

Daily Orders – For reference purpose only

Date 23rd FEB 2022

Coram: **Shri Anil Kumar B.**
Hon'ble Member (Technical)

Shri Ashok Kumar Borah
Hon'ble Member (Judicial)

1 CP(CAA)/4/KOB/2022

This 2nd Motion Petition has been filed under Section 230-240 of the Companies Act, 2013 by the Petitioner Companies in the matter of Scheme of Amalgamation between Hesel Engineering Pvt Ltd (Transferor Company) and Henry and Farad Pvt Ltd (Transferee Company).

Learned PCS for the Petitioners Shri Sumit Agarwal appeared through VC.

Vide order dated 03.02.2022 in CA(CAA)/02/KOB/2021 and CA(CAA)/03/KOB/2021 the Petitioners/Applicants were directed to individually send notice to the Regional Director, Income Tax Authorities, Registrar of Companies, Official Liquidator, GST Authorities and other sectoral regulators who may have significant bearing on the operation of the Petitioner/Applicant Companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises Arrangements and Amalgamations) Rules, 2016.

It appears from records that the Applicants have served the notice to the above statutory authorities, but ROC has only submitted his report along with a letter dated 19.01.2022 in this regard. Therefore, it is presumed that other statutory authorities have no objection in the matter of amalgamation of the Petitioner Companies.

ROC in his report dated 25.01.2022 stated that the Regional Director being the competent authority vide letter dated 19.01.2022 has conveyed that on behalf of the Central Government has examined the scheme with reference to the material papers made available to him and accordingly decided not to make any objection to the above Scheme of Amalgamation. However, the Regional Director has observed that except the following observed that as per Clause 1.6 of the Scheme, the Appointed Date is 01.04.2019, it is ante-dated beyond a year and the company has given its justification in the scheme for opting the above date as its appointed date, claiming it is in accordance with Ministry's General Circular No.09/2019, dated 21.08.2019. Hence this Tribunal may determine the appointed date, if it thinks fit. The RD has also prayed to direct the Transferee Company to comply with the provision of Section 232(3)(i) of the Companies Act, 2013 for merger of Authorized Share Capital of the Transferor with Transferee Company and also to file the amended MoA and AoA with the jurisdictional Registrar of Companies.

The Report of the Chairman appointed by this Tribunal to conduct the meeting of the Unsecured Creditors, is also on record.

List on 01.03.2022 for Admission.

2 COMP.APPLN/5/KOB/2022

This application has been filed by the petitioner with the prayer to condone the delay of 9 days in paying the cost of Rs.3,000/- in the matter of Restoration of CP/37/KOB/2020.

Learned counsel for the Applicant Shri K. Biju appeared through VC.

On hearing the learned counsel for the applicant, we are of the considered view that the prayer of the Applicants be allowed.

Accordingly, COMP.APPLN/5/KOB/2022 stands allowed and Registry is directed to restore the CP/37/KOB/2020 and list the same accordingly.

3 REPORT/46/KOB/2022 in IBA/38/KOB/2019

This Report has been filed under Regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 by the Liquidator in the matter of liquidation process against the Corporate Debtor Albanna Engineering (India) Pvt Ltd.

Learned Liquidator Shri Vinod Balachandran appeared through VC along with his counsel Shri K.B.Arunkumar.

Perused the report. Report is taken on record. Registry is directed to place the report in IBA/38/KOB/2019.

4 CP/16/KOB/2020

Learned counsel for the Petitioner Shri Sukumar Nainan Oommen appeared through VC. Learned counsel for R1 and R11 Shri Philip Mathew, learned counsel for R2, R4, R5 and R9 Shri Jomy George and learned counsel for R3, R6, R7 & R8 Shri P.Thomas George appeared through VC.

This is a part heard case. Since the NCLT-Kochi has been re-constituted from 28.01.2022 this case is released from Part heard.

At the request of Shri Sukumar Nainan Oommen, the case is adjourned to 02.03.2022 for hearing. There shall be no further adjournment in this matter.

Learned counsel for the all the parties may file their written submissions in brief (limiting 3-4 pages) 2 days before the date fixed.

4 IA/91/KOB/2020 IN CP/16/KOB/2020

Learned counsel for both sides appeared through VC.

Since pleadings are complete in the main CP this IA will be heard along with the main CP

At the request of Shri Sukumar Nainan Oommen, the case is adjourned to 02.03.2022 for hearing.

4 IA/126/KOB/2020 IN CP/16/KOB/2020

Learned counsel for both sides appeared through VC.

Since pleadings are complete in the main CP this IA will be heard along with the main CP

At the request of Shri Sukumar Nainan Oommen, the case is adjourned to 02.03.2022 for hearing.

4 IA/127/KOB/2020 IN CP/16/KOB/2020

Learned counsel for both sides appeared through VC.

Since pleadings are complete in the main CP this IA will be heard along with the main CP

At the request of Shri Sukumar Nainan Oommen, the case is adjourned to 02.03.2022 for hearing.

4 IA/128/KOB/2020 N CP/16/KOB/2020

Learned counsel for both sides appeared through VC.

Since pleadings are complete in the main CP this IA will be heard along with the main CP

At the request of Shri Sukumar Nainan Oommen, the case is adjourned to 02.03.2022 for hearing.

4 CONTEMPT PETITION/06/KOB/2020 IN CP/16/KOB/2020

Learned counsel for the Contempt Petitioner Shri Philip Mathew as well as learned counsel for respondent Shri Sukumar Nainan Oommen appeared through VC.

At the request of Shri Sukumar Nainan Oommen, the case is adjourned to 02.03.2022 for hearing.

5 CP(IB)/8/KOB/2021

Learned counsel for the Financial Creditor Shri Sunil Shankar as well as learned counsel for the Corporate Debtor Shri C.K.Karunakaran appeared through VC.

This is a part heard case. Since the NCLT-Kochi has been re-constituted from 28.01.2022 this case is released from Part heard.

Heard both sides afresh.

Hearing concluded. Orders reserved.

Learned counsel for both the parties may file their written submissions in brief (limiting 3-4 pages) along with the relevant case laws within 7 days from today.

5 IA(IBC)/149/KOB/2021 IN CP(IB)/8/KOB/2021

This is an IA filed by the applicant/Corporate Debtor against the Respondent/ Financial Creditor under Rule 11 of NCLT Rules, 2016 praying to accept the additional objections.

Heard both sides.

Hearing concluded. Orders reserved.

5 IA(IBC)/150/KOB/2021 IN CP(IB)/8/KOB/2021

This is an IA filed by the Applicant/Corporate Debtor against the Respondent Financial Creditor under Rule 11 of NCLT Rules 2016 praying for consideration of question of maintainability of the Petition filed under Section 7 by the FC as a preliminary issue.

Heard both sides.

Hearing concluded. Orders reserved.

5 IA(IBC)/12/KOB/2022 in CP(IB)/8/KOB/2021

This IA has been filed by the Applicant/FC with the prayer to accept on record the additional document produced by the applicant and grant further time to produce the certificate of registration of charge.

Learned counsel for both the parties appeared through VC.

Heard both sides.

Hearing concluded. Orders reserved.

6 IA(IBC)/13/KOB/2022 in IBA/27/KOB/2020

This IA has been filed under Section 12 A of IBC, 2016 read with Regulation 30A(1)(a) of CIRP Regulation and also read with Section 60(5)(a) of the IBC, 2016 by the IRP for withdrawal of the CIR Process.

This IA has already been disposed of vide order dated 27.01.2022. To clarify certain points the matter was posted on 01.02.2022 as “to be spoken to”.

The matter was suo motu restored to file and listed for hearing.

Vide Order dated 01.02.2022 the IRP was directed to file the proof of newspaper publication and to explain as to why this IA has been filed before the last date fixed for receiving the claims of creditors, in an affidavit within 7 days. He was also directed to clarify whether any claims received pursuant to the paper publication, and if so how many claims received.

The IRP in his affidavit has stated that the IA was filed in good faith and was in compliance of Rule 30A(1)(a) read with 30A(3) making it obligatory upon the Interim Resolution Professional to file the application under Section 12A of IBC 2016 within three days of receipt of the application. The application was received on 11.01.2022 and the same was filed within 3 days before this Tribunal. The IRP has also stated that in response to the public notice, no claim petitions were received by him under CIRP Regulation 8(1), 8A(1), 9(1)(2)(3), 9a(1)(2) of IBC 2016 as well.

Heard the IRP and perused the records.

Hearing concluded. Orders reserved.

6 IBA/27/KOB/2020

Learned IRP Shri K. Easwara Pillai as well as learned counsel for the Corporate Debtor Shri Jolly John appeared through VC.

Hearing concluded. Orders reserved.

7 CP(IB)/35/KOB/2021

Learned RP Smt Celine P. Thomas appeared in person through VC.

Learned counsel for the Creditor Bank Shri Akhil Suresh as well as learned counsel for the Personal Guarantor Shri Vinayak appeared through VC.

Shri Vinayak sought some more time to file the Reply Statement of the Personal Guarantor. Considering his prayer and in the interest of justice, the Respondent/Personal Guarantor is given the last and final opportunity to file the Reply Statement on or before 28.02.2022, failing which it will be presumed that he is no more interested to file any reply statement in this case.

List on 03.03.2022 for hearing.

8 CP(IB)/36/KOB/2021

Learned RP Smt Celine P. Thomas appeared in person through VC.

Learned counsel for the Creditor Bank Shri Akhil Suresh as well as learned counsel for the Personal Guarantor Shri Vinayak appeared through VC.

Shri Vinayak sought some more time to file the Reply Statement of the Personal Guarantor. Considering his prayer and in the interest of justice, the Respondent/Personal Guarantor is given the last and final opportunity to file the Reply Statement on or before 28.02.2022, failing which it will be presumed that he is no more interested to file any reply statement in this case.

List on 03.03.2022 for hearing.

9 CP/28/KOB/2020

Learned counsel for the petitioner Shri Philip Mathew as well as learned counsel for R1-R4 & R6 Shri Johny Thomas appeared through VC.

This is a part heard case. Since the NCLT-Kochi has been re-constituted from 28.01.2022 this case is released from Part heard.

Heard both sides.

Interim Orders passed vide separate sheets.

List on 27.04.2022 for further hearing.

10 CP/41/KOB/2021

Learned counsel for the Petitioner Shri Shinu J. Pillai as well as learned counsel for Respondents 1 to 3 Shri K. Shaj appeared through VC.

It appears that notice was duly issued to R4 on 16.02.2021. But he neither appeared through VC nor filed any reply statement till date. **Accordingly, R4 is hereby set ex-parte.**

Learned counsel for R1 to R3 sought an adjournment stating that some more time is required to settle the matter amicably. His submission is recorded and prayer is granted.

List on 09.03.2022 for hearing. R1 to R3 may file the settlement memo before the date fixed.