

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

**I.A. (IBC) No.81/KOB/2023
&
I.A.(IBC) No.82/KOB/2023
In
C.P.(IB) No.6/KOB/2023**

In the Matter of:

An application filed by the Applicant/Petitioner under Rule 32 and 11 of NCLT Rules, 2016 for directions from NCLT;

And

I.A. (IBC) No.81/KOB/2023

In the Matter of:

Jatayupara Tourism Private Ltd., a Private Limited company with CIN-U63040KL2014PTC037707 incorporated and having its registered office at Jatayu earth's centre, Jatayu Junction, Chadayamangalam, Kollam, Kerala – 961 534;

... Applicant

Verses

In the Matter of:

Dhanlaxmi Bank Ltd. Dhanalakshmi Building Naikanal, Thrissur 680 001 represented by Karunakaran & Associates, Advocates, A-One La Rochele, Vidya Nagar Kadavanthra, - Kochi 682 020 ckkoffice@gmail.com;

...Respondent 1

Shawn Jeff Christopher, Independent CA appointed by Hon'ble NCLT Kochi, JVR & associates Chartered Accountants, Willmount Park Business centre, Pallimukku, Kochi, Ernakulam – 682 016;

...Respondent 2

Appearances (through video conference)

For Applicant:

Mr. Sankar P. Panicker, Adv

For the 1st Respondent:

Mr. C. K. Karunakaran, Advocate.

For the 2nd Respondent

Mr. Shawn Jeff Christopher, CA

**Order reserved on: 12.04.2023
Order pronounced on: 19.04.2023**

And

I.A.(IBC) No.82/KOB/2023

An Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 32 & 11 of NCLT Rules, 2016;

In the Matter of:

P. J. Mathews, Nedumchira Thottathil, Adichanalloor P.O. Kollam 691 573;

... Applicant

Verses

Dhanlaxmi Bank Ltd. Dhanalakshmi Building Naikanal, Thrissur 680 001 represented by Karunakaran & Associates, Advocates, A-One La Rochele, Vidya Nagar Kadavanthra, - Kochi 682 020 ckkoffice@gmail.com;

...Respondent 1

Jatayupara Tourism Private Ltd., a private Limited company with CIN-U63040KL2014PTC037707 incorporated and having its registered office at Jatayu earth's centre, Jatayu Junction, Chadayamangalam, Kollam, Kerala – 961 534;

...Respondent 2

Order reserved on: 12.04.2023
Order pronounced on: 19.04.2023

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances

For Applicant:	Mr. Bijay P. Pulipra, Advocate
For the 1 st Respondent:	Mr. C. K. Karunakaran, Advocate.
For the 2 nd Respondent	Mr. Sankar P. Panicker, Advocate.

I.A. (IBC) No. 81/KOB/2023.

1. This is an application filed by the Applicant/Respondent, corporate debtor in main petition C.P (IBC) No.06/KOB/2023 to implead the second respondent in this application Mr. Shawn Jeff Christopher an Independent Charter Accountant

appointed in I.A. No.(C/Act) 03/KOB/2023 in C.P.No.21/KOB/2020 as an additional respondent in main C.P.No.06/KOB/2023.

I.A (IBC) No. 82/KOB/2023.

2. This is an application filed by one the shareholder of second respondent M/s. Jatayupura Tourism Private Ltd to implead him as additional respondent in the main section 7 IBC petition C.P.No.6/KOB/2023 filed by the 1st respondent Dhanalakshmi Bank Ltd.

3. The supra-two applications are filed to implead the third parties as an additional respondent in main section 7 IBC petition C.P.No.6/KOB/2023. The point involves in both the applications are whether third party, other than the corporate debtor is proper and necessary party to be impleaded to decide petition under section 7 IBC 2016? In an application I.A. No. 81/KOB/2023 the applicant wants to implead the independent charter accountant appointed in C.P.No.21/KOB/2020 and in I.A.No.82/KOB/2023 the applicant himself wants to be impleaded as a party, who has filed C.P.No.21/KOB/2020 under section 241 & 242 under Companies Act 2013 along with others against the second respondent M/s Jatuporn Tourism Private Ltd and others. In both the applications applicants referred the appointment of independent charter accountant in C.P.No.21/KOB/2020, and made their submission substantiating their prayers made in the applications, since prayers in both the applications are similar in nature and inter connected with each other, hence it is decided to pass this common order.

COMMON ORDER

4. The main petition is filed under section 7 of IBC 2016 by Dhanalakshmi Bank to initiate Corporate Insolvency Resolution Process against the corporate debtor M/s. Jatayupura Tourism Private Ltd for the default amount of Rs.3,22,96,229.74/- default committed in repayment of loan amount which was availed on 11.10.2017. The proceedings under Section 7 IBC 2016 is a summary in nature, the two main elements need to be satisfied by the financial creditor to pass

an order to initiate Corporate Insolvency Resolution process against the corporate debtor are financial Debt and Default. There is no provision in IBC 2016 to implead third parties in section 7 IBC 2016 petitions.

The point for consideration is:

1. Whether 3rd party is necessary or proper party in petition under section 7 IBC 2016?

Point.1: In any civil proceedings the parties need to be arrayed as parties are Necessary party and proper party. A necessary party is one without whom no order can be made effectively'; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. If a "necessary party" is not impleaded, the proceeding itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the petition, though he need not be a person in favour of or against whom the order is to be made. The proper party need not always be added as a party, such a party can be examined as a witness.

5. Here on the applicants side not explained how the proposed parties are necessary parties to the petition under section 7 IBC 2016, how their presence is necessary to decide the lis exist between the financial creditor and corporate debtor and to determine the debt and default. The petitioner being dominus litis, petitioner cannot be compelled to fight against a person against whom he does not claim any relief.

6.The applicants stated that the Independent chartered accountant appointed in C.P.No.21/KOB/2020 has filed a report that as on date a sum of Rs.7,24,53,485/- is lying in Escrow account in the Treasury. The applicant in I.A. No. 81 of 2023 stated that in spite of sufficient amounts available in the Treasury account the independent chartered accountant has not taken any steps to pay the

debt amount payable by the corporate debtor to the financial creditor Dhanalakshmi Bank hence he is necessary party to be impleaded. The similar argument was also made on the side of applicant in I.A.No.82/KOB/2023.

7. The Guru Chandrika Builders and Property, is the principal contractor who entered into an agreement with State of Kerala, obtained large extent of land about 60 acres for long term lease of 30 years and commenced/developed the “**Jatayupara Tourism Project**”. Later Guru Chandrika Builders and Property, entered into an agreement with corporate debtor M/s. Jatayupura Tourism Private Ltd on 23.09.2015. Under the said agreement the operational right of **Jatayupara Tourism Project**” was given to the corporate debtor M/s. Jatayupura Tourism Private Ltd.

8. In the year 2017 the corporate debtor availed loan from the financial creditor. It is stated by the applicants that the loan availed by the corporate debtor was utilized to complete the “**Jatayupara Tourism Project**” After sometimes dispute arose between the corporate debtor and principal contractor Guru Chandrika Builders and Property, it leads to the termination of the operational right given agreement dated 23.09.2015 by communication dated 12.03.2020. The Guru Chandrika Builders and property also issued notice to the corporate debtor to vacate the office which is situated in the site of “**Jatayupara Tourism Project**” The corporate debtor obtained stay order from the High Court of Kerala against the eviction and also challenged the unilateral termination of the agreement dated 23.09.2015 before the Civil courts and matter is pending before the Arbitrator.

9. After the termination of agreement dated 23.09.2015, on 12.03.2020 the Guru Chandrika Builders and Property, take over the administration of “**Jatayupara Tourism Project**” and started to sell the tickets on its own. At this juncture applicant in I.A.No.82/KOB/2023 and others filed company petition C.P.No.21/KOB/2020 against the corporate debtor and others under sections 241 and 242 of Companies Act 2013 for oppression and mis management. In the said proceedings at the instance of applicant in I.A.No.82/KOB/2023 and others the

Company Tribunal passed an order on 07.06.2022 directing the respondents thereon including Guru Chandrika Builders and property who are in management of “**Jatayupara Tourism Project**” to deposit daily collection in a separate Bank account/Escrow account. Then the daily ticket collection amount is started to deposit in the separate Escrow Treasury Account. In an appeal before NCLT-Chennai the said order was confirmed, against which appeal was filed before the Supreme court of India. In pursuance of Apex court order the independent charter accountant was appointed. The independent charter accountant was appointed to verify the claim submitted by the management of “**Jatayupara Tourism Project**” and if the claim is genuine, give consent in writing to the management to withdraw the amount from deposit, to meet the essential/necessary, salary and other operational and statutory expenses to run the “**Jatayupara Tourism Project**. The main concern for appointment of an independent charter accountant and withdrawal of amounts from the deposit is in order to ensure that the “**Jatayupara Tourism Project**” is not put in disuse.

10. The prime concern for appointment of charter accountant is to safe guard the “**Jatayupara Tourism Project**” and not for any particular company. Whether the unilateral termination of agreement is valid or not, who is entitle for the amount lying in Escrow deposit amount in Treasury are not the subject to be decided in this application.

11. On both the applicants side relies upon the Judgment of Apex court **Vidarbha Industries Power Ltd vs Axis Bank Ltd, Manu/SC/0874/2022** and submitted that the amount lies in Escrow treasury deposit amount is more than the debt amount payable to the financial creditor hence the corporate debtor is solvent company, no CIRP to be ordered. The applicability of Vidarbha judgment cannot be decided in these impleading applications, it is to the corporate debtor to raise all the available defense in the main petition under 7 of IBC 2016, there it has to be adjudicated, it is understood that the applicant in I.A.No.81/KOB/2023 who is

corporate debtor in main petition raised the plea of applicability of Vidarbha Judgment in its reply.

12. The presence of Independent chartered account is not required to dispose of the Section 7 IBC 2016 petition, hence I.A.No.81/KOB/2023 is liable to be dismissed.

13. In respect of Applicant in I.A.No.82/KOB/2023 is concern it is not explained how his presence require to dispose of petition under section 7 IBC 2016. Further the applicant being a shareholder of corporate debtor M/s. Jatayupura Tourism Private Ltd he is not a necessary or proper party, in this regard recently NCLAT-Chennai I Company Appeal (AT)(CH)(Ins.) No.142 of 2022 etc. dated 27.02.2022 in **Nirej Vadakkedathu Paul vs Sunstar Hotels Estate Private Limited**. held that shareholders have no locus standi to challenge the initiation of CIRP against the corporate debtor. In view of this citation plea of applicant need to be negated. On the applicant side relies upon certain citation and argued on the principal of natural justice the applicant needs to be impleaded, since direct supra NCLAT-Chennai citation is squarely applying to this case, we declined to refer those citations.

14. It is also worthwhile to refer the citation of NCLAT-Delhi in Company Appeal (AT)(Insolvency)No.246 of 2018 dated 31.07.2018 **Axis Bank Limited Vs Lotus Three Development Limited** held that:

“Initiation of corporate insolvency Resolution process under section 7 or 9 or 10 of IBC code is not an adverse litigation. It is not a recovery proceeding not can be treated to be a suit or case pending for decision on merit” and further held that “No other person has a right to be heard at the stage of admission of the application under section 7 and 9 of the IBC including the ‘Shareholders’ or the ‘personal guarantor’ etc.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

I.A.(IBC) No.81/KOB/2023
&
I.A.(IBC) No.82/KOB/2023
In
C.P.(IB) No.6/KOB/2023

In these circumstances it is answered to the point that in the section 7 of IBC 2016 petition 3rd party is not a proper and necessary party. Therefore, both the applications are **Dismissed**.

15. Registry is directed to send e-mail copies of the order forthwith to all the parties and their counsel's concern.

16. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.04.19 17:25:17 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.04.19 15:59:48 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 19th day of April, 2023.

Kaushal P.S.