

## IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

Thursday, the 27<sup>th</sup> day of June 2024 / 6th Ashadha, 1946

WP(C) NO. 15670 OF 2024 (G)

PETITIONER:

JAJU BABU, AGED 66 YEARS, MAKAM, ST ALBERTS HIGH SCHOOL LANE,  
BANERIEE ROAD, ERNAKULAM, PIN - 682 035.

RESPONDENTS:

1. NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH, GROUND FLOOR, COMPANY LAW BHAVAN BMC ROAD, THRIKKAKARA P.S. KAKKANAD, KOCHI, KERALA REP BY DEPUTY REGISTRAR, PIN - 682 021.
2. PHOENIX ARC PRIVATE LIMITED, 5TH FLOOR, DANI CORPORATE PARK, 158, CST ROAD, KALINA, SANTACRUZ (E), MUMBAI, REPRESENTED BY ITS AUTHORISED SIGNATORY, MR. HARSH MAGIA, PIN - 400 098.
3. MR. JOSSY STEPHEN KATTUR, RESOLUTION PROFESSIONAL OF KERALA CHAMBER OF COMMERCE & INDUSTRY BARONS 16C, SKYLINE IMPERIAL GARDENS, KALOOR, ERNAKULAM, PIN - 682 025.
4. M/S. DAVIDROOTS LLP, REPRESENTED BY ITS MANAGING PARTNER MR. ARUN DAVID 3XXI/185 G, DAVIDS ARCADE, BYPASS JUNCTION, A.M. ROAD, THANKALAM, KOTHAMAGALAM, KERALA, PIN - 686 691.
5. MS. ANNAMMA CHERIYAN, FLAT NO.44, ASHOKA APARTMENTS, SHANMUGHAM ROAD, ERNAKULAM, PIN - 682 031.
6. DR. THOMAS MATTATHIL, MATTATHIL HOUSE KIZHAPARAYAR P.O., POOVARARANI VILLAGE, KOTTAYARN DISTRICT, PIN - 686 578.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceeding pertaining to the final order Exhibit P5 passed by the 1st respondent pending this writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 11.06.2024 and upon hearing the arguments of SRI.TERRY V.JAMES, Advocate for the petitioner, M/S. SURESH DUTT DOBHAL, SHIKHAR KUMAR & NIDHI SAM JOHNS, Advocates for the 2nd respondent and of SRI.AKHIL SURESH, Advocate for the 3rd respondent, the court passed the following:

**T.R. RAVI, J.**

-----  
**WP(C) No.15670 of 2024**  
-----

Dated this the 27<sup>th</sup> day of June, 2024

**ORDER**

Heard parties on the writ petition.

2. Since it may not be possible to dispose of the writ petition today, some arrangements have to be made regarding the position that is obtaining as on today. This Court had stayed the order of NCLT whereby the NCLT had directed the reconstitution of the Committee of Creditors (CoC) after rejecting the claims of the home buyers/space buyers who had received sale deeds in their favour. The petitioner before this Court is a person whose claim is directed to be rejected.

3. The counsel for the financial creditor submits that on the strength of the order of stay issued by this Court, the RP is proceeding as if the CoC that was constituted prior to Ext.P5 order still exists and two plans have been put to vote and that the voting is going on. It is stated that voting is to be completed today. The grievance put forward is that if the order of the NCLT is found to be valid, the votes cast by the persons who have

WP(C) No.15670 of 2024

2

received sale deeds cannot be treated as valid and the percentage of vote in favour of the financial creditor would be higher. The grievance stated is justified. If on the other had this Court was to hold that the order issued by the NCLT is bad in law and requires reconsideration, then what was available at the time the NCLT had taken the matter for orders would continue to remain. This will again tilt the balance as far as voting shares are concerned. I am hence of the opinion that neither side should be prejudiced pending a determination by this Court on the writ petition.

In such circumstances, the RP is directed to put on hold all further proceedings regarding the voting and not take any action based on the votes so cast. The further actions shall be only in accordance with the directions that are to be issued finally in this writ petition.

H/o.

Sd/-  
**T.R.RAVI**  
**JUDGE**

LEK

**APPENDIX OF WP(C) 15670/2024**

**Exhibit P5**

**TRUE COPY OF THE FINAL ORDER DATED 09.04.2024**

