

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

**IA (C/Act)/16/KOB/2023**

**IN**

**CP(C/Act)/38/KOB/2022**

*(Under Rule 11 of NCLT Rules, 2016)*

***In the matter of* HIRAN VALIYAKKIL LAL AND  
OTHERS**

**MEMO OF PARTIES:**

**HIRAN VALIYAKKIL LAL (DPIN: 07589561),**

S/o. Heeralal Balakrishnan, Valiyakkil House,  
Brahmakulam P.O, Thaikkad, Thrissur, Kerala  
680104.

**... Applicant No. 1**

**APARNA HIRAN,**

D/o. Praseeth Kumar, UK House, Dutt  
Compound, Manakavu, Valayanadu, Kozhikode,  
Kerala 673007.

**... Applicant No. 2**

**SALIJA,**

D/o. Appu, UK House, Dutt Compound,  
Manakavu, Valayanadu, Kozhikode, Kerala  
673007.

**... Applicant No. 3**

**V G SANDHYA,**

W/o. Ajith P Arawind, Pandaran House,  
Brahmakulam P.O, Thaikkad, Thrissur 680104.

**... Applicant No. 4**

**-Vs-**

**K V SREEJA,**

D/o. Gopalan, Kalyanika, Jyothi Nagar,  
Puthiyangadi, Westhill, Kozhikode, Kerala –  
673005.

**... Respondent No.1**

**HARDOLL ENTERPRISES LLP,**

26/408(2), PM Tower, Near Sub Station,  
Thaikkad Junction, Chowalloorpadi, Guruvayoor  
68014.

**... Respondent No.2**

**VINEETH M V (DIN: 08053057),**

Manathil House, Kandanassery P.O – 680102.

**... Respondent No.3**

**PRAKASAN,**

S/o. Nayarkandi Kunhikannan, Kalyanika, Jyothi  
Nagar, Puthiyangadi, Westhill, Kozhikode,  
Kerala – 673005.

**... Respondent No.4**

**ATELIERZ3D INDIA LLP (AAT-8354),**

26/408(2), PM Tower, Near Sub Station,  
Thaikkad Junction, Chowalloorpadi, Guruvayoor  
68014.

**... Respondent No.5**

**BRANCH MANAGER,**

HDFC Bank Ltd (Branch Code:1233) East Nada,  
Guruvayur, Thrissur, Kerala 680101.

**... Respondent No.6**

**BRANCH MANAGER,**

Canara Bank, Thaikkad Branch, Chowallurpadi,  
Thrissur, Kerala 680104.

**... Respondent No.7**

**BRANCH MANAGER,**

ICICI Bank, Marar Road Branch, Thrissur, Kerala  
68001.

**... Respondent No.8**

**Order delivered on: 04.04.2024**

***Coram:***

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. (Retd.) Justice T Krishna Valli**

***Appearances:***

For the Applicant : Mr. Santhosh Mathew, Advocate

Mr. Vijay V Paul, Advocate

For the Respondents : Mr. P R Shaji, Advocate

Mr. Vinay Mathew, Advocate

**ORDER**

**Per Coram**

1. This application has been filed under rule 11 of NCLT, rules 2016 by Mr. Hiran Valiyakkil Lal and others who are respondents 2 to 5 in CP(C/Act)/38/KOB/2022, the main petition, against petitioner and other respondents in the main petition seeking to dismiss the

main petition on ground of its maintainability. The Brief facts of the case are as follows: -

2. Hardoll Enterprises LLP (AAH-3326), the 2nd respondent herein was incorporated on 06.09.2016 with a total capital contribution of Rs.50 lakh. The applicants including respondents 1, 3 and 4 are partners of the LLP. The main company petition is filed seeking to wind up the 2nd respondent under section 63 and 64(f) of the LLP Act, 2008.
3. The applicants state that the main petition is not maintainable as per the requirement laid down under Rule 26(4) of LLP Rules, 2012 is not complied which state as follows: -

***“A petition filed by the LLP or any of its partner or partners for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs of the LLP on the date of petition and a resolution of three-fourths of total number of partners in the form and manner specified in Part VI.”***

It is stated that as under the above proviso the required mandate, i.e 3/4th of the partners of LLP out of 7, which forms to 5 in this case, is mandatory and not complied with. It is stated that the main petition is filed by one of its partners solitarily without backing of the said resolution.

4. Further plea is taken by the applicant on ground of res judicata. It is stated that the 3rd respondent herein who is the son in law of the petitioner/ 1st respondent had earlier filed before this Tribunal

CP/19/KOB/2021 for winding up of LLP with same cause of action and facts as to dispute and similar reliefs. It is stated that the base cause of action for initiation of both earlier CP and this CP is same, i.e the redesignation of 3rd respondent as partner of firm on 2.01.2021. The applicant relies on **Ebix Singapore Pte Ltd vs Committee of Creditors of Educomp(Civil Appeal No. 3224 of 2020)** wherein the SC observed that the doctrine of res judicata is applicable to judicial proceedings outside those governed by CPC and quotes as below:-

*“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter 7 whether on a question of fact or a question of law 7 has been decided between two parties in one suit or proceeding and the decision is final, either because 6Civil Appeal No. 3224 of 2020 20 Company Appeal(AT)(Insolvency) Nos. 699 & 812 of2022 no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section I] does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”*

It is stated the earlier CP was withdrawn by the 3<sup>rd</sup> respondent without liberty to pursue the legal remedy again as is evident from Annexure A2 order of this Tribunal. The applicant further contends that the 1<sup>st</sup> respondent is involved in forum shopping as already another Arbitration matter is in process. The applicant state that the interim reliefs sought in the main CP with regard to appointment of administrator to manage the LLP, was tried before the Arbitral Tribunal during Arbitration proceedings which was dismissed by the Annexure A7 and A6 orders of the on just grounds.

5. The applicants further contend that NCLT is not the forum to adjudicate this cause of action as it pertains to virtually an inter se dispute between the partners of the LLP and the correct jurisdiction falls within the purview of the Civil courts. Reliance is placed on **Aanchal Mittal Vs Ankur Shukla {CM (M) 1086/2021 and [TM No. 42689/2021]}** wherein the Delhi High Court observed as follows: -

*“24. Section 9 of the CPC states that Courts shall have the jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. Merely because the definition of the “body corporate” under Section 2(1)(d) of the LLP Act includes an LLP, it is not automatically implied that the NCLT would be the competent forum for deciding all disputes inter se the partners of an LLP. Unlike Section 430 of the Companies Act, 2013, there is no bar on the jurisdiction of the Civil Courts under the*

*provisions of the LLP Act. Therefore, in terms of Section 9 of the CPC, the suit shall be maintainable in a Civil Court.”*

The applicants therefore contend that the 1<sup>st</sup> respondent is abusing the process of this Tribunal and is not maintainable on basis of the aforesaid question of law.

6. On respondent side, though counsels appeared on behalf of respondent No. 1 and 3, they failed to file any vakalath within proper time and also no counter affidavit was on record. However, the counsel for R1 who represents the petitioner in the main CP argued that Rule 26(4) of LLP Rules is meant only for the consideration of statement of affairs of LLP for the purpose of admission of LLP to winding up. The counsel relied on rule 26(1) and (2) to state that the petition can be filed by LLP or any of its partner or partners. It is stated that as per Rule 26(4), it talks about admission of the petition which is permissible upon the production of statement of affairs and 3/4<sup>th</sup> resolution of partners. He further relied on Rule 28 which state that the Tribunal shall on prima facie consideration of facts can direct by order to the LLP to file the statement of affairs along with objections if any. It is further contended that in case the LLP passes 3/4<sup>th</sup> resolution and makes statement of affairs as averred by the applicant, LLP shall go for voluntary winding up and not pursue matter under Rule 26(1). The counsel further relied on Rule 33 to show the jurisdiction of the Tribunal to entertain the matter relating to any suit or proceedings against the LLP or any question whatsoever arising on or out of

winding up. It is further stated that since the parties in the previous petition and the prayers are not the same, the matter cannot be regarded as bad for res judicata. It is hence contended that the matter is fit for admission under section 63 and 64 of LLP act.

7. Heard the submissions and perused the documents on record. This maintainability petition having come up for hearing on 07.07.2023 was heard and orders were passed on 09.08.2023 dismissing this maintainability petition stating that Rule 26(1) and (2) of LLP Rules read with section 63 and 64 of LLP Act, 2008 provide for a partner to present the petition for winding up of the LLP and the Tribunal on hearing the main petition and after considering the financial position of the LLP assessable from the statement of affairs which needs to be filed by the LLP, decide whether or not to admit the petition and order winding up of the LLP. At the maintainability stage, the Tribunal observed that as far as maintainability is in question, the petition is presentable by a partner as per LLP rules. The other plea of res judicata and jurisdiction of this Tribunal to entertain a winding up petition was also considered and adjudged in favour of the petitioner. It is to be noted that what this Tribunal passed is an order approving maintainability in matter of question of law alone and not in facts. The main petition was to be heard to decide whether the LLP needs to be wound up or not. But before main petition could be heard, these applicants approached the Hon'ble High court of Kerala filing an otherwise unusual petition, i.e, in **OP(Civil) No. 1859 of 2023** instead of preferring an appeal before Hon'ble NCLAT and obtained the following order: -

*“6. As I have already said above, this Court do not require to enter into the controversy on its merits because, as matters now stand, the petition filed by the petitioners herein, against the maintainability of the petition for winding up of the 5th petitioner – LLP, has been dismissed solely for the reason that the latter petition has not been taken for admission and therefore, that the stage of production of the Resolution and Statement of Affairs has not arrived.*

*7. Even if the above be so, obviously, the NCLT ought to have deferred consideration of the application of the petitioner until such time as the main petition for winding up of the 5th petitioner - LLP had been taken for admission.*

*7. To paraphrase, if the application of the petitioners, against the maintainability of the petition to wind up the LLP was found to be premature; then, its consideration ought to have been deferred until such time as the petition for winding up was taken up for admission.*

*8. I, therefore, asked the learned counsel for the parties, whether they would stand in the way of this Court remitting the matter to the learned Tribunal, for being considered along with main petition, as and when it is taken for admission; and I must record that all of them very fairly submitted that this course can be adopted.*

*In the afore circumstances, without entering into the merits of Ext.P4 in any manner, I set it aside, finding that it was unnecessarily issued by the NCLT even before the main petition for winding up of the LLP had been considered for admission; thus, consequentially, directing the said Tribunal to reconsider the application of the petitioners at the relevant time, after hearing both sides and granting them necessary opportunities as per law.”*

8. The matter being remanded back was taken up again on 16.02.2024. On the day, the applicants argued on the following grounds: -
- (i) Petition does not meet requirements for filing petition under Rule 26(4) of LLP rules, 2012 as the petition for winding up of an LLP should necessarily have 'statement of affairs' accompanied with it.
  - (ii) Petition cannot be filed by a single partner without a 3/4<sup>th</sup> resolution
  - (iii) Petition needs to be filed in Form 28 which mandate above documents
  - (iv) Existence of arbitration between parties and Tribunals powers under Rule 27(2) to refuse winding up of LLP as alternate remedy is available
  - (v) NCLT not a forum to raise inter se dispute between parties
9. Now point no.(iv) and (v) supra need not be considered here as this application here is not the main petition but an application for deciding on the question of maintainability of winding up petition presented by a single partner of LLP without accompanying the petition with statement of affairs and 3/4<sup>th</sup> resolution of partners. It is settled position that maintainability questions need to be considered in view of the legal impediments to entertain the petition. In respect of the formalities imposed by Rule 26, it is clear from the sub rule (1)(a) that a petition for winding up can be

presented by any partner. Further as to the petition being hit by conditions imposed in Rule 26(4) i.e for production of statement of affairs and resolution, it is necessary to see **Rule 28** which pertains to a case where any person other than LLP filing a winding up petition, in which case, this Tribunal can if circumstances appear so, order LLP to file its objections along with statement of affairs. Further in **Rule 101**, petition for winding up, it mentioned clearly in proviso to sub rule (1) that petition in case is made by LLP shall accompany with the statement of affairs. In this case, the petition presented by a partner without LLP's support can present this petition as per law but need not accompany it with statement of affairs and 3/4<sup>th</sup> resolution because it is not a case of voluntary winding up but only a winding up sought in view of the disputes alleging oppression and mismanagement. During the course of proceedings, this Tribunal also tried to encourage mediation between parties but it went without results. Hence considering the due process envisaged under the LLP Act, 2008, we find that this the main petition is clearly maintainable in law. However, keeping the orders from Hon'ble High Court of Kerala in mind, the matter of admission of the main petition cannot be deferred without further. Therefore, we are inclined to direct the respondent no.1 **Hardoll Enterprises LLP**, respondent no. 1 in CP(C/Act)/38/KOB/2022, the main petition, to file Statement of affairs as on date, in prescribed form and manner specified in Part VI along with written objections to the CP if any, within a period of 4 weeks from date of this order.

10. In view of the above, **IA (C/Act)/16/KOB/2023**, is, dismissed and disposed of accordingly. Let the **CP(C/Act)/38/KOB/2022** be listed on **03.05.2024** along with the relevant pleadings in file to hear on issue of admission of winding up of LLP.
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
12. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
13. File be consigned to records.

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this the 4<sup>th</sup> day of April, 2024.

Rohit/LRA