



2023:KER:77559

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 28TH DAY OF NOVEMBER 2023 / 7TH AGRAHAYANA, 1945

OP(C) NO. 2251 OF 2023

AGAINST CP 74/2019 OF NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH,

KAKKANAD

PETITIONER/PETITIONER IN CP:

K.N. ABDUL GAFOOR
AGED 58 YEARS

BY ADVS.
PHILIP MATHEW
VINAY MATHEW JOSEPH
K.R.JINAN
K.J.KARTHIKA
FEBA B.PANICKER

RESPONDENTS/RESPONDENTS IN CP AND TRIBUNAL:

- 1 M/S KASMISONS BUILDERS PVT. LTD
DOOR NO. 64/3916, 3RD FLOOR, KASMISONS ARCADE, M.G.
ROAD, ERNAKULAM-682 035, KERALA, NOW ALLEGING THE
REGISTERED OFFICE AT 29/1172F, JANATHA JUNCTION,
SAHODARAN AYYAPPAN ROAD, VYTTILA, ERNAKULAM, KERALA,
REPRESENTED BY ITS MANAGING DIRECTOR, PIN - 682019
- 2 K.N. SHAMSUDHEEN
AGED 63 YEARS
S/O KASMI,
- 3 K.N. MARZOOK
AGED 65 YEARS
S/O KASMI,
- 4 K.N. FAJAR
AGED 53 YEARS
S/O KASMI,
- 5 REGISTRAR OF COMPANIES, KERALA
COMPANY LAW BHAVAN, BMC ROAD, THRIKKAKKARA P.O.
ERNAKULAM, PIN - 682021
- 6 NATIONAL COMPANY LAW TRIBUNAL ,KOCHI BENCH
REPRESENTED BY ITS DEPUTY REGISTRAR COMPANY LAW BHAVAN,
BMC ROAD, THRIKKAKKARA P.O. ERNAKULAM, PIN - 682021



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BY ADVS.
ANIL D. NAIR
K.R.RAJKUMAR
TELMA RAJU (K/000635/2014)
AADITYA NAIR (K/000952/2017)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
28.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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J U D G M E N T*Dated this the 28th day of November, 2023*

This Original Petition is directed against Ext.P5 order of the National Company Law Tribunal, Kochi Bench ('NCLT' for short), which directs the petitioner in the winding up proceedings bearing No.CP/74/KOB/2019, to place on record a copy of the statement of affairs, subject to payment of Rs.50,000/-. The short ground under which Ext.P5 is challenged, is based on Section 274(1) of the Companies Act, 2013, which contemplates such an order only as against the company; and not against a person like the petitioner, who is only a share holder.

2. Heard the learned counsel for the petitioner, learned counsel for the respondents 1 & 3 and 5 & 6. Although, service is complete, there is no representation for respondents 2 & 4.



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3. As regards the proposition canvased by the learned counsel for the petitioner that, an order directing production of statement of affairs can be made only as against the company, it appears that there is no serious quarrel, as reflected from the submissions made by the learned counsel for the respondents. Section 274(1) is extracted here below.

274. Directions for filing statement of affairs. - (1) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed:

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a pre-condition to issue directions to the company.

4. It is clear from the above referred provision that, the 6th respondent-Tribunal can only direct the Company to file its objections along with the



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statement of affairs, within the time frame as stipulated in Section 274(1) of the Companies Act. As such, the impugned direction against the petitioner vide Ext.P5, to place on record the statement of affairs is *per se* illegal and the same is hereby set aside. The winding up proceedings will continue in accordance with law, directing the company to produce the statement of affairs, if it is found necessary to proceed with the matter .

The Original petition is disposed of as above.

Sd/-

C. JAYACHANDRAN
JUDGE

TR



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APPENDIX OF OP(C) 2251/2023

PETITIONER EXHIBITS

- | | |
|------------|---|
| Exhibit P1 | THE TRUE COPY OF THE COMPANY PETITION
NO. CP/74/KOB/2019 FILED BY THE
PETITIONER, WHICH IS PENDING BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL, KOCHI
BENCH DATED 30.01.2019 |
| Exhibit P2 | THE TRUE COPY OF THE COUNTER AFFIDAVIT
FILED BY THE RESPONDENTS NO. 1 & 3
BEFORE THE NATIONAL COMPANY LAW
TRIBUNAL, KOCHI BENCH IN CP/74/KOB/2019
DATED 03.10.2019 |
| Exhibit P3 | THE TRUE COPY OF THE ADDITIONAL COUNTER
AFFIDAVIT FILED BY THE RESPONDENTS NO.
1 & 3 BEFORE THE NATIONAL COMPANY LAW
TRIBUNAL, KOCHI BENCH IN CP/74/KOB/2019
DATED 14.01.2020 I |
| Exhibit P4 | THE TRUE COPY OF REPORT FILED BY THE
5TH RESPONDENT BEFORE THE NATIONAL
COMPANY LAW TRIBUNAL, KOCHI BENCH IN
CP/74/KOB/2019 DATED 11.03.2020 |
| Exhibit P5 | THE TRUE COPY OF THE ORDER PASSED BY
THE NATIONAL COMPANY LAW TRIBUNAL,
KOCHI BENCH IN CP/74/KOB/2019 DATED
22.09.2023 |