

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 05<sup>TH</sup> DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP NO.191 OF 2020

PETITIONER:

M/S ALBANNA ENGINEERING LLC  
POST BOX - 7323, DUBAI, UNITED ARAB EMIRATES;  
HAVING ITS PROJECT OFFICE AT XIV/98M  
MNB BUSINESS HUBFL ROOM NO.3, AMBATTU  
AMBALAMUGAL P.O., PIN - 682 302;  
REP. BY ITS POWER OF ATTORNEY HOLDER SREEKUMAR S.  
S/O LATE P. SANKARAN NAIR, AGED 56 YEARS  
H.B.47, PANAMPILLY NAGAR, KOCHI - 682 036

BY ADV. SRI. REJI GEORGE

RESPONDENTS:

1. NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH  
KUNNUMPURAM, VAZHAKKALA, KOCHI, PIN - 682 021
2. M/S. SANGHVI MOVERS LIMITED  
REGD OFFICE: SURVEY NO. 92  
TATHWADE, TALUKA - MULSI, PUNE  
MAHRASHTRA STATE, PIN - 411 033
3. M/S. ALBANNA ENGINEERING (INDIA) PRIVATE  
LIMITED  
REPRESENTED BY ITS EX-DIRECTOR MR. MATTHEW  
KAVALAM  
XIV 305 A4(4) 3E, NOEL FOCUS, SEAPORT-AIRPORT  
ROAD, CHITTETHUKARA, CSEZ P.O., KAKKANAD, PIN  
- 682 037
4. M/S. PUNJAB NATIONAL BANK  
REPRESENTED BY ITS CHIEF MANAGER  
HAVING OFFICE AT ARMB CIRCLE OFFICE  
ERANAKULAM, PIN - 682 011
5. COMMITTEE OF CREDITORS OF ALBANNA ENGINEERING  
(INDIA) PRIVATE LIMITED  
REPRESENTED BY MR. VINOD BALACHANDRAN (RP)  
HAVING HIS OFFICE ADDRESS AT 70/1909, ASHOKA  
ROAD, KALOOR, KOCHI, PIN - 682 017

6. M/S BHARAT PETROLEUM CORPORATION LIMITED  
REPRESENTED BY ITS EXECUTIVE DIRECTOR  
HAVING OFFICE AT KOCHI REFINERY, AMBALAMUGAL  
ERANAKULAM DISTRICT, KERALA, PIN - 682 302

R2 BY ADV. DHARAM JUMANI  
R3&5BY ADV. ARUN KUMAR  
R6 BY ADV. POULOSE C. ABRAHAM

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON  
05.05.2020, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**BECHU KURIAN THOMAS, J**

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**WP(C) TMP NO. 191 OF 2020**

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**DATED THIS THE 5<sup>th</sup> DAY OF May, 2020**

**ORDER**

This writ petition has been filed, invoking the extra ordinary jurisdiction of this Court for the purpose of staying the operation of Ext.P2 order issued by the NCLAT – Cochin. The order in effect directs invocation of 2 bank guarantees submitted by the petitioner for the purpose of obtaining contract work from the 6<sup>th</sup> respondent. I had passed an interim order on 28.02.2020 and posted this matter for today so as to enable the petitioner and the 6<sup>th</sup> respondent to obtain information as relating to the functioning of NCLAT.

2. I have heard Adv. Reji George, learned counsel appearing for the petitioner and Adv. Dharam Jumani appearing for the 2<sup>nd</sup> respondent, Adv. Arun Kumar for the 5<sup>th</sup> respondent and Adv. Poulose C. Abraham for the 6<sup>th</sup> respondent.

3. It is the contention of the petitioner that on account of the lockdown, the NCLAT Chennai or the Principal Bench, are both not sitting due to the lockdown and hence they are not in a position to pursue their appellate remedy. Since appeal being a continuation of the original proceeding, their rights are prejudiced on account of this peculiar lockdown situation now prevailing.

4. As mentioned earlier, on 28.4.2020, when the matter came up for admission, I granted an interim order, staying the operation of Ext.P2 order for the purpose of verifying as to whether the NCLAT is carrying on its sittings either in Chennai, or in New Delhi.

5. Advocate Sri.Dharam Jumani, who appears on behalf of the 2<sup>nd</sup> respondent submits that NCLAT Chennai has not yet commenced its sittings. However, NCLAT, New Delhi – the principal Bench continues to sit and hear matters. The said submission is opposed by the learned counsel for the petitioner, who submits that the matters that are being taken up are only as

an exceptional measure where personal filing are able to be done. It is his submission that in the prevailing situation, it is impossible for the petitioners to file an appeal.

6. Having considered the situation of the national lockdown prevailing and the difficulty of the parties to travel or even post articles, papers or documents, I feel it only just and proper that a reasonable time is granted to the petitioner to prefer an appeal, that too within the statutory limit of filing an appeal and till then, to continue the stay of invocation of bank guarantee so that petitioner will be able to move the appellate authority.

7. The time limit for filing an appeal is 30 days from the date of order under the Insolvency and Bankruptcy Code. A further 15 days period is also available by filing a petition for condonation of delay. Since the order impugned is dated 20.04.2020, I think it is only just and proper that the petitioner be granted an opportunity to prefer an appeal before the NCLAT within that period and also to direct that till that date, the

operation of Ext.P2 shall stand stayed.

In the aforesaid circumstances, I direct that the operation of Ext.P2 shall remain stayed till 19.05.2020 so as to enable the petitioner to file an appeal before the NCLAT. If any further orders are not obtained by the petitioner from the NCLAT, it is needless to state that this order will work itself out by 19.05.2020.

Post this WP(c) on 19.05.2020.

Nsd

**BECHU KURIAN THOMAS**  
**JUDGE**

**APPENDIX**

**PETITIONERS EXTS:**

**EXT. P1 : A TRUE COPY OF MA/25/KOB/2020 IN IBA/38/KOB/2019 FILED BY THE 2<sup>ND</sup> RESPONDENT DATED 09.03.2020 BEFORE THE NCLAT, KOCHI BENCH.**

**EXT. P2 : A TRUE COPY ORDER DATED 20.04.2020 PASSED BY THE CLT, KOCHI BENCH IN MA/25/KOB/2020 IN IBA/38/KOB/2019.**