



2026:KER:79190

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 15TH DAY OF OCTOBER 2026 / 23RD ASWINA, 1948WP(C) NO. 15055 OF 2026PETITIONERS:

- 1 SANDEEP CHANDRASENAN, AGED 43 YEARS,
S/O.CHANDRASENAN NAIR, RESIDING AT TC-25/3425,
VRINDAVAN, UPPALAM ROAD, THIRUVANANTHAPURAM,
KERALA, PIN - 695001.
- 2 ANISHMON THOMAS, AGED 45 YEARS,
S/O. AUGUSTINE THOMASKUTTY MAY COTTAGE, RDM BUSINESS
LANE, VAZHUTHACAD, SASTHAMANGALAM,
THIRUVANANTHAPURAM, KERALA, PIN - 695011.

BY ADV SRI.A.KEVIN THOMAS

BY SRI.SANTHOSH MATHEW (SR)

RESPONDENTS:

- 1 USHA KRISHNAKUMAR,
F-84, GROUND FLOOR, EAST OF KAILASH,
NEW DELHI, PIN - 110048.
- 2 THOMAS P. THOMAS,
FLAT NO. 5A, KESTON RISE, KESTON ROAD,
KOWDIAR POST, TRIVANDRUM, PIN - 691004.
- 3 CYRIAC NJAVALLY, NJAVALLIL HOUSE,
CHITTETHUKARA, KAKKANAD, KOCHI, PIN - 682037.
- 4 M/S.THARAKAN WEB INNOVATIONS PRIVATE LIMITED,
HAVING ITS REGISTERED OFFICE AT 1ST FLOOR,
COASTAL CHAMBERS, MAHATMA GANDHI ROAD, RAVIPURAM,
KOCHI, KERALA, REPRESENTED BY ITS MANAGING DIRECTOR,
PIN - 682015.
- 5 AVIRA THARAKAN, EX-MANAGING DIRECTOR & EX-CEO,
NAVAPURAM PARAYIL EZHUPUNNA, NEAR RAILWAY STATION,
EZHUPUNNA P.O., ALAPPUZHA, KERALA, PIN - 688537.



- 6 THOMAS THARAKAN, EX-DIRECTOR & EX-CFO, NAVAPURAM
PARAYIL EZHUPUNNA, NEAR RAILWAY STATION, EZHUPUNNA
P.O., ALAPPUZHA, KERALA, PIN - 688537.
- 7 SHAMEEM JALEEL, DIRECTOR, 014/869, ANUGRAH SUJATHA
ROAD, PANDIKUDI, MATTANCHERRY, KOCHI, ERNAKULAM,
KERALA, PIN - 682002.
- 8 RAJEEV GOPAL WAGLE, FORMER DIRECTOR, 19TH FLOOR,
TOWER A, URMI ESTATE, 95, GANPATRAO KADAM MARG,
LOWER PAREL (W), MUMBAI, MAHARASHTRA, PIN - 400013.
- 9 M/S.VFS GLOBAL SERVICES PVT. LTD.,
19TH FLOOR, TOWER A, URMI ESTATE, 95,
GANPATRAO KADAM MARG, LOWER PAREL (W),
MUMBAI, MAHARASHTRA, PIN - 400013.

BY ADVS.

SHRI.HARIKUMAR G. (GOPINATHAN NAIR)

SRI.ISAAC THOMAS

SHRI.ABRAHAM MATHAN

SHRI.YESWANTH C.R.

SRI.P.G.CHANDAPILLAI ABRAHAM

SMT.IRENE BABU

SHRI.JAYASANKAR R.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07.10.2026,
THE COURT ON 15.10.2026 DELIVERED THE FOLLOWING:

**“C.R.”****J U D G M E N T**

The petitioners have filed the captioned writ petition seeking to challenge Ext.P1 order dated 02.04.2026 passed by the National Company Law Tribunal, Kochi Bench (hereinafter referred to as “NCLT”), by which an application filed by respondents 1 to 3 herein to implead the petitioners in the company petition filed by the said respondents stood dismissed.

2. The short facts necessary for the disposal of this writ petition are noticed as under:

Respondents 1 to 3 and 5 to 8 herein were the shareholders in the 4th respondent company. Respondents 1 to 3 filed company petition CP(C/Act)/28/KOB/2022 pointing out the alleged mismanagement of the company. The 4th respondent company filed a counter statement before NCLT pointing out that shares of respondents 2 and 3 herein have been transferred to third parties. On receipt of the afore counter statement, respondents 1 to 3 herein instituted



IA(C/Act)/170/KOB/2023, seeking a direction to the 4th respondent company and respondents 5 to 9 herein (impleaded as respondents 1 to 6 in the IA before NCLT) to produce the originals of the duly completed and stamped share transfer forms stated to have been executed by respondents 2 and 3. By Ext.P2 order dated 05.12.2025, NCLT held that when the respondents therein have sought to rely on the plea of transfer of shares by the applicants as their defence, it was their duty to place the documentary evidence in support of such pleadings; therefore, directing the respondents in the Interlocutory Application to place on record all documents relating to the shares allegedly transferred by the applicants in the Interlocutory Application. In compliance with the directions issued as above, the 4th respondent company herein produced relevant details like SH-4 share transfer forms along with an affidavit dated 05.12.2025. The said affidavit was filed before NCLT on 29.12.2025 (produced as Ext.P3 in this writ petition). A perusal of the supporting documents produced along with the said affidavit disclosed transfer of shares by the 3rd respondent herein in favour of the petitioners herein. In such



circumstances, respondents 1 to 3 presented IA(C/Act)/12/KOB/2026 before NCLT on 21.01.2026 seeking impleadment of the petitioners herein (produced as Ext.P4 in this writ petition). The petitioners state that they were served with the advance copy of the application for impleadment as above. They contend that it was only then the petitioners came to notice that the 4th respondent company sought to rely on various fabricated share transfer instruments also containing the alleged signatures affixed by the petitioners in their capacity as transferees.

3. Therefore, the petitioners state that on 22.01.2026 their counsel entered appearance and sought for time to file their objections (Ext.P5 order). Later, the 7th respondent in the IA before NCLT, filed an affidavit also virtually seeking to deny the execution of signatures on the share transfer forms. However, by Ext.P1 order dated 02.04.2026, NCLT held that a party can be impleaded in the proceeding only if it is either a necessary party or a proper party, which determination is to be made with reference to the pleadings and reliefs in the main



petition, that no prayer is made against the parties sought to be impleaded, that there is no challenge to the validity of transfers as per existing pleadings, that no amendment to the petition is sought for and impleadment has been sought only in 2026, without offering any explanation for the delay. Therefore, NCLT dismissed the application filed as above. It is seeking to challenge Ext.P1 issued as above that the petitioners are before this Court.

4. Sri.Santhosh Mathew, the learned Senior Counsel instructed by Sri.A.Kevin Thomas, the learned counsel for the petitioners, would contend that:

- i. The requirement for impleading the petitioners arose only pursuant to the production of share transfer forms by the 4th respondent company.
- ii. Valid reasons were pointed out for seeking such impleadment, in the application.
- iii. The petitioners' signatures can only be fabricated ones, since they have never signed the share transfer forms.
- iv. The 4th respondent company in its counter affidavit before NCLT had contended that unless and until the transferees



were also in the party array, the contentions raised by the 3rd respondent (transferor) could not be considered.

- v. He sought to point out that there is no delay as stated by NCLT since, in the counter statement filed by the company, a rejoinder was filed seeking details of the alleged transfer, pursuant to which the company pointed out that there were share transfer forms for transfer of shares as noticed above. Pursuant to this, an application was filed before NCLT on 16.11.2023 for a direction to the company to produce the documents pertaining to the share transfer. It is further added that, pursuant to NCLT order dated 05.12.2025, share transfer forms were produced by the company on 29.12.2025 and the application seeking impleadment filed on 21.01.2026, was not belated.
- vi. He sought to rely on the judgment of the Apex Court in **Ghanashyam Mishra and Sons Pvt. Ltd. through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Ltd. through the Director and Others [(2021) 9 SCC 657]** in support of the contention that Article 226 of the Constitution of India could be invoked in such circumstances.

5. Sri.Harikumar G. Nair, the learned counsel for respondents 1 to 3, apart from adopting the submissions made by Sri.Santhosh Mathew, also would point out that:



- i. Having directed the production of the share transfer forms, pursuant to Ext.P2 order, NCLT erred in rejecting the impleadment application.
- ii. Respondents 4 to 9 had specifically contended before NCLT that no reliefs could be granted to the applicants before NCLT "without hearing the third parties". Therefore, NCLT ought to have allowed the impleadment application.

6. Sri.Isaac Thomas, the learned counsel for the 4th respondent company, would contend that:

- i. The impugned order of NCLT is appealable under Section 421 of the Companies Act, 2013 (for short, the 'Act'); and if at all it could be challenged, that is to be done by the applicants before NCLT – respondents 1 to 3 herein.
- ii. The petitioners' names were disclosed as transferees even in the first counter statement filed before NCLT on 04.10.2022. Therefore, the request for impleadment presented on 21.01.2026 is highly belated.
- iii. The share transfer took place in 2016 and therefore, there is an apparent lack of due diligence on the side of the petitioners, as rightly found by NCLT.
- iv. In this regard, he sought to rely on the judgment of the Himachal Pradesh High Court in **Rupa Suri v. Neelam Rana [2021 KHC 2720]** and this Court in **Alexander Correya and Others v. Dominic Savio and Others [2017 KHC 5638]**.



7. Sri.Abraham Mathew, the learned counsel for respondents 5 to 7, also sought to rely on the submissions made by Sri.Isaac Thomas, apart from relying on the judgment of the Apex Court in **NAK Engineering Company Pvt. Ltd. v. Tarun Keshrichand Shah[(2026) 3 SCC 631]** to contend that there is inordinate delay in seeking impleadment as above.

8. I have considered the rival contentions as well as the connected records.

9. The first question arising for consideration in this writ petition is whether the jurisdiction of this Court under Article 226 of the Constitution of India can be exercised in the case at hand. True, each and every order passed by NCLT is an appealable order under Section 421 of the Act. In this regard, the judgment of the Apex Court in **Ghanashyam Mishra and Sons Pvt. Ltd. (supra)** requires to be noticed. The Apex Court in the afore judgment has found as under:

“128. The main ground raised on behalf of the respondent is, with regard to availability of alternate remedy. The second ground raised is, since the transfer date is prior to 2019 amendment to S.31 of I&B Code, the said



amendment would not be applicable to the debts owed to the State Government or Central Government.

129. As held by this Court in catena of cases including in the cases of Babu Ram Prakash Chandra Maheshwari vs. Antarim Zilla Parishad Muzaffar Nagar ((1969) 1 SCR 518), Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. ((1998) 8 SCC 1), Nivedita Sharma vs. Cellular Operators Association of India & Ors. ((2011) 14 SCC 337), Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Others ((2020) 13 SCC 308) and recently in the case of Kalpraj Dharamshi (supra), that non - exercise of jurisdiction under Art.226 is a rule of self - restraint. It has been consistently held, that the alternate remedy would not operate as a bar in at least three contingencies, namely, (1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights; (2) where there has been a violation of the principle of natural justice; and (3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

.....

131. In this view of the matter, we find, that relegating the appellant to the alternative remedy would serve no purpose. A party cannot be made to run from one forum to another forum in respect of the proceedings and the claims, which are not permissible in law.”



Thus, where there is a violation of the principles of natural justice, this Court would be justified in invoking its jurisdiction under Article 226 of the Constitution of India.

10. Therefore, the question that arises for further consideration is whether there has been a violation of the principles of natural justice in the case at hand. As already noticed, respondents 1 to 3 sought to approach NCLT alleging mismanagement of the company. However, the respondents sought to contend that the applicants before NCLT were no longer holding any shares and that the shares were transferred to third parties. It is at this juncture, respondents 1 to 3 sought to obtain the details of the share transfer as well as the transferees, pursuant to which the details were produced. It was only upon the production of such share transfer forms that the details of the transferees were known to respondents 1 to 3. Therefore, they were justified in seeking the impleadment of the transferees in the pending litigation before the NCLT. When that be so, the non-consideration of the afore prayer amounts to violation of the principles of natural justice. This is



especially so, since NCLT in Ext.P2 order, while considering the prayer made for production of the relevant transfer documents, recorded the contention raised on behalf of respondents 5 to 7 herein as under:

“8. The respondents submitted that this application for production of original share transfer forms is not maintainable and has been filed without proper understanding of the facts or law. Neither Respondents 2 to 4 nor the 1st Respondent Company benefited from the share transfers. The applicants’ claim regarding the transfer dated 05.12.2016 is barred by limitation. The shares in question were transferred by Applicants 2 and 3 to third parties. Mr.Anishmon Thomas and Mr.Sandeep Chandrasenan, in good faith, with the share transfer forms and certificates handed over by the applicants themselves. Granting the relief sought without hearing these third parties would be inappropriate, as it may infringe upon their rights.”

(Underlining supplied)

Therefore, the respondents themselves were of the opinion that the petitioners herein also require to be brought on record, without which the contentions raised by respondents 1 to 3 could not be accepted. That being the position, the non-impleadment of the petitioners herein amounts to violation of



principles of natural justice. Therefore, the impugned order can be challenged before this Court under Article 226 of the Constitution of India.

11. In the light of the afore, this Court proceeds to consider the sustainability or otherwise of the findings contained in Ext.P1 order issued by NCLT. NCLT sought to reject the impleadment on the premise that, in the light of the pleadings and the reliefs sought in the company petition, no adjudicatory relief was claimed against the petitioners herein and therefore, their presence in the party array was unnecessary. It is also found that in the absence of foundational pleadings, impleadment is not required. NCLT also held that the applicants neither sought any amendment to the company petition nor prayed for any declaratory relief and therefore, impleadment is to be rejected. NCLT also found that there is delay in seeking impleadment. In this regard, the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908, require to be noticed. Under the afore provisions, an impleading is permitted in a situation where there is a right to



relief against such party and in a situation where no effective adjudication can be carried out in the absence of such party.

(See **Kasturi v. Iyyamperumal [(2005) 6 SCC 733]**).

Similarly, in **Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd. [(2012) 8 SCC 384]**, the Apex Court found as under:

“41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.”

(Underlining supplied)

In the case at hand, respondents 1 to 3 herein had approached NCLT complaining about the mismanagement of the company. The respondents therein sought to contend that the applicants before NCLT did not have any shareholding and hence their petition cannot be entertained. Respondents 1 to 3 herein denied the share transfer and sought for the details of such transfer. This is followed by the presentation of the interlocutory application seeking for a direction to respondents 4 to 9 herein to produce the share transfer forms allegedly



executed by the applicants therein. NCLT has also allowed the application by Ext.P2, specifically noting the objection raised by the respondents in the afore application that the relief sought for could not be granted without hearing the third parties (petitioners herein). It is thereafter that the share transfer forms were produced, pursuant to which the impleadment was sought for. The petitioners herein had admittedly entered appearance and filed their versions denying the alleged share transfer, contending that fraud was played by the company upon them.

12. Therefore, this Court is of the opinion that for an effective adjudication on the preliminary objection raised by the respondents 4 to 9 herein before NCLT, the petitioners herein were proper parties, even though there were no prayers raised against the petitioners herein. NCLT went wrong in refusing to allow the impleadment sought for as above.

13. NCLT has also stated that the impleadment sought for in 2026 during the course of hearing was without offering any satisfactory explanation for the delay. In this regard,



Sri.Isaac Thomas, the learned counsel for the 4th respondent, sought to contend that the names of the petitioners herein were pointed out as the transferee during 2022 itself and even thereafter the impleadment was sought for only on 21.01.2026. However, this Court is of the opinion that, in response to the counter statement filed by the 4th respondent, the petitioners before NCLT filed a rejoinder, followed by the filing of the application seeking production of share transfer forms, etc., and ultimately, when the share transfer forms were produced on 29.12.2025, the application seeking impleadment was filed on 21.01.2026. In other words, this is not a case where respondents 1 to 3 remained silent from 2022 onwards. Therefore, the finding of NCLT, with respect to delay in presentation of the application seeking impleadment also cannot be sustained.

14. Sri.Isaac Thomas also raised a contention to the effect that the impugned order at Ext.P1 ought to be challenged by the applicant before NCLT – respondents 1 to 3 herein - and not by the petitioners herein. However, this Court



notices that the petitioners herein were parties to the impleading application and were also permitted to file their affidavits as per order dated 22.01.2026 (Ext.P5). The petitioners have also filed a detailed affidavit (Ext.P6) denying the share transfer forms, also adding that respondents 4 to 9 herein are dragging the petitioners' names only to shield their interest. NCLT was therefore requested to take note of the fraud being perpetrated in the matter.

15. In other words, the petitioners herein were also interested parties, in view of the alleged fraud committed upon them. Therefore, the petitioners are entitled to challenge the impugned order at Ext.P1 issued by NCLT. In such circumstances, this Court is of the opinion that Ext.P1 requires to be *set aside*.

In the result, this writ petition would stand allowed, setting aside Ext.P1 and allowing IA(C/Act)/12/KOB/2026 in CP(C/Act)/28/KOB/2022 on the files of NCLT, Kochi Bench.

Sd/-

HARISANKAR V. MENON, JUDGE

In

APPENDIX OF WP(C) NO. 15055 OF 2026

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ORDER IN
IA(C/ACT)/12/KOB/2026 IN
CP(C/ACT)/28/KOB/2022 DATED 02.04.2026
PASSED BY THE NATIONAL COMPANY LAW TRIBUNAL,
KOCHI BENCH.
- EXHIBIT P2 TRUE COPY OF THE ORDER IN I.A. NO.
170/KOB/2023 IN CP(C/ACT)/28/KOB/2022 DATED
05.12.2025 PASSED BY THE NATIONAL COMPANY LAW
TRIBUNAL, KOCHI BENCH.
- EXHIBIT P3 TRUE COPY OF THE COMPLIANCE MEMO DATED
22.12.2025 TOGETHER WITH THE SH-4 FORMS.
- EXHIBIT P4 A TRUE COPY OF IA(C/ACT)/12/KOB/2026 IN
CP(C/ACT)/28/KOB/2022 BEFORE THE NATIONAL
COMPANY LAW TRIBUNAL, KOCHI BENCH.
- EXHIBIT P5 A TRUE COPY OF THE ORDER IN
IA(C/ACT)/12/KOB/2026 IN
CP(C/ACT)/28/KOB/2022 PASSED BY THE NATIONAL
COMPANY LAW TRIBUNAL, KOCHI BENCH DATED
22.01.2026.
- EXHIBIT P6 A TRUE COPY OF THE REPLY AFFIDAVIT FILED BY
THE 2ND PETITIONER ALONG WITH ITS ANNEXURES.
- EXHIBIT P7 TRUE COPY OF THE REPLY AFFIDAVIT FILED BY THE
1ST PETITIONER.
- EXHIBIT P8 A TRUE COPY OF THE ORDER IN
IA(C/ACT)/12/KOB/2026 IN
CP(C/ACT)/28/KOB/2022 DATED 02.02.2026
PASSED BY THE NATIONAL COMPANY LAW TRIBUNAL,
KOCHI BENCH.

RESPONDENTS' EXHIBITS:

- EXHIBIT-R5 (A) TRUE COPY OF THE FINAL REPORT DATED
16.11.2025 IN CRIME NO. 983 OF 2024 OF



JUDICIAL FIRST-CLASS MAGISTRATE COURT
(ECONOMIC OFFENCES), ERNAKULAM.

- EXHIBIT-R5 (B) THE TRANSLATED VERSION OF EXHIBIT R5 (A.)
- EXHIBIT R4 (A) TRUE COPY OF THE JUDGMENT IN ALEXANDER CORREYA AND OTHERS VS. DOMINIC SAVIO AND OTHERS - 2017 KHC 5638.
- EXHIBIT R4 (B) TRUE COPY OF THE REPLY DATED 24.01.2026 FILED BY THIS RESPONDENT (THE 1ST RESPONDENT THEREIN) IN IA(C/ACT)/12/KOB/2026 IN CP(C/ACT)/28/KOB/2022.
- EXHIBIT R4 (C) TRUE COPY OF THE COMMON RESPONSE FILED BY THIS RESPONDENT TO THE REPLY FILED BY THE ADDITIONAL 7TH AND 8TH RESPONDENTS (THE PETITIONERS HEREIN) DATED 12.02.2026 IN IA(C/ACT)/12/KOB/2026 IN CP(C/ACT)/28/KOB/2022.
- EXHIBIT R4 (D) TRUE COPY OF THE ARGUMENT NOTE DATED 26.02.2026 FILED BY THE COUNSEL FOR THIS RESPONDENT (THE 1ST RESPONDENT THEREIN) IN IA(C/ACT)/12/KOB/2026 IN CP(C/ACT)/28/KOB/2022.
- EXHIBIT R1 (A) A TRUE COPY OF THE SWORN STATEMENT OF THE 2ND RESPONDENT RECORDED ON 19.06.2026 BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE (EO), ERNAKULAM.
- EXHIBIT R1 (B) A TRUE COPY OF THE SWORN STATEMENT OF THE 3RD RESPONDENT RECORDED ON 19.06.2026 BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE (EO), ERNAKULAM.
- EXHIBIT R1 (C) A TRUE COPY OF THE SWORN STATEMENT OF THE 1ST PETITIONER RECORDED ON 25.07.2026 BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE (EO), ERNAKULAM.
- EXHIBIT R1 (D) A TRUE COPY OF THE SWORN STATEMENT OF THE 2ND PETITIONER RECORDED ON 25.07.2026 BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE (EO), ERNAKULAM.