



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

IA(IBC)/440/KOB/2024

In

IBA/51/KOB/2019

(Under Rules 11 and 32 of NCLT Rules, 2016)

In the matter of:

**M/s. Trivandrum International
Health Services Ltd & Another.**

Memo of Parties:

**Ananthapuram Co-operative
Society Ltd. No T.184.**

Kaithamukku, Trivandrum. 24.

Represented by Its Secretary, Sri. R.
Krishnakumar

...Applicant

-Vs-

Raju Palanilkkunnathil Kesavan
Liquidator- Resolution Professional
Trivandrum International Health
Services Ltd. (In Liquidation),
CGNRA-9(33/1183A), Kodamassery
Lane, Chalikkavattom, Vennala P.O.,
Ernakulam, Kerala, 682028.

.....Respondent No.1



The Stake Holders Committee
Trivandrum International Health
Services Ltd. (In Liquidation),
Kerala Financial Corporation,
Branch Office, Vellayambalam,
Thiruvananthapuram:695 033
.....Respondent No. 2

Order delivered on: 06.05.2025.

Coram:

Smt. Madhu Sinha

Shri. Vinay Goel

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. R V Sreejith

For the Respondent : Mr. Vinod P V

ORDER

Per Coram:

1. This is an application filed by the Successful Auction Purchaser of M/s Royal SUT Hospital sold in the liquidation process of Corporate Debtor, M/s Trivandrum International Health Services Limited with the following reliefs: -

(i) May be pleased to direct the respondents to repay the interest amount remitted by the applicant on the balance sale consideration, which is Rs. 51,40,149/- with interest upon the same at 12%, to



the applicant, as expeditiously as possible, within a time frame fixed by this Tribunal.

- (ii) May be pleased to direct the respondents to pay interest to the applicant on the original EMD amount furnished by the applicant, for the period from August 2023 to December 2023, amounting to Rs.14,47,650 (Rupees Fourteen lakh Forty-Seven Thousand Six Hundred and Fifty only), to the applicant, as expeditiously as possible, within a time frame fixed by this Tribunal.*
- (iii) May be pleased to direct the respondents to pay compensation to the applicant for their inordinate delay in completing the mutation of the property in favour of the applicant in revenue records and for the non-lifting of attachments over the property.*

and

- (iv) Pass such other orders as may be deemed fit and proper in the facts and circumstances of the case to meet the ends of justice.*

The Case of the Applicant: -

2. In this application, the applicant stated that, this application arises from the purchase of M/s Royal SUT Hospital by the applicant, a co-operative society, through an e-auction. The Co-operative society paid Rs. 2,89,53,000/- as Earnest Money Deposit (EMD) initially for a private sale, which was later considered as EMD for public auction at the instance of the applicant. After becoming the successful bidder, the society paid the balance consideration, but was subsequently demanded to pay Rs. 51,40,149/- as interest at 12%, claiming that the payment was made beyond the 30-day stipulated in the auction notice. The society is requesting a refund of the interest amount of Rs. 51,40,149/- paid as interest, while



also claiming interest on the EMD of Rs. 2,89,53,000/- earlier deposited with the request for private sale for five months, amounting to Rs. 14,47,650/-

The reply affidavit dated 05.11.2024 furnished by the Respondent states as follows: -

3. The Liquidator submitted that under Clause 12 of Schedule 1 to Regulation 33, payments made after 30 days shall attract interest at the rate of 12%, which reads as follows: -

"12. On the close of the auction, the highest bidder shall be invited to provide the balance sale consideration within ninety days of the date of such demand.

Provided that the payments made after thirty days shall attract interest at the rate of 12%"

4. It is further submitted by the Liquidator that the applicant's request for relief is not maintainable in law since the liquidator's demand for interest on delayed payment, amounting to Rs. 51,40,149/-, is in accordance with provisions of the Code, specifically, Regulation 33 of IBBI (Liquidation Process) Regulations, 2016.
5. It is stated that the registration of the property was delayed due to pending approvals from the Government of Kerala, and subsequently, an open attachment was observed by the Registrar based on a civil court decree. Despite this, the Liquidator took efforts to lift the attachment, including applying to this Tribunal, which ultimately directed the Sub Registrar to lift the attachment.



Therefore, there is no delay or inaction on the part of the Liquidator. It is further submitted that the application lacks merit and is liable to be dismissed at its threshold.

The rejoinder dated 22.04.2025 furnished by the Applicant states as follows: -

6. Whereas, the applicant submitted that the EMD of Rs. 2,89,53,000/- was submitted on 10.08.2023, relying upon the promise of private sale, but the Liquidator later issued a new notice for an e-auction with a last date for EMD submission of 04.12.2023. The applicant sought to adjust the earlier submitted EMD towards the e-auction on 04.12.2023 and claims interest of Rs. 14,47,650/- for the period from 10.08.2023 to 04.12.2023 during which the amount was with the respondent.
7. Further, it is submitted that the applicant repeatedly requested the respondent to refund the EMD, but was ignored. Instead, the respondent encouraged the applicant to participate in the e-auction. Even after the sale process was completed, the applicant's request for interest on the EMD was not acted upon.
8. Furthermore, it is submitted by the Applicant that even though the sale deed was registered on 14.03.2024, there was already an order of attachment in favour of Mr. Biju Senatipathan. The delay in paying the balance sales consideration was due to the reasons stated in the application. Hence, the respondent ought not to have made us pay the interest of Rs. 51,40,149/-.



9. We have heard both sides and also gone through the records. In this case, a public auction was conducted on 06.12.2023. Whereas, prior to that, the applicant society vide its letter dated 13.04.2023 approached the Resolution Professional showing their interest to purchase property under private sale. The letter so sends to the respondent as under: -

*"ANANTHAPURAM CO-OPERATIVE SOCIETY LTD. NO T. 184
H.O. KAITHAMUKKU, TRIVANDRUM-24
ESTD:1961*

M JAYAKUMAR, President

KRISHNA KUMAR, Secretary

13.04.2023

*To,
Shri. CA Raju P. K
M/s. Registered Valuer (Securities & Financial Assets)
Insolvency Professional.
Sir,*

*Ananthapuram co-operative Society is a Pioneer co-operative institute in Thiruvananthapuram registered under Kerala Co-operative Society Act 1969. We wish to start a Co-operative Hospital in Thiruvananthapuram corporation area. We are looking for a suitable property for running the hospital. We came to know that SUT Royal Hospital at Kochullor, is for sale. We are interested to acquire the said property of Trivandrum international Health Services Ltd on a negotiated private sale. We shall submit the required documents with in a short period.
Thanking you,
Your's Faithfully,
Secretary Ananthapuram Co-operative Society"*

10. The applicant in pursuance of its request for private sale deposited Rs. Rs. 2,89,53,000/- by way of Earnest Money Deposit to show its bonafides. Somehow, CoC opted for sale through public auction, and



public notice was accordingly published. And once, CoC decided to put the property on auction, the applicant requested to keep the EMD already deposited as EMD for public auction, and upon their such intentions, the applicant was allowed to participate in the public auction.

11. The balance amount was to be repaid within 30 days from the date of issuance of the letter of intent. The letter of intent was issued to the respondents on 12.12.2023, and it was conveyed to the highest bidder to confirm its expenses on or before 15.12.2023. The relevant part of the letter of intent is reproduced as under: -

"LETTER OF INTENT (LOD)

Sub: E-Auction Sale of Business of the M/s Trivandrum International Health Services Ltd (Corporate Debtor) in Liquidation on "AS IS WHERE IS", "AS IS WHAT IS BASIS" AND "WHATEVER THERE IS BASIS" AND WITHOUT ANY RECOURSE" basis under Insolvency and Bankruptcy Code, 2016 by the Liquidator appointed by Hon'ble National Company Law Tribunal, Kochi Bench

Ref.: E-Auction conducted on 06.12.2023 in the matter of M/s Trivandrum International Health Services Ltd (in Liquidation) for sale of business of the corporate debtor as a going concern under Regulation 32 (1)

Dear Sir,

1. With reference to the above, successful bid was submitted by yourself ("Successful Bidder") in relation to e-Auction sale of business of Trivandrum International Health Services (in Liquidation) auctioned on 6th December 2023 and the auction report furnished by NeSL(auction provider) has already been forwarded to you.

2. You are requested to confirm your acceptance of this Lol on or before 15/12/2023 with an endorsement stating that this Lol is, "Accepted Unconditionally", under the signature of the Authorized Director / Authorized Signatory. Within 30 (thirty) days from the date of issuance of this Lol, you shall pay an aggregate amount of Rs. 28,95,30,000/-(INR Twenty Eight Crore, Ninety Five Lakh, and Thirty Thousand Only) plus applicable taxes and levies (including



registration charges/ stamp duty/GST/other levies and fees whichever applicable for transfer of business/assets of Trivandrum International Health Services) as the balance Sale Consideration towards purchase. The EMD of Rs 2,89,53,000 remitted will be eligible for set-off against the above sale consideration. You may further note that the Sale Consideration received after thirty days (in accordance with Schedule 1, Regulation 33 of the Liquidation Process Regulations, 2016) shall attract interest at the rate of 12% per annum and if the Sale Consideration is not received within 90 days, the sale shall stand cancelled and the EMD amount shall be forfeited. Please note that failure to accept this Lol within the time period specified may result in your disqualification as the Successful Bidder along with cancellation of this Lol and forfeiture of the Earnest Money deposited.

Sincerely,

Raju P. K FCA, LLB

Liquidator for Trivandrum International Health Services Limited.

Reg No. INNI/IPA-001/IP-P00201/2017-2018/11356"

12. The applicant made the balance payment on 14.03.2024. Thus, there was a delay. The Resolution Professional, invoking Regulation 33 of IBBI (Liquidation Process) Regulations, 2016, claimed interest, and the same has been paid by the successful auction bidder.
13. Now, through this application, the applicant has claimed a refund of the said amount. Having considered rival contentions, as far as invoking the interest clause and its recovery is concerned, i.e., in accordance with Regulation 33 of IBBI (Liquidation Process) Regulations, 2016. Regulation 33 of IBBI (Liquidation Process) Regulations, 2016 has been inserted in the provisions to ensure transparency and for expeditious completion of the sale process. Being a participant in the auction process, it was obligatory on the part of the bidder to adhere to the schedule of payment. The applicant



cannot be allowed to take advantage of the intricacies of its internal operational process.

14. The Resolution Professional has rightly invoked the interest clause, and he had no other option. There is no illegality in claiming interest and same is in consonance with regulation No. 33 of IBBI (Liquidation Process) Regulations, 2016 and we find no merits in the argument advanced on behalf of the applicant that it being a society is to take various permissions from various authorities for remitting money and for that reason the applicant could not pay the auction money within time. It was the duty of the applicant to obtain the necessary permissions before making a bid in the auction.
15. Once regulations contain specific provisions to deal with some situation, it is the duty of Insolvency Professionals to religiously follow them in the same spirit without any deviation. The provision to invoke the interest clause in above quoted regulations does not give any discretion to the Insolvency Professional to waive that provision. Even no such discretion is vested with the Adjudicatory Authority under IBC, 2016, and rules framed thereunder.
16. As all the terms and conditions and repayment schedule had already been published in the auction notice. So, the excuse so made is not tenable. Further, no interest can be granted in favour of the applicant in respect of the amount lying with the Resolution Professional deposited by the applicant to purchase property under private sale, because that was deposited by the applicant of his own. There was no stipulation to claim or pay any interest on the amount so deposited



by the applicant as prior deposit at the time of offer for private sale. So, even otherwise, the applicant cannot claim interest for the alleged amount for the alleged period, and as such, no interest can be claimed or paid on such amount.

17. We find no merit to grant any relief as sought. As such, the application merits dismissal, and the **IA(IBC)/440/KOB/2024** is **dismissed**.
18. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Authorized Representative for information and for taking necessary steps.
19. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
20. The file be consigned to records.

SD/-
MADHU SINHA
(MEMBER TECHNICAL)

SD/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 06th day of May, 2025.

Anjali/Steno