

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

**IA(IBC)59/KOB/2023  
IN  
TIBA/08/KOB/2019**

*(Under Section 60(5) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016)*

*In the matter of:*

**Boban V T, Veliyil House, Palluruthy, Cochin- 682 006 ;**

**... Applicant**

**-Versus-**

1. **Aravindakshan Nair R**, Liquidator of Lake View Ayurvedic Resort and Research Centre Pvt. Ltd Having Office at Ashadha (Kuttara), Cheruthana Post, Karuvatta, Karthikapally, Alleppey 690 517;
2. **Kerala State Industries Development Corporation**, Represented by its general manager T.C. XI/266, Keston road, Kowdiar, Thiruvananthapuram- 695 003;
3. **Kerala State Co-operative Bank**, Represented by its general manager Post Box No 6515, COBANK Towers, Palayam, Thiruvananthapuram, Kerala. PIN 695 033;
4. **Chandy Mathew, Former Managing director**, Lake View Ayurvedic Resort and Research Centre Pvt. Ltd, Residing at Aruvickal house, Makkapuzha P.O., Mannamaruthi, Ranni- 689 676;
5. **Linkstar Infosys Pvt. Ltd.** Represented by its Manager (Name not known) 9-C, Vardan Complex, Near Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad- 380 014;

6. **Mani Mountain View Hospitality Private Limited**, represented by its Manager, (Name not known) 164/1, Maniktala, Main Road 9-IT Chambers EM Bypass, Kolkata West Bengal 700 054;
7. **Babu George**, Thekkedathu Valavukayathil, Kalanjoor P. O., Pathanamthitta 689 694, Kerala;
8. **K. Sivadas**, Jeeva Bhavan Kalaynadu, Plachery P.O., Kollam- 691 331, Kerala.

... Respondents

**-In-**

*In the matter of:*

Kerala State Industrial Development Corporation Limited

... Financial Creditor

**-Versus-**

Lake View Ayurvedic Resort and Research Centre Pvt. Ltd

... Corporate Debtor

*Coram:*

Shri. P. Mohan Raj : Member (Judicial)

Shri. Satya Ranjan Prasad : Member (Technical)

*Parties/ Counsel present (through video conference):*

For Applicant : Mr. Vinay Mathew Joseph, Adv.,

For Respondent No.1 : M/s. Quint Law Partners, Advocates.

For Respondent No. 6 : Mr. Ratnanko Banerji, Senior Adv.,  
M/s. Menon & Pai, Advocates.

For Respondent Nos. 2 to 5, : None appeared.

7 & 8

Order reserved on:01.03.2023

Order pronounced on:26.04.2023

**ORDER**

1. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by the Applicant who is an outsider took part in the auction of the properties of Corporate Debtor seeking the following reliefs: -

- a) *To set aside the auction sale that took place on 29.12.2022 and direct the 1<sup>st</sup> Respondent to conduct a re-auction of the property.*
- b) *To direct an enquiry into the manner in which the auction was conducted with respect to the actions of respondents No. 1 and respondent no. 5 and take necessary action.*
- c) *To direct the 1st Respondent to produce the data with regard to the bids made in the auction dated 29.12.2022 including the software data.*

2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:

- i. The Liquidation in this matter was initiated vide order dated 15.10.2020 and the Respondent No. 1 was appointed as Liquidator of the Corporate Debtor, M/s. Lake View Ayurvedic Resort and Research Centre Private Limited. The Applicant states that he is a businessman who upon coming to know of a public auction for a resort that belonged to the Corporate Debtor was tried to participate in the auction but he was prevented from taking part in the e-auction which was conducted by Respondent no. 1 along with Respondent no. 5. That on account of the said action of 1<sup>st</sup> Respondent, the Respondent No. 6 has auctioned the property having seven and a half acres in the national highway frontage along with a fully built up three storied building for a price of Rs. 4.05 crores. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents which are state-owned corporations are the majority creditors and claimants with over Rs. 30 crores claim.

- ii. It is stated that a property of the Corporate Debtor company was put up for auction by notice dated 30.11.2022 whereby the Liquidator proposed to use a private auction site in order to conduct the e-auction. The extent of land are Land measuring 2 hectares 99 ares, and six sq. meters Near Thenmala Eco - Tourism Destination in Thenmala village, Pathanapuram Taluk, Kollam, and a Hotel building have a plinth area of 4953.68 sq. meters in the side of Punalur Thenkasi Road'. Upon inquiry it was found that the land is a national highway adjacent land with a fully built-up multi-floor resort. The reserve price quoted for the land and building was Rs. 3.80 crores with a 5 % earnest money deposit. The Applicant being interested in the same proceeded to apply for the same and deposited Rs. 19 Lakhs as Earnest Money Deposit.
- iii. It is stated that the Applicant was given a memorandum for the e-auction whereby the rules and regulation for the auction was made out. The time stipulated for the auction was from 10:30 AM to 06:00 PM on 29.12.2022. On 29.12.2022, before the auction starts the applicant was given a tutorial video as to how the auction was to take place. It was noted that the persons conducting the auction were not from Kerala and were speaking predominately in Hindi. That there was only one other bidder as far as the Applicant knows which was Respondent No. 6 though the same was not known them. The Applicant entered the bidding right from the beginning and was leading the auction for the majority of the vast duration of the auction. With less than five minutes left for the auction, Respondent no. 6 made a last-minute bid of Rs. 4,05,00,000/- and came into the lead. Though the Applicant immediately prepared the next bid which was for Rs. 4,10,00,000/- the same was not accepted/ registered despite the same being made by 06:00 PM.
- iv. It is further stated that as per the auction memorandum if a bid is made in the last 5 minutes of the auction, then the auction, is to be extended by a further

period of 5 minutes which would mean that the auction was to close at 06:05 PM. However, the applicant's bid though made earlier than the said time was not accepted and not even registered. The bidder who won the auction was much lower than that which the Applicant was willing to pay. Within 10 minutes of the auction closing the Applicant sent a mail to Respondent no. 5 who was the auction conducting private entity to their email provided in the Memorandum raising objection. However, no reply has been received. A mail was also sent to the liquidator raising the said grievance however the liquidator chose to make a much-belated reply denying the same instead putting the blame on the Applicant for not acting in time.

- v. The objections raised by the Applicant was that Respondent No. 1 had proceeded to accept the bid made by Respondent no. 6 as the winning bid despite the power to reject the same as per the powers given in the memorandum of auction. It is stated that Respondent No. 1 is not to act alone and is advised by the Stakeholders Consultation Committee (SCC for short) that is formed under Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 which is akin to the Committee of Creditors and all Financial Creditors are made part of the same and given voting share for the same. That Respondents Nos. 2 and 3 would be the main Financial Creditors in the committee and would hold the majority of the voting share in the same. That as per Regulation 31A by a vote of 66% the Stakeholders Consultation Committee can advise the liquidator who is bound to take note of the same and take action or reply to same.
- vi. It is further stated that if the Applicant was allowed to continue in the auction, the Applicant would have bid at least Rs. 20 lakhs more than the current bid and is still ready to make such a bid over and above the bid made by Respondent No. 6. That Respondent No. 7 and 8 are the personal guarantors

to the company and they will be made to pay the balance amount after consideration from the auction is adjusted. Hence it would be in the interest of justice that a re-auction takes place so that the maximum amount is received.

vii. It is also stated that the Applicant has filed a Writ Petition challenging the auction before the Hon'ble High Court of Kerala as WP(C) 601/2023. However, without going to the merits the Hon'ble High Court disposed of the Writ Petition stating that this Tribunal would be proper the forum to deal with the question.

3. The 1<sup>st</sup> Respondent Liquidator filed his reply statement and stated that based on the recommendations of the SCC and the provisions of the Insolvency and Bankruptcy Code (Liquidation Process) Regulations, seven rounds of auctions were undertaken for the disposal of 8.47 Acres of the Immovable Assets of the Company. During the said rounds of auctions, no person had even participated in the e-auction. Since the above auctions failed, in order to get any interested parties, the 1<sup>st</sup> Respondent had reduced the reserve price by 25% in accordance with Clause 4 A of Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

4. It is stated that since no parties had shown interest in purchasing the Immovable Assets of the company even for a reduced price, as per the mandate under Clause 48 of Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"), the reserve price was again reduced by 10% on every round of the auction. Finally, the Seventh e-auction was thereafter conducted with the value of 4,66,00,000/- (Rupees Four Crores and Sixty Six Lakhs Only). Subsequent to the failure of the said e-auction, this Respondent conducted the Eighth e-auction with a reserve price of Rs. 3.80 Crores in which the reserve price was reduced based on the following: -

- a) The reduction in auction price by 10% as per the mandate under Clause 4B of the Schedule I of Liquidation Regulations; and
  - b) The reduction in property to be auction by 44 Ares based on the direction of this Tribunal in IA (IBC) 280/KOB/2022.
5. It is stated that upon the publication of the advertisement for the Eighth e-auction, the applicant and the Sixth Respondent submitted their Earnest Money Deposit and application for participating in the Auction website, [www.e-auctions](http://www.e-auctions). in which the auction is carried out by the 5<sup>th</sup> Respondent. The same practice was followed by this respondent for all the former auctions, hence the same was also followed in the Eighth e-auction as well.
6. It is further stated that upon submission of their application, the process document and the terms of the auction as provided by the 5<sup>th</sup> Respondent were served on the applicant and the 6<sup>th</sup> Respondent. It is stated that 8<sup>th</sup> auction was conducted by the 5<sup>th</sup> Respondent on 29<sup>th</sup> December 2022, and as per the newspaper publication it was informed to the applicant and 6<sup>th</sup> Respondent that the auction time is till 6:00 pm. Upon closure of the Eighth e-auction, the bid history report was provided by the 5<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent whereby the 6<sup>th</sup> Respondent had submitted their bid at 5:57 pm. Thereafter no further bid was submitted as per the bid history report within the cut-off time fixed as 6 PM. Since no further bids were submitted after the submission of the last bid by the 6<sup>th</sup> Respondent, the 6<sup>th</sup> Respondent was declared the winner in the auction and the 6<sup>th</sup> Respondent was confirmed and awarded the bid.
7. It is stated that after the completion of the auction, this Respondent received an email from the applicant stating that this Respondent had allocated extra time for the 6<sup>th</sup> Respondent to bid. This Respondent submits that the e-auction process is an automatic process and this Respondent cannot grant any additional

time and the bid history report shows that no extra time was provided specifically to the 6th Respondent. Thereafter the Applicant repeated his claims but without any basis since the auction is independently undertaken by the 5th Respondent. Since the applicant had not raised any serious allegation, this Respondent executed the Letter of Intent with the 6th Respondent on 30th December 2022.

8. It is further stated that after the execution of the Letter of Intent, a letter was e-mailed by the Applicant to this respondent in which the same allegation was repeated that extra time was provided to the 6<sup>th</sup> Respondent. Since the Applicant was finding new grounds to allege collusion and fraud when no substantial material has been put forward and an allegation to prove that this respondent has any interest to protect the 6th Respondent, the complaint was rejected. That this being the case, the Applicant had without any merit alleged that this Respondent is colluding with the 6th Respondent, when the matter of fact is that as per the result published by the 5th Respondent, this Respondent must perform his duties cast upon him by the provisions of Insolvency and Bankruptcy Code, 2016. It is stated that all the auctions were conducted through the same portal and no adverse inference could be made by this Respondent because of the language of the 5th Respondent. As per the bid history report, this Respondent realized that five minutes was granted to the Applicant to submit the bid from the last bid of the 6th Respondent which was made at 5:57 pm. Therefore, a reasonable time for submitting the bid was by 6:02 pm. The additional time was awarded to the applicant by the system. However, within that time, the Applicant has not submitted his bid and failed in his attempt. Hence, there is no case made out for interference of this Tribunal.

FINDINGS AND OBSERVATIONS: -

9. We have heard the learned counsel for the parties at length and perused the entire case records/documents. The main argument advanced by Mr. Ratnanko Banerji, the learned senior counsel appearing for the 6<sup>th</sup> Respondent who is the successful bidder, is that the e-auction report as disclosed by the Liquidator in his reply shows that the last bid was put in by Mr. Sameer Agarwal on behalf of 6<sup>th</sup> Respondent on 29.12.2022 at 17:57:40 hours at a price of Rs. 4.05 Crore. In terms of Clause Q (10) of the Terms and Conditions of the e-auction, the closing time was to be extended for five minutes after the last bid is placed, in case the last bid is placed in the last five minutes of the closing time. Therefore, in terms of Clause Q(10), the bid was to close at 18:02:40 hours. According to the bid history provided by the 1<sup>st</sup> Respondent, the bid was open until 18:02:40 hours. Therefore, it was a properly conducted e-auction and the 6<sup>th</sup> Respondent was the highest successful bidder. It is also submitted that the 6<sup>th</sup> Respondent has paid the entire sale consideration amount of Rs. 4.05 crores along with the applicable interest to the Liquidator which has been accepted by him without any protest.
10. On hearing both sides the only question to be decided is whether the e-auction conducted by the 1<sup>st</sup> Respondent is valid or not? To get clarity in this matter we have also gone through the evidence on record. It is seen from the records that even though various allegations have been put forward, the Applicant could not provide any proof to show that a bid was submitted by the Applicant at 6:00 pm, as contended, and that the bid history report did not contain any such application by the applicant.
11. It is also seen that the terms of the process document and the terms of e-auction, the extension time is automatically granted by the system and that no interference can be made by the 1<sup>st</sup> Respondent in such matters. The allegation of the applicant that extra time was provided is against the Bid history report and denial of any access was not made by the 1<sup>st</sup> Respondent. From Annexure A2 it

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is evident that no bid was submitted by the Applicant within the time stipulated. The absence of any proof regarding the submission of any bid by the Applicant handicapped the 1<sup>st</sup> Respondent from taking any decision in the Applicant's favour. Hence the 1<sup>st</sup> Respondent had to follow the mandatory requirements of the e-auction. In view of the aforesaid findings, we do not see any reason to entertain this application and pass any orders. Accordingly, **IA(IBC)/59/KOB/2023** is **dismissed** without costs.

12. The registry is directed to communicate this order to the respective parties through email.
13. Certified copy of the order be issued on request of the parties as per the procedure.
14. File be consigned to records.

Sd/-

**Satya Ranjan Prasad**  
**Member (Technical)**

Sd/-

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this, 26<sup>th</sup> day of April, 2023.

Rajasree R. Nair.