NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT CHENNAI

(APPELLATE JURISDICTION)

COMPANY APPEAL (AT) (CH) (INS.) NO. 276/2023
(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)

(Arising out of the Impugned Order dated 05/07/2023 in IA(IBC)/122/KOB/2023 in TIBA/08/KOB/2019, passed by the National Company Law Tribunal, Kochi Bench, Kerala)

In the matter of :

Kerala State Co-operative Bank Limited
Represented by Chief Executive Officer, Mr. P.S. Rajan,
Head Office at Co-Bank Towers, Palayam,
Thiruvananthapuram, Kerala – 695 033 **…Appellant**

Versus

1. **Mr. Aravindhakshan Nair R**
Liquidator of Lake View Ayurvedic Resort &
Research Centre Pvt. Ltd.
Ashadha (Kuttara), Cheruthana P.O., Karuvatta,
Karthikapally, Alappuzha – 690 517 **…Respondent No. 1**

2. **Mani Mountain View Hospitality Private Limited**
164/Maniktala Main Road, Kolkata – 700054 **…Respondent No. 2**

3. **Kerala State Industrial Development Corporation Limited**
T.C. XI/266, Keston Road, Kowdiar,
Thiruvananthapuram – 695003. **…Respondent No. 3**

Present :

For Appellant : Mr. Srikant Mohan, Advocate

For Respondents : Mr. Jerin Asher Sojan, Advocate, For R1
Mr. P.H. Arvindh Pandian, Sr. Advocate,
For Mr. Raj Kumar Jhabakh and Mr. Arjun Makuny,
Advocates, For R2

J U D G M E N T

(Virtual Mode)

[Per: Shreesha Merla, Member (Technical)]

1. Aggrieved by the Impugned Order dated 05/07/2023 passed in IA(IBC)/122/KOB/2023 in TIBA/08/KOB/2019, by the 'Adjudicating Authority', National Company Law Tribunal, Kochi Bench, Kerala State Co-operative Bank Limited, the Applicant in IA(IBC)/122/KOB/2023 preferred this Appeal under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code). The 'Adjudicating Authority' has dismissed the Application preferred by the Appellant herein observing as follows:

> *"9. The 1st respondent excluded 110 cents of land from the auction after the dismissal of application I.A.No.330/KOB/2022 filed by the 1st respondent seeking leave of this adjudicating authority to file an application before sub-court Kottarakara in Execution Petition No.51 of 2012 dated 16.11.2022. The court sale to the said land 1.10 acre was confirmed in favour of K.K.Johnson in the year 2012. In this situation, the exclusion of 110 cents of from the auction will not a ground to set aside the sale.*
>
> *10. The sale effected by auction on 29.12.2022 was confirmed by the 1st respondent after the receipt of the entire sale consideration of Rs.4.05 crores from the successful bidder, 2nd respondent, and also issued the sale certificate on 04.02.2023. Thus, the sale is completed".*

2. The Learned Counsel for the Appellant submitted that the Corporate Debtor Company is under Liquidation, ordered by the 'Adjudicating Authority' on 15/10/2020 in IA/160/KOB/2020. It is submitted that the Appellant had filed a Claim of Rs. 59,80,63,541/- as a Secured Financial Creditor which was admitted by the Liquidator; that the Corporate Debtor Company was engaged in the business of managing an 'Ayurvedic Hospital' and its assets comprised of lands including 8.47 acres and 4189 sq. m. building and another 395.59 sq.m. cottages situated therein; that the Corporate Debtor had possessory rights over 4.50 acres of land and is holding a total extent of 12.97 acres; that the Liquidator did not include these areas of land in the Liquidation estate and arrived at the Liquidation value of Rs. 6,38,00,000/- and the value of 8.47 acres of land was Rs. 7,10,00,000/-

3. The Learned Counsel for the Appellant submitted that the Liquidator proceeded to conduct the auction at a 'Reserve Price' of Rs. 7,10,00,000/-, but there was no buyer for the property and there after the Liquidator reduced the price mechanically and settled at a price of Rs. 3,80,00,000/- and conducted the last auction on 29/12/2022, wherein the 2nd Respondent became the Successful Bidder for a meagre sum of Rs. 4,05,00,000/-. It is argued by the Learned Counsel for the Appellant that the value in 2004 itself was Rs. 12,00,00,000/- and the valuation done by KSIDC in 2014 was Rs. 18,00,00,000/-, which shows that the property was not required to be sold at this distress rate. Merely because the Liquidation period was ending, it cannot be a ground for reducing the 'Reserve Price'. Rather than reducing the price to a paltry sum, the Liquidator ought to have consulted the Stakeholders Consultation Committee for an alternate viable option for value maximisation. The Liquidator ought to have given an option to the Secured Creditors to reassign the assets or exercise any other option under the Regulations instead of ‘mechanically’ reducing the price.

4. The Learned Counsel for the Appellant vehemently argued that in the Meeting held on 12/11/2021, the Liquidator informed about the extension until 15/01/2022 and proceeded to reduce the ‘Reserve Price’ by an additional 10 % leading to an auction on 17/12/2021 without the consent of the Appellant. Subsequently, in a Meeting held on 24/01/2022, the Liquidator revealed that he had received a Notice from the Sub Court concerning 110 cents of land, previously mortgaged to the Appellant, without the Appellant’s knowledge. The Stakeholders Consultation Committee recommended the Liquidator’s intervention at the Sub Court and release of the Property in favour of the Corporate Debtor, but the Liquidator had failed to disclose these facts before the ‘Adjudicating Authority’. In the Meeting held on 22/11/2022, the Liquidator had unilaterally reduced the price of 110 cents of land without boundary demarcation, by Rs. 44,23,000/-, setting the ‘Reserve Price’ at Rs. 3,80,000/-, despite the Appellant’s 72.85 % voting right in the Stakeholders Consultation Committee.

5. It is the main case of the Appellant that the Liquidator had proceeded with independent decisions overlooking the matters of maximising the value of the assets and had sold the assets at a diminished ‘Reserve Price’ without obtaining the requisite approval from the Appellant and did not adhere to prescribed modes of sale as mandated by Regulations 32 and 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016.

6. The Learned Counsel for the 1st Respondent submitted that the 'Reserve Price' of the property was higher than the guideline value of the Liquidation asset; that seven rounds of e-auction were conducted by the 1st Respondent allowing the same said procedure in valuation; that the Appellant had provided consent to the earlier auctions and is therefore, estopped from challenging the 8th auction on the ground of irregularity. It is also contended that the Appellant has not challenged the Meeting dated 22/11/2022 or the procedure in which the Meeting was conducted despite having a six week period to do so.

7. The Learned Senior Counsel appearing for the 2nd Respondent / the Successful Auction Purchaser submitted that the Appellant had participated in the Stakeholders Committee Meetings and that the Appellant had kept silent for a long time even after the decision was taken by the Liquidator to conduct the 8th auction in the revised 'Reserve Price'. The Learned Counsel for the second Respondent drew our attention to the recommendation of the Stakeholders Consolidation Committee held on 18/08/2021, wherein it was recommended that the 'Reserve Price' may be reduced by 10 % for the land and building and 25% for the furniture and to conduct the e-auction again. It is submitted that in this Meeting, it was categorically proposed that the next auction was to be held on 17/12/2021with this revised 'Reserve Price'. It is also argued by the Learned Senior Counsel for the 2nd Respondent that the Appellant has failed to plead and prove through any material documents that the impugned e-auction is vitiated by fraud or even against provisions of law. To the contrary, the Appellant has itself admitted that the sale is within the purview of the relevant provisions of law namely in accordance with Clause 4 of Schedule I of the IBBI (Liquidation Process) Regulations, 2016; and that the Hon'ble Supreme Court in the matter of ***'Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.'*** reported in ***[(2021) SCC OnLine SC 707]*** had observed that proceedings under Insolvency & Bankruptcy Code, 2016 are to be completed within a fixed timeline, and permitting any intervention after the expiry of such timeline would be against the intent and purpose of the Code.

8. It is significant to mention that the Appellant herein had attended this Stakeholder Committee Meeting on 12/11/2021 whereby and whereunder it was proposed that the 'Reserve Price' be reduced by 10 % and that of the furniture by 25%. The relevant portion is extracted below for ready reference.

> *"Shri Rajesh Jacob AGM KSIDC agreed with the proposal. Shri Shri Jills mon jose General Manager intimated that as the KSCB board convened on Tenth November 20212 could not consider this item, so he could ratify this expenditure and loan only after 25th November, 2021."*

9. The aforenoted Minutes of the Meeting shows that the Appellants herein were very much aware of the reduction of the 'Reserve Price' way back on 12/11/2021 itself. It is seen from the record that even in the Meeting dated 24/01/2022 the General Manager of KSCB was present and it was opined by the Liquidator in that Meeting that the Stakeholders Consultation Committee Members would have sanction to take commercial decisions in an emergency situation and promised another Meeting to finalise the e-auction details. It is seen from the record that in the 10th Stakeholders Consultation Committee Meeting held on 07/02/2022, the Annual General Meeting of KSIDC approved the reduction and the e-auction procedure. Shri GM Jills mon jose of KSCB abstained since their Board approval for the above proposal of reduction in the 'Reserve Price' by another 10 % was not yet obtained. It is stated that the final decision of KSCB would be intimated by 11/02/2022. This record of the Minutes of the various Stakeholders Consultation Committee Meetings held from 21/11/2021 to 24/01/2022 establishes that the Appellant was very much aware of the various stages when the 'Reserve Price' was being reduced.

10. Regarding the contention of the Learned Counsel for the Appellant that Regulations 32, 33, 35 and 36 of the Liquidation Regulations, 2016 were not adhered to, is to be examined and for ready reference, the relevant Regulations are being reproduced as hereunder:

32. Sale of Assets, etc

The liquidator may sell-

(a) an asset on a standalone basis;
(b) the assets in a slump sale;
(c) a set of assets collectively;
(d) the assets in parcels;
(e) the corporate debtor as a going concern; or
(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]

32A. Sale as a going concern.

(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under subregulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of

regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.

33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the 'Reserve Price' of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties

35. Valuation of assets intended to be sold.

(1)Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

(2) In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:

Provided that the following persons shall not be appointed as registered valuers, namely: -

(a) a relative of the liquidator;
(b) a related party of the corporate debtor;
(c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
(d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.

(3) The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.

(4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.

> ***36. Asset sale report.***
> *On sale of an asset, the liquidator shall prepare an asset sale report in respect of said asset, to be enclosed with the Progress Reports, containing –*
>
> *(a) the realized value;*
> *(b) cost of realization, if any;*
> *(c) the manner and mode of sale;*
> *(d) if the value realized is less than the value in the asset memorandum, the reasons for the same;*
> *(e) the person to whom the sale is made; and*
> *(f) any other details of the sale.*

11. It is contended by the Learned Counsel for the Appellant that Regulation 32 mandates a clear and transparent process for liquidation of assets; that Regulation 33 clarifies the mode of sale; that Regulation 35 prescribes the valuation of assets intended to be sold and that Regulation 36 mandates the submission of Progress Reports to the 'Adjudicating Authority' encompassing the Liquidator's actions and the status of the Liquidation process. It is vehemently argued by the Learned Senior Counsel for the Appellant that the scope and objective is maximisation of value of assets and this was not followed by the Liquidator at all. At this juncture, it is significant to reproduce Schedule- I, Mode of Sale under Regulation 33 of the IBBI Liquidation Process, Regulations, 2016:-

> ***1. AUCTION***
>
> *(1) Where an asset is to be sold through auction, a liquidator shall do so the in the manner specified herein.*
>
> *(2) The liquidator shall prepare a marketing strategy, with the help of marketing professionals,*

if required, for sale of the asset. The strategy may include-
(a) releasing advertisements;
(b) preparing information sheets for the asset;
(c) preparing a notice of sale; and
(d) liaising with agents.

(3) The liquidator shall prepare terms and conditions of sale, including 'Reserve Price', earnest money deposit as well as pre-bid qualifications, if any.

(4) The 'Reserve Price' shall be the value of the asset arrived at in accordance with regulation 35.

(4A) Where an auction fails at the 'Reserve Price', the liquidator may reduce the 'Reserve Price' by up to twenty-five percent of such value to conduct subsequent auction.

(4B) Where an auction fails at reduced price under clause (4A), the 'Reserve Price' in subsequent auctions may be further reduced by not more than ten percent at a time.

(Emphasis Supplied)

12. It is seen from the aforenoted Regulation and Schedule that the Liquidator can reduce the 'Reserve Price' by up to 25 % of such value to conduct the subsequent auction and where an auction falls at a reduced price under Clause 4A, the 'Reserve Price' in subsequent auctions may be further reduced by not more than 10 % at a time. It is seen from the record that there is no violation of the mode of auction as specified above. There is no documentary evidence to substantiate that there was any violation of Regulations 32, 33, 34 or 35 of the Liquidation Regulations, 2016.

13. There are no substantial grounds as to why the Applicant did not raise these issues when the Appellant himself attended the Stakeholders Consultation Committee Meetings from 12/11/2021 to 24/01/2022 and objected to the reduction. The Liquidator had included 110 cents of land from the auction after the dismissal of Application IA 330/KOB/2022 and sought leave of the 'Adjudicating Authority' to file an Application before the Sub Court, Kottarakara in EP No. 50/2012 dated 16/11/2022. The Court sale to the said land 1.10 acre was confirmed in favour of K.K. Johnson in the year 2012. It was based on this fact that the 'Adjudicating Authority' has observed that the exclusion of 110 cents of land from the auction is not a tenable ground to set aside the same.

14. It is seen from the record that the auction was conducted on 29/12/2022; the entire sale consideration of Rs. 4,05,00,000/- was received from the second Respondent / Successful Auction Bidder and most importantly, it is significant to mention that the Sale Certificate was issued on 04/02/2023. On a pointed query from the bench as to why the Appellant was silent and had filed this Application belatedly, it is submitted that the Appellant is a Co-operative Bank and each step requires prior approval of the Board and further submitted that the regulations do not satisfy any specific time limit to challenge the actions of the Liquidator. We do not find any merit in these submissions and keeping in view that the IBC is a time bound process and *the Sale Certificate had already been issued on 04/02/2023* and specifically having regard to the fact that the

Appellant had attended the Stakeholders Consultation Committee Meetings and was aware of the Proceedings and consequently, this Tribunal is of the view that the Liquidator had followed the 'Mode of Sale' as specified under Schedule – I of the Regulations, 2016.

15. For all the aforegoing reasons, this Company Appeal (AT) (CH) (Ins) No. 276/2023 is dismissed accordingly. No Order as to Costs. All Connected Pending Interlocutory Applications, if any, are closed.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

15/09/2023
SPR/TM