



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**C.P. (IB) No.1634/KB/2018  
With  
IA (IB) No. 1185/KB/2023**

*An Application under Section 7 of the Insolvency & Bankruptcy Code, 2016;*

In the matter of:

Alliance Broadband Services Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 53A, Dr. Lala Mohan Bhattacharyya Road, 2<sup>nd</sup> Floor, Kolkata - 700014.

... .. Financial Creditor

Versus

M/s. Manthan Broadband Services Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 6, Ganesh Chandra Avenue, 3<sup>rd</sup> Floor, Kolkata – 700013.

... .. Corporate Debtor

And

In the matter of:

M/s. Regent Vinimay Private Limited, a company incorporated under the Companies Act, 1956 having its registered office at 67F, Hindustan Park, 2<sup>nd</sup> Floor, Kolkata – 700029 in the State of West Bengal.

Versus

Mr. Kuldeep Verma, Liquidator of Manthan Broadband Services private Limited, having its office at 46, B.B. Ganguli Street, 5<sup>th</sup> Floor, Unit No.501, Kolkata – 700012 in the State of West Bengal

... .. Respondent

Date of Hearing: 27.09.2023

Date of Pronouncement of Order: 18.10.2023

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI ARVIND DEVANATHAN, HON'BLE MEMBER (TECHNICAL)**

**Appearance (via video conferencing/physically)**

Mr. Rishav Banerjee, Adv. ] For the Applicant in IA(I.B.C.)/334(KB)2023

Mr. S. Singha Sen, Adv. ]

Mr. Shaunak Mitra, Adv. ] For the Applicant in IA(I.B.C.)/1185(KB)2023

Mr. D. Majumdar, Adv. ]

Mr. P.P. Bishwal, Adv. ]

Ms. Manju Bhuteria, Adv. ] For the Liquidator

Mr. R. Auddy, Adv. ]

Mr. A. Goptu, Adv. ]



## ORDER

**Per: Bidisha Banerjee, Member (Judicial)**

1. Heard the learned Counsel for the parties.
2. This application has been preferred by M/s. Regent Vinimay Private Limited in connection with C.P.(IB)/1634(KB)/2023 filed by Alliance Broadband Private Limited (Financial Creditor) against Manthan Broadband Private Limited (Corporate Debtor)
3. **Facts in a Nutshell:**
  - (i) The Section 7 petition preferred by Alliance Broadband Private Limited was admitted by this Tribunal vide its order dated 18<sup>th</sup> September, 2019. Since no resolution could be achieved, vide order dated 6<sup>th</sup> April, 2022, this Tribunal passed an order for liquidation and the erstwhile RP, Mr. Kuldeep Verma was appointed as Liquidator.
  - (ii) The Liquidator published the sale notice dated 6<sup>th</sup> December, 2022 for sell of the Corporate Debtor as a going concern in accordance with 32 (e), 32A, 33 (1) and Schedule-I of the IBBI Liquidation Process Regulations. A further notice was published on 11<sup>th</sup> January, 2023. The last date for submission of the expression of interest was 27<sup>th</sup> January, 2023.
  - (iii) The applicant submitted his expression of interest vide mail dated 25<sup>th</sup> January, 2023 to participate in the e-Auction process for block assets of the Corporate Debtor.
  - (iv) Vide e-mail dated 27<sup>th</sup> January, 2023, he was asked to provide some more documents.
  - (v) Further vide e-mail dated 8<sup>th</sup> February, 2023, he was declared as a qualified bidder for the proposed e-Auction. The last date of submission of earnest money was 11<sup>th</sup> February, 2023 and the applicant deposited the EMD of Rs.90,000/- on 8<sup>th</sup> February, 2023. E-Auction was proposed for 14<sup>th</sup> February, 2023 and the applicant claims that he was declared as the second highest bidder.
  - (vi) On 14<sup>th</sup> February, 2023 itself, this Tribunal passed an order allowing the e-Auction as proposed on 14<sup>th</sup> February, 2023 to be conducted which shall,

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however, abide by the result in IA(I.B.C)/334(KB)/2023 preferred by Mr. Rajib Dhamija and others being the Member of the Suspended Board.

- (vii) It was further directed that consequential action in regard to the auction shall be conducted only with the liberty of this Tribunal, and a report to that effect shall be submitted by the Liquidator on the next date of hearing which was 15<sup>th</sup> March, 2023. Since March, 2023, the applicant started claiming a refund of the EMD as an “unsuccessful” bidder. He has come up with an application seeking a refund of EMD.
- (viii) Learned Counsel Mr. Shaunak Mitra would submit that being an unsuccessful bidder, the applicant has every right to seek a refund of EMD to that effect learned Counsel would draw our attention to the timeline of the e-Auction process which appears at page 35 of the e-Auction process information document.
- (ix) Clause 14 of the e-Auction process information document allows the EMD to be refunded to the unsuccessful bidder. Learned Counsel refers to the decision of *Nitin Jain vs. Lucky Holdings*.
4. Per contra, Mrs. Manju Bhuteria, learned Counsel appearing on behalf of the Liquidator would vehemently oppose the stand and submit that the applicant being the H-2 bidder cannot claim himself as an unsuccessful bidder and seek a refund of the EMD. He has to wait until the names of H-1 and H-2 bidders are announced and till the H-1 bidder fails to comply with the provisions. Thus, till an announcement is made in regard to the successful bidder, the applicant cannot claim himself as an unsuccessful bidder and seek a refund of the EMD.
5. We have considered the rival contentions and perused the records. We are aware of the order passed on 14<sup>th</sup> February, 2023, whereby and whereunder, the Liquidator was asked to seek liberty of this Tribunal while taking forward any consequential action in regard to the auction.
6. The liquidator has already preferred an application seeking liberty to declare the H-1 bidder. Therefore, till such time, the said declaration is made, the applicant who wants to withdraw himself from the bid, unless declared as an unsuccessful bidder, cannot claim a refund of EMD.

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7. Since the learned Counsel Mr. Shaunak Mitra heavily presses for disposal of this IA, we do hereby order that the claim for refund will depend upon the outcome of the application filed by the Liquidator to declare the successful bidder. Depending upon the outcome, the applicant herein will be entitled to seek a refund of his EMD in accordance with law. In the event, he wishes to withdraw himself from the bid process.
8. This IA is accordingly disposed of.

**Arvind Devanathan  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order signed on this, the 18<sup>th</sup> day of October, 2023.**

Sayon [Steno]