



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

IA (IBC)/ 122/KOB/2023

In

TIBA/08/KOB/2019

In the matter of:

An application under Section 60 (5) of the Insolvency Resolution Process, 2016 read with 11 of NCLT Rules, 2016 to set-aside the sale;

-And-

In the matter of:

Kerala State Co-operative Bank, Represented by Chief Executive Officer, Mr. P.S. Rajan, Head Office, Co-bank Towers, Palayam, Thiruvananthapuram, Email: ceo@keralabank.co.in

...Applicant

-Versus-

1. Mr. Aravindhakshan Nair R, Liquidator of Lake View Ayurvedic Resort & Research Centre Pvt Ltd, Ashadha (Kuttara), Cheruthana P.O, Kouvatta, Karthikapally, Alappuzha- 690 517;

2. Mani Mountain View Hospitality Private Limited, 164/Maniktala Main Road, Kolkata- 700054;

3. Kerala State Industrial Development Corporation, T.C. XI/266, Keston Road, Kowdiar, Thiruvananthapuram- 695 003;

...Respondents

-In-

In the matter of:

Kerala State Industrial Development Corporation Limited,

...Financial Creditor

-Versus-



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In re: Kerala State CO operative bank vs Liquidator of lake view ayurvedic Resort and others.

Lake View Ayurvedic Resort & Research Centre Pvt Ltd.

...Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through Video Conference)

For the Applicant : Mr. Vinod PV, Adv.
For the 1st Respondent : Mr. Cyriac Tom, Adv.
For the 2nd Respondent : Mr. Rantanko Banerji Sr. Adv
for Mr. Paulose C. Abraham.
For the 3rd Respondent : Mr. Sandeep Kumar, C.S.

Order pronounced on: 5.7.2023

ORDER

1. This is an application filed under section 60(5) of IBC 2016 R/w Rule 11 of NCLT Rules 2016 by one of the financial creditor/members of SCC against the Liquidator to cancel the sale made in favour of 2nd respondent through e-auction and to relinquish the assets in favour of the applicant or to do any other option to maximize the value of the asset.
2. The corporate debtor M/s Lake View Ayurvedic Resort & Research Centre Pvt Ltd was admitted into CIRP on Section 7 of IBC, 2016 petition filed by 3rd respondent Kerala State Industries Development Corporation by this Adjudicating Authority on 06.11.2019. The 1st respondent was appointed as IRP then RP, since there was no resolution plan received, on 15.10.2020 Liquidation was ordered against the corporate debtor by this Adjudicating Authority in M.A.No.160/KOB/2020, and the 1st respondent was appointed as liquidator.



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3. The applicant herein is one of the financial secured creditors, relinquished his secured interest over the immovable property. The applicant is member of SCC with 72.85% voting filed this application. The Liquidator, successful bidder and another financial creditor are arrayed as respondents.
4. The assets of the corporate debtor are inclusive of the immovable property i.e., 847.75 cents of land and 4189 sq fts building. In the SCC meeting held on 25.01.2021, it was decided to sell the property for the Realizable value of Rs.7.10 Crores. The liquidator conducted three auctions at the reserved price but there was no bidder. Thereafter, because of the receipt of notice from the Sub-court Kottarakara in Execution proceedings, an extent of 110 cents of land was excluded from the total assets of the corporate debtor and in consequence the reserved price was reduced to Rs.3.80 lakh. The eighth auction was held on 29.12.2022 and the 2nd respondent was declared as the successful bidder for the auctioned price amount of Rs.4.05 crores.
5. The grievance of the applicant is against the 1st respondent/liquidator for the reduction of reserved price and ineffective publication and not taken the advice of the applicant it is holding 72.85%.
6. The 1st respondent denies the allegation and stated that the reduction in value is as per the procedure contemplated in clause 4A of Schedule I of the liquidation process regulation. Further, he stated that he had only reduced 10% value in the initial round when there was an ambit to reduce 25%. The reserved price re-fixed was higher than the guideline value. In respect of publication, the 1st respondent effected paper publication both in English and vernacular languages as provided under the regulation. Earlier seven times also auctions were conducted after effecting the publication in dailies in the same manner.
7. The applicant itself has admitted that the reduction of the sale price and other acts were done by the 1st respondent in accordance with Regulations,



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- but the 1st respondent not taken the recommendation of the applicant. In fact, all the decisions were taken by 1st respondent after the discussion held in SCC meetings. Further, the applicant kept silent for a long time after the decision taken by the 1st respondent to conduct 8th auction in the revised reserved price, but the applicant preferred this application after the issuance of sale certificate.
8. On the 3rd respondent side not filed counter, but filed a written submission with certain prayers as if it is an application in an improper manner. The main contention of the 3rd respondent is the sale effected by the 1st respondent should be set aside and sale shall be conducted after including 110 cents of excluded land.
 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.
 11. For the reason stated above the application is devoid of merits, in consequence this application is **Dismissed**.



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12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,
13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

P. Mohan Raj
Member (Judicial)

Signed on this, 5th day of July, 2023.

Supriya_P.S