

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

IA(IBC)/77/KOB/2023

IN

TIBA/08/KOB/2019

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

In the matter of:

Babu George, Thekkedathu Valavukayathil, Kalanjoor P.O., Pathanamthitta,
Kerala- 689 694;

... Applicant

-Versus-

- 1. Aravindakshan Nair R.**, Liquidator of M/s 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. **K Sivadas, Jeeva Bhavan Kalaynadu**, Plachery P.O., Kollam 691331, Kerala;
8. **Boban V.T.**, Veliyil House, Palluruthy, Cochin- 682 006.

... 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. Johnymon Thomas, Adv.,

For RespondentNo.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)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by the Applicant who is a Personal Guarantor of Corporate Debtor Lake View Ayurvedic Resort and Research Centre Pvt. Ltd seeking reliefs aminly to the following effect: -
 - a) *To direct the liquidator to sell the property of the corporate debtor as a whole so as to maximize the value due from the property.*
 - b) *To direct an enquiry into the manner in which the auction was conducted by Respondent No. 1 and action be taken based on the same.*
 - c) *To set aside the auction sale that took place on 29.12.2022 and conduct a re-auction of the property following fair principles.*
 - d) *To direct the 5th respondent to produce the details and logbook with regard to the bids received attempted to be made during the 29.12.2022 e-auction.*
2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:
 - i. The applicant is the Personal Guarantor to the Corporate Debtor Lake View Ayurvedic Resort and Research Centre Pvt Ltd and who has been made liable by order of the Adjudicating Authority for the debts of the corporate debtor. The Applicant is one of the Promoters of the Corporate Debtor. The Corporate Debtor has been proceeded for liquidation by order dated 15.10.2020 in IA/160/KOB/2020 upon the failure of the CIRP process wherein the 1st Respondent was appointed as the Liquidator. While the liquidation proceedings

were going on, one of the Financial Creditors, the 3rd Respondent bank had initiated proceedings under Section 95 of the IBC against the applicant and the other Personal Guarantor who is the 7th Respondent herein. By order dated 02.12.2021 in CP(IBC)/35/KOB/2021, this Tribunal admitted the application and initiated proceedings for recovering amounts from the applicant.

- ii. It is stated that the claim made by the 3rd respondent bank with regard to the personal liability of the Applicant to pay off the debts of the Corporate Debtor is untenable. That the amount sought from the applicant is unconscionable as against a principal loan of Rs. 5.90 crores raised, of which the Corporate Debtor had already repaid over Rs. 75 lakhs back to the Financial Creditor and the 3rd Respondent had claimed dues in excess of Rs. 70 crores in 2022. It is further stated that the debts due to the said Financial Creditor were completely cleared when the 3rd Respondent bank itself had bought the entire assets of the Corporate Debtor which was worth Rs. 60 crores at the time for a bargain of Rs. 12,12,00,001/- at a public auction conducted by the 3rd Respondent itself on 30.05.2013 and hence no debts due from the Applicant could be claimed. The said objections were raised by the applicant in the Section 95 proceedings. However, this Tribunal taking the submissions of the Respondent bank directed the proceedings under Section 95 to continue, thus allowing the Section 95 application. The said order is under challenge before the NCLAT, Chennai Bench as Company Appeal (AT)(CH)(|ns) No.274/2022.
- iii. It is stated that the 1st Respondent Liquidator has been taking steps to sell off the assets of the Corporate Debtor in Liquidation proceedings at very low rates. That the Corporate Debtor property worth Rs. 60 crore being a fully built-up resort situated on 13.4 acres of land lying adjacent to a national highway. That even as per the valuation taken out by the 2nd Respondent through an authorised assessor, the land of the Corporate Debtor alone was valued at Rs. 9,74,68,250/-

while the buildings were valued at Rs. 9,58,73,500/- for a cumulative value of Rs. 19,33,41,750/-. It is stated that the 1st Respondent has conducted an e-auction of assets of the corporate debtor setting a low reserve price of Rs. 3.80 crores for over seven and a half acres of land along the main buildings of the resort.

- iv. It is stated that the e-auction took place on 29.12.2022 in which there were two bidders, the 6th Respondent and the 8th Respondent. It is seen that the 6th Respondent was the highest bidder in the said auction for Rs. 4.05 crores. That the 8th Respondent who was the only other bidder has raised serious allegations against the conduct and integrity of the auction that was conducted. The 8th Respondent contended that he was not allowed to make a bid at the last moment despite wishing to do so. That the allegations made are severe and go to the root and sanctity of the auction process and the liquidation process as well. In this respect, the 8th Respondent filed a Writ Petition before the Hon'ble High court of Kerala WP(C) No. 601 of 2023, which was later disposed of.
- v. It is stated that the auction that was conducted was for properties that were earlier sold by the 3rd Respondent and even keeping aside the same, considering the valuation of the property it is clear that the value for which the land and buildings are proposed to be sold is unconscionably low given the valuations made by the Financial Creditor itself. It is further stated that the Liquidator has the duty to get the maximum value of the assets in the liquidation process and the same not only affects the Creditors but also the Personal Guarantors such as the applicant as they are bound to pay the subsisting dues that are found to be owed. As the order putting liability to pay debts upon the Applicant as a Personal Guarantor is subsisting the applicant would at present be liable to pay the dues left to be paid after the liquidation of the assets of the company takes place.

FINDINGS and OBSERVATIONS: -

3. We have heard the learned counsel for the parties at length and perused the available case records/documents. The main argument advanced by the 1st Respondent is 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, nobody participated in the e-auction. Since the above auctions failed, in order to get interested parties, the 1st 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. The 1st respondent submitted 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. 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, 1st Respondent finally conducted the Eighth e-auction with a reserve price of Rs. 3.80 Crores in which the reserve price was reduced. The 8th e-auction was conducted on 29.12.2022. Upon closure of the Eighth e-auction, the bid history report was provided by the 5th Respondent to the 1st Respondent whereby the 6th 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 6th Respondent, the 6th Respondent was declared the winner in the auction and the 6th Respondent was confirmed and awarded the bid.

5. We have also heard the submission of Mr. Ratnanko Banerji, the learned senior counsel appearing for the 6th Respondent who is the successful bidder. He has stated that the Applicant has no locus to challenge the liquidation sale by a Liquidator. The sale was conducted on 29.12.2022. From the submission of the Liquidator, it appears that seven attempts had already been made for the sale of the property of the Corporate Debtor in liquidation and since all of them failed, the 8th attempt was made. Then also nobody has come forward to bid with a higher price. The Applicant who is only a Personal Guarantor of the Corporate Debtor has no right to object now with regard to the same. He was aware of the successive auctions.
6. On hearing both sides the only question to be decided is whether the e-auction conducted by the 1st 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 any person has come forward to bid with a higher price and that the bid history report produced by the 1st Respondent which was conducted by the 5th Respondent in the connected matter IA(IBC)/59/KOB/2023 did not contain any complaint from the Applicant herein, who has not even participated in the e-auction.
7. It is also seen that seven e-auctions were conducted and no persons had even participated in the e-auction. After the failure of the said e-auctions, the 1st Respondents reduced the reserve price in accordance with Clause 4 A of Schedule I of the IBBI (Liquidation Process) Regulations, 2016. It is also seen that the 6th Respondent is a bonafide purchaser and has participated in a properly conducted e-auction sale and has paid the entire sale consideration to the 1st Respondent and there is no reason why the liquidation sale should be permitted

to be challenged or set aside. Hence the 1st Respondent had to follow the mandatory requirements of the e-auction. The contention raised by the Applicant being a Personal Guarantor of the Corporate Debtor is to be raised in the Section 95 application filed against him and not in auction proceedings conducted as per the regulations/rules.

8. In view of the aforesaid findings, we do not see any reason to entertain this application and pass any orders. Accordingly, **IA(IBC)/77/KOB/2023** is **dismissed** without costs.
9. The registry is directed to communicate this order to the respective parties through email.
10. Certified copy of the order be issued on request of the parties as per the procedure.
11. File be consigned to records.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

P. Mohan Raj
Member (Judicial)

Signed on this, 26th day of April, 2023.

Rajshree