



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

IA(IBC)/368/KOB/2023

IN

TIBA/08/KOB/2019

(Under Section 60(5)(b) of the IBC, 2016 read with

Rule 11 of the NCLT Rules, 2016)

In the matter of:

**M/s. Lake View Ayurvedic Resorts and
Research Centre Pvt. Ltd.**

Memo of Parties:

Canara Bank, Represented by Chief Manager,
ARM Branch, 2nd Floor, Canara Bank Building,
Chittoor Road, Ernakulam South, Ernakulam- 682
016.

... Applicant.

-Versus-

Mr. R. Aravindakshan Nair, Interim Resolution
Professional of Ashadha (Kuttara), Cheruthana,
Karuvatta, Karthikappally, Alleppey, Kerala- 690
517. Email id:- kuttara@yahoo.co.in.

... Respondent.

In the matter of: -

Kerala State Industrial Development Corporation
Limited.

**... Financial
Creditor.**

-Versus-



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M/s. Lake View Ayurvedic Resorts and Research
Centre Pvt. Ltd. ... **Corporate
Debtor**

Order delivered on: 24.11.2023

Coram:

Hon'ble Member (Judicial) : TMT. Justice (Retd.) T. Krishna Valli.

Hon'ble Member (Technical): Shri. Shyam Babu Gautam.

Appearances:

For the Applicant : Mr. Akhil Suresh, Adv.,
For the Respondent : Mr. Cyriac Tom., Adv.

ORDER

Per: Coram

1. The present application is filed by the Applicant Canara Bank under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the following relief: -
 - To direct the Respondent Liquidator to deposit the proceeds of the sale of the secured asset in terms of Section 53(i)(b)(ii) of the IBC.
2. The brief facts of the case are that a Section 7 application filed by KSIDC to initiate CIRP against M/s. Lake View Ayurvedic Resorts and Research Centre Pvt. Ltd. has been admitted on 06.11.2019.



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The Corporate Debtor obtained certain facilities from the Canara Bank, Punalur Branch by executing pronote etc. The Applicant Bank is having the 2nd charge over 8 Acres 47 cents 750 sq. links of land together with factory building and structures, fixed plant and machinery and fixtures and fittings, electrical installations and all other fixed assets constructed/erected both present and future. The first charge is to the KSIDC. The Applicant filed a claim in Form C before the Resolution Professional on 20.04.2020 which was partially admitted by the Resolution Professional. Since the revival of the Company was not materialized the Corporate Debtor was ordered to be liquidated vide order dated 15.10.2020. Thereafter the Applicant being a Financial Creditor had filed a claim in Form D before the Liquidator on 13.11.2020 totalling to a sum of Rs. 2,04,46,739 (Principal: - 24,82,534, Interest: - 1,78,49,205) which was also admitted by the Respondent partially. Thereafter the Liquidator sold the entire assets mentioned above in which Applicant had the second charge. Hence the Applicant would have priority for its payment in terms of the waterfall mechanism under Section 53 of the IBC, 2016.

3. However, when the assets were sold by the Respondent, it has been communicated to the Applicant that they would not come under Section 53(b)(ii) and would only come under Section 53(e)(ii) of IBC and is therefore not entitled to any payments in priority.



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4. The Applicant stated that as per Form D provided in Annexure A-3, it can be seen that there is no explicit column provided for relinquishment of security. The Respondent without the consent or knowledge of the Applicant *suo moto* declared that the Applicant has not relinquished their security interest in the property. In such circumstances, it was illegal on the part of the Liquidator to sell the assets of the Corporate Debtor which the Applicant had second charge.

5. The Applicant further stated that relinquishment of security under Section 52 of the IBC, 2016 is not by any implication and the same is followed by a set of procedures. Section 52(2) states that where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the Liquidator of such security interest and identify the asset subject to such security interest to be realised. In the present case, the Applicant stated that there is no such intimation given by the Applicant to the Respondent. Section 52(3) further states that before any security interest is realised by the secured creditor, the Liquidator shall verify such security interest and permit the secured creditor to realise only such security interest. No such verification has been done by the Liquidator. The Applicant has further not ventured to enforce,



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realise, settle, compromise or deal with the secured assets as stipulated under Section 52(4) and 52(7) of IBC, 2016.

6. Per contra the Respondent filed a reply statement refuting the contentions in the applications stating that the applicant being a financial creditor had filed a claim in Form D dated 13.11.2020 totaling to a sum of Rs. 2,04,46,739 (Principal:- 24,82,534 Interest:- 1,78,49,205)
7. The Applicant as a Financial Creditor had provided the loan based on two sets of properties. The applicant had the exclusive charge over Jameela Beevi Land and the second charge over the Liquidation estate. Although the applicant submitted the claim form, no intimation was provided as per Clause 21A of Liquidation Process Regulation. It is submitted that as per Clause 21A of the Liquidation Process Regulation, the Applicant was supposed to inform the Respondent whether the Applicant was interested in surrendering the Security Interest of the secured assets. Further failure to inform the takeover of the assets, the liquidator has the right to consider the same as liquidation estate.
8. The Applicant did not raise any dispute to the Annexure R1 statement which clearly shows that the Applicant was categorized as a Financial Creditor who did not surrender the security interest.



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9. The Respondent stated that any dispute with respect to the categorization of the applicant should have been raised at least after the constitution of the Stakeholders Consultation Committee. The Respondent had constituted the Stakeholders Consultation Committee as per Section 31A of the Liquidation Process Regulation on 16.01.2021. The applicant was left out since the secured creditor who has not surrendered security interest is not a member of the SCC.
10. The Applicant has not made any communication to surrender the security interest and the Applicant should have at least claimed a position in the SCC. The Respondent further stated that the application is a subverted and belated attempt to change the status of the Claim form since the liquidation process is nearing completion. In the event that this application is allowed, that would be unfair to the rights of other secured creditors. All the decisions were communicated to the Applicant and the Applicant did not make any protest to those communications.
11. The Respondent stated that to his knowledge the claim was accepted fully and the contentions of the Applicant that it is partially allowed is denied. Section (b)(ii) provides that the debts owed to the secured creditor who has surrendered the security



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interest have priority and since the applicant has not provided any proof for surrender of security interest, the priority cannot be claimed.

12. The Applicant did not utilize any of the avenues under the provision of the insolvency law. This clearly shows that the Applicant was sitting over his rights and is now belatedly making a desperate attempt to claim rights. The Respondent further stated that the above facts and law clearly provided that the applicant was well aware of priority status under Section 53 from 2020 and even then the applicant did not raise any dispute. Thus the delayed application can only be seen as an attempt with ulterior motive. The prayer would only result in deriding the rights of other stakeholders who had made proper application and hence any determination of priority would also affect other financial creditors right to receive liquidation proceed. With the above the Respondent prayed for dismissal of this application.

FINDINGS: -

13. We have heard the arguments of the learned counsel for both parties at length and perused the entire case records/documents. The points for consideration is only whether the Applicant is eligible to get the proceeds of the sale of the secured asset in terms



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of Section 53(i)(b)(ii) of the IBC. The Applicant has not produced any proof to show that they have surrendered the security interest to claim the assets as a second charge. Even after constitution of the SCC the Applicant has not raised any dispute on this fact. The Respondent has rightly left out the Applicant being a secured creditor who has not surrendered security interest. Even though the Applicant was perusing the recovery of Jameela Beevi's land the Applicant has not claimed a position in the SCC. The attempt now is only to delay the process of liquidation and distribution of the assets to the stakeholders of the Corporate Debtor. Since the debts owed by a secured creditor who has surrendered the security interest has priority, the Applicant could have surrendered the security interest, which they have not done. The Liquidator has no right to compel a security creditor to surrender his security interest as per Clause 21A of the Liquidation Process Regulation. The Applicant was sitting over his rights and now belatedly making an attempt to claim their rights. If the Adjudicating Authority allows such a prayer that would only result in deriding the rights of other stakeholders who had made proper application and hence any determination of priority would also affect other financial creditors right to receive liquidation proceeds.



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14. In view of what is stated above, we do not find any merit for intervention in this matter. Accordingly, this application which is devoid of any merit is **dismissed without costs**.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
16. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
17. File be consigned to records.

SHYAM BABU GAUTAM Digitally signed by SHYAM BABU GAUTAM
Date: 2023.11.24 16:25:17 +05'30'

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

T.KRISHNA VALLI Digitally signed by T.KRISHNA VALLI
Date: 2023.11.24 16:24:53 +05'30'

**T KRISHNA VALLI
(MEMBER JUDICIAL)**

Signed on this the 24th day of November, 2023.

Rajasree R. Nair/LRA