

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KOCHI

IA(IBC)/118(KOB)/2022

IN

TIBA/34(KOB)/2019

(Under Section 60(5) of the IBC, 2016)

Order delivered on: 24.06.2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Anil Kumar. B, Member (Technical)

Santhosh A

Sopanam, Kallelibhagom P.O,
Karunagappally, Kallelibhagom,
Kollam, Kerala – 690 519.

... Applicant

Verses

Sathiq Buhari

Interim Resolution Professional

Resolution Professional in the matter of Axiomata Elevators Pvt. Ltd.,

Sagreen Law Chamber,

Bank Employees Cooperative Society Building

Chirakkulam Road,

Statue, Thiruvananthapuram – 695 001.

... Respondent

Parties/Counsel present (through video conference)

For Applicant

... S/Sh. Georgy Johny - Advocate

For Respondent

... S/Sh. Harikumar G Nair, Akhil Suresh,

Ms. Anu Balakrishnan,

Ms. Uthara PV – (Advocates)

ORDER

Per: Ashok Kumar Borah, Member (J)

This IA has been filed by applicant Santhosh A, who is an Operational Creditor of Axiomata Elevators Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 against the respondent Mr.

Sathiq Buhari, RP in the matter of Axiomata Elevators Private Limited for a direction to the respondent to accept the Form- F claim filed by the applicant with the respondent.

2. The applicant is an Operational Creditor of the Corporate Debtor M/s. Axiomata Elevators Private Limited. The Corporate Debtor had entered into an agreement for construction of Elevators in the residential premises of the applicant. In that respect the applicant made a payment of Rs. 3,00,000/- (Rupees Three lakh) on 25/07/2019 and Rs.2,00,000/- (Rupees Two lakh) on 23/11/2019 as per the agreement between them. However, the Corporate Debtor was ordered to be under the Corporate Insolvency Resolution Process (CIRP) vide order dated 26/11/2019 and the respondent could not complete the construction of the Elevators.

3. They have also stated that this Tribunal vide order dated 21/12/2021 had excluded the time spent in the CIRP as resolved in the 2nd CoC meeting, till 21/12/2021. While calculating the period under Section 12(1), the last date for filing the claim Petition was on 27/02/2020.

4. The applicant stated that since he is an NRI who works in Muscat, he was unaware of the paper publication and initiation of CIR Process. Hence, he could not file the Form-F within time and there is a delay of 90 (Ninety) days in submitting the claim.

5. He has referred to the decision of the NCLT, New Delhi in the matter of ***Twenty first century Wire Roads Ltd.*** in which the Tribunal condoned the delay and directed the RP to consider the claim. He has also referred to another decision of the NCLT, New Delhi in ***Edelwiss Asset Reconstruction Company Pvt. Ltd. Vs. Adel Landmarks Ltd.*** wherein it is held as under:

“... The rejection of claim on the ground of delay is not sustainable because the provision has been held as directory... We wish to make it clear that all the

Resolution Professionals shall make note of these repeated orders passed by NCLT clarifying that the claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held as directory...”

5. He has further stated that his claims are reflected in the books of the Corporate Debtor and that the claim made by him is a rightful claim as an Operational Creditor. The applicant also stated that since the Tribunal excluded the time spent till 21/12/2021, the claim filed by the applicant is within the time and as an abundant caution only they have stated that there is a delay of 90 (Ninety) days.

6. The respondent RP filed a counter affidavit stating that, it is true that the applicant filed the claim with proof only on 24/02/2022. He has referred to Regulation 12(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 which is as under:

“(2)A creditor, who failed to submit proof of claim within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.”

7. In view of the above provision, the RP is not empowered to admit the claim that is filed after 90 (Ninety) days of initiation of the Insolvency commencement date on 26/11/2019. He has also stated that since the applicant was abroad during the period of CIRP, the claim made by the applicant is genuine.

8. We have heard the learned counsel for the applicant Shri. Jayakrishnan and Shri. Akhil Suresh, learned counsel for the RP and had gone through all the documents produced by the applicant along with his application. During the course of hearing, the learned counsel for the respondent stated that the RP has no objection in accepting the claim of the applicant, if an order to that effect is passed by this Tribunal, even if there is a delay in filing the claim, that may be condoned in view of the decision of NCLT New Delhi

in the matter of Twenty *first century Wire Roads Ltd. (supra)* and *Edelwiss Asset Reconstruction Company Pvt. Ltd. Vs. Adel Landmarks Ltd. (supra)*.

9. In view of the submission of the learned counsel for the respondent that the respondent has no objection in accepting the claim of the applicant and that the applicant's contention that he is a rightful Operational Creditor who is entitled to claim and receive the amount payable to him as reflected in the Books of accounts of the Corporate Debtor, has not been disputed by the respondent in his Counter affidavit, we allow this application and direct the RP to accept the Form-F claim filed by the Applicant on 24/02/2022 and appropriate action taken in the matter.

Dated this the 24th day of June, 2022

Sd/-
(Anil Kumar. B)
Member (Technical)
AJ

ASHOK KUMAR
BORAH

(Ashok Kumar Borah)
Member (Judicial)

 Digitally signed by ASHOK KUMAR BORAH
Date: 2022.06.28 15:02:49 +05'30'