

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

IA (IBC)/ 109(KOB)/2022
IN
IBA No. 11(KOB)/2020
(Under Section 60(5) of the IBC, 2016)

Order delivered on: 1st July, 2022

Coram:

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

Mr.Hariskumar Panakkal
Krishnasoudha, Kunduparambil House,
Kalletumkara P.O,
Thrissur – 680 683.

... Applicant

Verses

Mr. P.T Joy,
P.T Joy & Associates Chartered Accountants,
34/306 C, 1st Floor, JB Plaza,
Near NSS Hostel,
Edapally- Tripunithura Road,
Oberon Mall Junction,
Pativattom, Kochi – 682 024.

... Respondent

Parties/Counsel present (through video conference)

For Applicant	... MTS Legal
For Respondent	... Shri. Sankar P Panicker, Advocate.

ORDER

Per: Ashok Kumar Borah, Member (J)

This IA(IBC)/109(KOB)/2022 has been filed under Section 60(5) of the IBC, 2016 by Mr. Harikumar Panakkal who has invested money to purchase an apartment in MIR Realtors (P) Ltd., along with his wife against the Resolution Professional (RP) in the matter of M/s. MIR Realtors Private Limited, seeking the following relief: -

- Set aside Annexure-D and Annexure-F order/e-mail communication dated 26.04.2022 and 12.05.2022 of the Respondent;
- Condone the delay in filing the Claim Petition before the IRP/Respondent and direct the IRP/Respondent to admit Annexure-E Form C Claim dated 12.05.2022 of the Applicant for Rs. 50,67,400/-.

2. The brief facts of the case are as under: -
3. The Applicant and his wife invested money for purchase of apartments constructed by M/s. MIR Realtors Private Limited. The Applicant was allotted an undivided share in the land and also Apartment No. 3041 (Type A) on the 4th Floor in the project Jade Heights-II, Kakkanad, Kochi vide Agreement dated 11.09.2012.
4. It is stated that at the time of booking the Apartment, the Applicant was working abroad and he returned to India and has been now staying in Bangalore for the last 5 years. The Applicant contacted and asked from M/s. MIR Realtors Private Limited regarding the status of construction. M/s. MIR Realtors Private Limited informed that alternate funding options are in progress and that the work would be started shortly. It is further stated that in the last week of April 2022, the Applicant contacted the Customer Service

representative of M/s. MIR Realtors Private Limited and he was informed about the Insolvency Proceedings pending against the MIR Realtors Private Limited. It is only then that the Applicant became aware of the Insolvency Proceedings of MIR Realtors Private Limited. Immediately the Applicant made inquiries and then became aware of the public announcement.

5. As per the public announcement the last date of submission of claims was 01.01.2022 and the Applicant submitted his claim to the Respondent vide e-mail dated 25.04.2022. However, the claim was rejected by the Respondent vide e-mail dated 26.4.2022 on the ground that the Claim ought to have been filed on or before 18.3.2022 as the 90 days expired on that date. It is stated that the Applicant's claim was rejected by the Senior Manager in the Respondent's office. Thereafter the Applicant submitted his claim before the Respondent for Rs. 50,67,400/- in Form C dated 12.05.2022 with supporting documents. Again, the claim was rejected by the Senior Manager of the Respondent vide e-mail dated 12.5.2022 for the same reason. The applicant stated that the order is bad in law because the person who passed the order does not have the power to issue such an order.

Submissions by the Respondent

6. The Respondent filed his reply on 08.06.2022 and stated that he has received an email from the applicant on 25.04.2022 mentioning the claim details of apartment booked by him and payments made to the Corporate Debtor of an amount of Rs 50,67,400/- (Rupees Fifty lakhs sixty-seven thousand and four hundred only) and that the soft copy was received from the applicant on 12.05.2022 which is on the 145th day of the Insolvency commencement date.

The claim could not be accepted by the Respondent as the time limit for accepting the claim as specified in CIRP Regulations 12(2) of IBC 2016 has been elapsed. It is also stated that the Respondent do not have the power conferred on him to accept the claim beyond the statutory limits specified in the IBC 2016, and hence the claim was not accepted.

7. We have heard Shri. Terry V. James, the learned counsel for Applicant and Shri. Sankar P. Panicker, the learned counsel for the Respondent/Resolution Professional and perused the entire case records/documents. To buttress the arguments of the learned counsel for the Applicant, he has referred to the order of a co-ordinate bench of this Tribunal in ***Twenty First Century Wire Rods Ltd. (CA-942(PB)/2019)***, wherein it was held as under: -

“We pass the same order in the instant matter and disposed of the application with a direction to the Resolution professional to take into consideration the claim made by the applicant on the basis of the award passed by the Arbitrator. The Resolution Professional shall not reject the claim on the ground of delay as the CIR Process is still under progress and no resolution plan has been approved by the CoC so far.”

8. He has also referred to another decision of a co-ordinate Bench 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 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...”

9. From the records produce, we could see that the Respondent received the soft copy of the claim on 12.05.2022 which is on the day of the commencement of Insolvency Resolution Process against the Corporate Debtor M/s. MIR Realtors Private Limited. In view of the decisions of NCLT New Delhi, referred to by the Applicant, the delay in submitting the claim may be condoned, in case the CIRP initiated against the Corporate Debtor is not concluded. In this case, the CIRP is not concluded.
10. In view of what is stated above, this Application IA (IBC/109 (KOB)/2022 is allowed, condoning the delay in filing the Form C by the applicant before the RP and directing the RP to accept the Form - C filed by the applicant on 12.05.2022 and take appropriate decision in the matter.
11. With the above direction IA(IBC)/109/KOB/2022 stands disposed of.

Dated this the 1st day of July, 2022.

Sd/-

(Anil Kumar. B)
Member (Technical)

rrn

ASHOK KUMAR
BORAH

(Ashok Kumar Borah)
Member (Judicial)

Digitally signed by ASHOK
KUMAR BORAH
Date: 2022.07.04 16:30:34 +05'30'