



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KOCHI

IA(IBC)57/KOB/2023

IN

CP(IB)/05/KOB/2021

*(Under Section 60(5) of IBC, 2016 read with Rules 11 and 32 of the NCLT Rules, 2016)*

***In the matter of:***

M/s. Silpa Projects & Infrastructure (I) Private Limited, 3<sup>rd</sup> Floor, North Avenue,  
Paramara Road, Kochi- 682 018. **... Applicant.**

-Versus-

Mr. K. Parameswaran Nair, Resolution Professional of Samson and Sons Builders  
and Developers Pvt. Ltd., Kadavanthara, Ernakulam, Kerala- 682 020.

**... Respondent.**

***In the matter of:***

Mr. Vijayakumaran J. : Operational Creditor.

-Versus-

M/s. Samson and Sons Builders & Developers (P) Ltd. : Corporate Debtor.

***Coram:***

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

***Parties/Counsel present (through video conference):***

For Applicant : M/s. Omega Alliance, Advocates,

For Respondent : M/s. India Law, Advocates.

**Order reserved on:01.03.2023**  
**Order pronounced on: 04.05.2023**

**ORDER**

1. The present application has been filed by M/s. Silpa Projects and Infrastructure (I) Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code,



2016 read with Rules 11 and 32 of the NCLT Rules, 2016 seeking the following reliefs: -

- a) Condone the delay of 329 days in filing the claim in Annexure A2 before the Respondent, the learned Resolution Professional and resultantly quash/ set aside Annexure A1 rejection e-mail;
  - b) Direct the Respondent, Resolution Professional of the Corporate Debtor to admit Annexure A2 claim of the Applicant and consider the said claim.
2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:
- i. The Applicant has filed this application being aggrieved by the rejection of its claim vide e-mail dated 04.01.2023 of the Respondent/Resolution Professional, on the ground that the claim was filed after the period of 90 days as provided in Regulation 12 of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). The claim of Rs 14,56,85,548/- is due to the Applicant from the Corporate Debtor in respect of two projects undertaken by it. It is stated that the amounts due to the Applicant have also been secured in the form of attachment orders passed under Section 9 of the Arbitration & Conciliation Act, 1996 in OP (Arb) 23 of 2017 dated 31.07.2018 and OP (Arb) 24 of 2017 dated 12.06.2018.
  - ii. It is stated that the Corporate Debtor has created an equitable mortgage in favour of M/s. Silpa Projects and Infrastructure (I) Private Limited by depositing title deeds vide letter dated 10.06.2016. The amounts due to the Applicant have been partly secured inter- alia based on Arbitration Orders in OP (Arb)/23 of 2017 and OP(Arb)/24 of 2017 of the learned Additional District Judge, Ernakulam, which has not been challenged till date by the Corporate Debtor. Further, the mortgage created in favour of the Applicant has not been challenged by the Corporate Debtor. The Applicant had entered into two work orders with the Corporate Debtor



in respect of two projects namely “Angel Woods -Towers A and B” and “Nova Castle” which were undertaken at Trivandrum.

- iii. It is further stated that the Insolvency commencement date in Form A has been determined as 12.11.2021. Hence, the period of delay in this Application has been determined having regard to the same. It is also stated that the claim has to be submitted by 10.02.2022, being the extended period prescribed under Regulation 12(2) of the CIRP Regulations. However, the Applicant has submitted the claim only on 04.01.2023, resulting in an overall delay of 329 days.
  - iv. It is stated that this Tribunal vide order dated 01.07.2022 in IA(IBC)/106/KOB/2022 had directed the exclusion of 139 days from the period of the Corporate Insolvency Resolution Process. In such an eventuality, the period of delay would stand reduced to 190 days.
  - v. In the order of the Hon’ble Supreme Court dated 10.01.2022 in *Suo Motu Writ Petition (Civil) No 3 of 2020*, the period commencing from 10.02.2022 until 30.05.2022 would stand excluded. In such an eventuality, the period of delay would stand reckoned as 119 days. The Applicant stated that the delay in filing the claim occurred as the Applicant was unaware of the CIRP.
3. On 17.02.2023, the Respondent filed his reply statement and stated that the Resolution Professional is not competent to accept a claim beyond 90 days. The claim is highly belated and any order of this Tribunal permitting to accept a claim at this stage would tumble down the entire Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor.
  4. It is stated that this Tribunal excluded 139 days from the CIRP period vide Order dated 01.07.2022 in IA(IBC)/106/KOB/2022 on account of the time lost due to the replacement of IRP and consequent delay in appointment of the present Resolution Professional and many activities which were to be carried out during the tenure of the IRP were not carried out until the appointment of this RP. It is



further stated that this Tribunal granted 90 days extension of the CIRP vide Order dated 21.09.2022 in IA(IBC)/269/KOB/2022 in CP(IBC)/05/KOB/2021. The RP made public advertisements in leading newspapers inviting Expressions of Interest (“EOI”) to submit the Resolution Plan with a deadline of 10.06.2022. Pursuant to this, the RP received one resolution plan which could not be accepted, hence the said Plan was rejected. Further public advertisement was made on 12.11.2022 in leading newspaper, the Business Line, inviting EOI to submit Asset-wise Resolution Plans. In response to this EOI, the Respondent received EOIs from eight Prospective Resolution Applicants (“PRA”) and out of these 8 PRAs, 6 PRAs are Associations of Home Buyers and they have submitted the Resolution Plans on 07.01.2023. The Resolution Plans are currently under evaluation by the Respondent and the Committee of Creditors (“CoC”).

5. It is stated that this Tribunal vide Order dated 22.12.2022 in IA(IBC)/475/KOB/2022 granted extension of 60 days considering the fact that the Corporate Debtor received EOIs from 8 PRAs and the same is being processed and out of this Resolution Professional received Resolution Plans from Associations of Home Buyers in 6 Projects. Considering the exceptional circumstances necessitating project-wise resolution of the Corporate Debtor’s assets and since only evaluation and voting on the submitted Plans are pending and the RP would be able to complete the same within a period of 60 days, the RP preferred application IA(IBC)/67/KOB/2023 under Rule 11 NCLT Rules, 2016 for further extension of 60 days. This Tribunal heard arguments and allowed the IA vide order dated 15.03.2023.
6. It is stated that the Respondent had made a paper advertisement on three occasions, i.e., when claims were invited and when the EOI was invited twice for the submission of resolution plans. It is not the case that the Applicant was situated far away from the location of the Corporate Debtor. In fact, the Registered office of the Applicant is located in Ernakulam, where the RP published newspaper advertisements inviting claims and also where public



announcements were made inviting claims and expressions of interest seeking Resolution Plans. Therefore, the averment made by the applicant that they were unaware of the CIRP proceedings against the Corporate Debtor is legally untenable and the Applicant is not entitled to any benefit.

7. It is stated that the Respondent is required to prepare the Information Memorandum and submit the same to the CoC on or before the 95th day of the insolvency commencement date under Regulation 36(1) of the CIRP Regulations. It is stated that under Regulation 36B, the RP is required to issue Request for Resolution Plan from PRAs within five days from the issue of the provisional list under sub-regulation (10) of Regulation 36A to every PRAs. The Request for Resolution Plan permits the PRA to submit the Resolution Plan within 30 days from the issue of the request. In the present case, RP made the final EOI inviting Resolution Plan on 12.11.2022 and a provisional list of PRAs was prepared on 03.12.2022. The RP circulated the Information Memorandum to the PRAs on 08.12.2022. The 6 PRAs had submitted the Resolution Plan based on the Information memorandum furnished to the PRAs.
8. It is stated that if any change is made in the Information Memorandum by adding a claim, each and every PRA is required to be given a sufficient opportunity to re-submit the Resolution Plan by taking into consideration the newly amended Information Memorandum. If the claim of the Applicant is admitted, this Hon'ble Tribunal is also required to give sufficient time to re-run the process from the date of re-circulating the Information Memorandum to the PRAs and granting the opportunity to re-submit the Resolution the Plan.
9. It is further stated that the Applicant had filed their claim only on 04.01.2023 with a delay of 329 days. IBC is not a process where delay can be condoned mechanically when any such claim can affect the entire process already undertaken during the period of CIRP. If any delay is condoned, it will be affecting the public at large, including all the claimants who have diligently submitted their claims and are awaiting the result of the process. If this Tribunal



allows any such delayed claim to be received, then the process requires to be restarted and it will double the time and cost of the CIR process. The CIRP of the Corporate Debtor cannot be imperilled by the belated claims of persons who did not do their due diligence in following through on their alleged debt and submitting claims before the Respondent.

10. It is stated that the reasons stated by the Applicant in their application are mere excuses to cover up their lack of diligence, which cannot be in any event be a legal ground to admit a time-barred claim in an IBC process, which is time-bound and being carried out within the strict timelines prescribed under the Code. The CIRP of the CD is at the final stage, considering the peculiar circumstances, this Tribunal has reserved orders in an application by the RP for an extension of 60 days beyond 330 days.

FINDINGS: -

11. We have heard the learned counsel for the parties at length and perused the entire case records/documents. The Applicant secured awards in the Arbitration Proceedings now the applicant wants to include it's claim of course he approached the Respondent belatedly but its claim is already tested in the Arbitration Proceedings. In general, the notice effected through publication cannot be considered as effective notice, however, since there is no other effective alternative, the publication was carried out from the averments of the application it appears that the corporate debtor obtained loan after mortgaging its immovable properties by depositing title deeds, in such a case it is surprising then how the claimants name and its transactions not reflected in the books of accounts of the corporate debtor. The Arbitration Proceedings initiated also might have been found place in the records of Corporate Debtor. The applicant also carried out two projects for the corporate debtor and had close association with the corporate debtor, the why personal notice not sent to the applicant about the submission of claims is not explained. It is true that the delay is substantial, but only because of delay the claim of the applicant cannot be denied.



12. We have also gone through the decision of the NCLT, Principal Bench, New Delhi in *State Bank of India Vs. ARGL Limited (CA-1215(PB)/2018 IN IB -531 (PB) 2019)* wherein it was held as under: -

*It is true that the regulation 12(2) after amendment has granted liberty to a creditor who has failed to submit the claim with the proof within the time stipulated in the public announcement and such a claimant could submit the claim with proof to the IRP/RP on or before 90th day of Insolvency commencement date. The aforesaid time obviously has expired as the CIR Process and in the present matter was commenced on 16.03.2018 and the claim were initially invited by fixing the last date as 30.03.2018. It is strange situation which is adopted by the RP because in the books of accounts the governmental dues are always reflected. It is nowhere stated as to how the claims which are to be filed alone are to be collated in terms of Section 21. First of all, as a matter of fact as the first step the IRP/RP has to prepare the list in accordance with the books of accounts and then invite the claims otherwise the dues reflected in the books of accounts would be rendered completely meaningless. It is only in case there is any discrepancy in the books of accounts that the claim needs to be modified or additions are required to be made. Therefore, we allow the application and direct the IRP/RP to collate the claim of the Central Board of Goods and Service Tax the needful shall be done within three days.*



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/57/KOB/2023  
IN  
CP(IB)/05/KOB/2021

*In re: Vijayakumaran J. Vs. M/s Samson and Sons Builders & Developers (P) Ltd.*

13. It is true that there is a delay of 329 days in filing the claim. Since the Respondent is in possession of the books of account of the Company, taking into consideration the decision of the NCLT Principal Bench in the matter of State Bank of India Vs. ARGL Limited (CA-1215(PB)/2018 IN IB -531 (PB) 2019) wherein it is clearly stated that when the books of accounts of the parties are available with the Resolution Professional, even though a claim is not made in time, the Resolution Professional can very well determine the dues of the said parties and include in the Information Memorandum. This exercise has not been done by the Resolution Professional. The IA(IBC)/67/KOB/2023 for extension of time was allowed as a special case and time was extended upto 16.04.2023. Even though this Tribunal is not agreeable to the inordinate delay in submitting the claim, we as a special case allow this application to condone the delay and direct the Respondent/Resolution Professional to consider the claim of the Applicant and pass appropriate orders expeditiously.
14. Accordingly, this application IA(IBC)/57/KOB/2023 is **ALLOWED**.
15. The Registry is directed to communicate this order to the respective parties through email.
16. Certified copy of the order be issued on request of the parties as per the procedure.
17. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.05.04 14:32:59 +05'30'

**(Satya Ranjan Prasad)**  
**Member (Technical)**

PANDIAN MOHAN RAJ Digitally signed by PANDIAN  
MOHAN RAJ  
Date: 2023.05.04 13:08:45 +05'30'

**(P. Mohan Raj)**  
**Member (Judicial)**

Signed on this 4<sup>th</sup> day of May, 2023.

Kaushal P.S.