

In the National Company Law Tribunal  
Mumbai Bench.

C.P.(IB)-2517/MB/2018

**Under Section 7 of Insolvency & Bankruptcy Code, 2016**

In the matter of

Capri Global Capital Ltd. : Petitioner/ Financial Creditor

V/s

Monarch Brookfields LLP,  
Panvel, Raigad,  
Maharashtra - 410206 : Respondent/ Corporate Debtor

Heard on : 25.09.2019  
Order delivered on: 27.09.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)  
Hon'ble Shri Chandra Bhan Singh, Member (Technical).

For the Petitioner(s) : 1. Mr. Rashid Boatwalla a/w.  
2. Mr. Rahun Jain, a/w.  
3. Ms. Prashansa Agrawal, Advocate, i.b  
Manilal Kher Ambalal & Co.

For the Respondent(s) : 1. Mr. Abhishek Bhaduri, Advocate.

***Per M.K. Shrawat, Member (Judicial).***

**ORDER**

1. A Petition has been filed on 02.07.2018 u/s.7 of the Insolvency & Bankruptcy Code, 2016 by the Petitioner/ '**Financial Creditor**' **M/s. Capri Global Capital Ltd.** against the '**Corporate Debtor**' **M/s. Monarch Brookfields LLP** to initiate Corporate Insolvency Resolution Process for a 'Financial Debt' of Rs.97,68,15,782/- as on 31.05.2018.

**A) FACTS AND BACKGROUND OF LOAN:-**

2. Following Securities were held by the Petitioner:-
  - a) Leasehold immovable property dated 29.12.2013
  - b) Sale proceeds of units in leasehold immovable property of the Corporate Debtor.

3. There was an Escrow Agreement dated 31.12.2013 recording creation of escrow account opened for deposit of the sale proceeds of units in leasehold immovable property of Corporate Debtor.
4. Additional Security as per Indenture of Mortgage of 07.04.2016 over the properties of M/s. Monarch Greenscapes.
5. In addition to the above securities of the Debtor Company, the Debtor has also given personal guarantees of Thakur Group.
6. Placed on record a Certificate of Registration of Charge issued by the Registrar of Companies.
7. A Notice of 04.10.2016 issued u/s.13(2) of SARFAESI Act by the Petitioner to the Corporate Debtor and other, calling upon them to make payment of the dues owed by them to the Petitioner.
8. Also issued Notice dated 21.12.2016 and 17.01.2017 issued u/s.138 of Negotiable Instrument Act, 1881 to the Corporate Debtor.
9. The Debtor Company has issued a Demand Promissory Note dated 29.12.2013, an evidence of acknowledgement of Debt.
10. Evidence is on record demonstrating the actual disbursement of loan of Rs.40 Crore as under:-

Monarch Imperial - Loan A/c		
Disb Date	Payment	Amount
30/12/2013	Andhra Bank O/D A/c No.112831100000159	37,500,000
1/7/2014	Union Bank of India A/c - 317901011012267-OD	162,500,000
	Total Disbursement	200,000,000

Monarch Brookfield LLP - Loan A/c		
Disb Date	Payment	Amount
30/12/2013	Andhra Bank O/D A/c No.112831100000159	40,000,000
30/12/2013	Andhra Bank O/D A/c No.112831100000159	40,000,000
30/12/2013	Andhra Bank O/D A/c No.112831100000159	32,500,000
7/1/2014	Union Bank of India A/c - 317901011012267-OD	87,500,000
	Total Disbursement	200,000,000
	Total Disbursement	400,000,000

11. A 'drawdown letter' dated 29.12.2013 issued with a request to disburse Rs.15 Crore by transfer to the following Accounts are on record, relevant portion reproduced below:-

Request you to kindly disburse the said amount of Rs. 15,00,00,000/- (Rupees Fifteen Crores only) by High Value cheque / Pay Order / Account Transfer to the below mentioned account :

Sr. No.	Beneficiary Name	Amount	Beneficiary Account Details
1	Dewan Housing Finance Corporation Limited	11,25,00,000	AXIS Bank, Fort, Mumbai-400001 Branch,IFSC Code UTIB0000004
3	Monarch Imperial	3,75,00,000	IDBI Bank, CBD-Belapur, Navi-Mumbai-400614 Branch, IFSC Code IBKL0000183

12. Again second 'drawdown letter' of 07.01.2014 was issued by the Corporate Debtor with a direction for disbursement of Rs.25 Crore by transfer in the following Accounts:-

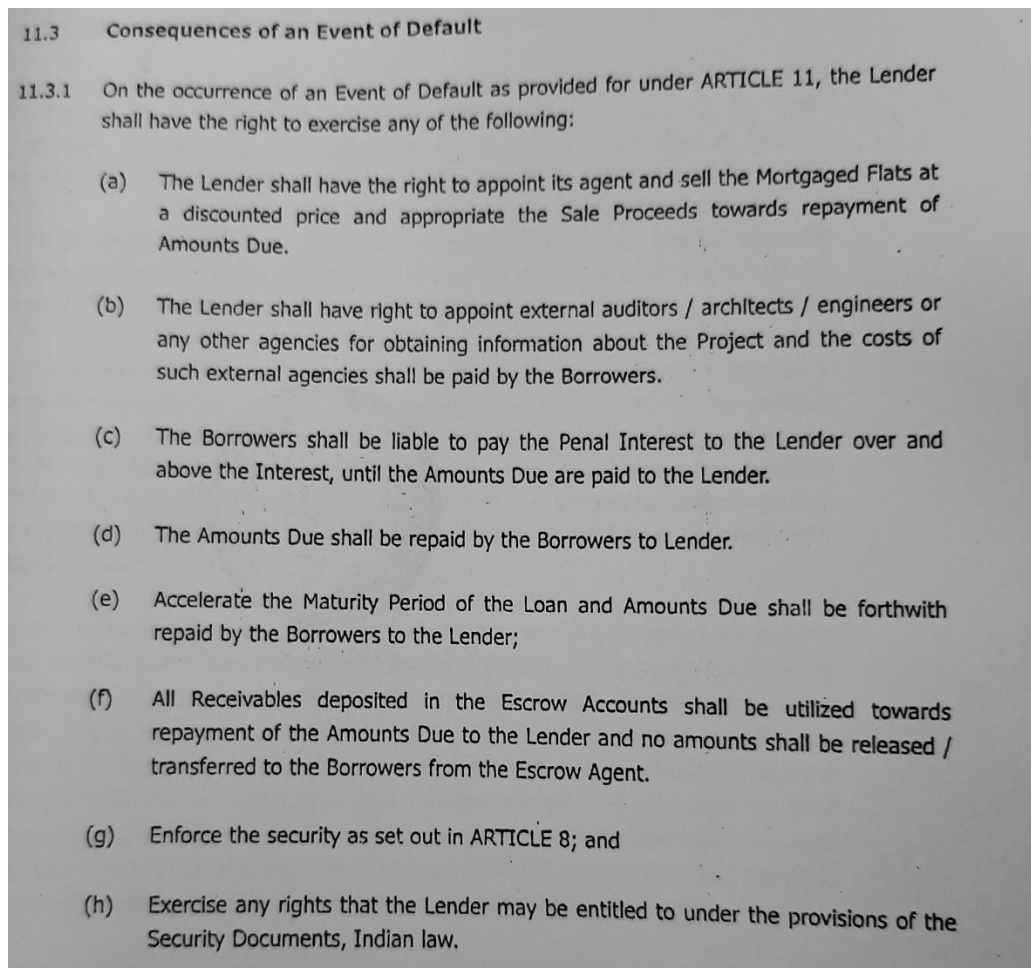
Request you to kindly disburse the said amount of Rs. 25,00,00,000/- (Rupees Twenty Five crores only) by High Value cheque / Pay Order / Account Transfer to the below mentioned account :

Sr. No.	Beneficiary Name	Amount	Beneficiary Account Details
1	Monarch Brookefields LLP	8,75,00,000	IDBI Bank, CBD-Belapur, Navi-Mumbai-400614 Branch, IFSC Code IBKL0000183
2	Monarch Imperial	16,25,00,000	IDBI Bank, CBD-Belapur, Navi-Mumbai-400614 Branch, IFSC Code IBKL0000183

13. It is worth to mention that as against the agreed Term Loan Facility of Rs.45 Crore, the Petitioner/ Financial Creditor has disbursed Rs.40 Crore as per details (*supra*).
14. The Petitioner has placed on record a Consolidated Statement of Accounts titled in the name of Monarch Brookefields LLP/ Monarch Imperial/ Monarch Universal Lifespaces. These Accounts have further confirmed the disbursements of Loan in conformity with the details of disbursement of loan as narrated above. It is informed that these Statement of Accounts is in the nature of a Ledger Account of the Corporate Debtor in the Books of the Financial Creditor for the period 30.12.2013 to 31.05.2018. In this Account there are several Credit and Debit entries reflecting the payments received time to time from the Debtor and the Interest receivable was debited in regular intervals. It has been informed that vide a last entry on **29.11.2016 a sum of Rs.1 Crore was credited** in this Account being receivable from the Corporate Debtor. The Closing Balance as per the Statement of Accounts was reflected at **Rs.97,68,15,782/-**.

15. The Loan Agreement dated 29.12.2013 included a clause under Para 11.3

'Consequences of an event of Default' reproduced below:-



**B) Submissions from the Respondent Debtor:-**

16. From the side of the Respondent Debtor a reply is on record, duly perused. In this reply the Debtor has alleged that the Financial Creditor had approached the Respondent to grant a Loan of Rs.45 Crore with the purpose to repay the outstanding Loan of DHFL. The Respondent has alleged that without knowing the mala fide scheme of the Petitioner, it had agreed to accept the Loan. Later on the Petitioner had started legal action such as Notice under SARFAESI Act, Notice under Negotiable Instrument Act and FIR. The Economic Offences Wing (EOW) had frozen all the Bank Accounts of all companies of the Monarch Group as well as the Accounts of the Directors. It had happened at the behest and due to action of the Petitioner. The repayments deferred, although up to 29.11.2016 time to time the amounts were paid. The strong objection of the Respondent is that arbitrarily the repayments have been adjusted against the Interest charged, instead of

adjusting against the Principle debt amount. It has also been vehemently pleaded that Arbitration proceedings are also in progress before the Hon'ble High Court, Bombay. The Hon'ble Court has also appointed an Arbitrator vide Order dated 08.08.2017, therefore, the Petition u/s. 7 of the Insolvency Code is bad in law, thus deserves to be dismissed.

17. It has been pleaded that the Petition u/s. 7 is barred by limitation because the NPA was declared on 31.05.2015; however, the Petition was filed on 29.06.2018. The Respondent has placed on record an Order of the Hon'ble High Court (Commercial Arbitration No.172 of 2017) wherein the Petitioner is Capri Global Capital Limited (Financial Creditor) and Monarch Bookefields LLP and others (Corporate Debtor), Dated 08.08.2017, wherein it was noted by the Hon'ble Court that the parties have agreed to appoint Mr. Vikram Nankani, Senior Advocate as an Arbitrator to arbitrate the dispute.
18. It is vehemently pleaded that since the Arbitration proceedings are in progress, therefore, this Petition must not be admitted.

### **C ) FINDINGS**

19. Heard the submissions of both the sides. Perused the contents of the Petition as well as the reply of the Respondent in the light of the annexed evidences.
20. It is pleaded by the Petitioner/ Financial Creditor that the Corporate Debtor had defaulted to make repayments of the loan in accordance with the terms of the Loan Agreement. Evidence of disbursement of Loan amount is on record as discussed supra. Since the repayment was defaulted, the Loan was recalled by the Petitioner vide Letter dated 07.09.2016. Accordingly, the 'Debt' and 'Default' are established.
21. In the light of the above discussion and on due perusal of the documents annexed, the Debt is to be qualified as "Financial Debt" as defined under section 5(8) of Insolvency & Bankruptcy Code, 2016. As a result, the Financial Creditor has filed this Application for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

22. Since this is a Petition of "Financial Creditor", therefore, the Insolvency Process shall commence as prescribed under Section 7 of I&BC, 2016.
23. The Petitioner / Financial Creditor has proposed the name of the IRP **Mr. Devendra Rameshchand Dhanesha**, Address: B/7, 2<sup>nd</sup> Floor, Skyland CHS LTD., Admar Mutt Lane, S.V. Road, Andheri (West), Mumbai -400 058, Registration No. IBBI/IPA-001/IP-P00693/2017-18/11183, Email: drdeven.ird@gmail.com. The proposed IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceeding is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.
24. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. The appointed IRP shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
25. It is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.
26. Accordingly, this **C.P.(IB)-2517/(MB)/2018** stood "Admitted".

27. The Corporate Insolvency Resolution Process is commenced from the date  
of this Order.

Sd/-  
**CHANDRA BHAN SINGH**  
Member (Technical)  
Date : 27.09.2019  
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Sd/-  
**M.K. SHRAWAT**  
Member (Judicial)