

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

INTERLOCUTORY APPLICATION. No. 2770/2022

In

CP(IBC)No. 2517/MB/C-II/2018

**Application filed under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016.**

In the matter of

Mr. Prabhkar P. Lahane,

Residing at: B.K. No.614, Room No.03,
Amardham Chowk, Ulhasnagar-421 002.

...Applicant

v/s

Arun Kapoor, Resolution Professional,

Monarch Brookefields LLP,

Having his address at: G-601, Army Co-operative
Housing Society, Sector-09, Nerul (East),
Navi Mumbai, Maharashtra-400706.

...Respondent

In the matter between:

Capri Global Capital Limited

.... Financial Creditor

v/s

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT II

I. A. No. 2770/2022

In

CP No. 2517/MB/C-II/2018

Monarch Brookfields LLP

...Corporate Debtor

Order Pronounced on: - 10.04.2024.

Coram:

Shri. Anil Raj Chellan : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

Appearances (in Physical Mode) :

For the Applicants : Adv. Abhishek Adke a/w Adv. Sagar Vichare.

For the Respondents : Adv. Amir Arsiwala a/w Adv. Nupur Shah.

ORDER

Per: Shri. Kuldip Kumar Kareer, Member Judicial.

1. This is an application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') impugning the rejection of his claim by the Respondent, as also praying for directions to the Respondent, who is the Resolution Professional of the Corporate Debtor, inter-alia, to accept the claim of the Applicant worth Rs. 92,82,247/- and to include his claim with respect to Flat No.303 in the list of creditors of the Corporate Debtor. The Applicant herein has also sought for the relief to condone the delay, if any, in filing the present application.

Case of the Applicant in brief:

2. The Applicants had purchased a Flat bearing No. 303, admeasuring 56.324+4.525 sq.mtrs (carpet) on the 03rd Floor of the Building known as “Florida”, constructed by the Corporate Debtor on Plot No. 03, situated at Sector 20, Kalamboli, Navi Mumbai for a total consideration of Rs. 48,00,000/- (Rupees Fourty Eight Lakhs only) vide Agreement for Sale dated 20th January, 2016 bearing registration no. PVL2-694-2016.
3. By an Order dated 27th September, 2019 passed by this Hon’ble Tribunal, the Corporate Insolvency Resolution Process (‘CIRP’) was initiated against the Corporate Debtor. The Applicant had filed his claim on 06th December, 2019 in Form CA under Regulation 8A of the CIRP Regulations for a sum of INR 92,82,247/- (Rupees Ninety-Two Lakhs, Eighty-Two Thousand, Two Hundred and Fourty-Seven only). The then Resolution Professional Mr. S. Gopalkrishnan, vide E-mail dated December 18, 2019 communicated that he was unable to accept the claim of the Applicant in the absence of bank statement. In the aforementioned e-mail, the then RP had requested the Applicant to provide the bank statement.
4. Thereafter, the then RP was replaced by the present Respondent by an Order dated 03rd August, 2021.
5. Being aggrieved by the aforesaid E-mail, the Applicant was constrained to file the present application challenging the rejection of his claim. Hence this Application.

6. **Reply of the Respondent:** The Respondent has not filed his reply. However, the Counsel appearing for the Respondent has been orally heard.

ANALYSIS AND FINDINGS

7. We have heard the learned counsels for both the parties and perused the record.
8. Counsel for the Applicant opened up his case by submitting that the Resolution Professional had wrongly rejected the claim of the Applicant on the ground that the Applicant had not provided a copy of the bank statement. According to the Counsel for the Applicant, the Resolution Professional ('RP') of the Corporate Debtor has failed to appreciate the copy of the registered Agreement for Sale dated 20th January, 2016 furnished by the Applicant to the Respondent along with the Claim Form on 06.12.2019. Counsel for the Applicant further submits that the Resolution Professional was informed that the consideration for the said flat was paid in cash. Yet, the RP proceeded to reject the claim of the Applicant for want of a bank statement. Therefore, according to the Ld. Counsel for the Applicant, the RP is in clear error in rejecting the claim of the Applicant, more so when the execution of a registered agreement for sale, which was entered into between the parties herein in respect of Flat No.603, has not been denied by the RP.
9. On the other hand, the Counsel for the RP has contested the claim of the Applicant on the ground that the Applicant, while lodging his claim before

the RP, had failed to furnish any proof of payment(s) made by him or on his behalf to the Corporate Debtor in support of his claim. Counsel for the Respondent/RP submits that the RP was unable to admit the Applicant's claim as his powers are restricted to collating and verifying the claims on the basis of the documentary evidence provided by the creditors. However, since the Applicant failed to furnish any documentary evidence in support of his claim, the act of the RP rejecting the claim of the Applicant stands fully justified in law. Counsel for the RP further submits that it was mandatory for the Applicant to obtain NOC from the financial creditor (i.e. Capri Global Capital Ltd) with which the flat in question was mortgaged by the Corporate Debtor prior to the execution of the agreement for sale with the Applicant. Since no such NOC was obtained, the RP was certainly not in error in rejecting the Applicant's claim.

10. In this regard, the Counsel for the Applicant submitted that the issue of mortgage of the flat in question was never communicated to the Applicant by the RP while rejecting the claim and it is being raked up for the first time at the stage of arguments without the Respondent having filed any reply on record, and thus, the aforesaid contention of RP cannot be entertained now. Further, the Counsel for the Applicant submitted that the RP has not filed any document on record to prove the factum of the mortgage of the flat which was purchased by the Applicant from the Corporate Debtor. Further, the RP has not taken any steps for challenging or setting aside the registered agreement for sale dated 20.01.2016. This shows that even the RP has not doubted the bona fide of the agreement for sale executed between the

Applicant and the Corporate Debtor. Hence, the defence of the RP w.r.t mortgage of the flat in question and failure of the Applicant to obtain NOC from the mortgagee is utterly baseless.

11. Lastly, the Counsel for the Respondent apprised the Adjudicating Authority of the fact that the resolution plan submitted by Planet Builders and Developers was unanimously approved by the members of the CoC at the 13th CoC meeting held on 19th November, 2021 and the Respondent has also filed an I.A. No. 70 of 2022 for approval of the resolution plan which is currently pending before the Tribunal. Counsel for the Respondent further brought to our attention the fact that the claim of the Applicant was rejected by the RP on 18th December, 2019 and the present application impugning such rejection has been filed on 11th August, 2022. The Counsel for the RP submits that there is an unexplained delay of nearly three years in filing the instant application and it has been filed only after the resolution plan was approved by the CoC. Therefore, the learned Counsel for the RP contended that the Applicant has filed the present application with an intent to delay the approval of resolution plan, thereby derailing the CIRP of the Corporate Debtor. Hence, it is submitted on behalf of the Respondent/RP that the present application should be dismissed with exemplary costs upon the Applicant.

12. We have carefully examined the above submissions and we have also meticulously gone through the records.

13. By way of this application, the Applicant herein is impugning the rejection of his claim of Rs. 92,82,247/- (Rupees Ninety-Two Lakhs, Eighty-Two Thousand, Two Hundred and Forty-Seven only) filed with the Respondent vide Form CA dated 06.12.2019 under Regulation 8A of the CIRP Regulations, 2016. The Applicant herein has, inter-alia, prayed before this Tribunal seeking directions to the Resolution Professional ('RP') of the Corporate Debtor to admit the claim of the Applicant and include the Applicant in the Committee of Creditors.

14. We find that the RP had rejected the claim of the Applicant by way of an e-mail dated 18.12.2019 on the ground that the Applicant had not provided a copy of the bank statement. On perusal of the Application, we find that the Applicant has stated at Para 4.3 on page 4 of the Application as under: *"The Impugned Email has been addressed in complete ignorance of the fact that the sale has been executed in favour of the Applicant for which Applicant has paid the consideration in cash as is reflected in the receipt annexed to the Sale Deed."*

However, on careful perusal of the receipt annexed to the Sale Agreement, which is found at Page 42 of the Application, we find that the sale consideration of Rs. 48,00,000/- has been acknowledged by and on behalf of the Corporate Debtor to have been paid by the Applicant. Further, we find that the said receipt bears the signature of two witnesses, as also the seal of the sub-registrar of assurance as the said agreement is registered with it. Moreover, since the Respondent has not filed his reply on record denying the receipt of the money by the Corporate Debtor from the Applicant,

which means that the respondent has seemingly admitted the averments made by the Applicant as correct.

15. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide Order u/s 7 of the Code, dated 27.09.2019. The Applicant filed his claim on 06.12.2019 and therefore, as such, there is no significant delay in lodging the claim. Thus, the delay in filing the claim, if any, ought to be condoned by the Respondent.

16. We also find that the claim of the Applicant was rejected by the RP on 18th December, 2019 and the present application impugning such rejection has been filed on 11th August, 2022. The Resolution Plan has been unanimously approved in the 13th CoC meeting held on 19th November, 2021. The application for approval of the resolution plan has been filed vide I.A. No. 70/2022 on 02-12-2021. However, since the Applicant has a good case on merits and the Respondent has not filed his reply opposing the claim of the Applicant, the present application deserves to be allowed.

17. We also observe that the Applicant has not satisfactorily explained the reason for approaching the Adjudicating Authority with this application at such a belated stage. The Applicant has stated in Para 7 of his application that he was not aware of the repercussions of the impugned email and it is only after enquiries he made, he found that the impugned e-mail rejecting his claim would effectively mean that the Applicant would not get the flat in question upon the completion of CIRP of the Corporate Debtor. Though

the plea of the Applicant that he was unaware of the consequences of rejection of his application does not appear to be tenable in the eyes of law, yet, we do not deem it appropriate to dismiss the application on the ground of delay as the Applicant has good case on merits. We are of the firm view that when substantive justice and technical considerations are pitted against each other, the technicalities and the procedure must pave their way to substantive justice.

18. In view of the facts and circumstances and in view of the foregoing discussions, we are inclined to allow this application and accordingly, we pass the following orders:

ORDER

- a. **I.A. No. 2770 of 2022** in CP(IB) No. 2517 of 2018 is **hereby allowed**;
- b. The Respondent is directed to consider the claim of the Applicant on merits; and
- c. Accordingly, the above-captioned I.A. stands disposed of.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)