

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

INTERLOCUTORY APPLICATION. No. 2769/2022

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. Pranay M. Bahuguna

Residing at: Sukhjit CHS Ltd.,
Opp. Congress Office, Hospital Area,
Ulhasnagar, District: Thane.

...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. 2769/2022

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: Coram.

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. 93,31,321/- and to include his claim with respect to Flat No.802 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. One Mr. Ramesh R. Manchandia had purchased a Flat bearing No. 802, (being hereinafter referred to as “the flat in question” or “the said flat”) admeasuring 55.246+9.30 sq. mtrs (carpet) on the 08th floor of the Building known as “Georgia”, constructed by the Corporate Debtor on Plot No. 03, situated at Sector 20, Kalamboli, Navi Mumbai for a total consideration of Rs. 40,00,000/- (Rupees Fourty Lakhs only) vide Agreement for Sale dated 06th April, 2015 bearing registration no. PVL-2-2944-2015. Thereafter, the Applicant approached Mr. Ramesh R. Manchandia to purchase the said flat. After discussion and deliberations, the Applicant herein and Mr. Ramesh R. Manchandia executed a Sale Deed dated 10th July, 2015 bearing registration no. 8603 of 2015, whereby all the right, title and interest of Mr. Ramesh R. Manchandia in the said flat stood transferred in favour of the Applicant in consideration of payment of a total amount of Rs. 43,00,000/- (Rupees Fourty-Three Lakhs only).
3. Prior to execution of the Sale Deed dated 10th July, 2015, the Corporate Debtor issued a certificate in favour of Mr. Ramesh R. Manchandia (‘the erstwhile buyer’) giving its no-objection for selling the said flat to any person.
4. 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 93,31,321/- (Rupees Ninety-Three Lakhs, Thirty-One Thousand, Three Hundred and Twenty-One only), out of which the principal amount of claim is Rs. 43,00,000/- and the remainder Rs. 50,31,321/- is the interest. The then Resolution Professional Mr. S. Gopalkrishnan, vide E-mail dated December 17, 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, allotment and payment receipts.

5. Thereafter, the then RP was replaced by the present Respondent by an Order dated 03rd August, 2021.
6. The Applicant, being aggrieved by the said E-mail, has preferred to file the above-captioned application in order to impugn the rejection of his claim by the Respondent.
7. **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

8. We have heard the learned counsels for both the parties and perused the record.
9. 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, allotment letter and payment receipts. According to Counsel for the Applicant, the Resolution Professional ('RP') of the Corporate Debtor has failed to appreciate the factum of execution of the registered Sale Deed dated 10th July, 2015 which was annexed by the Applicant to the Claim Form dated 06.12.2019. Counsel for the Applicant further submits that the Resolution Professional completely ignored the fact 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.802, has not been denied by the RP. Counsel for the Applicant asserts that the registered Sale Deed dated 10th July, 2015 and the registered Agreement for Sale dated 06th April, 2005, both were executed at least three years prior to the commencement of CIRP of the Corporate Debtor. It is not the case of the Respondent that the said registered agreement or the registered sale deed have been entered into by the Applicant in collusion with the Corporate Debtor and/or its directors, promoters. Thus, the learned Counsel for the Applicant contends that if the application is not allowed, then the rejection of the claim by the Respondent would effectively mean setting aside the registered document which cannot be done unless the same is a fraudulent or preferential transaction.

10. 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.

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 17th 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 INR 93,31,321/- (Rupees Ninety-Three Lakhs, Thirty-One Thousand, Three Hundred and Twenty-One 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 List of Creditors of the Corporate Debtor.

14. The Applicant herein has acquired a flat from the person, who had purchased it from the Corporate Debtor. Therefore, the Applicant is squarely covered under the definition of "allottee" as defined u/s 2(d) of the Real Estate (Regulation and Development) Act, 2016. As the Applicant herein is an allottee under the RERA Act, 2016, the amounts raised from him or his predecessor by the Corporate Debtor under the above-named real estate project shall be deemed to have the commercial effect of borrowing as per the Explanation (i) to Section 5(8)(f) of the Code and thus, the Applicant is bound to be treated as a financial creditor in a class under the provisions of the Code without any qualm.

15. We find that the RP had rejected the claim of the Applicant by way of an e-mail dated 17.12.2019 on the ground that the Applicant had not provided a copy of the bank statement and asked the Applicant to provide a copy of the bank statement, allotment letter and the payment receipts. 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.”*

On perusal of the receipt annexed to the Sale Deed dated 10th July, 2015, which is found at Page 57 of the Application, we find that the sale consideration of Rs. 43,00,000/- has been acknowledged by the erstwhile buyer to have been paid to him by the Applicant in cash. Further, on perusal of the Agreement for Sale dated 06th April, 2015, we find that the receipt annexed therein acknowledges the amount of Rs. 5,00,000/- to have been received in cash by the Corporate Debtor from the erstwhile on 30th March, 2014 and the Applicant has annexed the copy of the receipt printed on the letter head of the Corporate Debtor, at Exhibit ‘B’, to show that the balance amount of Rs. 35,00,000/- has been paid by the erstwhile buyer to the Corporate Debtor. Thus, the transaction on both the legs is said to be complete as the sale considerations have been paid in full. The Respondent has not contested the above-narrated facts by filing a reply and hence, the same shall be deemed to be admitted by the Respondent.

16. As the sale of the said flat in favour of the Applicant by the erstwhile buyer is complete, the Applicant would step into the shoes of the erstwhile buyer and is thus, eligible to file the claim. However, we wish to add that the purchase consideration of Rs. 43,00,000/- paid by the Applicant to the erstwhile buyer for acquisition of the said flat cannot be considered by the Respondent as the Corporate Debtor is not privy to the contract (i.e. Sale Deed dated 10th July, 2015) executed between the Applicant and the erstwhile buyer. As discussed above, since the Applicant has now stepped into the shoes of the erstwhile buyer, the sale consideration of Rs. 40 lakhs in Agreement for Sale dated 06th April, 2015 paid by the erstwhile buyer to the Corporate Debtor may be taken into account by the Respondent while considering the claim of the Applicant along with interest, if any, as per the terms and conditions of the Agreement for Sale dated 06th April, 2015. We hereby make it clear that we are not adjudicating the claim of the Applicant on merits and it shall be the duty of the Respondent in his capacity as a Resolution Professional of the Corporate Debtor to verify the claim of the Applicant in accordance with law.

17. 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. 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,

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2022. The Resolution Plan has been unanimously approved in the 13th CoC meeting held on 19th November, 2021 and 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.

18. We are further not inclined 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.

19. In view of the foregoing discussions in the given facts and circumstances of the case, we are inclined to allow this application and hence, we pass the following orders:

ORDER

- a. **I.A. No. 2769 of 2022** in CP(IB) No. 2517 of 2018 is **hereby allowed**;
- b. The Respondent is directed to consider and verify the claim of the Applicant on its merits as per the law;
- c. The above-captioned I.A. accordingly stands disposed of in the aforesaid terms.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)