

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



**IA. No. 70/2022**

**In**

**C.P.(IB)No.2517/MB/C-II/2018**

**Application filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.**

Filed by

**Mr. Arun Kapoor,**

Resolution Professional of Monarch  
Brookefields LLP.

A/301, Kanakia Zillion, junction of  
L.B.S. Road & CST Road, B.K.C.  
Annexe, Near Equinox, Kurla (West),  
Mumbai – 400070.

**...Applicant**

*In the matter of*

**Capri Global Capital Limited**

**...Operational Creditor**

Versus

**Monarch Brookfields LLP**

**...Corporate Debtor**

**Order Pronounced on: - 27.08.2024**

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**Coram:**

**Anil Raj Chellan**  
**Member (Technical)**

**Kuldip Kumar Kareer**  
**Member (Judicial)**

*Appearances:*

For the Resolution Professional : Adv. Anir Arsiwala a/w  
Vidit Divya Kumar  
For the Successful Resolution Applicant : Adv. Sakshi Dube a/w  
Rishabh Dhandka &  
Mahira Shah

**ORDER**

*Per: Anil Raj Chellan, Member (Technical)*

1. The present Interlocutory Application is filed by Mr. Arjun Kumar, the Resolution Professional of Monarch Brookefields LLP (hereinafter called 'RP') seeking approval of the Resolution Plan submitted by Planet Builders and Developers (hereinafter referred to as 'Successful Resolution Applicant' or 'SRA') under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation ('the CIRP Regulations'). The Resolution Plan was duly approved by 100% of the Committee of Creditors (CoC) on 19.11.2021.
2. The Applicant submits that Capri Global Capital Limited, the Financial Creditor initiated the Corporate Insolvency Resolution Process ('CIRP') against Monarch Brookefields LLP (hereinafter called 'the Corporate

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Debtor’) under Section 7 of the Code. This Tribunal vide order dated 27.09.2019 initiated CIRP against the Corporate Debtor and appointed Mr. Devendra Rameshchand Dhanesha, as the Interim Resolution Professional (IRP). However, in view of the inability of Mr. Devendra Rameshchand Dhanesha to act as the IRP, he filed an Application being IA. No. 3603 of 2019 seeking the appointment of Mr. S Gopalakrishnan as the IRP. The Tribunal vide its Order dated 19.11.2019 appointed Mr. S Gopalakrishnan as the new IRP of the Corporate Debtor. He was thereafter appointed as the Resolution Professional (hereinafter referred as ‘erstwhile RP’).

3. The IRP received a total of 295 claims amounting to Rs. 377,17,40,018.39 against the Corporate Debtor. Out of those, 275 claims amounting to Rs. 275,57,53,655.78 have been admitted. Only one claim filed by Capri Global Caoutak Limited (in short ‘Capri Global’) has been admitted in the category of “Secured Financial Creditor” to the extent of Rs. 139,95,53,042. Other 274 claims have been admitted as ‘financial creditors belonging to a class’ amounting to 135,62,00,613.78. Capri Global has 50.79% of voting share and the remaining creditors have 49.21% of voting share in the CoC.
4. The claims received from operational creditors were not accepted due to the absence of acknowledgement of the debt by the Corporate Debtor and no objection has been preferred to this Tribunal against such rejection.
5. The IRP appointed registered Valuers i.e. Mr. Sachin Parmar (Neo Appraiser and Consultant); and Mr. Rupesh Kumar (Ankalan Valuers and Engineers), to ascertain the Fair Value and the Liquidation Value of the assets of the Corporate Debtor.

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6. The erstwhile RP issued two public announcements on 25/02.2021 and 29.04.2021 inviting interests from prospective resolution applicants. Three (3) prospective resolution applicants submitted their Expression of Interest as per regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Accordingly, the erstwhile RP issued the final list of prospective resolution applicants on 08.06.2021. They were subsequently issued Request for Resolution Plans and Evaluation Matrix. The 3 applicants were: -

i) Priyanka Regency Builders and Developers Pvt Ltd;

ii) Planet Builders and Developers; and

iii) Nirvana Builders and Developers LLP

7. The CoC at its 10<sup>th</sup> meeting resolved to replace the Resolution Professional with the present Applicant (hereinafter called “RP”) which was affirmed by the Tribunal vide its order dated 03.08.2021.

8. All the Prospective Resolution Applicants submitted their resolution plans within the time specified. However, the plan submitted by Priyanka Regency Builders and Developers Pvt Ltd was not compliant as per Section 30(2) of the Code in so far as it was not authenticated by an authorized representative of the resolution applicant and was not accompanied by the Bid Bond Guarantee amount. Though an opportunity was granted to Priyanka Regency Builders and Developers Pvt Ltd to rectify the defects, no response was received from them. Therefore, CoC has taken into consideration the resolution plans submitted by the other two prospective resolution applicants.

9. The resolution plans were discussed by the COC in their 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> meeting. The COC in their 13<sup>th</sup> meeting voted on both the resolution plans

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and approved the revised resolution plan submitted by Planet Builders and Developers on 17.11.2021.

10. **Brief background of the Corporate Debtor:**

- a. The Corporate Debtor is a Special Purpose Vehicle formed by Monarch Universal Lifespaces Pvt Ltd and Mr. Gopal A. Thakur in the name and style of Limited Liability Partnership ('LLP') on 11.05.2010 for undertaking activities as Builders & Developers, Construction, developing and running of Hotels and Hospitality, etc and other ancillary business. The Corporate Debtor commenced its commercial operations in 2010 and constructed realty projects in Kalamboli and Panvel.
- b. The Corporate Debtor is also working on various realty projects which include the ongoing project at Plot No.3, Sector 20, Kalamboli, Navi Mumbai. The Corporate Debtor approached the CIDCO (Now Panvel Municipal Corporation) for the approval of the Sanction Plan for the ongoing project. CIDCO issued an assessment order bearing No. 968/2010-11 (CC) on 05.04.2011 with a permissible Floor Space Index of 1.5 and allowed floors from the Ground Floor to the 11<sup>th</sup> Floor (A to F wing). The total residential flats allowed were 264 along with 26 commercial units.
- c. Subsequently, CIDCO issued an Assessment order bearing No.948/2011-12 dated 03.02.2012 with permissible FSI of 1.5 but sanctioned 1.0 and allowed slit + 10 floor. As a result, the units allowed were reduced to 232 residential units with no commercial units.

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11. **Brief background of the Resolution Applicant:**

a) The Successful Resolution Applicant is a Proprietorship Firm. Its proprietor is Habib Mohammed Umar Khan. The Resolution Applicant was incorporated in the year 2000 and the Proprietor has vast experience of 20 years in the field of development of real estate, construction, building, and other activities.

b) Since its incorporation, the Successful Resolution applicant has completed 12 real estate projects and has three (3) ongoing projects. The Resolution applicant has reported its assets amounting to over 70 crores in the financial year 2109-20.

12. **Salient features of the approved Resolution Plan:**

***(a) Financial Outlay under the Plan***

The Resolution Plan outlines the total payment of Rs.54.90 crore to be made to different classes of creditors and stakeholders of the Corporate Debtor in the following manner:

Sr. No.	Category of Stakeholder	Payment Plan	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided to the Amount Claimed
1.	CIRP costs	To be paid in full and in priority	-	-	1,50,00,000	100%
2.	Secured Financial Creditors	a) 1,00,00,000/- as upfront payment	1,41,02,00,000	1,39,95,53,042	12,00,00,000	8.57%

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		<p>b) Balance of Rs. 7,50,00,000/- in three installments of Rs, 2,50,00,000/- each in 220,380,540 days from the approval date</p> <p>c) Remaining balance of ARs. 3,50,00,000/- to be paid in 730 days from the approval date.</p>				
3	For Development of the projects		-	-	40,90,00,000	-
4	Contingent Liability				50,00,000	
	Total				54,90,00,000	

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**(b) Source of funds**

The sum of Rs. 54.9 Crores is proposed to be received in tranches by the Resolution Applicant as under: -

Sr. No.	Particulars	Timelines	Amount (in Crores)
1.	Infusion of funds by Cash Equity	Within 60 days from approval of the Resolution Plan by the Tribunal	13.5
2.	Receipt of dues from apartment owners	As per Builder Buyer Agreement	13.5
3.	Receipt of Escalation cost from the apartment owners	Escalation cost proposed to be collected from apartment buyers together with GST.	27.9
		<b>Total</b>	<b>54.9</b>

**(c) Mandatory payments and payments to stakeholders**

**(i) CIRP costs:**

The amount payable towards CIRP cost is Rs. 1.5 crores. The entire CIRP costs will be paid out in priority over the payments to any other Creditors within 60 days from the Approval Date. Any adjustments in the CIRP cost whether surplus or deficit shall at

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first instance be adjusted from the contingent fund and thereafter from the funds of the Resolution Applicant.

**(ii) Payments to Workmen and Employees**

No claims were received by the RP from the Employees and Workmen and hence no amount is proposed to be paid under this category. However, the Resolution Applicant proposes to retain all employees subject to its rights to increase or decrease the employee headcount based on the operational performance and growth of the Corporate Debtor.

**(iii) Payments to Operational Creditors (including Government dues)**

No claims were received from the operational creditors including the Government and hence no amount is proposed to be paid under this category.

**(iv) Secured Financial Creditors:**

The Resolution Applicant proposes to pay an amount of Rs.12,00,00,000/- to the Secured Financial Creditor which is 8.57% of the total claims admitted. Out of the same, Rs.1 crore shall be paid upfront and Rs.7.5 crore shall be paid in three equal installments of Rs.2.5 crore each in 220, 380, and 540 days from the date of approval of the Plan by this Tribunal. The Remaining amount of Rs.3.50 crore shall be paid in 730 days.

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**(v) Unsecured Financial Creditors (Allottees)**

i. The allottees are divided into three categories:

Category A	
Payments received towards flat with valid CC and approvals and having registered agreements.	<p>These home buyers have to pay Escalation Charges as mentioned in Annexure 'I' with the schedule of payment as described in Annexure 'J'.</p> <p>The home buyers who have paid up to 70% of their agreement value will have to pay the balance amount as per the construction-linked schedule.</p> <p>The home buyers, who have paid below 70% of their agreement value shall have to complete up to 70% of their agreement value within 30 days from the approval date and balance as per construction-linked schedule.</p>
Category B	

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<p>i) Payments received towards the flats with CC and approvals and having verified allotment letters.</p> <p>ii) Payments received towards the flats which were approved and registered during the validity of the initial CC but later got removed in the amended CC.</p> <p>iii) Payments received towards shops which were approved &amp; registered during the validity of the initial CC but later got removed in the amended CC.</p>	<p>These home buyers and shop buyers are proposed to be paid 60% of the admitted principal at the end of the plan ie. T+ 730 days.</p> <p>The flat buyers and shop buyers can also opt to purchase new flats from the RA at prevailing or current market rates in case of which 100% of their admitted principal will be adjusted towards the new deal.</p> <p>The buyers opting to buy new flats need to pay 70% of the new deal value within T+90 days and the balance as per the construction linked schedule.</p>
<p>Category C</p>	
<p>i) Payments received towards the flat which had valid CC at the time of purchase but registered after the amended CC.</p>	<p>After receiving approvals for balance/additional or future FSI, these flat buyers will be paid 25% of their admitted principal at the end of the plan ie., T+ 730 days.</p>

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ii) Payments received towards flats with invalid CC irrespective of being registered or unregistered.	The flat buyers can also opt to purchase new flats after approvals for balance/additional or future FSI from the RA at prevailing or current market rates in case of which 50% of their admitted principal will be adjusted towards the new deal.  The buyers opting to buy new flats need to pay 70% of the new deal value within 30 days of getting approvals for the concerned FSI and the balance as per the construction-linked schedule.
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ii. Treatment for shop owners.

The 60% of the Principal Amount received will be refunded to the shop's owners as these shops are unauthorized and not sanctioned.

iii. No payment is proposed to the existing partners or Designated Partners of the Corporate Debtor.

**(d) Avoidable Transactions**

Any amount realized under the applications pursuant to Sections 43,45,49,50 and 66 of the Code will be to the account of the Corporate Debtor.

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**(e) Supervision of Plan**

i) On and from the Approval Date, the Resolution Applicant shall constitute the Board of the Corporate Debtor and the reconstituted board comprising the partners/designated partners and the Monitoring Committee will be responsible for the implementation of the Resolution Plan along with the Resolution Applicant until the final payments are made under the Plan.

ii) The Monitoring Committee shall consist of the Insolvency Professional, two representatives of CoC, and two representatives of the Resolution Applicant.

iii) The Monitoring Committee shall supervise the implementation of the Plan and shall be required and entitled to do all such acts, deeds, and matters and things as may be necessary, desirable, or expedient in order to implement and give effect to the plan in accordance with the terms.

**(f) Performance Guarantee:**

In accordance with regulation 36B (4A) of the CIRP Regulations, the Resolution Applicant has provided performance security by way of a bank transfer dated 30.11.2021 to the account of Corporate Debtor maintained at Central Bank of India for a sum of Rs. 2,02,50,000/-. The Resolution Applicant shall substitute the same with Bank guarantee.

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(g) *Eligibility of the Resolution Applicant under Section 29A of the Code:*

The Resolution Applicant has submitted an undertaking confirming the eligibility or no disqualification under Section 29A of the Code. The Resolution Applicant is a proprietorship firm and is eligible under Section 29A to submit the Resolution Plan.

(h) *Reliefs and Concessions*

The Successful Resolution Applicant has sought various reliefs and concessions based on the clean slate concept laid down by the Hon'ble Supreme Court in various judgements, reliefs which are necessary to keep the Corporate Debtor as going concern, release from any and all liabilities/proceedings, disputes and noncompliance prior to the Approval Date and extended period for renewal or revival of licenses for running the business of the Corporate Debtor.

13. CIRP was initiated on 27.09.2019 and this Tribunal vide its order dated 03.09.2021 allowed an extension of 90 days after the expiry of 180 days of CIRP and excluded the period of lockdown. The Application for approval of the Resolution plan is filed within the CIRP period.
14. The Applicant further submits that the Resolution Plan submitted is in compliance with Section 30 (2) of the Code and Regulation 38 of the CIRP Regulations. The RP has also provided a compliance certificate in "FORM H" as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal.

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**Observations of the Adjudicating Authority:**

15. We have heard the Counsel for the Applicant and perused the Resolution Plan and related documents submitted along with the Application.
16. As referred to in the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of law for the time being in force appears to have been contravened. The Plan value is above the liquidation value assessed by the valuers.
17. Section 30(4) of the Code reads as follows:

*“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in subsection (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirement or may be specified by the Board.’*
18. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan, as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

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19. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;
  - b. Payment of debts of the Operational Creditors as specified under Section 30(2) (b) of the Code;
  - c. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
  - d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2) (d) of the Code.
20. In *K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)* the Hon'ble Apex Court held that if the CoC has approved the Resolution Plan by the requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to the scrutiny of the Resolution Plan 'as approved' by the requisite percentage of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the

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Resolution Plan is with reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements. The legislature, consciously, has not provided any ground to challenge the commercial wisdom of the individual financial creditors or their collective decision before the Adjudicating Authority.

21. In CoC of *Essar Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531* the Hon'ble Apex Court clearly held that the Adjudicating Authority would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42, the Hon'ble Court observed as under:

*'Thus, it is clear that the limited judicial review available which can in no circumstances trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).'*

22. The Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (Civil Appeal No. 8129 of 2019 decided on 13.04.2021) held that on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
23. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2)

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of the Code and the Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We, therefore, allow the Application in the following terms:

**ORDER**

24. The Application **IA. No. 70 of 2022 in C.P.(IB) 2517 of 2022 is allowed** and the Resolution Plan submitted by 'Planet Builders and Developers' is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, and creditors including the Central Government, any State Government, or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan. As the resolution of the Corporate Debtor would be in the larger interest of all the stake holders, we deem it appropriate to observe that the treatment of allottees of shops and flats given in the Resolution Plan shall prevail if comes in conflict with anything else.
25. Accordingly, no person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Resolution Plan which is not a part of the Resolution Plan. However, in case any claim is subsequently admitted by the Tribunal or appellate tribunal, the same shall, notwithstanding the provisions contained in the Resolution Plan, be treated as an admitted claim as per the Resolution Plan.

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26. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate authorities in accordance with law. Any waiver sought in the Resolution Plan relating to the period after the date of this order, more particularly licenses and approvals for keeping the Corporate Debtor as a going concern, shall be subject to approval by the Authorities concerned and this Tribunal will not deter such Authorities from dealing with any of the issues arising after effecting the Resolution Plan. This Tribunal, however, recommends due consideration of the revival of the Corporate Debtor. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the Appropriate Authority within a period of one year from the date of approval of the Resolution Plan.
27. If any application(s) relating to preferential/fraudulent transactions under Sections 43 and 66 of the Code is pending before the Tribunal, the Corporate Debtor, as mentioned in the Resolution Plan, shall have exclusive right over such recoveries through those proceedings.
28. In accordance with Section 32A of the Code, the liability of the Corporate Debtor for an offense committed prior to the commencement of the Corporate Insolvency Resolution Process shall cease, and the Corporate Debtor shall not be prosecuted for such an offense committed prior to the commencement of Corporate Insolvency Resolution Process from the date of this order.
29. As per the Resolution Plan, the Corporate Debtor is to complete the pending works of the Projects and hand over the possession to apartment allottees

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within 24 months from the date of this order with a grace period of six months till Closing Date.

30. The capital structure and contribution of the Corporate Debtor shall be transferred and restructured to the Resolution Applicant without any further procedure required.
31. The Monitoring Committee, as proposed in Section 4 of the Resolution Plan, shall be constituted to supervise and implement the Resolution Plan. The Resolution Professional, who is part of the Monitoring Committee, shall submit quarterly progress reports to this Tribunal as regards implementation of the Resolution Plan and construction of the Projects & delivery to the home buyers.
32. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees, and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.
33. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.
34. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with a copy of this order for information.
35. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

**Sd/-**

**ANIL RAJ CHELLAN  
MEMBER (TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
MEMBER (JUDICIAL)**