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

IA No. 4365/2024
In
CP (IB) 2517/MB/ of 2018

Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016

NISHA CHANDWANI
A -19, Indraprashth Society
Sarvodaya Nagar, Jain Mandir Road
Mulund (West), Mumbai - 400 080.

...Applicant

Vs

Mr. Arun Kapoor
Resolution Professional of
Monarch Brookfields LLP
G-60 1, Anny Co-operative Housing Society,
Sector- 09, Nerul (East), Navi Mumbai,
Maharashtra, 400706

Planet Builders and Developers
8/A/40, Sagar Co-operative Housing
Society, Sector - 10, Koparkhairane,
Navi Mumbai - 400 709.

...Respondents

IN THE MATTER OF

Capri Global Capital Ltd.

… Financial Creditor

V/s

Monarch Brookfields LLP

… Corporate Debtor

Order delivered on: - 18.12.2024

Coram:

Anil Raj Chellan	**Kuldip Kumar Kareer**
Member (Technical)	**Member (Judicial)**

Appearances:

For the Applicant	:	Adv. Pulkit Sharma a/w Adv. Sagar Vichare i/b Adv. Abhishek Adke
For Respondent No.1/RP	**:**	Adv. Amir Arsiwala a/w Adv. Vidit Divya Kumat
For Respondent No.2	**:**	Adv. Aman Kacheria a/w Adv. Sakshi Dube, Adv. Rishabh Dhanuka, Adv. Ashwin Hirulkar

ORDER

Per: - Coram

1. The present application is filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') to recall the

order dated 27.08.2024 passed in IA no. 70 of 2022 vide which the Resolution plan of Respondent No. 2 has been approved.

Brief facts of the case as stated in the Application

2. The Applicant states that he is the owner of and as such well and sufficiently entitled to commercial premises being shop numbers 12, 17 to 26 in the building known as 'Monarch Brookfields' (hereinafter called 'Commercial Premises').

3. The Applicant had filed IA No. 2226 of 2020 after being aggrieved by the conduct of the Corporate Insolvency Resolution Process (CIRP) by Respondent No.1, the Resolution Professional appointed in respect of the Corporate Debtor wherein the Commercial Premises were sought to be included in the assets of the Corporate Debtor. This Tribunal, vide its order dated 15.12.2023 allowed the aforesaid Application, and the shop Nos. 12, 17 to 26 forming the Commercial Premises were excluded from the assets of the Corporate Debtor.

4. During the pendency of the aforesaid IA No. 2226 of 2021 filed by the Applicant, the Resolution Plan submitted by Respondent No.2 was approved by the Committee of Creditors (CoC) and the RP filed an IA bearing No.70 of 2022 seeking approval of the Resolution Plan submitted by the Respondent No.2.

5. The Applicant states that despite the order dated 15.12.2023 passed by this Tribunal directing Respondent No.1 to exclude the Commercial Premises from the assets of the Corporate Debtor, the Resolution Plan dealt with those Commercial Premises by making a provision of demolishing all the commercial spaces as they are purportedly

unauthorized and not as per approved plan.

6. The Applicant states that the RP was a party to the IA. No. 2226 of 2022 whereby the order of exclusion was passed by the Tribunal. The RP was duty-bound to take steps by directing Respondent No.2 to carry out an amendment to the resolution plan by excluding the Commercial Premises and not to deal with the same in compliance with the order dated 15.12.2022.

7. Since the Respondents have failed and neglected to amend the Resolution Plan to comply with the order dated 15.12.2023, the Applicant filed IA. No. 3169 of 2024 praying, inter alia, for direction to Respondent No.1 to amend the Resolution Plan by excluding the Commercial Premises. While the said IA was pending, this Tribunal proceeded to pass the order dated 27.08.2024 vide which the Resolution Plan of Respondent No.2 has been approved.

8. In the circumstances, the Applicant is seeking recall of the order dated 27.08.2024 approving the Resolution Plan on the ground that Respondent No.1 failed in his duty as an officer of this Tribunal to bring to the notice of this Tribunal the order dated 15.12.2022 and also the pendency of IA No.3169 of 2024. The Applicant further states that the order dated 15.12.2022 passed by this Tribunal has attained finality and as such no order defeating the order dated 15.12.2022 could have been passed by this Tribunal. The Applicant has also sought an interim stay of the order dated 27.08. 2024 passed in IA No. 70 of 2022.

Reply by Respondent No. 2

9. Respondent No.2 submits that it is the Successful Resolution Applicant whose Resolution Plan has already been approved by the Tribunal vide its order dated 27.08.2024. The present application is nothing but a replica of the IA No. 3169 of 2024 filed on behalf of the present Applicant and the reliefs claimed therein are similar.

10. The Commercial Shops are unauthorized and are not sanctioned as per the Assessment Order bearing no. 948/2011-12 dated 3rd February 2012 issued by CIDCO (being the authority), and no occupation certificate would be received for such shops, therefore the shop owners could not be put in valid possession of the commercial shop units. The sanctioned plan as given by CIDCO for the said building stood revised/updated with the permissible FSl 1.5 but sanctioned 1.0 and allowed stilt + 10 Floors with total residential flats allowed were 232, with no commercial units. Therefore, it is further submitted that the Commercial Units purportedly owned by the Applicant herein do not exist and/ or are illegal and never formed part of the said building and the sanctioned plans provided by CIDCO, demonstrating that the said Commercial Units are no longer in existence/ have been declared illegal.

11. It is submitted that during the hearing of IA No. 70 of 2022, Respondent No.2 clarified that the Commercial Units were declared unauthorized and there was no title to be transferred. Further, even as per the approved Resolution Plan, 60% of the transaction amount would be refunded to the valid agreement holders i.e., registered

agreements prior to 03.02.2012.

12. It is further submitted that this Tribunal inquired if any objections were raised against the approval of the Resolution Plan, for which Respondent No.1/RP appraised the Tribunal that no objection was received and/or no application was filed before this Tribunal objecting to the approval of the Resolution Plan. Further, the treatment of the valid shop owners was categorically recorded in the order approving the Resolution Plan.

13. The applicant failed to raise an appropriate application or proceeding to place its objection regarding the validity of the resolution plan.

14. It is further submitted that it is a well-settled position in law that once a resolution plan is approved the focus shifts to its implementation and not the re-litigation of settled matters and rights. Any objection and/or dispute regarding the approval of the resolution plan cannot be heard, tried, or entertained under Section 60(5) of the Code. Respondent No.2 submits that the reliefs that are being sought in the present application are similar to the reliefs sought in IA no. 3169 of 2024 and therefore based on the principle of res-judicata present application should be rejected.

15. Respondent No.1, the RP did not file any reply as the Resolution Plan has already been approved.

Findings: -

16. We have heard the Counsel for the Applicant and Respondents and perused the pleadings, documents and written submissions filed by them.

17. The Applicant seeks the recall of the order dated 27.08.2024 passed by this Tribunal in IA No. 70 of 2022 whereby the Resolution plan submitted by Respondent No. 2 was approved. This application has been filed on the premise that the Resolution Plan deals with the entire building including the Commercial Premises that were ordered to be excluded from the assets of the Corporate Debtor. Ld counsel for the Applicant has contended that despite the order dated 15.12.2023 passed by this Authority directing the exclusion of the Commercial Premises, Respondent No.1, the RP took no steps to get the resolution plan amended so that the Commercial Premises could be excluded from the Resolution Plan in compliance of the aforementioned order. Furthermore, Respondent No.1 did not even bring to the notice of this Tribunal about the order dated 15.12.2023 which had attained finality nor did he disclose the pendency of IA No.3169 of 2024. Therefore, it is argued that the Tribunal should not have passed the order dated 27.08.2024 approving the Resolution Plan which is in the teeth of the order dated 15.12.2023.

18. On the other hand, counsel for Respondent No.2 has contended that at this stage, under Section 60(5) of the Code, no objections and/or disputes regarding the approval of the resolution plan can be heard, tried, or entertained. The reliefs sought in the present application are similar to those sought in IA no. 3169 of 2024 and, therefore, the matter cannot be re-agitated, being barred by the principle of res-judicata.

19. Counsel for Respondent No.2 has further argued that the Commercial Shops in question are unauthorized and no occupation certificate would ever be issued for the said shops. Therefore, the shop owners

cannot be validly put in possession of the commercial shop units. It is also asserted that the Commercial Units, purportedly purchased/owned by the Applicant, have been declared illegal according to the sanctioned plans provided by CIDCO. Despite their illegal status, the Resolution Plan provides a refund of 60% of the transaction amount to the valid agreement holders and, as such, the Applicant cannot now scuttle the entire resolution plan based on this issue.

20. We have given a thoughtful consideration to the above contentions raised by the Ld counsel for the parties.

21. The primary relief sought in the Application is to recall the approval granted to the Resolution Plan. It is well settled that as per the provisions of section 30(2) of the IB Code,2016, this Authority has very limited powers while approving the Plan once it is approved by the requisite majority of the COC. In this context, reference can be made to the law laid in ***K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)*** whereby the Hon'ble Apex Court held that if the CoC had 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 further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of

the Resolution Plan 'as approved' by the requisite percent of voting share of financial creditors. Even in that enquiry the grounds on which the Adjudicating Authority can reject the Resolution Plan is in 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.

Similarly, in **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd**, the scope of judicial review of Adjudicating Authority was summarized by the hon'ble Supreme Court as follows:

"To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposited by this Court."

Thus, it is evident that this Authority has limited powers while approving the Plan and the Plan can be rejected only if it does not meet the requirements of section 30(2) IB Code.

22. The counsel for the Applicant, however, has contended that the approved resolution plan is illegal as it violates and disregards the order dated 15.12.2023 passed by this Authority which specifically excluded the Commercial Premises from the assets of the Corporate Debtor as well as the ambit of the Plan. However, it is pertinent to observe that at the time, the resolution plan was submitted for a vote and subsequently, when approved by the CoC on 15.11.2021, there was no order regarding exclusion of the Commercial Premises. Thus, there was no shortcoming in meeting the requirements of subsection 30(2) of the Code.

23. No doubt, in the order dated 15.12.2023, this Authority had ordered the exclusion of the commercial premises/shops from the ambit of the Plan and it was the bounden duty of the RP to apprise the CoC and the SRA about the same for implementation of the said order. However, despite this, we find it quite arduous to recall the Plan approval order at this belated stage. In our considered view, if the RP did not discharge his duty diligently, the Applicant was also not vigilant enough to protect his rights. If the RP had failed in his duty, the Applicant could have brought the factum of non-implementation of the order dated 15.12.2023 to the notice of this Authority before the Resolution Plan was approved.

24. Even otherwise, in our considered view, it would neither be feasible nor in the fitness of things to recall the Plan approval order at this stage

if the overall interest of all the stakeholders is taken into consideration. Here, one cannot be oblivious of the fact that commercial premises/shops, which are sought to be got excluded from the ambit of the Plan and treated as property of the applicant, are illegal in nature and the same were not approved by CIDCO while approving the site plan of the project of which the same are part of. Therefore, there is every likelihood that the same would have to be demolished eventually, being unauthorized structures. Besides, the Resolution Plan provides for payment of 60% of the invested amount against the shops to the Applicant. Apart from that, recalling the resolution plan approval order at this stage would not only upset the apple cart but will also result in gross injustice to all the stake-holders especially the homebuyers who voted in favour of the resolution plan.

25. In view of the above discussions, we do not find any legitimate grounds to recall the order dated 27.08.2024 passed in IA No. 70 of 2022 vide which the Resolution plan of Respondent No. 2 stands approved. Therefore, IA No. 4365 of 2024 is hereby dismissed. There will, however, be no order as to costs.

Sd/-	**Sd/-**
Anil Raj Chellan	**Kuldip Kumar Kareer**
Member (Technical)	**Member (Judicial)**