



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

**IA No. 313 of 2022
IN
CP (IB) No. 2517 of 2018**

Under Section 60(5) read with Other relevant provisions and Regulations of the Insolvency and Bankruptcy Code, 2016.

Sikandar Mulla

Having address at: P-16, MIDC, Near MIDC Office, Nachane Mirjole, MIDC (rtg), Ratnagiri, Maharashtra- 415 639
.....Applicant

Vs.

Mr. Arun Kapoor

Resolution Professional

Having Registered address at: G-601, Army Co-operative Housing Society, Sector- 09, Nerul (East), Navi Mumbai, Maharashtra- 400 706
....Respondent

In the matter of

Capri Global Capital Ltd.

... Financial Creditor

Vs

Monarch Brookfields LLP

... Corporate Debtor

Order delivered on: 17.03.2023

Coram:

Hon'ble Member (Judicial) : Shri Kuldip Kumar Kareer

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Nithish Bangera, CS
For the Respondent : Mr. Amir Arsiwala, Advocate

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. This is an Application filed by the Applicant, Sikandar Mulla, seeking inclusion of his name in the list of registered Flat buyers of the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”).
2. The Applicant submits that he was allotted a Flat being **Flat No. 402 on the 4th Floor, “Vermont”** (hereinafter called the “original Flat”) in a new residential cum commercial Building named “Monarch Brookefields” (hereinafter called the “Said Building”) being constructed by the Corporate Debtor for a total consideration of **Rs. 63,24,760/-** Only (Rupees Sixty-Three Lakhs Twenty-Four Thousand Seven Hundred and Sixty Only). As a part of this transaction, a sum of **Rs. 40,00,000/- (Rupees Forty Lakhs)** was transferred by the Applicant by way of RTGS to the account number given by one Mr. Gopal Thakur who was the Designated Partner of the Corporate Debtor and an Allotment Letter dated 7th July 2014 was issued to the Applicant for confirming the same. Subsequently, the Applicant realised that the amount so transferred was actually deposited in the account of Monarch Realty Management Services (hereinafter called “Monarch Realty”) instead of Monarch Brookefields LLP, the Corporate Debtor.

3. In the meantime, the original flat was registered in some other third party's name. The Corporate Debtor admitted the error and promised to allocate another flat being **Flat No. 101 in "Texas"** wing (hereinafter called the "new Flat") and register the same in the Applicant's name in lieu of the original flat. On getting this assurance, the Applicant paid a further sum of Rs. 9,36,000/- in cash on 17th July 2014 and Rs. 11,48,000/- via pay slip in the name of the Corporate Debtor on 25th May 2016. As agreed, an **Agreement of Sale dated 25th May 2016** was executed between the Applicant and the Corporate Debtor for the purchase of the new Flat. On the same day, a further payment of Rs. 2,40,760/- was made to the Corporate Debtor via Cheque No. 07 as part of the consideration towards the new Flat resulting in a total of Rs. 63,24,760/- being paid as the full and final payment towards the purchase. Copies of the payment receipt and the said Agreement are duly annexed to the Application.
4. The Applicant submits that he received a Notice from the Financial Creditor on **17th November 2016** stating that the new Flat registered by the Designated Partner of the Corporate Debtor in the Applicant's name had been mortgaged with the Financial Creditor without seeking permission from the Applicant. Aggrieved by the conduct of the Corporate Debtor, the Applicant filed a complaint of cheating and fraud by the Designated Partner on 28th November 2016 at the local police station, a copy of which has been attached to this Application.
5. Subsequently, the Corporate Debtor was admitted under Section 7 of the Code and Corporate Insolvency Resolution Process (CIRP) was initiated vide **Order of this Tribunal dated 27th September 2019**. The

Applicant filed a claim before the Resolution Professional (RP) which was admitted and his name was reflected as owner against the new Flat, with a total admitted amount of Rs. 71,92,504/- only. However, after the appointment of Mr. Arun Kapoor as the new RP of the Corporate Debtor, the Applicant's name was removed from the list of claimants/homebuyers without notice on the ground that the amount paid by the Applicant was actually credited to some other company and not to the account of the Corporate Debtor. The Applicant argues that the Designated Partners of the Corporate Debtor have indulged in fraudulent transactions by taking cheques and depositing it in different companies, by not depositing the cash in the account of the Corporate Debtor and misappropriating it and by selling a single Flat to two buyers. On the basis of complaints made by the homebuyers, the Designated Partners are currently in jail.

6. The Respondent filed a **Reply dated 6th April 2022** to this Application and submits that the present Application is not maintainable as the Applicant cannot be considered as a "Financial Creditor" of the Corporate Debtor since the Applicant has admittedly made no payments to the Corporate Debtor towards purchase of the original Flat. The Applicant's claim that he realised that the payments were made to a different account after having transferred the amount cannot be countenanced. The Respondent states that the purported Allotment Letter dated 7th July 2014 itself is an act of fraud and is unreliable. Even if it is assumed that the Applicant is a valid allottee of the Corporate Debtor, the disbursement of the consideration amount to the Corporate Debtor cannot be proved. Moreover, the cash transactions as claimed to be made by the Applicant cannot be verified. The Respondent also

submits that registration of the Agreement of Sale cannot be a proof for disbursement of the consideration amount and hence, since the existence of a Financial debt cannot be proved, this Application deserves to be dismissed.

7. We have heard the Counsel appearing for the Applicant and the Counsel appearing for the Respondent. On perusal of the relevant documents annexed to this Petition, it is noted that the Applicant had entered into a duly registered **Agreement dated 25th May 2016** for purchasing the new Flat after the Designated Partner of the Corporate Debtor assured him that the initial payment of Rs. 40 Lakhs towards purchase of the original Flat would be treated as consideration for purchasing the new Flat. That is, though such initial payment was made to Monarch Realty, the Designated Partner of the Corporate Debtor transferred the same to the present Corporate Debtor after the Applicant raised the grievance. This fact is evident from the confirmation issued by the Corporate Debtor in the said Agreement wherein the impugned payment of Rs. 40 Lakhs made to Monarch Realty is accounted and accepted as part-payment to the Corporate Debtor in respect of the new Flat. The same is reproduced below:

“The said payment made as under:

<i>Sr. No.</i>	<i>Date</i>	<i>Cheque/D.D No.</i>	<i>Drawn on</i>	<i>Amount</i>
1	07/07/2014	RTGS		40,00,000/-
2	25/05/2016	Cheque “215245”		12,00,000/-
				52,00,000/-

8. Notwithstanding the above, the transfer of the amount of Rs. 40 Lakhs from Monarch Realty to the account of the Corporate Debtor cannot be countenanced. At this point, it is pertinent to note the summary of the payments made by the Applicant as follows:

Date	Amount	Mode of payment	Payee name
7 th July 2014	40,00,000/-	Bank of India (RTGS)	Monarch Realty Management Services (Group Company)
17 th July 2014	9,36,000/-	Cash	Corporate Debtor
25 th May 2016	11,48,000/-	Bank of India (Pay Slip)	Corporate Debtor
25 th May 2016	2,40,760/-	Kotak Bank (Cheque)	Corporate Debtor

The transactions pertaining to the three transfers made in favour of the Corporate Debtor dated 17th July 2014 and 25th May 2016 are evidenced by the receipts and Financial Statements attached to the Application and therefore, it is established that the corresponding amounts were indeed transferred by the Applicant to the Corporate Debtor's account. Hence, we are of the view that the Respondent's decision to reject the entire claim of the Applicant was erroneous. Though the transfer of Rs. 40 Lakhs to the Corporate Debtor cannot be proved, the transfer of the remaining amounts aggregating to Rs. Rs. 23,24,760/- (Twenty-Three Lakhs Twenty-Four Thousand Seven Hundred and sixty only) via the abovementioned modes of payments ought to be considered by the Respondent while examining the claim of the Applicant.

9. In the light of the above, we hereby direct the Respondent RP to admit the Applicant's claim to the extent of the aggregate amount of Rs.



23,24,760/- (Twenty-Three Lakhs Twenty-Four Thousand Seven Hundred and sixty only). With the above observations, **IA No. 313 of 2022** is accordingly **allowed** and disposed of.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

Anusha
17.03.2023