

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

**IA No. 1128 of 2022
IN
CP (IB) 2517/MB/2018**

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

In the matter of

Prakash Matlani & Anr.

..... Applicant

Versus

Arun Kapoor

**..... Respondent/Resolution
Professional**

Order Delivered on :- 13.01.2023

Coram:

Justice P.N. Deshmukh : Member (Judicial)

Shyam Babu Gautam : Member (Technical)

Appearances:

For the Applicant : Mr. Abhishek Adke, Advocate

For the Respondent : Mr. Amir Arsiwala, Advocate

ORDER

Per:- Shyam Babu Gautam, Member Technical

1. The present Application is filed by the Applicants on being aggrieved due to rejection of claim by the Respondent which was previously approved by the erstwhile Resolution Professional. The Applicants in

the year 2012 had purchased flats in a project being developed by Monarch Imperial, a sister concern of the Corporate Debtor. The Applicants paid amount of Rs. 75,00,000/- to Monarch Imperial as against execution of registered Agreement for Sale for Flat No 1103 (Arizona), Flat No. 1106 (Arizona) and Flat No. 1101 (Virginia).

2. Due to substantial delay in completion of the project of Monarch Imperial, the partners of Monarch Imperial transferred and utilized the amounts paid by the Applicants to their real estate project being developed by the Corporate Debtor. The copies of the receipts dated 02.08.2016 issued by the Corporate Debtor evidencing amount of Rs. 75,00,000/- against the allotment of Flats in the real estate project of the Corporate Debtor known as 'Monarch Brookfields'.
3. Thereafter, by an Order dated 27.09.2019 Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor. Further, Mr. S. Gopalkrishnan was appointed as the Resolution Professional (RP) of the Corporate Debtor. The Applicants filed their claim dated 20.01.2020. The said RP admitted the claim of the Applicants and included the name of the Applicants in the list of the creditors of the Corporate Debtor.
4. Further, vide an order dated 03.08.2021, the erstwhile RP Mr. S. Gopalkrishnan was replaced and Mr. Arun Kapoor, the Respondent herein was appointed as the new RP. Further, in the month of March, 2022 the claims of the Applicants were rejected.
5. The Applicants submits that no intimation of such rejection had been given to the Applicants. Since the Applicants are senior citizens, the Applicants discovered an email stating that their claim was rejected on

the ground that, the consideration for the flats had been paid to another entity of the Corporate Debtor.

6. The Applicants state that the Respondent is not entitled to reject the claim once the same had been accepted by the earlier RP. The RP has ignored the fact that there exists registered Agreement in favour of the Applicants. The Respondent has deleted the names of the Applicants from the list of creditors without giving an opportunity of being heard. Also in view of outbreak of Covid-19, there was a delay in filing the present Application and the said delay is to be condoned.
7. The Applicant thus prays to direct the Respondent to accept the claim of the Applicants and set aside email dated 22.11.2021 of the Respondent.
8. The Respondent have filed its reply dated 15.06.2022. The Respondent submits that the present Application is not maintainable and also the Applicant cannot be considered as “Financial Creditor” of the Corporate Debtor. The Applicants have sought inclusion of their names in the list of homebuyers with respect to flats nos. 1101 (Virginia), 1103 (Arizona) and 1106 (Arizona).
9. The Respondent states that admittedly there is no evidence on record that actual amount of Rs. 75,00,000/- was transferred. There is an Agreement for Sale dated 11.08.2016 but no proof of any amount been paid into the accounts of the Corporate Debtor.
10. The Applicants have made the claim only on the strength of the receipt dated 02.08.2016 issued by Monarch Brookefields LLP which does not amount that the Applicants are Financial Creditor of the Corporate Debtor.

11. Further as submitted by the Applicants that initially their claim was admitted by the erstwhile RP and once the claim is admitted it cannot be rejected. The Respondent has acted in all fairness and after the verification process the claim was rejected as it became clear to the Respondent that no amount was disbursed by the Applicant to the Corporate Debtor. The same was verified with the books of accounts/Bank Statements of the Corporate Debtor and it was clear that no amount had been disbursed by the Applicant to the Corporate Debtor.
12. Further, the Respondent states that the claim filed by the Applicants was also time barred as it was submitted after a period of more than two years from the issuance of the public notice dated 24.11.2019 wherein the CIRP period was about to complete and the Resolution Plan was at a stage of approval by the CoC. Hence, for the reasons mentioned above the claim of the Applicants was rejected.

FINDINGS

13. We have heard the submissions of the Counsel appearing for the Applicants and Counsel appearing for the Respondent. From, the documents and records available it is seen that the receipts as produced by the Applicants in the Application are issued by Monarch Brookefields LLP i.e. the Corporate Debtor on 02.08.2016 for an aggregate amount of Rs. 75,00,000/-. The receipts also mentions that the Applicants had invested in the sister company of the Corporate Debtor but as the project was delayed, the said investment was transferred and utilized in the Corporate Debtor. Also, one of the partners of the Corporate

Debtor agreed the receipt of payment from the Applicants herein. Further, the Respondent has stated that there is no proof in any form that the amount has directly been paid to the Corporate Debtor is not accepted as there exists a registered Agreement for Sale dated 11.08.2016 for the respective Flats executed between the Applicants and the Corporate Debtor wherein it is evident that the Applicants have paid the consideration amount for the said flats.

14. In view of the above, **IA 1128 of 2022 is allowed. Delay if any in filing the claim and present petition is condoned.** The RP is hereby directed to accept the claim.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)**