

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

**IA 2399 of 2023**

**In**

**CP (IB) 2517(MB) of 2018**

Under section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 and the Provisions of  
the Rule 11 of the NCLT Rules, 2016

**IN THE MATTER OF**

**Mr. Abushema Choudhary**

A-Samart CHS, A-Wing, 04<sup>th</sup> Floor,

Room No. 401, Sonapur Lane,

Kurla (West), Mumbai-400 072.

**... Applicant**

V/s.

**Mr. Arun Kapoor**

Resolution Professional of Monarch  
Brookefields LLP

G-601, Army Co-operative Housing Society,  
Sector- 9, Nerul (East), Navi Mumbai,  
Maharashtra - 400706.

**... Respondent**

**IN THE MATTER OF**

**M/s Capri Global Capital Ltd.**

502, Tower-A, Peninsula Business Park,  
Senapati Bapat Marg Lower Parel Mumbai,  
Maharashtra.

**... Financial Creditor**

V/s.

**M/s. Monarch Brookefields LLP**

Survey No. 113/O Akurli, Village Panvel,  
Raigarh, Maharashtra - 410206

**... Corporate Debtor**

**Order delivered on: - 02.01.2024**

**Coram:**

**Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)**

**Hon'ble Shri Anil Raj Chellan, Member (Technical)**

*Appearances (Hearing in Physical Mode):*

For the Applicant : Adv. Dheeraj Patil a/w Milan A.

For the Respondent/RP : Counsel Nupur Shah i/b Adv. Amir  
Arsiwala.

### **ORDER**

*Per: - Coram*

1. The present Interlocutory Applicant is filed by the Applicant to condone the delay of 1,185 days (i.e. 3 years and 90 days) in filing the proof of claim with the Respondent and to direct the Respondent/Resolution Professional to allow the claim amounting to Rs. 37,00,000/- (Rupees Thirty-Seven Lakhs Only) plus interest.
2. Brief facts necessary for disposal of the present Application are as follows:
  - a. Corporate Insolvency Resolution Process (CIRP) in M/s Monarch Brookefields LLP (the Corporate Debtor) was initiated

vide order of the Tribunal dated 03.08.2021 and Mr. S Gopalakrishnan was appointed as Interim Resolution Professional (RP).

- b. IRP issued public announcement inviting claim under Regulation 6 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 and the last date for submission of the claim was 07.12.2019.
- c. As per the order of Tribunal dated 03.08.2021, the IRP was replaced and Mr. Arun Kumar was appointed as Resolution Professional (RP) of the Corporate Debtor. IRP/RP issued public announcement for initiation for Expression of Interest (EoI) and the Committee of Creditors (CoC) on 02.12.2021 approved a Resolution Plan and the same was filed before the Tribunal. The said Application for approval of Resolution Plan is pending for adjudication.
- d. On 10.03.2023, the Applicant filed his proof of claim for an outstanding sum of Rs. 37 lakhs plus interest towards the purchase of the shop (viz. Shop No. 26, Ground Floor, Monarch Brookfields, Plot No. 03, Sector 20, Kalamboli, Navi Mumbai) to be constructed by the Corporate Debtor under an agreement of sale dated 12.01.2012 entered with the Applicant. Under the aforesaid agreement for sale, the shop was purchased for a consideration of Rs. 40,01,000/- (Rupees Fourty Lakhs and One Thousand only).
- e. The Respondent rejected the claim of the Applicant on account of the delay and present status of Resolution Plan is that it is

pending before the Tribunal for approval u/s 31 of the Code.  
Hence, the present Application.

3. **Submissions of the Applicant:**

- a. The Applicant submitted that he was unaware of the initiation of CIRP against the Corporate Debtor and he was not following up with the Corporate Debtor after imposition of lockdown on account of Covid pandemic. Thereafter he had to visit his native place for medical emergency and when he came in the month of January, 2023, he came to know about the CIRP and immediately filed the claim with the Respondent.
- b. In support of the submissions the Applicant relied upon the decision of the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Private Limited (2021) 9 SCC 657* and the decision of Hon'ble NCLAT in the case of *Puneet Kaur V. K. V. Developers Private Limited (2022) SCC Online NCLAT 245* to contest that only after the Resolution Plan is approved by the Adjudicating Authority all claims not forming part of the Resolution Plan would get extinguished and not upon approval of the Resolution Plan by CoC.

4. **Submissions of the Respondent:**

- a. The Respondent submitted that the Resolution Plan submitted by Planet Builders and Developers was unanimously approved by the Members of the CoC in its 13<sup>th</sup> meeting held on 15<sup>th</sup> November, 2021 and 19<sup>th</sup> November, 2021 and an I.A. No. 70 of 2022 has been filed with the Tribunal for approval of the Resolution Plan, which is currently pending. The Information

Memorandum (IM) had been prepared on 26.07.2021 and the same was circulated to the prospective Resolution Applicants on 29.05.2021. The Resolution Plans were submitted pursuant to the above IM.

- b. Since the IM was published way before the filing of claim by the Applicant, there was no occasion to incorporate the claim of the Applicant in the IM. The claim of the Applicant had not been recorded with any Information Utility or in the books of accounts of the Corporate Debtor.
- c. To buttress the contentions, the Respondent relied upon the decisions laid down by the Hon'ble Supreme Court in the case of M/s R.P.S Infrastructure Limited v. Mukul Kumar and Anr. (Civil Appeal No. 5590 of 2021) and Committee of Creditors of Essar Steel India Limited through authorized signatory v. Satish Kumar Gupta and Ors. ((2020) 8 SCC 534) wherein it was held that a Resolution Professional cannot be compelled to admit claims which are received after the approval of the Resolution Plan by the CoC.
- d. The Respondent further submitted that there are many claims received after the approval of the Resolution Plan and many Applications relating to such rejection of claim are pending before the Tribunal. Admitting the present Application would lead to several hydra heads popping up which would derail the implementation of the Resolution Plan.

**Analysis and Decision:**

5. We have heard the Counsel appearing for the parties and perused the

records.

6. On perusal of the application of the Applicant, we find that the pleadings are inconsistent and they do not match with the evidence/documents relied upon and annexed by the Applicant to his application. On one hand, the Applicant states that (see Para 3 at Page no.05 of the application) he is constrained to file this application since the RP has summarily rejected his claim of Rs. 40,01,000/- plus interest on account of a delay of 1,185 days (i.e. 3 years and 90 days) in filing the claim with the RP; whereas on the other hand, the Applicant has prayed for a refund of only Rs. 37,00,000/- plus interest at prayer clause 29(b.) of the application. We further find that at Para 16, page no. 08 of the application, the Applicant states that he had filed his proof of claim with the RP in Form CA under Reg.8A of CIRP Regulations, 2016 for an outstanding sum of Rs. 37,00,00/-, whereas on perusal of Exhibit G to the application, we find that the total amount of claim to be Rs. 40,01,000/-. This discrepancy is further worsened on scrutiny of Form CA at Exhibit 'G', wherein we find that the amounts paid in cheque totals to Rs. 20,00,000/- and the amount paid in cash, as claimed by the Applicant, is Rs. 22,01,000/-, thus the claim aggregating to Rs. 42,01,000/-. Here again, the amount of claim does not match with the evidence relied upon by the Applicant while submitting his claim to the RP vide Form CA dated 01<sup>st</sup> March, 2023. Thus, we observe that there are lots of discrepancies and inconsistencies in the pleadings of the Applicant as well as in the documents annexed by him. The Applicant has not annexed the copy of agreement for sale, though the Applicant claims to have entered into an agreement for sale (see Para 7 at page 6 of the application) with the Corporate Debtor with respect to Shop No.26.

7. The Applicant claims to have paid the amount of Rs. 40,01,000/- to the Corporate Debtor by crossed cheques totaling to Rs. 18,00,000/- and the remainder amount of Rs. 22,01,000/- in cash. However, the Applicant has not produced any document to evidence the payments made in cash. The Respondent has contended that the claim of Applicant is neither reflected in the books of accounts of the Corporate Debtor nor recorded with any information utility.
8. It is observed that the IM was circulated to prospective Resolution Applicants on 29.05.2021 based on which the Resolution Applicants submitted their Resolution Plans. The claim of the Applicant, in the absence of records with the Corporate Debtor did not find a place in the IM.
9. It is also observed that many such belated claims are pending against the Corporate Debtor and admission of such claims has also possibility of derailing the Resolution Plan which is already approved by the CoC. In this context, it is relevant to observe that the Hon'ble NCLAT in the case of Mukul Kumar v. RPS Infrastructure (Company Appeal (AT) (Insolvency) No. 1050 of 2020) expressed that if new claims are entertained after approval of Resolution Plan by the CoC, the CIRP of the Corporate Debtor would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in timebound manner to maximize the value, if such request of such claimant is accepted, the purpose of IBC would be defeated. In the case of Essar Steel India Limited (Supra), it was held that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after the Resolution Plan submitted by him has been accepted as this would amount to a

hydra head popping up which would throw uncertainty on the amounts payable by a successful resolution applicant, who successfully takes over the business of the Corporate Debtor. All claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor.

10. There are certain cases and certain circumstances where the Adjudicating Authority and the Hon'ble Appellate Authorities have increased the timelines for admission of claims. We do not think this is one of such circumstances which warrants increase of timeline even at the risk of impacting the Resolution Plan pending approval before the Adjudicating Authority.
11. Considering the above, we are not inclined to condone the delay in filing the claim and hence the **IA 2399 of 2023 in CP(IB) 2517 of 2018** is **dismissed**.

Sd/-

**ANIL RAJ CHELLAN**  
**Member (Technical)**

Sd/-

**KULDIP KUMAR KAREER**  
**Member (Judicial)**