



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

IA No. 3390/2024

In

CP (IB) 2517/MB/2018

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

Mr. Rajkumar Jhawar

Flat No. B - 304, Tharwani Heritage, Plot No. 24,
Sector 7, Kharghar, Navi Mumbai, Maharashtra, 410
210

Email Id:rajkumar@pristinecoats.com

Mrs. Shobha Jhawar

Flat No. B - 304, Tharwani Heritage, Plot No. 24,
Sector 7, Kharghar, Navi Mumbai, Maharashtra,
410210

Email id:madhur.jhawar91@gmail.com

...Applicants

Vs

Mr. Arun Kapoor

Resolution Professional of

Monarch Brookfields LLP

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

Email ID:cirp.monarch@gmail.com

.... Respondent No. 1

Planet Builders and Developers

Resolution Applicant of Monarch Brookfields LLP,
arrayed through Arun Kapoor, Resolution Professional



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

of Monarch Brookfields LLP having address at G-601,
Army Co-operative Housing Society, Sector- 09, Nerul
(East), Navi Mumbai, Maharashtra, 400706
Case Specific Email id: cirp.monarch@gmail.com

.... Respondent No. 2

Committee of Creditors of Monarch Brookfields LLP
address at G-601, Army Co-operative Housing Society,
Sector- 09, Nerul (East), Navi Mumbai, Maharashtra,
400706.

.... Respondent No. 3

IN THE MATTER OF

Capri Global Capital Ltd.

... Operational Creditor

V/s

Monarch Brookfields LLP

... Corporate Debtor

Order delivered on :- 21.11.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant	:	Adv. Manoj Kumar Mishra
For the Respondent	:	Adv. Amir Arsiwala



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

IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. The present application is filed by Mr. Rajkumar Jhawar and Mrs. Shobha Jhawar, homebuyers of "MONARCH BROOKFIELDS", under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code'). The Applicants seek the following reliefs:

(a) That this Tribunal may be pleased to pass an Order directing Respondent No.1 i.e. Resolution Professional and/or Respondent No. 2 i.e. Resolution Applicant and/or Respondent No. 3 i.e. CoC, jointly, severally, or individually, to exclude Flat No. 1002 admeasuring 70.32 Sq. Mtr. (Carpet area) on the 10th Floor in "Vermont" wing in the building known as "MONARCH BROOKEFIELDS" situated at Plot no. 3, Sector-20, Kalamboli, Navi Mumbai from the resolution process of the Corporate Debtor, in view of the said Flat having already been sold by the Corporate Debtor to the Applicants vide registered Agreement for Sale dated 23.04.2012 bearing Regn. No. 4264/2012 and further, since the sale has crystallized by virtue of the payment of the entire sale consideration by the Applicants to the Corporate Debtor.

(b) The Tribunal be pleased to pass an Order directing Respondent No. 1 i.e. Resolution Professional and/or Respondent No. 2 i.e. Resolution Applicant and/or Respondent No. 3 i.e. CoC, jointly, severally, or individually, to disclose and confirm as to whether the said asset i.e., Flat No. 1002 admeasuring 70.32 Sq. Mtr. (Carpet area) on the 10th Floor in "Vermont" wing in the building known as "MONARCH



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

BROOKEFIELDS" situated at Plot no. 3, Sector20, Kalamboli, Navi Mumbai, is not a part of the Resolution Plan of Respondent No.2, in view of the Applicants being registered Home Buyers who have paid the entire sale consideration and have developed inextinguishable marketable rights, title, and interest over the said flat, by way of exercising the inherent powers vested on this Tribunal under Rule 11 of the National Company Law Tribunal Rules, 2016.

(c) In the event the said asset i.e., Flat No.1002 admeasuring 70.32 Sq. Mtr. (Carpet area) on the 10th Floor in "Vermont" wing in the building known as "MONARCH BROOKFIELD" situated at Plot no. 3, Sector-20, Kalamboli, Navi Mumbai, forms a part of the Resolution Plan submitted by the Respondent No.2, this Tribunal be pleased to exercise its inherent powers conferred under Rule 11 of the National Company Law Tribunal Rules, 2016 and direct the Respondent No. 1 i.e. Resolution Professional and or Respondent No. 2 i.e. Resolution Applicant and/or Respondent No. 3 i.e. CoC jointly, severally or individually, to exclude the said asset owned by Mr. Rajkumar Jhawar and Mrs. Shobha Jhawar from the resolution process of the Corporate Debtor.

2. The Application has been filed against the Resolution Professional, the Respondent No.1 appointed in respect of Monarch Brookfields LLP, (hereinafter called 'the Corporate Debtor'), the Resolution Applicant who submitted a Resolution Plan in respect of the Corporate Debtor, the Respondent No.2 and the Committee of Creditors ('CoC'), The Respondent No.3, constituted as per the provisions of the Insolvency and Bankruptcy Code, 2016



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

(the 'Code').

Facts of the case:

3. The Applicants were informed that the Corporate Debtor was constructing a residential cum commercial Building by the name "MONARCH BROOKEFIELDS". The Applicants had approached the Corporate Debtor expressing their interest in purchasing Flat No. 1002 admeasuring 70.32 Sq. mtr. (Carpet area) on the 10th Floor in "Vermont" wing in the building known as "MONARCH BROOKEFIELDS" situated at Plot no. 3, Sector-20, Kamboli, Navi Mumbai (hereinafter called 'the said Flat').
4. Subsequently, on 23.04.2012, the Corporate Debtor entered into a Registered Agreement for Sale bearing Regn. No. 4264/2012 (" Agreement for sale") of the said flat to the Applicants for a total sale consideration of Rs. 42,00,000/- (Rupees Forty - Two Lakhs Only), out of which Rs. 6,75,6251- (Rupees Six Lakhs Seventy - Five Thousand Six Hundred and Twenty - Five Only) had been already paid by the Applicants as on the date of the agreement. The Applicants also paid the balance amount out of the loans availed from the State Bank of India and duly complied with the terms and conditions set out in the Agreement for sale. The Applicants state that pursuant to payment of the entire sale consideration in accordance with the Agreement for sale, the Applicants have



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

obtained ownership rights over the said Flat.

5. As per Clause 16.1 of the Agreement for Sale, the Corporate Debtor proposed to hand over the possession of the said Flat to the Applicants, being the owners of the said Flat, within a period of 36 months (3 years) + grace period of 90 days. However, the Corporate Debtor failed to hand over possession of the said Flat to the Applicants within the stipulated timeline.
6. In the interregnum, on a Company Petition filed by Capri Global Capital Ltd. under section 7 of the Code, this Tribunal vide order dated 27.09.2019 initiated Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and appointed Respondent No. No.1 as Interim Resolution Professional. Respondent No.1 was later confirmed as a Resolution Professional (RP).
7. The Applicants subsequently came to know that Respondent No.2 had submitted a Resolution Plan which was approved by CoC and an application filed for approval of the Resolution Plan was reserved for orders on 16.05.2024.
8. On coming to know about the above developments, the Applicants submitted their claim on 11.06.2024 to the tune of Rs. 42,00,000 (Rupees forty-two lakhs) along with interest w.e.f. 02.02.2015 till the date of payment at the rate of 24%



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

IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018

per annum via mail dated 11.06.2024. However, Respondent no.1 vide email dated 12.06.2024 informed the Applicants that the claim cannot be accepted as the resolution plan has already been approved by the CoC and reserved for orders by the Tribunal.

9. The Applicants submit that Flat no. 1002 has already been sold by the Corporate Debtor in favour of the Applicants prior to the commencement of the CIRP process, and hence title with respect to the said Flat stand absolutely transferred in favour of the Applicants. Therefore, the said Flat should be excluded from the resolution process of the Corporate Debtor.
10. The Applicants also submit that they being aged persons and heart patients, after taking the COVID - 19 vaccine faced severe deterioration in health which rendered the Applicants bedridden and they remained out of station for quite some time. Therefore, the Applicants remained unaware of the initiation of CIRP against the Corporate Debtor. As soon as they became aware of the facts, they submitted their claim via e-mail.

Reply by Respondent no.1

11. The Respondent submits that the case of the Applicants is that they have made the entire payment of the sale consideration under the purported Agreement for Sale dated the 23rd of April, 2012. In order to justify this assertion, they have



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

produced some bank statements. However, a perusal of these bank statements shows that an amount of 44,75,625/- is stated to have been paid by the Applicants to an account having the name of the Corporate Debtor prior to the execution of the purported Agreement for Sale, i.e., prior to the 23rd of April, 2012. In fact, all the transfers, 4 in number, took place on the 13th of April, 2012. It is also surprising that the total amount of the transfers exceeds the total consideration under the purported Agreement for Sale. The purported Agreement for Sale only records an amount of Rs. 6,75,675/- having been paid prior to its execution. Further, the transfers through RTGS appear to have been done into an account purportedly maintained by the Corporate Debtor with HDFC Bank. The records of the Corporate Debtor made available by the erstwhile RP to Respondent No.1 do not show that the Corporate Debtor had maintained any bank account with HDFC Bank. Furthermore, Respondent No. 1 is unable to locate any record demonstrating an amount having actually been received from the Applicant into any account of the Corporate Debtor.

12. It is submitted that as per the bank statements produced by the Applicants, an amount of Rs. 30,00,000/- was transferred by the Applicants via RTGS on the 13th of April, 2012. The so-called sanction letter is subsequent to not only the Agreement for Sale but also the payment purportedly made by the Applicants to the Corporate Debtor. At any rate, there is no proof by the Applicants that



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

the State Bank of India actually disbursed any amount under the purported Sanction Letter produced by the Applicants.

13. It is submitted that the Applicant never submitted any claim pursuant to the public announcement taken out by the Interim Resolution Professional. Pursuant to various decisions passed by the Supreme Court of India as well as the National Company Law Appellate Tribunal, the Applicants have now lost the right to make any claim against the Corporate Debtor. The Committee of Creditors of the Corporate Debtor approved a resolution plan at their meeting held on the 15th of November, 2021, pursuant to which an application under section 31 of the Code came to be filed which has also been allowed by way of an order dated the 27th of August, 2024. The Applicants have filed the present application at a very belated stage.
14. The Respondent Nos. 2 and 3 did not enter appearance nor file any reply.

Analysis and Findings:-

15. We have heard the learned counsel appearing for the parties and have perused the documents on record.
16. The Applicants state that the Corporate Debtor executed a registered Agreement for Sale dated 23.04.2012 in respect of the said Flat in favour of the Applicants



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

but the construction of the said Flat was not completed and as a result, possession of the said Flat was never delivered to the Applicants before the commencement of CIRP. Learned counsel for the Applicants has further argued that the Applicants have paid the full sale consideration along with certain excess amounts aggregating to Rs. 65,72,000/- which were disbursement by SBI under the loan granted to the Applicants. Although the Corporate Debtor agreed and assured to refund excess amount, no amount was returned. In support of payment of entire consideration and excess payments, the Applicants have relied on payment receipts No. 180, 182, 359, 360, 361 & 362. The counsel has further submitted that since the entire consideration in respect of the said Flat has been given to the Corporate Debtor under a registered Agreement for Sale, the Applicants have become owners of the said Flat. Further, the registered document has never been terminated, cancelled, or disputed by the Corporate Debtor at any point of time. It is the case of the Applicant that the title to the said Flat stands transferred in favour of the Applicants and as such, the Applicants have acquired marketable title and are absolutely seized and possessed of the said Flat.

17. On the other hand, Respondent No. 1 contents that he has been unable to locate any record demonstrating the payment of sale consideration under the Agreement for sale into any account of the Corporate Debtor and there are



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

apparent inconsistencies in the bank statements produced by the Applicants and the amounts stated in the Agreement for sale. Respondent No.1 also doubted whether the Corporate Debtor had maintained any bank account with HDFC Bank to which the Applicants are stated to have transferred the funds. Respondent No. 1 further submits that the Applicants submitted their claim on 11.06.2024 long after the date specified for submission of claims against the Corporate Debtor. By the time, the Applicants submitted the claim, the Resolution Plan submitted by the Respondent No. 2 had already been voted upon by the CoC and the Application seeking approval of the Resolution Plan was heard by the Tribunal and reserved for orders. Since the claim was rejected by Respondent No. 1 on account of undue delay, the Applicants have preferred the present application on the ground that said Flat does not form part of the assets of the Corporate Debtor and sought exclusion of the said Flat from the CIRP and Resolution Plan. The counsel for Respondent No. 1 further submitted that the Resolution Plan, which was reserved for approval before this Tribunal, was eventually approved on 27.08.2024. In the circumstances, the application filed by the applicants is liable to be dismissed.

18. We have thoughtfully considered the rival contentions of the parties. Given that the contentions stem from the Agreement for Sale, it is essential to notice certain terms of this Agreement.



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

- (a) The Applicants agreed to purchase the said Flat along with the undivided proportionate share/interest in the land underneath the building in which the said Flat is located;
 - (b) The sale price shall be calculated on the basis of the carpet area stated in this Agreement is tentative and subject to change till the completion of the construction and issuance of the occupation certificate by the competent authorities.
 - (c) The schedule of payment, tentative plans, typical floor plan, site plan, and the specifications of the building etc. are tentative and the same are subject to change at the sole discretion of the Corporate Debtor.
19. It is thus, sufficiently clear that at the time of execution and registration of the Agreement, the Flat in question did not exist and no conveyance deed could have been executed at that stage. Further, the construction of the said Flat is still incomplete, so the question of handing over possession of the said Flat did not arise
20. In the case of *Munishamappa v. M. Rama Reddy and Ors.*, (Civil Appeal No. 10327 of 2011, order dated 2nd November, 2023) the Hon'ble Supreme Court, reiterated that the agreement to sell does not transfer ownership rights or confer any title on the purchaser of the property. It is also a fundamental principle of the conveyancing of immovable property, under section 54 of the Transfer of Property Act, 1882 that a contract of sale of immovable property only indicates that the sale shall take place on the terms settled between the parties and it does not of itself, create any interest, or charge on such property.
21. We are, therefore, of the considered view that the contention of Applicants claiming marketable title to the said Flat without a conveyance deed but based



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

IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018

on the Agreement for sale solely because the document is registered and full payment has been made is totally unsustainable.

22. Insofar as the arguments made with regard to the exclusion of the said Flat from the Resolution Plan are concerned, it is to be noted that the scheme of the Code provides for homebuyers to submit their claim, and such claims are to be dealt with in the Resolution Plan. In the instant case, the Applicants have filed their claim after approval of the Resolution Plan by the CoC and the said Resolution Plan has also since been approved by the Tribunal. When the Sale Agreement specified that the flat would be handed over within 36 months (3 years), with an additional grace period of 90 days, the Applicants should have been vigilant in monitoring the construction progress. Regardless of the justifications for any delays, these cannot be sufficient reasons to jeopardize an approved plan that could negatively impact other homebuyers and stakeholders.
23. In *Ghanashyam Mishra and Sons Private Ltd through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Ltd & Ors* (Civil Appeal; No. 8129 of 2019 the Hon'ble Apex Court held as under;

“95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of 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 part of the resolution plan.;



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

**IA No. 3390/2024
In
CP (IB) 2517/MB/ 2018**

24. In view of the foregoing discussions and based on the decision referred to above, we are of the view that the relief claimed by the Applicants to exclude the said Flat from the corporate insolvency resolution process and/or approved resolution plan cannot be granted as no person can be held entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan. Accordingly, **IA No. 3390 of 2024 stands dismissed** with no order as to costs.

**Sd/-
Anil Raj Chellan
Member (Technical)**

**Sd/-
Kuldip Kumar Kareer
Member (Judicial)**