

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

19. IA 70/2022 In C.P. (IB)/2517(MB)2018

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 24.04.2024**

NAME OF THE PARTIES: Capri Global Capital Ltd
V/s

Monarch Brookfields LLP

Section: 7, 30 of Insolvency and Bankruptcy Code, 2016

ORDER

Adv. Amir Arsiwala appeared for the Resolution Professional. Adv. Sakshi Dube appeared for Successful Resolution Applicant. At the request of the parties, list the matter on **16.05.2024** for hearing.

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

24.04.2024
Sushil

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-II

IA No. 745 of 2021

In

CP (IB) 2517(MB) of 2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T. Rules, 2016.

IN THE MATTER OF

1. Mr. Manish P. Sidhwani

2. Mr. Girish P. Sidhwani

3. Mrs. Sakshi G. Sidhwani

All the above three residing at: B4/7, Basant Park, R.C. Marg, Chembur, Mumbai-400071

4. Mr. Hemant Hotwani

5. Mrs. Roshni Hotwani

Both residing at: Bungalow No.06, Vaikunth CHS, Near Swami Vivekanand Degree College, Sindhi Society, Chembur, Mumbai-400 071.

... Applicants

V/s.

Mr. S. Gopalkrishnan

Resolution Professional of Monarch Brookefields LLP, Having his address at:
R-2/202, Moraj Riverside Park, Taluka:
Panvel, PIN: 410206.

... 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

Having its Registered Office at F. No. 701,
07th floor, Dheeraj Palace, Near Hira
Marriage Hall, Ulhasnagar, District: Thane,
PIN Code-421 001.

... Corporate Debtor

Order delivered on: - 24.04.2024.

Coram:

Mr. Kuldip Kumar Kareer, Member (Judicial)

Mr. Anil Raj Chellan, Member (Technical)

Appearances (Hearing in Physical Mode):

For the Applicant : Adv. Sheetal H. Pandya.

For the Respondent/RP : Counsel Mr. Amir Arsiwala a/w
Nupur Shah.

ORDER

Per: - Coram.

1. The Applicants in the present Interlocutory Application have prayed

for directions to the Respondent to admit the claim of the Applicants dated 06.12.2019 in respect of Flat allotted pursuant to the Deed of Settlement dated 24th September, 2016; or in the alternative, the Applicants have prayed that the Adjudicating Authority be pleased to consider and verify the claim of the Applicants afresh based on the aforementioned Deed of Settlement.

2. Brief facts necessary for disposal of the present Application are as follows:
 - a. Monarch Brookfield LLP, Monarch Universal, Monarch Realty Management Services Ltd, Monarch Imperials and Monarch Lifescapes Pvt Ltd, all together forms the Monarch group of companies. All Monarch group of companies deal into real estate business and management of all companies is looked into by Mr. Gopal Thakur and Mr. Hasmukh Thakur as directors/partners (hereinafter referred to as “the said Promoters”). The said promoters were also the designated partners of the Corporate Debtor as on the insolvency commencement date.
 - b. On 24.03.2012, the Applicant No.03 paid Rs. 15,00,000/- to M/s. Monarch Imperial on instructions of the promoter of Monarch group of companies. M/s. Monarch Imperial issued an allotment letter dated 10.01.2013 in favour of Applicant Nos. 02 and 03 whereby they were allotted Flat No. 204 in the building called ‘1st Avenue’ in the project named “Monarch Imperial”. On 05.07.2013, Applicant No.02 paid Rs. 25,00,000/- to Monarch Realty Management Services Pvt Ltd on instructions of the promoter of Monarch group of companies.

Thereafter, an allotment letter dated 11.07.2013 was issued whereby Flat No. 2201-A in the residential project named “Monarch Greenscapes” was jointly allotted to the Applicant Nos. 01 and 02. On 05.07.2013, Applicant No.01 paid Rs. 10,00,000/- to Monarch Realty Management Services Pvt Ltd on instructions of the promoter of Monarch group of companies. An allotment letter dated 11.07.2013 was issued whereby Flat No. 2204-A in the residential project named “Monarch Greenscapes” was jointly allotted to the Applicant Nos. 01 and 02. On 11.09.2013, Applicants No.04 and 05 paid Rs. 50,00,000/- to Monarch Realty Management Services Pvt Ltd on instructions of the promoter of Monarch group of companies. Two allotment letters dated 19.10.2013 were issued whereby Flat Nos. 2301-A and 2307-A in the residential project named “Monarch Greenscapes” were jointly allotted to the Applicant No.04.

- c. Thus, the Applicants had purchased the flats as described hereinabove for an aggregate consideration of Rs. 1 crore paid by them in 2012-2013. The Applicants had purchased the said flats by depositing the consideration amounts in favour of different Monarch companies managed and controlled by the Monarch Group. However, despite issuance of the allotment letters, no agreements for sale were either executed or registered in favour of the Applicants. The Applicants further learnt that the aforesaid flats, which were originally allotted to them, were subsequently illegally sold to third parties thereby cheating the Applicants.

- d. Around December 2014, the promoters offered the allotment of alternative flats to the Applicants as follows in satisfaction of their claims since the Monarch group was in dire straits not able to refund the money of the Applicants:
- i. The Applicant Nos. 01 and 02 were allotted Flat Nos. 401-B and 404-B in the project called Monarch Solitaire and Flat Nos. 2202 & 2203 in the project called Monarch Greenspaces. However, in spite of repeated requests by the Applicants No. 01 and 02, the Agreement for Sale was not registered.
 - ii. By Letter of Allotment dated 13th February 2015, Flat No. 1401 was jointly allotted to Applicant Nos. 01 and 02, and Flat No. 1402 was jointly allotted to Applicant Nos. 02 and 03.
 - iii. The Applicant Nos. 01, 02 and 03 were allotted Flat Nos. 2401-D, 2202-B and 2203-B in the project called Monarch Greenspaces. However, in spite of repeated requests by the Applicants, the Agreement for Sale was never registered.
 - iv. The Applicant Nos. 04 and 05, both were allotted Flat No. 1403-A in the project called Monarch Greenspaces. However once again, the Agreement for Sale was never registered.

The Applicants accepted the allotment of the aforesaid flats having regard to their market value of Rs. 1.5 crores at that point of time. It is also pertinent to note that the above projects were initiated by Monarch Brookefields LLP.

- e. The Applicants learnt that the promoters were persistently faltering in their commitments and several illegalities were being committed by them again and again as a result of which the Applicants were yet again defrauded. This led the Applicants to filing a police complaint dated 17.07.2015 to the Additional Commissioner of Police, CBD Belapur, District: Navi Mumbai, alleging the offence of cheating as defined u/s 419 of IPC and punishable u/s 420 of IPC. The Economic Offences Wing, CBD Belapur, Navi Mumbai issued a Notice dated 12.04.2016 to the Applicants No. 01 and 02 *inter-alia* recording that the investigation was in progress. Amid the ongoing investigation by the Economic Offence Wing, the Promoters of Monarch Group once again approached the Applicants to allot certain alternative flats in full and final settlement of their claims. Applicant Nos. 03 to 05 had authorized the Applicant Nos. 01 and 02 to accept the settlement offer put forth by the promoters.
- f. Accordingly, after a long round of negotiations, a Deed of Settlement dated 24.09.2016 came to be executed between M/s. Monarch Universal and all Monarch Group of Companies as the 'Developer' through Mr. Gopal Thakur and Mr. Hasmukh Thakur, and Applicant Nos. 01 and 02 acting for themselves as well as the 'Beneficiary' for Applicant Nos. 03 to 05. Under the Deed of Settlement, it was agreed that eight flats, as specified in Annexure 'K' to the Deed of Settlement, have been offered to the Applicants against them withdrawing the EOW complaint. The details of the eight flats is given in the table below:

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
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<u>Project</u>	<u>Building</u>	<u>Flat No.</u>	<u>Type</u>	<u>Carpet Area (in sq. mtrs)</u>	<u>Terrace Area (in sq. mtrs)</u>	<u>Allotted to</u>
Monarch Imperial	Avenue 2	1005	1 BHK	32.336	4.972	Not available
Monarch Brookefields	Virginia	103	2 BHK	56.324	4.525	Applicant No. 02
Monarch Brookefields	Arizona	203	1 BHK	32.283	4.522	Applicant No. 03
Monarch Brookefields	Vermont	804	1 BHK	32.283	4.522	Applicant No. 05
Monarch Brookefields	Vermont	206	1 BHK	32.283	4.522	Applicant No. 04
Monarch Brookefields	Arizona	503	1 BHK	32.283	4.575	Applicant No. 04
Monarch Brookefields	Arizona	1001	1 BHK	32.283	4.522	Applicant No. 01
Monarch Brookefields	Arizona	1002	1 BHK	32.283	4.522	Applicant No. 01

The Applicant Nos. 01 and 02 accepted the allotment of the aforesaid flats on behalf of the Applicants including them, having regard to their market value of Rs. 2.5 crores at that point of time. Under the Deed of Settlement, it is specifically clarified that the flats referred to in the table above are free from all encumbrances, not mortgaged and freely marketable. Pursuant to the Deed of Settlement, the Applicant Nos. 01 and 02 withdrew the police complaint filed by them.

g. In the meantime, Corporate Insolvency Resolution Process

(CIRP) against M/s Monarch Brookefields LLP (the Corporate Debtor) was initiated vide Order of the Tribunal dated 27.09.2019 and Mr. S Gopalakrishnan was appointed as Interim Resolution Professional (IRP). IRP issued a public announcement in Form 'A' on 24.11.2019 inviting claim under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the last date for submission of claim was 07.12.2019. In response to the publication dated 24.11.2019, the Applicants filed their claim in Form CA as financial creditors in a class by virtue of being the allottee of flats in the project Monarch Brookefields being implemented by the Corporate Debtor as mentioned in the Deed of Settlement.

- h. It is further clarified that the allotment made in favour of the Applicant Nos.01 and 02 is disclosed by the Affidavit dated 19.04.2017 filed by the Corporate Debtor before the Hon'ble Bombay High Court in Commercial Arbitration Petition No. 172/2017 filed by the Financial Creditor against the Corporate Debtor. Despite the same, the Resolution Professional has erroneously rejected the Applicant's claim by observing that the consideration amount of Rs. 1,00,00,000/- was paid by the said purchasers to other group companies and therefore, the transaction appears to be a money lending transaction.
- i. Hence, the Applicants herein are constrained to file this application. The aforesaid Affidavit dated 19.04.2017 filed by the Corporate Debtor before the Hon'ble Bombay High Court, as discussed above, has been placed on record by the Applicants

vide Additional Affidavit dated 02.02.2023 filed before this Tribunal.

3. **Reply of the Respondent:**

- a. It is an admitted position that the Applicants had not advanced or paid any sum of money into the account of the Corporate Debtor. Admittedly, the Applicants originally sought allotment of units in projects belonging to other group entities of the Corporate Debtor, but not of the Corporate Debtor itself.
- b. The correct position of law is that an allottee of real estate project being undertaken by the Corporate Debtor (and not its group companies) will only be entitled to be a financial creditor of that Corporate Debtor to the extent of amounts raised from that particular allottee. In the present case, since the Corporate Debtor has not raised any amount from the present applicants, the Applicants cannot be considered as financial creditors of the Corporate Debtor.
- c. Further, it is also worth noting that the Applicants do not have any registered agreements in their favour from the Corporate Debtor. It is not even the case of the Applicants that the Corporate Debtor had entered into any agreement for sale with the Applicants. The entirety of the case of the Applicants is based upon certain purported letters of allotment as well as certain purported settlement deeds. It is humbly submitted that these documents cannot be the basis of a claim filed by the Applicants against the Corporate Debtor as a financial creditor belonging to the class of home buyers.

Analysis and Decision:

4. We have heard the Counsel appearing for the parties and perused the records.
5. This is an application filed by the Applicants u/s 60(5) of the Code since the Respondent has rejected their claim on the ground that the Applicants are not financial creditors of the Corporate Debtor as admittedly neither any money has been paid by the Applicants to the Corporate Debtor nor the agreement for sale has been executed, much less registered, between the Applicants and the Corporate Debtor.
6. Counsel for the Applicants submits that a Deed of Settlement dated 24.09.2016 was executed between M/s. Monarch Universal and all Monarch Group of Companies as the 'Developer' through Mr. Gopal Thakur and Mr. Hasmukh Thakur, and Applicant Nos. 01 and 02 acting for themselves as well as the 'Beneficiary' for Applicant Nos. 03 to 05, wherein it was agreed that the Applicants will be allotted flats in the project belonging to the Corporate Debtor. Counsel for the Applicants further submits that even in the affidavit filed before the Bombay High Court in Commercial Arbitration Petition No. 172/2017, the designated partner Corporate Debtor had, *inter-alia*, mentioned the details of allotments to be made to the Applicants in the real estate project of the Corporate Debtor. Therefore, according to the learned Counsel for the Applicants, the Applicants are the allottees of the Corporate Debtor and the rejection of their claims by the Respondent was not justified in facts as well as in law.
7. Per contra, Counsel appearing for the Respondent submitted that since the Applicants had neither paid any money to the Corporate Debtor

towards the allotment of flats nor any agreement for sale was executed by the Corporate Debtor, the Applicants cannot be treated as financial creditors of the Corporate Debtor and therefore, the claim rejection by the Respondent was in accordance with law.

8. We have heard the Counsel for the Applicants and the Counsel for the Respondent. We have also examined the case on its merits and have given due weightage to the aforesaid submissions.
9. It is an admitted fact that the neither any money has been paid into the account of the Corporate Debtor nor any agreement for sale was executed by the Corporate Debtor towards the allotments of flats to the Applicants. Further, the initial allotments of the flats in favour of the Applicants herein were not made by the Corporate Debtor, but by the other entities of the Monarch Group. We also observe that the Deed of Settlement dated 24.09.2016 was not executed by the Corporate Debtor as the deed does not bear any name, stamp or seal of the Corporate Debtor.
10. Under section 5(8) of the Code, “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money; and under section 5(7) of the Code, “financial creditor” means any person to whom a financial debt is owed. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become ‘financial debt’ for the purpose of Part II of the Code, the basic elements are that there ought to be a disbursement against the consideration for time value of money. In other words, the essential element of disbursement and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it

may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. The term "disburse" is comprised of two elements, namely (i) the departing of money from the creditor and (ii) its availability, upon such departure, to the corporate debtor for utilisation. In the factual matrix of the present case, admittedly, there has been no disbursement of money by the Applicants to the Corporate Debtor. Thus, the Applicants cannot be considered as "financial creditors", much less "financial creditors in a class" under the provisions of the Code read with Regulation 8-A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Merely on the basis of a settlement deed in which the Corporate Debtor was not even a party, it cannot be said that the Applicants have become the financial creditors of the Corporate Debtor. Therefore, the rejection of the claims of Applicants No. 01 to 05 by the Respondent vide E-mail dated 23rd August, 2020 is fully justified in facts as well as in law. Hence, we are not inclined to pass any order directing the Respondent to admit the claims of the Applicants.

11. Before parting with the order, we observe that the Applicants have simultaneously filed their claims on 06.12.2019 in Form CA and Form F under Regulations 8A and 9A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 respectively. This practice of the Applicants is deprecated as the Applicants can either claim themselves to financial creditors in a class or other creditors, but not both at the same time and the same is evident upon plain reading of Regulations 9A (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
12. Though in the Affidavit filed by the Corporate Debtor before the

Hon'ble Bombay High Court, the Corporate Debtor has shown the allotment of flats as against the amounts received, but it is a matter of record as also an admitted fact that neither any money has been paid by the Applicants into the account of the Corporate Debtor nor any agreement for sale of flats has been executed between the Applicants and the Corporate Debtor. On account of the fraud perpetrated by the Monarch Group companies against its homebuyers including the Applicants herein, there was a settlement between the Applicants and the Corporate Debtor pursuant to which the promoters of the Corporate Debtor had agreed to allot the flats in the projects that are constructed or to be constructed by the Corporate Debtor. Therefore, in that factual context, the Corporate Debtor filed an Affidavit before the Hon'ble Bombay High Court showing the allotments made by it project-wise. It is also pertinent to note that the Corporate Debtor while admitting the allotments made to the Applicants, has made no reference to the cheque numbers along with the dates corresponding to the payments, which proves that the allotments were made only pursuant to a settlement between the parties and not for monetary consideration received by it from the Applicants.

13. In the present matter, we are only concerned with the question as to whether the Applicants can be considered as financial creditors/financial creditors in a class of the Corporate Debtor so as to maintain their claim filed before the Respondent in Form CA under Regulation 8-A of the CIRP Regulations, 2016. Even though the Applicants may be the allottees as per the Deed of Settlement or as per the Affidavit filed before the Hon'ble High Court, however, they cannot be considered as financial creditors of the Corporate Debtor for the only reason that there was no disbursement against the consideration

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for time value of money.

14. In the facts and circumstances of the case and in view of the foregoing findings and aforesaid observations, we are not inclined to admit the claims of the Applicant Nos. 01 to 05 and hence, **we reject I.A. 745 of 2021** with no order as to costs.

**Sd/-
ANIL RAJ CHELLAN
Member (Technical)**

**Sd/-
KULDIP KUMAR KAREER
Member (Judicial)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-II

IA No. 3014 of 2021

In

CP (IB) 2517(MB) of 2018

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T. Rules, 2016

IN THE MATTER OF

1. Mr. Jai Kumar Rai

2. Mrs. Supriya Saxena

Both residing at: Building No.02, Dreams Apartment, Flat No.1402, L.B.S. Marg, Bhandup West, Mumbai-400078.

... Applicant

V/s.

Mr. Arun Kapoor

Resolution Professional of Monarch Brookefields LLP, Having his address at:

M/s. Areion Resolution and Turnaround Private Limited, A/301, Kanakia Zillion, Junction of LBS Marg and CST Road, BKC Annexe, Near Equinox, Kurla West, Mumbai-400070.

... 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

Having its Registered Office at F. No. 701,
07th floor, Dheeraj Palace, Near Hira
Marriage Hall, Ulhasnagar, District: Thane,
PIN Code-421 001.

... **Corporate Debtor**

Order delivered on: - 24.04.2024.

Coram:

Mr. Kuldip Kumar Kareer, Member (Judicial)

Mr. Anil Raj Chellan, Member (Technical)

Appearances (Hearing in Physical Mode):

For the Applicant : Adv. Vinit J. Mehta

For the Respondent/RP : Counsel Mr. Amir Arsiwala a/w
Nupur Shah.

ORDER

Per: - Coram.

1. The Applicants in the present Interlocutory Applicant have prayed for directions to the Respondent to condone the delay in filing their claim and to consider and admit the claim of the Applicant. The claim of the

Applicant is Rs. 98,83,932/-, out of which the principal claim is of Rs. 40,00,000/- and the interest thereon is Rs. 58,83,932/-.

2. Brief facts necessary for disposal of the present Application are as follows:

- a. The Applicants state that they were allotted flat premises being Flat No. 101, Wing: Vermont, admeasuring 55.246 sq. mtrs plus 4.575 sq. mtrs (terrace) situated at Plot No. 03, Sector-20, Kalamboli, Navi Mumbai-410 218 with the Corporate Debtor for a total consideration of Rs. 40,00,000/- (Rupees Forty Lakhs only) through the registered Agreement for Sale dated 24th July, 2013. The Applicants have availed a mortgage loan from HDFC Ltd for the same vide Loan Agreement dated 17th August, 2013 at 10.50% p.a. The Applicants state that they have paid the entire sale consideration amount of Rs. 40 lakhs.
- b. The Applicants state that they had filed a consumer complaint vide CC/17/843 before the District Consumer Disputes Redressal Forum under the provisions of the Consumer Protection Act, 1986. The Applicants had also lodged a police complaint against the Directors of the Corporate Debtor, with Kalamboli police station.
- c. Corporate Insolvency Resolution Process (CIRP) against M/s Monarch Brookefields LLP (the Corporate Debtor) was initiated vide Order of the Tribunal dated 27.09.2019 and Mr. S Gopalakrishnan was appointed as Interim Resolution Professional (IRP).
- d. IRP issued a public announcement in Form 'A' on 24.11.2019

inviting claim under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the last date for submission of claim was 07.12.2019.

- e. The Applicants state that the first time ever they were informed about the CIRP of the Corporate Debtor was on 18.11.2021. Based on the information received from one of the allottees, the present applicants filed their claim with the respondent on 18.11.2021 for an amount of Rs. 98,83,932/- (Rupees Ninety-Eight Lakhs, Eighty-Three Thousand, Nine Hundred and Thirty-Two only) including interest. The said claim came to be rejected by the Respondent on 19.11.2021 by way of an email on the grounds of delay in filing the claim and since the resolution plan had already been approved by the CoC, the claim of the Applicant could not be entertained at such a belated stage.
- f. As per the order of Tribunal dated 03.08.2021, the IRP was replaced and Mr. Arun Kapoor was appointed as Resolution Professional (RP) of the Corporate Debtor. The erstwhile IRP issued a public announcement dated 25.02.2021 for inviting Expression of Interest (EoI) from prospective resolution applicants. After receiving resolution plan from the prospective resolution applicants, two plans were considered and put to vote and the resolution plan submitted by Planet Builders and Developers was unanimously approved by the members of CoC in the 13th CoC meeting held on 15.11.2021 which was adjourned to 19.11.2021 on which date the modified resolution plan after having been incorporated with minor changes was approved. Hence, the Respondent filed an I.A. No. 70/2022 for

approval of a Resolution Plan before the Tribunal. The said Application for approval of Resolution Plan is pending adjudication before this Hon'ble Tribunal.

- g. The Applicants state that they have faced huge financial crises due to which they were prevented from filing their claim before the Respondent. Moreover, they were not aware of the present proceedings being filed against the Corporate Debtor. There were deaths of the relatives of the Applicants. The Applicant No.01 was jobless for over a year and later took-up a job in August, 2021 at 60% lower salary than his last drawn CTC.
- h. The Applicants state that of late at the time of filing the present application, they found an old letter addressed to them by the erstwhile IRP, Mr. Gopalkrishnan dated 23rd June, 2020 requesting them to file their claim in Form CA. The Applicants state that they were not aware of the said letter which was left inadvertently out of their sight as in May 2020, the Applicant got a cervical slip disc and was bed ridden for a period of 3 weeks and thereafter, due to the financial constraints and turmoil in their family, the said letter was left out of their sight as they were not in appropriate state of mind during the said period. The Applicants submit that due to aforesaid reasons, they were not able to lodge their claim timely with the respondent and hence, the delay in filing their claim may be condoned and the claim may be admitted by the respondent on merits.

3. **Reply of the Respondent:**

- a. It is an admitted position that the Applicants had received a letter

from the erstwhile IRP dated 23rd June, 2020 requesting them to file a claim in accordance with the provisions of the Code. Yet, no claim was filed despite the Applicants having received this letter.

- b. The erstwhile interim resolution professional had taken out an advertisement for inviting claims on 24th November, 2019. The period of 90 days for submission of claim as required under Regulation 12 of the CIRP Regulations, 2016 came to an end on 22nd February, 2020. Admittedly, the Applicants did not submit their claim before 18th November, 2021. Therefore, the claim submitted by the Applicants was thoroughly belated and could not have been processed or placed in the information memorandum or be made known to the potential resolution applicants. The acceptance of the claim of the Applicants would have derailed the CIRP of the Corporate Debtor and would have defeated the objectives of the Code.
- c. The Company Petition No. 2517/2018 was admitted against the Corporate Debtor on 27th September, 2019. The erstwhile IRP in accordance with Regulation 6 of the CIRP Regulations, 2016 published a public notice dated 24.11.2019 in one regional language and in one English language newspaper for inviting claims and the said public notice was also displayed on the website of the Corporate Debtor. Therefore, it is deplorable as to how the Applicants contend that they were unaware of the present CIRP process.
- d. The CoC had already approved the Resolution Plan submitted by Planet Builders and Developers in the 13th CoC meeting held

on 15th November, 2021 and only minor changes were required to be incorporated by the Prospective Resolution Applicant before 18th November, 2021. Therefore, the 13th CoC meeting was adjourned to 19th November, 2021 from 15th November, 2021. While, the Respondent has fullest sympathy for the Applicants, but the admission of their claim at this belated stage would upset the entire CIRP process as admission of their claim at this belated stage would jeopardise the approved resolution plan and would in-turn defeat the interests of all other homebuyers who dutifully and diligently submitted their claims. Hence, the Respondent prays that the instant application be dismissed with exemplary costs on the Applicants.

4. **Submissions on behalf of the Applicant:**

- a. Counsel for the Applicant submits that the Applicants are amongst the class of financial creditors of the Corporate Debtor and have paid the entire consideration to the Corporate Debtor through their own funds as well through the borrowed funds from HDFC Ltd. Counsel for the Applicant submits that on perusal of the records, it can be established that the claim has been submitted to the respondent prior to the approval of the resolution plan by the CoC as the Respondent had replied to the Applicants by email dated 24th November, 2021 stating that the claim of the Applicants has not been admitted as the plans have been put to vote. Thus, according to the learned Counsel for the Applicants, there is no hurdle in admission of the claim since the same has been submitted prior to the approval of the resolution plan by the CoC.

- b. Counsel for the Applicant has relied upon the judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd (2022 SCC Online NCLAT 245) wherein it was held that extinguishment of claims take place only upon approval of the resolution plan by the Adjudicating Authority and not otherwise. To buttress his submissions, Ld. Counsel drew our attention to Para 27 of the judgment wherein the Hon'ble NCLAT had held that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor ought to have been included in the Information Memorandum and the Resolution Applicant ought to have taken note of the said liabilities and should have appropriately dealt with them in the resolution plan. The Hon'ble NCLAT further held that non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution. Hence, the Counsel for the Applicant asserts that even if the Applicant's claim was not filed within time, his claim should have been considered and included in the Information Memorandum prepared by the RP, more so when the Lis against the Corporate Debtor was pending before the Hon'ble District Consumer Disputes Redressal Forum.
- c. As regards the outer time limit of filing the claim within 90 days of the insolvency commencement date under Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, Counsel for the Applicant submits that the said time limit is directory and not mandatory in nature.
- d. Counsel for the Applicant has also relied upon the Order dated

03.03.2023 passed by this Bench in Company Appeal No. 09 of 2022 in CP(IB) No. 2517 of 2018 in support of the aforesaid submissions.

5. **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 13th meeting held on 15th November, 2021 and 19th 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:

6. We have heard the Counsel appearing for the parties and perused the records. We have also weighed and carefully examined the contentions of the rival parties.
7. On perusal of the application of the Applicants, we find that admittedly the Applicants had lodged his claim before the Respondent on November 18, 2021 which came to be rejected by the Respondent on November 19, 2021. It is also not in dispute that Public Announcement in Form A was made by the erstwhile IRP on 24.11.2019 and the last date for submission of claims as per the aforesaid public announcement was 07th December, 2019. Thus, there is a delay of 712 days or 1 year, 11 months and 11 days.
8. The Applicants have pleaded in their application the reasons explaining the delay in lodging their claim with which we shall deal in seriatim. However, before doing that, we find that the Applicants have not annexed any document or material on record to prove, justify or substantiate the causes, reasons and/or explanations offer by them for condoning the delay. The Applicants have pleaded in their application

that the Applicant No.01 lost his father, late Mr. Shiv Prasad Rai, due to esophagus cancer on 25.01.2016. The Applicants further state that the Applicant No.02 had lost her mother named Mrs. Pramila Saxena on 07th February, 2017 and then the grandmother on 15th September, 2018. However, we are not satisfied with this explanation as the aforesaid bereavements took place much prior to the commencement of CIRP of the Corporate Debtor and therefore, the same has no direct or even remote nexus with the delay in filing their claim before the Respondent. As regards the death of Applicant's uncle on 02nd November 2021, there is no document on record to prove the factum of his death. The Applicants have stated in the application that their younger daughter is an asthmatic patient and had been in ICU five times in the past 3 years. However, here again, there is no document or evidence on record to prove the same.

9. The Applicants have stated that the Applicant No.01 lost his job last year amid Covid-19 pandemic as he used to work for a US based hospitality chain which got closed with effect from 01st February, 2020 as United State of America was hugely affected with the pandemic. The Applicants state that the Applicant was jobless or without income for more than a year as a result of which he was constrained to take up a job at 60% of his last drawn remuneration. The Applicants further state that they had opened up their Food Kitchen- MP Ki Rasoi (FSSAI Licensed) in Dreams Mall located at Bhandup West, which got burnt in the mall fire incident on 26th March, 2021. However, we do not find these reasons to be satisfactory for condoning the delay. Job loss or loss of business in itself is no satisfactory ground to condone the delay in filing the claim. In fact, by reason of economic necessity, the Applicants should have been more vigilant in filing their claims

before the Respondent. The Applicants state that HDFC has been hounding after the Applicants for recovery of its dues as the Applicants are unable to pay their home loan EMIs since March, 2020 and therefore, their bank accounts have been sealed. In this context, we state that besides there being no document, evidence or material on record to prove this assertion, the delay in filing the claim cannot be condoned on emotional pleas of the Applicants.

10. Lastly, the Applicants state that the Applicant No.01 got a cervical slip disc in May, 2020 and was bedridden for 3 weeks. This explanation is again unsatisfactory as the Applicant was bedridden only for three weeks since somewhere in the month of May in the year 2020; whereas the claim was submitted by the Applicants on 18.11.2021. Therefore, the delay in the interregnum remains unjustified. Even otherwise, there is no document on record to show that the Applicant was suffering from cervical slip disc in May, 2020. Thus, the ground of medical ailment taken by the Applicants is summarily rejected. Further, the Applicant No.02 suffering from high blood pressure is no good reason to condone the delay.

11. In our considered view, no sufficient and satisfactory explanation has been offered by the Applicants about their delay in lodging the claim before the Respondent. The Applicants state in their application that they became aware of the CIRP of the Corporate Debtor only on 18th November, 2021. However, in our opinion, this is not a satisfactory explanation as the public announcement concerning the CIRP of the Corporate Debtor was made on 24.11.2019. The Public Announcement of the CIRP of Corporate Debtor made through newspapers u/s 15 of the Code constitutes deemed knowledge on the

Applicant and therefore, ignorance of CIRP cannot be pleaded as a justifiable excuse for delay in filing the claim and more so when the erstwhile IRP named Mr. Gopalkrishnan had addressed a letter dated 23rd June, 2020 asking the Applicants to file their claim, however, the Applicants missed it out of their inadvertence and oversight.

12. CIRP is a process which is required to be completed in a time bound manner for achieving the purpose of value maximisation for all creditors. The Applicants submitted their claim on 18.11.2021 which is nearabout the time when the CoC had unanimously approved the resolution plan submitted by Planet Builders and Developers in the 13th CoC Meeting held on 15.11.2021 and adjourned to 19.11.2021 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 mere fact that the Adjudicating Authority has not yet approved the plan does not imply that the plan can go back and forth, thereby making CIRP an endless process. This would result in the re-opening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. Even otherwise, the delay in filing the claim cannot be condoned as the Applicants have not offered any sufficient or satisfactory reason justifying their delay.

13. Counsel for the Applicant has relied upon the following precedents in support of his submissions:

- i. Judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd. (2022 SCC Online NCLAT 245);
- ii. Order dated 03.03.2023 of NCLT in Company Appeal No. 9 of 2022 in CP(IB) No. 2517/MB/2018;

14. In view of the law laid down by the Hon'ble Supreme Court in RPS Infrastructure Ltd v/s. Mukul Kumar & Anr. vide Judgment dated September 11, 2023 in Civil Appeal No. 5590 of 2021, the precedents of NCLT and NCLAT, which have been relied upon by the Counsel as above, are prior to the judgment of RPS Infrastructure Ltd (supra) and hence, those precedents do not hold the field anymore. Prior to the judgment of Hon'ble Apex Court in RPS Infrastructure Ltd (supra), there were divergent views on whether the claim can be admitted after the approval of resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code. In some of the cases, including the precedents relied upon by the Applicant, the Adjudicating Authority as well as the Appellate Authority under the Code, taking a lenient view, were inclined to condone the delay in admitting the belated claim of the claimant even if the same was filed after the approval of the resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code on the reasoning that the resolution plan becomes final only upon its approval by the Adjudicating Authority u/s 31 of the Code and therefore, there was some room left to accommodate the belated claims by the creditors/claimants, which were filed after the approval of resolution plan but prior to its approval by the Adjudicating Authority u/s 31 of the Code.

15. While in some other cases, such as Mukul Kumar v. RPS Infrastructure Ltd. (Judgment dated 30th July, 2021 in Company Appeal (AT) (Insolvency) No. 1050 of 2020), the Hon'ble NCLAT had held as follows: “34. *With the aforesaid, we are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are*

entertained the CIRP 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 time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated.”. This matter went in appeal before the Hon’ble Supreme Court of India and the law in this regard, as discussed below, has now been settled by the Hon’ble Apex Court.

16. The Hon’ble Supreme Court has observed in the judgment of Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors. reported in (2020) 8 SCC 534 as follows: *“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 into uncertainty amounts payable by a prospective resolution applicant who would successfully take 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. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

17. The Hon’ble Supreme Court in M/s. RPS Infrastructure Ltd v/s Mukul Kumar & Anr. (neutral citation: 2023 INSC 816) has observed as under:

*“20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. **This would***

constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant."

18. Hence, after having due regard to the law settled by the Hon'ble Supreme Court, as discussed above, we are of the considered view that the claim of the Applicant cannot be entertained at such a belated stage where the resolution plan has been unanimously approved by the Committee of Creditors and the same is pending for the approval of the Adjudicating Authority. At this stage, we cannot allow to unleash the hydra-headed monster of undecided claim(s) on the successful resolution applicant. Even otherwise, the Applicant has no good case on merits. Hence, the present application is liable to be dismissed.

19. In the facts and circumstances of the case and in view of the aforesaid discussions, we are not inclined to condone such a long, unjustified and unreasonable delay of 712 days on the part of the Applicants in submitting their claim before the Respondent and hence, **we hereby**

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

**IA 3014 of 2021
In
CP (IB) 2517 of 2018**

dismiss IA No. 3014 of 2021 filed in the above-captioned company petition with no order as to costs.

**Sd/-
ANIL RAJ CHELLAN
Member (Technical)**

**Sd/-
KULDIP KUMAR KAREER
Member (Judicial)**

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

IA No. 4154 of 2023

In

CP (IB) No. 2517(MB) of 2018

Under section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the N.C.L.T. Rules, 2016

IN THE MATTER OF

1. Ms. Sneha Kore, and

2. Mr. Nipun Kore,

Both residing at: Plot No. 1963, 1964, Savitri
Nivas, Nivrutti Colony, near Ram mandir,
Kolhapur, Maharashtra-416 113.

... Applicants

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: - 24.04.2024.

Coram:

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

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

Appearances (Hearing in Hybrid Mode):

For the Applicant (in VC Mode) : CA. Udayraj Patwardhan.

For the Respondent/RP : Counsel Mr. Amir Arsiwala.

ORDER

Per: - Coram

1. The present Interlocutory Applicant is filed by the Applicants praying for directions to the Respondent to consider and admit the claim of the Applicants and to set aside the rejection order of the Respondent vide e-mail dated August 28, 2023. The claim of the Applicant that was rejected by the Respondent is INR 93,16,601.92/-, which was filed on August 25, 2023.
2. Brief facts necessary for disposal of the present Application are as follows:

- a. Corporate Insolvency Resolution Process (CIRP) against M/s Monarch Brookefields LLP (the Corporate Debtor) was initiated vide Order of the Tribunal dated 27.09.2019 and Mr. S Gopalakrishnan was appointed as Interim Resolution Professional (IRP).
- b. IRP issued a public announcement on 24.11.2019 in Form 'A' inviting claim under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the last date for submission of claim was 07.12.2019.
- c. As per the order of Tribunal dated 03.08.2021, the IRP was replaced and Mr. Arun Kapoor was appointed as Resolution Professional (RP) of the Corporate Debtor. The erstwhile IRP issued a public announcement dated 25.02.2021 for inviting Expression of Interest (EoI) from prospective resolution applicants. After receiving resolution plan from the prospective resolution applicants, two plans were considered and put to vote and the resolution plan submitted by Planet Builders and Developers was unanimously approved by the members of CoC. Hence, the Respondent filed an I.A. No. 70/2022 for approval of a Resolution Plan before the Tribunal. The said Application for approval of Resolution Plan is pending adjudication before this Hon'ble Tribunal.
- d. On 25.08.2023, the Applicants filed their proof of claim electronically in Form CA for an outstanding sum of Rs. 93,16,601.92, out of which the principal sum is of Rs. 35,00,000/- arising in respect of the purchase of the Flat (viz. Flat No. 1104, 11th Floor, Wing-Arizona, in the project known

as “Monarch Brookfields”, situated at Plot No. 03, Sector 20, Kalamboli, Navi Mumbai) and the remainder of the claim is in respect of Parking, Maintenance and other charges, compensation and costs as awarded by the Hon’ble Maharashtra Consumer Disputes Redressal Commission vide Order dated September 23, 2019 in Consumer Complaint No. CC/18/837.

- e. The Respondent rejected the claim of the Applicant vide E-Mail dated August 28, 2023 on the following terms:

“We refer to your claim submitted to the undersigned vide email dated August 25, 2023.

In view of your claim, we hereby inform you that the Resolution Plan has been approved by members of the Committee of Creditors and the same has been filed by the undersigned before the Hon’ble NCLT, Mumbai Bench on 2 December 2021.

Since the resolution plan has already been filed with the Hon’ble NCLT, we are not in the position to admit your claim.”

- f. Being aggrieved by the rejection of his claim, the Applicant herein has filed this application before the Hon’ble Tribunal impugning the rejection of claim by the Respondent.

3. **Reply of the Respondent:**

- a. It is an admitted position that the Applicants had received a letter from the erstwhile IRP dated 23rd June, 2020 requesting them to file a claim in accordance with the provisions of the Code. Yet, no claim was filed despite the Applicants having received this letter.
- b. The erstwhile interim resolution professional had taken out an advertisement for inviting claims on 24th November, 2019. The

period of 90 days for submission of claim as required under Regulation 12 of the CIRP Regulations, 2016 came to an end on 22nd February, 2020. Admittedly, the Applicants did not submit their claim before 18th November, 2021. Therefore, the claim submitted by the Applicants was thoroughly belated and could not have been processed or placed in the information memorandum or be made known to the potential resolution applicants. The acceptance of the claim of the Applicants would have derailed the CIRP of the Corporate Debtor and would have defeated the objectives of the Code.

- c. The Company Petition No. 2517/2018 was admitted against the Corporate Debtor on 27th September, 2019. The erstwhile IRP in accordance with Regulation 6 of the CIRP Regulations, 2016 published a public notice dated 24.11.2019 in one regional language and in one English language newspaper for inviting claims and the said public notice was also displayed on the website of the Corporate Debtor. Therefore, it is deplorable as to how the Applicants contend that they were unaware of the present CIRP process.
- d. The CoC had already approved the Resolution Plan submitted by Planet Builders and Developers in the 13th CoC meeting held on 15th November, 2021 and only minor changes were required to be incorporated by the Prospective Resolution Applicant before 18th November, 2021. Therefore, the 13th CoC meeting was adjourned to 19th November, 2021 from 15th November, 2021. While, the Respondent has fullest sympathy for the Applicants, but the admission of their claim at this belated stage would upset the entire

CIRP process as admission of their claim at this belated stage would jeopardise the approved resolution plan and would in-turn defeat the interests of all other homebuyers who dutifully and diligently submitted their claims. Hence, the Respondent prays that the instant application be dismissed with exemplary costs on the Applicants.

4. **Submissions on behalf of the Applicant:**

- a. Counsel for the Applicant submits that the Applicant came to know about the CIRP of the Corporate Debtor only in the month of August, 2023. The Applicant took some time to scout and engage the professionals dealing in insolvency and bankruptcy laws and soon thereafter, the Applicant filed his claim on August 25, 2023 with the Respondent.
- b. Counsel for the Applicant has relied upon the judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd (2022 SCC Online NCLAT 245) wherein it was held that extinguishment of claims take place only upon approval of the resolution plan by the Adjudicating Authority and not otherwise. To buttress his submissions, Ld. Counsel drew our attention to Para 27 of the judgment wherein the Hon'ble NCLAT had held that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor ought to have been included in the Information Memorandum and the Resolution Applicant ought to have taken note of the said liabilities and

should have appropriately dealt with them in the resolution plan. The Hon'ble NCLAT further held that non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution. Hence, the Counsel for the Applicant asserts that even if the Applicant's claim was not filed within time, his claim should have been considered and included in the Information Memorandum prepared by the RP, more so when the claim against the Corporate Debtor has been adjudicated by the Hon'ble State Consumer Disputes Redressal Commission, Maharashtra upon the complaint filed by the Applicant vide CC/18/838 under the provisions of the Consumer Protection Act, 1986.

- c. As regards the outer time limit of filing the claim within 90 days of the insolvency commencement date under Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, Counsel for the Applicant submits that the said time limit is directory and not mandatory in nature. In this regard, Counsel for the Applicant has relied upon the Judgment of Hon'ble Supreme Court of India in State Tax Officer v/s. Rainbow Paper Ltd (Civil Appeal No. 1661 of 2020).
- d. Learned Counsel for the Applicants has contended in his written submissions that the respondent's reliance on the judgment of RPS Infrastructure Ltd v/s. Mukul Kumar is wholly misplaced. According the learned counsel, in that case, the Hon'ble Supreme Court while addressing the delay of 287 days, emphasized the appellant's commercial entity status and its responsibility to stay vigilant regarding the Corporate Debtor's

CIRP. Whereas, the facts and circumstances of the present case under consideration are different. The learned Counsel for the Applicant submits that the Applicants herein are not the commercial parties, but are rather commoners and farmers residing in Kolhapur, which is far away from Mumbai i.e. the place of business of the Corporate Debtor. Counsel for the Applicants contends that the Applicants were completely unaware of the public announcement published in Mumbai newspapers with very limited circulation and the same is in violation of Regulation 6 of the CIRP Regulations.

5. **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 13th meeting held on 15th November, 2021 and 19th 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:

6. We have heard the Counsel appearing for the parties and perused the records.
7. On perusal of the application of the Applicant, we find that admittedly the Applicant had lodged his claim before the Respondent on August 25, 2023 which came to be rejected by the Respondent on August 28, 2023. It is also not in dispute that Public Announcement in Form A was made by the erstwhile IRP on 24.11.2019 and the last date for submission of claims as per the aforesaid public announcement was 07th December, 2019. Thus, there is an unexplained delay of 1357 days

or 3 years, 8 months and 18 days. No explanation has been offered by the Applicant about the delay in lodging the claim before the Respondent. The Applicant states in his application that he became aware about the CIRP of the Corporate Debtor in the month of August, 2023. However, in our opinion, this is not a satisfactory explanation as the public announcement concerning the CIRP of the Corporate Debtor was made on 24.11.2019. In our considered view, the Public Announcement of the CIRP of Corporate Debtor made through newspapers u/s 15 of the Code constitutes deemed knowledge on the Applicant and therefore, ignorance of CIRP cannot be pleaded as a justifiable excuse for delay in filing the claim.

8. Counsel for the Applicant submits that since the Applicants are residing in Kolhapur, the Applicants cannot be expected to know about the CIRP of the Corporate Debtor when the public announcement regarding the same was published in the newspapers in Mumbai with very limited circulation. According to the learned counsel, such publication is in violation of Regulation 6 of the CIRP Regulations. However, we are unagreeable with the aforesaid submission. As per Regulation 6(2)(b)(i) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the public announcement shall be published in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the Corporate Debtor and any other location where in the opinion of the interim resolution professional, the Corporate Debtor conducts material business operations. Thus, it is not mandatory to make an announcement in the newspapers having wide circulation across the state or country or across the location where the Applicants reside. In

the present case, the Public Announcement of the CIRP of the Corporate Debtor has been made in the two newspapers viz. Financial Express and Mumbai Lakshadeep on 24.11.2019 which are in circulation at the place/location where the registered office of the Corporate Debtor is situate. Therefore, the plea of the Applicants that the public announcement was made in breach of Regulation 6 (supra) cannot be accepted. Further, the plea that since the Applicants reside far away from Mumbai, therefore they cannot be expected to know of the CIRP is equally untenable as once the public announcement is made under Section 15 read with Regulation 6 (supra), it shall be deemed to be communicated to the creditors of the Corporate Debtor (including the Applicants herein) under proviso to Regulation 6A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

9. On perusal of records, we find that the Agreement for Sale is undated and unregistered. The Applicants have not annexed the copy of Demand Draft dated January 17, 2013 to show that they have made the payment of Rs. 35,00,000/- to the Corporate Debtor towards the sale consideration for purchase of the flat. The Applicants claims to have paid Rs. 10,85,750/- in cash to the Corporate Debtor towards, *inter-alia*, the consideration of a parking slot for four wheeler and one time maintenance, however, no receipt or any other document evidencing the payment(s) made in cash have been placed on record by the Applicant. Further, we also find that the 'Receipt' annexed by the Applicant at 'Annexure-3' to the Application is undated, the said Receipt does not contain any reference to the Demand Draft dated January 17, 2013 and name of the place and names and signature of the witnesses in the said Receipt are also blank. The Respondent has

contended in his Affidavit-in-Reply that the claim of Applicant is neither recorded in the books of accounts of the Corporate Debtor nor recorded with any information utility. Therefore, the Respondent had no reason to incorporate the purported claim of the Applicant into the Information Memorandum at any point of time.

10. Further, we find that the Resolution Plan submitted by Planet Builders and Developers was unanimously approved by the Members of the CoC in its 13th meeting held on 15th November, 2021 and 19th 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. CIRP is a process which is required to be completed in a time bound manner for achieving the purpose of value maximisation for all creditors. The Resolution Plan cannot go back and forth thereby making CIRP an endless process.

11. Counsel for the Applicant has relied upon the following precedents in support of his submissions:

- i. Judgment of Hon'ble NCLAT in the case of Puneet Kaur v/s. K.V. Developers Pvt Ltd. (2022 SCC Online NCLAT 245);
- ii. Order dated 03.03.2023 of NCLT in Company Appeal No. 9 of 2022 in CP(IB) No. 2517/MB/2018;
- iii. Judgment of the Hon'ble Supreme Court in the case of State Tax Officer v/s. Rainbow Paper Ltd (Civil Appeal No. 1661 of 2020);
- iv. Order dated 06.06.2019 in CA Nos. 1083(PB)/2019 & 1084(PB)/2019 of the Hon'ble NCLT, Principal Bench;

- v. Order dated 06.08.2018 of the Hon'ble NCLT, Kolkata Bench in CA(IB) Nos. 273, 629 & 671 of 2018 in CP(IB) No. 699/KB/2017;
- vi. Order dated 16/06/2022 of the Hon'ble NCLT, Indore Bench in IA No. 99(MP)/2022.

12. In view of the law laid down by the Hon'ble Supreme Court in RPS Infrastructure Ltd v/s. Mukul Kumar & Anr. vide Judgment dated September 11, 2023 in Civil Appeal No. 5590 of 2021, the precedents of NCLT and NCLAT, which have been relied upon by the Counsel as above, are prior to the judgment of RPS Infrastructure Ltd (supra) and hence, those precedents cannot be applied or considered anymore to condone the delay where the claim has been filed after the approval of the resolution plan by the CoC even though the plan is not approved by the Adjudicating Authority. Prior to the judgment of Hon'ble Apex Court in RPS Infrastructure Ltd (supra), there were divergent views on whether the claim can be admitted after the approval of resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code. In some of the cases, including the precedents relied upon by the Applicant, the Adjudicating Authority as well as the Appellate Authority under the Code, taking a lenient view, were inclined to condone the delay in admitting the belated claim of the claimant even if the same was filed after the approval of the resolution plan by the CoC but before its approval by the Adjudicating Authority u/s 31 of the Code on the reasoning that the resolution plan becomes final only upon its approval by the Adjudicating Authority u/s 31 of the Code and therefore, there was some room left to accommodate the belated claims by the creditors/claimants, which were filed after the

approval of resolution plan but prior to its approval by the Adjudicating Authority u/s 31 of the Code.

13. While in some other cases, such as Mukul Kumar v. RPS Infrastructure Ltd. (Judgment dated 30th July, 2021 in Company Appeal (AT) (Insolvency) No. 1050 of 2020), the Hon'ble NCLAT had held as follows: “34. *With the aforesaid, we are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are entertained the CIRP 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 time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated.*”. This matter went in appeal before the Hon'ble Supreme Court of India and the law in this regard, as discussed below, has now been settled by the Hon'ble Apex Court.

14. The Hon'ble Supreme Court has observed in the judgment of Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors. reported in (2020) 8 SCC 534 as follows: “*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 into uncertainty amounts payable by a prospective resolution applicant who would successfully take 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. This the successful resolution applicant does on a fresh slate,*

as has been pointed out by us hereinabove.”

15. The Hon'ble Supreme Court in M/s. RPS Infrastructure Ltd v/s Mukul Kumar & Anr. (neutral citation: 2023 INSC 816) has observed as under:

“21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

16. Counsel for the Applicant seeks to distinguish the judgment of RPS Infrastructure Ltd. (supra) on facts by submitting that in the said case, RPS Infrastructure Ltd was a commercial party and therefore, they ought to have known the CIRP; whereas in the present case, the Applicants are not a commercial party and hence, the law laid down in RPS Infrastructure Ltd would not apply to the facts of the instant case. We are unable to agree with the aforesaid contention. The only issue before the Hon'ble Apex Court in RPS Infrastructure Ltd. (supra) was whether the claim pertaining to an arbitral award, which is in appeal under Section 37 of the said Act, is liable to be included at a belated stage – i.e. after the resolution plan has been approved by the COC. In the said case, even though the Corporate Debtor was a party

to the arbitration proceedings, yet the Appellant therein (i.e. RPS Infrastructure Ltd) was required to lodge its claim before the IRP/RP of the Corporate Debtor. However, since the claim was filed after the resolution plan had been approved by the CoC, the Hon'ble Apex Court dismissed the appeal and upheld the impugned NCLAT Order. The Hon'ble Supreme Court observed that in any case the plea of not being aware of newspaper pronouncements is not the one which should be available to a commercial party. However, in our considered view, the Hon'ble Apex Court's judgment in the aforementioned case should not be interpreted to mean that if the claimant is a non-commercial entity, then the plea of not being aware of newspaper pronouncements should be available in order to condone the delay in filing the claim. This interpretation of the judgment of the Hon'ble Supreme Court of India in RPS Infrastructure Ltd. (supra) is thoroughly misconceived as also untenable.

17. Even though the Corporate Debtor was a party to the consumer case filed by the Applicants, the same does not dispense the Applicants from the obligation of filing their claim before the Respondent or the erstwhile IRP, in a time bound manner. It is not open to the Applicants to contend that since the consumer case (in which the Corporate Debtor was a party) was awarded in favour of the Applicants, the Respondent should have been aware and included the claim of the Applicants in the list of creditors even if the Applicants had not submitted their claim in time.
18. Hence, after having due regard to the law settled by the Hon'ble Supreme Court, as discussed above, we are of the considered view that the claim of the Applicant cannot be entertained at such a belated stage

where the resolution plan has been unanimously approved by the Committee of Creditors and the same is pending for the approval of the Adjudicating Authority. At this stage, we cannot allow to unleash the hydra-headed monster of undecided claim(s) on the successful resolution applicant. Even otherwise, the Applicant has no good case on merits. Further, the Applicants have failed to offer any satisfactory explanation to condone their delay in filing the claim before the Respondent. Hence, on all counts, the present application is liable to be dismissed.

19. In the facts and circumstances of the case and in view of the aforesaid discussions, we are not inclined to condone such a long, unjustified and unreasonable delay of 1357 days on the part of the Applicants in filing their claim before the Respondent and hence, **we hereby dismiss IA No. 4154 of 2023** with no order as to costs.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)