

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

**Company Appeal No. 9 of 2022
In CP 2517 OF 2018**

Under Section 42 of the Insolvency and
Bankruptcy Code, 2016.

Dr. Shankar Sawant

Having address at: Flat No. 17, Building
No. 1, Government Colony, K.K. Marg,
Near Mahalaxmi Race Course, Haji Ali,
Mumbai, Maharashtra- 400 036

Dr. Sandhya Sawant

Having address at: Flat No. 17, Building
No. 1, Government Colony, K.K. Marg,
Near Mahalaxmi Race Course, Haji Ali,
Mumbai, Maharashtra- 400 036

.....Applicants

Vs.

Mr. Arun Kapoor

Resolution Professional

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

....Respondent

In the matter of

Capri Global Capital Ltd.

... Financial Creditor

Vs

Monarch Brookefields LLP

... Corporate Debtor

Order delivered on: 03.03.2023

Coram:

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

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

Appearances:

For the Applicants : Mr. Vishwanath Patil, Advocate
For the Respondent : Mr. Amir Arsiwala, Advocate

ORDER

Per: Shyam Babu Gautam, Member Technical

1. This is an Application filed by the Applicants, Shankar Sawant and Sandhya Sawant, seeking the following reliefs:

“a) To give necessary directions to the Resolution Professional of Monarch Brookefields LLP (Under Liquidation) to accept and admit the claims of the Applicants;

b) Condone the delay in filing of this Application, and claims before the Liquidator due to the aforesaid practical difficulties which was unintentional.

c) Any other orders as the Hon'ble Tribunal may deem fit.”

2. The Applicants submit that they decided to purchase a Flat in a new project being developed by the Corporate Debtor to be constructed at Kalamboli in Navi Mumbai. On payment of a token amount of Rs. 1,00,000/- (Rupees One Lakh Only), the Corporate Debtor issued an Allotment Letter vide which Flat No. 402, “Florida” Building (hereinafter referred to as “said Flat” for the sake of brevity) was allotted to the Applicants. Subsequently, the Applicants made a series of payments to the Corporate Debtor on demand and the same is tabulated hereinbelow:

Sr. No.	Date	Bank	Cheque No.	Account Holder	Amount (in Rs.)
1.	23/01/2011	MMC	033374	Shankar Sawant	1,00,000/-
2.	12/11/2013	Axis	0077792	Shankar Sawant	3,00,000/-
3.	28/11/2011	MMC	036160	Shankar Sawant	2,00,000/-
4.	28/11/2011	Axis	052181	Shankar Sawant	4,00,000/-
5.	28/11/2011	ICICI	134963	Sandhya Sawant	8,00,000/-
6.	9/12/2011	ICICI	134964	Sandhya Sawant	4,00,000/-
7.	9/12/2011	ICICI	134965	Sandhya Sawant	4,00,000/-
8.	9/12/2011	ICICI	134966	Sandhya Sawant	4,62,000/-
9.	25/08/2015	Axis	324517	Shankar Sawant	2,00,000/-
10.	25/08/2015	Axis	324518	Shankar Sawant	2,20,000/-
11.	25/08/2015	Axis	324519	Shankar Sawant	30,000/-
	TOTAL (Rupees Thirty-Five Lakhs Twelve Thousand Only)				35,12,000/-

Copies of Financial Statements evidencing the abovementioned transactions have been duly annexed to this Application.

3. The Applicants further submit that an **Agreement of Sale dated 14th September 2015** was executed and registered with respect to the said Flat by and between the Applicants and the Corporate Debtor, copy of which has been attached to this Application. The Corporate Debtor kept delaying the handing over of possession of the said Flat to the Applicants. Meanwhile, the Applicants learnt about the initiation of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor vide Order dated **27th September 2019** and filed their claim for

an amount of Rs. 55,30,269/- before the Resolution Professional (RP) i.e. the Respondent, on 2nd February 2022, copy of which has been annexed to this Application. The Respondent addressed an **e-mail dated 7th February 2022** and rejected the claim of the Applicants on the ground that the Resolution Plan has been approved by the members of the Committee of Creditors (CoC) of the Corporate Debtor and the same has been presented before this Tribunal on 2nd December 2021 of obtaining the Tribunal's approval as a result of which the Respondent is not in a position to admit the claim. Hence, this Company Appeal was filed by the Applicants on **28th July 2022**. The Respondent has not filed any Reply to this Application.

4. We have heard the Counsel appearing for the Applicant and the Counsel appearing for the Respondent. On perusal of the relevant documents annexed to this Petition, it is noted that a valid Agreement exists between the Applicants and the Corporate Debtor vide which the said Flat was purchased by the Applicants for a total consideration of Rs. 35,12,000/-. The Financial Statements annexed to this Application present ample proof of the fact that the periodic payments made by the Applicants were deposited in the account of the Corporate Debtor. Keeping this in view, it is evident that the sole issue for consideration before us is as to whether the Respondent RP is justified in rejecting the claim of the Applicants who are homebuyers in the project constructed by the Corporate Debtor on the ground of filing the claim belatedly. In this regard, it is observed that since the Resolution Plan is still pending adjudication before this Tribunal, the right of the homebuyers to raise their claim before the RP would not cease to exist. In fact, it is now settled by the Hon'ble Supreme Court in the case of *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction*

Company Limited, (2021) 9 SCC 657, that it is only after the Resolution Plan is approved by the Adjudicating Authority that all such claims not forming a part of the Plan shall stand extinguished.

5. The Applicant has rightly pointed out the decision of the Hon'ble NCLAT in the case of ***Puneet Kaur vs. K V Developers Pvt. Ltd. (2022 SCC OnLine NCLAT 245)*** wherein the rights of bonafide homebuyers were addressed at length in the following words:

“18. It is thus clear that extinguishment of claim of the Appellant(s) shall happen only after approval of the Plan by the Adjudicating Authority. The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC.”

.....

21. The liabilities which have been undertaken by the Corporate Debtor, huge money received by the Corporate Debtor from Homebuyers, whose claims, which could not be filed within time, could not be wished away by the Resolution Professional, on the convenient ground that claims have not been filed by such Homebuyers. The purpose of CIRP of Corporate Debtor is to find out all liabilities of the Corporate Debtor and take steps towards resolution. Unless all liabilities of the Corporate Debtor are not known or included in the Information Memorandum, the occasion to complete the CIRP shall not arise.”

6. Therefore, it has been established that the Applicants being bonafide homebuyers retain the right to submit their claims to the Respondent. The delay caused by the Applicants in filing the claims before the

Respondent is condoned. Accordingly, the Respondent is directed to accept and admit the claim of the Applicants.

7. With the above observations, **Company Appeal No. 9 of 2022** is accordingly **allowed** and disposed of.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

Anusha
03.03.2023