

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 547 of 2023

IN THE MATTER OF:

Arun KapoorAppellant
Resolution Professional of Monarch Brookefields LLP

Vs.

Shankar W Sawant & Anr.Respondents

With

Company Appeal (AT) (Ins.) No. 594 of 2023 &
I.A. No. 1973 of 2023

IN THE MATTER OF:

Arun KapoorAppellant
Resolution Professional of Monarch Brookefields LLP

Vs.

Sikandar MullaRespondent
A homebuyer of Monarch Brookefields LLP

Present:

For Appellant: Mr. Amir Arsiwala, Advocate

For Respondent:

O R D E R

01.08.2023:

Company Appeal (AT) (Ins.) No. 547 of 2023:- This appeal has been filed against the order dated 03.03.2023 by which order Adjudicating Authority has allowed the Company Appeal No. 9 of 2022 directing the Resolution Professional 'Monarch Brookefields LLP' under Liquidation to accept and admit the claim of the applicants.

2. Resolution Professional aggrieved by the said order has come up in this appeal. Learned Counsel for the Resolution Professional submits that plan has

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already been approved by the CoC and under consideration before the Adjudicating Authority.

3. At this stage acceptance of the claim of the respondent could not be justified. It is further submitted that respondents have made payment of only Rs. 11,50,000/- by direction has been issued to accept the claim of Rs. 35,12,000/-.

4. We have considered submissions of the appellant and perused the records.

5. In Paragraph 2 of the order Adjudicating Authority has held:

“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:

S.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.	09/12/2011	ICICI	134964	Sandhya Sawant	4,00,000/-
7.	09/12/2011	ICICI	134965	Sandhya Sawant	4,00,000/-
8.	09/12/2011	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.

6. Paragraph 2 give details of all bank transactions and finding has been recorded that financial statements evidencing the above mentioned transactions have been duly annexed by this application.

7. We have no reason to doubt the aforesaid finding recorded by the Adjudicating Authority.

8. In so far as, the submission of the appellant that plan is under consideration before the Adjudicating Authority, it is open for the Resolution Professional to take appropriate steps to bring into notice of the CoC/Adjudicating Authority about the order passed by Adjudicating Authority which is impugned in the appeal.

9. We do not find any error in the order impugned. Appeal is dismissed.

Company Appeal (AT) (Ins.) No. 594 of 2023:- Heard Learned Counsel for the Appellant. This appeal has been filed against the order dated 17.03.2023 passed by the Adjudicating Authority allowing the I.A. No. 313 of 2022. I.A No. 313 of 2022 has been filed by the respondent an allottee of the Corporate Debtor. In the application respondent was allotted Flat No. 402 by the Corporate Debtor. There are certain issues regarding the payments. It appears that certain payments were made by the allottees to ex-directors which were not reflected in the records of the Corporate Debtor.

2. Adjudicating Authority after hearing the parties, however, returned a findings that the amount of Rs. 40 lakhs which is claimed by RTGS by the allottees was given to another group company, hence, that amount was not acceptable. However, other three payments of Rs. 9,36,000/-, Rs. 11,48,000/-

and Rs. 2,40,760/- have been accepted. In paragraph 8 of the Judgment following findings have been recorded by Adjudicating Authority.

“Notwithstanding the above, the transfer of the amount of Rs. 40 Lakhs from Monarch Realty to the account of the Corporate Debtor cannot be countenanced. At this point, it is pertinent to note the summary of the payments made by the Applicant as follows:

Date	Amount	Mode of payment	Payee name
7 th July 2014	40,00,000/-	Bank of India (RTGS)	Monarch Realty Management Services (Group Company)
17 th July 2014	9,36,000/-	Cash	Corporate Debtor
25 th May 2016	11,48,000/-	Bank of India (Pay Slip)	Corporate Debtor
25 th May 2016	2,40,760/-	Kotak Bank (Cheque)	Corporate Debtor

The transactions pertaining to the three transfers made in favour of the Corporate Debtor dated 17th July 2014 and 25th May 2016 are evidenced by the receipts and Financial Statements attached to the Application and therefore, it is established that the corresponding amounts were indeed transferred by the Applicant to the Corporate Debtor's account. Hence, we are of the view that the Respondent's decision to reject the entire claim of the Applicant was erroneous. Though the transfer of Rs. 40 Lakhs to the Corporate Debtor cannot be proved, the transfer of the remaining amounts aggregating to Rs. 23,24,760/- (Twenty-Three Lakhs Twenty-Four Thousand Seven Hundred and sixty only) via the abovementioned modes of payments ought to be considered by the Respondent while examining the claim of the Applicant.”

3. The Resolution Professional has filed the appeal challenging the said order. Learned Counsel for the appellant submits that it is well settled that disbursement of the amount is pre-condition. He relied on Judgment of Hon'ble Supreme Court in *New Okhla Industrial Development Authority Vs. Anand Sonbhadra (2023) 1 Supreme Court Cases 724*.

4. There can be no dispute to the proposition that disbursement is a pre-condition for allotment.

5. Learned Counsel for the appellant has referred to the application filed by the respondent where they have claimed that certain payments were made which was not reflected in the records of the Corporate Debtor but that was misappropriated by ex-director. Be as it may, when the specific findings have been recorded by the Adjudicating Authority regarding three payments in paragraph 8, we see that the said averments made in the application does not help the appellant in any manner.

6. Present is the case where learned counsel for the appellant himself has submitted that agreement to sell has been executed in favour of Respondent No. 1 with regard to premises in question. In so far as the three payments which were accepted by Adjudicating Authority, the findings have been recorded by Adjudicating Authority that the corresponding amount were indeed transferred by the applicant to the corporate debtor's account, we see no reason to doubt the aforesaid finding, contention raised by the respondent were considered and findings have been returned. We do not find any merit in the appeal, appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

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