

In the National Company Law Tribunal  
Mumbai Bench.

C.P. No. C.P. (IB)-1798/(MB)/2017

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Shrishankar Menon,  
Power of Attorney holder of :  
1. Mrs. Rukmini P. Nair &  
2. Mrs. Veena S. Menon : Petitioners/ Operational Creditors

V/s

Ram Agri Infra India Pvt. Ltd. : Respondent/ Corporate Debtor

Heard on : 17.12.2018

Order delivered on: 28.12.2018.

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

Present:

For the Petitioner(s) : 1. Mr. Nitesh V. Bhutekar, Advocate.

For the Respondent(s) : 1. Mr. Brijesh V. Shukla, Advocate.

*Per M.K. Shrawat, Member (Judicial).*

**ORDER**

1. A Petition was filed on 22.12.2017 in Form No.5 by the Power of Attorney holder Mr. Shrishankar Menon on behalf of Mrs. Rukmini P. Nair and Mrs. Veena S. Menon in the capacity of Operational Creditor, against M/s. Ram Agri Infra India Pvt. Ltd., Mira Village, Mira Road, Mumbai-401 101 Corporate Debtor to initiate Corporate Insolvency Resolution Process to claim an outstanding Operational Debt amount of ₹10,97,445/- as under:-

<b>"Particulars of Claim"</b>			
<i>Sr. No.</i>	<i>Name of the Party</i>	<i>Principal amount</i>	<i>Amount of Interest @ 9% from the date of agreement</i>
1	Rukmini P. Nair	3,37,500/-	From 28.07.2012 till 30.09.2017 (sic) is ₹1,56,735/-
2	Veena S. Menon	4,12,500/-	From 28.07.2012 till 30.09.2017 is ₹1,90,710.61/-
<b>Total</b>		<b>7,50,000/-</b>	<b>3,47,445.61/-</b>
<b>Total due amount including interest</b>			<b>10,97,445.61/-</b>

”

2. Brief history of the case is as follows:-

2.1. The Operational Creditors had entered into an Agreement for the purchase of Plot bearing No. D/62/12 in Phase II admeasuring approximately about 900 sq. ft. each, situated in a housing project in the name and style of Dreamsity at Village Kude, Taluka Palghar, District Thane/ Palghar. It is alleged that the Agreement to allot without Possession dated 28<sup>th</sup> day of July, 2012 was executed by and between Rukmini Purushothaman Nair and M/s. Ram Agri-Infra India Private Limited. Similar Agreement was executed on 10.08.2012 by and between Veena Shrisankar Menon and the impugned Corporate Debtor.

2.2. It is stated by the Petitioners/ Operational Creditors that vide the Agreements *supra* it was agreed by and between the parties that if the possession of the said plot and or the permissions like N.A. permission for the approval of plans were not forthcoming or delayed beyond the period of 36 months from the date of Agreement, the proposed acquirer have option to withdraw from the scheme and in that event, Corporate Debtor would refund the entire amount paid by the said proposed acquirer with the rate of interest at 9% p.a. from the date of Agreement.

2.3. It is submitted that the Operational Creditor had paid the entire amount of ₹4,12,500/- each to the Corporate Debtor and in turn the Corporate Debtor had issued the Reservation Letter dated 11.06.2012 in favour of Rukmini Nair and Veena Shrishankar Menon, the Operational Creditors. Receipts were issued by the Corporate Debtors, copies are placed on record as Exhibit G1 to G4 and Exhibit H-1 to H-6 respectively to the Petition.

2.4. Due to non-performance of the Corporate Debtor, the Operational Creditors had issued a joint letter along with Applications to the Corporate Debtor on 04.03.2016 for cancellation of Agreements dated 28.07.2012, entered into with Rukmini Nair and 10.08.2012 entered into with Veena Menon. It is alleged that the same were received by the Corporate Debtor on 04.03.2016 and 05.03.2016. However, no action was taken.

2.5. It is also submitted by the Operational Creditors that the Corporate Debtor had assured them in its letter dated 09.12.2016 that the repayment of aggregate of ₹8,25,000/- against the bookings of Plot Nos. D/62/12 and D/62/11 done by them within 4 to 6 months.

2.6. The Operational Creditor alleged that the Corporate Debtor issued Three Cheques viz. dated 05.01.2017 for ₹1 Lakh, dated 10.01.2017 for ₹1 Lakh, dated 10.01.2017 for ₹50,000/- towards the outstanding payment in the name of Rukmini Nair, drawn on Axis Bank. It is further alleged that the First Cheque when deposited was dishonoured with the remark "Insufficient Funds". Other cheques were not deposited as allegedly requested by the Corporate Debtor. It is further stated that the Corporate Debtor had then assured that the entire payment with interest would be made within 1 month.

2.7. It is also stated by the Petitioner/Operational Creditors that the Corporate Debtor had made of 3 NEFT payments aggregating to ₹75,000/- (10,000/- + 25,000/- + 40,000/-) in lieu of the dishonoured Cheques. No other amounts have been received from the Corporate Debtor.

2.8. As the payments were defaulted, the Operational Creditors issued a legal Notice dated 21.01.2017 requesting the Corporate Debtor to make payment within 14 days from the receipt of the said legal Notice. However, no reply to the Notice was given by the Corporate Debtor nor payments made.

2.9. Thereafter, the Operational Creditors issued Demand Notice u/s.8 of The Code on 22.07.2017 demanding the payment of ₹8,25,000/- from the Corporate Debtor along with Interest @ 9% p.a. No reply to this Section 8 Notice was given by the Corporate Debtor nor the amounts paid. The Petitioner alleged that the said Demand Letter was returned back with remark "Left". The Petitioners also stated that they served the said Demand Notice at the Registered Office of the Corporate Debtor, however, no reply nor payment was received.

3. Number of opportunities were given to both sides to settle the matter, however, the matter remained unresolved. Learned Representative of the Corporate Debtor had not appeared on the latest hearing date i.e. on 17.12.2018.

### **FINDINGS**

4. Considering the totality of the facts and circumstances of the case discussed *supra*, I am of the opinion that the default as defined u/s. 3(12) of The Code is established. Demand Notice has been issued to the Respondent Debtor, however, the Respondent Debtor has not raised any “dispute” of the outstanding claim within the 10 days’ time prescribed u/s.8(2) of The Code.

5. As a consequence, keeping the admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/ Corporate Debtor, it is my conscientious view that this Petition deserves “Admission”.

6. The Operational Creditor has proposed the name of the Interim Resolution Professional Mr. Manishkumar Patel, Registration No. IBBI/IPA-001/IP/IP-01342/2018-19/12061, Address: 1, Vishram Apartment, L.B.S. Road, Thane – 400602. The IRP has submitted his consent in Form No.2 and also certified that no Disciplinary Proceedings are pending against him. The proposed IRP is hereby appointed. Upon Admission of the Application and Declaration of “**Moratorium**” the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

7. Having admitted the Petition/ Application the provisions of “**Moratorium**” as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of

any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during “**Moratorium** Period”. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

8. Accordingly, this **CP (IB)-1798/(MB)/2017 stood** Admitted.

9. The Corporate Insolvency Resolution Process shall commence from the date of this order.

Sd/-  
**M.K. SHRAWAT**  
Member (Judicial)

Date : 28.12.2018.  
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