



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

COURT – IV

13.

C.P. (IB)/128(MB)2021

CORAM:

SHRI PRABHAT KUMAR  
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI  
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON 11.01.2023

NAME OF THE PARTIES: Sunjeet Communications Pvt. Ltd.  
Vs.  
Rashmi Metro Homes Llp

SECTION: 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

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**ORDER**

**The Court is convened through Video Conference.**

1. Mr. Jonathan Jose i/b Argus Partners, Ld. Counsel for the Operational Creditor (OC) present. Mr. Amir Arsiwala, Ld. Counsel for the Corporate Debtor (CD) present.
2. The Operational Creditor/Purchaser filed the present company petition on 16.01.2021 under Section 9 of the IBC, 2016 claiming the principal amount of Rs.2,66,74,085/- along with interest of Rs.2,07,12,198/-. The total claim amount of Rs.4,73,86,283/- and the date of default is 11.03.2017. Subsequent to this default, the Operational Creditor and Corporate Debtor entered into the MOU on 18.01.2018, i.e. after 14 months of the aforesaid default date mentioned by the OC. In this MOU, the CD had allotted few under construction flats and agreed to deliver the same after completion thereof. The OC had agreed that it shall discharged the CD from the previous default dated 11.03.2017. Admittedly, the allotment letters of the flats are handed over by the CD to the OC and some of the sale agreements are also executed by the CD.



3. In view of the MOU entered by the parties, the previous default dated 11.03.2017 does not survive and the present petition filed by OC for default dated 11.03.2017 is not maintainable.
  
4. In view of the above findings, the OC has no locus to file present Petition under Section 9 of the IBC for the default dated 11.03.2017. It is clarified that any non-compliance of the MOU shall result into fresh cause of action i.e. non-completing the flats by CD and handing over the physical possession of the flats etc. The OC may avail whatever remedy is available under the law for the fresh default in terms of MOU. Hence, the C.P. (IB)/128(MB)2021 is **dismissed for not maintainable**.

Sd/-  
**PRABHAT KUMAR**  
Member (Technical)

Sd/-  
**KISHORE VEMULAPALLI**  
Member (Judicial)