

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 19.08.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 123/BB/2020	For Pronouncement of orders	Sec 9 of I&B code 2016	Dr Kalathur Thomas Thomas	Ms. Namrata Miriam, Advocate	LGCL Urban Homes(India) LLP	R. Krishnamurthy

ADVOCATE FOR PETITIONER/s:

Ms. NAMRATA MIRIAM- Advocate

ADVOCATE FOR RESPONDENT/s:

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ORDER

C.P (IB) No. 123/BB/2020 is disposed of by separate order

[Signature]

MEMBER (T)

[Signature]

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.123/BB/2020
U/s. 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

Dr. Kalathur Thomas Thomas

Also known as K.T.Thomas

S/o. Late Kalathur Geevarghese Thomas

Aged about 85 years,

R/a. No.374A, Millenium Street,

Near Millenium School,

Horamavu Agara,

Bengaluru – 560 043

- Petitioner/Operational Creditor

And

M/s. LGCL Urban Homes (India) LLP,

A Limited Liability Partnership

No.12/1, Rest House Road,

Bengaluru – 560 001 & Anr.

- Respondents/Corporate Debtors

Date of Order: 19th August, 2020

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Petitioner : Ms. Namrata Miriam

For the Respondents : Shri R. Krishnamurthy

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.123/BB/2020 is filed by Dr. Kalathur Thomas Thomas ('Petitioner/Operational Creditor'), U/s. 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate

Corporate Insolvency Resolution Process (CIRP) in respect of M/s. LGCL Urban Homes (India) LLP & Anr. (Respondent/ Corporate Debtor), on the ground that it has committed default for an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) along with interest @18% p.a.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- (1) Dr. Kalathur Thomas Thomas (Petitioner/Operational Creditor) had paid advance for the unit bearing No.63 in the project "LGCL New Life", Bengaluru, on 9th September, 2018, after payment of refundable deposit amount of Rs.20,00,000/- towards title inspection. This advance amount of Rs.20,00,000/- was paid, based on a specific assurance from the representative of the Respondent Nos.1 & 2, that this whole advance amount paid would be refunded immediately by the Respondent to the Petitioner, if not satisfied fully with regard to the marketable title of property.
- (2) M/s. LGCL Urban Homes (India) LLP, is limited Liability Partnership. The Vice President of the Respondents viz., Mr. Sujan had collected the two cheques from the Petitioner's residence for Rs.20,00,000/- (Rupees Twenty Lakhs only) in the following manner :-
 - a. Rs.5,00,000/- (Rupees Five Lakhs only) vide cheque bearing No.801768 dated 9th September, 2018, drawn on Indian Overseas Bank.
 - b. Rs.15,00,000/- (Rupees Fifteen Lakhs only) vide cheque bearing No.801770 dated 23rd September, 2018, drawn on Indian Overseas Bank.
- (3) Since the Petitioner was not convinced with title of property deficient documents as mentioned earlier in clause-4. The Petitioner, in his letter dated 10th November, 2018 to the Respondents had conveyed in writing in explicit terms that the

Petitioner was not convinced with regard to the 3 critical issues with regard to the marketable title of the property and to return the operational debt paid of Rs.20,00,000/-. Thus, the Petitioner has issued the demand notice on Respondent Nos.1 & 2, for refunding the advance of Rs.20,00,000/-. However, no response was forthcoming to the Petitioner's letters. Hence, the Respondent No.1 was physically met, with a second letter of 18th December, 2018.

- (4) The cancellation of the Booking, as conveyed in three letters to the Respondents and based on the written assurances of the Vice President of Respondents viz., Mr. Sajan who had agreed to return the entire advance immediately on the Petitioner's requisition "for issues related to the property documents or for personal issues, till agreement execution". Since, no agreement had been signed, the Respondent Nos.1&2 had no option but to return the token advance immediately on the Petitioner's written submission of demand notice, already submitted two times dated 10th November, 2018, 18th December, 2018 and a fresh one on 19th December, 2018.
- (5) The Respondent Nos.1 & 2 issued a letter acknowledging no dispute to the unpaid operational debt vide their letter dated 19th December, 2018 accompanied by post-dated cheque for amount of outstanding debt, numbered 001781 dated to 19th June, 2019 or payable six months later, instead of paying the outstanding immediately. Due to the old age and ill-health of the Petitioner and having no other option, the Petitioner reluctantly agreed to receive the post-dated cheque for the amount of outstanding debt of Rs.20,00,000/- dated 19th June, 2019. However, the Respondent Nos.1 & 2 urgently couriered a letter dated 14th June, 2019 to the Petitioner, exactly 5 days before the encashment of the cheque No.001781 dated 19th June, 2019, intimating the Petitioner of having issued express

stop payment instructions to the Respondents own bankers. However, this was done without first discussing the matter with the Petitioner for his concurring with extension of PAY-BY date of the debt, thereby committing default on repayment of the debt involved. The Respondent Nos.1 & 2 had also enclosed fresh cheques No.002091 and 002092 dated 10.02.19 for repayment of the Debt of Rs.20,00,000/- and Rs.34,904/- as interest (voluntarily), intimating of a further delay of “three months” time or to Sep 2019. Two days before the date of encashment of new cheques nos.002091 and 002092 dated 19.09.2019, the Respondent Nos.1 & 2 couriered a second letter dated 17th September, 2019 to the Petitioner, informing of stopping payment of the cheques no.002091 and 002092 dated 19.09.2019 thereby committing a second default on repayment of the debt. The letter was accompanied by new cheques for repayment of the Debt of Rs.20,00,000/- with their PAY-BY date extended now to December, 2019, dated 19th December, 2019 bearing No.002196 drawn on HDFC Bank for Rs.20,00,000/- and Cheque No.002197 drawn on HDFC Bank for Rs.34,904/-. The new cheque bearing No.002196 dated 19th December, 2019 drawn on HDFC Bank for Rs.20,00,000/- have been returned by the Bank for reasons “payment stopped by the drawer.

- (6) The Respondents have been blaming “sluggish market condition” “financial crunch” “state not stabilised” implying Bankruptcy thereby, for their repeated replacement of cheques without seeking concurrence or discussing, systematically invalidating previous cheques without seeking concurrence or discussing, systematically invalidating previous cheques issued over a period of an year, with precisely times stop-payment orders. This indicates to the Petitioner that the Respondents are insolvent to meet their financial obligations.



- (7) The Respondents are apparently by round tripping of small amounts of loan up to Rs.75 Crores channelled through successive NBFCs and closed in a timely fashion, but Operational Creditors like retail customers such as the Petitioner and material supplying vendors are caught in a debt cycle. Their unpaid debt pay for the operational expenses of Respondents are left high and dry, after drawing in operational creditors and customers like the Petitioner. Large numbers of projects are partially done and abandoned, neither completing the project nor returning Operational debts, due to lack of funds being generated, the Respondent Company is misusing title inspection deposit amount, misappropriating it for working capital requirements as is evident from the self-certificate of bankruptcy, with no escrow account visible where amounts in question are being deposited. The Petitioner is eligible for a penal interest payable at 18% p.a. simple interest on the debt outstanding from the date of first intimation vide demand notice served on 10th November, 2018. The Respondents should make good the payment of debt of Rs.20,00,000/- and interest @ 18% annually till the date of realization of payment.
- (8) Therefore, the instant Petition is filed for initiating CIRP against the Corporate Debtor.
3. The Respondent has filed its Statement of objections dated 15.07.2020, by inter alia contending as follows:
- (1) The Petition is not maintainable as the Petitioner has not issued prescribed notice under Rule 5 of the I & B (AAA) Rules, 2016 and also in the light of the Notification issued by the Ministry of Corporate Affairs dated 24.3.2020 whereby, in exercise of the powers conferred by the proviso to Section 4 of the IBC, the Central Government has specified One Crore Rupees as the minimum amount of default.



- (2) On 09.09.2018, the Operational Creditor submitted Application for Unit No.63, Type "S" of "LGCL New Life", Bangalore. Along with the Application, he also paid an Application fee of Rs.20,00,000/- as required. Vide letter dated 19.12.2018, the Operational Creditor informed the Corporate Debtor that due to some personal reasons, he withdraws the booking and requested to return the Application fee. In this connection, clause 6 of the terms and conditions of the booking which reads as under:

"Withdrawal and/or cancellation of the application by the allottee for whatever reasons, after submission of the application but before entering into the definitive agreements, entitles the company to deduct a sum of Rs.5 Lakh from the application Fee amount paid along with the application, and the balance sum if any, will be refunded to the allottee without any interest thereon."

- (3) However, vide letter dated 19.12.2018, the Operational Creditor was informed that his request has been considered favourably. Accordingly, a cheque bearing No.001781 dated 19.6.2019 for Rs.20,00,000/- was issued to him towards refund of the Application fee. Due to sluggish market condition in the real estate sector, the business and liquidity position of the Corporate Debtor was affected very badly. Therefore, vide letter dated 14.06.2019, the Corporate Debtor informed the Operational Creditor not to present the above cheque for collection. In lieu thereof, the Corporate Debtor issued a fresh cheque bearing No.002091 dated 19.9.2019 for Rs.20,00,000/- and another cheque bearing No.002092 dated 19.9.2019 for Rs.34,904/- (towards interest) to the Operational Creditor. In the same letter, it was also informed that the Corporate Debtor has issued Stop Payment instructions to the bank in respect of the previous cheque dated 19.6.2019. Subsequently, in the



light of the continued adverse market condition in the real estate sector, vide letter dated 17.09.2019, the Corporate Debtor once again informed the Operational Creditor not to present the cheque bearing No.002091 dated 19-9-2019 for Rs.20,00,000 for collection. In lieu thereof, the Corporate Debtor issued another fresh cheque bearing No.002196 dated 19-12-2019 for Rs.20,00,000 (towards refund of application fee) and another cheque bearing No.002197 dated 19-12-2019 for Rs.34,904/- (towards interest).

- (4) In the meanwhile, on 30.9.2019, the Operational Creditor committed a malicious act of publishing defamatory allegations against the Corporate Debtor in public domain with an intention of causing harm to the reputation of the Corporate Debtor. Due to malicious acts on the part of Petitioner, the Corporate Debtor reserve its right to issue stop payment instructions to the Bank to stop payment of the above cheques issued to the Petitioner.
- (5) It is worth noticing that the Operational Creditor has not initiated proceedings under Section 138 of the Negotiable Instruments Act, for the dishonour of the above cheques.
- (6) The Corporate Debtor is in the field of land development and construction of apartments, villas, row houses, etc. As on date, the Corporate Debtor is handling about 10 projects, which all multi-crore projects and which are progressing in different stages – from the stage of entering into Joint Development Agreement to the stage of execution of final sale deeds in favour of the home buyers. The total cost of all these projects is approximately more than Rs.100 crores. The Corporate Debtor has about 50 direct employees and has also given indirect employment to more than 500 persons. The Corporate Debtor is financially sound and solvent. Therefore, they have urged the Adjudicating Authority to dismiss the Petition.



4. Heard Ms. Namrata Miriam, learned Counsel for the Petitioner and Shri R. Krishnamurthy, learned Counsel for the Respondent, **through Video Conference**. We have carefully perused the pleadings of the Parties, and the extant provisions of the Code, the Rules made there under, and the law on the issue.
5. The facts as narrated above, it is not in dispute that the Petitioner has booked the unit in in question with Respondent and has paid Rs.20 Lakhs as advances. When the Respondent failed to establish title to the Property to the satisfaction of Petitioner, he has cancelled the booking of unit. The Respondent has issued cheques for the same along with interest. However, for the reasons best known to the Respondents, they have stopped payments and used to replace cheques due to their financial distress caused in real estate sector. The Respondents are avoiding to return the admitted advance payment to Senior Citizen, who is about 85 years of age, on one pretext or the other. And the latest being threatening of initiating defamation case against him and to stop payment of cheques in question.
6. On one hand, the Respondents are pleading they are solvent Company and the opposing the instant Petition vehemently by raising several technical and frivolously grounds. The Petitioner has alleged that the Respondents are committing defaults in respect of others too. It is a clear to initiate criminal case against the Respondent U/s 138 of NI Act. It is not fair on the part of Respondents to take un-tenable and un-justifiable pleas to deny the legitimate claim of the Petitioner and advising to file other cases. It is paramount of duty of any Court or Tribunal to render justice to genuinely suffering parties, instead of rejecting the litigation on mere technical grounds. The Respondent, while pleading not to initiate CIRP proceedings, as it is solvent, suggesting to initiate Criminal Proceedings U/s 138 of NI Act, against them.



7. Since the Petitioner being a Senior Citizen, aged about 85 years, cannot be forced to approach other judicial forms, as the material facts are not in dispute and it cannot be thrown on technical grounds. Since the Unit in question was booked on 10th September, 2018, cause of action arose in the year 2018, which is continuous cause of action as the Respondent used to issue cheques by replacing the existing cheques. Since Corporate Debtor is in the field of land development and construction of apartments, villas, row houses, etc. and it is stated to have handling about 10 projects, which approximately costs more than Rs.100 crores and having several employees, we are not inclined to initiate CIRP at present and wanted to give one more opportunity to the Respondent to pay the outstanding amount of 20, 00,000/- along with the interest @ 18% per annum within short time.
8. In the result, **C.P(IB)No.123/BB/2020** is hereby disposed of by directing the Respondent to return the deposited amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) along with Bank interest to the Petitioner, within a period of one month from the date of receipt of copy of this Order, failing which the Petitioner is entitled to file necessary Petition in terms of Code to initiate CIRP in respect of the Corporate Debtor for the same cause of action. No order as to costs.

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**