

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.128/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

Sunjeet Communications Private Limited

[CIN: U74300MH2003PTC140473]

...Operational Creditor

v/s.

Rashmi Metro Homes LLP

[LLPIN: AAI-7751]

...Corporate Debtor

Order Delivered on: 12.07.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Shyam Kapadia a/w Mr. Ranjit
Shetty, Mr. Yuvraj Choksy & Ms.
Monika Vyas, Learned Counsel
present.

For the Corporate Debtor:

Mr. Yogesh Bosmiya, Authorised
representative.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Sunjeet Communications Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Rashmi Metro Homes LLP, the Corporate Debtor.
2. The Corporate Debtor is a Limited Liability Partnership incorporated on 08.03.2017 under the Limited Liability Partnership Act, 2008. Its registered office is 601, Classic Pentagon, Western Express Highway, Chikuwadi, Andheri (East), Mumbai-400099. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Company Petition is filed on 16/01/2021 claiming an amount towards Principal of Rs. 2,66,74,085/- (Two Crore Sixty-Six Lakh Seventy-Four Thousand and Eighty-Five Rupees Only) and Interest @ 18% is Rs. 2,07,12,198/- (Two Crore Seven Lakh Twelve Thousand One Hundred and Ninety-Eight Only) aggregating to Rs. 4,73,86,283/- (Four Crore Seventy-Three Lakh Eighty-Six Thousand Two Hundred and Eighty-Three Only) is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the petition is 11.03.2017.
4. On 11.01.2023, the Adjudicating Authority by way of the Impugned Order, had rejected the Application primarily on the grounds of Non- Maintainability. The present applicant therefore preferred a Company Appeal (AT) (Ins) No. 371 of 2023 against the impugned order dated 11.01.2023 before National Company Law Appellate Tribunal. The same was allowed on 20.09.2023 and the impugned order was set aside and the matter was remanded back to this Tribunal. The relevant extract of the said order is reproduced below:

“7. The default which is claimed is from 11.03.2017 which is said to be continuing. The MOU was an intermediate step to deal with the default and it is categorical case of the

Operational Creditor that MOU was not implemented and even cheques given to the Operational Creditor were not honoured. We, thus, are of the view that default which was committed on 11.03.2017 is still continuing and original default could not be wiped out by the MOU.

8. It was categorical case that Corporate Debtor has not complied with its commitment and the total outstanding debt is there as indicated in the application. We are of the view that the Adjudicating Authority committed error in rejecting Section 9 application as not maintainable. In result, we allow the Appeal. Set aside order dated 11.01.2023 and revive the Section 9 application before the Adjudicating Authority to be heard and decided afresh in accordance with law.”

5. In view of the Order passed by the Hon'ble NCLAT, the Applicant filed an IA 4717/2023 for Restoring the Company Petition No.128/2021. The said IA was allowed and the CP was restored vide order dated 20.10.2023. The said matter was listed on 04.12.2023 for hearing wherein the Corporate Debtor stated that he had filed a Writ Petition against the said order passed by Hon'ble NCLAT and sought short adjournment.
6. On 08.12.2023, the Hon'ble Supreme Court passed an order in the Civil Appeal that, *“We do not find any Good ground and reason to interfere with the impugned judgement and hence, the appeal is dismissed”*. Thereafter, the said matter was listed for hearing on 18.06.2024.

Submissions advanced by the Operational Creditor are as follows:

7. The Operational Creditor submits that the Applicant is one of the leading advertising agencies providing holistic advertising solutions to its customers in all forms of media including print, television, digital and social media. The Applicant is accredited by Indian Newspaper Society ("INS") having established its presence in the market since 1992.
8. The Operational Creditor submits that the Corporate Debtor is carrying on its business as a Property Developer. The Corporate Debtor is a part of Rashmi Group of companies and its associate companies have been dealing with

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- Applicant since 2010 relating to advertisement and publication of their projects in various newspapers and other media. The Corporate Debtor provided to the Operational Creditor the work relating to advertisement and publication of their projects in newspapers/media. All such advertisements were duly published/released and accordingly invoices were raised by Applicant upon the Corporate Debtor for their advertisements from time to time. However, the Corporate Debtor failed to pay the invoices despite repeated reminders and assurances of the Corporate Debtor and its partners/officials from time to time.
9. The Operational Creditor submits that in or around January 2018, the Corporate Debtor along with its associate concerns/companies viz. M/s Rashmi Properties, Rashmi Housing Pvt. Ltd. (RHPL) and Rashmi Realty Builders Private Limited (RRBPL) offered to pay the dues of Applicant under its unpaid invoices raised on the Corporate Debtor, RHPL and RRBPL by allotment/sale of certain Flats of M/s. Rashmi Properties and accordingly, the said M/s. Rashmi Properties along with the Corporate Debtor, RHPL and RRBPL entered in to a Memorandum of Understanding dated 18th January 2018 (MOU) with the Applicant whereunder the Corporate Debtor, RRBPL and RHPL admitted their liability to the Applicant and, at the request of the Corporate Debtor, RHPL and RRBPL, M/s. Rashmi Properties agreed to sell its flats in its Building Project "Rashmi Signature" to the Applicant in settlement of the combined dues payable by the Corporate Debtor, RHPL and RRBPL to the Applicant. However, M/s Rashmi Properties could not obtain NOC of its lender for sale of its Flats to the Applicant in settlement of the said dues and consequently the actual sale of Flats to the Applicant did not materialize.
10. The Operational Creditor submits that thereafter a reminder was made to the Corporate Debtor for payment of its said invoices, which was duly acknowledged by the Corporate Debtor on January 17, 2019. Thereupon, the Corporate Debtor issued 21 cheques all dated January 18, 2019 in favour of the Operational Creditor aggregating to Rs.41,39,490 against some of the

outstanding invoices of Operational Creditor. However, when presented for payment on January 27, 2019, all the said cheques issued by the Corporate Debtor were dishonoured on January 29, 2019. Therefore, the Operational Creditor issued its Advocate's Notice dated February 10, 2019, to the Corporate Debtor and initiated proceedings against the Corporate Debtor and its partners under Section 138 of the Negotiable Instruments Act.

11. In the circumstances, aforesaid, the Operational Creditor, through its Advocates, issued Demand Notice dated February 07, 2019, to the Corporate Debtor under Section 8 of the Code. However, despite, the said Demand Notice, the Corporate Debtor has failed and neglected to pay the dues of the Operational Creditor. Therefore, the Operational Creditor initiated proceedings under section 9 of the Code against the Corporate Debtor.

Submissions advanced by the Corporate Debtor are as follows:

12. The Corporate Debtor submits that the Respondent is not liable for any interest pertaining to the delay caused by him in repayment of its outstanding debts as no interest clause subsists in the invoices in Company Petition nor does the Memorandum of Understanding contain any clause wherein a further interest of 18% shall be chargeable from 08th January 2021, till the date of payment.

13. The Corporate Debtor submits that a Criminal Case No. 1950/SS/2019, was filed before the Metropolitan Magistrates Court under Sections 138 and 141 of the Negotiable Instruments Act, 1881, for an amount of Rs. 41,39,490/- (Rupees Forty- One Lakhs Thirty-Nine Thousand Four Hundred and Ninety Only). Thereafter, on the 17th of March 2020, an adverse order came to be passed, thereby, directing the Respondents to deposit 20% of the cheque amount for interim compensation proportionately within 60 days from 17th March, 2020, under section 143A of the Negotiable Instruments Act, 1881, to the complainant.

14. It was further submitted that during the pendency of the aforesaid litigation, the Respondent and the Petitioner entered into an amicable settlement for an

amount of Rs. 40,00,000/- (Rupees Forty Lakhs Only) by executing two agreements of sale dated 9th of July 2019, for sale of Flat No. 210 admeasuring 299.23 sq. ft., on the second floor in the F-8 wing of the building Rashmi's Star City and Flat No. 208 admeasuring 299.23 sq. ft., on the second floor, in the F-8 wing of the building Rashmi's Star City, for a consideration of Rs. 20,00,000/- (Rupees Twenty Lakhs only) each, by adjusting the part liability of the Respondent to the Petitioner as full sale price of each flat and that all the formalities pertaining to the project Rashmi's Star City were duly complied with.

15. The Corporate Debtor submits that a Criminal Case No. 1950/SS/2019, has already been filed before the Metropolitan Magistrates Court under Sections 138 and 141 of the Negotiable Instruments Act, 1881, for recovery of the dues owed by the Corporate Debtor. For that reason, a pre-existing dispute exists at the time of filing the present petition. Hence, the present petition is not maintainable, and the Hon'ble Tribunal vide section 9(5)(ii)(d) of the IBC ought to dismiss the said petition filed under section 9 of IBC.

Findings

16. Heard the Counsel and perused the record.
17. From the perusal of the documents on record it is evident that the Operational Creditor has issued Invoices for the services availed by the Corporate Debtor which is unpaid. We also note that the Operational Creditor has been repeatedly requesting the release of the payments of the amount due to which the Corporate Debtor issued 21 cheques dated 18.01.2019 in favour of the Operational Creditor for Rs. 41,39,490/- (Forty-One Lakh Thirty-Nine Thousand Four Hundred and Ninety Rupees Only) against some of the outstanding invoices of the Operational Creditor, which were dishonoured by the Bank.
18. We also note that in response to notice under section 138 of Negotiable Instrument Act, 1881 on 10.02.2019, the Corporate Debtor responded vide letter dated 04.03.2019, admitting the debt and stating as under:

“3. My client state that there was outstanding amounts to be paid by my client to your client, however my client and your client both entered into Memorandum of Understanding (MOU) dated 18th January, 2018 to settle my client's dues. It is pertinent to note that under the said MOU my client agreed to sell their flats in building "Rashmi Signature" to your client. As per the MOU my client and your client have agreed that - "And whereas the parties hereto confirm that the amount due and payable to the party of the Fifth part (Purchaser herein) under the said bills i.e. Rs. 3,28,12,275/- shall be adjusted against the full and final consideration of Rs. 3,36,00,000/- for the said flats and the balance amount of Rs. 7,87,725/- was supposed to be returned by you to us”. There is a clear admission of outstanding dues by the Corporate Debtor.

19. The Bench takes notes of the order passed by Hon'ble NCLAT on 20.09.2023 setting aside the order dated 11.01.2023 of the Adjudicating Authority by holding that the issues raised with respect to default committed on 11.03.2017 is still continuing and that the original default could not be wiped out by the MOU.
20. We have considered the submission of the Corporate Debtor that petition is not maintainable on the ground of the pre-existing disputes, on account of case filed by Operational Creditor under Sections 138 and 141 of the Negotiable Instruments Act, 1881 for dishonouring of cheques. We are of the considered view that a case filed under Sections 138 and 141 of the Negotiable Instruments Act, 1881 on account of dishonouring cheques given by the Corporate Debtor towards its dues to the Operational Creditor cannot be termed as a pre-existing dispute with reference to the transactions between the two parties. If at all it is taken cognizance of, it is infact a clear admission of liability by the Corporate Debtor as Corporate Debtor had issued these cheques to clear the outstanding debts owed to Operational Creditor on account of services provided.
21. Without prejudice to the above that there is no pre-existing dispute. We also find that demand notice is dated 07.02.2019 which is prior to the case initiated under Sections 138 and 141 of the Negotiable Instruments Act, 1881. For a Pre-

existing dispute to exist, it has to be prior to issue of Demand Notice. Hence, the Corporate Debtor defence on this account fails.

22. In view of the admission by the Corporate Debtor of the liability, the bench observes that Operational Debt amounting to more than Rs. 1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor. Therefore, after considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of “operational debt” which was due & payable and there is a “default” committed by the Corporate Debtor.

23. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing CP (IB) 128/MB/2021 filed by Sunjeet Communications Private Limited, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Rashmi Metro Homes LLP, the Corporate Debtor, is Admitted. We are hereby directing the Suspended Board of Director to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

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- (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium: -
- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Purusottam Behera, Registration No IBBI/IPA-002/IP-N00940/2019-2020/12993, having registered address at 708, Raheja Centre, 7th Floor, Nariman Point, Mumbai, Maharashtra, 400021, email: - purusosbbj@yahoo.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be

compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs. 2,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)