

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.371 of 2023**

**IN THE MATTER OF:**

**Sunjeet Communications Pvt. Ltd.**

**...Appellant**

**Versus**

**Rashmi Metro Homes LLP**

**Respondent**

**Present:**

**For Appellant:      Mr. R. Sudhinder, Ms. Aastha Trivedi and Mr.  
                                 Sanidhya Sonthalia, Advocates.**

**For Respondent:    Mr. Dhaval Deshpande, Advocate for R-1.**

**ORDER**

**20.09.2023:**      Heard learned counsel for the parties. This Appeal has been filed against order dated 11.01.2023 passed by the Adjudicating Authority by which Section 9 application filed by the Appellant has been rejected as not maintainable.

2.      Brief facts of the case are that Operational Creditor has filed Company Petition on 16.01.2021 under Section 9 claiming Principal Amount of Rs.2,66,74,085/- alongwith interest.

3.      The case of the Appellant - Operational Creditor is that default was committed on 11.03.2017 and thereafter the Operational Creditor and Corporate Debtor entered into MOU on 18.01.2018 under which certain flats were allocated and promised to deliver the same. Section 9 application was filed claiming that default from March, 2017 is continuing and the MOU was not implemented. It was further stated that cheques issued were also not

honoured. The Adjudicating Authority took the view that in view of the MOU previous default dated 11.03.2017 does not survive and the present petition is not maintainable.

4. Learned counsel for the Respondent submits that in view of the MOU, the application has rightly been rejected.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. When we look into the part IV of the application, the following statements have been made:

2.	<i>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form)</i>	<p><b><u>Amount claimed to be in default:</u></b></p> <p><i>Principal Amount: Rs. 2,66,74,085/-</i></p> <p><i>Interest due till 07.01.2021: Rs.2,07,12,198/-</i></p> <p>-----</p> <p><b><i>Rs. 4,73,86,283/-</i></b></p> <p>=====</p> <p><b><i>(Rupees Four crores seventy three lacs eighty six thousand two hundred eighty three only)</i></b></p> <p><i>As per statement enclosed as Annexure- VI hereto plus further interest @18 % per annum from January 08, 2021 till payment/realization.</i></p> <p><b><u>Date on which default occurred:</u></b></p> <p><i>The debt is due from the date of each outstanding invoice issued from March 11, 2017 and is continuing since then.</i></p>
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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.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**[Arun Baroka]  
Member (Technical)**

*Archana/nn*