IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT V

C.P. No. 3126/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Positive Rays Events Private Limited
CIN: U74900MH2009PTC196539
having its registered office address at
Old Rizvi Nagar, Yellow Building, R. No .1
Ground Floor, S. V. Road, Santacruz (W)
Mumbai - 400054,
Maharashtra
......Petitioner / Operational Creditor

V/s

Sheltrex Karjat Private Limited
CIN: U55100MH1986PTC040749
having its registered office address at:
Tanaji Malushree City Site.
Shirse-Akurle, Karjat (West)
Raigarh - 410201
Maharashtra
.......Corporate Debtor

Order Reserved On: 20.12.2022

Order Pronounced On: 01.02.2023

Coram: Shri Kuldip Kumar Kareer, Hon'ble Member (Judicial)
Smt. Anuradha Sanjay Bhatia, Hon'ble Member(Technical)

Appearances (*Via Videoconferencing*):

For the Petitioner: Ms. Ashwini Gawade, Advocate

For the Corporate Debtor: Mr. Avinash Khanolkar, Advocate

<u>Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)</u>

<u>ORDER</u>

1. This Company Petition is filed by Positive Rays Events Private Limited (hereinafter called as "**Petitioner/ Operational Creditor**") seeking to initiate the Corporate Insolvency Resolution Process ("**CIRP**") against **Sheltrex Karjat Private Limited** (hereinafter referred as "**Corporate Debtor**") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called "**Code**" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for seeking a Resolution of Operational Debt of **Rs. 5,38,854/-** (Rupees Five Lakh Thirty-Eight Thousand Eight Hundred and Fifty-Four Only).

2. **<u>Petitioner's Submission:</u>**
   i. The Petitioner states that the present Petition arises out of the commercial transaction entered between the Petitioner and the Corporate Debtor. The Corporate Debtor had appointed the Petitioner to provide Event Management Services (hereinafter referred to as the "**Said Services**") to the Corporate Debtor as per the terms and conditions agreed by both the parties. Accordingly, the Petitioner had provided the said services and consequently raised various invoices

from January 2018 till March 2018 for an amount of Rs. 4,38,919/- on the Corporate Debtor.

ii. The Petitioner states that the Corporate Debtor had failed to make any payment till date towards the aforesaid invoices and therefore is liable to make payment of the total debt amount of Rs. 5,38,854/- including the amount of Rs. 4,38,919/- along with an interest at the rate of 18% per annum i.e. Rs. 99,935/- calculated from the date of default. Further, the Petitioner states that various emails were exchanged between the parties for the payment of outstanding dues.

iii. Thereafter, the Petitioner through its Advocate had issued a Legal Demand Notice dated 08.10.2018 calling the Corporate Debtor to clear the outstanding dues. Pursuant to which, the Corporate Debtor through its Advocate belatedly replied to the Legal Demand Notice on 27.11.2018 giving totally false, frivolous and vague reply and on one pretext or the other, tried to circumvent their liability to pay the said outstanding amount.

iv. Further, the Petitioner had issued Demand Notice dated 28.03.2019 in Form 3 and Form 4 under Rule 5 of the Insolvency and Bankruptcy Code 2016 calling upon the Corporate Debtor to clear the outstanding dues. However, even after the receipt of the Demand Notice, the Corporate Debtor has not made any payment towards the amount in default till date. Hence, this Petition.

3. <u>Reply Filed by The Corporate Debtor:</u>

i. The Corporate Debtor had filed its reply dated 31.01.2022 by admitting the averments and debt as claimed in the Petition which is due and payable to the Petitioner. The Corporate Debtor states that it had availed Event Management Services of the Petitioner however, due to compelling circumstances, it could not make timely payments of some invoices and hence the amount of Rs.4,38,919/- became outstanding against the Corporate Debtor.

ii. Further, undisputedly the Corporate Debtor was intimated by the Petitioner about the outstanding amount from time to time through emails and private notices. However, the Corporate Debtor till considerable time could not make payment of the outstanding dues to the Petitioner.

The Corporate Debtor states that to describe the present status of the Corporate Debtor, the following may be considered:

a. The Corporate Debtor is a company incorporated in the year 1986 and is engaged in the business of building construction. It had availed financial assistance from various financial institutions, at high interest rates, for expansion and completion of various building projects.

b. The Corporate Debtor submits that it has been facing financial difficulties due to the deteriorating real estate market and current pandemic situation with no financial institution ready to finance the Corporate Debtor, resulting the housing project to halt abruptly. Further, the Corporate Debtor submits that the available funds are already utilized for the envisaged projects.

c. The Corporate Debtor further states that the loan repayments and other financial commitments were to be satisfied from the sale proceedings of the said building projects which remain incomplete till now, and the Petitioner's outstanding dues are one of the financial commitments, that the Corporate Debtor could not satisfy till date. The Corporate Debtor submits that although it was hopeful to overcome all the financial crunch but the same is still subsisting.

iii. Hence, the Corporate Debtor states that it is presently not in a condition to pay the outstanding dues of the Petitioner but will strive hard to satisfy the said debt as soon as it receives any financial assistance.

Findings:

4. Heard the arguments of both the sides and perused the material on record. The Petition reveals that the Corporate Debtor had availed Event Management Services from the Petitioner. Consequently, the Petitioner provided the said services and raised various invoices during the period from January, 2018 till March, 2018. On the account of default, the Petitioner issued a Legal Demand Notice dated 08.10.2018 and also Demand Notice dated 28.03.2019 in Form 3 and Form 4 under Rule 5 of the Insolvency and Bankruptcy Code 2016. However, due to the financial constraint, the Corporate Debtor failed to make payment amounting to Rs. 4,38,919/- along with an interest rate of 18% per annum, giving a cause of action to the Petitioner to invoke the provisions of Section 9 of the Code.

5. Further, the Corporate Debtor has admitted the liability in its Affidavit - in - Reply dated 28.01.2022 by categorically stating that it has no source of funds to repay the same. Since the date of default is 14.03.2018 and the above Company Petition being filed on 20.08.2019, is well within limitation. Thus, Company Petition satisfies all legal requirements for admission.

6. Considering the above facts, we come to conclusion that the nature of Debt is a “**Operational Debt**” as defined under Section 5 (21) of the Code, it stands established that there is a “**Default**” as defined under

section 3 (12) of the Code on the part of the Debtor. Accordingly, the above Company Petition is **admitted** by passing the following:

ORDER

a. The above Company Petition No. 3126/IBC/MB/2019 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sheltrex Karjat Private Limited.**

b. Since the Petitioner has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Arun Nandlal Agarwal**, Insolvency Professional, E-mail id:irparun@gmail.com Contact no: 9860000033, Registration No :IBBI/IPA-003/IP-N00282/2020-2021/13234 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of **Rs. 2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, CP 3126 of 2019 is **admitted**.

SD/- **SD/-**

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)