

NATIONAL COMPANY LAW TRIBUNAL  
COURT-V, MUMBAI BENCH

1. C.P. (IB)/408(MB)2023

**IN THE MATTER OF**

Shree Sai Decorators Through sole  
Proprietor Pramod Kumar

VS

SHAILA HOSPITALITY PRIVATE LIMITED

Section 9 of the Insolvency & Bankruptcy Code, 2016

**Order Delivered on 03.04.2024**

CORAM:

SHRI. K R SAJI KUMAR  
MEMBER (J)

MS. MADHU SINHA  
MEMBER (T)

**Appearance through VC/Physical/Hybrid Mode:**

For the Petitioner: Adv. Mily Ghoshal  
For the Respondent: None

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**ORDER**

Order pronounced in the open court vide separate order. In the result, the above

**Company Petition is admitted.**

Sd/-  
MADHU SINHA  
Member (Technical)  
Shubham

Sd/-  
K R SAJI KUMAR  
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI (SPECIAL) BENCH-V**

**C.P. (IB) No. 408/IBC/MB/2023**

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

*In the matter of:*

**M/s. Shree Sai Decorators**

Through sole Proprietor Mr. Pramod Kumar  
Shop No.42, Pimpripada Road, Opp New Classic  
Comfort Hotel, Gokuldham, Malad (E), Mumbai 400097.  
.....Operational Creditor

Vs

**Shaila Hospitality Private Limited**

Baycity, 154, Cest-la-bie Club, Hill Road, Opp St.  
Stanislaus School, Bandra West, Mumbai- 400050.  
.....Corporate Debtor

**Pronounced: 03.04.2024**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR MEMBER (JUDICIAL)**

**HON'BLE SMT. MADHU SINHA, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

**For Operational Creditor:**

Adv. Mily Ghoshal.

**For Corporate Debtor:**

Adv. Nausher Kohli.

**ORDER**

**1. BACKGROUND**

1.1 This Application bearing C.P. (IB) No. 408/IBC/MB/2023 is filed by **M/s. Shree Sai Decorators**, the Operational Creditor (OC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of **Shaila Hospitality Private Limited**, the Corporate Debtor (CD) under Section 9 Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules), alleging that the CD has committed default as on 30.08.2021 for an amount of Rs. 1,00,00,000/- (One Crore Rupees).

**2. CONTENTIONS OF OC**

2.1 The OC states that the CD is in possession of and entitled to operate or conduct Restaurant/Banquets/Lawns in the part of Premises owned by the Maharashtra Rajya Dudh Sahakari Mahasangh Maryadit, Mumbai situated at Survey No.258, Pahadi Village, adjacent to Western Express Highway, Goregaon East, Mumbai. The CD has obtained possession of the Premises by way of a registered Lease Deed No. 2800/2007 dated 18.04.2007 and is running Banquets, Lawns and other facilities in the Premises.

2.2 Further, it is submitted that the OC is into the business of catering and decorating and the OC and the CD entered into and executed a Conducting Agreement dated 18.08.2017, in which the OC was required to keep an interest free security deposit of Rs. 1,10,00,000/- (One Crore Ten Lakh Rupees) with the CD.

2.3 It was agreed between the parties that the said security deposit shall be returned immediately on or prior to the signing of the Conducting Agreement. Accordingly, the OC made the payment of one crore rupees in the below mentioned manner:

Date	Mode of payment	Bank Name	Amount in Cr
17.07.2017	Check No.85048	Axis Bank Ltd Mumbai	10,00,000.
20.07.2017	RTGS	Axis Bank Ltd Mumbai	20,00,000.
21.07.2017	RTGS	Axis Bank Ltd Mumbai	10,00,000.
24.07.2017	RTGS	Axis Bank Ltd Mumbai	10,00,000.
08.08.2017	RTGS	Axis Bank Ltd Mumbai	15,00,000
11.08.2017	RTGS	Axis Bank Ltd Mumbai	15,00,000
16.08.2017	RTGS	Axis Bank Ltd Mumbai	20,00,000
		Total	1,00, 00,000

The balance of ten lakh rupees was agreed to be paid by the OC to the CD by the end of August, 2017. However, this amount was not paid by the OC.

2.4 The OC submits that the amount of one crore rupees given as security deposit is very well reflected in the Audited Balance Sheet and Profit and Loss Account of the CD for the years 2019-20 and 2020-21 without any caveats and, is thus, an admission on the part of the CD as regards receipt of the amount.

2.5 In accordance with the Conducting Agreement, the tenure was for 4 years from 18.08.2017, for the parties to perform such duties as mentioned therein. After the tenure of 4 years, the CD was required to refund the security deposit of one crore rupees on the day of vacating the premises by the OC. The OC states that the Premises were duly vacated on 30.08.2021 and possession of the Premises was peacefully handed over to the CD on the same date. However, the CD failed

to refund the security deposit to the OC. In spite of the OC approaching the CD on various occasions for refund of the security deposit, the CD did not return the security deposit of one crore rupees.

2.6 The OC, thus issued demand notice dated 28.01.2023 in Form 3 under Section 8 of the Code which was received by the CD on 02.02.2023. However, the CD has failed to reply and, has thus, neither disputed the contents of the notice nor has made any payments towards the legitimate dues to the OC. Hence this Application. According to the OC, the date of default is 30.08.2021, being the date of handing over of the Premises to the CD.

### **3. CONTENTIONS OF CD**

3.1 The CD received court notice on 19.06.2023 as revealed by the consignment track record of India Post. The matter could not be taken up for hearing on 19.07.2023 for paucity of time and adjourned to 21.08.2023. On 21.08.2023, Adv. Rafeeq a/w Adv. Yash Vora appeared for the CD. On 14.09.2023, the matter could not be heard due to paucity of time and was adjourned to 21.11.2023 and later to 01.01.2024. Since there was no representation of the CD on 14.09.2023; 21.11.2023; and 01.01.2024, it was given last opportunity to file reply/address arguments, and it was ordered that, otherwise the right of the CD to file reply shall be forfeited and shall be proceeded ex parte. On 18.01.2024, the CD was represented by Counsel and both the Ld. Counsel for the OC and the CD were heard in detail. The CD did not choose to file any reply. Although the Ld. Counsel for the CD submitted that there were certain attempts to amicably settle the matter by the parties, settlement did not take place. There was no other pleading or submission from the side of the CD as to debt, liability and default.

#### 4. ANALYSIS AND FINDINGS

4.1 We have heard the Ld. Counsel for both the OC and the CD and have considered all the pleadings and records.

4.2 From perusal of the records, it is revealed that the OC and the CD had entered into and executed the Conducting Agreement dated 18.08.2017 and that the OC had made payment of Rs. 1,00,00,000/- to the CD, as security deposit for conducting OC's business in the Premises, which is undisputed. The OC has produced a copy of receipt dated 29.09.2017, for total amount of one crore rupees, issued by Ms. Meghana. R. Kode, Director, for and on behalf of the CD. The said amount of one crore rupees has also been consecutively reflected in the financial statements of the CD for the years 2018-19; 2019-2020; and 2020-2021, and shown as current liabilities of the CD. The CD has not disputed receipt of the said amount by way of security deposit. There is no material to demonstrate any repayment of the said amount to the OC by the CD. All the above clearly show acknowledgment of debt and liability by the CD which is due and payable to the OC. Hence, it has been established that the amount of one crore rupees has been advanced by the OC as a security deposit to the CD.

4.3 It has been established that the Premises were duly vacated by the OC on 30.08.2021. The CD was thus required to refund the security deposit on the day of vacating the Premises under the Conducting Agreement. The OC has further proved that a demand notice dated 28.01.2023 was served upon the CD by speed post but the latter neither responded to the said notice nor made any payment. The only submission of the Ld. Counsel for the CD was that there were attempts to settle the matter between the parties but in vain. The date of default as mentioned

in Part IV of the Application is 30.08.2021 and the present Application is filled on 01.06.2023, hence it is well within the limitation period. Therefore, this is a fit case for admission of the CD into CIRP.

4.4 Having considered the above, it has clearly come out that an operational debt of one crore rupees is due and payable by the CD to the OC in terms of Section 4 of the Code and thus, this Application under Section 9 is maintainable. The CD has not notified the existence of any dispute to the OC before issuance of demand notice under Section 8 of the Code. The CD has not even replied to the statutory notice issued to it by the OC. The Application is complete and has been filed in proper form. Since the OC has established existence of operational debt, due and payable and defaulted by the CD, we hold that this Company Petition is only to be admitted under Section 9(5)(i) of the Code.

### **ORDER**

In view of the above discussions, C.P. No. 408/IBC/MB/2023 filed under Section 9 of the Code for initiating CIRP in respect of Shaila Hospitality Private Limited is hereby **admitted**.

We further declare moratorium under Section 14 of the Code, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- b) transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

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

III. That the order of 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 section 31(1) of the Code or passes an order of liquidation of the CD under section 33 thereof, as the case may be.

IV. That public announcement of the CIRP shall be made in accordance with the provisions of the Code, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Anand Pravin Pande** having registration No. IBBI/IPA-003/ICAI-N-00374/2021-2022/13914, Email – [appande@gmail.com](mailto:appande@gmail.com) as the IRP to carry out the functions under the Code, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Sections 17 and 25 of the Code. The officers and managers of the CD 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.

- VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the OC to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. A copy of this Order shall be sent by the Registry to IBBI for records.
- XI. Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**  
**MADHU SINHA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**