



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

4. IA/942/2024 C.P. (IB)/3126(MB)2019

IN THE MATTER OF

Positive Rays Events Private Limited

Vs

Sheltrex Karjat Private Limited

Section 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on: 18.07.2025

CORAM:

SH. SUSHIL MAHADEORAO KOCHEY
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: - PCS Suraj Sharma (VC)

For the Respondent: - Adv. Maulik Chokshi (VC)

ORDER

IA/942/2024 :-The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

sd/-

CHARANJEET SINGH GULATI
Member (Technical)
/Arjun/

sd/-

SUSHIL MAHADEORAO KOCHEY
Member (Judicial)



**NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

IA/942/2024

IN

C.P. (IB) No. 3126/MB-V/2019

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016]

HITESH HASMUKHLAL DAMANIA

NIKITA HITESH DAMANIA

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Mahakali Caves Road, Plot No. 78 79,
Sher E Punjab Society, Andheri East.,
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...Applicant/Financial Creditor in class
Vs.

MANISH LALJI DAWDA

Resolution Professional

Sheltrex Karjat Private Limited

**IBBI Reg. No.: IBBI/IPA-001/IP-P-02506/2021-
2022/13797**

Address: 205-A, 2nd Floor, Plot No 408,
Hiren Light Industrial Estate,
Bhagoji Keer Marg, Near Paradise Cinema,
Mahim, Mumbai City, Maharashtra ,400016
Email: cirpsheltrex@gmail.com
ip.dawdamanish@gmail.com

.....Respondent / Resolution Professional

In the original matter of

Positive Rays Events Private Limited

... Operational Creditor / Petitioner

Vs.



SHELTREX KARJAT PRIVATE LIMITED

... Corporate Debtor/Respondent

Order Dated: 18.07.2025

Coram:

Sh. Sushil Mahadeorao Kochey, Hon'ble Member (Judicial)

Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the Applicant: PCS Suraj Sharma (VC)

For the Respondent:

ORDER

1. This is an application filed seeking necessary directions to the Resolution Professional to consider and admit the claim filed by the Applicant in the class of Financial Creditor.
2. The relevant facts leading to the filing of this Application are briefly as under:-

CONTENTIONS OF THE APPLICANT: -

3. That Board of Directors of the Corporate Debtor at their Board Meeting held on 23.01.2019 offered and settled the adjustment of outstanding dues amounting to Rs. 26,63,030/- of Hitesh H. Damania & Co. (Proprietorship Firm of Mr. Hitesh Hasmukhlal Damania) who has rendered various types of income-tax consulting services to the Company, as sale consideration for under construction commercial unit/shop at TMC project at Karjat as full and final settlement. The Company agreed to offer premises of Commercial Unit/ Shop bearing no. 101 admeasuring carpet area 38.84 Sq. Mtr. (418.074 Sq. Ft.) on the Ground Floor/



Podium 01 of the Building No. Y11 being constructed in the PALISO series of Sheltrex Smart Phone City 2 project situated at Village-Akurle, Taluka-Karjat, District-Raigad and within the Registrar Sub District of Karjat.

4. That Company allotted the Allotment Letter on 31st January, 2019 for allotment of Commercial Unit/ Shop “101” in “Y11” building in “SHELTREX SMARTPHONE CITY Project 2” Phase I.
5. That to reduce in writing and record the terms as agreed, Corporate Debtor and Applicant executed Memorandum of Understanding (“MOU”) on 28th September, 2020 where Corporate Debtor agreed for registration of said commercial unit in favor to the Applicant.
6. That Corporate Debtor executed an “Agreement for Sale” with the Applicant on 27th January, 2023 which also got registered with the jurisdictional Sub-Registrar Office Karjat where requisite stamp duty was also paid by the Applicant.
7. That CIRP of the Corporate Debtor has been initiated by this Tribunal vide order dated 01.02.2023 wherein Mr. Arun Nandlal Agarwal, Insolvency Professional having IBBI Registration No. IBBI/IPA-003/IP-N00282/2020-2021/13234 was appointed as the Interim Resolution Professional.
8. That as per the records of the Corporate Debtor available on IBBI Portal, Public Announcement in Form A got published on 08th February, 2023 where last date to file claim mentioned was 20th February, 2023.



9. That pursuant to the above said provisions of the Regulation 8A of the CIRP Regulations, Applicant had submitted the claim in Form CA along with all the supporting documents with the Interim Resolution Professional Mr. Arun Nandlal Agarwal through email on 18th February, 2023 for an amount of Rs. 26,25,000.
10. That Mr. Arun Nandlal Agarwal, IRP through email dated 02nd March, 2023 admitted the claim of the Applicant for an amount of Rs. 26,25,000.
11. That as per the List of Creditors upto 10th June, 2023 available on the IBBI Portal, the claim of the Applicant has been accepted by the IRP in “Claims received in Class- Home Buyer” category where name of the Applicant is reflecting in Sr. No. 47 for total admitted amount of Rs. 26,25,000 as claimed by the Applicant.
12. That as per the records available on the IBBI Portal, Respondent Mr. Manish Lalji Dawda, Insolvency Professional having IBBI Reg. No. IBBI/IPA-001/IP-P-02506/2021- 2022/13797 has been appointed as Resolution Professional of the Corporate Debtor with effect from 13th June, 2023 in place of Mr. Arun Nandlal Agarwal.
13. That suddenly on 25th December, 2023 (327th Day of CIRP) Applicant had received an email having subject line “Rejection of Claim as Financial Creditor in respect of Sheltrex Karjat Private Limited” from the Respondent RP for rejecting the claim even after admission by the Erstwhile IRP.



CONTENTIONS OF THE RESPONDENT: -

14. The respondent has filed his reply and contended that the Applicant had filed the Claim before the Erstwhile Interim Resolution Professional (hereafter referred to "IRP") on 18th February 2023 in Form CA claiming to be a Financial Creditor. The Respondent i.e., the current RP had rejected the claim that of the Applicant on 25th December 2023.
15. The Respondent states that, the Board Resolution which was passed on 23rd January 2019, were in relation to the consultancy services provided by the Applicant. It is pertinent to note that, the said Board Resolution is defective in nature as in the said minutes of the board meeting which is attached by the Applicant there is no quorum mentioned in the minutes of the board meeting and the number of directors who have attended board meeting and necessary resolution passed in relation to the transfer of the said flat to the Applicant. Further the said Board Resolution was signed by one of directors Mr. Suresh Singh who without any authority was acting as a chairman for the Corporate Debtor. The Respondent further states that, the said decision which was taken will fall under the category of "special business" for which no special resolution was passed in the Annual General Meeting/Extra ordinary General Meetings and for which no Form MGT-14 was filed with the ROC.
16. The Respondent states that it has been mentioned that allotment letter was issued by the Corporate Debtor on 31st January 2019 for the unit/shop "101" in Y 11" building in "SHELTREX SMARTPHONE CITY PROJECT 2" Phase I. In the said allotment letter there are various variance and non-compliances observed by



the Respondent which are as follows:

“Is said board resolution dated 23rd January 2019 which is annexed and marked as Annexure-A2 the value of said unit was Rs. 26,63,030/- (Rupees Twenty-Six Lakh Sixty-Three and Thirty Only) where is in the allotment letter dated 31st January 2019 the value was the said unit which was transfer to the Applicant was mention as Rs. 25,00,000 /- (Rupees Twenty-Five Lakh Only). Further in the said allotment letter it has been clearly mentioned that the Applicant has to bear the taxes, stamp duty and registration charges in addition to the said consideration which would be inclusive of Service Tax/Value Added Tax/Goods and Services Tax. However, on perusal of the documents/returns the Applicant has neither produce GSTR-2A, Copy of GSTR-1 and the copy of challan in relation to the payment of GSTR-3B. On perusing the documents by the Respondent which were provided by the Suspended Director of the Corporate Debtor and extracted from the Government Sites by the Respondent, it came to the notice of the Respondent that the Applicant has neither paid any taxes/duties/other charges in relation to the transfer of the said unit.

Further the Applicant has also assured in the allotment letter that as and when the taxes will be demanded by the Corporate Debtor, the Applicant will have to pay the same. However, it has been verified by the Respondent that none of the taxes has been paid by the Applicant which were levied by the statutory authorities. It is pertinent to note that, it has been expressly mentioned that the Applicant will have to bear documentation charges in addition to amount mentioned in the allotment letter. The Applicant has only relied upon the allotment letter and has not taken any further steps to get the unit transferred in his name which will prove that he has valid title.



The Applicant has mentioned and it has been also captured in the impugned Board Resolution that, as a part of the settlement between the Applicant and the Corporate Debtor, the said unit was transferred as full and final settlement for the outstanding fees which were to be paid by the Corporate Debtor to the Applicant. However, in the allotment letter it has been categorically mentioned that, if the Applicant will commit any breach of the terms mentioned in the allotment letter, then in that case, the Corporate Debtor will still have full rights to terminate the said allotment of the said unit and will have rights to sell/ dispose of/ or deal with the unit as it deems fit to the Corporate Debtor. This prima facie shows that, the said transfer is frivolous in nature as the Applicant at one instance has mentioned that the said unit was transferred by the Corporate Debtor as a full and final settlement of his outstanding dues for the services provided to the Corporate Debtor and on the other hand, in the allotment letter the terms and conditions itself speak as if the Applicant himself is purchasing the said unit from the Corporate Debtor wherein the Applicant himself has breached the terms of the allotment letter.”

17. The respondent has submitted that Section 5(8)(f) Read with Regulation 8A of the CIRP Regulations, contemplates that an amount raised under any transaction which includes forward sale or purchase agreement, having the commercial effect of a borrowing which include amount raised from home buyer who has not only entered into an agreement for sale and/ or letter of allotment and has paid consideration for purchase of the said units which are registered under RERA. It is pertinent to note that the Applicant in his own, Application has categorically mentioned that he has rendered various types of Income Tax



consulting services in the capacity of a professional which is termed as Operational Creditor.

18. The Respondent contends that the Applicant itself has averred in his application that, he has provided various Income Tax Services to the Corporate Debtor for which the amount was due and payable by the Corporate Debtor and the Applicant need to file his claim in Form B as in Operational Creditor where he has to provide a contract for rendering services, invoices raised demanding payment, ledger copies and a copy of Goods and Services Tax paid. However, the Applicant instead of filing its claim in Form B as an Operational Creditor has filed his claim in Form CA calling himself as home buyer.

19. The Respondent relying upon Section 23(2) and 25(2)(e) of the Insolvency and Bankruptcy Code 2016 contended that the Resolution Professional has to perform his duties as vested on the Interim Resolution Professional which also include maintain and updated list of claims filed by the claimants. The Respondent further states that, he was appointed as Resolution Professional by the Hon'ble NCLT on 13th June 2023 and subsequently he took charge of the custody of the assets of the Corporate Debtor and took the handover from the erstwhile IRP of the books of accounts and other documents. After looking into the complexity of the transactions in the Corporate Debtor, as a good governance the RP has again started verifying the claims of the Corporate Debtor which were initially either admitted or rejected by the Erstwhile IRP, where it came to his notice that the claim which was submitted by the Applicant was filed in the capacity of a home buyer in Form CA and not in the capacity of Operational



Creditor in Form B. Due to which the Respondent has rejected the claim on 25.12.2023.

20. It is pertinent to note that, Section 23(2) and Section 25(2)(e) of the Insolvency and Bankruptcy Code 2016 gives powers to the Respondent and also the Respondent is duty bound to re-verify the claims that were verified, either admitted/ or rejected by the erstwhile IRP. The Respondent further states that, as a newly appointed RP he is duty bound to check and verify the claim along with the supporting annexures that under which head the claimant falls and subsequently the Resolution Professional has to check whether the claim filed by the claimants are filed as per the provision read with relevant regulations of the Code. The Respondent has prima facie checked the transaction trail between the Applicant and the Corporate Debtor where it came to the notice of the Respondent that the Applicant had given consultancy services to the Corporate Debtor hence it clearly falls under definition of Operational Debt whereas the Applicant as per his arrangement with the Corporate Debtor has received flats against his outstanding fees, however the Applicant has filed his claim as home buyer due to which the Respondent has to reject the claim. Hence the Respondent has not acted as an adjudicating authority but as an officer of the court where in order to facilitated the CIRP has acted diligently in the interest of all stakeholders.

21. The Respondent states that, in the matter of "***Umesh Kumar versus Narendra Kumar Sharma Company Appeal (AT) (Insolvency) No. 100 of 2024 decided on February 13, 2024***" where the Hon'ble NCLAT has held that: -



"the IBC framework has endowed the RP with the cardinal responsibility as facilitator of the CIRP process. This obligates the RP to take reasonable care and diligence while performing his duties. That being so the RP is very much required to undertake appropriate verification and analysis of the claims filed. RP cannot afford to be unmindful of the fact that he is expected to assist in CIRP process in a fair and objective manner in the best interest of all stakeholders. As an officer of the court vested with administrative powers, the RP is expected to conduct the CIRP process with fairness, diligence, forthrightness and highest sense of responsibility. It is quite clear from the sequence of events in the present facts of the case that the RP had been consistently pointing out that he is not in a position to verify the claims due to want of documents substantiating the claims"

22. The Respondent further states that, he can only admit the claim if the said claim is filed as per the procedure laid down in the code otherwise his bound to reject the claim. The Respondent after verifying the claim along with the annexed document came to a logical conclusion that the Applicant despite giving professional services had filed its claim as a Financial Creditor in a class and not as an Operational Creditor.

POINTS FOR CONSIDERATION: -

23. After considering the rival contentions of either party to the present application the points which arise for determination in this case is as under: -
- a. Whether, the applicant, who, rendered various income tax related services for the project of the Corporate Debtor, was offered an allotment of commercial unit in the project of the corporate debtor and having executed an agreement



of sale in his favour should be considered as the Financial Creditor or an Operational Creditor?

- b. Whether, the decision of the present Resolution Professional reviewing the decision of the Erstwhile Resolution Professional is as per law and needs any interference?

ANALYSIS AND FINDINGS: -

24. It is submitted by the learned counsel for the applicant that the board of director of the Corporate Debtor in its board meeting held on 23.01.2019 offered and settled the outstanding dues amounting to Rs. 26,63,030/- of the applicant as a sale consideration for under construction commercial unit in the project of the corporate debtor as full and final settlement. The allotment letter was issued, MOU was executed and an agreement for sale was also registered in favour of the applicant thereafter, the CIRP was initiated against the Corporate Debtor. The erstwhile Resolution Application has admitted the claim of the Applicant under the category of home buyers. The present Resolution Professional vide his e-mail rejected the claim of the applicant as Financial Creditors and considered him as an Operational Creditor. It is therefore contended that the claim of the applicant as home buyer was justified and the rejection of claim by the present Resolution Professional cannot be sustained in the eyes of law.

25. As against this contention it is the contention of the Resolution Professional that the applicant himself has admitted that he has rendered various income tax related services and has raised the bills for the services rendered therefore, he cannot be considered as a Financial Creditor on the contrary as per the provisions



of Section 5(21) Read with Regulations 7 of the CIRP Regulations, the applicant has rightly clarified as an Operational Creditor.

26. It is not in dispute that the applicant has rendered various income tax related services to the Corporate Debtor for his project and has also raised a bill for the same and the board of directors of the Corporate Debtor at its board meeting on 23.01.2019, settled and adjusted the outstanding dues of the Applicant and in lieu of the adjustment of the dues a commercial unit/shop at TMC Project at Karzat as full and final settlement was offered to the applicant. The allotment letter was also issued in favour of the Applicant vide letter dated 31.01.2019. An MOU was also executed in favour of the applicant on 28.09.2020, where the corporate debtor agreed for registration of the said commercial unit in favour of the applicant. The applicant also executed agreement of sale on 27.01.2023, and it was registered with the Sub-Registrar's Office at Karzat and the requisite stamp duty was also paid by the Applicant.

27. In the light of these admitted facts the erstwhile Resolution Professional has admitted the claim of the Applicant as a home buyer and his name appeared at Serial no. 47 for total admitted amount of Rs. 26,25,000/-. It is pertinent to note that the amount of fees for the services rendered was settled between the parties and in lieu of that amount a commercial unit in the project was offered and was in fact allotted, an agreement of sale is also executed. Therefore, so far as the project of the Corporate Debtor is concerned the applicant has rendered services and the amount due is treated as an amount paid to the Corporate Debtor for allotment of commercial unit and hence, the applicant acquires the status of an



allottee as such the applicant has acquired the status of financial creditor. Therefore, the claim of the applicant in view of the agreement of sale in his favour and allotment of the commercial unit in his favour by the Corporate Debtor can no longer be considered as operational debt as defined under Section 5(21) of the IBC and therefore, the decision of the present Resolution Professional to review and consider the applicant as the Operational Creditor is erroneous. Section 5(8) as amended contemplates any amount raised from a allottee under the Real Estate Project shall be deemed to be the amount having commercial effect of the borrowing and therefore, the applicant in the present case although has rendered various services to the Corporate Debtor, it was between the Corporate Debtor and the Applicant that they have converted into a commercial transaction of allotment of commercial unit in the project in lieu of the services rendered and, therefore, the applicant has to be considered as an allottee who has document of allotment in his favour and the agreement of sale in his favour. Therefore, the decision of the present Resolution Professional is certainly erroneous.

28. It is the contention of the Resolution Professional that the board resolution which were passed on 23.01.2019, where in relation to the consultancy services provided to the applicant the said board resolution is defective in nature as in the said minutes of the board meeting which is attached by the applicant there is no quorum mentioned in the minutes of the board meeting and the number of directors who have attended the board meeting and necessary resolution passed in relation to transfer of the said flats to the applicant. The board resolution was



signed by one Director Mr. Suraj Singh, who was without any authority, was acting as a chairman of the Corporate Debtor. The said decision taken will fall under the category of special business for which no resolution was passed in the annual general meeting/extraordinary general meeting. He further raised a contention that the amount/value of the said unit in the board resolution is different than what is mentioned in the allotment letter. He has also pointed out that the applicant has neither paid the taxes, duties, charges or other dues to the transfer of the said unit. It is therefore, contended that the said transfer is frivolous in nature as the applicant on the one instance has mentioned that the said unit was transferred by the Corporate Debtor as full and final settlement of his outstanding dues for the service provided to the Corporate debtor and on the other hand in the allotment letter the terms and conditions itself speak as if the applicant is purchasing the said unit from the Corporate Debtor wherein the Applicant himself has breached the terms of the allotment letter.

29. Relying on Section 23(2) and 25(2)(e) of the IBC. It is submitted that the Resolution Professional is duty bound to reverify the claim that were verified. The respondent has *prime-facie* checked the transaction trial between the applicant and the corporate debtor where it came to the notice of the Respondent that the applicant has given consultancy services hence it is clear under the definition of the Operational debt whereas the applicant as per his arrangement with the Corporate Debtor has received flats against his outstanding fees however, the applicant has filed his claim as home buyer due to which the respondent has to reject the claim. Relying on the judgment of the Umesh Kumar



Versus Narendra Kumar Sharma it is submitted by the Respondent that he has performed his duty by re-verifying the claim of the Applicant.

30. It is pertinent to note that the Resolution Professional/Respondent does not dispute the fact that the commercial unit in the project of the Corporate Debtor was allotted by a board resolution and allotment letter as well as the agreement of sale made in favour of the Applicant. The contention that the board resolution is not passed properly there was no quorum or that the applicant has not paid the taxes and that the agreement of sale in favour of the applicant is *sham* or *bogus*, is the subject matter which if the Resolution Professional felt were not in accordance with law or they are *sham* and *bogus*, it becomes the subject matter of investigation by the Appropriate Authority, for which the Resolution Professional could have initiated appropriate proceedings before the appropriate authorities which the Resolution Professional has not done in the present case. He *suo-moto* reviews the decision taken by the IRP admitting the claim. Once the claim of the applicant was admitted by the IRP, as contended by the respondent in the present case it was the duty of IRP to verify the claim properly and only after verification the claim could have been admitted or rejected. Once it is admitted or rejected; to re-verify it of its own would be exceeding the powers and duties of the present Resolution Professional without the approval of the adjudicating authority. Admittedly the Resolution Professional/Respondent has not moved the adjudicating authority for decategorization of the applicant from the category of the home buyer to the category of Operational Creditor and therefore, the action of the Resolution professional is certainly erroneous and



cannot be sustained in the eyes of law. To fortify this preposition, reliance can be placed on the decision of the ***Hon'ble NCLAT Reported in [2020] Ibclaw.in409 NCLAT Mr. Rajnish Jain vs. Manoj Kumar Singh (RP) and Ors.***

It is held by their lordship that:-

“the IRP after collation of Claims and Formation of CoC was not entitled to suo-moto review or change the status of a creditor from financial to operational creditor, updating list and review are different acts. If the resolution professional was aggrieved, he should have moved the adjudicating authority. The aggrieved person can challenge either constitution. The resolution professional cannot arbitrarily on its own overturn earlier decision change the status of a creditor from financial creditor to Operational creditor.”

31. The learned counsel for the applicant has also relied upon the judgment of this Hon'ble Tribunal in the case of ***“MA 1435/2018 & IA 76/2018 in CP No. 870/IBC/NCLT/MB/MAH/2017 Dr. Ramakant Suryanath Pande Versus CS Prakash K. Pandya”*** wherein it is held that the Resolution Professional is not an adjudicating authority and is not required to enquire into factual scenario between the parties determine their rights and liabilities. The task of the Resolution Professional is to limit itself to confirm that the claim received by him are true and correct, thus in the present case the Resolution Professional has exceeded its powers and duties and has *suo-moto* reviewed the decision taken by the IRP and has arbitrarily rejected the claim of the applicant as home buyer in spite of the fact that the allotment letter and the agreement of sale of the units in the project of the Corporate Debtor were in its favour it amounts to adjudication



on the part of the Resolution Professional. Therefore, the following order is passed.

ORDER

- i. The subject claim rejection e-mail dated 25th December 2023, sent by the Respondent RP to the Applicant is hereby quashed and set aside.
- ii. Respondent RP is directed to admit the claim of the Applicant as a Financial Creditor in the class as admitted by the Erstwhile IRP/RP.
- iii. The IA/942/2024 is **allowed**.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

/Anmol/

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)