

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/994/MB/2023

*[Under Section 9 of the Insolvency and Bankruptcy Code,
2016 r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

TANISHI TRADEWELL PRIVATE LIMITED

[CIN No.: U74120MH2013PTC242324]

Room No. 27, Mata Ram Devi Niwas

NS Road, Mulund (West), Mumbai – 400080.

...Applicant/Operational Creditor

V/s

GREEN SHIELD ENTERPRISES PRIVATE LIMITED

[CIN No.: U674900MH2008PTC184619]

Room No. 5, Hetal Apartment

NS Road, Mulund (West), Mumbai – 400080.

...Respondent/Corporate Debtor

Pronounced: 07.01.2025

CORAM:

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

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: CS Priyanka Jain

For Respondent: CS Krupa Joisar

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This C.P.(IB) No.994/MB/2023 (Application) was filed on 15.05.2023 by Tanishi Tradewell Private Limited, the Operational Creditor (OC) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Green Shield Enterprises Private Limited, the Corporate Debtor (CD), for alleged default of operational debt amounting to Rs.5,62,66,435/- (Five Crore Sixty-Two Lakhs Sixty-Six Thousand Four Hundred Thirty-Five Rupees).

1.2 The OC is engaged in the business of trading in Greige Goods, which are fabrics that are just off the loom or knitting machine in a natural or unfinished state.

2. CONTENTIONS OF OC

2.1 The CD purchased Cotton Linen Printed Fabrics from the OC *vide* Purchase Order (PO) dated 01.03.2020, whose receipt was acknowledged by the CD *vide* 6 (six) Delivery Notes dated 21.03.2020 and 23.03.2020.

2.2 A Demand Notice (Form 4) dated 11.02.2023 under the IBC was issued to the CD for repayment of the total unpaid debt of

Rs.5,62,66,435/-, which includes operational debt of Rs.3,71,42,537/- and interest of Rs.1,91,23,898/-. The Demand Notice was duly delivered to the registered office of the CD on 13.02.2023 *vide* DTDC Courier Consignment No. M19541365, but no response has been received to date.

2.3 The due date of payment and the invoice date are the same. Hence, the date of default (as mentioned in Part-IV of the Application) is considered as 21.03.2020 and 23.03.2020 respectively. As the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

3. CONTENTIONS OF CD

3.1 The CD acknowledged the balance due in its Balance Confirmation Letter dated 31.03.2020.

3.2 It is the case of the CD that due to COVID-19 pandemic, it was facing grave financial distress as its cash flow stopped resulting in delay in payment to the OC for reasons beyond its control.

3.3 Additionally, the CD is unable to pay back the Cash Credit and FITL facilities it availed from Punjab National Bank (PNB), because of which its accounts have been classified as Non-Performing Assets (NPA) in PNB's books as of 09.07.2020.

3.4 The CD further submits that it is in a serious financial crunch and its business is completely shut because of which it is not in a position to pay back the OC's debt. The CD is hopeful of making the payment once its business is back on track.

4. ANALYSIS AND FINDINGS

- 4.1 We have perused all the documents available on record and heard both the Ld. Counsel for OC and the CD.
- 4.2 This is a case of admitted operational debt as the CD has stated that it was unable to make payments to the OC solely for the reason of financial stress due to the adverse effects of COVID-19 pandemic. The IBC's focus is on the timely resolution of corporate defaults. Financial distress or business slowdown due to external factors like the COVID-19 pandemic cannot be used to indefinitely avoid CIRP of the CD. The law does not absolve debtors from their obligations due to financial hardship unless the debtor demonstrates that the debt is disputed on legal grounds.
- 4.3 While the CD claims financial distress due to COVID-19, it has not demonstrated a legal dispute over the existence of debt or the terms of payment. Therefore, the application for CIRP should be admitted.
- 4.4 The default dates mentioned in the application viz., 21.03.2020 and 23.03.2020) are prior to the imposition of CIRP suspension period by Section 10A of the IBC. The CD has not challenged the above. Therefore, the CD's inability to pay due to COVID-19 does not qualify as a defence against the operational debt under the IBC.
- 4.5 Based on the available records, the default by the CD in repaying the operational debt is proved. The OC has claimed an amount of Rs.5,62,66,435/-, and there is no other ground available for the CD to challenge the Application other than financial distress.

4.6 In light of the above, we hold that the OC has a rightful claim against the CD and the CD has defaulted in operational debt and the OC's claim for initiating CIRP is legally valid.

ORDER

In view of the aforesaid findings, this Application being C.P. (IB) 994/MB/2023 filed under Section 9 of the IBC by Tanishi Tradewell Private Limited, the OC for initiating CIRP in respect of Green Shield Enterprises Private Limited, the CD, is **admitted**.

We further declare moratorium under Section 14 of IBC with consequential directions as mentioned below:

- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the CD including the 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, and;
 - 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 Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. The OC had proposed Ms. Pooja Damir Miglani, a registered Insolvency Professional (IP) having Registration Number IBBI/IPA-002/IP-N01189/2021-2022/13994. However, we find that her name does not appear in the panel of IPs for the period between 01.01.2025 and 30.06.2025 for Mumbai Zone. In view of the above, we hereby appoint **Ms. Nidhi Amit Poddar, Registration Number IBBI/IPA-001/IP-P-02829/2023-2024/14381,** **e-mail** **ID** nidipoddar.ip@gmail.com having valid Authorisation for Assignment up to 30.06.2025 as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That 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 Section 17 or

Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the CD.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the OC is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of 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 becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the CD.
- XI. A copy of the Order shall also be forwarded to the IBBI for record; dissemination on their website; and for maintaining data.

- XII. The Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

//Alka Siwach//

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