

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH -I**

**CP(IB) No. 849/MB/2023**

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of*

**Ashok Investors Trust Limited  
CIN: U67120MH1991PLC162315**

Having office at  
Office 701, The Capital G-Block  
Bandra Kurla Complex  
Behind ICICI Bank, Plot-C70  
Bandra (East)  
Mumbai City MH 400051  
...Applicant / Financial  
Creditor

Versus

**OM Shree Ganesh Containers Private  
Limited [CIN: U74900MH2007PTC170632]**  
Office 1202, Plot No. 39 /2 Sector 30A, Vashi  
Navi Mumbai MH 400705

**Order Delivered on : 05.12.2023**

***Coram:***

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)  
Hon'ble Member (Technical) : Sh. Prabhat Kumar

***Appearances:***

For the Financial Creditor : Mr. Yahya Batatawala, Ld. Counsel  
For the Corporate Debtor : Ms. Nimisha Rathod

**ORDER**

*Per:* Justice V.G. Bisht

1. This is a Company Petition filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Ashok Investors Trust Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **OM Shree Ganesh Containers Private Limited** ("the Corporate Debtor ").The Corporate Debtor is a company incorporated on 07.05.2007 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai.
2. The present Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Ashok Investors Trust Limited ("Financial Creditor/Applicant") against the OM Shree Ganesh Containers Private Limited ("Corporate Debtor/Respondent"). The Date of Default arose on **1<sup>st</sup> May 2023, 1<sup>st</sup> June 2023 and 1<sup>st</sup> July 2023** when the Corporate Debtor failed to repay as per the terms of the said agreement the corporate debtor was supposed to pay the interest@12% p.a. on monthly basis consideration of the loan amount. However, the corporate debtor failed to pay the interest for 1<sup>st</sup> month, the amount **of Rs.1,00,00,000/- (Rupees One Crore Only)** along with the interest of **12% p.a.** The Corporate Debtor was supposed to pay the interest at the end of every month, in respect of the entire outstanding unpaid Principal balance of the unsecured loan.
3. That on 01.06.2023 the interest was due for the 2nd Month however, the Corporate Debtor failed to pay.
4. The total amount claimed to be in default by the Financial Creditors is **Rs.1,02,92,603 ((Rupees One Crore Two Lakh Ninety-Two Thousand Six Hundred and Three Only)** Principal and Interest computation table annexed as **Annexure 7** with interest at the rate of **12%**.

5. The Corporate Debtor is a company incorporated on 07.05.2007 at 1202, Plot No. 39 /2 Sector 30A, Vashi Navi Mumbai MH 400705 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai, therefore the Bench has the Jurisdiction to deal with this Petition.

**Submissions made by the Financial Creditor:**

6. The Financial Creditor is a company incorporated on 01.01.1991, registered office at 701, The Capital G-Block Bandra Kurla Complex Behind ICIC Bank , Plot C70 Bandra (East)Mumbai City Mh-400051.
7. Both the parties have entered into an Agreement executed on 10th April ,2023 in the terms of the agreement it was stated, whereby the Corporate Debtor shall compulsorily pay the interest to the Financial Creditor at the end of every month, and the Corporate Debtor agreed to pay all sums due to Financial Creditor and to perform all other covenants and agreement under the said Loan Agreement.
8. The Corporate Debtor defaulted in making the payment of the interest for the 1<sup>st</sup> Month i.e. 01.05.2023 and 2<sup>nd</sup> Month i.e. 01.06.2023 and 3<sup>rd</sup> Month i.e. 01.07.2023, therefore on 10<sup>th</sup> July 2023, the Financial Creditor issued a Demand notice to the Corporate Debtor by demanding payment of an unpaid financial debt due from OM Shree Ganesh Containers Private Limited. In the said Demand Notice the Financial Creditor informs the Corporate Debtor for repayment of the entire loan along with the interest amounting to **Rs.1,02,92,603 (Rupees One Crore Two Lakh Ninety Two Thousand Six Hundred and Three Only)** as the Corporate Debtor failed to comply with the **Demand notice** of Applicant dated **10.07.2023**.

**Submissions made by the Corporate Debtor by way of Affidavit in reply:**

9. The Corporate Debtor in the reply to the Applicant states that default in repayment of the said Loan is not deliberate and the same has been caused due to the circumstances beyond the control of the Corporate Debtor because of Covid-19 and the global recession, the Corporate Debtor was facing financial difficulties in paying back the loan. It is also submitted by the Corporate Debtor that they have requested 2-3 years of time to repay the loan amount which was borrowed from the Financial Creditor. To revive the Company, the Financial Creditor had given a loan of Rs. 1,00,00,000/- along with 12% p.a.

**Findings:**

10. We have heard the counsel and perused the matter on record.
11. We find that the corporate debtor defaulted on several terms as stipulated in the Loan Agreement and also failed to repay the outstanding due amount and the Applicant issued a Demand Letter dated 10.07.2023. On account of the occurrence of an event of default under the Loan Agreement, the Applicant recalled the entire loan amount being an aggregate sum of INR 1,02,92,603/- (Rupees One Crore Two Lakh Ninety-Two Thousand Six Hundred and Three Only) outstanding as on 10<sup>th</sup> July, 2023, together with additional/ further interest, legal charges, cost incurred thereafter till the date of repayment of the entire liability within 7 (Seven) days from the date of the said notice..
12. The said Petition is within the scope of Limitation. As the date of default are 01.05.2023, 01.06.2023 and 01.07.2023 and the Petition was instituted before this Tribunal on **25.09.2023**.
13. We also consider the facts of the case in the lights of the Order passed by *Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no

scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition

14. Upon perusal of records, this Tribunal is of the considered opinion that the Corporate Debtor is in default of debt and owes money to the Financial Creditors.
15. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
16. It is clear from the records that the amount was disbursed to the Corporate Debtor by the Applicant from **Annexure 5** the copy of the Bank statement of the financial creditor where the disputed principal amount is disbursed by the Applicant on **13.04.2023**. This Bench is of the considered opinion that Learned Counsel for Petitioner through his arguments articulated the existence of debt and default which are corroborated from the records annexed to the Petition. In view of this, this Adjudicating Authority **Admits** this Petition and orders initiation of CIRP against the Corporate Debtor.
17. The Financial Creditor has proposed the name of ***Mrs. Neha Jain Nemani, having registration no. IBBI/IPA-001/IP-P-02465/2021*** as the Interim Resolution Professional to take charge of the Respondent company assets, affairs, and books of account and to conduct the affairs of the Respondent Company's / Corporate Debtor's as per the provisions of the Insolvency

& Bankruptcy Code, 2016 of the Corporate Debtor. The written communication in Form 2 is filed as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

18. It is, accordingly, hereby ordered as follows: -

- a. The Petition bearing **CP (IB) 849/MB/2023** filed by, **Ashok Investors Trust Limited(U67120MH1991PLC162315)**, the Financial Creditor, under section 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against, **OM Shree Ganesh Containers Private Limited [CIN: U74900MH2007PTC170632]** the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC, regarding the following:
  - (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

c. Notwithstanding the above, during the period of moratorium:-

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

b. The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

d. The 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 sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IB Code.

e. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC

read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

*Mrs. Neha Jain Nemani*, having registration no. **IBBI/IPA-001/IP-P-02465/2021-2022/13927** having address at Unit #207, 2<sup>nd</sup> Floor, Kshitij, Near Azad Nagar Metro Station, Veera Desai Road, Andheri West, Mumbai-400053 and email: [nehavkjain@gmail.com](mailto:nehavkjain@gmail.com) is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. He shall be paid a consolidated remuneration of Rs.1,50,000 /- (Rupees One Lakh Fifty Thousand only) for the period from the commencement of CIRP till the Constitution of CoC as fee, in addition to the expenses incurred in relation to CIRP process. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- f. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor 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.
- g. The Financial Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) with the IRP to

meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- h. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- i. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

**Sd/-**

**PRABHAT KUMAR**  
**Member (Technical)**

SR

**Sd/-**

**JUSTICE V.G. BISHT**  
**Member (Judicial)**