



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH –II, CHENNAI
CP(IB)/168(CHE)/2023**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule
6 of the Insolvency and Bankruptcy (Application to Adjudication Authority)
Rules, 2016)*

In the matter of Goddess Textiles Private Limited

Nova Tex,
represented by its Partner Mr. I. Andrews William,
No. 29F, Power House Road,
Old Union Bank Backside,
First Street, Somanur,
Thiruppur District - 641 668.

... Applicant/Operational Creditor

-Vs-

Goddess Textiles Private Limited,
No.1/192, Appanaickenpattai,
Pudur Road,
Kalangal PO, Sulur Via, Coimbatore,
Tamil Nadu - 641 402.

... Respondent/Corporate Debtor

Order Pronounced on 2nd September 2024

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**Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
Shri. VENKATARAMAN SUBRAMANIAM, MEMBER(TECHNICAL)**

*For Operational Creditor : M/s D Senthil Kumar, D.Irusappan
M. Mohanraj Advocates*

*For Corporate Debtor : M/s H. Mohammed Farook,
K. Koteswara Rao
Advocates*



ORDER

Under Adjudication is **CP(IB)/168(CHE)/2023** which has been filed by **M/s. Nova Tex** (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Goddess Textiles Pvt Ltd** (hereinafter referred to as '**Corporate Debtor**'). The prayer is made to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Operational Creditor **M/s. Nova Tex**. As per Part II of the application, the Corporate Debtor **M/s Goddesss Textiles Private Limited** is a private limited company with Corporate Identification U17111TZ2014PTC020934 and the registered office of the Corporate Debtor as per the Application is stated to be at No.1/192, Appanaickenpattai, Pudur Road, Kalangal PO, Suler Via, Coimbatore, Taminadu-641 402. As per Part III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. Part IV of the application signifies the amount of debt to the tune of Rs.1,83,52,196.40/- (Rupees One Crore Eighty Three Lakhs Fifty Two Thousand One Hundred Ninety Six and forty paise only) as the outstanding dues that is payable by the Corporate Debtor. In part IV of the application specific date of Default is not mentioned vide order



dated 22.02.2024 Applicants were directed to submit the date of default by way of affidavit the Applicant avers that on 10.06.2023 they have supplied the materials and demand was payment of was done by operational creditor 2nd week of June which is not paid by the corporate debtor and the last payment is received by operational creditor is 29.04.2023. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default as follows:

- i. Copy of the Demand Notice as in Form 3 of the IBC Rules, 2016 served on the Corporate Debtor dated 10.08.2023. **(Annexure I).**
- ii. Copy of Partnership Deed and GST Registration Certificate dated 31.12.2018, issued by the GST. **(Annexure II(2)).**
- iii. Copy of invoices (totally 75 Nos.) in the name of Operational Creditor. **(Annexure II (4)).**
- iv. Copy of Bank Statement of Account of the Operational Creditor maintained with the City Union Bank, Thennampalayam Branch. **(Annexure III(1)).**

4 SUBMISSIONS OF THE PETITIONER

4.1 It is submitted that the Operational Creditor, M/s Nova Tex, is a partnership firm represented by its Partner, Mr.I. Andrews William are dealing with wholesale and retail business of supplying Viscose Stable Fiber, Lenzing Loyocell, Viscose Excell Fiber etc under the name and stile of "NOVA TEX" in the above address.



4.2 It is submitted that the Corporate Debtor, M/s Goddess Textiles Private Limited, represented by its Managing Director, Mr. R. Senthil Kumar, is a private limited Company incorporated under the provisions of the Companies Act, 1956 and engaged in the business of manufacturing of yarn and allied products.

4.3 It is submitted that the Corporate Debtor had placed orders with Operational Creditor for the supply of Viscose Stable Fiber, Lenzing Loyocell, Viscose Excell Fiber etc. which had been delivered to them, under various invoice bills and delivery challans, the said invoices totally 75 Nos. are annexed hereto marked as **Annexure II** amounting to Rs.1,83,52,196.40 (Rupees One Crore Eighty Three Lakhs Fifty Two Thousand One Hundred Ninety Six and paise forty only).

4.4 It is submitted that the Operational Creditor has been maintaining an open and running account in respect of those transactions they had with Corporate Debtor and accordingly, there is an outstanding a sum of Rs.1,83,52,196.40 (Rupees One Crore Eighty Three Lakhs Fifty Two Thousand One Hundred Ninety Six and paise forty only) payable by the Corporate Debtor to the Operational Creditor which was admitted and acknowledged by the Corporate Debtor.

4.5 The Operational Creditor submits that the following invoices are due and payable to Nova Tex with GSTIN 33AAPFN8189G1ZP

S.No	Date	Invoice Number	Bill Amount due (in Rs.)	Amount paid (in Rs.)
1.	06.05.2022	25	Rs. 12,41,862	On various dates the Corporate Debtor repaid to the Operational
2.	11.05.2022	35	Rs. 8,54,589	
3.	11.05.2022	39	Rs. 6,74,375	
4.	30.05.2022	70	Rs. 7,46,927	
5.	01.06.2022	76	Rs. 7,43,458	
6.	07.06.2022	84	Rs. 13,22,049	
7.	10.06.2022	91	Rs. 7,37,407	



8.	17.06.2022	103	Rs. 14,01,975	Creditor
9.	22.06.2022	110	Rs. 3,66,957	
10.	28.06.2022	116	Rs. 12,80,075	
11.	02.07.2022	121	Rs. 13,47,685	
12.	06.07.2022	129	Rs. 6,32,623	
13.	07.07.2022	130	Rs. 8,01,775	
14.	10.07.2022	134	Rs. 14,82,906	
15.	12.07.2022	135	Rs. 13,17,399	
16.	17.07.2022	140	Rs. 13,00,703	
17.	19.07.2022	143	Rs. 3,95,241	
18.	20.07.2022	147	Rs. 19,54,647	
19.	23.07.2022	150	Rs. 8,69,865	
20.	28.07.2022	154	Rs. 13,12,845	
21.	29.07.2022	156	Rs. 13,03,428	
22.	02.08.2022	161	Rs. 11,87,210	
23.	07.08.2022	170	Rs. 5,82,083	
24.	09.08.2022	174	Rs. 9,64,686	
25.	10.08.2022	176	Rs. 11,38,995	
26.	17.08.2022	180	Rs. 14,04,336	
27.	20.08.2022	183	Rs. 13,85,332	
28.	27.08.2022	186	Rs. 5,96,224	
29.	30.08.2022	189	Rs. 13,80,765	
30.	03.09.2022	192	Rs. 13,78,587	
31.	10.09.2022	199	Rs. 5,71,710	
32.	14.09.2022	204	Rs. 3,51,658	
33.	15.09.2022	206	Rs. 10,38,999	
34.	21.09.2022	211	Rs. 3,04,883	
35.	26.09.2022	215	Rs. 6,08,385	
36.	26.09.2022	217	Rs. 7,84,411	
37.	06.10.2022	223	Rs. 7,28,037	
38.	10.10.2022	225	Rs. 10,52,245	
39.	21.10.2022	232	Rs. 7,19,753	
40.	02.11.2022	237	Rs. 6,00,331	
41.	05.11.2022	239	Rs. 6,87,132	
42.	09.11.2022	246	Rs. 2,75,713	
43.	14.11.2022	248	Rs. 6,86,663	
44.	19.11.2022	257	Rs. 4,16,102	
45.	23.11.2022	262	Rs. 6,82,436	
46.	30.11.2022	271	Rs. 6,78,009	
47.	07.12.2022	282	Rs. 6,28,861	
48.	10.12.2022	284	Rs. 2,75,540	
49.	12.12.2022	286	Rs. 3,18,280	
50.	17.12.2022	292	Rs. 3,14,193	
51.	19.12.2022	295	Rs. 2,75,518	
52.	22.12.2022	299	Rs. 5,68,694	
53.	23.12.2022	303	Rs. 3,79,623	
54.	30.12.2022	312	Rs. 3,91,284	
55.	02.01.2023	314	Rs. 3,95,560	
56.	06.01.2023	319	Rs. 3,56,921	
57.	07.01.2023	322	Rs. 1,15,847	
58.	09.01.2023	327	Rs. 3,42,731	
59.	12.01.2023	334	Rs. 2,78,333	
60.	21.01.2023	357	Rs. 1,59,654	
61.	06.02.2023	384	Rs. 2,79,577	
62.	18.02.2023	412	Rs. 2,80,018	
63.	26.02.2023	425	Rs. 3,51,026	
64.	01.03.2023	435	Rs. 2,61,558	
65.	06.03.2023	443	Rs. 2,61,762	
66.	11.03.2023	450	Rs. 3,27,893	
67.	18.03.2023	457	Rs. 2,61,635	
68.	01.04.2023	2	Rs. 3,27,012	
69.	07.04.2023	8	Rs. 4,09,655	
70.	19.04.2023	29	Rs. 4,09,166	
71.	25.04.2023	35	Rs. 4,10,195	
72.	05.05.2023	52	Rs. 4,13,844	
73.	26.05.2023	67	Rs. 2,53,759	
74.	30.05.2023	72	Rs. 3,38,382	
75.	10.06.2023	82	Rs. 2,62,385	
			Rs.5,50,49,371	Rs.3,66,97,174.60
Total outstanding amount Rs.1,83,52,196.40				

4.6 It is submitted that the Corporate Debtor through various telephone calls and meetings had assured the Operational Creditor that outstanding dues payable to the Operational Creditor were a matter of top priority for the Corporate Debtor and that the Corporate Debtor would pay the debts of the Operational Creditor at the earliest.

4.7 Therefore, the Operational Creditor prefers a Company Petition for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor before this Tribunal.



5 SUBMISSIONS OF THE CORPORATE DEBTOR

5.1 It is submitted by the Corporate Debtor is not disputing the transaction between the Applicant and Respondent and default committed by the Respondent, the Operational Creditor has failed to establish operational debt in terms of Section 5 of the Insolvency and Bankruptcy Code, 2016.

5.2 It is submitted that since the Corporate Debtor is facing financial difficulties, the amounts due is undertaken to be paid by the Corporate Debtor within a period of six months from the disposal of this present petition.

5.3 It is submitted that the Corporate Debtor that owing to Covid-19 pandemic, the Corporate Debtor similar to all like businesses, suffered severe losses and is unable to accede to the immediate demand of the Applicant.

6 FINDINGS OF THIS TRIBUNAL

6.1 On 30.04.2024 Respondent has stated that they are not in position to pay the amount and had sought the proceedings to be continued.



6.2 Heard for the counsels and perused the documents on record.

6.3 The application has been filed by the operational creditor for the payment due from the corporate debtor to the extent of Rs 1,83,52,196.40 for the supply of materials rendered by the operational creditor.

6.4 Applicant contends that there was a business transaction between the corporate debtor and the operational creditor which is not disputed by the corporate debtor it is an admitted fact that the parties were in business terms.

6.5 Applicant contends that 75 Invoices are due and payable from the end of corporate debtor to the operational creditor; Corporate debtor has acknowledged the said debt and sought six months to pay as the corporate debtor company was in financial crisis. Vide order dated 22.02.2024 we had taken on record the fact that the amount is not disputed from the end of corporate debtor. On 30.04.2024 counsel for the respondent submitted to us that they are not in a position to pay the debt we are considering the application on merits.



6.6 Before we dwell into the merits of the case it is pertinent for us to discuss if the present application is filed within the stipulated period of limitation , with regard to the date of default and period of limitation The Hon'ble supreme court in in ***B.K. Educational Services Private Limited v Parag Gupta and Associates(2019)*** stated that “ Articles 137 and 5 of the Limitation Act, 1963 apply to applications filed under Sections 7 and 9 of IBC., the position is that the period of limitation is three years from the **right to apply** accrues but the delay is condonable on sufficient grounds. It is to be noted that the third column in Article 137 of the Limitation Act posits that time runs when the ‘right to apply accrues’. Hon'ble Supreme Court In the decision of ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited and Anr 2020*** Court considered the question as to when the ‘right to apply would accrue?’ Paragraph 32 of the said decision, in so far as it is relevant for this case reads as

- (d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;
- (e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the



right to apply under the Code accrues on the date when default occurs;

(f) that default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable; and

(g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned.

*Hon'ble supreme court in **Sabarmati Gas Limited vs Shah Alloys Limited 2020** Held that "positions settled with respect to Section 7, IBC will "proprio vigore" apply to Section 9, IBC."*

6.7 Based on the above judgements it is evident that limitation starts from the date "***right to apply accrues***". To consider on when the right to apply accrues the date on which the debt fell in due plays a curtail role from which 3 years time period the application can be filed by the operational creditor, since the specific date of default has not been mentioned in the application vide order dated 22.02.2024 we had directed the applicants to submit the date of default in the compliance filed the specific date of default was not filed instead it was averted that last payment was made on 29.04.2023, On perusal of records it is seen that the Last invoice was dated 10.06.2023 and Nesl report state the date of default as 10.08.2023 hence the date of default is considered as on 10.08.2023



hence we consider that the present application is within the period of limitation.

6.8 At this Juncture the short point for our consideration is whether any operational debt qua the Corporate Debtor has been proven to have become due and payable and if there has been a default in the payment thereof and whether there is any pre-existing dispute between the parties.

6.9 The examination of the same would be in line with the test which has been laid down by the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353 ('Mobilox' in short)*** which is as reproduced below

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

For ready reference relevant provisions are extracted.

Section 3(11) of IBC "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt



Section 5 (21) operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the **[payment]** of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority

Section 3(12) Default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not ¹**[paid]** by the debtor or the corporate debtor, as the case may be;

6.10 The pre requisite to initiate CIRP against the Corporate debtor under section 9 of the code the debt should be operational debt, Corporate debtor contends that the debt which is payable doesn't constitute to be operational debt, But has substantiated their claims with grounds

6.11 For a debt to constitute a operational debt a claim should be with respect of goods and service rendered. Hon'ble supreme court in *New Okhla Industrial Development Authority v Anand Sonbhadra*, held as follows:

122. 'operational debt' has been defined in Section 5(21), which means 'a claim in respect of provision of goods or services including employment'. Operational debt also means a debt in respect of payment of dues arising under any law for the time being in force and payable to any Local Authority, inter alia. 'Operational creditor' is defined in Section 2(20) as meaning 'a person to whom



operational debt is owed and includes any person to whom such debt has been legally assigned or transferred

6.12 As it as an undisputed fact that the corporate debtor has received the goods from the operational debtor which is within the meaning of section 5(21) for which corporate debtor had undertaken to pay within the period of six months, since receiving of goods has not been disputed and impliedly accepted and as per section 5(21) operational debt includes claim with respect to delivery of goods that being the scenario we are of the opinion that the said debt is within the preview of the operational debt

6.13 Vide order dated 30.04.2024 the applicants were directed to file a NesL report compliance has been filed by the applicant, relevant portion is extracted below,

NesL NATIONAL E-GOVERNANCE SERVICES LIMITED

FORM D
RECORD OF DEFAULT (RoD)

(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Operational Creditor M/s NOVA TEX in respect of the default of debt as per details given below:-

(a) Name of the Submitter: M/s NOVA TEX
(b) Schedule-2 Bank (Y/N): N
(c) Name of Corporate Debtor: M/s GODDESS TEXTILES PRIVATE LIMITED
(d) Unique Debt Identifier Number: AAPFN8189G_25
(e) Registered Address: No. 29F, Power House Road, Old Union Bank Backside, 1st Street, Somanur, Tiruppur
(f) Total Outstanding Amount: 18352196.40
(g) Default Amount: 18352196.40
(h) Date of Default: 10-08-2023
(i) Status of Authentication of Default: AUTHENTICATED
(j) Date of Last Acknowledgement of Debt (AoD): Not Available

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated/Disputed/Deemed to be authenticated)	Authentication completed on
(1)	06-06-2024 12:36:29	*AUTHENTICATED Colour Code : GREEN	07-06-2024 12:05:53

NesL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.



6.14 The NesL report placed on record records it as Code Green and mentions the default amount as Rs 18352196.40 and mentions the date of default as 10.08.2023.

6.15 Since the Corporate debtor has acknowledged the debt and sought time for paying the debt within the period of six months which recorded by us on 22.02.2024, subsequently on 30.04.2024 Respondent had submitted to us that they are not in position to pay the amount and had sought to continue the proceedings and placing reliance on the NesL report submitted by the operational creditor, The Applicant has establish that there is Operational debt which is defaulted from the end of corporate debtor, for us to initiate CIRP against the corporate debtor.

6.16 For the above mentioned reasons we are of the considered opinion that CIRP should be initiated against the corporate debtor under section 9 of Insolvency and Bankruptcy code 2016

6.17 Operational Creditor has not suggested the name of IRP instead has let to discretion of this Tribunal to appoint IRP. Hence, from the latest list published by IBBI, we appoint **Ms. Ms. SANTHANALAKSHMI** WITH IBBI NO **IBBI/IPA-002/IP-N00831/2019-2020/12661** (email id: *santhanalakshmi@gmail.com*) as the “Interim



Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

6.18 As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

16.19 However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to



- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

16.20 The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

16.21 The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy



Board of India (Insolvency Resolution Process for Corporate Persons)
Regulations, 2016.

17. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry.

18. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-

**VENKATARAMAN SUBRAMANIAM,
MEMBER (TECHNICAL)**

-SD-

**JYOTI KUMAR TRIPATHI,
MEMBER (JUDICIAL)**

Rannika