



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **25.09.2024** THROUGH VIDEO CONFERENCING

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**APPLICATION NUMBER** :  
**PETITION NUMBER** : CP(IB)/676(CHE)/2017  
**NAME OF THE PETITIONER(S)** : Bank of India & Nabard  
**NAME OF THE RESPONDENTS** : Vinkem Labs Ltd  
**UNDER SECTION** : Sec 7 Rule 4 of IBC, 2016

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**ORDER**

Present: Ld. Counsel Shri. Deva Dakshan for the Petitioner.

None for the Respondent.

Vide separate order pronounced in Open Court, the petition for initiating corporate insolvency resolution process against the Corporate Debtor is **allowed**.

Ms. Kavitha Surana is appointed as IRP.

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, CHENNAI**

**CP(IB)/676/(CHE)2017**

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the  
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of M/s. Vinkem Labs Limited*

**1. Bank Of India,**

Chennai Mid Corporate Branch,  
826, Anna Salai,  
Tarapore Towers, 4<sup>th</sup> Floor,  
Chennai - 600 002.

**2. National Bank for Agriculture and Rural Development (NABARD)**

Tamilnadu Regional Office,  
No.48, Mahatma Gandhi Road,  
Nungambakkam, Chennai — 600 034      ... Financial Creditors/Applicants  
-Vs-

**Vinkem Labs Limited**

29, Shanthi Colony,  
Anna Nagar,  
Chennai – 600 040

...Corporate Debtor/Respondent

*Order Pronounced on 25<sup>th</sup> September, 2024*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)  
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Financial Creditor : T.Ravichandran, Advocate  
For Corporate Debtor : Munusamy Perumal, Respondent in person*



## ORDER

(Heard Through Physical Mode)

Under consideration is an application filed by the Financial Creditors viz. Bank of India and National Bank for Agriculture and Rural Development (NABARD) under Section 7 of Insolvency and Bankruptcy Code 2016 (*hereinafter referred to as "IBC, 2016"*) against the Corporate Debtor viz. Vinkem Labs Limited seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. Part I of the application set out the details of Financial Creditors i.e., Bank of India, a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 and NABARD, a Bank established under Section 3 of the National Bank for Agriculture and Rural Development Act, 1981. Part II of the application sets out the details of the Corporate Debtor. It was incorporated on 21.12.1994 with Authorised Share capital of Rs. 12,50,01,000/- (Rupees Twelve Crores Fifty Lakhs and One Thousand only) and Paid-Up Share Capital of Rs.9,89,02,000/- (Rupees Nine Crore Eighty Nine Lakhs Two Thousand Only). Its registered office is at Shanthi Colony, Anna Nagar, Chennai - 600 040 within the jurisdiction of this Tribunal. It is a company engaged in R&D and Commercial Manufacture of High-Tech, High Value, Low Volume Life Saving Cancer Drug.



3. In Part III of the Application, the Financial Creditor has proposed the name of one Ms. CS Kavitha Surana as an Interim Resolution Professional (IRP).

4. Part IV of the application sets out the details of the debt and default amount and the date of default.

5. As per the averments made in the Application. The Respondent had approached the Applicants to meet part of its cost in the project of manufacturing and supply of injectable and lyophilized form of Oncology products. The Applicants/Financial Creditors sanctioned various credit facilities on various dates to the Corporate Debtor, which were revised from time to time. Bank of India initially sanctioned Rs. 1139 lakh vide letter dated 24.03.2009 and later revised to Rs.1659.12 lakh. Similarly, NABARD initially sanctioned Rs.1216.50 lakh vide letter dated 21.08.2007 which it increased to Rs.1659.12 lakh vide letter dated 10.08.2009. It also sanctioned FITL-1 for Rs.93.66 lakh and FITL-2 for Rs.162.50 lakh respectively on 27.07.2010 and 29.07.2011.



6. It is alleged that the Corporate Debtor defaulted in repayment of loan which made the Financial Creditors/Applicants, send demand / legal notice dated 11.07.2015 calling upon the Corporate Debtor to discharge the entire liabilities by paying Rs.54,58,74,831.47 to Bank of India in respect of various credit facilities and Rs.28,78,27,360.00 to NABARD in respect of various credit facilities. It is stated that as on 01.11.2017, the following amounts were outstanding against the Corporate Debtor.

**a) Bank of India**

Nature of Facility	Outstanding in Rs. In lakhs
Term Loan-I	184077569.22
Term Loan-II	150284337.22
Cash Credit-I	37041617.60
FITL – I	42673176.18
FITL-II	114359249.81
Cash Credit-II	108199009.98
Total	63,66,34,959.88

**b) NABARD**

Nature of Facility	Outstanding in Rs. in lakhs
Term Loan (including FITL-I & II)	35,11,62,005
Total	35,11,62,005

7. It is stated that the Corporate Debtor at the time of availing loan had hypothecated the assets including immovable properties as detailed in Annexure-A of the application (page 10 to 11).



8. The Applicants have also annexed copy of the documents executed by the Corporate Debtor including acknowledgment of debts. The details of the documents is as under.

- i) Joint Deed of Hypothecation executed in favour of the Applicant Banks/Financial Creditors dated 16.12.2009.
- ii) Acknowledgment of Debt (Term Loan-I) executed in favour of the First and Second Applicant Bank dated 09.05.2011.
- iii) Acknowledgment of Debt (Term Loan - I) executed in favour of the First and Second Applicant Bank dated 13.07.2013.
- iv) Supplementary Term Loan Agreement (Term Loan-I) executed in favour of the First and Second Applicant Bank.
- v) Hypothecation cum loan agreement (Term Loan II) dated 09.05.2011.
- vi) Demand Promissory Note (Term Loan II) for Rs. 1200 lakhs dated 09.05.2011.
- vii) Hypothecation cum loan Agreement (Cash Credit- I) dated 08.04.2011.
- viii) Letter of undertaking (Cash Credit-I) dated 08.04.2011.
- ix) Acknowledge of debts (Cash Credit-I) dated 13.07.2013.
- x) Demand Promissory Note (FITL-I) for Rs. 1850 lakhs dated 13.07.2013.
- xi) Hypothecation cum loan agreement (FITL-I) dated 13.07.2013.
- x) Letter of undertaking (FITL-I) dated 13.07.2013.
- xi) Demand Promissory note (FITL-II) Rs 737 Lakhs dated 13.07.2013.
- xii) Hypothecation cum loan agreement (FITL-II) dated 13.07.2013.
- xiii) Letter of undertaking (FITL-II) dated 13.07.2013.
- xiv) Demand Promissory Note (Cash Credit- II) Rs. 650 Lakhs dated 13.07.2013.



xv) Hypothecation cum loan agreement (Cash Credit II) dated 13.07.2013.

xvi) Letter of undertaking (Cash Credit II) dated 13.07.2013.

xvii) Acknowledgment of Debt Cash Credit – II dated 18.04.2015.

9. The Applicants have also given the details of the amounts outstanding against various facilities including date of default as under:

**Bank of India**

**b**

Sl. No	Nature of facility	Sanctioned Amount	Date of Default	Book Outstanding as on 01.11.2017 (Rs)
1	Term Loan – I	7,94,00,000.00	30.09.2013	18,40,77,569.69
2	Term Loan – II	10,20,00,000.00	28.02.2013	15,02,84,337.22
3	Cash Credit - I	2,00,00,000.00	23.08.2017	37,04,16,17.60
4	FITL - I	18,50,00,000.00	20.09.2013	4,26,73,176.18
5	FITL – II	7,37,00,000.00	19.09.2013	11,43,59,249.81
6	Cash Credit - II	6,50,00,000.00	25.08.2014	10,81,99,009.98
	<b>Total Outstanding</b>			<b>63,66,34,959.88</b>



**NABARD:**

Sl. No	Nature of facility	Sanctioned Amount (In lakhs)	Date of Default	Book Outstanding as on 01.11.2017 (Rs)
1	Term Loan	1659.125	01.08.2011	35,11,62,005.00
	FITL – I	93.66		
	FITL - II	162.50		
	<b>Total</b>			<b>35,11,62,005.00</b>

10. Notice of the Petition was given to the Respondent. The Respondent during the proceeding on 19.12.2017 submitted an order passed by Hon'ble High Court of Madras on 14.12.2017 in WP.No.11777 of 2017 whereby parties were directed to either jointly or separately file a memo before the Tribunal for deferment of the matter. The order was extended from time to time. This Tribunal vide an order dated 05.03.2018 adjourned the matter sine die with liberty to the parties to mention the matter when the final order is passed by the Hon'ble High Court. The matter was taken up on 01.04.2024 on the submissions made on behalf of the Applicants that the Hon'ble High Court has directed the Applicants in WP Nos.11777 and 16622 of 2017 to file the copy of the order before the Tribunal to enable the Tribunal to dispose of the matters before it. It is





pertinent to mention that the Hon'ble Division Bench of Madras High Court in Writ Appeal Nos.87 and 123 of 2021, stayed the proceedings of the Hon'ble Single Bench of the Madras High Court vide order dated 05.03.2021.

11. The Respondent on appearance was directed to file status of the cases pending in the Hon'ble High Court. He was also served with the copy of the petition along with annexures for filing the reply but despite opportunities given, he did not filed any reply.

12. It is pertinent to mention that during the proceedings, the Respondent filed a Memo vide SR. No.2077 dated 26.04.2024 referring the order of Hon'ble High Court dated 05.10.2017 in WP.No.11777 of 2017. It is to be noted that Hon'ble Single Bench of the High Court disposed of WP.Nos.16622 of 2017 and 11777 of 2017 vide order dated 30.09.2020, with directions to the Tribunal to dispose of the matter taking note of the order. Against the order dated 30.09.2020, WA.No.87 of 2021 and WA.133 of 2021 were preferred by the Applicants/Financial Creditors where the order of Hon'ble Single Bench of High Court was stayed vide order dated 29.01.2021.



13. The relevant excerpts of Order dated 29.01.2021 in W.A.No.87/2021 is extracted hereunder:

W.A.Nos.87 and 133 of 2021

W.A.No.87 of 2021  
and C.M.P.Nos.652 and 654 of 2021  
and  
W.A.No.133 of 2021  
and C.M.P.No.705 and 706 of 2021

THE HON'BLE CHIEF JUSTICE  
AND  
SENTHILKUMAR RAMAMOORTHY, J.

(Order of the Court was made by *the Hon'ble Chief Justice*)

These two appeals have been instituted by a Nationalised Bank, Bank of India, and another Government controlled body, National Bank for Agriculture and Rural Development, and directed against a common judgment and order of September 30, 2020.

2. The principal ground urged by either set of appellants is that, whatever may have been the position on the factual matrix, a writ in the nature of mandamus would not lie to command a bank to make available credit facilities to a constituent.

3. Prima face, the proposition appears to be unimpeachable and, at this stage, it is difficult to imagine that there may be an exception to

W.A.Nos.87 and 133 of 2021

the principle, at least in theory, except in a case of crass and egregious malafides.

4. For the aforesaid reason, the order impugned will remain stayed pending further orders. Issue notice to the respondents, including notice to learned counsel who had appeared before the learned Single Bench.



14. We have heard Ld. Counsel for the Applicants/Financial Creditors and Respondent in person and perused the record.

15. A perusal of the records reveals that, the Corporate Debtor had availed multiple credit facilities from the Applicants/Financial Creditors. The Corporate Debtor has also not denied availing the loan facilities. It even made acknowledgement of debt on 18.04.2015. (Copy of Acknowledgment of Debt dated 18.04.2015 is annexed. This application has been filed on 16.03.2017 i.e. within the period of three years from the date the debts became due and payable. The debt amount in the present case is more than the threshold limit of Rs.1.0 crore.

16. The Applicants have filed a memo vide SR No:4355 dated 29.08.2024 annexing the NeSL Record of Default. In the NeSL record, the status of authentication of default is marked as "AUTHENTICATED".

17. Upon considering the facts and circumstances of the present case, we are of the view that the Corporate Debtor had consistently acknowledged the amount which is due and payable by the Corporate Debtor towards the Financial Creditors and as such the present application is within by limitation.



18. Facts and circumstances show that there is a financial debt which is due and payable by the Corporate Debtor and the Corporate Debtor has committed default in repayment of the said financial debt.

19. The Hon'ble Supreme Court in the case *Innoventive Industries Limited -Vs- ICICI Bank & Anr., (2018) 1 SCC 407* has held that Tribunal is required to see whether there is a 'debt' which is due and payable under the law and whether the default is more than Rupees One Lakh (now Rupees One Crore). The moment when default amount exceeds rupees one lakh (now Rupees One Crore), this Tribunal is required to initiate a Corporate Insolvency Resolution Process as against the Corporate Debtor.

20. Since, there is a debt and default, the Application filed under Section 7 of IBC, 2016 is liable to be admitted. We therefore allow the application and admit the Corporate Debtor viz., Vinkem Labs Limited into Corporate Insolvency Resolution Process.

21. The Financial Creditor has proposed the name of **Ms. Kavitha Surana**, having Reg. No. IBBI/IPA-002/IP-N00166/2017-18/10435; Email ID: kavitha@mksurana.com as the Interim Resolution Professional (IRP) who has also filed his consent in Form - 2 and also upon verification



from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 22.11.2024. **Ms. Kavitha Surana** is appointed as the IRP and is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under 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;

- 23. However, during the pendency of moratorium period in terms of Section 14(2) 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.

24. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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.

25. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 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.





27. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

28. The IRP shall take custody of the records of information relating to the assets, finances and operations of the Corporate Debtor referred in clause (a) of section 18 and such other information required under regulation 36; and also the assets recorded in the balance sheet of the Corporate Debtor or in any other records referred in clause (f) of section 18 of IBC, 2016 and the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall provide to the IRP, the list of assets in terms of Regulation 3A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

29. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of



IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

30. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

31. Accordingly, **CP(IB)/676(CHE)/2017** stands **admitted**.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)