

IRP

CP/1263/IB/2018

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

**CP/1263/IB/2018**

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

In the matter of **M/s. VasmO Agro Nutri Products Private Limited**  
**M/s. Chola mandalam Investment and Finance Company Limited**  
---Financial Creditor

Vs.

**M/s. VasmO Agro Nutri Products Private Limited**  
---Corporate Debtor

**Order delivered on: 15.03.2019**

**Coram:**

**B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**  
**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Financial Creditor: *Shri.S. Namasivayam, Advocate*  
*Shri.S. Rajkumar, Advocate*  
*Ms.R. Balambigai Gowri, Advocate*  
*Shri.T.M. Mano, Advocate*

For the Corporate Debtor : *Shri. R.K. Ramaiah, Advocate*

**ORDER**

**Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

**Order pronounced on: 15.03.2019**

Under consideration is a Company Petition filed under  
Section of the Insolvency & Bankruptcy Code ("the Code") by



M/s. Cholamandalam Investment and Finance Company Limited (**"the Financial Creditor"**) for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of M/s. VasmO Agro Nutri Products Pvt. Ltd. (**"the Corporate Debtor"**) on the ground that it has defaulted in repaying an amount of ₹3,67,40,282.81 (Rupees Three Crores Sixty Seven Lakhs Forty Thousand Two Hundred and Eighty Two and Eighty One paise) as on 03.10.2018 as against the loans (purchase bill discounting facility revolving every three months) availed by the Corporate Debtor and that the date of occurrence of default for the purpose of IBC is considered to be the date of issuance of demand/recall notice dated 23.08.2018.

2. The Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 on 21.06.2010 having its registered office at Old No.12 New No.6, Kamraj Park Street, Royapuram, Chennai-600013.

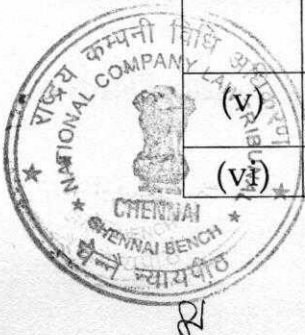
3. On perusal of the record, it is seen that the Corporate Debtor availed credit facilities under the head **"Purchase Bill Discounting**



*Facility* against undated cheques/blank cheques from the borrower as well as guarantor, 15% Fixed Deposit of loan amount as existing collateral and also executed necessary documents in favour of the Financial Creditor for a corporate finance loan of ₹4 crores.

4. To support this claim, the Financial Creditor filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S.No.	Dates	Events
(i)	06.12.2017	Sanction of credit facility under the head Purchase Bill Discounting Corporate Finance Loan Agreement executed by the Debtor
(ii)	29.11.2016 & 07.12.2017	Resolution passed in the meeting of Board of Directors of the company resolving to avail Purchase Bill Discounting facility of Rs.4 crores from the Financial Creditor
(iii)	23.08.2018	Record of Disbursement of credit facilities
(iv)	29.12.2017 to 03.10.2018	Statement of Accounts
(v)	23.08.2018	Advocate's Notice sent to Corporate Debtor
(vi)	17.11.2018	Tracking Report reflecting delivery of Notice



5. Looking at the dates and events as well as the annexures to the Company Petition, we hereby hold that the Financial Creditor has furnished material disclosing the Financial Creditor having provided credit facilities as mentioned above.

6. The learned counsel for Corporate Debtor has submitted that when he checked the transactions between the parties around June 2018, it was found that the Financial Creditor had charged 2.5% interest per month for the delayed payments and that the bills were discounted by the Financial Creditor even before crediting the same to the bank account of the Corporate Debtor for which the proportionate interest for the period of 90 days upfront was deducted. The total amount paid by way of such penal interest with discrepancy over a period of more than two years runs to more than ₹1crore. This discrepancy in the loan account was pointed out in various meetings but the Financial Creditor did not reconcile the accounts. Therefore, the Corporate Debtor

withheld the payment from April 2018. However, the Corporate





Debtor is ready to honour its commitment subject to reconciliation of the accounts and the applicant giving credit for the excess penal interest charged.

7. The learned counsel for Corporate Debtor argued that

- None of the bills stated in the list of bills which were discounted have been certified by the Corporate Debtor;
- The Statement of Accounts submitted by the Petitioner is not acknowledged nor signed by the Corporate Debtor;
- Demand Notice effected upon is not as mandated under the Act;
- There is an arbitration clause in the agreement by which all disputes have to be referred to arbitration;
- With a view to harass and intimidate, the Financial Creditor has straightaway filed this petitioner before this Tribunal.

Hence, he prayed for dismissal of the petition on the point of pre-existence of dispute.

8. On looking at the submissions of either side, we observe that

the Financial Creditor has placed before this Tribunal (i) loan sanction letter (ii) Board resolution of the Corporate Debtor (iii)



personal guarantees provided by the Directors of the Corporate Debtor (iv) undated/blank cheques given as security for the fulfilment of the terms of facility agreement (v) record of disbursement of the amount to the Corporate Debtor (vi) Statement of Accounts (vii) Demand Notice etc. evidencing the fact that the amounts were credited to the Corporate Debtor by way of "*Bill Discounting Facilities*". It is seen that the Corporate Debtor has not fulfilled the terms of facility agreement and as such had committed default for which the Corporate Debtor is liable to repay the Financial Creditor.

9. The Corporate Debtor has submitted that none of the bills (in the list of bills discounted) have been certified by this respondent. This contention is devoid of any merits as it contravenes their own statement made in the earlier counter (wherein the Company Petition No. has been wrongly mentioned). The Corporate Debtor stated that they have been regular in payment of all discounted bills on the maturity date



right from the year 2016 and that more than 200 bills have been discounted by the Corporate Debtor and the amounts have also been paid back. It is further submitted that their auditor, during the check of transactions had found that 2.5% interest per month was charged for the delayed payments but it was in fact charging more than that amount and has stated that the bills were discounted by the Financial Creditor even before crediting the same to the bank account of the Corporate Debtor and that the penal interest paid by the CD for a period of two years runs to more than a ₹1 crore of rupees. Since the Financial Creditor did not reconcile the account inspite of several requests in the various meetings, the Corporate Debtor withheld payment effective from April 2018 and has stated that they are ready to honour their commitment subject to reconciliation of the accounts and the Financial Creditor giving credit for the excess penal interest charged. The respondent/CD has contended that the petition has been filed only to harass and intimidate them and that the



Financial Creditor has straightaway filed this petition before NCLT without evincing any interest to resolve the outstanding issues.

10. It is seen that no record or factual material or any document/letters evidencing the existence of a dispute could be found, as claimed by the CD. The statements which have been made in the counter and additional counter appear to be without any basis as the CD has not chosen to file any documentary evidence rebutting the statement of accounts submitted by the FC. On perusal of the process file, it is also seen that when this matter came up for hearing on 01.02.2019, 06.02.2019, 13.02.2019 and 22.02.2019, the CD has stated that they are exploring the possibility of a settlement and that settlement talks are in progress. Since no settlement was forthcoming between the parties, this Tribunal reserved its Orders on 27.02.2019.

11. In view of the above facts, this Tribunal admits the Company Petition 1263/IB/2018 and order for the commencement





of Corporate Insolvency Resolution Process (CIRP). The Financial Creditor/Applicant has recommended the name of Interim Resolution Professional and consent of the IRP is also enclosed along with the application in form-2. We hereby declare moratorium with the following directions:

I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

- a) *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;*
- b) *transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*



*d) the recovery of any property by a owner or lessor where such property is occupied by or in the possession of the corporate debtor.*


- II. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of Sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of issue of order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may




V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Ms. Subramaniam Aneetha (IBBI/IPA-001/IP-P00376/2017-2018/10633) A-2Sarada Apartments, No.17/6, Sringeri Mutt Road, R.A. Puram, Mandaveli, Chennai 600028, Mobile No.7904357629, E-mail: [aneethaca@gmail.com](mailto:aneethaca@gmail.com) as Interim Resolution Professional (IRP) to carry out the functions as mentioned under the IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.


12. Accordingly, the CP/1263/IB/2018 is hereby **admitted**.

  
(S. VIJAYARAGHAVAN)  
MEMBER (Technical)

  
(B.S.V. PRAKASH KUMAR)  
MEMBER (Judicial)



Certified to be True Copy

  
ASST. REGISTRAR / DEPUTY REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
CHENNAI BENCH  
CORPORATE BUILDING, 2nd FLOOR,  
20 RAJAJI SALA