

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

**CP/636/IB/2018** filed 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

In the matter of ***M/s. Shree Murugan Flour Mills Private Limited***

**M/s. ADM Agro Industries India Private Limited**

Kaledonia (HDIL Building), Level 7,  
B Wing, Office No.4A, Sahar Road,  
Opposite Vijay Nagar House,  
Andheri (East)  
Mumbai - 400 069 Maharashtra

*... Operational Creditor*

-Vs-

**M/s. Shree Murugan Flour Mills Private Limited,**

No.5, Vinayakar Koil Street,  
Krishnaswamy Nagar,  
Ramanathapuram,  
Coimbatore – 641 045, Tamil Nadu

*... Corporate Debtor*

*Order Pronounced on 31<sup>st</sup> January, 2020*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : B. R. Shankaralingam, Advocate*

*For Corporate Debtor : K.S. Ravichandran, PCS  
S. Manjula Devi, Advocate  
M.K. Preetha, Advocate  
Harisha, Advocate  
For KSR & Co.,*

## ORDER

**Per: ANIL KUMAR. B, MEMBER (TECHNICAL)**

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant in the capacity of the Operational Creditor viz., **M/s. ADM Agro Industries India Private Limited** against the Respondent viz., **M/s. Shree Murugan Flour Mills Private Limited**. The Applicant seeks to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company with CIN:U01403MH2009PTC291309.

3. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U15311TZ1986PTC001889 which was incorporated on 15.12.1986 and that its nominal share capital and paid up

capital is ₹1,50,00,000 each (Rupees One Crore and Fifty Lakhs only). The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.5, Vinayakar Koil Street, Krishnaswamy Nagar, Ramanathapuram, Coimbatore - 641 045, Tamil Nadu.

4. Part-III of the Application shows that the Operational Creditor has not proposed the name of Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the IRP.

5. From Part-IV of the Application, it is seen that a sum of ₹2,27,71,221 (Rupees Two Crores, Twenty Seven Lakhs, Seventy One Thousand, Two Hundred and Twenty One only) along with the interest at 18% per annum from the date of default till payment/realization is due and payable to the Applicant. The background of the Operational Debt is that the debt originates from the purchase of wheat (hereinafter referred to as the "**Said Goods**") by Corporate Debtor from Operational Creditor pursuant to a Contract No: WTBTS/10 dated 10.08.2016

6. The Corporate Debtor had approached the Operational Creditor who requested to supply the said goods on credit, thereafter, pursuant to various discussions and negotiations with

the Operational Creditor, the Corporate Debtor entered into Sales Contract bearing number WTBTS/10 dated 10.08.2016.

The salient features are as follows:-

Tax Invoice No.	Date of Invoice and Voucher	Location	Buyers name	Description of Items
WTBTS/58	16.08.2016	Maharashtra	Shree Murugan Flour Mills (P) Ltd.	Wheat Mill Quality - MT @ Rs./MT

It is also seen that both the parties have signed the said document of Sales Contract.

7. Accordingly, the Operational Creditor sold, supplied and delivered the said Goods to the Corporate Debtor and raised the invoice bearing No.WTBTS/58 dated 16.08.2016 for a sum of ₹4,24,20,000 (Rupees Four Crore Twenty Four Lakh Twenty Thousand only). In terms of the said Sales Contract and said Invoice the Corporate Debtor was required to make payment within 30 days from the date of receipt of the said goods.

8. It is seen from the application, that during the period of 29<sup>th</sup> September, 2016 till 27<sup>th</sup> April, 2017 the Corporate Debtor made payments in several tranches amounting to ₹1,96,48,779 (Rupees One Crore Eighty One Lakh Forty Eight Thousand Seven Hundred and Seventy Nine only) but even after several

discussions and negotiations with the Corporate Debtor the outstanding debt of ₹2,27,71,221 remained outstanding.

9. Pursuant to the enactment of the Insolvency and Bankruptcy Code, 2016, Operational Creditor issued Demand Notice dated 16<sup>th</sup> August 2017 under Section 8(1) of the said Code to the Corporate Debtor. It is submitted that the said Demand Notice was delivered upon the registered office of the Corporate Debtor on 19<sup>th</sup> August 2017. It has been submitted that till date the **Operational Creditor had not received any reply/notice of dispute to the statutory demand notice dated 16<sup>th</sup> August 2017 within the prescribed period under the Code.**

10. This Application has been moved by the Operational Creditor stating that the Corporate Debtor has failed and neglected to pay the Operational Creditor its legitimate dues of an amount of ₹2,27,71,221 (Rupees Two Crore Twenty Seven Lakh Seventy One Thousand Two Hundred and Twenty One only) along with interest @ 18% per annum from the date of default till the date of payment/realization.



11. In the Reply Affidavit filed by the Authorized Representative of the Respondent / Corporate Debtor on 05.12.2019, it has been *inter-alia* stated that:

- a) the Respondent/Corporate Debtor procures wheat from Food Corporation of India (FCI) by way of allotment and tender imported from Australia and Ukraine-Russia, Direct procurement from wheat growing areas like Punjab, Haryana, UP-Delhi and through agents who were working for traders and Merchants.

The grinding capacity of the Mill is 1800 MT per month. Respondent/Corporate Debtor was also doing trading activity of wheat buying and selling. The Wheat would be converted into Maida, Rava, Atta and bran at the mills and the wheat products are sold to wholesalers and the retailers in Tamil Nadu, Kerala and Karnataka.

- b) It has been submitted by the Respondent that the application was filed by the Operational Creditor claiming an amount of ₹2,27,71,221 along with interest @ 18% per annum. The applicant claimed in the application that the amount due is towards invoice raised by the Applicant vide Invoice No.WTBTBS/58 dated 16<sup>th</sup> August 2016 for the supply of Wheat to the Respondent/Corporate Debtor. Total invoice value raised was for ₹4,24,20,000. Wheat was supplied by the Applicant on the basis of the Contract dated 10<sup>th</sup> August 2016 (Contract No.WTBTBS/10). As per the Contract the



Applicant has to supply 2000 MT Mill quality Wheat to the Respondent/Corporate Debtor between the period 10<sup>th</sup> August 2016 to 16<sup>th</sup> August 2016.

- c) The Respondent/Corporate Debtor sent acknowledgement letter dated 16<sup>th</sup> August 2016 to the Applicant which are as follows:

*"We have received Goods from 11.08.2016 to 16.08.2016 from yourself number 41,541,2100.000 MT @ ₹20,200 = ₹4,24,20,000. We will settle the amount 30 days from the date of receipt."*

- d) The Respondent/Corporate Debtor claims to have intimated to the Applicant vide letter dated 18<sup>th</sup> August 2016 as follows:

*"With reference to the above, we have purchased 2100 MT of Wheat from you. The quality of wheat supplied is not good. The sample given and the specifications at the time of concluding transaction was good. But, when wheat was received at our factory, we found that the wheat has lot of impurities, rain damaged, dunky 6 to 7% and 7 to 8% mud balls with stand total comes to 15 kg per quintal. We have incurred heavy loss around ₹3000 per MT. So we are sending this letter along with wheat sample through your Representative Mr. Silesh Kalani and we request you to issue compensation for 2100 MT @ ₹3,000 per MT"*

- e) The Respondent has stated that the above letter was handed to the representative of the Applicant, who came and met the Managing Director of the Respondent/Corporate Debtor at his office. The quality issue was communicated to the representative of the Applicant and another letter



dated 21<sup>st</sup> September 2016 along with the debit note was given to the representative of the Applicant when he visited the factory of the Respondent/Corporate Debtor and it was stated as follows:

*"We refer to our letter dated 18<sup>th</sup> August 2016 complaining on the quality of wheat supplied under your above-mentioned invoice. We regret to note that you have not replied to our complaint so ar. As already agreed by you orally, the loss works out to ₹63 lacs [2100 MT into ₹3000 per MT]. Please send the Credit Note immediately"*

- f) Thereafter, the Applicant issued Demand Notice dated 16<sup>th</sup> August 2018 on 17<sup>th</sup> August 2018 and the Application was filed before the Hon'ble Tribunal in April 2018 and was listed on 06<sup>th</sup> June 2018.
- g) The above application was again listed on 9<sup>th</sup> July 2018 and thereafter on 02<sup>nd</sup> August 2018. On that day the Respondent/Corporate Debtor filed the Memo stating the schedule of payment after serving copy to the Counsel for Applicant in it is stated as follows:

**"WITHOUT PREJUDICE – SCHEDULE OF PAYMENT FILED BY THE RESPONDENT"**

1. *"Out of the outstanding debt of ₹2,27,71,221 claimed in Form-5, a sum of ₹63,00,000 is disputed owing to quality issues. This is recorded in the letter dated 18.08.2016 and 21.09.2016.*

2. *For the balance sum of ₹1,64,71,221 the Respondent offers to pay the same as per the following schedule of payment:*

*Six (6) Equated Monthly Instalment from August 2018.*

- h) On the basis of the above said Memo, the Hon'ble Tribunal dated 23<sup>rd</sup> August 2018 passed the following order which is reproduced as follows:

*"Counsels for both the parties are present. Counsel for the Corporate Debtor has agreed to pay a sum of ₹1,64,71,221 in six equal monthly instalments starting from the month of August 2018. However, he is disputing the claim of ₹63 lakhs on the ground that the material supplied by the Operational Creditor was of the inferior quality and at the relevant point of time the same has been brought to the notice of the Operational Creditor"*

*Counsel for the Applicant has submitted that without prejudice to the claims and contentions of the Applicant, the Counsel for the Applicant is ready to accept the offer subject to the condition that the issue relating to the disputed amount may be decided mutually by the parties or by the process of mediation"*

*In the circumstances, Counsel for the Corporate Debtor is directed to bring 1<sup>st</sup> instalment of due credit amount on next date of hearing. It is also directed that both the parties will file a joint memo of compromise outlining the terms and conditions of the settlement of the disputed amount. Put up on 31.08.2018 at 10.30 A.M."*

- i) The Respondent has stated that they had already paid the settlement amount of ₹1,64,71,221 except the disputed amount of ₹63 lakhs and that the Counter was being filed for the remaining disputed amount of ₹63 lakhs.



- j) After the hearing dated 23<sup>rd</sup> August 2018, the Applicant and the Respondent/Corporate Debtor have been in correspondence with respect to the disputed amount and with respect to the quality of the wheat supplied. However, it is seen that no consensus could be arrived at between the parties in the matter.
- k) Considering the above documents, the statement on affidavit filed by the Applicant the Respondent has stated that there is no dispute is false. It has been alleged that since the date of demand notice, already the issues were in the knowledge of the Operational Creditor and despite the same they had issued the demand notice with a view to threatening the Corporate Debtor by arm twisting the provisions of IBC. It is also alleged that the real motive of the Operational Creditor is not any resolution of insolvency. It is actually an exercise for recovery of money due which they would otherwise have gone through the due process of law through suits and proceedings in a manner known in law. In order to cut short such legal proceedings the Operational Creditor has taken the IBC route.
- l) The Respondent has stated that the claim with respect to the dispute could not be adjudicated before this Hon'ble Tribunal and the same has to be decided by the parties mutually or by the process of mediation.



- m) It is further represented that since there are pre-existing disputes with respect to the claim made by the Operational Creditor and as well as mala fides on the part of the Applicant/Operational Creditor to invoke insolvency proceeding with a view to putting pressure for recovery of money, the Corporate Debtor has prayed to dismiss the Application filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 as this Application is not maintainable.

12. In the Rejoinder filed by the Applicant/Operational Creditor to the affidavit of the Corporate Debtor, it has been inter-alia stated that:

- a) Corporate Debtor has failed to produce any document evidencing acknowledgement of the operational creditor or any of its representative to their alleged letter dated 18<sup>th</sup> August 2016 and hence the contentions are denied and it is also submitted that the said letters are fabricated and generated at a later stage by the Corporate Debtor to avoid their liability which is an abuse of process of law.
- b) Operational Creditor is not aware of any dispute and it is only before the NCLT the Operational Creditor was appraised regarding the alleged dispute created by the Corporate Debtor and hence does not come under Section 5(6) of the definition of "Dispute" as per Insolvency and Bankruptcy Code 2016.

- c) Operational Creditor acknowledges receipt of the amount to a tune of ₹1,64,71,221 through several part payment vide post-dated cheques but unable to receive any payments or schedule towards the balance outstanding amount of ₹63,00,000 as the same is disputed by the Corporate Debtor. Further, the Operational Creditor also submits that the cheques issued towards part payment of the acknowledged amount by the Corporate Debtor were bounced on each and every occasion and it is the Operational Creditor who once again reminded and requested the Corporate Debtor for payment of their outstanding dues but the Corporate Debtor neglected the Operational Creditor and made payment as per their convenience. It was further submitted that the entire debt became due on 15<sup>th</sup> September 2016 as per the agreed terms of payment and since then the Operational Creditor has been awaiting payment of their outstanding dues from the Corporate Debtor.
- d) It has been submitted by the Operational Creditor that the Corporate Debtor has placed on record only emails wherein partial conversation reflecting their readiness is prepared and moulded as per their convenience but failed to place on record the entire conversation exchanged with the Operational Creditor wherein the **Corporate Debtor failed to establish the authenticity of the letters dated 18<sup>th</sup> August 2016 and 21<sup>st</sup> September 2016 and mode of intimation to the Operational Creditor. The said letters were never received by the**




**Operational Creditor from the Corporate Debtor and the said letters were first time brought into the notice of the Operational Creditor after initiation of proceedings before Hon'ble National Company Law Tribunal, thus Operational Creditor vehemently disputes the authenticity of the said letters.**

- e) The Operational Creditor has stated that they are not aware of any dispute and it is only when the Operational Creditor filed the application before the National Company Law Tribunal, the Operational Creditor was appraised of the dispute and the fabricated letters which were never handed over to the Operational Creditor earlier and even the Corporate Debtor as per the procedure of the IB Code failed to reply to the Demand Notice dated 16<sup>th</sup> August 2018 and hence the dispute raised in the present matter is false and mere an afterthought by the Corporate Debtor to avoid payment of the balance outstanding amount. Further, the Corporate Debtor had also not initiated any proceedings against the Operational Creditor rather the Corporate Debtor was making payments to the Operational Creditor with last payment received of ₹15,00,000 on 27<sup>th</sup> April 2017 and till then there was no intimation of alleged dispute by the Corporate Debtor.
- f) It has been submitted by the Operational Creditor that as per the procedure of the IB Code 2016, when a Demand Notice is received by the Corporate

Debtor a reply to the same as per Section 8(2)(a) of the IBC has to be issued within ten days from the date of receipt of the Demand Notice and hence Corporate Debtor wilfully failed to issue the reply to the said Demand Notice and later disputed the amount with the support of fictitious letters.

- g) It has been stated that the relevance of the pre-existing dispute becomes relevant when subsequent evidence is supported to prove the dispute. It has been reiterated that the letters of the Corporate Debtor were never received by the Operational Creditor and even the Corporate Debtor failed to submit any acknowledgement from the Operational Creditor. Thus, existence of dispute is denied by the Operational Creditor. Further the Corporate Debtor has bifurcated the amount of dispute on their own without any consideration from the Operational Creditor. The said disputes are neither supported by a quality report or any rejection letters.

13. This Tribunal has examined the petition of the Operational Creditor. The Counter and Memo filed by the Corporate Debtor and Rejoinder filed by the Operational Creditor, the submissions and arguments of both the parties.

-  i) The Operational Creditor has effected the supply of 2000 MT Mill quality Wheat pursuant to Contract No.WTBTBS/10 @ ₹20,200 Per M.T. and the goods

were delivered on 16.08.2016 for a total value of ₹4,24,20,000.

- ii) Payment of ₹1,96,48,779 had been effected on 27.04.2017 by the Operational Creditor leaving a balance of ₹2,27,71,221.
- iii) As no payment was forthcoming to the Operational Creditor a demand notice dated 16.08.2017 was issued which was delivered on 19.08.2017; which remained without having received any reply from the side of the Corporate Debtor as a result of which the Operational Creditor initiated CIRP process for the recovery of ₹2,27,71,221 [Rupees Two Crores Twenty Seven Lakhs Seventy One Thousand Two Hundred and Twenty One only]
- iv) Counter Affidavit was filed on 04.12.2019 in which it is stated that there is a dispute pertaining to quality issues for an amount of ₹4,24,20,000 which is purported to have been communicated on 10.08.2016.

14. During the course of proceedings before this Tribunal, the parties were heard on a series of posting and the parties were given opportunities to file counter, memos and rejoinders and direction was given by this Tribunal on various dates as described below:-



<b>Sl. No.</b>	<b>Date of Direction by the Tribunal</b>	<b>Gist of Direction</b>
1	09.07.2018	To file Counter on the next date of hearing and posted for arguments.
2	02.08.2018	He has disputed claim of ₹63,00,000 to give response to the proposal given by the Corporate Debtor
3	31.08.2018	To make compliance with the order dated 23.08.2018
4	11.09.2018	To accept part payment of ₹26,86,608 and to settle the dispute.
5	04.10.2018	To accept part payment of ₹26,86,666 in two cheques and to negotiate and settle the dispute.
6	12.11.2018	Both the parties presented and requested time to report for settlement
7	16.11.2018	Both the parties presented and requested time for making balance payment
8	05.11.2018	To accept part payment of ₹13,36,666 in two cheques and to negotiate and settle the dispute.
9	09.01.2019	To accept part payment of ₹80,86,668 in six cheques and to negotiate and settle the dispute.
10	26.03.2019	Both the parties present and are exploring the possibilities of settlement
11	28.06.2019	Both the parties are present and requested time for making payment.
12	18.07.2019	Both the parties are present and requested time for making payment.
13	31.07.2019	Both the parties are present and Counsel for Corporate Debtor requested time for making payment through RTGS.
14	19.08.2019	Both the parties are present and prayed for adjournment.
15	23.08.2019	Both the parties are present. Corporate Debtor has agreed to pay a sum of ₹1,64,71,221/- in six equal monthly instalments starting from the month of August 2018. Corporate Debtor is directed to bring 1 <sup>st</sup> instalment of due amount on next date of hearing and also to file a joint memo of compromise outlining the terms and conditions of the settlement of the disputed amount.

15. This Tribunal observes that the letters of dispute purported to have been issued were produced only during the advanced stage of hearing in the counter affidavit filed by the new Authorized Representative. Further, no record of joint inspection as to the quality issue is seen to have been done by the parties or even by a third party when the quality issue was noticed by the Corporate Debtor; nor the letter of dispute is seen to have been acknowledged by the Operational Creditor.

16. This Tribunal also observes that so far the parties have not filed any Joint Memo of Compromise as directed by this Tribunal nor the Corporate Debtor has been able to produce any further documentary proof to substantiate the existence of dispute which was brought to the notice of this Tribunal only, in the advanced stage of hearing, probably as an afterthought.

17. Taking into account the whole gamut of the issue this Tribunal finds that existence of the Operational debt is proved and the dispute could not be proved to the satisfaction of this Tribunal by the Corporate Debtor and accordingly the petition for initiating against CIRP Process is admitted.

18. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the

list furnished by Insolvency and Bankruptcy Board of India appoints **Ms. Santhanam Rajashree** with Registration Number *IBBI/IPA-002/IP-N00330/2017-1810935* (Email id:- *rajashree66@gmail.com*), as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. 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.

19. However, during the pendency of the 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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



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.

21. The Operational Creditor is directed to pay a sum of **₹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.

22. 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. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*Elz/Raymond*