

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – I, CHENNAI

CP(IB)/221(CHE)2022

(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 Sun Bio Naturals (India) Pvt. Ltd

DRIP CAPITAL INC,
555, Bryant St.#356,
Palo Alto, CA 94301,
United States of America.

... Financial Creditor

-Vs-

SUN BIO NATURALS INDIA PRIVATE LIMITED,
P.No.Super-7, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 600 032.

...Corporate Debtor

Order Pronounced on 06th June 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : Mr. Dinesh Balachandran, Advocate and
Mr.B.Surendhar, Advocate

For Corporate Debtor : Mr. E.Omprakash, Senior Advocate for
R.Swarnavel, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

(Hearing Conducted through VC)

This Application has been filed by DRIP CAPITAL INC

(hereinafter referred to as 'Financial Creditor') under Section 7



of the Insolvency and Bankruptcy Code, 2016 (**I & B Code**) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **SUN BIO NATURALS INDIA PRIVATE LIMITED** (hereinafter referred to as '**Corporate Debtor**').

2. Part I of the Application states that the Financial Creditor was incorporated on 22.08.2014 under EIN No. 47-1674445 having registered office at 555, Bryant St. #356, Palo Alto, CA 94301, United States of America.
3. From Part-II of the Application states that the Corporate Debtor having CIN: U74900TN2014PTC097698 was incorporated on 14.10.2014 and having its registered office at P.No.Super-7, Thiru-Vi-Ka Industrial Estate, Guindy, Chennai – 600 032.
4. In Part-III of the Application states that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., **Mrs. Chhaya Gupta**, having Reg. No. IBBI/IPA-002/IP-N00984/2020-2021/13133; Email ID: guptachayacs@gmail.com.
5. In Part-IV of the Application, it has been alleged that in pursuance of the Demand Promissory Note (DPN) dated 14.07.2020, the Financial Creditor had extended certain facilities to the Corporate



Debtor. A Full Recourse Accounts Purchase and Security Agreement (**Master Agreement**) was executed between the Financial Creditor and the Corporate Debtor on 22.07.2020. It is stated that the said Master Agreement sets out the Financial Creditor's right to exercise recourse against the Corporate Debtor in the event of buyers failure to repay the invoices assigned by the Corporate Debtor in its favour.

6. It is stated that the Corporate Debtor had issued in favour of Financial Creditor, three Purchase Requests and Deed of Assignment dated 18.03.2022, wherein the Corporate Debtor assigned its receivables under seven invoices on full recourse basis. The Financial Creditor had thus advanced an aggregate amount of USD 374,976 on 25.03.2022 to the Corporate Debtor towards assignment of seven invoices which are reproduced below:- (Page No.8)

S.No.	INVOICE NO (INVOICES)	DATE OF PAYMENT	AMOUNT IN USD
1	SGE1011	25.03.2022	53,568
2	SGE1010	25.03.2022	53,568
3	SGE1009	25.03.2022	53,568
4	SGE1008	25.03.2022	53,568
5	SGE1007	25.03.2022	53,568
6	SGE1006	25.03.2022	53,568
7	SGE1005	25.03.2022	53,568
Total amount paid by Financial Creditor			374,976



It is stated that the above invoices were payable by the buyer within 120 days from the date of respective bill of lading. The seven invoices mention the notation under the payment terms as follows: -

"This Invoice has been sold and assigned to Drip Capital Inc., 555 Bryant St # 356 Palo Alto, CA 94301 USA. Please make all remittances towards this Invoice directly to their Bank Account

Account Name: Drip Capital

JPMorgan Chase Bank, JPMorgan Chase New York NY 10017

Account Number: 20000011141325

ABA Routing & Transit Number: 021000021 (For ACH - 028000024) Vessel/Flight no: SWIFT CODE: CHASUS33."

7. It is alleged that in terms of the above, the proceeds of the invoices were directly payable by the buyer to the Financial Creditor within 120 days from the date of respective bill of lading pertaining to the invoices. It is stated that the last date of payment was 20.06.2022.
8. It is alleged that the said amounts remained unpaid till date of filing of the application which forced the Financial Creditor to exercise its right of recourse against the Corporate Debtor under the Master Agreement. It had issued a Demand Notice dated 26.07.2022 and called upon the Corporate Debtor to clear the outstanding dues along with other charges.



9. It is stated that vide e-mail dated 28.07.2022 the Corporate Debtor had acknowledged its liability towards the Financial Creditor in respect of the entire facility and requested the Financial Creditor to wait till 15.09.2022 stating that it is ready to pay the interest against the facility extended by the Financial Creditor.
10. However, the Corporate Debtor failed to repay the amount. Legal notice dated 08.08.2022 was sent by the Financial Creditor to the Corporate Debtor whereby the Financial Creditor asked the Corporate Debtor to clear the outstanding payable to the tune of USD 388,535. Further follow on legal notice dated 20.09.2022, was issued by the Financial Creditor. However no payments were received.
11. It is stated that as per the Master Agreement the Financial Creditor has full recourse against the Corporate Debtor in case of non payment of any invoices.
12. The Financial Creditor has claimed that as on 06.10.2022 the total defaulted amount is USD 399,798 approximately equivalent to INR 3,29,43,355 @ conversion rate of INR 82.40. The computation of the default amount is annexed at page Nos. 95 & 96 of the Applicant's typed set which is reproduced as under:-



Schedule
Computation of Current Default Amount

Sr. No	Exporter	Importer	Invoice Ref	Disbursed Date	Due Date	Invoice Value (USD)	Advance Value (USD)	Factoring Commission (USD)	Regular Interest (USD)	Overdue Interest (USD)	Total Amount Due (USD)
1	Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1005	25-Mar-22	20-Jun-22	66,960	53,568	804	734	1,115	56,221
2			SGE1006	25-Mar-22	20-Jun-22	66,960	53,568	804	734	1,115	56,221
3			SGE1007	25-Mar-22	20-Jun-22	66,960	53,568	804	734	1,115	56,221
4			SGE1008	25-Mar-22	20-Jun-22	66,960	53,568	804	734	1,115	56,221
5			SGE1009	25-Mar-22	20-Jun-22	66,960	53,568	804	734	1,115	56,221
6			SGE1010	25-Mar-22	20-Jun-22	66,960	53,568	804	734	1,115	56,221
7			SGE1011	25-Mar-22	20-Jun-22	66,960	53,568	804	734	1,115	56,221
Total						4,68,720	3,74,976	5,628	5,138	7,805	3,93,547

NOTARY

Exporter	Importer	Invoice Ref	Disbursed Date	Due Date	Invoice Value (in USD)	Advance Value (in USD)	Factoring Fees (in USD)	Interest (in USD)	Overdue Interest (in USD)	Total Amount Due (in USD)
Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1011	25 Mar 2022	20 Jun 2022	66,960.00	53,568.00	1071	874	1601	57114
Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1010	25 Mar 2022	20 Jun 2022	66,960.00	53,568.00	1071	874	1601	57114
Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1009	25 Mar 2022	20 Jun 2022	66,960.00	53,568.00	1071	874	1601	57114
Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1008	25 Mar 2022	20 Jun 2022	66,960.00	53,568.00	1071	874	1601	57114
Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1007	25 Mar 2022	20 Jun 2022	66,960.00	53,568.00	1071	874	1601	57114
Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1006	25 Mar 2022	20 Jun 2022	66,960.00	53,568.00	1071	874	1601	57114
Sun Bio Naturals (India) Pvt Ltd	Beneficial Blends LLC	SGE1005	25 Mar 2022	20 Jun 2022	66,960.00	53,568.00	1071	874	1601	57114
Total						3,74,976.00	7,497.00	6,118.00	11,207.00	3,99,798.00

USD - INR Conversion Rate 1USD= INR 82.40
Total Default Amount in INR 3,29,43,355.20

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13. It is stated that initial date of default by the Corporate Debtor is 21.06.2022.
14. The list of the documents which have been relied upon by the Financial Creditor are as follows:-

[Handwritten signature]



1. *A true copy of the EIN document for Drip Capital Inc. bearing aforesaid number ANNEXURE-1(1)*
 2. *A true copy of the EIN document read with certificate of incorporation. ANNEXURE -I (2)*
 3. *The authorization dated 18th January, 2022 authorizing Ms. Tanvi Fifadra. ANNEXURE-I (3)*
 4. *A true copy of the Master Data available on the Ministry of Corporate Affairs website of the Corporate Debtor. ANNEXURE-I (4)*
 5. *A true copy of the Demand Promissory Note dated 14.07.2022. ANNEXURE – I(5)*
 6. *A true copy of the Full Recourse Accounts Purchase and Security Agreement dated 22.07.2022. ANNEXURE-I (6)*
 7. *A true copy of the Non-Recourse Rider to Full Recourse Accounts Purchase and Security Agreement dated 22.07.2022. ANNEXURE-1 (7)*
 8. *A true copy of the Purchase Request and Deed of Assignment dated 18.03.2022. along with copies of 7 Invoices, and copy of Purchase Order, respectively (Colly) ANNEXURE-I (8)*
 9. *A true copy of the Demand Notice dated 26.07.2022. ANNEXURE-I (9)*
 10. *A true copy of the E-mail Communications between the Financial Creditor and Corporate Debtor from 28.07.2022 to 13.09.2022. ANNEXURE-I (10)*
 11. *A true copy of the Legal Notice dated 08.08.2022 and 20.09.2022. ANNEXURE -I (11)*
 12. *The computation relating to the default amount and days of default. ANNEXURE -I (12)."*
15. **Reply** has been filed by the Corporate Debtor vide SR.No.458 dated 30.01.2023.
16. In reply, the Corporate Debtor has admitted that it had availed



factors assistance from the Financial Creditor and the same was under full recourse. The Corporate Debtor also admitted the execution of DPN and Full Recourse Account Purchase and Security Agreement dated 22.07.2020. The Corporate Debtor however states that till date of filing of reply, the ultimate purchaser i.e., M/s. Beneficial Blends, LLC has paid nearly USD 84,000 to the Financial Creditor which is roughly 30% of the credit value extended to the Corporate Debtor.

17. It is stated that the Financial Creditor retracted from its assurance vide mail communication dated 09.09.2022 that it would not pursue the legal proceedings if two instalments are paid immediately. Though M/s. Beneficial Blends paid the two instalments, but the Financial Creditor filed this Application on 15.10.2022.
18. Beside the above, some technical objections have been raised collating the claim.
19. **Rejoinder** under SR.No. 1235 dated 20.03.2023 has been filed by the Financial Creditor wherein it reiterated the facts as stated in the application. It is stated that the Corporate Debtor has acknowledged its liability to pay the financial debt together with interest vide its e-mail dated 28.07.2022. It is further stated that the



Corporate Debtor has committed default in terms of Clause 9.1 of the Master Agreement.

20. The Financial Creditor further stated that in terms of Section 7(5) of the Code, the Application filed by the Financial Creditor is may be admitted since there exists debt and default.

21. Heard both the sides and perused the documents.

22. Section 5(8) of I & B Code, 2016 defines Financial Debt and it reads as under reference:-

(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a)

(b).....

(c).....

(d).....

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

23. In terms of Section 5(8)(e), in our view, Factoring Assistance on recourse basis is to be considered as 'financial debt'.

24. The second question which requires consideration is whether there existed a default.

25. In the present case, the Financial Creditor has proved the existence of Master Agreement, DPN and has also proved the amounts disbursed. The same were never denied by the Corporate Debtor



in the Counter. This shows that there is a debt and default.

26. As to the contention of the Corporate Debtor that certain amounts have been paid by the ultimate buyer i.e., M/s. Beneficial Blends LLC.
27. It is seen from the record that there is a debt and there is a default of more than Rs.1 crore. It thus satisfies the mandate under the Insolvency & Bankruptcy Code, 2016 for commencing the CIRP against the Corporate Debtor.
28. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' having been committed by the Corporate Debtor, this Tribunal is left with no other option but to proceed with the present case. We therefore allow the application and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.
29. As a consequence of the Application being admitted in terms of Section 7 of the Code, we declare the moratorium as envisaged under provisions of Section 14(1) for prohibiting all of the followings in relation to the Corporate Debtor namely;



- 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;



30. However during the pendency of moratorium period in terms of Section 14(2) and 14(3);

(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.

31. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced as under;



- (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.

32. In the present case, the Financial Creditor has proposed the name of **Mrs. Chhaya Gupta**, having *Reg. No. IBBI/IPA-002/IP-N00984/2020-2021/13133; Email ID: guptachayacs@gmail.com* as the Interim Resolution Professional (IRP). She has also filed her consent in Form – 2. Also upon verification from the IBBI website, it is seen that the said person holds a valid Authorization for Assignment till 21.06.2023.
33. **Mrs. Chhaya Gupta**, is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is 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.

34. 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. 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.
35. 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 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.
36. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order 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 forwarded to IBBI for its records. 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, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

37. Accordingly, the present petition stands **admitted**.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)