

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
C.P. (IB)/250(AHM)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Drip Capital Inc

V/s

Sumarrow Impex LLP

.....Applicant

.....Respondent

Order delivered on: 10/10/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed before pronouncement of order.

The order is pronounce in open court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

CP (IB) No. 250/7(AHM)/2024

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

IN THE MATTER OF:

Drip Capital Inc.

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

...Applicant/
Financial Creditor

Versus

Sumarrow Impex LLP

403-1, 4th Floor, Eden Ceramic City,
8A - National Highway, Lalpar,
Morbi, 363642-Gujarat, India.

...Respondent/
Corporate Debtor

Order pronounced on 10.10.2025

Coram:

**MRS. CHITRA HANKARE, MEMBER (JUDICIAL)
MR. V G VENKATA CHALAPATHY, MEMBER (TECHNICAL)**

Present:

For the Applicant : Mr. Vinay Bairagra, Adv.
For the Respondent : Mr. Kunal Vaishnav, Adv.

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J U D G E M E N T*(Heard Through Hybrid Mode)*

1. This Application has been filed under Section 7 of Insolvency and Bankruptcy Code, 2016 by Drip Capital Inc. (hereinafter referred to as “Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process against Sumarrow Impex LLP (hereinafter referred to as “Corporate Debtor”) for having committed a default of an amount of Rs.1,76,62,185/- (USD 211,346). The date of default is 10.01.2024.
2. The financial creditor is USA based company engaged in the business of acquisition of receivables from assignor/corporate debtor by accepting assignment of such receivables or financing such receivables on recourse basis. The financial creditor and the Corporate Debtor had entered into Receivables Purchase Agreement dated 13.06.2023 for availing export factory facility from the financial creditor. It is submitted that the upper limit of the facility that the corporate debtor would be eligible for USD 150,000/- which after mutual discussions was later increased to USD 400,000/- and the maximum credit tenor for each invoice was 120 days from the date of bill of

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lading. Pursuant to the said agreement dated 13.06.2023, The financial creditor paid an aggregate amount of USD 256,932/- to the Corporate Debtor between 23.06.2023 and 30.08.2023 towards the Purchase Requests dated 23.06.2023, 05.07.2023, 13.07.2023, 18.07.2023 and 23.08.2023 received from the Corporate Debtor. The invoices became due on 17.08.2023, 31.10.2023, 09.11.2023, 13.11.2023 and 26.12.2023 accordingly.

3. As per clause 1.1(24), (29) and 7 of the agreement, it is submitted that in-case the buyer of goods fails to pay to the Financial Creditor on respective invoices due date it constitutes "Dilution" of invoice, resulting into occurrence of "Event of Default". Upon occurrence of event of default, the Financial Creditor is entitled to exercise recourse and the Corporate Debtor shall repay the financial debt along with accrued interest and charges.
4. It is submitted that the Financial Creditor, vide various emails, between 29.08.2023 to 20.11.2023 sent reminders and requested to pay the outstanding accounts. Accordingly, in view of the Corporate Debtor's failure to pay the outstanding accounts, the Financial Creditor, vide its

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demand letter dated 10.01.2024 called upon the Corporate Debtor to repay the outstanding account of USD 197,719.10/-. Subsequently, another demand notice dated 23.01.2024 was sent to the Corporate Debtor.

5. The applicant has relied upon following documents to substantiate its claims:
 - a. Receivables Purchase Agreement' dated 13/06/2023 executed between the Financial Creditor and Corporate Debtor;
 - b. Letter of Authority dated 13/06/2023 executed by the Corporate Debtor;
 - c. 5 Invoices dated 10.04.2023, 08.07.2023, 13.07.2023 and 19.08.2023 assigned by Corporate Debtor in favour of Financial Creditor together with Purchase Order and Bill of Lading;
 - d. Purchase Request cum Deed of Assignment executed by Corporate Debtor in favour of Financial Creditor between 23.06.2023 and 23.08.2023;
 - e. transaction details evidencing disbursement of the amounts;

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- f. emails exchanged between the Financial Creditor and Corporation Debtor;
 - g. demand letter dated 10/01/2024, raised by Financial Creditor on the Corporate Debtor towards repayment of financial debt owed to Financial Creditor;
 - h. legal notice dated 23/01/2024, issued to the Corporate Debtor by Financial Creditor;
 - i. Email communications by the Corporate Debtor and buyer dated 23.03.2024 admitting its liability;
 - j. Email communications by the Corporate Debtor and buyer dated 23.03.2024 admitting its liability;
6. The Applicant has proposed the name of Primus Insolvency Resolution & Valuation Pvt. Ltd. having Registration No. IBBI/IPE-0072/IPA-2/2022-23/50002 to act as the Interim Resolution Professional.
7. The corporate debtor filed its reply and contended that the Petitioner is not a "Financial Creditor" under IBC, as it has not produced any valid license or approval from the Reserve Bank of India permitting it to finance Indian entities. Further, it is argued that the Receivables Purchase Agreement dated 13.06.2023 is governed by Delaware law

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and contains an arbitration clause (Clause 11), requiring disputes to be resolved by arbitration administered by the American Arbitration Association, seated in Palm Beach County, Florida. Hence, the maintainability of this petition is questioned.

8. The Respondent submits that the alleged debt does not arise from a financial transaction between the parties, but rather from underlying sales to a third party, Al Sultan Natural Stones LLC (UAE), who is the actual buyer and debtor. Therefore, the transaction is in the nature of an operational transaction, not a financial debt. The Respondent further stated that certain invoices relied upon by the Petitioner pre-date the Receivables Purchase Agreement and cannot be considered under it. The Petitioner has suppressed material facts, including payments already received from Al Sultan Natural Stones LLC on 07.09.2023 (USD 30,000), 26.10.2023 (USD 20,000), and 25.03.2024 (USD 41,168), totalling about Rs.76.6 lakhs.
9. A demand notice dated 23.01.2024 was followed by a legal notice dated 08.03.2024 under Section 138 of the

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Negotiable Instruments Act, 1881, issued by Drip Capital Services India LLP, for dishonour of cheques worth Rs.1,91,07,372/-. The pendency of parallel NI Act proceedings, it is urged, reflects suppression of facts before this Tribunal.

10. It is also contended that the Petitioner failed to properly stamp the Agreement for use in India, and has not obtained an apostille as required for authentication of U.S. documents. Further, the corporate debtor denies its liability towards the amounts claimed, disputes the calculation of interest, and submits that there exists a pre-existing dispute, thereby rendering the present petition non-maintainable.
11. The Financial Creditor filed its rebuttal to the reply of the corporate debtor and submits that the Corporate Debtor has not denied the disbursement of an aggregate amount of USD 256,932 between 23.06.2023 to 30.08.2023. It is further not denied that such disbursement was made pursuant to the Receivables Purchase Agreement dated 13.06.2023 and was on a full recourse basis. The Corporate Debtor has also not disputed the execution of

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the said Agreement and other transaction documents, nor has it denied that the outstanding amounts remain unpaid. The communications exchanged between the parties demonstrate an admission of liability by the Corporate Debtor along with assurances of repayment.

12. The Financial Creditor contends that the aforesaid facts clearly establish the existence of a financial debt within the meaning of Section 5(8) of the IBC, being receivables sold or discounted on recourse basis, and the occurrence of default by the Corporate Debtor. It is further submitted that the plea of arbitration clause being a bar to the present proceedings is untenable. Reliance is placed on the judgment of the Hon'ble NCLAT in *Shahi Md. Karim v. Kabamy India LLP*, 2023 SCC Online NCLAT 180, which held that an arbitration clause does not oust the jurisdiction of this Tribunal in proceedings under Section 7 of the Code. Further, as regards the objection of insufficient stamping or apostille, the Financial Creditor submits that the Agreement was executed in the United States of America, where no stamp duty is applicable. The requirement of apostille applies only to personal

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documents such as birth, death, or educational certificates, and not to commercial contracts. Reliance is placed on *Q West Infrastructure Pvt. Ltd. v. Starrwort Engineers Pvt. Ltd.*, NCLT Mumbai, judgment dated 16.09.2023.

13. The allegation of suppression of material facts is specifically denied. The Financial Creditor has duly disclosed the payments of USD 91,168 received from Al Sultan Natural Stones LLC, which were adjusted towards the respective invoices. Further, proceedings under Section 138 of the Negotiable Instruments Act are independent causes of action and do not bar initiation of proceedings under IBC.
14. Both the parties have filed their written submissions.
15. Heard the submissions of the counsels for both the parties and perused the documents placed on record.
16. It is undisputed that the applicant and the corporate debtor has entered into the Receivables Purchase Agreement dated 13.06.2023. The Financial Creditor has relied upon the Agreement dated 13.06.2023, purchase requests, deed of assignment, invoices, disbursement

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details, e-mail communications, demand letters and notices to substantiate the claim of disbursement of USD 256,932 and the occurrence of default of an amount of Rs.1,76,62,185/- (USD 211,346). The date of default is stated to be 10.01.2024. The Corporate Debtor has not denied execution of the said Agreement dated 13.06.2023 or the receipt of funds under it. The outstanding liability has also been acknowledged by the Corporate Debtor in e-mail communication dated 23.03.2024. The contention of the Corporate Debtor that the Petitioner is not a "Financial Creditor" on account of not having obtained RBI approval is not tenable. The definition of financial debt under Section 5(8)(e) of the Code expressly includes receivables sold or discounted on a recourse basis. The disbursements made under the Agreement, being in the nature of receivables financing with recourse, squarely fall within the ambit of financial debt. The Applicant being a factor who has discounted the export bills being an overseas entity incorporated in US is entitled to rediscount the bills as a factor which does not have any restrictions in India wherein the Respondent is incorporated. The compliance to

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the provisions is the onus of the respondent. As a factor who is a financial creditor as defined under IBC 2016 and his dues as proved through the documents have been defaulted. The amount is credited through a bank in India at Morbi, a fact not denied. Absence of RBI approval or license may have regulatory implications but does not, per se, affect the maintainability of a petition under Section 7 of the Code.

17. Further, the existence of an arbitration clause or pendency of proceedings under the Negotiable Instruments Act, 1881 does not bar initiation of proceedings under IBC as Section 238 of IBC has an overriding effect over other laws, even if there is a private contract's in built arbitration clause. The objections regarding pre-dated invoices, alleged suppression of facts, and improper stamping are also without merit. The payments received from the buyer have been adjusted by the financial creditor. The Applicant has satisfied this Tribunal as to the existence of debt with proper documents. The objection regarding apostille carries no strength, as the debt is otherwise proved through other evidences in terms of Section 7(3) of the Code.

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18. From perusal of records and the documents relied upon by the Applicant it stands proved that there has been a financial debt above the threshold limit of Rs.1 crore in respect of which default has been committed by the Corporate Debtor and further that the application has been filed within the period of limitation. Therefore, the Application under section 7 of the Code, deserves to be admitted.
19. It is ordered accordingly in the following terms:

ORDER

- I. CP (IB) No.250 of 2024 is allowed.
- II. The CIRP is ordered to be initiated against the corporate debtor - Sumarrow Impex LLP.
- III. We hereby appoint Primus Insolvency Resolution & Valuation Pvt. Ltd. having Registration No. IBBI/IPE-0072/IPA-2/2022-23/50002 email id- info@primusresolutions.in to act as IRP. 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

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claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- IV. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the IRP to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.
- V. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate Debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium

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period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

- VI. The Registry is directed to communicate this order to the applicant, IRP and the corporate debtor. In addition, a copy of the order shall also be forwarded to IBBI for its records and to take steps for updating the Master Data of the corporate debtor in the MCA portal and shall forward the compliance report to the Registrar, NCLT.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)

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