

149

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No. 149
CP(IB) 175 of 2020

Order under Section 7 IBC

IN THE MATTER OF:

Drip Capital Ltd

V/s

Jashank Impex Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 02.08.2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :

For the IRP/RP :

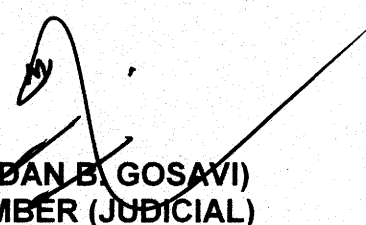
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

C.P.(IB) 175/NCLT/AHM/2020

[An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

Drip Capital Inc.,
240 Delphi Cir,
Los Altos CA 94022,
United States of America.

.... Financial Creditor

Versus

Janshank Impex Private Limited,
Landmark Empire Building-A,
5th Floor, SH-516, Landmark Corporation,
Saroli, Surat, Gujarat-395010.

...Corporate Debtor

Order Reserved on 26.07.2021

Order delivered on 02.08.2021

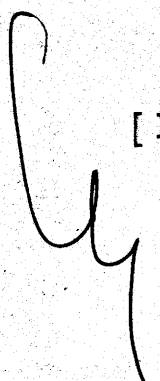
**Coram: MADAN B. GOSAVI, MEMBER (J)
 VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance...

For the Applicant : Advocate, Mr. Vinay Bairagra.
For the Respondent : Advocate, Mr. Sumit Shukla.

ORDER

[Per : VIRENDRA KUMAR GUPTA, MEMBER (T)]



- 1) This application has been filed by Financial Creditor, namely, Drip Capital Inc. under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) against the Corporate Debtor, namely, Janshank Impex Private Limited. The amount of default of USD 2,00,000 and the date of default is stated as 20.01.2020.
- 2) The facts, in brief, are that the Financial Creditor paid an aggregate amount of USD 2,00,000 to the Corporate Debtor towards assignment of two invoices in pursuance of term sheet letter dated 24.07.2019 executed in terms of Full Recourse Purchase and Security Agreement dated 10.09.2019. It has been claimed by the Financial Creditor that as per agreed terms, the Corporate Debtor is liable to pay the Financial Debt along with accrued interest and charges, in case buyers of the goods failed to pay the Financial Creditor on respective invoice due dates. It is further claimed that as per Clause 7 of the said agreement, Financial Creditor

~~has~~ has full recourse against the Corporate Debtor in case of non-payment of invoices by the buyer of goods. Accordingly, on failure of the buyer of goods in respect of these two invoices as well as by Corporate Debtor, this application under Section 7 of the IBC has been filed.

- 3) The learned counsel for the Financial Creditor appeared and narrated these facts. It was further pleaded that default cum demand notice was served on the Corporate Debtor claiming an amount of USD 2,10,152.22 due and payable as on 31.01.2020. The learned counsel also drew our attention to the relevant clause of the agreement. Our attention was also drawn to the Demand Promissory Note executed by the Corporate Debtor dated 10.09.2019 whereby Corporate Debtor had undertaken to make the payment irrevocably and unconditionally on demand made by the Financial Creditor both for principal amount as well as interest accrued thereon. On the basis of these documents, the learned counsel for the Financial Creditor submitted that there was a debt which was due and payable, being not barred by limitation and a default

has occurred in payment thereof, hence, this application was liable to be admitted.

- 4) The learned counsel for the Corporate Debtor appeared and submitted that the Financial Creditor is not a Financial Creditor in terms of provisions of IBC, 2016. It was also claimed that the Financial Creditor was first liable to provide the evidence as regard to the fact of non-payment of these amounts by the respective buyers of the goods. It was also claimed that the liability to pay the impugned sum would arise only when such buyers failed to make the payments, hence, without such event being proved, no liability of the Corporate Debtor can be said to have arisen.
- 5) In the rejoinder, the learned counsel submitted that the fact of disbursement of the impugned sum on 12.09.2019 by the Financial Creditor to the Corporate Debtor remains undisputed. It was also claimed that to prove that the claim of the Financial Creditor was an instance of double dip lied on the Corporate Debtor and the Corporate Debtor is trying to shift its burden without bringing any evidence on record to

~~show~~ that such buyers had made payment to the Financial Creditor and in spite of receiving such payment this application had been filed. It has also been claimed that other pleas made in their reply are of frivolous nature, untrue as well as have got no bearing on the admission of this application.

- 6) It was also claimed that name of IRP has be proposed as per the required procedure and his consent is also on record.
- 7) We have considered the submissions made by both the sides and material on record.
- 8) It is not in dispute that sum of USD 2,00,000 has been disbursed to the Corporate Debtor in terms of agreement executed between them. It is also noted that the Corporate Debtor has also executed a Demand Promissory Note undertaking liability to pay unconditionally the amount so disbursed along with interest thereon. It is also noted that the Corporate Debtor has not adduced any evidence on record to show that the buyers of the goods had, in fact, made payment to the applicant and, therefore, such action of the

Financial Creditor was not tenable in law. Thus, the basic conditions of Section 7 of the IBC, 2016 i.e. that there should be a debt which is due and payable both in law and fact and a default has occurred, stands satisfied. The Application under Section 7 of the IBC, 2016 is also complete in all respect. The name of IRP has also been proposed and against him no disciplinary proceedings are pending as per records. Accordingly, we admit this application and order as under:

ORDER

1. Corporate Debtor M/s Jashank Impex Private Limited, is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. We appoint Mr. Krishna Gopal Ratanlal Maheshwari, registration no. IBBI/IPA-001/IP-P-01296/2019-2020/12712, having address 602, Rajendra Ratna, Mahesh Nagar, SV Road, Goregaon(W), Mumbai City,

Maharashtra-400104, under section 13(1) (c) of the IB Code as IRP.

3. That the Moratorium under Section 14 of the Code shall come to effect from 02.08.2021 till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub- Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
4. That the Bench hereby prohibits the institution of suits or continuation of pending suit 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(s), transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property

is occupied by or in the possession of the Corporate Debtor.

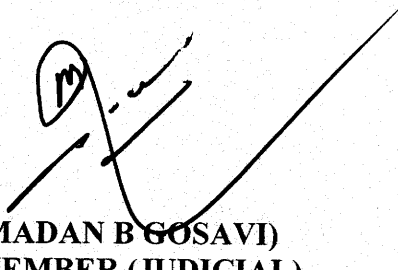
5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law r.w. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.
7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.

8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 2,00,000/- (Rs. Two lakh) as fees & expenses till the COC decides about his fees / expenses.
11. The Registry is directed to communicate a copy of this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.
12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
13. CP(IB) No. 175/7/NCLT/AHM/2020 is allowed and stands disposed of.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)
MEMBER (JUDICIAL)