



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**C.P. (IB) No.127/BB/2022**  
**Under Section 7 of the IBC, 2016**  
**r/w Rule 4 of the I&B (AAA) Rules, 2016**

**IN THE MATTER OF:**

**Drip Capital Inc.,**

Having its registered office at  
240 DELPHI CIR  
LOS ALTOS CA 94022  
United States of America

**Also at:**

Solitaire Corporate Park, Building No.12,  
2<sup>nd</sup> floor, Guruhargovindji Marg,  
(Andheri-Ghatkopar Link Road),  
Andheri (East), Mumbai-400093  
Represented by its authorised Signatory  
Mr. Dharmil Shah

... Applicant/Financial Creditors

**VERSUS**

**Marksmen Digi Technologies Private Limited**

Having its registered office at  
No.T2, IV Floor, Sait Manor,  
Apartment, 1<sup>st</sup> Cross, BM  
Krishnappa Layout, Shampur,  
RT Nagar, Bangalore - 560032  
Karnataka

... Respondent/Corporate Debtor

**Order delivered on: 10<sup>th</sup> January, 2024**

**Coram:** 1. Hon'ble Shri. K.Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**


For the Petitioner : Ms. Deepika H.  
For the Respondent : None



## ORDER


Per: Manoj Kumar Dubey, Member (Technical)

1. The present Company Petition has been filed on 04.01.2022 by Drip Capital Inc., Represented by Mr. Dharmil Shah (for brevity 'Financial Creditor/FC') under Section 7 of the Insolvency and Bankruptcy Code, 2016,(hereinafter referred to as the Code) r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against Marksmen Digi Technologies Private Limited (hereinafter called as 'Corporate Debtor/CD'), on the ground that it has committed default for the total amount of USD 317,304 along with other amount due as per the Master Agreement and other allied documents, which is equivalent to INR. 2,38,23,184/- @ USD INR rate of 75.08 as on 03.12.2021.
2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:
  - I. The Financial creditor and Corporate Debtor entered into Term Sheet dated 12.04.2021 and Full Recourse Accounts Purchase and Security Agreement dated April 26<sup>th</sup>, 2021 ("Master Agreement") executed between the Financial Creditor and the Corporate Debtor, read with Demand Promissory Note granted by Corporate Debtor in favour of financial creditor dated 26<sup>th</sup> April, 2021 ("DPN"), and the Financial Creditor paid an aggregate amount of USD 3,00,000/- to Corporate Debtor towards purchase price of 3 invoices. The said invoices were payable by 'Tianjin Zhiyun Technology Co.Ltd.' and Tianjin Xinwang Interactive Technology Co.Ltd.' respectively (together referred to as "**Account Debtor**"). The receivables under invoices were assigned by the Corporate Debtor to the Financial Creditor, against the payment of aforesaid aggregate amount with a provision for full recourse basis against the corporate debtor in case of account debtor failure to pay on the Invoice Due Date.
  - II. It is submitted that all the 3 invoices clearly mentioned the notation under the payment terms that the invoice amounts were directly



payable by respective Account Debtor to the Financial Creditor within the Invoice Due Date. Further, the Receivables under the Invoices were assigned by the Corporate Debtor to the Financial Creditor on full recourse basis under the Term Sheet and Master Agreement read with purchase Request, against the payment of aforesaid aggregate amount.

- III.** However, on the respective due dates of the 3 invoices, Account Debtor failed to make payments to the Financial Creditor and after sending repeated reminders to both Account Debtor and the Corporate Debtor, the Corporate Debtor failed to arrange for payment or repay the amounts under the invoices. Any failure of the Account Debtor to pay the invoice on the respective invoice due date, entitled the Financial Creditor to exercise recourse on Corporate Debtor and demand of the payment of entire invoice amount along with allied amounts payable. Therefore, as per the terms of the Master Agreement, the Financial Creditor herein had a right of full recourse on the Corporate Debtor and demand from the Corporate Debtor to make the payment of the said due amounts.
- IV.** Accordingly, the Financial Creditor issued Notice of Default cum Demand to the Corporate Debtor on 25.10.2021 (“Default Notice”) thereby calling upon the Corporate Debtor to pay an amount of USD 314,704 within 7 days of the Default Notice, being the aggregate unpaid outstanding amount. As per the Master Agreement, upon receipt of the full outstanding amount, the Financial Creditor will reassign the title of the relevant purchased receivables to the Corporate Debtor.
- V.** However, the Corporate Debtor failed to pay the outstanding amounts under the Demand Notice, neither replied to the Demand Notice sent by the Financial Creditor, resulting into default in payment of its admitted financial debt due to the Financial Creditor.
- VI.** In an effort to remind the Corporate Debtor of its obligation to pay the Financial Creditor under Demand Notice and cure the default, the Financial Creditor, through its advocates sent a legal notice dated 08.11.2021 to the Corporate Debtor again demanding



payment of the outstanding default amount. However, in continuation of its default under the Term Sheet and Master Agreement read with Purchase Request, the Corporate Debtor failed to pay Default Amount to Financial Creditor till date; neither the Corporate Debtor bothered to respond to the said legal notice. As on the date of this application for insolvency, the Corporate Debtor has failed to repay the amounts to Financial Creditor as per its aforesaid Demand Notice read with Term Sheet and Master Agreement read with Purchase Request, and therefore, the Corporate Debtor is in default of its acknowledged obligations to pay its financial debt due to the Financial Creditor.

- VII.** As on 3<sup>rd</sup> December, 2021, the default amount under the Master Agreement read with Purchase Request is USD 317,304.00 along with other amounts due as per the RPA and other allied documents which is equivalent to INR 2,38,23,184 @ USD INR rate of 75.08.
- 3.** Subsequently, matter was listed for hearing on several dates. However on 21.03.2023 and 21.04.2023 no one attended on behalf of the Respondent; and the counsel for the Petitioner stated that the counsel for respondent had taken retirement from the case. No reply has been filed nor any representation was made on subsequent dates upto 15.11.2023, when the matter was fixed for hearing.
  - 4.** On 21.04.2022, this Tribunal directed the Petitioner to furnish the date of disbursement in respect of various loans along with the respective copies of Accounts. The above direction was complied vide diary No 2759 dated 29.05.2023 by stating that the date of disbursement for the invoice raised were 07.06.2021 and 28.04.2021. Further, the default date was 105 days from the date of invoice i.e., 20.09.2021 and 11.08.2021 respectively and the amount was disbursed on 08.06.2021 and 17.05.2021. And for the invoice raised dated 15.05.2021, the default date was 90 days from the date of invoice i.e., 27.07.2021 and the amount was disbursed on 21.05.2021.
  - 5.** Vide order dated 27.06.2023, it was observed from the memo filed vide diary no. 2759 dated 29.05.2023 that the petitioner has given comments and date of disbursements against the invoices raised by the corporate



debtor against third parties on three different dates. Therefore, the petitioner was directed to explain whether it is engaged in the business of Invoice Discounting; and justification of applicability of provisions of section 7 of IBC, 2016 for this application. The compliance to this order was filed on 06.10.2023 vide diary no: 5142 and this Tribunal directed the petitioner to pay the costs of Rs.10,000/- for the delay in filing the explanation regarding the maintainability, which was taken on record on payment of cost.

6. The petitioner filed the synopsis on maintainability of the petition as under:

**FACTORING SERVICES AND INVOICE DISCOUNTING:**

(i) It is submitted that the Financial Creditor disbursed an aggregate amount of USD 3,00,000/- to the Corporate debtor towards purchase price of 3 invoices by way of transfer dated 08.06.2021, 17.05.2021 and 21.05.2021.

(ii) In turn, the Corporate Debtor assigned the said 3 invoices payable by one 'Tianjin Zhiyun Technology Co.Ltd' and Tianjin Xinwang Interactive Technology Co.Ltd.' ("**Account Debtors**") to the Financial Creditor with a specific provision for full-recourse against the corporate debtor in case of failure by Account Debtors to pay on the invoice due date. The relevant portion of the clause from the Agreement is extracted hereinbelow:

"7.1 The factor shall have full recourse to the client in case of Account Debtor's failure to timely pay any purchased Account including, but not limited to, an Account Debtor's failure to pay a Purchased Account if a Recourse event occurs. If this occurs, factor may exercise recourse on client by giving a written demand requiring the client to immediately pay...

7.2 Upon exercise of recourse against the client by raising a demand, the client admits that the factor shall constitute Financial Creditor under applicable law and amounts under demand notice raised shall constitute admitted financial debt due and payable by the client."



(iii) Without prejudice, as per Section 2(j) of the Factoring Regulation Act 2011, Factoring Services is a business of acquisition of receivables of assignor by accepting assignment of such receivables or for financing, whether by way of making loans or advances or otherwise against the security interest over any receivables.

(iv) It is submitted that whilst factoring services is the sale or acquisition of receivables by the third party assignees, Invoice Discounting is a form of borrowing from third party lenders by using the accounts receivables as a collateral for the loan. In invoice discounting banks and financial institutions primarily extend such discounting facilities and act as intermediaries between the seller and the several invoice discounters.

(v) It is submitted that both factoring services and invoice discounting fall within the ambit of financial debt as defined under section 5(8) of the IBC so long as the arrangement is on Recourse basis. The relevant portion of the section is extracted herein below:

“financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

...

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(vi) Therefore, the intrinsic ingredients for financial debt shall be (a) disbursement of funds; (b) time value of money; and (c) provision for recourse. It is submitted that the categorization of debt as financial debt or operational debt hinges on disbursement of money and the provision for recourse under the contract.

(vii) It is submitted that the factoring transactions on recourse basis will fall within the contours of financial Debt as the Financier/Assignee is directly entitled to recover the disbursed money from the Assignor (in this case the corporate debtor) in case of default by the Account Debtors/ purchaser of goods/customers. The petitioner has

also filed a comparative analysis of differentiation between “factoring with recourse” and “factoring without recourse.”


(viii) The Petitioner relied on the Hon’ble NCLAT order dated 04.07.2023 in the case of Mr. Ritesh Kumar Agrawal, Suspended Director Arcons Infrastructure and Constructions Pvt. Ltd. Vs. M/s. India Factoring and Finance Solutions Pvt. Ltd. in which it was held that *“the Financial Debt which is covered by full recourse Factoring Agreement is clearly covered within meaning of Section 5(8)(e) of the Code and the Financial Creditor was entitled to recourse.”*

(ix) Further, the Petitioner has distinguished the facts from the orders as follows:

(a) The Hon’ble NCLAT in the matter of *Minions Ventures Pvt.Ltd Vs. TDT Copper Ltd., 2023 SCC Online NCLAT 171*, dated 28.03.2023, held that *“In this transaction, the money was never disbursed much less for the time value as a financial debt to the Corporate Debtor and by virtue of discounting the invoice of the Seller of an amount of Rs.3,42,03,903/- for amount of Rs.1,75,23,133/- the Financiers/Appellants entered into shoes of the Seller and had become Operational Creditors in terms of Section 5(20) as well as 21(5) and Section 5(7), and 5(8)(e) of the Code is not at all applicable.”*

(b) Further, the Hon’ble NCLAT in the matter of *Cooperative Rabobank U. A. Singapore Branch Vs. Mr. Shailendra Ajmera., 2019 SCC Online NCLAT 812* dated 29.04.2019, held that *“the ‘Bill of Exchange’ relates to supply of goods and whatever finance given by the Appellant is to ‘Aavanti Industries Pte Ltd., Singapore’ and not to the ‘Corporate Debtor’. The Corporate Debtor has merely received the goods and therefore we hold that the Appellant is not a ‘Financial Creditor’ but at best can claim to be an ‘Operational Creditor’ as held by the Adjudicating Authority”.*

(c) In the matter of *Invoice Discounters of BNH Infra Projects (India) Pvt. Ltd. Vs. BNH Infra Projects (India) Pvt. Ltd., CP(IB) No. 95 of 2021* dated 13.04.2023, relying on the orders of *Minions Ventures Pvt.Ltd Vs. TDT Copper Ltd, (2023) ibclaw.in 209 NCLAT*, order dated 28.03.2023 and *Cooperative Rabobank U. A. Singapore*



Branch Vs. Mr. Shailendra Ajmera., dated 29.04.2019, it was held in this case that there is no disbursement of money to the corporate debtor in that case.

It is submitted that in the present case it is factoring services and not invoice discounting; and there is direct disbursement of money to the corporate debtor under the factoring agreement along with a provision for full-recourse. Hence, the reasoning does not apply to the facts of the present case.

7. The Learned Counsel for the Petitioner in memo filed vide diary no:2197 dated 20.04.2023 had filed the order of Hon'ble NCLAT Chennai Bench, in the matter of *Drip Capital Inc. Vs. Concord Creations (India) P. Ltd.*, dated 08.11.2021, in which it was held that *"because of the fact that the advances made by the Appellant / Financial Creditor to the Corporate Debtor was supported by the 'Irrevocable Undertaking for Recourse' and as such, it is within its ambit to demand the repayment from the 'Corporate Debtor' etc. Added further, it cannot be forgotten that the invoices purchased and assigned to the Appellant / Financial Creditor/Petitioner were with 'Recourse' and that the said advances will squarely come within the definition of Section 5(8)(e) of the 'I&B' Code, 2016."*
8. We have heard the Learned Counsel for petitioner and perused the records available. The issue for consideration whether the impugned debt is falling under section 5(8) of the Code. In view of the citations cited by the petitioner on distinguishable facts, it is noticed from the agreement between the parties clearly indicates the conditions for recourse. The demand for payment raised in 3 invoices also indicates the terms of payment: *"This Invoice has been sold and assigned to Drip capital Inc, please make all remittances towards this invoice directly to their bank account."* Further, the present petition was supported by the demand promissory note dated 12.04.2021 giving irrevocable and unconditional undertaking and promise to pay on demand. In clause 7.2 of the Agreement, it is stated that *"Upon exercise of recourse against the client by raising a demand, the client admits that the factor shall constitute Financial Creditor under applicable law and the amount under demand notice raised shall constitute admitted financial debt due and payable by the client. The*



*client shall be liable to immediately pay the financial debt owed to the factor under demand notice, without any dispute. Failure to pay such amounts by the client as per demand notice shall constitute default in payment of admitted financial debt due and payable by the client to the factor.”* Accordingly, the debt is falling under section 5(8)(e) of the Code as the financial debt, and it is due and payable.

- 9.** It is observed that the amount in default as per the Company Petition is USD 317,304 along with other amount due as per the Master Agreement and other allied documents which is equivalent to INR. 2,38,23,184/- @ USD INR rate of 75.08 as on 03.12.2021. Hence the Threshold requirement mentioned under Section 4 of the IBC, 2016 is fulfilled. The date of agreement is 26.04.2021 and date of disbursement is 17.05.2021, 21.05.2021 and 08.06.2021. The Company Petition was filed on 04.01.2022. Hence, the Petition is filed well within the Limitation. The Petition is complete and has been filed in the proper form. The debt amount is more than One Crore Rupees and Default of the Corporate Debtor has been established.
- 10.** Accordingly, this Adjudicating Authority is of the considered opinion that there is no reason to deny the Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing CP (IB) No. 127/BB/2022 is admitted and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code the following prohibitions are imposed, which must be followed by all and sundry:

  - (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
  - (b) any court of law, tribunal, arbitration panel or other authority;
  - (c) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (d) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (e) the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
  - (f) it is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
  - (g) the provisions of Section 14(3) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
  - (h) the order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31, or passed an order for liquidation of Corporate Debtor under Section 33, of the Code as the case may be;
- 11.** In Part-III of Form No.1, Mr. Shivadutt Bannenje bearing Registration No. IBBI/IPA-002/IP-N00266/2017-2018/10779 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos.24-29 of the Petition. In view of the above, we appoint Mr. Shivadutt Bannenje bearing Registration No. IBBI/IPA-002/IP-N00266/2017-2018/10779, having registered address at N-705 NORTH BLOCK MANIPAL CENTRE ,47, DICKENSON ROAD ,Bangalore, Karnataka ,560042, email-[ip.shivaduttb@gmail.com](mailto:ip.shivaduttb@gmail.com) , as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of the IBC, 2016.
- 12.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 13.** The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and



shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

- 14.** A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

-Sd-

**(K.BISWAL)**  
**MEMBER (JUDICIAL)**