

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
CP(IB)/238(AHM)2023

Order under Section 7 of IBC,2016

IN THE MATTER OF:

Drip Capital Inc.

.....Applicant

V/s

Girdhari International Pvt. Ltd.

.....Respondent

Order delivered on: 29/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

CP(IB)/238(AHM)/2023

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016]

In the matter of **M/s. Girdhari International Pvt. Ltd.**

DRIP CAPITAL INC

Having address at:
555 Bryant St.
#356, Palo Alto, CA 94301,
United States of America

...Applicant/Financial Creditor

VERSUS

M/s GIRDHARI INTERNATIONAL PRIVATE LIMITED

Having address at:
402, 4th Floor, Union Trade Centre,
Udhna Darwaja, Nodh2107-2111,
B/S Apple Hospital, Ring Road,
Surat-395002, Gujarat.

...Respondent/Corporate Debtor

Order pronounced on: 29.02.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

Appearance

For the Applicant : Mr. Vinay Bairagra, Adv.
For the Respondent : Mr. Chaitanya Patel, Adv.

O R D E R

1. This application is filed on 05.10.2023 by one Drip Capital Inc. (**“Applicant/Financial Creditor”**) against M/s. Girdhari International Pvt. Ltd., (**“Respondent/Corporate Debtor”**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (**“CIRP”**) on the Corporate Debtor, to appoint Interim Resolution Professional (**“IRP”**) and declare a moratorium for having defaulted payment of its outstanding dues **Rs.2,08,82,320/-**.
2. Part-I of the Form-1 reveals that the Applicant is a company registered in the United States of America, with EIN Assigned No.47-1674445, having address at: 555 Bryant St., #356, Palo Alto, CA 94301, United States of America.
3. This application has been filed by one Mr. Soumyadri Chattopadhyaya authorised under Board Resolution Dated 18.01.2022.

4. Part-II of the Form-1 reveals that the Corporate Debtor - M/s. Girdhari International Private Limited was incorporated on 08.08.2019 under CIN: U17299GJ2019PTC109457, having its registered office at: 402, 4th Floor, Union Trade Centre, Udhna Darwaja, Nodh2107-2111, B/S Apple Hospital, Ring Road, Surat-395002, Gujarat.
5. Part-III of the Form-1 reveals that the Applicant has named the IRP - Primus Insolvency Resolution & Valuation Pvt. Ltd., having Registration No. IBBI/IPE-0072/IPA-2/2022-23/50002. A copy of Form-2 is attached as Annexure-II.
6. Part-IV of the Form-1 reveals that as on 01.09.2023, the amount in default is USD 2,52,660 approximately equivalent to Rs.2,08,82,320/- calculated at a conversion rate of Rs.82.65 Per Dollar.
7. The Applicant has relied upon the following documents:-

5. THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE (ATTACH A COPY)

The details of the financial contracts executed between or in favour of the Financial Creditor by the Corporate Debtor are set out hereinbelow:

- (i) In-principal terms sheet letter dated 30/03/2022 executed by the Corporate Debtor (annexed as **EXHIBIT 5**);
- (ii) 'Full Recourse Account Purchase And Security Agreement' dated 11/04/2022 and the Non-Recourse Rider To Full Recourse Accounts Purchase And Security Agreement dated 11/04/2022 (annexed as **EXHIBIT 6**);
- (iii) Invoices containing necessary details that were assigned by Corporate Debtor in favour of Financial Creditor together with packing list (annexed as **EXHIBIT 7 [Colly]**);
- (iv) Purchase Request and Deed of Assignment of Corporate Debtor (annexed as **EXHIBIT 8 [Colly]**);
- (v) Transaction details evidencing disbursement to Corporate Debtor (annexed as **EXHIBIT- 9 [Colly]**);
- (vi) Demand Promissory Note dated 11/04/2022 issued by the Corporate Debtor in favour of the Financial Creditor (annexed as **EXHIBIT 14**)



8. It is stated the Applicant is a factoring company. A term sheet letter dated 30.03.2022 was issued. Subsequent to which Full Recourse Account Purchase and Security Agreement dated 11.04.2022 was executed by the Respondent in favour of Applicant. At the request of Respondent, from time to time, the Applicant paid an aggregate amount of USD 3,65,660 to Respondent towards

assignment of its 7 invoices. Details of which are provided in Schedule attached at page no. 72-75 of this application.

9. It is stated that the assignment of invoices was on full recourse basis to the Respondent i.e., in case the buyer of goods fails to pay the Applicant on the respective invoice due date, upon demand, the Respondent shall repay the financial debt along with accrued interest and charges.
10. It is stated that the Applicant disbursed the amount of USD 3,65,660 to the Respondent and for which the disbursements were made and the invoices are attached at page no. 78-84.
11. The Purchase Request cum Deed of Assignment by Respondent are attached at page no. 76-77.
12. It is stated that the buyers failed to pay the invoices and the Applicant exercised recourse on Respondent by raising official demand vide its letter dated 26.12.2022. A copy of which is attached at page no. 85-87 which was followed by another legal notice dated 16.01.2023.

13. It is stated that the Respondent vide its e-mails dated 13.03.2023 and 16.03.2023 expressly admitted their liability with the commitment to pay the outstanding financial debt. However, the Respondent failed to repay the default amount.
14. Upon failure to pay by the Respondent since the goods were incurring damages and as the invoices were already 238 days past due and after issuance of notice dated 18.05.2023, the Applicant sold the goods and has adjusted the amounts received towards its liability and is now claiming the balance unpaid financial debt from the Respondent.
15. The computation of the defaulted amount is attached at page no. 96. A perusal of which reveals that the said goods were sold for UDS 1,61,355 and the balance due under the agreement is USD 2,52,660.
16. Notice was issued by this Tribunal on 13.10.2023. IA/32(AHM)2024 was filed by the Respondent seeking condonation of delay in filing the reply. The same was

allowed vide order dated 22.01.2024 and the reply filed by the Respondent was taken on record.

17. The brief contentions of the Respondent in reply are as under:-

I. The present petition filed by the Applicant under Section 7 of IBC, 2016 is not maintainable as the present applicant does not qualify to be a Financial Creditor. For which the following judgments have been relied upon:-

a) *Jaypee Infratech Ltd. Interim Resolution Professional vs Axis Bank Ltd., (2020) 8 SCC 401.*

b) *Minions Ventures Pvt. Ltd. vs TDT Copper Ltd. dated 28.03.2023 in Company Appeal (AT) (Ins) No. 572 of 2022.*

c) *Invoice Discounters of BNH Infraprojects Ltd vs BNH Infraprojects Ltd.*

II. The buyer was unable to pay due to fluctuations in the global market.

III. The Applicant has sold the goods without any authority and has not disclosed the consideration on which the goods were sold.

18. Rebuttal affidavit was filed on 17.01.2024 under Inward No. D466.
19. It is stated that as per the provisions of IBC, 2016, more particularly, Section 5(7) r.w. Section 5(8)(e) of the Code, the Applicant is a Financial Creditor and as per Section 3(8) of the Code, the Respondent is a Corporate Debtor.
20. It is stated that factoring services with full recourse basis falls within the ambit of 'Financial Debt' as defined under Section 5(8) of the IBC, 2016.
21. It is stated that the Default Notice cum Demand letter was sent by the Applicant on 27.12.2022 followed by legal notice through advocate on 16.01.2023, 15.03.2023 and 18.05.2023 and, thereafter, the goods were sold after sending final intimation to the Respondent vide email dated 11.07.2023 which is annexed at page no. 95.
22. It is stated that the judgments relied upon by the Respondent are not at all applicable to the facts of the present case. The Applicant has further relied upon the following judgments:-

- a) *Drip Capital v. Concord Creations (India) P. Ltd., passed by Hon'ble NCLAT on 08.11.2021.*
 - b) *Drip Capital v. Jashank Impex Pvt. Ltd., passed by this Tribunal on 02.08.2021.*
 - c) *Drip Capital v. Vibrant FAB Pvt. Ltd., passed by this Tribunal on 31.12.2020.*
23. Along with the Rebuttal Affidavit, the applicant has filed the record of default with the Information Utility in Form-D which is annexed at page no. 14 of this affidavit.
24. The Applicant as well as the Respondent has filed the written submission under Inward Diary Nos.D1550 dated 22.02.2024 and D1435 dated 20.02.2024 respectively.
25. We have heard the counsels appearing in the matter and perused the documents. The factoring agreement between the parties is annexed page no. 40-71.
26. The Applicant has directly disbursed the amount to the account of the Respondent for which the necessary advices are attached from page no. 78-84.
27. A perusal of the Full Recourse Account Purchase And Security Agreement dated 11.04.2022 reveals as under:-

"Recourse Event means any one of the following events, whether or not they occur in connection with a Purchased Account (whether or not within the control of the Client):

a. the Client is in breach of any of its representations, warranties or obligations in the Facility Documentation which relate to that Purchased Account;

b. a fraud, illegality or unauthorized act is committed or permitted by the Client, any Affiliate or any director, proprietor, partner, individual, employee, contractor or agent of the Client or its Affiliate;

c. Factor is not paid in full or Factor is required to reimburse any person for moneys received by it from any person as a result of a Commercial Dispute (whether or not subsequently settled) or because of any injunction, stop order or other court order (whether or not subsequently discharged);

d.....

e.....

f. any Purchased Account remains unpaid, in whole or in part, after the Invoice Due Date or becomes subject to Dilution;

g.

"7 NON-PAYMENT BY ACCOUNT DEBTOR

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 Factor the sum of:

(a) the amount of the relevant Purchased Account, and

(b) any other amount payable by the Client to Factor (including indemnities) relating to that Purchased Account.

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. The Client shall be liable to immediately pay the financial debt owed to the Factor under the 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.

28. Further, it is seen that the Respondent also executed the Non-Recourse Rider to Full Recourse Account Purchase And Security Agreement dated 11.04.2022 which gives a right to the Applicant to pursue the Respondent for the realisation of the short of amount disbursed.

29. We are of the view that factoring of non-recourse basis is covered under the definition of financial debt in terms of Section 5(8)(e) of IBC, 2016 which reads as under:-

“Section 5(8): 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 non-recourse basis.**”*

30. As such we hold that the Applicant herein is a Financial Creditor of the Corporate Debtor.
31. The judgment of the Hon'ble NCLAT in the matter of ***Drip Capital v. Concord Creations (India) P. Ltd.***, is squarely applicable in the present matter.
32. As regards the amount of default, we are of the view that the Respondent has defaulted which led to the sale of goods by the Applicant herein and the Applicant herein is before us to claim the remaining amount which amounts to USD 2,52,660 upon conversion, the amount under claim is Rs.2,08,82,320/- which is well above Rs.1.00 Crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.
33. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

34. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

(i) The Respondent/Corporate Debtor – **M/s. Giridhar International Pvt. Ltd.**, is admitted in the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016.

(ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

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 any court of law, tribunal, arbitration panel or other authority;

b. transferring, encumbering, alienating or disposing of by the corporate debtor 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 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;

d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

e. The provisions of sub-Section (1) shall however,

not apply to such transactions, agreements 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.

- (iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this 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 of the IBC, 2016, as the case may be.
- (iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- (v) As proposed by the Financial Creditor, **we appoint Primus Insolvency Resolution & Valuation Pvt. Ltd., having Reg. No. IBBI/IPE-0072/IPA-2/2022-23/50002, email- info@primusresolutions.in** under section 13 (1)(c) of the Code to act as Interim Resolution Professional (“**IRP**”) of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. They shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. 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 the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.
- (viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.
- (xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within week from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.
- (xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of

this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

35. In view of the above directions, **CP(IB)/238(AHM)2023** is hereby allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)**

Note: This order of the Bench consisting of Hon'ble Member Judicial & Hon'ble Member Technical is pronounced in open court on behalf of the Bench by Hon'ble Member Judicial under Rule 151 of NCLT, Rules, 2016.

**-SD-
(HANIF SHAIKH)
COURT MASTER**

Rajeev/PS