

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No.174/NCLT/AHM/2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.12.2020**

Name of the Company: Drip Capital Inc
V/s
Vibrant Fab Pvt Ltd

Section 7 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

The order is pronounced in the open court, vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 31st day of December, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court -2**

CP (IB) No.174/7/NCLT/AHM/2020

In the matter of:

Drip Capital Inc.
Registered Office at
240 Delphi Cir
Los Altos, CA 940 22
United States of America

...Petitioner
(Financial Creditor)

Versus

Vibrant FAB Private Limited
Shop No.39, Ground Floor
Navmanglam Apartment
City Light
Surat-395 007
Gujarat

... Respondent
(Corporate Debtor)

Order delivered on 31st December, 2020.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

And

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T).

Appearance:

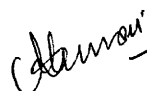
Advocate, Mr.Vinay Bairagra, for the Petitioner.
None appeared for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. This Petition is filed by Mr. Dharmil Shah, Authorized Signatory of the Petitioner Company, under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "I&B Code"] read with Rule 4 of the Insolvency and Bankruptcy Application to

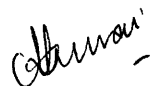




Adjudicating Authority Rules, 2016 (hereinafter referred to as “the Rules”), for the purpose of initiating Corporate Insolvency Resolution Process [hereinafter referred to as “CIRP”) against M/s. Vibrant FAB Pvt. Ltd. [hereinafter referred to as Respondent/Corporate Debtor].

2. M/s. Vibrant FAB Pvt. Ltd., the Respondent, is a company incorporated on 29.08.2011, under the provisions of the Companies Act, 1956 having its Registered Office at Landmark Empire Building-A, 5th Floor, SH-517, Landmark Corporation, Saroli, Surat, Gujarat-395 010 and its CIN: U17120GJ2011PTC066922.
3. The Authorised Share Capital of the Respondent Company / Corporate Debtor is Rs.5,00,00,000 /- (Rupees Five Crore only) and the Paid-Up Share Capital is Rs.4,98,00,000 (Rupees Four Crore Ninety Eight Lakh only).
4. As per Part IV of the application, the Financial Creditor submitted that it has granted aggregate amount of USD 3,00,000.00 (USD Three Lakh only) to the Corporate Debtor towards assignment of its two invoices, disbursed on 30.08.2019 and 11.09.2019, respectively. It is further stated that as on 31st January 2020, the default amount under the Agreement read with Undertaking is USD 3,15,168.15 approximately equivalent to INR 2,24,80,994.13 (INR Two Crore Twenty Four Lakh Eighty Thousand Nine Hundred and Ninety Four and Thirteen paisa only). The date of default is 20th January, 2020.





5. The Petitioner submitted the copy of following documents in support of its claim against the Corporate Debtor.
- i) Corporate Debtor's master data available on the Ministry of Corporate Affairs website.
 - ii) Term sheet letter dated 22.11.2018 containing the in-principle indicative term sheet for Export Factoring Facility.
 - iii) Receivables Purchase Factoring Agreement dated 04.06.2019 executed between the Financial Creditor and Corporate Debtor.
 - iv) Irrevocable Undertaking dated 04.6.2019 executed by the Corporate Debtor in favour of Financial Creditor towards recourse for any unpaid disputed receivables.
 - v) Two Invoices both dated 12.08.2019 assigned by the corporate debtor to the financial creditor.
 - vi) All Purchase Request cum Deed of Assignment executed by Corporate Debtor in favour of Financial Creditor, along with corresponding bills of lading.
 - vii) Transaction details evidencing disbursement of the amounts.
 - viii) Demand Letter dated 13.01.2020, raised by the Financial Creditor on the Corporate Debtor towards repayment of financial debt owed to Financial Creditor.
 - ix) Computation relating to the default amount and days of default.
 - x) Demand Promissory Note dated 04.06.2019 executed by Corporate Debtor in favour of the Financial Creditor.
6. After filing of the present IB Petition a paper publication was made by the petitioner on 12.08.2020 as notice sent has not been delivered. However, none appeared on behalf of the corporate debtor.

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7. Heard the arguments of the learned counsel for the petitioner. Gone through the application as well as documents submitted by the Petitioner as per Section 7 of the I&B Code. In an application preferred by the Financial Creditor for initiation of Corporate Insolvency Resolution Process, the Adjudicating Authority is required to see the existence of financial debt and ascertain the existence of default. As per the documents submitted by the Petitioner, there is an agreement executed between the petitioner and the corporate debtor on 04.06.2019, i.e. Receivables Purchase Factoring Agreement dated 04.06.2019 (Agreement) and Irrevocable Undertaking dated 04.06.2019 (Undertaking) towards recourse for any unpaid disputed receivables. Against assignment of invoices was on full recourse basis to corporate debtor, i.e. in case the buyer of goods fails to pay to the financial creditor on respective Invoice Due Date, the corporate debtor shall repay the financial debt along with accrued interest and charges. The petitioner/ financial creditor had granted/dispensed an amount to the tune of USD 3,00,000.00 (USD 1,83,744 + USD 1,16,256) were disbursed on 30.08.2019 and 11.09.2019, respectively, towards assignment of two invoices, i.e Invoice bearing Nos. VF/34/19-20 and VF/33/19-20, both dated 12.08.2019. The buyers of the goods, as per the agreement i.e. Receivables Purchase Factoring Agreement' were required to make payment directly to the Financial Creditor. But they failed to make the payment in time. The financial creditor sent a Default cum Demand letter to corporate debtor on 13.01.2020. But the corporate debtor had failed to make the payment to the financial creditor. Hence,



the petitioner filed this application for initiating Corporate Insolvency Resolution Process against the corporate debtor.

The date of default is 20th January 2020. The application is filed on 19th February 2020. Thus, the application is filed well within the period of limitation.

8. The Petitioner has proposed the name of Shri Krishna Gopal Ratanlal Maheshwari, having office at 602, Rajendra Ratna, Mahesh Nagar, S V Road, Goregaon (W), Mumbai City, Maharashtra-400 104, to act as an Interim Resolution Professional (IRP), who is having Registration No. IBBI/IPA-001/IP-P-01296/2019-2020/12712 to act as Interim Resolution Professional under Section 13(1)(b) of the I&B Code and written communication in Form-2 of IBBI has been submitted by the proposed IRP.
9. From the documents placed on record, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of debt to the Petitioner / Financial Creditor. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the I&B Code and the moratorium as envisaged under the provisions of Section 14(1) of I&B Code and extracted hereunder shall follow in relation to the Respondent/Corporate Debtor.

(1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority





herein declares moratorium for prohibiting all of the following
viz;-

- (i) 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.
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor, any of its assets or any legal right or beneficial interest therein;
 - (iii) 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(54 of 2002);
 - (iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - (3) The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
 - (4) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency


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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.

10. This Adjudicating Authority hereby appoints Shri Krishna Gopal Ratanlal Maheshwari, having office at 602, Rajendra Ratna, Mahesh Nagar, S V Road, Goregaon (W), Mumbai City, Maharashtra-400 014, having Registration No. IBBI/IPA-001/IP-P-01296/2019-2020/12712 to act as "Interim Resolution Professional" under Section 13(1)(b) of the I&B Code.
11. Accordingly, the present petition stands admitted.
12. Communicate a copy of this order to the Petitioner, Respondent and to the Interim Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)


Manorama Kumari
Adjudicating Authority &
Member (Judicial)