

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

CP (IB) No.61/BB/2020

U/s. 7 of the IBC, 2016

R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Drip Capital Inc.

240 Delphi Cir,
Los Altos CA 94022,
United States of America

... Financial Creditor/Petitioner

VERSUS

M/s. Concord Creations (India) Private Limited,

No. 23/4, 3rd Floor, Axis Bank
Building, Dr. Rajgopal Road,
Gedahalli Sanjaynagar, Main Raod,
Bangalore – 560 094

... Respondent/Corporate Debtor

Order delivered on: 31st May, 2022

Coram:

Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)

Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Ms. Shruti Rao

For the Respondent : None

ORDER

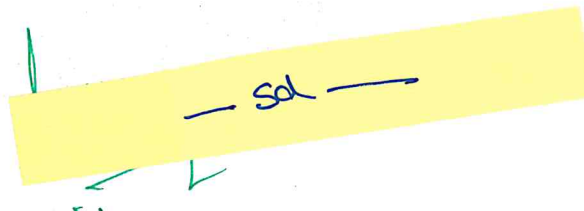
Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present petition is filed, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s. Drip Capital Inc. (for brevity 'Financial Creditor/Applicant/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Concord Creations (India) Private Limited (hereinafter referred as 'Corporate Debtor/Respondent').
2. The Corporate Debtor, namely, M/s. Concord Creations (India) Private Limited is a Company incorporated on 08.12.2005 with CIN:

U18101KA2005PTC077660 having its registered office at No.23/4, 3rd Floor, Axis Bank Buidling, Dr. Rajgopal Road, Gedahalli Sanjaynagar, Main Raod, Bangalore - 560094, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.15,00,00,000/- and the Paid-Up Share Capital is Rs.15,00,00,000/- as per the Company Master Data attached at Exhibit-4 of this Application.

3. The present application has been filed by the Financial Creditor against the Corporate Debtor in respect of the default amount of Rs.27,39,899.33/- (Rupees Twenty Seven Lakh Thirty Nine Thousand Eight Hundred and Ninety Nine and Thirty Three Paise only).
4. The Financial Creditor had granted an Export Finance facility to the Corporate Debtor, under the Receivable Purchase Factoring Agreement (RPA) dated 12.12.2018 duly authorised by Corporate Debtor vide its Board resolution dated 12.12.2018 and an Irrevocable Undertaking for Recourse against the Corporate Debtor dated 12.12.2018. In addition, the Corporate Debtor also provided a demand promissory note in favour of Financial Creditor which is also dated 12.12.2018.
5. It is stated that under the terms of the RPA read with undertaking, the Corporate Debtor requested the Financial Creditor to purchase and assigned in favour of the Financial Creditor, the receivables under 3 Invoices on with recourse basis. The said goods shipped under the Invoices were primarily purchased by Aquarius USA Inc. Each Invoice mentioned that it has been assigned to Financial Creditor by stating 'this invoice has been sold and assigned to Drip Capital Inc., 555 Bryant St #356 Palo Alto, CA 94301 USA'.
6. The Financial Creditor remitted payment to Corporate Debtor towards the purchase and consequential assignment of said 3 Invoices, to the tune of Rs. USD 36,532.00 (USD Thirty Six Thousand Five Hundred and Thirty Two only). The Receivables under the Invoices were assigned by Corporate Debtor to the Financial Creditor on with recourse basis under the Undertaking, against the payment of aforesaid aggregate amount. In the event of the Financial Creditor not receiving the aforesaid aggregate amount within the repayment due date due to happening of Commercial Dispute between the Corporate Debtor and Aquarius USA Inc., the Financial Creditor shall have

- right of recourse against the Corporate Debtor for recovery of aforesaid payments. The payment toward each Invoice was due and payable at Sight of the documents through bank transfer (Repayment Due Date) failing which the Financial Creditor had a right of recourse against the Corporate Debtor.
7. The Financial Creditor reminded Aquarius USA Inc., of its obligation to make payments towards the Invoices directly to the Financial Creditor on repayment Due Dates. However, vide their email dated 12.09.2019 Aquarius USA Inc. informed the Financial Creditor that the said Invoices are disputed and therefore payment cannot be made. Aquarius USA Inc. also advised the Financial Creditor to get in touch with Corporate Debtor for its payment.
 8. The Financial creditor approached the Corporate Debtor asking details of the commercial dispute and requesting for payments to be made under the recourse undertaking. However, the Corporate Debtor failed to reply or arrange payment under 3 Invoices assigned to Financial Creditor, and therefore the Financial Creditor exercised recourse against the Corporate Debtor under the Undertaking by claiming amounts paid by the Financial Creditor towards the Invoices.
 9. It is further stated that the Financial Creditor sent a demand letter dated 14.10.2019 to Corporate Debtor thereby exercising recourse on Corporate Debtor as per terms of the RPA r/w duly executed Undertaking towards repayment of the unpaid aggregate Outstanding Receivables. The Financial Creditor raised an official demand on Corporate Debtor for repayment of Outstanding Receivables under the overdue Invoices. Even after repeated reminders to the Corporate Debtor regarding the non-payment of Invoices on Repayment Due Date, the Corporate Debtor failed to reply to Demand Notice or repay the Financial Debt. As per the terms of the Demand, the failure of the Corporate Debtor to pay Financial Debt within a period of 3 days as stipulated in the Demand would constitute an admitted inability to pay its debts by the Corporate Debtor.
 10. The Corporate Debtor has failed to either pay the Financial Debt or respond to the aforesaid Demand of Financial Creditor dated 14.10.2019 and thereby has committed default in repayment of its admitted Financial Debt due to the Financial Creditor till the date of this Application. It is evident that the



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Corporate Debtor is financially unsound, has defaulted in its payment obligation and is unable to pay its debt. Hence the petition.

11. This Adjudicating Authority vide order dated 28.05.2021 after recording at Para-3 of the said order dated 28.05.2021 that *"on perusal of the order sheet dated 02.03.2021 it is seen that the Counsel for the Respondent Mr. K.S Satish who had filed vakalath as early as on 16.03.2020, but no Statement of Objections was filed"* and after hearing the learned Counsel appearing for the Petitioner disposed of the C.P. as under:

"In the result, C.P. (IB) No. 61/BB/2020 is disposed of by directing the Respondent/Corporate Debtor to repay the balance debt or the amount as settled with the Petitioner within a period of 6 months failing which the Petitioner would be at liberty to file a fresh Petition for admission. No order as to costs."

12. Having aggrieved with the above referred order of this Adjudicating Authority, the Petitioner preferred CA (AT) (CH) (Ins.) No. 167 of 2021 and the Hon'ble NCLAT vide order dated 08.11.2021 set aside the order of this Adjudicating Authority and directed to restore the C.P. to its file and to admit the same and to proceed further in accordance with law. The operative portion of the said order reads as under:

"In fine the Company Appeal (AT) (CH) (Ins.) No. 167 of 2021 is allowed. Resultantly, the impugned order dated 28.05.2021 passed by the Adjudicating Authority (National Company Law Tribunal) Bengaluru Bench in C.P (IB) No. 61/BB/2020 is hereby set aside. No costs. The Adjudicating Authority is directed by this Tribunal to restore C.P (IB) No. 61/BB/2020 to its file, 'Admit' the same and to proceed further in accordance with law."

13. In terms of the orders of the Hon'ble NCLAT in C.P (IB) No. 61/BB/2020, as on 18.04.2022 this Adjudicating Authority directed the learned Counsel appearing for the Petitioner to serve the copy of the memo informing about the orders of the Hon'ble NCLAT on the Respondent/Corporate Debtor and also on the Counsel for the Respondent who was on record as on the date of disposal of the main C.P. through Speed Post as well as by E-mail and file the affidavit of service thereto. Accordingly, the learned Counsel appearing for the Petitioner sent the notice and filed memo vide Diary No. 2293 dated 27.05.2022 stating that the notices sent through Speed Post returned unserved with an endorsement no such person.

14. We have heard the learned Counsel for the Petitioner and have also perused the records carefully.

15. Section 7(5)(a) of the Code is as follows:-

"5) Where the Adjudicating Authority is satisfied that-

(a) default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."

16. In the circumstances and in view of the documents placed before us and order of the Hon'ble NCLAT, the instant C.P. is **admitted** and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, 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 however, 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

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Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

17. In Part-III of Form No.1, Mr. Pankaj Srivastava bearing Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 11.12.2019 has been filed along with the C.P are found at Page Nos.86-88 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Pankaj Srivastava and there is nothing adverse against him. In view of the above, we appoint Mr. Pankaj Srivastava bearing Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474, having registered address at G02 Kundur Park, Amruthhali Jakkur Road, Bengaluru 560064, email- psri@live.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 IBC, 2016.
18. 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.
19. 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 —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)