

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

CP (IB) 68/MB/C-II/2020

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Drip Capital Inc.

[EIN Assigned No: 47-1674445]

Reg. Off: 555 Bryant St. #356, Palo Alto, CA 94301, United States of America, Mumbai – 400058.

Through Authorized Officer:

Mr. Yogesh Chiplonkar

Correspondence Address: 1001, Embassy Chambers, Khar West, Mumbai – 400052.

... Financial Creditor/Petitioner

Versus

Shivani Trendz Private Limited

[CIN: U17222MH2012PTC263871]

114, 11th Floor, Hubtown Viva, Shankar Wadi, Jogeshwari (East), Mumbai – 400060.

... Corporate Debtor/Respondent

Order Delivered on --.09.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Rajeev Carvaho, Advocate
i/b M/s Manilal Kher Ambalal
& Co.

For the Corporate Debtor : Mr. Ajay Bhaootra, Ex-
Director.

(23/06/2014 – 07/04/2021)

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This is a Company Petition filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Drip Capital India LLP** (“the Financial Creditors”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shivani Trendz Private Limited** (“the Corporate Debtor”).
2. The Corporate Debtor is a Private company limited by shares and incorporated on 06.08.2012 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is **U17222MH2012PTC263871**. Its registered office is at 114, 11th Floor, Hubtown Viva, Shankar Wadi, Jogeshwari (East), Mumbai – 400060. Therefore, this Bench has jurisdiction to deal with this petition.

Brief Facts of the case:

3. In or around 8th October 2018, the Corporate Debtor, as an exporter of textile related items in India, approached the Applicant being in the business of trade finance for availing a trade finance facility including factoring/ Invoice discounting facility. Based on the representations made by the Corporate Debtor, the Applicant executed a Receivable Purchase Factoring Agreement (hereinafter referred to as the “**Agreement**”) inter alia sanctioning a Receivables Purchase Facility with a limit of USD 1,000,000 on the terms and Conditions as set out therein. In order to secure the repayment of the facility amount along with all Fees, charges, interest, overdue interest, factoring commission accrued thereon, the Corporate Debtor issued Post Date Cheques along with an Undated Cheque Undertaking dated 10th December 2018 and an Irrevocable undertaking dated 10th December 2018 towards any unpaid disputed Receivables in favor of the Applicant.
4. Accordingly, as per the terms of the Agreement, the Corporate Debtor appointed the Applicant to act as their Factor and assigned and sold Commercial Invoice (hereinafter referred to as “Purchased Receivable”) pertaining to Kothari General Trading L.L.C (hereinafter referred to as the “**Buyer**”) with regard to consignment of certain products on the terms and conditions stipulated in the Agreement.

5. The side Purchased Receivable clearly stipulated that the same was sold and assigned to the Applicant, with a request to the Buyer to route all remittance directly to the Applicant's bank account. Consequently, at the request of the Corporate Debtor, the applicant disbursed a total sum of USD 1,00,000 towards Purchase Price of the Purchased Receivable. As the outstanding Receivable were overdue and unpaid by the Buyer on the Due Date resulting into occurrence of Remedy Event as per the Agreement read with Irrevocable Undertaking dated 10th December 2018 for exercising recourse on the Corporate Debtor towards repayment of the unpaid overdue aggregate outstanding Receivables, the Applicant issued a Demand Notice dated 8th November 2019, calling upon the Corporate Debtor to immediately make payment towards the aggregate outstanding days from the said Notice.
6. However, the corporate Debtor failed to make payment of the Aforesaid amount i.e. USD1,08,425.46.

Submissions made by Financial Creditor by way of Application/Petition:

7. Receivable Purchase Facility was sanctioned to Corporate Debtor with Limit of USD 1,000,000 (One Million Dollar).

Date of Disbursement: 9th January 2019.

8. As on 30th November 2019, the total amount of default is Rs. 78,20,677.01. Date of default is 8th November 2019.

The Computation of Claim Amount has been annexed herewith at “**Annexure – D**”.

9. **Details of Acknowledgement:**

- a. Irrevocable Undertaking dated 10th December 2018 issued by the Corporate Debtor in favor of the Applicant inter alia irrevocably undertaking to repay (without any dispute or demure) the entire amount advanced by the applicant along with all fees and charges including interest overdue interest, factoring commission to the Applicant or their duly appointed Collection and Process Agent i.e. Drip Capital Services India LLP, upon the occurrence of any remedy event, any Commercial Dispute or Fraud, in any manner whatsoever. Further undertaking that the Applicant shall have full recourse on the Corporate Debtor and that the latter shall repay that amount due and payable under the Agreement not later than 3 Business Days of having received the demand under the Remedy Event Notice from the Applicant is annexed herewith as **annexure E**.
- b. Demand Promissory Note dated 10th December 2018 issued by the Corporate Debtor in favor of the Applicant inter alia irrevocably and unconditionally undertaking and promising

to pay the Applicant on demand the amount of USD 1000000 or rupee equivalent thereof together with interest from the date such demand (at the interest rate contractually agreed upon between the parties) is annexed herewith as **Annexure F**.

- c. Undated Cheque Undertaking dated 10th December 2018 along with Post-dated Cheques (“**PDCs**”) issued by the Corporate Debtor in favor of the Collection and Process agent viz. Drip Capital Services India LLP (hereinafter referred to as “Collection and Process Agent”) of the Applicant towards the repayment of the principal amount of the Facility along with all fees, charges, interest, overdue interest, factoring commission accrued thereon and inter alia authorizing the Collection and Process Agent of the Applicant to rely on the said Undertaking while dealing with or taking action related to the PDCs is annexed herewith as **Annexure G**.

10. The Financial Creditor in furtherance of his claim annexed following documents:

- i. Copy of Irrevocable Undertaking dated 10th December 2018 issued by the Corporate Debtor in Favor of the Applicant.
- ii. Copy of Demand Promissory Note dated 10th December 2018 issued by the Corporate Debtor in favor of the Applicant.

- iii. Copy of Undated Cheques Undertaking dated 10th December 2018 issued by the Corporate Debtor in favor of the Collection and Process Agent of the Applicant.
- iv. Copy of Receivable Purchase Factoring Agreement dated 10th December 2018.
- v. Copy of the Statement of Accounts of the Applicant along with requisite Certificate.
- vi. Copy of Notice dated 8th November 2019 issued by the Applicant to the Corporate Debtor.

Submissions made by the Corporate Debtor:

- 11. Mr. Ajay Bhaootra, Ex- Director, appeared from the side of the Corporate Debtor on the date of final hearing of this Petition. Submitted that the Corporate Debtor had not filed any formal reply in this matter.
- 12. This matter was listed on several occasions for hearing it is observed that since inception opportunities were given to the Respondent to file formal reply, but Respondent chose not to file reply. Therefore, the opportunity to file reply was forfeited on account of non-filing.
- 13. We have heard the arguments of Financial creditor and Corporate Debtor and perused the records.
- 14. It is noted from the records and submissions from counsel that the Corporate Debtor has availed the Receivable Purchase Factoring

Agreement dated 10/12/2018. There is no dispute regarding the Corporate Debtor having availed the Receivable Purchase Factoring at the rate of interest mentioned in Agreement from the Financial Creditor. The Corporate Debtor issued cheques in favor of the Financial Creditor to repay the debt. The Financial Creditor issued notice dated 8/11/2018 for repayment of debt but same was not honoured. These submissions establish the existence of debt and default.

15. We also consider the facts of the case in the lights of the Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
16. The Financial Creditor has proposed the name of **Mr. Gaurav Ashok Adukia**, Registration No. IBBI/IPA-002/IP-N00457/2017-2018/11293, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

17. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
18. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP (IB) 68/MB/C-II/2020** filed by **Drip Capital India LLP** the Financial Creditors, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Shivani Trendz Private Limited [CIN: U17222MH2012PTC263871]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating

Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Gaurav Ashok Adukia**, Registration No. IBBI/IPA-002/IP-N00457/2017-2018/11293, having address at Anand Bhavan, Jamnadas Adukia Road, Kandivali West, Mumbai – 400067, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge

to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Three 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 (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Dated the 7th day of September, 2021

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

ASHOK KUMAR BORAH
Member (Judicial)

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