

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Special Bench)

Item No.-04
IB-745/ND/2020

IN THE MATTER OF:

Drip Capital Inc.

....Applicant

Vs.

Al Saqib Exports Pvt. Ltd.

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 23.05.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-745/ND/2020 stands **admitted.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 745 of 2020

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

**Drip Capital Inc.
240 DELPHI CIR
LOS ALTOS CA 94022
United States of America**

...Applicant/Financial Creditor

Versus

**Al- Saqib Exports Private Limited,
12, New Rajasthani Enclave,
Preet Vihar, Delhi- 110092, India**

...Respondent/Corporate Debtor

Order pronounced on: 23.05.2023

Coram:

SHRI P.S. N. PRASAD, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Appearances (through video conferencing):

For the Applicant : Adv A Girish Kumar

For the Respondent : Adv Rishabh Dua

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016, by Drip Capital Inc. (hereinafter referred to as ‘Financial Creditor’), represented by Mr. Dharmil Shah, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Al- Saqib Exports Private Limited [CIN: U63023DL1996PTC078460] (“Corporate Debtor”). The instant application was filed on 17.02.2020.
2. The Corporate Debtor was incorporated on 24.04.1996, having CIN: U63023DL1996PTC078460, under the Companies Act, 1956. Its registered office is at 12, New Rajdhani Enclave, Preet Vihar, Delhi- 110092. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 17.02.2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 1,02,58,820.00/- (One crore two lakhs fifty-eight thousand eight hundred and twenty only) as on 29.11.2019(date of default).

Submissions of learned Counsel appearing for the Financial Creditor are as under: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:

- a) In the present case, the Applicant/Financial Creditor is an Offshore Company based out of Delaware, USA and engaged in 'Factoring Business'. The said business of acquisition of receivable of assignor/Corporate Debtor by accepting assignment of such receivable and financing such receivables was with recourse basis. Corporate Debtor is an export Company registered in Delhi which had availed export credit facility from the Financial Creditor. This Section 7 IBC application pertains to the default in respect of seven receivables purchased on recourse basis by the Financial Creditor from the Corporate Debtor by advancing an aggregate sum of USD 475,440.00 during July/August, 2019, most of which remained unpaid by the debtor/consignee beyond the Invoice Due Date. Pursuant to exercise of recourse by Financial Creditor, the Corporate Debtor has not repaid the outstanding dues and there is default in respect of the same. The details of the invoice and dues has been filed with the present petition. The Financial Creditor has also sent a demand noticed dated 22.11.2019 to the Corporate Debtor, followed by legal notice dated 09.01.2020.
- b) A Receivables Purchase Factoring Agreement ('RPFA') was executed between the Financial Creditor and the Corporate Debtor on 07.03.2019. Along with RPFA, the Corporate Debtor also executed a Factoring with Recourse-Terms and Conditions ('Recourse Terms) towards any unpaid or disputed receivables along with other charges payable under the RPFA. The receivables sold to the Financial Creditor were on recourse basis and therefore, debt payable by the Corporate Debtor

was covered within the definition of 'Financial Debt' under Section 5(8)(e) of the IBC, 2016. Further, Clause 13 (h) of the Recourse Terms also confirms the status of the applicant as Financial Creditor.

- c) Apart from Recourse undertaking, the financial debt given to the Corporate Debtor was backed by, Undated Cheque Undertaking dated 07.03.2019 in respect of 5 cheques and also, Demand Promissory Note on 07.03.2019. Also, vide order dated 12.07.2021, this Hon'ble Tribunal had passed an order of ad-interim injunction against the Corporate Debtor restraining the Corporate Debtor from creating any third-party rights or alienating the assets of the Corporate Debtor.
- d) As on the date of filing of the Section 7 application, the outstanding dues payable by Corporate Debtor was Rs. 1,02,58,820/-. Subsequently, one payment was received on 20.03.2020 to the tune of USD 56,000. Notwithstanding the above, the threshold limit of Rs. 1 Crore is not applicable to the present Section 7 application, reason being, the present Section 7 IBC petition was filed on 17.02.2020, much before the amendment to Section 4 of IBC on 24.03.2020, increasing the threshold to Rs. 1 Crore. The amendment being prospective, is applicable to Section 7 application filed after 24.03.2020. In para 6 of the Written Submission filed by the Corporate Debtor on 20.02.2023, it has been specifically admitted by the Corporate Debtor that dues are payable under three invoices to the tune of USD 4,610 each, which aggregates to USD 13,830.00 (approximately equivalent

to INR 11,43,879/- calculated at USD INR rate of @82.71).

- e) Entire due payable to the Financial Creditor, arising out of the 7 invoices in the present S. 7 application, was with Recourse basis and the Corporate Debtor was liable to pay the same. As per the Receivable Purchase Factoring Agreement [RPFA], Corporate Debtor is responsible to Financial Creditor, if a REMEDY EVENT occurs and what constitutes as Remedy Event is defined as under:

“Remedy Event means any of the following events that occur in connection with the Purchase Receivables (whether or not with control of the Client):

(a) the Client is in breach of any of its representations, warranties or obligations in a Facility Document which relate to that Purchased Receivable.

(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 be reimburse any person for moneys received by it from any person as a result of 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) In the present application, 'RECOURSE' is defined as,
- “RECOURSE means in respect to the Recourse Receivables; the client bears the risk of Debtor’s default and the client is the personally liable to the Factor in respect of any of the following:
- a. for the performance of the Purchased Receivables by the Debtor on the Due Date;
 - b. for the collection of the Recourse Receivables on the Due date; and
 - c. upon happening of the Recourse Event.”
- g) 'RECOURSE EVENT' is defined in the application as,
- “RECOURSE EVENT means any of the following:
- a. The Debtor has not or has not either completely or partly paid the Receivable amount on Due Date, whether due to any legal constraints or acts or orders of government or for any other reason whatsoever; or
 - ..
 - h. Occurrence of any Remedy Event; or i. ...
 - . j.”
- h) Importantly, in the S. 7 application containing Irrevocable Undertaking for “with Recourse” Factoring of Receivable, it is clearly accepted by the Corporate Debtor as under,
- “Therefore, we the client hereby expressly and irrevocably agree and undertake with the factor that the

following purchased receivable or outstanding receivable (hereinafter referred to as 'Recourse Receivable') shall be on full recourse basis to the client and shall be governed by the recourse terms attached hereto:

- (i) all purchase receivables of any approved debtor, exceeding the respective debtors' limits on the date of such purchase by the factor; or
 - (ii) the amounts by which the aggregate of the purchase receivables of any debtor exceeds their respective debtor limits; or
 - (iii) any purchase receivables for which a collateral is provided by the clients; or
 - (iv) such other purchased receivables.”
- i) Each invoice was purchased by the Financial Creditor upon the specific request of the Corporate Debtor. Reference may be made to the purchase requests. The above terms accepted by the Corporate Debtor and the invoices purchase requests clearly negates the case of the Corporate Debtor that the said alleged undertaking is applicable only in case the amounts that are in excess of the admitted limits as mentioned in the Master Factoring Agreement.
- j) The RECOURSE TERMS, clearly states as under, ‘... the undertakings and recourse terms are in addition to all the terms, conditions, representations and warranties provided under the master agreement....’. Therefore, the parties clearly intended that the

Recourse Terms had to be given precedence to any other agreement including the RPFA.

- k) Therefore, in view of the facts and circumstances narrated above, the Financial Creditor submits that the respondent Corporate Debtor is unable to pay its debts and therefore in such circumstances, it is just and equitable that the corporate debtor is liable to be declared insolvent. Hence, the applicant submits this application to initiate a corporate insolvency resolution process against M/s Al- Saqib Exports Private Limited.
5. The Financial Creditor has placed the following documents on record:
 - a. Copy of Receivable Purchase Agreement dated 07.03.2019.
 - b. Copy of Recourse Undertaking dated 07.03.2019.
 - c. Copy of Purchase request and deed of assignment in respect of 7 invoices.
 - d. Computation related to default amount and days of default.
 6. The Financial Creditor has proposed the name of Mr. Ankit Kumar Agrawal, registration number IBBI/IPA001/IP-P01708/2019-20/12634, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given 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 registration certificate with IBBI.

Submissions of learned Counsel appearing for the Corporate Debtor

7. The details of the submissions made by the Corporate Debtor are as follows:
 - a) It is submitted by the Corporate Debtor that the Financial Creditor has filed the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against the alleged Corporate Debtor. The petition is liable to be dismissed as there is no financial debt within the meaning of the said term under section 5 (8) (e) of the Code and even otherwise, the alleged debt does not meet the threshold limit as prescribed under section 4 of the Code.
 - b) The Corporate Debtor has premised its application under section 7 of the Code, claiming the transaction between the parties as one under Section 5 (8) (e) of the Code being “receivable sold or discounted other than any receivables sold on non-recourse basis”.
 - c) The alleged Financial Creditor has contended that the debt due/default is in relation to Seven (7) invoices which were advanced for an aggregate sum of USD 475,440. The alleged Financial Creditor has relied upon the demand letter dated 22.11.2019 and legal notice dated 09.01.2020 to claim an amount of USD 1,43,480, amounting to Rs.1,02,58,820/- (Rupees One Crore Two Lakh Fifty-Eight Thousand Eight Hundred and Twenty Only). This alleged debt has been claimed basis a Master Factoring Agreement dated 07.03.2019 (“Agreement”) and a Recourse Undertaking dated

07.03.2019. It is the contention of the alleged Financial Creditor that the amounts claimed are “with recourse” and therefore there is a Financial Debt within the meaning of the said term under the Code.

According to the Corporate Debtor, the said contention of the Financial Creditor is liable to be rejected for the following reasons:

- d) The Master Factoring Agreement dated 07.03.2019, explicitly in Clause No.7 (@ Page No.61), provides that the “Factor shall have no-recourse to the Client in case of Debtor’s failure to pay under the Purchased Receivables due to Debtor becoming insolvent or happening of a “protracted default.”. Further, in Clause No.7, it has been mentioned that the Client will be responsible to make payment only for a Debtor’s failure to pay a Purchased receivable on happening of a ‘Remedy Event’.
- e) ‘Protracted Default’ and ‘Remedy Event’ have both been defined at Page No.50 of the Application. It is not the case of the alleged Financial Creditor that any “Remedy Event” has occurred. In-fact, the case of the alleged Financial Creditor is that there has been a default in payment of the purchased receivables, which comes within the definition of “Protracted Default” for which there is “no recourse” under the terms of the Agreement.
- f) The alleged Financial Creditor, to overcome this issue, has sought to place reliance on an irrevocable undertaking with recourse basis. It is the contention of the alleged Financial Creditor that the Corporate Debtor has sold the receivables to the alleged Financial

Creditor on recourse basis. This is factually wrong. A reading of the said undertaking clearly provides that the same is in addition to the Master Factoring Agreement and is only applicable “over and above the applicable approved debtor limit”. Therefore, the said alleged undertaking is applicable only in case the amounts are in excess of the admitted limits as mentioned in the Master Factoring Agreement.

- g) Admittedly, the limits specified in the Master Factoring Agreement, are to the extent of USD 1500000 (Schedule 1 @pg. 75 of the application). The alleged claim admittedly, is only to the extent of USD 1,43,480 (Calculation sheet @Pg. 138 of the application). Therefore, there could be “no recourse” to the said alleged debt.
- h) The alleged debt “being on non-recourse basis” is therefore not covered under the definition of Financial Debt, as being contended by the alleged Financial Creditor. In fact, in terms of the agreement, on purchase of the receivables, the ownership of the purchased receivables is deemed to have been transferred. The Factor shall also have all the rights and remedies to legally recover the said amounts.
- i) It is also inconceivable that after selling the “receivables” at a discounted price being 80 % of the Value, the Corporate Debtor will also permit the Factor to recover the amounts which have been sold from the Corporate Debtor. Clearly, therefore, the alleged debt is on a “non-recourse” arrangement and therefore not a “Financial Debt” as defined under the Code.

- j) The Financial Creditor has also taken a second argument, being that the Corporate Debtor, in respect of the alleged Seven Invoices, which have been purchased has specifically provided for a “recourse undertaking”. For this, the alleged Financial Creditor has placed reliance on letter dated 26.11.2019 to contend that the invoices purchased by the alleged Financial Creditor have been given on “recourse basis”.
- k) This argument is also liable to be set aside, as a perusal of the said letter clearly shows that it is in respect of only three invoices, being number ASE/19-20/041 to 043. The Financial Creditor has already received payment in respect of these invoices, which is clear from its own statement filed by the alleged Financial Creditor at page No.138 of the Application, wherein against these invoices, an amount of USD 64,270 each has been paid and only an amount of USD 4,610 each is payable, which cannot form part of a financial debt as the same does not meet the threshold limit as prescribed under the Code. In respect of the other four alleged invoices, no such undertaking has been placed. Without Prejudice, even assuming without admitting the alleged amounts are liable to be paid, the said amount comes to USD 1,14,830, is again lesser than the threshold limit (when converted to Indian Rupees). Thus, the petition itself is not maintainable.
- l) It is also necessary to state here, that there have been subsequent payments between the parties, after which the alleged due amounts have come down to USD 58,000 (Rupees Forty-Three lakhs approximately). This is clearly reflected from the email correspondences

exchanged between the parties, wherein the Corporate Debtor has proposed to pay 25% prepayment of USD 58,000 which is the total claim of the alleged Financial Creditor. It is respectfully submitted that the alleged Financial Creditor in subsequent emails has not refuted or denied the quantum of the total claim of the alleged Financial Creditor. In-fact, vide email dated 28.06.2021 the Corporate Debtor had proposed to pay USD 40,000 to the alleged Financial Creditor against the total claim of USD 58,000. The alleged Financial Creditor had even replied to the said email on the very same day and had sought for certain documents to consider the proposal of the Corporate Debtor. It will further not be out of place to mention that the alleged Financial Creditor has nowhere averred in the application that the total claim is to the tune of USD 58,000, which when converted to Indian Rupees at best is an amount of Rs.43,00,000/- (Rupees Forty-Three Lakh Only). This amount is even otherwise less than the threshold limit as prescribed under section 4 of the Code.

- m) The Financial Creditor has filed the present petition only as a recovery mechanism, which is clear from the fact that an amount to the tune of USD 1,43,480, amounting to Rs.1,02,58,820/- (Rupees One Crore Two Lakh Fifty-Eight Thousand Eight Hundred and Twenty Only) has been claimed which includes interest component which the alleged Financial Creditor ought to have recovered from the third parties.
- n) It will not be out of place to mention that the object of the Code is not recovery of money but to bring out of

insolvency and maximization of value of assets of the Corporate Debtor. That the Corporate Debtor is a solvent company, fully functional and therefore, a running concern. The Corporate Debtor has a renowned name in the export business. This itself depicts that the Corporate Debtor is a solvent company, and the Financial Creditor has malafidely approached this Learned Adjudicating Authority by misusing the objectives of the Code for recovery.

- o) The captioned petition is filed by misinterpreting the covenants agreed between the Financial Creditor and the Corporate Debtor and is only filed in order to unjustly enrich itself. Therefore, the present application is liable to be dismissed. Hence, in view of the aforesaid facts and circumstances, the instant application is legally untenable and liable to be dismissed by this Learned Adjudicating Authority with exemplary costs.

Analysis and Findings

8. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
9. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed

to the Financial Creditor and whether there is a “default” with respect to such debt.

10. It is the case of the Applicant that, the Applicant/Financial Creditor is an Offshore Company based out of Delaware, USA and engaged in ‘Factoring Business’. The said business of acquisition of receivable of assignor/Corporate Debtor by accepting assignment of such receivable and financing such receivables is with recourse basis. Corporate Debtor is an export Company registered in Delhi which had availed export credit facility from the Financial Creditor. This Section 7 IBC application pertains to the default in respect of seven receivables purchased on recourse basis by the Financial Creditor from the Corporate Debtor by advancing an aggregate sum of USD 475,440.00 during July/August, 2019, most of which remained unpaid by the debtor/consignee beyond the Invoice Due Date. Pursuant to exercise of recourse by Financial Creditor, the Corporate Debtor has not repaid the total outstanding dues and there is default in respect of the same. The details of the invoice and dues has been filed with the present petition. The Financial Creditor has also sent a demand noticed dated 22.11.2019 to the Corporate Debtor, followed by legal notice dated 09.01.2020.

11. Further the Applicant has relied on the Receivables Purchase Factoring Agreement (‘RPFA’) which was executed between the Financial Creditor and the Corporate Debtor on 07.03.2019. Along with RPFA, the Corporate Debtor also executed a Factoring with Recourse-Terms and Conditions (‘Recourse Terms’) towards any unpaid or disputed receivables along with

other charges payable under the RPFA. It is therefore, claimed that The receivables sold to the Financial Creditor were on recourse basis and therefore, debt payable by the Corporate Debtor was covered within the definition of 'Financial Debt' under Section 5(8)(e) of the IBC, 2016. Further, Clause 13 (h) of the Recourse Terms also confirms the status of the applicant as Financial Creditor.

12. Furthermore, according to the Applicant, apart from Recourse undertaking, the financial debt given to the Corporate Debtor was backed by, Undated Cheque Undertaking dated 07.03.2019 in respect of 5 cheques and also, a Demand Promissory Note on 07.03.2019. Also, vide order dated 12.07.2021, this Adjudicating Authority had passed an order of ad-interim injunction against the Corporate Debtor restraining the Corporate Debtor from creating any third-party rights or alienating the assets of the Corporate Debtor.
13. Factually, as on the date of filing of the Section 7 application, the outstanding dues payable by Corporate Debtor was to the tune of Rs. 1,02,58,820/-. Subsequently, one payment was received by the Financial Creditor on 20.03.2020 to the tune of USD 56,000 which brought down the due amount to USD 56,000 equivalent to INR 43 Lakh (approximately) only. The Corporate Debtor has argued that since the debt remaining outstanding is only to the tune of Rs. 43 Lakh, the Petition would not survive in the absence of pecuniary threshold of Rs. 1 Crore under Section 4 of the IBC, 2016. Notwithstanding the above argument it is observed that, the threshold limit of Rs. 1 Crore is not applicable to the present Section 7 application, reason being, the present Section 7 IBC

petition was filed on 17.02.2020, much before the amendment to Section 4 of IBC on 24.03.2020, increasing the pecuniary threshold to Rs. 1 Crore. The amendment, being prospective, is applicable to Section 7 application filed after 24.03.2020. In para 6 of the Written Submission filed by the Corporate Debtor on 20.02.2023, it has been specifically admitted by the Corporate Debtor that dues are payable under three invoices covered under 'Recourse Terms' to the tune of USD 4,610 each, which aggregates to USD 13,830.00 (approximately equivalent to INR 11,43,879/- calculated USD INR rate of @82.71). Entire due payable to the Financial Creditor, arising out of the 7 invoices in the present S. 7 application, was with Recourse basis and the Corporate Debtor was liable to pay the same.

14. In the present case, we need to see whether there is a debt and default with respect to such debt, and whether the liability to pay the default amount is of the Corporate Debtor in the present case. In order to ascertain the same. Certain clauses of the Receivables Purchase Factoring Agreement ('RPFA') needs to be seen.
15. The Financial Creditor is engaged in 'Factoring Business' i.e. the business of acquisition of receivable of assignor/Corporate Debtor by accepting assignment of such receivable and financing such receivables on with recourse basis. There were seven receivables purchased on recourse basis by the Financial Creditor from the Corporate Debtor by advancing an aggregate sum of USD 475,440.00 during July/August, 2019, most of which remained unpaid by the debtor/consignee beyond the Invoice Due Date. Therefore, one essential with respect to

Section 7, that there has been a debt stands substantiated.

16. Thereafter, pursuant to exercise of recourse by Financial Creditor, the Corporate Debtor has not repaid the outstanding dues and there is default in respect of the same. The Financial Creditor has also sent a demand noticed dated 22.11.2019 to the Corporate Debtor, followed by legal notice dated 09.01.2020. The major point which comes before us in the present Section 7 application is, whether in the present case, if the Corporate Debtor is liable for the default occurred. We need to see, if the amount arising out of the seven invoices was with Recourse basis and if the Corporate Debtor is responsible to the Financial Creditor for the default amount.

17. Further, as per the Receivable Purchase Factoring Agreement [RPFA], Corporate Debtor is responsible to Financial Creditor, if a REMEDY EVENT occurs and what constitutes as Remedy Event is defined as under:

“Remedy Event means any of the following events that occur in connection with the Purchase Receivables (whether or not with control of the Client):

(a) the Client is in breach of any of its representations, warranties or obligations in a Facility Document which relate to that Purchased Receivable.

(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 be reimburse any person for moneys received by it from any person as a result of 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)

18. In order to substantiate, that the Receivable Purchase Factoring Agreement (“Agreement”) was on recourse basis, further, certain other clauses and terms of the Agreement needs to be seen and are stated as under:

- i. “RECOURSE means in respect to the Recourse Receivables; the client bears the risk of Debtor’s default and the client is the personally liable to the Factor in respect of any of the following:
 - a. for the performance of the Purchased Receivables by the Debtor on the Due Date;
 - b. for the collection of the Recourse Receivables on the Due date; and
 - c. upon happening of the Recourse Event.”
- ii. “RECOURSE EVENT means any of the following:
 - a. The Debtor has not or has not either completely or partly paid the Receivable amount on Due Date, whether due to any legal constraints or acts or orders of government or for any other reason whatsoever; or

...

h. Occurrence of any Remedy Event; or i. ...

j.”

iii. Further, in the Section 7 application containing Irrevocable Undertaking for the Recourse Factoring Receivable, it is clearly accepted by the Corporate Debtor as under: “Therefore, we the client hereby expressly and irrevocably agree and undertake with the factor that the following purchased receivable or outstanding receivable (hereinafter referred to as ‘Recourse Receivable’) shall be on full recourse basis to the client and shall be governed by the recourse terms attached hereto:

(v) all purchase receivables of any approved debtor, exceeding the respective debtors’ limits on the date of such purchase by the factor; or

(vi) the amounts by which the aggregate of the purchase receivables of any debtor exceeds their respective debtor limits; or

(vii) any purchase receivables for which a collateral is provided by the clients; or

(viii) such other purchased receivables.”

19. Therefore, on perusal of above mentioned clauses of the Agreement, it is clear that the Agreement was on Recourse basis and the liability of the Corporate Debtor arises on the

default. Therefore, another major essential of Section 7 i.e. default with respect to the debt stand substantiated.

20. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 17.02.2020, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. 11,43,879/-, this petition is maintainable as the threshold of Rs. One Crore was stipulated by the amendment through Notification dated 24.03.2020 only.
21. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/745(ND) 2020** filed by Drip Capital Inc the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Al- Saqib Exports Private Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s Al- Saqib Exports Private Limited is initiated.
22. That the petitioner in part-III of the petition has proposed the name of Ankit Kumar Agrawal as proposed Interim Resolution Professional, having Registration Number IBBI/IPA001/IP-P01708/2019-20/12634. Mr. Ankit Kumar Agrawal, having registration number IBBI/IPA001/IP-P01708/2019-20/12634 and email – id ankit.agarwal@outcomess.com is hereby appointed as an

Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The AFA attached with the Application has expired. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.

23. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(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 IB Code 2016 also prohibits

Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

26. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Ankit Kumar Agrawal to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
27. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
28. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

29. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
30. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
31. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./745 (ND)/2020 stands admitted.**
32. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
DR. BINOD KUMAR SINHA
Member (Technical)

Sd/-
SHRI P.S. N. PRASAD
Member (Judicial)