

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 355(ND)/2021

IN THE MATTER OF:

M/S VINTAGE FOOTWEAR PRIVATE LTD.

I-8, SAI APARTMENTS,

SECTOR-13, ROHINI,

DELHI-110085

THROUGH ITS DIRECTOR MR CHANDAN BINDAL

...OPERATIONAL CREDITOR

VERSUS

I WORLD BUSINESS SOLUTIONS PVT LTD

30/1 EAST PATEL NAGAR,

DELHI-110008

CORPORATE OFFICE:

27, BASANT LOK MARKET,

VASANT VIHAR, NEW DELHI-110057

... ..CORPORATE DEBTOR

SECTION: U/S 7 OF IBC, 2016

Order Delivered on: 31.01.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

PRESENT:- Adv. Abhishek Anand and Adv. Rajiv Malik for the Financial
Creditor



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The matter was heard on 04th January, 2022 and reserved for orders on the point of issuance of notice upon the Respondent.

2. We have heard the Learned Counsel appearing for the applicant and perused the averments made in the application. In course of hearing, the Applicant was directed to convince the Bench, “whether the amount claimed under the Promissory Note comes under the definition of Financial Debt and whether the Board of Director of Corporate Debtor was authorized to borrow the loan from the applicant or note?

3. The Learned Counsel for the applicant, in course of hearing, submitted that the Board resolution regarding the borrow the loan by the directors of the corporate debtor is not with the applicant because it is under the possession and control of the Corporate Debtor.

4. The Learned Counsel appearing for the applicant further submitted that the Corporate Debtor has acknowledged the debt in his balance-sheet and the Learned Counsel has referred to the page no. 57, Annexure- A7 of the application, by which the Corporate Debtor has confirmed the Rs. 1,77,46,750/- as on 31st March, 2020.

5. He further submitted that since there is a confirmation of accounts by the authorized signatory of Corporate Debtor on 29th July, 2020, therefore, the



applicant has established this fact that the said amount is due and payable by the Corporate Debtor. He further submitted that thereafter the Corporate Debtor had issued two cheques, cheque bearing number 850555 dated 04th February, 2021 for a sum of Rs. 01 crore and cheque bearing number 000107 dated 04 February, 2021 for a sum of Rs. 75 lakhs and these cheques were deposited in the bank but the same were returned by the bank vide memo dated 06th February, 2021 with a remark i.e. insufficient funds, therefore, the Corporate Debtor has acknowledge the debt.

6. He further submitted that so far the amount claimed on the basis of Promissory Note is concerned, it comes under the definition of Financial Debt. The Learned Counsel referred to Section 8 Clause (c) and submitted that the Promissory Note is an instrument under the N.I.Act, therefore, it comes under the definition of Financial Debt.

7. In the light of the submissions, now we consider the case in hand. Since the question is limited regarding the issuance of notice upon the respondent, therefore, firstly, we examine whether, the amount claimed on the basis of Promissory note comes under the definition of Financial Debt or not?

8. At this juncture, we would like to refer to Section 5 sub-Section 8 of IBC, 2016 and the same is reproduced below: -

Section 5 sub-Section 8 of IBC, 2016

(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause, -

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause

9. A bare perusal of the provision shows, in view of Section 5 sub-Section 8 Clause © of IBC 2016, any amount raised pursuant to any note purchase



facility or the issue of bonds, notes, debentures, loan stock or any similar instrument comes under the definition of Financial Debt.

10. At this juncture, we would like to refer to the definition of Promissory Note as defined Under Section 4 and Negotiable Instrument defined under section 13 of the Negotiable Instrument Act and the same is reproduced below: -

Section 4 of N I Act

“Promissory note.”—A “Promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Section 13 of NI Act: **“Negotiable Instrument” : A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer .**

11. On conjoint reading of these two provisions show that Promissory note comes under category of any of similar instrument. Hence the Promissory Notes comes under the definition of Financial Debt under Section 5 sub-Section 8(5)© of the IBC, 2016, hence, we are of the considered view that the Promissory note comes under the definition of Financial Debt.

12. Now coming to the non-submission of the Board Resolution regarding the authorization to borrow the loan. Admittedly, that has not been placed by the applicant but the applicant has referred to page 57 Annexure- A7 which shows that the confirmation of amount from 01st April 2019 to 31st March, 2020 is made by the authorized signatory of the Corporate Debtor and as per the books of account, the balance is of Rs. 1,77,46,750/- as on 31st March, 2020.



13. Therefore, in our considered view, for the purpose of issuance of summons under Section 7, the Adjudicating Authority requires to establish this fact that whether an amount is a Financial Debt and is there any default in payment of the Financial Debt?

14. Since the applicant has convinced the Bench that the Promissory note comes under the definition of Financial Debt, and there is default in payment of debt, therefore, we think it proper to issue a notice upon the Respondent.


15. Accordingly, Notice be issued upon the Respondent by all modes including email id of the respondent, affidavit of service be filed within a week from today.

List the matter on **11.03.2022**.

-Sd-

(AVINASH K. SRIVASTAVA)

Member (T)

-Sd- 

(ABNI RANJAN KUMAR SINHA)

Member (J)