

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-201
IB-355/ND/2021
IA/4964/2022

IN THE MATTER OF:

Vintage Footwear Pvt. Ltd.

Vs.

I World Business Solutions Pvt. Ltd.

....Applicant

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 29.08.2023

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. IA/4964/2022
in IB-355/ND/2021 is **allowed**

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

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

THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI
I.A. 4964/2022
IN
COMPANY PETITION No. (IB)-355/ND/2021

APPLICATION UNDER SECTION 60(5) OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 R/W RULE 11 OF NCLT RULES, 2016

In the matter of:

Vintage Footwear Private Limited

I-8, Sai Apartments Sector 13,

Rohini Delhi - 110085...Financial Creditor

Versus

I World Business Solutions

Private Limited

30/1, East Patel Nagar,

Delhi - 110008...Corporate Debtor

CORAM:

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

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

APPEARANCE:

For the Applicant : Adv. Rajiv Malik

For the Respondent : Adv. Mr.Nikhil Kohli

Order Pronounced on: 29.08.2023

ORDER

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

1. The present Application has been filed by the Financial Creditor (hereinafter referred as 'Applicant) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC/Code) r/w Rule 11 of NCLT Rules, 2016 praying for the following reliefs:

- a) To allow the amendment in the main application no. IB-355/ND/2021 with respect to the date of default as 15.04.2021 instead of 15.07.2020 in Serial No.1 of part IV of application/petition.
- b) To allow the amendment in the main application no. IB-355/ND/2021 with respect to the date of default as 15.04.2021 instead of 15.07.2020 in Serial No.8 of Part V of application/petition.
- c) Pass any order(s) as the Hon'ble Adjudicating Authority may deem fit and proper in the fact and circumstances of the case

2. Briefly stated the facts of the present case as averred by the applicant are that the applicant is the Financial Creditor who had filed the main Company Application bearing No. C.P.(IB) No. 355(ND) of 2021 against I World Business Solutions Private Limited (hereinafter referred

as Corporate Debtor/Respondent) seeking initiation of the Corporate Insolvency Resolution Process (hereinafter referred as CIRP) against the Corporate Debtor having defaulted in the payment of the Financial Debt due and payable to the Applicant.

3. The Applicant submits that the present Interlocutory Application is filed to amend the pleadings in the main Company Application bearing No. C.P.(IB) No. 355(ND) of 2021 filed by the Applicant herein against the Corporate Debtor seeking initiation of the CIRP against the Corporate Debtor Company for its defaults in making payments of the Financial Debt which is till date due & payable.

4. Further, it was submitted that the Applicant had inadvertently mentioned the Date of Default of the Account of the Corporate Debtor i.e. 15.07.2020 whereas the default had occurred on 15.04.2021 only. To support its contention, the Applicant had placed reliance on case titled as Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy & Anr. bearing Civil Appeal No. 1650 of 2020.

5. Per Contra in the reply filed by the Corporate Debtor, the Corporate Debtor has submitted that there is no inadvertent error which warrants amendment to Application under the Section 7 of the Code but an attempt to get out of the rigors of section 10A of the Code, in view of the fact that the date of alleged default 15.07.2020, which cannot in any case, be claimed by filing the present interlocutory application in view of Section 10A of the Code which was introduced in the wake of COVID-19 pandemic and whereby the initiation of the CIRP process for any default arising on or after 25th March 2020 until 24th March 2021 was excluded from the purview of the Code. Therefore, no CIRP against the Corporate Debtor for the alleged date of default can be initiated by the Applicant.

6. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.

7. Sans irrelevant facts, adverting to the factual matrix of the present case the main Company Application i.e., C.P.(IB)355(ND)/2021 is filed under Section 7 of the Code, 2016 seeking initiation of the CIRP against the Corporate Debtor having defaulted in the payment of the Financial Debt due and payable to the Applicant for an amount of Rs.1,83,51,025/- as on 31.03.2021 wherein the date of default was mentioned as 15.07.2020. The Applicant through the present Interlocutory Application seeks the rectification/amendment of the date of default mentioned in the Application of the main Company Application (C.P.(IB)355(ND)/2021) to '15.04.2021' as the date of default in place of '15.07.2020' as the date of default.

8. The Hon'ble Supreme Court in Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy and Anr [Civil Appeal No. 1650 of 2020] while answering to the issue, "whether there is any bar in law to the amendment of pleadings, in a Petition under Section 7 of the IBC, or to the filing of additional documents, apart from those filed initially, along with the Petition under Section 7 of the IBC in Form-1?" held as follows:

"144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an

applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.”

9. It is well settled proposition that an Application under Section 7 of the Code, 2016 can be amended and additional documents can be filed by the parties in proceedings under Section 7 of the Code, 2016. The Corporate Debtor, no doubt, has contended that the instant Application is a well thought plan to avail the defense of maintainability under Section 10A of the Code, 2016 however, this Adjudicating Authority as on date has not given any finding on the amendment, and the question of maintainability is kept open. The Corporate Debtor may take note of the same. The issue of the correct date of default shall be adjudicated by this Adjudicating Authority after hearing the arguments of both the parties in the main Company Petition i.e., . (C.P.(IB)355/ND/2021).

10. Accordingly, subject to the aforesaid observation, the present application i.e., I.A./4964/2022 stands allowed. The amendment in the main application no. IB-355/ND/2021 with respect to the date of default from ‘15.07.2020’ to ‘15.04.2021’ in Serial No. 1 of part IV and Serial No.8 of part V of the application is taken on record, for further consideration and adjudication.

Let a copy of order be served to parties.

Sd/-

(DR. BINOD KUMAR SINHA)

MEMBER (TECHNICAL)

Sd/-

(P.S.N. PRASAD)

MEMBER (JUDICIAL)