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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-172/ND/2020

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF

Vikash Kumar

Registered Address
601, B Wing, M7, Pratiksha
Nagar near Sundar Vihar hotel
Mumbai-400022

...Financial Creditor/Applicant

Versus

M/S Vishal Footwear Limited

Registered Address
Shop No. 123, Plot No. 23 Vardaman Charve
Plaza K.P Block Comm, Complex Pritampur
New Delhi-110034

...Corporate Debtor

Coram:

Shri Bachu Venkat Balaram Das **Shri Narender Kumar Bhola**
Hon'ble Member (Judicial) Hon'ble Member (Technical)

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24/11/20



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Delivered on: 23.11.2021

Appearances:

Financial Creditor : Mr. Mohd Nazim Khan, PCS

Corporate Debtor :

ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. This is an application filed by the Financial Creditor namely, Vikash Kumar against the corporate debtor namely, Vishal Footwear Ltd. under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor
2. The transaction leading to filing of application under consideration is as follows:
 - a. The Financial Creditor is the director of Corporate Debtor since 15.12.2010. The Corporate Debtor is engaged in the business of manufacturing and repairs of and retail dealers in all types of footwear and accessories of footwear.
 - b. It is submitted that a loan agreement was entered between the financial creditor and corporate debtor on 03.04.2017

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which, *inter-alia*, contained the detailed terms and conditions of the loan granted including but not limited to repayment with interest @ 8% p.a. Pursuant to that Financial creditor paid to Corporate Debtor an amount of Rs. 13,04,983/- (Rupees Thirteen Lakhs four thousand nine hundred and eighty-three only), which is also reflected in the financial statements of the corporate debtor for the F.Y. 2018-19.

c. It is averred that the financial creditor has not received principal amount including interest from the corporate debtor till date in respect of the loan granted to the corporate debtor and same is evident from the bank statements of the financial creditor. It is stated that financial creditor has furnished the evidence of default and the corporate debtor has acknowledge the debt by furnishing ledger from its books of accounts. Hence, prayed that CIR Process of the Corporate Debtor may be initiated in view of the above submission.

3. The Corporate Debtor has been provided with various opportunities for appearance and objection to the captioned petition, however, no one appeared on behalf of the Corporate

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Debtor. Hence, this adjudicating authority vide order dated 26.02.2020 proceeded *ex-parte* on the service against the corporate debtor was held sufficient. This adjudicating authority vide order dated 19.01.2021 again directed to issue the fresh notice to Corporate Debtor in the interest of justice and vide order dated 08.04.2021 proceeded *ex-parte* as service against the corporate debtor was held sufficient.

4. This adjudicating Authority during the hearing of the captioned petition vide order dated 27.10.2021 directed the financial creditor following:

“.....

In this connection, he is directed to file the credible evidence along with an affidavit in support of his client's claim i.e. "he is a financial creditor as per the books of accounts of the corporate debtor herein" within a period of 10 days. In addition, he is directed to get an affidavit filed from his client that he is not/ he has never been a shareholder in the corporate debtor company within 10 days from today.

He is also directed to file the authorization for assignment (AFA) for the proposed IRP along an affidavit within the said period.

....”

5. In compliance of the order dated 27.10.2021, the financial creditor has filed a supplementary affidavit and stated that he is not the shareholder of the corporate debtor and also annexed the AFA with the supplementary affidavit as per the direction of this adjudicating authority. The Financial creditor has filed another supplementary affidavit to show credible evidence in compliance of order dated 27.10.2021



and annexed Declaration (certified by statutory auditor of corporate debtor) that he has lent the unsecured loan to the corporate debtor and also annexed declaration by Corporate Debtor that the loan was taken from Mr. Vikash Kumar, Director.

6. The Financial Creditor has also filed written submission and reiterated all the facts mentioned in the captioned petition and further relied on the Hon'ble Supreme Court order dated 15.04.2021 in the matter of *Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr (Civil Appeal No. 323 of 2021)*. It was held by the Hon'ble Apex Court that the balance sheet of the corporate debtor, wherein it acknowledges its liability, was signed before the expiry of three years from the date of default, and entries in such balance sheets being acknowledgements of the debt due for the purposes of section 18 of Limitation Act, 1963, the section 7 application is not barred by limitation.

7. This Adjudicating Authority has perused the petition, Written Submissions as well as heard the arguments advanced by Authorised Representative of the financial creditor. It is seen from the petition that the Corporate Debtor has admitted its liability towards Financial Creditor in its Ledger account annexed as Annexure-5 and further in declaration Annexed as Annexure-3 with Supplementary Affidavit, the corporate debtor has given declaration regarding the loan from Mr. Vikash Kumar, Director (Financial Creditor). It is also



important to take note that the notification regarding the enhancement of minimum amount of default to Rs. One crore for the purpose of section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the corporate debtor as well as filing of captioned petition is much before the coming into effect of notification dated 24th March, 2020. Since any notification issued by the Government is generally prospective in nature unless specifically expressed, hence, the said notification is not applicable to the present matter. The evidence placed by the financial creditor is sufficient to establish the existence of debt as well as default in payment on the part of the Corporate Debtor. The Hon'ble Apex Court has clearly stated in case of *Innoventive Industries (Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407*) that the moment it is established that there is a default in payment of financial debt by the corporate debtor, which is due and payable and the application is complete and no disciplinary proceedings is pending against the proposed RP then the adjudicating authority has no option but to admit the application. The Financial Creditor has fulfilled all the requirements of law. Accordingly, this Adjudicating Authority admits this application and initiate the process of CIRP of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP.

8. Mr. Anand Rao Karoda having Regn. No. IBBI/IPA-002/IP-N00286/2017-18/10844 (Email ID: raoka@gmail.com and

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Mobile No. +919874264647) is hereby appointed as Interim Resolution Professional (IRP) as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as evident from the Form-2 dated 10.09.2019. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

9. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- 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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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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.

10. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

11. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

12. The financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.

13. The financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.

14. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of

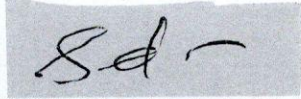


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Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

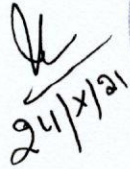
15. The order is pronounced by this Adjudicating Authority through Virtual Hearing



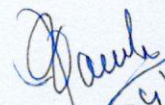
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


24/11/21




24/11/2021
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अदिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003