

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1141/ND/2019***Under Section 7 of the Insolvency and Bankruptcy Code, 2016***IN THE MATTER OF:****M/S SAFE CAPITAL SERVICES PRIVATE LIMITED**

...Applicant/ Financial Creditor

VERSUS**M/S TECHNOPAK ADVISORS PRIVATE LIMITED**

...Respondent/ Corporate Debtor

Judgment Pronounced on: 21.08.2019**CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)****For the Applicant:** Mr. Nikhil Gupta, Advocate**For the Respondent:** Mr. Praveen Maratha, Advocate

MEMO OF PARTIES**M/S SAFE CAPITAL SERVICES PRIVATE LIMITED**

Registered office at: A-47, Lower Ground Floor,
Hauz Khas, New Delhi-110016

...Applicant/Financial Creditor

VERSUS**M/S TECHNOPAK ADVISORS PRIVATE LIMITED**

Registered office at: 202 Sona Apartments
Hauz Khas, New Delhi-110016

...Respondent/ Corporate Debtor

JUDGEMENT

Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC', 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/S safe capital services private limited (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/S Technopak Advisors Private Limited (for brevity 'Corporate Debtor').

2. The Applicant is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of financial advisory and support. The company is having CIN U74899DL1994PTC056804 and is having its registered office at A-47, Lower Ground Floor, Hauz Khas, New Delhi-110016.
3. The Corporate Debtor is a limited company incorporated under the provisions of the Companies Act, 1956 on 28.09.1994 having CIN U74140DL1994PTC061818 as per Master Data and having registered office at 202 Sona Apartments, Hauz Khas, New Delhi-110016.
4. The Applicant has stated that the parties had entered into a loan agreement dated 15.03.2019 whereby it was agreed that the loan of Rs. 25,00,000/- is to be paid by the applicant to the corporate debtor who shall return the same to the applicant after the end of loan term of 15 days i.e. on 01.04.019. The agreed rate of interest was 12% per annum. The relevant part of the loan agreement supporting the above contention is reproduced hereunder:

“3. The loan provided shall be for a period of 15 days form the date, the loan shall be disbursed, subject to conditions referred to in Article 2.”

The applicant disbursed the loan amount to corporate debtor through RTGS and informed the same to corporate debtor through its letter. The

- corporate debtor also had sent an acknowledgement to the applicant confirming the receipt of the amount in its account.
5. On 28.03.2019, the applicant has sent a letter intimating the corporate debtor regarding the loan amount as also the interest payable by it totaling to Rs 25,12,500/- on the due date i.e. 01.04.2019, as agreed between the parties. The corporate debtor failed to repay the loan amount of Rs 25 lacs to the applicant.
 6. The applicant again sent letters on 08.04.2019 and 09.04.2019 to the corporate debtor and its failure to repay the loan amount. The corporate debtor replied to the letter dated 09.04.2019 admitting its inability to pay the borrowed amount of Rs 25,00,000/- with the interest as agreed and sought grace period of 120 days from the applicant, for repayment.
 7. The applicant declined the request made by the corporate debtor of grace period of 120 days and demanded to return the loan amount and interest latest by 13.04.2019. The applicant further submitted that various follow ups with the corporate debtor through phone and through personal visits, did not yield result and no plausible reason has been given till date for non-payment. The corporate debtor has also stopped responding to the calls of the applicant thereby leaving the latter in a lurch. Thus, applicant filed

present application under section 7 of I & B Code to initiate Corporate Insolvency Resolution Process against corporate debtor.

8. The corporate debtor has replied to application dated 28.05.2019 and has admitted its liability towards the outstanding loan amount to the applicant as follows:

“The corporate debtor is in temporary deficiency of funds, however it has bonafide intensions to repay the outstanding dues of the applicant and for this purpose only the corporate debtor has time and again approached the applicant and requested for time to repay its dues. It is respectfully submitted that the corporate debtor’s payment of Rs. 4.50 crores (Rupees Four Crore Fifty Lakhs Approximately) is due from few Government Projects.”

9. The application is complete as per the requirements of section 7 of the code and the date of default is 01.04.2019, hence the debt is not time barred and the application is filed within the period of limitation.
10. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
11. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its dues, which remain uncontroverted and duly admitted by the Corporate Debtor,

- establishing the default in payment of the financial debt beyond doubt. In the light of above facts and records the present application is admitted.
12. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Deepak Maheshwari, with registration number IBBI/IPA-002/IP-N00531/2017-18/11594 (email – deepak@jindagilive.in) as the Interim Resolution Professional subject to the condition and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 13. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Deepak Maheshwari to meet out the expenses to perform the 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 one week from the date of receipt of this order by the financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.
 14. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate debtor prohibiting proviso

(a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.

15. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)