



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through physical/ web based video conferencing platform)

CP (IB) No. 121/BB/2021
Application U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Technopak Advisors Private Limited

Through Authorised Representative Ms. Saloni Nangia
Having registered office at:
202, Sona Apartment,
3 Kaushalaya Park, Hauz Khas
New Delhi- 110016

... Financial Creditor/Petitioner

VERSUS

Vertebrand Consulting and Solutions Private Limited

“Centaurus”, No.449,
2nd Cross, 4th Block, 1st Stage,
HBR Layout, Bangalore, Karnataka – 560043

Also at:

119, 1st Cross, 2nd Main, HAL III Stage, Indira Nagar,
Bangalore Karnataka - 560075

... Respondent/Corporate Debtor

Order delivered on:17/10/2024

Coram: Hon’ble Mr. K. Biswal, Member (Judicial)
Hon’ble Mr. Manoj Kumar Dubey, Member (Technical)


PRESENT:

For the Petitioner : Shri Manish Khurana
For the Respondent : Shri Goutham S.

ORDER**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 22/10/2021, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'/Code), read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity 'Rules'), by Technopak Advisors Private Limited (for brevity 'Financial Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of Vertebrand Consulting and Solutions Private Limited (for brevity 'Corporate Debtor/Respondent') for a total outstanding default amount of Rs. 3,16,09,955/-, In Part IV of Form No.1 of the revised Form filed with application, the following information is given:

3	Amount claimed to be in Default and dates on which the Defaults occurred (Attach the workings for computation of amount and days of Default in Tabular Form)	The total amount of default is Rs. 3,16,09,955/- (Rupees Three Crore Sixteen Lakh Nine Thousand Nine Hundred Fifty Five Only). The default occurred on the maturity dates of the Loan Agreements. The date of Majority/Defaults under Loan Agreements are detailed below:					
		Date of Loan Agreement	Date of Disbursal	Amount	Date of Default	Date of expiry of limitation	Date of expiry of limitation as per Section 18
		03.10.2007	28.09.2007	50,00,000	02.12.2012	02.12.2015	14.06.2024
		04.06.2009	04.06.2009	10,00,000	03.06.2011	03.06.2014	14.06.2024
		18.11.2009	31.10.2009	5,00,000	30.10.2011	30.10.2014	14.06.2024
		23.07.2010	08.06.2010	15,00,000	07.06.2012	07.06.2015	14.06.2024
		03.12.2010	03.12.2010	10,00,000	02.12.2012	02.12.2015	14.06.2024



	.2010					
	23.11 .2011	09.05 .2011	25,00,000	08.05 2013	08.05. 2017	14.06.2024

2. The facts of the case are discussed below:
- The parties had entered into a Share Purchase and Joint Venture agreement dated 06/08/2007. One of the terms in – clause 6.1 of the agreement was that the FC would provide a non-interest bearing loan of Rs 50,00,000/- to the CD, which was repayable in 25 monthly instalments of Rs 2,00,000/- each with a moratorium of 90 days of such advance. Further, such loan was to be utilised by the CD to settle their previous dues with their banks. The loan was to be repaid by the Corporate Debtor by 02/01/2010.
 - The Corporate Debtor sought an extension for repayment of loan and thus an amendment letter dated 02/04/2010 to the Loan Agreement dated 03/10/20227 was executed between the parties, thereby extending the maturity period for repayment of the loan by 24 months, i.e up to December, 2012; upon a condition that the Corporate Debtor shall pay interest @ 13% per annum after 01/04/2010 on the entire outstanding loan of Rs 50,00,000/-. Further, pursuant to the demands of the Corporate Debtor, the Financial Creditor advanced several other loans to the Corporate Debtor between June 2009 to May 2011, vide separate Loan Agreements. These loans were in addition to the capital contribution commitments of the Financial Creditor under the Share Purchase and Joint Venture Agreements dated 06/08/2007. The details of the loans advanced by the Financial Creditor to Corporate Debtor are as follows:

Loan Agreement Date	Date of Loan given	Loan Amount Given	Amount received	Outstanding	Rate of interest	Maturity Date
03.10.2007	28.09.2007	50,00,000	50,00,000	-	13% p.a. after 01- 04-2010	02.12.2012 (After Extension)




04.06.2009	04.06.2009	10,00,000	3,36,000	6,64,000	12.5% p.a.	03.06.2011
18.11.2009	18.11.2009	5,00,000		5,00,000	12.5% p.a.	30.10.2011
08.06.2010	08.06.2010	15,00,000		15,00,000		07.06.2012
03.12.2010	03.12.2010	10,00,000		10,00,000	13.5% p.a.	02.12.2012
23.11.2011	09.05.2011	25,00,000		25,00,000	Prevailing Bank rate for Existing facilities from IOB	08.05.2013
	Total (Principal)	1,15,00,000/-	53,36,000/-	61,64,000/-		

- c. Thus, the total amount of debt owed by the Corporate Debtor to the Financial Creditor is Rs 3,16,09,955/-. The principal debt of Rs 61,64,000/- and interest accrued upto 15/01/2021 amounting to Rs. 2,40,88,970/- was acknowledged by the Director of the Corporate Debtor, Shri Raghu Vishwanath vide his email dated 17/01/2021.
- d. On Account of the failure of the Corporate Debtor to pay the outstanding loan amount even after repeated chances, the Financial Creditor herein was compelled to issue the Legal Notice on 28/05/2021. In its reply dated 14/06/2021, the Corporate Debtor made a categorical and unambiguous admission of debt of the principal amount of Rs 61,64,000/- and further admitted that an interest of Rs1,03,78,619/- was due and payable from the Corporate Debtor to the Financial Creditor. Thus the application under Section 7 of IBC is liable to be admitted on this ground alone.

3. Learned counsel for the Respondent filed objection vide diary No 596, dated 16/02/2022 inter alia submitting that,



- a) The said Loan agreements were to be read with and in consonance with the SPA and the relationship of the parties was such that of between a parent company and a wholly owned subsidiary company. Hence, the Applicant is not a Financial Creditor. The Applicant and other shareholder of the Corporate Debtor entered into a “Share Purchase and Joint Venture Agreement” dated 06/08/2007 with the purpose being that the Applicant acquire a strategic investment in the Corporate Debtor Company. The SPA and JV agreements further provided that the Applicant was to eventually become 100% shareholder in the respondent by investing in a phased manner from 2010-2013.
- b) Further, all the loans were extended by the Applicant at a time when it was a 51% shareholder in the respondent, and when it had 2 nominee directors with substantial powers on the board of directors of the Respondent. None of these loans were intended to create, or did indeed create a jural relationship, whereby the Applicant became a financial creditor of the Respondent.
- c) The Applicant was unable to deliver on its express contractual commitment to become 100% equity shareholder in the Respondent when the Applicant itself faced financial difficulties and went through its own insolvency proceedings. It was then that the Applicants directors resigned from the board of directors of the Respondent. Thus it is amply evident that there was a material breach of the reciprocal obligations and promises as under the SPA and JV Agreement and the Applicant was never considered to be a financial creditor. The Hon’ble NCLAT in the matter of *Mukesh N Desai, Shree Darshan Society v Piyush Patel and Ors MANU/NL/0151/2022* held that in an agreement of reciprocal promises rights and obligations, an application under Section 7 would not be maintainable as the same does not amount to “financial debt.”
- d) The Applicant had time and again assured the Respondent that the repayment periods mentioned were only for record purposes. It was agreed by the parties that the Respondent could calibrate the



repayment in accordance with the available financial resources at its disposal over time. Moreover, the Applicant had throughout maintained that it would only be a matter of time till the loans given to the Respondent would be converted into equity through its buy-out of the remaining 49% equity shareholding in the Respondent.

- e) The Applicant has combined all the Loan Agreements mentioned above as a single combined default which is impermissible. It is pertinent to mention that all the Loan Agreements are to be looked at as separate and distinct from each other for the purpose of default of debt by the respondent before this Hon'ble Tribunal. In this regard judgment of NCLT New Delhi has been relied upon; *CBRE South Asia Private Limited v. M/s United Concepts and Solutions Private Limited (IB)-797(ND) 2021*.
- f) The said loan Agreements were entered into between the period of 2007-2011 and the Applicant has not produced any documents to show there was a demand of the said sums past the point of expiry of the said agreements and has instead produced email correspondences between the Applicant and the respondent only in the year 2021. Thus the Petition is barred by limitation.
4. On 06/06/2023, this Tribunal had observed that in the original Part IV of Form 1 the Petitioner had stated that default occurred on the maturity dates of Loan Agreements and different dates of Loan Agreement and date of default are mentioned as 02.12.2012, 03.06.2011, 30.10.2011, 07.06.2012, 02.12.2012, 08.05.2013. It is further stated as under: *"The Default further occurred on 07.06.2019 when director of the Corporate Debtor admitted the liability towards Outstanding Loan"*. In accordance with the proviso to Section 7(5)(b), opportunity was granted to the Applicant to rectify the defect within seven days, and file corrected Form-1. Accordingly, vide diary No. 2073 dated 02/04/2024, the Amended Part IV for Form No.1 was filed by the Petitioner.
5. On 11/10/2023, this Tribunal had directed the Petitioner herein to file a proper chart and explanation regarding the satisfaction of limitation for



each Loan Agreement. Accordingly, the Petitioner on the hearing dated 05/04/2024, pointed to this Tribunal regarding the additional documents vide 1856 dated 29/04/2022, wherein Balance Sheets of the Corporate Debtor and e-mail correspondences were filed to pursue the satisfaction of the Limitation to this Court.


6. The Learned Counsel for the Petitioner filed its Rejoinder vide Diary No 1352 dated 30/03/2022 and written submissions vide Diary No: 1855 contenting that the loan agreements and the disbursal of loan amounts are based on 'payable when able' basis is not tenable. The Loan Agreements were in pursuance to the Share Purchase and Joint Venture Agreement and that the FC herein is not a 'Financial Creditor' as per IBC. The contention is ill founded in terms of the law settled by the Hon'ble NCLAT in *CA(AT) (Ins) (CH) 95/21 and CA (AT) (AT) (Ins) 521/2018*. Further, that the current Petition is not barred by limitation since the book of Accounts and Balance sheet of the Corporate Debtor has been continuously showing the outstanding dues payable by it to the Financial Creditor. Thus in term of the law settled by the Hon'ble Supreme Court in *'Asset Reconstruction Company India Private Limited v. Bishal Jaiswal [(2021) 6 SCC 366]* that entries in balance sheets amount to acknowledgement of debt for the purpose of Section 18 of the Limitation Act.
7. Heard both Ld. Counsels for the parties and perused the records.
8. The main contention of the Respondents herein is that the Petitioner herein is not a 'Financial Creditor' and the Loan advanced is not 'Financial Debt' as per Section 5(8) of the Code, since the money owed to the Petitioner was not a loan and was simply an investment in the company of the Respondent. In this regard we first find it apt to peruse the Share Purchase and Joint Venture agreement dated 06/08/2007. The Clause 6 of the agreement clearly stipulates that the amount provided is a "Loan" with an express caveat and it is not any consideration or arrangement in respect of the agreement. Moreover, in



the subsequent Loan agreement dated 03/10/2007, though it was mentioned that the Loan of Rs 50,00,000 is advanced without any interest, nowhere is there a mention that such agreement is in consideration to the Share Purchase and Joint Venture agreement.

Further, on perusal of the letter dated 02/04/2010, it is clear that though initially it was agreed the Loan advanced in pursuant or Agreement dated 03/10/2007 was interest free, the same was amended to impose interest of 13% p.a on account of default of the Respondent. Hence, the condition under 5(8) – *money disbursed against the consideration for the time value of money* is taken care of. Moreover, we do not find any basis on the allegation of the Respondent that such interest agreement was only for the sake of paper work and not to be fulfilled when the book of accounts and other formalities show that the payment of interest was duly agreed by the parties on mutual terms and for that matter the Respondent has even acknowledged the same in various e-mails.

9. Further, it is observed that the Petitioner has mentioned various dates of default from 03/06/2011 to 08/05/2013, the Applicant has placed the Balance Sheet of the Corporate Debtor for 31/03/2014, 31/03/2015, 31/03/2016, 31/03/2017, 31/03/2020 and 31/03/2021 on record, which clearly reflects the debt of the Financial Creditor, disclosed in the Balance Sheet of the Corporate Debtor. Further, the Petitioner has also produced various emails dated 18/06/2019, 15/07/2019, 20/01/2021 from the Corporate Debtor to the Financial Creditor, wherein there is clear acknowledgement of the Debt. As per the decision of Hon'ble Apex Court in the case of *Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330*, "It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act." In light of the above discussion we hold that the present Company Petition filed on 22/10/2021 which is within limitation. Further, in accordance with the letter dated 14/06/2021, it has already been acknowledged/admitted by the Respondent that the outstanding amount is Rs 61,64,000/- (principal amount) +




1,03,78,619/- (interest). Hence the issue of threshold under Section 4 of IB Code, is taken care of.

10. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs1,00,00,000/-, the petition is liable to be admitted in terms of Section 7 of the IBC, 2016.
11. In view of the above discussion, we are of the considered opinion that there is a debt and default in this case; and the Petition is filed within the limitation period. The threshold requirement is also fulfilled. Hence the present petition **CP (IB) No. 121 of 2021 is admitted** and moratorium is declared against the Corporate Debtor in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- 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. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall



- not be terminated or suspended or interrupted during the moratorium period;
- f. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- g. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
12. This bench appoints Sandeep Kumar Agrawal Registration No. IBBI/IPA-001/IP/-PO1135/2018-19/11828, having registered address: *523, Pocket-E, Mayur Vihar, Phase 2 Delhi - 110091* Contact No: 9811337758, e-mail ipsandeepagrawal@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC.
13. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
14. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty



days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

15. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(K BISWAL)
MEMBER (JUDICIAL)