



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No. 1205/MB-IV/2022**

**And**

**IA No. 1299/MB-IV/2023**

**In**

**CP (IB) No. 1205/MB-IV/2022**

Under Section 7 of the I&B Code, 2016

In the matter of:

**NDW Ventures LLP**

[LLPIN: AAM-7148]

...Financial Creditor/Applicant

V/s

**Tattva & Mittal Lifespaces Private  
Limited**

[CIN: U70102MH2012PTC228161]

...Corporate Debtor/Respondent

**Order Dated: 28.04.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) :

Mr. Akanksha Agrawal,  
Advocate.

For the Respondent(s) :

Mr. Aniruth Purusothamanan,  
Advocate.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is an application bearing C.P. (IB) No. 1205/MB-IV/2022 filed by NDW Ventures LLP, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Tattva & Mittal Lifespaces Private Limited, Corporate Debtor.
2. The Application is filed by Mr. Naqeeb Nisar Patel, Director of the Financial Creditor duly authorised vide its Board Resolution dated 20.09.2022, claiming total default of Rs.11,74,53,673/- (Rupees eleven crore seventy-four lakh fifty-three thousand six hundred seventy-three only) as on 30.09.2022 which includes:
  - 2.1. Principal amount of Rs.7,28,00,000/-; and
  - 2.2. Interest amount of Rs.4,46,53,673/-.
3. The date on which the default occurred as mentioned in Part-IV of the Petition is 07.01.2022. The Petition is filed on 14.10.2022.
4. The case of the Financial Creditor is that:
  - 4.1. The Corporate Debtor and one 'Blue Planet Co-operative Housing Society' ("Society") entered into a Development Agreement for redevelopment of the property comprised of 4 buildings, being Chawl Structure Nos.1, 2, 3 and 4 consisting of ground plus 3 upper floors totally consisting of 323 premises occupied by various

tenants/occupants, admeasuring 3858 sq. mts. bearing CS No. 1928 of Byculla Divisions along with the standing structure thereon at Mumbai (“said property”).

- 4.2. The Society and the Corporate Debtor executed a Development Agreement dated 16.05.2013 granting exclusive development rights in favour of the Corporate Debtor in the manner as set out under the terms and conditions of the Agreement. A further Supplemental Development Agreement dated 23.02.2015 was executed between the Society and the Corporate Debtor with revised terms and conditions.
- 4.3. The Corporate Debtor was desirous of jointly developing the said project with Financial Creditor and hence, on 02.07.2019, the Financial Creditor and Corporate Debtor entered into a Joint Development Agreement dated 12.07.2019 to develop the said Property wherein it was agreed that the Financial Creditor shall provide/raise funds for the aforesaid development.
- 4.4. The Financial Creditor accordingly provided Financial Assistance to the Corporate Debtor as Bridge Loan amounting Rs.15,00,00,000/- as per the extract of Business Plan in the Agreement. As per Clause 3.2 (c), the Financial Creditor is entitled to 15% rate of interest per annum until repayment of the entire amount.
- 4.5. The Financial Creditor accordingly disbursed Rs.7,28,00,000/- as bridge loan in different tranches and the same was credited to the

Corporate Debtor's Account from March 2019 to October 2019 in the following manner:

Sr. No.	Date	Amounts in Rupees
1.	25.03.2019	1,00,00,000/- 3,50,00,000/- 50,00,000/-
2.	28.05.2019	50,00,000/-
3.	29.05.2019	50,00,000/-
4.	16.07.2019	30,00,000/-
5.	29.07.2019	53,00,000/-
6.	11.09.2019	20,00,000/-
7.	01.10.2019	25,00,000/-
<b>Total</b>		<b>7,28,00,000/-</b>

4.6. After due negotiation between the Financial Creditor and Corporate Debtor, the Corporate Debtor agreed to pay the Financial Creditor an amount of Rs.4,00,00,000/- towards part interest @ 15% p.a. for the period of 25.03.2019 to 07.01.2022 on the Principal Debt amount of Rs.7,28,00,000/- and further agreed to pay the balance of Rs.6,69,56,617/- to the Corporate Debtor on or before 31.03.2022. Accordingly, the Corporate Debtor issued 4 Cheques bearing nos. 001724, 001725, 001726 and 001727 dated 20.12.2021 respectively, for a total sum of Rs.4,00,00,000/- drawn on HDFC Bank payable to the Financial Creditor. However, those Cheques returned "unpaid" with remark "insufficient funds" on 07.01.2022.

- 4.7. The Corporate Debtor issued Demand Notice dated 12.08.2022 upon the Corporate Debtor for claiming an amount of Rs.11,64,65,050/- payable within 10 days.
5. The Corporate Debtor has filed its Affidavit-in-Reply dated 08.03.2023 and submits as under;
- 5.1. The relationship between the Financial Creditor and Corporate Debtor was that of Joint Developers for the purposes of the said Project. The funds provided by the Financial Creditor were in its capacity as the Joint Developer of the said Project towards the development of the said Project and the disbursement of funds under joint development agreement cannot be construed as financial debt.
- 5.2. As per Clause 2.2, Clause 3.1, Clause 3.2, Clause 3.4, Clause 5.1 (g), Clause 5.1(o), and Clause 6.1 (a) of the Joint Development Agreement the Financial Creditor was obliged to provide the funds for the said Project including but not limited to be way of Bridge Loan, Third Party Capital, Additional Unsecured Loan, sale of the premises, etc., towards the project costs. The time was the essence of the said Joint Development Agreement. The Financial Creditor was further obliged to provide a Bridge Loan of Rs.15,00,00,000/- as per timeless specified in the business plan, however, the Financial Creditor only provided an amount of Rs.7,28,00,000/- to the Corporate Debtor and the same was not in accordance with the timelines specified in the business plan. Due

to breach by the Financial Creditor in providing the requisite funds, there was a delay in the said project.

- 5.3. It is further stated that the Petition is not maintainable as the time for repayment of the money invested by the Financial Creditor in the said Project is not specified in Clause 1.1 (tt), Clause 3.1, Clause 3.2 and Clause 9.3 of the Joint Development Agreement.
- 5.4. The post-dated Cheques were security Cheques and did not represent any lawful debt due and payable by the Corporate Debtor to the Financial Creditor. The Financial Creditor does not have money lending license under the Maharashtra Money Lending (Regulation) Act, 2014. There is no record of default recorded with information utility by the Financial Creditor. The Joint Development Agreement is not properly stamped.

*Findings/Observations:*

6. We have heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor and perused the records.
- 6.1. This Bench has noticed that the Corporate Debtor as Developer and the Financial Creditor as Joint Developer entered into a Joint Development Agreement dated 12.07.2019, Clause Y, Z and AA whereof reads as follows:

*“Y. Because of the magnitude of Project, substantial financial resources, technical expertise and skill including but not limited to conceptualization, planning, designing, construction, marketing and*

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*branding of the Project would be required to successfully implement and complete the Project, Accordingly, the Developer is desirous of identifying a third party of repute with the necessary experience technical and financial capability to jointly develop and execute the Sale Project.”*

*“Z. In this regard, the Developer has approached the Joint Developer for jointly executing the Sale Project and developing/re-developing the Sale Land.”*

*“AA. Pursuant to the discussions and negotiations between the Parties hereto, the Developer and the Joint Developer (solely based on the representations and warranties made by the Developer to the Joint Developer and by the Joint Developer to the Developer especially relating to the financial capability to undertake the said Project) have agreed to Jointly develop and re-develop the Sale Land (by utilisation of the Sale Component : both present and future) and execute the Sale Project and all related and incidental activities on the terms and conditions as agreed and as set out herein”.*

- 6.2. Clause 3.2 (c) obligates the Applicant *“to provide a bridge loan/finance to an extent of Rs. 15,00,00,000/- (Rupees fifteen crore only) within the time period agreed in the Business plan. The Joint Developer shall be entitled to interest at the rate of 15% per annum with monthly rest on the amounts paid ‘incurred by the Joint Developer as a loan/bridge finance, from the date of payment of such amounts till the return/ repayment thereof. The Joint Developer shall be repaid such amounts along with the interest out of the Developer’s Realization after entire repayment of the Third-Party Capital”.*

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6.3. Clause 6.1 (a) also obligates the Joint Developer to *“fund and / or arrange the monies for the Project Cost through Sale proceeds, Bridge Loan, Additional Unsecured Loan and Third-Party Capital within the time period agreed in the Business Plan”*. Clause 6.1 further obligates it *“to complete the construction; obtain approvals; to cause to prepare the plans including lay outs etc”*. Clause 8.4 provides that *“the Sale and Marketing of the Project shall be the responsibility of the Joint Developer. The Parties shall mutually agree on the Minimum Sales Price below which no offer for sale or sale shall be made provided that the joint Developer shall be entitled to the sell the Premises at a variable up to 5% lower than the Minimum Sale Price.....”*.

6.4. Clause 9.3 provides the manner in which Sale proceeds shall be utilised under the Joint Development Agreement. It provides the following order:

- a. *“Firstly, towards Project Costs;*
- b. *Secondly, towards repayment of the third-Party Capital and interest and/or the amounts due thereon in accordance with the terms thereof;*
- c. *Thirdly, towards repayment of the Bridge Loan and Additional unsecured loan and interest and/or the amounts due thereon in accordance with the terms thereof;*
- d. *.....;*
- e. *.....”*

- 6.5. It is a case of the Financial Creditor that the Corporate Debtor failed to perform its part of the said Agreement even after repeated reminders and personal meetings between the parties; has failed to provide any cogent reasons for failure on its part to act on the said Agreement; and has violated certain norms of MCGM while developing the said Land.
- 6.6. The Corporate Debtor has filed Affidavit-in-Reply dated 08.03.2023 stating that the Financial Creditor failed to provide requisite funds in timely manner and subsequently abandoned the Project which led to cost over runs and delay in obtaining approvals and constructions thereby increasing the cost to the developer. It has further contended that Clause 9.3 of the Agreement clearly spelt out the manner in which the amount funded by the Financial Creditor shall be repaid and hence, those amounts have not fallen due till date. Also, the repayment of the amount is obligation of both the parties in the manner stated in the Agreement.
- 6.7. Clause 14.1 provides for consequences arising from occurrence of event of default and also provides 60 days cure period from the date of Notice to the defaulting party. Clause 14.2 empowers the non-defaulting party, in case event of default is not cured, to exercise step in rights and also makes reimbursement of rectification cost to the non-defaulting party. On perusal of this clause and other clauses of the Agreement, this Bench notices that the refund of amounts paid by the Financial Creditor in terms of Clause 3.2 is contemplated in the Agreement only in the manner provided in

Clause 9.3 i.e. the amount is refundable from the Project Account. Accordingly, this Bench is of the considered view that the amount claimed to in default is certainly a debt owed by the Project but it cannot be said that the default has been committed by the Corporate Debtor in payment of the said debt as there is no obligation on the Corporate Debtor to pay the said amount except out of monies in Project Account in the manner stated in Clause 9.3.

6.8. Further, the Financial Creditor has not served any Notice of default as contemplated in Clause 14.1 of the Agreement. Further, the Financial Creditor has averred in the Demand Notice dated 12.08.2022 that the Corporate Debtor had promised to pay an amount of Rs.4,00,00,000/- towards interest for period from 25.03.2019 to 07.01.2022 and issued 4 Cheques dated 20.12.2021, however, the Financial Creditor has not enclosed any correspondence in relation thereto except copy of Cheques and return memo following part Criminal Complaint under section 138 of the NI Act filed before the Metropolitan Magistrate.

6.9. In view of above observation this Bench is of the considered view that the Application filed by the Financial Creditor under section 7 of the Code is liable to be dismissed.

**ORDER**

7. This Application being C.P. (IB) No. 1205/MB/C-IV/2022 filed by NDW Ventures LLP, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 seeking initiation of

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Corporate Insolvency Resolution Process against Tattva & Mittal Lifespaces Private Limited, Corporate Debtor is hereby **Dismissed**.

8. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present Petition.
9. The Financial Creditor has filed an Application bearing IA No. 1299/MB-IV/2023 for review/recall of main Company Petition as the Financial Creditor desires to place on record certain additional documents to respond to the allegation made and contended by the Corporate Debtor. The said IA was listed before us on 11.04.2023. However, none appeared on behalf of the Applicant in this IA despite e-mail having been served upon the address stated in the application as confirmed by NIC. The Ld. Counsel for the Corporate Debtor stated that the said IA is not maintainable, as the CP (IB) No. 1205/MB-IV/2022 is already reserved for orders on 24.03.2023 vide order dated 24.03.2023. On perusal of said order, this Bench notes that an opportunity was afforded to both the parties to file a synopsis in not more than two pages within three days, however, the applicant in this IA didn't file the said synopsis, which he could have if it had any further clarification to provide. The observations in order dated 11.04.2023 are incorporated as follows:

*“Ld. Counsel for the Corporate Debtor submits that this IA is filed by the Applicant seeking liberty to file rejoinder. We note that this matter was heard at length and liberty was granted to both the*

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*parties to file two pages synopsis for the benefit of this Bench. The filing of rejoinder is not a vested right of the Applicant and he could place on record whatever he wishes to in the two-page synopsis, though it has also not been filed till date. We are in agreement with the submission of Ld. Counsel for the Corporate Debtor that this Application nothing but only attempt to further delay the adjudication of an application. In view of this, this present Applications is Reserved for Orders and will be decided along with the main CP Ld. Counsel for the Corporate Debtor promises that the xerox copy of the IA available with him shall be placed before Bench by end of the day.”*

10. Accordingly, this IA No. 1299/MB-IV/2023 filed by the Financial Creditor is hereby **Dismissed as Infructuous**.

Sd/-  
Prabhat Kumar  
Member (Technical)  
28.04.2023

Sd/-  
Kishore Vemulapalli  
Member (Judicial)