

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 2353 OF 2022**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

Tattva Properties LLP

...Applicant/Corporate Debtor

In the matter of

C.P.(IB) No. 548/MB/2022

Ashok Tiwari

**Financial Creditor**

Vs.

Tattva Properties LLP

**Corporate Debtor**

*Order delivered on: 17.10.2023*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)  
*Appearances*

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

For the Applicant : Mr. Devul Dighe, Advocate

For the Respondent : Mr. Aniruth Purusothaman, Advocate

**ORDER**

*Per: V.G. Bisht, Member (Judicial)*

1. The Interlocutory Application IA 2353/2022 is filed on 23.08.2022 by M/s Tattva Properties LLP ("Corporate Debtor") in CP (IB)548/2022 challenging the maintainability of the Company Petition filed by Mr. Ashok Tiwari, the Financial Creditor seeking initiation of CIRP process in the case of the Corporate Debtor u/s 7 of the Code.
2. The Applicant submits that the Petition CP (IB)548/2022 is not maintainable in terms of Section 10A of the Insolvency and Bankruptcy Code, 2016 ("IBC") inter alia on the basis that it is an admitted position, as is evident from the documents produced and relied upon by the Petitioner itself, that the date of default of the purported debt is during the period 15th February 2021 and 15th March 2021, which squarely falls within the period prescribed under Section 10A of the IBC viz., 25th March 2020 until 25th March 2021.
3. The Respondent/Financial Creditor had filed a company Petition on 22.04.2022 claiming the debt in default of Rs.1.50 Crores plus interest thereon amounting to Rs.40,50,000/-. The date of default is stated to be 09.01.2022 in Part IV of the Petition.
4. By and under Personal Loan Agreement dated 12 October 2020 (hereinafter referred to as "Loan Agreement") executed by and between the Financial Creditor, Corporate Debtor and Tattva & Mittal Lifespaces Private Limited i.e. Corporate Guarantor, the Financial Creditor extended loan for an amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only). It is submitted

by the Respondent Financial Creditor that the said loan was to be originally repaid for the period from 15th February 2021 to 15th March 2021 subject to timely payment of instalment amounts as per clause V of the said loan agreement, and in the event the Corporate Debtor failed to make payment of outstanding amount along with interest within the originally prescribed period of repayment, then the loan was continued subject to Corporate Debtor being liable repay interest to financial creditor at the rate of 24 percent per annum for delayed repayment/extended period of loan.

5. The Applicant Corporate Debtor has relied upon Clause-V of the said loan agreement which reads as under:

*“V. PAYMENT. The loan amount shall be due and payable, including the principal and any accrued interest, under the following repayment plan.*

*Monthly payment of Rs.75,00,000/- beginning on 15.02.2021 and to be paid every seven (7) days until balance is paid ending on 15.03.2021.*

6. The Applicant/Financial Creditor has filed reply dated 15.10.2022 contending that the loan was originally supposed to be repaid during the period from 15th February 2021 to 15th March 2021 as per clause V of the said loan agreement. However, in the event the Applicant/Corporate Debtor failing to make payment of outstanding amount along with interest within the originally prescribed period of repayment, then the loan was to be continued subject to Applicant/Corporate Debtor being liable to pay interest

to Respondent/Financial Creditor at the rate of 24 percent per annum for extended period of loan i.e. period after initial period of 6 months. Hence the Applicant/Corporate Debtor was liable to pay interest from April 2021 onwards at the rate of 24 percent per annum.

6.1. Further in the event of Applicant/Corporate Debtor exercising its option to continue loan and take additional time for repayment of loan and thereby continuing to be benefitting from the financial assistance provided by the Respondent/Financial Creditor, the Applicant/Corporate Debtor as well as Corporate Guarantor i.e. Tattva & Mittal Lifespaces Private Limited ("Corporate Guarantor") were liable to secure the outstanding amount due inclusive of interest by providing security of residential flat of an amount equivalent to the outstanding amount due under the said loan agreement in the project known as "Bombay XI" located at BIT Chawl No. 124, KK Marg, Bhyculla West, Mumbai - 400011 undertaken by "Tattva & Mittal Lifespaces Private Limited" (hereinafter referred to as the "said Project").

6.2. It is further submitted that initially the Applicant/Corporate Debtor represented to the Respondent/Financial Creditor that it wants to avail loan for a period of 6 months and hence the amount inclusive of interest for the period of 6 months was secured by issuance of cheques by Applicant/Corporate Debtor and Corporate Guarantor. However, the Corporate Debtor continued to avail loan assistance beyond the period of 6 months, when Applicant/Corporate Debtor and Corporate Guarantor represented and agreed under the said loan

agreement to provide additional security in the form of flat and undertook to repay loan amount with interest at the rate of 24 percent per annum on such extended period of loan.

7. We heard the Learned Counsel and perused the materials available on records.

7.1. We find that Clause-V of the loan Agreement defines the repayment period of financial debt as *Monthly payment of Rs. 75,00,000/- beginning on 15.02.2021 and to be paid every seven (7) days until balance is paid ending on 15.03.2021*. It simply follows therefrom that the whole of the loan falls due on 15.03.2021. As regards contention of the Petitioner in terms of clause-VI of the Agreement, we find that Clause-C pertains to the provision of security in case of delay in repayment and reads as follows  
*“The Loan Amount under this Agreement shall be Unsecured. There shall be No security provided in this Agreement wherein in the repayment is as per the above mentioned schedule in case of delay in repayment the interest charges will be 24% per month and the borrower need to be secured the lender by providing residential flat at project BOMBAY XI (Address BIT Chawl no 124, KK Marg, Bhyculla West, Mumbai-400011) equivalent to Loan amount and the rate of such flat will be 23,000/- per sq.ft. (carpet area) including parking equivalent to outstanding amount including interest.”*

7.2. From perusal of the aforesaid clause it is clear that the original tenure of the loan expires on 15.03.2021 and the stipulation for security was only in the case of delay in repayment. The words delay in repayment used in clause-VI conveys that the loan became due for repayment on 15.03.2021 and this clause was

to be invoked only in case there is a delay to secure the outstanding. Accordingly, we do not find any substance in the argument of the Respondent/Financial Creditor that the loan tenure gets extended in terms of Clause-VI of the Loan Agreement. The reliance of the Financial Creditor on a letter dated 01.06.2022 sent by the Corporate Debtor that there is a admission on the existence of loan and the Corporate Debtor never disputed such existence does not support his case that the default cannot be said to have occurred on 15.03.2021. It is not the case of the Financial Creditor that the securities as contemplated under Clause-VI was ever provided by the Corporate Debtor as can be noticed from Part-V of the Form-I placed in the petition where the details of securities held are stated as not applicable.

7.3. In view this, this Bench is of the considered view that the default occurred on 15.03.2021 in terms of Clause-V of the Loan Agreement and the said period falls within the period stated in Section 10A of the Code which bars filing of any application for initiation of CIRP in terms of Section 7, 9 and 10 of the Code. Accordingly, we hold that the present application deserves to be allowed and consequently CP No. 548/2022 deserves to be dismissed as not maintainable.

Sd/-  
**Prabhat Kumar**  
Member (Technical)

Sd/-  
**Justice V.G. Bisht**  
Member (Judicial)