

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

CP(IB)-3072/MB/2019

Under Section 7 of the IBC, 2016

In the matter of

India Asset Growth Fund II & Anr.

.....Financial Creditor

v/s.

Tattva & Mittal Lifespaces Private Limited

.....Corporate Debtor

Order Pronounced on: 18.10.2021

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Umang Mehta a/w Mr. Aamir Attari, Advocate.

For the Respondent: Ms. Punita Arora, Advocate.

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **India Asset Growth Fund II & Anr.**, ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Tattva & Mittal Lifespaces Private Limited** ("the Corporate Debtor"), [CIN: U70102MH2012PTC228161]. The Corporate Debtor is a company incorporated on 04.03.2012 under the

Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Office No. OA, Ground Floor, Benefice Business House, Mathuradas Mill Compound, Lower Parel(W), Mumbai City, Maharashtra - 400 013. Therefore, this Bench has jurisdiction to deal with the present petition.

BRIEF FACTS OF THE CASE:

2. The Petitioner disbursed Rs. 28,40,00,000/- (Rupees Twenty Eight Crores and Forty Lakh Only) to the Corporate Debtor in the following instalments:

Rs. 240,000,000/-	on	16.08.2017
Rs. 10,000,000/-	on	09.11.2017
Rs. 5,000,000/-	on	29.11.2017
Rs. 5,000,000/-	on	27.12.2017
Rs. 10,000,000/-	on	28.03.2017
Rs. 14,000,000/-	on	30.09.2018

3. The Petitioner No.1 is registered with SEBI as a category II Alternative Investment Fund having registration No. AIR 2/15-16/0212 dated 1st March 2016.
4. The Petitioner No. 2 is the Trustee of the Petitioner No.1 and of the Debenture Holders, and as such has appointed M/s. Essel Finance Advisors and Managers LLP as the Investment Manager of the Petitioner No.1 by an Investment Management Agreement dated 20th November 2015, a copy whereof is annexed with the Petition and marked as Exhibit

“B”. The Petitioner No.2 is registered as a Debenture Trustee under SEBI Debenture Trustee Regulations, 1993.

5. Upon the request of the Corporate Debtor and the Promoters of the Corporate Debtor, the Petitioner No. 1 and/or its nominees (together hereafter referred to as “Debenture Holders”) agreed to subscribe to the Debentures of the Corporate Debtor on a private placement basis to the tune of Rs.65,00,00,000/- (Rupees Sixty five Crores only) which were supposed to be disbursed in tranches in the form of 6500 unlisted, unrated, secured, redeemable non-convertible Debentures for a face value of Rs.1,00,000 (Rs. One Lakh only).
6. Pursuant to Board Resolution of the Corporate Debtor dated 10.08.2017, Petitioner No.2 was appointed as a Debenture Trustee for the benefit of the Debenture Holders and the Petitioner No.2 agreed to be appointed as Debenture Trustee for the benefit of the Debenture Holders. In order to facilitate the said transaction, the Petitioner No. 2 and the Corporate Debtor executed a Debenture Trust Deed dated 16.08.2017 to secure the payment and the obligations of the Debenture Holders including Petitioner No.1
7. M/s. Essel Finance Advisors and Managers LLP having its office at 18th Floor, A Wing, Marathon Future, NM Joshi Marg, Lower Parel, Mumbai 200013 has been duly authorized by the Petitioners to manage the funds of the investors.
8. The subscription of the said Debentures was subject to the fulfilment of the terms and conditions of the Debenture Subscription Agreement dated

11.08.2017 and other related documents. However, the Corporate Debtor failed to comply with all of the requisitions of the Debenture Subscription Agreement and thus in view thereof the Petitioner No.1 subscribed to the Debentures of the Corporate Debtor, only to the tune of Rs. 28,40,00,000/- (Twenty Eight Crores and Forty Lakh only) which were disbursed in such number of tranches in the form of 2840 secured, redeemable non-convertible Debentures for a face value of Rs.1,00,000/- each and in addition to the same other debenture holders have subscribed to the Debentures of the Corporate Debtor, to the tune of Rs.3,20,00,000/- (Three Crores and Twenty Lakh only) which were disbursed in such number of tranches in the form of 320 secured, redeemable non-convertible Debentures for a face value of Rs.1,00,000/- each.

9. Such disbursement was never objected or disputed by the Corporate Debtor. Copies of the ledger accounts, bank statements and receipts of payment made to the Corporate Debtor more specifically by Petitioner No.1 are annexed to the Petitioner and marked as Exhibit "D-colly."
10. Due to the continuing defaults on part of the Corporate Debtor towards the repayment of the combined debt to all the Debenture Holders along with coupon, redemption premium and default interest, the Investment Managers for Petitioner No.1 and the Petitioner No.2 have sent several notices/emails including but not limited to the notice dated 05.10.2018 calling upon the Corporate Debtor to pay its dues, despite of which the Corporate Debtor failed to comply with its requisitions. Petitioner has

annexed a copy of the said letter dated 05.10.2018 with the Petition marked as Exhibit "E".

11. In furtherance thereof, the Petitioner No.2 was constrained to serve a legal notice dated 20.03.2019 upon the Corporate Debtor thereby calling upon the Corporate Debtor to make full payment towards the combined debit of all the Debenture Holders along with coupon, redemption premium and default interest as on 08.03.2019, aggregating to an amount of Rs.37,93,71,311/- (Thirty Seven Crores Ninety Three Lakh Seventy One Thousand Three Hundred Eleven only) to Petitioner No.1 and Rs.42,26,022/- (Forty two lakhs Twenty six Thousand and Twenty two only) to other Debenture Holders towards the Principal, the Redemption Premium and other ancillary outstanding on 29.03.2019. Thereafter the Corporate Debtor made another payment to the Petitioner No.1 to the tune of Rs.65,00,000/- (Rupees Sixty Five Lakh only) towards the Principal outstanding thereby leaving behind combined debt outstanding amount of Rs.33,86,13,063/- (Rupees Thirty three Crores Eighty six Lakhs Thirteen Thousand and Sixty three only) as on 08.03.2019. The fact that the aforesaid payments were made immediately after the receipt of the notice dated 20th March 2019 and the contents of the said notice were never disputed, is evidence of acknowledgement of the liability of the Corporate Debtor towards the transaction and acknowledgement of liability of the outstanding payment.
12. However, after the last two payments made after the issuance of the demand notice dated 20.03.2019, no payment was made by the Corporate

Debtor towards the outstanding amount, as a result of which the Petitioners were constrained to issue two demand notices dated 10.04.2019 and 24.05.2019, copies whereof are annexed with the Petition marked as Exhibit "G-1" and Exhibit "G-2" respectively, calling upon the Corporate Debtor to pay the outstanding amount with interest. However, in spite of the notices issued, no payment has been made by the Corporate Debtor till date.

13. The total amount claimed to be in default along with default interest to Petitioner No.1 as on 30.06.2019 is Rs. 34,24,92,584/- (Rupees Thirty four Crores Twenty Four Lakh Ninety two Thousand Five Hundred and Eighty Four only) towards Principal, Coupon, Redemption Premium, Interest and Default interest.
14. Date of defaulting respect of the balance outstanding amount as of today is 24th May 2019 (i.e. date of last demand notice). Whereas, the default towards the Principal amount payable under the Agreements is outstanding since 30th September 2018.

Particulars of Financial Debt

15. Charge on plot of land owned by the Corporate Debtor admeasuring 3858 sq. mts. Bearing CS No. 1938 (Pt.) of Byculla Division situated at Keshavrao Khadye Marg, S. Bridge Junction, Jacob Circle, Mumbai along with structures standing thereon (vide Debenture rust Deed dated 16.08.2017).
16. Charge on plot of land owned by the Corporate Debtor admeasuring 1250 sq. mts. bearing Plot nos. 79 & 80 (Pt.)

17. The Petitioner has provided record of financial information issued by national e-governance service Ltd. dated 14.08.2019. The Petitioner also annexed the copy of the demand notice dated 10.04.2019 issued by investment manager to the Corporate Debtor, copy of the demand notice dated 24.05.2019 issued by the counsel for the investment manager and have enclosed copy of audited financial statement of Corporate Debtor as on March 31, 2018.

REPLY OF THE CORPORATE DEBTOR:

18. The Corporate Debtor denied the contentions averment, allegations and insinuation in the company petition. The Corporate Debtor also pointed out that the present petition is filed without any authority and therefore ought to be dismissed *in limine*.
19. The petitioner agreed to invest 6500 unlisted redeemable, non-convertible debenture of face value of Rs.100,000 each for an aggregate amount of Rs.65 crores and executed the Debenture Subscription Agreement dated 11.08.2017. the petitioner agreed to invest 65 crores but only invested Rs.31,60,00,000/- till date and has not paid the balance amount of Rs.33,40,00,000/-. The petitioner charged an amount of Rs.1,78,75,000 on the entire amount of 65 crores @ 2.75% as their fees/charges and therefore were required to pay the balance amount.
20. The Corporate Debtor further pointed out that the petitioner is liable to pay the balance amount of Rs.33.40 crores and due to the non-payment the

Corporate Debtor is facing huge cost overrun, losses and damages. Therefore, the petitioner has failed to fulfil their obligation to pay the entire amount as agreed under the Debenture Trust Deed and are in material breach of the same and therefore, Corporate Debtor contended that there is no default on their part.

21. The Corporate Debtor also contended that vide notice dated 24.05.2019 the petitioner has alleged event of default under the Debenture Subscription Agreement and have called upon the Corporate Debtor and its promoters to repay the entire investment amount. The Corporate Debtor pointed out that the entire investment was recalled in May 2019 but whereas no repayment instalment plus interest coupon were payable in June 2019. Thus, the petitioner is making a false and mischievous and *malafide* attempt to create pressure and exhort money from the Corporate Debtor.

REJOINDER:

22. The petitioner pointed out that the authorized representative of the petitioner is authorized by the designated partner in resolution of the investment manager and hence the investment manager of petitioner No.1 is duly authorized to represent the Petitioner No.1. The Petitioner No.2 is the debenture trustee as defined in the debenture subscription agreement.
23. The Petitioner claim that they did not subscribe in the debenture of Corporate Debtor for the full amount of Rs.65 cores and only subscribed to the tune of Rs.31.60 crores as the Corporate Debtor failed to comply with the Debenture Subscription Agreement and Debenture Trust Deeds. The

Corporate Debtor was obliged to provide copy of NOC and other concessions sought by the Corporate Debtor from the Municipal Corporation of Greater Mumbai and necessary documents to enable the petitioner to conduct the title search in respect of the properties of Corporate Debtor. The Corporate Debtor failed to provide the same to the petitioner in spite of reminders and email. Hence the Petitioner did not disburse the balance amounts.

FINDINGS:

24. The issue for consideration is whether is a default of non-payment of money under the Debenture Subscription Agreement and Debenture Trust Deed.
25. The Petitioner has disbursed an amount of Rs. 28,40,00,000 to Corporate Debtor in the following instalments:
- | | | |
|-------------------|----|------------|
| Rs. 240,000,000/- | on | 16.08.2017 |
| Rs. 10,000,000/- | on | 09.11.2017 |
| Rs. 5,000,000/- | on | 29.11.2017 |
| Rs. 5,000,000/- | on | 27.12.2017 |
| Rs. 10,000,000/- | on | 28.03.2017 |
| Rs. 14,000,000/- | on | 30.09.2018 |
26. The Corporate Debtor defaulted in repayment of combined debt to all the debenture holders along with coupon, redemption premium and default interest. The petitioner issued notice dated 05.10.2018 calling upon the Corporate Debtor to pay dues. Thereafter the petitioner served a legal notice on 20.03.2019. The Corporate Debtor then made a payment of

Rs.3,00,32,226/- and Rs.42,26,022/- towards principal amount. The redemption premium and other ancillary outstanding still remaining outstanding as on 29.03.2019. Thereafter the Corporate Debtor made another payment of Rs.65,00,000/-. The total amount claimed in default as on 30.06.2019 is Rs.34,24,92,584/-.

27. The Corporate Debtor in the reply has raised an objection that the petitioners have paid only Rs.31,50,00,000/- and whereas the petitioners had obliged to pay the balance amount of Rs.33,40,00,000/- and therefore claim that due to non-payment of balance amount the Corporate Debtor is facing huge cost overrun, losses and damages and that the petitioners are in breach of terms and conditions of debenture subscription agreement and debenture deeds. The Corporate Debtor further claim that there is no default as on in the year 2019 and such there is no amount payable to the Petitioners.
28. It is an undisputed fact that the petitioners have subscribed to the debenture subscription agreement and debenture trust deeds and have disbursed an amount of Rs.28,40,00,000/-. The Corporate Debtor failed to make repayment of amount due along with coupon, redemption premium and default interest and the petitioners have issued several emails and notice dated 05.10.2018 calling upon the Corporate Debtor to pay its dues. The petitioners further served legal notice dated 20.03.2019.
29. The Debenture Trust Deeds dated 16.08.2017 and Debenture Subscription Agreement dated 11.08.2017 stipulated that the Corporate Debtor is liable

to pay the interest coupon, redemption premium and default interest as on 29.03.2019. The Petitioner released the first tranche of monies and chose not to disburse the second tranche of money, the only question is whether there has been default of non-payment of monies under the first tranche of money disbursed by the Petitioner to the Corporate Debtor. The Corporate Debtor admittedly failed to repay the said amount to the petitioners under the Debenture Trust Deeds which establishes the default in repayment of the said amount due and payable under the debenture trust deed and debenture subscription agreement. Hence, the essential ingredients of debt and default are satisfied and this amount shows financial debt for time value and money under section 5(8) of the Code. Hence the petition is admitted.

30. The objection of balance amount payable under the Debenture Trust Deeds is untenable in view of the facts that the Corporate Debtor has failed to pay its dues as required under the Debenture Trust Deeds / Debenture Subscription Agreement and the petitioners are entitled to seek repayment of entire outstanding dues as the Corporate Debtor has failed to provide the necessary documents and in breach of terms and conditions of the contract.
31. Therefore, the Petition made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the

IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

32. The Financial Creditor has proposed Mr. Arun Bagaria as Interim Resolution Professional (IRP) in the matter.
33. The Application bearing **CP(IB)-3072/MB/2019** filed under Section 7 of I&B Code, 2016, presented by **India Asset Growth Fund II & Anr.**, Financial Creditors/Petitioners against **Tattva & Mittal Lifespaces Private Limited [CIN: U70102MH2012PTC228161]**, Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of moratorium, prohibits:

- 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 possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Arun Bagaria, a registered insolvency resolution professional having Registration Number IBBI/IPA-002/IP-

N00278/2017-18/10836, residing at 701 Stanford, Junction of S.V. Road and C.D. Burfiwala Marg, Andheri (W), Mumbai – 400 058, as “Interim Resolution Professional” to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

34. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
Rajesh Sharma
Member (Technical)
18.10.2021/pvs

Sd/-
Suchitra Kanuparthi
Member (Judicial)