

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II**

IA No. 52 of 2022

In

C.P.(IB)/1765 (MB) 2018

Under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016.

Shailesh Verma, Resolution Professional
for M/s. Lavasa Corporation Limited
Warasgaon Assets Maintenance Limited
Dasve Convention Center Limited,
Warasgaon Power Supply Limited and
Dasve Retail Limited

.....Applicant

Vs.

Darwin Platform Infrastructure Limited

....Respondent

In the matter of

**Raj Infrastructure Development (India)
Private Limited**

.....Petitioner

Vs.

Lavasa Corporation Limited

.....Corporate Debtor

Order delivered on: 09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Resolution Professional: Mr. Ashish Kamat, Senior Advocate

ORDER

Per: Coram

1. This is an Application filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 ("the Code") for seeking approval of this Bench in respect of the Resolution Plan passed by the **Consolidated Committee of Creditors ("CoC")** with requisite majority under Section 30(4) of the Code.
2. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") vide Order **dated 30th August 2018** and subsequently the Corporate Debtor's CIRP was consolidated with the ongoing CIRP of all its four subsidiaries resulting in the commencement of a **Consolidated CIRP on 13th May 2021** pursuant to an order of this Tribunal. After the due progression of the Consolidated CIRP, the Resolution Plan submitted by the Resolution Applicant, Darwin Platform Infrastructure Limited, was approved by the CoC by a majority of 96.14% vote share on 23rd December 2021. The RP then filed the instant Application on 18th January 2022.

3. We have heard the submissions of the Counsel appearing for the Resolution Professional at great length. We have also perused the Resolution Plan annexed to this Application and in particular, the “Treatment of Stakeholders under the Plan” which lays down the detailed scheme of allocation of funds to the different classes of Creditors and other dues according to the manner provided under Section 53 of the Code. The said scheme is reproduced as follows:

Sr. No.	Category of Stakeholder (Note-1 &2)	Sub-Category of Stakeholder	Amount Claimed	Amount Provided under the plan (Note-3)	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)
1.	Secured Financial Creditors	(a) Creditors not having right to vote under sub-section (2) of section 21	0/-	0/-	NIL
		(b) Other than (a) above:		Total payment to Financial Creditors (including assenting & dissenting financial creditors as well as secured and unsecured financial creditors) is INR 11,52,76,00,000/- (which also includes interest payment amount of 2,23,76,00,000/- Crores)	20.50%
		(i) who did not vote in favour of the resolution plan	1,92,28,92,887/-		This is the percentage of the payout to the Financial Creditors (including assenting & dissenting financial creditors)
		(ii) who voted in favour of the resolution plan	54,30,00,88,697/-		

		Total [(a) + (b)]	56,22,29,81,584/-	11,52,76,00,000/-	20.50%
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21			
		I. Related Party	4,47,24,26,948/-	0/-	NIL
		(b) other than (a) above:		Please refer to note mentioned in the column – “Amount Provided under the Plan” in point 1 above	
		(i) who did not vote in favour of the resolution plan	31,55,36,186/-	Axis Bank Limited is a Secured Financial Creditor as well as an Unsecured Financial Creditor. The Resolution Plan provides that the total payment to be made to Axis Bank Ltd. Is INR 105.97 Crores (including interest on the deferred payment)	-
		(ii) who voted in favour of the resolution plan	7,59,34,77,645/-		-
		Total [(a) + (b)]	12,38,14,40,779/-		
3.	Financial Creditors Class ‘A’	(a) General	5,52,72,29,857/-	4,38,20,30,000/-	79.28%
		(b) Financial Creditors ‘A’ Class – RERA / Terminated Contracts)	10,32,96,859/-	4,03,70,000/-	39.08%
		(c) Related Party	10,83,01,533/-	NIL	NIL

		Total [(a)+ (b) + (c)]	5,73,88,28,249/-	4,42,24,00,000/-	77.06%
4.	Operational Creditors	(a) Related Party of Corporate Debtor	1,34,81,67,135/-	0/-	NIL
		(b) Other than (a) above			
		I. Government	9,58,75,222/-	50,000/-	0.05%
		II. Workmen	0/-	0/-	NIL
		III. Employees	9,36,04,087/-	5,57,57,922/-	59.57%
		IV. General (includes vendor claim) & electricity dues.	2,06,06,05,461/-	93,20,000/-	0.45%
		V. Homebuyers	58,52,05,446/-	6,30,000/-	0.11%
		Total [(a)+(b)]	4,18,34,57,351/-	6,57,57,922/-	1.57%
5.	Other debts and dues	(a) General	99,66,06,141/-	0/-	NIL
		(b) Related Party	12,96,35,991/-	0/-	NIL
		Total [(a)+(b)]	1,12,62,42,132/-	0/-	NIL
Grand Total			79,65,29,50,095/-	16,01,57,57,922/-	20.11%

4. From the above, it is evident that the Secured Financial Creditors (including assenting and dissenting Financial Creditors) are provided with 20.50% of the amount claimed whereas the same is 0.05% in case of Government dues and 0.45% for General (including vendor claims) and electricity dues. In other words, an amount of **Rs. 9,58,75,222/-** (Rupees Nine Crores Fifty-Eight Lakhs Seventy-Five Thousand Two Hundred and Twenty-Two Only) were the dues claimed by the Government authorities of which, only an amount of **Rs. 50,000/-** (Rupees Fifty Thousand Only) (0.05%) is provided under the Plan. Similarly, an amount of **Rs. 206,06,05,461/-** (Rupees Two Hundred

and Six Crores Six Lakhs Five Thousand and Four Hundred and Sixty-One Only) were claimed by General Operational Creditors (including vendor claims) and electricity authorities against which a meagre amount of **Rs. 93,20,000/-** (Ninety-Three Lakhs Twenty Thousand Only) (0.45%) is provided under the Plan.

5. In this respect, firstly, we observe that the Resolution Plan does not contemplate the disbursement of the Government and statutory dues in a rational and equitable manner. There is a wide disparity between the percentage of the amounts provided to the Secured Financial Creditors and the Government dues under the Plan which are now treated as “secured” dues in the light of the Judgment passed by the Hon’ble Supreme Court in the matter of *State Tax Officer (1) vs. Rainbow Papers Limited (Civil Appeal No. 1661 of 2020)*:

“57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.”

6. Besides, this indicates that the Secured Financial Creditors have approved this Resolution Plan for securing maximum recovery of their dues while meting out disproportionate and discriminative treatment qua the Government authorities and other statutory claims and such

treatment cannot be allowed. This principle was enunciated in ***Rainbow Papers (supra)*** in the following words:

“54. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.”

7. Thus, we are of the opinion that the Resolution Plan needs to be reconsidered by the Committee of Creditors (CoC) in order to take into account the above observations. It is clarified that the Resolution Applicant is not precluded from submitting a revised Plan after taking due note of the above observations, in line with ***Rainbow Papers (supra)***:

“59.....However, this judgment and order will not, prevent the Resolution Applicant from submitting a plan in the light of the observations made above, making provisions for the dues of the statutory creditors like the appellant.”

8. In view of the above, we are of the opinion that it is essential for the Consolidated CoC to re-examine the Resolution Plan and endeavour to allocate funds for the fulfillment of Government and statutory dues in the same proportion as provided to the Secured Financial Creditors. Since the Secured Financial Creditors have been provided with 20.50% of the amount claimed, it is directed that the Government and other statutory dues be treated in the same manner and proportion in any subsequent revised Plan that may be submitted by the Resolution Applicant. The Resolution Applicant is hereby granted two weeks for submission of modified or fresh Resolution Plan to the RP and the RP

is directed to place the same before the Consolidated CoC for their consideration.

9. Hence, this Bench is of the view that the RP shall place the revised Resolution Plan before the Consolidated CoC for their reconsideration in the light of the above observations. In view of the foregoing reasons, IA No. 52 of 2022 is disposed of in the above terms.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)

Anusha
09.02.2023