

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH- COURT II**

**IA 1651 of 2020**

**In**

**CP (IB) 1765/MB/C-II/2018**

Under Section 60 (5) of the  
Insolvency and Bankruptcy Code,  
2016, r/w Rule 11 of the National  
Company Law Tribunal Rules, 2016.

*In the Application of*

**Shailesh Verma**

**...Applicant**

**V/s**

**Union Bank of India & Ors.**

**...Respondents**

*In the matter of*

**Raj Infrastructure Development  
(India) Private Ltd.**

**...Operational Creditor**

**Versus**

**Lavasa Corporation Ltd.**

**...Corporate Debtor**

**Order Delivered on 24.12.2021**

***Coram:***

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

**Hon'ble Member (Technical) : Mr. Shyam Babu Gautam**

*Appearances (through video conferencing) :-*

For the Applicant : Mr. Aashish Kamat, Advocate  
For the Respondent : Mr. Zal Andhyarujina, Senior Counsel

*Per :- Shyam Babu Gautam, Member (Technical)*

**ORDER**

1. This is an Application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, (“**Code**”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions to be issued to the Respondents to make contributions to the corpus fund as approved by the Committee of Creditors (CoC) to meet and support the Applicant to keep the Corporate Debtor Company as a going concern, protect and preserve the value of assets and to meet the costs and expenses during the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.
2. The Applicant submits that the Respondents are called upon to pay the corpus as the said had been unanimously approved by the CoC members in three CoC meetings namely the 4<sup>th</sup> CoC meeting held on 14.12.2018, 20<sup>th</sup> CoC meeting held on 16.12.2019 and in the 5<sup>th</sup>

meeting of the consolidated CoC of the Corporate Debtor held on 07.09.2020.

3. The Applicant submits that in absence of adequate funds the Applicant is finding extremely challenging to meet the day to day Operational requirements to keep the Corporate Debtor Company as a going concern. The Applicant states that the Corporate Debtor is principally engaged in the business of “Comprehensive Development and management” of the Lavasa hill Station township project. The Applicant states that due to pending approvals/renewals of the environmental clearances for the project, the construction activity of the project was hampered.
4. Further, with respect to city management services, provided to the residents pursuant to the lease/sale deed/agreements executed between the Corporate Debtor and the residents, the Corporate Debtor provided various amenities, facilities, maintenance, servicing/management to the residents, users and customers within Lavasa city towards the common area maintenance (CAM), city maintenance services (CMS), water charges etc. which were payable by such residents. Despite being in receipt of bills and invoices

towards CMS, CAM, the Lavasa city defaulted in discharging these payments/contributions.

5. Further, the Applicant states that apart from the fact that the revenue is affected due to non-payment, the capability of the Corporate Debtor to provide the services also was adversely affected due to non-availability of sufficient funds. Further, the Applicant submits that with respect to repair and general upkeep of the Corporate Debtor, a substantial investment would require which might not be possible for the Applicant to undertake due to paucity of funds. The accumulated arrears presently stands at 14.7 crores as on 31.07.2020 with over 1103 defaulting residents.

6. Further, with respect to tourism, the present on going CIRP of the Corporate Debtor and existence of several incomplete projects has resulted in lower foot fall. Further, the on going CIRP also affected the facilities such as hotels and also the convention centre. Further due to outbreak of covid-19, the key expenses forming part of the CIRP of the Corporate Debtor such as MSEDCL, security agencies, vendors of the Corporate Debtor, salaries of employees pending since August, 2020 and other such insolvency resolution expenses etc. have remained pending for a significant amount of time.

7. On account of inadequate revenue and in view of the abovementioned factors, the Applicant had no option but to seek assistance of the members of CoC, other than Financial Creditors in class A, being Home Buyers, to fund the CIRP costs to carry the CIRP of the Corporate Debtor in a smooth and efficient manner. Therefore, in the third CoC meeting held on 03.12.2018, the approval of the members of the CoC was sought for creation of a corpus to meet costs incurred for the CIRP and the operations of the Corporate Debtor.
8. Further, after deliberations by the members of the CoC, it was agreed that the corpus would initially be met for the CIRP costs and expenses for six months, further that the contributions will be made by each member of the CoC on a pro rata basis equivalent to their apportioned voting share after excluding the share of the Financial Creditors of Class A. The said corpus would carry cost of funds at 12% p.a. applicable from the date of respective contribution made by the members of the CoC till repayment or the maximum period as permissible, whichever is earlier.
9. In the fourth CoC meeting held on 14.12.2018, the Applicant presented an estimate for the creation of the corpus. The members of the CoC approved the creation of a corpus of Rs. 15,90,43,669/-

(Rupees Fifteen Crores Ninety Lakhs Forty Three Thousand and Six Hundred and Sixty Nine Only) by a majority vote of 72.45%. after the approval of the agenda for creation of the corpus, the Applicant requested relevant individual members of the CoC to make payment of their contribution towards creation of the first corpus. Although certain members of the CoC made payments towards their contribution, still contributions were awaited from certain other members of the CoC.

10. The Applicant clarified that the delay in contribution was affecting the ability of the Applicant to make timely payments on behalf of the Corporate Debtor towards large amounts that were outstanding towards various parties. The Applicant further requested the concerned members of the CoC vide email dated 25.02.2019 for the contribution of the second tranche of the contribution for the first corpus for an amount of Rs. 2,46,25,882/- (Rupees Two Crore Forty Six Lakhs Twenty Five Thousand Eight Hundred and Eighty Two Only).

11. However, some of the members of the CoC had not paid their contribution towards the first cash call of the first corpus and the said issue was taken up in the seventh CoC meeting dated 07.03.2019. The

Applicant informed the members of the CoC that an amount of Rs. 12.34 Crores was sought from the members of the CoC against which the Applicant received only Rs. 6.60 Crores which constitutes merely 53% of the amount sought towards the shortfall. Due to the said inordinate delay in receipts of funds, the said Applicant could not make crucial payments including insurance, security etc. which were critical for preservation of the assets of the Corporate Debtor.

12. Further, the Applicant updated that the Applicant had received contributions from the majority of the members of the CoC towards the first call of the first corpus however, the contribution towards the second cash call to the extent of Rs. 50.45 Lakhs still remains pending from Bank of India (Respondent 4), Asset Care & Reconstruction Enterprise Ltd. (Respondent No. 8) and Bennett Coleman & Company (Respondent No. 16).

13. The Applicant submitted that in light of such deficit and the financial stress upon the Corporate Debtor no payments were made to the vendors for several months and also due to the financial crunch faced by the Corporate Debtor, the Applicant requested the members of the CoC to consider the creation of another corpus and accordingly the members of the CoC approved the creation of a corpus of Rs.

8,89,70,376/- (Rupees Eight Crores Eighty Nine Lakhs Seventy Thousand Three Hundred and Seventy Six Only) by a majority of 70.97% votes. The Applicant further submits that number of members of the CoC made their respective contributions to the first and second corpus and an amount of Rs. 5.05 Crores remained pending towards corpus contributions as on 31.03.2020.

14. The Applicant submits that the Corporate Debtor Company continued to face severe cash flow shortages and the Applicant explored various avenues to reduce the costs incurred by the Corporate Debtor by a reduction in payment of city expenses and employees salaries. Further in the fifth consolidated meeting of the CoC held on 07.09.2020, the Applicant proposed creation of a third corpus with different end uses namely CIRP expenses, city maintenance expenses, salary payments etc. Pursuant to the conclusion of the e-voting, the CoC approved the creation of third corpus of Rs. 7,01,30,834/- (Rupees Seven Crores One Lakh Thirty Thousand Eight Hundred and Thirty Four Only) with a voting majority of 74.25%.

15. Pursuant to the creation of the third corpus, the Applicant made a cash call to the members of the CoC requesting for their respective

contributions and giving them 7 days' time for disbursement. However, the Applicant submits that it is yet to receive Rs. 6.24 crores against the total contribution of Rs. 7.01 crores. In view of the above the Applicant states that he is facing number of difficulties in operating the Corporate Debtor as a going concern due to acute shortage of funds on account of the Respondents not making contributions towards the corpus.

16. The Applicant places reliance on the Order passed by this Tribunal in the case of *State Bank of India vs. Jet Airways (India) Ltd.* where it directed all the members of the CoC to sanction interim finance to the relevant Corporate Debtor. The relevant paragraph is as follows :-

*“It is pertinent to mention that Resolution Professional is duty-bound to maintain Corporate Debtor as going concern interim finance. CoC has approved to arrangement of interim finance of Rs. 63 Crores. However, some of the members of the CoC has not yet sanction interim finance. In the circumstances, we have passed an Order that the members of the CoC, who have sanctioned Interim finance, they should make an available fund to the Corporate Debtor immediately and we further*

*direct other members of CoC to sanction and make the payment within 15 days to persons”.*

17. The Applicant submits a Note on status of pending contributions towards corpus to be received from CoC Members updated as on 28.09.2021 as follows :-

<b>Sr. No.</b>	<b>Name of the Financial Creditor</b>	<b>Pending Contribution (INR)</b>
1.	Bank of India	3,00,82,997
2.	Central Bank of India	1,21,29,834
3.	Punjab National Bank (incl. erstwhile Oriental Bank of Commerce)	44,81,086
4.	Asset Care & Reconstruction Enterprise Ltd. (ACRE)	2,15,98,534
5.	Indian Bank (Erstwhile	1,15,14,104

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II

IA 1651 of 2020 In CP (IB) 1765/MB/2018

	Allahabad Bank)	
6.	SSG Investment Holding India Ltd.	70,22,013
7.	Edelweiss Asset Reconstruction Company Ltd.	54,30,323
8.	India Opportunities II Pte Ltd.	25,15,853
9.	Karnataka Bank Ltd.	3,803
10.	Bennett Coleman & Company Limited	18,54,359
	<b>Total</b>	<b>9,66,32,906</b>

**FINDINGS**

18. We have heard the Counsel appearing for the Applicant. It is seen from the records that the corpus was created and unanimously approved in the meetings of the CoC held on 14.12.2018, 16.12.2019 and 07.09.2020 respectively. The said corpus was created to keep the Corporate Debtor Company as a going concern, to protect and preserve the assets and to meet the costs and expenses incurred in the CIRP.
19. Further the instalments of corpus had been approved and created by the requisite majority of the CoC members. It is seen that there are pending contributions from the Respondents as mentioned in tabulated form as at **paragraph 17** above towards the said approved corpus. Therefore, in view of the urgent need for the funds and in absence of any alternate source of funds for running of the Consolidated CIRP of the Corporate Debtor Company and to keep the Corporate Debtor Company as a going concern, this Bench hereby directs the Respondents as mentioned in paragraph no. 17 to make payments towards their respective share of pending contributions to the corpus as approved by the CoC, **within 15 days**

from receiving the Certified copy of the Order, to enable the Applicant to operate the business of the Corporate Debtor as a going concern to preserve and protect the assets during the CIRP and meet the costs and expenses incurred during the CIRP of the Corporate Debtor.

20. In view of the above, **IA 1651 of 2020 in CP 1765 of 2018 is allowed and disposed of.**

**Sd/-**

**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**Sd/-**

**JUSTICE P. N DESHMUKH  
(MEMBER JUDICIAL)**