

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

IA 2238/MB/C-II/2020

In

CP (IB) 936/MB/C-II/2020

Under section 60 (5) of the Insolvency and Bankruptcy Code, 2016.

The Consolidated Committee of Creditors of Lavasa Corporation Limited, through the Lead Bank: Union Bank of India, Union Bank Bhawan, 239 Vidhan Bhavan Marg, Nariman Point, Mumbai – 400 021

... Applicant

In the matter of

Mr. Shailesh Verma

Resolution Professional of

Lavasa Corporation Limited (LCL)

E 1004, Vijaya Apartments, Mall Road, Ahinsa Khand 2, Near Shanti Gopal Hospital, Indirapuram, Ghaziabad, Uttar Pradesh, 201014.

...Corporate Applicant

In the matter of

Dasve Retail Limited

Subsidiary of Lavasa Corporation Limited (LCL)

[CIN : U51109MH2008PLC187367]

Hincon Home, L.B.S Marg, Vikhroli (West), Mumbai-400093.

...Corporate Debtor

Order Delivered on 13.05.2021

Coram:

Mr. H. P. Chaturvedi : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

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Appearances:

For the Applicant : Mr. Pulkit Sharma Counsel a/w
Mr. Rugved More, Mr. Akhil
Mahesh, Advocates i/b L & L
Partners.

For the RP : Ms. Salonee Kulkarni, Ms. Kirti
Kalyani, Advocates i/b Shardul
Amarchand Mangaldas & Co.

ORDER

Per: H. P. Chaturvedi, Member Judicial

1. This Present Application is moved by the Consolidated Committee of Creditors (“**CoC**”) of Lavasa Corporation Limited (“**Lavasa**”) through this application the Applicant Consolidated CoC has sought prayer for a direction to be issued for consolidation of the respective insolvencies of Consolidated Lavasa and two of its wholly-owned subsidiaries, Warasgaon Power Supply Limited (“**WPSL**”) and Dasve Retail Limited (“**DRL**”).
2. As per the material available in record a Corporate Insolvency Resolution Process (“**CIRP**”) in respect of Lavasa was commenced on 30.08.2018 by admitting the Company Petition by this Tribunal (bearing C.P. 1765 /IB/NCLT/MB/2018) which was filed by Raj Infrastructure Development (India) Private Limited.

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3. Subsequent to the admission of the Insolvency and Bankruptcy Petition against Lavasa, another two petitions came to be filled and admitted against the two of Lavasa's wholly-owned subsidiaries namely Warasgaon Assets Maintenance Limited ("**WAML**") and Dasve Convention Centre Limited ("**DCCL**"). Thereafter, the CoC of Lavasa moved an application before this Tribunal bearing M.A. 3664 of 2019 seeking a direction from this Tribunal for consolidation of the insolvencies of Lavasa and its wholly owned subsidiaries being WAML and DCCL.
4. The same was duly considered and came to be allowed by this Tribunal vide an Order dated 26 February 2020 ("**Lavasa Consolidation Order**"), and thus directed for consolidation of the CIRP of Lavasa and its two subsidiaries being WAML and DCCL. Accordingly a Consolidated Committee of Creditors for Lavasa and its above-mentioned subsidiary was constituted.
5. Thereafter, the Lavasa Consolidation Order also recognized that there are two other wholly owned subsidiaries of Lavasa namely Warasgaon Power Supply Limited ("**WSPL**") and Dasve Retail Limited ("**DRL**") being the present Corporate Debtor, which although were not undergoing CIRP at that time, but owes debts to creditors which includes financial creditors of Lavasa as well.
6. Hence, the Resolution Professional of Lavasa has moved captioned Company Petition under Section 10 of the Code on 24

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April 2020 for initiation of CIRP against the Corporate Debtor. This captioned Company Petition was also admitted by this Tribunal vide order dated 8 February, 2021 and accordingly the CIRP of the Corporate Debtor was commenced.

7. The applicant has stated further that the present case meets same criteria which this Tribunal had identified in the Videocon Industries Limited Order dated 08 August 2019 and Lavasa Consolidation Order dated 26 February 2020, viz. common control, common assets, pooling of resources, interdependence, intricate link of subsidiaries, inter-twined accounts, common financial creditors and singleness of economic of units (in that the economics of these entities revolves around Lavasa's Hill Station Township).
8. In support of his above contention the applicant has prepared and submitted a chart indicating that present case meets the criteria as identified by this Tribunal in its order dated 26.02.2020 (Lavasa Consolidation Order) for perusal and consideration which is stated as follows:

Sr.No.	FACTORS	OBSERVATION
1.	Common Control	a. WPSL and DRL are both wholly-owned subsidiaries (100% shareholding) of Lavasa. b. Each company mentioned above has its registered office at "Hincon House Lal

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		<p>Bahadur Shastri Marg Vikhroli West Mumbai City MH 400083 IN”.</p> <p>c. Further, for Secretarial purposes, Lavasa, and DRL each has reported a common e-mail address to the Ministry of Corporate Affairs (“MCA”).</p>
2.	Common Directors	<p>Basis a review of the Company Master Data available on the website of the Ministry of Corporate Affairs as at 04 October 2020, the following details indicate common directorship between three entities, viz. Lavasa, WAML and DCCL: -</p> <p>a. Mr. Praveen Sood was a Director of Lavasa since 19 May 2017. He was also a Director of DCCL in 2018.</p> <p>b. Avinash Harde is indicated to have been a Director of WAML from 24 March 2017 until 19 March 2019. He was also a Director of DCCL from 25 April 2016 till 28 March 2019.</p> <p>c. Praveen Sood was serving as a Director on the Board of DCCL along with Avinash Harde at the same time for a period in 2018.</p> <p>Further to this, as far as WAML and WPSL</p>

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		<p>are concerned, Vikram Manoharan served a director on the Board of both these companies since 15 June 2018 until the commencement of CIRP in the case of WAML, and as per WPSL's Company Master Data, until now.</p> <p>Similarly, Hamshire Rodriguez served as Director for both WAML (24 April 2013 till 28 March 2019) and WPSL (26 March 2015 - 03 January 2019).</p>
3.	Common Assets	<p>WPSL and DRL operate a common set of assets and office infrastructure owned by Lavasa.</p> <p>a. DRL business is /was operation of retail business over the properties belonging to Lavasa</p> <p>b. WPSL business is solely develop, operate and maintain the power and infrastructure facility of the Lavasa Project</p> <p>c. WPSL and DRL also reflect that relevant personnel and office infrastructure were common.</p>
4.	Common Liabilities	<p>The entire Financial Debt of DRL and WPSL is guaranteed by Lavasa and the financial creditors have already admitted the</p>

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		said financial debt in Lavasa.
5.	Inter-dependence	<p>Taking into account the businesses of Lavasa, DRL and WPSL as well as the agreements executed by them inter-se, it is evident that there is a substantial inter dependence amongst each.</p> <p>The businesses of each of these are inter-linked and intertwined to the extent that the fate of DRL and WPSL depends greatly on outcome of Lavasa.</p>
6.	Inter-lacing of Finance	<p>a. L&T which is a financial Creditor of Lavasa is the only financial Creditor of WPSL, similarly, Central Bank of India which is a Financial Creditor of Lavasa is the only Financial Creditor of DRL.</p> <p>b. CIRP of Lavasa Corporation Limited would result into ceasing of contracts between subsidiaries and Lavasa leaving subsidiaries with no assets or business streams.</p> <p>c. The entire Financial Debt of DRL and WPSL is guaranteed by Lavasa and the claims of financial creditors in this respect have already been admitted by the</p>

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		Resolution Professional of Lavasa.
7.	Pooling of Resources	Lavasa, WPSL and DRL depend upon a common set of assets for functioning of their respective businesses for eg: DRL is in the business of operation and maintenance of retail outlets belonging to Lavasa at Lavasa Hill Township. Similarly, WPSL's business relates to <i>inter alia</i> maintaining the transport infrastructure at Lavasa.
8.	Co-existence for Survival	<p>a. WPSL is a 100% subsidiary of Lavasa and its business is solely to develop, operate and maintain the power and infrastructure facility of the Lavasa at the Lavasa Hill Township.</p> <p>b. DRL is a 100% subsidiary of Lavasa and its business is operation and management of retail outlets in Lavasa Hill Township belonging to Lavasa.</p> <p>c. In view of the above, it is clear that the survival of the subsidiaries was dependent on Lavasa.</p>
9.	Intricate Link of Subsidiaries	Consolidated Accounts (see entry 10 below), Pooling of Resources (see entry 7 above), Common Assets (see entry 3 above) and interdependent business functions (see entry

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		8 above) are examples of intricate link amongst subsidiaries.
10.	Inter-twined accounts	<p>a. Exhibit F to the Application contains the Report on Consolidated Financial Statements of Lavasa Corporation Limited, its subsidiaries, its associates and its Joint Ventures which comprises Consolidated Balance Sheet as on 31 March 2018, 31 March 2019 & 31 March 2020.</p> <p>b. The Consolidated Statement of Profit and Loss (including Comprehensive Income), Consolidated Cash Flow Statements and Consolidated Statements of changes in Equity by an Independent Auditor – Walker Chandiok & Co LLP, is also contained therein.</p>
11.	Inter-looping of debts	<p>a. WPSL and DRL have only one financial creditor each which are also amongst the financial creditors of Lavasa.</p> <p>b. The entire Financial Debt of DRL and WPSL is guaranteed by Lavasa and the financial creditors have already admitted the said financial claim in Lavasa. (See entry 6 above)</p>
12.	Singleness of	The group is known by its brand name

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	Economic Units	<p>“Lavasa”. Therefore, the entire economics of the group revolve around this brand name as the businesses of these entities are interdependent. The group as a whole therefore, has a common economic feature to sustain and promote the business operation.</p> <p>The entire purpose of incorporation of each of these entities is towards the creation, management and maintenance of a unified entity i.e. “Lavasa Hill Township”</p>
13.	Common Financial Creditors	<p>a. The entire debt of WPSL (100% subsidiary of Lavasa) has been admitted as financial debt of Lavasa.</p> <p>b. Further, the Financial Creditor of WPSL (L&T Infrastructure Finance Company Limited) is also creditor of Lavasa.</p> <p>c. (DRL) (100% Subsidiary of Lavasa) has one Financial Creditor (Central Bank of India) which is also the financial creditor of Lavasa Corporation Limited.</p>
14.	Common Group of Corporate Debtors	<p>a. There will be no increase in the total financial debt to be resolved on account of the proposed consolidation.</p> <p>b. The entire financial debt of DRL and WPSL is guaranteed by Lavasa and</p>

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		Financial Creditors have already admitted the same debt as financial debt of Lavasa. All the entities are 100% subsidiaries of Lavasa.
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9. We have gone through the contents of the present application and considered the facts and peculiar circumstances of the present case. We feel that lack of consolidation of the CIRPs with its other subsidiary which already under CIRP would not serve practical purpose and therefore defeat the objective of the Code, to maximize the value of the Corporate Debtor and its subsidiaries comprehensively a resolution of Lavasa Corporation Limited can only be possible with consolidation of CIRP with its subsidiaries under the CIRP.

10. It is also stated that LCL Group of Companies are engaged in development of a Township various functions like provision of stand-alone captive power is provided by WPSL, running of basic transport etc. is by WAML, maintaining and running the Convention Centre is by DCCL, running the retail operations within the premises of LCL is by DRL. Therefore, the inter-linkages and synergies between these Companies to keep LCL as a running Township cannot be over-emphasized and, therefore, to achieve a more value maximization deal, it becomes imperative that any Resolution Applicant bids for these inter-

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linked Companies by way of a single offering which would result in achievement of higher value.

11. It is also contended before us that the most of the Resolution Applicants have put “Consolidation” as a precondition to Resolution Plan. Hence, it would be difficult to find an isolated Resolution Plan for any of these Companies on a stand-alone basis if the supply and demand from rest of the Companies is not guaranteed but if consolidation of CIRP is ordered for above-mentioned group Companies of LCL then such difficulty may be removed due to coordinated/ consolidated manner, and there is possibility of much more maximization of the value of the assets of the Corporate Debtor.
12. It is clear from the above stated facts of the case that each of subsidiaries of LCL depends on the outcome of LCL’s CIRP.
13. Therefore, we are of the confirmed view that present IA deserved to be allowed in terms of its prayer clause. Hence, it is allowed with following direction: -
 - i. A Consolidated Corporate Insolvency Resolution Process in respect of Lavasa Corporation Limited along with its 100% subsidiary Company viz. Dasve Retail Limited, which is also under going the CIRP.

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- ii. The Applicant the Resolution Professional of the parent Company i.e. of Lavasa Corporation Limited is now hereby appointed as the Resolution Professional for the Consolidated CIRP of the Corporate Debtor (LCL).
 - iii. An initial time period of 90 days from the date of this Order is granted to complete the Consolidated CIRP of Lavasa Group. Further the RP is at liberty to approach this Adjudicating Authority for further extension provided that facts and circumstances of the case warrants so.
14. With the aforesaid direction/observation the present IA 2238 of 2020 In CP (IB) 936/MB/2020 is **allowed** and stands **disposed of**.

Sd/-

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)
13.05.2021
SAM

H.P. CHATURVEDI
Member (Judicial)