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

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

Under section 10 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

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

Through its Resolution Professional,

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

Order Delivered on 08.02.2021

Coram:

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

Appearances:

For the Corporate Applicant	:	Mr. Ravi Kadam, Senior Counsel, a/w Mr. Ameya Gokhale, Ms. Salonee Kulkarni,

Ms. Kirti Kalyani i/b Shardul Amarchand Mangaldas & Co.

For the Financial Creditor : Mr. Rugved More, Advocate.

ORDER

Per: Mr. H. P. Chaturvedi, Member Judicial

1. This Company Petition is filed by Dasve Retail Limited (hereinafter called "Corporate Debtor"), through Resolution Professional of Lavasa Corporation Limited (LCL). Corporate Debtor is a wholly owned subsidiary of Lavasa Corporation Limited (LCL) Mr. Shailesh Verma, (hereinafter called "Corporate Applicant"), IBBI registration no.: IBBI.IPA-002/IP-N00070/2017-18/10148 under Section 10 of Insolvency and Bankruptcy Code 2016 ("the Code") read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, for initiation of Corporate Insolvency Resolution process.

2. The Corporate Applicant that the Corporate Debtor's registered office is situated at Hincon Home, L.B.S Marg, Vikhroli (West), Mumbai-400093 incorporated on 08.10.2008 vide CIN U51109MH2008PLC187367 on the file of Registrar of Companies, having nominal share capital of Rs.1,00,00,000/-.

3. The Corporate Applicant is the Resolution Professional of the Lavasa Corporation Limited (LCL) appointed by this Adjudicating Authority vide an order dated 15.10.2018 passed in

C.P. No. 1765 of 2018. LCL is currently undergoing CIRP which was initiated on 30.08.2018, when the petition being C. P. No.1765 of 2018, filed by the Operational Creditor against LCL was admitted.

4. The Corporate Applicant submits that presently, two other wholly owned subsidiaries, viz. Dasve Convention Centre Ltd. ("**DCCL**") and Warasgaon Asset Management Ltd. ("**WAML**") are also undergoing CIRP before this Adjudicating Authority in C.P. No. 574 of 2019 and C.P. No. 1757 of 2018 respectively. Further, the Corporate Applicant Submits that in MA 3664/2019 in C.P.(IB)- 1765, 1757 & 574/MB/2018 in Lavasa Corporation Limited and Warasgaon Assets Management Limited and Dasve Convention Centre Limited under section 60(5) of the Insolvency and Bankruptcy Code, 2016 this Adjudicating Authority has passed an order to allow consolidation of the CIRP of LCL, with that of its two subsidiaries, i.e. DCCL and WAML placed as Annexure VII A at page 208-224 of the Petition.

5. The Corporate Applicant submits that the primary rationale for consolidating the CIRP is that the creditors of the parent company and its subsidiaries are common, it would be expedient and in the interest of the creditors to resolve their debt in a single consolidated process. The said Consolidation Order dated 26.02.2020 states that the Corporate Debtor is also wholly owned subsidiary of LCL, owes debts to creditors who are also the Financial Creditors of the parent company. It has been

recognized in the Consolidation Order with respect to the Corporate Debtor that: -

"*15. Dasve Retail Limited (DRL) is again a wholly owned subsidiary of LCL. DRL has only one Financial Creditor, i.e. Central Bank of India, which like DCCL is also among the Financial Creditors of LCL. The entire financial Debt of DRL has been admitted as with Financial Debt of LCL pursuant to the Corporate Guarantee and Security provided by LCL to the lenders of DRL. The sole business of DRL is operation of retail business for the properties belonging to LCL. It is clarified that such infrastructure is not owned by DRL but only by LCL. Like DCCL, WAML and WPSL, the revenue stream of DRL will cease to exist with the Insolvency of LCL. The sole Financial Creditor of DRL has confirmed to the Resolution Applicant that it would prefer the Resolution of its Debt as part of the consolidated Resolution Plan for LCL.*"

"23(II) Warasgaon Power Supply Limited and Dasve Retail Limited are also 100% Subsidiaries and have L&T Infrastructure Finance Company Limited and Central Bank of India respectively as the sole Financial Creditors who have agreed to resolve its Debt as part of the Consolidated Resolution Plan of LCL. However, since Warasgaon Power Supply Limited and Dasve Retail Limited are not undergoing CIRP, therefore, the Consolidated CoC of LCL, WAML and DCCL may take an informed decision regarding resolution of debt of

Warasgaon Power Supply Limited (WPSL) and Dasve Retail Limited (DRL)"

6. The Corporate Applicant submits that pursuant to the passing of the Consolidation Order, a meeting of the consolidated Committee of Creditors ("**CoC**") of LCL was held on 03.03.2020, wherein the consolidated CoC has passed a resolution enabling the Corporate Applicant, as the Resolution Professional of LCL, to file the present petition under Section 10 of the Code, for the initiation of CIRP in respect of present Corporate Debtor.

7. The Corporate Applicant submits that the Corporate Debtor has no directors or employees at present. Further since the business of the Corporate Debtor is that of retailing properties leased by the LCL (parent company), it is intrinsically linked to the business of LCL which 99.99% shareholder of the Corporate Debtor. Therefore, the Corporate Debtor has been conducting minimal business.

8. The Corporate Applicant submits that since the subsidiaries are separate legal entities, it has not taken control of management of day to day activities of the Corporate Debtor. Since the Corporate Debtor does not have any management of its own the Committee of Creditors of LCL in a meeting dated 15.05.2019 have appointed Mr. Sureshkumar Pendharkar to deal with the activities of the Corporate Debtor.

9. The Corporate Debtor availed a Term loan facility from Central Bank of India *vide* Sanction letter dated 27.06.2015 and Facility agreement dated 29.06.2015 placed as Annexure I (B), Page 17 – 39 of the Petition, whereby Central Bank of India disbursed a loan amount of Rs. 20 Crores to the Corporate Debtor against mortgage of movable and immovable property. LCL being the parent company furnished a Corporate Guarantee dated 29.06.2015 in favour of the Corporate Debtor placed as Annexure VI at page 182 – 190 of the Petition on basis which Central Bank of India has also filed a claim in the CIRP of LCL. Further the Corporate Applicant submits that an inter-corporate deposit was advanced by LCL to the Corporate Debtor to the tune of Rs.75,02,379 (Rupees Seventy-five lakh two thousand three hundred and seventy-nine only).

10. The Petition reveals that the Corporate Debtor has defaulted in the repayment of the aforesaid amount, to the tune of Rs.25.88 Crores (Rs.18.64 crores along with interest amounting to Rs.7.24 crores only as on 29.02.2020). The record of default supported by relevant documents is provided in a detailed manner which are as follows:

    a. Copy of books of accounts of the Corporate Debtor evidencing defaults to creditors (Refer Annexure IVA, Pgs 75 - 100 (Refer item 12 @ Pg 93 of the Petition)

b. Loan Recall Notice dated 25.05.2018 issued by Central Bank of India under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor seeking repayment of the outstanding loan amount. (Refer Annexure IV B, Pgs 101- 102 of the Petition)

c. List of financial and operational creditors of the Corporate Debtor (Refer Annexure VI C, Pg 180 of the Petition)

d. Books of accounts of Corporate Debtor for FY 2017-18 as of 31.03.2018 (Refer Annexure VI A, Pg 143 – 147 of the Petition).

11. The Corporate Debtor further has also defaulted on the deposit which was advanced by LCL to the tune of Rs.75,02,379 (Rupees Seventy-five lakhs two thousand three hundred and seventy-nine only). An interest of Rs.9,79,060 (Rupees nine lakh seventy-nine thousand and sixty only) is further due against the said inter-corporate deposit as on 15.03.2020.

12. Thus, the Corporate Debtor has defaulted totally to the tune of Rs. 26,73,90,224 (Rupees twenty-six crores seventy-three lakhs ninety thousand two hundred and twenty-four only) towards financial creditors, i.e. Central Bank of India and LCL. Further, the Corporate Debtor owes an amount of Rs.11,19,101/-

(Rupees eleven lakhs nineteen thousand one hundred and one only) to its operational creditors. The Corporate Debtor has an unpaid TDS liability for the month of March, 2020 of Rs.1,43,669/- (Rupees one lakh forty-three thousand six hundred and sixty-nine only) and an outstanding GST liability of Rs.46,025 (Rupees forty-six thousand and twenty-five only) for the month of September 2020.

13. We have gone through the contents of the present IB petition and perused the documents annexed therewith having heard learned Senior Counsel for the Corporate Applicant, we find that the Corporate Debtor is liable to make payment to financial and operational creditors, of its debts and the default has occurred in making payments thereof.

14. Therefore, this adjudicating authority find the Petition contains the all the requisite particulars as required u/s 10 of the IB Code. Hence, its filing is in order and it is found complete as per the IB Code 2016 and Rules and Regulations made thereunder. Hence the present IB Petition deserves Admission and CIRP to be triggered in respect of the Corporate Debtor.

15. Therefore, this adjudicating authority hereby Admit the present Petition declaring the Moratorium in respect of the Corporate Debtor u/s 14 of the IB Code with the following consequential directions:

(a) That this Adjudicating Authority hereby prohibits 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 as per Section 14(1)(a) of the Code;

(b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein as per Section 14(1)(b) of the Code;

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 as per Section 14(1)(c) of the Code;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor as per Section 14(1)(d) of the Code;

(e) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector

regulator.

(g) That the order of moratorium shall have effect from this date till the completion of the corporate insolvency resolution process or until this Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

(h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(i) That this Adjudicating Authority hereby appoints **Mr. Shailesh Verma,** (Registration No. BBI.IPA-002/IP-N00070/2017-18/10148, having address at E1004, Vijaya Apartments, Mall Road, Ahinsa Khand 2, Near Shanti Gopal Hospital, Indirapuram, Ghaziabad, Uttar Pradesh, 201014) as Interim Resolution Professional to carry out the functions as mentioned under the Code.

16. Accordingly, this Petition is admitted.

17. The Registry is hereby directed to communicate this order to the Applicant and the Interim Resolution Professional at the earliest.

Sd/- **Sd/-**

RAVIKUMAR DURAISAMY
Member (Technical)

H.P. CHATURVEDI
Member (Judicial)

08.02.2021
SAM