

In the National Company Law Tribunal  
Mumbai Bench.

**MA 3664/2019** in C.P.(IB)-1765, 1757 & 574/MB/2018

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

In the matter of

Axis Bank Limited L&T Infrastructure Finance Company Limited Central Bank of India Allahabad Bank Corporation Bank Asset Reconstruction Company of India Ltd. Karnataka Bank Ltd. and Union Bank of India <b>through</b> Union Bank of India Mumbai-400 021.	}	Applicant
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In the matter of

**C.P. 1765/IB/NCLT/MB/2018**

Lavasa Corporation Limited : Corporate Debtor

**AND**

In the matter of

**C.P. 1757/IB/NCLT/MB/2018**

Warasgaon Assets Maintenance Limited : Corporate Debtor

**AND**

In the matter of

**C.P. 574/IB/2018**

Dasve Convention Centre Limited : Corporate Debtor

Order delivered on : 26.02.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)  
Hon'ble Shri Chandra Bhan Singh, Member (Technical).

For the Petitioner(s) : Mr. Pradeep Sancheti, Senior Advocate, a/w. Mr. Pulkit Sharma, Mr. Prateek Mishra & Mr. Rugved More, i/b. L&L Partners, Advocates for Applicants, Mr. S.R. Firodiya, Advocate for Operational Creditor, R.K. Najam, Advocate.

For the Respondent(s) : Mr. Deep Roy, Advocate, for Resolution Professional of WAML, Ameya Gokhale, Salonee Kulkarni, Kriti Kalyani, i/b. Shardul Amarchand Mangaldas & Company for Resolution Professional of Lavasa, Mr. Devarajan Raman, PCS, Rep. Resolution Professional Mr. Mahesh Kumar Gupta.

***Per Chandra Bhan Singh, Member (Technical).***

**ORDER**

**1.** This Application is preferred by Axis Bank Limited, L&T Infrastructure Finance Company Limited, Central Bank of India, Allahabad Bank, Corporation Bank, Asset Reconstruction Company of India Ltd., Karnataka Bank Ltd. and Union Bank of India, being the financial creditors of Lavasa Corporation Limited ("**LCL**") AND/ OR Warasgaon Assets Maintenance Limited ("**WAML**"). By way of this Application the Applicant seeks 'consolidation' of the respective insolvencies of LCL and two of its wholly-owned subsidiaries, **WAML** and Dasve Convention Centre (**DCCL**) and the Resolution of the Debt of

Warasgaon Power Supply Limited ("**WPSL**") and Dasve Retail Limited ("**DRL**"). The Applicant mainly has prayed for the following:-

**1.1.** Direction by this Bench for reconciliation of the List of Creditors of LCL, WAML and DCCL by the respective Resolution Professionals appointed under CIRP.

**1.2.** Consolidation of CIRP of LCL, WAML and DCCL and submission and approval of one Consolidated Resolution Plan in respect of all the three group companies.

**2.** The Corporate Insolvency Resolution Process ("**CIRP**") of LCL was initiated upon the Admission of the Company Petition, filed by Raj Infrastructure Development (India) Private Limited ("**Operational Creditor**"), under the Order dated 30<sup>th</sup> August 2018 passed by this Hon'ble Tribunal.

**3.** Subsequent to the "Admission" of the above-mentioned Company Petition, another Petition by the Operational Creditor was Admitted by a different Bench of this Hon'ble Tribunal against WAML on December 20, 2018 in CP No. 1757/IB/NCLT/MAH/2018.

**4.** Then, on a Petition under section 9 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") filed by Highbrow Audio Visual Services Private Limited came to be admitted against DCCL.

**5.** LCL was incorporated under Companies Act 1956 and was granted permission by the Urban Development Department, Government of

Maharashtra to develop a hill station in 18 villages in Taluka Mulshi and Velhe in district Pune of Maharashtra. LCL has in total 49 subsidiaries and/ or joint ventures.

**6.** WAML is a wholly-owned subsidiary of LCL and was incorporated to design, develop, engineer, procure, finance, construct, operate and maintain the transportation infrastructure/ project facility including right of collection of usage charges at its Hill Station Township. The assignment of the rights in relation to the project infrastructure was provided by LCL to WAML, by an Agreement dated 22.06.2012.

**7.** DCCL : DCCL is a 100% subsidiary of LCL. DCCL was incorporated for running and maintaining the Dasve Convention Centre, at the premises leased by it from LCL. To this end, a Lease Agreement dated 30.09.2010 was executed between LCL and DCCL. However, since the said Agreement was not duly stamped and registered, the same has been cancelled by the Resolution Professional of LCL.

**8.** The CIRP of LCL had commenced on 30.08.2018 and the Expression of Interest (EoI) was floated for the first time on Nov. 13, 2018 with multiple extension was provided for the submission of EoI on 07.12.2018, 18.12.2018, 08.01.2019, 17.01.2019, 25.02.2019, 11.04.2019, 25.04.2019 and 24.05.2019. After substantial effort only 3 (three) Resolution Applicants submitted their Resolution Plan for the Corporate Debtor.

**9.** In case of WAML, the CIRP had commenced on 17.12.2018 and the EoI was floated on 24.05.2019. However, despite substantial effort as on date the Applicant (LCL) has mentioned that no Resolution Plan has been received for WAML.

**10.** The CIRP of DCCL had commenced on 05.02.2019 and the EoI was floated on 26.05.2019, however, for DCCL also no Resolution Plan has been received.

**11.** The Resolution Professional of LCL mentions that the Resolution Applicants in their proposal to submit Resolution Plans of LCL had proposed that as a pre-condition the entire group Debt with respect to LCL Group Company should be extinguished instead of stand-alone Debt of LCL. However, the Applicant mentions that taking a call on these conditions are not within the control of LCL.

**12.** The Applicant mentions that WAML is a 100% subsidiary of LCL and its sole business is to manage the infrastructure of LCL and therefore directly inter-linked to that of LCL. The contract under which the infrastructure is managed could cease to have any force and effect after LCL's Resolution/ Liquidation and would thus leave WAML as an entity without any business or revenue stream. It is further submitted by the Applicant that the Lenders of WAML had provided the Loan to WAML for the purposes of funding the payment of the security deposit payable to LCL under the terms of the Concession Agreement executed between WAML and LCL. It is submitted that the payments proposed to be made

by WAML to LCL under the terms of the Concession Agreement would be utilized for the repayment of the debt by LCL to its Financial Creditors. LCL had also provided a corporate guarantee towards the repayment of the entire Debt owned by WAML to its lenders. Also, the entire shareholding of WAML has been pledged in favour of its lenders by LCL.

**13.** The DCCL, undergoing CIRP since 05.02.2019 does not have any Financial Creditor as the property belongs to LCL and its sole business is to operate the Convention Centre located in the Lavasa City. LCL owns the property in which DCCL is carrying out its business operation. Pursuant to the cancellation of Unregistered Lease Deed, DCCL would not have any business or revenue stream and therefore cannot receive any Resolution on a stand-alone asset.

**14.** Warasgaon Power Supply Limited (WPSL) is a wholly owned subsidiary of LCL, though not undergoing CIRP, has only one Financial Creditor i.e. L&T Infrastructure Finance Co. which is also among the Financial Creditors of LCL. The entire financial Debt of WPSL has been admitted as Financial Debt of LCL pursuant to the Corporate Guarantee and security provided by LCL to the Lender of WPSL. Further, WPSL is a 100% subsidiary of LCL and its business is to develop, operate and maintain the power and infrastructure of Lavasa Project. The Infrastructure of WPSL is owned by LCL. The contract under which the infrastructure is managed of WPSL would cease to have any force after LCL's Resolution / Liquidation and thus leaving WPSL as an entity with

no business or revenue stream. It would be interesting to note here that L&T, the sole Financial Creditor of WPSL who is also the Financial Creditor of LCL has confirmed that it would prefer its financial debt in WPSL to be resolved as part of the Consolidated Resolution Plan for LCL.

**15.** Similarly, 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.

**16.** The entire Financial Debt of WAML, DCCL, DRL and WPSL is guaranteed by LCL and the claims of the Financial Creditors are already admitted as Financial Debt in LCL. Therefore, there will be no increase the total Financial Debt to be resolved on account of the proposed consolidation.

**17.** Along with the Applicant, the CoC of WAML through the Resolution Professional in their written submission have submitted that the

Resolution of WAML should be consolidated with that of LCL. However, DCCL, a 100% subsidiary of LCL who is maintaining the Dasve Convention Centre leased by it from LCL through an Unregistered Agreement dated 30.09.2010 through the Resolution Professional mentioned before this Bench that it wants an independent Resolution of DCCL. Here it may be noted that even the unregistered Lease has been cancelled by LCL.

**18. FINDINGS :-**

**18.1.** It appears from the facts mentioned above that lack of consolidation of the CIRPs of these Corporate Debtors viz. WAML and DCCL which are already under Insolvency and Resolution of the Debt of WPSL and DRL can only happen along with the LCL, who is the Corporate Debtor and owner of the Township. Any stand-alone Resolution does not seem to be possible and would therefore defeat the objective of the Code, which is to maximise the value of the Corporate Debtor. In case of DRL and WPSL, Resolution of its Debt is directly linked to the Resolution of LCL. The Debt of DRL and WPSL on a stand-alone basis can never happen and only when it is consolidated with LCL, that Resolution may happen. However, this Bench is aware that DRL and WPSL is not undergoing Insolvency.

**18.2.** In case of LCL Group of Companies 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-linked good Companies by way of a single offering which would result in achievement of higher value.

**18.3.** As has been mentioned in the Application of consolidation of LCL that most of the Resolution Applicants have put "Consolidation" as a pre-condition to Resolution Plan. Therefore, it would be harder to find a 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. However, if all the above-mentioned group Companies of LCL are resolved in a coordinated/ consolidated manner, a much more value maximising Resolution could be achieved.

**18.4.** This case for consolidation of CIRP of various LCL Group Companies is akin to Insolvency Resolution of different Videocon Companies by way of Consolidation of separate proceedings by treating the Corporate Insolvency Resolution Process (CIRP) as one for all these Companies. In case of State Bank of India Vs. Videocon Industries Limited, in MA 1306/2018 in CP(IB)-02/2018, vide a decision dated 08.08.2019, 13 yardsticks for looking into the rationality of "consolidation" was enumerated. We are inclined to test whether in case

of LCL Group Companies those yardsticks/ criteria are being met or not. Each of the yardstick/ criterion and the manner in which it is being met in the case of Insolvency of LCL and its Group Companies are as under:-

- I. **Common Control**: WAML, DCCL, WPSL and DRL are all wholly-owned subsidiaries (100% shareholding) of LCL. Each Company mentioned above has its registered office at "Hincon House, Lal Bahadur Shastri Marg, Vikhroli (West), Mumbai-400083". Further, LCL, DCCL, WAML and DRL each has reported a common e-mail address to the Ministry of Corporate Affairs ("**MCA**").
- II. **Common Directors**: Basis a review of the Company Master Data available on the website of the Ministry of Corporate Affairs, the details indicate common directorship between the group entities.
- III. **Common Assets**: WAML, DCCL, WPSL and DRL operate a common set of assets and office infrastructure owned by LCL. DCCL is/ was in the business of maintaining a Convention Center on premises leased by LCL. WAML's business relates to, *inter alia*, maintaining the transport infrastructure at LCL's Hill Station Township. DCCL, WAML, WPSL and DRL also reflect that relevant personnel and office infrastructure are common.
- IV. **Common Liabilities**: The entire Financial Debt of WAML, DRL and WPSL is guaranteed by LCL and the claims of Financial Creditors in this regard have already been admitted by the Resolution Professional of LCL.

- V. **Inter-dependence:** Taking into account the business of LCL, WAML, DCCL, DRL and WPSL as well as the agreements executed between them, it is evident that there is a substantial inter-dependence amongst each other. The business of each of these are inter-linked and intertwined to the extent that the fate of WAML, DCCL, DRL and WPSL depends greatly on the outcome of LCL.
- VI. **Inter-lacing of Finance:** As far as WAML is concerned, there was a financing arrangement between WAML and Lavasa whereby LCL had agreed to provide third party security interest including mortgage over immovable properties at the Hill Station Township to secure the financing to be availed by WAML. L&T which is a Financial Creditor of LCL is the only Financial Creditor of WPSL, similarly, Central Bank of India which is a Financial Creditor of LCL is the only Financial Creditor of DRL. As per LCL's Company Master Data, it has created a charge over its 5979967 equity shares in WAML. CIRP of LCL would result into ceasing of contracts between subsidiaries and LCL leaving its subsidiaries with no assets or business streams. The entire Financial Debt of WAML, DRL and WPSL is guaranteed by LCL and the claims of Financial Creditors in this respect have already been admitted by the Resolution Professional of LCL.

- VII. **Pooling of Resources:** LCL, WPSL, DCCL and DRL depend upon a common set of assets for functioning of their respective businesses.
- VIII. **Co-existence for survival:** WAML is 100% subsidiary of LCL and its business is solely to manage certain infrastructure of Lavasa at Lavasa Hill Township and therefore directly interlinked to that of LCL. DCCL's sole business is to operate the convention centre located in the Lavasa Hill Township built on land leased out by LCL. WPSL is a 100% subsidiary of LCL and its business is solely to develop, operate and maintain the power and infrastructure facility of the LCL at the Lavasa Hill Township. DRL is a 100% subsidiary of Lavasa and its business is operation and management of retail outlets in Lavasa Hill Township belonging to LCL. In view of the above, it is clear that the survival of the subsidiaries was dependent on LCL.
- IX. **Intricate Link of Subsidiaries:** Consolidated Accounts, Pooling of Resources, Common Assets, and Inter-dependent business functions are examples of intricate link amongst subsidiaries.
- X. **Inter-twined Accounts:** The Application contains the Report on Consolidated Financial Statements of Lavasa Corporation Limited, its subsidiaries, its associates and its Joint Ventures which comprises of Consolidated Balance Sheet as on 31 March 2018.
- XI. **Inter-looping of Debts:** WPSL and DRL have only one Financial Creditor each of which are also amongst the Financial Creditors of

LCL. The entire Financial Debt of WAML, DRL and WPSL is guaranteed by LCL and the claims of Financial Creditors in this respect have already been admitted by the Resolution Professional of LCL.

- XII. **Singleness of Economic Units**: The group is known by its brand name "Lavasa". Therefore, the entire economics of the group revolves 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. 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".
- XIII. **Common Financial Creditors**: The entire Debt of WPSL (100% subsidiary of Lavasa) has been admitted as Financial Debt of Lavasa. Further, the Financial Creditor of WPSL (L&T Infrastructure Finance Company Limited) is also Creditor of Lavasa. DRL (100% subsidiary of Lavasa) has one Financial Creditor (Central Bank of India) which is also the Financial Creditor of Lavasa Corporation Limited.
- XIV. **Common Group of Corporate Debtors**: There will be no increase in the total Financial Debt to be resolved on account of the proposed consolidation. The entire Financial Debt of WAML, DRL and WPSL is guaranteed by Lavasa and claims of the Financial

Creditors in this regard have already been admitted by Resolution Professional of LCL. All the entities are 100% subsidiaries of LCL.

**19.** As far as LCL and WAML are concerned, the CoC of both the Companies have agreed for consolidation. However, the CoC of Dasve Convention Centre Limited (DCCL) consists only of Operational Creditors. DCCL is a 100% subsidiary of LCL and the assets belongs to LCL only. The DCCL was incorporated for running and maintaining of the Convention Centre belonging to LCL. A Lease Agreement dated 30.09.2010 was executed between LCL and DCCL, however, the Agreement was not duly stamped and was unregistered. The Resolution Professional of LCL mentions that in the Lease Deed dated 23.09.2002 signed between Maharashtra Krishna Valley Development Corporation and Corporate Debtor (the Lessee) i.e. LCL it was decided as per Clause 18 of the Deed of Lease that LCL does not have right to assign the Leasehold rights to any other person. Therefore, the sub-Lease dated September 30, 2010 of the property, to DCCL (Deed of Sub-Lease) by the Corporate Debtor LCL without permission of the Lessor, i.e. Maharashtra Krishna Valley Development Corporation and by way of unregistered instrument without payment of adequate stamp duty is in contravention of applicable laws and therefore, vests no rights, interest, or title whatsoever in DCCL pursuant to Deed of Sub-Lease. Besides, as has been mentioned in the previous paragraphs the DCCL is 100% subsidiary of LCL and is part of Lavasa group and is not amenable to Resolution on a stand-alone basis. Therefore, this Bench is of the view

that DCCL Resolution be consolidated and clubbed with the parent Company.

**20.** DRL is a wholly owned subsidiary of LCL. It has only one Financial Creditor, i.e. Central Bank of India. In case of DRL also the entire Financial Debt has been Admitted as Financial Debt of LCL pursuant to the Corporate Guarantee and Security provided by LCL. The lone Financial Creditor, i.e. Central Bank of India, as an Applicant in the consolidation Application has mentioned that the financial Debt of DRL be resolved as part of the consolidated Resolution Plan for LCL. Keeping in view that DRL is a 100% subsidiary of LCL the infrastructure is not owned by DRL but by LCL and also revenue stream of DRL will cease to exist once LCL Resolution comes into effect, therefore, it is a fit case for where the Resolution of DRL be linked and decided with LCL. However, since DRL is not under CIRP "Consolidated" CoC of LCL, WAML and DCCL where the sole Creditor of DRL, i.e. a Member, may discuss their issue and take a call on consolidating it with the Consolidated Resolution Plan.

**21.** As far as WPSL is concerned, it is a wholly-owned subsidiary of LCL and is not undergoing CIRP. It has only one Financial Creditor, i.e. L&T Infrastructure Finance Company Limited. WPSL is a 100% subsidiary of LCL and the infrastructure is not owned by WPSL but is rather owned by LCL. L&T is one of the Applicants and has confirmed that it would prefer its Financial Debt to be resolved as consolidated Resolution Plan of LCL. The Corporate Guarantee and Security has been

provided by LCL to the lender of WPSL. The Resolution Professional of LCL mentions that the Debt of L&T has already been Admitted in case of LCL. In view of this, this Bench is of the view that the Resolution of Debt of WPSL like that of DRL be carried out in terms of consolidated Resolution Plan of the LCL.

**22.** It is clear from the above that the fate of each of the 100% subsidiaries of LCL viz. WAML, DCCL, DRL and WPSL depends on the outcome of LCL's CIRP. Looking at the substantial inter-dependence, this Bench is of the view that without consolidation of LCL group companies no Resolution of Insolvency of LCL and its 100% subsidiaries is possible and would result into a loss of huge value to all stakeholders and thereby defeating the objective of the Code.

**23.** In view of the above, this Bench orders the following:-

- I. A Consolidated Corporate Insolvency Process of Lavasa Corporation Limited and its 100% subsidiary Companies viz. Warasgaon Asset Maintenance Limited and Dasve Convention Centre Limited, all of which are undergoing CIRP.
- 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 the Resolution of Debt of Warasgaon Power Supply Limited (WPSL) and Dasve Retail Limited (DRL).

- III. As prayed by the Applicant and all the Financial Creditors of WAML, DRL and WPSL, the Resolution Professional of the parent Company i.e. of Lavasa Corporation Limited is appointed as the Resolution Professional for the Consolidated CIRP of the Corporate Debtor (LCL).
- IV. An initial time period of 60 days from the date of this Order is granted for the completion of the Consolidated CIRP of Lavasa Group. For any further extension, depending on the progress of the Consolidated CIRP, the CoC/ Resolution Professional may approach the Adjudicating Authority accordingly.

**24.** MA 3664/2019 in CP 1765, 1757 and 574 of 2018 is **"Allowed"** as indicated above.

Sd/-  
**CHANDRA BHAN SINGH**  
Member (Technical)  
Date : 26.02.2020  
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Sd/-  
**SUCHITRA KANUPARTHI**  
Member (Judicial)