**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**COURT II, MUMBAI BENCH**

**INTERVENTION PETITION NO. 32 OF 2024**
**IN**
**INTERLOCUTORY APPLICATION NO. 1956 OF 2024**
**IN**
**COMPANY PETITION (IB) NO. 1765/MB/2018**

***Application u/s 60(5) and 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T Rules, 2016.***

**In the matter of:**
**(Intervention Petition No. 32 of 2024)**

**Mukesh Mangale & Ors.**

**…Applicant/Intervenor**

**Versus**

**Darwin Platform Infrastructure Ltd;**
Regd Office: 502/F/3, Sundervan Complex,
Lokhandwala Link Road, Andheri West,
Mumbai-400 053.

**…. Non-Applicant**

**In the matter of: (I.A. No. 1956 of 2024)**
**Darwin Platform Infrastructure Ltd.**

**…Applicant**

**Versus**
**Union Bank of India & Ors. …. Respondent**

**In the matter between (CP(IB) No. 1765/2018):**
**Raj Infrastructure Development (India) Pvt. Ltd.**

**…Applicant**

**Versus**

**Lavasa Corporation Ltd. …Corporate Debtor**

**Order pronounced on 06.09.2024**.

**Intervention Petition No. 32/2024**
**IN**
**Interlocutory Application No. 1956 of 2024**
**IN**
**CP(IB) NO. 1765 (MB)/2018**

**Coram:**

**Shri. Kuldip Kumar Kareer : Member Judicial.**

**Shri. Anil Raj Chellan : Member Technical.**

**Appearances (in hybrid mode)**

For the Applicant/Intervenor : Counsel Mr. Aditya Raut a/w Shwetaank Nigam appeared through V-C.

For the Respondent : Sr. Adv. Gaurav Joshi a/w Counsel Dhruva Gandhi a/w Abhishek Kale, Deepak Deshmukh, Vivek Dwivedi and Nevil Chopra.

## ORDER

***Per: Coram***

1. This is an application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") seeking following reliefs:
   i. Permit the Applicants to intervene in I.A. No. 1956 of 2024;
   ii. Dismiss I.A. No. 1956 of 2024 as being vexatious and impose exemplary costs upon them;
   iii. Ratify the decision of the Lenders to encash the bank guarantee and restore the CoC and initiate CIRP afresh.

**Facts of the Case (in brief):**

2. The Applicants/Intervenors are a group of more than 500 homebuyers. The Non-Applicant i.e. Darwin Platform Infrastructure Ltd., is the Successful

Resolution Applicant ('SRA') of the Corporate Debtor i.e. Lavasa Corporation Limited.

3. First group of about 135 homebuyers and another group of 368 homebuyers have filed appeals before the Hon'ble NCLAT wherein the homebuyers have alleged serious irregularities in the resolution plan, some of which are as follows:
   a. Non-Applicant has not placed before this Tribunal that the Monitoring Committee of the Corporate Debtor under the chairmanship of the erstwhile Resolution Professional Mr. Shailesh Verma has been dissolved by the Lenders.
   b. There has been a fudging of figures and misrepresentation of facts which inter-alia comprises of fudging of net-worth, share capital and long-term liability figures, misrepresentation in valuation of shares and inconsistencies in MCA filings.
   c. Failure of the Non-Applicant to provide requisite instructions to Mr. Shailesh Verma, the erstwhile RP, to obtain extension of environmental clearance of the Corporate Debtor and full, complete and clear disclosure by Non-Applicant that a new/fresh environmental clearance for Phase I of the Corporate Debtor is not possible.

4. Some of the instances of fudging of figures and misrepresentation of facts are summarized hereinbelow for ready reference:

| **Fudging of Net Worth Figures-Reserves & Surplus:** | | |
|---|---|---|
| Financial Year | Extracts from Plan | Comparable Actual Figures Obtained from MCA Portal |
| 2020-2021 | 4,167.56 Crores | 10.76 crores |

| | | |
|---|---|---|
| 2019-2020 | 4,164.05 Crores | 7.19 crores |
| 2018-2019 | 4,162.23 Crores | 5.37 crores |

| **Fudging of Long-Term Borrowing Figures:** | | |
|---|---|---|
| Financial Year | Extracts from Plan | Comparable Actual Figures Obtained from MCA Portal |
| 2020-2021 | 1,914.03 Crores | 8,290.74 crores |
| 2019-2020 | 1,900.79 Crores | 6,057.65 crores |
| 2018-2019 | 1,900.79 Crores | 1,900.79 crores |

| **Misrepresentation in Valuation of Shares:** | | |
|---|---|---|
| Financial Year | Extracts from Plan | Comparable Actual Figures Obtained from MCA Portal |
| 2020-2021 | 5.00 Lakhs | 500.00 Lakhs |
| 2019-2020 | 5.00 Lakhs | 5.00 Lakhs |
| 2018-2019 | 5.00 Lakhs | 5.00 Lakhs |

5. Board of Directors of Non-Applicant vide their Resolution dated 10.08.2021 and Shareholders of Non-Applicant vide their Special Resolution in EGM on 02.09.2021 approved a conversion of Rs. 1,900.79 crores of unsecured interest-free loan of related party viz. Mr. Ajay Harinath Singh being 99.9% shareholder of the Company, into 49,192 equity shares of face value of Rs. 10/- each. Thus, the Board and Shareholders of Non-Applicant valued each equity share at a premium of Rs.3,86,000/- per equity share. Contrary to the foregoing, the equity shares have been allotted on preferential basis to only one shareholder of the company without any valuation, which is mandatory. This allotment was at par for non-cash consideration of Rs. 495 lakhs as per MGT-14 filed on

21.09.2021. Thus, while allotting the equity shares on preferential basis, the premium and valuation of about Rs. 3,86,000/- per equity share was ignored.

6. There have been misrepresentations in the Annual Report for FY 2018-19. It is surprising to note that Director's Report and Auditor's Report, both, are dated 30th June, 2019. The qualifying remarks of the auditors are as follows: "The Accounts have been re-opened by the Board of Directors with the approval of the shareholders to remove the assets being immovable property and the corresponding loan from director since the said property was never transferred to the name of the Company. Apart from the above, there are no changes in the financial statements of the Company." This anomaly is incomprehensible as shareholders' meeting was held on 31.05.2019, while the Director's Report and Auditor's Report, both, are dated 30th June, 2019. Further, it is impossible to comprehend that AGM of Non-Applicant was held on 30.09.2019 and there was no reference to the Shareholders' Meeting dated 31.05.2019.
7. Under the circumstances as mentioned hereinabove, action of the lead lender i.e. Union Bank of India, to invoke and encash the Performance Bank Guarantee of Rs. 25 crores provided by the Non-Applicant is unquestionably justified to expedite restoration of credibility in CIRP and maintain the status of the Corporate Debtor and Dasve Township as a going concern.
8. The present application is bona fide and made in the interest of justice, and if it is not entertained, there will be a grave prejudice caused to the Applicant.

## ANALYSIS AND FINDINGS

9. We have heard the learned Counsel for the Applicant and the Non-Applicant/Respondent.

10. The Applicants/Intervenors, being the home-buyers of the Corporate Debtor seek impleadment in I.A. No. 1956/2024 filed in the above-captioned Company Petition. I.A. No. 1956/2024 has been filed by the Successful Resolution Applicant ('SRA') seeking, *inter-alia,* exclusion/extension of time to make payments under the approved resolution plan for its effective implementation and to declare the invocation of performance bank guarantee by Union Bank of India as illegal, non-est and bad in law. The Applicants herein seek to oppose the IA filed by the SRA and have prayed for ratifying the decision of lenders/CoC to invoke performance bank guarantee as also for starting the CIRP afresh.

11. As per the scheme of the Code, the body of committee of creditors set up in accordance the provisions of the Code and CIRP Regulations is entrusted with the responsibility of conducting the CIRP process through the Resolution Professional and take all commercial decisions including but not limited to the matters relating to resolution plan. Though there are many stakeholders and interested parties in the resolution process of every corporate debtor, there is no provision in the Code for all of them to be part of the CIRP process or be part of the commercial decisions taken during the period. Obviously, this is necessary to conduct the CIRP process in an effective and time bound manner. It is true that the Applicants, who are home buyers, are very much interested in the resolution of the Corporate Debtor, but their presence or say is not essential to decide the issues involved or reliefs sought in the application. It is also a matter of record that I.A. No. 1956/2024 is being vehemently contested by the respondent therein, who is a secured financial creditor and member of CoC of the Corporate Debtor. Furthermore, the Intervenors/Applicants herein have failed to establish that their intervention in IA No. 1956/2024 is utmost

necessary for effective disposal of the said application. The Intervenors/Applicants herein, if at all would be aggrieved by the Order to be passed by the Adjudicating Authority in I.A. No. 1956/2024, the right to file appeal u/s 61 of the Code would be available to them and the Applicants do not have a right to agitate the same at this stage.

12. In view of the foregoing discussion, we hold that the Applicants/Intervenors herein are neither necessary party nor proper party for adjudication of IA No. 1956/2024 and thus, we are not inclined to exercise our discretion to implead the Applicants as a party to the aforesaid IA, as the same is wholly unnecessary for effective, complete and final decision on the questions involved therein. **Hence, we hereby dismiss Intervention Petition No. 32 of 2024 with no order as to costs.**

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **ANIL RAJ CHELLAN** | **KULDIP KUMAR KAREER** |
| **(MEMBER TECHNICAL)** | **(MEMBER JUDICIAL)** |

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**COURT II, MUMBAI BENCH**

**INTERLOCUTORY APPLICATION NO. 1765 OF 2024**

**IN**

**COMPANY PETITION (IB) NO. 1765/MB/2018**

***Application u/s 60(5) read with Section 74 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T Rules, 2016.***

**In the matter of (I.A. No. 1765/2024):**

1. **Mr. Abhijeet Pramod Pawar**
2. **Apex Association of Lavasa Property Owners**
3. **Ashiana Housing Limited**

**….Applicants**

**Versus**

1. **Mr. Shailesh Verma, Resolution Professional of Lavasa Corporation Ltd.**
2. **Lavasa Corporation Limited.**
3. **Darwin Platform Infrastructure Ltd.**
4. **State Bank of India**
5. **Union Bank of India**
6. **Bank of India …. Respondents**

**In the matter between (CP(IB) No. 1765/2018):**

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

**…Operational Creditor**

**Versus**

**Lavasa Corporation Ltd. …Corporate Debtor**

**Order pronounced on 06.09.2024**.

**Interlocutory Application No. 1765 of 2024**
**IN**
**CP(IB) NO. 1765(MB)/2018**

**Coram:**

**Shri. Kuldip Kumar Kareer : Member Judicial.**

**Shri. Anil Raj Chellan : Member Technical.**

**Appearances (in Physical mode)**

For the Applicant : Adv. Sandesh R. Shukla i/b Adv. Vivek Patil.

For the Respondent : Sr. Adv. Prateek Seksaria, Adv. Naman Jain appeared for Respondent No.5.

## ORDER

***Per: Coram.***

1. This is an application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") seeking following reliefs:
   i. To order and direct Respondent No.03 (i) to execute the Order dated 21st July, 2023 passed by this Tribunal and forthwith implement its resolution plan by taking over the complete management and operations of Respondent No.02 and Lavasa Project; and (ii) to bear the day-to-day/monthly expenses of Respondent No.02 and the Lavasa Project with immediate effect; and
   ii. To order and direct the members of the erstwhile Committee of Creditors i.e. Respondent Nos. 04 to 06 herein together with the Monitoring Committee to co-operate with Respondent No.03 for expeditious implementation of the resolution plan.

**Facts of the Case (in brief):**

2. The Applicant No.01 is one of the 29 employees of Respondent No.03 and is filing this application on behalf of himself and other 28 co-workers of Respondent No.01, authorised under a Power of Attorney dated 28th December, 2023. Applicant No. 02 is an Association registered under the Societies Registration Act, 1960, and Maharashtra Public Trust Act, 1950. Applicant No. 2 is representing about 600 small property owners in Lavasa City Project. Applicant No. 03 is a company registered under the Companies Act, 1956 and is engaged in setting up homes for senior citizens at Lavasa. Applicant No. 03 has set up such a retirement homes on land taken on a 999 Year lease from Respondent No. 02. It is called 'Ashiana Utsav Lavasa". At this time, there are about 400 senior citizens residing in this retirement home.
3. Respondent No. 1 is the erstwhile Resolution Professional of Respondent No. 2. Respondent No.2 is primarily engaged in the business of inter alia the construction and development of the Lavasa private hill station in Pune, District of Maharashtra. Respondent No. 3 is the Successful Resolution Applicant, whose Resolution Plan was duly approved by the Committee of Creditors ("COC") and thereafter by this Tribunal under Section 30(6) of the Code. Respondent Nos. 4 to 6 are the leading secured financial creditors and members of the COC constituted for the Corporate Insolvency Resolution Process ('CIRP') of Respondent No. 2. Except Respondent No. 4, all the said members of the COC participated in the approval of the Successful Resolution Plan for Respondent No. 2.
4. By an Order dated 21.07.2023, the Resolution Plan submitted by the Successful Resolution Applicant (i.e. Respondent No.03) came to be approved. Thereafter, the Letter of Intent (LOI) was issued to the said Respondent No. 3 and which was unconditionally accepted. On 31st December 2021, Respondent No. 1 received a copy of the Performance Bank Guarantee dated 18th January 2022

for an amount of INR 25 Crores issued by ICICI Bank on behalf of the Respondent No. 3 as per the terms of the approved Resolution Plan.

5. Thereafter, as per the Approval Order, a Monitoring Committee ("MC") comprising (i) erstwhile Resolution Professional i.e. Respondent No. 1, (ii) Successful Resolution Applicant (SRA) i.e. Respondent No. 3. and (iii) a representative of one of the secured financial creditors i.e. Respondent No. 5. The MC was constituted with the purpose of monitoring the implementation of the approved Resolution Plan within 90 days. On or around 25th October 2023, the period of 90 days (from date of Approval of Resolution Plan) stood expired and the Resolution Plan by Respondent No. 3 has not been implemented till this date. Hence this application.
6. Union Bank of India i.e., Respondent No. 5, had post approval of the Successful Resolution Plan by the NCLT Mumbai, filed an application before the NCL T being I.A. (IBC) - 4340/2023 before the NCLT Mumbai seeking recall of the Approval Order dated 21st July 2023 passed by the NCLT Mumbai. Simultaneously, the representative of Respondent No. 5 resigned from his position as a member of the said MC. The State Bank of India i.e., Respondent No. 4 has also filed Company Appeal (AT) (Insolvency) No.1354 of2023 directly before the Hon'ble NCLAT purporting to be aggrieved by the aforesaid Approval Order. As a consequence, the entire operations of the MC came to a grinding halt and as a consequence, no money was available to pay workers' wages, maintain the Lavasa City and pay for electricity charges. Therefore, the Applicants have been constrained to file the above-captioned application seeking necessary directions to the SRA and the CoC for implementation of the Resolution Plan.

7. **Reply filed by the Respondents:** None of the Respondents have filed their reply on record of this Tribunal.

## ANALYSIS AND FINDINGS

8. We have heard the learned Counsel for the Applicants and the Respondents.

9. By way of this Application, the Applicants are essentially seeking effective and expeditious implementation of the sanctioned Resolution Plan of Respondent No.03. To be more specific, the Applicants have sought the following reliefs:
   To order and direct Respondent No.03:
   (i) to execute the Order dated 21st July, 2023 passed by this Tribunal and forthwith implement its resolution plan by taking over the complete management and operations of Respondent No.02 and Lavasa Project; and
   (ii) to bear the day-to-day/monthly expenses of Respondent No.02 and the Lavasa Project with immediate effect;

10. Here, we wish to observe that the Successful Resolution Applicant/Respondent No.03 has already filed I.A. No. 1956/2024 seeking necessary directions for implementation of the sanctioned Resolution Plan. The Secured Financial Creditor, namely, Union Bank of India, who was also a former member of the Monitoring Committee, has filed an I.A. No. 2520/2024, seeking to restore the Corporate Debtor back to CIRP and allow utilisation of Rs. 25 crores obtained by invocation of performance bank guarantee on account of Respondent No.03's alleged failure to infuse funds for implementation of the sanctioned resolution plan. Thus, the issue of implementation of resolution plan and consequences following thereof, are sub-judice in the above-referred IAs. Hence, in our considered view, the instant application is not maintainable as the issue raised by the Applicants herein with respect to the implementation of the resolution plan by Respondent No.03, is already under consideration in the above-referred IAs.

11. When the Successful Resolution Applicant fails to implement the sanctioned Resolution Plan, it is the duty incumbent upon the Monitoring Committee of the Corporate Debtor to ensure its effective and expeditious implementation from the SRA, failing which the Monitoring Committee is entitled to take steps in accordance with law. Thus, we are of the considered view that the Applicants herein lack the necessary locus to seek effective and expeditious implementation of the sanctioned Resolution Plan of Respondent No.03.

12. In view of the above findings and discussion, we are of the considered view that it is wholly unnecessary to entertain the present application as the larger issue with respect to the implementation/non-implementation of resolution plan and consequences following thereof, are already under consideration in I.A. No. 1956/2024 and I.A. No. 2520/2024. Also, as held above, since the Applicants lack the locus, there is no question of considering the apprehensions of the Applicants raised in the instant IA. **Hence, we hereby dismiss I.A. No. 1765 of 2024** with no order as to costs.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **ANIL RAJ CHELLAN** | **KULDIP KUMAR KAREER** |
| **(MEMBER TECHNICAL)** | **(MEMBER JUDICIAL)** |

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**COURT II, MUMBAI BENCH**

**INTERLOCUTORY APPLICATION No. 1956 of 2024**

**IN**

**COMPANY PETITION (IB) NO. 1765/MB/2018**

***Application u/s 60(5) read with Section 74 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T Rules, 2016.***

**Darwin Platform Infrastructure Limited**

**…. Applicant**

**Versus**

1. **Union Bank of India**
2. **State Bank of India**
3. **Bank of India**
4. **Central Bank of India**
5. **Punjab National Bank**
6. **Indian Bank**
7. **Bank of Baroda**
8. **Phoenix ARC Private Limited**
9. **Asset Reconstruction Company of India Ltd. (ARCIL)**
10. **Axis Bank Ltd.**
11. **Asset Care & Reconstruction Enterprise Ltd. (ACRE)**
12. **SSG Investment Holding India Ltd.**
13. **Edelweiss Asset Reconstruction Company Ltd.**
14. **India Opportunities II Pte Ltd.**
15. **Karnataka Bank Ltd.**
16. **Bennett Coleman & Company Limited**

**17. Mr. Shailesh Verma**

Erstwhile Resolution Professional of Lavasa Corporation Limited,

Warasgaon Assets Maintenance Ltd.

Dasve Convention Centre Ltd.

Dasve Retail Ltd.,

Warasgaon Power Supply Ltd.

**…. Respondents**

**INTERLOCUTORY APPLICATION No. 2520 of 2024**

**IN**

**COMPANY PETITION (IB) NO. 1765/MB/2018**

***Application u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T Rules, 2016.***

**Union Bank of India …. Applicant**

**Versus**

1. **Darwin Platform Infrastructure Limited**
2. **Shailesh Verma, Resolution Professional of Lavasa Corporation Limited.**

**…. Respondents**

**In the matter between (CP(IB) No. 1765/2018):**

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

**…. Operational Creditor**

**Versus**

**Interlocutory Application Nos. 1956 of 2024 & 2520 of 2024**
**IN**
**CP(IB) NO. 1765(MB)/2018**

**Lavasa Corporation Ltd.**

**…. Corporate Debtor**

**Order pronounced on 06.09.2024.**

**Coram:**

**Shri. Kuldip Kumar Kareer : Member Judicial.**

**Shri. Anil Raj Chellan : Member Technical.**

**Appearances (in Physical mode)**

**IA.No.1956/2024**

For the Applicant : Sr. Counsel, Gaurav Joshi a/w Counsel, Dhruva Gandhy a/w Adv. Abhishek Kale, Adv. Deepak Deshmukh, Adv. Vivek Dwivedi, and Adv. Nevil Chopra

For the Respondent : Sr. Counsel, Prateek Seksaria a/w Adv. Shriraj Khambete and Adv. Naman Jain

**IA.No.2520/2024**

For the Applicant : Sr. Counsel, Prateek Seksaria a/w Adv. Shriraj Khambete and Adv. Naman Jain

For the Respondent : Sr. Counsel, Gaurav Joshi a/w Counsel, Dhruva Gandhy a/w Adv. Abhishek Kale, Adv. Deepak Deshmukh, Adv. Vivek Dwivedi and Adv. Nevil Chopra

## ORDER

***Per: Anil Raj Chellan, Member (Technical)***

1. Interim Application No. 1956 of 2024 and Interim Application No. 2520 of 2024 have been filed with respect to the common facts and events, and hence, we propose to dispose of both applications together by way of this common order:

   (a) IA No.1956 of 2024 is filed by Darwin Platform Infrastructure Ltd, the Applicant, and the Successful Resolution Applicant (hereinafter referred to as 'the Successful Resolution Applicant' or 'SRA' or 'DPIL') under Section 60(5) read with Section 74 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") seeking, *inter-alia,* the following reliefs:

   i. This Tribunal be pleased to order and declare that the invocation and encashment of the Performance Bank Guarantee ('PBG') by Union Bank of India, Respondent No.01 therein vide its Letter dated 08th April 2024 addressed to ICICI Bank, is bad in law, illegal, and *non-est*;

   ii. Direct Respondent No.01 to return a sum of Rs. 25 crores to ICICI Bank and declare that upon such return, the said PBG continues to be valid, binding, and subsisting;

   iii. Pass an appropriate order for punishment of Respondent No.01 and/or its concerned officers/employees/servant/authorised representatives u/s 74 of the Code;

   iv. Pass an appropriate direction to the Respondents and/or its concerned officer/employees/servants/authorised representative to extend full co-operation to the Applicant in the implementation of the resolution plan approved by this Tribunal;

v. Exclude an overall period of 90 days from the computation of timelines as per which the Applicant is required to make payments under the Resolution Plan read with its Addenda;

vi. In the alternative, extend the timelines as per which the Applicant is required to make payments under the Resolution Plan read with its Addenda.

(b) IA No. 2520 of 2024 is filed under Section 60(5) of the Code by Union Bank of India, a secured creditor of the Corporate Debtor by and on behalf of the Secured Financial Creditors of Lavasa Corporation Limited (hereinafter referred to as 'the Corporate Debtor' or "LCL') being aggrieved by the default in implementation of the Resolution Plan approved by this Tribunal seeking following reliefs:

i. Restore the Corporate Debtor back to the Corporate Insolvency Resolution Process (CIRP) and appoint the erstwhile Resolution Professional Mr. Shailesh Verma, as the Resolution Professional in charge of the Corporate Debtor;

ii. Exclude the period from 13.07.2021 (date of submitting plan by Resolution Applicant-DPIL) till 03.01.2022 i.e. the date of filing IA No.52 of 2022 (Earlier Plan Approval Application), as the period therein was rendered redundant by the failure of Respondent No.01 to implement the plan;

iii. Direct for the dissolution of the Monitoring Committee;

iv. Allow the utilisation of the amount of INR 25 Crores of the encashed PBG, towards the maintenance of the Corporate Debtor and the township any other CIRP Costs including the legal and

other professional costs as stipulated in Para 33 of the present application; and

v. Appoint the erstwhile Resolution Professional, Mr. Shailesh Verma, as the active administrator/ insolvency professional, in charge of the management and affairs of the Corporate Debtor on an immediate basis.

**Factual Background**

2. One Raj Infrastructure Development India Private Limited/Operational Creditor filed a petition u/s 9 of the Code against Lavasa Corporation Limited ('LCL'). The said Petition was admitted by this Tribunal on 30.08.2018 ("Admission Order") initiating the Corporate Insolvency Resolution Process ('CIRP') against LCL and Mr. Devendra Prasad was appointed as the Interim Resolution Professional ('IRP'). Thereafter, the IRP proceeded with the publication and invitation of claim in terms of the Admission Order.

3. Thereafter, vide orders dated 17.12.2018 and 05.02.2019, CIRP was initiated against Warasgaon Assets Maintenance Ltd. ("WAML") and Dasve Convention Centre Ltd. ("DCCL"), respectively. Expression of Interest was invited pursuant to which two Resolution Plans were received from proposed Resolution Applicants ("PRAS") i.e. (i) Haldirams Consortium; and (ii) Mr. Aniruddha Deshpande in the CIRP of WAML and DCCL. However, one of the Resolution Plans was found to be non-compliant with the mandatory requirements of the Code. No Resolution Plan was approved in the standalone LCL CIRP. At least 13 meetings of the Committee of Creditors ('CoC') were held in the standalone CIRP of LCL.

4. In the meantime, on an application of the CoC of LCL, the CIRP process of WAML and DCCL were consolidated with the CIRP of LCL vide order dated 26.02.2020 passed by this Tribunal. In this order, the Tribunal had also observed that the CoC of LCL, WAML, and DCCL might also take an informed decision regarding the resolution of two other subsidiaries of LCL i.e. Dasve Retail Ltd. ("DRL") and Warasgaon Power Supply Ltd. ("WPSL"), which were not in CIRP at that point in time. On 08.02.2021, this Tribunal initiated CIRP in respect of DRL and WPSL as well. Pursuant to an application moved by the CoC of LCL, WAML, and DCCL, on 13.05.2021, this Tribunal consolidated the CIRP of DRL and WPSL with LCL, WAML and DCCL. As such, the CIRP of LCL was consolidated with its subsidiary companies.

5. The Consolidated CoC, in its 8th meeting dated 22.02.2021, resolved to cancel the resolution plan process received earlier and initiate a fresh resolution plan process considering the Second Consolidation Order. A Fresh public announcement was issued for the submission of resolution plans in respect of the Consolidated LCL CIRP. The last date for submission of resolution plans was 13.07.2021, which was thereafter extended to 26.07.2021 and further to 31.07.2021. Revised RFRP and Evaluation Matrix were issued by the Applicant separately. Submissions were received from the following three entities in respect of the Consolidated LCL CIRP: (a) Divisha Real Estate Advisors LLP; (b) Darwin Platform Infrastructure Ltd (**'DPIL'**); and (c) Mr. Madhav Dhir, Ms. Shrishti Dhir, and Dhir Hotels and Resorts Private Limited. As Divisha Real Estate Advisors LLP failed to make payment of the earnest money deposit, the CoC decided to proceed with the remaining two resolution plans received from DPIL and Dhir.

6. On 13.12.2021, the CoC approved the Resolution Plan submitted by DPIL with 96.41% votes in favour. Thereafter, the Letter of Intent ("LOI") was issued to the SRA, which was unconditionally accepted. On 31.12.2021, the Union Bank of India, on behalf of CoC, received a copy of the Performance Bank Guarantee for an amount of INR 25 Crores issued by ICICI Bank on behalf of the SRA as per the terms of the approved Resolution Plan.

7. Thereafter, the RP filed an application being IA No. 52 of 2022 ("Earlier Plan Approval Application"), under Section 30(6) of the Code praying for the approval of the resolution plan. On 09.02.2023, this Tribunal passed an order in the Earlier Plan Approval Application directing certain modifications to be considered and carried out in the resolution plan, by the COC. In the 24th CoC Meeting, the CoC discussed the Order dated 09.02.2023 passed by this Tribunal, and an Addendum dated 20.02.2023 was placed before the CoC. The CoC approved the modifications made to the resolution plan vide the addendum, in compliance with the Order dated 09.02.2023, with a voting majority of 84.05%. Further, in the 25th CoC meeting, the modification introduced by the addendum was tabled and approved by the CoC with the requisite majority. It is stated that the modification introduced by the addendum neither changed the total amount payable under the Resolution Plan nor affected the share of the Secured Financial Creditors. Accordingly, the erstwhile RP filed IA No.1007 of 2023 in C.P.(IB)/1765(MB)2018 ("Plan Approval Application") seeking approval of the Resolution Plan as submitted by the erstwhile Resolution Professional and approved by CoC. Thereafter, the Resolution Plan was approved by this Tribunal vide Order dated 21.07.2023 ("**Plan Approval Order**").

8. After approval of the Resolution Plan, the Monitoring Committee ("MC") of LCL was constituted on 25.07.2023 with one representative of the secured financial creditors, one representative of DPIL, and the erstwhile RP. The MC held seven meetings but no progress has been made in the implementation of the approved Resolution Plan.

**IA No. 1956 of 2024**

***Submissions of the Successful Resolution Applicant***

9. The approved Resolution Plan contemplates an investment of Rs. 1814 Crores including a Resolution Plan amount of Rs. 1466.50 Crores to be paid/discharged from funds infused over multiple tranches into the Corporate Debtor by way of cash funding and instruments. Out of the plan amounts, an amount of Rs. 100 Crores was required to be paid upfront by the SRA within 90 days from the Effective Date and a payment of a further amount of Rs. 50 Crores within 9 months from the Effective Date. The amounts under the Resolution Plan were to be utilized for (i) mandatory payments under the Code, (ii) payments to certain creditors (including operational creditors) and the secured creditors of the Corporate Debtors, and (iii) meeting the working capital and/or expenditure requirements, etc.

10. After approval of the Resolution Plan, though the MC was constituted on 25.07.2023, the implementation of the Resolution Plan has encountered various challenges:

(a) The status of the Corporate Debtor was reflected as '*active, non-compliant*' in the records of MCA. In order to undertake any further step towards the implementation of the Resolution Plan, such as fresh issuance or reorganization of share capital, it was necessary for the Corporate Debtor

to be '*active, complaint*'. For this purpose, the Corporate Debtor would need to file its audited financial statements and undertake other corporate compliances. This could be possible only if, the Company had a Board of Directors. At the second MC meeting, the names of Directors circulated by the Applicant were accepted. However, the agenda item for the appointment of a Company Secretary to assist/advise the Corporate Debtor in achieving an 'active, complaint' status could not be taken up in subsequent meetings of MC and the discussions were still ongoing over the terms/quotation for engagement of consulting Company Secretary. Thus, the issue of converting the status of the Corporate Debtor to 'active, complaint' continues to be standstill as the MC has not fulfilled its part by taking the necessary steps. But for this, the Applicant could not do anything to implement the Resolution Plan.

(b) After approval of the Resolution Plan by this Tribunal, Union Bank of India, (Respondent No. 1 in this application), filed an application (IA No. 4340 of 2023) on 16.09.2023 for recall of the Plan Approval Order on the ground that it is a nationalized bank that has been made to suffer a haircut of nearly 80% which is grossly inequitable and unpalatable considering the fact that the public money is involved. Respondent No. 1 further pleaded that the valuation reports of the assets of the Corporate Debtor were obtained in the year 2018 whereas the Plan was approved in the year 2023, and over the years, there was a drastic change in the valuations and this aspect was overlooked while approving the Resolution Plan. The aforesaid IA was dismissed by this Tribunal vide order dated 10.11.2023 against which Respondent No. 1 preferred an appeal on 08.12.2023 before Hon'ble NCLAT which was also dismissed by the Hon'ble NCLAT only on 10.01.2024.

(c) Similarly, after the Plan Approval Order, State Bank of India, another secured creditor, (Respondent No. 2 in this application) filed an appeal against the Plan Approval Order before Hon'ble NCLAT which was finally rejected vide order dated 13.02.2024.

(d) Various other parties such as home buyers, MSEDCL, and Lessees of Flats/Villas also raised objections and initiated litigation.

11. The pending litigations, including the litigations initiated by Respondent No. 1 and 2 exposed the Applicant to a greater risk. This created a climate of considerable uncertainty for the Applicant. On one hand, the Applicant was required to make an upfront payment, which would be distributed among the financial creditors. On the other hand, two of those creditors had themselves sought to recall/impugn the Plan Approval Order. Surely, the Applicant could not have been expected to pay those creditors who had proceeded to challenge the Resolution Plan itself.

12. The Applicant has always shown its readiness and willingness to implement the Resolution Plan. Even today, the Applicant is ready and willing to pay a sum of Rs. 150 Crores, within such time as this Tribunal deems fit and proper. Considering the aforesaid circumstances, the Applicant has stated that no case was made out for Respondent No. 1 to invoke/encash the PBG.

13. The Applicant states that the invocation and encashment of the Performance Bank Guarantee is illegal, malicious, fraudulent, and arbitrary for the following reasons:

(a) Respondent No. 1 could not have unilaterally decided to invoke the said PBG as it is currently not part of the Monitoring Committee and is no longer a representative of the financial creditors.

(b) The invocation of the PBG was against the terms of the Resolution Plan. Respondent No. 1 has acted contrary to the terms of the Request For Resolution Plan (RFRP) dated 11.06.2021 (Clause 1.9), without specifying any breaches on the part of the Applicant.

(c) Respondent No. 1 was aware of the fact that the Applicant had already filed an IA No. 4863 of 2023 on 17.10.2023 wherein Respondent No. 1 (amongst other lender banks) has been impleaded as a party Respondent and whereby the Applicant has categorically prayed to restrain Respondent No.1 and other Respondents from encashing the PBG till the disposal of the Application. However, Respondent No. 1 has proceeded to encash the said PBG during the pendency of the said application.

(d) Without achieving the "active, complaint" status of the Company, the Applicant could not have proceeded with the implementation of the Resolution Plan.

(e) At the last meeting of the MC held on 19.03.2024 it was agreed to wait at least till 20.04.2024 for implementation of the Resolution Plan contingent upon SBI not filing any further appeal against the plan approval order. Since the period was not yet over, the act of Respondent No. 1 is highly illegal and arbitrary.

(f) The Applicant has time and again informed the Respondents of its readiness and willingness to implement the Resolution Plan.

(g) The invocation and subsequent encashment of the said PBG will severely prejudice the CIRP of the Corporate Debtor and dislodge the mode and manner of payment, as envisaged in the Resolution Plan.

(h) Respondent No. 1 has not given any prior intimation to the Applicant before invoking the said Performance Bank Guarantee.

14. The act of the Respondents is illegal, arbitrary, and contrary to the terms of the Resolution Plan. The act of Respondent No. 1 in invoking/encashing the said PBG amounts to an offense under Section 74 of the Code and Respondent No.1 and its Officers/Agents deserve to be punished under Section 74 of the Code for the blatant attempt made to defeat and scuttle the Resolution Plan, long after it has attained finality.

15. The invocation of the PBG has created additional hurdles for the Applicant insofar as its attempt to implement the Plan is concerned. The Applicant has already incurred considerable expenditure insofar as maintaining the properties and assets of the Corporate Debtor are concerned.

***Submissions of the Respondents:***

16. Respondent No.01 has filed its reply affidavit dated 04th May 2024 and stated as under:

i. The MC was constituted as per the Resolution Plan on 25.07.2023. The first meeting of the MC was held on 28.07.2023 where it was decided that the Effective Date in terms of the Approved Resolution Plan would be 25.07.2023. In the second meeting of the MC held on 25.08.2023, it was resolved to suspend the old Board of Directors and appoint two additional directors and one whole-time director. A Chief Financial Officer also came to be appointed by the MC, specifically for the purpose of achieving the "active compliance" status of the Corporate Debtor. Till the upfront payment (the amount of Rs. 100 crores to be paid by the Applicant within 90 days of the Effective Date)

was made, the power of the Board of Directors would vest with the MC. This in no way suggests that the payment of the upfront payment by the Applicant to the Secured Financial Creditors could be delayed for the formation of a Board of Directors, or was contingent on the formation of a Board of Directors. In any case, it was also resolved in this meeting that the powers of the reconstituted/new Board of Directors would remain suspended till the upfront payment was made by the Applicant.

ii. The Applicant was required to make the upfront payment of Rs. 100 Crores to the Secured Financial Creditors within 90 days of the Effective i.e., before 23.10.2023. In the MC meeting, though the Applicant had pointed out the application filed by Respondent No. 1 to recall the Plan Approval Order and the Appeal filed by Respondent No. 2, it was observed that no stay has been granted by any court and the upfront payment should be made as per the prescribed timelines. It was also made clear that in case the Applicant fails to implement the Plan or fails to make the upfront payment as required, the lenders would be constrained to invoke the PBG.

iii. The Applicant cannot use pending litigations as an excuse to wriggle out of its obligation to implement the Resolution Plan. This was also in consonance with the terms of the RFRP which provided for invocation of the PBG in certain cases. Litigations at all stages of a CIRP were common and could not be a deterrent against the implementation of a Plan unless there was a specific order to that effect by a Court.

iv. MC meetings were held on 13.10.2023, 13.12.2023, 05.01.2024 and 19.01.2024 but the Applicant failed to make the upfront payment. In

addition, the Applicant failed to meet the critical expenses towards city maintenance, MC expenses, and working capital expenses from 22.07.2023 till 31.12.2023 amounting to Rs. 5,49,19,262/-.

v. Since the Applicant/SRA failed to implement the approved resolution plan within the timelines stipulated thereunder, the residential township of the Corporate Debtor gravely suffered and it resulted in various operational and maintenance issues such as security, sewage treatment, school, vendor, and employee payments and insurance. The SRA's failure to adhere to even the first action it had to take in terms of monetary infusion i.e. the upfront payment of INR 100 crores, makes it clear that the SRA does not have the intention of implementing its resolution plan. Therefore, Respondent No. 01 is fully justified in facts as well as in law to have invoked the PBG.

vi. The Applicant/SRA has claimed the existence of litigations against the Plan Approval Order as a reason for not implementing the resolution plan. However, in this regard, Respondent No.01 submitted in its reply that there was no stay by any Court or Tribunal on the implementation of the resolution plan and, therefore, it was imperative for the SRA to implement its plan without giving pending *lis* as an excuse for not implementing its plan.

vii. The Respondent No.01 submitted that encashment of the PBG was as per the provisions of RFRP, more particularly in terms of Clause 1.9 therein. As the failure to implement the resolution plan gave a cause of action to Respondent No.01 to invoke the Performance Bank Guarantee in terms of Clause 1.9 of RFRP, there can be no question on the validity of such invocation.

viii. The SRA has claimed another reason for the non-infusion of funds i.e. the upfront payment, is that a Company Secretary was not appointed to assist in changing the non-compliant status of the Corporate Debtor to an 'active' status on the MCA portal. It is submitted by Respondent No.01 that there is no mandatory pre-requisite either in law or in RFRP or in the Resolution Plan that without that the SRA could not make the infusion of the upfront payment of INR 100 crores. It is further submitted that the SRA has failed to show any stipulation in law or RFRP or Resolution Plan which deterred them from making necessary fund infusion as per the stipulated timelines. Thus, the aforesaid reason or the excuse taken by the SRA is nothing but an afterthought and the same cannot be sustained in the eyes of law.

***Submissions in the Rejoinder filed by the Applicant/SRA***

17. Respondent No.01 has failed to provide any material particulars of the so-called severe deterioration which took place in the residential township due to non-infusion of funds by the SRA. Given the fact that the Corporate Debtor was in CIRP for a period of nearly five years and the resolution plan came to be approved vide Order dated 21.07.2023, it cannot be accepted that there was a sudden and severe deterioration in the conditions at the residential township for a few months after 21.07.2023 due to such non-infusion of funds.

18. The recall application filed by Respondent No.01 vide I.A. No. 4340/2023 and thereafter, Company Appeal (AT)(Ins.) No. 24/ 2024, created a degree of uncertainty and un-viability in implementing the approved resolution plan. The pleading of Respondent No.01 that no order of stay was passed by

any court of law, is an attempt by Respondent No.01 to take advantage of its own wrong.

19. Respondent No.01 has failed to inform this Tribunal that no resolution was passed with respect to the appointment of a Company Secretary, whose appointment was of critical importance to achieving an 'active' compliance status. The submission of Respondent No.01 that there was no mandatory pre-requisite for the above act, is patently absurd. This is for the simple reason that achieving an 'active' compliance status for the Corporate Debtor was necessary for any further steps being taken under the Resolution Plan such as the increase in share capital and allotment of further shares. Respondent No.01 cannot be heard saying that on one hand, it will insist on the payment of funds as per the terms of the resolution plan and on the other, it will not cooperate insofar as the revival of the business of the Corporate Debtor is concerned.

## IA. No. 2520 of 2024

***Submissions of the Applicant (Union Bank of India)***

20. The Applicant has summarized the discussions and resolutions passed in various MC meetings as under:

(a) The 1st meeting of the MC was held on 28.07.2023. It was decided, inter alia, that the Effective Date in terms of the approved resolution plan would be 25.07.2023, the documents and records of LCL would be handed over to the MC so that it could take over the control and management of the LCL till the upfront payment was made by DPIL.

(b) The 2nd meeting of the MC was held on 25.08.2023 wherein two additional directors and one whole-time director of LCL were

appointed. A chief Financial Officer also came to be appointed by the MC, specifically for the purpose of achieving the 'active' compliance status of the Corporate Debtor. It was resolved that till the Upfront Payment (the amount of Rs. 100 crores proposed to be paid by the Respondent No. 01/DPIL within 90 days of the Effective Date) was made, the power of the Board of Directors would continue to vest with the MC.

(c) The 3rd meeting of the MC was held on 13.10.2023. As per the Resolution Plan, DPIL was required to make the Upfront Payment of INR 100 Crores to the secured financial creditors within 90 days of the Effective Date 25.07.2023. This period would come to an end on 23.10.2023. However, as of the 3rd meeting, there was no update on any Upfront Payment by DPIL. It was made clear that in case DPIL fails to implement the plan or fails to make the Upfront Payment as required, the lenders would be constrained to invoke the performance bank guarantee ("PBG") deposited by DPIL. This was in consonance with the terms of the Request for Resolution Plan ("RFRP") which provided for invocation of the PBG in certain cases. It was also emphasized that DPIL cannot use pending litigations as an excuse to wriggle out of its obligations to implement the resolution plan and make the Upfront Payment.

(d) The 4th meeting of the MC was held on 13.12.2023. It may be noted that this meeting was held after the end of the 90-day period (from Effective Date) within which DPIL had to make the Upfront Payment to the lenders. However, no Upfront Payment had been made till them. As recorded in the minutes of the meeting, the MC was reconstituted and the Bank of India was nominated and taken on

record as the representative of the financial creditors in the MC. The matter of appointment of a Company Secretary for LCL was also discussed.

(e) The 5th Meeting of the MC was held on 05.01.2024. However, the DPIL had still not made the upfront payment that it was required to as per the provisions of the approved resolution plan. This was despite the fact that a separate bank account was already opened for disbursement in terms of the approved resolution plan and the fact that no court of law, whether this Hon'ble Tribunal or the Hon'ble NCLAT had stayed the implementation of the resolution plan by DPIL.

(f) The 6th meeting of the MC was held on 19.01.2024. For the sake of the record, it is being pointed out that the Upfront Payment was not made. It is pertinent to note the observations in the minutes on the issues in the management of LCL which were cropping up for the sole reason of non-payment of any money, whether Upfront Payment or otherwise by DPIL. The problems related to lack of improper security, expiry of contracts for sewage treatment and other vendors (due to lack of funds), the school located at LCL premises facing shutdown, potential loss of insurance policies, and more. It was noted in the minutes that the critical expenses towards city maintenance, MC expenses and working capital expenses from 22.07.2023 till 31.12.2023, amounting to INR 5,49,19,262/- were not paid by DPIL. A detailed discussion on the lack of implementation of the resolution plan was carried out in the 6th meeting of the MC. It was requested that DPIL should address the concerns of the lenders relating to the fund infusion. In reply, DPIL had only given a vocal resolve to implement the plan. However, DPIL was not able to show actual steps

taken for any fund infusion or making the Upfront Payment and instead claimed that due to the pending litigations against the approved resolution plan, they are unable to take steps. In the meeting, it was unequivocally pointed out to DPIL that there has been no stay of the implementation of the resolution plan by any court. There was nothing to hinder or stop PDIL from carrying out the implementation of the resolution plan and pending litigations were common in such proceedings and further that in the absence of any order of the court staying the resolution plan, DPIL had no reason not to implement. It was further noted by the lenders that in case DPIL would not implement the resolution plan, the natural consequence would be the forfeiture of the PBG. It was also suggested that a suitable application be filed before this Hon'ble Tribunal to reject the plan if DPIL was unwilling to implement the same.

(g) The 7th meeting of the MC was held on 19.03.2024. In this meeting also, the pending issues of LCL arising due to no infusion of funds by DPIL were discussed. It was noted that the costs and expenses incurred by the MC during the period after the approval of the resolution plan were to be borne by DPIL. However, the funds were not infused as yet. Other costs, including that of litigation were to be covered by the DPIL, however, no funds infusion was made with regard to that either.

21. Thereafter, looking at the conditions of the CIRP of LCL, the lenders of LCL held a joint lender's meeting on 06.04.2024 to discuss the way forward on the CIRP of LCL. It was observed by the lenders that DPIL had failed to implement the resolution plan as per the timelines mentioned therein. Even after the replacement of the Applicant as a member of the MC by the Bank

of India, more than 120 days had elapsed, and yet DPIL had failed to take any steps for implementation of the plan or for fund infusion. In fact, due to the non-infusion of funds, the lender banks were forced and constrained (so as to maintain the corporate debtor) to infuse money into the Corporate Debtor. Accordingly, in the meeting, it was agreed by 62.73% of the lender banks that the PBG submitted by DPIL be invoked and encashed. Subsequently, ARCIL also indicated their approval for the invocation of the PBG, so there was a consensus of 73.65% of the lender banks in favour of the invocation of PBG.

22. Based on the consensus of the majority of lenders of LCL, the Applicant issued a letter dated 08.04.2024 to ICICI Bank Limited invoking the PBG that DPIL had submitted when its resolution plan was approved. The letter stated that DPIL had failed to implement the approved resolution plan and contributed to the failure of the implementation of the approved resolution plan despite receiving multiple opportunities to address the issues. Therefore, the Applicant was invoking the PBG provided by DPIL as security for their performance in the implementation of the resolution plan. Such invocation by the Applicant was done as per the provisions of Clause 1.9 of the RFRP which provided or invocation of the PBG if DPIL failed to make payment in accordance with the resolution plan.

23. The amount of Rs. 25 Crores from the PBG belongs to the CoC and the CoC proposes to use the money as per the decision of the CoC from time to time for the purpose of the following: -

(a) Cover the operational costs towards maintenance of the Corporate Debtor and the township, and any other CIRP Costs in each case,

incurred/to be incurred from time to time and/or pay/reimburse the funds previously utilized.

(b) Pay such costs as incurred by the CoC during the CIRP including its legal and other professional costs.

24. It is stated that as per the minutes of the joint lenders meeting dated 24.04.2024, the lenders resolved to file the present Application seeking restoration of the CIRP. It is stated that based on the facts and circumstances of the CIRP of the Corporate Debtor and the failure of DPIL in implementing the resolution plan as per the timelines stipulated therein, the present Application has been filed seeking to restore the Corporate Debtor back to CIRP and under the management of its erstwhile RP.

***Reply filed by the Respondents:***

25. Respondent No. 01 has filed its reply and denied averments made in the application.

26. The Respondent has submitted that the Applicant has tried to prejudice this Tribunal by stating that the condition of the residential township being developed by the Corporate Debtor deteriorated severely due to a lack of infusion of funds by the Respondent No.1. It further submitted that if the Applicant was genuinely concerned about the alleged deterioration in the condition of the residential township, it would not have filed IA No. 4340/2023 seeking a recall of the Plan Approval Order or Company Appeal (AT)(Ins.) No. 24 of 2024 challenging the order dated 10.11.2023 by which the IA No. 4340 of 2023 was rejected. Further, the applicant has not provided any material particulars to show deterioration in the residential

township after 21.07.2023 due to an alleged non-infusion of funds by Respondent No. 01.

27. A few creditors (even if they are banks) cannot unilaterally appropriate unto themselves powers which are conferred on the CoC as a body. Thus, the resolution, if any, passed by few creditors cannot be relied upon for granting the relief sought.

28. A careful reading of the minutes of the MC demonstrates that Respondent No.01 has always been and, in fact, till date, is ready and willing to implement the Resolution Plan subject to the Applicant and other lender banks and home buyers giving an assurance that they will not prosecute and/or initiate any proceedings challenging the Resolution Plan.

## ***ANALYSIS AND FINDINGS***

29. We have, considering the common facts, taken up both the applications together and heard the learned Counsels for both the Applicants and the Respondents therein. We have also gone through the records carefully.

30. The facts of the case reveal that the Resolution Plan submitted by the SRA got the muster of 96.41% majority of CoC and was subsequently approved by this Tribunal by the Plan Approval Order. As per the approved Resolution Plan, the SRA was required to make an upfront payment of Rs. 100 crore within 90 days from the Effective Date (date of approval of the Resolution Plan and receipt of a copy of the order) and a payment of further amount of Rs. 50 crore within 9 months from the Effective Date. The amounts under the Resolution Plan are to be utilized for meeting CIRP Costs, payments to certain creditors (including operation creditors) and the

secured creditors, and also for meeting the working capital and/or expenditure requirements. In addition, all costs and expenses incurred by the MC including fees payable to the advisors/legal advisor of the MC and/or its constituent till the MC is dissolved are to be borne and paid by the SRA. The Resolution Plan also provides that post-approval of the Resolution Plan by NCLT, all costs incurred in relation to the implementation of the Resolution Plan and litigations, if any, connected with the CIRP of the Corporate Debtor/ongoing litigations, including legal costs, which is to be incurred by the erstwhile RP/MC, shall also be borne by the Corporate Debtor. The Applicant under the Resolution Plan has undertaken to maintain a reserve of 50 lakh till the 15th month from the Effective Date or payment of 1st Tranches, whichever is earlier for payment of the Legal Costs in an interest-bearing Escrow Account to be maintained with designated pack.

31. MC, as per the Resolution Plan, was constituted on 25.07.2023 and held 7 meetings for implementation of the Resolution Plan. However, much progress could not be achieved in the implementation of the Resolution Plan resulting in the invocation of the PBG of Rs. 25 crore furnished by the SRA. This led to the filing of the present Applications.

32. Upon consideration of the rival submissions, the following issues arise for our consideration in these applications:

(i) Whether invocation and encashment of PBG furnished for Resolution Plan as per Regulation 36B of CIRP Regulations, is legal and proper?

(ii) Whether an extension of timelines for implementation of approved Resolution Plan should be granted?

(iii) In the event of non-extension of time for implementation of the Resolution Plan, can CIRP be restored?

(iv) As to what relief, if any, the applicants are entitled to?

33.1 The primary contention of SRA is that the status of the Corporate Debtor was reflected as "active, non-compliant" in the records of MCA and hence, no further steps such as fresh issuance or reorganization of share capital etc., could be taken for raising funds and thereby implementing the Resolution Plan. The change of status to "active, complaint" requires the filing of audited financial statements, the constitution of the Board of Directors, and undertaking of other corporate compliances. The discussions in the MC on the agenda item for the appointment of a Company Secretary for achieving an "active, complaint" status remained inconclusive which is a major reason for the non-implementation of the Resolution Plan.

33.2 On the contrary, the Respondents have contended that the upfront payment of Rs. 100 crores to be made by the Applicant within 90 days of the Effective Date, as per the approved Resolution Plan in no way linked to the formation of a new Board of Directors or achieving the status of "active, complaint" status of the Corporate Debtor.

33.3 Part A of the Resolution Plan, which deals with the financial structure, specifies the payment schedule and the source of funding (pages 68 & 69 of the Resolution Plan). Further, the Resolution Plan (page 70) provides as under:

***"Management and Control of the Business of the Corporate Debtor during Resolution Term-***

*Board of Directors- Approval of the Resolution Plan by Hon'ble NCLT will be treated as Order for existing Board to retire/dissolve and RA will appoint minimum requisite directors under the Companies Act, 2013 for compliance purpose within 15 days of the Effective Date. However, the Board of Directors will take over the Management responsibilities of the Company for better operation on payment of Upfront amount of Rs.25.00 Crores within 90 days of the Effective Date. Till the Upfront Payment is made, the MC will be having all the Powers of the Board to monitor the Operations of the Business. The RA will appoint requisite Directors (as required under the Law) who may be in Executive /Non-executive Director Capacity.*

…….

…….

*Access to the Site for- The Monitoring Committee shall exercise the powers of the board of directors of the CD and shall manage the affairs and operations of the Corporate Debtor and the entire Lavasa Township from the date of NCLT approval till the time Rs.25.000 Crores is paid within 90 days from the Effective Date. Upon payment of the Upfront Amount, the Monitoring Committee shall handover the control of the Corporate Debtor to the new board of directors constituted by the RA and thereafter it will be the responsibility of the new board of directors to run the Business Operations of the CD. The Monitoring Committee will continue to monitor the implementation of this Resolution Plan till expiry of the Tenor."*

In this connection, it is noticed that the 3rd addendum to the Resolution Plan modified the definition of Upfront Amount or Upfront Payment as the amount of Rs. 100 crores proposed to be paid by the Resolution Applicant within 90 days of the Effective Date in terms of the Resolution Plan. But other terms referred to hereinabove remained the same.

33.4 A plain reading of the aforesaid provisions in the Resolution Plan makes it abundantly clear that the Upfront payment was required to be paid within 90 days from the Effective Date and such payment was not linked or subject to any other condition.

33.5 The Counsel for the Union Bank of India representing the secured financial creditors has brought to our notice the Order passed by the Hon'ble NCLAT in ***PKH Ventures Limited Vs. Monitoring Agency of Amar Remedies (Company Appeal (AT) (Ins) No. 877 of 2024*** wherein it was observed:

*"… Clause 5 was sourcing of fund and the payment schedule and conditions and timelines for payment were not dependent on or conditional to sourcing of funds. In the event the funds are not provided as per Clause 5 (c), the plan has to fail. The implementation of plan being not dependent on sourcing of funds because sourcing of fund was the responsibility of the Resolution Applicant and the Resolution Applicant cannot be heard on contending that since the status of company was not changed into 'active' he cannot infuse the fund and make payment. The plan was approved on 25.03.2021 and in three years no payment was made as per the Resolution Plan.*

The Counsel for the SRA has filed a written submission to distinguish the decision on facts. However, we are of the view that the above decision is squarely applicable to the facts of the present case for the reason that payment terms under the Resolution Plan are unconditional in this case also, and not a single payment as per or under the Resolution Plan has been made.

33.6 It is also pertinent to observe that though the representative of SRA was present in all meetings of the MC, he never informed the MC that payment of the upfront amount was delayed on account of the 'inactive' status of the Corporate Debtor, despite the insistence of other members of MC to make

upfront payment. Thus, SRA just appears to be making lame excuses for not making the upfront payment, as stipulated in the plan.

33.7 Another contention raised by SRA is that the litigations initiated by Respondent No. 1 for recall of the Plan Approval Order and the appeal filed by Respondent No.2 against the Plan Approval Order exposed the Applicant to a greater risk and deterred him from making payment. This created a climate of considerable uncertainty for the Applicant and it could not be expected to pay those creditors who had proceeded to challenge the Resolution Plan itself.

33.8 On the other hand, Ld. Counsel for Respondents has contended that litigations against the order approving the resolution plan are common and in the absence of any order of the court/Tribunal staying the resolution plan, there cannot be any reason or justification not to implement the approved Resolution Plan. There was, in fact, nothing to hinder or stop SRA from carrying out the implementation of the resolution plan and pending litigations are common in such proceedings. However, in the absence of any order of the court staying the resolution plan, SRA had no reason not to implement it. It was further noted by the lenders that in case SRA continued not to implement the resolution plan, the natural consequence of the forfeiture of the PBG was bound to follow.

33.9 This contention, in our considered view, needs to be gauged in the context of the CIRP being a time-bound process to preserve and unlock the economic value hidden in such stressed assets as per the Code and the timeframe projected in the resolution plan for realizing the benefits to the stakeholders. While Section 61 of the Code specifically permits any person aggrieved by the order of the Tribunal to challenge the same before the Appellate

Authority, there is no standstill provision in the Code as regards implementation of the resolution plan. The absence of any such provision clearly indicates that the resolution plan approved by the Tribunal should be implemented forthwith as per the terms unless there is a stay by the Appellate Authority. Any laxity for non-implementation of the approved resolution plan on the grounds of pending litigations goes against the very root, cause, and scheme of the Code. We, thus, hold that the pendency of litigations initiated by any person or stakeholder is not a justifiable ground for non-implementation unless the implementation is stayed by a court/tribunal.

33.10 This takes us to the next contention of the SRA that Respondent No. 1 could not have unilaterally decided to invoke the said PBG as it is currently not part of the Monitoring Committee and is no longer a representative of the financial creditors. It is further contended that Respondent No. 1 has acted contrary to the terms of the Request For Resolution Plan (RFRP) dated 11.06.2021 (Clause 1.9), without specifying any breaches on the part of the Applicant. On the other hand, Union Bank of India has contended that the lenders of the Corporate Debtor in a joint lender's meeting held on 06.04.2024 agreed by 62.73% to invoke the PBG. Subsequently, ARCIL also indicated their approval for the invocation of the PBG, so there was a consensus of 73.65% of the lender banks in favour of the invocation of PBG.

Based on the consensus of the majority of lenders of LCL, the Applicant issued a letter dated 08.04.2024 to ICICI Bank Limited invoking the PBG that DPIL had submitted when its resolution plan was approved. The letter stated that DPIL had failed to implement the approved resolution plan and contributed to the failure of the implementation of the approved resolution plan, despite receiving multiple opportunities to address the issues. Such

invocation by the Applicant was done as per the provisions of Clause 1.9 of the RFRP which provided or invocation of the PBG if DPIL failed to make payment in accordance with the resolution plan.

33.11 Before we consider the above rival contentions, we may notice Regulation 36B (4A) of the CIRP Regulations:

*" The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule."*

The use of the words "fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule' shows that even contribution to the failure of the implementation of the plan should be sufficient to invoke the performance security. Further, clause 1.9 of the RFRP provides that "*Union Bank of India in its capacity as the member of CoC shall have the right to invoke/encash/forfeit the Performance Security by issuance of a written demand to invoke Performance Security or by encashing the demand draft, as the case may be. The Performance Security can be invoked/encashed/forfeited at any time if ……. (g) failure of the Successful Resolution Applicant to implement the Approved Resolution Plan in accordance with the terms thereof or in case the Successful Resolution Applicant contributes to the failure of implementation of the Approved Resolution Plan in accordance with the terms of the Approved Resolution Plan and its implementation Schedule, after approval to the Resolution Plan has been provided by the Adjudicating Authority.*"

The fact that the Union Bank of India is currently not part of the Monitoring Committee has no bearing on its capacity to invoke the PBG. The letter dated 08.04.2024 issued by Union Bank clearly stated that DPIL had failed to implement the approved resolution plan and contributed to the failure of the implementation of the approved resolution plan, despite providing opportunities to fulfil their obligations under the approved resolution plan. Having regard to the above, we do not see any merit in the contention that the PBG was not properly invoked or that Union Bank of India was not entitled to invoke the guarantee.

33.12 It is pertinent to observe that SRA not only failed to make the Upfront payment as required under the approved Resolution Plan but also failed to take any real steps even after the dismissal of appeals by Hon'ble NCLAT on 10.01.2024 (appeal filed by Union Bank) and 13.02.2024 (appeal filed by SBI). The PBG was invoked by Union Bank on 08.04.2024 i.e., many days after the rejection of the appeals. This clearly demonstrates that the SRA was never ready to implement the plan and was only making excuses to somehow save the PBG amount. In the light of the discussion, we have no hesitation in holding that SRA has starkly contributed to the failure of implementation of the Approved Resolution Plan in accordance with the terms of the Approved Resolution Plan. Consequently, Union Bank has rightly invoked and encashed the PBG furnished for by SRA, and the proceeds thereof can be used for the purposes as decided by CoC.

34.1 The SRA has submitted that it is ready and willing to implement the Resolution Plan Pass and sought an appropriate direction to the Respondents and/or it's concerned officer/employees/servants/authorised representative to extend full cooperation to the Applicant in the

implementation of the resolution plan approved by this Tribunal. It is further submitted that a careful reading of the minutes of the MC demonstrates that SRA has always been ready to implement the Resolution Plan. SRA, therefore, has sought an extension of timelines as per which the Applicant is required to make payments under the Resolution Plan read with its Addenda.

34.2 In support of the above submission, the SRA relied on the decision of the Hon'ble NCLAT in the case of ***Ashok Dattatray vs. State Bank of India [Company Appeal (AT) (Ins.) Nos. 221 and 222 of 2024]*** whereby the jurisdiction of the Tribunal to extend the timelines under a Plan has been affirmed. It has also been affirmed that an extension of the timeline does not amount to a modification of a Plan.

34.3 There is no dispute with regard to the proposition of law laid down in the above-cited case. However, our consideration here is limited to whether the present is a case fit for an extension of time. It is noticed that the Resolution plan was approved by this Tribunal way back on 21.07.2023 and even after one year, not a single positive action appears to have been taken by the SRA towards the implementation of the plan. It is also pertinent to observe that even in the Application, the SRA has not given any specific period for making the upfront payment and the remaining payments under the Resolution Plan but only states that it is ready and willing to implement the Resolution Plan subject to the lender banks and home buyers giving an assurance that they will not prosecute and/or initiate any proceedings challenging the Resolution Plan. It is only a conditional prayer without a clear timeframe for making payments including the upfront payment. Thus, we are of the considered view that the facts and circumstances of the present

case, the applicant lacks the bona fides to justify an extension of timelines under the Resolution Plan.

35.1 Having come to the conclusion that the SRA has failed to implement the approved Resolution Plan, the question which now arises for consideration is as to whether the CIRP can be restored or not. While the Union Bank on behalf of secured creditors of the Corporate Debtor has sought restoration of CIRP as well as exclusion of period from the date of submission of the resolution plan to the date of the filing of the application for approval to the Tribunal, and dissolution of the Monitoring Committee, the SRA, however has submitted that in the event of failure of an approved resolution plan, the only consequence permissible under the Code is liquidation.

35.2 Here, it is worth mentioning that LCL is primarily engaged in the business of construction and development of a private hill station in the Pune District of Maharashtra. LCL also obtained permission for the construction of dams on the Warasgaon River and for the construction of infrastructure for the development of the area as a smart hill city. The four companies viz, DCCL, WAML, WPSL & DRL are wholly owned subsidiaries of LCL and are engaged in the business of running convention centers/providing recreational/hospitality facilities (DCCL), infrastructure construction and services (WAML), designing/operating power and distribution infrastructure (WPSL), and rental/leasing of retail shops and business of investment property (DRL). Thus, the construction, development, and maintenance of the hill city is solely dependent upon the successful resolution of the Corporate Debtor (s). The counsel for the secured creditors, therefore, submits that considering the peculiar nature of the Corporate Debtor, admitting it to liquidation would not be a viable and feasible option.

Further, the counsel has relied upon the case of ***Almas Global Opportunity Fund SPC Vs. CA Kannan Triuvengadam, Insolvency Professional and Other (Company Appeal (AT) (Ins) No. 683 of 2022),*** where the Hon'ble NCLAT has upheld the NCLT's decision on an application made by the lenders directing restoration of the Corporate Debtor to CIRP, instead of pushing it to liquidation. The Hon'ble NCLAT has also distinguished the decision of the ***Committee of Creditors of Amtek Auto Limited through Corporation Bank Vs. Mr Dinkar T. Venkatasubramanian (Company Appeal (AT)(Ins.) No. 219 of 2019)*** while observing that the said judgment does not lay down any proposition that when the implementation of the Resolution Plan has failed, no other option is available except to direct the liquidation. It is, therefore, submitted that this Tribunal has the power and authority to restore the CIRP of the Corporate Debtor to sustain it as a going concern.

35.3 Even otherwise, as per the scheme of the Code, the resolution of the Corporate Debtor is the ultimate objective and liquidation of the Corporate Debtor is only a last resort. It is well settled and reiterated from time to time by the Hon'ble Supreme Court that all possible steps and efforts be made to revive the Corporate Debtor before opting for liquidation. We further also observe that keeping in view the peculiar and distinct nature of the Corporate Debtor and also keeping in view the large interest of homebuyers and all other stakeholders, the revival of the Corporate Debtor seems to be of utmost significance. Hence, the prayer to exclude the period from submission of the Plan (13.07.2021) till the filing of IA No. 52 of 2022 (03.01.2022) from CIRP can be favourably considered in the exercise of the incidental powers under Rule 11 of the NCLT Rules.

36. As a corollary to the foregoing discussion, we found that the SRA has miserably failed to take any positive action to implement the approved resolution plan without any justifiable reasons, no purpose would be served by granting further time to SRA for implementation of the resolution plan. Any further delay in the resolution of the Corporate Debtor would not only severely affect the interest of various stakeholders but would also render the resolution impossible. Thus, the prayer of the SRA seeking an extension of time for the implementation of the approved resolution plan is hereby rejected. We are further of the considered view that since the SRA is blatantly and consciously responsible for the failure of implementation of the Approved Resolution Plan, its inevitable consequence is the invocation of PBG furnished by SRA. We, therefore, hold that the PBG has been rightly invoked and encashed by the Union Bank and there is nothing illegal or improper in the same. Resultantly, the reliefs sought by the SRA in its application cannot be granted.

37. Resultantly, we pass the following order:

i. **IA. No. 1956 of 2024** filed by the SRA is hereby **dismissed** being devoid of any merit.

ii. **IA No. 2520 of 2024 is allowed** and the CIRP of the Corporate Debtor is restored with Mr. Shailesh Verma as Resolution Professional in charge of the Corporate Debtor. The period from 13.07.2021 i.e. from the date of submission of the plan by the resolution applicant (DPIL) till 03.01.2022 i.e. the date of filing IA No. 52 of 2022 i.e. the plan approval application shall stand excluded having been rendered redundant owing to the failure of the SRA in the implementation of

the resolution plan. Under the circumstances, the monitoring committee shall stand dissolved with immediate effect.

iii. Parties are left to bear their own costs.

**Sd/-**

**ANIL RAJ CHELLAN**
**(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER**
**(MEMBER JUDICIAL)**