

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency)No. 783 of 2020**

[Arising out of Order dated 26<sup>th</sup> February, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in M.A. No. 3664 of 2019 in C.P. (IB)-1765, 1757 & 574/MB/2018]

**IN THE MATTER OF:**

**1. Oase Asia Pacific Pte Ltd.**

51, Gold Hill Plaza,  
17-01 Singapore - 308900

**...Appellant.**

**Versus**

**1. Axis Bank Ltd & Other Financial Creditors  
Through Union Bank of India**

With its address being:  
Union Bank Bhawan,  
239 VidhanBhavan Marg,  
Nariman Point  
Mumbai - 400021

**...Respondent No. 1**

**2. Lavasa Corporation Ltd.  
Through its Resolution Professional,  
Mr. ShileshVerma**

C/o Deloitte Touche Tohmatsu India LLP  
27<sup>th</sup> Floor, Tower 3, India Bulls Finance Centre,  
Elphinstone,  
West Mumbai – 400013

**...Respondent No. 2**

**3. Warasgaon Assets Maintenance Ltd.  
Through its Resolution Professional,  
Mr. ShileshVerma**

C/o Deloitte Touche Tohmatsu India LLP  
27<sup>th</sup> Floor, Tower 3, India Bulls Finance Centre,  
Elphinstone,  
West Mumbai – 400013

**...Respondent No. 3.**

**Present:**

**For Appellant: Ms. Anjali Sharma, Mr. Devrajan Raman and  
Mr. Deepak Bashta, Advocates.**

**For Respondent: Mr. Aakarshan Sahay and Mr. NakulSachdeva,  
Advocates for R-1.**

**Mr. AmeyaGokhale, Ms. KritiKalyani,  
Ms. Salonee Kulkarni, Mr. SumeshDhawan and  
Mr. SagarDhawan, Advocates for R-2 & R-3.**

**J U D G M E N T  
(26<sup>th</sup> February, 2021)**

**A.I.S. Cheema, J.:**

1. This Appeal has been filed against the Impugned Order 26<sup>th</sup> February, 2020 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Mumbai in M.A. No. 3664 of 2019 in C.P. (IB) No. 1765, 1757 and 574/MB/2018. By the Impugned Order, the Adjudicating Authority consolidated 'Corporate Insolvency Resolution Process' (CIRP In Short) of Respondent No. 2-Lavasa Corporate Ltd. (LCL in Short) and its hundred percent subsidiary Companies Respondent No. 3-Warasgaon Assets Maintenance Ltd. (WAML in short) and DasveConvention Centre Ltd. (DCCL in short) all three of which Companies were undergoing 'CIRP'. The Impugned Order stated that the consolidated 'Committee of Creditors' (CoC in short) should take informed decision regarding the debt of Warasgaon Powers Supply Ltd. (WPSL in short) and DasveRetail Ltd. (DRL in short) which were also hundred percent subsidiaries but which companies were not under 'CIRP'. The Resolution Professional of the LCL-Respondent No. 2 was appointed as Resolution Professional for the consolidated 'CIRP'. Other directions were also issued.

2. The present Appellant Oase Asia Pacific Pte Ltd. claims to be Operational Creditor of DCCL which was admitted to 'CIRP' by Order dated 05<sup>th</sup> February,

2019. The Appellant claims to be part of 'CoC' in that 'CIRP'. It is stated that in that 'CIRP' there is no Financial Creditor and only Operational Creditors constitute 'CoC'.

**3.** Before start of Insolvency on 05<sup>th</sup> February, 2019 against DCCL the 'CIRP' against the Respondent No. 2-LCL was admitted on 30<sup>th</sup> August, 2018. The Respondent No. 1 Axis Bank filed consolidated Application M.A. No. 3664 of 2019 for consolidation of the CIRPs of LCL, WAML and DCCL. The Adjudicating Authority heard parties of the three CIRPs and relying on the Judgment in the matter of "*State Bank of India Versus Videocon Industry Ltd.*" in M.A. No. 1306 of 2018 in CP (IB)-02/2018 dated 08<sup>th</sup> August, 2019 passed by \*NCLT took into consideration the yardsticks specified and concluded that the yardsticks/criteria substantially applied to Respondent No. 2-LCL and its group companies and for reasons recorded in the Impugned Order directed consolidation of the three 'CIRP' proceedings into one under the Resolution Professional of LCL

**4.** We have heard Learned Counsel for the parties. The Appellant-Operational Creditor of DCCL claims that majority decision of 'CoC' of DCCL which was comprising only of the Operational Creditors were against the consolidation of the 'CIRP' of DCCL with 'CIRP' of Respondent No. 2-LCL. The Learned Counsel for the Appellant referred to the Written-Submissions filed by her vide Diary No. 25454 to submit that the Resolution Professional of Respondent No. 2 had in the 'CIRP' of Respondent No. 2-LCL taken over the DCCL disregarding the 'CIRP' pending in the matter relating to DCCL by

claiming that the Lease Agreement between Respondent No. 2 and DCCL was not registered and was unstamped. It is claimed that it violated Section 14 of Insolvency and Bankruptcy Code, 2016 (IBC in short) in the 'CIRP' of DCCL. The Convention Centre "Dasve Convention Centre" was in possession of the Resolution Professional of DCCL but still the Resolution Professional of Respondent No. 2-LCL took over. The Learned Counsel claimed that the Resolution Professional of Respondent No. 2-LCL acted illegally in the CIRP being held by Resolution Professional of DCCL and the concerned Resolution Professional of DCCL filed M.A. No. 1369 of 2019 in CP No. 574/2018 which was still pending.

At the time of arguments, it was stated by Learned Counsel for Respondent No. 2 and 3 that the said M.A. No. 1369 of 2019 was reserved for Orders on 24<sup>th</sup> February, 2020 but the Orders are not yet passed.

**5.** The Appellant claims that the Impugned Order suffers as certain guiding yardsticks for consolidation were absent with regard to the DCCL. The Creditors of DCCL were entirely distinct from the Creditors of the other two companies and thus there were no common liabilities. It is also argued that there was no inter-lacing of finance between DCCL and the other two companies. It is also claimed that there was no inter-looping of debts and the Creditors of DCCL were not Creditors of the other two Companies. The Learned Counsel further submitted that common Financial Creditors were also not there as in the matter of DCCL. There was actually no Financial Creditor. Thus it is tried to be argued that the yardsticks as laid down in the Judgment in the

matter of “*State Bank of India Versus Videocon Industry Ltd.*” were wrongly applied while consolidating ‘CIRP’ of DCCL with the other two Companies.

**6.** Learned Counsel for the Appellant accepted that the Respondent No. 2-LCL was lessee of Maharashtra Krishna Valley Corporation with regard to the Property of DCCL and that Respondent No. 2-LCL in its turn had leased the property to its subsidiary DCCL vide Deed of Lease Annexure-F at Page 109. The document shows the Lease of 20 years was created w.e.f 15.07.2010 for a lease premium of Rs. One Hundred and Ten Crores and yearly rent of Re. 1.

**7.** It has been argued by Learned Counsel for Respondent No. 1 that the Impugned Order was passed is proper and correct and in the interest of three companies. It is argued that DCCL is only a convention centre and subsidiary of Respondent No. 2 and the businesses are inter-linked. The Learned Counsel referred to Appeal Page 100 where there is copy of written-submissions which was filed by the Resolution Professional of DCCL before the Adjudicating Authority and the Learned Counsel referred to Paragraph 33 of the written-submissions. Relevant part of Paragraph 33 reads as under:

*“33. The CoC of DCCL has resolved that they are willing to support consolidation if they receive their entire claim amount. Otherwise they are confident that there will be enough Resolution Applicants interested in the convention Centre on a standalone basis. On the contrary they feel that in consolidation the Centre may not get the right value and it will be nowhere near the lease premium of Rs 100 Crs as indicated in the lease agreement. The view is that for the 10 year unexpired period of lease the Centre could fetch conservatively Rs. 40 Crs to Rs. 50 Crs as lease premium*

*which could easily cover the entire claim of Rs. 21.33 Crs received by the Resolution Professional of DCCL.....”*

8. The Learned Counsel submitted that the written-submissions show that ‘CoC’ of DCCL which had only Operational Creditors was merely interested in getting back their entire claims rather than resolution of the company which had gone into the ‘CIRP’ and that aim of ‘CIRP’ is resolution for the Company rather than recovery of money.

9. Perusal of the Impugned Order shows that keeping the yardsticks laid down in the Judgment in the matter of “*State Bank of India Versus Videocon Industry Ltd.*” the Adjudicating Authority discussed the common control of these hundred percent subsidiaries of Respondent No. 2; that there were common directors; that there were common assets and liabilities. The inter-dependence and inter-lacing of finance was also considered as well as the pooling of resources. The Adjudicating Authority considered that DCCL’s sole business is to operate the convention center located Lavasa Hill Town Ship built on land leased out by Respondent No. 2-LCL. The business is dependent on the working of LCL. For such and other reasons recorded in details, the Adjudicating Authority thought appropriate to consolidate the CIRPs. The Learned Counsel for the Appellant has tried to search and nit-pick portions where DCCL is not referred to say that the particular yardstick does not apply. For example, common Financial Creditor. We find, only because DCCL does not have Financial Creditors, would not be sufficient reason to say that the yardsticks laid down in the matter of “*State Bank of India Versus Videocon Industry Ltd.*” were not attracted.

**10.** It appears from record and the Adjudicating Authority has painstakingly written the Impugned Judgment and succinctly put relevant facts on record. The Adjudicating Authority found that WAML had agreed to the consolidation. As records DCCL in Paragraph 7, Adjudicating Authority noted that DCCL was incorporated for running and maintaining Dasve Convention Centre at the premises leased to it by Respondent No. 2- LCL and for this purpose the Lease-Agreement dated 30<sup>th</sup> September, 2010 was executed which was not duly stamped and registered and was cancelled by the Resolution Professional of Respondent No. 2. It is to be noted that the CIRP in LCL had started on 30<sup>th</sup> August, 2018 while CIRP in DCCL started on 05<sup>th</sup> February, 2019. The Adjudicating Authority noted that in the three CIRPs Resolution Plans were received only in the matter of LCL and none was received in the other two CIRPs. It was also noticed that in the Resolution Plans submitted with regard to the LCL, the Applicants wanted pre-condition that entire group debt with respect to LCL group of Companies should be extinguished instead of stand-alone debt of LCL. There is no dispute that LCL has about 49 subsidiaries or joint-ventures. The Adjudicating Authority observed that with the cancellation of the un-registered lease DCCL could not have any business or revenue stream or any resolution on stand-alone asset. In Paragraph 18.1, the Adjudicating Authority observed as under:

*“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 maximize 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.”*

Thus, inter-linkages and synergies between the Companies to keep LCL as a running Township was found. After examining the yardsticks in the matter of *State Bank of India Versus Videocon*, the Impugned Order shows that the Adjudicating Authority found that the yardsticks were substantially applying.

**11.** In paragraph 19, the Learned Adjudicating Authority observed as under:

*“19. As far as LCL and WAML are concerned, the CoC of both the Companies have agreed for consolidation. However, the CoC of DCCL 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 Lease-hold 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.”*

**12.** In paragraph 22, it was observed as under (Page 60):

*“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.”*

*(Emphasis Supplied)*

Consequently, consolidation was ordered.

**13.** We find substance in the reasonings and findings recorded. Having heard Learned Counsel for both sides, we do not find any error in the Impugned Order consolidating the three CIRPs. The subsidiary DCCL appears to have been created for running the Convention Centre and it does appear to be linked with the business of Respondent No. 2-LCL with annual rent of token Re. 1.

The Appellant who is only an Operational Creditor of DCCL is trying to find fault with the consolidation Order the object of which is Resolution of the Companies while the Appellant appears to be more concerned that its money as Operational Creditor should be protected. The Resolution Professional of DCCL appears to have filed M.A. No. 1369 of 2019 (Page 141) seeking handing back the possession of the convention centre. That order is still to be passed by the Adjudicating Authority. As such, we would not like to comment on that aspect.

There is no substance in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice A.I.S. Cheema]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**\* Corrected as per Order dated 16<sup>th</sup> March, 2021.**

**New Delhi**  
**Basant B.**