

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.

**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:

<b><u>Fudging of Net Worth Figures-Reserves &amp; Surplus:</u></b>		
<b><u>Financial Year</u></b>	<b><u>Extracts from Plan</u></b>	<b><u>Comparable Actual Figures Obtained from MCA Portal</u></b>
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:**

<u>Financial Year</u>	<u>Extracts from Plan</u>	<u>Comparable Actual Figures Obtained from MCA Portal</u>
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:**

<u>Financial Year</u>	<u>Extracts from Plan</u>	<u>Comparable Actual Figures Obtained from MCA Portal</u>
2020-2021	5.00 Lakhs	500.00 Lakhs
2019-2020	5.00 Lakhs	5.00 Lakhs
2018-2019	5.00 Lakhs	5.00 Lakhs

- 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 30<sup>th</sup> 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 30<sup>th</sup> 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 Intervenor/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/Intervenor 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/-

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

Sd/-

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