

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

44.

IA-1181/2023 in C.P.(IB)/3106(MB)/2019

CORAM:

SHRI PRABHAT KUMAR
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON 10.04.2023

NAME OF THE PARTIES:

Ultratech Cement Ltd.

Vs

Darshan Developers Pvt. Ltd.

SECTION: 9, 60(5) OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

The Court is convened through Video Conference.

1. Mr. Vikram Nankani, Ld. Sr. Counsel a/w Mr. Nausher Kohli, Adv. Shoma Maitra, Adv. Nanki Grewal, Adv. Nikhil Apte and Adv. Manasi Joglekar i/b Wadia Ghandy & Co., Ld. Counsel for the Applicant present. Mr. Zal Ardhyarujina, Ld. Sr. Counsel a/w Mr. Karan Bhide, Adv. Serena Jethmalani i/b Ms. Pranali Gada, Ld. Counsel for the Resolution Professional present.
2. This Application is filed by the Financial Creditor who is sole member of CoC of the Corporate Debtor and impleads the Corporate Debtor and 10 other companies undergoing CIRP. The Applicant seeks *consolidation of the on-going Corporate Insolvency Resolution Process in respect of Respondent Nos. 2 to 11 in Company Petition Nos. (i) 594 of 2022; (ii) 656 of 2022; (iii) 699 of 2022; (iv) 744 of 2022; (v) 637 of 2022; (vi) 742 of 2022; (vii) 644 of 2022; (viii) 636 of 2022; (ix) 681 of 2022; and (x) 700 of 2022 with the on-going Corporate Insolvency*

Resolution Process in respect of Respondent No. 1 in Company Petition No. 316 of 2019.

3. The Applicant submits that the Corporate Debtor as well as Respondent No. 2 to 11 are undergoing CIRP and there is a commonality of interest in the resolution of all these Corporate Debtors. The Ld. Counsel drew our attention to following facts:
 - a) that the Corporate Debtor was implementing a slum rehabilitation scheme on various pieces and parcel of land at Juhu gully, Andheri in terms of letter of intent dated 29.10.2011 and 25.11.2016. As part of the Slum Scheme, the Corporate Debtor was obligated to develop the rehabilitation premises by utilizing the rehabilitation Floor Space Index (FSI) and was constantly entitled to utilize free sale FSI to develop free sale premises. For this purpose, the Corporate Debtor obtained loan from the Applicant (then DHFL) against registered mortgage dated 11.09.2019 over free sale component. Thereafter, Corporate Debtor, by way of assignment, granted rights for the construction of various portions of free sale premises in favour of Respondent No. 2 to 11, who also obtained loan from the Applicant (then DHFL) under various agreements against assignment of rights of the Corporate Debtor. The Corporate Debtor along with R2 to R11 are in default of Rs.83679589700/-. Accordingly, there is a common land parcel in which the Corporate Debtor along with R2 to R11 have rights which are in turn mortgaged to the Applicant Financial Creditor, which makes the resolution of Corporate Debtor and R2 to R11 dependent and subject to resolution in each other's case;
 - b) the applicant is holder of common security interest in the tangible rights over the single land parcel under SRA Scheme, possessed by all the Respondents i.e. Corporate Debtor as well as R2 to R11;

- c) the consolidated CIRP shall result into maximisation of value for all Corporate Debtors which is the intent and object of the Code;
 - d) There is a commonality of signatory, ownership structure, director and address of the Corporate Debtors; and
 - e) The Resolution Professional is a common person in all eleven (11) CIRPs have common ownership; common signatories.
4. In view of above, the Applicant has prayed for consolidation of the ongoing CIRP in case of R2 to R11 with the ongoing CIRP in respect of R1 company in CP(IB)-3106/2019 and consequential order in this regard.
 5. We have heard the Ld. Counsel for the Applicant and Counsel for the RP who is also RP in R1 to R11.
 6. We are convinced that commonality of directorship, of control, of assets, of near-total interdependence, and the fact that all the companies i.e. Respondent No. 2 to 11 and Respondent No. 1 i.e. the Corporate Debtor in the main Petition were being run in such a seamless fashion as to be virtually indistinguishable and inseparable from each other, should be more than adequate reason to order consolidation of the CIRPs of Respondent No. 2 to 11 with the Respondent No. 1 Corporate Debtor.
 7. We note that the Adjudicating Authority, Mumbai Bench laid down guidelines in **State Bank of India v. Videocon Industries Ltd MANU/NC/7959/2020** dated 12.02.2020 (“Videocon Guidelines”). The Videocon Guidelines were upheld by the Hon’ble NCLAT in *Jitender Arora v Tek Chand and Ors C.A. (AT) (Ins.) No. 1069 of 2020* dated 18 Nov 2021 and have also been followed in *Lavasa Corporation Ltd. and Ors. M.A. 3664/2019* in C.P. (IB) 1765, 1757 & 574/MB/2018 dated 26 Feb 2020. In the case of *Edelweiss Asset Reconstruction Company Limited Vs. Sachet*

Infrastructure Pvt. Ltd. (2019) ibclaw.in 477 NCLAT, the three member bench held that *“The ‘Resolution Professional’ has rightly taken the plea that the ‘Resolution Process’ will not be successful if the total township is not developed. As the project will be developed on the land of five ‘Corporate Debtors’, as referred to above as per the township plan, they have IBC rightly taken plea that simultaneous CIRP should continue against them under the guidance of same ‘Resolution Professional’”* and reversed the order of Adjudicating Authority, thereby allowing consolidated CIRP noting that *“it is a case of joint consortium of different ‘Corporate Debtors’ and thereby a group insolvency is required to develop the township on the land of ‘Sachet Infrastructure Pvt. Ltd.’; ‘Magad Realtors Pvt. Ltd.’; ‘Mehak Realtech Pvt. Ltd.’; ‘Sameeksha Estate Pvt. Ltd.’ and ‘Jamvant Estates Pvt. Ltd.’ and others along with CIRP initiated against ‘Adel Landmarks Limited’ who is the sole Developer.”*

6. In view of the aforesaid judicial precedents we allow the prayer of Applicant as follows:

- (a) *This Hon’ble Tribunal be pleased to consolidate the on-going Corporate Insolvency Resolution Process in respect of Respondent Nos. 2 to 11 in Company Petition Nos. (i) 594 of 2022; (ii) 656 of 2022; (iii) 699 of 2022; (iv) 744 of 2022; (v) 637 of 2022; (vi) 742 of 2022; (vii) 644 of 2022; (viii) 636 of 2022; (ix) 681 of 2022; and (x) 700 of 2022 with the on-going Corporate Insolvency Resolution Process in respect of Respondent No. 1 in Company Petition No. 316 of 2019;*
- (b) *in furtherance to prayer (a) above, this Hon’ble Tribunal be pleased to merge the assets and liabilities of Respondent Nos. 1 to 11 into a common pool resulting in a common consolidated Corporate Insolvency Resolution Process of Respondent Nos. 1 to 11;*
- (c) *in furtherance to prayer (a) above, this Hon’ble Tribunal be pleased to confirm the appointment of Mr. Jayesh Sanghrajka as the Resolution Professional in respect of the consolidated Corporate Insolvency Resolution Process of Respondent Nos. 1 to 11;*

- (d) in furtherance of prayer clause (a), this Hon'ble Tribunal be pleased to allow submission and approval of one consolidated resolution plan for Respondent Nos. 1 to 11;*
- (e) this Hon'ble Tribunal be pleased to order and direct that the Insolvency Commencement Date for the consolidated Corporate Insolvency Resolution Process of Respondent Nos. 1 to 11 be the date on which this Hon'ble Tribunal passes an order consolidating the Corporate Insolvency Resolution Process of Respondent Nos. 1 to 11 under the present Application.*

7. Since we have allowed the prayer for consolidation, prayer 'f' has become meaningless.

8. Accordingly, IA-1181/2023 is **disposed** of.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)