

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 4170 OF 2023
AND
INTERLOCUTORY APPLICATION NO. 4057 OF 2023
IN
CP(IB) NO. 1765/MB/2018**

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of I.A. No. 4170 of 2023:

HREL REAL ESTATE LIMITED

...Applicant

v/s.

**Mr. Shailesh Verma, Resolution Professional of
Lavasa Corporation Ltd.**

.... Respondent

In the matter of I.A. No. 4057 of 2023

Hindustan Construction Company Limited

...Applicant

v/s.

**Mr. Shailesh Verma, Resolution Professional of
Lavasa Corporation Ltd.**

In the matter between:

**Raj Infrastructure Development (India) Pvt Ltd.,
...Financial Creditor**

v/s.

Lavasa Corporation Ltd. ...Corporate Debtor

Order pronounced on 25.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in physical mode)

For the Applicant: P. Lalit Munshi a/w Fatima Fernandes.

For the Respondent: Kriti Kalyani.

ORDER

Per: Coram

1. I.A. No. 4170 of 2023 and I.A. No. 4057 of 2023 are the applications under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) filed by the Applicants praying for following directions to the Registry of this Tribunal:
 - a. To provide to the Applicant a certified copy of the approved resolution plan, forming part of Interlocutory Application No. 1007 of 2023, approved by this Tribunal vide Order dated 21st July, 2023;
 - b. In the alternative to prayer clause (a) referred to above, to provide a copy of the Interlocutory Application No. 1007 of 2023, along with all its annexures, which has been allowed and disposed of vide this Tribunal’s Order dated 21st July, 2023;
 - c. Such other and further reliefs as the nature and circumstances of this case may require.

Since the facts in both the above-captioned matters are identical, the issues involved are similar and reliefs sought are one and the same, both the matters have been heard together by consent of the parties and have been reserved for orders on the same day. Thus, both the I.A.s referred-to-above are being disposed of by this common order.

Facts of the Case (in brief):

2. Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor commenced vide Order dated 30.08.2018 passed u/s 9 of the Code in Company Petition No. 1765/MB/2018. This Tribunal had consolidated the CIRP of the Corporate Debtor with the CIRP of its four subsidiaries i.e. Warasgaon Assets Maintenance Limited, Dasve Convention Centre Limited, Dasve Retail Ltd and Warasgaon Power Supply Limited, vide Order dated 13.05.2021.
3. Darwin Platform Infrastructure Limited emerged to be the Successful Resolution Applicant ('SRA') whose resolution plan came to be approved by the Committee of Creditors ('CoC') by 96.41% majority. Accordingly, I.A. No. 52/2022 was filed by the Resolution Professional ('RP') u/s 30(6) of the Code praying for approval of the resolution plan by the Adjudicating Authority. This Tribunal vide Order dated 09.02.2023 passed an order in the above-referred I.A., directing certain modifications to be considered and carried out in the resolution plan by the CoC.
4. Thereafter, the SRA placed an addendum dated 20th February, 2023 *inter-alia* making certain modifications to the resolution plan, which was approved by the CoC with majority voting of 84.05%. Accordingly, the Resolution Professional filed the I.A. No. 1007 of 2023 seeking approval of the resolution plan along

with the addendum. This Tribunal vide Order dated 21st July, 2023 approved the resolution plan of SRA.

5. The Applicant is the guarantor in respect of the debt undertaken by its step-down subsidiary i.e. the Corporate Debtor. The Applicant is unaware of the mechanism that is set out in the approved resolution plan vis-à-vis the guarantees that have been provided on behalf of the Corporate Debtor and its subsidiaries. The resolution plan may have provided for a reduction in the amount payable to the creditors, which again would vitally impact the rights of the Applicants. Thus, the Applicant is vitally interested in the approved resolution plan.
6. The Applicant attempted to obtain a certified copy of the approved resolution plan. However, the Applicant was asked to obtain necessary orders in this regard from the Tribunal. Hence this application.
7. **Reply filed by Respondent/RP:**
 - i. The Applicant has relied only on certain extracts of the judgment of Association of Aggrieved Workmen of Jet Airways (India) Ltd v/s. Jet Airways (India) Ltd, in Company Appeal (AT) (Ins.) No. 643 of 2021 and has not relied on the said judgment in its entirety. The Hon'ble NCLAT in Jet Airways (India) Ltd (supra) in spite of recording that a resolution plan once approved by the Adjudicating Authority is no more a confidential document, has directed the successful resolution application to provide only those parts of the resolution plan which pertained to the claims of the applicant therein.
 - ii. In light of the ratio laid down in Jet Airways (India) Ltd (supra) and taking into consideration that the Applicant is a guarantor of the

Corporate Debtor and has some vested interest in the approved resolution plan, the Respondent has provided the relevant extracts of the approved resolution plan which pertained to the treatment of corporate guarantees under the approved resolution plan vide e-mail dated October 01, 2023.

- iii. In view of the relevant extracts pertaining to the treatment of the Applicant under the approved resolution plan vide email dated 01.10.2023, the present application deserves and ought to be dismissed.

FINDINGS

8. We have heard the learned Counsels for the Applicants and the Respondent.
9. Counsel for the Applicants submits that the Applicants being the guarantors of the Corporate Debtor, have a vital interest in the copy of the approved resolution plan. Counsel for the Applicant has relied upon the ruling of Hon'ble NCLAT in Association of Aggrieved Workmen of Jet Airways (India) Ltd v/s. Jet Airways (India) Ltd, vide Order dated 20th January, 2022 in Company Appeal (AT) (Ins.) No. 643 of 2021, in support of his submission that once a resolution plan is approved by the Adjudicating Authority, it is no more a confidential document. Thus, the learned Counsel for the Applicants submits that the Applicants are entitled to a copy of the approved resolution plan. In order to buttress the aforesaid submissions, the learned Counsel for the Applicants has relied upon the judgment of the Hon'ble Supreme Court in Vijay Kumar Jain v/s. Standard Chartered Bank reported in (2019) 20 SCC 455.
10. Per contra, Counsel for the Respondent has vehemently opposed the prayers of the Applicants. Counsel for the Respondent has contended that the reliance of the Applicants on the ruling of Hon'ble NCLAT in Jet Airways

(India) Ltd (supra) is misplaced. Counsel for the Respondent submits that even though the resolution plan, once approved by the Adjudicating Authority, ceases to be a confidential document, still it cannot be made available to each and every person. Learned Counsel for the Respondent has drawn our attention to Para 28 of the NCLAT Judgment in Jet Airways (India) Ltd (supra) wherein the Hon'ble NCLAT has categorically held that on various grounds the access to resolution plan, even if it is not a confidential document after approval, can be denied in proper and appropriate cases. Ld. Counsel further contends that even in Jet Airways (India) Ltd case, the Hon'ble NCLAT had directed the SRA to provide to the employees and workmen only that part of resolution plan which deals with their claims. Counsel for the Respondent states that in the instant case, since the relevant extracts pertaining to the guarantees have already been provided to the Applicants vide email dated 01.10.2023, the present application deserves and ought to be dismissed.

11. We have heard the learned Counsel for the Applicants and the learned Counsel for the Respondent. We have thoroughly examined the merits of the matter and after having carefully weighed the rival submissions canvassed across the bar, we give our findings as under.

12. By way of e-mail dated 01st October 2023, the Respondent had provided the relevant extracts of the approved resolution plan pertaining to treatment of guarantors which is reproduced hereinbelow:

“Continuation of Personal Guarantee of the Promoters or Promoter's Group Company or Guarantee Issued by Third Party to Secure the Lona extended to Corporate Debtor

Approval of the Resolution Plan by the Hon'ble NCLT Mumbai shall be treated as specific order for the Continuation of Personal Guarantee/Corporate Guarantee of Promoters or Promoter's Group Companies or any Third Party and specific carve out shall be available to SFC's for any recourse or recovery against third party Personal and Corporate Guarantors and such action may be treated over and above the plan provided. However, Corporate Guarantee issued by the Subsidiaries, Associate and Joint Ventures of Corporate Debtor shall not form part of the Approval sought under this clause.

It is to be noted that the recourse against the Personal Guarantees/Corporate Guarantees shall be free from any subrogation rights of the Guarantors. This arrangement in relation to the Personal Guarantees relies on the fact that it shall in no way or manner permit the Guarantors to claim any right of subrogation, indemnity, security, recompense or any Claim of whatsoever nature (whether under contract, equity or Applicable Law) against the CD or the RA, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity.”

The Applicants have not denied the receipt of the aforesaid mail. In view of the information supplied by the Respondent to the Applicants vide email dated 01.10.2023, it cannot be now said that the Applicants are unaware of the mechanism set out in the approved resolution plan vis-à-vis the guarantees that have been provided by them on behalf of the Corporate Debtor and its subsidiaries.

13. Counsel for the Applicant has relied upon the ruling of Hon'ble NCLAT in Jet Airways (India) Ltd (supra). However, in our view, the reliance upon the aforesaid ruling is misplaced. Even in Jet Airways (India) Ltd (supra) case, the Hon'ble NCLAT was not inclined to issue a direction to provide entire resolution plan to the association of aggrieved workmen. The Hon'ble NCLAT held that the association of aggrieved workmen is entitled to only the relevant

part of the resolution plan relating to the claim of workmen and employees. The Hon'ble NCLAT had also observed in the aforementioned ruling that the access to resolution plan, even if it is not a confidential document after approval, can be denied on various grounds in proper and appropriate cases. The relevant extracts from the aforesaid ruling are reproduced hereunder:

*“28. When the right to Appeal on the ground enumerated in sub-section (3) of Section 61 is provided, unless the Appellant is aware of the contents of the Resolution Plan, how he will be able to satisfy the Appellate Court that the grounds enumerated in sub-section (3) of Section 61 are made out in reference to approval of the Resolution Plan. The provision of Section 61, sub-section (3) reaffirms our view that after approval of the Resolution Plan, Resolution Plan does not remain a confidential document, so as to deny its perusal to a claimant, who is aggrieved by the Plan and has come up on the Appeal. We, thus, are of the view that Resolution Plan after its approval by the Adjudicating Authority is no more a confidential document, so as to deny access to even a claimant. It is true that the Resolution Plan even though it is not a confidential document after its approval, **cannot be made available to each and to anyone who has no genuine claim or interest in the process. On various grounds the access to Resolution Plan even if it is not a confidential document, after approval can be denied in proper and appropriate cases.***

*29. Now coming back to the facts of the present case, as submitted by the learned Counsel for the Respondent No.4 that there are more than 20,000 Operational Creditors apart from Financial Creditors and other stakeholders. We have noticed above that before the Adjudicating Authority, Applications were filed by several Applicants including National Aviators' Guild, Jet Aircraft Maintenance Engineers Welfare Association, Bhartiya Kamgar Sena, Jet Airways Cabin Crew Association etc. before the Adjudicating Authority praying for copy of Resolution Plan, which Application was rejected by detailed order dated 22nd February, 2021. **We, thus, are not inclined to issue a***

direction to provide entire Resolution Plan to the Appellant herein. We however, are fully satisfied that the Appellant is entitled for the relevant part of the Resolution Plan relating to the claim of the workmen and employees. We, thus, direct that part of Resolution Plan which deals with claim of workmen and employees should be provided to the Appellant by Successful Resolution Applicant – Respondent No.4 within a period of three weeks from today. The prayer made by Appellant/ Applicant for the copy of Resolution Plan is decided accordingly.” (Emphasis Supplied)

14. Counsel for the Applicants have also placed reliance upon judgment of the Hon’ble Supreme Court in Vijay Kumar Jain v/s. Standard Chartered Bank reported in (2019) 20 SCC 455. However, in our view, the aforesaid ruling of the Apex Court does not apply to the case in hand as it stands distinguished on facts. In the aforementioned case, the issue was whether the suspended director has a right to receive a copy of resolution plan and the ratio of the decision was that the suspended board of directors are entitled to a copy of resolution plan so as to effectively participate in each and every meeting held by the CoC although they not the members of CoC. In the present case, the resolution plan has already been approved by the Adjudicating Authority and the Applicants are not the suspended directors of the Corporate Debtor. Hence, the ruling of Hon’ble Supreme Court of India in Vijay Kumar Jain (supra) is not relevant to the facts of the present case.

15. We also observe that the Order passed by the Adjudicating Authority u/s 31 of the Code approving the resolution plan of the Corporate Debtor has been impugned before the Hon’ble NCLAT u/s 32 read with Section 61 of the Code, vide Company Appeal (AT)(Ins.) Nos. 1211/ND/2023, 1271/ND/2023 and 1318/ND/2023. We, therefore, do not deem it appropriate to give any relief

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prayed for by the Applicant at this stage where the appeal is pending before the Hon'ble NCLAT.

16. Since in the instant case, the relevant part of the approved Resolution Plan relating to the guarantees has already been provided to the Applicants by the Respondent, and also for the fact that the appeals against the order approving the resolution plan are pending before the Hon'ble NCLAT, we are not inclined to issue a direction to provide entire resolution plan to the Applicants herein. Hence, **we hereby dismiss the I.A. No. 4170 of 2023 and I.A. No. 4057 of 2023.**

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)