

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -II**

IA No. 4340/2023

In

C.P. (IB) No. 1765/MB/2018

Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016

Union Bank of India

Through Authorized Representative

Sidhartha Mhade

Aged- 41 years, Service- Occupation

Having Branch at:

Stressed Assets Management Branch,

104, ground floor, Bharat House,

M.S. Marg Fort, Mumbai- 400001

.... Applicant/Financial Creditor

Versus

1. Shailesh Verma

Resolution Professional of Lavasa
Corporation Limited,

Dasve Convention Centre Limited,

Warasgaon Asset Maintenance Limited,

Dasve Retail Limited,

Warasgaon Power Supply Limited

E1004, Vijaya Apartments,

Mall Road, Ahinsa Khand 2,

Near Shanti Gopal Hospital,

Indirapuram, Ghaziabad- 201014

- 2. Darwin Platform Infrastructure Limited**
H-127, Ansa Industrial Estate,
Sakivihar Road, Saki Naka,
Andheri East, Mumbai- 400072

...Respondents

- 3. Bank of India**
Head Office: “Star House” C-5,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai- 400051
Branch Office: Mumbai Large
Corporate Branch, 364,
Oriental Building, D N Road,
Fort, Mumbai – 400001.
- 4. Central Bank of India**
Head office: Chander Mukhi,
Nariman Point, Mumbai- 400021
Branch Office: Corporate Finance
Branch, 1st Floor, MMO building,
M G Road, Fort, Mumbai – 400023
- 5. Punjab National Bank**
Head office: 7, Bhikaji Cama Place,
New Delhi-066
Branch office: Maker Towers ‘E’,
Cuffe Parade, Mumbai- 400005.
- 6. Indian Bank**
Corporate office- PB No. 5555,

254-260, Avvai Shanmugam Salai,
Royapettah, Chennai- 600014

7. State Bank of India

Branch office: Overseas Branch,
Ashok Mahal, 1204 Tulloch Road,
Colaba, Mumbai- 400038.

8. Bank of Baroda

Head office: Suraj Plaza-I Sayajiganj,
Baroda-390005

Branch office: Corporate Financial
Service Branch, 4th Floor, 10/12,
Mumbai Samachar Marg Fort,
Mumbai- 400023.

...Performa Respondents

In the matter of

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

V/s

Lavasa Corporation Ltd.

Order Delivered on :- 10.11.2023

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant : Senior Counsel, Mr. Vikram Nankani a/w
Malhar Zatakia, Deepak Saxena

For the erstwhile RP : Adv. Ankit Lohia

For the Respondent No. 8 in
Bank of Baroda : Adv. Nitin Jain i/b S.K Singhi

ORDER

Per: - Coram.

1. This Interlocutory Application is filed by Union Bank of India, one of the Financial Creditors of Lavasa Corporation Limited (hereinafter referred to as “the Corporate Debtor”) seeking recall of the order dated 21.07.2023 passed by this Tribunal in I.A. No.1007 of 2023 (‘Plan Approval Order’) whereby the Resolution Plan, approved by 96.41% of the Committee of Creditors (‘CoC’), was allowed. The Applicant has further requested in the application to (i) obtain fresh valuation of the assets of the Corporate Debtor and to invite fresh resolution plans based on the fresh valuation of the assets of the Corporate Debtor, and (ii) restrain the Respondents from acting on the approved Resolution Plan pending disposal of the present application.

Submissions of the Applicant.

2. The counsel for the Applicant made submissions on the admission as well as the maintainability of the Application.

3. The Ld. Counsel for the Applicant submitted that the Plan Approval Order is sought to be recalled primarily on the ground that the Applicant, which is a nationalised bank, has been made to suffer a haircut of nearly 80% which is acutely inequitable and unpalatable considering the fact that public money is involved. Therefore, according to the Counsel for the Applicant, a strong prima facie case is made out for the recall of the impugned order.
4. The Ld. Counsel for the Applicant has further submitted that the valuation reports of the asses 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, and on this ground also, the impugned order is liable to be recalled.
5. The Counsel for the Applicant further submitted that so far as the issue of maintainability of the instant IA is concerned, the same may be kept open to be decided later on and at this state, a notice be issued to the parties arrayed as respondents in this IA.
6. We have heard and considered the submissions made by the Counsel for the Applicant as also gone through the records.
7. By way of this application, the Applicant, which is one of the members of the CoC, has sought to recall the Plan Approval Order whereby the Resolution Plan was approved. Incidentally, the Resolution Plan was approved by the committee of which the Applicant was part of and voted in favour of the same

after exercising its commercial wisdom. The grounds stated for recall of the Plan Approval Order is not based on a new development of which the Applicant was not aware of before or at the time the impugned order was passed. Besides, the Applicant having been part of the Committee of Creditors and having voted in favour of the plan is in a way estopped from challenging the same. More so, when an appeal is already pending with the Hon'ble NCLAT against the order which has been sought to be recalled by the Applicant.

8. Secondly, it has to be seen as to how and under what circumstances an order passed by this Authority can be recalled as per law. In this regard, a reference can be made to the law laid down in *Asit Kumar Kar vs. State of West Bengal & Ors (2009) 2 SCC 703* whereby the Hon'ble Supreme Court has noted the distinction between review and recall petition in para 6 in the following terms:

“ 6. There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the fact of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.

9. In this case, the ground raised for recall of the order is not on account of an error or mistake arising from any accidental slip or omission, a material procedural irregularity or the like. In this regard, a reference can also be made to the law laid down in *Union Bank of India (Erstwhile Corporation Bank) vs. Dinkar T. Venkatasubramanian & Ors in Company Appeal (AT) (Insolvency)*

No. 729 of 2020 vide order dated 27.01.2022 whereby the Hon'ble NCLAT held that power to review is not conferred upon this Tribunal and the power of recall which can be exercised by the Tribunal is not to rehear the case to find out any apparent error in the judgement. It is also settled position that after approval of the resolution plan, this Tribunal becomes *functus officio* and thus is not entitled to review the order subsequently.

10. The Applicant has sought the recall of the order approving the Resolution Plan mainly on the ground that the resolution plan was approved on the basis of the valuation of assets of the Corporate Debtor carried out in the year 2018 and it has not taken into account the real estate market dynamics which improved over a period from 2018 to 2023. It is a settled position that the consideration of prevailing asset value is essentially within the commercial wisdom of CoC. Moreover, if the Applicant had any issue with regard to the valuations, it could have raised the same any time prior to the approval of the plan by this Authority which was approved in the year 2023.
11. As regards the submission of the Counsel that notice may be issued to the various parties arrayed as respondent in this application keeping the issue of maintainability of the application open, we are of the considered view that since the application is without any merit and does not lie at all, issuing a notice to the Respondents would be nothing but an exercise in futility. In these circumstances we are not inclined to issue notice to the Respondents at this stage.

12. If the Applicant is aggrieved by the Plan Approval Order, the remedy available is to file an appeal before the Appellate Authority and absolutely no case is made out for the recall of the plan approval order.
13. In the light of the foregoing discussion, we hold that the interlocutory application No. 4340 of 2023 does not lie at all nor can be admitted being not maintainable and the same is hereby summarily **dismissed**.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**