

## **Frequently Asked Questions (FAQ)**

DISCLAIMER: The following questions and answers are intended to be provided for general information in relation to the Corporate Insolvency Resolution Process of Lavasa Corporation Limited (the "**Company**") only and may be updated from time to time. These may not be completely accurate in every circumstance, do not constitute or purport to constitute legal advice, and are not intended to be binding, in any manner, on any stakeholder, including the resolution professional ("**RP**"). The RP is neither making any representation through answers to these FAQs, nor takes any responsibility with respect to their correctness or reliability. Any concern in relation to these FAQs, or otherwise relating to the provisions of Insolvency and Bankruptcy Code, 2016 along with rules & regulations framed there under ("**Code**") and/ or your legal rights and obligations should be addressed to a lawyer and independent decision on the course of action, as may be appropriate, should be taken in consultation with your legal advisor:

### **Q1) What is the Corporate Insolvency Resolution ("CIR") Process and CIR Period?**

Answer: CIR process is a process during which a resolution professional is appointed to manage the affairs of the Company as a going concern and invites prospective lenders, investors and any other persons to put forward their resolution plans for insolvency resolution of the corporate debtor (in the present case, Lavasa Corporation Limited or "**LCL**") ("**Corporate Debtor**") as a going concern.

CIR period stretches for a period of 180 days commencing from the date of admission of application for initiating CIR Process by the National Company Law Tribunal (NCLT) ("**Insolvency Commencement Date**") in case of corporate persons which may be extended for a further period of 90 days (180 + 90 = 270 days) in accordance with the Code. The CIR process for LCL commenced on August 30, 2018, was supposed to end on February 26, 2019. However, the NCLT has excluded 20 days from this period on account of RP not functioning as the resolution professional during that period, and hence, the CIR period ends on March 18, 2019. Further, the RP has filed an application with the NCLT for extension of the CIR period by 90 days, and the same will be listed shortly.

### **Q2) What is the status of management of Company after the appointment of the RP?**

Answer: From the date of appointment of RP, the management of affairs of the Company vests in the RP, the powers of the board of directors stand suspended and are to be exercised by the RP. All personnel of the Company, its promoters and persons associated with the management of the Company are required to extend all assistance and cooperation to the RP, as may be required by him; and officers and managers of the Company are required to report to the RP. The RP is required to endeavor to manage the operations of the Company as a going concern.

### **Q3) What does suspension of powers of board of directors mean and what is the role of the officers and managers of the Company?**

Answer: Suspension of powers of the board of directors does not mean that the board of directors is dissolved. The directors do not cease to be the directors. The powers of the

board of directors vest in the RP and the directors are required to extend all assistance and cooperation to the RP as may be required by him in managing the affairs of the Corporate Debtor as a going concern.

#### **Q4) What are the major duties of of the RP during the CIR period?**

Answer: The major role of the RP is to preserve and protect the assets of the corporate debtor, including the continued business of the corporate debtor. The other roles of the RP in terms of the Code include:

- a) to collect all information relating to the assets, finances and operations of the Company for determining the financial position of the Company and take control and custody of assets of the Company as per the Code.
- b) receive, collate & verify claims submitted by creditors, pursuant to public announcement published on September 1, 2018
- c) constitute Committee of Creditors ("CoC") & prepare list of creditors,
- d) prepare an information memorandum
- e) invite prospective lenders, investors, and any other persons, through publication of Expressions of Interest / Notice of Invitation or otherwise, to submit resolution plans (if any).

#### **Q5) What is a resolution plan?**

Answer: A resolution plan is a plan proposed by a resolution applicant for insolvency resolution of a corporate debtor as a going concern. A resolution plan aims to resolve the insolvency of the corporate debtor by providing for inter alia measures towards the management and operations of the corporate debtor, dealing with the claims of various stakeholders and continuing the business of the corporate debtor as a going concern, after taking into consideration, among other things, the present financial situation of the company, claims of the creditors admitted by the RP, the causes of default etc.

#### **Q6) Who is the final sanctioning/ approving authority of a resolution plan?**

Answer: The resolution professional is required to present all resolutions plans received, that meet the mandatory requirements of the Code, to the CoC for its consideration. The CoC may approve any such resolution plan with such modifications as it deems fit. The resolution plan approved by CoC is to be submitted for final approval to the NCLT by RP as per the provisions of the Code and implemented once approved. The final approving authority is accordingly NCLT. Once approved, the resolution plan becomes binding on the Company and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

In terms of Section 5(8)(f) of the Code, any amount raised from an allottee of a real estate project shall be deemed to be an amount having the commercial effect of borrowing. Therefore, any homebuyers who have been allotted plot / flat / apartment / building and have not been provided with the possession, subject to meeting the other requirements of the Code, are treated as financial creditors and form part of the CoC.

**Q7): Whether flat buyers/ allottees are creditors, and if so, financial creditors, operational creditors or other creditors?**

Answer: In terms of Section 5(8)(f) of the Code, any amount raised from an allottee of a real estate project shall be deemed to be an amount having the commercial effect of borrowing. Such persons shall be considered as financial creditors to the extent of amount raised from him/her under the real estate project, provided that other criteria for them to be treated as financial creditors is met, including, but not limited to, possession of the premises having not been handed over to them. Among other things, this may, for instance, depend on the nature of the underlying agreement/ other documents basis which claim has been submitted. The RP will evaluate and verify the claims of all creditors based on the proof of claims and other supporting documents received as per the Code and as per the applicable law. Those persons who have received possession and have submitted claims on account of service/maintenance related issues, they have been considered as operational creditors of LCL.

**Q8) Which homebuyers are eligible for the purpose of constituting the Committee of Creditors?**

The home buyers who have been allotted a plot / flat / apartment / building as on 30.08.2018 vide letter of allotment or agreement to lease or agreement of sale or any other agreement and have not been given possession of the property are to be considered as financial creditors and will be represented in the meetings of committee of creditors through their authorized representative.

This includes the home buyers who were not given possession of property and have terminated their agreement to lease with LCL.

In cases of termination by the home buyers where the home buyer have received refund in part and the rest is pending to be paid by LCL, the refund amount pending as on August 30, 2018 has been considered for computing the voting share of such home buyers.

**Q9) What is the role of a homebuyer who is a financial creditor, in the CIR process?**

By amendment to the Insolvency and Bankruptcy Code, 2016 by way of Insolvency and Bankruptcy (Amendment) Ordinance, 2018 issued on 06 June 2018, home buyers are to be considered financial creditors of the corporate debtor if they fall within the scope of amendment.

As per the regulation 16A(7) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"), "The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties". Accordingly, for the purpose of voting share, the interest has been computed at the rate of **[insert]** per cent per annum for home buyers. The home buyers shall be carrying the voting rights through-out the CIRP and shall be required to exercise their vote as and when CoC meetings are convened.

**Q10) How will the homebuyers (who are financial creditors of LCL) exercise their powers in the committee of creditors?**

As per the Code and the CIRP Regulations, an authorized representative, Mr. Sudip Bhattacharya ("**AR**"), selected by the homebuyers vide their claim forms, has been appointed by the erstwhile interim resolution professional, Mr. Devendra Prasad and his appointment has been confirmed by the NCLT. The Authorised representative shall be a registered insolvency professional (IP).

The homebuyers (who are financial creditors of LCL) shall be represented in the committee of creditors by the AR, and shall exercise their right to vote through him.

It should be noted that the AR represents only the homebuyers who are financial creditors, i.e. to whom possession of property has not been handed over. Those persons who have received possession and have submitted claims on account of service/maintenance related issues, they have been considered as operational creditors of LCL and are not represented by the AR. Further, the AR does not represent the residents of Lavasa city as a whole. To reiterate, the AR represents only the residents who are financial creditors, as discussed in response to question 7, to the extent that they are financial creditors of LCL

**Q11) What are the roles and responsibilities of the AR of the homebuyers?**

The AR of homebuyers has the right to participate and vote in meetings of the committee of creditors on behalf of the homebuyers (who are financial creditors of LCL) in accordance with prior voting instructions of these homebuyers obtained through physical or electronic means. The AR is required to circulate the agenda and minutes of meetings of committee of creditors to the financial creditors he represents

**Q12) What will happen if flat buyer/ allottee/ claimants fails to submit proof of claim within stipulated time?**

Answer : The last date for submission of proofs of claim was September 14, 2018, as is stated in the public announcement published on September 1, 2018. Any creditor who fails to submit the proof of claim within the time stipulated in the public announcement may submit such proof to the RP on or before the 90<sup>th</sup> day of the Insolvency Commencement Date. While claims filed by a creditor after the last date specified shall not be admitted by the RP, however, the books of the Corporate Debtor shall continue to reflect the liability of the Corporate Debtor in respect of such claim, provided that such claim is valid, to enable the resolution applicant to consider the financial position clearly while formulating a resolution plan and enable it to deal with all such liabilities in its resolution plan.

**Q13) Can a flat buyer/ allottee cancel the booking and ask for refund?**

Answer: Cancellation of any booking shall be subject to the terms and conditions of allotment documents including the allotment cum flat buyer agreement and, all payments relating to claims / refunds received shall be required to be made in accordance with the terms thereof, the provisions of the Code and as per the resolution plan as may be finally approved by NCLT.

**Q14) How should the Form be sent to RP?**

Answer: Claimants can file their proof of claims by way of the relevant forms as per the CIRP Regulations and the public announcement published on September 1, 2018 and they may be sent electronically at the email id [inlavasaip@deloitte.com](mailto:inlavasaip@deloitte.com) or sent by post or in person, depending on the nature of their claim.

**Q15) For claimants who live abroad, can they file claim form by electronic means?**

Answer: Yes. You are requested to refer to the public announcement published on September 1, 2018 for more details.

**Q16) Can a claimant appoint a representative to sign the claim form on his behalf?**

Answer: Yes, subject to the representative having a valid Letter of Authority/Power of Attorney, in which case, the claimant is required to enclose this letter of authority/ power of attorney along with the Form submitted.

**Q17) What are the supporting documents of proof needed to be attached with the claim form?**

Answer : Documents that are sufficient to establish your claim such as allotment letter, receipts, sale deed, agreement for sale, bank statements, receipt of payment made etc. or other relevant documents evidencing the existence of debt. .

**Q18) Whether construction and allotment would continue?**

Answer: As stated above, the IRP/RP shall make every endeavor to manage the operations of the Company as a going concern and keep the operations of the Company running as smoothly as practically possible based on the availability of cashflow and/ or required funding, and within of course, the boundaries laid down by the Code. To this end, the IRP/RP will endeavor to continue construction of the ongoing projects of the Company, to the extent reasonably possible, and in accordance with the applicable law. However, the Hon'ble Bombay High Court vide its order dated 19th June 2018 in the matter of Bhagyalaxmi Rolling Mill Pvt. Ltd., has restrained LCL from selling, transferring, alienating, assigning or disposing off or from creating third party rights in any manner the movable and immovable properties belonging to LCL. Thus, LCL is precluded from creating third party rights on its immovable properties and therefore, any new lease deed cannot be executed as there is a stay on transferring, alienating, assigning or disposing off, or on creating third party rights in any manner on, the movable and immovable properties belonging to LCL.

**Q19) What about court cases, if any, filed by flat buyers/ allottee?**

Answer: NCLT vide its order dated August 30, 2018 has declared moratorium prohibiting the institution of suits or continuation of pending suits or proceedings against the Company, including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority. In view of the same, all suits and proceedings pending against the Company shall be stayed. Please refer to Section 14 of IBC. Flat buyers / allottees who have an order of a judicial or regulatory authority for payment by LCL may file a claim with the RP in this respect.