

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. 5, MUMBAI BENCH

I.A. 1068/2020

in

C.P. 547/I&B/MB/2020

Under Section 60(5) of the Insolvency &  
Bankruptcy Code, 2016 and Rule 11  
of the National Company law  
Tribunal Rules, 2016

TJSB Sahakari Bank Ltd.

...Applicant

Vs.

Mr. Kshitiz Gupta & Ors.

...Respondents

*In the matter of*

State Bank of India

...Financial Creditor

vs.

Aditya Fabrication Private Limited

...Corporate Debtor

and

I.A. 78/2021

in

C.P. 547/I&B/MB/2020 and C.P.  
193/I&B/MB/2019

Under Section 60(5) of the Insolvency  
& Bankruptcy Code, 2016 and Rule  
11 of the National Company law

Tribunal Rules, 2016

Committee of Creditors of Aditya Vidyut  
Appliances Limited and Aditya  
Fabrication Private Limited through  
State Bank of India

...Applicant

Vs.

Aditya Vidyut Appliances Limited  
(through Resolution Professional) &

Ors

...Respondents

*In the matter of*

State Bank of India

... Financial Creditor

vs.

Aditya Fabrication Private Limited

... Corporate Debtor

and

*In the matter of*

Easun – MR Tap Changers Pvt. Ltd.

... Operational Creditor

Vs.

Aditya Vidyut Appliances Ltd.

... Corporate Debtor

**Order Pronounced on: 16.04.2021**

Coram: Hon'ble Suchitra Kanuparthi : Member (Judicial)

Hon'ble Chandra Bhan Singh : Member (Technical)

**For I.A. 1068/2020 in C.P. 547/I&B/MB/2020:**

For the Applicants: Adv. Nausher Kohli a/w Adv. Harsh Gokhale, Adv.  
Makarand Godse and Adv. Kishor Satpute

For the Respondents: Adv. Sandhya Iyer a/w Adv. Rishabh Chandra i/b  
Vaish Associates Advocates

For the Resolution Professional: Adv. Ajinkya Kurdukar a/w Adv.  
Sadiya Mahek i/b Kurdukar & Co.

**For I.A. 78/2021 in C.P. 547/I&B/MB/2020 and C.P.  
193/I&B/MB/2019:**

For the Applicants: Adv. Sandhya Iyer a/w Adv. Rishabh Chandra i/b  
Vaish Associates Advocates

For the Respondents: Adv. Ajinkya Kurdukar a/w Adv. Sadiya Mahek  
i/b Kurdukar & Co.

***Per: Suchitra Kanuparthi, Member (Judicial)***

**COMMON ORDER**

1. This is an Application filed by the Applicant seeking consolidation of CIRP of Aditya Vidyut Appliances Ltd. and Aditya Fabrication Pvt. Ltd. (AVAL and AFPL) in the interest of justice to enable the maximization of value of assets of both Corporate Debtors and as well as all creditors and other stake holders of Corporate Debtor.

**BRIEF FACTS SET OUT BY THE APPLICANT SEEKING  
CONSOLIDATION:**

2. Respondent No. 1 AVAL is undergoing CIRP vide an order of

admission passed by the NCLT on 11.09.2019. The status of CIRP is as follows:

Action / Stage of CIRP	Status
	<b>In AVAL</b>
Date of public announcement inviting claims	September 23, 2019
Date of appointment of valuer	November 2, 2019
Status of valuation	Completed
Publishing Form G	Original form G on December 4, 2019 First extension of form G on January 31, 2020 Second extension of form G on August 20, 2020
Details of EOI received	From Riddhisiddhi Bullions Limited, Prudent ARC Limited, Rational Engineers Limited and Mr. Harsh Vardhan Reddy. However, Mr. Harsh Vardhan Reddy was not included in the final list of prospective resolution applicants unlike the remaining three entities abovenamed as he did not submit requisite document as requested by RP.
Submission of information memorandum to COC	Original IM- November 13, 2019 First addendum to IM-March 17, 2020

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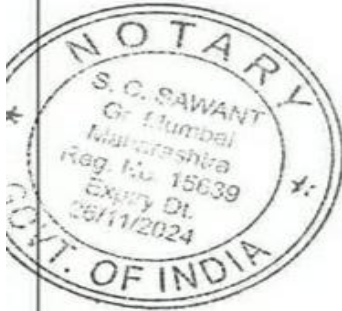
	Second addendum to IM- October 3, 2020 (IM was shared with COC members as and when the confidentiality undertaking was received)
Last date for submission of EOI	Original- December 19, 2019 First extension- February 15, 2020 Second Extension- September 10, 2020
Shortlisting provisional list of PRAs (Prospective Resolution Applicants)	Original-December 29, 2019 First extension- February 25, 2020 Second Extension- September 12, 2020
Shortlisting final list of PRAs	Original-January 13, 2020 First extension- March 11, 2020 Second Extension- September 19, 2020
Issue of RFRP, Evaluation Matrix and Information Memorandum	Original-January 3, 2020 First extension- March 1, 2020 Second Extension- September 17, 2020
Last date for receipt of Resolution Plans	Original-February 2, 2020 First extension- March 31, 2020 Second Extension- October 17, 2020 Further extensions given (subject to approval of CIRP tenure extension by Hon'ble NCLT - CIRP extension granted by Hon'ble NCLT upto November 24, 2020 i.e date of next hearing): 21 days – November 7, 2020 30 days – December 7, 2020 Till date, no resolution plan submitted
Appointment of transaction auditor	December 12, 2019. The transaction audit has been completed and the report has been shared with the committee of creditors
Status of avoidance applications	Not filed



3. AFPL is undergoing CIRP pursuant to the order dated 15.05.2019 passed by the NCLT, Principal Bench, New Delhi. The status of

CIRP is as follows;

Action	Status in AFPL
Date of public announcement inviting claims	May 17, 2020
Date of appointment of valuer	June 25, 2020
Status of valuation	In process
Publishing Form G	August 20, 2020
Details of EOI received	From Riddhisiddhi Bullions Limited, Prudent ARC Limited, Rational Engineers Limited and Mr. Harsh Vardhan Reddy. However, Mr. Harsh Vardhan Reddy was not included in the final list of prospective resolution applicants unlike the remaining three entities abovenamed as he did not submit requisite document as requested by RP.
Submission of information memorandum to COC	July 8, 2020 (IM was shared with COC members as and when the confidentiality undertaking was received)
Submission of EOI	September 10, 2020
Shortlisting provisional list of PRAs (Prospective Resolution Applicants)	September 12, 2020
Shortlisting final list of PRAs	September 19, 2020
Issue of RFRP, Evaluation Matrix and Information Memorandum	September 17, 2020
Date of receipt of Resolution Plan	October 17, 2020 Further extensions given: 21 days – November 7, 2020 30 days – December 7, 2020 Till date, no resolution plan submitted
Appointment of transaction auditor	June 25, 2020
Status of avoidance applications	Not filed



4. Respondent No. 1 (AVAL) is a company incorporated on June 26, 1989 under the provisions of the Companies Act, 1956 and is primarily involved in the manufacturing, remanufacturing and testing of the Transformers. A Company Petition viz. CP IB No. 193 of 2019 filed by Easun-MR Tap Changers Private Limited

u/s 9 of the Code on account of default in making payment of INR 4,32,70,548/- came to be admitted against AVAL vide order dated September 11, 2019 passed by Hon'ble National Company Law Tribunal, Mumbai Bench. In terms of the aforesaid order, Mr. Kshitiz Gupta was appointed as Interim Resolution Professional of AVAL and his appointment was subsequently approved by the committee of creditors in the first meeting of AVAL held on October 19, 2019. Subsequently, the following meetings of the committee of creditors of AVAL have been conducted till date — 2<sup>nd</sup> meeting dated November 28, 2019, 3<sup>rd</sup> meeting dated January 15, 2020, 4<sup>th</sup> meeting dated March 2, 2020, 5<sup>th</sup> meeting dated June 12, 2020, 6<sup>th</sup> meeting dated October 13, 2020 and 7<sup>th</sup> meeting dated November 4, 2020 inter alia, to discuss, deliberate and decide upon various pertinent issues in respect of the operations and management of AVAL. The RP had filed an Application u/s 12(2) of the Code viz. I.A. No. 2042/MB/2020, thereby seeking extension of CIRP Period of AVAL inter alia on account of grant of exclusion due to Covid-19 while computing the CIRP period. The aforesaid Application was heard by this Hon'ble Tribunal on November 11, 2020 and this Hon'ble Tribunal directed that the CIRP Period for AVAL stands extended till the date of next hearing in the matter of AFPL viz. November 24 2020, when the Hon'ble Bench proposed to hear and decide the present Application seeking consolidation of CIRP for both the Corporate Debtors.

5. Respondent No. 2 (AFPL) is a company incorporated on November 24, 2003, under the provisions of the Companies Act, 1956 and is primarily engaged in the business of buying, selling and fabricating of transformers and other electrical goods and provides support services to AVAL. AFPL came to be admitted into CIRP vide order dated May 15, 2020 passed by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi

(Camp at Chennai) in CP IB No. 547 of 2020 filed by the Applicant u/s 7 of the Code on account of default in honoring Corporate Guarantee furnished by Respondent No. 2 by executing the Deed of Guarantee dated September 27, 2014 in order to secure repayment of loan obtained by Respondent No. 1 from the Applicant. By the aforesaid order, Mr. Kshitiz Gupta was appointed as Interim Resolution Professional of AFPL, in CIRP of AFPL as per the provisions of the Code, and his appointment was subsequently approved by the members of the committee of creditors in the first meeting of AFPL held on June 12, 2020. Subsequently, the 2<sup>nd</sup> COC meeting was conducted on October 13, 2020 in order to discuss, deliberate and decide upon various pertinent issues in respect of the operations and management of AFPL. The Applicant craves leave to refer to and rely upon copies of minutes of all the meetings of the committee of creditors in respect of AFPL as and when required. The RP had filed an Application u/s 12(2) of the Code viz. I.A. No. 2041/MB/2020, thereby seeking extension of CIRP Period of AFPL inter alia on account of grant of exclusion due to Covid-19 in computation of the CIRP period. The aforesaid Application was heard by this Hon'ble Tribunal on November 11, 2020 and this Hon'ble Tribunal was pleased to grant exclusion from May 15, 2020 to July 31, 2020 for the purpose of computation of CIRP Period for AFPL. In view thereof, the CIRP period of AFPL can be effectively considered to commence with effect from August 1, 2020.

6. In the meanwhile, TJSB filed an Interlocutory Application viz. I.A. No. 1068 of 2020 before this Hon'ble Tribunal in CP No. 547 of 2020 i.e. in the CIRP proceedings of AFPL. In the aforesaid Interlocutory Application, TJSB had, inter alia, contended that in view of various decisions passed by the Hon'ble National Company Law Appellate Tribunal and the Principal



bench of the Hon'ble Tribunal, the Applicant and BOI, CFM and SVC are prohibited from lodging any claim in the CIRP of AFPL (the guarantor) in connection with the consortium loan agreement as they have already lodged their claims with regard to the same loan in the CRP of AVAL ("Principal Borrower"). TJSB further contended that apart from being a member of the Applicant led consortium, TJSB had also provided an independent loan to AFPL and holds exclusive security in respect thereof, and therefore TJSB ought to be holding 100% vote share in the committee of creditors of AFPL. The Applicant had filed an affidavit opposing IA No. 1068 of 2020 and setting out why the contentions of TJSB were not tenable. During the course of hearing of the above Interlocutory Application, this Hon'ble Tribunal observed that both the Corporate Debtors are heavily interdependent on one another in terms of operations and therefore, all concerned parties should make endeavour to arrive at a mutually amicable settlement of this dispute in the larger interest and to enhance the possibility of successful resolution of both the Corporate Debtors. Thereafter the Applicant and TJSB, BOI, CFM, SVC and Pegasus began exploring the possibility of a consolidated CIRP of AVAL and AFPL.

7. In view thereof, the Applicant and TJSB in consultation with the BOI, CFM, SVC and Pegasus have been making efforts to arrive at mutually agreeable terms in furtherance of a consolidation of CIRP of both the Corporate Debtors in order to enable the maximization of value of assets for all creditors and other stakeholders of both the Corporate Debtors, which is the purpose of the Code. The Applicant further states that on October 29, 2020, a joint lenders meeting of the members of the committee of creditors was held and attended by the lenders of AFPL (except BOI) wherein it was agreed to file an application

for consolidation of the CIRP of AVAL and AFPL.

8. The issue regarding consolidation of CIRP proceedings of the Corporate Debtors was discussed at a meeting of the members of the committee of creditors of AFPL held on October 29, 2020 and attended by State Bank of India viz. the Applicant, TJSB, CFM, SVC, Pegasus as well as the RP. BOI did not attend the meeting. In the aforesaid meeting, the following decisions, inter alia, were taken:
- i. Applicant, TJSB, CFM, SVC, Pegasus agreed for consolidated CIRP of AVAL and AFPL and distribution to be in line with Section 30(4) of IB Code, 2016, wherein the distribution as per the resolution plan would take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53 of Insolvency and Bankruptcy Code, 2016 including the priority and value of the security interest of a secured creditor.
  - ii. Based on the directions, if any, of Hon'ble NCLT on November 2 hearing, if required, Resolution Professional to call an early meeting of committee of creditors of AVAL and take view for consolidated CIRP of AVAL and AFPL and approval to proceed under Section 30(4) of the IBC in case submission of Resolution Plan.
  - iii. Consolidation application was sought to be filed by the SBI after authorization letter from the lenders and confirming the minutes of the JLM dated 29.10.2020. Lenders will issue letter of authorization to SBI to file application for consolidation of CIRP of AVAL and AFPL within 5 days from the circulation of this Minutes of the meeting held on October 29, 2020.

Subsequent thereto, as per the directions of this Hon'ble Tribunal in the course of hearing of the captioned proceeding held

on November 2, 2020, the Resolution Professional called for meeting of committee of creditors of AVAL on November 4, 2020. In the aforesaid meeting of the members of committee of creditors of AVAL, the agenda for consolidation of CIRP of the AVAL and AFPL was approved with 89.48% voting in favour.

9. The Applicant set out following are the reasons to consolidate CIRP of AVAL and AFPL:
  - a. The registered address with MCA is same of AFPL as well AVAL which is also called as Unit-H of AVAL situated at Survey No. 168, Hissa No-10, Sonale Village Bhiwandi Bypass Road NH-3 Bhiwandi, Thane- 421302.
  - b. The aforesaid Unit-11 is on a land mainly owned by AVAL, AFPL and family of promoters in various pieces and parcels.
  - c. Land belonging to AFPL along with building were given on lease to AVAL. Further, such land of AFPL is mortgaged to the Consortium of lenders to secure loans to AVAL. Further, plant & machinery located in such building and belonging to AVAL were also hypothecated to the Applicant led consortium to secure the dues payable by AVAL. AFPL has also provided a corporate guarantee to secure the amounts due from AVAL to such consortium of lenders.
  - d. Additionally, shareholding of AFPL is majorly held with AVAL (45%) and the promoter family. The shareholding pattern of AFPL and AVAL as per the records available on the MCA website are as follows:

**SHAREHOLDING PATTERN OF AVAL (MAJOR SHAREHOLDERS)**

<b>Name of shareholder</b>	<b>Percentage shareholding</b>
Narayan Pundalik Shenvi Prabhu	30.14%
Narayan Pundalik Shenvi Prabhu (HUF)	0.90%
Prakash Pundalik Shenvi	30.69%
Vijaylaxmi Narayan Pundalik Shenvi Prabhu	19.53%
Aditya Narayan Shenvi Prabhu	7.00%
Vaibhav Shenvi Prabhu	2.67%
Kavita Prakash Shenvi	1.45%
Asha Vasaikar	1.10%

**SHAREHOLDING PATTERN OF AFPL**

<b>Name of shareholder</b>	<b>Percentage shareholding</b>
Aditya Vidyut Appliances Ltd	45.00%
Mr Narayan Pundalik Shenvi Prabhu	18.00%
Sudhindra Shenvi Prabhu	10.00%
Mr Prakash Pundalik Shenvi	10.00%
Mrs Vijaylaxmi Narayan Pundalik Shenvi Prabhu	10.00%
Kavita Prakash Shenvi	7.00%

- e. AVAL and AFPL have almost identical/ mostly common lenders, viz. the members of the committee of creditors of AFPL constitute approximately 82.85% in terms of quantum of debt of the committee of creditors of AVAL. The constitution of committee of creditors Of AVAL and AFPL is as per the tables set out herein below:

**COMMITTEE OF CREDITORS OF AVAL**

Name of Financial Creditor	Admitted Claim in INR crores	Voting percentage (%)
<b>Against loan availed by AVAL</b>		
SBI	73.72	40.63
TJSB	24.39	13.44
CFM ARC	23.52	12.96
BOI	10.89	6.00
SVC Coop Bank	10.35	5.70
Fullerton India Credit Company Ltd	16.82	9.27
Pegasus Asset Reconstruction Private Ltd	7.44	4.10
Siemens Financial Services Ltd	3.27	1.80
Reliance Home Finance	1.55	0.86
IDFC First Bank	0.46	0.25
Dewan Housing	0.32	0.18
Axis Bank	0.23	0.13
<b>Against Corporate Guarantee given for loan availed by AFPL</b>		
TJSB	8.46	4.66
Total	181.42	100

**COMMITTEE OF CREDITORS OF AFPL**

Name of Financial Creditor	Admitted Claim in INR crores	Voting percentage %
TJSB (Against Term Loan availed by AFPL)	8.46	4.99
<b>As beneficiaries of Corporate Guarantee given by AFPL to secure loan availed by AVAL</b>		
SBI	80.26	47.38
TJSB	26.32	15.54

CFM ARC	25.81	15.24
BOI	10.70	6.32
SVC Coop Bank	10.35	6.11
Pegasus Asset Reconstruction Company Private Limited	7.50	4.43
Total	169.40	100

As such, a consolidation of CIRP of both the Corporate Debtors will exponentially increase the chances of successful resolution of both the Corporate Debtors. In the event of consolidation of CIRP of both the Corporate Debtors, all the common lenders will provide the best possible support and co-operation towards successful resolution, decision making process in relation to the CIRP may be done in an efficient manner.

10. The claims have already been invited in accordance with the Code and the process of verification has also been completed for both AVAL and AFPL. In the circumstances, in order to avoid needless duplication of work and expedite the resolution process, it is necessary that the Resolution Professional appointed in the consolidated CIRP of AVAL and AFPL be permitted to treat the claims already received in the individual CIRPs of AVAL and AFPL as claims in the consolidated CIRP without double counting. The CIRP commencement date for AVAL shall continue to be September 11, 2019 and the moratorium under Section 14 of the Code will be effective from that date. The CIRP commencement date for AFPL shall continue to be May 15, 2020 and the moratorium under Section 14 of the Code for AFPL will be effective from that date.
11. A new COC will be formed by the Resolution Professional for the

consolidated CIRP of AVAL and AFPL and the voting share of all financial creditors will be set out as per law based on the claims already received and verified in CIRP of AVAL and AFPL respectively.

12. The valuers have already been appointed in respect of CIRP of both AVAL and AFPL and have submitted their valuation reports. The finances of both AVAL and AFPL are stretched and in order to be more cost effective it is proposed that since valuations for both companies are completed the same valuers be permitted to provide an updated valuation report for the consolidated CIRP rather than undertaking fresh valuations.
13. It was decided in the 5<sup>th</sup> meeting of the committee of creditors of AVAL on June 12, 2020 and first meeting of committee of creditors of AFPL on June 12, 2020 that the eligibility criteria and evaluation matrix for the prospective resolution applicant(s) were kept the same for both AVAL and AFPL and the process of publishing the Form G in both companies proceeded in parallel. Three prospective resolution applicants have already been shortlisted pursuant to expression of interest received from them. Upon this Hon'ble Tribunal approving the consolidation of CIRP, the Resolution Professional appointed for the consolidated CIRP be permitted to call a combined meeting of the committee of creditors who will, inter alia, decide on whether to proceed with negotiations with the three shortlisted resolution applications or invite fresh expression of interest.
14. The Applicant submits that no prejudice will be caused to any stakeholders of either of the Corporate Debtors if consolidation of both the Corporate Debtors is permitted by this Hon'ble Tribunal. The Applicant submits that consolidation of CIRP of

both the Corporate Debtors will result in equitable treatment of all the creditors and other stakeholders.

15. TJSB is a part of the Applicant led consortium of lenders in respect of loan sanctioned to Respondent No. 1 and guaranteed by Respondent No. 2 as well as independent lender to Respondent No. 2. The Applicant, BOI, CFM, SVC and Pegasus are the other consortium lenders in respect of loan sanctioned to Respondent No. 1 and guaranteed by Respondent No. 2. Fullerton India Credit Company Limited, Siemens Financial Services Limited, Reliance Home Finance, IDFC First Bank, Dewan Housing Finance Corporation Limited and Axis Bank along with the Applicant, TJSB, BOI, CFM, SVC and Pegasus are lenders to the Respondent No. 1 and constitute the committee of creditors of AVAL. The Applicant has received letter/email of authorization from TJSB and Pegasus out of the members of committee of creditors of AFPL for the consolidation of CRP of AVAL and AFPL, which along with State Bank of India constitutes 58.17% of debt ratio/ voting percentage in the COC of AFPL. However, the Applicant did not receive authorization letter/ email from BOI, CFM and SVC despite repeated reminders in respect thereof. Further, in the 7<sup>th</sup> COC meeting of AVAL held on November 4, 2020, the Applicant viz. State Bank of India, TJSB, CFM, SVC, BOI, Pegasus, Siemens Financial Services Limited and Dewan Housing Finance Corporation Limited voted in favour of consolidation of CIRP of AVAL and AFPL which constitutes aggregate 89.48% of the voting share of members of committee of creditors of AVAL. Whereas in the meeting of the committee of creditors of AVAL held on November 4, 2020, Fullerton India Credit Company Limited had voted against the consolidation and Reliance Home Finance, IDFC First Bank and Axis Bank had abstained from voting. Accordingly, the Applicant is filing this Application pursuant to authorization of



majority of members of committee of creditors of both AVAL and AFPL.

16. The corporate Structure of AVAL and AFPL is set out as under, even at the cost of repetition.

a) AVAL (Respondent No. 1) since its inception was initially involved in the business of repairing distribution transformers. Subsequently AVAL commenced manufacturing of transformers and also became a pioneer in the field of Transformer Remanufacturing. Primarily, AVAL operated in three business verticals namely Transformer Manufacturing, Transformer Remanufacturing and Transformer Contract Manufacturing. The products offered by AVAL included Power Transformers, Furnace Transformers, Rectifier Transformers, Railway Transformers, Distribution Transformers, Wind Mill Transformers and Special Application Transformers and Reactors. AVAL also used to offer various types of transformer testing services.


b) AFPL (Respondent No. 2) since its inception was engaged in the business of buying, selling and fabricating of transformers and other electrical goods. Pertinently, forty-five percent (45%) of the shareholding of AFPL is held by AVAL. In fact, shareholding of both the Corporate Debtors (i.e. Respondent No. 1 and Respondent No. 2) are majorly held within the family of Mr. Narayan Shenvi Prabhu and his brother, Mr. Prakash Pundalik Shenvi. Mr. Narayan Shenvi Prabhu and his family members are the promoters of both AVAL and AFPL. Also, both AVAL and AFPL have a common suspended director, Mr. Narayan Shenvi Prabhu who was appointed as director of AVAL since its very inception whereas he was appointed as director in AFPL on May 6, 2019.

17. In the year 2014, few machineries were purchased by AFPL for which they availed a Term Loan for INR 11,94,70,000/- from TJSB in order to enter into reactor testing of transformers. However AVAL did not have testing equipment required for reactor testing purpose. As per the norms of the National Accreditation Board for Testing and Calibration ("NABL"), the company which is into the manufacturing/ repairing of reactor transformers must outsource the testing job to another company (which can be associate company) and cannot set up testing lab itself, hence in view of abiding by the aforesaid norms, the management of AVAL and AFPL decided to undertake repairing job by AVAL and testing work by AFPL. In order to facilitate the aforesaid arrangement, the land and building owned by AFPL were given on lease to AVAL and became major source of revenue of AFPL .Lease rentals of AVAL and job work from AVAL was also expected to contribute to AFPL revenues but unfortunately did not pick up. Hence, it is clear that both the Corporate Debtors are engaged in the business of Transformers as if they were a single economic entity with different units dedicated to repairing and testing.
  
18. Further, all the consortium lenders led by Applicant had granted a loan of INR 1,68,75,76,000/- (Rupees One Hundred Sixty Eight Crores Seventy Five Lakhs Seventy Six Thousand Only) to AVAL which was enhanced to INR 1,92,14,30,000/- (Rupees One Hundred Ninety Two Crores Fourteen Lakhs Thirty Thousand Only). Under the Deed of Extension of Charge dated July 31, 2018, both AVAL and AFPL had, inter alia, mortgaged their respective securities (as more particularly described in the aforesaid Deed of Extension of Charge) to secure the aforesaid loan facility. All the consortium members of AVAL (viz. Applicant, TJSB, BOI, CFM, SVC and Pegasus) are joint charge

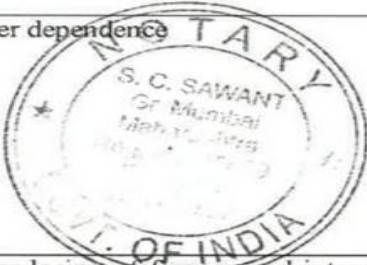
holders in respect of the mortgaged properties on paripassu basis. Hence, both the Corporate Debtors have mortgaged their respective properties to secure the same loan and the security sharing structure in respect of those properties is also such that they are jointly held by all the consortium members on paripassu basis. As such, the Applicant submits that considering the aforesaid security sharing arrangement, it is clear that a consolidation of the CIRP of both the Corporate Debtors will ensure a higher possibility of successful resolution of both the Corporate Debtors.

**FINDINGS:**

19. This Bench relies upon the ratio laid down by the coordinate Bench in the matter of Videocon in MA 1306/2018, MA 1416/2018 in CP 559/2018 wherein the NCLT at para 78 has laid down certain guidelines which are para material before allowing a consolidation of group companies which includes common control, common directors, common assets, common liabilities, interdependence, inter-lessness of finance, pooling of resources, coexistence of survival, intricate link of subsidies, intertwined of accounts, interlocking of debts, singleness of economic of units, cross shareholding, interdependence due to intertwined consolidated accounts, common pooling of resources etc., these principles are borne out of judicial authorities and precedents.
20. The facts set out by the applicant corresponds to the ratio laid down in Videocon consolidation case as per the table given below:

<p>Common Control</p> 	<p>45% of the shareholding of the AFPL is held by AVAL. In fact, shareholding of both the Corporate Debtors are majorly held within the family of Mr. Narayan Shenvi Prabhu and his brother, Mr. Prakash Pundalik Shenvi. Mr. Narayan Shenvi Prabhu and his family members are the promoters of both AVAL and AFPL. The registered office of both AVAL and AFPL is the same. The email id of AVAL as per MCA records is <a href="mailto:npsprabhu@adityavidyut.com">npsprabhu@adityavidyut.com</a>. The email id of AFPL as per MCA records is <a href="mailto:finance@adityavidyut.com">finance@adityavidyut.com</a>.</p>
<p>Common Directors</p>	<p>Both AVAL and AFPL have a common suspended director, Mr. Narayan Shenvi Prabhu who was appointed as director of AVAL since its very inception whereas he was appointed as director in AFPL on May</p>

	6, 2019. The other directors of AVAL are Vijayalaxmi Narayan Prabhu and Prakash Pundalik Shenvi. The other director of AFPL is Sudhindra Narayan Shenvi Prabhu. Thus all directors of both AFPL and AVAL are related to Mr. Narayan Shenvi Prabhu.
Common Assets	Land belonging to AFPL along with building were given on lease to AVAL. Further, such land of AFPL is mortgaged to the Consortium of lenders to secure loans to AVAL.
Common Liabilities and Financial Creditors	There will be no increase in the total Financial Debt to be resolved on account of the proposed consolidation. The members of Committee of Creditors of AFPL constitute 82.85% per cent in value of the members of committee of creditors of AVAL.
Inter dependence	Currently, AVAL is primarily engaged in manufacturing, re-manufacturing and repairing jobs for transformers whereas AFPL is primarily engaged in testing work for transformers manufactured/repared by AVAL
Inter lacing of finance and inter looping of debts	82.85 per cent of the financial debt of AVAL is guaranteed by AFPL.
Pooling of resources	AFPL and AVAL depend upon common set of assets for functioning of their respective Businesses
Co-existence for survival	<ul style="list-style-type: none"> <li>- AVAL's manufacturing operations run on land majorly owned by AFPL.</li> <li>- AFPL solely dependent on AVAL for its business operations and revenue.</li> </ul>
Intricate link of subsidiaries	AVAL major shareholder (45%) in AFPL. Business decisions of both companies taken by NPS Prabhu (MD in AVAL and director in AFPL) and family (promoters).
Inter twined accounts	AVAL major shareholder (45%) in AFPL.
Singleness of economic unit	Common factory premises. AFPL undertook job work exclusively for AVAL. Further, entire land at factory owned by



*N.e*

	AFPL was given on lease to AVAL. As stated above, AFPL solely dependent on AVAL for its business operations and revenue.
Cross shareholding	AVAL major shareholder (45%) in AFPL. Promoter family holds major shareholding in both companies.

The above table demonstrates that the consolidation protects the substantial interest of stakeholders and amounts to a fair treatment to all creditors.

21. Therefore this bench is of the considered view that consolidation of both the Corporate Debtors would be conducive and would result in the following advantages:

- a. All the assets of the Corporate Debtors be pooled together as if all such assets belong to a single manner;
- b. A common resolution professional shall be appointed. Such resolution professional will be required to perform the mandatory functions under the Code for both the Corporate Debtors as if he is the resolution professional of a single entity. This will enable the resolution professional to invite/consider comprehensive resolution plans for both the Corporate Debtors which will result in maximizing value for all the stakeholders of each of the Corporate Debtors;
- c. There should be a single committee of creditors for both the Corporate Debtors. In any event, a huge majority of the members in terms of voting share of the committee of creditors of both the Corporate Debtors are identical. A single committee of creditors will ensure that there is unitary

decision making in relation to affairs of both the Corporate Debtors which in turn will ensure that all major decisions related to the CIRP of both the Corporate Debtors are taken by a single committee of creditors thereby enabling the preparation of a comprehensive resolution plan for both the Corporate Debtors which will result in maximizing value for all the stakeholders of each of the Corporate Debtors.

- d. The CIRP period is hereby extended after consolidating the CIRP of both the Corporate Debtors such that the time period of 180 days is permitted for completion of CIRP under Section 12 of the Code shall be extended so as to expire after 180 days from the date of the order directing such consolidation. This will enable the resolution professional and the committee of creditors enough time to formulate a comprehensive resolution plan for both the Corporate Debtors in accordance with the provisions of the Code

22. In view of the aforesaid discussion consolidation, this Bench doth orders as follows:

- a) Consolidation of both the Corporate Debtor's namely AVAL and AFPL is ordered.
- b) The CIRP of the Corporate Debtor's would commence from the date of the order.
- c) All the assets shall be pooled together as if it belongs to single entity.
- d) There should be a single committee of creditors for both corporate debtors.
- e) Upon consolidation, the CIRP would commence form the date of the order and shall complete within 180 days as required under the Insolvency and Bankruptcy Code, 2016.

- f) Mr. Kshitiz Gupta is appointed as Resolution Professional to conduct the common CIRP.
- g) IA is allowed and disposed off.

Sd/-  
Chandra Bhan Singh  
Member (Technical)

Sd/-  
Suchitra Kanuparthi  
Member(Judicial)