

In the National Company Law Tribunal  
Mumbai Bench.

CP (IB)-02 (MB)/2018

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

**State Bank of India** : Petitioner / Financial Creditor

V/s

**Videocon Industries Limited** : Respondent / Corporate Debtor

Heard on : 18.05.2018  
Order delivered on: 06.06.2018

Coram:

**Hon'ble Shri M.K. Shrawat, Member (Judicial)**

For the Petitioner(s): : 1. Mr. Janak Dwarkadas, Sr. Counsel,  
2. Mr. Mustafa Doctor, Sr. Counsel,  
3. Mr. Animesh Bisht, Advocate  
4. Mr. Anush Mathkar,  
5. Mr. Dhananjay Kumar,  
6. Mr. Abhishek Makhija, Adv.  
7. Ms. Saloni Kapadia,  
8. Ms. Surbhi Pareekh, i/b. Cyril Amarchand  
Mangaldas.

For the Respondent(s): : 1. Mr. Zal Andhyarujina, Counsel, a/w  
2. Mr. Sandeep Ladda, a/w  
3. Mr. Punit Damodar, a/w  
4. Ms. Nikita Vardhan, a/w  
5. Ms. Akanksha Agarwal,  
6. Mr. Nikhil Upadhyay, i/b  
Kanga & Co.

Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. A Petition has been filed on 01<sup>st</sup> January 2018 by State Bank of India in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code, 2016 ( The Code ), a Public Sector Bank incorporated on 01<sup>st</sup> July, 1955 pursuant to the enactment of State Bank of India Act, 1955, against the Corporate Debtor viz. **Videocon Industries Limited, ( VIL )** having its address in district Aurangabad, Maharashtra, India, hence within the territorial jurisdiction of NCLT, Mumbai Bench.

2. The 'Corporate Debtor' is part of the Videocon Group having business of manufacturing, assembling, marketing and distribution of Consumer Electronics and Home Appliances. It is informed that the Subsidiaries of the Group are also in the business of Oil and Gas. Videocon Group was founded in the year 1984 by Late Shri Nandlal Madhavrao Dhoot. Stating the background of the Group, it is informed that the Company had started business from Marathwada Region and presently expanded across India and in other countries as well. Earlier Videocon Group was in the business of manufacturing of Television but later on diversified the business in Telecom, Oil and Gas etc. The Group is a **Listed Company on National Stock Exchange as well as Bombay Stock Exchange**. The Promoters are holding about 62.37% shareholding.

3. It is informed that for the purpose of diversification of the business, the Videocon Group had availed several financial Facilities from various Banks. A 'Consortium' of Bankers have granted Loan facilities constituting several Banks wherein SBI is a Lead Bank. The Joint Lenders Forum ( JLF ) rendered several types of 'Financial Debt' facilities to the Petitioner.

4. The details of various kinds of '**Financial Debts**' as enumerated in Part-IV of the requisite Form, depicting the Bank-wise Loans granted, are as under :-

"Part IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED  DATE(S) OF DISBURSEMENT	<p>The details of debt granted by the Financial Creditor to the Corporate Debtor (i.e. Videocon Industries Limited) under the Rupee Term Loan Agreement dated August 08, 2012 ("<b>RTL Agreement</b>") and Fourth Supplemental Working Capital Consortium Agreement dated May 25, 2012 ("<b>Working Capital Facility Agreement</b>") are as follows:</p> <p><u>By SBI:</u> <u>Fund based facilities</u> 1) Rupee term loan to the tune of Rs. 2072 Crores (Rupees Two Thousand Seventy Two Crores Only) ("<b>SBI RTL</b>"), as set out in Schedule I to the RTL Agreement.</p> <p>2) Further, a working capital term loan to the limit of Rs. 460 Crores (Rupees Four Hundred and Sixty Crores Only) ("<b>SBI Working Capital Facility</b>") was made available to the Corporate Debtor comprising of fund based facility to the tune of Rs. 162.50 crores (Rupees One Hundred and Sixty Two Crores and Fifty Lakhs Only) and non-fund based facilities being letter of credit facility of Rs. 287.50 (Rupees Two Hundred and Eight Seven Crores and Fifty Lakhs Only) crores and bank guarantee facility</p>

of Rs. 10 crores (Rupees Ten Crores Only) as specified in Schedule I to the Working Capital Facility Agreement and forward contracts/ derivatives facility of Rs. 60 Crores (Rupees Sixty Crores Only).

(The above mentioned facilities granted to the Corporate Debtor by SBI are collectively referred to as the "SBI Facilities")

Total debt granted to the Corporate Debtor under the SBI Facilities: Rs. 2532 Crores (Rupees Two Thousand Five Hundred and Thirty Two Crores Only)

By SBH:

Fund based facilities

1) Rupee term loan to the tune of Rs. 300 Crores (Rupees Three Hundred Crores Only) ("SBH RTL"), as set out in Schedule I to the RTL Agreement.

2) Further, a working capital term loan to the limit of Rs. 83 Crores (Rupees Eighty Three Crores Only) ("**SBH Working Capital Facility**") was made available to the Corporate Debtor comprising of fund based facility to the tune of Rs. 29.25 Crores (Rupees Twenty Nine Crores and Twenty Five Lakhs Only) and non-fund based facilities being letter of credit facility of Rs. 51.75 crores (Rupees Fifty One Crores and Seventy Five Lakhs Only) and bank guarantee facility of Rs. 2 crores (Rupees Two Crores Only) as specified in Schedule I to the Working Capital Facility Agreement.

(The above mentioned facilities granted to the Corporate Debtor by SBH are collectively referred to as the "**SBH Facilities**")

Total debt granted to the Corporate Debtor under the SBH Facilities: **Rs. 383 Crores** (Rupees Three Hundred and Eighty Three Crores Only)

By SBM:

Fund based facilities

1) Rupee term loan to the tune of Rs. 250 Crores (Rupees Two Hundred Fifty Crores Only) ("**SBM RTL**"), as set out in Schedule I to the RTL Agreement.

2) Further, a working capital term loan to the limit of Rs. 92 Crores (Rupees Ninety Two Crores Only) ("**SBM Working Capital Facility**") was made available to the Corporate Debtor comprising of fund based facility to the tune of Rs. 32.50 Crores (Rupees Thirty Two Crores and Fifty Lakhs Only) and non-fund based facilities being letter of credit facility of Rs. 57.50 crores (Rupees Fifty Seven Crores and Fifty Lakhs Only) and bank guarantee facility of Rs. 2 crores (Rupees Two Crores Only) as

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specified in Schedule I to the Working Capital Facility Agreement.

(The above mentioned facilities granted to the Corporate Debtor by SBM are collectively referred to as the "**SBM Facilities**")

Total debt granted to the Corporate Debtor under the SBM Facilities: **Rs. 342 Crores** (Rupees Three Hundred and Forty Two Crores Only)

By SBT:

Fund based facility

1) Rupee term loan to the tune of Rs. 200 Crores (Rupees Two Hundred Crores Only) ("**SBT RTL**"), as set out in Schedule I to the RTL Agreement.

(The above mentioned facility granted to the Corporate Debtor by SBT is referred to as the "**SBT Facility**")

By SBBJ:

Fund based facility

1) Rupee term loan to the tune of Rs. 100 Crores (Rupees One Hundred Crores Only) ("**SBBJ RTL**"), as set out in Schedule I to the RTL Agreement.

(The above mentioned facility granted to the Corporate Debtor by SBBJ is referred to as the "**SBBJ Facility**")

By SBP:

Fund based facilities

1) Rupee term loan to the tune of Rs. 50 Crores (Rupees Fifty Crores Only) ("**SBP RTL**"), as set out in Schedule I to the RTL Agreement.

2) Further, a working capital term loan to the limit of Rs. 85 Crores (Rupees Eighty Five Crores Only) ("**SBP Working Capital Facility**") was made available to the Corporate Debtor comprising of fund based facility to the tune of Rs. 31 Crores (Rupees Thirty One Crores Only) and non-fund based facilities being letter of credit facility of Rs. 52 crores (Rupees Fifty Two Crores Only) and bank guarantee facility of Rs. 2 crores (Rupees Two Crores Only) as specified in Schedule I to the Working Capital Facility Agreement.

(The above mentioned facilities granted to the Corporate Debtor by SBP are collectively referred to as the "**SBP Facilities**")

Total debt granted to the Corporate Debtor under the SBP Facilities: **Rs. 135 Crores** (Rupees one Hundred and Thirty Five Crores Only)

(The SBI Facilities, SBH Facilities, SBM Facilities, SBT Facilities, SBBJ Facilities and SBP Facilities, are collectively referred to as the "**Facilities**")

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		The total amount of debt granted by the Financial Creditor to the Corporate Debtor by way of the Facilities is <b>Rs. 3747.85 Crores</b> (Rupees Three Thousand Seven Hundred and Forty Seven Crores and Eighty Five Lakhs Only) and the total debt outstanding as on December 27, 2017 is <b>Rs. 3961.56 Crores</b> (Rupees Three Thousand Nine Hundred and Sixty One Crores and Fifty Six Lakhs Only).
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4.1 The Petition contains the summary of the Financial Facilities availed by the Corporate Debtor, stated therein the Debt disbursed, Date of Disbursement under various facilities as under :-

#### Details of Total Amount of Debt granted and Dates of Disbursements under Facilities

S. No.	Facility	Disbursed amount (in Crores)	O/s as on 27.12.2017 (in crores)	Date of Disbursement	Comments
<b>SBI Facilities</b>					
1	SBI RTL facility	2072.00	Principal : 1947.58 Interest : 259.77 Total : 2207.35	22.11.2012	1 <sup>st</sup> disbursement was done on 22.11.2012 and remaining amount in multiple tranches
2	SBI WCTL facility – Cash Credit-I	161.50	Principal : 315.04 Interest : 35.23 Total : 350.27	31.07.1995	Facilities were renewed on 04.01.2017
3	SBI WCTL facility – Cash Credit-II	1.00	Principal : 0.98 Interest : 0.10 Total : 1.08	31.07.1995	Facilities were renewed on 04.01.2017
4	SBI WCTL facility – LC Facility	287.50	239.58	31.07.1995	Facilities were renewed on 04.01.2017
5	SBI WCTL facility – BG Facility	10.00	11.56	31.07.1995	Facilities were renewed on 04.01.2017 Balance above BG limit are against 100% cash margin.
6	SBI WCTL facility – CEL Facility	60.00	2.23	31.07.1995	Facilities were renewed on 04.01.2017 Balance above BG limit are against 100% cash margin.
	<b>Total</b>	<b>2592.00</b>	<b>2812.07</b>		

<b>SBBJ Facility</b>					
1	SBBJ RTL facility	100.00	Principal : 93.99 Interest : 13.82 Total : 107.81	28.09 2012	
	<b>Total</b>	<b>100.00</b>	<b>1007.81</b>		
<b>SBH Facilities</b>					
1	SBH RTL facility	200.00 100.00	Principal : 281.63 Interest : 40.87 Total : 322.50	16.11. 2012 15.05. 2013	
2	SBH WCTL facility – Cash Credit Facility	29.52	Principal : 54.26 Interest : 7.60 Total : 61.86	01.10. 1990	Facilities were renewed on 14.12.2015
3	SBH WCTL facility – LC Facility	51.75		01.10. 1990	Facilities were renewed on 14.12.2015
4	SBH WCTL facility – bG Facility	2.00		01.10. 1990	Facilities were renewed on 14.12.2015
	<b>Total</b>	<b>383.00</b>	<b>384.36</b>		

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<b>SBM Facilities</b>					
1.	SBM RTL Facility	210.00 31.45 8.55	Principal : 234.48 Interest : 31.53 Total : 266.01	28.09. 2012 11.10. 2013 25.10. 2013	
2	SBM WCTL facility – Cash Credit Facility	32.50	Principal : 58.08 Interest : 6.75 Total : 64.83	31.07.2015	Facilities were renewed on 31.12.2015
3	SBM WCTL facility – LC Facility	57.50		31.07.2005	Facilities were renewed on 31.12.2015
4	SBM WCTL facility – BG Facility	2.00		31.07.2005	Facilities were renewed on 31.12.2015
<b>Total</b>		<b>342.00</b>	<b>330.84</b>		
<b>SBP Facilities</b>					
1	SBP RTL Facility	16.09 2.45 27.31	Principal : 42.86 Interest : 5.80 Total : 48.66	19.12.2012 20.12.2012 20.12.2013	
2	SBP WCTL facility – Cash Credit Facility	31.00	Principal : 57.07 Interest : 7.09 Total : 64.16	24.11.2005	Facilities were renewed on 20.01.2016
3	SBP WCTL facility – LC Facility	52.00		24.11.2005	Facilities were renewed on 20.01.2016
4	SBP WCTL facility – BG Facility	2.00		24.11.2005	Facilities were renewed on 20.01.2016
<b>Total</b>		<b>130.85</b>	<b>112.82</b>		
<b>SBT Facility</b>					
1	SBT RTL Facility	200.00	Principal : 188.12 Interest : 25.54 Total : 213.66	20.09.2012	
<b>Total</b>		<b>200.00</b>	<b>213.66</b>		
<b>Grand total (SBI and Associate Bank Facilities)</b>		<b>3747.85</b>	<b>3961.56</b>		

4.2 Further informed that the 'Corporate Debtor' had issued following Corporate Guarantees:-

	<p>In addition to the aforesaid, the Corporate Debtor has issued the following corporate guarantees:</p> <p>1) Corporate guarantee dated March 30, 2017 in relation to obligations of Videocon Oil Ventures Limited, in favour of SBICAP Trustee Company Limited (the security trustee) on behalf of inter alia as amended by SBI Supplementary Deed dated April 13, 2017; and</p> <p>2) Corporate guarantee dated December 18, 2007 in relation to obligations of Videocon Telecommunications Limited (formerly known as Datacom Solutions Private Limited), in favour of SBI.</p> <p>Further, the Corporate Debtor has, pursuant to a Confirmation Agreement dated June 20, 2016 ("<b>Confirmation Agreement</b>"), become a party to a Rupee term loan agreement dated August 8, 2012 ("<b>VTL Agreement</b>") as a co-obligor and assumed all obligations of the obligors therein towards the Videocon Group Lenders (as defined therein), which include SBI, SBM, SBBJ and SBP.</p>
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	<p>A. The exposures of SBI, SBM, SBBJ and SBP under the VTL Agreement are as follows:</p> <p><b><u>SBI</u></b></p> <ol style="list-style-type: none"> <li>1. Bank guarantees up to a limit of Rs. 882 crore ("<b>SBI VTL BG</b>");</li> <li>2. Rupee term loans to the tune of Rs. 1,400 crore ("<b>SBI VTL RTL</b>");</li> <li>3. Letter of Credit facilities up to a limit of Rs. 840 crore ("<b>SBI VTL LC</b>").</li> </ol> <p><b><u>SBBJ</u></b></p> <ol style="list-style-type: none"> <li>4. Rupee term loans to the tune of Rs. 100 crore ("<b>SBBJ VTL RTL</b>");</li> </ol> <p><b><u>SBM</u></b></p> <ol style="list-style-type: none"> <li>1. Rupee term loans to the tune of Rs. 100 crore ("<b>SBM VTL RTL</b>");</li> <li>2. Letter of Credit facilities up to a limit of Rs. 50 crore ("<b>SBM VTL LC</b>")</li> </ol> <p>in each case, as set out in Schedule 1 to the Rupee Facility Agreement dated May 31, 2010 as amended from time to time.</p>
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#### 4.3 Amount claimed to be in 'Default' and the date of default is described as under:-

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<p>2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p><u>Amounts under default and dates of default under the SBI Facilities:</u></p> <ol style="list-style-type: none"> <li>1) The amount in default under the SBI RTL facility as on December 27, 2017 is Rs. 298.63 crores (Rupees Two Hundred and Ninety Eight Crores and Sixty Three Lakhs Only), out of which the total principal amount defaulted as on December 27, 2017 is Rs. 38.85 Crores (Rupees Thirty Eight Crores and Eighty Five Only). The first date of default under this facility was May 01, 2016.</li> <li>2) The amount in default under the SBI Working Capital Facility facility (sic) as on December 27, 2017 is Rs. 44.12 crores (Rupees Forty Four Crores and Twelve Lakhs Only), out of which the total principal amount defaulted as on December 27, 2017 is Rs. 8.79 crores (Rupees Eight Crores and Seventy Nine Lakhs Only). The first date of default under this facility was May 01, 2017.</li> </ol> <p><u>Amounts and dates of default under the SBH Facilities:</u></p> <ol style="list-style-type: none"> <li>1) The amount in default under the SBH RTL facility as on December 27, 2017 is Rs. 46.50 crores (Rupees Forty Six Crores and Fifty Lakhs Only) out of which the total principal amount defaulted as on December 27, 2017 is Rs. 5.63</li> </ol>
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crores (Rupees Five (sic) Crores and Sixty Three Lakhs Only). The first date of default under this facility was May 01, 2016.

2) The amount in default under the SBH Working Capital Facility facility (sic) as on December 27, 2017 is Rs. 7.60 Crores (Rupees Seven Crores and Sixty Lakhs Only). The first date of default under this facility was May 01, 2017.

Amounts and dates of default under the SBM

Facilities:

1) The amount in default under the SBM RTL facility as on December 27, 2017 is Rs. 36.22 Crores (Rupees Thirty Six Crores and Twenty Two Lakhs Only) out of which the total principal amount defaulted as on December 27, 2017 is Rs. 4.69 Crores (Rupees Four Crores and Sixty Nine Lakhs Only). The first date of default under this facility was May 01, 2016.

2) The amount in default under the SBM Working Capital Facility facility (sic) as on December 27, 2017 is Rs. 6.75 Crores (Rupees Six Crores and Seventy Five Lakhs Only). The first date of default under this facility was May 01, 2017.

Amounts and dates of default under the SBT

Facility:

1) The amount in default under the SBT RTL facility as on December 27, 2017 is Rs. 29.29 Crores (Rupees Twenty Nine Crores and Twenty Nine Lakhs Only) out of which the total principal amount defaulted as on December 27, 2017 is Rs. 3.75 Crores (Rupees Three Crores and Seventy Five Lakhs Only). The first date of default under this facility was May 01, 2016.

Amounts and dates of default under the SBBJ

Facility:

1) The amount in default under the SBBJ RTL facility as on December 27, 2017 is Rs. 15.70 Crores (Rupees Fifteen Crores and Seventy lakhs Only) out of which the total principal amount defaulted as on December 27, 2017 is Rs. 1.88 Crores (Rupees One Crores and Eighty Eight Lakhs Only). The first date of default under this facility was May 01, 2016.

Amounts and dates of default under the SBP

Facilities:

1) The amount in default under the SBP RTL facility as on December 27, 2017 is Rs. 6.66 Crores ( Rupees Six Crores and Sixty Six Lakhs Only) out of which the total principal amount defaulted as on December 27, 2017 is Rs. 0.86 Crores (Rupees Eighty Six Lakhs Only). The first date of default under this facility was May 01, 2016.

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		<p>2) The amount in default under the SBP Working Capital Facility facility (sic) as on December 27, 2017 is Rs. 7.16 Crores (Rupees Seven Crores and Sixteen Lakhs Only) out of which the total principal amount defaulted as on December 27, 2017 is Rs. 0.07 Crores (Rupees Seven Lakhs Only). The first date of default under this facility was May 01, 2017.</p> <p>Total amount in default as on December 27, 2017 under the SBI Facilities SBI Facilities, SBH facilities, SBM facilities, SBT facilities and SBBJ facilities, SBP Facilities collectively; <b>Rs. 498.63 Crores</b> (Rupees Four Hundred Ninety Eight Crores and Sixty Three Lakhs Only).</p>
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4.4 That vide Notice dated 05.03.2016 the Financial Creditor had demanded the Corporate Debtor to pay the amount due under 'RTL Agreement' and 'Working Capital Facility Agreement'. However, no payment was received. Again the Financial Creditor had issued Notices asking the Corporate Debtor to arrange Funds for servicing the amount. Some of the Notices are dated 27.01.2017, 02.05.2017, 25.07.2017 directing the Corporate Debtor to make the payment under 'RTL Agreement' and 'Debt' in respect of Working Capital Facility. It was communicated by the Lenders to the Defaulter that the Accounts be regularised urgently, but the default continued.

4.5 That the Compilation contains '**Rupee Term Loan Agreement' ( RTL ) dated 08.08.2012** executed by the Group of Companies in the capacity of "Co-obligor / Obligors", as many as 13 in number, as a Party of the One Part and Videocon Industries has also signed the said Agreement in the capacity of "Obligor Agent". On the Other Part, several Banks have signed the said Agreement as "Lenders / Facility Agent" as Parties of the Other Part. Under the heading "Obligations of the Obligors", it was provided that each Obligor or Co-Obligor shall be liable jointly or severally for all the obligations and liabilities to secure the Lenders.

4.6 That in the voluminous compilation the Petitioner has annexed copies of 'Supplemental Working Capital Consortium Agreement', 'Corporate Guarantee Agreement' and copies of 'Rupee Facility Agreement' to demonstrate that the Corporate Debtor had accepted the liability of JLF by signing all those Agreements.

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4.7 That the Compilation contains particulars of various 'Securities' created in favour of the Financial Creditors. In relation to the RTL facility the description of the "mortgaged document" is on record providing the details of the immovable properties. In respect of each immovable property, mainly containing parcel of Land, non-Agriculture Land, a Commercial Tower at Rani Jhansi Marg, New Delhi etc. separate Indenture of Mortgage have been executed.

4.8 That the estimated value, as per the Petitioner ( SBI ), of the properties mortgaged is about ₹5283.45 Crores.

4.9 That time to time RoC was informed about the '**Charge**' created and thereafter accordingly RoCs, one after another, are issuing Certificate of Registration for modification of Charge. Voluminous compilation contains Certificates of modification of charge issued by RoC, Mumbai and RoC, Pune.

5. Before I proceed further, it is worth to place on record an information that the Corporate Debtor (VIL) had filed a Writ Petition before the Hon'ble Bombay High Court against the Petitioner, State Bank of India. The main purpose for filing the said Writ Petition was to issue a Writ of Certiorari for quashing or setting aside a Notification of Reserve Bank of India. Alternatively, a Prayer is that the Hon'ble Court be pleased to issue a Writ of Mandamus directing State Bank of India and Reserve Bank of India to appoint independent Rating Agency. The contention of the Company ( VIL ) was that on one hand the negotiations were in the process with the JLF , but on the other hand the State Bank of India had filed this Petition for invocation of Insolvency Proceedings. As per the said Writ Petition a Meeting was held on 12.05.2016 among the Corporate Debtor and the members of JLF but thereafter no action was taken for the implementation. In the Writ Petition several dates are mentioned to demonstrate that the impugned Corporate Debtor had made efforts to consider the proposal of restructuring of the Debt which was agreeable to the Consortium of Banks, but while the proposal was pending, a Circular was issued to all Scheduled Commercial Banks and Financial Institutions in respect of "Scheme for Stressed Assets – Revisions" to consider the Resolution Plan within a specified period. Even on 14.12.2016 a Meeting was held with JLF to discuss a Plan of Resolution. Meanwhile, it was decided by the Government and Reserve Bank of India to

initiate Insolvency Proceedings in respect of a defaulting Company. In the Writ Petition, therefore, the main Prayer was that the Hon'ble Court be pleased to set aside the said decision of Reserve Bank of India and a letter dated 27.12.2017 addressed by Reserve Bank of India to the Company. It is informed that in the said Writ Petition the Company is unable in obtaining the desired result till date.

5.1 That the attention was drawn on a letter dated 28.08.2017 issued by General Manager, RBI addressed to the Chairman, SBI referred therein a Press Release of 13.06.2017 issued by RBI that on recommendation 12 Accounts were identified for immediate reference to Resolution under the Insolvency & Bankruptcy Code. Based upon the recommendation of IAC it was decided that where more than 60% of the total outstanding Debt is classified as NPA a final time till December 2017 was granted for arriving at a Resolution outside the IBC. In the event a viable Resolution Plan is not finalized, then the Insolvency Proceedings under IBC may be initiated, if not initiated earlier. It is reiterated that the Videocon Group had submitted a Debt Restructuring Proposal (DRP ) to RBI. But without considering the said DRP, the Bank had preferred Insolvency Proceedings because of the change of policies pronounced by RBI. According to VIL this has caused great prejudice towards the bonafide attempt of settling the entire outstanding Debt.

6. On behalf of the Videocon Group, Learned Counsel has pleaded that in all such cases where the Resolution Plan is submitted for consideration before the Consortium of Banks and pending for acceptance, it is *ab initio* wrong on the part of the Bank to file a Petition under Insolvency & Bankruptcy Code. According to him, when the Group has sufficient Assets and able to repay the Debt then such a Group of Companies be not declared as commercially insolvent.

6.1 Learned Counsel has also highlighted that the Corporate Debtor had always cooperated with the Bank Authorities in timely repayment of Loan in the past, but at present this default has happened because of the unexpected and unforeseen circumstances. In the month of February, 2012 the Hon'ble Supreme Court had directed to cancel 156 2-G licences of various Telecom Operators. The Videocon Group was carrying on Telecom business, therefore, badly affected by the said Order of the Hon'ble

Supreme Court. The Telecom business was victimised and the Authorities have cancelled 21 2-G Telecom Licences. The Group had suffered huge losses in Telecom business on account of cancellation of Licence which resulted into non-payment of Bank Liabilities.

6.2 The Learned Counsel has further stated that on 18.09.2008 Videocon had executed a 50:50 Joint Venture with Brazil Petroleum Limited to have a business of Oil and Gas. The delay was caused in obtaining the sanction from the local Government, which resulted into heavy losses.

6.3 The Learned Counsel has also informed that VIL was in the business of manufacturing and supply of Cathode Ray Tube Televisions and being only manufacturer earning considerable profit margin. The business was across the world as there was a large demand of CPR-TV. However, on account of demonetization in India the Suppliers were unable to provide the raw-material. As a result, there was a sharp decline of the business, as a result VIL was constrained to close that business. Because of these reasons, the cash circulation was disturbed which was beyond the control of VIL. He has also pleaded that the Corporate Debtor and the Group have never been declared as "wilful defaulter" because they have always cooperated with the Bank Authorities. Learned Representative has stated that the Promoters / Directors are law abiding citizens, therefore, placed before the Bank Authorities various Resolution Plans for Debt Restructuring but without considering those Resolution Plans the Bank had decided to file this Application under I&B Code, although the Company is commercially viable to satisfy the Loans if time be granted.

7. At this juncture it is interesting to place on record that while Learned Representative of VIL was arguing the case and about to conclude his submissions, a message was delivered to him from the side of the Management of VIL that in the larger interest of the public the Learned Advocate may not vehemently oppose the 'Admission' of the Petition. So the Ld. Counsel has conveyed in the court that the Management of the Company has taken this decision keeping in mind the Public Interest, although he was instructed to contest the maintainability of the Petition. A noting has also been made on the Order Sheet that without prejudice to the legal rights and contentions the Petition under consideration be considered as per law for admission. It has also been noted that

the consolidation Application submitted before the Principal Bench, NCLT, New Delhi had also been withdrawn. As a consequence, my observation is that this dramatic turn, as happened during the hearing, has definitely facilitated the admission proceedings.

8. One more fact is to be brought on record that the Financial Creditor (SBI) has amended the Petition and that amended Petition has also been carefully perused. As far as the quantum of Debt and nature of various Loan Facilities granted are concerned, on comparison with the Main Petition, noticed that there is no variation except that the 'defaults' have been clarified and 'dates of default' have been introduced. It is, therefore, directed that in case a decision is hereby taken to admit this Petition, in that event, the IRP shall take into account the specifications as per the Amended Petition along with the Main Petition.

9. That the admitted factual position thus emerges that the '**Debt' as defined U/s 3(11) of The Code** under consideration have been classified as "Non-Performing Asset" by the Consortium of Banks, listed hereinabove and there was a "**Default" as defined U/s 3(12) of The Code** of non-payment. Therefore, the basic requirement of Admission of an Application under Section 7 appears to be fulfilled for initiation of Corporate Insolvency Resolution Process ( CIRP ). The Financial Creditor has furnished several evidences to establish the existence of the "Financial Debt" and sufficient record to establish the occurrence of "Default". Rest of the conditions being satisfied, this Petition deserves "**Admission**".

10. The Financial Creditor has intimated the name of the **IRP Mr. Anuj Jain** having Registration No. IBBI/IPA-001/IP-P00344/2017-18/10645, Address: KPMG, 1<sup>st</sup> Floor, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai-400 011, Email: anujvjain@bsraffiliates.com. The proposed IRP has furnished the requisite Certificate in Form No.2 that no disciplinary Proceedings is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.

11. Upon "Admission" of the Application it is hereby pronounced the declaration of "**Moratorium" as mandated in Section 14 of The Code**. The declaration of Insolvency Process and commencement of "Moratorium" shall be made by Public Announcement immediately as prescribed **U/s. 13 read with Section 15 of The Code**.

The appointed IRP shall perform the duties as an Interim Resolution Professional as defined **U/s. 18 of The Code i.e. "Duties of Interim Resolution Professional"** and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed U/s. 31 of The Code on receiving the "Expression of Interest" in response to the Advertisement made.

12. It is hereby pronounced that the **"Moratorium" as prescribed U/s. 14 of The Code** shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium" period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution Process.

13. Accordingly, this **CP (IB)-02 (MB)/2018** stood **"Admitted"**.

14. The Corporate Insolvency Resolution Process is commenced from the date of this Order.

SD/-  
**(M.K. SHRAWAT)**  
Member (Judicial)

Date : 06.06.2018  
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