

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

COMPANY APPEAL (AT) (Ins) No.299 of 2020
& I.A. No. 2190 of 2021
& I.A. No. 2828 of 2023, 1299 of 2025

In the matter of:

State Bank of India

Appellant

Vs

Venugopal Dhoot

For Appellant: Mr Tushar Mehta, SGI, Mr Gopal Jain, Sr Advcoate, Mr Madhav Kanoria, Ms Surabhi Khattar, Mr. Sriharsh Raj, Ms Neha Shivhare, Ms Pallavi Agarwal, Mr Ansh Arora, Advocates

For Respondent: Mr Sandeep S Ladda, Mr. Yashvardhan, Mr. Gyanendra Shukla, Mr Shubhang Shukla, and Mr Pranav Das, Advocates for Respondent No.1
Mr Vijayant Paliwal, Moulshree Shukla, Ms Gayathri, Advocate for R2.

WITH

COMPANY APPEAL (AT) (Ins) No.467 of 2020

In the matter of:

**Pertamina Hulu Energi
Nunukan Company**

Appellant

Vs

Venugopal Dhoot & Ors

Respondent

For Appellant: Ms Varuna Bhanrale, Ms. Ananya Sinha, Advocates.

For Respondent: Mr Sandeep S Ladda, Mr. Yashvardhan, Mr. Gyanendra Shukla, Mr Shubhang Shukla, and Mr Pranav Das, Advocates for Respondent No.1
Mr Vijayant Paliwal, Moulshree Shukla, Ms Gayathri, Advocate for R2.
Mr Gopal Jain, Sr Advcoate, Mr Madhav Kanoria, Ms Surabhi Khattar, Mr. Sriharsh Raj, Ms Neha Shivhare, Ms Pallavi Agarwal, Mr Ansh Arora, Advocates.

WITH

COMPANY APPEAL (AT) (Ins) No.639 of 2020

In the matter of:

**BPRL Ventures Indonesia
B.V. & Anr**

Appellant

Vs

Venugopal Dhoot & Ors

Respondent

For Appellant: None

For Respondent: Mr Sandeep S Ladda, Mr. Yashvardhan, Mr. Gyanendra Shukla, Mr Shubhang Shukla, and Mr Pranav Das, Advocates for Respondent No.1
Mr Vaijayant Paliwal, Moulshree Shukla, Ms Gayathri, Advocate for R2.
Mr Gopal Jain, Sr Advcoate, Mr Madhav Kanoria, Ms Surabhi Khattar, Mr. Sriharsh Raj, Ms Neha Shivhare, Ms Pallavi Agarwal, Mr Ansh Arora, Advocates.

WITH

COMPANY APPEAL (AT) (Ins) No.640 of 2020

In the matter of:

BPRL Ventures B.V. & Anr.

Appellant

Vs

Venugopal Dhoot & Ors

Respondent

For Appellant: None

For Respondent: Mr Sandeep S Ladda, Mr. Yashvardhan, Mr. Gyanendra Shukla, Mr Shubhang Shukla, and Mr Pranav Das, Advocates for Respondent No.1
Mr Vaijayant Paliwal, Moulshree Shukla, Ms Gayathri, Advocate for R2.
Mr Gopal Jain, Sr Advcoate, Mr Madhav Kanoria, Ms Surabhi Khattar, Mr. Sriharsh Raj, Ms Neha Shivhare, Ms Pallavi Agarwal, Mr Ansh Arora, Advocates.

WITH

**COMPANY APPEAL (AT) (Ins) No.1442 of 2024
& I.A. No. 5240, 5241, 5242 of 2024**

In the matter of:

Venugopal Dhoot

Appellant

Vs

Vovl Ltd. & Ors.

Respondent

For Appellant: Mr Sandeep S Ladda, Mr. Yashvardhan, Mr. Gyanendra Shukla, Mr Shubhang Shukla, and Mr Pranav Das, Advocates

For Respondent: Ms. Muskan Narang, Advocate for R1
Mr Vaijayant Paliwal, Ms. Houlshree and Ms Gayathri, Advocate for R2.
Mr Tushar Mehta, SGI, Mr Gopal Jain, Sr Advcoate, Mr Madhav Kanoria, Ms Surabhi Khattar, Mr. Sriharsh Raj, Ms Neha Shivhare, Ms Pallavi Agarwal, Mr Ansh Arora, Advocates.

WITH

COMPANY APPEAL (AT) (Ins) No.1623 of 2024
& I.A. No. 5930 of 2024

In the matter of:**Venugopal Dhoot**

Appellant

Vs

Pravin R. Navandar & Ors.

Respondent

For Appellant: Mr Sandeep S Ladda, Mr. Yashvardhan, Mr. Gyanendra Shukla, Mr Shubhang Shukla, and Mr Pranav Das, Advocates

For Respondent: Ms. Muskan Narang, Advocate for R1
Mr Vaijayant Paliwal, Ms. Houlshree and Ms Gayathri, Advocate for R2.
Mr. Tushar Mehta, SGI, Mr Gopal Jain, Sr Advocate, Mr Madhav Kanoria, Ms Surabhi Khattar, Mr. Sriharsh Raj, Ms Neha Shivhare, Ms Pallavi Agarwal, Mr Ansh Arora, Advocates.

JUDGEMENT**JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)**

Four appeals viz. *Company Appeal (AT)(ins) No.299/2020, 467/2020, 639/2020 and 640/2020*, all have been filed against an impugned order dated 12.02.2020 whereby application MA No.2385/2019 has been allowed by the

Ld. NCLT. Such appeals are *a) Comp. App. (AT) (Ins) No. 299 of 2020 - State Bank of India v Venugopal Dhoot & Ors.*; *b) Comp. App. (AT) (Ins) No. 467 of 2020 - Pertamina Hulu Energi Nunukan Company v Venugopal Dhoot & Ors.*; *c) Comp. App. (AT) (Ins) No. 639 of 2020 - BPRL Ventures Indonesia B.V. & Anr. v Venugopal Dhoot & Ors.*; and *d) Comp. App. (AT) (Ins) No. 640 of 2020 - BPRL Ventures Indonesia B.V. & Anr. v Venugopal Dhoot & Ors.* And two appeals Company Appeal (AT) (Ins) No.1442/2024 and 1623/2024 have been filed against the impugned order dated 26.06.2024.

2. Essentially, Mr. Dhoot sought all foreign oil and gas assets be considered as assets of Videocon Industries Ltd and be included in its Information Memorandum. On 22.08.2019, the Ld. National Company Law Tribunal, Mumbai Bench ("**NCLT**") passed an ad-interim order directing SBI to refrain from sale of any asset belonging to Videocon Oil Venture Ltd., Videocon Energy Brasil Limited, Videocon Hydrocarbon Holdings Ltd, and Videocon Indonesia Nunukan Inc. and had directed status quo be maintained. Subsequently, on 12.02.2020, the NCLT allowed MA 2385 of 2020 filed by Mr. Dhoot and had directed the Resolution Professional to consider and treat all assets, properties (tangible and intangible), rights, claims, benefits of Videocon Oil Venture Ltd., Videocon Hydrocarbon Holdings Ltd, Videocon Energy Brasil Limited and Videocon Indonesia Nunukan Inc. as assets and properties of Videocon Industries Ltd. for the purpose of Corporate Insolvency Resolution Process and include the assets, liabilities, claims of these companies in the Information Memorandum of Videocon Industries Ltd.

3. Further yet another appeal *viz* CA(AT)(Ins.) 467 of 2020 is in relation to Brazilian oil and gas assets and appeals CA(AT)(Ins.) 639 and 640 of 2020 are in relation to Indonesian oil and gas assets. The company appeal bearing no. CA(AT)(Ins.) 299 of 2020 is a comprehensive appeal dealing with all the aforesaid assets, including the ones forming subject matter of the aforesaid appeals. While there are three separate appeals, the main question of law remains the same in all these appeals i.e., *whether any of the foreign oil and gas assets can be included in the CIRP of Videocon Industries Ltd + 12 entities.*

4. Admittedly on 19.02.2020, this Tribunal had stayed the impugned order dated 12.02.2020 and re-enforced the earlier order dated 22.08.2019. Now to understand the issue involved we need to first examine the facts of this case.

5. In the year 2012 and thereafter Videocon Oil Venture Ltd (hereinafter referred to as VOVL) and Videocon Industries Ltd (hereinafter referred to as VIL) had availed finances on obligor/co-obligor basis through a standby letter of credit under the terms of LOC/SBLC Facility Agreement dated September 27, 2012, as amended, (Tranche 1 Facility) and Tranche 2 LOC/SBLC Facility Agreement dated 1st September, 2015, as amended from a consortium of lenders led by State Bank of India (Secured lenders) The secured lenders who had issued the SBLCs were secured by a first ranking security interest.

6. In the year 2016-17, Mr VN Dhoot, Chairman and Managing Director, himself approached the Bank requesting Videocon Industries Ltd be removed as a co-obligor and instead be made a corporate guarantor so that Videocon Industries Ltd will not be required to show it as a primary liability on its

balance sheet. Thus this structure was changed and Videocon Industries Ltd became a corporate guarantor. This step was taken in pursuance to the letters and VN Dhoot's submission that foreign oil and gas assets are to be ring fenced from the troubles being faced by the domestic business. The relevant extract of the letter dated 21.11.2016 of Mr. VN Dhoot is as under:-

The Group is facing stress in domestic debt servicing on account of insufficient cash flows from the domestic business VIL. Therefore, in order to protect the oil and gas assets of the group from the financial stress being experienced by VIL in the domestic business, it is essential to shift the SBLC Facility from VIL and VOVL on Obligor/Co-Obligor Basis to VOVL. Accordingly, VIL shall be released as co-obligor from the SBLC Facility, while VOVL shall continue as the Borrower of the SBLC Facility.

In view of the above, the process of shifting the SBLC facility from VIL, with VOVL continuing as the Borrower and VIL becoming the Guarantor, needs to be taken up on priority. Accordingly, the Banks are requested to consider the proposal favourably.

7. In January 17, 2017 similar request was yet again made by Mr. VN Dhoot. Accordingly, on 30th March, 2017 the facility agreements were amended and executed and one of the conditions for release under the LOC/SBLC agreement was Videocon Industries Ltd was required to furnish an irrevocable and unconditional corporate guarantee in respect of debts and liabilities of Videocon Oil Venture Ltd and foreign currency borrowers, to all or any other secured parties under the facility agreement and financing documents.

8. However, on June 6, 2018 an application under Section 7 of the Code was filed by State Bank of India against Videocon Industries Ltd and it was admitted by Ld. NCLT, Mumbai Bench and thus the CIRP of Videocon Industries Ltd was initiated.

9. On 17th September, 2018, Videocon Oil Venture Ltd filed a writ petition being Writ Petition No. *1138 of 2018* under Article 32 of the Constitution of India, challenging the constitutionality of a Circular dated 12.02.2018 issued by the SBI, alleging the oil and gas assets *belonging to* Videocon Oil Venture Ltd be excluded, as the CIRP of Videocon Industries Ltd would erode the value of assets of Videocon Oil Venture Ltd.

10. The Interim Resolution Professional then took over the affairs of Videocon Industries Ltd and *admittedly* did not take control and custody of the foreign oil and gas assets, since were not *considered the assets of Videocon Industries Ltd*. This circular of 12th February, 2018 was later on quashed by the Hon'ble Supreme Court.

11. The 12th February circular is relevant as Videocon Oil Venture Ltd filed a writ petition before the Hon'ble Supreme Court against the circular and obtained a status quo from the Hon'ble Supreme Court. Such writ petition was filed on the following premise: - *a)* Videocon Oil Venture Ltd held the participating interest in key oil and gas reserves spread across Brazil and Indonesia; *b)* foreign oil and gas assets were acquired by Videocon Oil Venture Ltd; *c)* Lenders had lent to Videocon Oil Venture Ltd; *d)* lenders had made best efforts to make a Resolution Plan for Petitioner and its subsidiary Videocon Hydrocarbon Holdings Ltd., which is most beneficial to all stake holders, especially the Lenders, by maximising the value by rightly timing the asset monetisation/sale process and still explore all options for resolving and restricting the debts of the Petitioner and its subsidiary Videocon Hydrocarbon Holdings Ltd; *e)* initiation of CIRP of Videocon Oil Venture Ltd

at that stage shall not achieve value maximisation. In the writ petition there was no whisper of applicability of moratorium under Section 14 of IBC because of CIRP of Videocon Industries Ltd.

13. Thereafter Mr. Dhoot as well as Videocon Oil Venture Ltd moved an application *viz* MA No. 1306/2018 and MA No.1416 of 2018 seeking consolidation of Videocon Industries Ltd and 15 group companies, *excluding Videocon Oil Venture Ltd* and in such application there was *no mention of foreign oil and gas* and it only mentioned domestic companies.

14. On 8th August, 2019 Ld. NCLT allowed the consolidation of 13 companies out of 15 companies; Mr. VN Dhoot did not stop at writ petition and MA 1416/2018 and during the pendency of such writ petition, participated in valuation and monetisation process, initiated by the secured lenders. On December 18, 2018 SBI addressed a letter to Videocon Oil Venture Ltd requesting for appointment of an Investment banker/consultant/advisor for the valuation of the Videocon Group companies, Brazil and Indonesia. On 20th December, 2018, Videocon Oil Venture Ltd responded to such letter of SBI stating *interalia* subject to orders in the Writ Petition, steps may be taken to monetise the oil and gas assets. *This letter was signed by Mr. VN Dhoot himself.*

15. Further on 08.01.2019, each of the Board of Directors of Videocon Oil Venture Ltd, Videocon Hydrocarbon Holdings Ltd, VeBL and VINI passed respective board resolutions for execution of a deed of undertaking for monetization and valuation of the Oil and Gas assets and forwarded those to Mr VN Dhoot. However, on 3rd July, 2019, Mr. VN Dhoot filed MA (IB) No.2385

of 2019 in CA(IB) No.2 of 2018 before the Ld. NCLT Mumbai, more than a year after the commencement of CIRP of Videocon Industries Ltd.

16. On 23.07.2019 MA 2620 of 2019 was filed by Mr. Dhoot *inter alia* seeking declaration of moratorium of foreign oil and gas assets. This application was dismissed for non-prosecution *vide* order dated 16.9.2021. On 22nd August, 2019, Ld. NCLT passed an *ad interim* order in MA No. 2385 of 2019 whereby Ld. NCLT directed the appellant to refrain from sale of any of the assets belonging to Respondents No.3 to 6 and directed the status quo be maintained until the pendency of the MA No.2385 of 2019.

17. On 08.11.2019, CIRP of Videocon Oil Venture Ltd was initiated. On 29.11.2019 MA 3944 of 2019 was filed by Mr. Dhoot praying for consolidation of CIRP of Videocon Oil Venture Ltd with the CIRP of Videocon Industries Ltd +12. The same was however dismissed for non-prosecution *vide* order dated February 9, 2022 of the Ld. NCLT Mumbai Bench. Such order was not challenged and thus has attained finality. But on 12.02.2020 the Ld. NCLT, Mumbai allowed MA 2385/2019. Aggrieved by this order, SBI filed an appeal CA AT(Ins) No.299 of 2020 before this Tribunal and *vide* order dated February 19, 2020, the impugned order of 12.02.2020 was stayed while re-enforcing 22.08.2019 order.

18. However on 31st August, 2019 Mr. Dhoot submitted Form FA dated August 31, 2020, to the Resolution Professional of Consolidated Corporate Debtors seeking withdrawal of the CIRP of consolidated Corporate Debtors. It was clarified to Mr. Dhoot at the 16th meeting of the CoC held on 7th September, 2020 that Form FA cannot be accepted since he was not an

applicant within the meaning of Section 12A of the IBC r.w. Regulation 30A of the CIRP Regulations, 2016. Whilst the legal position was amply clear, Mr Dhoot, nevertheless, filed an application before the Ld. NCLT seeking direction to the Resolution Professional to consider his Form FA. Mr Dhoot in his Section 12A Proposal for Videocon Industries Ltd +12 specifically *did not include the foreign oil and gas assets*. The query and response as mentioned in Section 12A proposal is reproduced herein below:-

Ques- Earlier in 2017 the proposal spoke about repayment through cash flows of its Brazilian counterparts, what is the arrangement and how is it going to be met?

Reply- In view of lack of clarity on account of CIRP of VOVL, we are now proposing to keep the offshore assets out of the business plan. The revised plan which we are proposing to submit shall be a sound plan which shall address all the concerns of the lenders.

19. In November-December 2020 despite Mr. Dhoot having no locus standi whatsoever to submit a proposal for withdrawal under Section 12A of the Code, the CoC of Videocon Industries Ltd +12 Group companies, with a view to ensure fairness and transparency in the process and to ensure any decision of the CoC of Videocon Industries Ltd +12 group companies is not challenged as being arbitrary and also to avoid any further litigation in the CIRP which could have resulted in further delay in the conclusion of the process, decided to consider the proposal of Mr. Dhoot.

20. Feasibility and viability checks were done. SBICAPS and D&B conducted evaluation of the commercial terms of the plan. CoC even decided to vote upon Section 12A proposal along with other resolution plans. Voting

concluded on 11.12.2020 and Section 12A proposal was rejected by 98.14% votes. No challenge was raised.

21. On 11.12.2020, a Resolution Plan was submitted by Twin Star Technologies Ltd (herein after referred to as TSTL) and it was approved by CoC of Videocon Industries Ltd + 3 other Corporate Debtors with 95.09% voting shares. On 08.06.2021 Resolution Plan was submitted by TSTL and it was approved by Ld. NCLT. In July 21, Mr Dhoot filed an appeal challenging the Resolution Plan approval order dated 08.06.2021, *primarily* on the ground foreign Oil and Gas assets *were not included in the information memo*. In his appeal, bearing CA-AT(Ins) 650 of 2021, Mr. VN Dhoot challenged approval of the resolution plan.

22. Now Mr. Dhoot in his appeal against the approval order dated 08.06.2021 of Ld. NCLT raised three questions of law as under:- **a)** whether a resolution Plan can be approved by CoC and in turn by Adjudicating Authority, when all assets owned by Videocon Group, particularly oil and gas assets owned by Videocon Industries are not included in Information Memorandum and no valuation thereof has been considered; **b)** whether Resolution Professional and CoC were right to ignore order of Adjudicating Authority to treat and include foreign oil and gas assets of Videocon as assets of Videocon Industries Ltd and **c)** whether Resolution Professional and CoC committed grave error in not considering foreign Oil and Gas assets of VOCL as assets of Videocon Industries Ltd , particularly when the claim of lenders of foreign Oil and Gas assets were to the tune of Rs.23,120.90 Cr was considered as a claim upon Corporate Debtor (Videocon Industries Ltd).

23. Further in the grounds of appeal, more specifically grounds *gg, hh, nn*, Mr. Dhoot raised issues as stated above and the relief sought in the said appeal was as follows: -

b) Set aside the impugned order dated 08.06.2021 passed by the Adjudicating Authority and the Respondents be ordered to issue fresh IM and call for fresh EOI/Resolution Plan for all assets of Videocon Group including all foreign oil and gas assets of Videocon group; and

24. The said appeal *viz.* Company Appeal (AT)(Ins) No.650/2021 was decided by this Tribunal vide its order dated 05.01.2022 wherein all submission of Mr Dhoot were recorded, including the issues raised above; i.e. the contentions *viz;*

“The Ld senior counsel further stated that their existed no legal or statutory requirements to trade the foreign oil and gas assets as part of the Consolidated CIRP process. However, in ‘finance and accounts’ there is a matching concept of liability and its corresponding assets wherever liability is considered the corresponding assets is suppose to exist in the form of the assets or the liability/borrowings which have been used to finance the losses. In any case, commercial wisdom of CoC is non-justifiable as already laid down by multiple judgements of Hon’ble Supreme Court. Hence this appeal deserves to be dismissed and is dismissed.

25. This Tribunal in its order dated 05.01.2022 held as under:-

“21. What is revealed from the submission of the Appellant that all assets owned by Videocon group, particularly, foreign oil and gas assets are not included in the information memorandum as also no valuation thereof has been considered while the claim of lenders of foreign oil and gas assets of Rs. 23,120.90 Crore being considered as claims without considering the corresponding assets- foreign oil and gas assets for which the borrowings were used. This has resulted into lower valuation and the secured creditors are getting less than 5% of their claimed amount and there is a haircut of

95.85% to all its creditors as per para 5 of the impugned order. The RP should have included these foreign oil and gas assets appropriately. [...] The RP has summarily rejected his stand and has cited explanation - b to Section 18 of the Code specifically which excludes the assets of any Indian and foreign subsidiary of the CD from the purview of the terms Assets "as mentioned in the section 18 of the Code.

[...]

23. [...] As a result of non-resolving the continuing default, the CIRP petition was filed on 01.01.2018 against VIDEOCON INDUSTRIES LTD and VTL; they are blaming the poor management of the appellant, leading to such situation who is obstructing to frustrate and derail the CIRP and thwart, all attempts of a Successful Resolution of a consolidated CD. It has also been stated by the CoCs that it is a matter of record the applicants act of commission and omission while in control of the consolidated CDs are being investigated by several investigating agencies and the proposal under Section 12A of the Code was already rejected by the CoCs. The Appellants are challenging the impugned order just for reviving its Section 12A (of IBC) proposal. It has also been stated by them that it is the commercial wisdom of the CoCs to manage the CIRP the way they think fit and proper. **The Appellant's Section 12A proposal was rejected by CoCs by a majority of 98.14% voting share. The Ld. Sr. Counsel further stated that their existed no legal or statutory requirements to trade the foreign oil and gas assets as part of the Consolidated CIRP process.** However, in 'finance and accounts' there is a matching concept of liability and its corresponding assets wherever liability is considered, the corresponding assets is supposed to exist in the form of the assets or the liability / borrowings which have been used to finance the losses. **In any case, commercial wisdom of CoC is non-justifiable as already laid down by multiple judgments of Hon'ble Supreme Court. Hence, this appeal deserves to be dismissed and is dismissed.**"

26. It was argued by the learned Solicitor General the findings in the decision dated 05.01.2022 in CA (AT)(Ins) No.650/2021 covered the impugned order dated 12.02.2020. Further he argued now the bidding process for the assets of Videocon Oil Venture Ltd stands complete and Bharat Petroleum Products

Ltd has given the highest bid. The learned Solicitor General submitted that admittedly the order dated 19.02.2020 of this Tribunal has not been challenged by Mr. Dhoot. Further Mr. V. Dhoot had filed an application being IA No.3896/2023 in CP(IB) 2742/2019 seeking rejection of any resolution plan dealing with foreign assets of Videocon Oil Venture Ltd but such application was also rejected on 26.06.2024.

27. It is also pertinent to mention Mr Dhoot filed IA No.3896/2023 praying for rejection of the Resolution Plan submitted by BPCL, primarily on the ground of inclusion of foreign oil and gas assets. Simultaneously the said impugned order dated 26.06.2024 allowed I.A. No.2787/2023 in CP IB No. 2742/MB/2019 whereby the Ld. NCLT approved the consummation of transaction with BPRL Ventures B.V. for purchase of quota held by VEBL in IBV in terms of its offer dated 26.05.2023 in CIRP of VOVL Ltd. Two appeals filed against the impugned orders dated 26.06.2024 are **(i)** Company Appeal (AT)(Ins) No.1442/2024 and Company Appeal (AT)(Ins) No.1623/2024 also filed by Mr. Dhoot.

28. The crux of submissions/contentions of learned senior counsel for Mr. Dhoot are **(i)** the judgement dated 05.01.2022 of this Tribunal in Company Appeal (AT)(Ins) No.650/2021 did not decide the issue of whether the foreign oil and natural gas assets are to be included in the CIRP of VIL+12 group companies since the scope of the appeal and order was only with respect to the approval of resolution plan of Twin Star Technologies Ltd in the CIRP of VIVL + 12 group companies. It was argued the CoC have only relied upon the order dated 05.01.2022 but did not argue against the order dated 12.02.2020

passed by Ld. NCLT in MA No.2385/2019 filed by Mr. V. Dhoot in CIRP of Videocon Industries Ltd + 12 group companies; **(ii)** the lenders of Videocon Oil Ventures Ltd (VOVL) wish to keep the foreign oil and gas assets outside the CIRP of Videocon Industries Ltd +12 group companies for their own benefit; **(iii)** the impugned order dated 12.02.2020 of Ld. NCLT has been passed after due consideration of facts; **(iv)** the lenders of Videocon Oil Ventures Ltd has filed their claim in the CIRP of Videocon Industries Ltd + 12 group companies and are trying to claim advantage for themselves; **(v)** the lenders have been taking inconsistent stand with respect to the foreign oil and natural gas assets; **(vi)** VoVL and VIL are single economic entity; **(vii)** the Ld. NCLT could not have passed the order dated 26.06.2024 during the pendency of the Company Appeal (AT)(Ins) No.299/2020 and; **(viii)** the lenders are illegally including the oil and natural gas assets in the CIRP of VOVL.

29. We have gone through the record and have heard the arguments in detail. Qua contention **(i)** raised by the Respondent we note by relying on 05.01.2022 judgment passed by this Tribunal in Appeal 650 of 2021, CoC has not given up the contentions in the Appeal 299 of 2020. In fact, CoC's submission is identical issues, arguments and submissions pertinent in the present set of appeals have already been dealt with and answered in favour of CoC by this Tribunal in its order dated 5th January 2022 passed in Appeal 650 of 2021. It was an argument of the appellant-SBI that all issues in the present underlying appeals, including CA(AT)(Ins.) No. 299 of 2020 have been decided by this Tribunal *vide* its final judgement dated 5th January 2022 passed in CA(AT)(Ins.) 650 of 2021. Now the core issue agitated by Mr. V.

Dhoot in MA 2385 was the foreign oil & gas assets be considered as assets of Videocon Industries Ltd + 12 Group companies and those must be included in the Information Memorandum of Videocon Industries Ltd. The argument of Mr. V Dhoot that CoC has not challenged the findings of impugned order is completely erroneous. In Appeal 299 of 2020, CoC has challenged such findings in detail.

30. Now, Mr. V Dhoot had himself filed Appeal 650 of 2021 in the CIRP of Videocon Industries Ltd +12 group companies wherein he was essentially contending that (a) the Resolution Professional and Committee of Creditors of VIL+12 group companies should not have invited and placed the resolution plan for voting in view of the order dated 12th February 2020; and (b) the order dated 8th June 2021 pursuant to which the resolution plan in respect of VIL+12 group companies was approved by the Ld. NCLT was contrary to the order dated 12th February 2020 as all the assets pertaining to foreign oil & gas assets were not included in the Information Memorandum of VIL + 12 group companies.

31. In Appeal 650 of 2021, Mr. Dhoot had placed all the pending legal proceedings and orders including MA 2385 of 2019, order dated 22nd August 2019, order dated 12th February, 2020, and order dated 19th February, 2020.

32. Further, amongst others, the following questions of law were framed by Mr. Dhoot in Appeal 650 of 2021:

- I. *Whether a resolution plan can be approved by CoC and in turn by Adjudicating Authority, when all the assets of Videocon Group, particularly oil and gas assets owned by Videocon Industries are not*

included in Information Memorandum and no valuation thereof has been considered?

II. *Whether Resolution Professional and CoC were right to ignore order of Adjudicating Authority to treat and include foreign oil and gas assets of Videocon as assets of Videocon Industries Ltd.?*

III. *Whether Resolution Professional and CoC committed grave error in not considering foreign oil & gas assets of Videocon as assets of Videocon Industries Ltd., particularly when the claim of lenders of foreign oil and gas assets to the tune of Rs. 23,120.90 Cr. Is considered as claim upon Corporate Debtors?*

33. *Mr. V Dhoot had advanced grounds in support of his Appeal 650 of 2021 wherein he had argued that Foreign Oil and Gas Assets are Assets of VIL+12 Group Companies and the main prayer in Mr. Dhoot's Appeal 650 of 2021 was:-*

*"b) Set aside the Impugned Order dated 08.06.2021 passed by the Adjudicating Authority **and the Respondents be ordered to issue fresh IM and call for fresh EOI/Resolution Plan for all assets of Videocon group including all foreign oil and gas assets of Videocon group**"*

34. *The grounds raised and the prayers sought by Mr. Dhoot in Appeal 650 of 2021 were identical to the issues raised by him and relief sought in MA 2385 of 2019 in which the order dated 12th February 2020 was passed and against which Appeal 299 of 2020 is pending. The arguments that were advanced by Mr. V Dhoot at the time of hearing of Appeal No.650 of 2021 are identical in all aspects to the arguments and pleadings in the present Appeals.*

35. *A bare perusal of the reliefs sought in MA 2385 (which forms the subject matter of the instant Appeals) and the reliefs sought in Appeal 650 of 2021 would make it abundantly clear that the subject matter of both the proceedings is in fact identical.*

367. The relevant prayers from the MA 2385 of 2019 and the Appeal 650 of 2021 are also reproduced herein:

MA 2385 of 2019	Appeal 650 of 2021
<i>Hence it is prayed that</i> <i>a. Resolution Professional of the Corporate Debtor, Videocon Industries Ltd. be directed to consider and treat all assets, properties (tangible and intangible), rights, claims, benefits of the Respondent Nos. 2 to 5 as assets and properties of Videocon Industries Ltd. for the purpose of present CIRP and to include the assets, liabilities, claims of Respondent Nos. 2 to 5 in the Information Memorandum (IM) of the present Corporate Debtor, Videocon Industries Ltd;</i>	<i>XXI. RELIEFS SOUGHT:</i> <i>b) Set aside the Impugned Order dated 08.06.2021 passed by the Adjudicating Authority and the Respondents be ordered to issue fresh IM and call for fresh EOI/Resolution Plan for all assets of Videocon group including all foreign oil and gas assets of Videocon group;</i>

37. This Tribunal has, whilst passing the order and judgment dismissing Appeal 650 of 2021, considered the rival submissions on behalf of the contesting parties and perused the documents on record in the pleadings and was duly aware of the order dated 12th February 2020 passed in MA 2385 of 2019; the pendency of Appeal 299 of 2020 and the order dated 19th February, 2020 passed by this Tribunal; and the fact the lenders to VOV Limited had filed their claims in the CIRP of VIL+12 Group Companies was on account of *corporate guarantee* issued by VIL.

38. Therefore, it is amply clear the issue of inclusion of assets in the CIRP of VIL+12 group companies has been considered and answered conclusively

in the negative and against Mr. Dhoot in the 5th January 2022 order by upholding the commercial wisdom of CoC in this respect.

39. The dismissal of Appeal 650 of 2021 assumes significance in light of the conclusion at paragraph 50 of the order dated 5th January, 2022 which read as follows:

“50. In view of the above stated analysis of facts and law, we have come to the conclusion that Section 30(2)(b) of the Code has not been complied with and hence, the approval of the Resolution Plan is not in accordance with Section 31 of the Code. Accordingly, the approval of Resolution Plan by the CoC as well as Adjudicating Authority is set aside and the matter is remitted back to CoC for completion of the process relating to CIRP in accordance with the provisions of the Code. All IAs stands disposed of.

Appeal CA(AT)(Ins) No. 650 of 2021 dismissed whereas Appeal CA(AT)(Ins) No. 503, 505, 529, & 545 of 2021 allowed as indicated above.

No order as to costs.” (Emphasis added) [Paragraph 50 in Order dated 5th January, 2022 in CoC’s Convenience Compilation @pgs 1005]

40. Thus, by way of the 5th January, 2022 order and judgment, this Hon’ble NCLAT has remanded the matter pertaining to CIRP of VIL+12 group companies to CoC for completion of the process related to CIRP of VIL+12 group companies *without directing the Resolution Professional and the CoC of VIL+12 group companies to issue fresh IM and call for fresh EOI/Resolution Plan for all assets of Videocon group including all foreign oil and gas assets of Videocon group.*

41. The specific prayer to include the foreign oil & gas assets in the IM of VIL+12 group companies has been categorically rejected by this Tribunal in its order dated 5th January 2022.

42. The order in Appeal 650 of 2021 passed by this Tribunal has in effect overruled the finding in the order dated 12th February 2020 passed by the Hon'ble NCLT, Mumbai in MA 2385 of 2019 as the issue whether the foreign oil & gas assets are to be included in the IM of VIL+12 group companies has been duly considered and categorically rejected by this Hon'ble NCLAT. This is clear from the following chain of events: (a) Mr. Dhoot had filed MA 2385 of 2019 in the Company Petition pertaining to the Videocon Industries Limited ("VIL") i.e. Company Petition (IB) No. 2 of 2018; (b) Mr. Dhoot's argument was the foreign oil & gas assets held by the Indian and foreign subsidiaries of VIL must be included in the CIRP of VIL+12 group companies; (c) the Ld. NCLT, Mumbai Bench vide order dated 12th February, 2020 allowed MA 2385 of 2019; (d) subsequently, the operation of the 12th February, 2020 order was stayed by this Tribunal by way of order dated 19th February, 2020 passed in Appeal 299 of 2020 and stay on the 12th February 2020 order continues till date; (e) there was no stay in the CIRP of VIL+12 group companies. Further, there was no stay in the CIRP of VOVL Limited; (f) in the CIRP of VIL+12, a resolution plan was approved by the CoC in December, 2020 and by the Ld. NCLT on 8th June, 2021; (g) importantly, Mr. V Dhoot himself had filed 12A proposal in the VIL+12 group companies (despite the pendency of Appeal 299 of 2020). In his proposal, he had kept the foreign oil & gas assets *outside the purview* of the proposal; (h) the approved resolution plan in VIL+12 group companies came to be challenged by way of separate appeals by certain dissenting financial creditors, amongst which was Appeal 650 of 2021 filed by Mr.V Dhoot; (i) Mr. Dhoot made the identical submissions for inclusion of

foreign oil & gas assets in VIL + 12 group companies, which was rejected by this Tribunal.

43. Thus the contention that the subject matter of Appeal 650 of 2021 was wholly different and thus, the judgment dated 5th January 2022 has not decided the issues underlying in the instant Appeals in any manner is wholly wrong. After considering all the submissions and documents, this Tribunal had dismissed Appeal 650 of 2021. Since all the submissions and arguments that are being advanced in the present Appeals and the documents sought to be relied upon by the contesting parties have been made and considered in detail by this Tribunal in its judgment dated 5th January, 2022, thus the said order had brought a complete *quietus* to the issues that are germane to the present Appeals pending before us.

44. Qua contention **(ii)** the composition of committee of creditors of VIL+12 Group Companies and VOVL makes it clear that Mr. Dhoot is misleading this Tribunal by contending the lenders of VOVL have sought to include the foreign oil and gas assets in the CIRP of VOVL to earn a larger share of the *pie* than the share such lenders would get in the CIRP of VIL + 12 group companies due to the presence of operational creditors in the latter.

45. While dismissing Appeal 650 of 2021 after considering all the submissions and documents on record, this Tribunal has, *inter alia*, held it is the commercial wisdom of CoC which has to be given paramount importance. It is worthwhile to note the lenders of VOVL who constitute 99.96% of the CoC of VOVL are also lenders at VIL + 12 group companies and are members of the CoC of VIL + 12 group companies. The lenders have granted loans to both

the domestic business under VIL + 12 group companies as well as the foreign oil & gas assets which are held through VOVL. The lenders of VOVL comprise of 92.66% of the total admitted claims of the CoC of VIL + 12 group companies. It is also pertinent to note the lenders of VOVL have (a) first ranking charge over all the assets of VOVL, VHHL, VINI and VEBL (including their respective shareholding in the step-down companies / joint ventures); (b) except for EXIM Bank, have a first ranking charge over the domestic assets of VIL + 12 group companies. Thus, the lenders of VOVL also have majority stake in the CoC of VIL + 12 group companies and are the majority first ranking secured lenders at both VIL + 12 group companies for the rupee loans and VOVL for the SBLC facilities.

46. Section 30(4) of the Code empowers the CoC to consider the feasibility and viability of the plan and the manner of distribution of amounts while approving a resolution plan. In *India Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd.*, (2021) 19 SCC 672, the Hon'ble Supreme Court held considerations of asset distribution, including priority in scheme of distribution, is a business decision falling within the realm of the Commercial wisdom of CoC. Such decision cannot be altered by judicial intervention unless similarly situated creditors are denied fair and equitable treatment. Further, *Essar Steel (India) Ltd. Committee of Creditors v. Satish Kumar Gupta*, (2020) 8 SCC 531 recognizes that so long as the provisions of the Code have been met, the process of negotiation and acceptance of a resolution plan is driven by the complete discretion and commercial wisdom of the CoC which may involve differential payment to different classes of creditors.

47. Thus even if it is assumed the foreign oil and gas assets were to be included in the CIRP of VIL, it is the CoC's right and sole decision to determine distribution of plan amount amongst the creditors of VIL, including both financial and operational creditors. Therefore, Mr Dhoot's contention the CoC would have recovered lesser in the CIRP of VIL + 12 group companies is practically untenable as the distribution of amounts in the resolution plan would occur in proportion to the claims of different classes of creditors. Besides, Mr. Dhoot himself was cognisant that recovery for the creditors would not be impacted by keeping the assets out of the CIRP of VIL, and had thus, exchanged letters and provided undertaking to CoC for monetization and valuation of the oil and gas assets. Thus, the arguments by Mr. Dhoot are without any merit.

48. In light of the above, it is clear the contention the lenders have sought to include the foreign oil and gas assets in the CIRP of VOVL to earn a larger share of the pie than the share it would yield in the CIRP of VIL due to the presence of operational creditors in the latter is wrong.

49. Qua contention **(iii)** we may note the 12th February 2020 order has been stayed by order dated 19th February 2020 passed in CA(AT)(Ins.) 299 of 2020 by this Tribunal and no longer survives in light of order dated 5th January 2022 passed by this Hon'ble Tribunal in CA(AT)(Ins.) 650 of 2021. The 12th February 2020 order has been passed basis issues which were clearly beyond the pleadings made by the parties. The Ld. NCLT, Mumbai Bench has rather unnecessarily gone into the question of principles of consolidation, which was never pleaded by Mr. Dhoot in MA 2385 of 2019.

The Ld. NCLT, Mumbai Bench has mixed the issue of consolidation of CIRP and inclusion of foreign oil and gas assets in the CIRP.

50. The decision of consolidation is the prerogative of the lenders in exercise of their commercial wisdom, i.e., to seek/ or not to seek consolidation in their effort of maximization of the value of the Corporate Debtor for all the stakeholders. In any case, an unwanted consolidation cannot be forced upon the lenders – as it is essentially their interest which is at stake in the CIRP, especially at the instance of ex-promoter responsible for insolvency.

51. Qua contention (iv), we note Mr. Dhoot's contention is the lenders of Videocon Oil Venture Ltd filed a claim in the CIRP of Videocon Industries Ltd due to Videocon Industries Ltd's guarantee obligation, and thus, the foreign oil and gas assets have to be included in VIL's CIRP. The said averment is absolutely baseless as it goes against the basic principle of co-extensive liability of borrower and guarantor, which has been cemented by various judgements of the Hon'ble Supreme Court *viz.* BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd., (2025) 1 SCC 456). Lenders have filed the claims and also has been admitted by the Resolution Professional. An ex-promoter, who has driven the company to insolvency, has no locus to challenge admission of claims.

52. Even the IBC envisages in Section 60(2) and 60(3) that CIRP can be initiated against both the corporate debtor and a corporate guarantor. However, mere filing of claims by creditors against a corporate guarantor and admission thereof in the CIRP of a corporate guarantor (which is VIL in the

present case) cannot mean the assets of a corporate debtor have to be included in the CIRP of the corporate guarantor.

53. Qua contention **(v)** we may note the entire journey by Mr Dhoot has been of flip-flops. It is pertinent to note the documents evidencing his flip-flop had not been taken into account by Ld. NCLT in 12th February 2020 order but has been taken note of and dealt with by this Tribunal in its order dated 5th January 2022.

54. Admittedly, Mr V Dhoot's letters in 2016 and 2017 sought to remove Videocon Industries Ltd as co-obligor to ring-fence the foreign oil and gas assets from the troubles being faced by the domestic business and thereby admitting the financing structure and the ownership structure of the foreign oil & gas assets is completely distinct from Videocon Industries Ltd: However, in order to avoid showing the said liability as its primary liability in books of accounts of Videocon Industries Ltd, Mr. V Dhoot vide his letters dated 21st November 2016 and 17th January 2017, requested the lenders to remove Videocon Industries Ltd as co-obligor and instead make it a corporate guarantor of VOVL. The reason was to enable Videocon Industries Ltd to not show the liabilities. Further Mr V Dhoot's Consolidation Application for Domestic Companies did not include any reference to foreign oil & gas assets: Even in the consolidation application filed by Mr. Dhoot in the CIRP of VIL+12 group companies, there was no whisper of inclusion of foreign oil and gas assets or the foreign subsidiaries within the realm of CIRP in India. Further Videocon Oil Venture Ltd's Writ Petition filed after commencement of CIRP of Videocon Industries Ltd did not make any plea that the foreign oil & gas assets

are included in Videocon Industries Ltd's CIRP and hence protected by moratorium: In the Writ Petition filed by Videocon Oil Ventures Ltd on 17th September 2018, wherein it was, inter alia, stated that a) lenders had lent to Videocon Oil Ventures Ltd Limited; b) the oil and gas assets belong to Videocon Oil Ventures Ltd; c) the CIRP of Videocon Oil Ventures Ltd would erode the value of assets of Videocon Oil Ventures Ltd. Nowhere in the writ petition was it mentioned the assets belong to Videocon Industries Ltd. In fact in paragraph 12 of the Writ Petition, Videocon Oil Ventures Ltd has mentioned as follows:

"12. On 6th June, 2018, the parent Company (VIL) being in financial stress for various reasons, have been admitted into National Company Law Tribunal (NCLT) for debt resolution under the regime of Insolvency and Bankruptcy Code. Lenders of Petitioner VOVL are exploring options for monetisation of the Oil & Gas assets owned by it and have decided to carry out the valuation of these oil assets."

55. Thus, the fact of commencement of CIRP preceded the Writ Petition and even then, there was no plea on the applicability of moratorium over the foreign oil & gas assets or the inclusion of foreign oil & gas assets in the CIRP of Videocon Industries Ltd by including it in the Information Memorandum of Videocon Industries Ltd.

56. Mr. V Dhoot and Videocon Oil Ventures Ltd, Videocon Hydrozen Holdings Ltd and Videocon Energy Brasil Ltd participated in the valuation and monetization process during pendency of CIRP of Videocon Industries Ltd and the pendency of Writ Petition. Vide letter dated 20th December 2018, Mr.V Dhoot, on behalf of Videocon Oil Ventures Ltd issued a letter to CoC requesting them to initiate the process of assessing the valuation of the oil

and gas assets. Subsequent to the aforesaid letter, the board of directors of Videocon Oil Venture Ltd, Videocon Hydrozen Holdings Ltd, Videocon Energy Brasil Ltd and Videocon Indonesia Nunukan Inc passed respective board resolutions for the execution of a deed of undertaking for monetization and valuation of the oil and gas assets. Finally, a deed was executed by each of Videocon Oil Venture Ltd, Videocon Hydrozen Holdings Ltd, Videocon Energy Brasil Ltd and Videocon Indonesia Nunukan Inc on 9th January 2019, whereby they have unequivocally acknowledged that the lenders are owed money by VOVL and VHHL and the rights of the lenders to monetize the assets by way of sale of shares of IBV.

57. Mr. V. Dhoot, out of the blue, filed MA 2385 of 2019 for the very first time and against provisions of all law and facts, in Company Petition pertaining to the CIRP of Videocon Industries Ltd, wherein he tried to seek the inclusion of all foreign assets in the CIRP of Videocon Industries Ltd. The Ld. NCLT to our mind, ignored all the relevant documents and correspondence in relation to the matter and without any basis, passed the order dated 12th February 2020.

58. Further, Mr. V Dhoot filed a settlement proposal under Section 12A of the IBC in the CIRP of VIL+12 group companies and submitted form FA dated 31st August 2020 to the Resolution Professional of the consolidated corporate debtors. However, Mr. Dhoot in his Section 12A proposal for VIL + 12 group companies specifically *did not include the foreign oil and gas assets (despite the pendency of Appeal 299 of 2020)*.

59. Moreso, Mr V Dhoot did not file any objections to the resolution plan of Twin Star; when the resolution plan of TSTL was approved by CoC and then by the Ld. NCLT on 8th June 2021, alleging foreign oil & gas assets have not been considered in the IM of VIL + 12 group companies.

60. Then, Mr. V Dhoot belatedly files objections to the resolution plan of TSTL on, *inter alia*, the ground the Resolution Professional and Committee of Creditors of VIL + 12 Group companies did not consider the foreign oil & gas assets in the CIRP of VIL + 12 Group companies. This appeal was dismissed by this Tribunal *vide* order dated 5th January 2022.

61. Thus the chain of events make it abundantly evident that, prior to, during and even post CIRP of VIL+12 group companies, Mr. Dhoot has himself sought to segregate Videocon Oil Venture Ltd and Videocon Industries Ltd. It is imperative to state the lenders have not taken any contradictory stance, as alleged by Mr. V Dhoot. The lenders have always maintained that Videocon Industries Ltd and Videocon Oil Venture Ltd are separate entities and the foreign oil and gas assets cannot form part of CIRP of VIL + 12 group companies.

62. Qua contention **(vi)** we note Videocon Oil Ventures Ltd was never meant to be part of the “single economic entity” with Videocon Industries Ltd. In fact, the letters and correspondence shows that Videocon Oil Venture Ltd, Videocon Hydrozen Holdings Ltd, Videocon Energy Brasil Ltd and Videocon Indonesia Nunkan Inc are meant to be part of “single economic entity”. A bare perusal of the Consolidated Financial Statements of the Specified Companies of the Videocon Group as at 31st March, 2017 will unequivocally demonstrate

the VOVL was never intended to be part of a “single economic unit” with VIL+12 group companies. Paragraph (2) of the Financial Statements states that “..These Consolidated Financial Statements of the Group has been prepared by VIL and the procedures were performed to enable you to evaluate and analyse the financial position of the Group. These statements are intended to present financial information about the Group *as a single economic entity* to show the economic resources controlled by the Group, the obligations of the Group and results of the Group achieved *with its resources*.” Further Paragraph 4 shows the companies that are to be considered as a single economic entity, are all the domestic companies engaged in the consumer electronics and home appliances business and which are also part of the group CIRP of VIL+12 group companies. *VOVL is not part of these companies.*

63. Pertinently, the said consolidated financial statement was signed by Mr. Dhoot himself. Further, even the Ld. NCLT *inter alia* relied on the aforesaid financial statements while allowing consolidation of VIL + 12 other Videocon Group of Companies *vide* its order dated 08.08.2019. Consolidation was done only of the entities engaged in home appliances business and not of those entities engaged in foreign oil and gas assets. Thus, VIL+12 group companies were never meant to be part of a “single economic entity” even as per the financial statements prepared by Videocon Industries Ltd and signed by Mr.V Dhoot himself.

64. On the contrary, it is clear in Mr. V Dhoot’s and Videocon Industries Ltd’s understanding, Videocon Oil Ventures Ltd and the foreign companies

were meant to be a single economic entity separate and distinct from VIL and the domestic companies that are part of VIL + 12 group companies. The above is evident from the contents of the letter dated 21st November 2016 (supra) and letter dated 17.01.2017 (supra) written on behalf of VIL by Mr. Dhoot.

65. Though Mr. V Dhoot contends Videocon Oil Ventures Ltd and other foreign subsidiaries had obtained loans and other finances at the strength of Videocon Industries Ltd and that the foreign subsidiaries were merely used as Special Purpose Vehicles for acquiring participating interests in the foreign oil and gas assets at the behest of Videocon Industries Ltd, but the same does not imply the assets of the foreign subsidiaries can be included in the CIRP of the Videocon Industries Ltd.

66. Qua contention **(vii)**, it is pertinent to note Mr. Dhoot did not stop his agitation that the foreign oil & gas assets ought to be included in the CIRP of VIL+12 group companies despite the order passed by this Tribunal on 05.01.2022 in Appeal 650 of 2021. He agitated the same grounds and contentions before the Ld. NCLT, Mumbai Bench by filing his IA 3896 of 2023 along with the application bearing IA 2787 of 2023 filed by the Resolution Professional of Videocon Oil Ventures Ltd. A perusal of IA 3896 of 2023 filed by Mr. V Dhoot shows the same grounds and contentions that have been agitated by Mr. Dhoot in MA 2385 of 2019 and in Appeal 650 of 2021 and rejected by this Tribunal vide order dated 5th January 2022 were sought to be re-agitated by Mr. Dhoot in IA 3896 of 2023. Both the aforesaid applications have been decided by 2 separate orders both dated 26th June 2024 by Ld. NCLT, Mumbai. Mr Dhoot's IA 3896 of 2023 has been dismissed by way of a

reasoned order. The VOVL Resolution Professional's IA 2787 of 2023 has been allowed by the Ld. NCLT. In addition to the abovementioned two applications, Mr. V Dhoot re-agitated the issue of inclusion of foreign oil and gas assets in IA 681 of 2022 filed before the Ld. NCLT Mumbai Bench in the CIRP of Videocon Oil Ventures Ltd. The said application was also rightly dismissed by the Ld. NCLT Mumbai Bench *vide* its order dated 09.04.2025.

67. Mr.V Dhoot has argued the entire ROFR proceedings should have occurred offshore since both Videocon Energy Brasil Ltd and BPRL Netherlands (under the QHA) are foreign companies. He contends that Ld. NCLT has no jurisdiction to determine the exercise of ROFR by BPRL since the assets are held by Videocon Energy Brasil Ltd. The proves of ROFR undertaken by BPRL was done on the basis of disclosure made in the Information Memorandum of Videocon Oil Ventures Ltd to the effect that Videocon Oil Ventures Ltd can exercise control over foreign oil and gas assets through its shareholding in Videocon Hydrozen Holdings Ltd, whereas Information Memorandum of Videocon Industries Ltd does not disclose this. He argued the decision with respect to foreign assets has been taken without authority as Videocon Oil Ventures Ltd is not a party to the Quota Holders Agreement and holds no quotas.

68. At the outset, we note *vide* order dated 26.06.2024 passed by Ld. NCLT in I.A. 3896 of 2023, the Ld. NCLT rightly approved the consummation of BPRL's offer, after considering the judgment dated 05.01.2022 passed by this Tribunal in CA(AT)(Ins) 650 of 2021, whereby, *inter alia*, this Tribunal has

settled the dust on the issue of inclusion of foreign oil and gas assets in the CIRP of VIL + 12 group companies.

69. In para 59 of the 26th June order, Ld. NCLT noted Videocon Oil Ventures Ltd indirectly holds Participating Interest (PI) in oil and gas blocks in Brazil through a downstream joint venture company IBV, a joint venture between Videocon Energy Brasil Ltr and BPRL. Thereafter, in para 60, Ld. NCLT noted that:

“on 12.09.2008, BPRL and VIL entered into QHA setting out the terms of their inter-se rights and obligations as quota holders in IBV. Subsequently, the interest of VIL in IBV devolved on VEBL. The entire quota-holding/shareholding of VEBL in IBV is pledged to the secured lenders of VOVL, who comprise 99.6% of the CoC of VOVL.”

70. It is pertinent to note the secured financial creditors of VOVL had a first ranking charge over the shares held by Videocon Oil Ventures Ltd in Videocon Hydrocarbon Holdings Limited, the shares held by Videocon Hydrozen Holdings Ltd in Videocon Energy Brasil Ltd and the shares held by Videocon Energy Brasil Ltd in IBV, which is the Brazilian joint venture company. Videocon Oil Ventures Ltd. is a holding company which derives its value from the shares held in the subsidiaries as evident from the chart above. VOVL Ltd. had availed financial assistance from various Indian banks and financial institutions in order to, inter alia, fund the acquisition and ongoing operations of the various assets. The lending and securities structure which has been disclosed to all the participating PRAs makes the aforesaid clear.

71. The invitation to submit EOI and RFRP clearly spelled out the process was for invitation of resolution plan for Videocon Oil Ventures Ltd. The

Resolution Professional or the CoC at no juncture invited bids for any individual assets of Videocon Oil Ventures Ltd. or its subsidiaries.

Even the Information Memorandum was prepared as per the regulations and gave vital information about Videocon Oil Ventures Ltd. The *participating interests were never shown as assets owned by Videocon Oil Ventures Ltd.*

72. After running a process for almost three years, four offers/plans were received by the RP of VOVL as below:

- a) Eneva S.A and PetroRio S.A. (together “Buyers”) separately submitted offers to acquire VEBL’s proportionate share of the PI held by IBV in Sergipe (VEBL Sergipe PI) and VEBL’s proportionate share of PI held by IBV in Campos (VEBL Campos PI), respectively (collectively, Brazilian Assets) by way of demerger of IBV.
- b) RKG Fund submitted a resolution plan for resolving VOVL through monetization of the Brazilian Assets, the proceeds of which would be utilized for repaying the creditors of VOVL.
- c) Twin Star Overseas Limited, a group company of Vedanta Limited (Twin Star) submitted a resolution plan for VOVL (involving acquisition of its shareholdings) under the IBC. Twin Star’s resolution plan reserved the right to call upon the secured creditors of VOVL to invoke the pledge over IBV quotas and transfer the same to Vedanta/its nominee.

73. Various negotiations were held with each of the applicants from time to time to enhance their respective values and also to request them to submit complaint resolution plans. However, the offeror’s gave their respective offers

in a manner that was commercially suitable for them and by stipulating conditions which were essential for consummation of their offer.

74. The RP placed all the offers/plans before the COC. The RP and the COC went through each of the offers/plans to ascertain various aspects of each of them, including the amount they were offering, the manner in which they will be implemented and whether there are any essential conditions that need to be fulfilled to ensure that the approved offer/plan is ultimately implementable and does not remain contingent to any conditions remaining unfulfilled. After examination of the plans/offers, it became clear that each of them in some manner or other were triggering pre-existing contractual rights of certain counterparties. These counterparties included BPRL (counterpart to QHA) as well as certain other entities which are counterparties to certain joint operating agreements.

75. Under the current law of the land, which is most succinctly covered under *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Anr.*, 2021 SCC OnLine SC 707, once the COC approves any offer/plan in its commercial wisdom, the same becomes binding on the COC and the applicant and there is no scope for non-implementation of such offer/plan. Given the conditions the four plans/offers, including the offer of the appellant had stipulated for implementing such offer/plans, it became imperative for the Resolution Professional and CoC to ensure any offer/plan that is ultimately approved by COC and then placed by the Resolution Professional for the approval of the adjudicating authority is ultimately implementable. Therefore, the COC instructed the RP to comply with the

conditions which were enshrined in pre-existing contractual documents and which were also pre-conditions for implementation of the offer/plan received in the process. Accordingly, this entire exercise has been done to comply with the legal principle that an offer/ plan approved by COC has to be implementable and at the same time to ensure there is no protracted litigation by any contractual counter-party that their rights have been violated.

76. Accordingly, ROFR notice was issued to BPRL and was so accepted by the same. If ROFR was not given to BPRL, then the resolution plans/offers would not have been implementable. Subsequently, BPRL's offer was put forward for voting and was approved by the COC with 99.6% votes in favour. This entire exercise has been done to comply with the legal principle that an offer/plan approved by COC has to be implementable and at the same time to ensure there is no protracted litigation by any contractual counter-party that their rights have been violated.

77. In the 26th June order, the Ld. NCLT analysed whether or not a contractual ROFR can be given effect to during the CIRP under the provisions of the IBC read with the CIRP Regulations. It held that *"there is no restriction on the powers of the CoC from considering a proposal for sale of all the asset of the Corporate Debtor which, in its commercial wisdom, would provide a more feasible and viable resolution of a corporate debtor; as has been done in the present case."* The Ld. NCLT held the insolvency process under the IBC does not give a carte blanche to override pre-existing third party contractual rights under the garb of Section 238 of the IBC and the Resolution Professional is

bound to comply with the obligations under any contract entered into by the Corporate Debtor.

The Ld. NCLT has held that *“in the peculiar facts and circumstances of the CIRP of the Corporate Debtor...the instances of the ROFR notice to BPRL and approval of the BPRL Offer by the CoC in exercise of their commercial wisdom is the most viable option for resolution of the insolvency and outstanding dues of an maximisation of value for the stakeholders of the Corporate Debtor.”*

Further it was held that *“....the structure and the manner adopted for insolvency resolution of a corporate debtor depends on the peculiar facts and circumstances of each case and there cannot be a “straitjacket” formula which can be adopted in each and every insolvency resolution...Therefore, there is always a scope of innovation and experimentation so long as such innovations are necessary and conducive for achieving the object of maximisation of value which is the ultimate goal of the IB Code....As highlighted above, there may be some cases, like the instant one, where the objects of value maximisation could not have been possible in ordinary course of procedure laid down in the Code and Regulations.”*

78. In the light of the above observations and key findings, the Ld. NCLT had, after detailed consideration, approved BPRL's offer and the consummation of transaction with BPRL. Admittedly COC comprises of public sector banks and institutions. The contracting party is BPRL, which is a subsidiary of BPCL, which is also a public sector undertaking. This is not a transaction between private parties which is being undertaken in any unscrupulous manner but a transfer which is in furtherance of pre-existing contractual rights and a consequence of offer/plans received during CIRP.

79. It is evident that Mr. V Dhoot's contentions have been considered in detail and dismissed on four separate occasions by different fora, including

this Tribunal. It is a settled position of law courts must take cognisance of events and developments subsequent to the institution of proceedings while deciding the *lis viz* Pasupuleti Venkateswarlu v. Motor and General Traders, (1975) 1 SCC 770, and Beg Raj Singh v. State of U.P. & Ors., (2003) 1 SCC 726]. Thus, the judgement dated 05.02.2022 has settled the issue in the instant appeals. To our considered view, the final order and judgement dated 05.01.2022 in Appeal 650 of 2021 and the order dated 26.06.2024 passed by the Ld. NCLT, Mumbai are well reasoned orders and we are not inclined to interfere.

80. Qua contention **(viii)** we are of the view the CIRP of VIL + 12 group companies and Videocon Oil Ventures Ltd have been run in accordance with the Code. Mr. Dhoot's submission that Videocon Industries Ltd is the ultimate owner of the foreign oil and gas assets due to holding 100% shareholding of Videocon Oil Ventures Ltd and thus, the assets should be included in Videocon Industries Ltd's CIRP is flawed. It is Videocon Energy Brasil Ltd who could be called, in a strict sense, the actual owner of the assets since VEBL holds 50% shareholding of the Brazilian company which directly holds the assets. In any event, it is trite law that assets of subsidiaries of a Corporate Debtor cannot be included in the CIRP of the Corporate Debtor. The framework of IBC is clear in excluding assets over which the Corporate Debtor has no ownership rights from the CIRP of the Corporate Debtor. Thus, the foreign oil and gas assets cannot be included in the CIRP of Videocon Industries Ltd. In the case of *Vodafone International Holdings BV v. Union of India*, (2012) 6 SCC 613 (paras 257 and 258), it was held that "When a holding

company owns all of the voting stock of another company, the company is said to be a WOS of the parent company....The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary,....”

81. Admittedly, Videocon Industries Ltd and Videocon Oil Ventures Ltd underwent separate CIRPs under the provisions of the IBC. Further, the CIRP of Videocon Oil Ventures Ltd was done in accordance with the Code. As the CIRP of VOVL progressed, upon examination of the plans / offers that were received, it became clear each of them in some manner or other were triggering pre-existing contractual rights of certain counterparties. Thus, it became imperative for the Resolution Professional of Videocon Oil Ventures Ltd and the Committee of Creditors to comply with the conditions which were enshrined in pre-existing contractual documents and which were also pre-conditions for implementation of the offer/plan received in the process. Accordingly, a Right of First Refusal (“ROFR”) notice was issued to BPRL to surmount such pre-existing contractual requirement. If ROFR was not given to BPRL, then the resolution plans / offers would not have been implementable. Consequently, BPRL exercised its ROFR and made an offer to purchase the Videocon Energy Brasil Ltd Quotas by matching the offers made by other resolution applicants. The said offer of BPRL was accepted and approved by 99.96% voting of the CoC in its commercial wisdom, which was further approved by Ld. NCLT *vide* its order dated 26.06.2024.

82. In the CIRP of Videocon Industries Ltd, it is only the *shareholding of the offshore subsidiaries held by Videocon Industries Ltd that is included*. In

the Information Memorandum of Videocon Industries Ltd, it is expressly mentioned that VOVL is a subsidiary of Videocon Industries Ltd and that Videocon Industries Ltd through its subsidiaries Videocon Oil Ventures Ltd and Videocon Hydrozen Holdings Ltd has interests in oil fields in Brazil and Indonesia.

83. Further, it is also mentioned in the Information Memorandum of VIL that pledge has been created in favour of SBICAP Trustee Company Limited (Security Trustee) over the shares of Videocon Oil Ventures Ltd held by the Videocon Industries Ltd. In furtherance of the same, it is pertinent to note *vide* Invocation Notice dated 09.03.2018, the Security Trustee invoked the pledge over the shares of Videocon Oil Ventures Ltd held by Videocon Industries Ltd. The law is settled after invocation of pledge, the pawnee becomes a “beneficial owner” of the shares for the purpose of subsequent sale and mere invocation of pledge does not constitute an “actual sale”. *PTC India Financial Services V Venkateswarlu Kari and Another, (2022)9 SCC 704*

84. The creditors of Videocon Industries Ltd and Videocon Oil Ventures Ltd intended the CIRPs of the two companies to run separately. The objective of the Code is to keep the corporate debtor a going concern besides the resolution of creditor dues. Videocon Industries Ltd and Videocon Oil Ventures Ltd are involved in starkly different businesses – Videocon Industries Ltd being in the market of consumer electronic products while Videocon Oil Ventures Ltd being in the business of oil products. One single entity would not have the expertise to revive these varied businesses. Therefore, the creditors of Videocon Industries Ltd and Videocon Oil Ventures

Ltd intended to conduct separate CIRPs for the two companies to ensure different buyers with the requisite expertise for their businesses who would be able to effectively handle the assets and revive the businesses. It was a decision taken in the commercial wisdom of the CoC, which cannot be interfered by this Tribunal.

85. In view of the above reasoning the order dated 12.02.2020 is set aside and accordingly Appeals Nos. 299/2020; 467/20; 639/2020; 640/2020 are allowed and whereas appeals No.1442/2024 and No.1623/2024 are dismissed.

86. Pending applications, if any, are disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 14 -05-2026

BM