

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA 2385/2019 in CP No. 02/2018

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

In the Application of

Mr. Venugopal Dhoot

....Applicant

In the matter of

State Bank of India

...Financial Creditor

v.

1. Videocon Industries Ltd.
2. VOVL Ltd.
3. Videocon Hydrocarbon Holdings ltd.
4. Videocon energy Brasil Ltd.
5. Videocon Indonesia Nunakan Inc.

....Respondents

Date of Hearing : 20.08.2019

Date of Pronouncement: 22.08.2019

Coram: Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T).

For the Applicants

(1) Ms. Nafisa Khandeparkar, (2) Ms. Neeraja Balakrishnan, i/b. A2B & Partners (For Eletrolux Home Products Inc.

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(1) Mr. Zal Andharujina, (2) Ms. Ishani Khanwilkar, (3) Mr. Aurup Dasgupta, Advocates for the Applicant, i/b/ Jhangiani Narula & Associates.

For the Respondents :

(1) Mr. Ameya Gokhale, (2) Mr. Anoop Rawat, (3) Mr. Vaibhav Singh, (4) Ms. Radhika Indapurkar, i/b. Shardul Amarchand Mangaldas & Co. (For Resolution Professional).

(5) Mr. Mahender Khandelwal, Resolution Professional, (6) Mr. Sandeep Ladda a/w. Naser Ali Rizvi, i/b. DNA Associates, (7) Mr. Dhananjay Kumar, i/b. Cyril Amarchand Mangaldas, (8) Mr. Amish Mathkar, (9) Ms. Naveena Varghes for SBI.

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(1) Mr. Shyam Kapadia, (2) Mr. Varghese Thomas, (3) Mr. Jasu Shah, (4) Ms. Aditi Deshpande (For Respondent Nos.2 to 5 & for Respondent Nos. 3 to 5 in MA

2407/2019, instructed by J. Sagar Associates, Advocate for Bharat Petro Resources Limited (**Intervenor**).

Per: M. K. Shrawat, Member (J)

ORDER

1. This Application is filed by Mr. Venugopal Dhoot, the guarantor, shareholder and the ex-Managing Director/ Chairman of the Corporate Debtor, Videocon Industries Ltd as well as the Videocon Group. This application is filed under section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) seeking the assets and properties (tangible and intangible), rights, claims and benefits of the Respondent Nos. 2 to 5 herein to be treated as assets and properties of the Corporate Debtor and the same be covered u/s 14 of the I&B Code during the CIRP of the Corporate Debtor VIL.
2. Out of number of prayers, the interim prayer for urgent adjudication is reproduced for ready reference:

“pending final hearing and disposal of this Application, this Hon’ble Tribunal be pleased to protect the properties and assets of the Corporate Debtor by restrain any sale, transfer, alienation, assignment or creation of any sort of third party right in whatsoever form or manner on the said foreign oil and gas assets and all the other rights, assets (tangible and intangible) and benefits held by or through the Respondent Nos. 2 to 5”.
3. To give a background, it is worth to note that previously vide order dated 08.08.2019 passed by this Bench in this very matter in MA No. 1306 of 2019, it is ordered that the CIRPs of the 13 Videocon Group companies be consolidated for the purposes of insolvency resolution of the Corporate Debtor.
4. It is submitted by the Learned Counsel for the Applicant Mr. Zal Andhyarujina to show the urgency for passing the interim order, that SBI has advertised to sell the upstream oil and gas assets of the Corporate Debtor located in Brazil and Indonesia. The EoIs for this purpose are invited by 22.08.2019.
5. To give a history regarding the facts of this application, it is mentioned that the Corporate Debtor and Bharat Petroleum Corporation Ltd. (BPCL) (“the purchasers”) jointly acquired the domestic and international oil and gas assets and the participating interests therein. To consummate the transaction, the purchasers were required to set up a SPV (Special Purpose Vehicle) for holding these oil and gas assets. The Corporate Debtor played a major role in acquisition of the Participating Interest in the Brazilian Assets. Hence, the Ld. Counsel for the Applicant contends that the assets of SPVs are nothing but the assets of the Corporate Debtor.

6. It is vehemently contended by Mr. Zal that if the sale of these assets, as advertised by SBI, is executed the loss shall be irreparable, hence an immediate injunction deserves to be granted.
7. On behalf of SBI objected the granting of injunction primarily on the ground that the assets do not belong to Videocon group. Technical objection is that the moratorium u/s 14 does not apply under the facts and circumstances because of the reason that the asset is not owned by Videocon group.

Findings:

8. After hearing both the sides and perusing the documents produced on record, *prima facie*, it appears that if SBI is allowed to execute the sale as advertised, the Videocon group may suffer an irreparable loss if this Bench in future takes a view that the asset in question belongs to or owned by the group, especially when the Application no. 2385 of 2019 is yet to be decided. It is also seen that the legal ownership of these assets vest with the subsidiaries of the Corporate Debtor and the beneficial ownership vest with the Corporate Debtor itself. These subsidiaries are Special Purpose Vehicles (SPVs) specifically incorporated by the Applicant for holding foreign oil and gas assets for and on behalf of the Corporate Debtor. Therefore, the creditors of these SPVs have lodged their claims with the IRP of the Corporate Debtor. However, on merits the matter is still sub judice.
9. Balance of convenience as on date on the face of records is in favour of the Applicant. The SBI is hereby prohibited to go ahead with the advertisement and directed to **maintain the status quo** till the decision is pronounced on merits.
10. Since the Applicant has raised an imminent apprehension of sale, therefore, the registry is directed to issue a Certified Copy of this order Dasti on demand.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
M.K. Shrawat
Member (Judicial)

Date: 22.08.2019

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