

*Through Videoconference*

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI  
SPECIAL BENCH, COURT No. II**

**IA 1018 of 2020**

**in**

**CP (IB) 2742/MB/2019**

Under Section 19(2) read with section  
60(5) of the Insolvency and  
Bankruptcy Code, 2016

*In the Application of*

**Mr. Pravin R Navandar**

Resolution Professional of  
VOVL Limited

Having office address at:

D519/520, Neelkanth Business Park,  
Old Nathani Road,  
Vidyavihar (West),  
Mumbai – 400 086

...Applicant/Resolution Professional

*In the matter of*

**S Z Deshmukh & Co.**

“Shreeram”, B Ed College Road,  
Sangamner – 422 605.

...Operational Creditor

Versus

**VOVL Limited**

Auto Cars Compound,  
Adalat Road, Aurangabad,  
Maharashtra – 400 705

...Corporate Debtor

**Order Delivered on 15.12.2020**

**Coram:**

**Janab Mohammed Ajmal, Hon'ble Member Judicial**  
**Mr. Ravikumar Duraisamy Hon'ble Member Technical**

**Appearance:**

For the Applicant: Mr. Shyam Kapadia a/w Mr. Ravitej Chilumuri,  
Mr. Vishnu Shriram and Mr. Ashwij Ramaiah,  
Advocates i/b Khaitan & Co and Mr. Pravin  
Navandar, RP.

For the Respondents 1 & 5 : Mr. Amir Arsiwala a/w Yash Jariwala,  
Ms. Radhika Motiani, Advocates.

**ORDER**

**Per: Janab Mohammad Ajmal, Member Judicial & Ravikumar Duraisamy,  
Member Technical**

1. This is an Application filed under section 19(2) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the IBC) by the Resolution Professional of the Corporate Debtor **VOVL Limited** against the Directors of the Corporate Debtor seeking necessary direction for cooperation.
2. The Operational Creditor has filed the captioned C.P. (IB) 2742(MB) of 2019 in this Tribunal, and the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced vide order dated 8 November 2019 passed by this Adjudicating Authority. Mr. Rakesh Rameshwar having registration number IBBI/IPA-001/IP-P00696/2017-18/1211 appointed as the Interim Resolution Professional (IRP). The IRP convened the first meeting of the Committee of Creditors (COC) of the Corporate Debtor on 20 December 2019. The COC *inter alia* resolved unanimously to appoint the Applicant herein as the Resolution Professional and authorised State Bank of India, one of its

- members, to file the necessary Application in this Tribunal for confirmation of such appointment. The State Bank of India, on 2 January 2020, filed M.A. No. 23 of 2020 before this Tribunal seeking appointment of the Applicant as the Resolution Professional. This Tribunal by an order dated 20<sup>th</sup> January 2020 approved the same, the copy of which he received on 4<sup>th</sup> February, 2020.
3. Meanwhile the IRP had taken necessary steps in furtherance of the CIRP. The IRP addressed a letter dated 22 November 2019 to the suspended Directors (including the Respondent Nos. 1 to 3 herein), personnel and erstwhile management of the Corporate Debtor (“22 Nov Letter”) seeking various documents and information for the purpose of taking charge and for managing the assets and affairs of the Corporate Debtor including but not limited to the assets, finances and operations of the Corporate Debtor. The IRP also annexed to the said letter, a copy of the Admission Order and the Public Notice issued by him in terms of the requirement under the IBC. The IRP did not receive any response to the 22 Nov Letter from any of the recipients thereto, including the Respondents. Accordingly, the IRP re-sent the 22 Nov Letter to the Respondent Nos. 1, 2 and 3 by emails dated 17 December 2019. The IRP then addressed emails dated 3 January 2020 and 20 January 2020 to the Respondent Nos. 1, 2 and 3, once again requesting that the information and documents be provided to him, to no avail.
  4. It is submitted that the Applicant has not been provided with necessary information and assistance by the Respondents despite repeated requests and instructions by the Applicant since December 2019 and thereafter since 6 February 2020. The lack of information and support from the Respondents has seriously jeopardized the CIRP, which has

further been exacerbated by the time lost on account of the COVID-19 Pandemic. Despite the easing of the lockdown restrictions by the Central Government and respective State Governments, the Respondents have continued to not cooperate and comply with the directions and requests of the Applicant, as a result of which several key steps in the CIRP have been held-up, including the finalisation of the Information Memorandum (IM).

5. At the outset, the Applicant states that although the present Application was ready for filing in the third week of March 2020, the Applicant was unable to file the same since this Hon'ble Tribunal was closed for judicial work on account of the Pandemic.

**Submissions Made by Applicant by way of Interlocutory Application:**

6. The Corporate Debtor is *inter alia* engaged in the business of investing in and holding offshore oil and gas assets through its direct and indirect subsidiaries and is a wholly owned subsidiary of Videocon Industries Limited (“VIL”), which is also under CIRP as part of the Videocon Group’s Corporate Insolvency Proceedings under the IBC before this Tribunal. The CIRP of the Corporate Debtor herein is not part of the Videocon Group’s consolidated “group insolvency” proceedings. The Corporate Debtor holds, indirectly through its subsidiaries, participating interest in oil and gas blocks in Federative Republic of Brazil (“Brazil”) through a downstream joint-venture with group company of Bharat Petroleum Corporation Limited in Brazil and by itself Republic of Indonesia (“Indonesia”). The Corporate Debtor is the majority shareholder (99% shareholding) of Videocon Hydrocarbon Holdings Limited (“VHHL”), which in turn holds 100% of equity shares of Videocon Energy Brazil Limited (“VEBL”), and VEBL is a 50% joint venture partner in IBV Brasil Petróleo Ltd.

(“IBV”) which holds participating interests in various oil and gas assets in Campos, Sergipe and Potiguar basins in Brazil. With respect to Indonesia, VHHL holds 100% of the equity shares of Videocon Indonesia Nunukan Inc (“VINI”), which holds participating interest in oil and gas assets in the Nunukan basin of Indonesia.

7. Immediately upon taking charge as the Resolution Professional, the Applicant addressed a letter dated 6 February 2020 to each of the Respondents (“6 Feb Letter”) informing them of the Applicant’s appointment as the Resolution Professional and *inter alia* requesting for various documents and information pertaining to the Corporate Debtor including but not limited to the financials, bank accounts, details of subsidiaries, list of assets, valuation of assets, details of ongoing projects, cash flow management, details of employees, organisation chart, list of customers, receivables and payables, ongoing litigations, charge filings and DSCs of suspended directors. The Applicant also specifically informed each of the Respondents in the said 6 Feb Letter of their responsibility to cooperate with and assist the Applicant in terms of Section 19 of the IBC.
8. In addition to dispatching the 6 Feb Letter by Registered Post/ Speed Post A.D. the Applicant also sent a scanned copy of the 6 Feb Letter along with this Hon’ble Tribunal’s order dated 20 January 2020 to each the Respondents by separate emails, also dated 6 February 2020.
9. The Applicant states that not only have each of the Respondents failed to respond to or even acknowledge the 6 Feb Letter, the Respondent

Nos. 1 and 2 even refused receipt of the 6 Feb Letter, which action is in itself a clear breach of the obligation and duty of the Respondent Nos. 1 and 2 as suspended Directors of the Corporate Debtor towards the Applicant.

10. Despite the CIRP of the Corporate Debtor having commenced on 8 November 2019, even after a period of nearly 3 months, the Applicant was not in possession of even the most rudimentary and basic information with respect to the finances, assets and operations of the Corporate Debtor to enable the Applicant to manage the affairs of the Corporate Debtor in accordance with the IBC and conduct the CIRP of the Corporate Debtor in accordance therewith. Owing to the studied silence of the Respondents in providing information despite several requests, requisitions, reminders and letters by the IRP as well as the Applicant, the Applicant addressed a letter dated 4 March 2020 to the Respondent No. 5, a suspended Managing Director of the Board of VIL and the erstwhile promoter of the Corporate Debtor, attaching therewith a list of documents required by the Applicant to carry out the CIRP of the Corporate Debtor.
11. By a second letter, also dated 4 March 2020 addressed by the Applicant to the Respondent No. 5, the Applicant sought the names and contact details of authorised persons/ points of contact in various downstream direct and indirect subsidiaries of the Corporate Debtor concerning its offshore oil and gas assets.

12. The Applicant also issued separate letters dated 4 March 2020 to each of the Respondents requesting each of them to provide the documents set out in the list of documents annexed to the said letters, which are required by the Applicant to carry out the CIRP of the Corporate Debtor.
13. On 18 March 2020, the Applicant had telephonic discussions with Respondent No. 5, pursuant to which the Applicant received an email dated 18 March 2020 from the Respondent No. 4 with the following documents:
- i. Balance sheet as on 31-03-2018
  - ii. Income Tax Return Copy for AY 2018-19
  - iii. ITR Acknowledgment copy for AY 2018-19
  - iv. Tax Audit Report for AY 2018-19
  - v. GST registration certificate
  - vi. MOA and AOA of the Company
  - vii. PAN : AADCV1810B
  - viii. TAN : MUMV19018G
  - ix. TAN return filled Form 27A
  - x. Certificate of Incorporation after Name change
  - xi. Details of Investments as on 31-03-2018

However, the information provided pertains to the financial year 2017-2018, and no data for financial years 2018-19 and 2019-2020 was made available. Therefore, the Applicant states that the bulk of the information and documents sought from the Respondents has still not been provided to the Applicant by the Respondents and continues to remain unavailable.

14. Thereafter, by emails dated 17 March 2020 sent by the Applicant to Respondent No. 5 and Respondent No. 6, the Managing Director of VHHL and an erstwhile promoter of the Corporate Debtor, the Applicant sought additional information (i.e. in addition to the information/ documents requested in the Applicant's letter dated 4 March 2020). As on the date of this Application, the Applicant had not received a response to the said emails dated 17 March 2020 or the information sought therein.
  
15. By an email dated 25 March 2020 sent by the Applicant to the Respondent No. 4, the Applicant sought the balance information. By an email dated 26 March 2020 sent by Respondent No. 4, the Applicant was informed that Respondent No. 4 is in the process of compiling the information sought by the Applicant but that Respondent No. 4's office is shut due to the lockdown resulting from Covid-19. Respondent No. 4 stated that they would provide the documents and information sought once the Covid-19 lockdown eases. The Applicant addressed a further email dated 26 March 2020 to Respondent No. 4 requesting Respondent No. 4 to provide the information as soon as possible since there has already been a significant delay.
  
16. By an email dated 27 March 2020 sent by the Applicant *inter alia* to Respondent No. 5, scanned copies of the two letters dated 4 March 2020 were once again sent to the Respondent No. 5, requesting him to acknowledge the email and provide the required data and information

at the earliest so that the Applicant is able to conduct the CIRP of the Corporate Debtor effectively.

17. Thereafter, by an email dated 16 April 2020 sent by the Applicant *inter alia* to Respondent No. 5, the Applicant once again sought the following documents from Respondent No. 5 for the purposes of preparing the Information Memorandum of the Corporate Debtor in accordance with the IBC:
- i. Audited financials for FY 2019 of the VOVL group (i.e. including of subsidiaries such as VEBL, VHHL, VINI and JVs of the group);
  - ii. Status on audit of FY 2020 of VOVL and its subsidiaries;
  - iii. Books of accounts, including detailed trial balance and bank statements of VOVL group and statutory registers and contact persons;
  - iv. Consolidated and standalone financials of the Corporate Debtor as on FY 2019 and FY 2020;
  - v. Details of other creditors in the presentation (slide 2) attached to the email and the latest position on liabilities of VOVL group along with details;
  - vi. Complete liability entity wise for each of the VOVL group companies; and
  - vii. Whether liabilities of VHHL towards banks includes any lenders other than IDBI & Exim Bank.
18. By an email dated 22 May 2020 sent by the Applicant *inter alia* to Respondent No. 5, the Applicant sought calculations and workings for

the purpose of calculating the TDS return of the Corporate Debtor for the period since commencement of CIRP.

19. Thereafter, by an email dated 13 June 2020 sent by the Applicant to Respondent No. 4, the Applicant has once again followed up with Respondent No. 4 for the information and documents request since the lockdown pursuant to the Covid-19 pandemic has now eased. Respondent No. 4 had informed the Applicant on 26 March 2020 that they were unable to provide the documents and information as a result of the lockdown. The Applicant directed Respondent No. 4 to provide the documents and information at the earliest since it was now possible for Respondent No. 4 to visit their office and access the relevant documents and information.
20. By emails dated 13 June 2020 sent by the Applicant to Respondent No. 4, 5 and 6, respectively, the Applicant has sought certain additional documents relating to the subsidiaries of the Applicant.
21. The Applicant states that as a result of the Respondents' failure to assist and cooperate with the Applicant, the Applicant has been unable to prepare the IM of the Corporate Debtor as per the requirement under the IBC. The Applicant states that the status of the information memorandum and the missing information is as follows:

<b>Sl. No.</b>	<b>Information as per Regulation 36 of the CIRP Regulations</b>	<b>Status of Information</b>	<b>Remarks</b>
1.	Assets and liabilities	Complete details not available	<b>Only partial information relating to the offshore oil and gas assets is</b>

			<b>available</b>
2.	Latest annual financial statement	Not available	Only balance sheet for FY ending 31 March 2017 and 31 March 2018 is available. Balance sheet for FY ending 31 March 2019 not available.
3.	Annual financial statements for the last two financial years	Not available	Only balance sheet for FY ending 31 March 2017 and 31 March 2018 is available. Balance sheet for FY ending 31 March 2019 not available.
4.	Provisional financial statement for FY ending 31 March 2020	Not available	-
5.	List of creditors	Available	<b>Details of creditors who have not filed their claims with the Applicant is not available in the absence of the balance sheet for FY ending 31 March '19</b>
6.	Particulars of debt due to the Corporate Debtor from related parties	Complete details not available	Related party details as per the balance sheet for FY ending 31 March 2018 is available
7.	Details of guarantees in relation to the debts of the Corporate Debtor	Complete details not available	Relevant data from balance for FY ending 31 March 2018 and data obtained from the MCA portal has been included in the draft Information Memorandum, however further details/clarifications are still required

8.	Details of all material litigations and ongoing investigations by government and statutory authorities	Complete information not available	Data from balance for FY ending 31 March 2018 and from the website of the Income Tax portal has been included in the Information Memorandum. Applicant has not been provided specific details of any other material litigation.
9.	Shareholders holdings at least 1% stake in the Corporate Debtor	Available	-
10.	Number of workers and employees and liabilities of the Corporate Debtor towards them	Not available	<b>Applicant has no data relating to the workers and employees of the Corporate Debtor.</b>

22. The Applicant submits that on account on the continued non-cooperation on the part of the Respondents in providing the required details and documents, the Applicant has been put under very difficult circumstances and is faced with an uphill task in carrying out his duties and responsibilities under the IBC. It is submitted that the Applicant is duty bound to carry out and discharge the statutory duties imposed upon him as the Resolution Professional of the Corporate Debtor, which are in the larger interest of all stakeholders of the Corporate Debtor and maximisation of value of the assets of the Corporate Debtor. Although the Applicant has received some information from the Respondent No. 4 as stated above, the information pertaining to the recent financial years viz. 2017-18 and

2018-19 are yet to be received. The Applicant submits that the failure and wilful refusal of the Respondents in cooperating with the Applicant's instructions is a clear violation of the statutory obligations cast upon the Respondents as suspended directors, promoters and erstwhile management of the Corporate Debtor in terms of Section 19 of the IBC. A consolidated list of all the information and documents sought by the Applicant from the Respondents and which has not been provided.

23. In this regard, reference is made to *Mr. Ashwini Mehra vs. Mr. Vinod Kumar* (Order dated 14 June 2019 in CA No. 335/2018 in CP (IB) No. 10/Chd/Hry/2018). Where in the National Company Law Tribunal, Chandigarh Bench held as follows:

“We have examined carefully the contents of the pleadings exchanged between the Resolution Professional and Respondents/Suspended Directors and thereupon formed this opinion that there was default on their part in compliance of the provisions of **Section 19 of the Insolvency Code. This Section is unambiguous that the personnel of the Corporate Debtor, its Promoters, persons associated with the management should extend all assistance to Resolution Professional in managing the affairs of the Corporate Debtor.** Where any personnel does not assist or cooperate, the Resolution Professional has to make an application to Adjudicating Authority. This Section is to be read along with Section 18 of the Code wherein duties of Interim Resolution Professional are carved-out. **One of the foremost duty is to collect information relating to assets, finances of the Corporate Debtor for determining the financial position including the information relating to business operations for the past two years, financial operations for previous two years, collate all the information etc.** It is also pertinent to read Section 17 along with these two Sections prescribing management of affairs of

the Corporate Debtor by Resolution Professional/Interim Resolution Professional.”

24. Further in *Asset Reconstruction Company (India) Limited vs. Shivam Water Treaters Pvt Ltd* (Order dated 28 March 2019 in CP (IB) 1882(MB)/2018), this Hon’ble Tribunal has held that a failure to comply with direction issued by the Adjudicating Authority under Section 19 (2) of the IBC would amount to misconduct in terms of Section 70 of the IBC and liable to penalty thereunder, including imprisonment of up to 5 years and fine of up to INR 1 crore, or both.
  
25. As demonstrated above, the Respondents have failed to provide the information and documents sought by the Applicant from each of them despite repeated reminders. As a result the Applicant does not have the requisite information to prepare the IM of the Corporate Debtor in accordance with Section 29 of the IBC read with Regulation 36 of the CIRP Regulations. The Information Memorandum is the most crucial document in a CIRP as it forms the basis on which a prospective Resolution Applicant would prepare a Resolution Plan for resolution of insolvency of the Corporate Debtor. Despite the fact that the CIRP of the Corporate Debtor commenced as early as 8 November 2019 and despite the Applicant herein taking charge as the Resolution Professional of the Corporate Debtor with effect from 4 February 2020, the Applicant has not been able to complete the Information Memorandum in accordance with the requirements under the IBC solely on account of the acute non-cooperation of the Respondents herein.

26. The required information pertaining to the assets, financial position and operations of the Corporate Debtor has been repeatedly sought from the Respondents for over a period of nearly 6 months. The Respondents have already been provided ample time to locate, compile and provide the information, or assist the Applicant in obtaining the information required from other sources in case the same was not available with the Respondents.
  
27. The Applicant does not have information relating to any of the key employees or officers of the Corporate Debtor who may be able to assist him in sourcing the required information on the financial position and assets of the Corporate Debtor.
  
28. The process for resolution of insolvency under the IBC is a time-bound process and strict adherence to the timelines set out under the IBC are in furtherance of the objective of maximisation of value of the assets of the Corporate Debtor. The Respondents' wilful non-cooperation and failure to provide the relevant information and documents is detrimental to the interests of all stakeholders of the Corporate Debtor.
  
29. No prejudice whatsoever would be caused to any party should the reliefs sought herein be granted. *Per contra* grave injustice, prejudice and irreparable injury is likely to be caused to the Corporate Debtor and its stakeholders in the event the reliefs sought herein are not granted.

30. Respondent No.1 and 5 were present. Respondent No. 1 has not filed any counter. Respondent No. 2 to 4 and 6 despite being given sufficient time, have not been able to file their Vakalatnama. Service against Respondent Nos. 2 to 4 and 6 have been held to be sufficient. Heard the Learned Counsels on the Interim Application.

**Submissions made by Respondent No. 5 by way of Affidavit in Reply:**

31. The Applicant has made the incomplete statement in paragraph 6 (*page 8 of IA*) that “*the CIRP of the Corporate Debtor herein is not part of the Videocon Groups consolidated ‘group insolvency’ proceedings*”. However, the Applicant has not disclosed the order dated 22<sup>nd</sup> of August, 2019, passed by this Hon'ble Tribunal in Miscellaneous Application No. 2385 of 2019 in Company Petition (IB) No. 2 of 2018 whereby a *status quo* order was passed in relation to the oil & gas assets of the Videocon Group, or the order dated the 19<sup>th</sup> of February, 2020, passed by the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Ins) No. 299 of 2020, whereby this *status quo* order was continued and made applicable to the Applicant, who is a Respondent in that appeal.
32. The effect of this omission is that the Applicant has failed to indicate that there was urgency to the present Application as the Hon'ble National Company Law Appellate Tribunal is seized of the matter as to whether the CIRP of the present Corporate Debtor is to continue independently or whether it is to be consolidated with the CIRP of its holding company. If the CIRP of the Corporate Debtor is consolidated with the CIRP of its holding company then the present Applicant

would not be the Resolution Professional and would therefore have no jurisdiction. These are material facts which ought to have been brought on record by the Applicant. He thus is not entitled to any reliefs having not approached this Tribunal with clean hands.

33. The Respondent has relied on the following judgment:

- i. *Brihan Karan Sugar Syndicate Private Limited & Anr v. Karmaveer Shankarrao Kale Shahakari Sakhar Karkhana Limited 2018(3) Mah LJ 746*, more particularly paragraphs 22 & 23.

34. In paragraph 29 of the captioned application (page 21 of the IA) the Applicant states that “*a consolidated list of all the information and documents sought by the Applicant from the Respondents and which has not been provided is hereto annexed and marked as Exhibit W*”. This statement has also been confirmed to be true through the verification clause at the end of the application as well as in the General Affidavit in Support thereto. However, this is a false statement for the reasons averred in the Affidavit-in-Reply filed by the Respondent No. 5.

35. It is also noteworthy that as per the verification clause appended to the captioned application, the Applicant is not even personally aware of the veracity of the contents of paragraph 29 of the application. *Thus, the Applicant is not even claiming to be personally aware that he has not been provided with the documents contained in Exhibit W.*

36. It is submitted that 45 of the 153 documents listed in Exhibit ‘W’ are facility documents between the financial creditors of the Corporate

Debtor and companies of the Videocon Group. These documents form the basis of the claims submitted by the members of the COC of the Corporate Debtor, and therefore would certainly form part of the documents already available with the Applicant. Therefore, to this extent, the statement made by the Applicant in paragraph 29 of the application with respect to the entries in Exhibit W is false.

37. It is submitted that 17 of the 153 documents listed in Exhibit 'W' are documents which are part of Miscellaneous Application No. 2385 of 2019 in Company Petition (IB) No. 2 of 2018, a copy of which is in the possession of the Applicant as the Corporate Debtor was a party to those proceedings as well as the appeal that arose therefrom. In fact, page 69 of the Affidavit-in-Reply of the Respondent No. 5 (being part of the order dated 12<sup>th</sup> February, 2020, passed by this Hon'ble Tribunal) recorded that the Respondent No. 2 therein (which is the Corporate Debtor herein) had supported the reliefs being sought for in Miscellaneous Application No. 2385 of 2019. Thus, the Applicant cannot now state that he is unaware of the documents forming part of the record of Miscellaneous Application No. 2385 of 2019.

38. Serial number 85 in Exhibit W also shows the dishonesty of the Applicant. The end of the description of the document in serial number 85 contains the line “[KCO Note: *This document is in Portuguese*]”. This appears to be an internal note between the Applicant and his attorneys whereby it is noted that the document is in the Portuguese language. However, this also shows that the Applicant is already aware of this document and has a copy. In fact, the Applicant

most certainly has a copy of this document as it is Exhibit 28 in the Miscellaneous Application No. 2385 of 2019, a copy of which is already in the possession of the Applicant.

39. Thus, it is clear that the Applicant has made false statements on affidavit and has thus committed perjury. For this reason, the present Application ought to be dismissed with exemplary costs, and necessary action ought to be taken against the Applicant under section 425 of the Companies Act, 2013.

40. It is further contended that the Applicant has not filed any rejoinder denying the allegations set out in the Affidavit-in-Reply. *Thus, the Applicant is deemed to have admitted the allegations that he has committed perjury and has made a false affidavit before this Hon'ble Tribunal.*

41. Judgments relied upon:

- i. *ABCD v. Union of India: (2020) 2 SCC 52*, more particularly paragraphs 14 to 19.
- ii. *Prestige Lights Limited v. State Bank of India: (2007) 8 SCC 449*, more particularly paragraph 14.

42. The Respondent No. 5 has dealt with each and every entry in Exhibit W in his Affidavit-in-Reply dated 25<sup>th</sup> June 2020. The Respondent No. 5 has also supplied a chart showing the categories into which the 153 documents set out in Exhibit W fall. A perusal of Exhibit W shows:

- i. There is significant overlap between entries – such as 21 different entries talk about financial documents of the Corporate

- Debtor, and 13 different entries all relate to organizational details.
- ii. 45 documents pertain to loan documents which the Applicant would have already been supplied with by the members of the COC.
  - iii. 48 documents pertain to correspondence and transactions to which the Corporate Debtor is not a party.
  - iv. 66 documents relate to the affairs of the subsidiaries of the Corporate Debtor.
43. It is pertinent to note that after the Respondent No. 5 filed his Affidavit-in-Reply raising the above issues, the Applicant, through his attorneys, submitted an unaffirmed “Written Note” through which they sought to completely change their case and pivot away from Exhibit W. Through this “Written Note”, the Applicant now sought information completely unrelated to Exhibit W and which had no basis in the pleadings of the captioned application. This also shows the non-application of mind of the Applicant, and for this reason also, the present application ought to be dismissed and exemplary costs ought to be imposed upon the Applicant.
44. The Applicant has sought to portray a picture that the time period for the CIRP of the Corporate Debtor is running out, and therefore urgent reliefs are required from this Hon’ble Tribunal. The Applicant has used this justification to approach this Hon’ble Tribunal during the lockdown period.

45. However, this is a false statement as the Applicant has conveniently overlooked the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020, which has added the following regulation after Regulation 40B in the CIRP Regulations:

*“40C. Special provision relating to time-line. Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”*

46. Thus, there is currently no apprehension of the CIRP process of the Corporate Debtor getting stalled and the urgency being displayed by the Applicant is false.

47. It is also submitted that the advocate for the Respondents has not been able to obtain instructions or Vakalatnama from the remaining Respondent Nos. 1-4 and 6 due to the lockdown situation. The Advocate for the Respondent Nos. 1 & 5 sent an email communication to the remaining Respondent Nos. 1-4 and 6 asking for instructions to prepare an affidavit as per the order of this Hon'ble Tribunal dated the 26<sup>th</sup> of June 2020. The Respondent Nos. 1, 2 and 4 have responded stating that they are not in a position to make any affidavit in reply or give any particulars during this lockdown period.

48. It can be seen that the current pandemic has instilled a deep-rooted fear of the Coronavirus amongst all members of society. It can also be

noted that the Central and State Governments have not yet lifted the lockdown in light of the constantly increasing cases. In these circumstances, it is extremely distressing that the Applicant is seeking hearing and disposal of the present application in such haste. It may be noted that the Respondents have (in total) been given less than a week to file their affidavits in reply, which is insufficient considering that none of the Respondents are working from their homes and cannot make frequent trips to other places out of fear for their safety. It is submitted that the very purpose of not opening the courts and tribunals and conducting hearings through video conferencing.

49. It is submitted that the Respondent No. 5 has already made a categorical statement as to what is available with him and what isn't, by way of the interim Affidavit-in-Reply.
  
50. It is emphasised that the Corporate Debtor had no separate existence of its own but was fully administered by its holding company. Thus, if the Applicant seeks any further documents or information, he ought to approach the Resolution Professional of the holding company, VIL, and not the Respondents.
  
51. We have perused the records and duly considered the reasons, grounds submitted by the RP in respect of the present Application, having considered the facts and circumstances, the situation and the prayer sought by the Applicant, the Bench is satisfied with the submissions made by the Applicant on the prayers that Directors, Promoters and the persons associated with the management of the Corporate Debtor

to extend full co-operation, provide necessary assistance and the information to the Applicant/Resolution Professional. The Respondents are bound under law to provide necessary information sought by the RP. No amount of explanation can absolve them of that liability. The submission/the plea taken by the Respondents that due to lockdown, pandemic situation, Advocate for the Respondent Nos. 1 to 4 & 6 is not able to obtain instructions or Vakalatnama etc. would not be a convincing ground in view that the State Government vide order dated 31<sup>st</sup> August, 2020 with Easing of Restrictions and Phase-wise opening of Lockdown (Mission Begin Again) permitted various activities with certain restrictions. Therefore, the above plea of the Respondents is not tenable.

52. In fact the Respondent No. 5 has subsequently filed M.A No. 3944 of 2020 in C.P.(IB)-02/MB/2018 seeking consolidation of the CIRP of VOVL Limited, which is under consideration before the Hon'ble Tribunal. Further, the order dated 22 August 2019 in M.A No. 2385 of 2019 in C.P.(IB)- 02/MB/ 2018 does not have the effect of staying the CIRP of the Corporate Debtor herein since it was passed prior to the commencement of CIRP of the CD. In any event, M.A No. 2385 of 2019 in C.P. (IB)-02/MB/2018 is a subject matter of Company Appeal (AT) (INS) 299 of 2020 and connected matters before the Hon'ble National Company Law Appellate Tribunal.
53. Therefore, we are of the view that the present IA filed under section 19(2) read with section 60(5) of the IBC reliefs sought therein are within the four corners of IBC, in order that the CIRP can effectively completed in a time bound manner. Considering the aforesaid

discussions, we are of the considered opinion that the Application needs to allowed. Hence ordered.

### **ORDER**

The Application be and the same is allowed on contest. We hereby direct the Directors, Promoters and the persons associated with the management of the Corporate Debtor to forthwith extend full co-operation, provide all assistance and hand over all the information including Books of Accounts/Bank Accounts, provide the information and documents set out in Annexure-W to the present Application and all other relevant documents of the Corporate Debtor to the RP. We also direct that the Applicant may obtain such information and documents, as may be necessary from the persons associated with the management of the Corporate Debtor in addition to seeking the same from the Directors, Promoters of the Corporate Debtor as well as from the MCA website available in the public domain. Ordered accordingly. No costs.

We would also like to emphasise that section 70 of the IBC provides for punishment for misconduct in course of CIRP. The Directors could be liable thereunder, in case of violation of any order.

**Sd/-**  
**RAVIKUMAR DURAISAMY**  
**MEMBER TECHNICAL**

**Sd/-**  
**JANAB MOHAMMED AJMAL**  
**MEMBER JUDICIAL**

15.12.2020  
SAM