In the National Company Law Tribunal
Mumbai Bench.

MA 2385/2019 in C.P.(IB)-02/MB/2018

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

Venugopal Dhoot)
Former Chairman,)
Videocon Industries Limited.) … Applicant

In the Matter between :

State Bank of India) … Petitioner/
Financial Creditor

Versus

1. Videocon Industries Limited (VIL)) … Respondent No. 1.
2. VOVL Ltd. (VOVL)) … Respondent No. 2.
3. Videocon Hydrocarbon Holdings Ltd. (VHHL)) … Respondent No. 3.
4. Videocon Energy Brasil Ltd. (VEBL)) … Respondent No. 4.
5. Videocon Indonesia Nunukan Inc. (VINI),) … Respondent No. 5.

Order delivered on: 12.02.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical).

For the Applicant(s) : Sr. Counsel Mr. Zal Andhyarjuna a/w Mr. Anurup Dasgupta, Ms. Ishani Khanwilkar, Mr. Karan Bhide, Ms. Sonam Ghiya, Jinal Vani i/b Jhangiani Narula & Associates.

For Petitioner/State Bank of India : Sr. Counsel Mr. Ravi Kadam, Mr. Madhav Kanoria,
Mr. Anush Mathkar, Ms. Sanjana M, i/b Cyril Amarchand Mangaldas. Mr. Patel i/b AVP Partners for Exim Bank.

For the Respondent(s) : Mr. Varghese Thomas, Ms. Aditi Deshpande, Mr. Jash Shah i/b J. Sagar Associate for BPCL/BPRL.

Per Chandra Bhan Singh, Member (Technical).

ORDER

Reliefs sought in MA 2385/2019:

1. Mr. Venugopal Dhoot, who is the guarantor, shareholder, former Managing Director / Chairman of the Videocon Industries Limited (parent Company of Videocon Group of Companies) has filed this Miscellaneous Application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 and, *inter alia*, has made the following prayers:

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;*

b. *That this Hon'ble Tribunal be pleased to declare that moratorium as per the provisions of the Code is applicable and imposed 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;*

Background:

2. After admission of each of the Company Petition separately against the 15 Videocon Group Companies, the independent CIRP process against each of the 15 Companies was initiated. However, since there was obligor / co-obligor arrangement between these 15 Videocon Group Companies, Mr. Venugopal Dhoot as well as the State Bank of India moved an application to consolidate the CIRP of these 15 Companies into one single CIRP and prayed for common resolution of these independent Companies through one Resolution Professional. In all 15 application where filed , some in favour of ' Consolidation' and some opposing the 'Consolidation' of the Videocon group of companies.

3. The Adjudicating Authority after hearing all concerned parties Ordered for the consolidation of the CIRP of 13 Videocon Group Companies pursuant to the request made by both the parties i.e. by State Bank of India and Mr. V.N. Dhoot. The consolidation order was passed on 8th August 2019.

4. The Videocon Group has mainly three kind of businesses viz. Consumer Home Appliances (**CHA**), Telecom and foreign Oil & Gas business. For the said purpose, the Videocon Group had taken various financial facilities from the Group of lenders. The CHA business as well as the Telecom business was funded through Rupee Term Loan (RTL) Agreement and Oil & Gas business was mainly funded through LOC / SBLC Facility Agreement in different tranches.

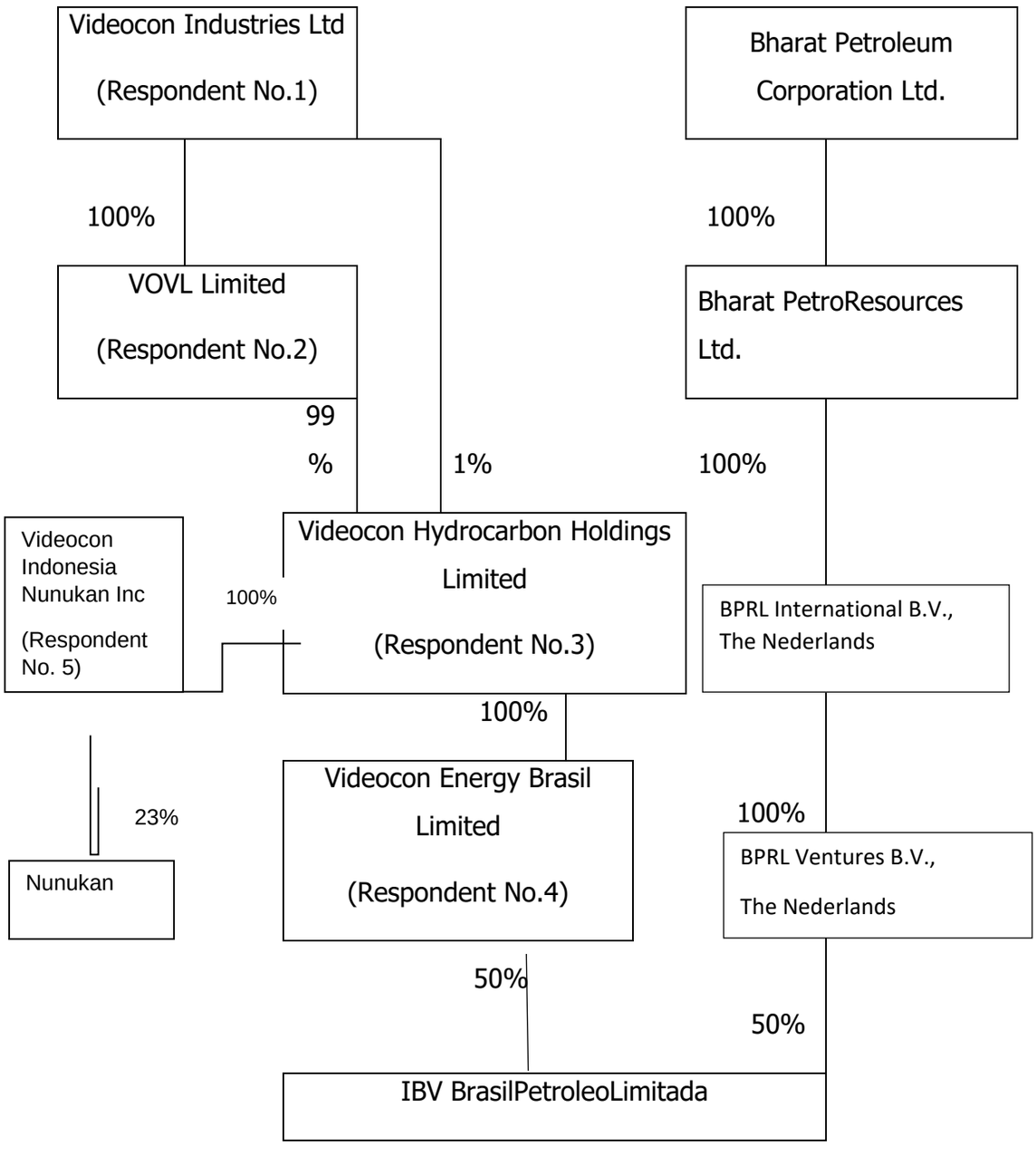
5. The RTL Agreement had an obligor / co-obligor arrangement initially amongst the 13 Videocon Group Companies which were mainly into the CHA business. The 14th Company i.e. C.E. India Limited is owner of Videocon brand, goodwill, trademark and patents and was the guarantor and later on, the 15th Group Company i.e. Videocon Telecommunication Limited, which was in the telecom business had also

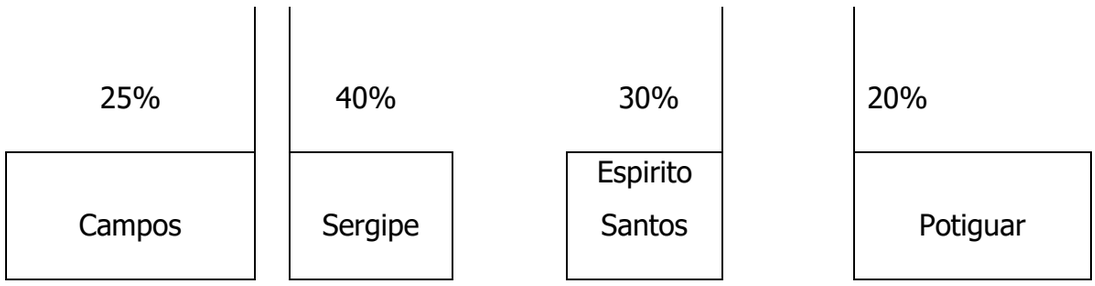
become party to the RTL Agreement and accepted the obligor / co-obligor structure with the other 13 Group Companies.

6. The foreign Oil & Gas business was apparently funded through the LOC / SBLC Facility Agreement. The flagship parent Videocon Group Company, VIL i.e. the Corporate Debtor in CP No.2 of 2018 was initially i.e. from 2011 until 30th March 2017, also party to the said LOC / SBLC Facility Agreements as obligor / co-obligor along with Respondent Nos.2 to 5 subsidiary Companies through which the foreign Oil & Gas assets are being held by the Videocon Group.

7. Later on, by way of an amendment to LOC / SBLC Facility Agreements, tranches 1 and 2, VIL was released from obligor / co-obligor structure and became Confirming Party and Guarantor to the said Agreements.

8. The Videocon Group presently is holding foreign Oil & Gas assets and participating interest therein with BPCL under a structure as given below :





Note: BPRL Ventures Indonesia B.V. is a wholly owned subsidiary of Bharat Petro Resources Ltd. and holds 12.5% Participating Interest in the Nunukan Oil and Gas Asset separate and independent of the Participating Interest held by Respondent No. 5 (VINI). The balance 64.5% of Participating Interest is held by third party – PHE Nunukan Company.

9. The summary of date of constitution of each of the above Companies and shareholding thereof as given in the written submissions are reproduced below:

Company	Date of Incorporation	Shareholding and Management	Remarks
IBV Brasil Petroleo Ltd. ('**IBV Brasil**')	--	Equally between BPRL Ventures BV and VEBL	Direct holder of the participating interests by virtue of the Joint Operating Agreement
VB (Brasil) Petroleo Pvt. Ltd.	28 Jun 2007	Equally between BPRL and VIL	JV Company incorporated to acquire IBV Brasil; stood merged with IBV Brasil
Videocon Energy Brasil Ltd. ('**VEBL**')	07 Jan 2008	*Shareholding*: Incorporated as a wholly-owned subsidiary (WOS) of VIL; Presently a WOS of VHHL *Management*: VN Dhoot & PN Dhoot (Directors)	Foreign Company incorporated under the laws of the British Virgin Islands
Videocon Indonesia Nunukan Inc. ('**VINI**')	21 May 2008	*Shareholding*: WOS of VHHL *Management*:	Foreign Company incorporated under the laws of

		VN Dhoot & PN Dhoot (Directors)	the Cayman Islands
Videocon Hydrocarbon Holdings Ltd. ('**VHHL**')	30 Nov 2009	*Shareholding*: Incorporated as a WOS of VIL; Presently, • 99% - VOVL; • 1% - VIL *Management*: VN Dhoot & PN Dhoot (Directors)	Foreign Company incorporated under the laws of the Cayman Islands
VOVL Ltd. ('**VOVL**')	19 Jan 2010	*Shareholding*: WOS of VIL *Management*: VN Dhoot & PN Dhoot (Directors)	Indian Company; presently under CIRP

10. We are detailing out occurrence of certain events in the acquisition of Participating Interest in the Foreign Oil and Gas assets by the Applicant . These dates and events are admitted and not disputed by any of the Parties. These dates and sequence of events would be useful when we are discussing the findings. It will also help us in putting the facts in proper perspective.

Sr No	**Date**	**Particulars**
A.		**ACQUISITION OF PARTICIPATING INTEREST IN THE FOREIGN OIL AND GAS ASSETS**
1.	22.12.2005	Memorandum of Understanding was entered into **between the Corporate Debtor / VIL and Bharat Petroleum Corporation Limited** [hereinafter referred to as "**BPCL**"], to jointly acquire the domestic and international oil and gas assets and the participating interest therein.
2.		Corporate Debtor / VIL was approached by Jefferies Randall & Dewey, an Advisor to Encana Corporation of Canada, to ascertain its interest in acquiring the petroleum exploration and production rights in its Brazilian assets
3.	10.05.2007	**Confidentiality Agreement** was signed by and between ENCNA Corporation and VIL (present Corporate Debtor) in relation to evaluate data and information relating to the ENCNA and the **Brazilian Assets** in connection with the

		possible acquisition of all issued share capital of the Company or some or all of the **Brazilian Assets.**
4.	20.07.2007	**Board Resolution** of the present Corporate Debtor / VIL, mentioning that the present Corporate Debtor / VIL was authorized to bid in consortium with Bharat Petro Resources Limited [hereinafter referred to as "**BPRL**"] for the **Brazilian Assets**.
5.	30.07.2007	The present Corporate Debtor / VIL and BPRL jointly submitted the final bid / "binding proposal" for the potential acquisition of 100% of the issued and outstanding capital stock of EnCana Corporation or alternatively for direct asset purchase. 1. The present Corporate Debtor / VIL and BPRL referred to as ***"Purchaser".*** 2. Also mentioned "*In the event our proposal is successful,* ***purchaser will set-up a SPV for the purpose of consummating the Transaction***."
6.	7.01.2008	The Company VEBL (Respondent No.4) was constituted, having 100% subsidiary of VIL which is now 100% subsidiary of VHHL (Respondent No.3).
7.	12.09.2008	Quotaholders Agreement was entered into by and between BPRL, the present Corporate Debtor / VIL and VB (Brasil) Petroleo Private Limitada. It is important to note that the recitals mention that *(a) BPRL and VIL have signed a Joint Bidding Agreement dated June 13, 2007, in connection with acquisition of all the quotas of Encana Brasil Petroleo Private Limitada (Target Company) from its quotaholders viz. Encana Corporation, Canada and Alberta Limited (Seller);* *(b) BPRL and VIL have entered into Share Purchase Agreement on 8th September 2007 with sellers wherein the sellers have agreed to sell all the quotas of the Target Company to BPRL and VIL;* (c) *BPRL and VIL have promoted the JV Company to consummate the transaction referred in SSA*.

8.	12.09.2008	Share Pledge Agreement was executed by and between the present Corporate Debtor / VIL, Standard Chartered Bank, VEBL and VB Brasil, whereby the present Corporate Debtor / VIL pledged its quota of 1,004,500 shares [existing shares], representing 50% of the total issued and subscribed quotas of VB Brasil in favour of Standard Chartered Bank.
9.	16.09.2008	Corporate Guarantee was issued by the present Corporate Debtor / VIL of USD 155 Million to guarantee the loan extended by Standard Chartered Bank to VEBL of USD 150 Million.
10.	17.09.2008	Loan Agreement executed by and between the Standard Chartered Bank, London in favour of VEBL for a sum of USD 150 Million. ["**SCB Loan**"]
11.	21.08.2008	Loan Agreement executed by and between VEBL in favour of VB Brasil for a sum of USD 150 Million. ["**VB Brasil Loan**"] to facilitate the purchase of shares of Encana Brasil under the Share Sale Agreement dated 08.09.2007.
12.	9.10.2008	The name of Encana BrasilPetroleoLimitada was changed to *'IBV BrasilPetroleoLimitada'* [hereinafter referred to as **"IBV Brasil"**].
13.	19.1.2010	VOVL, an Indian Company, was incorporated which is 100% held by the present Corporate Debtor / VIL.
14.	7.7.2010	The present Corporate Debtor / VIL divested its entire stake in VEBL (Respondent No.4) in favour of VHHL (Respondent No.3) and, therefore, VEBL (Respondent No.4) became 100% held by VHHL (Respondent No.3) and VHHL (Respondent No.3) became 100% held by the present Corporate Debtor / VIL.
15.	25.8.2010	VOVL subscribed 5 Million shares of VHHL (Respondent No.3) from the fundings of the present Corporate Debtor / VIL.
16.	21.12.2010	The present Corporate Debtor / VIL subscribed to 198 Million shares of VHHL (Respondent No.3) through the funds raised by issuance of FCCB.
17.	12.7.2011	The present Corporate Debtor / VIL sold 195.97 Million shares of VHHL (Respondent No.3) held by it to VOVL and,

		therefore, revised shareholding structure of VHHL (Respondent No.3) has become 99% held by VOVL; whereas 1% is held by the present Corporate Debtor / VIL.
18.	06.06.2018 to 25.09.2018	The company Petitions against 15 Videocon Group Companies were admitted by NCLT, Mumbai Bench.
19.	08.08.2019	The Adjudicating Authority passed order of Consolidating CIRP of 13 Videocon Group Companies by way of detailed order.
20.	22.08.2019	The Adjudicating Authority of this Bench granted interim protection thereby prevented the State Bank of India from selling oil and gas assets pending the hearing of the present Application.

11. The financial documents entered into and executed between the parties in the Videocon Group companies as given in its submissions is being referred to in this paragraph. The two most important documents to our mind are Rupee Term Loan Agreement under which credit was extended to the 13 Videocon group of companies presently under insolvency and the SLC/ SBLC facilities under which loans were extended by the Financial creditors for the Oil and gas assets. This would again as per this Bench would come to assistance in deciding the Obligor/ co-obligor and inter-twining if any between these Agreements. The highlights of the main points in these documents are as under :

a) Deed of guarantee executed in favour of Standard Chartered Bank, London by the present Corporate Debtor / VIL along with ODI Form duly filled in and submitted for the purpose of securing the loan of USD 150 Million for Videocon Global Energy Holdings Limited;

b) Rupee Term Loan Agreement dated 8th August 2012 executed by and between the 13 Videocon Group Companies (which are already referred to CIRP and 11 of them are consolidated in the CIRP of the present Corporate Debtor / VIL). The following are some of the points mentioned in the said RTL Agreement which are relevant for present application.

i) The sanctioned letter annexed to the Petition dated 16th April 2012 of the RTL Agreement mentions name of Respondent No.1 along with 13 obligor / co-obligor Companies to the RTL Agreement.

ii) Clause 14 "Security" of the sanctioned letter for RTL facility mentions *second pari passu charge on VHHL subsidiaries participating interest in the production sharing contract of the identified assets and/or second*

ranking pledge of 100% shareholding of VHHL (Respondent No.3) in (a) Videocon Mozambique Rovuma 1 Ltd., (b) Videocon Energy Brazil Ltd. (Respondent No.4); and (c) Videocon Indonesia Nunukan Ltd. (Respondent No.5); (d) 100% shareholding of Videocon Energy Brazil Ltd., in IBV Brazil (currently 50% shareholding of IBV, Brazil).

iii) Second *pari passu* charge on Pledge of 100% *shares of Videocon Oil Ventures Ltd. (Respondent No.2) held by Videocon Industries Limited, 99% shares of VHHL held by Videocon Oil Ventures Ltd*. (VIL's wholly-owned subsidiary) and 1% shares of VHHL held by VIL.

iv) Second *pari passu* charge on *VHHL's share of cash flows from the identified Assets, through escrow of receivables of the Identified Assets, through escrow of receivables* of the Identified Assets.

v) The event of default Clause 20 mentions that non-payment of interest and/or scheduled repayment by Borrower (i.e. the 13 obligor / co-obligor Companies in CIRP, including Respondent No.1) **OR** VHHL (Respondent No.3) for a period of 30 days from respective due dates. It also further mentions that cross defaults by Borrowers or VHHL shall also be treated as the event of default of RTL facility besides the insolvency of the VHHL.

vi) The RTL Agreement also mentions about LOC / SBLC Facility Agreement, Offshore Share Pledge Agreement, Oil & Gas Funding Loans is defined as collectively the LOC / SBLC Facility, the Supplemental Rupee Facility, the Foreign Currency Facility, Additional Foreign Currency Facility.

vii) Clause 12.47 regarding revenues from identified oil and gas assets of RTL Agreement mentions that "*The obligor shall ensure that the contracts in respect of product of identified oil and gas assets shall be broadly consistent with the terms envisaged in the business plan. In the event that the selling price of the products from the identified oil and gas assets are contracted at a value lower than that assumed under the business plan, the vendor shall have right to stipulate such additional conditions as may be deemed necessary by them.*"

viii) The said Clause 12.49 further mandates that the Borrowers of the RTL Agreement shall procure an undertaking from VOVL (Respondent No.2) that it shall not divest, pledge, alienate or dilute its direct or indirect shareholding in its subsidiaries or step down subsidiaries i.e. VHHL,

VMRL, VEBL, VINI, Videocon JPDA and Videocon, Australia, without obtaining prior written approval of RTL lenders.

ix) The obligors (i.e. 13 Companies under the CIRP) shall procure undertaking from VHHL (Respondent No.3), VEBL (Respondent No.4) and VINI i.e. Respondent No.5 that they shall ensure that the surplus generated by identified oil and gas assets shall be ploughed back to the offshore trust and retention or escrow account and/or onshore trust and retention account.

x) Clause 12.50 (iii) of the RTL Agreement mentions that the obligor shall effect the oil and gas securitization only with the prior approval of the RTL lenders and in the event of borrowers or any one on behalf of the borrowers receive any funds in respect of the oil and gas assets securitization, any surplus thereof after meeting debt service obligation under the financing documents shall be used to prepay the Rupee Term Loan.

xi) Schedule 15 to the RTL Agreement mentions about VHHL's (Respondent No.3) undertakings. Various clauses mentioned therein, including the clause pertaining to the disposal mentions that VHHL without written consent of the RTL lenders shall not dispose of its stakes in the foreign Oil & Gas assets except the permissible disposals. The entire Schedule 15 mentions the various restrictions of the RTL lenders on VHHL (Respondent No.3) and/or its subsidiaries.

xii) As such, the Rupee Term Loan was, *inter alia*, secured by the following:

(a) Second ranking pledge by VIL of 100% of fully paid equity shares of Respondent No. 2;

(b) Second rank in charge on the 'Identified Oil and Gas Assets' and/or second ranking pledge by Respondent No. 3 of the 100% fully paid shares of inter-alia Respondent No. 4;

(c) Second ranking pledge by Respondent No. 4 of 50% fully paid shares of IBV Brazil;

(d) Second ranking pledge by Respondent No. 2 of 99% fully paid shares of Respondent No. 3 and VIL of 1% fully paid shares of Respondent No. 3;

(e) Second charge on the account of the offshore trust and retention or escrow account which would contain Respondent

No. 3's share of the cash flow generated from the 'Identified Oil & Gas Assets'.

(c) For foreign Oil & Gas business, LOC/SBLC Facility Agreement dated 27.09.2012 executed inter-alia by and between (i) the Consortium of Lenders set out in the Schedule; (ii) the State Bank of India (as the 'Security Agent'); (iii) the Respondent No. 1 / the present Corporate Debtor / VIL and Respondent No. 2-VOVL (as 'Obligors'); and (iv) VHHL (Respondent No. 3) (as the 'Foreign Currency Borrower'). The VIL is termed as one of the co-obligors;

(i) In recitals, it is mentioned that VOVL (Respondent No.2) directly and/or indirectly manages and controls the overseas oil and gas business of Videocon Group by holding participating interest in foreign oil and gas assets fields; whereas in relation to the present Corporate Debtor / VIL, it is mentioned that VIL is also engaged in the oil and gas exploration and extraction business in India and through overseas subsidiaries of VIL holds participating interest in various oil and gas fields globally.

(ii) In terms of the said LOC/ SBLC Facility Agreement, the said SBLC Facility was inter-alia secured by the following:

a) First ranking pledge by VIL of 100% of fully paid up equity shares of VOVL/Respondent No.2;

b) First rank in charge in participating interest by way of first ranking pledge/charge by the Respondent No. 3 – the Foreign Currency Borrower - of 100% fully paid shares of inter-alia Respondent No. 4;

c) First ranking pledge / charge by Respondent No. 4 of all its shares of IBV Brasil;

d) First ranking pledge by VOVL/Respondent No.2 of 99% fully paid shares of the Respondent No. 3 - Foreign Currency Borrower - and VIL of 1% fully paid shares of the Respondent No. 3 – the Foreign Currency Borrower; and

e) First charge on the relevant Offshore Trust and Retention Accounts which would contain the Respondent No. 3 -

Foreign Currency Borrower's share of cash flows from the 'Identified Oil and Gas Assets.

f) It is mentioned in Clause 2.5 that VIL and VOVL shall be obligors / co-obligors to the said Facility and shall be liable on joint and several basis and shall further act as an obligor agent.

g) It is also agreed by Respondent Nos.2 to 5 that VIL shall be appointed as their obligor agent.

(iii) Tranche 2 LOC / SBLC Facility Agreement was also executed between (i) the Consortium of Lenders set out in the Schedule thereto; (ii) the State Bank of India (as the 'Security Agent'); (iii) the Respondent No. 1 / the present Corporate Debtor / VIL and Respondent No. 2-VOVL (as 'Obligors'); and (iv) VHHL (Respondent No. 3) (as the 'Foreign Currency Borrower') which has clauses mentioning as follows: The VIL, the present Corporate Debtor is termed as one of the co-obligors and facility agent for Respondent Nos.2 to 5.

(iv) Clause 9 of the said Agreement deals with the security for the facility and further mentions that the following security is to be created in favour of the security trustee of the facility lender as follows:

(a) First ranking pledge of VIL of 100% of fully paid equity shares of VOVL, over which the Rupee Lenders will have second charge;

(b) First ranking charge on the Videocon brand, ranking *pari passu* with the Rupee Lenders;

(c) Irrevocable and unconditional personal guarantee of Mr. V.N. Dhoot, Mr. P.N. Dhoot and Mr. R.N. Dhoot;

(d) First ranking pledge by the Foreign Currency Borrower of 100% fully paid shares of VEBL (Respondent No.4) and VINI (Respondent No.5), or otherwise to the satisfaction of Lenders Legal Counsel, over which the Rupee Lenders will have second charge;

(e) First ranking pledge by VEBL (Respondent No.4) of all its shares of IBPL, both present and future (currently 50% of the share capital of IBPL), over which the Rupee Lenders will have second charge;

(d) On 30.3.2017, the SBLC Tranche 1 Facility Agreement as well as SBLC Tranche 2 Facility Agreement came to be amended by way of Deed of amendment to both the Tranche 1 and Tranche 2 LOC / SBLC Facility Agreements, *inter alia,* mentioning as under:

2. VIL Obligations

2.1 *"…VIL shall stand released from all its obligations as a Co-Obligor / Obligor and Obligor Agent under the Tranche 1 / 2 LOC/SBLC Facility Agreement. …"*

2.2 *"… All references to the terms "Obligor", "Co-Obligor" and "Obligor Agent" under the Tranche 1 / 2 LOC/SBLC Facility Agreement, shall be deemed to be references only to VOVL. …"*

2.3 *"On and from the date of this Amendment Agreement, VIL shall be deemed to be the "Confirming Party" to the Tranche 1 / 2 LOC/SBLC Facility Agreement."*

12. As per the submissions made before this Bench in the ongoing CIRP of Respondent No.1 i.e. the present Corporate Debtor / VIL, all the Financial Creditors of VIL plus 12 Companies have lodged claim of Rs.34,370.75 Crores; whereas the lenders of Respondent Nos.2 to 5 i.e. lenders for the oil and gas business also appear to have lodged the claim to the tune of Rs.23,120.90 Crores with the Resolution Professional of Respondent No.1, as mentioned hereinbelow:

Sr. No.	**Name of the Financial Creditor**	**VIL+13 Claim Amount (Rs. Crore)**	**VOVL Claim Amount (Rs. Crore)**	**Total VIL Claim Amount (Rs. Crore)**
1	ALLAHABAD BANK	1,456.28	417.88	1,874.16
2	ANDHRA BANK	445.94	-	445.94
3	BANK OF BARODA	1,405.58	434.28	1,839.86
4	BANK OF INDIA	427.36	1,709.54	2,136.90
5	BANK OF MAHARASHTRA	880.65	333.10	1,213.75
6	CANARA BANK	1,468.63	406.47	1,875.10
7	CENTRAL BANK OF INDIA	3,540.37	1,522.56	5,062.93
8	CORPORATION BANK	1,795.15	430.96	2,226.11

9	DENA BANK	720.29	-	720.29
10	EXIM BANK	-	2,365.42	2,365.42
11	FEDERAL BANK	55.53	-	55.53
12	IFCI LTD	620.41	-	620.41
13	ICICI BANK	1,479.00	1,838.95	3,317.95
14	IDBI BANK	4,844.50	4,716.43	9,560.93
15	INDIAN OVERSEAS BANK	1,272.54	489.94	1,762.48
16	INDIAN BANK	183.05	371.93	554.98
17	J & K BANK	92.11	-	92.11
18	LIC OFINDIA	973.68	-	973.68
19	ORIENTAL BANK OF	353.18	-	353.18
20	PUNJAB NATIONAL BANK	1,684.61	415.32	2,099.93
21	STATE BANK OF INDIA	5,532.50	5,307.50	10,840.00
22	SYNDICATE BANK	867.74	834.77	1,702.51
23	UCO BANK	998.04	-	998.04
24	UNION BANK OF INDIA	1,141.94	1,387.44	2,529.38
25	UNITED BANK OF INDIA	370.34	-	370.34
26	VIJAYA BANK	825.35	138.41	963.76
27	NOMURA INTERNATIONAL	6.14	-	6.14
28	GOLDMAN SACHS INTL	39.70	-	39.70
29	MORGAN STANLEY INTL	7.84	-	7.84
30	HEWLETT PACKARD FIN. SERV.	1.29	-	1.29
31	KOTHARI METALS LIMITED	3.24	-	3.24
32	FOLLOWEL ENGINEERING	5.84	-	5.84
33	DB TRUSTEES (HONGKONG)	538.83	-	538.83
34	SIDBI	32.74	-	32.74
35	HIND FILTERS LIMITED	0.02	-	0.02
36	LATUR URBAN COOP BANK	0.33	-	0.33
37	BARCLAYS BANK PLC	65.55	-	65.55
38	ABG SHIPYARD LTD	15.00	-	15.00
39	YES BANK	143.00	-	143.00
40	MORGAN SECURITIES &	76.45	-	76.45
	Grand Total	**34,370.75**	**23,120.90**	**57,491.65**

The claim of the Oil and Gas vendors in the total claims of the Financial creditors in the Corporate Debtor's company /VIL is about 40.2%.

Contentions of Applicant, Mr. Venugopal Dhoot:

13. The Applicant mentions that this Application under Section 60 (5) (c) of the Code and the Applicant being guarantor, shareholder and Ex Managing Director and Chairman of the Videocon Group has locus to file present Application to include all assets and properties belonging to the Respondent No.1 in the present CIRP in the interest of all stakeholders.

14. It is further contention of the Applicant that under the provisions of the Code, he is duty bound to bring all assets and properties of the Respondent No.1 in the knowledge of this Authority as the Resolution Professional has failed to include the said assets as the assets and properties of the present Corporate Debtor / VIL.

15. The foreign oil and gas assets, properties, claims and participating interests therein i.e. participating interests in the Brazil and Indonesia blocks were initially acquired by the present Corporate Debtor / VIL and then subsequently Respondent Nos.2 to 5 were incorporated just to ostensibly hold these foreign oil and gas assets for and on behalf of the present Corporate Debtor / VIL.

16. The Respondent Nos.2 to 5 are the special purpose vehicles (SPVs) created only to ostensibly hold the foreign oil and gas assets, properties and interests therein. The said Respondents are acting like extended branch of the present Corporate Debtor / VIL and had no separate control and management and decision-making power on its own.

17. The entire management, operation and Board of the Respondent No.2 was completely controlled and was acting under the instructions of the present Corporate Debtor / VIL and it never enjoyed any independent decision-making power. The Board of these companies did not have any independent decision-making authority.

18. The Respondent Nos.2 to 5 companies were not in existence when in 2005 present Corporate Debtor / VIL entered into MOU with BPCL to acquire the stake in foreign oil and gas assets.

19. The important documents, agreements, loan documents executed in relation to acquisition of these foreign oil and gas assets, properties and interest therein refers the present Corporate Debtor / VIL as "**Purchasers**".

20. The Share Purchase Agreement through which the shares of the companies holding the participating interests in the Brazil oil and gas blocks, notwithstanding the incorporation of Respondent Nos. 2 to 5 still stands in the name of the present Corporate Debtor / VIL.

21. Similarly, the Quota Holders Agreement through which the participating interests of the Brazilian oil and gas assets is being held jointly through the BPRL, still stand in the name of the present Corporate Debtor / VIL, notwithstanding the incorporation of Respondent Nos.2 to 5 and change of holding structure time to time.

22. That neither the SBI nor BPCL at any point of time objected that the Quota Holders Agreement as well as Share Purchase Agreement of these assets, properties or interests therein still standing in the name of the present Corporate Debtor / VIL, despite change in holding structure i.e. through Respondent Nos. 2 to 5.

23. The Respondent Nos. 2 to 5 never had any independent means of income and/ or assets and/ or business to acquire / subscribing shareholding or assets but solely on the basis of the financial assistance from the present Corporate Debtor / VIL, the foreign oil and gas assets, properties and/ or interests therein was acquired.

24. The present holding structure to hold the participating interests in the foreign oil and gas assets through the Respondent Nos.2 to 5 (SPVs) was created for the convenience purpose as it was practically difficult for the present Corporate Debtor / VIL to fund the operation costs of these foreign oil and gas assets (cash calls) from India to foreign countries under the provisions of the FEM Act.

25. Under the provisions of the FEM Act, the foreign subsidiaries could easily get the finance in the foreign countries in the foreign currency under the automatic route on the basis of the guarantee of the Indian holding company i.e. the present Corporate Debtor / VIL. Whereas, the substantial time was being wasted to send money of cash call from India to abroad as it required the specific permission from Reserve Bank of India under the approval route and therefore just for the convenience purpose the structure of SPVs i.e. Respondent Nos.2 to 5 was created. However, the said SPVs companies never did any other business except holding the participating interests for and on behalf of present Corporate Debtor / VIL.

26. That as per Sub-Section 3 of Section 6 of the Foreign Exchange Management Act read with Overseas Direct Investment regulations, 2004 a parent company may remit funds to its foreign subsidiaries via the automatic route without any prior RBI approval. However, any foreign remittance to a third party necessarily requires an application to be made to the RBI and is subject to approval therefrom. Thus, the Applicant submitted that incorporation of the SPV's served to ease the operational and commercial convenience of the parties.

27. Alternatively, the lenders have treated the Videocon Group as a single economic entity for CHA, Telecom and Oil and Gas Business while lending the money for these businesses through various facility agreements.

28. That the Consumer Home Appliance (CHA) business was prominently funded through the Rupee Term Loan (RTL) Agreement under the Obligor- Co-obligor structure. Whereas, the foreign oil and gas business was funded through LOC/ SBLC Facility Agreement.

29. That the lenders of CHA businesses have taken second charge on the foreign oil and gas assets, properties and interests therein and also taken security from all stakeholder companies in the chain i.e. Respondent Nos.1 to 5. Similarly, the

Respondent No.1 was obligor and facility agent for the loan advanced to the foreign oil and gas business by LOC/ SBLC Lenders.

30. As such, the Lenders always treated the Videocon Group as single economic entity and the Lenders of the Rupee Agreement i.e. the financial creditors of Respondent Nos.1 and other 12 companies referred in CIRP had second charge on the foreign oil and gas assets as specifically referred in the Rupee Term Loan Agreement as well as LOC/ SBLC Facility Agreement. Therefore, clearly qualifies the criterion laid down in the consolidation order to treat the assets of Respondent Nos.2 to 5 as assets of Respondent No.1 i.e. the present Corporate Debtor / VIL.

31. That even otherwise in view of the definition of the "property" and "security interest", as defined in Section 3 (27) and 3 (31) of the Code, respectively, it is contended that the security interest is created of the oil and gas assets, properties and/ or the interest therein including present or future or vested or contingent, in favour of the lenders of the Rupee Term Loan Agreement i.e. the financial creditors of the Respondent No.1, the present Corporate Debtor / VIL and the 12 other consolidated companies.

32. Notwithstanding the amendment in LOC/ SBLC Facility Agreement practically there is no change in the liability accepted by the Respondent No.1, the present Corporate Debtor / VIL as it was/ is the confirming party and Guarantor to the said Facility Agreement under which oil and gas business was financed.

33. In consequence to above arrangement in the present ongoing CIRP of the Respondent No.1, the present Corporate Debtor / VIL plus other 12 consolidated companies, the Lenders of foreign oil and gas business i.e. lenders of Respondent Nos.1 to 5 have lodged their claim to the tune of Rs.23,120.90 Crores in the present ongoing CIRP.

34. In the clauses of the Loan Agreements i.e. RTL Agreement as well as LOC/ SBLC Facility Agreement, the loan granted are interconnected and inseparable. Hence, it is impossible to have Resolution of the group as envisaged in the Code without inclusion of the foreign oil and gas assets in the present CIRP.

35. That it shall be in public interest to lift the corporate veil of Respondent Nos.2 to 5. The Applicant's counsel has relied on various authorities in support of this contention.

36. That in view of the creation of security interest of the properties of the present Corporate Debtor / VIL (Ostensibly held through SPVs, Respondent Nos.2 to 5), the provisions of Section 14 of the Code shall apply to the said foreign oil and gas assets.

Contentions of Respondent Nos.2 to 5:

37. The counsel for Respondent Nos.2 to 5 supported the contention of the Applicant and further submitted that from record it appears that Respondent Nos. 2 to 5 were incorporated subsequent to the decision to acquire the foreign oil and gas assets, properties and interests therein by the present Corporate Debtor / VIL in conjunction with BPCL. The relevant documents go to show that the Respondent No.1, present Corporate Debtor / VIL is referred to as the "**Purchaser**".

38. The lenders have treated the entire group as single economic entity and it is evident from the loan agreements and clauses mentioned therein, the lenders always treated the present Corporate Debtor / VIL as ultimate beneficiary of the foreign oil and gas assets or any interest therein.

39. The entire shareholding of VHHL which is the main holding company of foreign oil and gas assets (having shareholding 1% held by VIL and 99% held by VOVL). The 1% shares held by VIL is treated in Memorandum and Articles of Association of VHHL as "**A ordinary shares**". It is clearly mentioned in the clause of Dividend, Distribution and Reserve in the Memorandum and Articles that all dividends of the VHHL shall be paid to "A ordinary shareholder" i.e. to the present Corporate Debtor / VIL irrespective of 99% of the shares are held by VOVL (Respondent No.2). This arrangement clearly indicates the intention of the parties that notwithstanding any holding structure the ultimate beneficiary of the foreign oil and gas assets, or any interests therein shall always belong to the ultimate parent company i.e. the present Corporate Debtor / VIL.

40. The Writ Petition filed by the VOVL before the Hon'ble Supreme Court was altogether on different issue and challenging the relevant RBI Circular. The said Writ Petition was filed to safeguard the interest of the downstream subsidiaries and there was no occasion in that Writ Petition to challenge the real ownership and beneficial interest of the Videocon Industries Ltd. rather it was clearly mentioned that the property was initially acquired by the present Corporate Debtor / VIL in conjunction with BPCL.

The contention of the State Bank of India:

41. The CIRP process envisaged in the Code is creditor driven process and no interference from the third party like the present Applicant is warranted. The present Application is filed to delay the ongoing CIRP.

42. The present Applicant, Mr. V. N. Dhoot has no locus standi to file the present Application. The Resolution Professional is competent to take any such steps if required in law. The property sought to be included is not owned by the present

Corporate Debtor / VIL and will not come under the ambit of the order of moratorium under Section 14 (1) (b) of the Code.

43. The Adjudicating Authority do not enjoy any jurisdiction over the foreign companies so no order of restraining the sale of such assets can be passed by the Adjudicating Authority.

44. The subsidiary and its assets are not the assets of the holding company and that the subsidiary and its assets are separate and independent. The corporate veil cannot be lifted on the contentions pleaded by the Applicant.

45. The Applicant, as an afterthought trying to obtain multiple stages on the CIRP and attempting to defeat the rights of the lenders. The lenders have an independent claim and remedy against each of the Respondents. It has been maliciously portrayed a false and ill conceived picture that lenders have filed their claims in respect of foreign oil and gas assets in the CIRP of the present Corporate Debtor / VIL. The present Corporate Debtor / VIL is liable under various agreements executed by it for facilities to VOVL and / or VHHL including the corporate guarantees and therefore the lenders are financial creditors of the present Corporate Debtor / VIL in their independent right pursuant to section 5(8) of the I B Code.

46. That the Respondent No.2 had approached the Hon'ble Supreme Court by filing Writ Petition bearing No.1138 of 2018 under Article 32 of the Constitution of India on 17.09.2018 which is subsequent to the initiation of the CIRP of Respondent No.1 (on 06.06.2018). It is categorically mentioned by Respondent No.2 in the said Writ Petition that the said foreign oil and gas assets belonged to VOVL and further it was pleaded that initiating CIRP against Respondent Nos. 2 to 5 pursuant to 12th February Circular will erode the assets of the VOVL and would be in turn detrimental to the lenders. Nowhere in the said Writ Petition did the VOVL take ground that foreign oil and gas assets could not be proceeded against since they were the assets of the present Corporate Debtor / VIL.

47. As such, the present application by Mr. V. N. Dhoot is an afterthought and contrary to the pleadings in the said Writ Petition.

48. That during the meetings with the lenders, the Applicant himself gave consent to undertake the process of valuation and monetization of certain oil and gas assets, therefore he stopped from alleging contrary in this application.

49. Under Section 14(1)(c) of the Code specifies that the security interest should be in relation to the "its" property by the Corporate Debtor. In the present case the oil and gas assets cannot be said to be property of the present Corporate Debtor / VIL. Hence, the provisions of Section 14 of the Code will not apply.

50. Section 18 (1)(f) of the Code mandates the Resolution Professional to take control and custody of any assets over which the Corporate Debtor has ownership right as recorded in the balance sheet of the Corporate Debtor. In the present case the balance sheet of the present Corporate Debtor / VIL do not reflect the foreign oil and gas assets as assets of the Corporate Debtor. Hence, cannot be treated as "its" assets.

51. Explanation to Section 18 (1) of the Code clarifies that the term "assets" shall not include the assets of any Indian or foreign of the subsidiary of the Corporate Debtor.

52. Therefore, the assets of the Respondent Nos.2 to 5 cannot be said to be assets of the present Corporate Debtor / VIL.

53. That it is established principle of law that the subsidiary companies have separate legal existence than their legal holding companies. For the said purpose the Ld. Senior Counsel has relied on many authorities which are discussed hereinafter.

54. The Beneficial Ownership Agreements have never been tendered in past nor brought in the knowledge of lenders and now have been surreptitiously revealed at the application stage to defeat the rights of the lenders. The signatures appearing on the said Agreements are of the same parties. The Beneficial Ownership Agreement creates serious doubt and therefore no reliance shall be placed on the Beneficial Ownership Agreement. The Beneficial Ownership Agreements have been prepared as an afterthought.

The contentions of BPCL/ BPRL:

55. The BPCL is having 53.29% direct ownership of Government of India which is 100% holding company of another Indian Company viz., BPRL which in turn holds 100% of the Netherland company, viz., BPRL INT BV which further hold 100% in another Netherland company, viz., BPRL Ventures through which an investment of Rs.5,500 Crores are invested in a J V company, viz., IBV Brazil Petroleo Ltd. which is 50:50 JV of Respondent No.4, VEBL and BPRL Ventures.

56. Since many days VEBL is in default to honor the cash call and hence the BPRL Ventures is contributing for the default of VEBL and till this time has incurred additional investment of Rs.250 Crores. Over and above Rs.5,500 Crore invested by VEBL and BPRL Ventures, each.

57. If any stay as prayed by the Applicant is granted there would be loss to the Nation as the BPRL will lose its share in the concession for the default.

58. In absence of the contribution and honouring cash calls by VEBL it has become difficult for BPRL to secure the interest of JV company i.e. IBV Brazil Petroleo Ltd. through which the participating interests are of JV is being held.

59. The Respondent No.5, VINI has already defaulted in paying its shares of expenses for exploration of the oil field in Indonesia and therefore BPRL Ventures, Indonesia, BV has paid its shares along with the other parties except VINI. Therefore, under Joint Operating Agreement for commission of the default the shares of defaulting party i.e. VINI is consummated proportionately by non-defaulting parties under the terms of the Agreement. The Joint Operating Agreement provides that if the default continues for more than 60 days the non defaulting parties can forfeit and distribute amongst themselves the participating interest of VINI at zero compensation by issuing notice of withdrawal.

60. The notice of withdrawal was issued long back and the effect of such notice is irreversible under the terms of the Joint Operating Agreement and it operates as the deemed transfer of participating interests of defaulting parties in the present case, VINI, Respondent No.5.

61. That the stand taken by the Applicant herein is contrary to the stand taken by them in the Writ Petition filed before the Supreme Court for protecting the Respondent Nos.2 to 5 from pushing to the CIRP. Now, therefore by no stretch of imagination the present Application can be entertained.

62. Even otherwise, there is no public interest to lift the corporate veil in between Respondent Nos. 1 to 5. In fact, the Applicant who has created the structure cannot be permitted in law to pray for lifting corporate veil which he himself created.

63. The Respondent Nos.2 to 5 are independent companies and just because it is 100% held by the present Corporate Debtor / VIL, the assets of Respondent Nos. 2 to 5 is separate and distinct with the assets of the Respondent No.1, the present Corporate Debtor / VIL and cannot be termed as assets of the holding company in view of the settled law.

64. In case the Application is allowed for any reason, the crucial investment by BPCL shall get jeopardized and entire investment of Rs.11,750 Crores shall be at stake as the participating interest allotted to the JV company may get allotted to the other parties under the terms of the Joint Operating Agreement pursuant to default of payment by JV company i.e. IBV Brazil Petroleo Limitada.

Analysis of the contentions of the parties:

65. It is undisputed fact that Videocon Group was a conglomerate which was into the diversified businesses and for the said business the Group has availed various financial facilities from different financial institutions. Bare perusal of the claim lodged in the ongoing CIRP of Respondent No.1, the present Corporate Debtor/ VIL plus 12 consolidated companies by the financial creditors alone, shows that the huge claims to the tune of Rs.57,491.65 Crores have been lodged by not only the financial creditors of Respondent No.1, the present Corporate Debtor/ VIL plus 12 consolidated companies, but also by the financial creditors of Respondent Nos.2 to 5.

66. The record shows that in the ongoing CIRP of Respondent No.1, the present Corporate Debtor/ VIL plus 12 consolidated companies, the financial creditors have lodged a claim of Rs.34,370.75 Crores, whereas the financial creditors of Respondent Nos. 2 to 5 have lodged claim of Rs.23,120.90 Crores. As such, the claims of lenders/ financial creditors of Respondent Nos. 2 to 5 lodged in the present ongoing CIRP is 40.21% of the total claims of the financial creditors of Respondent No.1, the present Corporate Debtor/ VIL plus 12 consolidated companies.

67. In the light of above referred undisputed facts, the list of dates and events, the various financial documents, the various terms agreed by the parties therein, the findings of the Adjudication Authority of this Bench as appearing in the consolidation order dated 08.08.2019 (which is accepted by the parties and stakeholders), and in the light of the submissions and contentions of the parties, including the various provisions of the Code and the case laws relied upon by the parties, the following questions arise for determination:

a) ***Whether the foreign oil and gas assets and properties, including any claim, interest therein, of Videocon Group held through Respondent Nos.2 to 5 can be said to be the property of Respondent No.1, the present Corporate Debtor/ VIL for the purpose of the present CIRP.***

b) ***Whether the provision of Section 14 of the Code would apply to the said*** **foreign oil and gas assets** ***and properties, including any claim, interest therein?***

c) ***This Bench on 08.08.2019 had passed a Consolidated Order in case of VIL. While doing so this Bench had framed certain parameters on the touchstone of which the rationale or otherwise regarding consolidation was decided. It would be worthwhile to see whether in this case those parameters stands or not.***

68. For the purpose of the present CIRP to determine the true ownership and status of the said foreign oil and gas assets and the properties, it is important to first understand the acquisition and financing for operational of these foreign oil and gas assets and the terms mentioned therein.

69. It is not disputed by the parties that the CHA business was funded through the RTL Agreement by the lenders of Respondent No.1, the present Corporate Debtor/ VIL. The RTL Agreement had an obligor / co-obligor arrangement initially amongst the 13 Videocon Group Companies which were mainly into the CHA business. The 14th Company i.e. C.E. India Limited is owner of Videocon brand, goodwill, trademark and patents and was the guarantor and later on, the 15th Group Company i.e. Videocon Telecommunication Limited, which was in the telecom business had also become party to the RTL Agreement and accepted the obligor / co-obligor structure with the other 13 Group Companies.

70. The foreign oil and gas business was admittedly funded through LOC / SBLC Facility Agreement, to which Respondent No.1, the present Corporate Debtor/ VIL was initially co-obligor and facility agent. Later on, by way of amendment Agreement, Respondent No.1 was relieved as a co-obligor, but was made the Confirming Party without changing any obligation against Respondent No.1 in the original Tranche 1 and Tranche 2, LOC / SBLC Facility Agreements. Besides this, Respondent No.1 / VIL had also given the Corporate Guarantee for funding of foreign oil and gas business held through Respondent Nos.2 to 5. As such, to my mind, Respondent No.1, the present Corporate Debtor/ VIL had since inception taken the joint and several liability of repayment of the facility amount disbursed to the foreign oil and gas business. Notwithstanding the amendment Agreements executed between the parties as late as on 30th March 2017, Respondent No.1 practically was never absolved from its original liability of repayment. Accordingly, a claim of Rs.23,120.90 Crores has been lodged by the Financial Creditors in the ongoing CIRP of Respondent No.1, the present Corporate Debtor/ VIL plus 12 Companies.

71. On the other hand, as referred to hereinbefore, the various clauses of Tranche 1 and Tranche 2 LOC / SBLC Facility Agreements, clearly indicate that the participating interest is being held for Respondent No.1 / VIL through Respondent Nos.2 to 5. Further, Clause 2.5 (obligation of the obligor), Clause 2.6 (obligor agent), Clause 9 (security for the facilities) clearly mentions the role and liability of Respondent No.1 / VIL, so also the linkage to the RTL Agreement (in respect of finance to CHA business of Respondent No.1 plus 12 consolidated Companies under the ongoing CIRP).

72. Similarly, in Tranche 2 LOC / SBLC Facility Agreement, in this Agreement also clearly indicate that the participating interest is being held for Respondent No.1 / VIL

through Respondent Nos.2 to 5. Further, definition clause of financing documents clearly refers to the undertaking from Respondent No.1, the present Corporate Debtor/ VIL. Furthermore, there is also a clear reference to Rupee Facility and Rupee Loan Agreement. Clause 2.5 (obligation of the obligor), Clause 2.6 (obligor agent), Clause 2.6.2, Clause 9 (security for the facilities), particularly Clause 9.1 (i)(a) & (d) which mentions about pledging of 100% shares of Respondent No.1 / VIL as well as first ranking charge on Videocon brand. (Admittedly, Videocon brand is held in C.E. India Limited which Company is already part of the ongoing CIRP of Respondent No.1 / VIL and 12 consolidated Companies). Further, Clause 9.1 (ii)(a) to (e) clearly shows the linkage of Respondent No.1 / VIL and security given by it and **clearly refers to the second charge by the Rupee Lenders** (i.e. the lenders of CHA business of 13 consolidated Companies under the ongoing CIRP).

73. It is worthwhile to understand that the aforesaid clauses of the LOC / SBLC Facility Agreements, both Tranche 1 and Tranche 2, have not been diluted by the amendment Agreements executed by both the parties belatedly.

74. Consequent to the above clauses as well as the guarantee issued, the Financial Creditors of foreign oil and gas business of the Videocon Group have admittedly lodged claim of Rs.23,120.90 Crores in the ongoing CIRP.

75. Now, coming to the RTL Agreement, for default of which the said 15 Videocon Group Companies, including Respondent No.1 / VIL are referred to the CIRP, as particularly referred in the consolidation order dated 8.8.2019. The clauses of the said RTL Agreement also indicate its linkage with the foreign oil and gas assets, properties and interest therein. The Financial Creditors under the RTL Agreement, which are also part of Committee of Creditors (**COC)** of the ongoing CIRP, have also created the substantial rights and interest in the foreign oil and gas assets and properties which is evident from the various clauses of the sanction letter for the RTL Facility dated 16th April 2012 and the RTL Agreement.

76. A bare perusal of the sanction letter shows that the same is also addressed to Respondent No.2-VOVL along with other 13 obligor / co-obligor Companies under the ongoing CIRP. Further, Clause 4 (Permitted Indebtedness) refers to the restrictions on the further financial facilities availed by VHHL (Respondent No.3) or its subsidiaries i.e. Respondent Nos.4 & 5, Clause 14 (Security) clearly points out that second pari passu charge of foreign oil and gas assets, and second pari passu charge on pledge on 100% shares of Respondent Nos.2 to 5 together with second pari passu charge on cash flow from the foreign oil and gas assets is secured in favour of the present COC members and lenders in the RTL Agreement to these 13 Videocon Group Companies under the ongoing CIRP, including Respondent No.1 / VIL. Annexure-2

to the said sanction letter in Clause 4 defines the 'Identified Assets' which clearly mentions that VIL through its ***step down subsidiaries has participating interest*** in Campos Basin Contract Area in Brazil and with Nunukan Block Contract Area in Indonesia.

77. A combined reading of Annexure-2 and the clauses mentioned in the said sanction letter of RTL Agreement shows that the lenders of Rupee Facility i.e. the present COC members under the RTL Agreement have taken clear security of the aforesaid foreign oil and gas assets towards the repayment of the Rupee Term Loan.

78. The State Bank of India contended that in view of the amendment of LOC / SBLC Facility Agreement, both Tranche 1 and Tranche 2, the Corporate Guarantee was executed by Respondent No.1 / VIL in favour of the lenders of foreign oil and gas business. Hence, in pursuance of the guarantee, the claim has been lodged by the lenders of Respondent Nos.2 to 5 in the present ongoing CIRP. However, as stated above, notwithstanding the amendments both Agreements, the facts remains that the security and other obligations promised by Respondent No.1 / VIL in favour of LOC / SBLC Lenders were never diluted and in fact, its mere change of the nomenclature of VIL from obligor / co-obligor to the Confirming Party and the guarantor.

79. As such, it is clear from the above that the Financial Creditors in the ongoing CIRP i.e. Rupees Facility Lenders as well as the LOC / SBLC Facility Lenders have interweaved the obligations and rights of Respondent Nos.2 to 5 while granting the Rupee Facility to the 13 Companies under the CIRP. Whereas similarly the SBLC Lenders have taken the obligations from Respondent No.1 / VIL while granting the loan to the foreign oil and gas business. Therefore, it brings us to the conclusion that the lenders treated the Assets of the Videocon Group as the common Assets and created common / cross liabilities in favour of each other, by creating inter-dependent and interlacing financial arrangements between the CHA business, telecom business and foreign oil and gas business of the Videocon Group.

80. However, mere treating the Assets as the common Assets, liabilities as the common and inter-dependent and interlace liabilities, the Assets held through Respondent Nos.2 to 5 cannot be said to be the Assets of Respondent No.1 / VIL. To find out the real ownership of the Assets besides conduct of the parties and reference in the financial documents as referred to hereinabove, we need to consider the source of acquisition of the same.

Source of acquisition of foreign oil and gas assets:

81. It is not disputed either by BPCL or State Bank of India that the decision to acquire the foreign oil and gas assets was taken in 2005 by Respondent No.1 / VIL with BPCL. Secondly, it further records that VIL and BPCL will, if required, work together to set up an operating Company that can be considered for operation-ship of exploration / production block that Videocon – BPCL combine secures domestically and/or internationally.

82. On 8th September 2007, the Share Sale Agreement was executed between EnCana Corporation and Alberta Ltd. Jointly referred as '**Vendors**' and the present Corporate Debtor / VIL and BPRL whereby, the said **Vendors** sold their entire shareholding **in favour of the present Corporate Debtor / VIL and BPRL**, for a consideration of USD 165 Million. Respondent No.1 / VIL is referred therein as the 'Purchaser'. It is contended by the Applicant that the said Share Sale Agreement executed jointly with BPRL still stands in the name of Respondent No.1 / VIL and no amendments thereto are done, replacing names of Respondent No.1 / VIL to any of Respondent Nos.2 to 5.

83. Further, Quota holder Agreement was executed on 12th September 2008, which clearly mentions the name of Respondent No.1, the present Corporate Debtor/ VIL as one of the principal parties.

84. It is the contention of the State Bank of India as well as BPCL that the assets of the subsidiaries and assets of holding Company are different and distinct, irrespective of common control, management and 100% shareholding by the parent Company. Whereas the Applicant has canvassed that Respondent Nos.2 to 5 are mere SPVs and were acting as trustees and holding the foreign oil and gas assets for ultimate beneficial interest of ultimate parent Company i.e. Respondent No.1, the present Corporate Debtor/ VIL.

85. The parties have relied on various case laws on the subject of lifting of corporate veil. These case laws were presented by the Applicant as well as BPRL and SBI. I have tried to place relevant portions of some of them in my Order along with inference which can be drawn from them.

86. In the case of **LIC** v. **Escorts Ltd. and others** reported in **(1986) 1 SCC 264**, it is held as under:

> "***90.*** *It was submitted that the thirteen Caparo Companies were thirteen companies in name only; they were but one and that one was an individual, Mr. Swaraj Paul. One had only to pierce the corporate veil to discover Mr. Swaraj Paul lurking behind.*

It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M. R. in Wallersteiner v. Moir (1974) 3 All ER 217 and the decisions of this Court in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (1964) 6 SCR 885 : (AIR 1965 SC 40), the Commr. of Income Tax. v. Meenakshi Mills AIR 1967 SC 819 and Workmen v. Associated Rubber Ltd. (1985) 2 Scale 321. While it is firmly established ever since Salomon v. A. Salomon and Co. Ltd. 1897 AC 22 was decided that a company has an independent and legal, personality distinct from the individuals who are its members, ***it has since been held that the corporate veil may be lifted, we corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances.*** *Pennington in his Company Law (Fourth Edition) states :*

"Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The Government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of Companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text books on Corporation Tax, Income Tax, Capital Gains Tax and Capital Transfer Tax.

"The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle **where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members**."

In Palmer's Company Law (Twenty-third Edition), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (Fourth Edition), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotives Co. Ltd. (supra) the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Art. 32 of the Constitution, by treating it as one filed by shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Art. 19. ***In Commr. of Income-tax. v. Meenakshi Mills (supra), the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry (supra), resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation****. It was emphasised that regard must be had to substance and not the form of a transaction.* ***Generally and broadly speaking, we may say that the corporate, veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented'. or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern****. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since,* ***that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of***

the element of the public interest, the effect on parties who may be affected etc."

87. **Inference from the above:**

The various acquisition and finance documents of respondent no. 2 to 5 and respondent no. 1 ,have already pointed that these companies are evidently interconnected, interwoven and interlaced to much greater extent. The obligations of each other are also intermingled and it is evident that the Respondent no. 1 to 5 are being treated, by all stakeholders **as one single economic entity**, since long, irrespective of the change of holding structure, time to time. The assets, rights, liabilities of these were also treated as of single economic entity.

88. In the case of **State of U.P. and others Appellants** v. **Renusagar Power Co. and others Respondents** reported in **(1988) 4 SCC 59**, it is held as follows:

*"**53**. The learned editor of Pennington's Company Law, 5th Edn., at page 49 has recognised that this principle has been relaxed in subsequent cases. He states that the principle of company's separate legal entity has on the whole been fully applied by the Courts since Salomon's case (1897 AC 22).* ***Corporate veil has been lifted where the principal question before the court was one of company law, and in some situations where the corporate personality of the company involved was really of secondary importance and the application of the old principle has worked hardship and injustice****. In England, there have been only a few cases where* ***the court had disregarded the company's corporate entity and paid attention to where the real control and beneficial ownership of the company's undertaking lay. When it had done this, the court had relied either on a principle of public policy, or on the principle that devices used to perpetrate frauds or evade obligations will be treated as nullities, or on a presumption of agency or trusteeship which at first sight Salomon's case seems to prohibit****. Again at page 36 of the same Book, the learned author notes a few cases where the courts have disregarded separate legal entity of a company and investigated the personal qualities of the shareholders or the persons in control of it because there were overriding public interests to be served by doing so.*

55*. In Kodak Ltd. v. Clark, (1903) 1 KB 505, the Court of Appeal in England while dealing with an English company carrying on business in the U. K. owned 98% of the shares in a foreign company, which gave it a preponderating influence in the control, election of directors etc., of the foreign company. The remaining shares in the foreign company were, however, held by independent persons, and there was no evidence that the English company had ever attempted to control or interfere with the management of the foreign company, or had any power to do so otherwise than by voting as shareholders. It was held that the foreign company was not carried on by the English company, nor was it the agent of the English company, and that the English company was not, therefore, assessable to income-tax.* ***Renusagar was not the alter ego of Hindalco, it was submitted. On the other hand these English cases have often pierced the veil to serve the real aim of the parties and for public purposes****. See in this connection the observations of the Court of Appeal in DHN Food Distributors Ltd. v. London Borough of Tower Hamlets (1976) 3 All ER 462. It is not necessary to take into account the facts of that case.* ***We may, however, note that in that case the corporate veil was lifted to confer benefit upon a group of companies under the provisions of the Land Compensation Act, 1961 of England.***

Lord Denning at page 467 of the report has made certain interesting observations which are worth repeating in the context of the instant case*. The Master of the Rolls said at page 467 as follows:-*

> ***"Third, lifting the corporate veil. A further very interesting point was raised by counsel for the claimants on company law. We all know that in many respects a group of companies is treated together for the purpose of general accounts, balance sheet and profit and loss account. They are treated as one concern. Professor Gower in his book on company law says : 'there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group. <u>This is especially the case when a parent company owns all the shares of the subsidiaries, so much so that it can control every movement of the subsidiaries</u>.*** *These subsidiaries are bound hand and foot to the parent company and must do just what the parent company says. A striking instance is the decision of the House of Lords in Harold Holdsworth and Co. (Wakefield) Ltd. v. Caddies (1955 (1) All ER 725). So here. This group is virtually the same as a partnership in which all the three companies are partners. They should not be treated separately so as to be defeated on a technical point. They should not be deprived of the compensation which should justly be payable for disturbance.* ***The three companies should, for present purposes, be treated as one, and the parent company, DHN, should be treated as that one. So that DHN are entitled to claim compensation accordingly****. It was not necessary for them to go through a conveyancing device to get it. I realise that the President of the Lands Tribunal, in view of previous cases, felt it necessary to decide as he did. But now that the matter has been fully discussed in this court, we must decide differently from him. These companies as a group are entitled to compensation not only for the value of the land, but also compensation for disturbance. I would allow the appeal accordingly."*

66*. It is hightime to reiterate that in* ***<u>the expanding of horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation</u>****. The* ***aim of the legislation is to do justice to all*** *the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium.....*

68*. The veil on corporate personality even though not lifted sometimes is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon's case (1897 AC 22) still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P. B. Mukharji in the New Jurisprudence.*

69. It appears to us, however, that as mentioned <u>the concept of lifting the corporate veil is a changing concept and is of expanding horizons</u>. We think that the appellant was in error in not treating Renusagar's power plant as the power plant of Hindalco and not treating it as the own source of energy. The respondent is liable to duty on the same and on that footing alone; this is evident in view of the principles enunciated

and the doctrine now established by way of decision of this Court in Life Insurance Corpn. of India (AIR 1986 S C 1370) (supra) that in the facts of this case sections 3(1)(c) and 4(1)(c) of the Act are to be interpreted accordingly. The person generating and consuming energy were the same and the corporate veil should be lifted. In the facts of this case Hindalco and Renusagar were inextricably linked up together. Renusagar had in reality no separate and independent existence apart from and independent of Hindalco."

89. In the case **Arcelomittal India (P) Ltd. vs. Satish Kumar Gupta** reported in **(2019) 2 SCC 1**, it is held as under:

"35. I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. <u>The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality</u>. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil."

37. ***It is thus clear that, where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole***." As such keeping in mind of the ratio laid down in above cases of *LIC, Renusagar,* it is clear that the law and criteria for lifting or not lifting corporate veil changes from case to case and law is evolving in modern jurisprudence. Therefore it can not be said that corporate veil can be lifted only for particular reasons but has to be judged on unique facts applicable to each case. In our opinion the facts pertaining to present case and relationship of Respondent no. 1 to 5 is also unique and which is also to the knowledge of the Lenders and BPCL. All stakeholders, despite frequent change in holding structure, were/are treating it as property, assets held by VIL through the Respondent no. 2 to 5, for exclusive benefit of parent company i.e. VIL and not VOVL.

90. Thus, it is clear from the aforesaid catena of Judgments that the corporate veil between the subsidiaries and holding companies are to be lifted depending facts of each case and no straight jacket formula can be defined. As held in aforesaid judgments, now in the modern jurisprudence, the corporate veil can be lifted for unlimited reasons and it is not only limited to the extent of the cases of fraud, impropriatory. Each case need to be tested with the unique facts of arrangement applicable to it. In the recent case of Arcelormittal India, Hon'ble Apex Court has held that there is a limited principle of English Law which applies and ***<u>the Court may pierce the corporate veil for the purpose, and only for the purpose of depriving company or its controller of the advantage that they would otherwise have obtained by company's separate legal personality</u>***.

91. It is also held in the said Judgment that ***where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations***

imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole.

92. Keeping the aforesaid ratio in front of us now to apply to the facts of the present case, it is the specific case of the Applicant that the Respondent Nos.2 to 5 were special purpose vehicles and were not doing any other business and had no separate decision making power where conferred to the Board of Directors of Respondent Nos.2 to 5. This fact has not been denied by the State Bank of India and/ or BPCL. Besides that it is also not disputed by them that the Respondent Nos. 2 to 5 were acting as a Special Purpose Vehicles for Respondent No.1/ VIL.

93. The Special Purpose Vehicle is a legal entity created to fulfill narrow, specific or temporary objectives. The Special Purpose Vehicles are generally created to limit the financial risk and exposure so also to mask it from the risk of insolvency of the parent company. So the advantage anyone would achieve by way of the creating Special Purpose Vehicles structure is to ring fence such assets held by the Special Purpose Vehicle from the unlimited risks and liabilities and to protect it from the insolvency in case of the insolvency of the parent company.

94. The preliminary acquisition documents still stand in the name of Respondent No.1/ VIL as the owner, notwithstanding the creation of the holding structure through Respondent Nos. 2 to 5. Besides that the finance documents do clearly indicate that the participating interest of these oil and gas assets fields was held for and on behalf of the parent company i.e. Respondent No.1/ VIL.

95. There is no document produced in front of us showing actual transfer of the rights, interests of Respondent No.1/ VIL in favour of the SPVs i.e. Respondent Nos. 2 to 5 at the market value. Further, the incorporation documents such as Memorandum of Article of Association of VHHL i.e. Respondent No.3 which is a foreign holding company through which the subsequently entire participating interest of all foreign oil and gas assets being held clearly specifies that though the Respondent No.1/ VIL is holding 1% share yet it will receive 100% dividends of it clearly indicates that it was / is the intention and understanding of all parties that the said assets are being held by the Respondent No.1/ VIL.

96. Therefore, to our mind there is no question of lifting corporate veil yet even if the corporate veil is lifted no advantage would accrue to the Applicant or the parent company which has created the structures of Respondent Nos.2 to 5. It is sought to be contended by the State Bank of India and BPCL that the Applicant would be benefited in case the corporate veils are lifted and the foreign oil and gas assets are included in the present ongoing CIRP as the personal guarantee exposure of Mr. V. N. Dhoot would reduce however, after examining the Rupee Term Loan Agreement and LOC/ SBLC Facility Agreement which clearly mention that all promoters including Mr. V. N. Dhoot will be personally liable and has issued the personal guarantees for repayment of both the facilities to the lenders of both Respondent No.1/ VIL as well as Respondent Nos.2 to 5. Therefore, we do not find that just because of inclusion of the assets in the present CIRP any benefit would accrue to the Applicant as in such case under the personal guarantee the Applicant will have to make loss good in other Facility Agreements. Even if presuming due to inclusion of the said assets in the present ongoing CIRP, the liability/ exposure of personal guarantee of the Applicant would reduce. As such, we do not see any merit in the argument that by including the foreign oil and gas assets in the CIRP of Respondent No.1/ VIL, the Applicant would be in advantageous position.

97. From the above, it is clear that Respondent Nos.2 to 5 herein and foreign Oil and Gas assets do not enjoy any different status than of the earlier consolidated 13 Companies.

98. It is the contention of the SBI that since the Code envisage the CIRP process is basically creditor driven process, therefore it should be left at the choice of financial creditors and they are free to choose to independently liquidate the foreign oil and gas assets. We apprehend that this is not the correct interpretation and it is worth to point out and request that the IB Code clearly envisages '***to balance the interest of all stakeholders'*** which includes not only the Financial Creditors but also the Operational Creditors, employees etc.

99. It is further contended by the State Bank of India that since these foreign oil and gas assets are not shown in the balance sheet of the Respondent No.1/ VIL in view of Section 18 of the Code it cannot be said to be assets of Respondent No.1/ VIL. Firstly, Section 18 of the Code deals with the duties of the Resolution Professional and Section 18 (f) therein is just indicator that what assets to be taken over in the custody by the Resolution Professional. However, in our opinion in the case like this, the 18(f) will have limited role to play. In our opinion, in the case like this wherein initially assets is acquired in the name of Respondent No.1/ VIL and the Share Sale Agreements as well as Quotaholder Agreement clearly mentions name of Respondent No.1/ VIL as joint owner/ purchaser with BPCL/ BPRL. Any subsequent creation of the structure of Respondent Nos.2 to 5 and in absence of any legal transfer of all rights, interests and ownership in the said properties, assets by the Respondent No.1/ VIL, at market value in favour of Respondent Nos.2 to 5, will not make Respondent Nos.2 to 5 as owners of these assets in exclusion of Respondent No.1/ VIL. Therefore, the Balance Sheet cannot be sole criteria of deciding ownership of the assets when the other documents and evidences are in place.

100. Another contention of the State Bank of India is the explanation (b) appended to Section 18 of the Code, which inter alia, mentions that assets of any Indian and foreign subsidiary of the Corporate Debtor shall not be deemed to be assets of the Corporate Debtor. It is to be noted that this explanation comes into play in case it is established that the assets in question are undoubtedly held and purchased by the subsidiaries from its sources. However, in the present case as stated above the crucial acquisition documents still mentions that name of Respondent No.1/ VIL as the Purchaser and there is no subsequent transfer of these rights in favour of the Respondent Nos.2 to 5.

101. Now, coming back to the contentions of BPCL that in the event such application is entertained it shall suffer irreparable loss and rather the investment of Rs.11,750 Crores shall be at stake, firstly, this submission on the face of it is not correct from the perspective of the Code, as the BPCL or BPRL is a 50% holder of the participating interest held through the 50:50% JV of the BPCL and Respondent No.1/ VIL. Now, Respondent No.1/ VIL is already in CIRP pursuant to which there are defaults in payment of the 50% shares of the cash call attributable to the Videocon Group. It is admitted that pursuant to the clauses of joint operation agreement and JV Agreement, for the default of Videocon Group, its share of cash call is being paid by BPCL/ BPRL and converting the proportionate equity of JV belonging to the Videocon, in its favour by BPCL.

102. We fail to understand that how does it make difference to BPCL for the purpose of present ongoing CIRP the assets held through the Respondent Nos.2 to 5 are treated assets of the Respondent No.1/ VIL, when the acquisition documents such as Share Purchase Agreement, the Quotaholder Agreement entered with BPCL still mentions the name of Respondent No.1/ VIL as owner. Secondly, even when the Respondent No.2, VOVL was not in the CIRP yet the default in cash call was in place and no cure of default was possible in absence of the Respondent No.1/ VIL.

103. Now we try to answer the question that whether "consolidation" in this case meets the criteria of consolidation as propounded in the Judgment of this Bench of 08.08.2019 by which "consolidation" of 13 Videocon Group Companies were done for the purpose of CIRP. Each of these parameters and whether the same is fulfilled or not is detailed below:-

i) **Common control**: There is no dispute about the control of Respondent No.1/ VIL on all decisions of Respondent Nos.2 to 5. It is also not denied that Respondent Nos. 2 to 5 were/ are the Special Purpose Vehicles created by the Respondent No.1/ VIL. It is also not seriously disputed that the Respondent Nos.2 to 5 were acting like an agent and / or extended arm of the Respondent No.1/ VIL.

ii) **Common directors**: The family members of V.N. Dhoot are Directors in Respondent Nos.2 to 5 Companies, as was there for the 12 consolidated Companies;

iii) **Common assets**: As stated in the preceding paragraphs we have already held that Lenders of LOC/ SBLC Agreement as well as Rupee Facility Agreement (RTL Agreement) have always treated the Videocon Group, **as a Single Economic Entity,** which included the 13 Obligor Co-obligor companies as well as Respondent Nos. 2 to 5. Further, as stated

hereinbefore the Lenders have treated the assets of the Videocon Group may it be in CHA assets, Telecom assets and/ or foreign oil and gas assets as common assets for granting of the facility amount.

iv) **Common liabilities**: The clauses of the SBLC Facility Agreements and the VTL and RTL Facility Agreements have demonstrated that the security available for satisfaction of the debts are common securities belonging to various entities in the Videocon group, as was there for the 12 consolidated Companies;

v) **Inter-dependence**: As already discussed and held hereinbefore the Lenders have treated the foreign oil and gas assets and businesses dependent with the CHA business by way of putting various restrictions and cross defaults in respective funding Agreements to CHA and foreign oil and gas business. That apart the executed documents, the acquisition documents do indicate the Respondent Nos.2 to 5 were never independent and financially sound to acquire and maintain the properties but, it is admitted that all the time Respondent Nos.2 to 5 were dependent on Respondent No.1/ VIL. Similarly, the funding arrangements also envisaged that for the CHA business funding foreign oil and gas assets shall have second charge and vice versa.

vi) **Interlacing of finance**: In view of the aforesaid discussion and reference to the specific clauses in Rupee Facility Agreements on one hand, (for the default of which the 15 Videocon Group Companies are referred to the ongoing CIRP), clearly establishes the substantial right, security and interest qua the foreign oil and gas assets, properties, including interest therein is secured in favour of the Rupee Lenders under the various terms of the RTL Agreement. Whereas on the other hand, the LOC / SBLC Lenders i.e. lenders of Respondent Nos.2 to 5 for the foreign oil and gas business, have also secured the rights and interest in Respondent No.1 / VIL and has put various restrictions in its favour in relation to the non-disposal of the pledge shares of Respondent Nos.2 to 5 by Respondent No.1 / VIL as well as have also taken the other securities including the security of the Videocon Brand which belongs to one of the Companies i.e. C.E. India Limited which is already part of the ongoing CIRP. Beside this the reference to various clauses of the RTL Agreements as well as LOC/ SBLC Agreements do clearly show that there was interlacing finance arrangements.

vii) **Pooling of resources**: It has not been denied and admitted that Respondent Nos. 2 to 5 were financed from the resources of Respondent No.1/ VIL with the security to the Lenders for this finance and on the other hand for CHA business the resources of foreign oil and gas assets was given as a second charge. As such, for the sanction of the facility limits either for CHA business or foreign oil and gas business security of each other's assets was offered. Not only this, the surplus flow arrangement from each other's business agreed to be shared by the Lenders. Further, it is apparent that there was common Board of Directors, Promoters, pooling of human resources, liaising and funding. Undisputedly, the directors are common using their contacts and relationship to run all the subsidiaries for which common office staff, accountants, and other human resources are mobilised to manage the affairs collectively. Further, common arrangement of capital/funds is an accepted position in Videocon group, as was there for the 12 consolidated Companies;

viii) **Co-existence for survival**: The Respondent Nos.2 to 5 were / are completely dependent on Respondent No.1/ VIL and it is admitted that these companies did not have any separate financial capability to serve the cash calls. Admittedly, the funding was done on the basis of the responsibility and guarantee taken by the parent company.

ix) **Intricate link of subsidiaries**: The Respondent Nos.2 to 5 were incorporated subsequent to acquisition of the assets, the shareholding pattern, the control on these Respondents was/ is common and admittedly never was independent but, there is intricate link amongst them. Further, the loan documents and security arrangement mentioned therein clearly establish the intricate link between them and Respondent No.1/ VIL.

x) **Intertwined accounts**: The accounts of Respondent Nos.2 to 5 were completely under control of the Respondent No.1/ VIL and each other Lenders have taken the charge on the proceedings of each other's account, which itself shows the accounts were intertwined.

xi) **Inter-looping of debts**: As stated hereinbefore, we have already held that the accounts were intertwined and creditors of CHA business and oil and gas business have already created inter-looping of the debts in favour of each other's debt.

xii) **Singleness of economics of units**: As discussed above in the preceding paragraphs thereby referring to various specific clauses clearly shows that the Lenders have treated the Respondent Nos. 1 to 5 as one single

economic unit, irrespective of the different businesses and assets, properties. The same is fortified from the various securities and restrictions mentioned in the loan documents. The foreign oil and gas assets acquisition documents also support the said fact.

xiii) **Common Financial Creditors**: As per two financing agreements viz., SBLC Facility Agreement and the RTL & VTL Facility Agreements, the lenders are members of 'consortium of banks' which is common for all. Because the impugned Insolvency Petitions were filed by SBI for itself and also on behalf of the said Joint Lenders Forum, already listed above, the names of all the banks forming consortium thus substantiate the fact that the financial creditors are common for Respondent No. 1 and Respondent No. 2, as was there for the 12 consolidated Companies.

104. It can be clearly seen from the above that all the 13 parameters which were enunciated in the Order dated 08.08.2019 in the consolidation of 13 Videocon Group Companies is fully met and satisfied in this case also.

105. We are of the view that in case the said assets are not considered to be assets of single economic entity and/ or of the Respondent No.1/ VIL, then, by no stretch of imagination, the effective resolution of ongoing CIRP of any of the 13 Companies as well as the CIRP VOVL would meet to the objective envisaged under the IB Code and they shall be forced towards the liquidation despite having sufficient means and assets to resolve the debt of all corporate persons.

106. In other words, there shall be compromise rather the rights and interest of important stakeholders like Operational Creditors, employees etc. shall be jeopardized to the greater extent as looking at the cross creation of the security interest in relation to the assets of each of the VIL Group Companies would not be able to independently meet with the claims lodged by all the creditors.

107. As such, to effectively find resolution, and maximize the value of the assets, and keep the corporate persons as a going concern, the foreign Oil and Gas assets cannot be treated separately only for the benefit of the Financial Creditors.

108. In the backdrop of aforesaid discussion, it has to be held that the foreign oil and gas assets and properties, including any claim, interest therein, of Videocon Group held through Respondent Nos.2 to 5 will have to be said to be the property of Respondent No.1, the present Corporate Debtor/ VIL for the purpose of the present CIRP.

109. That in view of aforesaid finding it is clear that the provision of Section 14 of the Code shall come into play. The Section 14(1)(c) of the Code is reproduced hereunder:-

> "***14. Moratorium*** *– (1) Subject to provisions of sub-sections (2) and (3) on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely:-*
>
> *1. xxx*
>
> *2. xxx*
>
> *3. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (54 of 2002)"*

110. As referred in foregoing paragraphs, we have already held that the security interest is created by Rupee Facility Lenders in the oil and gas assets and there is cross creation of the security interest by all lenders in other business assets of Videocon Group treating it as single economic entity. Further, we have concluded the foreign oil and gas assets of Videocon Group held through Respondent No.2 to 5 is in fact, asset and property of Respondent No.1/ VIL on the count of being original acquirer or alternatively even for qualifying all tests to lift corporate veil in between Respondent No.1 / VIL and Respondent Nos. 2 to 5. Therefore, the assets held by them can be said to be "**its**" assets i.e. the assets of Respondent No.1/ VIL/ Present Corporate Debtor, which is under the CIRP.

111. **MA 2385/2019** is **"Allowed"** to the extent of relief sought at (a) and (b) on Page 2 of the Order. In addition, since some time has passed in deciding the present Application and as the interim protection was granted on 22.08.2019, therefore, the time spent in deciding this application from 22.08.2019 until the date of the order, is added in the permitted timeline for the completion of the ongoing CIRP.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

ug
12.02.2020