

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

MA 1092/2018 in
CP No. 02/IBC/NCLT/MB/MAH/2018

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Venugopal Dhoot : Applicant in State
Bank of India,
Financial Creditor

v.

Videocon Industries Limited
..... Respondent Debtor

Order pronounced on : 05.10.2018

Coram :

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

For the Applicant :

Mr. Zal Andhyarujina, Counsel a/w. Mr. Shey Shah, Advocate i/b. Jhangiani
Narula & Associates.

For the RP :

Mr. Sanjay Bhat, Advocate.

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

ORDER

By way of this Miscellaneous Application, submitted on October 2018,
the Applicant has made a prayer as under :-

Page 19 para 32 Marked "A"

"This Hon'ble Tribunal be pleased to temporarily prevent the Insolvency Resolution Professional Mr. Anuj Jain, from in any manner whatsoever acting upon or in furtherance of the Notice dated 25th September, 2018 (Exhibit "18" hereto) issued by him or from in any manner whatsoever including accepting offers/expression of Interests/resolution Plan and/or placing before the Committee of Creditors of the Respondent/Corporate Debtor, and/or acting in any manners on any expressions of interest if any received by him pursuant to the notice dated 25th September, 2018 (Exhibit "18" hereto) issued by him inviting submissions of Resolution Plans for the Respondent/Corporate debtor, till such time as conclusion of all Corporate Insolvency Resolution Proceedings of all Obligor/Co-Obligor Companies including the Respondent/Corporate Debtor, takes place;"

1. Through praecipe dated 3rd October 2018, an urgency was expressed on account of the fact that an advertisement has been made by the appointed Resolution Professional inviting Resolution Plan on or before 5th October, 2018 with following conditions:-

"A declaration that it meets the eligibility criteria.

Refundable deposit of INR 100,000,000 (Rupees ten crores). The refundable deposit shall be in the form of demand Draft in favour of "State Bank of India" – Videocon Industries limited or a bank guarantee for INR 100,000,000 (Rupees ten crores) in the favour of "state Bank of India" – Videocon Industries Limited." Other evidences shall include but not be limited to financial statements for last 3 financial years, proof of address, copy of PAN card, company profile, and details of KMP/Promoters/ Board of Directors and rational for bidding for VL."

2. Considering the circumstances narrated by the Id. Representative, an out of turn urgent hearing is granted and thereupon heard today. At the outset, Id. Representative has informed that the Applicant Mr. Venugopal N. Dhooth has moved an Application before the Hon'ble Principal Bench at New Delhi with the following prayer:-

"(a) this Hon'ble Tribunal be pleased to order and direct that Company Petitions (IB) No. 2 of 2018, (IB) No. 509 of 2018, (IB) No. 528 of 2018, (IB) No. 563 of 2013, (IB) No. 512 of 2018, (IB) No. 508 of 2018, (IB) No. 511 of 2018, (IB) No. 560 of 2018, (IB) No. 507 of 2018, (IB) No. 559 of 2018, (IB) No.510 of 2018, (IB) No. 562 of 2018, (IB) No. 564 of 2018 be clubbed and consolidated before Court Room No. 2 of the Mumbai Bench of this Hon'ble Tribunal)."

3. In short, it is explained that SBI had filed 13 Petitions against Obligors/co-obligors being party to a "Rupee Term Loan Agreement" in respect of various Loan facilities granted to Videocon Group. All those applications before various Benches of NCLT, Mumbai have been admitted and different IRP (s) have been appointed. It is pointed out that the main Insolvency Petition was filed by State Bank of India (Lead Bank of consortium) against Corporate Debtor M/s Videocon Industries Limited under section 7 of the Insolvency Code which was admitted vide an order dated 6th June, 2018 by commencing CIRP through Mr. Anuj Jain (IRP) appointed therein. Difficulty expressed is that on admission of several Petitions of co-obligors, number of IRP(s) have been appointed in respect of those very loans that were availed by Videocon Industries now under process of Insolvency. Not only this, the position of the assets either hypothecated or pledged is also identical and that the common assets are involved in all those cases as also in the case of Videocon Industries. Along with this Petition placed on record the impugned Agreements executed by all these entities with the consortium of Banks. This M.A. also contains the names of all those subsidiaries, names of IRP, dates of order and the NCLT Benches admitting those Petitions.

4. Ld. Counsel appearing on behalf of the Applicant has narrated that due to multiple admission of the Petitions, it has become impractical to convene several meetings of "Committee of Creditors" common in all cases because the lenders are common as well as process of Insolvency to be commenced by calling EOI through advertisement. As a consequence, a request Application

has already been moved before the Hon'ble Principal Bench seeking consolidation of all those cases.

5. Before adverting on the main request of deferment of CIRP till the decision of the Hon'ble Principal Bench, a preliminary question has been raised about the *locus* of the Applicant. Undisputedly, Mr. V.N. Dhooth is one of the Promoter Directors of Videocon Industries Ltd, which is under insolvency, hence, due to suspension of the Board, not qualified to represent the Debtor Company. Ld. Counsel has explained that the Applicant has not moved this Application in the capacity of Director of the Debtor Company but in the capacity of a "Guarantor". As a Guarantor, along with other guarantors, it shall become cumbersome to protect the interest separately by attending queries to be raised in respect of 13 cases. Further, it has also been pleaded that this Application is moved U/s 60 (5) of the Insolvency Code, for ready reference reproduced below:-

"(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

- (a) any application or proceeding by or against the corporate debtor or corporate person;
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

6. This section begins with an *Obstante* clause i.e. quote, "Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -".unquote. The argument is that in spite of the fact that the suspended directors have no *locus standi only* if representing the Debtor Company; but whenever there is any question of priorities or any question of law or facts arising out of the Insolvency Resolution then NCLT has jurisdiction to dispose of such matter. Therefore, it is pleaded that this Application has been moved under unique as well as exceptional circumstances arose due to multiplicity of admission of several Petitions of obligors.

6.1 To me, it appears logical that multiplicity of the litigation has to be avoided. In spite of the existence of Section 17 of the Insolvency Code prescribing therein the vesting of the Management of the Corporate Debtor with the Resolution Professional, it is appropriate and practical to allow a Guarantor to represent his difficulty in attending multiple Court proceedings. This legal question has also been posed to Ld. IRP/Ld. Representative present; who has also expressed that it is the need of the hour to await the directions of the Hon'ble Principle Bench. Considering the uniqueness of circumstances, Applicant's Application needs adjudication subject to a rider that this decision shall not in any way have overriding effect on the disqualifications of suspended Board of Directors as prescribed in the Insolvency Code.

7. In the light of the afore discussed matrix of law and facts, I am of the conscientious view that the Ld. IRP be hereby directed to defer temporarily the CIRP proceedings and wait for the directions of the Hon'ble Principle Bench, expected to be pronounced within 10 days' time, informed by the Ld. Counsel. Since the above-mentioned advertisement has fixed cut-off date today i.e. 5th October, 2018, hence, directed to receive the Resolution Plan, if any, but not to be processed further till the outcome of the awaited order. To be more safe, IRP is directed to revert back and inform this Bench immediately without a delay of single day on receiving such an information. The Applicant is duty bound to contact the Ld. IRP immediately on receiving the directions of the Hon'ble Principle Bench.

8. This Miscellaneous Application (MA No. 1092) is disposed of accordingly.

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 05.10.2018.

Rk