In the National Company Law Tribunal
Mumbai Bench.

MA 1300/2018 In C.P.(IB)-02/(MB)/2018

Under Section 7 & 60(5) of Insolvency & Bankruptcy Code, 2016

In the matter of

Videocon Industries Limited : Applicant / Corporate Debtor

V/s

1. State Bank of India, Mumbai : Respondent (1)/ Financial Creditor

2. Union of India, through
Ministry of Petroleum &
Natural Gas (Exploration Division)
New Delhi : Respondent (2)

3. Chennai Petroleum Corporation Ltd.
Chennai-600018 : Respondent (3)

4. Mangalore Refinery and Petrochemicals Ltd.
Through its Chairman LGF, New Delhi-110001 : Respondent (4)

5. GAIL (India) Limited Through its Chairman &
Managing Director, New Delhi-110001 : Respondent (5)

6. Bharat Petroleum Corporation Ltd.,
New Delhi-110001 : Respondent (6)

7. Directorate General of Hydrocarbons,
Noida-201301. : Respondent (7)

Order delivered on : 13.03.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Applicant : 1. Mr. Zal Andhyarujina, a/w.
2. Mr. Sundeep Ladda, a/w.
3. Ms. Sheetal Shah, i/b. Mehta & Girdharlal, Advocates
(for Insolvency Resolution Professional, Mr. Anuj Jain)

For the Respondent(s) : 1. Ms. Manidar Acharya, Sr. Counsel (ASG) a/w. } For Respondents 2 & 7.
2. Ms. Sheeja John, Advocate;
3. Mr. Anurag Ahluwalia
4. Mr. Tushad Kakalia, a/w.
5. Mr. Parikshit Barpujari, a/w.
6. Mr. Jehan Lalkaka, i/b. Mulla & Mulla and CBC for Respondent No.4.

Per M.K. Shrawat, Member (Judicial).

INTERIM ORDER

1. This Miscellaneous Application is submitted on 29.10.2018 by the 'Resolution Professional' (hereinafter R.P.) Mr. Anuj Jain having appointed vide an Order dated

06.06.2018 titled as **State Bank of India** (**Financial Creditor**) **Vs. Videocon Industries Limited** (**Corporate Debtor**) (C.P. (IB)-02/(MB)/2018) **passed u/s. 7** of the Insolvency Code.

1.1. The reason for filing this Miscellaneous Application, as explained, is that a **Notice dated 22.10.2018** was issued by Union of India, Ministry of Petroleum & Natural Gas (Exploration Division) Shastri Bhawan, New Delhi -110 001 (Respondent No.2), demanding quote, "*3. You are, therefore, advised to assign and allocate 100% of the Sale Proceeds/ Oil and Gas Invoices in favour of Government, with immediate effect for recovering the provisional sum of US $314 million together with applicable interest towards the unpaid Government share of Profit Petroleum. You are also advised to remit the above assigned amount to Pay and Accounts Officer (PAO), Ministry of Petroleum and Natural Gas (MoPNG) under intimation to this office.*" unquote. This demand notice/ letter is issued to the followings:-

1. Chairman, CPCL, 536, Anna Salai, Teynampet, Chennai,
2. Chairman, MRPL, GF, Mercantile House, 15KG MARG, New Delhi
3. The Chairman & Managing Director, GAIL, GAIL Bhawan, Bhikaji Cama Place, RK Puram, New Delhi;
4. Chairman, BPCL, E.C.E. House, 28-a, KG Marg, Connaught Place, New Delhi.

1.2. There was a **"Production Sharing Contract"** which was executed on 28.10.1994 (known as Ravva PSC) between the Government and the following four parties having percentage of participating interest as follows:-

"

S. No.	Name of Party	% Participating Interest
1	ONGC Ltd. ("ONGC")	40%
2	Videocon Industries Limited	25%
3	Vedanta Ltd. ("VIL") (company in which Cairn India ltd. Stands merged)	22.5%
4	Ravva Oil (Singapore) Pte. Ltd. ("ROS")	12.5%

"

1.3. A dispute arose between Government of India (**GoI**) and Videocon Industries (**VIL**), (Corporate Debtor), regarding deductibility of ONGC Participating Interest. There was a litigation for the purpose of computation of 'Post-Tax Rate of Return' (PTRR) and 'Cost Petroleum' (ONGC Carry Issue). The impugned dispute was referred by the VIL (Corporate Debtor) on 19.08.2002 to 'International Arbitration

Tribunal'. The Tribunal passed its verdict granting 'Partial Award' on 31.03.2005, stated to be upholding VIL's contention and simultaneously dismissing Government of India's contention with respect to the ONGC carry issue.

1.4. One of the major claim and contention of the Applicant is that the GoI is required to re-compute PTRR, "Cost Petroleum" and "Profit Petroleum" in accordance with the said Award giving direction for such re-allocation. The parties were unable to agree for 'quantification of profit', hence further litigation started. The GoI had filed an Appeal on 10.05.2005 before the High Court of Kuala Lumpur, Malaysia. The High Court has given verdict agreeing with the contention/ claim of VIL and held that it had no jurisdiction to hear the appeal of the GoI by pronouncing dismissal of appeal Order dated 05.08.2009. Even further an Appeal filed by the GoI, again the Federal Court of Malaysia dismissed vide Order dated 16.05.2016.

1.5. As per the contention of the Applicant, the Award of the Tribunal had become final, therefore, binding upon the GoI.

1.6. When the matter was under dispute, the Ministry of Petroleum and Natural Gas had issued a Notice dated 10.07.2014 stated therein that the following parties were liable to make the payment, as demanded hereinbelow:-

> *"6. Whereas, DGH vide letter dated 15.5.2014 has intimated this Ministry that M/s. Cairn India Limited (CIL), Ravva Singapore Pte Ltd (ROS), Videocon Industries Limited (VIL) and ONGC have made short payment of Government's share of Profit Petroleum (PP) in the Ravva Field. The break-up of the profit petroleum of USD 314 million that is liable to be paid is as under:*

Items	*ONGC 40% PI*	*CIL 22.50% PI*	*ROS 12.50% PI*	*VIL 25% PI*	*Total*
ONGC Carry		*64*	*35*	*71*	*170*
Base Development Cost	*52*	*29*	*16*	*32*	*129*
VIL short payment				*15*	*15*
Total	*52*	*93*	*51*	*118*	*314*

"

1.7. The vehement objection of the Applicant is that in a situation when the Arbitration Tribunal had passed an Award on 31.03.2005, then the GoI should not have unilaterally issued the impugned Notice of 10.07.2014, which was in breach of "Ravva PSC". The Tribunal Award dated 31.03.2005 was binding upon the parties. **An interesting point has also been mentioned by this Applicant that the said Award of 31.03.2005 was a "partial award", meaning thereby partly in favour of the VIL and partly in favour of GoI.** The GoI had acted upon that part of the

Award which was favouring the GoI, however ignored the verdict and the Award which was declared in favour of the VIL. So the argument is that if a portion of an Order/ Award is acceptable to one of the parties and acted upon that part of the Order/ Award, then the entire Order is binding upon the said party. It is pleaded that the portion of the Award which had gone in favour of the VIL should also be acceptable to GoI since the litigation stood set at rest.

1.8. The Applicant has vehemently contested the issuance of **Notice dated 10.07.2014 s**pecially when the Appellate Courts have given their verdicts in favour of the Applicant and all the contentions or claims of the GoI have been rejected. The Government of India through the said Notice asked the VIL to show cause within 30 days as to why the Government of India nominee be not directed to recover an amount to the tune of **USD 118 Million** from the sale proceeds payable by the nominee of Government of India to VIL.

Attention has also been drawn on an Order of the **Arbitral Tribunal constituted by Mr. Soli J Sorabjee, Chairman, Justice G.T. Nanavati, Member and Justice J.K. Mehra, Member (Arbitration Case No.1 and 03 of 2003)** which was pending for adjudication, therefore, the Respected Chairman/ Presiding Arbitrator vide Order dated 18.05.2015 has directed, quote "*The Tribunal directs the Respondents in the meantime to restrain from taking any coercive action in furthermore of or in pursuance to the show cause notice dated 10 July 2014 issued to the claimant till the final hearing of the interim Application at a neutral venue in Colombo.*" unquote.

1.9. The Applicant has pointed out that even after losing the case, the GoI had recovered (i) a sum of USD 16.70 Million and (ii) a sum of Rs.372.21 Million in excess of actual recoverable amount. Therefore, VIL is seeking refund of excessive recoveries made by GoI. Before the said Tribunal an Application of this nature had already been submitted.

1.10. In respect of "Base Development Cost" ("BDC") it is informed that the Arbitration Final Award at Kuala Lumpur dated 18.01.2011 had gone in favour of VIL.

1.11. In respect of **"Exchange Rate Issue"** it is informed that the Arbitration Partial Award dated 31.03.2005 had concluded that the **sales made by VIL to nominee of GoI were in fact sales made to GoI.** The said Award provided for the payment by **converting USD to Indian Rupees at SBI, Middle Rate (i.e. Average of SBI TT Buy Rate and SBI TT Sell Rate).** As per this Applicant, and it is important to place on record that, pursuant to the said Award, **VIL has been making payment of the GoI share of "Profit Petroleum" by converting USD into Indian Rupees at SBI Middle Rate.** It is also placed on record that after dismissal of final appeal of GoI by the Federal Court of Malaysia in May 2016, there was no recourse left for the GoI but to settle the Exchange Rate as per the claim of VIL.

1.12. A legal argument has also been raised that vide an Order dated 06.06.2018 in the case of Videocon, an Order is pronounced and Insolvency was declared. Upon Admission, the **"Moratorium" u/s.14** of the Insolvency Code was pronounced. On pronouncement of "Moratorium" no recovery proceeding be initiated against the Debtor Company. Because of the declaration of "Moratorium" the Applicant is seeking an **Injunction** against the impugned Notice dated 22.10.2018 issued by Ministry of Petroleum. It is informed that the Sale Proceeds are receivable from Chennai Petroleum Corporation, Mangalore Refinery, GAIL (India) Limited and Bharat Petroleum (hereinabove made Respondent Nos. 3 to 6.).

1.13. The method of allocation and the details of claim as well as counter claims have been narrated from the side of the Applicant and finally made Prayers as under:-

> *"(a) Pass an order declaring the enforcement and/or acting upon in any manner pursuant to impugned recovery notice dated 22.10.2018 issued by Respondent No.2, Union of India pending moratorium/ CIRP of Applicant is bad in law and illegal;*
>
> *(b) Pass an order that the impugned recovery notice dated 22.10.2018 issued by Union of India be stayed and direction restraining the Respondents, jointly or severally, not to acted upon or enforced in any manner in furtherance of the said impugned notice to the extent of the Applicant i.e. Videocon Industries Ltd.;*
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> *(c) Pass an order and direction restraining the Respondent No. 3 to 6 from assigning and allocating any portion of the sale proceeds / Oil & Gas Invoices in favour of Respondent No.2 for recovering any sum due from the Applicant i.e. Videocon Industries Ltd.;*
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> *(d) Pass an Order and direction restraining the Respondent No.3 to 6 from remitting any portion of the sale proceeds / Oil & Gas Invoices payable to the Applicant i.e. Videocon Industries Ltd. to Pay and Accounts Office (PAO), Ministry of Petroleum and Natural Gas (MoPNG);*
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> *(e) Pass an order and direction to Respondents Nos. 3 to 6 to continue to pay VIL in accordance with the practice adopted hitherto without deducting any amounts as set out in GoI's letter dated 22.10.2018;*
>
> *(f) Pass an ad-interim ex-parte stay order in favour of the Applicant i.e. Videocon Industries Ltd. in terms of the abovementioned prayers;*
>
> *(g) Pass an order awarding the entire costs of this application to the Applicant i.e. Videocon Industries Ltd.;"*

REPLY FROM RESPONDENT NO.2

2. From the side of Respondent No.2 (Union of India) through its Ministry of Petroleum and Natural Gas and Respondent No.7 Directorate General of Hydro Carbons, a reply has been submitted. In this reply it is contested that the Respondent No.2 is rightly entitled to recover its share of "Profit Petroleum". According to the Respondents, the Applicant had failed to demonstrate as to how the 'Profit Petroleum" of Rs.118 Million to be paid by Respondents 2 to 6.

2.1. Narrating the brief facts as it is stated in the Reply to the impugned Application that Union of India is the sovereign owner of the petroleum and natural resources underlying below the seabed of India territorial waters and the continental shelf, which is recognized and declared vide Article 297 of the Constitution of India. This fact has been interpreted by the Hon'ble Supreme Court to mean that the people of India are the real owners of these resources and that State is only a Trustee to hold them for the benefit of the people. The answering Respondents took steps to explore and exploit expeditiously the petroleum resources available within a specified area for the overall interest of India. In accordance with the rights conferred to it under the Oilfields (Regulation and Development) Act, 1948, the Answering Respondents entered into a **Production Sharing Contract dated 28.10.1994 ("PSC")** with the Applicant, Cairn India Ltd. (now Vedanta Ltd.). ("Cairn Energy") and Ravva Oil (Singapore) Pte Ltd. ("Ravva Singapore") (together "the Contractor") for the development of a specified offshore area in the **Bay of Bengal**. Under the Production Sharing Contract, the Applicant and other entities (not parties to the present proceedings) undertook the task of development of the offshore fields to enable **crude oil production.** As per the scheme of the PSC, the Applicant and other entities (not parties to the present proceedings) were entitled to recoup all the costs incurred in connection with the exploration and development of the oilfield from the portion of the petroleum produced ("Cost Petroleum"). All the remaining petroleum produced *inter alia* by the Applicant after deducting the 'Coast Petroleum' would be shared by the Applicant and the Answering Respondents in a particular proportion so as to have their shares of the

profits ("Profit Petroleum"). The computations and manner in which the 'Profit Petroleum' would be distributed amongst the parties was governed under Article 16 of this PSC. One of the claim of Respondent No.2 is that it was a settled position among the parties, as also held by the Arbitral Tribunal in its partial Award dated 31.03.2005 that the revenue is the property of Ministry of Petroleum. As a consequence, the Ministry is only responsible to pay the contractor the cost incurred. However, in practice adopted for the sake of convenience, the Operator is physically involved in production and transportation of crude oil and gas produced. The operator is to supply the hydrocarbons and collect the revenue out of sale. The Operator is required to allocate the revenue towards the "Cost Petroleum" and "Profit Petroleum" share of the Government and other constituents including VIL. The Operator is, therefore, only administering the operation. Accounts so maintained are to be approved by the Management Committee. Allegation is that the Operator had not obtained any such approval from the Management Committee. One more fact has been stressed upon that it was agreed in PSC that costs incurred by ONGC prior to PSC was to be reimbursed by the operators including the Respondents to ONGC. There was a dispute about the "Base Development Cost" ("BDC"). The contractor had recovered cost about USD 500 Million towards BDC as against their entitlement of only USD 188.98 Million. Therefore, the contractor through operator had appropriated excessive amount of cost without approval of Management Committee. The outcome was that the share from "Profit Petroleum" entitlement got adversely affected.

2.2. To resolve the controversy, the contractor had initiated arbitration proceedings against the Respondent. The Arbitral Tribunal vide Award dated 18.01.2011 decided the dispute with regard to Base Development Cost in favour of the contractor, allegedly disregarding the express terms of the contract. Due to this the nation was deprived to the extent of USD 129 Million of Government share of "Profit Petroleum".

2.3. With regard to the ONGC Carry issue, since the Contractor represented that they were entitled to deduct the ONGC Carry charges in the computation of PTRR, the Contractor deducted the same in PTRR as a consequence of which, the Answering

Respondents suffered a loss of "Profit Petroleum" to the extent of USD 284 million because of illegal suppression of PTRR calculated under Appendix D of PSC.

2.4. A legal point vehemently pleaded is that the Awards dated 31.03.2005 and 18.01.2011 being foreign Awards, therefore, the Applicant (VIL) is under obligation to enforce the said Award as per **Part II of the Arbitration and Conciliation Act, 1996 (Arbitration Act).** The Award is declared but it is not enforceable being not a decree of any Court. A fact has also been mentioned that the Applicant (VIL), Cairn Energy and Ravva Singapore filed OMP (EFA) (Comm) No. 15/2016 in the Hon'ble Delhi High Court seeking recognition and enforcement of the award dated 18.01.2011. The said petition was filed beyond the period of limitation and is still pending before the Hon'ble High Court. In view of what is stated hereinabove and in the circumstances, the award dated 18.01.2011 is not yet recognized as a valid decree of a Court under Section 49 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). According to the Respondent, the Applicant had not yet filed any "Execution Petition" in respect of the Partial Award dated 31.03.2005. It is also informed that the PSC is expiring by October, 2019 but in terms of Article 16 of the said Contract, the Respondent had not yet received its share of "Profit Petroleum". Due to said reason a Notice was issued on 22.10.2018 to OMCs viz. (i) ONGC, (ii) Vedanta Ltd. (Cairn Energy) (iii) Ravva Singapore and (iv) VIL. On receiving notice, Cairn Energy had approached High Court of Delhi through an Interim Application and vide Order dated 29.10.2018 the Hon'ble Court had refused to stay the operation of the said Notice. The Applicant (VIL) had filed this Application and on this Application an Ad-Interim Order was passed on 31.10.2018 directing to maintain the status quo. That Interim Order was challenged before the Hon'ble NCLAT and in Appeal No. (AT)(Insolvency) No. 717 of 2018 Order dated 20.11.2018 it was held as under:-

> *"2. Since the Adjudicating Authority has passed the interim direction on the basis of a prima facie view which is directed to last only till 26.11.2018 and MA No. 1300/2018 has not been decided on merit, it would be appropriate to dispose of the instant appeal by requesting the Adjudicating Authority to expedite the disposal of aforesaid MA after taking reply from the Appellant. The Adjudicating Authority will permit the Appellant to submit its reply on 26.11.2018.*

3. To safeguard the interests of both the parties, I am of the considered opinion that it would be appropriate to direct that the oil companies (R-2 to 5) shall not release amounts under profit petroleum which comprises subject matter of notice, till disposal of MA No.1300/2018.

4. Learned Adjudicating Authority is requested to consider the aforesaid MA on its merit being uninfluenced with the observations made in the impugned order. It is clarified that this order shall not in any manner be interpreted as limiting the authority and powers of Adjudicating Authority to pass appropriate direction in regard to profit petroleum after hearing the matter on merit."

2.5. Further it is pleaded that the 'Profit Petroleum' is an Asset of the Respondent, hence out of the ambits of Section 14 of IBC, therefore, the "Moratorium" has no role to play to recover its own asset belonging to Respondent. The Answering Respondent has a legal right over the Profit Petroleum, therefore, issued Notice dated 22.10.2018. Such claim also does not constitute the essential Goods and Services. It is concluded that the Applicant is not entitled for the relief(s) as prayed for in this Application.

3. Learned Counsel Advocate Manidhar Acharya (ASG) along with Ld. Sheeja John along with Advocate Anurag Ahluwalia and Mr. N.P. Puranik, Dy. G.M.-C.F. appeared. Case laws relied upon are as under:-

1) 2012 SCC OnLine Del 3610 [*Hindustan Petroleum Cor. Ltd. v. M/s. Videocon Industries Ltd. and Ors*] And [*Union of India and Anr. (O.M.P. 223/2006) v. Videocon Industries Ltd. and Ors.*] Order dated 13.07.2012 ;

2) 2006 SCC OnLine Bom 545: (2006) 5 Bom CR 155: (2006) 3 Arb LR 510 [*Bombay High Court (O.S.) Noy Vallesina Engineering Spa Versus Jindal Drugs Limited*] Order dated 05.06.2006.

3.1. It is vehemently pleaded by the Learned Counsel that the impugned Foreign Award is not enforceable under the Arbitration Act in terms of Section 49 which says that, for enforcement of Foreign Award, a satisfaction of a Court is to be recorded and only thereupon such Award is enforceable. Further it is pleaded that the Profit Petroleum is a public property and the Government is the sole owner in respect of Petroleum produced within contract area. Merely demanding of one's own share of profit is not recovery of any Tax or Cess, therefore, clauses of the "Moratorium" do not apply.

4. There is an "Affidavit-in-Reply" on behalf of Respondent No.4: Mangalore Refinery and Petrochemicals Limited, however, through this Affidavit the Deponent remained non-committal and affirmed that the directions of the NCLT shall be complied with in due course.

FINDINGS

5. Heard both the sides at length. Perused the records of the case in the light of the evidences and precedents cited by the rival sides. (i) A fundamental question which is to be answered while deciding this Miscellaneous Application is that whether an action of any authority, which may cause financial loss to a Debtor Company which is under Insolvency Proceedings having huge financial liability, be approved within the four corners of the Insolvency Code ?. There is one more question that (ii) Whether a claimant, may be Government authority, can seek permission from the Adjudicating Authority functioning under Insolvency & Bankruptcy Code, 2016, to settle its claim in the garb of right over its own asset while the Debtor Company is under Insolvency Proceedings, instead of lodging claim before the Resolution Professional already appointed ?

5.1. An Order was pronounced u/s. 7 of the Insolvency & Bankruptcy Code, 2016 on 06.06.2018 titled as "SBI V/s. Videocon Industries Ltd." (C.P.(IB)-02(MB)/2018) admitting the petition of the Financial Creditor by declaring "Moratorium" u/s 14 and appointing Interim Resolution Professional to commence Insolvency process. It is worth to place on record that the Debtor Company is under heavy financial Debt pertaining to various types of Loan facilities availed from consortium of Banks approximately to the tune of Rs.3,961 Crores. The process of consolidation of group matter under the direction of the Principal Bench, New Delhi and preparation of Information Memorandum for inviting Expression of Interest is in progress on the date when this Interim Application was submitted.

5.2. The reason for submission of this Miscellaneous Application is a Letter-cum-Notice dated 22.10.2018 (No. O-22013/38/2010-ONG-D-V (E-4731) issued by Respected Under Secretary to the Government of India, Ministry of Petroleum & Natural Gas (Exploration Division) with the subject quote, "*Non Payment of Profit Petroleum by*

M/s. Videocon Industries Ltd., M/s. Oil and Natural Gas Limited, M/s. Vedanta Limited and Ravva Singapore Pte. Ltd. (ROS) under Ravva PSC." unquote. Being an urgent and directly affecting the source of revenue generation of the Debtor Company, the Resolution Professional has preferred this Miscellaneous Application and the main Prayer is that the operation of the impugned Letter-cum-Notice dated 22.10.2018 issued by Union of India be stayed.

5.3. It is worth to reiterate, although already referred in foregoing paragraphs, that previously a Notice was issued on 10.07.2014 by the Ministry of Petroleum, wherein with reference to Production Sharing Contract dated 28.10.1994 signed with Cairne India Limited, Ravva Singapore, ONGC and VIL in respect of Ravva Oil and Gas demanding therein a recovery of short payment of Government's share of Profit Petroleum in the said Ravva filed from ONGC, CIL, ROS, VIL in respect of the items i.e. ONGC Carry, Base Development Cost and VIL short payment. The demand in respect of VIL 25% PI was 118 Million US Dollar. It was specified that the said Three Companies were given notice to show cause as to why within 30 days all Oil Marketing Companies be not directed to recover the amount mentioned against the Companies and ONGC together with interest from sale proceeds. It is now worth to mention at this juncture that the same amount i.e. USD 118 Million from VIL is now again claimed through the impugned Notice dated 22.10.2018.

5.4. The issuance of Notice dated 10th July, 2014 as raised by the Government of India, Ministry of Petroleum was challenged before the Respected Arbitral Tribunal and an Interim Order was passed on 4.08.2014 by the Hon'ble Bench constituted by Soli J Sorabjee, Justice (Retd.) G.T. Nanavati and Justice (Retd.) J.K. Mehra wherein opined as under:-

> *"The Tribunal is of the view that the present dispute is squarely covered within the ambit of the expression 'sums payable to either parties'. The contention of the Ld. ASG Nagesh Rao that the Tribunal is functus officio except to the extent of the 'computation of the sums payable' ignores the fact in addition to the same, the Tribunal also retained jurisdiction to determine the sums payable to either parties. The present dispute concerns itself with the very same question, namely the sums which are payable by or to either party. It is the considered opinion of the Tribunal that it has not become functus officio and has jurisdiction to determine the sums payable to other parties."*

5.5. Not only the above observation, the Tribunal held as under:-

> "To sum up, the Tribunal holds:
>
> (a) The Tribunal is not functus officio to consider and entertain the Interim Application dated 24.07.2014 filed by the Claimant;
>
> (b) The Tribunal is not denuded of the power to grant interim relief as prayed for or after modifying the same, if a case is made out after hearing the parties;
>
> (c) The issue of juridical seat of arbitration is pending adjudication before the Federal Court at Malaysia. Accordingly, the present order will be deemed to have been made at the juridical seat as finally determined by the Federal Court at Malaysia."

5.6. Finally on 18.05.2015 in the said Arbitration case an Interim Order was passed by the Presiding Arbitrator Mr. Soli J Sorabjee, already reproduced *supra* in Para 1.8 that the Respondents **(Ministry of Petroleum and Natural Gas) be restrained** from taking any coercive action in pursuance of Show Cause Notice of 10.07.2014 (referred *supra*).

5.7. The above discussion revolving around an attempt of GoI, Ministry of Petroleum for recovery of the very amount of 118 Million US Dollar was thwarted by granting Interim Restrain Order in the year 2014 by the Arbitral Tribunal of India.

6. Now again vide a Notice of 22.10.2018, almost on identical lines, GoI, Ministry of Petroleum has issued Notice for recovery/ collection of USD 118 Million from VIL. On the face of it, the impugned Notice of 22.10.2018 is nothing but a repetition of an earlier attempt. If the fresh attempt is similar then naturally the outcome shall also be identical. Before giving a final verdict it is quite appropriate to deal with the contentions of both the sides.

6.1. From the side of the Government of India a legal question has been raised that the impugned USD as claimed by the Government was the outcome of Arbitral Tribunal Award of Malaysia of 18.01.2011 and Interim Partial Award respectively dated 12.02.2004 and 23.12.2004. Because the Arbitral Awards were pronounced by an Arbitration authority outside India, therefore, Part II of the Arbitration and Conciliation Act, 1996 shall be operative. The basic contention is that any Foreign Award which would be **enforceable** shall be treated as binding where the Court is satisfied that the Foreign Award is enforceable and that the Award thereafter shall be deemed to be a Decree of that Court. In this regard a moot question is to be answered that whether the Applicant is trying to enforce its right on the Petroleum Profit by enforcing the said

Foreign Award, or that the GoI is issuing Notice for recovery of its Profit Sharing Ratio. The present contention undisputedly raked up due to the issuance of the impugned Notice dated 22.10.2018. It is not the Applicant i.e. VIL who has made an attempt for its claim over Petroleum Profit. On the contrary, the GoI is attempting to recover Petroleum Profit, undisputedly not yet crystalized. The legal question of applicability of Chapter II of Arbitration & Conciliation Act, 1996 is therefore misplaced having no role to pay under the present facts and circumstances.

6.2. The issue before me is not the enforcement of an Award pronounced by a Foreign Tribunal. All the case laws cited from the side of the GoI revolve around a legal question that under what circumstances a procedure is to be followed as enshrined **u/s.47 read with Section 48 of the Arbitration and Conciliation Act, 1996.** I am of the view that the scope of this Miscellaneous Application is very limited that whether the GoI can recover Petroleum due at this stage when the Corporate Debtor is already under Insolvency. The scope of this Miscellaneous Application is not towards a request of enforcement of Foreign Award. Because of this reason, since this Bench is not adjudicating upon Enforcement of Foreign Award, therefore, not inclined to answer the legal question raised about the applicability of Section 47, 48 and 49 of the Arbitration and Conciliation Act, 1996.

7. This Bench is only concerned about the enforcement of the provisions of Insolvency Code. This Code is introduced with the objective as per its Preamble, to reorganize a corporate person in a time bound manner for maximization of value of assets as well as to promote entrepreneurship along with the motive to balance the interest of all the stakeholders, notwithstanding alteration in the Order of priority of payment of Government dues. All attempts are to be made to procure the value of the Debtor Company as also to procure the assets of the Debtor Company. Already an Order has been pronounced on 06.06.2018 by this Bench u/s. 7 of the Insolvency Code, thereupon, implementation of Section 14 of IBC by declaring commencement of "Moratorium". The effect of declaration of "Moratorium" is that prohibition is enforced for recovery against the said Corporate Debtor. Prohibition is also towards institution of any suit or execution of any Judgment, Decree or Order of any Court of Law, Tribunal,

Arbitration Panel, etc. Once the "Moratorium" is declared such an action on the part of the GoI, Ministry of Petroleum, is not legal as far as the Insolvency Code is concerned now fully applicable on this Corporate Debtor.

8. In the light of the foregoing detailed discussion it is judicious to **direct the concerned Government authority not to press or implement the impugned Notice dated 22.10.2018** during the commencement of Insolvency proceeding and as long as the "Moratorium" is applicable on this Corporate Debtor. At the most, the Ministry of Petroleum can lodge its claim of any legally enforceable right of recovery to the appointed Resolution Professional, being not rendered remediless, as prescribed under The Code. Further directed that Respondent No.3 to 6 i.e., Chennai Petroleum Corporation Ltd.; Mangalore Refinery and Petrochemicals Limited; GAIL (India) Limited; and Bharat Petroleum Corporation Ltd. are **restrained and not to remit sale proceeds which are due to this Corporate Debtor** i.e. Videocon Industries Limited. Status quo shall be maintained i.e. the Respondent No.3 to 6 shall continue to pay the share to VIL as adopted hitherto.

9. This Miscellaneous Application is disposed of accordingly.

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

Date : 13.03.2019
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