IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 560/I&BP/NCLT/MAH/2018

(Under Section 7 of the I&B Code, 2016)

In the matter of
State Bank Of India
...Financial Creditor
v/s.
Value Industries Limited
...Corporate Debtor

Order Delivered on: 05.09.2018

Coram: Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Animesh Bisht, Mr. Madhav Kanoria, Ms. Saloni Kapadia, Ms. Naveena Verghese i/b Cyril Amarchand Mangaldas

For the Respondent: Mr. Sandeep Ladda, Mr. Aurup Das gupta a/w Mr. Shrey Shah i/b Jangiani Narula & Associates

Per B.S.V. Prakash Kumar, Member

ORDER

Order pronounced on 30.08.2018

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (IBC) by State Bank of India, Financial Creditor against Value Industries Limited, Corporate Debtor, to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor on the grounds that, as on 31st December 2017, Corporate Debtor has defaulted in making payment of ₹484.90 crores under the Rupee Term Loan Agreements (herein after referred to as **"RTL"**) and supplemental agreement to the Working Capital Consortium Agreement (herein after referred to as **"Working Capital Consortium Agreement"**)

2. The Petitioner counsel submits that in terms of the said agreements, the Corporate Debtor is individually and jointly liable as Obligor/Co-obligor with 12 other Videocon group companies to repay the loan granted under RTL and the Working Capital Consortium Agreement.

3. The Petitioner counsel further submits that *vide* Gazette Notification dated 22nd February 2017, State Bank of Hyderabad (herein after referred to as **"SBH"**), State Bank of Mysore (herein after referred to as **"SBM"**), State Bank of Travancore (herein after referred to as **"SBT"**), State Bank of Bikaner and Jaipur (herein after referred to as **"SBBJ"**) and State Bank of Punjab (herein after referred to as **"SBP"**) are merged into State Bank of India (herein after referred to as **"SBI"**) with effect from 1st April 2017. Therefore, for the purpose of this Petition, although all these Loans were granted and disbursed by SBH, SBM, SBT, SBBJ and SBP prior to their merger with SBI, these loans are now considered to have been granted and disbursed by SBI.

4. The Rupee Term Loan was granted to the Corporate Debtor under the RTL dated 8th August 2012 wherein each of the lenders extended rupee term loans of amounts *viz.* SBI–₹2072 crores, SBH–₹300 crores, SBM–₹250 crores, SBT–₹200 crores, SBBJ–₹100 crores and SBP– ₹50 crores. The working capital facility was granted to the Corporate Debtor under the supplemental agreement to the Working Capital Consortium Agreement dated 16th April 2012 wherein the lenders, as they stood before merging with SBI had extended working capital facility of amounts *viz.* SBI working Capital Facility ₹45.50 crore and SBBJ Working Capital Facility ₹50 crore. The total amount in default as on 31st December 2017 under the impugned RTL facility and the working capital facility is ₹484.90 crores.

5. The following table is submitted by the Petitioner to show the amount in default as on 31st December 2017:

(Figures in ₹ crore)

Loan Agreement	Principal in Default	Interest in Default	Penal Interest	Total Outstanding
SBI RTL	51.8	260.46	3.03	315.29
SBI Working Capital Facility	8.74	4.78	0.7	14.22
SBBJ RTL	2.5	13.85	0.16	16.51
SBBJ Working Capital Facility	7.66	5.28	0.84	13.78
SBH RTL	7.5	40.99	0.46	48.95
SBM RTL	6.25	31.62	0.35	38.22
SBP RTL	1.14	5.83	0.06	7.03
SBT RTL	5	25.59	0.31	30.9
				484.9

6. It is stated in the Petition that the Financial Creditor called upon Videocon Industries Limited (herein after referred to as **"VIL"**), through its notice dated 27.01.2017, to arrange funds to regularize their account. The Financial Creditor again, *vide* its letter dated 02.05.2017 to the Chairman and Managing Director of Videocon group informing that the accounts of VIL and Videocon Telecommunications Limited (herein after referred to as **"VTL"**) had turned into non-performing asset and therefore called upon certain co-obligors of the Corporate Debtor to make up-to date payment of dues. As per the terms of RTL agreement, it is submitted, that the notices sent to VIL may be deemed to be sent to the Corporate Debtor. The Petitioner vide their demand notice dated 18.01.2018 addressed to the Corporate Debtor along with other Videocon group companies informed about the failure and neglect to make payment and demanded the repayment of the outstanding amounts being the total amount due and payable under RTL agreement. The Petitioner vide their demand notice dated

31.01.2018 also asked the Corporate Debtor to repay the outstanding amount due and payable under the Working Capital Facility.

7. The Corporate Debtor Counsel has argued that the actual disbursement under the RTL was only to VIL and not to other Obligor/Co-obligor Companies and the obligation of Obligor/Co-obligor is not covered under any clause of section 5 sub-section (8) of IBC. It is argued that since the Petitioner i.e. SBI has not factually disbursed any amount to the Respondent against the consideration of time value of money thereby the amount does not qualify as "Financial Debt" as defined in IBC and consequently the Petitioner cannot be termed as "Financial Creditor". It is also argued that CP No. 2 of 2018, under IBC has already been admitted against VIL for the same debt as that of the Present petition. The CIRP in the said admitted petition is in process and the duly appointed Resolution Professional has taken charge of all the secured assets which are common under the RTL. It is argued that the rigors of section 14(c) of IBC shall apply and prohibit initiation of separate CIRP against the Obligor/Co-obligor for the same secured assets. It is also submitted by the Corporate Debtor counsel that if separate petitions are admitted for the same debt then each of the Resolution plans shall be claiming the same amount due and payable from each of the group companies and thus total due shall become multiple of actual dues and would frustrate the resolution process.

8. This Petition clearly reveals that there is a debt as defined in Section 3(11) of IBC, also there is default in this case within the meaning of Section 3(12) of IBC and no evidence of dispute with regard to the claim amount.

9. In the Rupee Term Loan (RTL) Agreement dated 8.8.2012, this Corporate Debtor along with other associate companies, while executing this Agreement in favour of the Financial Creditor herein, agreed that each obligor, including this Corporate Debtor, shall be liable to the secured parties on a joint and several basis for all the obligations and liabilities of all other obligor/co-obligors and Videocon Industries Ltd (VIL) shall be liable for all the obligations and the liabilities of other obligors/co-obligors as an obligor and as an

obligor's agent. It is further stated that the liability of the obligors to the secured parties shall not be discharged until and unless the obligors have paid in or discharged the outstandings owed to the facility agent, the lenders or the onsure security trustee and the offshore security trustee under the financing documents to the satisfaction of the lenders. These obligors in this Agreement are coined as specified companies of Videocon Group. It is being further stated that the Company Petitions filed against VIL and VTL have already been admitted and CIRP has commenced. It is further submitted that in the consolidated financial statements of specified companies of Videocon group (Consolidated Financial Statements), it is seen at Note 33 that the Co-obligor's system is acknowledged, it is therefore submitted that the Corporate Debtor being a party to the RTL Agreement as a co-obligor has assumed the primary obligation to repay the debts owed by any other obligor under the RTL Agreement. For none of these obligors who are parties to RTL Agreement have not repaid the debt to this Petitioner, the Petitioner Counsel submits that they are jointly and severally liable to repay the same, for the same not being paid, this Petitioner has filed separate petition against each of these obligors including this Corporate Debtor to initiate CIRP against this Corporate Debtor.

10. The Petitioner Counsel has relied upon letter dated 28.8.2017 issued by the Reserve Bank of India to the applicant directing this Company to give time till 13.12.2017 for resolution outside the court, in the event a viable resolution is not finalised and implemented before the said date, the insolvency proceedings under the provisions of Code should have to be initiated against these Obligors including the Corporate Debtor. It has been further stated that on 6.6.2018, a petition under Section 7 of this Code by this Applicant against VIL was admitted and in respect to other companies, i.e. one of the associate company namely KAIL Ltd was admitted under Section 9 of the Code on 8.6.2018. To prove that this Corporate Debtor defaulted in making repayment, the Petitioner relied upon report of Central Depository Information on Large Credits of VIL dated 28.12.2017 classifying this account as substandard. To prove it further, Petitioner filed

consolidated financial statements of the specified companies of Videocon Group dated 15.9.2017 and notice dated 27.1.2017 and 2.5.2017 by this applicant to the head of Videocon Group namely Shri V.M. Dhoot informing that the accounts of VIL and VTL have turned into NPA on 30.4.2017 for non-payment of interest for the month of January, 2017. Besides this, this Applicant issued another demand notice on 18.1.2018 calling upon the Corporate Debtor to repay forthwith in respect to the outstanding amounts remained due in relation to the RTL Agreement and also filed letter giving balance confirmation details of VIL as on 30.6.2017. The Counsel has also filed a certificate under Banker Books Evidence Act, 1891 as Exhibit 13. Looking at the totality of the historical facts of this case, it is clear that the applicant has furnished all the material papers disclosing existence of debt as well as the existence of default.

11. To which, the Corporate Debtor Counsel submits that the remedy against this Corporate Debtors lies in Civil law but not under the provisions of this Code. The Corporate Debtor Counsel has further stated that this Petition is not maintainable in view of the fact that there is no disbursement of the funds in favour of the Corporate Debtor therefore, this Petition shall be liable to be dismissed.

12. As to the objection raised by the Corporate Debtor that this Petition lies before Civil Court and not before NCLT, our answer is that the RTL Agreement entered between the Banks and the specified companies of Videocon Group including this Corporate Debtor, obliging that they are jointly and severally liable to repay this debt by all or by any one of them as if each one of them is principal borrower to the loan Agreement entered between the Petitioner and these Group companies including the corporate Debtor. In view of the terms of the Agreement, it does not matter as to whether VIL or VTL has been pressed upon to repay the same to the Financial Creditor. However, the fact of the matter is that there is enough material before this Bench to prove that VIL as well as VTL defaulted in making repayment to the Financial Creditor. On the top of it, for NCLT already having admitted company petition against VIL in respect to the same debt, I

don't think any further evidence is required to prove VIL defaulted in making repayment to this Petitioner.

13. Another specious argument the Corporate Debtor Counsel raised is that the consideration has not been received by this Corporate Debtor therefore, for having this Petitioner proceeded against VIL, this Petition will not lie against this Corporate Debtor, against which, the answer is as to the definition of "debt" under IBC, it has been envisaged that debt means a liability or obligation in respect of a claim which is due from any person. Here for there being an obligation in respect of this claim against this Corporate Debtor as well, and the same not being discharged till date, it squarely falls within the definition of "debt" as mentioned under the IBC. For it need not be said separately that the Corporate Debtor has not denied the fact of lending this loan to this specified companies of Videocon Group, we are of the view that we need not take pains to say that it is a financial debt. For the Petitioner having proved the existence of debt as well as existence of default, this Petition is hereby admitted against this Corporate Debtor.

14. The Corporate Debtor having named the Interim Resolution Professional with his consent and there being no disciplinary proceedings against the same, this Bench hereby admits this petition filed under Section 7 of IBC, 2016, declaring moratorium with consequential directions as mentioned below:

I. That this Bench hereby prohibits

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) 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 Securitization and Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from 05.09.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Mr. Dushyant Dave, having Registration Number [IBBI/IPA-003/IP-P00061/2017-18/10502] as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

15. Accordingly, this Petition is admitted.

16. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

राष्ट्रीय कम्पनी विधि अधिकरण NATIONAL COMPANY LAW TRIBUNAL सत्यमेव जयते मुंबई न्यायपीठ MUMBAI BENCH

SD/-
RAVIKUMAR DURAISAMY
Member (Technical)

SD/-
B.S.V. PRAKASH KUMAR
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 7/9/2018

Assistant Registrar
National Company Law Tribunal Mumbai Bench