

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 408 of 2019

(arising out of order dated 13th March, 2019 passed by National Company Law Tribunal, Mumbai Bench, in M.A. No. 1300/2018 in C.P. (IB) - 02/(MB)/2018)

IN THE MATTER OF:

Union of India & Anr.

...Appellants

Versus

Videocon Industries Ltd. & Ors.

...Respondents

Present:

For Appellant :

Mr. Moninder Acharya, Senior Advocate with Mr. Anurag Ahluwalia, CGSC, Ms. Nidhi Mohan Parashar, Mr. Pratyaksh Sharma and Mr. Viplav Acharya, Advocates

For Respondents :

Mr. Arun Kathpalia, Senior Advocate with Mr. S. S. Ladda, Mr. Devender Singh, Mr. Yashvardhan, Ms. Kritika Nagpal and Mr. Kanishk Rana, Advocates for Respondent No. 1

Mr. P.K. Jain and Mr. Saurabh Jain, Advocates for Respondent No. 3

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

During the 'Corporate Insolvency Resolution Process' against 'Videocon Industries Limited' (Corporate Debtor), the Union of India, Ministry of Petroleum & Natural Gas (Exploration Division), Shastri Bhawan, New

Delhi – 110 001 issued Demand Notice dated 22nd October, 2018 to the ‘Corporate Debtor’ raising demand as quoted below:

“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.”

2. Against the aforesaid Demand Notice, the ‘Resolution Professional’ filed a ‘Miscellaneous Application’ under Section 60(5) of the ‘Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **‘I&B Code’**) before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai on the ground that during the period of Moratorium, the ‘Corporate Debtor’ cannot be asked to part away with any amount including the share of profit. The Adjudicating Authority by impugned order dated 13th March, 2019 has allowed the prayer and passed the following order:

“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 or 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.”*

3. The aforesaid order dated 13th March, 2019 has been challenged by ‘Union of India and another’.

4. The brief facts of the case are that a ‘Production Sharing Contract’ was executed on 28th October, 1994 between the government and the following four parties on 28th October, 1994, having percentage of participating interest as follows:

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

5. The dispute arose between ‘Government of India’ and ‘Videocon Industries Limited (Corporate Debtor) on 19th August, 2002 which was referred to the ‘International Arbitration Tribunal’, which passed ‘Partial Award’ on 31st March, 2005 upholding the ‘Videocon Industries Limited’ contentions and dismissing Government of India’s contention.

6. Thereafter, the Government of India filed an appeal on 10th May, 2005 before the Hon'ble High Court of Kuala Lumpur, Malaysia which by its decision accepted the objections of Videocon Industries Limited and held that it had no jurisdiction to hear the appeal of the Government of India and dismissed the appeal on 5th August, 2009. Subsequently, an appeal was filed by the Government of India before the Hon'ble Federal Court of Malaysia which was also dismissed on 16th May, 2016.

7. Thereby the award of the International Tribunal in favour of the 'Corporate Debtor' became final and binding on the Government of India.

8. The aforesaid facts were brought to the notice of the Adjudicating Authority by the 'Resolution Professional' which on hearing the parties, passed the impugned order on 13th March, 2019, as quoted above.

9. Learned counsel appearing on behalf of the Appellants submitted that the petroleum is the property of the Union of India and 'profit petroleum' of public property. The 'Resolution Professional' had miserably failed to prove as to why Union of India is not entitled to claim its share of profit on the petroleum product. Reliance has been placed on Article 28.1 of the 'Production Sharing Contract' to suggest that Union of India is the sole owner of the entire petroleum from the Contract Area. It was further submitted that as per Articles 15.8 and 16.4 of the 'Production Sharing Contract', the allocation of petroleum towards 'cost petroleum' and 'profit petroleum' requires the approval of the Management Committee and the Central Government. It was alleged that the 'Corporate Debtor' through 'Resolution Professional' is trying to defeat the terms of the 'Production Sharing Contract'

by falsely claiming that the 'profit petroleum' do not fall in the share of the Union of India.

10. According to the learned counsel for the Union of India the Demand Notice dated 22nd October, 2018 does not come within the ambit of 'recovery' from the 'Corporate Debtor'. It relates to 'profit petroleum' which falls to the share of the Appellant – Union of India. It was also contended that the 'Resolution Professional' cannot place reliance on any proceedings/orders or awards of the Arbitral Tribunal since the awards are not a decree of the court until executed in accordance with the Arbitration Act.

11. Learned counsel appearing on behalf of the 'Resolution Professional' submitted that the money received from Respondent Nos. 2 to 5 namely 'Chennai Petroleum corporate Ltd' (R-2); 'Mangalore Refinery and Petrochemicals Limited' (R-3); 'GAIL (India) Limited' (R-4) and 'Bharat Petroleum Corporation Ltd.' (R-5) are essential for 'Videocon Industries Limited' to keep it as a going concern while undergoing 'Corporate Insolvency Resolution Process'.

12. Referring to a 'Production Sharing Contract' dated 28th October, 1994 between the Union of India and other parties, it was further submitted that the 'ONGC Limited'; 'Videocon Industries Limited'; 'Vedanta Ltd.' and 'Ravva Oil (Singapore) Pte. Ltd.' are 4 parties to the Contract with Union of India and defined as 'participating interest' in the Ravva Oil & Gas Field (Unincorporated) joint venture. Clause 8.3 (b) of the 'Production Sharing Contract' provides that the contractor shall conduct all petroleum operations within the contract area diligently, expeditiously, efficiently and in safe and workman like manner in accordance with good international petroleum

industry practices pursuant to the approved work programme. Clause 7.2 of the 'Production Sharing Contract' provides that the 'operating function' required of the contractor under this contract has to be performed by the operator on behalf of all the parties comprising contractor subject to, and in accordance with, the terms and provisions of the contract and generally accepted international petroleum industry practice.

13. According to 'Resolution Professional' all joint petroleum operations are conducted by operator (Vedanta Limited) in accordance with policies, work programme and budgets approved by all the constituents of the contractor unanimously in accordance with the provisions of the contract and agreement between the contractors. As per agreement between the contractors, all costs and expenses incurred by the operator on behalf of the parties in carrying out such joint operations are to be borne and paid by the parties in advance for the following month in proportion to their participating interests and / or allocated in accordance with the current accounting procedures as prescribed in the 'Joint Operation Agreement'. As per Clause 7.9 (ii) of the 'Joint Operation Agreement', each party acknowledge and accepts that a fundamental principle of the said Agreement is that each party must pay its participating interest share of all amounts due under the 'Joint Operation Agreement'.

14. It was submitted that if amount of invoices raised by 'Videocon Industries Limited' upon Respondent Nos. 2 to 5 towards supply of petroleum and gas is not ordered to be paid pending 'Corporate Insolvency Resolution Process', it will hamper the 'Corporate Insolvency Resolution Process' and 'Videocon Industries Limited' cannot be maintained as a going concern.

Reliance has also been placed on the decision of the Arbitral Tribunal, which according to the 'Resolution Professional has reached finality.

15. On hearing the parties and from perusal of the record we find that the as per procedure the amount in question has been deposited with the 'Videocon Industries Limited (Corporate Debtor) in the light of the 'Joint Operation Agreement' and 'Production Sharing Contract' as discussed above. It is in this background, the impugned notice dated 22nd October, 2018 was issued by Union of India, Ministry of Petroleum & Natural Gas (Exploration Division), Shastri Bhavan, New Delhi.

16. It is true that the aforesaid demand notice has no relevancy with the award and the 'Resolution Professional' cannot rely on the award for the purpose of deciding whether it is payable to the Union of India or not, during the 'Corporate Insolvency Resolution Process'.

17. The Adjudicating Authority rightly held that it was concern about the enforcement of the provision of Section 14 of the I&B Code as per which after declaration of 'Moratorium' prohibition is enforced from recovery of any amount from the '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 order of 'Moratorium' is passed. However, it is open to the 'Corporate Debtor' to recover any amount as per law and award, if any, passed in its favour. It was in this background the Adjudicating Authority rightly held that during the period of 'Moratorium', Union of India, Ministry of Petroleum & Natural Gas (Exploration Division), cannot recover any amount nor can issue demand notice to the Corporate Debtor through 'Interim Resolution Professional' to pay any amount. In the

aforesaid background, we hold that the Adjudicating Authority rightly stayed demand notice dated 22nd October, 2018 during the pendency of the resolution process as long as the 'Moratorium' is applicable on the 'Corporate Debtor'. The Adjudicating Authority rightly held that the Ministry of Petroleum can lodge its claim for any legally enforceable right of recovery through 'Resolution Professional', thereby not rendered it remediless. 'Chennai Petroleum Corporation Ltd. '; 'Mangalore Refinery and Petrochemicals Limited'; 'GAIL (India) Limited' and 'Bharat Petroleum Corporation Ltd.' have been rightly restrained from remitting the amount from the sale proceeds to the Union of India, which are due to the 'Corporate Debtor' during the pendency of the 'Moratorium'.

In absence of any merit, the appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

New Delhi

30th August, 2019

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