

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) -528/I&BP/MB/2018

Under Section 7 of the I&B Code,  
2016

In the matter of

State Bank of India  
State Bank Bhavan, Madame Cama  
Road, Mumbai- 400021

...Petitioner

Vs.

PE Electronics Limited  
Auto Cars Compound, Adalat Road,  
Aurangabad-431005,  
Maharashtra.

... Respondent

Order delivered on: 31.08.2018

**Coram:**

Hon'ble Mr. Bhaskara Pantula Mohan, Member (J)

Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Gaurav Joshi, Senior Advocate, a/w Adv.  
Madhav Kanoria, Adv. Anush Mathkar, Adv.  
Saloni Kapadia, i/b M/s. Cyril Amarchand  
Mangaldas

For the Respondent: Mr. Zal Andhyarujina, Advocate, Adv. Sandeep  
Ladda, Adv. Avrup Dasgupta, Adv. Shrey Shah  
i/b M/s. Jhangiani, Narula & Associates

*Per: Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. State Bank of India (hereinafter called "Petitioner"), has sought the Corporate Insolvency Resolution Process of PE Electronics Limited (hereinafter called the 'Corporate Debtor'), under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

Adjudicating Authority) Rules, 2016, on the ground, that the Corporate Debtor committed default in repayment of various facilities granted by State Bank of India and its associate Banks viz. State Bank of Hyderabad (SBH), State Bank of Mysore (SBM), State Bank of Travancore (SBT), State Bank of Bikaner & Jaipur (SBBJ) and State Bank of Patiala (SBP), which were all merged with the State Bank of India, the Petitioner herein. The Petitioner submitted that the Corporate Debtor committed default on 31.01.2017 to the extent of Rs. 456.90 crores due to which the entire outstanding of Rs. 3171.37 crores becomes payable immediately.

2. The Petitioner submits that the Petitioners along with its associate banks and other banks entered into a Rupee Facility Agreement on 31.05.2010 as amended by the Agreement of Modification dated 30.08.2010 with Videocon Telecommunications Limited (referred as "VTL") and the following table reveals the facilities granted by the SBI and its associate banks under the said facility Agreement;

<b>Bank</b>	<b>Rupee Term Loan (In INR Crores)</b>	<b>Letter of Credit Facilities (INR Crores)</b>	<b>Total</b>
SBI	1400	840	2240
SBBJ	100	--	100
SBM	100	50	150
SBP	100	60	160
Total	1700	950	2650

3. The Petitioner further submits that on 08.08.2012, a Rupee Term Loan agreement ("RTL") was entered between consortium banks including SBI, Videocon Industries Limited and its 12 group companies including the Corporate Debtor herein, wherein Videocon Industries Limited (VIL) is termed as 'Obligor Agent' whereas the other 12 companies including the Corporate Debtor herein are termed individually as 'Co-Obligor' and collectively as

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

'Obligors'. In the preamble to the said agreement all the entities are mentioned as 'obligors' and the said document has been signed by all the entities separately under the name of each entity and the Obligor agent is represented by one Mr. V.N. Dhoot and the Authorised Representatives concerned for each Unit. The following table discloses the Rupee Term Loan sanctioned and the disbursement to Videocon Industries Limited and its 12 group companies:

<b>Facility</b>	<b>Sanctioned Amount (in INR Crores)</b>	<b>Disbursed Amount (in INR Crores)</b>
SBI	2072	2072.00
SBBJ	100	100.00
SBH	300	300.00
SBM	250	250.00
SBP	50	45.85
SBT	200	200.00
Total	2972	2967.85

4. On 20.06.2016, a confirmation agreement was entered into between (i) Videocon Telecommunications Limited and (ii) Videocon Industries Limited, (iii) Value Industries Limited, (iv) Trend Electronics Limited, (v) Techno Kart India Limited, (vi) Kail Limited, (vii) Applicomp (India) Limited, (viii) Sky Appliances Limited, (ix) Techno Electronics Limited, (x) Millenium Appliances India Limited, (xi) Century Appliances Limited, (xii) Evans Fraser and Co. (India) Limited, (xiii) **PE Electronics Limited**, (xiv) Videocon International Electronics Limited as co-obligors to the Rupee Facility Agreement and

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

(xv) the Banks and Financial Institutions as set out in Schedule 1 to the Confirmation Agreement which includes the Petitioner bank herein.

The said Confirmation Agreement at Clauses 2.1 and 2.2 mentions as follows:

*"2.1 The Obligors hereby covenant and agree with the lenders that with effect on and from the date hereof, they shall perform all duties and obligations of the borrower under the Rupee Facility Agreement as if each of the Obligors had been an Original Party to the Rupee Facility Agreement as a Co-Obligor with VTL and be bound by and comply with all the obligations expressed to be assumed by it as a co-obligor under the Rupee Facility Agreement.*

*2.2 VTL hereby covenants and agrees with the Lenders that with effect on and from the date hereof, it shall perform all duties and obligations of a Co-Obligor under the Rupee Term Loan Agreement as if VTL had been an original party to the Rupee Term Loan Agreement as a Co-Obligor and be bound by and comply with all the obligations expressed to be assumed by it as a Co-Obligor under the Rupee Term Loan Agreement."*

The Petition discloses the following details in respect of default committed by the co-obligors including the Corporate Debtor herein;

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

Facility	Total Overdue as on December 31, 2017 (In INR Crores)				Initial Date of Default	Days of Default till December 31, 2017
	Principal	Interest	Penal Interest	Total Defaulted Debt		
SBI RTL facility	51.80	260.46	3.03	315.29	31.01.2017	334
SBBJ RTL facility	2.50	13.85	0.16	16.51	31.01.2017	334
SBH RTL facility	7.50	40.99	0.46	48.95	31.01.2017	334
SBM RTL facility	6.25	31.62	0.35	38.22	31.01.2017	334
SBP RTL facility	1.14	5.83	0.06	7.03	31.01.2017	334
SBT RTL facility	5.00	25.59	0.31	30.90	31.01.2017	334
<b>Total</b>	<b>74.19</b>	<b>378.34</b>	<b>4.37</b>	<b>456.90</b>		

5. The Petition discloses the following details in respect of total dues payable by the Corporate Debtor on the occurrence of default, in respect of only VIL RTL Agreement which is claimed in this Petition.

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

<b>Facility</b>	<b>Amount outstanding (in INR Crores) as on 31.12.2017</b>
SBI	Principal : 1947.58 Interest: 263.49 Total: 2211.07
SBBJ	Principal: 93.99 Interest: 14.01 Total: 108.08
SBH	Principal: 281.63 Interest: 41.45 Total: 323.08
SBM	Principal: 234.48 Interest: 31.97 Total: 266.45
SBP	Principal: 42.86 Interest: 5.89 Total: 48.75
SBT	Principal: 188.12 Interest: 25.90 Total: 214.02
<b>Grand Total</b>	<b>3171.37</b>

6. On 31.01.2017, the Corporate Debtor defaulted in making the payments under the Rupee Term Loan Agreement.
7. On 30.04.2017 the account of Videocon Industries Limited was declared as NPA and on the same day the first date of default occurred with regard to the working capital facility.
8. On 28.08.2017, RBI directed that the NPA accounts including the account of Videocon Industries Limited would be given time till December 13, 2017 for resolution outside Insolvency and Bankruptcy Code and in the event that a viable resolution plan is not finalized and implemented before the said date, Insolvency proceedings under the provisions of the Code may be initiated.

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

9. On 18.01.2018 apart from other notices earlier issued, a demand notice was issued calling upon the Corporate Debtor to make the payment forthwith.
10. The Corporate Debtor has become party to the Rupee Facility Agreement as a co-obligor pursuant to a Confirmation Agreement dated 20.06.2016 and has thereby assumed all obligations of the obligors under the Rupee Facility Agreement towards the lenders which includes SBI and its associate banks (i.e. SBM, SBBJ and SBP).
11. As stated supra, apart from the aforesaid loan facility, this Corporate Debtor stood as a co-obligor towards other loans granted to its associated company, however, this case is limited only to the claim made by the Petitioner against the Corporate Debtor in the Rupee Term Loan Agreement dated 08.08.2012.
12. It is to be noted that, the associate banks of SBI have already merged with SBI and the latter has made this claim aggregating the amounts payable not only to SBI but also to other erstwhile Banks namely SBB&J, SBM and SBP. As details of the sanctioned limits, disbursed amounts and dates of disbursements and amounts outstanding (principal + interest) as on 31.12.2017 have been disclosed in the table mentioned above, for the sake of avoiding repetition, it has not been mentioned again.
13. The argument on behalf of the Financial Creditor is that the present petition is filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 against the Respondent who is a co-obligor under the Rupee Term Loan agreement dated 08.08.2012. This Tribunal had already passed orders dated 06.06.2018 against Videocon Industries Limited and against Videocon Telecommunications Limited dated 11.06.2018 for the defaults committed therein. By virtue of the fact that all Videocon group companies are co-obligors to the Rupee Term Loan agreement, the liability on the part of the parties therein is joint and several.  
As per clause 2.3 of the Rupee Term Loan agreement:

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

*"each obligor/co-obligor shall be liable to the secured parties on joint and several basis for all the obligations and liabilities of all other obligors/co-obligors. The liability of the obligors to the Secured parties shall not be discharged until and unless the Obligors have paid in or discharged the Outstanding's owed to the Facility Agents, the Lenders or the Onshore Security Trustee and the Offshore Security Trustee under the Financing Documents to the satisfaction of the Lenders. For the avoidance of doubt, notwithstanding that the Obligors may have paid all amount due to any Lender under the Financing Documents, the Obligor shall remain liable to such Lender if, as a result of any sharing agreement between the Lenders that has been notified to the Obligors under the Financing Document, such Lender is obliged to share the payments made by the Obligors with the other Lenders, and consequently, the obligations owing to such Lenders under the Financing Documents are still owing and/or undischarged."*

14. The consortium of banks led by the Petitioner have filed similar applications against the other co-obligors viz. Value Industries Limited, Trend Electronics Limited, Applicomp (India) Limited, TechnoKart India Limited, Sky Appliances Limited, Techno Electronics Limited, Century Appliances Limited, Evans Fraser Co. (India) Limited, PE Electronics Limited, KAIL Limited and Electroworld Digital Solutions Limited. All these companies which are referred to as specified companies of Videocon group are co-obligors under the Rupee Term Loan Agreement which means each of them have a joint and several liability under the Rupee Term Loan Agreement and have performed other obligations under the Rupee Term Loan Agreement. Now in view of the fact that a petition has already been admitted against two of the group companies of Videocon group, the Financial Creditor prays the petition to be admitted.
15. In this scenario the Corporate Debtor represented by Ld. Counsel Mr. Zal Andhyarujina had advanced the following points:

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

- i. The Petitioner SBI has not factually disbursed any amount to the Respondent against the consideration of time value of money and hence the same cannot be called as financial debt and in turn SBI cannot be called as Financial Creditor.
- ii. The Respondent, Obligor/Co-obligor Companies can neither be called as Guarantor nor Indemnifier under the relevant provisions of Contract Act hence there is no specific carve out in Insolvency and Bankruptcy Code 2016 to separately initiate CIRP against Obligor/Co-obligor but it has to be included in CIRP already initiated against VIL in CP(IB) No.2/2018;
- iii. Separate and independent resolution plan/s cannot be made separately by different IRP/RP against each of the Co-Obligor Company for the same set of secured assets pursuant to Sec.18(f) of Insolvency and Bankruptcy Code, 2016 and due to consolidated balance sheet, the very same assets are already in control and custody of RP appointed for CIRP against Videocon Industries Ltd in CP(IB) No.2/2018;
- iv. Pursuant to initiation of CIRP against VIL and the same set of assets are shown to be secured for the purpose of each application, the rigour of Section 14(c) shall apply for all subsequent proceedings in relation to the very same assets;
- v. Since a CIRP is already initiated against Videocon Industries Ltd.(VIL) in CP No.2 of 2018 by Order dated 6<sup>th</sup> June 2018, for the same alleged default amount hence, a separate and independent initiation of CIRP through separate IRP/RP against each of Obligor/Co-obligor Company will frustrate the Resolution Process;
- vi. If separate CIRP against each of the 12 Companies is permitted through different IRP/RP for the same Debt then

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

each Resolution Plan will be for same amount due against each Obligor/Co-obligor Company, and making it virtually impossible to implement as total due become multi-fold.

16. In response to the arguments of the Ld. Counsel for the Corporate Debtor, the Ld. Counsel for the Petitioner argued the following points:

- a. The Co-Obligors have joint and several obligations under the RTL agreement.
- b. The contention of the Corporate Debtor that the independent petitions against the co-obligors for the same claim are not maintainable and *ex facie* absurd and ought to be rejected.
- c. As per the Law Lexicon the term joint and several liability has been defined as "*a liability is said to be joint and several when the creditor may sue one or more of the parties to such liability separately or all of them together at his option*"
- d. Section 7 of the Code provides that a financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when default has occurred. The Code restrains one financial creditor from taking a joint proceeding against several corporate debtors after the occurrence of default.
- e. Disbursement to a corporate debtor is not a mandatory requirement to constitute financial debt. It is submitted by the Counsel that there is no requirement under the Code that the loans pursuant to which the amounts are in default are to be disbursed to the Corporate Debtor. An example in this regard can be taken in the instant case of a guarantor, to whom there are no debts

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

disbursed. Further, in the judgment of the Hon'ble NCLAT in the matter of *B.V.S. Lakshmi v. Geometrix Laser Solutions Private Limited* [[2018]142CLA321] which states, at Paragraph 29 that:

*"For coming within the definition of 'Financial Debt' as defined under sub-section (8) of Section 5, the Claimant is required to show that (i) there is a debt alongwith interest, if any, which has been disbursed and (ii) such disbursement has been made against the 'consideration for the time value of money...."*

*.....To show that there is a debt due which was disbursed against the 'consideration for the time value of money', it is not necessary to show that an amount has been disbursed to the 'Corporate Debtor'. A person can show that the disbursement has been made against the 'consideration for the time value of money' through any instrument."*

- f. The 'debt' and 'default' of VIL are established:
- i. 'Debt' as defined under section 3(11) of the Code means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and an operational debt. Further, definition of 'financial debt' under section 5(8) of the Code is illustrative, and hence should be treated with a wide import:

"financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a) money borrowed against the payment of interest;

...

(g) the amount of any liability in respect of any guarantee or indemnity for any of the items

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

referred to in sub-clause (a) to (h) of this clause.

- g. The Petitioner has relied upon the following documents in order to prove the existence of debt and default:

(i) Letter dated August 28, 2017, issued by the Reserve Bank of India to the Petitioner (Annexed as Exhibit 16, page. 679, Vol. IV of the Application).

(ii) Order dated June 06, 2018 of the NCLT, wherein the application under Section 7 of the Code by the Petitioner against VIL was admitted ("VIL Order");

(iii) Order dated June 11, 2018 of the NCLT, wherein the application under Section 7 of the Code by the Petitioner against VTL was admitted ("VTL Order");

(iv) Order dated June 08, 2018 of this bench of NCLT, Mumbai wherein the application under Section 9 of the Code by Cool Tech Appliances Pvt. Ltd. against KAIL Limited was admitted ("KAIL Order");

(v) Report of the Central Repository of Information on Large Credits of VIL dated December 28, 2017 which classifies the account of VIL as "Sub Standard" (Annexed as Exhibit 12, page 544, Vol. III of the Application);

(vi) Copies of Entries in Bankers Books Evidence Act, 1891 (Annexed as Exhibit 13, page 549, Vol. III of the Application);

(vii) Consolidated Financial Statements of the Specified Companies of Videocon Group dated September 15, 2017 ("Consolidated Financial Statements") (Annexed as Exhibit 17, page 670, Vol. IV of the Application);

(viii) Notice dated January 27, 2017 issued by the Petitioner to Shri V.N. Dhoot of VIL for repayment of

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

amount due as on date as per the RTL Agreement and requesting to regularize its account. (Annexed as Exhibit 14, page 656, Vol. IV of the Application);

(ix) Notice dated May 02, 2017 issued by the Petitioner to Shri V.N. Dhoot of Videocon Group specifying that the RTL accounts of VIL and VTL have turned to NPA on April 30, 2017 for non-payment of interest for the month of January 2017, asking it to pay the up-to-date dues. (Annexed as Exhibit 14, page 657, Vol. IV of the Application);

(x) Demand notice dated January 18, 2018 issued by the Petitioner to, inter alia, the Corporate Debtor, calling upon the Corporate Debtor to pay forthwith, the outstanding amounts in relation to the RTL Agreement, sent to all co-obligors. (Annexed as Exhibit 18, page 691, Vol. IV of the Application);

(xi) Letter giving Balance Confirmation Details of VIL as on June 30, 2017 (Annexed as `Exhibit 15, page 658, Vol. IV of the Application).

h) **Different Interim Resolution professionals for specified companies:**

- (i) It is submitted by the Ld. Counsel for the Corporate Debtor that the CIRP for each of the Specified Companies of the Videocon Group under the supervision of different interim resolution professionals would lead to complications as the CIRP will be carried out under the supervision of different resolution professionals and the committees of creditors.
- (ii) It was submitted by the Ld. Senior Counsel for the Petitioner that for the 12 applications filed by the Petitioner against the co-obligors under the RTL Agreement, 4 different IRPs have been proposed in order to satisfy the requirement under Item 22 of the Code of Conduct for Insolvency

## NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP(IB)No.528/I&BP/MB/2018

Professionals, provided under the First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016:

### **"Occupation, employability and restrictions.**

22. An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments."

- (iii) It was also submitted by the Senior Counsel that in the event that all the applications filed by the Petitioner against the Specified Companies of the Videocon Group are admitted, then the resolution professionals of each such company may either consolidate the resolution processes of all the companies, or may choose to have standalone resolution process as he deems fit and is required for maximum recovery and resolution. Either of these options may be approved by the committee of creditors as well as the Hon'ble NCLT at a later stage.
- (iv) It is also stated that under Section 18 of the Code, the resolution professional only has the power to take control and custody of the assets over which the corporate debtor has "ownership" rights, as recorded in the balance sheet of the corporate debtor. Thus, the argument of the Respondent that the resolution processes of all the companies will become complicated due to the pooling of assets as security under the RTL Agreement does not stand.

17. We have considered the arguments advanced by both the Counsel. Our observations are as follows:

- a. From the pleadings in the petitions filed against Videocon group companies, the documents annexed and from the arguments advanced, one important point that emanates is that initially though the State Bank of India and its associate banks have advanced loans to various group companies

## NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP(IB)No.528/I&BP/MB/2018

separately, at one point of time the necessary documentation was done in such a manner that Videocon Industries Limited and its group companies have expressly agreed and consented to being one party on the whole for all the loans taken from the State Bank of India and other associate banks. As a result for all practical purposes, irrespective of the name of the Corporate Debtor, the State Bank of India and its associate Banks remain as the lender and all the group companies of Videocon Industries Limited would become borrowers and are projected as one single unit in respect of recovery against each Corporate Debtor.

- b. The contention of the Respondent that the debt, to be called as "financial debt" under the Insolvency and Bankruptcy Code, 2016 must have been disbursed, is not tenable for the reason that all the co-obligors have jointly approached the bankers for advancing loan facilities in their group companies. The fact remains that all the group companies represented by their Authorised Representative had approached the banks and signed the documents together projecting themselves as one entity. Here an example has to be given wherein five persons put together approach a lender for a loan facility treating them as one unit and the lender consents for advancing/ disbursing the money as per the request of the parties concerned or to whomsoever suggested by the entire group together, then, in the event of default, the lender shall have to treat all the five members as one unit and can proceed against them singly or jointly as per law. The same situation is seen in the present case as the banks were approached by the Videocon group companies as one Unit (jointly), consisting of different entities. So, it cannot be said that there is no disbursement of loan to the Corporate Debtor in the present petition. Therefore, we hold that the obligor and co-obligors to the debt are a single unit and disbursement to one obligor amounts to disbursement to all of them put together and hence the Videocon group companies are jointly and severally liable.

## NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP(IB)No.528/I&BP/MB/2018

- c. Another contention on the part of the Respondent is that a separate and independent resolution plan/s cannot be made by different Insolvency Resolution Professional/RP against each of the co-obligor company for the same set of secured assets as per Section 18(f) of the Insolvency and Bankruptcy Code and due to consolidated balance sheet as the very same assets are already under the control and custody of RP appointed for CIRP against Videocon Industries Limited in C.P (IB) 2 OF 2018. The Ld. Senior Counsel, Shri Gaurav Joshi replied to the said contention that as per the rules a single IRP cannot take up many assignments and further that the co-obligors are separate juristic entities with their own set of assets and liabilities and hence appointment of different IRP's each for different Corporate Debtors is justified and is perfectly legal. We completely agree with the explanation given by the Ld. Senior Counsel. Further we add, though the lenders have advanced the loans to different co-obligors, for all practical purposes, the manner in which the representations were made on behalf of all of them, it should be construed as a single unit and it is the Parties/group companies who distributed the funds as per their own requirements by entering into separate documentation keeping the one mother binding document. Therefore, the appointment of different IRP's to each group company separately is perfectly legal and perhaps it's the only way the procedure has to be worked out. Therefore, we are completely in tune with the explanation given by the Ld. Senior Counsel appearing on behalf of the Petitioner and we hereby hold that appointment of different IRP's to each company differently is not hit by any provisions of the Code and hence is perfectly maintainable.
- d. Another contention very intelligently raised by the Ld. Counsel Mr. Zal Andhyarujina is that, the obligor/co-obligor arrangement cannot be called as "Guarantor" nor "Indemnity/Counter-Indemnity" under the provisions of Chapter 8 of the Indian Contract Act. Hence, co-obligor does not fall within the purview of sub-clause (h) or (i) of section

## NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP(IB)No.528/I&BP/MB/2018

5(8) of Insolvency and Bankruptcy Code. The said contention is not tenable in view of the fact that when all the group companies approach lenders together as juristic persons under one umbrella and executed documents together, then all of them put together must be considered as one single entity and are termed as Obligors collectively as per the Rupee Term Loan Agreement dated 08.08.2012. Apart from that, the contention that it cannot be called as a guarantee nor an indemnity, is also not appreciated. When we look at the facts, all the group companies together executed the documents which practically implies that each party is a guarantor to the other or each party would indemnify the other in case of default, for the reason that they are the different organs of the same body i.e. the Videocon group. There is a guarantee/ indemnity by legal fiction and law estops the other party or parties in the same group from repudiating the liability cast on them. The 'Doctrine of Estoppel' is clearly applicable and tilts the entire case in favour of the Petitioner. Apart from that it can be noticed from the documentation that term "obligor" and "co-obligor" is used for the entities which means, in so far as the loan agreement, there is no distinction between an obligor and a co-obligor as far as the liability is concerned and legally all of them must be considered as "Debtors" for the purpose of this Code. Therefore, we hold that the arrangement and the manner in which the documentation was done for the purpose of advancing loans is perfectly legal and the Corporate Debtor herein is liable to pay the debt and is bound by the proceedings as projected in Form 1 and since there is a default in the repayment of the same, the application is hereby admitted.

18. In view of the reasons aforementioned, on looking at the agreements and other documents, we are hereby satisfied that a debt and default is in existence, therefore this Company Petition is hereby **admitted** with reliefs as follows, prohibiting all of the following items-

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

- (I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (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 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) Section 14 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 31.08.2018 till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
- (V) That the public announcement of the Corporate Insolvency Resolution Process (CIRP) shall be made immediately as specified under section 13 of the Code.

**NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH**

CP(IB)No.528/I&BP/MB/2018

(VI) That this Bench hereby appoints, Mr. Divyesh Desai, having Registration No.: IBBI/IPA-001/IP-P00169/2017-18/10338 having his address at B2 402B, Marathon Innova, Off Ganpatrao Kadam Marg, Lower Parel (West), Mumbai 400013, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

19. Accordingly, the Petition is **admitted**.
20. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

SD/-  
V. Nallasenapathy  
Member (T)

SD/-  
Bhaskara Pantula Mohan  
Member (J)