

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

CP 288/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Videocon Industries Limited	... Respondent No.1.
Mr. Venugopal Nandlal Dhoot	... Respondent No.2
Mr. Rama Venugopal Dhoot	.. Respondent No.3
Mr. Vinod Kumar Bohra, Company Secretary	... Respondent No.4
Mr. Mandar C. Joshi, Company Secretary	... Respondent No.5
Mr. Ashutosh Gune, CFO	... Respondent No.6

CP 289/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Sky Appliances Limited	... Respondent No.1
Shri Dyaneshwar Raybhan Malkar	... Respondent No.2
Shri Ashish Sharadkumar Pallod	... Respondent No.3
Shri Jagdish Laxmandas Bangad	... Respondent No.4
Shri Mandar Chintaman Joshi	... Respondent No.5

CP 290/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Value Industries Limited	... Respondent No.1

Shri Avinash Chandra Malpani	... Respondent No.2
Shri Naveen Bhanwarlal Mandhana	... Respondent No.3
Shri Bhujang Shesharao Kakade	... Respondent No.4
Smt. Gayathri Ramanan Girish	... Respondent No.5
Shri Deepak Anant Pednekar	... Respondent No.6
Shri Anagha Milind Joshi	... Respondent No.7
Shri Sumit Shyamprasad Mishra	... Respondent No.8

CP 291/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Evans Fraser And Co. (India) Limited	... Respondent No.1
Shri Sushil Ramnath Jaju	... Respondent No.2
Shri Suresh Maruti Patil	... Respondent No.3
Shri Ashok Babu Shetty	.. Respondent No.4
Shri Sanjay Kumar	.. Respondent No.5

CP 292/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Ce India Limited	... Respondent No. 1
PradeepKumar Nandlal Dhoot	... Respondent No. 2
Kesharbai Nandlal Dhoot	... Respondent No. 3

CP 293/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Century Appliances Limited	... Respondent No. 1
Aditya Krishna Kumar Somani	... Respondent No. 2
Anirudha Venugopal Dhoot	... Respondent No. 3
Gregary Herald Fernandes	... Respondent No. 4

CP 294/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Videocon Telecommunication Limited	... Respondent No.1
Shri Venugopal Nandlal Dhoot	... Respondent No.2
Shri Pradipkumar Nandlal Dhoot	... Respondent No.3
Shri Subhash Shamsunder Dayama	... Respondent No.4
Shri Sudhir Chintamani Nilkanth Jatar	... Respondent No.5
Shri Mansukhlal Panalal Surpuriya	... Respondent No.6
Smt. Sarita Sanjay Surve	... Respondent No.7
Shri Narendra Joshi	.. Respondent No.8
Shri Pradeep Paliwal	... Respondent No.9
Shri Chandrashekhar Ashok Nagarkar	... Respondent No.10
Shri Arvind Bali	... Respondent No.11
Shri Sat Pal Bansal	... Respondent No.12

CP 295/MB/2021

IN THE MATTER OF

Union of India	... Petitioner
Vs	
Millennium Appliances India Limited	... Respondent No.1
Shri Kavishwar Bhaurao Patil	... Respondent No.2
Shri Sunil Tandon	.. Respondent No.3
Shri Deepansingh Ganpatsingh Rajput	... Respondent No.4

Order under Section 241-242 of the Companies Act, 2013

Order Delivered on 31.08.2021

CORAM:

**SH. BHASKARA PANTULA MOHAN
HON'BLE ACTG. PRESIDENT**

**SH. NARENDER KUMAR BHOLA
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Petitioner: Shri Sanjay Shorey, Director (Legal & Prosecution), Shri Manmohan Juneja, Director of General (OSD), Shri Rakesh Tiwari, Jt. Director, RD(WR), Mumbai, Shri M.P. Shah, RD (WR), Shri C. Balooni, AD, RD(WR), Shri Anil Yadav, Dy. ROC, Mumbai, Shri Yash Chauhan, Company Prosecutor, Mumbai.

For the Respondent: Senior Counsel Krishnendu Dutta along with Adv G. Aniruth Purusotham instructed by Adv. G Aniruth Purusothaman for Respondent No. 4, Mr. Sandeep Ladda, Advocate, Ms. Ishani Kanvilkar, Advocate.

ORDER

This is a Petition filed by the Petitioner, i.e. Union of India, Ministry of Corporate Affairs through the Joint Director, working in the Office of Regional Director (Western Region), Mumbai under Section 241-242, read with other relevant provisions of the Companies Act, 2013, praying this Tribunal for certain interim reliefs, as contained in the Petition and which are as follows:

Interim Reliefs:

- I. *That the Petitioner be permitted to serve the Respondents Through Joint Director working in office of post, publication in the newspapers, email, WhatsApp messaging, wherever required, in order to ensure due service of notice to all Respondents present in India and overseas;*
- II. *That the Respondent Nos. 2 to 6 be immediately directed to disclose on affidavit their moveable and immovable properties/assets, including bank accounts, owned by them in India or anywhere in the world;*
- III. *That the Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) be directed that securities owned/ held by the Respondent nos. 2 to 6 in any company/society be frozen, and be prohibited from being transferred or alienation and details thereof be shared with the Petitioner;*
- IV. *That the Central Board of Direct Taxes (CBDT) may be directed to disclose information about all assets of the Respondent nos. 2 to 6, in their knowledge or possession, for the purpose of freezing and restrain on alienation of such assets;*
- V. *That the Indian Banks Association (IBA) be directed facilitate disclosure of the details of the bank accounts, lockers owned by the Respondent Nos. 2 to 6 and such bank accounts and lockers also be frozen with immediate effect;*
- VI. *That the Petitioner may be permitted to write to the State Government(s) and the Union Territories to identify and disclose all details of immovable properties owned/held by the Respondent Nos. 2 to 6;*

- VII. *That all movable and immovable properties of Respondent No. 2 to 6 including bank accounts, lockers, demat accounts including jointly held properties be attached during the pendency of the company petition.*
- VIII. *The Petitioner seeks the leave of the Hon'ble Tribunal to enlarge the scope of the reliefs sought and prayers made in this petition by filing any other documents or applications in view of the extraordinary nature of the circumstances pertaining to the present petition; and*
- IX. *The Hon'ble Tribunal may grant any other order(s); reliefs as deemed fit in the interest of justice and fairness.*

The Petitioner has also prayed for final reliefs as contained in the Petition.

The UoI is represented by Shri Sanjay Shorey, Director (L&P), MCA who argued for the Petitioners, supported by Director General of MCA, Mr. M. M. Juneja, RD of Western Region, Mumbai Mr. M. P. Shah and Jt. Director of Western Region, Mumbai, Mr. Rakesh Tiwari.

Though this Petition figures the Respondent No.1 as Videocon Industries Limited and Seven Other Companies, the order is sought to be passed in all the Petitions as mentioned in the above cause title with regard to the seven other companies, individuals and KMPs.

Before we proceed to discuss the merits of the Petition, we would like to make it clear that the Union of India had made all the possible efforts to serve the copy of this Petition, also with regard to the other companies to all the Respondents either by email or by delivering physical copies or by post. Some of the Respondents have received the copy and some have not received the entire paper book and hence they have stated to be not in a position to defend the matter in any manner, as of now and requested for the adjournment. Adjournment denied.

As regards the contention raised in the petition, mainly concerning the aspects of mis-management with regard to the funds and revenues of the companies, it is clear from the pleadings that the balance sheets of the flagship company, i.e. Videocon Industries Ltd., the reserves and surplus as declared in the financial statements in the year 2014 as Rs.10,028.09 crores (in December, 2014) and the same is declared as Rs.(-)2,972.73 crores in the F.Y. ended 2019, showing the steep downfall in the reserves and surplus just within the period of five years. The same is the case when it comes to secured loans wherein it is declared as Rs.20,149.23 crores in the year 2014 and the same increased to Rs.28,586.87 crores in the year 2019, showing a steep rise in the loan component.

Coming to the investment in the year 2014, the Company recorded Rs.5,626.93 crores and the same is increased to Rs.9,635.75 crores, showing a rise in the investment but according to the Petitioners, the amount so invested by the Company is, in fact, dead investment which ought not to have been made by the company in any prudent manner, in view of the accumulated / loans resulting into depletion of networth of the company. This is also reflected in the adjusted Profit and Loss Account wherein in 2014, it is shown as Rs.3.04 crores and the same is shown as Rs.(-)5,347.41 crores in the year March, 2019, which indicates the company's performance as completely derailed and the final networth of the company has become negative.

It is also made to note that the operating income is shown as Rs.18,967.60 crores in the year 2014 which has come down to just Rs.906.60 crores in the year 2019. Copy of the Annual Accounts for 2016-17 and 2017-18 which are marked as Annexure 3, clearly shows that the promoters hold 40.59% share capital of the company out of which 98.16% of their equity is pledged with various financial institutions and banks. This particular information is available from the records of Bombay Stock Exchange which has been tabulated clearly in the Petition. Thus it is evident that the promoters have hardly any financial interest left in the company.

Subsequently, when the Banks realised that the final networth of the company has completely eroded, the State Bank of India which is the lead Banker has filed a Petition under Section 7 of the IBC, 2016, against the Respondent Company on 01.01.2018. After hearing the contentions of the Petitioners, the CIRP was initiated by the orders of this Bench on 06.06.2018. The point to be noted very importantly is that nobody from the Respondent company had come forward to oppose the said petition, even though the notice have been served on them and sufficient opportunity has been given to them.

At one point of time when the hearing has taken place, this Bench also noted the fact that the Respondent Company has stated that there is no defence and has supported the Petition for initiation of CIRP. Further, vide orders dated 8.8.2019, this Bench had passed orders consolidating the IBC proceedings which were pending in other benches which also include the above named companies.

Subsequently, this Bench vide its order dated 08.06.2021 in the Company Petition No.2(MB)/2018, interalia, approved the resolution plan. It is important to note that while the CIRP process was on, the Resolution Professional has filed application under Section 43 and 66 of the IBC, 2016, making serious allegations against the promoters. Subsequently, the transaction audit was conducted for the period from 06.06.2016 to 06.06.2018 in which there are several serious acts of mismanagement on the part of erstwhile management/promoters had come out. In the transaction audit, the Auditor had clearly noted that out of the receivable to Respondent No.1 from 36 entities, aggregating to Rs.2,891.3 crores, an aggregated amount of Rs.1,209.25 crores was settled against the amount payable by Respondent No.1 to the 19 entities as per the table contained below:

Sr. no.	Receivable Entity	Receivable Amount (INR Crores)	Payable Entity	Payable amount adjusted (INR crores)
1.	Universal Digital	513.29	Dome-Bell Electronics(I	90.18

	Connect Ltd. ("UDCL")) P. Ltd.	
			Value Industries Ltd.	47.25
			Videocon Realty & Infrastructures Ltd.	46
			Millennium Appliances (I) Ltd.	20
			Applicomp India Ltd	17
			Techno Electronics Ltd.	16
			Videocon D2H Limited	4.34
	UDCL SUB-TOTAL	513.3		240.78
2.	Joshua Properties & Finvest Pvt. Ltd. ("JPFPL")	185.35	Hindustan Oil Ventures Limited	116.75
			Recharge Express Private Ltd.	68.75
	JPFPL SUB-TOTAL	185.35		185.5
3	Indian Refrigerator Company Ltd.	386.05	Videocon Realty & Infrastructures Ltd.	143
4	Veronica Properties P.L.	137.56	Videocon Realty & Infrastructures Ltd.	137.2
5	Videocon D2H Limited	93.83	Trend Electronics Ltd.	97.95
6	Unity	80.35	Dome-Bell	80.35

	Appliances Pvt. Ltd.		Electronics (I) P. Ltd.	
7	Tecorno Properties & Finvest Pvt. Ltd.	47.48	Recharge Express Private Ltd.	47.25
8	Tekcare India Private Ltd.	318.18	Videocon Realty & Infrastructures Ltd.	47.25
9	Vissanji Estate Pvt. Ltd. (As on 30 Junc2L)1R)	32.52	Recharge Express Private Ltd.	3.52
10	Gran Electronics Pvt. Ltd. ("GEPL")			
	As on 31 March 2018	46.74	Techno Electronics Ltd.	29
	As on 30 June 2018	15.23	Recharge Express*. Private Ltd.	25
	GEPL Sub – total	61.97		54
11	Hollyhoek Investments Pvt. Ltd.	25.63	Dome-Bell Electronics P. Ltd.	25.63
12	Hindustan Oil Ventures Limited	21.76	Recharge Express Private Ltd.	.25
13	AutoCars	21.81	Lioine-Hell Electronics (II) P.Ltd.	21.81
14	Ramkrishna Reality Pvt.Ltd.	11.74	Recharge Express Private Ltd.	>1.75
15	The Invex Pvt. Ltd.	11.67	Videocon Realty	11.75

			Infrastructures Ltd.	
16	H1 Housing & Infrastructures Pvt Ltd.	8.92	Videocon Realty & Infrastructures Ltd.	8.92
17	Platinum Appliances P.L.	7.08	Electro Parts(India) Pvt. Ltd.	7.08
18.	KBS Realtors Pvt. Ltd.	112.05	Videocon Realty &: Infrastructures Ltd.	5.5
19.	Electro Parts (India) Pvt. Ltd. (EPIPL)	6.03	Green field appliance Pvt. Ltd.	4.48
20			Shree Dhoot Trading and Agency Ltd.	0.6
			Joshua Properties & Finvest Pvt. Ltd.	0.15
	EPIPL sub total	6.03		5.23
20	Kail Ltd.	1,209.43	Value Industries Ltd.	5
21	PE Electronics Limited	235.54	Techno Electronics Ltd.	4
22	Instant Retail India Ltd.	3.44	Recharge Express Private Ltd.	3.5
23	Force Appliances P.L.("FAPL")	302.62	Agnijwala Electronics Suppliers	1.48
			Sycamore Grow more Pvt. Ltd	0.12
	FAPL SUB-TOTAL	302.62		1.6
	Giriganga		Dome-Bell	

24	Investment	1.58	Electronics(I) P. Ltd.	1.58
25	Videocon Realty Pvt. Ltd.	3.77	Videocon Realty & Infrastructur es Ltd.	1.25
26	Techno Kart India Limited	129.66	Techno Electronics Ltd.	1
27	Videocon Developers Ltd	0.52	Videocon Realty & Infrastructur e Ltd.	0.55
28	Redmond Properties & Investments Pvt Ltd.	0.52	Dome-Bell Electronics (I) P. Ltd.	0.52
29	Videocon Power Ltd	0.4	Dome-Bell Electronics (I) P. Ltd.	0.4
30	Nucleus Energy Pvt, Ltd,	0.88	Videocon Realty & Infrastructures Ltd..	0.35
31	Videocon Infinity Infrastructure Pvt. Ltd.	0.28	Videocon Realty & Infrastructures Ltd.	0.25
32	Pvt Ltd. (WCPL')		Pipavav Energy Pvt Ltd.	0.12
			Tecomo Properties & Finvest Pvt. Ltd.	0.02
			Ramkrishna Realty Pvt. Ltd.	0.01
	WCPL Sub – total	1.39		0.15
33	Rarndil Resorts Pvt Ltd.	0.1	Dome-Bell Electronics (I) P. Ltd.	0.1

34	Instant Energy Pvt Ltd	3.33	Videocon Realty 8Infrastructure sLtd.	0.03
35	Elite Electronic.. Pvt. Ltd.	3.63	Videocon Realty Infrastructures Ltd.	0.01
36	Videocon Energy Limited		ElectroParts (India) Pvt. Ltd.	0
	Grand Total	2,8913		1,209.25

The Auditor was tasked to perform transaction review and identify transactions undertaken by the Respondent No.1 in the review period which fall within any of the following categories:

- (i) Preferential transactions under Section 43 of the Code
- (ii) Undervalued transactions under Section 45 of the Code
- (iii) Extortionate credit transactions under Section 50 of the Code and
- (iv) Fraudulent transactions under Section 66 of the Code.

The entire table as contained above clearly shows that while the receivables amount was Rs.2891.3 crores, the payable amount adjusted was at Rs.1,209.25 crores. The Auditor stated that on inquiring with the Respondent No.1 above settlements, ascertaining whether any approval was sought from the Joint Lender Forum and Board of Directors of Respondent No.1, in reply it was stated the same have been recorded on approval from only Mr. Venugopal Dhoot, Respondent No.2

The Auditor further noted that 46 out of 49 tabled entities as stated in the Audit report, the working for which related to settlement of receivables and payable are entities which are connected as group entities of the Corporate Debtor. The details of the 22 out of 46 entities have been set out by the Auditor in Exhibit 5 read with Annexure 2 to the Audit Report. The relationship between these entities and the Respondent No.1 are tabulated in the Audit Report as below:

S No	Form of disclosure	Count of Entities	Page number of Annual Report FY 2017-18
1	Promoter group entities holding Shareholding in VIL	11	Clause IV (Form no. MGT-9) on page 19 of the Annual return FY 2017-18
2	Obligor entities includes three entities which were also disclosed as 'Promoter group entities' holding shareholding in VIL in Annual report)	8	Note 46 on Page 81 of Annual report FY 2017-18
3	Entities where certain disclosed VIL group entities holed investments	3	Clause III (Form No. Mgt-9) on Page 16 and 17 of Annual report FY 2017-18and Note 4A on Page 102 of Annual report FY 2017-18
Total		22	

The Auditor further discovered that the balance of the 24 entities (out of the 46 entities referred in the para above) were not disclosed as being directly connected or known to the Respondent No.1 in its various Annual Reports.. However, the auditor conducted independent searches on the basis of information and documents available in public domain and learnt that the said 24 entities were connected to the Respondent No.1or the group entities of the Respondent No.1 As per the audit reports, the said entities are as follows:

- (i) Entities which have common directors with certain disclosed Group companies of the Respondent No.1
- (ii) Entities where family member(s) of Respondent No.1 hold directorship positions or hold equity shares in the entities;
- (iii) Entities wherein investments are made by certain disclosed Group companies of the Respondent No.1
- (iv) Entities which share common registered office address of the Respondent No.1

It is further submitted that the details with respect to above findings regarding the balance 24 entities have been included by the Auditor as Annexure 3, Exhibit 6, 7 and 8 to the Audit Report. As per the Audit report, the Auditor made enquiries with respect to the authorisation granted by the Board of Directors of the Respondent No.1 regarding approval of transactions between entities connected/known to the Respondent No.1. In this regard, it is made clear that no such documentation had been provided to the Auditor, which could demonstrate that Respondent No.2 was authorised by the Board of Directors to approve accounting adjustments of such nature, especially where it pertains to related parties or entities connected to Respondent No.1. This is confirmed by email dated 26.3.2019 which is annexed as Exhibit 9 to the Auditor's report.

It is further submitted that owing to the lack of information and documents, the Auditor has stated that it has not been able to establish the appropriateness or the business rationale of the above mentioned transactions. In view of the failure of the representatives of the Respondent No.1 to supply any supportive information or documents, adverse inference must be taken against as these were not undertaken during the 'ordinary course of business'. Further, the auditor too has not made any qualifying remarks in his report vis-à-vis transactions mentioned in Table 1, which goes to show that the auditor's involvement in respect of purported fraud in Respondent Companies.

In the light of the evidences reviewed by the auditor, arguments held and observations of the transaction auditor, the Audit report concludes that the transactions mentioned in Table 1 have had an effect of putting such creditor entities connected/known to the Respondent No.1 (whose payable balances aggregating to Rs.1,209.25 crores have been settled with receivables from other entities) in a beneficial position than they would have been in the event of distribution of assets being made in accordance with Section 53 of the Code. Accordingly, the Auditor has noted that the aforesaid transactions in Table 1 are classified under Section 43 of the Code as preferential transaction.

The conclusive findings of the Auditor, as detailed in para 2.8.1 of Audit Report states that settlement transactions of Rs.1,209.25 crores as depicted in Table 1, have been classified under Section 43 of the Code. Further it has been stated that there is reason to believe that the transactions stated in Table 1 tantamount to preferential transactions within the meaning of Section 43 of the Code. Moreover, the Auditor has ruled out the existence of any reasonable business rationale behind the settlement transactions detailed in Table 1 of the Audit Report.

That on a review of the Consolidated Trial Balance Sheets of the Respondent no. 1 for financial year 2017-2018, the Auditor noted that Rs. 634.67 crores was written off from the Sundry Debtor Account of the Respondent no. 1. The Auditor, pursuant to inquiries with the erstwhile management of the Respondent no. 1, was provided with a list of 967 customers against whom Rs. 634.67 crores stood receivable, which was later written off without any reasonable grounds.

It is also to be noted that the Auditor reviewed the list of 967 customers from whom receivables were due to the Respondent no. 1. It was noted that 7 out of the 967 customers were disclosed under "Promoter/ Promoter Group Entity Holding Shareholding" in the Annual Reports filed by the Respondent no. 1 during the

Review Period. However, the said entities were never disclosed as a subsidiary, joint venture or an associate company of the Respondent.

It is further noted from the arguments of the Ld. Director (Legal & prosecution) Mr. Sanjay Shorey, representing the petitioners that the Auditor conducted review of standalone financial statements of Respondent No. 1 for the financial quarter ended 30.06.2018, wherein it was noted that Rs.1,413.35 crores was written off from the books of Respondent No.1 and the same was reflected under “Exceptional Items”. It is pertinent to note that as per the Audit Report, the write off of advances was recorded on 31.05.2018 in the books of the Respondent No.1, while the actual recording of write off entries was 30.7.2018, after the appointment of the Resolution Professional. It is stated that the auditor was not provided with any express approval from the Resolution Professional for writing off the advances and backdating the same. The written request for such approval were sent to the Respondent No. 1 vide email dated 04.02.2019. The email dated 04.02.2019 is annexed to the Audit Report as Exhibit 33.

It has also been mentioned that the Auditor made several inquiries with the erstwhile management of the Respondent No.1. The writing off of Rs. 931.45 breakup is tabulated hereunder.

S NO	NAME OF THE PARTY	AMOUNT (IN CRORES)
A	Samsung C&T Corp Ltd	424.71
	Samsung C & T Corporation	70.15
SUB – TOTAL (I)		494.86
B.	Shenzhen MTC Co. Ltd (II)	82.34
C.	Top 10 (out of remaining 38) Parties	
1.	Singapore Satori Pte Ltd	64.75
2.	Amarsonic International	46.08

3.	Tgdc Guangdong Display Co Ltd	33.83
4.	Shanghai Asian Development	28.84
5.	Guangzhou Kinte Industrial Co Ltd	25.60
6.	China National Electronics Imp & Exp	16.42
7.	Spice Retail Ltd	13.42
8.	Hongkong Asano Technology Ltd	12.85
9.	Coreach Technology (HK) Limited	10.92
10.	Zxg International (HK) Limited	8.97
SUB - TOTAL (III)		261.68
	Other 28 Parties (VI)	92.57
Total (I+II+III+IV)	931.45	

Basing on the above observations made by the Auditor, the Petitioner states that Respondent No. 1 and other connected declared group entities have not come clean before this Bench which goes to show the prima facie that Respondents were directly involved in the objectionable transactions with regard to the affairs of the Company. This preferential and fraudulent transactions are the same with regard to the other companies as contained in the above cause title. We have also perused the pleadings made in the above said petition wherein the contentions raised by the parties are one and the same and the transaction audit report is also more or less point out fraudulent conduct of erstwhile management. There has been thorough leakages taken place which has got a recurring effect until this day.

This Bench is very cautiously making this statement and emphasising on the fact of the legal position that the transaction audit reports reveal for fraudulent conduct in the companies mentioned in the cause title and their affect felt till this date of filing the petition. The UoI has taken initiative to curtail the acts of

preferential and fraudulent transactions in the best possible manner and the public interest could be better served.

The reason by this Bench to emphasis the word that the affairs of the Companies are being conducted/set to have been conducted earlier/may be conducted in has got a bearing on the argument advanced by the Ld. Counsel Mr. Datta, appearing for R4 in the Petition who contends that Section 241(2) does not apply to this Petition at this point of time because CIRP process has already been initiated and the provisions of Section 14 of IBC as already kicked in.

We will come to the argument on the part of the Respondents later but in order to maintain synchrony of the order, we are only mentioning the above argument.

Now the point for another issue is whether to pass any order under Section 242(2)(m) of the Companies Act, 2013, to intervene or not since the Respondent Counsels are making submissions on the maintainability of the Petition in view of the provisions of Section 14 and 238 of the IBC. We are very cautious of the fact that the argument advances by the Ld. Counsels for the Respondents that the Petitioners have no power under Section 242 has no bearing for the reasons that the provision is very clear which shows that in the event the Central Government is of the opinion that the affairs of the company are been conducted in the manner provided and to protect the public interest it may itself be applied to the petitioner for the order under this chapter. Thus provisions of section 241(2)(m) of the Act are independent and have wide import as evident from IL&FS orders passed by this Bench and the Hon'ble NCLAT.

The argument advanced by the Ld. Counsels appearing for the Respondents that the words used are “the affairs are being conducted”, only indicates present acts but not past acts of Respondent No.1. We with all our little wisdom defer with the contentions raised by the Ld. Counsel of the Respondent, the reason being that the company is very much alive and the present actions are covered within the scope of Section 241(2) of the Act.

The proviso 241(2) “The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this chapter.”

The use of words “are being conducted”, does not mean it does not cover the past acts. It is to be interpreted that the acts so mentioned in the above proviso also indicates past acts of mis-management, the present acts of mis-management and also to contain the future acts, especially when it comes to dealing with fraudulent transactions. In this present case, the company is still in operation under the control of RP and hence all the acts so mentioned are not just past continuous but also present perfect continuous.

Further it is argued that Section 14(1)(a) of IBC which clearly shows that the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law.

The cover under moratorium and the same could not be instituted or proceeded with. This is not a proceedings against the Corporate Debtor but for the Corporate Debtor. We certainly agree that the contention that no suit or proceeding can be instituted against the Corporate Debtors. But here the efforts made by the Union of India is to secure or restore the assets back to the ultimate victims of fraud and it is not any adversarial proceeding that is the proceeding in rem which has initiated by the Government of India to catch hold all the wrong doers and the fraudulent persons. The efforts will continue until the wrong doers are punished and the legitimate persons and their assets are restored back. Adding further to the above analysis, the Petitioner Union of India has made a very categorical submission that they have not sought any relief against any of the corporate debtors in the above list of companies. Having established the prima facie case from the above submission, it is for the Bench to see the balance of convenience and the irreparable loss. The fact that has been brought to our

notice is that the resolution plan as approved by this Bench has been stayed by the Hon'ble Appellate Tribunal and the Hon'ble Supreme Court did not interfere with the same. That means as of now, there is no Resolution Plan and the Resolution Professional's position is restored. It is to be considered that the CIRP process is still on and it means that the company operations would continue under the control of RP. If at all an interim order as sought by the Union of India is not passed, the devastating effect would be that the wrong doers, fraudulent persons would get away and the valuable assets of the companies would get depleted, bringing the irreparable loss to the stakeholders. That means the balance of convenience and the irreparable loss coupled with the prima facie case are absolutely on the side of the petitioners and passing of interim orders in favour of the petitioners is extremely essential in order to protect the public interest and public estate which is intertwined with the estate of the Respondents. In this background of the matter, the Union of India has produced couple of judgements passed by the various authorities and Hon'ble Supreme Court, as stated below:

1	Padmini Technology Limited V/s UOI	Delhi High Court
2	UOI V/s Satyam Computes Services Limited	CLB, Principal Bench New Delhi
3	UOI V/s Gitanjali Gems Limited & Other	NCLT Mumbai Bench
4	UOI V/s Gitanjali Gems Limited & Other	NCLT Mumbai Bench
5	UOI V/s Gitanjali Gems Limited & Other	NCLAT New Delhi Bench
6	UOI V/s D.S. Kulkarni Developers Limited & Other	NCLT Mumbai Bench
7	Gopal Krisshna Karunakaran Nair V/s UOI	Supreme Court
8	UOI V/s Ridhi Sidhi Infraproject Private Limited	NCLT Jaipur Bench
9	UOI V/s Adarsh Through Works Private Limited	NCLT Ahmedabad Bench
10	UOI V/s Sambhav Energy Limited & 13 Others	NCLT Channai Bench
11	Chitra Sharma & Others V/s UOI	Supreme Court

In all these citations, it is very clear that there is ample power to invoke Section 242 of the Companies Act, 2013 at any stage. In this background of the matter, we the Tribunal direct:

- I. *That the Petitioner is permitted to serve the Respondents Through Joint Director working in office of post, publication in the newspapers, email, WhatsApp messaging, wherever required, in order to ensure due service of notice to all Respondents present in India and overseas;*
- II. *That the Respondents (except companies) are immediately directed to disclose on affidavit their moveable and immovable properties/assets, including bank accounts, owned by them in India or anywhere in the world;*
- III. *That the Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) is directed that securities owned/ held by the Respondents (except companies) in any company/ society be frozen, and be prohibited from being transferred or alienation and details thereof be shared with the Petitioner;*
- IV. *That the Central Board of Direct Taxes (CBDT) is be directed to disclose information about all assets of the Respondents (except companies) in their knowledge or possession, for the purpose of freezing and restrain on alienation of such assets;*
- V. *That the Indian Banks Association (IBA) is directed facilitate disclosure of the details of the bank accounts, lockers owned by the Respondents (except companies) and such bank accounts and lockers also be frozen with immediate effect;*

- VI. *That the Petitioner is permitted to write to the State Government(s) and the Union Territories to identify and disclose all details of immovable properties owned/held by the Respondents (except companies);*
- VII. *That all movable and immovable properties of Respondents (except companies) including bank accounts, lockers, demat accounts including jointly held properties be attached during the pendency of the company petition.*

In addition to the above, this Bench is surprised with the manner in which the financial institution has come forward to grant loans to a sinking ship and again come forward to file petition under Section 7 of IBC and again supports this petition. This certainly rises the eyebrows of the common man in the public.

As this Bench is cautious that Union of India is taking steps and also carrying out investigation through SFIO, i.e. Serious Fraud Investigation office to unearth the fraud. We direct the Petitioners to use all the powers available with it to extend their long arm to thoroughly investigate the affairs of the companies in all the above-mentioned Company petitions and others. Unless it is properly investigated as to how the loans were arranged by the corporate debtors the fraud will not be completely be unearthed that a copy of this order may also be shared with Director, SFIO who is already investigating the corporate debtors.

List the matter on 22.09.2021.

Sd/-
(BHASKARA PANTULA MOHAN)
ACTG. PRESIDENT

Sd/-
(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)