

# IBC16's Easy Explainers

## Videocon Industries Limited

### A Background of Videocon Industries Limited ("VIL")

- Founded in 1984, the group branched out from consumer electronics to telecom, oil, and gas.
- The promoters held 62.37% of the shares.
- Videocon Group was a listed company in the National Stock Exchange and the Bombay Stock Exchange.
- VIL claimed that demonetization, late foreign government approvals, and other extraneous circumstances contributed to its stress and eventual collapse.



### Timeline of the Corporate Insolvency Resolution Process ("CIRP")

- [Admission](#) in Greater Public Interest (6th June 2018; NCLT, Mumbai Bench)

SBI, leading the Consortium of Bank Lenders, filed a Section 7 application under the Insolvency and Bankruptcy Code, 2016 ("the Code") on 1 January 2018 to initiate insolvency proceedings against VIL.

VIL argued against the admission of the insolvency application by highlighting the ongoing restructuring negotiations, and business difficulties due to extraneous circumstances.

The Adjudicating Authority held that the non-payment of Videocon's debt and its classification as NPA by the Consortium of Bank Lenders constituted a default. Consequently, the Adjudicating Authority admitted the insolvency application and imposed a moratorium, to prevent detriment to VIL's estate for the benefit of all the stakeholders.

A dramatic turn of events led to the Adjudicating Authority noting down that the VIL management requested their counsel to not "vehemently oppose" the admission in the public interest.

- **Denying the Government its Own Asset** (13th March 2019; NCLT, Principal Bench, New Delhi)

The Ravva Production Sharing Contract (“PSC”), enabled the Government to recover dues from VIL in the name of “Profit Petroleum”.

The PSC was aimed at developing offshore fields in the Bay of Bengal for the production of crude oil; however, crude oil is a natural resource held in public trust by the government.

Through this technicality, the Government claimed that it is simply asking for its own asset, and tried to unsuccessfully circumvent the moratorium.

The NCLT upheld the validity of NCLT Mumbai’s order dated 06.06.2018, which imposed a moratorium, and denied the Government its asset; thereby favoring the scheme of the Code.

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- **To Consolidate, or Not to Consolidate?** (8 August 2019; NCLT, Mumbai Bench)

The applicant's financial creditor and an erstwhile promoter, through the title of Guarantor, approached the NCLT Principal Bench, New Delhi, to consolidate the multiple insolvency proceedings for logistical ease. However, not all the creditors who initiated the insolvency resolution proceedings against related corporations of VIL were in favor of consolidation.

Consolidation of insolvency proceedings involving related entities has not been statutorily tackled by the Indian insolvency regime. However, a tribunal can disregard separate corporate entities, if consolidation leads to logistical ease and a better resolution.

The court relied heavily on global jurisprudence, and by balancing the competing considerations: opted for consolidation of 13 out of 15 related entities of VIL – excluding two, citing their ability to function on their own. Additionally, due to the extraordinary circumstances, the timeline prescribed under Section 12 of the Code started on the date of this order.

- **The Objective of CIRP [Prevails](#) over the Rights of Financial Creditors** (12 February 2020; NCLT, Mumbai Bench)

Special Purpose Vehicles set up only to acquire the oil and gas assets were under the direct control of VIL. The assets were also bought in the name of VIL. Therefore, VIL wanted to include the oil and gas assets acquired through the SPVs to the common pool of assets, to facilitate a successful resolution.

However, SBI contended that those assets could not be included in the common pool as the Guarantor (VIL) would unduly benefit from the same. Further, that the financial creditors are the main decision-makers of the CIRP process and VIL has no locus standi to request for pooling of these assets.

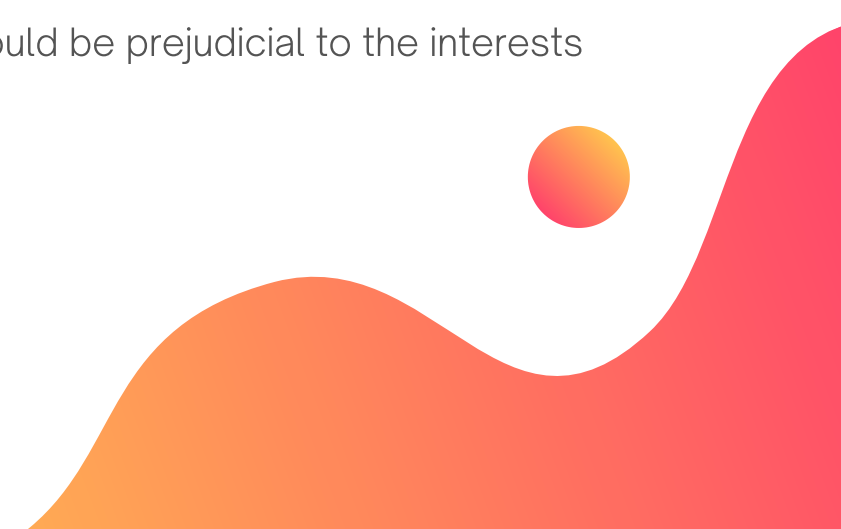
SBI wanted to improve its own chances of recovery by excluding these assets from the common pool. However, the NCLT dismissed SBI's self-serving assertions by reiterating the actual objective of CIRP, the benefit of all the stakeholders involved.

Therefore, the NCLT allowed the inclusion of the oil and gas assets in the common pool by determining the nature of the SPVs as related entities, on the basis of the elaborate test laid down in the [consolidation](#) order.

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- **The NCLT [enables](#) physical GST compliance during CIRP, as the pre-CIRP period's non-payment of dues renders the e-service inaccessible to the Corporate Debtor.** (27 February 2020; NCLT, Mumbai Bench)

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- **A Moratorium Does Not Afford [Absolute](#) Protection** (7th October 2020; NCLT, Mumbai Bench, Special Bench-II )

The Department of Telecommunications issued a notice to VIL to clear the outstanding dues. However, the RP contended that the moratorium wouldn't allow such a recovery, as it would be prejudicial to the interests of all stakeholders involved.



The Code excludes a bank guarantee from the purview of “security interest”, which VIL had availed to conduct business with the Department of Telecommunications. A bank guarantee is generally not intervened with and is also not covered by Section 14 of the code.

Hence, the NCLT dismissed the RP’s contentions, and validated the notice recovering outstanding dues, as the same was backed by the bank guarantee availed by VIL in favor of the Department of Telecommunications.

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- **The Resolution [Plan](#): Dangerously Subverting Claims** (8th June 2021; NCLT Mumbai Bench)

11 Resolution Applicants submitted their plans before 31st August 2020. The Committee of Creditors found two resolution plans compliant with the Requirements for Resolution Plan. The resolution applicants were V-Shape Investment Management Limited and Twin Star Technologies Limited.

The resolution plan of Twin Star Technologies Limited prevailed with approval by a majority of 95.09% of the voting share of the Committee of Creditors. The plan was of the amount of 2962.02 crores, which caused the creditors to sustain a significant haircut of 95.85%.

Further, the NCLT was particularly distressed with the treatment according to the claims of operational creditors, the majority of whom were MSMEs. The resolution plan allowed this class only 0.72% of their admitted claim amount. Fearing their insolvency, the NCLT suggested and requested the CoC and the Resolution Applicant to increase the amount allocated to them.

Additionally, the amount of the accepted resolution plan was suspiciously close to the liquidation value set by valuers. This is concerning, as the liquidation value and the fair market value of the debtor’s operation are confidential, so as to invite a higher bid. This turn of events led the NCLT to consider the operability of the confidentiality clause, and request the Insolvency and Bankruptcy Board of India for their regulatory intervention.