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ANNEXURE-A-3

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Reserved on: 18th July, 2017
Pronounced on: 28th July, 2017**

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CO.PET. 446/2013

CITICORP INTERNATIONAL LIMITED

..... Petitioner

versus

SHIV-VANI OIL & GAS EXPLORATION

SERVICES LTD

..... Respondent

Presence : Mr.Rajiv Nayyar, Sr. Adv. with Mr.Ashish Mukhi, Adv. for petitioner in Item No.1
Mr.Sandeep Sethi, Sr. Adv. with Mr.Neeraj Yadav, Adv. for applicant in CA Nos.1053 & 1055 of 2017
Mr.Sahil, Adv. for Edelwiss ARC Ltd.
Mr.Sarat Chandra, Adv. for petitioner in item No.3 and 39
Mr.Atul Sharma, Mr.Nitesh Jain and Mr.Shubham Mahajan, Advs. for SBI Capital
Ms.Padma Priya, Adv. for petitioner in item No.8
Mr.Arvind Kumar, Adv. for R-2 to 9 in item No.39
Mr.Padam Singhal, Mr.Prem Singhal & Mr.E.S.Rao in person.

CORAM:

HON'BLE MR.JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The petitioner company is engaged in the business of providing corporate trustee services. The respondent company was incorporated to deal in instrumentation, handling equipment, software and chemicals related to drilling fluids etc as given in its memorandum of association and to do such other business activities.

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2. The company is indebted to the petitioner in its capacity as Trustee on behalf of the Bond-Holders for an aggregate sum of USD 84,100,000.33 which represents a gross yield of 5.74% per annum, inclusive of the July Interest calculated on a semi-annual basis along with such amount which continues to increase on a daily basis until the Relevant Date (as defined in the Conditions of the Bonds) and is due in accordance with such Conditions.

3. The petitioner has filed this Company Petition in its capacity as a Trustee, on behalf of the holders of the Bonds. The petitioner is well within its right to take legal action to enforce the Bonds if Bond Holders of at least 25% in principal amount of the Bonds then outstanding instruct it to do so if it is indemnified and/or secured to its satisfaction. The petitioner had been duly indemnified / secured to its satisfaction and has been instructed by the Bond Holders by over 25% of the Bonds outstanding to file this petition.

4. The respondent company had offered USD80,000,000, 5% Convertible Bonds due on 17.08.2015, per its offering circulars dated 08.07.2010 and 16.07.2010. The Bonds were issued at 100% of its principal amount on 08.07.2010 and the company agreed to and so redeem the Bonds at maturity date @ 104.34% of the principal amount together with interest thereon at the rate of 5% pa.

5. The respondent company entered into a Conversion Agency Agreement dated 16.07.2010 with Citi Bank, NA acting through its London Branch at its specified office at London appointing the principal agent to act as the paying agent, the conversion agent and the transfer

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agent in respect of the Bonds and appointing Citigroup Global Markets Deutschland AG as the Registrar.

6. The respondent company entered into a Trust Deed dated 16.07.2010 with the petitioner and appointed the petitioner as the Trustee in respect of said Bonds. The Trust Deed contains numerous covenants including No.2.2 wherein the respondent company covenanted two Business Days prior to any date when the Bonds or any of them become due to be redeemed in accordance with the terms and conditions of Bonds to unconditionally pay or procure to be paid to or to the order of the Trustee in USD in immediately available freely transferable funds, the principal amount of the Bonds becoming due for redemption or repayment on that date, together with any applicable interest and premium (if any).

7. Under Condition No.5.1.1, the respondent was under an obligation to pay the principal, premium or interest due @ 5.0 % pa calculated by reference to the principal amount of the Bonds, payable semi-annually in arrears on 16th January and 16th July in each year; to the principal agent at least two business days prior to the relevant due date for payment.

8. The respondent company was therefore required to pay interest in the amount of USD2,000,000 on 16.07.2013 -- which it failed to pay. Consequently, the petitioner in the capacity as Trustee sent a notice dated 31.07.2013 (after expiry of the 14 days grace period as per the conditions) intimating the respondent that an "Event of Default" had accrued and calling upon to make a payment of USD 84,100,000.33 and noted that such amount is to continue to increase on daily basis in

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accordance with the Conditions of the Bond until the Relevant Date. The proof of service of the Notice Of Default dated 31.07.2013 is annexed. As per terms and conditions of the Bonds and Trustee Deed, the entire accreted Redemption Amount pursuant to an Event of Default becomes due and payable. In spite of receipt of Notice of Default the respondent company did not make any payment under the Trust Deed and Bonds.

9. As per the Annual Report for the financial year ended on 31.03.2012 the respondent company has acknowledged a figure of INR 4,092,520,000 under the caption 'Long Term Borrowings' which represents the amount due under the Bonds. Further, as per the Annual Report of the company for the financial year ended 31.03.2011 the company has acknowledged a figure of INR 3,572,000,000 under the caption 'Unsecured Loans' which represents the amount due under the Bonds. Copies of Annual Reports are annexed and amount to an unconditional admission of the company's liability *inter alia* under the Bonds outstanding as at the respective dates.

In spite of admitting its liability to make the payments under the Bonds, the company has failed/neglected to discharge its unconditional, absolute or irrevocable obligation to make the payment under the Trust Deeds and the Conditions. Hence, Demand Notice dated 01.08.2013 under Section 434 of the Companies Act was served upon the respondent company. The respondent vide its letter dated 07.08.2013 admitted the receipt of the Notice of Default and Statutory Demand Notice and also admitted its liability to pay the July Interest and proposed to make the payment only towards July Interest and not the amount which was now due and payable following the default. Moreover, the company did not set out

any timeline or plan for payment of July Interest. The petitioner also came to know from corporate announcement dated 01.07.2013 on the Bombay Stock Exchange & National Stock Exchange 16 days prior to the due date of payment of July Interest; that the respondent company had initiated discussions with its lenders to restructure its debt through Corporate Debt Restructuring Mechanism (CDR) it is thus evident that the respondent company is unable to pay its debt under the Bonds to the petitioner and hence the petitioner seeks winding up of the responding company.

10. It is also alleged that the company in its meeting held on 10.07.2013 with some of the creditors had admitted of its tight financial position and need to restructure its existing debt. The company has the service tax liability to the tune of ₹2,00,00,00,000/- as on 31.03.2013. The total debt of the respondent has increased from ₹5,87,00,00,000/- to ₹6,22,00,00,000/- from the Financial Year 2012 to Financial Year 2013. The company did not inform to the Bond-holders about the CDR process which could directly affect the dues owed to the Petitioner on behalf of the Bond-holders. The company in its Consolidated Unaudited Financial Results for the quarter ended on 30.07.2013 released on Bombay Stock Exchange has mentioned about the CDR process and filed Flash Report with CDR cell, Mumbai on 28.06.2013.

Further the respondent in its Notes to Accounts has admitted "drastic decline" in its turnover and is in a bad financial state, providing a strong basis to the fact that its unable to pay its debt. The petitioner also apprehend that the respondent company under the guise of CDR, is attempting to enter into private arrangements with the specific creditors whereby certain benefits are being offered to the said creditors for the

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purpose of restructuring of debts and is trying to have CDR package without the consent of the petitioner and without making the petitioner a party therein.

11. The respondent company in its reply has admitted the debt but cited reasons beyond its control; viz. prevalent financial market conditions which led to its failure to comply with the obligations to pay interest amount falling due on 16.07.2013. The respondent company admitted that it is faced with severe liquidity problem in view of downfall in industry & hence proposed a CDR Scheme with all its secured lenders & 75% of them have accepted the scheme i.e. 17 banks /financial institutions/companies out of 22 of them in principle have approved the said CDR mechanism and if it is allowed the Respondent may have a chance to revive and grow. However admittedly no such scheme has been formulated as yet.

12. Admittedly, the respondent company has no business at present but has applied for two contracts by giving bids and is hopeful to get those contracts of Indian Oil Corporation, though admittedly is functioning with only 14-15 employees and has liability more than ₹600 Crores and that its net worth has become negative. Besides the above, on 11.02.2014 a judgment was passed by the High Court of Justice Queens's Bench Division, Commercial Court, London directing the respondent company to pay the amount due under the Bonds.

13. On 07.11.2014 an additional affidavit was filed by the respondent company wherein it admitted its liability to repay under the Bonds. This Court vide order dated 11.05.2017, as a matter of last opportunity directed the respondent to place on record an affidavit giving the mode and manner

in which it will repay its admitted outstanding liability towards petitioner and also to demonstrate its ability to repay admitted amount. On 14.07.2017 the respondent filed an additional affidavit but nothing was stated as to how it is going to repay the debt owed to the petitioner or ever demonstrated its ability to repay.

14. Further though respondent contended of paying only interest, but acceptance of such payment after default may require an amendment to the express terms of the Trust Deed as per the procedure prescribed, contained under Condition 14.2 of the Trust Deed but however, even this contention cannot be accepted now in view of the judgment passed on 11.02.2014 but the High Court of Justice Queens's Bench Division, Commercial Court, London. The court had rather directed the respondent to pay USD 84,100,000.33 (along with default interest & costs).

15. The CDR scheme as proposed, even otherwise, is not binding upon the petitioner or the Bond Holders since they have never approved of such a scheme. The petitioner in its own right as a creditor, being the Trustee in respect of the Bonds has a locus to file this petition and considering the financial deterioration of the company as is shown in the record submitted and also is out of business and is merely speculating of getting more contracts from ONGC despite having being blacklisted by it from January 2013 till the end of 2014, do show that it had failed in its business. The TEV Report which forms the basis of CDR Scheme too is based on assumptions, caveats or benefits which are largely theoretical.

16. In its reply dated 21.08.2013 to the legal notice, the respondent did not dispute the allegations of the petitioner. Thus considering the huge debt

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liability of the respondent company coupled with the fact it is out of business and is pulling with scant number of employees, having a negative worth; there is no reason why the petition be not admitted against it.

17. Consequently, the petition is admitted and the Official Liquidator attached to this Court is appointed as the Provisional Liquidator. He is directed to take over all the assets, books of accounts and records of the respondent-company forthwith. The citations be published in the Delhi editions of the newspapers 'Statesman' (English) and 'Veer Arjun' (Hindi), as well as in the Delhi Gazette, at least 14 days prior to the next date of hearing. The cost of publication is to be borne by the petitioner who shall deposit a sum of ₹75,000/- with the Official Liquidator within 2 weeks, subject to any further amounts that may be called for by the liquidator for this purpose, if required. The Official Liquidator shall also endeavour to prepare a complete inventory of all the assets of the respondent-company when the same are taken over; and the premises in which they are kept shall be sealed by him. At the same time, he may also seek the assistance of a valuer to value all assets to facilitate the process of winding up. It will also be open to the Official Liquidator to seek police help in the discharge of his duties, if he considers it appropriate to do so. The Official Liquidator to take all further steps that may be necessary in this regard to protect the premises and assets of the respondent-company.

18. In addition, the directors of the respondent-company shall file their statement of affairs within 21 days from today before the Provisional Liquidator. It is made clear that in the event the said statement of affairs

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is not so filed within the specified time, the concerned Directors, including the Managing Director of the respondent-company, shall remain personally present in Court on the next date of hearing, in order to enable this Court to examine them, if required, on that date.

19. Respondent company is directed to file an affidavit before the Provisional Liquidator hereby appointed, within two weeks from today, furnishing the following details:-

- (i) The names and address of the Managing Director and Directors of the respondent-company.
- (ii) Latest address of the registered office and corporate office of the Respondent Company.
- (iii) The location of the books of accounts of the respondent-company.
- (iv) The details of the movable and immovable assets of the company and the details of the Bank account operated in the name of the respondent company and statement of account thereof.

20. The respondent-company, as well its directors, are restrained from alienating, encumbering, or otherwise parting with possession of the assets of the respondent-company without the leave of this Court. The Official Liquidator shall file a compliance report before the next date of hearing.

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21. A copy of the petition along with annexures be supplied to the Official Liquidator.

22. List on 13th December, 2017.

YOGESH KHANNA, J

JULY 28, 2017

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