

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO.-II  
KOLKATA**

**C.P. (IB) No 4/KB/2019**

*An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016*

**In the matter of:**

**J.M. Financial Asset Reconstruction Company Limited** .....**Financial Creditor**

*Versus*

**Howrah Mills Company Limited** .....**Corporate Debtor**

**AND**

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read along  
with Rule 11 of the NCLT Rules,2016*

**In the matter of:**

**Abhinandan Holdings Private Limited** .....**Applicant/Intervener**

**Date of Pronouncement:25.01.2024**

**Coram:**

**Shri Bidisha Banerjee, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (Physically/ via video conference)**

Mr. Vikram Wadhera, Adv. ] For the Financial Creditor

Mr. Indradeep Basu, Adv. ]

Mr. Mayukh Roy, Adv. ]

Mr. Abhrajit Mitra, Sr. Adv. ] For the Corporate Debtor

Mr, Dhirendranath Sharma, Adv. ]

Ms. Madhuja Barman, Adv. ]

Mr. Joy Saha, Sr. Adv. ] For the Abinandan Holidays (P) Ltd.

Mr. Shaunak Mitra, Adv. ]

Mr. Rishav Banerjee, Adv. ]

Mr. Patitia Paban Bishwal, Adv. ]

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. This Court is convened through hybrid mode.
2. Sr. Counsels/ Counsels were heard.
3. The Brief Background:
  - 3.1 The J.M. Financial Asset Reconstruction Company Limited, (JMFARC in short) the **Financial Creditor ('FC')** had preferred this Company Petition to initiate CIRP against Howrah Mills Company Limited the **Corporate Debtor ('CD')** under Section 7 of Insolvency and Bankruptcy Code, 2016.
  - 3.2 Upon execution of a deed of Assignment of Financial Assets of the borrower Howrah Mills, executed between the intending Assignor the JMFARC and intending Assignee Abhinandan Holdings, on 15.01.2020, and in compliance of the terms thereof, the FC JMFARC preferred I.A. 123/KB/2020 to seek withdrawal of the C.P. (IB) No. 4/KB/2019, with liberty to pursue it in the event of default by Abhinandan Holdings Pvt. Ltd, the intending assignee.
  - 3.3 By an order dated 23rd January, 2020, this Adjudicating Authority allowed withdrawal of the CA (IB) No. 123/KB/2020, with the following order:

*“Ld. Sr. Counsel for the financial creditor appears. Ld. Counsel for the corporate debtor appears. Both of them submitted that matter is settled. For this purpose, CA(IB) 123/KB/2020 is filed for recording settlement. In view of this, this proceeding stands disposed of with liberty to the financial creditor to get the matter revived, if the settlement fails. CP along with all the CAs stand disposed off.”*
  - 3.4 The settlement with Abhinandan having failed the FC JMFARC preferred a Restoration Application being RST.A..842/KB/2020. The CD Howrah Mills objected to the revival of the main Company Petition against it. This Tribunal however allowed restoration on 02.02.21.
  - 3.5 Aggrieved with the order of restoration of the CP, the CD Howrah Mills moved the Appellate Tribunal. In its order dated 11.1.23 in Company Appeal (AT) (Insolvency) No. 339 of 2021, the Appellate Tribunal noted the following: (quoted verbatim herein below with emphasis for clarity)

- (1) “that there was an agreement to assign the debt of Howrah Jute Mill Limited between Abhinandan Holding (NBFC) and JM Finance (ARC) dated 15.01.2020 makes Abhinandan Holding a necessary party but despite the same it has not been made a party by JM Finance before the - Adjudicating Authority when the main prayer is against Abhinandan Holding (AHPL).”
- (2) “The Adjudicating Authority failed to appreciate that the third-party rights will be affected and it is not possible to hold default against the said assignee/AHPL to be a party to the restoration application.”
- (3) “The adjudicating Authority has passed the impugned order on the basis of a prima facie satisfaction that there is default on the part of the assignee based on the rejection letter dated 2nd March, 2020, not taking into account the fact that the same letter is under challenge in a Civil Suit being T.S. No. 22 of 2021 which was filed by AHPL against the Respondent and the Appellant before the learned Howrah Commercial Court. Therefore, the embargo under Section 238 of the Code 2016 could not have been made applicable.”
- (4) “On 29.09.2021, Civil Court passed an order of injunction restraining the defendants in the suit which included the Respondent from giving any effect to the document/revocation letter dated 2nd March, 2020 The stay was continued vide order dated 03.12.2021 The application for revival was thus non-est and could not have been entertained.”
- (5) “Clause 7.4.5 of the Agreement dated 15th January, 2020 the Respondent had agreed to keep in abeyance all the legal proceedings and actions AHPL upon receipt of 25% of the consideration mentioned in clause 1(d) of the said agreement.”
- (6) “Under the said agreement to assign which was entered into between AHPL and Respondent herein, AHPL had undertaken to take over the financial assets of the Appellant from the Respondent.”
- (7) “The particulars of the financial assets have been mentioned in Schedule-I of the said agreement which includes creation of charge over fixed assets of the Appellant and all the piece and parcel of land containing estimation an area of 95 Bighas, 1 Kottah, 1 Chittack, 20 Square Feet (more or less),

situated in Mouja, Bage Shibpur and partly, Mouja, Ramkrishnapur, PO and PS Shibpur, forming municipal holding number 493/C/A and 493/C/BG.T. Road, Howrah. In addition to the above, inter alia, charge over the plant and machinery and fixed assets of the Respondent lying at the property has to be assigned in favour of the Respondent by AHPL in terms of the said agreement to assign dated 15th January, 2020.”

- (8) “The sum and substance of the said agreement which would be evident from a meaningful reading of all the terms is that AHPL and its management is to take over the Appellant Company once 25% (or more) payment in terms of the said agreement is made.”
- (9) “that according to the Respondent the third-party assignee defaulted in making payment under the aforesaid Agreement after having paid the first instalment of Rs. 6.50 crores being 25% of the amount agreed between the Respondent and AHPL. In the Agreement to Assign dated 15th January, 2020, there is no mention or provision of the purported liberty on the part of the Respondent to continue legal proceedings against the Appellant, however, despite the same the Respondent filed the revival application and obtained the impugned order by suppressing the foregoing crucial material facts which unequivocally establishes that there is not admitted crystallized debt and the application was pre-mature and liable to be set aside”
- (10) “In 'Mahendra Trading Vs. Hindustan Controls and Equipment Pvt. in Company Appeal (AT) (Insolvency) No. 97 of 2018' it was held that existence of an admitted debt is sine qua on for initiation of CIRP.”
- (11) “the order of admission of CIRP in respect of a financially going concern which provides livelihood to over 3000 workers and innumerable farmers in the markets is contrary to the true intent of the IBC.”
- (12) “that after paying 7.5 crores by AHPL to Respondent and agreeing to a rescheduled payment schedule the Respondent has waived its right to the purported termination dated 02.03.2020.”
- (13) “In AHPL's case, the default, if any, happened after 25th March, 2020.”
- (14) “Inasmuch as the Respondent had waived the earlier default and the time for repayment under the said agreement was extended as would be evident

from the Respondents letters dated 12th March, 2020, 29th June, 2020 and 08th July, 2020.”

- (15) “this Tribunal should consider directing the Respondent to settle the alleged debt invoking the pre-pack scheme in light of the Judgment of the Hon'ble Supreme Court in 'Swiss Ribbons Vs. Union of India, 2019 SCC OnLine SC 7' wherein it held that the intent of the IBC to resolve and revive a corporate debtor and thereby significantly reinforces the efforts of the creditors and other stakeholders to achieve such end.
- (16) “The Assignee Abhinandan Holdings is willing to pay the balance amount of Rs. 18.51 crores to the Respondent No. 1 within 60 days as per its letter dated 12.10.2022”
- (17) “that the Assignee 'Abhinandan Holdings Private Limited' moved before the Commercial Court and obtained injunction order in the Court of Neyaz Alam, Judge, Commercial Court at Rajarhat, North 24 Parganas vide order dated 29.09.2021 in [T.S.-22/21 (CC) (CNR No. WBNP19- 000000-2021) J.O: WB01398], therefore, proceeding before the Adjudicating Authority in RST. A. No. 842/KB/2020 in CP (IB) No. 04/KB/2019 was stayed.”
- (18) “In view of the order of injunction passed by a civil court on October 20, 2020 when there was no proceeding pending under the IBC, the financial creditor/Respondent No. 1 herein could not have relied upon the revocation letter dated 2nd March, 2020 as part of its restoration application which was filed before the Adjudicating Authority. The order dated 20th October, 2020 is subsisting, the financial creditor remains enjoined to rely upon the purported revocation letter.”
- (19) “The financial creditor in course of hearing of the restoration application before the Adjudicating Authority did not bring to the notice of the Adjudicating Authority the relevant communications which were exchanged between the assignor and the assignee post the revocation letter which includes the communications dated 12th March, 2020, 29th June 2020, 06th July 2020 and 08th July 2020 and hence an incorrect impression was given before the Adjudicating Authority by the financial creditor as if to suggest that there has been a purported default on the part

of the AHPL/assignee. AHPL ought to have been added as party Respondent in the restoration application and the impugned order could only and be heard thereafter.”

Having thus noted that Abhinandan was a necessary party before this Adjudicating Authority, but it was not impleaded, the Hon’ble Appellate Tribunal passed the following order: “we are of the considered view that no case for setting aside the order dated 02.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) in RST. A. No. 842/KB/2020 in CP (IB) No. 04/KB/2019 is made out as the Section 7 Application bearing CP (IB) No. 04/KB/2019 filed by the Respondent No. 1 was directed to be listed for hearing on 16.03.2021 by the Adjudicating Authority, therefore, there is no ground for interference. However, we dispose of the instant Appeal with request to the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) to hear all the parties i.e., Appellant, Respondent No. 1 & Respondent No. 2 and after hearing the parties, the Adjudicating Authority may pass appropriate orders in CP (IB) No. 04/KB/2019 in accordance with law expeditiously. Keeping in view that the matter is pending before the Adjudicating Authority since 2019, the parties are at liberty to raise all the relevant issues both in fact and in law before the Adjudicating Authority. We have not expressed any view on the merits of the matter and the Adjudicating Authority shall hear the matter afresh uninfluenced by any observations herein.

With the aforesaid observations and directions, the instant Appeal is disposed of.”

- 3.6** Having noted as above, this Tribunal permitted Abhinandan to be impleaded in the Company Petition and to file a reply. Affidavits were exchanged.
- 3.7** The parties were heard at length and records perused.
- 3.8** In terms of the Hon’ble NCLAT’s order as extracted above this Adjudicating Authority is bound to consider afresh the merits of all relevant issues the parties would canvass before it.

**4. The Discernible Facts**

I. An Agreement to assign the debts of Howrah Mills to Abhinandan was executed on 15.01.2020 between the JMFARC the **Intending Assignor** and Abhinandan Holdings Private Ltd the **Intending Assignee**, terms whereof are extracted verbatim hereunder with supplied emphasis, for clarity:

- a) **“Borrower means and Includes Howrah Mills Company Limited to whom financial assistance was extended by the Federal Bank Limited (Bank) (the predecessor-in-interest of the Intending Assignor). The said Loan account was subsequently assigned by the Bank to JMFARC vide a registered Assignment Agreement dated March 30, 2016.”**
- b) **“Financial Assets mean the facilities more particularly described in Schedule I herein below originally availed of by the Borrower from the Bank and now the Intending Assignor under or pursuant to agreements, deeds and/or documents executed therefore all the amounts due to the Intending Assignor by the Borrower in respect thereof, including principal, interest, compound interest and all other monies whatsoever stipulated in, or payable by the Borrower to the Intending Assignor in respect thereof, together with any security interest created to secure the repayment of the same.”**
- c) **“Purchase Consideration means an amount agreed amongst the Parties which shall be the aggregate purchase consideration for the Agreement to Assign the Financial Assets OR means an amount of Rs.26,01,00,000/-, (Rupees Twenty Six Crores and One Lakh Only) being the aggregate purchase consideration for the Loans. The Purchase Consideration shall be paid as per the schedule mentioned below, subject to cure period as stipulated under clause 7.4.2 of this agreement.”**

<b>SR. No</b>	<b>Particulars</b>	<b>Instalment %</b>	<b>Instalment (Rs Crore)</b>
1.	Since Paid	25.00%	6.50
2.	On or before January 31, 2020	17.30%	4.50
3.	On or before February 29, 2020	26.91%	7.00

4.	<i>On or before March 25, 2020</i>	<i>30.79%</i>	<i>6.01</i>
	<b><i>Total</i></b>	<b><i>100%</i></b>	<b><i>26.01</i></b>

***WHEREAS:***

(A) *“The Intending Assignor has expressed its desire to assign to Intending Assignee, the Financial Assets (as hereinafter defined) of the Borrower more particularly described in Schedule Land the Intending Assignee is agreeable to acquire the said Financial Assets.”*

*NOW THEREFORE, in consideration of mutual promises and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:*

***2. ASSIGNMENT***

- (a) *“For and against the Purchase Consideration paid by the Intending Assignee to the Intending Assignor and upon terms and conditions set forth herein, the Intending Assignor hereby agrees to sell, assign and transfer all its rights, title and interest in the Financial Assets to the Intending Assignee/nominee appointed by Intending Assignee and the Intending Assignee hereby agrees to purchase from the Intending Assignor or arrange purchase by its nominee from Intending Assignor, so that the Intending Assignee/ its nominee shall become the full and absolute legal owner and the only person legally entitled to the Financial Assets or any part thereof as defined herein above in the instant agreement.”*
- (b) *“After the payment of Purchase Consideration, the Intending Assignor shall transfer/deliver or cause to be transferred/ delivered to the Intending Assignee / its nominee all such available original loan documents, deeds and/or writings related to Financial Assets.”*
- (c) *“The Parties irrevocably and unconditionally agree that on or before March 25, 2020 (subject to cure period as per clause 7.4.2 of this agreement) the Intending Assignee should make the payment as mentioned in clause 1.d above and the Parties shall enter into a Deed of Assignment / Assignment Agreement on or after receipt of the entire Purchase Consideration by the*

*Intending Assignor as per mutually acceptable terms and conditions to complete the transaction envisaged herein.”*

#### **7.4 Performance**

7.4.1 *“If by the terms of this Agreement, any act would be required to be performed on or within a period ending on a day, which is not a business day, then it shall be performed, on or by the immediately succeeding business day. Time is of the essence of the contract.”*

7.4.2 *“Any delay in making payment of any single instalments of the Consideration under Sr. No. 2, 3, and 4 of the table under clause 1 d above beyond a cure period of 30 days from the respective due dates of payments shall be considered as Event of Default (hereinafter referred to as "Event of Default"). However, JMFARC shall permit delay up to 30 days from the respective due dates for the payments by Intending Assignee subject to Intending Assignee paying simple interest computed @ 12% p.a for the period of delay, on the delayed amount of instalment. In case of Event of Default, JMFARC shall have the right to forfeit the amounts received till the Date of Default and also to cancel this arrangement. Any such amount received shall be adjusted against the outstanding dues owed by the Borrower to JMFARC.”*

7.4.4 *“Immediately upon execution of this Agreement, JMFARC shall file petition to National Company Law Tribunal (NCLT), Kolkata Bench, Kolkata for withdrawal of its application under Insolvency and Bankruptcy Code (IBC) filed before National Company Law Tribunal, Kolkata Bench, Kolkata being C.P (IB) No. 4/KB/2019 against Howrah Mills Company Ltd (hereinafter referred to as "Howrah Mills"). If, however, the application filed by JMFARC is admitted by NCLT, Kolkata Bench, Kolkata before execution of registered Deed of Assignment between JMFARC and Intending Assignee/its nominee, then this Agreement shall become null and void and all sums received by JMFARC from Assignee till date of admission shall be refunded back to the Intending Assignee preferably within 4 (four) weeks.”*

7.4.5 “Upon receipt of initial 25% of the consideration, JMFARC shall keep in abeyance all legal actions and legal proceedings initiated by JMFARC against Howrah Mills and its guarantors.”

**7.5 Execution**

*“The Agreement may be executed in two counterparts, both of which taken together shall be regarded as one and the same instrument.”*

2. A mere running over of eye on the aforesaid clauses would explicitly demonstrate the following:
- (a) The original Borrower was Howrah Mills, to whom financial assistance was extended by the Federal Bank, the predecessor in interest of the **Intending Assignor** JMFARC
  - (b) Later, the Loan Account (debt of Howrah Mills) or the Federal Bank’s right to recover the debt was assigned to JMFARC by Federal Bank vide Assignment Agreement dated 30.06.2016.
  - (c) Subsequently, the JMFARC as an **Intending Assignor** has on 15.01.2020 assigned “financial assets or the dues” of Borrower Howrah Mills (to JMFARC), to the **Intending Assignee** the Abhinandan Holdings intending to a complete sale/purchase/transfer of its rights to the dues, in favour of Abhinandan Holdings so that Abhinandan shall become full and absolute legal owner and only person legally entitled to the **financial assets** of the Borrower Howrah Mills, evincing a complete buy out.
  - (d) To complete the transaction, it was agreed upon that the intending assignee would pay the following amounts in four tranches:
    1. 6.50 Cr being 25% of consideration amount, which is already paid on 15.01.2020.
    2. 4.50 Cr being 17.30% payable by 31.01.2020 (+ Cure period of 30 days, i.e., 01.03.2020) out of which 1 crore is paid.
    3. 7 Cr being 26.91% payable by 29.02.2020 (+ 30 days Cure period, i.e., by 30.03.2020)
    4. 8.01 Cr being 30.79% payable by 25.03.2020 (+ 30 days Cure period, i.e., by 24.04.2020).

Out of which the 2<sup>nd</sup> tranche remains partially paid and the 3<sup>rd</sup> and 4<sup>th</sup> tranche became payable during the 10A period.

- (e) Upon payment of 25% of the consideration money:
- (i) the intending assignee Abhinandan shall become the absolute legal owner of the Financial Assets of the borrower, while intending assignor will be bound to transfer to Abhinandan all the loan documents related to such financial assets.
- (ii) The JMFARC will also be bound to keep in abeyance all legal actions initiated against borrower Howrah Mills.
- (f) In compliance thereof, the JMFARC withdrew the Company Petition filed against Howrah Mills but later got it restored to proceed against Howrah Mills for the default of Abhinandan, although its obligation stood partially discharged and payment schedule got extended.
- (g) Upon failure of Abhinandan to pay in terms of the assignment agreement, JMFARC the **Intending Assignor** shall have the right to forfeit the amounts and adjust it against the outstanding dues of the borrower till the date of default, and also cancel the arrangement.
3. It is further discernible that on 29.09.2021, in TS 22 of 2021 the Commercial Court at Rajarhat upon hearing the plea of Howrah Mills the Plaintiff, preferred against Defendant No. 1 being the JMFARC, observed the following while restraining JMFARC from cancelling the arrangement:

*“It is submitted that the defendant no. 1 by a letter dated March 2, 2020 purported to exercise its option to forfeit the money paid in terms of the said agreement by the Plaintiff, i. e. Rs. 6.50 crore and the plaintiff on 16th March, 2020 made over a pay order for Rs. 1 crore to the defendant no.1 and by a letter dated April 2, 2020 requested for deferment of the financial commitment so as to enable the plaintiff to arrange the requisite funds during the pandemic lock down. The defendant no. 1 has retained the pay order of Rs. 1 crore and has thus waived the purported termination dated 2nd March, 2020. It has subsequently been contended by the defendant no. 1 that they have not encashed the said pay order but the fact remains that the Defendant No.1 has retained the pay order and not returned the same to the Plaintiff.”*

“Thereafter certain letters were exchanged between the parties on 29th June, 2020, 6th July, 2020 and 8th July, 2020. From these letters it would be evident that the plaintiff and defendant no. 1 were negotiating a fresh repayment schedule.”

“The plaintiff was surprised to learn from the defendant no. 2 that on or after 31st July, 2020, the defendant no. 1 had filed an application for revival of the said C. P. (IB) No.04/KB/2019, in which the plaintiff was not even made a party.”

“The plaintiff states that a civil suit being T. S. No. 322 of 2020 is pending before the Learned Civil Judge, Senior Division, 3<sup>rd</sup> Court, Howrah which has been filed by the defendant no. 2 herein as the plaintiff therein and in the suit, interim order was passed on October 20, 2020 restraining the defendants in such suit from giving effect to the notice dated March 2, 2020.”

#### **Findings of the Court**

“Deducing the factual matrix, it transpires that the petitioner is a non-banking financial institution registered with RBI. The respondent No 1 is an asset reconstruction company and respondent No. 2 is a company and also a borrower. The petitioner and respondent No. 1 entered into an agreement for assignment dated 15.01.2020 with certain stipulations, the petitioner had undertaken to take over the financial assets of the respondent No. 2 from the respondent No. 1 against consideration. Therefore, the agreement between the petitioner and respondent No. 2 and the agreement to assign between petitioner and respondent No. 1 dated 15.01.2020 formed part of one composite transaction. Pursuant to the agreement the petitioner paid Rs. 6.50 crores to respondent No. 1. The second instalment of Rs. 4.50 crores was to be paid by 31.01.2020, but due to force majeure condition the petitioner defaulted in the payment of instalment for the month of January, 2020 and February, 2020 but was supposed to pay within (30+30) 60 days limit.”

“Meanwhile, the respondent No. 1 by a letter dated 02.03.2020 expressed intention to invoke negative covenant to forfeit the advance money. The petitioner immediately contacted the respondent No. 1 and after the deliberation handed

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*over a sum of Rs. 1.00 crore and at the same time requested for deferment of financial commitment in view of the corona pandemic. One gazette notification also got published on 23rd September, 2020 by the Ministry of Law and Justice pertaining to the insolvency and bankruptcy code (2nd amendment), 2020 which states;”*

*Section 10(A) "Notwithstanding anything contained in Section 7,9 and 10 no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March 2020 for a period of six months or such further period, not exceeding one year from such date as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of Corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period."*

*X X X*

*“It is apparent certain dispute occurred between the parties with regard to the financial commitment, but due to claim and counter claim of defaulter and no defaulter payable within the extended time in line with assignment agreement coupled with Govt. Gazette notification, the property in question is required to be preserved and protected balancing the equities for time being”*

*X X X X*

*“Balance and convenience and inconvenience is also inclined in favour the petitioner and the petitioner will suffer irreparable loss and injury if the opus of the property is not protected at this preliminary stage.”*

*Having noted that the balance and convenience and inconvenience as inclined in favour of the Petitioner and the Petitioner will suffer irreparable loss and injury, pass the following orders:*

*Hence, it is,*

**ORDERED**

*“The respondent No. 1 and or his men and agents is restrained from giving any further effect or acting on the basis of the letter March 02, 2020 till 8.10.2021.”*

**4. Implication of the Order:**

The effect of the said order is that, the letter dated 02.03.2020 whereby and whereunder JMFARC attempted to exercise its option to forfeit the money paid in terms of the Assignment Agreement and invoke the revocation clause, was stayed till 08.10.2021 and is said to be still in force. The implication of the said order is that:

- (a) The assignment agreement between the parties is still in force;
  - (b) Therefore, the parties cannot resile from their stand as for they are bound by the said Assignment Agreement till date.
  - (c) The JMFARC has been restrained by a Civil Court of Competent jurisdiction from giving effect to its notice dated 02.03.2020;
  - (d) Instead to frustrate the order of the Civil Court the JMFARC has sought for restoration of the CP against the original borrower Howrah Mills without impleading Abhinandan the intending assignee, which has already made part payments in terms of the agreement and intends to pay the balance sum too.
  - (e) The Attempted termination or revocation by JMFARC being thwarted by the Civil Court of competent jurisdiction, it has failed to take effect and hence:
    - i. Consequently, the payment of 25% of the consideration money and a subsequent payment of 1 crore totalling to 7.5 crore, made by Abhinandan (intending Assignee) to JMFARC (the intending Assignor), stands not forfeited;
    - ii. The arrangement stands not cancelled due to default, and hence it subsists;
    - iii. The transfer or sale of financial assets of Howrah Mills (the borrower) to Abhinandan which is in effect the dues of the borrower to JMFARC is still in force being not revoked, cancelled or rescinded;
    - iv. JMFARC and Abhinandan are still bound of the agreement to assign, but that does not bind the original borrower Howrah Mills;
- 5. Such being the legal position, for all practical purposes**
- i. JMFARC cannot proceed against Howrah Mills anymore.

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- ii. However, JMFARC can proceed against Abhinandan for any default committed by Abhinandan in terms of agreement but not against Howrah Mills, its financial assets being already purchased by Abhinandan as explained above.
6. We would also note that the default against the 3<sup>rd</sup> and 4<sup>th</sup> tranche falls within 10A bar. Hence on that count also application under Section 7 that too against Howrah Mills for the said defaults is not maintainable.
  7. This instant Petition being as such no more maintainable against Howrah Mills, is dismissed.
  8. Abhinandan as it seems, had expressed its intention to settle with the intending Assignor JMFARC when the matter was pending before the Appellate Forum which it can always explore.
  9. JMFARC will always be at liberty to pursue its remedies in accordance with law.
  10. The Registry of this Adjudicating Authority is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.
  11. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Order Signed on the 25<sup>th</sup> Day of January 2024

*A.J.S LRA*