

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**(Court – II)**

**KOLKATA**

**IA (IB) No.2/KB/2022**

**in**

**CP (IB) No.832/KB/2019**

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.*

*And*

*In the matter of*

**CP (IB) No.832/KB/2019**

Carbon Resources Private Limited [U23109WB1991PTC052947]

*...Operational Creditors*

*Versus*

Dimension Steel & Alloys Private Limited [CIN: U27109WB2005PTC100957]

*... Corporate Debtor*

**IA (IB) No.2/KB/2022**

*In the matter of*

*Bijay Murnuria*, the Resolution Professional

*...Applicant*

*Versus*

1. ***Karnataka Bank Limited***, Member of the Committee of Creditors, and a body corporate, constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Registered office at P B No: 599, Mahaveera Circle Kankanady, Mangaluru- 575002 and having its Branch Office at 1, Sarojini Naidu Sarani, 1st Floor, Shubham Building, Kolkata- 700017

*... Respondent No. 1*

2. ***Asset Reconstruction Company (India) Limited***, having its registered office at the Ruby, 10<sup>th</sup> Floor, 29 Senapathi Bapat, Marg, Dadar (West), Mumbai - 400028

*..... Respondent No. 2*

**Coram:**

***Ms. Bidisha Banerjee, Member (Judicial)***

***Mr. Balraj Joshi, Member (Technical)***

**Counsels appeared through Video Conference/Physical hearing**

For the Applicant in IA/02/2022 : Mr. Anuj Singh, Advocate  
Ms. Urmila Chakraborty, Advocate  
Ms. Rashmi Singhee, Advocate.  
Ms. Madhuj Barman, Advocate  
Mr. Arun Kumar Singh, Advocate  
Mr. Bijay Murmuria, RP ( Self)  
Mr. Parikshit Poddar

For the Karnataka Bank : Mr. Subhasish Ghosh, Advocate

**Date of hearing: 11 January, 2023**  
**Order pronounced on: 24 April, 2023**

**ORDER**

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

1. This court convened *via* hybrid mode.
2. This is an Interlocutory Application filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) by Mr. Bijay Murmuria, the Resolution (*'Applicant'*). The Applicant was appointed by the Committee of Creditors (*'CoC'*) in the Second Meeting of CoC by 78.27% of votes on 09 December, 2019. The same was approved by this Adjudicating Authority on 23 January, 2020.
3. The Applicant seeks the following reliefs:-
  - a. *Necessary directions/guidance/order to the Resolution Professional in the manner of disbursal of monies received post the approval of the Resolution Plan by this Adjudicating Authority.*

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*b. To allow the Resolution Professional to withhold the payments allowed to ne made to Karnataka Bank Limited ('Respondent No.1) as per the Resolution Plan approved by the Adjudicating Authority till the disposal of the present Application.*

**4. The Ld. Counsel appearing on behalf of the Applicant submits as follows:**

- i. *Vide* order dated 18 October, 2019 of this Adjudicating Authority in IA 479/KB/2021, Dimension Steel & Alloys Private Limited (**'Corporate Debtor'**) was admitted into Corporate Insolvency Insolvency Resolution Process (**'CIRP'**) and Ms. Meena Sureka was appointed as the Interim Resolution Professional (**'Erstwhile Resolution Professional' or 'Erstwhile RP'**).
- ii. The Erstwhile RP made a public announcement on 22 October 2019, in Form A, inviting claims from the creditors of the Corporate Debtor. Upon constitution of Committee of Creditors (**'CoC'**), on 09 December 2019, the Applicant was appointed as the Resolution Professional by the said CoC by 78.27% votes. However, the Applicant took over the accounts of the Corporate Debtor on 23 January, 2020 from the erstwhile RP and convened the Fifth Meeting of the CoC.
- iii. In the meantime, Form G was published on 30 December 2019, in Financial Express and Aajkaal. As per the Form G, the last date for submission of Expression of Interest (**'EOI'**) was 18 January, 2020. Since no EOI was received till last date of submission of EOI i.e. 18 January 2020, the RP extended the last date of submission of EOI till 10 February 2020 and published the revised Form G in Financial Express and Aajkaal on 18 January 2020. Thereafter, upon Applicant's request the period was further extended till 02 March 2020. Consequently, the Applicant received one Expression of Interest from eligible Prospective Resolution Applicant namely, C.P. Ispat Private Limited within 10 February, 2020 and one more from Prudent ARC Ltd within 02 March 2020.

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- iv. On 12 March 2020, the Applicant filed an application for extension of CIRP for a further period of 90 days. However, the said application could not be considered owing to the imposition of lockdown by the State Government of West Bengal and Central Government with effect from 15 March 2020.
- v. Subsequently, on 15 April 2020, 180 days of CIRP for the Corporate Debtor expired. Therefore, the Applicant filed an application on 05 November 2020 for Extension of 90 days over and above the period of 180 days and exclusion of 161 days from the overall period of 180 days due to the period lost for imposition of lockdown by the Central Government of India and State Government of West Bengal. Exclusion of 161 days and extension of CIRP by a further period of 90 days, w.e.f. 01 October 2020 was allowed by this Adjudicating Authority *vide* its order dated 05 November 2020.
- vi. In the meantime, it came to the attention of the Applicant that the Respondents no. 1, being one of Financial Creditors of the Corporate Debtor and a constituent of CoC, was retaining Rs. 45,90,206/- (Rupees Forty-five Lac Ninety Thousand and Two Hundred and Six only) towards ECGC Claim and Rs. 11,75,521/- (Rupees Eleven Lac Seventy-five Thousand Five Hundred and Twenty-one only) towards Fixed Deposits, from the Corporate Debtor.
- vii. It further came to the Applicant's notice that another Financial Creditor of the Corporate Debtor namely, Punjab National Bank was holding a deposit of Rs.3,01,500/- (Rupees Three Lac One Thousand and Five Hundred only) which was received by the Bank from the Corporate Debtor. Owing to the fact that any credit of amount and adjustment of claims during the CIRP of Corporate Debtor is a serious breach under Section 14 of the 18B Code, the Applicant, by an e-mail dated 16 June 2020, requested the Respondent no. 1 and Punjab National Bank to supply relevant documents for the purpose of verification of claims.

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- viii. In view with the order of extension dated 05 November 2020, the Applicant further extended the last date for submission of Expression of Interest and the same was ratified in the Ninth Meeting of Committee of Creditors. Thus, another revised Form G was published in Business Standard-Kolkata Edition and Aajkaal- Kolkata Edition on 13 November 2020.
- ix. Upon such extension, the Applicant received two more Expression of Interest from Satvik Enterprises Limited and RKG Asset Management LLP. Therefore, the applicant in compliance with the provisions of Regulation 36A (10) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, issued another provisional list of eligible prospective resolution applicants to the CoC and to all the prospective resolution applicants on 20 November 2020.
- x. The Applicant on 21 December 2020 filed an interlocutory application for extension of 60 days over and above the period of 270 days at the behest of the CoC. The said application was approved vide order dated 12 February 2021.
- xi. On receiving no resolution plan till the cut off date i.e., 22 December 2020 the agenda for Liquidation of the Corporate Debtor was put for voting at the Tenth CoC Meeting. Consequently, the said agenda was approved via E-Voting wherein 63.12% voted in favor of the resolution while 36.088% members altogether abstained from voting on the said resolution.
- xii. Thereafter, on 04th February 2021, the Applicant received an e-mail from one of the shortlisted Resolution Applicants namely, C. P. Ispat Private Limited requesting the Applicant to accept their Resolution Plan, albeit, submitted beyond cut-off date being 22 December, 2020. The said Resolution Applicant further applied to this Adjudicating Authority to pass an order in its favour excluding the delay of 52 days and further directing the CoC and Applicant to accept its Resolution Plan.

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- xiii. Meanwhile, by an letter dated 01 December 2020, the Respondent No.1 informed the Applicant that the actual fixed deposits as held by their bank amounts to Rs. 11,75,521 and informed that the said deposits were held as per the instructions of West Bengal Financial Corporation (**'WBFC'**) to instruct the Respondent No. 1 for liquidating and crediting the Fixed Deposit proceeds to the Current Account of the Corporate Debtor.
- xiv. In furtherance of the Ninth Meeting of the CoC, the Applicant again issued e-mail to Respondent No. 1 and Punjab National Bank to release the Fixed Deposits and ECGC claims as retained to the CIRP Account of the Corporate Debtor. The latter did not respond while the Respondent No. 1 by its e-mail dated 17 December 2020, clarified that the export credit availed by the Corporate Debtor was covered under ECGC which was executed under a separate contract between their bank and ECGC and such it was a third party guarantee.
- xv. It was further informed that the report of default was lodged by the bank with ECGC before initiation of CIRP of Corporate Debtor and is not realized from the assets of the Corporate Debtor. Respondent No. 1 also informed that the Fixed Deposits could be transferred to receipt of instructions from WBFC.
- xvi. In view of the responses received from the aforesaid financial creditors of the Corporate Debtor, the Applicant was constrained to file an application being I.A. 52 of 2021 in C.P. (IB) 832 of 2019, under section 60(5) read with Section 14 & Section 17(1)(d) of the 1& B Code, on 06 January 2021 for release of the ECGC amount and Fixed deposit lying with the Respondent No. 1 and Punjab National Bank.
- xvii. Subsequent to that, by an order dated 16 March 2021, this Adjudicating Authority condoned a period of 43 days in submitting the Resolution Plan by the Prospective Resolution Plan and a further exclusion of 52 days was granted from the overall period of 330 days to deliberate on the Resolution Plan for the Corporate Debtor with the members of the CoC.

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- xviii. In view of the order dated 16th March 2021, the Applicant convened the 13<sup>th</sup> CoC meeting dated 23 March 2021, wherein the updated Resolution Plan submitted by C. P. Ispat Private Limited, was placed before the CoC for its consideration. In the said Meeting, the CoC asked the prospective Resolution Applicant to submit a modified plan.
- xix. On 08 April 2021, 15<sup>th</sup> CoC Meeting was conducted to approve the final resolution plan via e-voting. Subsequently, on 22 April 2021, the Resolution Plan submitted by C.P Ispat Pvt Ltd was approved with 80.93% votes conducted via E-voting. The Respondent No 1 voted in favour of the Resolution Plan submitted by CP Ispat Pvt Ltd. By an order dated 08 October 2021 in IA (IB) No. 479 of 2021, this Adjudicating Authority approved the Resolution Plan submitted by C.P Ispat Private Limited.
- xx. On 30 November, 2021 the Applicant being the Resolution Professional of the Corporate Debtor received numerous transactions email alerts from Respondent No. 1. By an email dated 30 November, 2021, the Applicant herein as part of his duties as a Resolution professional enquired from the Respondent No 1 the details of transactions leading to the transaction alerts and requested the Respondent No 1 for a copy of the bank statement for better understanding of the transactions.
- xxi. *Vide* email dated 08 December, 2021, Respondent No. 1 informed the Corporate Debtor that Respondent No 1 had vide Assignment Agreement dated 26th November, 2021 assigned its Loan account pertaining to the Corporate Debtor to Respondent No 2 together with underlying security interest under section 5 of the SARFAESI Act, 2002. The Respondent No 1 further informed that henceforth all communication in relation to the Loan account should be done with Respondent No 2 and all payments in relation to the Loan accounts are to be paid directly to Respondent No 2.
- xxii. It is alleged that the Respondent No.1 has not preferred any application before this Adjudicating Authority seeking leave to assign such loan account of the

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Corporate Debtor. Such assignments during the implementation of the plan can create confusion qua payments to be made to different parties and can jeopardize the successful implementation of the Plan.

**5. *Per Contra, the Ld. Counsel appearing on behalf of the Respondent No.1 would allege as under:***

- i. That, this Interlocutory Application has been made to prolong the matter after the disposal of the main Company Petition, being CP (IB) No.832/KB/2019, this Application has no merit and the RP has no locus standi to make this Application.
- ii. That, necessary clarification with regard to the sum retained through ECGC claim as well as the fixed deposits has been provided to the Applicant. The Applicant has already filed a separate application being IA (IB) No. 52 of 2019, where the Respondent No. 1 has already contested the said Interlocutory Application.
- iii. That, amount received from ECGC is a third party guarantee and does not come under the purview of asset of the Corporate Debtor. Hence, is not hit by moratorium under section 14 of the Code.
- iv. That, Resolution Plan has been approved for the purpose of revival of the Corporate Debtor, there is no embargo on the part of the Financial Creditor for assignment of their right, title and interest over the Corporate Debtor. The Financial Creditor will get their respective amount as per the approved Resolution Plan.
- v. That, there is no impediment on Respondent No. 1 for assignment of its claim to Respondent No. 2. Such assignment shall not jeopardize the task of the RP

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for proper implementation of the Resolution Plan, the amount payable under the Resolution Plan should be paid to the Respondent No. 2.

**6. While, the Ld. Counsel appearing on behalf of the Respondent No.2 (ARCIL) would submit as follows:**

- i. The Corporate Debtor, Dimension Steel & Alloys Pvt. Ltd. was admitted into CIRP on the 18 October, 2019. Subsequently, a resolution plan came to be submitted by a resolution applicant CP Ispat Pvt. Ltd. which was approved by the COC by a majority vote of 80.93%. The said resolution Plan was approved by this Adjudicating Authority vide order dated 08 October, 2021.
- ii. During the implementation of the Resolution Plan, the Financial Creditor, Karnataka Bank Ltd assigned the loan accounts in respect of the Corporate Debtor to the Respondent no. 2, ARCIL together with underlying security interest under Section 5 of the SARFAESI Act, 2022. The same was done vide Assignment Agreement dated 26 November, 2021.
- iii. The applicant has instituted the instant application because the applicant apprehends that such assignment during the implementation of the Resolution Plan can create confusion qua payments to be made to the different parties and jeopardize the implementation of the Resolution Plan. He has sought for orders/directions from this Hon'ble Tribunal in the manner of disbursement of monies received post the approval of the Resolution Plan by the Hon'ble Adjudicating Authority, among others.
- iv. That upon approval the Resolution Plan by this Adjudicating Authority, the moratorium declared under Section 14 of the Code at the time of the order admitting the Corporate Debtor into CIRP ceased to exist. That the Respondent no. 1 is one of the Financial Creditors of the Corporate Debtor Company. Under the Resolution Plan, the Respondent no. 1 is entitled to receive payments in respect of credit facilities extended by it to the Corporate Debtor prior to the admission of the

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Corporate Debtor into CIRP. The Resolution Professional as the Chairman of the Monitoring Committee, in terms of the Plan, has been put under an obligation to make the necessary disbursements/payments to the various stakeholders. During the pendency of the implementation of the Resolution Plan, the loan accounts of the Corporate Debtor had been assigned to respondent no. 2 ARCIL vide assignment agreement dated 26<sup>th</sup> November, 2021 along with all underlying security. But, the Resolution Professional has kept in his custody the payments which the respondent no. 2 is now entitled to receive by virtue of the said assignment agreement questioning the legality of assignment of loan accounts by the respondent no. 1 during the implementation of the Resolution Plan.

- v. The applicant presently is the Chairman of the Monitoring Committee set up under the plan to supervise the implementation of the Plan. Under the resolution plan an amount of Rs. 59,31,633 (approx.) was to be paid by the Successful Resolution Application to the Respondent No. 1 within 60 days of the approval date, Rs. 59,69,460/- (Rupees Fifty Nine Lakhs Sixty Nine Thousand Four Hundred and Sixty Only) was to be paid upfront, Rs. 51,33,518/- ((Rupees Fifty One Lakhs Thirty Three Thousand Five Hundred and Eighteen Only) was to be paid within 9 months and Rs. 51,33,518/- (Rupees Fifty One Lakhs Thirty Three Thousand Five Hundred and Eighteen Only) was to be paid within 18 months of the approval date aggregating to total payable sum of Rs. 2,21,68,129/- (approx.) (Rupees Two Crores Twenty One Lakhs Sixty Eighty Thousand One Hundred and Twenty Nine Only) (approx.)
- vi. After the approval of the resolution plan and during its implementation, the Respondents entered into an assignment agreement dated 26 November, 2021 inter-alia, in terms of Section 5 SARFAESI Act, 2002. As per the said assignment agreement, the Loan account of the Corporate Debtor together with all underlying security interest and all right, title and interest therein have since been acquired by the Respondent No. 2 [ARCIL] as the trustee of ‘Arcil-SBPS-006-VII-Trust’. Accordingly, the Respondent No. 2 [ARCIL] has therefore as the Assignee, stepped into the shoes of the Original Lender i.e., the Respondent

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- No. 1 and is vested with all the powers, authorities, right and title to further pursue proceedings against the Corporate Debtor. In terms of the assignment agreement, the loan account granted to the Corporate Debtor by the Respondent No. 1 stood assigned to the Respondent No. 2. All payments arising out of or related to the loan agreements was to now be paid to the Respondent No. 2.
- vii. On the 08 December, 2021, the Respondent No. 1 by way of an email informed the Corporate Debtor that the loan account of the Corporate Debtor with the Respondent No. 1 by virtue of the said assignment agreement stood transferred to the answering respondent herein and that all future communications pertaining to the loan account should be done with respondent no. 2 as well as all payments in relation to the loan account should be made to respondent no. 2
- viii. That, the same has not been adhered to by the Applicant. Instead, the Applicant till date is unlawfully in custody of the amount paid by the Successful Resolution Applicant and due to the Respondent No. 2 on the basis of certain apprehensions that the Applicant has sought to urge by way of the instant application.
- ix. The Applicant, in the instant application has contended that no leave of the Adjudicating Authority has been sought for by the Respondent No. 1 to assign the loan to the Respondent No. 2. The applicant apprehends that such assignment during the implementation of the Resolution plan can create confusion qua payments to be made to different parties and can jeopardize the successful implementation of the Resolution Plan. The applicant further apprehends serious damages to the Corporate Debtor and discredit to the entire CIRP of the Corporate Debtor in absence of any formal order or direction prayed for by the applicant.
- x. In response to the contention of the Applicant the Ld. Counsel would submit that an application should have been filed by respondent no.1 seeking leave to assign such loan account of the Corporate Debtor to respondent no. 2 during the implementation of the resolution plan. There is nothing in the Code that bars a

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Financial Creditor to assign its loan account in relation to the Corporate Debtor to a third party upon the approval of the Resolution Plan and as such leave of this Adjudicating Authority to enter into an assignment agreement between them was not required. Further, even during the continuance of the CIRP of the Corporate Debtor, a creditor is permitted to assign its debt to a third person. The only rider to the same is that the terms of such assignment or transfer and the identity of the assignee or transferee should be provided to the Resolution Professional in terms of Regulation 28 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It was urged that when the Code permits assignment of debt even during the continuance of CIRP, there certainly cannot be a bar on the Financial Creditor to assign its debts to a third party when the CIRP of the Corporate Debtor has already come to an end and the Corporate Debtor is already under the management of the Successful Resolution Applicant.

- xi. Further, in response to the contention that such assignment can create confusion qua payments to be made to the different parties and can jeopardize the successful implementation of the Plan it is contended that the Applicant was duly informed about the assignment agreement that had been entered into between the respondents, and that all future communications pertaining to the loan accounts should be made with the assignee, the Respondent No. 2 herein, but the Applicant, instead of concerning himself as to the validity of the agreement and the identity of the assignee and make the necessary disbursements, has gone on to question the bona fide of the transaction and has gone as far as questioning the legality of the transaction itself, though the parties to the agreement are not disputing the assignment and/or claiming anything beyond the scope of the Resolution Plan.
- xii. It is forcefully asserted that the respondents have only exercised their rights by entering into a transaction that they were freely entitled to enter under the law. The Applicant was to only satisfy himself of the execution of the validly executed agreement and being satisfied with the same proceed to make

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disbursements under the plan to the Respondent No. 2. How an assignment agreement executed between a creditor and third party, unconcerned with other creditors and stakeholders, will lead to a spanner in the works qua payments made to different parties is something incomprehensible.

- xiii. Further, the ECGC claims as well as the fixed deposits in dispute bear no connection with the loan accounts assigned to the respondent no. 2 and continue to remain under the control and custody of the respondent no. 1 and as such any of the contentions of the applicant against respondent no. 1 as regards the claims will be clarified by the respondent no. 1 in the concerned proceeding to which the respondent no. 2 is not a party.
- xiv. Further that, there is no claim outstanding by the Corporate Debtor against respondent no. 1 which now stand assigned to respondent no. 2. Even otherwise, the assignment agreement clearly lays out the loan accounts which stand assigned to the respondent no. 2 and as against which the respondent no. 1 continues to be liable. Liabilities against the respondent no. 1, if any, unless assigned/ relinquished or in any manner extinguished qua the respondent can very well be proceeded with under the law, in the instant case, the disbursements to be made under the Resolution Plan is now to be made to respondent no. 2 by virtue of the said assignment agreement which is a valid document in the eye of law.
- xv. It is alleged that the Applicant has through the instant application has attempted to manufacture confusion of some sort though none exists for motives best known to him and has by way of the instant application resorted to stall the implementation of the resolution plan depriving the respondent herein of it is rightful dues under the plan.

***Finding and analysis***

7. Ld. Counsels were heard, records perused and rival contentions noted.
8. The basic thrust of argument of the Applicant was in regard to the assignment of a debt to a third party, which according to him ought to have been preceded by a

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leave from this Adjudicating Authority. However, no legal provisions or propositions have been cited in support.

9. Section 5 of the SARFAESI Act, 2002 enjoins the following;

*“5. Acquisition of rights or interest in financial assets.—(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any 2 [asset reconstruction company] may acquire financial assets of any bank or financial institution— (a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them. 1 [(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 (2 of 1899): Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.] (2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the 2 [asset reconstruction company], such 3 [asset reconstruction company] shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets. 1 [(2A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or*

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*assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).] (3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powersof-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the 3 [asset reconstruction company], as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, 3 [asset reconstruction company], as the case may be, had been a party thereto or as if they had been issued in favour of 3 [asset reconstruction company], as the case may be. (4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the 3 [asset reconstruction company], as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the 3 [asset reconstruction company], as the case may be. 4 [(5) On acquisition of financial assets under sub-section (1), the 3 [asset reconstruction company], may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery*

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*Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the 3 [asset reconstruction company] in such pending suit, appeal or other proceedings.]”*

It is explicit from the aforesaid provisions that an Asset Reconstruction Company can be legally assigned debts by a Financial Company, and it is only upon such acquisition that consent of this Adjudicating Authority will be required for substitution of name of the assignee in a continuous legal proceeding.

**10.** In *Siti Networks Ltd. v. Assets Care and Reconstruction Enterprises Ltd. & Anr.*<sup>1</sup>, Hon’ble NCLAT was considering an Appeal filed against an order dated 01 November, 2022 passed by the Adjudicating Authority (National Company Law Tribunal), NCLT Mumbai Bench, Court-V disposing IA No. 3105 of 2022 in C.P. (IB)/414(MB)2022. The facts therein were as under:

- i. Housing Development Finance Corporation Limited had sanctioned a loan to the Corporate Debtor on 06.09.2016. The Corporate Debtor was classified as Non-Performing Asset on 30.06.2019. On 30.03.2022, notices were issued in Section 7 Application. ‘Housing Development Finance Corporation Limited’ vide Registered Assignment Deed dated 29.06.2022 assigned the debt of the Corporate Debtor to the Respondent No.1- ‘Assets Care and Reconstruction Enterprise Limited’. The Corporate Debtor was also informed about the assignment vide letter dated 06.07.2022. The Respondent No.1- ‘Assets Care and Reconstruction Enterprise Limited’ filed an I.A. No. 3105/2022 on 08.10.2022 seeking to be substituted as Financial Creditor in place of original Applicant and to be permitted to pursue the C.P.(IB)/414(MB)2022 filed by the ‘Housing Development Finance Corporation Limited’. On the said I.A, the Adjudicating Authority passed an order on 01.11.2022 allowing the Application filed by ‘Assets Care and Reconstruction Enterprise Limited’ for substitution of its name on the basis of assignment.

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<sup>1</sup> [Comp. App. (AT) (Ins.) No. 1449 of 2022 decided on 13.12.2022].

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- ii. The Adjudicating Authority took the view that there is no binding precedent from higher forum and there is no express prohibition in the code preventing the assignee to come on record and continue the pending proceedings. Challenging the said order, such Appeal was filed.

Hon'ble NCLAT noted that sub-section (4) of Section 5 of the SARFAESI Act, 2002 clearly contemplates continuation and prosecution of any proceeding by an assignee who acquire financial asset. Sub-section (4) of Section 5 of the SARFAESI Act, 2002 is as follows:-

*“5. Acquisition of rights or interest in financial assets.-..... (4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the [asset reconstruction company], as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the [asset reconstruction company], as the case may be.”*

The Hon'ble NCLAT observed;

*“The above provision of sub-section (4) of Section 5 does contemplate continuation of all proceedings after acquisition of financial assets by assignee. In the present case, there is no dispute that Respondent No.1 was assigned the debt by the 'Housing Development Finance Corporation Limited' during pendency of the proceeding under Section 7.”*

**And** *“provisions of Order XXII Rule 10 of CPC which contemplates continuance of proceeding on the basis of devolution of rights with the*

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*leave of the Court which is applied generally in civil proceeding and suit.”*

**And held,** *“The order of the Bengaluru Bench NCLT dated 26.08.2019 on which reliance has been placed by the Appellant cannot be said to be laying down a correct law to be followed as a precedent. As has been observed rightly by the Adjudicating Authority, there is no prohibition in the IBC or any of the Regulations from continuing the proceeding by an assignee. Section 5(7) of the IBC which defines ‘Financial Creditor’ also includes a person to whom such debt has been legally assigned or transferred to. By virtue of assignment, Respondent No.1 become the Financial Creditor and having stepped in the shoes of ‘Housing Development Finance Corporation Limited’, it has every right to continue the proceeding which was initiated by Respondent No.2. 8. We, thus, are satisfied that no error has been committed by the Adjudicating Authority in allowing I.A. No. 3105/2022. We do not find any merit in this Appeal. The Appeal is dismissed.”*

*(Emphasis added)*

- 11.** In view of the extract supra, we are of the considered opinion that this application seeking restraining order, has no merit. It is accordingly **dismissed**.
- 12.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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

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

The order is pronounced on 24<sup>th</sup> day of April, 2023

SA [LRA]