



IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

IA No. 203/JPR/2022
In CP (IB) No. 39(PB)2018

IN THE MATTER OF:

**ADMINISTRATOR OF SPECIFIED UNDERTAKING
OF UNIT TRUST OF INDIA & ANR.**

...Petitioners

VERSUS

MODERN SYNTAX (INDIA) LIMITED

...Corporate Debtor

MEMO OF PARTIES

IA(IBC) No. 203/JPR/2022

DYNAMIX GROWTH AVENUES PVT LTD.

305/306, Anand Building, 82/84
Kazi Sayad Street Masjid Bunder,
Mumbai- 400003

...Applicant

VERSUS

1. MR. PARTHA SARATHY SARKAR

Interim Resolution Professional of *Modern
Syntax (India) Limited*, Office No. 1, Jalaram
Krupa, Building No. 61, Janmabhoomi Marg,
Fort, Mumbai City-400001
Email: sarkarpartho@yahoo.com

**2. ADMINISTRATOR OF SPECIFIED
UNDERTAKING OF UNIT TRUST OF
INDIA R/o: UTI Tower, 'Gn' Block, Bandra-
Kurla Complex, Bandra-East Mumbai-400051**

...Respondents

FOR THE APPLICANT : Mr. Alok Dhir, Adv. Adv.

IA No. 203/JPR/2022
In CP (IB) No. 39(PB)2018



FOR THE RESPONDENTS : Mr. Partha Sarathy Sarkar, RP in person
Mr. Deepakirti Verma, Adv.

Order Pronounced On: 19.04.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present application has been filed by *M/s Dynamix Growth Avenues Private Limited* ('Applicant') under Section 60(5) of Insolvency and Bankruptcy Code, 2016 ('IBC'/'Code') read with Rule 11 of National Company Law Tribunal Rules, ('NCLT Rules') vide Diary No. 1265/2022 dated 27.04.2022 seeking the following set of prayers:

- a. *Allow the instant Applicant filed by the Applicant; and*
- b. *Direct the Respondent / Interim Resolution Professional to re-constitute the Committee of Creditors of the Corporate Debtor Modern Syntex (India) Limited by including the Applicant as the Financial Creditor having the voting rights; and*
- c. *Declare any resolution passed in any CoC meeting convened in the absence of the Applicant as null and void and non-est; and*
- d. *Stay the convening of any meeting of the Committee of Creditors meetings during the pendency of the instant Application; and*
- e. *Grant ex-parte ad interim stay against implementation of any resolution as passed by the CoC in absence of the Applicant during the pendency of the instant Applicant; and / or*
- f. *Pass any other Order that this Ld. Tribunal deems necessary in the interests of justice.*

2. The main application bearing number *CP (IB) No.39(PB)/2018* was filed by the *Administrator of Specified Undertaking of Unit Trust of India* and *UTI Trustee Company Private Limited* ('Financial Creditor No. 1 & 2') under Section 7 of the Code against *M/s Modern Syntex (India) Limited*



(‘Corporate Debtor’/‘CD’). The said application came to be admitted vide order dated 28.03.2022; CIRP was initiated against the Corporate Debtor and *Mr. Partha Sarthy Sarkar* (‘Resolution Professional’/‘RP’) was appointed as the Interim Resolution Professional (‘IRP’). Subsequently, the RP of the Corporate Debtor made public announcement in response of which the Applicant submitted three claims amounting to a total of Rs. 12893,39,03,000/- (Rupees Twelve Thousand Eight Hundred Ninety-Three Crores Thirty-Nine Lacs and Three Thousand Only) under Form-C; the details of the financial claims as submitted in Form-C are as follows:

- 2.1. A financial debt of an amount of Rs. 10862,22,74,000/- (Rupees Ten Thousand Eight Hundred Sixty-Two Crores Twenty-Two Lacs Seventy Four Thousand). The CD borrowed a loan from *Unicredit Bank AG, Germany* in which *M/s Modern Terry Towel* (‘Assignor No. 1’) was a Guarantor. The Bank obtained a decree from a court in Munich, Germany for a sum of € 20,688,329.00 (Equivalent to Rs. 169,48,76,131/- (Rupees One Hundred Sixty-Nine Crores Forty-Eight Lacs Seventy-Six Thousand and One Hundred Thirty-One) at the time of filing) against both the Corporate Debtor and Guarantor. The Assignor No. 1 settled the amount in the decree with *Unicredit Bank* and assigned its right to recover the amount along with interest from the Corporate Debtor to the Applicant herein vide assignment deed dated 03.04.2017 for a consideration of Rs. 5 Crores.



2.2. Financial Claim of an amount of Rs. 1315,29,99,000/- (Rupees One Thousand Three Hundred Fifteen Crores Twenty-Nine Lacs and Ninety-Nine Thousand only) on the basis of the assignment deed dated 29.01.2019 executed between Applicant and *M/s Pallavi Synthetics Private Limited* ('Assignor No. 2') for a consideration of Rs. 4.66 Crores. The debt is arising out of financial facilities and assistance taking by the Corporate Debtor from Assignor No. 2 amounting to Rs. 9,33,76,000/- (Rupees Nine Crore Thirty-Three Lacs and Seventy-Six Thousand only). The principal amount as on 31.08.2017 is Rs. 452,96,59,000/- (Rupees Four Hundred Fifty-Two Crores Ninety-Six Lacs Fifty-Nine Thousand only) and interest is Rs. 862,33,40,000/- (Rupees Eight Hundred Sixty-Two Crores Thirty-Three Lacs and Forty Thousand Only).

2.3. Financial Claim of an amount of Rs. 715,86,30,000/- (Rupees Seven Hundred Fifteen Crores Eighty-Six Lacs and Thirty Thousand Only) on the basis of assignment deed dated 30.04.2017 executed between the Applicant and *M/s Midas Powertech Private Limited* ('Assignor No. 3') arising out of financial facilities and assistance availed by the Corporate Debtor for an amount of Rs. 45 Crores. The said amount includes principal amount of Rs. 45 crores and interest from 01.04.2004 to 28.03.2022 amounting to Rs. 670,86,30,000/- (Rupees



Six Hundred Seventy Crores Eighty-Six Lacs and Thirty Thousand Only).

3. It is contended that the claims of the Applicant were acknowledged and provisionally accepted by the RP vide email dated 13.04.2022. The RP sought certain more documents from the Applicant and later on declared the Applicant as a related party vide email dated 18.04.2022. Thereafter, the Applicant vide email dated 21.04.022 called upon the RP to withdraw its email dated 18.04.2022 and reconstitute the Committee of Creditors ('CoC') of the Corporate Debtor but the same was not acted upon. Hence, the present application has been filed.
4. The Applicant submitted that the RP has unlawfully declared the Assignor Companies as related parties along with the Applicant so as to ensure that the Applicant is benched from the meetings of the CoC. The Applicant herein does not fall under any of the provisions of Section 5(24), therefore, the Applicant cannot be categorized as a related party. Moreover, the financial debt owed by the Corporate Debtor to the Assignor Companies was assigned to the Applicant Company almost five years prior to the initiation of CIRP. This neither classifies the Applicant as a related party to the Corporate Debtor nor does it take away the right of the Applicant to be a part of the CoC. The Applicant has also relied on the judgment of *Phoenix Arc Private Limited Vs. Spade Financial Services Limited and Ors. (2021) 3 SCC 475* to submit that a debt transferred from a related



party assignor will not bar the assignee from being a part of the Committee of Creditors.

5. The Applicant also states that the balance-sheet of the Corporate Debtor available online for the year 2019-20 clearly reflects the Applicant as a Financial Creditor. Therefore, the Applicant ought to be included in the CoC as a Financial Creditor and holds its right to representation, participation and voting in the meeting of CoC.
6. The Application came to be listed before this Bench on 10.05.2022 wherein this Authority directed the following:

“In context, the Applicant and Resolution Professional, as the case maybe, are hereby directed as follows:

- a) To respond to all the questions in specific factual details which have been asked by the IRP from the Applicant (details to be provided by Dynamix Growth Avenues Pvt. Ltd. without any legal submissions).*
- b) Provide copy of the ICICI Bank Statement at Bhat Bazar Branch of Dynamix Growth Avenues Pvt. Ltd. bearing Account No. 122305000396 (IFCI Code- ICIC0001223) for the past six years.*
- c) Furnish the name of the director of Dynamix Growth Avenues Pvt. Ltd. who has signed the assignment deeds. Such director shall be present on the next date of hearing, whether through physical or virtual mode, as may be prevalent at that time.*
- d) Furnish the name of the person who has signed the affidavit of the instant Application who shall also be present on the next date of hearing, whether through physical or virtual mode, as may be prevalent at that time.*
- e) Provide copy of Minutes Book, Board Meetings Attendance Register, Notices and Agenda of Board Meetings of Dynamix Growth Avenues Pvt. Ltd. since inception. **This shall be furnished on or before Friday 20.05.2022 in original along with a copy to be verified by the Deputy Registrar/ Assistant Registrar of NCLT, Jaipur.***



- f) *List of other statutory Registers maintained by the Dynamix Growth Avenues Pvt. Ltd.*
- g) *Complete Books of Accounts of Dynamix Growth Avenues Pvt. Ltd. for the lookback period as prescribed under Section 128(5) of the Companies Act, 2013; and its Memorandum and Articles of Association.*
- h) *Original assignment deeds of Modern Terry Towels dated 03.04.2017, Pallavi Synthetics Private Limited dated 29.01.2019 & Midas Powertech Private Limited dated 30.04.2017; nature of business of Dynamix Growth Avenues Pvt. Ltd. and major business events and deals done by the said company since its inception in 2013.*
- i) *The details of the statutory Auditor for Modern Syntex Ltd. and the period for which he/ they has/ have been the Auditor for Modern Syntex Ltd. The Auditor who has signed the Balance Sheet of Modern Syntex Ltd. for the year 2019-2020 shall also be present in person on the next date of hearing whether through physical or virtual mode, as may be prevalent at that time.*
- j) *Certified photocopy of the relevant pages of the Minutes Book and Attendance Register, notice & agenda of Modern Syntex Ltd. pertaining to the assignment deeds in question.*
- k) *Details of accounting entries that were passed in the books of Modern Syntex Ltd., Modern Terry Towels, Dynamix Growth Avenues Pvt. Ltd., Midas Powertech Private Limited and Pallavi Synthetics Private Limited in relation to each element of all transactions associated with the assignment deeds.*
- l) *List of the directors of the aforesaid companies for the past 8 years.*
- m) *Supporting documentation for the principal amount and detailed calculation of principal and interest in respect of the amounts involved in each of the 3 assignment deeds pertaining to Modern Syntex Ltd., Modern Terry Towels, Midas Powertech Private Limited and Pallavi Synthetics Private Limited.*
- n) *Diagrammatic representation/ illustration of various entities in the Modern Group showing cross-holdings and linkages with/ across entities.*
- o) *List of any other documents which the Applicant or the Resolution Professional may wish to furnish in one go.”*



7. The Applicant filed an Affidavit in compliance vide Dairy No. 1817/2022 dated 20.06.2022. In the said affidavit, the Applicant has annexed the following:
 - 7.1. Copy of the Appeal filed against order dated 10.05.2022 along with order of the Hon'ble NCLAT dated 25.05.2022;
 - 7.2. Copy of its Memorandum of Association and Article of Association;
 - 7.3. Copy of Board Resolutions allowing Applicant to execute the Assignment Deeds along with the minutes of the relevant board meetings;
 - 7.4. Copy of Finance Agreement dated 18.07.1994 as executed between Unique Credit Bank (BV Bank) & Corporate Debtor;
 - 7.5. Copy of Working capital consortium agreement dated 30.12.1999 executed between M/s Modern Petrofils (a unit of Corporate Debtor) and A consortium of Banks (which included Mashreq Bank);
 - 7.6. Copy of Section 7 Petition filed by the Mashreq Bank against Corporate Debtor before NCLT, Delhi Bench; and
 - 7.7. Copies of DIR Forms of the Directors of the Applicant.
8. The Resolution Professional has also filed certain documents vide Diary No. 1852/2022 dated 22.06.2022 which are enumerated as below:
 - 8.1. Details of auditor of the Corporate Debtor;
 - 8.2. Copy of mail communication to the erstwhile management of the CD dated 31.03.2022 seeking books of accounts/records;



- 8.3. List of directors of the Corporate Debtor, Assignor Companies and Applicant;
 - 8.4. Copy of mail communication to the Applicant seeking documents regarding the calculation of interests dated 13.04.2022 and;
 - 8.5. The tabulated representation of various entities.
9. It is noted that the Applicant had preferred an Appeal challenging the order dated 10.05.2022. Upon final adjudication of the matter, the Hon'ble NCLAT has vide Order dated 05.01.2023 dismissed the appeal subject to certain observations and liberty while holding that the Adjudicatory Authority was well within its bounds to ask for such documents. Meanwhile, an application was also filed by the *Financial Creditor* namely *Administrator of Specified Undertaking of Unit Trust of India* bearing *IA No. 485/JPR/2022* before this Adjudicatory Authority wherein the Financial Creditor sought intervention in the present application; the same was allowed vide Order dated 12.10.2022.
10. The RP has filed written submissions vide Diary No. 1898/2022 dated 28.06.2022 wherein the summary of transactions amongst Applicant and Assignor Companies has been tabulated. Moreover, it is contended that the relevant excerpts of the Financial Statements as per Ministry of Corporate Affairs available on-line ('MCA') neither corroborate the claims raised by the Applicant in Form-C nor verifies the amount payable to the Assignor Company as receivable from the Assignee. Therefore, the claim of the



applicant lacks any basis of foundation and the Application is merely an attempt to derail the CIRP.

11. The RP has also preferred a reply vide Diary No. 2136/2022 dated 18.07.2022 wherein it is submitted that the three assignor companies are related parties to the CD and have not acknowledged the amount to be receivable from the CD in the respective balance-sheets. It is also submitted that the Applicant has failed to provide any proof of payment for the execution of Assignment Deeds. The tables as mentioned by the Respondent are summarised as follows :-

<i>Claim of the Applicant is based on the following:</i>			
<i>S. No.</i>	<i>1</i>	<i>2</i>	<i>3</i>
<i>Name of Assignor</i>	<i>Modern Terry Towels Ltd.</i>	<i>Pallavi Synthetics Pvt. Ltd.</i>	<i>Midas Powertech Pvt. Ltd.</i>
<i>Principal amount</i>	<i>Rs. 1,69,48,76,000/-</i>	<i>Rs. 4,52,96,59,000/-</i>	<i>Rs. 45,00,00,000/-</i>
<i>Amount Claimed in Form C</i>	<i>Rs. 1,08,62,22,74,000/-</i>	<i>Rs. 13,15,29,99,000/-</i>	<i>Rs. 7,15,86,30,000/-</i>
<i>Purchase consideration</i>	<i>Rs. 5,00,00,000/-</i>	<i>Rs. 4,66,00,000/-</i>	<i>Rs. 45,00,00,000/-</i>
<i>Purchase consideration paid during execution</i>	<i>Rs. 5,00,000/-</i>	<i>Rs. 0/-</i>	<i>Rs. 0/-</i>
<i>Date of assignment</i>	<i>03.04.2017</i>	<i>29.01.2019</i>	<i>30.04.2017</i>
<i>Due Date</i>	<i>01.04.1997</i>	<i>31.08.2017</i>	<i>30.04.2017</i>
<i>Total Finance Assets (Excluding Inventories & Trade Receivables) of Assignor (In Crores) as per Audited Balance Sheet Dated 31st March 2017</i>	<i>Rs. 74.77</i>	<i>Rs. 3.82</i>	<i>Rs. 6.05</i>



12. The applicant has filed rejoinder vide Diary No. 2639/2022 dated 02.09.2022 contending that the mode of payment of purchase consideration or incident of payment of purchase consideration shall not be significant for the purpose of admission of the claim. The disbursal of debts by the Original Creditors is a matter of record and accordingly, the claim of the Applicant herein is liable to be admitted. The interest component as claimed by the applicant herein is also as per the contract and thus liable to be admitted in its entirety. Further the Applicant submits that the law on the subject of assignment is clear and well settled i.e. the rights under the contract are always assignable. The value at which the assignment is given effect to is not a subject matter of adjudication either by the RP or by the Adjudicating Authority. The applicant has also relied on certain set of judgments and lastly submitted that the alleged short stamping of the assignment deed can in no manner result in rejection of the claim.
13. The RP has filed another affidavit vide Diary No. 2871/2022 dated 28.09.2022 annexing the copy of the interim application filed before the Hon'ble NCLAT in the matter wherein the Applicant had challenged the order dated 10.05.2022. The said Interim Application postulates details of the intricacies making the Assignor Companies and the Applicant Company related parties to the Corporate Debtor; which are discussed in detail in the later part of this order.



14. The RP has vide Diary No. 3238/2022 dated 02.11.2022 submitted that Shri Mudit Mathur who has identified himself as the Authorised signatory of the Applicant *prima facie* appears as a related party with the suspended Board of Directors of the Corporate Debtor i.e. Ranka's ; which can be proved from the evidences available in public domain. Moreover, it was contended that the Application has been filed through Parties related to the suspended board of directors via a shell company i.e the Applicant namely *M/s Dynamix Growth Avenues*, to frustrate CIRP proceedings of the Corporate Debtor.
15. The Financial Creditor, impleaded vide order dated 12.10.2022, has also filed its written submissions vide Diary No. 3336/2022 dated 11.11.2022 and asserted the following:
- 15.1. The claims submitted by the Applicant are misleading. In the year 2003-2004 a sum of Rs. 26,00,00,000/- (Rupees Twenty-Six Crores) was brought in by way of promoters in terms of restructuring arrangement by the Financial Institutions. Subsequently till the year 31.03.2009, the above amount had reached Rs. 45,00,00,000/- (Rupees Forty-Five Crores Only). This application money was not allotted for around 8 years because the company had plans to reduce the face value of equity share of Rs. 10 to Rs. 0.50 i.e., 95% reduction. As per the directions given by the BIFR, at the time of hearing, the Corporate Debtor



submitted revised draft rehabilitations scheme, which suggests reduction on equity share capital by 95%. The Financial Creditors objected to the same and suggested that the promoters should bring at least Rs. 45 crores in the form of interest free uncleared loans to be converted into equity only on achieving the projected income and profitability by 31.03.2014.

15.2. On 13.03.2012, BIFR observed that deducting of share capital by 95% was not acceptable to anyone, hence the Board concluded that the Companies rehabilitation proposal was not viable. This was unknown to the contributors of Rs. 45 crores share application money, however, the notes in the balance-sheet of CD for the year ending 31.03.2005 state that share application money represents subscription by the promoters and associates pursuant to the restructuring/ settlement scheme of liabilities. It is therefore clear that the alleged debt of Assignor No. 3 i.e. *M/s Midas Powertech* is actually the money of the promoters and associates of the CD and not any independent third party financial assistance. The Applicant has annexed summary records of proceedings before BIRF and Financial Statement of the CD for the year ending 31.03.2017 to prove the same.

15.3. Moreover, the balance-sheet of Assignor No. 3 does not substantiate any debt receivable of Rs. 45 crores from the CD so as



to assign the said debt to the applicant, nor the balance-sheet of the applicant corroborates Rs. 45 crores receivable from the CD.

- 15.4. With regard to the loan assigned by Assignor No. 2 i.e. *M/s Pallavi Synthetics*, it is submitted that *Mashreq Bank* had extended loan to CD which was settled by way of OTS for a sum of Rs. 4.66 crores (Rs. 3.47 crores by way of *Miss K3N* and Rs. 1,16,50,000/- (Rupees One Crore Sixteen Lacs and Fifty Thousand) by one *M/s Adarsh Pratishtan* to the account of *M/s Modern Petrofils, a unit of the Corporate Debtor*). Moreover, balance-sheet of the particular Assignor Company does not state any amount receivable from the CD or their applicant having any receivable from the CD.
- 15.5. With respect to loan assigned by Assignor No. 1 Company i.e. *M/s Modern Terry Towels*, the Financial Creditor submits that as per the balance-sheet extract of the CD for the year 2014-15, the outstanding loan to B V Bank is 81 crores and interest outstanding is 56.81 crores, whereas the balance-sheet of the Assignor Company for the year ending 31.03.2017 does not state of any amount receivable from the CD nor the balance-sheet of the applicant corroborated with any receivable from the CD. If the deed of assignment between the Assignor Company and the applicant would have actually assigned on 03.04.2017, then the outstanding amount mentioned by the CD as Rs. 169.48 crores



would have reflected in the standalone financial statements of the CD on 31.03.2018.

16. The RP submitted various documents along with certain assertions vide Diary no. 3360/2022 dated 15.11.2022 which are encapsulated below:

16.1. Against the Assignor No. 2 it has been contended that *Mashreq Bank* had extended loan to the CD which was settled by way of OTS. The amount of 4.66 crores was transferred by one *M/s K3N* and one *M/s Adarsh Pratishthan* to the account of one *M/s Modern Petrofils*. Both the transfers were towards payment obligation to the OTS proposal of *Mashreq Bank* but the identity of *Ms. K3N* and *M/s Adarsh Pratishthan* could not be ascertained nor there is any chain of transaction as to how payments made by *Ms. K3N* and *M/s Adarsh Pratishthan* conferred assignment rights in favour of Assignor No. 2 namely *M/s Pallavi Synthetics Pvt. Ltd.* Further, there is no chain of transaction between the Applicant and the particular Assignor No. 2 towards payment of consideration for assigning such rights with the Applicant.

16.2. With respect to the assignment of debt by Assignor No. 3 namely *M/s Midas Powertech*; as per the records produced, it is seen that Rs. 45 crores was share application money received from the promoters. The financial statement of CD for period ending 31.03.2017 stated that Corporate Debtor does not envisage refund



of the share application money; thus fails the fundamental test of debts. There is no chain of transaction to substantiate as to how Assignor Company No. 3 was assigned the rights of shareholders / promoters contribution.

16.3. With regard to the assignment of debt of Assignor No. 1 namely, *M/s Modern Terry Towels*, it is being inferred that the Financial Statements of the Applicant do not corroborate that it had an outstanding debt of Rs. 169.49 crores from the CD.

16.4. The Applicant has failed to substantiate its claim as a Financial Creditor. During the meeting held on 31.10.2022, CoC Member *Ms. Anita Thakur* queried for any legal proceedings initiated by the applicant against the CD for recovery of approx Rs. 13000,00,00,000/- (Rupees Thirteen Thousand Crores) to which *Shri. Nirav Thakkar (Director of Applicant)* replied that no legal proceedings were initiated. The Applicant has refused to share its bank accounts; in its absence there is no evidence corroborating chain of transactions with regard to any genuine assignment in favour of the applicant.

17. The applicant filed objections to the report of the Resolution Professional vide Diary No. 3546/2022 dated 05.12.2022 mentioning that various documents have been provided to the RP in support of its claim which include notarised copy of all the assignment agreement, Working



Consortium Agreement dated 30.12.1999 executed between *Mashreq Bank* and the Corporate Debtor, Copy of the petition dated October 2017 filed by *Mashreq Bank* under Section 7 of the Code against the Corporate Debtor, Banks Statement of Group Companies of Assignor No. 2 i.e., *M/s K3N* and *M/s Adarsh Pratishthan* demonstrating payment of settlement amount of Rs. 4.66 crores, Financial Agreement dated 18.07.1994 entered by *Unicredit Bank (formerly B V Bank)*, Decree obtained by *B V Bank* against Corporate Debtor for an amount of € 2,06,88,329/- which was satisfied by Assignor No. 1 namely *Modern Terry Towels* for a sum of € 24,00,000, subsequent Settlement Agreement dated 29.07.2014 and Ledger statement of various Groups Company. It is also submitted that the false contention as to the cost of the acquisition of assignment as alleged by the Resolution Professional nowhere discloses the date on which the term loan/ financial facility/ deposit was provided to the Corporate Debtor and neither does the same disclose the entity/ Institution which granted the financial loan or assistance to the Corporate Debtor.

18. The RP has filed written submissions vide Diary No. 3361/2022 dated 15.11.2022 wherein it has stated that despite follow ups the RP has not been provided access to the registered office of CD. The Financial Creditor has filed written submissions vide Diary No. 339/2023 dated 07.02.2023 wherein it has summarised the points laid down earlier.



19. We have carefully perused the documents laid down by the Applicant, the RP and the Financial Creditor and the pleading advanced before us.
20. The Applicant had submitted a claim of approx Rs. 13000,00,00,000/- (Rupees Thirteen Thousand Crores) (approx.) based on assignment of loans from three Companies namely *M/s Modern Terry Towels Ltd.* (Assignor No. 1), *M/s Pallavi Synthetics Pvt. Ltd.* (Assignor No. 2) and *M/s Midas Powertech Pvt. Ltd.* (Assignor No. 3), the specifics of which are being dealt with hereunder.
- 20.1. The Corporate Debtor borrowed a certain sum from the *Unique Credit Bank AG, Germany (formerly referred to as BV Bank)*. The Bank obtained a decree from a court in Munich, Germany against the Corporate Debtor for an amount of € 2,06,88,329/-. The Assignor Company No. 1 namely, *M/s Modern Terry Towels Ltd.* was the guarantor in the said loan agreement and pursuant to the decree, it satisfied the loan of the Bank vide settlement dated 29.07.2014. Thereafter, the Assignor Company has allegedly assigned the loan to the Applicant vide Assignment Deed dated 03.04.2017 for a consideration of Rs. 5 Crores. The part consideration of Rs. 5 Lakh was paid at the time of execution of the said deed.
- 20.2. Second, the Corporate Debtor had availed a loan from *Mashreq Bank* for which the bank had preferred an application under



Section 7 of the Code against the Corporate Debtor before NCLT, Delhi Bench. The Section 7 Application was withdrawn in terms of the settlement reached between the parties and the same was observed by NCLT, Principal Bench vide order dated 25.01.2018. The said matter was allegedly settled by payment of Rs. 4.66 Crores by *M/s K3N* and *M/s Adarsh Prathishthan* into the account of one *M/s Modern Petrofils* (which is a unit of the Corporate Debtor).

- 20.3. Lastly, the Corporate Debtor had allegedly availed a loan from the Assignor Company 3 which was assigned to the Applicant vide Assignment deed dated 30.04.2017.
21. The Applicant was directed vide Order dated 10.05.2022 to file certain documents before us but the Applicant has failed to file the same. The only piece of documents presented before us are Memorandum of Association of the Applicant, Articles of Association of the Applicant, name of the director of Applicant and his authorization stemming from Board Resolutions for signing the Assignment Deeds, Details of the Statutory Auditors of the Corporate Debtor, List of Directors and Representation of the various shareholdings/directors. The Applicant has failed to file its Bank Statement for the past 6 years; Original Assignment Deeds as executed between the Applicant and the Assignor Companies; Copy of minutes books, Board Meetings, Notice & Agenda of Board Meetings;



Minutes and Attendance register in the books of the Corporate Debtor, Applicant and Assignor Companies at the time of Assignment; etc.

22. In absence of the bank statements, we are unable to ascertain how the consideration as mentioned in the Assignment deeds was disbursed to the Assignee Companies. It is seen that only w.r.t. the Assignor Company No. 1 an amount of Rs. 5,00,000/- (Rupees Five Lacs Only) was disbursed at the time of execution as mentioned in the Assignment deed itself. The remaining payment to the Assignor Companies cannot be traced in the absence of any proof. Also, there is no reason which can explain the absence of any transaction between the Applicant and the Assignor Companies for the subsequent assignment of the alleged loans.
23. Moreover, it is shocking to see that these transactions have been carried out by the Assignor Companies without coming in true light. With respect to the rights of Assignor Company No 2, it is observed that there is no link established between the payment made by *M/s K3N* and *M/s Adarsh Prathishthan* to *M/s Modern Petrofils (A unit of Corporate Debtor)* for settlement of loan availed from *Mashreq Bank* with that of the rights assigned by the Assignor Company No. 2. No link has been established between Assignor Company No. 2 and *M/s K3N* and *M/s Adarsh Prathishthan*, the companies that made payment to the *M/s Modern Petrofils (A unit of Corporate Debtor)* for disbursing the alleged settlement



amount to *Mashreq Bank*. The nature of the transactions carried out by the above 2 companies cannot be ascertained in the present circumstances.

24. Mere glance of the documents shows that there is no cogent evidence to prove the existence of any loan in favour of the Assignor No. 3 which was availed by the Corporate Debtor. The Assignor Company No.3 has plainly assigned its rights to recover from the Corporate Debtor to the Applicant for a consideration of Rs. 50 Lakhs but no document is on record which can show that there was an existing debt. Hence, in the absence of any loan, the assignment done by Assignor Company No. 3 automatically stands nullified. There is no iota of proof which can substantiate the claim of the Applicant *vis-à-vis* the claim of Assignor Company No. 3.
25. The amounts against which the Applicant is basing its Financial Claim cannot be traced back to the balance sheets of either the Applicant or the Assignor Companies. The transactions undertaken as alleged raise question of suspicion regarding the nature of business undertaken between the Applicant and Assignor Companies.
26. The Applicant while relying on the Judgment of the Hon'ble Supreme Court in *Phoenix Arc Private Limited Vs. Spade Financial Services Limited and Ors. (2021) 3 SCC 475* has skipped the part where it is observed that in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotaging



the CIRP, by diluting the vote share of other creditors, it would be keeping with the object and purpose of first proviso to Section 21(2), to consider the former related party creditor, as under debarred under first proviso.

27. There is no prudent explanation why the Applicant has had a non-acting/lethargic attitude towards recovery of the substantial amount of approximately Rs. 13000,00,00,000/- (Rupees Thirteen Thousand Crores). When the Assignment deeds on the basis of which the whole claim of the Applicant is based cannot be corroborated or produced in original before this court, we find no reason to entertain such claim.
28. This bench had specifically directed, vide its order dated 10.05.2022, to the Applicant to provide certain sets of documents but the Applicant did not submit all these documents and information as called for even after the appeal filed by the Applicant before the Hon'ble NCLAT against the impugned order was disposed of. It is also found that the Applicant has lodged a claim of Rs. 10862.22 Crores against a transaction whose reported principal loan amount is Rs. 169.48 Crore; Sixty Four times the principal amount, which has never been heard of. As compared to the existing Financial Creditors lodging their respective claims, the Applicant has made all possible attempts with malicious intent to lodge a huge amount of claim of Rs. 12893.39 Crores with the RP, calculating interest at a rate, so ensure that the Applicant controls the CoC and can frustrate the CIRP of the Corporate Debtor.



29. There is a clear cut procedure; guidelines and the requirements of minimum payment, capacity of the Assignee, reflections of transactions in Balance Sheets of the Assignor Companies and the Assignee in case of assignment of any debt. All of the aforesaid are missing in the present case. It appears that all there are sham transactions and the matter needs thorough examinations by the Appropriate Authority to prevent misuse of this forum and defeat the objectives of the Code. The role of all the Statutory Auditors, who have signed the Balance Sheets of the Assignor Companies, Applicant Company and the Corporate Debtor need to be examined. Though it is a fit case to reject this application with a heavy penalty, we are not imposing any penalty as the matter needs further examination and investigation in the interest of all the stakeholders.
30. In view of the foregoing, the interim applicant bearing *IA No. 203/JPR/2022* is rejected.
31. The Resolution Professional is directed send all the related papers received from the Applicant, Financial Creditors, Documents in his possession and the details of such transactions with date and events undertaken by the Applicant Company, Assignor Companies and other such related parties vide a detailed report to the Ministry of Corporate Affairs within 3 weeks for examination/investigation. Copy of the same shall be preferred to the Registry for record.



32. Certified copies of this order be communicated by the Registry to the parties.

DEEP
CHANDRA
JOSHI

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DEEP CHANDRA
JOSHI
Date: 2023.04.19
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
MOHANTY

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**