



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA-35/2022, IA-36/2022, IA-57/2022

IN

Company Petition No. (IB)-1095(ND)/2019

IN THE MATTER OF:

Ritu Tandon

... Applicant/Operational Creditor

Versus

**M/s Rain Automotive India Private Limited
(in Liquidation)**

... Respondent

AND IN THE MATTER OF IA-35/2022, IA-36/2022, IA-57/2022:

M/s Inquest Fintech Private Limited

Having Registered Office at:
85-A, Pocket-A, Mayur Vihar,
Phase-II Chilla Saroda Khadar,
Patparganj Delhi-110091

... Applicant/Assignee

VERSUS

Ms. Maya Gupta

Liquidator
M/s Rain Automotive India Private Limited
Office: 701, Vikrant Tower-4,
Rajendra Place, Delhi-110008

... Respondent

Order Delivered on: 11.08.2023

SECTION: Rule 53 And 11 of NCLT Rules, 2016 read with Regulation 37A
of IBBI (Liquidation Process) Regulations, 2016

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Abhay Kaushik in IA No.35, 36, 57 of 2022

For Respondents : Advs. Jitesh P. Gupta, Harsh Kumar, Amrita for
Respondent No. 3, Adv. Chitranshul A. Sinha,
Adv. Jaskaran S. Bhatia in IA. No. 4978/2021 for
R-4, Adv. Rajat Chaudhary, Adv. Gautam
Singhal, Adv. Deepali Thakran for Ex-Directors

For the Liquidator : Ms. Maya Gupta, Liquidator in all IAs



ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

The present I.A. Nos. 35, 36 and 57 of 2022 have been filed by the Inquest Fintech Private Limited (hereinafter referred to as, the '**Applicant/Assignee**') under Rule 53 And 11 of NCLT Rules, 2016 read with Regulation 37A of IBBI (Liquidation Process) Regulations, 2016 seeking impleadment of the Applicant in IA-4978/2023, IA-4981/2021 and IA-4995/2021. The prayers made in the I.A. No. 35 of 2022 are as follows:

- a) *Impleading the Applicant as a party to the Application bearing no. IA/4978/2021 and substitute the name of liquidator with that of Applicant herein; and;*
- b) *Take on record the amended memo of parties for the Application bearing no. IA/4978/2021; and*
- c) *Pass a directory clarification at this preliminary stage that all the reliefs and benefits arising in favour of the corporate debtor, in liquidation through the liquidator qua the Application bearing no. IA/4978/2021 shall be remitted to the Applicant herein in consonance with the Deed of Assignment dated 19h November, 2021, as and when the said application will be finally adjudicated by the Hon'ble AA; and*
- d) *Pass any further or other order which this Hon'ble AA deems fit and appropriate in the interest of justice, equity, reasonableness and good conscience."*

2. The prayers made in the second application i.e., IA-36/2022 read thus:

- a) *Impleading the Applicant as a party to the Application bearing no. IA/4981/2021 and substitute the name of liquidator with that of Applicant herein; and;*
- b) *Take on record the amended memo of parties for the Application bearing no. IA/4981//2021; and*



- c) *Pass a directory clarification at this preliminary stage that all the reliefs and benefits arising in favour of the corporate debtor, in liquidation through the liquidator qua the Application bearing no. IA/4981/2021 shall be remitted to the Applicant herein in consonance with the Deed of Assignment dated 19th November, 2021, as and when the said application will be finally adjudicated by the Hon'ble AA; and*
- d) *Pass any further or other order which this Hon'ble AA deems fit and appropriate in the interest of justice, equity, reasonableness and good conscience."*

3. The prayers made in the I.A. No. 57 of 2022 are similar and read thus:

- a) *Impleading the Applicant as a party to the Application bearing no. IA/4995/2021 and substitute the name of liquidator with that of Applicant herein; and*
- b) *Take on record the amended memo of parties for the Application bearing no. IA/4995/2021; and*
- c) *Pass a directory clarification at this preliminary stage that all the reliefs and benefits arising in favour of the corporate debtor, in liquidation through the liquidator qua the Application bearing no. IA/4995/2021 shall be remitted to the Applicant herein in consonance with the Deed of Assignment dated 19th November, 2021, as and when the said application will be finally adjudicated by the Hon'ble AA; and*
- d) *Pass any further or other order which this Hon'ble AA deems fit and appropriate in the interest of justice, equity, reasonableness and good conscience."*

4. Since the prayers made in all three IAs are of a similar nature, all three Applications are taken up together for adjudication. To put the facts succinctly, the underlying main Petition CP (IB)-1095/ND/2019 was filed by Ms Ritu Tandon against the Corporate Debtor namely, M/s Rain Automotive India Private Limited under Section 9 of IBC, 2016, which was admitted vide Order dated 14.06.2019 of this Adjudicating Authority. Further, the Liquidation Proceedings of the Corporate Debtor were initiated vide order



dated 02.01.2020 of this Adjudicating Authority and Ms. Maya Gupta was appointed as the Liquidator of the Corporate Debtor on 15.01.2023.

5. The present 03 IAs are filed on behalf of the common Applicant M/s Inquest Fintech Private Limited, through Mr Rakesh Kumar Director, who is duly authorised vide their Board resolution dated 14th December 2021, under Rule 53 and 11 of the NCLT Rules, 2016 read with Regulation 37A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (for brevity, referred hereinafter as “**Liquidation Regulations**”) thereby seeking impleadment of the Applicant in the Applications bearing no. IA-4978 of 2021, IA-4981 of 2021, and IA-4995 of 2021, which are pending adjudication before this Adjudicating Authority (AA). In support of its applications, the Applicant/Assignee has submitted the following:

5.1 The liquidator is making endeavours for the benefit of the stakeholders of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**Code**”) and Liquidation Regulations.

5.2 Initially, the liquidator had filed an Application bearing no. IA-619/2021 under sections 45, 50 and 66 of the Code, thereby seeking avoidance of certain transactions of the corporate debtor on the basis of the Transaction Report submitted by the Transaction Auditor. However, pursuant to the directions of this AA, the said application has been split into three new different IAs bearing no. IA-4978/2021 filed under section 50, IA-



4981/2021 filed under section 45 and IA-4995/2021 filed under section 66 separately, which are pending adjudication before this AA.

5.3 From the newspaper publication dated 24th September 2021, the Applicant came to know about the sale of actionable claims of the corporate debtor, pursuant to which it approached the liquidator of the corporate debtor seeking purchase/ takeover of the said actionable claims forming part of the Application bearing no. IA-4978 of 2021, IA-4981 of 2021, and IA-4995 of 2021 in accordance with the provisions of the law.

5.4 The Applicant in accordance with the provisions of the Code and in furtherance to the Liquidation Regulations submitted all the relevant documents and bid to the liquidator on 26th October 2021 along with an undertaking as per section 29A of the Code and earnest money deposit of Rs. 50,000/- only.

5.5 After mutual discussion and negotiations, a Deed of Assignment dated 19th November 2021 was executed between the Applicant and the Liquidator, in consonance with Regulation 37A of the Liquidation Regulations, whereby the Liquidator assigned all the rights to the assets and recoveries emanating from the Application bearing no. IA-4978-2021, IA-4981 of 2021, and IA-4995 of 2021 in favour of the Applicant/Assignee for an agreed and lawful consideration. The said assignment has been done by the Liquidator with the Applicant in line with the established provisions of law and for the benefit of the stakeholders of the corporate debtor since the assets and recoveries emanating out of the said Applications are not readily realisable.



5.6 Pursuant to the execution of the aforesaid Assignment Deed between the Applicant and the liquidator, the assets and recoveries and all ancillary rights thereto, pertaining to IAs bearing no. IA-4978-2021, IA-4981 of 2021, and IA-4995 of 2021 are transferred and delegated in the name of the Applicant/Assignee herein including the right to implead in the said applications, the right to recover the assets, lien over the recoveries arising out of the said applications and to further contest the said applications. Hence, it is in the interest of equity and reasonableness that the Applicant herein shall substitute the Liquidator in the applications bearing no. IA-4978-2021, IA-4981 of 2021, and IA-4995 of 2021 and be impleaded as a party to the instant proceedings in the capacity of the assignee and beneficiary to the monetary benefits arising out of the said application. Accordingly, the Applicant/Assignee has filed the amended memo of parties with the applications.

6. During the course of the hearing, vide order dated 07.12.2022, this Adjudicating Authority directed the Liquidator thus:

IA-35/2022, IA-36/2022, IA-57/2022: These applications have been filed by the Inquest Fintech Pvt. Ltd. for impleading their name, as being successful assignee of the debts in IA-4978/2021, IA-4981/2021, IA-4995/2021 filed by the Liquidator.

Ld. Counsel appearing for the Applicant is directed to file the amended Memo of Parties by arraying the Liquidator as the Respondent. Liquidator is directed to file an affidavit/reply to these applications and also an affidavit stating that these debts have been assigned in consultation with the Stakeholders Consultation Committee (SCC) as per the provisions of 37(A) of IBBI (Liquidation Process) Regulations, 2016.

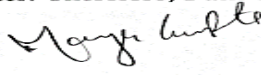


List these IAs on 25.01.2023.



7. In compliance with the aforesaid order, the Liquidator has filed its Affidavit dated 16.01.2023, which is reproduced below, for the immediate reference:

AFFIDAVIT IN COMPLIANCE TO ORDER DATED 7TH DECEMBER, 2022 PASSED BY THE LD. ADJUDICATING AUTHORITY BY THE LIQUIDATOR IN IA NO. 35, 36 AND 57 OF 2022 IN MATTER OF IB 1095/ND/2019

I, Maya Gupta, D/o Shri Bishamber Dayal, aged about 42 years, acting as the liquidator for M/s Rain Automotive India Private Limited, having IBBI Registration no. IBBI/IPA-002/10-N00363/2017-18/11061, having office at 701, Vikrant Tower, Rajendra Place, Delhi-110008, do hereby solemnly affirm and state as under:

1. I state that I am the Liquidator of M/s Rain Automotive India Private Limited ('Corporate Debtor') appointed by the Ld. Adjudicating Authority ('AA') vide order dated 15th January 2020, and hence, well conversant with the facts and circumstances of the instant matter. Therefore, I am competent enough to swear this affidavit on oath.  
2. I state that in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (as amended) ('IB Code') read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations'), pursuant to my taking charge over the assets and liabilities of the corporate debtor, I have been making endeavours to liquidate the assets of the corporate debtor for the benefits of the stakeholders.
3. I state that during the course of liquidation proceedings and on the basis of transaction report submitted by the transaction auditor, I have filed applications under section 45, 50 and 66 of the IB Code bearing nos. IA/4981/2021, IA/4978/2021 and IA/4995/2021 ('Avoidance Applications').
4. I state that in accordance with Regulation 37A of the Liquidation Regulations, the liquidator is vested with the rights to assign the assets of the corporate debtor which are not readily realisable in nature including the assets/ recoveries underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in section 43 to 51 and section 66 of the IB Code ('Actionable Claims'), through a transparent process in consultation with the stakeholders' consultation committee ('SCC').
5. I state that vide newspaper publication dated 24th September, 2021, the sale of actionable claims of the corporate debtor has been published by the undersigned in the newspaper 'Jansatta'. I state that pursuant to the said publication, the Applicant in the captioned application approached the undersigned thereby seeking purchase/ takeover of the said actionable claims forming part of the avoidance applications mentioned herein above in accordance with the provisions of law.
6. I state herein that the Applicant herein has vide email dated 5th October, 2021 approached the undersigned and expressed its willingness to take the assignment of the aforementioned actionable claims and further provided undertaking in terms of its eligibility as per section 29A of the IB Code for the said purposes. 



Furthermore, the Applicant has also deposited the earnest money deposit with the undersigned in consonance with the said assignment to the tune of INR 50,000/- only.

7. I state that the said agenda *qua* assignment of actionable claims has been duly put forth before the SCC in its meeting dated 9th November 2021, under which the SCC has categorically approved and recommended the assignment of avoidance applications in favour of the Applicant herein. The minutes of SCC meeting dated 9th November 2021 is annexed herein as **Annexure-A1**.

8. I state herein that pursuant to mutual discussions and negotiations culminated with the Applicant, a Deed of Assignment dated 19th November, 2021 has been executed between the Applicant and the liquidator of the corporate debtor in consonance with Regulation 37A of the Liquidation Regulations, wherein the undersigned has assigned all the rights to the assets and recoveries emanating from the aforementioned avoidance applications in favour of the Applicant herein for an agreed and lawful consideration. The said assignment has been done by the undersigned with the Applicant herein in line with the established provisions of law and for the benefit of the stakeholders of the corporate debtor since the assets and recoveries emanating out of the said avoidance applications are not readily realisable for the liquidator and are further contingent which are underlying the proceedings before the Hon'ble AA. In consonance with the same, Regulation 37A of the Liquidations Regulations is reproduced herein for the ready reference of the Hon'ble AA:

“(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders’ consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation- For the purposes of this sub-regulation, “not readily realisable asset” means any asset included in the



liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in section 43 to 51 and section 66 of the code.”

9. It is pertinent to mention herein that pursuant to execution of the assignment deed between the Applicant and the undersigned, the assets and recoveries and all ancillary rights thereto, pertaining to avoidance applications have been transferred and delegated in the name of the Applicant herein including the right to implead in the said application, right to recover the assets and lien over the recoveries arising out of the said avoidance applications and to further contest the said application.
10. I state that the contents of the aforementioned affidavit are drafted by undersigned liquidator, and I confirm that the same are true and correct to the best of my knowledge as evidenced from the records and available documents.
11. I state that no part stated herein is false or incorrect and nothing material has been concealed from this Hon'ble AA for the sake of brevity.



Maya Gupta
DEPONENT

8. The Applicant/Assignee through its Counsel Mr Abhay Kaushik too filed a “Brief Note on NRRA and Regulation 37A of Liquidation Regulations” dated 02.03.2003, *inter alia*, stating the following :

8.1 Not Readily Realisable Assets (NRRA) includes :

- a) Sundry debts; and
- b) Contingent receivables; and
- c) Disputes receivables; and
- d) Sub-judice receivables; and
- e) Disputed assets; and
- f) Assets underlying avoidance transactions.



8.2 Why is the above classified as NRRA:

- a) Values of the same are not easily realisable; and
- b) Indefinite waiting time frame is associated with it; and
- c) It remains in the realm of uncertainty.

8.3 In terms of Regulation 37A of Liquidation Regulations, 2016, what is to be seen is whether the following has been adhered to:

- a. Assignment of NRRA through the transparent process: Followed since the Liquidator made publication in the newspapers for information of the general public at large;
- b. Consultation with the SCC: Since the Assignee is prevented by the doctrine of indoor management, it is assumed that the liquidator has consulted the SCC on the issue; and
- c. Person's eligibility to submit resolution plan: For the same, the undertaking has been furnished to the Liquidator that the Assignee is not ineligible under 29A of the Code.

Since, following the basic principles of law, the assignment has been made in the instant case, therefore, the same is valid and lawful.

9. The Applicant/Assignee in the above-referred 'Brief Note' has also relied upon the following judgements:

9.1 In India, the law does not prohibit the assignment of cause of action. The Supreme Court in Re: Mr. 'G', A Senior Advocate (1954) judgment held that the rigid British principles of champerty and maintenance are not applicable in India per se. The Privy Council in **Ram Coomar Coondoo v Chunder Canto Mookerjee (1876)**, for the first time, permitted third-party



litigation funding on the ground of promoting access to justice in India and noted that:

“Agreements of this kind ought to be carefully be watched, and when found to be extortionate and unconscionable, so as to be inequitable against the party; or to be made, not with the bona fide object of assisting a claim believed to be just, and of obtaining a reasonable recompense therefore, but for improper objects, as for the purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy, effect ought not to be given to them.”

9.2 The concept of third-party funding is statutorily recognised under the Code of Civil Procedure, 1908 (CPC) in some states such as Maharashtra, Gujarat, Madhya Pradesh and Uttar Pradesh by respective state amendments to Order XXV of the CPC. The Hon’ble Supreme Court in **Bar Council of India v A.K. Balaji & Ors. (2018)** has clarified the legal permissibility of third-party funding in litigation and observed that:

“There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation”.

9.3 Section 132 of the Transfer of Property Act, 1882 provides that the transferee (assignee) of an actionable claim has to take it subject to all the liabilities and equities to which the transferor (assignor) was subject in respect thereof at the date of the transfer (assignment). In **ICICI Bank Limited v. Official Liquidator of APS Star Industries Ltd. & Others (2010)**, the Hon’ble Supreme Court observed that:



“rights under a contract are always assignable unless the contract is personal in its nature or unless the rights are incapable of assignment, either under the law or under an agreement between the parties. A benefit under the contract can always be assigned. That, there is, in law, a clear distinction between assignment of rights under a contract by a party who has performed his obligation thereunder and an assignment of a claim for compensation which one party has against the other for breach of contract.”

9.4 In ***Kapilaben & Ors vs Ashok Kumar Jayantilal Sheth & Ors (2019)***, the Hon’ble Supreme Court observed that:

“...If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it. It is clear from the above that the promisor may employ a competent person, or assign the contract to a third party as the case may be, to perform the promise only if the parties did not intend that the promisor himself must perform it....”

9.5 The general rule is that the benefit of a contract may be assigned to a third party without the consent of the other contracting party. Further, adequate provisions are provided in commonwealth jurisdictions that give the right to the liquidator (office-holder) to assign personal actions vested in the office-holder, particularly with respect to avoidance transactions.

9.6 Further, section 5(7) of the Code defines a “financial creditor” to mean *“any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to”*. The Code allows the



assignee of the debt to initiate the insolvency process against the CD, on the occurrence of default and receive dues in resolution. However, it is observed that there are no express provisions for the assignment of cause of action under the regulations.

9.7 In order to address the same, it is proposed that the regulations may explicitly provide the assignment of the right of cause of action by the liquidator to a third party in consultation with SCC in the best interest of stakeholders and to facilitate access to justice. Post requisite amendment in regulations, a market may develop for assignment for such assets.

9.8 It is reasonable to expect that the assignee shall be able to realise the NRRA at lesser cost and possibly earlier than the liquidator might have, due to its expertise, and economies of scale. Therefore, the total surplus for the economy/society as a whole would be equal to or greater than the situation wherein such assets are realised by the liquidator himself. Further, over a period of time, a market for such assets may develop, which, in turn, would lead to better price discovery and provide greater business and employment opportunities through assignees. The proposal is also in the interest of equity as the stakeholders, having a right on the liquidation estate will get their dues.

9.9 Further, the said NRRA can be assigned in favour of any person who is not disqualified in terms of section 29A of the Code and can submit a resolution plan, through transparent mode.



10. The Applicant/Assignee, along with the “Brief Note on NRRA and Regulation 37A of Liquidation Regulations” dated 02.03.2003, has also annexed a “Chart of Assignment”, which reads thus:

CHART ON ASSIGNMENT

S.NO.	IA NO. OF AVOIDANCE APPLICATION	AMOUNT INVOLVED IN THE AVOIDANCE APPLICATION	FROM WHOME TO RECOVER THE AMOUNTS UNDER THE AVOIDANCE APPLICATION(S)	AMOUNT OFFERED BY THE APPLICANT FOR TAKING OVER THE CONTINGENT RECEIVABLES UNDER THE AVOIDANCE APPLICATION	DATE OF ASSIGNMENT
1.	IA/4978/2021 U/S 50 OF IB CODE	INR 7,02,53,831/-	1. GIRISH BHATIA 2. RAJESH KUMAR 3. FORD CREDIT INDIA PRIVATE LIMITED 4. FORD INDIA PRIVATE LIMITED	INR 50,000/- AS TOTAL CONSIDERATION FOR ASSIGNMENT OF NRRA	19.11.2021
2.	IA/4981/2021 U/S 45 OF IB CODE	INR 1,10,52,656/-	1. GIRISH BHATIA 2. RAJESH KUMAR		
3.	IA/4995/2021 U/S 66 OF IB CODE	INR 18,25,31,158/-	1. GIRISH BHATIA 2. RAJESH KUMAR 3. HANA MOTOR PLAZA PVT. LTD. 4. CELEBRATE MOTORS PVT. LTD. 5. NATH MOTORS PVT. LTD. 6. OLA FLEET TECHNOLOGIES PVT. LTD. 7. MGF DEVELOPMENTS LIMITED 8. BHARTI AXA GENERAL INSURANCE COMPANY LIMITED 9. THE ORIENTAL INSURANCE COMPANY LIMITED 10. FUTURE GENERALI INDIA INSURANCE COMPANY LIMITED 11. KOTAK MAHINDRA GENERAL INSURANCE COMPANY LIMITED		



			12. HDFC ERGO GENERAL INSURANCE COMPANY LIMITED		
			13. RELIANCE GENERAL INSURANCE COMPANY LIMITED		
			14. SBI GENERAL INSURANCE COMPANY LIMITED		
			15. TATA AIG GENERAL INSURANCE COMPANY LIMITED		
			16. TATA MOTORS INSURANCE BROKING AND ADVISORY SERVICES LIMITED		
			17. BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED		
			18. GO DIGIT GENERAL INSURANCE LIMITED		
			19. ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED		
			20. USHA SPEEDWAYS		
			21. HARPREET MOTORS PVT. LTD.		
			22. ALVA AUTO SPARES PVT. LTD.		

11. We heard the submissions of the Applicant as well as the Ld. Liquidator and perused the documents on record. From the pleadings, it is observed that the Liquidator has assigned debt/ “Not readily realisable



assets” (hereinafter referred to as “**NRRA**”) of the Corporate Debtor total worth Rs. 26,38,37,645/- arising out of 03 IAs under consideration of this Adjudicating Authority (viz., Rs.7,02,53,831/- in IA-4978-2021, Rs.1,10,52,656/- in IA-4981 of 2021, and Rs.18,25,31,158/- in IA-4995 of 2021) for a total consideration amount of Rs. 50,000/- (Rs. Fifty thousand) only vide Deed of Assignment dated 19th November 2021 executed between the Liquidator and the Applicant herein. Accordingly, the Applicant has filed the 03 present IAs viz., IA-35/2022, IA-36/2022, and IA-57/2022 for impleading itself as a party in the Applications bearing no. IA-4978 of 2021, IA-4981 of 2021, and IA-4995 of 2021 to substitute the name of Applicant herein in place of liquidator. Indubitably, the Avoidance/PUFE Applications viz., IA-4978 of 2021, IA-4981 of 2021, and IA-4995 of 2021 filed under the instant petition are yet to be decided by this Adjudicating Authority. Hence, the pertinent issues that emerge before us are that -

- a) **At what stage the Liquidator could assign the NRRAs - Is it before or after the adjudication of an Application filed for Avoidance / PUFE (Preferential, Undervalued, Fraudulent, and Extortionate credit) transactions by the Liquidator under Sections 43, 45, 50, or 66 of IBC 2016?**

- b) **If the NRRAs are assigned before the adjudication of an Avoidance/PUFE Application, whether the Adjudicating Authority have jurisdiction to hear an Application filed/pursued by the Assignee?**



12. In order to examine the first issue, we would like to visit the Regulation 37A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**hereinafter, referred to as “Liquidation Regulations”**), which is reproduced below:

⁵⁵[37A. Assignment of not readily realisable assets.

(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders’ consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation. — For the purposes of this sub-regulation, “not readily realisable asset” means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.]

From a perusal of the “Explanation” to Regulation 37A, it is evident that “Not Readily Realisable Asset” (NRRA) includes –

- (a) any asset included in the Liquidation estate, which could not be sold through available options, and includes
- (b) contingent and disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and Fraudulent transactions (PUFE) referred to in Sections 43 to 51 and 66 of IBC, 2016.

13. Since the “Explanation” to Regulation 37A refers to *any asset included in the “Liquidation Estate”*, we refer to Section 36(3) of IBC, 2016 which reads thus:



36. Liquidation estate. -

(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

(a) assets owned by a third party which are in possession of the corporate debtor, including -

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

From a bare perusal of the aforementioned provision, it is observed that, inter alia, *any Assets or their value recovered through proceedings for avoidance of transactions* are permitted to be included in the liquidation



estate. It goes without saying that the proceeds/contributions receivable by the Corporate Debtor as an outcome of the avoidance/PUFE proceedings can only be recovered once such proceedings are concluded or determined and the entitlement of the Corporate Debtor qua the same is crystallised.

14. Though, as per Regulation 37A of the Liquidation Regulations, a Liquidator is entitled to sell assets underlying PUFE Applications i.e., “Not readily realisable assets”. However, a question that arises is regarding the valuation of such assets. The assets underlying the pending PUFE Applications are contingent assets. There is always a possibility of dismissal or allowing of avoidance/PUFE Applications, which could lead to the realisation of ‘NIL’ or “Full value” or “a value in between”. However, if the proceeding(s) covered under the ambit of “Not readily realisable assets” is allowed, then the value underlying such proceeding(s) is determined by this Adjudicating Authority and is known to the Liquidator which, in other words, is a crystallised demand. **In the absence of conclusion/ adjudication of Avoidance/PUFE proceedings by the Adjudicating Authority, there will be room for arbitrariness and the Liquidator may end up assigning the NRRAs for an arbitrary or a meagre amount, as has happened in the instant case, where the Liquidator has assigned the debt/ “Not readily realisable assets” (NRRAs) of Corporate Debtor worth Rs. 26,38,37,645/- for a meagre consideration of Rs. 50,000/- only, through Deed of Assignment dated 19th November 2021 executed between the Liquidator and the Applicant herein.**



15. Other than the valuation of the assets underlying the pending avoidance/PUFE proceedings, the next issue before us is **who can pursue avoidance /PUFE Applications after the assignment of NRRA ?** At this stage, we refer to the statutory provisions under Sections 43, 45, 50, and 66 of IBC 2016, which read thus:

43. Preferential transactions and relevant time. -

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if-

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers-

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that -

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. - For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if -

(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

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45. Avoidance of undervalued transactions. -

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) ¹[***] determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor–

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

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50. Extortionate credit transactions. -

(1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1).

Explanation. - For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

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66. Fraudulent trading or wrongful trading. -

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, **the Adjudicating Authority may on the application of the resolution professional** pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

²[(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]

Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

16. Thus, on a bare perusal of the aforementioned Sections, it is evident that an application to this Adjudicating Authority in terms of Sections 43, 45, 50, and 66 of IBC 2016 can only be filed by a Resolution Professional (RP) or a Liquidator as the case may be.

17. We are aware of the fact that under Section 47 of IBC 2016, where the undervalued transaction is not reported to the Adjudicating Authority by the Resolution Professional or Liquidator as the case may be, a Creditor, Member, or a Partner of the Corporate Debtor may make an application to the Adjudicating Authority to declare such transaction void and reverse their effect.



18. Moreover, as has been analysed hereinabove, the avoidance applications are preferred qua certain transactions entered into by the ex/suspended-management of the CD and once the claim involved in such applications is treated as “not readily realisable asset” and is assigned to a third party, the semblance is such that the remedy in terms of the provisions of Sections 43 to 51 and 66 is not found effective enough to realise the asset of the CD, and therefore, such asset is assigned by RP/Liquidator to a third party. It is not understood as to how the same application if pursued by a third party/assignee would render the NRRR realisable.

19. We are also conscious of the fact that the terms “Financial Creditor” as defined under Section 5(7) and “Operational Creditor” as defined under Section 5(20) of IBC 2016, include the ‘assignee’ of the debt too as a Financial Creditor and Operational Creditor which implies that an ‘assignee’ is also entitled to file an application under Section 7 or 9 IBC, 2016 as the case may be. **However, we see no such explicit provision under Sections 43, 45, 50, and 66 of IBC 2016, in terms of which an Application under these Sections could be filed or pursued by an Assignee/ or a Third Party on behalf of the RP or Liquidator as the case may be.**

20. However, the Code permits where an RP or Liquidator of a Corporate Debtor under the CIRP/ Liquidation process, as the case may be, by virtue of their entitlement under Explanation II of Section 11 of IBC 2016, files an Application under Section 7 or 9 against **another** Corporate Debtor, they in the capacity of being “Financial Creditor” or “Operational Creditor” as



defined under Section 5(7) and 5(20) of IBC 2016 respectively, can assign, at any stage, the debt of the Corporate Debtor which they represent.

21. The objective of avoidance/ PUFÉ applications filed under Sections 43, 45, 50, and 66 of IBC 2016 is discussed by the Hon'ble High Court of Delhi in the matter of "**Tata Steel BSL Limited Vs Tata Steel Bsl Limited Vs. Venus Recruiter Private Limited & Ors LPA 37/2021, dated 13.01.2023, (2023) Ibclaw.In 09 HC.**" The relevant extracts of the Judgement are reproduced below:

*"41. In furtherance of the larger object and purpose of the IBC discussed in the paragraphs above, provisions pertaining to various types of avoidable transactions i.e., Sections 43-51 and 66 and 67 were especially made a part of the IBC so that they could be avoided by the RP (during the CIRP) or the liquidator thereafter **to protect the interests of the creditors.** On account of avoidable transactions undertaken by the erstwhile promoters/management of a corporate debtor, the pool of assets of the corporate debtor stands diminished, becoming detrimental to the successful resolution of the corporate debtor as it does not serve as a lucrative prospect to a Resolution Applicant. **Even if the corporate debtor would proceed to liquidation, the diminished pool of assets harms the recovery prospect of creditors directly. Therefore, these provisions, largely endeavor to enhance the pool of assets of the corporate debtor available for either making it a lucrative prospect for a Resolution Applicant or in the event of liquidation, for distribution among creditors. The avoidance of these transactions essentially prevents unjust enrichment of one party at the expense of a creditor."***

(Emphasis added)

In terms of the Judgement (ibid), the larger object of avoidance/ PUFÉ applications is to (a) enhance the pool of assets of the corporate debtor available for either making it a lucrative prospect for a Resolution Applicant



or in the event of liquidation, for distribution among creditors, and (b) prevent unjust enrichment of one party at the expense of a creditor. **Per Contra, the Liquidator herein by assigning the debt/ “Not readily realisable assets” (NRRAs) of the Corporate Debtor total worth Rs. 26,38,37,645/- for a meagre consideration of Rs. 50,000/- is facilitating the enrichment of the Applicant/Assignee herein, if the pending 03 applications are allowed by this Adjudicating Authority, at the expense of the Creditors.**

22. Furthermore, in our view, the intent behind avoidance/ PUFÉ applications filed under Sections 43, 45, 50, and 66 is not the “recovery”, but to maximize the value of the assets of a Corporate Debtor. However, if the avoidance/ PUFÉ applications are allowed to be pursued by a Third Party or an Assignee, then adjudication of such applications, pursued by a Third Party or an Assignee would effectively end up making this Adjudicating Authority a “Recovery Forum”. Nevertheless, de hors such semblance, we would still like to examine the legal position - **Whether this Adjudicating Authority has jurisdiction to adjudicate the Avoidance/ PUFÉ Applications pursued by a Third Party or an Assignee when even the proceedings under Sections 43, 45, 50, and 66 are not concluded.** In order to examine this issue relating to our jurisdiction, we refer to Section 60(5) of IBC 2016, which stipulates what kind of applications or proceedings can be adjudicated by this Adjudicating Authority. The contents of Section 60(5) of IBC 2016 read thus:



60. Adjudicating Authority for corporate persons. -

(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or ¹[liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or ²[liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.



On perusal of Section 60(5)(a) of IBC 2016, it is observed that only an application or proceeding *by or against the Corporate Debtor* can be entertained by this Adjudicating Authority. Further, as per Section 60(5)(b) of IBC 2016, a claim *by or against the Corporate Debtor* and its subsidiary outside India can be adjudicated. Undoubtedly, proceeding under Sections 43, 45, 50, and 66 of IBC 2016 are the proceedings or claims, that are instituted by RP or Liquidator on behalf of the Corporate Debtor. Hence, the applications filed by RP or Liquidator under Sections 43, 45, 50, and 66 of IBC 2016 can be considered applications by the Corporate Debtor.

23. However, if a debt is assigned to a Third Party or an Assignee under Sections 43, 45, 50, and 66 of IBC 2016, the application or claim cannot be deemed to be pursued by the Corporate Debtor. Moreover, the Avoidance/PUFE transactions underlying such applications pursued by a Third Party or an Assignee will cease to be an issue *arising out of CIRP or Liquidation* of the Corporate Debtor in terms of Section 60(5)(c), as the beneficiary of those proceedings or claims would be the Third Party or Assignee and recovery if any, would be realised and added to the asset pool of the Assignee. Furthermore, what was earlier a dispute between the “Corporate Debtor, Through RP/ Liquidator Vs. Respondents of PUFE Application”, will now, become a dispute between “an Assignee and Respondents of PUFE Applications, which will be *dehors* the insolvency proceedings of the Corporate Debtor. **Hence, in view of the aforesaid discussion, we conclude that this Adjudicating Authority has no jurisdiction to adjudicate an avoidance/PUFE application pursued by a Third Party or an Assignee, in terms of Section 60(5) of IBC, 2016.**



However, this does not mean that the debt can never be assigned. Once the demand is crystallised or determined, in other words, when the avoidance/PUFE proceedings are concluded, the debt can be assigned by following the due procedure prescribed under the law. This is a trite law that after the crystallisation of demand, no examination of debt/transaction is done on merit. In other words, the proceedings are concluded and what remains is only the execution of order.

24. In the sequel to the above-mentioned legal position and discussion, we summarise our findings and conclusions as follows:

- a) As per the present scheme of Sections 43, 45, 50, and 66 of IBC 2016, Avoidance/PUFE applications can only be filed and pursued by a Resolution Professional (RP) or a Liquidator, as the case may be. There is no explicit provision under Sections 43, 45, 47, 50, and 66 of IBC 2016, by which an Application under these Sections could be filed or pursued by an Assignee/ or a Third Party on behalf of the RP or Liquidator.
- b) An RP or a Liquidator cannot assign debt/NRRAs under Sections 43, 45, 50, and 66 of IBC 2016 before the adjudication of Avoidance/PUFE proceedings i.e., before the Debt/Demand is determined or crystallized by the Adjudicating Authority.
- c) In the absence of adjudication of Avoidance/PUFE proceedings and determination of the precise amount of debt by the Adjudicating Authority, there will be room for arbitrariness and the Liquidator may end up assigning the debt/NRRAs for an arbitrary or a meagre



amount, as happened in the instant case, where the Liquidator has assigned the debt/ “Not readily realisable assets” (NRRAs) of Corporate Debtor worth Rs. 26,38,37,645/- for a paltry sum of Rs. 50,000/- only, through the Deed of Assignment dated 19th November 2021 executed between the Liquidator and the Applicant herein. Thereby, instead of enhancing the pool of assets of the Corporate debtor, the Liquidator is facilitating the enrichment of the Applicant/ Assignee herein at the expense of the Creditors, if the pending 03 applications are allowed by this Adjudicating Authority.

- d) However, as per the Code where an RP or a Liquidator of a Corporate Debtor under the CIRP/ Liquidation process, as the case may be, as per their entitlement under Explanation II of Section 11 of IBC 2016, files an Application under Section 7 or 9 against another Corporate Debtor, RP or a Liquidator in the capacity of “Financial Creditor” or “Operational Creditor” as defined under Section 5(7) and 5(20) of IBC 2016 respectively, can assign, at any stage, the debt of the Corporate Debtor which they represent.
- e) In terms of Section 60(5) of IBC 2016, this Adjudicating Authority has no jurisdiction to adjudicate an Avoidance/PUFE application pursued by a Third Party or an Assignee i.e., a dispute between two third parties (i.e., the Assignee and Respondents of the Avoidance Applications, neither of whom represents the Corporate Debtor) which will be *dehors* the insolvency proceedings of the Corporate Debtor.



- f) However, this does not mean that the debt can never be assigned. Once the demand is crystallised or determined, in other words, when the avoidance/PUFE proceedings are concluded, the debt can be assigned by following the due procedure prescribed under the law. In other words, the cause to pursue avoidance applications cannot be transferred or assigned by the Liquidator. Only the assets crystallised in terms of the order passed in avoidance/PUFE applications can be assigned or transferred to a third party.

25. In view of the above, we have no other option but to dismiss the IA-35/2022, IA-36/2022, and IA-57/2022.

26. Parties to bear their own cost.

27. A copy of this order shall be sent by the Registry/ Court officer to IBBI.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)