

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT-VI

Item No. 602
IB-324/PB/2020

IN THE MATTER OF:
Yes Bank Ltd.

...PETITIONER

Vs.

M/s. Niryat Sam Apparels (India) Pvt. Ltd.

...RESPONDENT

Section
U/s 7 of IB Code, 2016

Order delivered on 31.05.2023
(Virtual Hearing)

Coram:
SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner/Financial Creditor :
For the Applicant

:Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Vaibhav Mendiratta, Mr. Sahil Chopra, Advs. in IA/506/2023.

For the Respondent/Corporate Debtor

:Mr. Amitabh Chaturvedi, Mr. Jeevesh Nagrath, Mr. Ankit Monga, Mr. Arjun Gaur, Mr. Rajat Gupta, Advs.

ORDER

IA/506/2023

This application has been filed by Applicant (M/s JC Flowers Asset Reconstruction Pvt. Ltd.) seeking substitution of M/s JC Flowers Asset Reconstruction Pvt. Ltd. in IB/324/PB/2020 which has been original filed by the Yes Bank Ltd. against M/s Niryat Sam Apparels India Pvt. Ltd on the basis of Assignment deed dated 16.12.2022.

We have heard the submissions of Mr. Abhishek Anand, Ld. Counsel for the Applicant and also heard the submissions of Mr. Amitabh Chaturvedi, Ld. Counsel appearing for the Respondent No.1. Mr. Abhishek Anand, Ld. Counsel for the Applicant has relied upon the judgments passed by Hon'ble NCLAT in Company Appeal No. 1449 of 2022 in the matter of Siti Networks

V/s Assets Care and Reconstruction Enterprises Ltd. and Anr. Vide order dated 13.12.2022 and submitted that the Assignor need not be heard while passing an order for substitution on the basis the Assignment deed. Mr. Abhishek Anand, Ld. Counsel for the Applicant has brought to our notice the findings recorded by the Hon'ble NCLAT in para 7 in the said judgment which is reproduced below:-

“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 defined ‘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.”

Mr. Abhishek Anand, Ld. Counsel for the Applicant has also submitted that Tribunal does not have jurisdiction to look into the veracity/authenticity of the assignment deed. However, he has not produced any judgment which shows that there is no requirement of hearing the Assignor at the time of considering the application for substitution. Even in the judgments referred to above by the Counsel for the Applicant it has nowhere been observed that in matters of substitution under Section 7 of IBC, the Assignor is not required to be heard.

Vide order dated 09.01.2023, this Tribunal has passed the following orders:-

“We have heard the Counsel for the Financial Creditor (Yes Bank) as well as Counsel for the Corporate Debtor. Counsel for the Financial Creditor has submitted that Yes Bank is assigning its debt to some ARC and that they will move an application for substitution of the ARC in place of Yes Bank in

this matter. Ten days' time is given to the Yes Bank to file the substitution application alongwith the assignee.”

Further vide order dated 24.01.2023, it was recorded that M/s. JC Flowers Assets Reconstruction Pvt. Ltd. (Assignee) has filed an application seeking substitution as Financial Creditor. Since no one has appeared on behalf of Yes Bank and the application for substitution has not yet been filed as directed by this Tribunal vide order dated 09.01.2023, we deem it appropriate to issue notice to the Yes Bank.

Having heard the submission made by the Ld. Counsel appearing for both the parties, we are of the view that since the Yes Bank is the original Petitioner who is stated to have assigned the debt and in the light of the observations as above, we deem it appropriate to issue notice to Yes Bank and hear them. The Applicant is directed to serve notice on Yes Bank and file affidavit of service within one week. Registry is directed to provide a copy of this order to the Applicant during the course of the day.

Dasti permitted.

List this IA on **04.07.2023**.

IA/1052/2023

Despite direction being given to the Petitioner to file reply affidavit vide order dated 16.03.2023, no reply has been filed by the Yes Bank. 10 days' time granted as a last and final opportunity to the Petitioner/Yes Bank to file reply affidavit. List on **04.07.2023**.

Sd/-
(Rahul Bhatnagar)
Member (T)

Sd/-
(Bachu Venkat Balaram Das)
Member (J)