

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**I.A. (IB) No.1582/KB/2023**

**In**

**Company Petition (IB) No. 91/KB/2022**

**And**

**I.A. (IB) No. 1583/KB/2023**

**In**

**Company Petition (IB) No. 94/KB/2022**

*Two applications under section 60 (5) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 11 of the National  
Company Law Tribunal Rules, 2016*

**I.A. (IB) No.1582/KB/2023**

**IN THE MATTER OF:**

**Indian Bank**

**... Financial Creditor.**

*Versus*

**Motijug Agencies Limited**

**... Corporate Debtor.**

**And**

**IN THE MATTER OF:**

**CFM Asset Reconstruction Private Limited**

**.....Applicant**

**AND**

**I.A. (IB) No.1583/KB/2023**

**IN THE MATTER OF:**

**Indian Bank**

**... Financial Creditor.**

*Versus*

**Anirudh Kanoi**

**... Personal Guarantor.**

**And**

**IN THE MATTER OF:**

**CFM Asset Reconstruction Private Limited**

**.....Applicant**

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And  
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**Date of Pronouncement: April 01, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

**For I.A. (IB) No. 1582/KB/2023**

**and I.A. (IB) No. 1583/KB/2023: Mr. Siddhartha Chatterjee, Adv.  
Mr. Abir Lal Ghosh, Adv.**

**For the Corporate Debtor:**

**Mr. Joy Saha, Sr. Adv.  
Mr. Subhankar Nag, Adv.  
Mr. Avishek Guha, Adv.  
Ms. Arunika Dutta, Adv.  
Mr. Kaustov De Sarkar, Adv.**

**For the RP in**

**C.P. (IB) No. 94/KB/2022:**

**Ms. Pooja Agrawal, Adv.  
Mr. Rajesh Kumar Agrawal, RP.**

**COMMON ORDER**

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

1. This Court congregated through hybrid mode.
2. The Learned Counsel and the Learned Senior Counsel were heard.
3. Both **I.A. (IB) No. 1582/KB/2023** and **I.A. (IB) No. 1583/KB/2023** have been preferred for the substitution of the applicant in place of and stead of Indian Bank pursuant to the execution of a registered deed of assignment dated 14.08.2023

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between the applicant and Indian Bank coupled with the provisions contained in Section 5 of the SARFAESI Act, 2002.

***Submissions of the Applicant in both the matters:***

- 4.** The Learned Counsel appearing in both the applications on behalf of the applicant submits that the date of default is admitted, the principal borrower is under liquidation and the assignment has not been challenged in any proceedings before any Court or Tribunal. As such, the assignment is accepted to be valid, as per the procedure enshrined in Section 5 of the SARFAESI Act, 2002.
  
- 5.** The Learned Counsel for the applicant has drawn our attention to the Deed of Assignment dated 14.08.2023 executed between Indian Bank (Assignor) and CFM Asset Construction Private Limited (Assignee). He took us to Clause 1.1 (j) of the Deed of Assignment, which defines the term “Loans” and it means any financial assistance by way of loan, debentures, or in any other form being the aggregate amount of dues payable under the financing documents by the borrower to the assignor bank, including proceeds of enforcement of security interests but does not include A) any undisbursed commitments made by the assignor bank to the borrower; and B) does not include any amounts actually paid by the borrower towards the amounts due before the cut-off date being 10.08.2023 as such amounts cannot be considered as part of the loan.

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6. Further, he has drawn our attention to clause 2.2.6 to the Deed of Assignment dated 14.08.2023 which states that the grant of consent by the assignor to the assignee in terms of Sec 5(5) for filling the applications before the DRT, DRAT or the Court or such other authorities may be required for the purposes of substitution of its name in place and stead of the name of the Bank.
7. The Learned Counsel has referred the statutory provision to substantiate its contention as under:

**Section 5 of SARFAESI Act, 2002.**

**Acquisition of rights or interest in financial assets.**

*“(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any [asset reconstruction company] may acquire financial assets of any bank or financial institution—*

*(a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or*

*(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.*

*[(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the*

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*purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 (2 of 1899):*

*Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.]*

*(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the 3[asset reconstruction company], such 4[asset reconstruction company] shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.*

*[(2A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).]*

*(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or*

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*financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the 4[asset reconstruction company], as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, 4[asset reconstruction company], as the case may be, had been a party thereto or as if they had been issued in favour of 4[asset reconstruction company], as the case may be.*

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

*[(5) On acquisition of financial assets under sub-section (1), the 4[asset reconstruction company], may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the 4[asset reconstruction company] in such pending suit, appeal or other proceedings.]”*

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8. The Learned Counsel has referred the decision of NCLT in ***Naresh Kumar Aggarwal vs. CFM Asset Reconstruction Private Limited*** in **Company Appeal (AT) (Insolvency) No. 470 of 2023** at paragraph 7 to 9 and 14 to 17, wherein the Hon'ble NCLAT held that upon assignment, all rights of a bank or financial institution vest with the asset reconstruction company and it is deemed to be the lender for all purposes and the assignee is entitled in law to proceed against the borrower as well as the guarantor in equal measure as has been held in ***LaxmiPat Surana vs. Union of India*** reported in **(2021) 8 SCC 481, paragraph 23.**

***Submissions made in opposition to the Applicant:***

9. The Learned Senior Counsel, Mr. Joy Saha appearing on behalf of both the Corporate Debtors would vehemently oppose the applications and resist the substitution of the Indian Bank by CFM and would claim that the CFM can only be added as a party on the following grounds:
- a) The Committee of Creditor the Resolution Professional and the Liquidator are responsible for the wastage of the assets of the company in liquidation resulting in a deviation of its assets from Rs. 21.46 crore to 1.26 crore.

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**b)** The assignee can only take over the assets as permissible under the law in force and not the liabilities of the assignor bank.

**10.** The Learned Senior Counsel would further submit that as against the Indian Bank, a plethora of proceedings initiated by the Corporate as well as Personal Guarantors are pending such as:

- i.** T.S. No. 26 of 2021 pending before Learned Commercial Court Rajarhat
- ii.** IA. 666 of 2022 in CP.IB 480/KB/2018 before this Adjudicating Authority.
- iii.** IA 774 OF 2022 IN CP 480/KB/2018 before this Adjudicating Authority

It is submitted that as of today the guarantors have substantial claim against the Indian Bank and therefore the Indian bank is necessary party in the application, hence it cannot be substituted by CFM, rather CFM can be added as a Respondent.

**11.** The learned Senior for the Corporate Debtor would submit that the agreement of assignment dated 14.08.2023 has not been executed in accordance with the terms and mandate envisaged under Indian Stamp Act 1899 and the Registration Act 1908. Thus, the agreement is an invalid document. Therefore, no reliance can be placed on such agreement of assignment.

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- 12.** Further, that the agreement contains the following clauses which debars the right of the guarantors to enforce their right against the assignor, as follows:

**“2.3 ASSETS ASSIGNED**

*2.3.1 Nothing other than a "financial asset" as defined in the SARFAESI Act is acquired by the assignee from the assignor as per this Agreement.*

*2.3.2 The financial assets are assigned by the Assignor to the assignee on "as is where is", "as is what is" and "without recourse" basis.*

**4. ASSIGNOR'S REPRESENTATIONS AND WARRANTIES**

*4.1 To the best of the assignor's beliefs and knowledge, the assignor hereby represents and warrants to the Assignee that as on the date of this agreement and with reference to the facts and circumstances then existing :-*

*(k) each of the loans have been provided by the Assignor in the ordinary course of its business and the Assignor confirms that cases classified as fraud do not form part of the loans.*

*(o) There have been no defaults to the knowledge of the Assignor as per the records available with the Assignor that may have a material adverse effect on the recovery of Amounts Due from the Borrower under the Financing Documents;*

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*(w) the Assignor has not received any notice, nor has the knowledge of any valid basis for any claim or assertion of liability against the Assignor, relating to any of the Financing Documents any Transaction Document, the Amounts Due or any other amounts payable in respect of the Loan or the acquisition, collection or administration thereof other than as disclosed by the Assignor to the Assignee;*

*7(b) Provided also that the Assignor shall not be liable to indemnify the Assignee for breach of any warranties, representations, covenants, undertakings specifically furnished in Schedule (A) to (F); or agreement*

**8. EXCLUSION OF LIABILITY OF ASSIGNEE**

*To the extent permitted by Applicable law, the Assignee does not by virtue of entering into or carrying out the terms of this Agreement or purchasing the loans assume any of the financial or pecuniary obligations of the Assignor under any of the Financing Documents not hereby assigned. Any such obligations, duties, warranties, indemnities and liabilities of the Assignor, if any under the Financing Documents and not hereby assigned shall be the sole responsibility of the Assignor.*

- 13.** By interpreting the clauses of the Deed of Assignment, the Learned Senior Counsel would contend that the assignee although has taken the rights against the properties of Ural India Ltd. (now in

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Liquidation) but it has not taken any liability arising out of the transaction between the Ural India Ltd. and the Indian Bank.

- 14.** The Learned Senior Counsel for Corporate Debtor would further submit that in the event, the guarantors emerge successful in the pending legal proceedings, they shall not have any recourse left against the assignor, the Indian Bank. In view thereof in respect of present case, substitution cannot be allowed, and Indian Bank should be present as a party respondent in the present application.
- 15.** Further it is submitted that the Indian Bank thereafter allegedly by a registered deed of assignment dated 23.08.2023 has purportedly assigned the debt in favour of CFM Asset Reconstruction Private Limited, the present application. Such assignee has now preferred these applications claiming substitution in the present application, which should be dismissed.

***Submissions in counter to the Corporate Debtor:***

- 16.** The Learned Counsel appearing for the Applicant in counter would submit that the claim for wastage of assets is based on a balance sheet dated 31.08.2019 where the valuation of the assets was shown as Rs. 1.20 crore and the minutes of the 6<sup>th</sup> CoC meeting held on 24.09.2020 where the valuation allegedly is shown to be Rs. 21.46 crore. It is submitted that even if the substitution is ordered, and the Indian bank is deleted from the array of parties,

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the right to proceed against the Indian bank under Section 60 (2) read with Section 60 (5) of the I&B Code is available, thus the anxiety of the deponent of being non-suited is misconceived.

- 17.** The Learned Counsel would further submit that as per section 5 read with section 2 (1) of the SARFAESI Act, 2002, the applicant can only acquire only the financial assets which do not include the liabilities of the assignor bank. Reliance is placed on the judgment rendered by the Hon'ble Supreme Court in ***ICICI Bank Limited vs. Official Liquidator of APS Star Industries Limited & Ors*** reported in **(2010) 10 SCC 1**.
- 18.** Further it is submitted that the order dated 07.02.2024 passed by the Learned DRT, wherein it has held that CFM (Applicant) has to be added as the party and cannot be substituted, does not have any precedential value and cannot bind this Adjudicating Authority. Further, the said order has not attained any finality since the applicant is preferring an appeal against the order.
- 19.** The Counsel for the applicant would further refer to the decision rendered in ***Kapilaben vs. Ashok Kumar Jayantilal Sheth*** reported in **(2020) 20 SCC 648** at **para 24 to 30** wherein the preposition laid down is that only rights can be assigned and not the obligations and in certain case where rights and the obligations are intertwined, such right or benefit without the consent of the person to whom the coextensive burden or the liability owed cannot be assigned. The Learned Counsel for the

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Applicant would submit that while this preposition of law is not disputed, it is not applicable to the assignment made by the banks or the financial institutions under sec 5 of the SARFAESI Act, 2002. The general principles stand overridden by the mandate of a special statute. The Learned Counsel has relied on the legal maxim that is “**generalia specialibus non derogant**” which means that **a special law overrides a general law.** Therefore, it is submitted that where an Assignment is made in favour of an ARC, the proceedings for substitution under Section 5 of the SARFAESI Act, 2002 has to be allowed.

- 20.** Further it is submitted that both the personal guarantor in this matter is admittedly a corporate guarantor of Ural India (in Liquidation) and “the debt and default is admitted”. Liability of the guarantor under section 128 of the contract Act 1872 is coextensive with that of the principal borrower. Reliance is placed of the judgment rendered by the Hon’ble Apex **Court Laxmi Pat Surana vs. Union of India** reported at **(2021) 8 SCC 481** wherein it has been held that where are right or cause of action ensure to the lender to proceed against principal borrower as well as the guarantor in equal measure in case the default in repayment of the amount of debt jointly or severally.
- 21.** Thus, the Learned Counsel for the applicant asserts that the contentions raised to resist the submissions have no bearing in so far as the personal guarantors in both the matters i.e., **Motijug Agencies Limited** and **Anirudh Kanoi** is concerned.

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***Analysis and findings:***

- 22.** We have duly considered the rival contentions and perused the records. The issues, we have found for determination is twofold:
- i. *Whether the enforceability of an assignment depends on the adequacy of stamp duty.***
  - ii. *Whether the assignment Under section 5 of the SARFAESI Act, 2002 excludes assignment of liability.***
- 23.** For the ***first issue***, we seek to place reliance on the judgement of ***T. Johnson v. Phoenix ARC (P) Ltd.***, reported at **2019 SCC OnLine NCLAT 244**, wherein the Hon'ble NCLAT held that:

*“In cases involving assignment of debts, another issue arises. Often, the corporate debtor, whilst not challenging the locus of the assignee, may challenge the very assignment before the NCLT. In such cases , the process adopted for such assignment, the consideration paid for such assignment, etc, may be challenged . **The NCLT, being a tribunal of summary jurisdiction , does not have any jurisdiction to deal with such challenges.** The consideration for assignment of debt is of no relevance in so far as the liability and obligation on the part of Corporate Debtor is concerned. The assignment only changes the hands of the creditor clothing the assignee with authority to enforce the claim. The liability in regard to claim as regards ther Corporate Debtor remains intact and does not get diluted in any manner whatsoever.”*

**(Emphasis added)**

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24. Similarly, the Hon'ble NCLAT in **Lalan Kumar Singh v. Phoenix ARC Pvt Ltd.** reported at **2018 SCC OnLine NCLAT 835**, has held that “[...] declaration that the assignment made by HSBC to ‘Phoenix’ as illegal, ... can be raised only in a civil suit. The applicant is trying to convert the proceedings under the IBC as civil proceedings akin to a trial which is not the legislative intent.”
25. In **Ranjit Kapoor v Asset Reconstruction Co (India) Ltd.**, reported in **2018 SCC OnLine NCLAT 1041**, the Hon'ble NCLAT held that “the question of validity of such assignment agreement cannot be gone into by the NCLT or the NCLAT, even in an application under section 65 of the IBC.”
26. Further we have taken a similar view in **M/s. Manavta Tradelink Private Limited v. M/s. Manikaran Vincom Private Limited** in **C.P. (IB) No. 80/KB/2023** at Para 12 reported at **(2023) ibclaw.in 733 NCLT**, that:

“We hold that registration of assignment is not mandatory. Even otherwise the Corporate Debtor never disputed the assignment till date. The Corporate Debtor was in correspondence with the applicant seeking time to repay the loan with interest and therefore, at this stage, the Respondent cannot question the validity of assignment. We would rely upon the decision passed by the NCLT, New Delhi Bench in the matter of CFM Asset Reconstruction Private Limited v. Nikhil Footwears Private Limited, order dated 28.02.2023, reported in MANU/NC/1088/2023 as observed:

“8. At this juncture it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code,

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2016. The definition of Financial Creditor is reproduced herein in verbatim: -

**5. Definitions: -**

**(7) "financial creditor" means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to;"**

**"9. We are of the considered view that the assignment of debt essentially being a transaction between the Creditor and the Assignee and assignment being recognized by the Code, 2016 as a valid mode of transfer of rights across the ambit of Section 5(7) of the Code, therefore, the entity who received the said assignment of debt falls within the fold of "Financial Creditor". Further, we are persuaded by the decision of the Hon'ble NCLAT in Lalan Kumar Singh v. Phoenix ARC (P) Ltd., [MANU/NL/0345/2018, dated 20-12-2018] wherein the Hon'ble NCLAT while reiterating the objectives of the Code, 2016 observed that, "in the present case we find that the appellant has sought declaration that the assignment made by HSBC to "Phoenix" as illegal, which can be raised only in a civil suit. The appellant is trying to convert the proceedings under the "I&B Code" as civil proceedings akin to a trial which is not the legislative intent."**

**XXX**

**XXX**

**XXX**

**XXX**

**"11. [...] Therefore, considering the exemption provided under Section 5(1A) of SARFAESI Act, 2002 we are not inclined to accept the contention that the said assignment agreement being unregistered is not legally enforceable."**

**"12. In a summary proceeding like the IBC proceedings, it is out of the ambit of this Adjudicating Authority to go into the details as regard the requirement or exemption of registration of the Assignment Agreement and other related issues concerning the legality and issue of privity of parties to the Assignment Agreement dated 18.01.2021."**

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Therefore, in this background the assignment cannot be challenged in the petition under Section 7 of the Code, 2016 and as such this issue cannot be decided by the Adjudicating Authority.”

**(Emphasis Added)**

**27.** Further, the Collateral Bench of this Adjudicating Authority in **CFM Asset Reconstruction private Limited v. Jagdamba Industries Limited** in **C.P. (IB) No. 203/KB/2021** has also held that:

*“40. So, in other words, the Corporate Debtor has not denied or disputed existence of assignment deed with respect to financial assistance/loan granted by Central Bank of India. ...*

**41. Further, as brought herein above, all right in favour of assignor Bank created by virtue of loan agreement dated 30.08.2013, referred above continued in terms of above stipulation in favour of assignee, financial creditor in this petition and the financial creditor was lawfully entitled to have filed this petition. This situation squarely fits into law laid down in M/s CFM Asset Reconstruction Private Limited v. M/s Nikhil Footwears Private Limited<sup>12</sup> (supra), therefore, plea raised by Corporate Debtor is found to be incorrect.**

*42. The case law cited by the Ld. Senior Counsel for the Corporate Debtor is thus distinguishable on the basis of facts noted hereinabove in para 38 to 41 above. 43. In addition to the above, there is nothing on record put forth by Corporate Debtor to disprove existence of debt or default- the only two things as required to be established as per law laid down by Hon’ble Supreme Court in above referred case of Innoventive Industries. Arguments of Ld Counsel for Corporate Debtor raised*

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*and as noted above also do not hold water in view of two orders of NCLT Mumbai and NCLT Delhi Bench, referred herein above.”*

**(Emphasis Added)**

- 28.** We would note that **“debt and default”** has not been disputed by the Corporate Debtor.
- 29.** Hence, in the backdrop of aforesaid legal provisions and propositions, we are of the considered opinion that the validity or enforceability of an assignment cannot be judged on the touchstone of adequacy or inadequacy of stamp duty etc. by this Adjudicating Authority, in a summary proceeding as the present ones.
- 30.** Now, coming to the **second issue** regarding the **assignment of liabilities**, we would refer to the Section 2(b) of the SARFAESI Act, 2002, which envisages that:

*“Asset reconstruction” means acquisition by any [asset reconstruction company] of **any right or interest** of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance.*

- 31.** Further, the language of **Section 10** of the SARFAESI Act, 2002, is very clear having no reason for any ambiguity or ambivalence. Section 10 of the Act, 2002 reproduced verbatim as under:

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*(1) Any [asset reconstruction company] [registered under section 3 may-*

*(a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;*

*(b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;*

*(c) act as receiver if appointed by any Court or tribunal:*

*Provided that no [asset reconstruction company] shall act as a manager if acting as such gives rise to any pecuniary liability.*

Thus, it is discernible that the **SARFAESI Act, 2002 does not specifically contemplate the assignment of a liability to an assignee**, i.e., CFM Asset Reconstruction Private Limited in the present case. It is explicit that **the statute permits only the assets to be assigned and not the liability**, and the statute book does not provide for the assignment of liability or obligation.

**32.** Further, if any clause in the assignment agreement specifically excludes the liability of the assignee, it is valid and squarely applicable in terms of the statute.

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**33.** However, we would note that **Section 5(3)** of the SARFAESI Act, 2002, envisages that:

*“Unless otherwise expressly provided by this Act, **all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation**, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect **against or in favour** of the [asset reconstruction company], as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, [asset reconstruction company], as the case may be, had been a party thereto or as if they had been issued in favour of [asset reconstruction company], as the case may be.”*

**34.** Further, **Section 5(4)** of the Act, 2002 envisages that:

*“If, on the date of acquisition of financial asset under sub-section (1), **any suit, appeal or other proceeding of***

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

- 35.** Thus, the **liabilities of the Assignor in regard to the very same assets in question would remain protected to such extent**, as envisaged under the provisions Sections 5(3) and 5(4) of the SARFAESI Act, 2002, as it appears that the provisions will squarely apply to the present case.
- 36.** We have already adopted a similar view in **I.A. (IB) No. 1585/KB/2023 in C.P. (IB) No. 200/KB/2022 (Indian Bank vs. Machine Works International Limited)** decided on **19.03.2024**.
- 37.** Having observed as above, we are inclined to pass the following order:
- (i)** The substitution of **CFM Asset Reconstruction Private Limited** (Applicant herein) in place of Indian Bank (Financial Creditor) in the both matters, is **allowed**.

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**(ii) Both the interlocutory application i.e., I.A. (IB) No. 1582/KB/2023 in C.P. (IB) No. 91/KB/2022 and I.A. (IB) No. 1583/KB/2023 in C.P. (IB) No. 94/KB/2022 are accordingly disposed of.**

**(iii)** Necessary correction is permitted to be carried out in cause title.

**38.** At the hearing, both the applications have been analogously placed before us by the Learned Senior Counsel/ Learned Counsel and were heard together. Thus, we are passing this common order in both the matters.

**39.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties for compliance with all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on the 01<sup>st</sup> Day of April, 2024.**

Bose, R. K. [LRA]  
Tiwary, V. [LRA]