



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-IV**

**I.A./3041/2022**

**IN**

**Company Petition No. (IB)-571(PB)/2021**

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]

**In the matter of:**

JM Financial Asset Reconstruction Company Ltd.

(Acting in its capacity as trustee of Hotel II May 2022 Trust)

..... Applicant

**And In the matter of:**

Yes Bank Limited

.... Financial Creditor / Petitioner

**versus**

Asian Hotels (West) Limited

.... Corporate Debtor / Respondent

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)**

**Order Delivered on: 16.09.2022**

**ORDER**

**PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**


The instant interlocutory application is filed on behalf of JM Financial Asset Reconstruction Company Limited ('applicant') seeking the following prayer(s) from this Adjudicating Authority:-

- a. *"permit the applicant to be substituted as Petitioner in the main petition i.e., IB/571(PB)/2021 in stand and place of the original petitioner (Yes Bank Limited) and take on record the amended memo of parties.*

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*b. to allow the substitution of proposed resolution professional as proposed in the original petition to Mr. Sapan Garg having IBBI Registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903.”*

2. Brief facts of the case, as averred by the applicant in the instant application, leading to filing of this present interlocutory application are as follows:-

- a. The applicant submits that the main petition is filed by Yes Bank Limited under Section 7 of the Code, 2016 against M/s. Asian Hotels (West) Limited seeking initiation of the corporate insolvency resolution process. The applicant adds that the captioned petition is pending before this Adjudicating Authority for admission.
- b. The applicant submits that a registered Assignment Agreement dated 21.06.2022 was executed between the applicant and petitioner wherein the petitioner unconditionally and irrevocably sold, assigned, transferred and released unto the applicant all loans to which the petitioner was entitled to recover from the corporate debtor including the right to file suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of loans granted to the corporate debtor. The applicant further submits that the said assignment agreement has been executed as per the provisions of the SARFAESI Act.
- c. The applicant further submits that applicant proposes to nominate a new Interim Resolution Professional in place and stead of Mr. Amit Jain originally proposed by the Petitioner in the main petition with Mr. Sapan Garg having registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903.
- d. The applicant has placed on record the following documents in support of the submissions made:-
  - i. copy of the Assignment Agreement dated 21.06.2022
  - ii. copy of the letter dated 22.06.2022 sent by the applicant to the corporate debtor intimating the assignment agreement.
  - iii. copy of letter dated 22.06.2022 sent by Yes Bank Ltd to the corporate debtor intimating the execution of assignment agreement.
  - iv. amended memo of parties
  - v. consent form in Form-2 executed by Mr. Sapan Garg registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903.

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3. The corporate debtor had filed its reply cum objection to the substitution and the objections of the corporate debtor in the reply are summarized below:-
- a. The corporate debtor submits that the purported Assignment Agreement dated 21.06.2022 does not bear any stamp duty and is not registered.
  - b. The corporate debtor submits that the substitution of assignee in place of the original financial creditor cannot take place once proceedings have been initiated under Section 7 of the Code, 2016. The corporate debtor further submits that there is no provision under Code, 2016 that allow substitution of an assignee in place of the original financial creditor after initiation of proceedings under Section 7 of the Code, 2016.
  - c. The corporate debtor submits that the applicant has failed to file supporting documents including the trust deed explaining its composition and status. The corporate debtor further submits that in terms of the Reserve Bank of India's Master Circular-Asset Reconstruction dated 10.02.2022, any ARC is prohibited from acquiring financial assets from sponsors and lenders, therefore, it is necessary for the applicant to clarify the relationship between the Yes Bank Limited and the applicant.
4. The applicant filed the rejoinder to the reply submitted by the corporate debtor. The submissions of the applicant in the rejoinder are stated in brief:-
- a. The applicant submits that a stamp duty of Rs.1,01,500/- has already been paid on the registered assignment agreement dated 21.06.2022 executed between the Yes Bank Limited and the applicant. The applicant further submits that Section 5(1-A) of the SARFAESI Act exempts documents executed between a bank and an asset reconstruction company from stamp duty.
  - b. The applicant submits that there is no bar in the Code, 2016 to assign the debt before CIRP is initiated by admitting a petition under Section 7 of the Code, 2016 or even after initiation of the Corporate Insolvency Resolution Process. The applicant further submits that there is no bar in law to amendment of pleadings in an application under Section 7 of the Code, 2016 or filing of the additional documents. To support the contention, the applicant placed reliance on citation **Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy and Anr . [Civil Appeal No. 1650 of 2020]**.
  - c. The applicant submits that the debt was assigned by Yes Bank Limited to the applicant in accordance with RBI Master Circular on Transfer of Stressed Assets dated 24.09.2021. The applicant further

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submits that Yes Bank Limited is not a sponsor or a lender or a related party to the applicant or its operations. The applicant adds that Yes Bank had issued an advertisement on 01.06.2022 inviting counter bids for sale of Financial Assets/ Loan Account of the corporate debtor under Swiss challenge method.

5. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and rejoinder filed by the parties. The relevant documents annexed with the respective submissions have been examined meticulously.
6. During the course of hearing, the Ld. Senior Advocate on behalf of the applicant had stated that the purchase consideration of the loans was INR 284,06,02,102/-, clause 2.2.5 of the said Assignment Agreement provides the provision to notify to the Borrower, Guarantor, Advocate, other Lenders, Statutory Authorities, DRT/DRAT/High Court, Resolution Professional, Liquidator/Official Liquidator, NCLT/NCLAT and any other entity related to the Borrower of the assignment of the Loans, the underlying Security Interests, pledges and/or guarantees and all its right, title and interests in the Financing Documents to the Assignee, and sufficient disclosure of the pendency of the company petition IB/571/ND/2021 in schedule 2 of the said Assignment Agreement.
7. Coming to the factual matrix, it is an undisputed fact that the loan was assigned by the Yes Bank to the applicant during the pendency of the IB/571/ND/2021 filed under Section 7 of the Code, 2016 for a purchase consideration of INR 284,06,02,102/-. The corporate debtor was duly informed by the Yes Bank as well as by the JM Financial Asset Reconstruction Company by letter dated 22.06.2022. Be that as it may, this does not dilute the liability of Corporate Debtor who is under an obligation to discharge the outstanding debt in full. 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

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liability in regard to claim as regards the Corporate Debtor remains intact and does not get diluted in any manner whatsoever, therefore, the Adjudicating Authority has the jurisdiction to initiate Corporate Insolvency Resolution Process by passing order of admission on an application filed by the Financial Creditor which was later substituted by the Assignment on account of assignment of debt subject to the conditions of establishment of debt and default as envisaged under Section 7 of the Code, 2016.

8. At this juncture it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 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 right across the ambit of Section 5(7) of the code, the said assignment of debt squarely falls within the fold of ‘Financial Creditor’. It is pertinent to mention that the assignment does not affect the liability and obligations of the Corporate Debtor to discharge the debt. When this is so, the Applicant herein i.e., JM Financial Asset Reconstruction Company would step into the shoes of Yes Bank Limited (original petitioner) with the Assignment Deed executed in its favour. The contentions raised by the corporate debtor are accordingly overruled.

10. The Hon’ble NCLAT in **Lalan Kumar Singh v. Phoenix ARC (P) Ltd., 2018 SCC OnLine NCLAT 835, dated 20-12-2018** reiterating the objectives of the Code, 2016 held that ***“the assignment cannot be challenged in the petition under Section 7 and that too by a party who had the knowledge of Assignment Deed.”*** Since, the corporate debtor was duly notified of the Assignment Deed both by yes bank limited as well as by the

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

11. Accordingly in view of the discussions as made above and the reasons as shown, the instant application i.e., **I.A/3041/ND/2022 stands allowed as to no order to costs.** The amended memo of the parties placed by the applicant is taken on record. The name of the proposed interim resolution professional stands substituted to Mr. Sapan Mohan Garg having registration no. IBBI/IPA-002/IP-N00315/2017-2018/10903.

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(DR. BINOD KUMAR SINHA)  
MEMBER (T)

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(DHARMINDER SINGH)  
MEMBER (J)