

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 648 of 2024

[Arising out of Order dated 19.03.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, Division Bench, Court – II, Kolkata), in CP
No.308/KB/2012]

IN THE MATTER OF:

**Saurabh Jhunhunwala
(Suspended Board of Director of
Fairdeal Supplies Limited.)**

...Appellant

Versus

**Pegasus Assets Reconstruction Company
Private Limited & Anr.**

...Respondent

Present:

**For Appellant : Mr. Krishnendu Datta and Mr. Abhijit Sinha, Sr.
Advocates with Ms. Aditi Sharma and Mr. Kaushik
Banerjee, Advocates.**

**For Respondents : Mr. Amar Dave, Sr. Advocate with Mr. Dinkar
Singh and Mr. Rohit Singh, Advocates for R-1.**

**Mr. Gaurav H. Sethi, Mr. Bijay Murmuria (IRP),
Mr. Rahul Panwar and Mr. Rahul Kapoor,
Advocates for IRP/R-6.**

**Mr. Vipin Jai, Mr. Vipul Jai and Mr. Monish
Surendran, Advocates for Intervenors in I.A. No.
1058/2025.**

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by suspended director of the corporate debtor has been filed
challenging order dated 19.03.2024 passed by the adjudicating authority
(National Company Law Tribunal, Division Bench, Court-II, Kolkata) in CP

(IB) No.308/KB/2022, admitting Section 7 application filed by the financial creditor, Pegasus Asset Reconstruction Company Private Ltd. (hereinafter referred to as 'Pegasus'). Aggrieved by the order admitting Section 7 application, the appellant suspended director of the corporate debtor has come up in this appeal.

2. Brief facts necessary to be noticed for deciding this appeal are:

- i. The corporate debtor M/s. Fairdeal Supplies Limited had obtained financial facilities from Allahabad Bank in the year 2010 for an amount of ₹34.50 crore to purchase a property at Coimbatore through auction sale conducted in the High Court of Judicature at Madras through official liquidator.
- ii. Sanction letter dated 05.03.2010 was issued by the Allahabad Bank sanctioning the loan. Under the sanction letter, corporate debtor was to repay the loan amount to 16 equal instalments at ₹2.16 crore.
- iii. On request of the corporate debtor by letter dated 30.03.2011, repayment schedule was restructured.
- iv. The bank declared account NPA on 30.09.2011.
- v. On 27.09.2013, Allahabad Bank assigned its debt to the Pegasus by a registered assignment deed.
- vi. As per assignment agreement, the total amount due was ₹22,02,51,721/- principal amount with interest at ₹8,28,15,279/- totalling ₹30,31,00,02,000/- as on 15.07.2013. Financial assistance

taken by the corporate debtor, was reflected in the balance sheet of the corporate debtor.

- vii. In the year 2012, Allahabad Bank preferred an application under Section 19 of Recovery of Debt Due to Banks and Financial Institutions Act, 1993 for recovery of Money with interest.
- viii. In the year 2017, a suit was filed by the corporate debtor, challenging the assignment agreement in favour of the financial creditor being Suit No. 195/2017.
- ix. On 18.08.2022, Section 7 application was filed by Respondent Pegasus claiming an amount debt in default amounting to ₹145,74,89,265/- as on 04.08.2022.
- x. Adjudicating authority issue notice in Section 7 application. Corporate debtor filed its reply to Section 7 application pleading that application is barred by limitation.
- xi. It was further pleaded by corporate debtor that assignment agreement was insufficiently stamped hence unenforceable. It was pleaded that agreement was executed in Mumbai, Maharashtra, hence was amenable to the provisions of Bombay Stamp Act, 1958.
- xii. Rejoinder was also filed by the financial creditor to the reply of corporate debtor. Financial creditor filed supplementary affidavit, bringing on record on default information derived from information utility to which a reply was also filed by the corporate debtor.
- xiii. Adjudicating Authority heard both the parties and by impugned order dated 19.03.2024, admitted Section 7 application. Adjudicating

Authority held that application filed by financial creditor is not barred by time. It was held that in the balance sheets of the corporate debtor from financial year 2013– 14 till financial year 2019–20, debt of the Allahabad Bank is acknowledged. It was held that corporate debtor cannot be allowed from disputing the legality of the assignment deed. It was also held that a record of default issued by National E-Governance Services Limited (NeSL) also notice debt. Adjudicating authority held that debt and default is proved and the application is not barred by time, appointed the Interim Resolution Professional (IRP) and declared the moratorium.

- xiv. When the appeal was heard on 08.04.2024, appellant sought opportunity from this Tribunal to approach the financial creditor with revised and enhanced offer and interim order was passed on 08.04.2024, directing the Resolution Professional (RP) not to constitute the Committee of Creditors (CoC), however, RP was to continue to verify the claim received. Appeal came for consideration on 28.05.2024, on which date, the appellant offered to deposit the total principal amount of ₹22,02,51,721/- as reflected in Part IV of Section 7 application. Appellant was permitted to deposit the amount before 10.07.2024. Interim order was continued. It was noticed by this Court on 10.07.2024, that appellant has deposited the amount as directed. Interim order was passed, directing the IRP not to take any further steps in the Corporate Insolvency Resolution Process (CIRP).

3. We have heard learned sr. counsels, Mr. Krishnendu Dutta and Mr. Abhijeet Sinha appearing for the appellants. Learned senior counsel Mr. Amar Dave and learned counsel Mr. Dinkar Singh has appeared for the Respondent No. 1. Learned counsel, Mr. Gaurav H. Sethi has appeared for the IRP. We have also heard learned counsel for the interveners Punjab and Sind Bank.

4. Learned senior counsel for the appellants, submit that assignment dated 27.09.2013 is null and void. Learned counsel for the appellants relied on Section 28 of the Registration Act, 1908 as amended in state of Tamil Nadu vide Act No. 19/1997, enacted by Tamil Nadu Legislative Assembly after receiving the assent of the president on 27.03.1997. It is submitted that as per the amendment in Section 28 of the Registration Act, 1908, every document affecting immovable property shall be presented for registration in the office of Sub-Registrar within whose sub-district the whole or some portion of the property situate in the state of Tamil Nadu. It is submitted that by virtue of Section 28(b) as amended for state of Tamil Nadu any document registered outside the state of Tamil Nadu in contravention of provisions of Clause (a) shall be deemed to be null and void. It is submitted that the assignment deed dated 27.09.2013 deals with the property situated in Coimbatore, state of Tamil Nadu and the assignment agreement is claimed to be executed in Mumbai, state of Maharashtra and has been registered in Kolkata. It is submitted that in view of the aforesaid, assignment agreement being void application under Section 7 filed by the Respondent No. 1 on basis of such assignment agreement is not maintainable and deserves to be rejected

on this ground alone. Learned counsel for the appellant further submit that NPA having declared on 30.05.2011 and application under Section 7 having been filed on 17.05.2022, the same is barred by time. It is submitted that balance sheet of the corporate debtor on which the reliance is placed, there is no acknowledgment of debt in favour of the Respondent Pegasus, hence, Respondent No. 1 cannot claim any acknowledgement for extension of limitation under Section 18 of the Limitation Act, 1963. None of the balance sheets, corporate debtor has acknowledged indebtedness to Pegasus. Corporate debtor has been challenging the assignment and has already filed the suit in the year 2017.

5. Learned counsel for the financial creditor refuting the submissions of the counsel for the appellant submits that the amount disbursed by Allahabad Bank to the corporate debtor is not denied. There is clear default on the part of the corporate debtor in payment of financial debt. Section 7 application can be admitted when the adjudicating authority is satisfied with regard to debt and default. Adjudicating authority has given sufficient reason for admitting Section 7 application. Learned counsel for the respondent has also relied on the record of default issued by NeSL. It is submitted that debt is acknowledged in the balance sheets of the corporate debtor from financial year 2013–14 till financial year 2019–20, application was well within limitation. By assignment deed dated 27.09.2013 executed at Kolkata, the assignment transfer multiple debt on defaulting borrowers to the assignee for consideration along with the underlying security detailed in schedules attached to the deed of assignment. Dominant purpose of assignment

agreement was to transfer/ assign the financial assets along with the underlying security, entitling the assignee to demand receive and recover the debt with its own name and right. The debt is purely an intangible property.

6. Learned counsel for the respondent submits that even if it is accepted that any document relating to the immovable assets situated at Coimbatore was required to be registered at the office of sub-registrar within whose sub-district the whole or some portion of property is situate, that itself shall not make entire assignment, void or inoperative and at best assignment deed may not confer any right with regard to immovable property situated at Coimbatore, but the financial debt which corporate debtor owed to Allahabad Bank having been assigned, the Respondent No. 1 was fully entitled to file Section 7 application on the strength of assignment. Adjudicating authority has rightly taken the view that assignment made in favour of the financial creditor cannot be disputed in proceeding under Section 7, and the assignment deed cannot be questioned by the appellant. It is further submitted that submission of the appellant that application was barred by limitation is also incorrect, which has rightly been rejected by the adjudicating authority. The balance sheet of the corporate debtor from 2013–2014 to 2019–2020 continuously acknowledged the debt. Acknowledgement of debt, even if the balance sheet does not refer to the Respondent No. 1 and refers to only the Allahabad Bank from whom facilities was taken by corporate debtor the said is valid acknowledgment from extension of limitation. Assignee has stepped into the shoes of assignor and take benefit of extension of limitation under Section 18, due to the acknowledgement in the balance sheet.

7. Learned counsel for the IRP has contended that in pursuance of the order dated 19.03.2024, initiating Section 7 application, IRP has made publication on 22.03.2024 in Business Standard in English language all India Edition and Aajkal in Bengali language of Kolkata, where the registered office of the corporate debtor is situated inviting claims. It is submitted that IRP has received the claim, two financial creditors, namely; Indian Overseas Bank and UCO Bank have withdrawn their claim on account of balance payment of OTS settlement made with the members of suspended board, however, the claim filed by the other the financial creditor including the Pegasus is ₹854,52,63,792/-. Operational creditors have filed their claim which runs into ₹134,77,55,150/-. It is submitted that in view of the interim order passed by this Tribunal, IRP has not taken any further steps.

8. Learned counsel appearing for Punjab and Sind Bank, intervener (I.A.1508/2025) submits that Punjab and Sind Bank has sanctioned facilities to the corporate debtor amounting to ₹56.70 crore. The corporate debtor also stood guarantor for facilities extended to Formal Export Private Limited & Frontline Corporation Limited to the extent of ₹80 crore. The Punjab and Sind Bank have filed their claim in the CIRP to the IRP amounting to ₹605,80,89,017/-.

9. We have considered the submissions of the counsel for the parties and perused the records.

10. From the submissions of learned counsel for the parties and the materials on record, following three questions, arise for consideration:

- I. Whether assignment agreement dated 27.09.2023, executed by Allahabad Bank in favour of Pegasus is void on the strength of Section 28 of the Registration Act, 1908 as substituted by state of Tamil Nadu by Act No.19/1997?
- II. Whether the application filed by Pegasus under Section 7 on 18.08.2022 was barred by limitation?
- III. Whether by depositing the principal amount as mentioned in Part IV of Section 7 application by the appellant in the order of this Tribunal dated 28.05.2024, it can be said that debt of financial creditor stand discharged?

Question No. I

11. The assignment agreement dated 27.09.2013 is a registered document registered in state of West Bengal. Copy of registered assignment agreement has been filed along with Section 7 application C.P. (IB) No.308/2022, which is registered on 30.04.2014, with Additional Registrar of Assurance – 3 Kolkata between Allahabad Bank, assignor, Pegasus, the assignee. Clause, 1.1(a) defines amount due, which is as follows:

“1.1 Definitions

All words and expressions, not otherwise defined hereunder, shall, unless the context otherwise requires, have the same meaning given to them in the SA RF AESI. In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings set out below:

(a) Amounts Due means all amounts due and payable by each of the Borrowers to the Assignor in respect of

the Financial Assistance availed of, under the terms of its respective Financing Documents.”

- 12.** Clause 1.1(l) defines purchase consideration, which is as follows:

“(l) Purchase consideration means an amount of Rs.350,00,00,000/- (Rupees Three Hundred and Fifty Crores only), being the aggregate purchase consideration for the Loans.”

- 13.** Clause 2.1.1 & 2.1.2, which deal with assignment are as follows:

“2.1.1 The Parties hereto acknowledge that provisions of SARFAESI including but not limited to Section 5(3) will be applicable thereto and the conditions precedent set forth in Clause 3 of this Agreement (Conditions Precedent) have been fulfilled or waived by the Assignee, as the case may be, and in consideration of the Assignee, paying the Purchase Consideration to the Assignor, and upon the terms and conditions set forth herein and in the relevant Transaction Documents, the Assignor as the true, legal and beneficial owner of the Loans, in the ordinary course of its business, hereby unconditionally and irrevocably sells, assigns, transfers and releases to and unto the Assignee all the Loans forever, pursuant to Section 5(1) (b) of the SARFAESI TO HOLD the same absolutely IN TRUST for the benefit of the holders of the Security Receipts issued by the Assignee pursuant to the Pegasus Group Three Trust III, and the Trust Deed TO THE END AND INTENT THAT the Assignee shall hereafter be deemed to be the full and absolute legal owner, and the only person legally entitled to the Loans or any part thereof, free from any or all encumbrances, and to recover and receive all Amounts Due. including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Loans, in its own name and right and as an assignee, and not as a representative or agent of the Assignor and to exercise all other rights of the Assignor in relation thereto.

2.1.2 The Assignor hereby further assigns in favour of the Assignee, all its rights, title and interest in the Financing Documents, all agreements, deeds and documents related thereto and all collateral and underlying Security Interests and/or pledges created

to secure, and/or guarantees issued in respect of, the repayment of the Loans, which the Assignor is entitled to. The Assignee shall have the right to enforce such Security Interests, pledges and/or guarantees and appropriate the amounts realized therefrom towards the repayment of the Loans and to exercise all other rights of the Assignor in relation to such Security Interests, pledges and/or guarantees. The Assignor shall transfer/deliver or cause to be transferred / delivered or hold for and on behalf of the Assignee, all such original documents, deeds and/or writings, including but not limited in the Financing Documents, and produce the same promptly upon any request by the Assignee.”

14. Clause 2.3 deals with assets assigned. Clause 2.3.1 provides that nothing other than financial assets as defined in SARFAESI Act, 2002, is acquired by assignee from the assignor as per this agreement:

“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.”

Financial asset has been defined in Section 2(1)(l) of the SARFAESI Act, 2002, which is as follows:

“2. Definitions.

1. In this Act, unless the context otherwise requires,

(l) financial asset means debt or receivables and includes

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent;

or

(va) [any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or [Inserted by Act No. 44 of 2016.]

(vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or;]

(vi) any financial assistance;”

15. Section 7 application, Part V mentions about the equitable mortgage of 253.89 acres of land and building at Coimbatore under the heading collateral by the corporate debtor, which is as follows:

“COLLATERAL by the Corporate debtor:

1. Equitable mortgage of 253.89 Acres of land and building at Coimbatore acquired by the corporate debtor through auction sale from the Official Liquidator, High Court at Judicature at Madras. (Hon'ble DRT, Kolkata) vide its order Dated 24.12.2019 has upheld that applicant has saleable interest in the property).

2. Hypothecation on the plant and machineries including scrape lying at the said property at Coimbatore.

3. 12 Vestas make Wind Energy Generators (WEGs with generating capacity of 500 KW each, 1) 4 WEG along with Land ad-measuring 16.075 Acres situates at land survey Nos. 196/2, 497/8, 446/2A, 496/2, DAI 487 (part), 450 (part), 368/2 (part) and 368/1A (part),

452 (part). 440art), 440/3,465 situated at village Tenkasi, Taluka Tenkasi, District Tirunelveli, State Tamil Nadu and land ad-measuring 0.50 Acres in Land survey no 60 situated in Pattakurechi Village, Taluk Tenkasi, District Tirunelveli in the State of Tamil Nadu 2) 7 WEG along with Land ad-measuring of 8.095 Acres situated at Land survey Nos 100/4,102/4,102/5 (part), 101/1, 117/1,117/2, 78/2, 78/1, 102/6 situated at Village Ayikudi, Taluka Tenkasi, District Tirunelveli, State Tamil Nadu, and 3) 1 WEG along with a Land ad-measuring of 2.5 Acres at 664/4 (part) situated at Veeranam, Taluka Veerakeralampudur, District Tirunelveli in the State of Tamil Nadu.”

16. The facts brought on the record clearly indicates that equitable mortgage is claimed with regard to land and building at Coimbatore. The submission as noted above on behalf of the appellant challenges the assignment agreement on basis of Section 28 of Indian Registration Act as applicable in the state of Tamil Nadu. Section 28 of the Registration Act, 1908 provides as follows:

“28. Place for registering documents relating to land.

– Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) [, (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property,] [Substituted by Act 33 of 1940, Section 3, for "and (d)" .] and section 18, clauses (a), (b), [(c) and (cc)] [Substituted by Act 33 of 1940, Section 3, for "and (c)" .], shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.”

17. Learned counsel for the appellant has produced the Tamil Nadu Government Gazette published dated 29.03.1997, in Part IV Section 2, where following has been published:

“The following Act of the Tamil Nadu Legislative Assembly received the assent of the President on the 27th March 1997 and is hereby published for general information :-

ACT No. 19 OF 1997.

An Act further to amend the Registration Act, 1908 in its application to the State of Tamil Nadu.

Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Forty-eighth Year of the Republic of India as follows :-

1. (1) This Act may be called the Registration (Tamil Nadu Amendment) Act, 1997.

2) It extends to the whole of the State of Tamil Nadu.

2. In the Registration Act, 1908, for section 28, the following section shall

be substituted, namely:-

*" 28. Place for registering documents relating to land.-
Save as in this Part*

otherwise provided,-

(a) every document mentioned in clauses (7). (b), (c), (a) and (e) of sub section (I) and sub-section (2) of section 17 in so far as such document affects immovable property and in clauses (a), (b). (c) and (cc) of section 18, shall be presented for registration in the office of a Sub-Registrar within whose sub district the whole some portion of the property to which such document relates is situate in the State of Tamil Nadu: and

(b) any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (2) shall be deemed to be null and void."

18. The above provisions which is applicable in the state of Tamil Nadu on the strength of presidential assent dated 27.03.2007 shall be applicable for the state of Tamil Nadu by virtue of Article 264 of the Constitution of India. Thus, place for registering any document relating to land situated in state of

Tamil Nadu has to be registered in the office of sub registrar within whose sub-district, the whole or some portion of property is situated.

19. Learned counsel for the appellant has given emphasis on Section 28(b) as applicable in the state of Tamil Nadu, which provides that any document registered outside the state of Tamil Nadu in contravention of the provision of Clause (a) shall be deemed to be null and void. Learned counsel for the appellant has relied on the Division Bench judgment of Madras High Court reported in **(2014) 5 CPC 2009** in the matter of **‘Veena Textile Ltd. & Ors.’ Vs. ‘Authorised Officer, IFCI Ltd. & Anr.’**, which judgment is part of the appeal. In the above case, Division Bench of the High Court has noticed the Section 28(b) as amended by Tamil Nadu Act No. 19/1997 with effect from 29.03.1997, where Division Bench of Madras High Court has held that assigning debt along with underlying securities immovable properties laying in Tamil Nadu, but registered beyond Tamil Nadu is null and void. Learned counsel for the appellant has relied on paragraphs 13 & 14, which is as follows:

“13. It is not in dispute that the above properties thus assigned under the deed of assignment dated 25.05.2011, are admittedly situated in Tamil Nadu and not within the jurisdiction of the Registering Authority at Calcutta. Therefore, it is very clear that the said assignment deed made at Calcutta in respect of property situated in Tamil Nadu and got registered before the Registering Authority, Calcutta was against [Section 28](#) of the Registration Act as amended by the Tamil Nadu Act 19 of 1997 with effect from 29.03.1997, which reads as follows:-

*28. Place for registering documents relating to land:-
Save as in this part otherwise provided:- (a) Every*

document mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (1) and sub-section (2) of Section 17 in so far as such document affects immovable property and in clauses (a), (b), (c) and (cc) of Section 18, shall be presented for registered in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu; and

(b) any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be deemed to be null and void.

14. A perusal of the above said provision of law would show that the document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) of [Section 28](#) of the Registration Act shall be deemed to be null and void. Therefore, there cannot be any doubt that the deed of assignment dated 25.05.2011 is deemed to be null and void, since the same was made in violation of [Section 28\(b\)](#) of the Registration Act. Consequently, the first respondent, having not empowered to act legally against the petitioners in pursuant to the said deed of assignment dated 25.05.2011, was not entitled to initiate the proceedings before the second respondent under the [SARFAESI Act](#), which has resulted in passing the impugned order by the second respondent under [Section 14\(3\)](#) of the SARFAESI Act.”

20. In the said Writ Petition challenge to the proceeding initiated under SARFAESI Act, 2002 under Section 14(1) SARFAEI Act for possession of the assets situated in the state of Tamil Nadu.

21. The question to be considered in the present case is as to whether on the basis of assignment agreement 27.09.2013 application under Section 7 could not have been filed, the said assignment being void by virtue of Section 28(b) of Indian Registration Act as applicable in the state of Tamil Nadu. We have noticed above that a suit has been filed by the appellant challenging the assignment in the year 2017, which is said to be pending. Challenge to

assignment agreement could not have been directly raised in Section 7 application. However, in the present case, we need to consider the effect and consequence of Section 28(b) as applicable in the state of Tamil Nadu. Section 28 deals with the registering document relating to land, sub-Clause (a) mentions that every document affecting immovable property and sub-Clause (b) provides that any document registered outside the state of Tamil Nadu in contravention of provisions of Clause (a) shall be deemed to be null and void. The document thus has to be treated null on void in respect to the property situated in the state of Tamil Nadu, which document was required to be registered in state of Tamil Nadu. Thus, assignment agreement qua the immovable property which is covered by the assignment, which property is situated in the state of Tamil Nadu is null and void and no right can be claimed by financial creditor with respect to the said land. We have noticed Section 7 application which pleads that equitable mortgage has been created with respect to land situated in Coimbatore. The provisions of Section 28(a) & (b) makes it clear that assignment deed qua the immovable property, i.e., land situated in Coimbatore as referred to in Part V of Section 7 application is void and the assignment has to be treated to be void for the said property. The question which also need to be considered is as to whether the assignment of the above assets situated in Coimbatore being void, whether the assignment deed dated 27.09.2013, registered in the state of West Bengal has to be declared null and void in its entirety.

22. When we look into the loans and financial assets which have been assigned by the assignment agreement, it is clear that the large number of

accounts have been covered by assignment and majority of the accounts are situated at Kolkata including the loan account, under which the loan was sanctioned by Allahabad Bank to the corporate debtor. The assignment agreement indicates that apart from creating mortgage in the assets situated in Tamil Nadu, there large number of other accounts and other financial assets which are dealt in the assignment agreement. Assignment deed dated 27.09.2013 can be held to be void insofar as the mortgage of land situated in Coimbatore and no rights in the said land by virtue of assignment can be claimed by financial creditor, but that itself is not sufficient to hold the entire assignment void so as to make application Section 7 as not maintainable.

23. We thus are of the view that submission of the appellant on the strength of Section 28 (a) & (b) of the Registration Act as applicable in the state of Tamil Nadu, can be accepted to the extent that on the basis of assignment, no rights can be claimed by financial creditor qua the assets situated in Coimbatore since the assignment agreement insofar as creating any mortgage or any other interest in the immovable assets is void. However, the entire assignment cannot be declared as null and void on the said ground.

24. Learned counsel for the respondent has also relied on the judgment of the Hon'ble Supreme Court in **'Mattapalli Chelamayya' Vs. 'Mattapalli Venkataratnam'** reported in **(1972) 3 SCC 799**. In the above issue question arose with regard to award made by an arbitrator which award was required to be registered by Section 17(1)(b) of the Indian Registration Act and was not registered. Hon'ble Supreme Court noticed that award contained two parts;

one part did not affect or relate to any immovable property and contained a personal liability. Hon'ble Supreme Court held two part; severable transaction and it was held that second transaction with regard to the charge being a severable transaction can be validly ignored. In paragraph 11 of the judgment on Hon'ble Supreme Court stated as follows:

“11. The direction to pay a sum of money which has been held due and payable by the appellants to the respondents is a direction giving effect to a liability which already existed. It does not create the liability for the first time but merely works out the liability. But the same thing cannot be said about the charge. The charge is created for the first time. The case, therefore, involves two distinct matters — one is a personal liability to pay a certain amount, and the second is an additional relief to recover that amount from the immovable property of the appellants, should they fail to pay as ordered. It is, therefore, clear that the two do not form one transaction but two severable transactions. As pointed out long ago by Muttusami Ayyar, J., in Sambaya v. Gangayya [13 Mad 308, 311] : “The test, therefore, is whether the transaction evidenced by the particular instrument is single and indivisible or whether it really evidences two transactions which can be severed from each other, the one as creating an independent personal obligation and the other as merely strengthening it by adding a right to proceed against immovable property. But it should be remembered that it is not enough that there is an obligation to pay a sum of money, but that it is also necessary that the obligation should have an independent existence, and be in no way contingent or conditional on the breach of some obligation relating to immovable property created by the same instrument, for the contingency or the condition and the obligation would then be parts of one indivisible transaction”. In the present case the document evidences two transactions which can be severed from each other. One transaction creates an independent personal obligation to pay a certain sum of money and the other transaction, namely, the charge merely strengthens the first transaction by adding a right to proceed against the charged property. In our opinion the High

Court was right in directing that the second transaction with regard to the charge being a severable transaction can be validly ignored and to the extent that it declares the personal obligation to pay the transaction, not being required to be compulsorily registered, the award was admissible in evidence.”

25. The above judgment, fully support the submission of the respondent that assignment qua immovable property situated in state of Tamil Nadu which is hit by Section 28(b) is severable from the entire assignment agreement and assignment agreement has to be held to be void to that extent only.

Question No. II

26. The second question is regarding bar of limitation in respect to the Section 7 application filed by the financial creditor. The account was declared NPA on 30.09.2011, which is clearly pleaded in Part IV of the application. Part IV column 2 is as follows:

“PART IV

PARTICULARS OF THE FINANCIAL DEBT

2	Amount claimed to be in default and the date on which the default occurred (Working for computation of amount and days of default in tabular form)	1. The account was declared as a Non Performing Asset (NPA) on As such the date of default is 30.09.2011. However, the corporate debtor has continuously admitted and acknowledged its default in its Financial statements for the financial year 2013-2014, 2015-2015, 2016-2017, 2015-2016, 2017-2018, 2018-2019, 2019-2020. 2. Allahabad Bank in the year 2012 preferred an application under Section 19 of The Recovery
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		<i>of Debts Due to Banks and Financial Institutions Act 1993 for recovery of money and advance with interest, cost and expenses and other reliefs valued at Rs.27,42,10,233 with interest @ 16.45% per annum with monthly rests from 10.09.2012.</i> <i>3. The said account was thereafter assigned to the applicant/ Financial creditor and the principal outstanding amount as on September, 27 2013 was 30,31.02,000.00. applicant Rs. The entered appearance before the Debts Recovery Tribunal No.1 and filed application for substitution. The said substitution application was allowed and vide order dated 07.04.2015, the Original Application was amended with the name of the applicant.</i> <i>4. The present outstanding as on August 04, 2022 is Rs. 1,45,74,89,265.08 (Rupees One Hundred Forty Five Crores Seventy Four Lacs Eighty Nine Thousand Two Hundred Sixty Five and Eight Paise only) the term loan granted to the corporate debtor.</i> <i>The copy of the Statement of accounts is annexed herewith and marked with the letter "D".</i>
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27. In the above column 1 it was also pleaded that corporate debtor has continuously admitted and acknowledged its default in financial statement for financial year 2013–14 to 2019–20. There is no dispute that financial statement contained acknowledgement of debt of Allahabad Bank.

Submission which has been pressed by learned counsel for the appellant is that the said acknowledgement cannot be treated an acknowledgement by financial creditor Pegasus after execution of assignment deed on 27.09.2013, there being no reference of the assignee in the financial statements, Section 18 shall not be applicable for extension of the limitation.

28. The acknowledgement contained in the balance sheet is acknowledgement of debt. The debt is continuously acknowledged in the balance sheets of the corporate debtor. It is acknowledgement of the corporate debtor, it is relevant for extension of limitation. The mere fact that Allahabad Bank has assigned the debt to the Pegasus and non-mention of Pegasus in the balance sheet shall not deny the benefit of Section 18 of the Limitation Act in facts of the present case.

29. Learned counsel for the financial creditor has relied on the judgment of this Tribunal in **Comp. App. (AT) (Ins.) No.1359 & 1360/2023, ‘Loramitra Rath’ VS. ‘JM Financial Asset Reconstruction Company Ltd. & Anr.’**. It is useful to notice paragraphs 16, 17 & 18 of the judgment, where the similar submissions raised was rejected:

“16. Having heard both parties and perused the records, it is an undisputed fact that the Corporate Debtor had availed the loan facility undisputedly from KBL, the original Financial Creditor. This debt had also been clearly acknowledged by the Appellant on 06.09.2013 in their reply to the SARFAESI notice. The balance sheets of the Appellant/Corporate Debtor for the years 2014-15 and subsequently in 2017-18 and 2018-19 as placed at pages 303-328 of the APB also clearly depicts an acknowledgment of financial debt. It is, however, the case of the Appellant that the financial

debt in the balance sheet is reflected qua KBL, the original Financial Creditor and not to the Respondent No.1. Be that as it may, it is an undisputed fact that the OTS proposal had been sent by the Appellant not to KBL but to the Respondent No.1 on 21.10.2016. This constitutes sufficient evidence that they were very much aware that assignment of the debt in favour of Respondent No.1 was already in place. From this OTS proposal, it can be safely inferred that the Corporate Debtor had acknowledged their liability to pay to the Respondent No. 1. The acknowledgment of debt in the present facts of the case is therefore clear and unambiguous.

17. The balance sheets also reflect that debt is owed by the Corporate Debtor to the original Financial Creditor. Since the Appellant was well aware of the assignment of the debt, they cannot take advantage of the anomaly in the balance sheet with respect to the continuation of the name of KBL as the debtor. There is no material on record to show that this debt had been liquidated by the Corporate Debtor. That being so, the debt was continuing and there was a default in repayment and nothing on record controverts that position. The Corporate Debtor having accepted the assignment agreement in their OTS proposal has no ground to deny knowledge of the fact that the Respondent No.1 had stepped into the shoes of the original Financial Creditor and therefore it has been correctly concluded by the Adjudicating Authority that the loan facility acknowledged in the name of the Financial Creditor in the balance sheet is to be construed as acknowledgement of debt qua the Appellant. The Appellant is contesting the legal tenability of the Assignment Agreement on hyper-technical grounds which cannot be accepted. We are of the considered opinion that since in the facts of the present case, a debt has arisen which is due and payable by the Corporate Debtor and a default has occurred, admission of Section 7 application cannot be obfuscated by raising technical pleas and that too after hearing in the main petition stood concluded and matter was reserved for hearing.

18. In view of the above discussions, facts and circumstances, we therefore affirm the findings of the Adjudicating Authority and are of the considered opinion that there are no convincing reasons to

interfere with either of two impugned orders. In the result, both the appeals having no merit are dismissed. No Costs.”

30. Adjudicating authority has rightly dealt with the above question regarding limitation. Following was observed in paragraphs 41 & 42 of the judgment:

“41. Therefore, the due of debt in favour of the applicant by the corporate debtor has been clearly established. Now we will have to examine whether the bar of limitation would come to the rescue of the respondent. Admittedly the date of default is on 30.09.2011. The debt should have been acknowledged within three years from the date of default which is 30.09.2014. We have pursued the balance sheets of the corporate debtor from the Financial Year 2013-2014 till the Financial Year 2019- 2020. In all these balance sheets, debts have been acknowledged as due to Allahabad Bank and not to the applicant. There is no whisper in any of the balance sheets about the assignment deed executed in favour of the applicant herein for the reasons best known to the Corporate Debtor. After the execution of assignment on 27.09.2013, Allahabad Bank has no locus standi to continue as a financial creditor and the bank is not even claiming to be so.

42. When that being the case the applicant is legally entitled to become the financial creditor of the corporate debtor in terms of the said assignment. Merely, because the balance sheet does not record the name of the applicant herein as a financial creditor from the Financial Year 2013-2014 to 2019-2020 will not take away the fact that the applicant has become a financial creditor, by virtue of the assignment deed executed.”

31. We, thus are satisfied that application filed by the financial creditor was not barred by time.

Question No. III

32. Coming to Question No. III, Part IV of the application, column 2 (4) mentions the outstanding amount as ₹145,74,059,265/- as on 04.08.2022. Part IV, Item No. 2, column 4 is as follows:

**“PART IV
PARTICULARS OF THE FINANCIAL DEBT**

2	<i>Amount claimed to be in default and the date on which the default occurred (Working for computation of amount and days of default in tabular form)</i>	<i>4. The present outstanding as on August 04, 2022 is Rs. 1,45,74,89,265.08 (Rupees One Hundred Forty Five Crores Seventy Four Lacs Eighty Nine Thousand Two Hundred Sixty Five and Eight Paise only) the term loan granted to the corporate debtor.</i> <i>The copy of the Statement of accounts is annexed herewith and marked with the letter "D".</i>
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33. The deposit which was offered to be made by the appellant was amount of ₹220,02,051,721/- which was mentioned as amount due on 15.07.2013 in the assignment agreement. The relevant amount is the amount due at the time of filing of Section 7 application as claimed in Part IV. The amount mentioned in the assignment, agreement has no relevance to find debt and default of the corporate debtor.

34. We thus are satisfied that amount deposited in no manner liquidate the debt of financial creditor.

We answer Question No. III accordingly.

35. In view of our above discussions and conclusions, we do not find any error in the order of the adjudicating authority in admitting Section 7 application. The appeal is disposed of in following manner:

- (i) Order of Adjudicating Authority dated 19.03.2024 admitting Section 7 application is upheld.
- (ii) Interim order dated 08.04.2024 and 28.05.2024 stand vacated.
- (iii) The period from 08.04.2024, till date is excluded from the CIRP.
- (iv) The amount deposited as per order of this Tribunal dated 28.05.2024, be returned to appellant along with accrued interest.
- (v) The assignment agreement dated 27.09.2013 is held void in so far as it creates equitable mortgage of 253.89 acres of land and building situate at Coimbatore, State of Tamil Nadu.

The parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

1st May 2025

himanshu