

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court- II)  
SPECIAL BENCH  
KOLKATA**

I.A. (IBC) 504/KB/2022 and  
I.A. (IBC) 1371/KB/2023  
in  
CP (IB) 634/KB/2020

*In the matter of:*

**L&T Finance Limited**

.....Financial Creditor

*-versus-*

**EMTA Coal Ltd.**

.....Corporate Debtor

And

**I.A. (IBC) 504/KB/2022**

*An application 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

**L&T Finance Limited**

.....Financial Creditor

*-versus-*

**EMTA Coal Ltd.**

.....Corporate Debtor

And

**Phoenix ARC Pvt. Ltd.**

.....Applicant

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Kolkata Bench (Court- II)**

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in C.P (IB) 634/KB/2020

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**I.A. (IBC) 1371/KB/2023**

*An application 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

**EMTA Coal Ltd.**

..... *Applicant*

-versus-

**1. L&T Finance Ltd.**

**2. Phoenix ARC Pvt. Ltd.**

..... *Respondents*

**Date of Hearing: 12.09.2023**

**Date of Pronouncement of the order: 04.04.2024**

**Coram:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via video conferencing/physical):**

Mr. Abhrajit Mitra, Sr. Adv.                   ] For the Phoenix ARC

Mr. Vikram Wadehra, Adv.                ]

Mr. Jishnu Chowdhury, Adv.                ] For the Corporate Debtor

Mr. Zeeshan Haque, Adv.                   ]

Mr. Tanay Agarwal, Adv.                   ]

Mr. Ram Maroo, Adv.                        ]

**COMMON ORDER**

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

1. This Court convened through hybrid mode.

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2. **IA. (IBC) 504/KB/2022** has been filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter may be referred to as "IBC" or "the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter may be referred to as "NCLT Rules") seeking the substitution of the name of the party being **Phoenix Arc Pvt. Ltd.** in place of **L&T Finance Ltd.** due to assignment of the debt by **L&T Finance Ltd.**(“assignor”) to **Phoenix Arc Pvt. Ltd.** (“assignee”).
3. In response, **IA. (IBC) 1371/KB/2023** has been filed by **Emta Coal Ltd.** under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter may be referred to as "IBC" or "the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter may be referred to as "NCLT Rules") seeking the directions upon by **L&T Finance Ltd.** and **Phoenix Arc Pvt. Ltd.** to produce the original assignment agreement date 29<sup>th</sup> March 2022, or a copy thereof as well as the impounding of the original assignment agreement date 29<sup>th</sup> March 2022.
4. Since the subject matters in the aforesaid applications are inter-connected as such, we find it appropriate to deal with them together. Hence, this common order.
5. **Submissions of Applicant in I.A. 504/KB/2022:**
  - 5.1 L&T Finance Limited, in its capacity as the Financial Creditor, had instituted the instant proceedings under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.
  - 5.2 During the pendency of the proceedings, L&T Finance Limited, pursuant to a Assignment Agreement dated 29<sup>th</sup> March 2022, unconditionally and irrevocably assigned, transferred and released in favour of the Applicant all the Financial Assistance granted by it to the Corporate Debtor together with all its rights, title and interest in the Financing Documents and all collateral and underlying Security Interest and/or pledges created to secure and/or pledges created to secure and/or guarantees issued in respect of the repayment of the Financial Assistance and to which the Assignor is entitled to, in terms of Section 5 of the SARFAESI Act, 2002.

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- 5.3 In view of the said registered Deed of Assignment, the Applicant has become the only person legally entitled to recover the Financial Assistance or any part thereof granted to the Corporate Debtor and has further become entitled to recover and receive all amounts due, including the right to continue proceeding institute such other recovery proceedings and take such other actions as may be required for the purpose of recovery of the financial assistance, including the instant proceedings for initiation of Corporate Insolvency Resolution Process in its own name and right.
- 5.4 The Applicant submits that by virtue of section 5(2) of the SARFAESI Act, the Applicant shall be deemed to be the lender and all the rights of the Assignor i.e. L&T Finance Limited herein vest in the Applicant in relation to recovery of such financial assistance.
- 5.5 Further, by virtue of provisions of Section 5(4) of the SARFAESI Act and covenants of the said Assignment Agreement the proposed Applicant is entitled to continue, prosecute and enforce all applications, appeals and legal proceedings of what so ever nature which are pending on the date of the said Assignment Agreement with regard to the Corporate Debtor including the instant proceedings instituted under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
- 5.6 It has therefore become necessary to amend the application filed in the instant proceedings in order to substitute the name of the Applicant in the place of its Assignor i.e. L&T Finance Limited and accordingly the instant application is being made for amending the instant proceeding being C.P. (IB) No. 634 of 2020 pending adjudication before this Adjudicating Authority.

**6. Submissions of Applicant in I.A. 1371/KB/2023:**

- 6.1 *Vide* an Assignment Agreement dated 29<sup>th</sup> March, 2022 the Financial Creditor purported to assign the debt of the Corporate Debtor in favour of Phoenix ARC Private Limited. Pursuant to the same, a purported application for substitution was filed before this Adjudicating Authority by the said Phoenix Arc Private Limited on 23<sup>rd</sup> May, 2022 which was

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subsequently numbered as L.A. 504/KB/2022. The said application was defective and was required to be cured by filing a supplementary affidavit thereto.

6.2 Such supplementary affidavit<sup>1</sup> was filed on 14<sup>th</sup> July, 2022. A further application being I.A. No. 1070/KB/2022 was filed by the said Phoenix Arc Private Limited to once again bring on record the purported Assignment Agreement dated 29<sup>th</sup> March, 2022 and seeking disposal of I.A. 504/KB/2022.

6.3 Assailing, inter-alia, the maintainability of the said applications filed by the said Phoenix Arc Private Limited, the Corporate Debtor filed an application which was subsequently registered as I.A. No. 1640/KB/2022, inter-alia, for dismissal of the company petition and the said applications. The principle ground taken by the Corporate Debtor in the said application was that such assignment was illegal, null and void, inter-alia, since the purported Assignment Agreement dated 29<sup>th</sup> March, 2022 is inadequately and/or insufficiently stamped.

6.4 The interlocutory applications being I.A. No. 1070/KB/2022 and I.A. No. 1670/KB/2022 were heard analogously and by an order<sup>2</sup> dated 12<sup>th</sup> May, 2023, this Adjudicating Authority was pleased to allow the I.A. No. 1070/KB/2022 filed by the said Phoenix Arc Private Limited directing that the purported Assignment Agreement to be taken on record and was further pleased to dismiss I.A. No. 1640/KB/2022 filed by the Corporate Debtor while keeping all points including the point of maintainability of the company petition open.

6.5 Aggrieved by and/or dissatisfied with the said order dated 12<sup>th</sup> May, 2023, the Corporate Debtor preferred an appeal therefrom by filing a Company Appeal (AT) (Insolvency) No. 582 of 2023 before the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi. The Hon'ble NCLAT passed an order<sup>3</sup> therein on 21<sup>st</sup> July 2023.

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<sup>1</sup> Annexure A/3 to I.A. 1371/KB/2023

<sup>2</sup> Annexure A/6 to I.A. 1371/KB/2023

<sup>3</sup> Annexure A/7 to I.A. 1371/KB/2023

**7. Analysis and Findings:**

- 7.1 Heard the Ld. Counsels on behalf of the parties and perused the record.
- 7.2 It is noted that the Applicant in I.A.(IBC) 504/KB/2022, has filed a supplementary affidavit notarized on 14<sup>th</sup> July 2022, seeking to place on record the complete set of the assignment agreement dated 29<sup>th</sup> March 2022. This Adjudicating Authority, vide order dated 16<sup>th</sup> August 2022, allowed for the same.
- 7.3 Further I.A.(IBC) 1070/KB/2022 had also been filed by Phoenix Arc Pvt. Ltd. seeking to bring on record the registered instrument *i.e* assignment agreement dated 29<sup>th</sup> March 2022 duly registered on 26<sup>th</sup> July 2022. The same was allowed by this Adjudicating Authority; vide order dated 12<sup>th</sup> May 2023. The Adjudicating Authority, vide the said order, also rejected I.A.(IBC) 1640/KB/2022 filed by the Corporate Debtor, however the contentions on limitation, maintainability as well as merit in the CP were kept open. The Adjudicating Authority further noted that the I.A.(IBC) 504/KB/2022 would be taken on the posted date.
- 7.4 The aforesaid order dated 12<sup>th</sup> May 2023 was challenged in an appeal before the Hon'ble NCLAT. The Appellate Authority, vide order dated 21 July 2023, disposed the Appeal with the following observation:
- “5. After hearing learned counsel for the parties, we are of the view that in so far as the order of Adjudicating Authority taking registered document on record, we see no infirmity. The other application by which Phoenix ARC Pvt. Ltd. has prayed for substitution i.e. I.A. No. 504/KB/2022 is still pending and at the time of decision of the said application the Adjudicating Authority may consider the submission of the Appellant as to whether the document is correctly stamped or not. With these observation, we dispose of this Appeal.”*
- 7.5 As such, the assignment agreement dated 29<sup>th</sup> March 2022 duly registered on 26<sup>th</sup> July 2022, as put on records vide I.A.(IBC) 1070/KB/2022, has been considered by us whilst deciding the merits of the case in hand.
- 7.6 Upon perusal of the records before us, we find it essential to adjudicate upon the following issues:

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- I. Whether an assignee of the debt due to the Financial Creditor can continue the proceeding under section 7 or 9 of the Code which was initially filed by the financial Creditor;
- II. Whether the instrument of such assignment need to be duly stamped and the consequences of insufficiently stamping an instrument;
- III. Whether the Assignment Deed can be considered by the Adjudicating Authority or does the assignment agreement need to be impounded.

7.7 Each of the aforesaid issue is dealt with in details in the following paragraphs:

**Issue I: whether an assignee of the debt due to the Financial Creditor can continue the proceeding under section 7 or 9 of the Code**

- i) It is pertinent in to refer to sub-section (4) of Section 5 of the SARFAESI Act, 2002 is as follows:-

*"5. Acquisition of rights or interest in financial assets.....(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 [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."*

It is clear that section 5(4) contemplates continuation and prosecution of any proceeding by an assignee who acquires financial asset. Sub-section(4) of Section 5 of the SARFAESI Act, 2002

- ii) Further, in the matter of *Siti Networks Ltd. Vs. Assets Care and Reconstruction Enterprise Ltd. & Anr.*<sup>4</sup> Hon'ble NCLAT has observed that:

*"7. 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 defines '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".*

- iii) In view of the aforesaid provision as well as the decision in *Siti Networks Ltd.* (supra), it is clear that the assignee of a Financial Creditor shall also be covered within the definition of 'financial creditor' as per section 5(7) of IBC and as such, an assignee very much has the right to continue the proceeding initiated by the original Financial Creditor.

**Issue II: whether the instrument of such assignment need to be duly stamped and the consequences of insufficient stamping of the instrument:**

- i) The Corporate Debtor has contended that the registered deed herein is insufficiently stamped and as such the same must not be admitted into evidence. In reliance of its contentions, the Corporate Debtor has relied on the decision of the Hon'ble Supreme Court of India in the matter of *M/S. Bhaskar Raju and Brothers and Anr vs. M/S. Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram Other Charities and Ors*<sup>5</sup> wherein the Apex Court , has dealt with the consequences of the failure to stamp an instrument. The Apex Court therein has observed that:

*"Besides this situation, there are other ways in which an instrument may not be properly stamped, including the following:*

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<sup>4</sup>Comp. App. (AT) (Ins.) No. 1449 of 2022

<sup>5</sup>Curative Petition (C) no. 44/2023 in R.P.(C) No. 704/2021 in C.A. No. 1599/2020 With Arbitration Case (C) No. 25/2023, decided on 13 December 2023

- a. *The duty may have been paid under an incorrect description under Schedule I;*
- b. *The duty paid may be of a sufficient amount but of improper description;*
- c. *The provisions of Section 5 which govern instruments relating to several distinct matters may not have been complied with; or*
- d. *The instrument may be written in contravention of Sections 13 and 14, and thereby deemed to be unstamped in terms of Section 15.” (para 37)*

The Apex Court has further held that:

*“...In terms of Section 35, an instrument which is not duly stamped is inadmissible in evidence for any purpose and it shall not be acted upon, registered, or authenticated. 30 Clause (a) of the proviso to Section 35 stipulates that the bar contained in the provision is removed upon the payment of duty and the penalty (if any)....” (Para 39)*

- ii) It is noted that the Apex Court in the following paragraphs of ***Bhaskar Raju and Brothers*** (*supra*), has elaborated on section 35 of the Stamp Act and held as follows:

*“Section 35 of the Stamp Act is unambiguous. It stipulates, “No instrument chargeable with duty shall be admitted in evidence...” The term “admitted in evidence” refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be “admissible in evidence.” The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterised as a curable defect. The Stamp Act itself provides for the manner in which the defect may be cured and sets*

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*out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be “cured.”” (Para 48)*

- iii) The Apex Court has concluded the judgment as follows:  
“224. The conclusions reached in this judgment are summarised below:  
*a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;*  
*b. Non-stamping or inadequate stamping is a curable defect;*  
*c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;*  
*d. Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and*  
*e. The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent.”*
- iv) It is clear from the aforesaid observations of the Apex Court in ***Bhaskar Raju and Brothers (supra)*** that a non-stamped instrument including an insufficiently stamped instrument is not admissible in evidence. However, the said defect of insufficient stamping is curable and does not render the instrument as void or unenforceable. It is noted that as per Section 42 of the Stamp Act, an instrument becomes admissible in evidence once the payment of duty and a penalty (if any) is complete.

**Issue III: whether the Assignment Deed can be considered by the Adjudicating Authority or does the assignment agreement need to be impounded:**

- i. It is understood that the under section 5(1A) of SARFAESI Act 2002 read with section 8F of the Indian Stamp Act, 1899, no stamp duty needs to be paid for the assignment of debt where the assignment is debt is made by any bank or financial institution in favour of an asset reconstruction company

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(ARC) provided that such debt is acquired by the ARC for the purposes of asset reconstruction or securitization.

- ii. In this Regard, we would like to rely on the observations made by the Ld. National Company Law Tribunal, New Delhi bench in the matter of ***CFM Asset Reconstruction Pvt. Ltd. vs. Nikhil Footwears Pvt. Ltd.***<sup>6</sup> wherein the Ld. Adjudicating Authority has held as follows:

*“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."*

*10. The Corporate Debtor has relied upon Palm Products Pvt. Ltd. Vs T.V.L. Narsimha Rao & Anr. C.A. (AT)(INS) No. 809 of 2020 to submit that if an assignment deed is not registered, it cannot fall within the ambit of claim and consequently, will not fall within the ambit of debt under the Code. On a perusal of given citation, we observe that the finding with regard to registration of assignment deed in the relied citation relates to acceptance of a claim by the Resolution Professional and not*

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<sup>6</sup>CP. No. (IB)- 106(ND)/2022

*admission of an application, filed under Sec. 7 of the Code, 2016. Therefore, the said citation is not helpful to the Corporate Debtor in the present case.*

*11. As regards to the Corporate Debtor's contention that the Assignment Agreement dated 18.01.2021 is not legally enforceable since the same has not been registered under Section 17 of the Registration Act, 1908, whereas on the other hand the Applicant contended that the Applicant being an Asset Reconstruction Company is exempted from Stamp Duty Payment under Section 5(1A) of SARFAESI Act read with Section 8F of the Indian Stamp Act, 1899, we find that under Section 5(1) of the SARFAESI Act, 2002, Bank is empowered to assign loan to an Asset Reconstruction Company and specifically under Section 5(1A) of the SARFAESI Act, 2002, the documents executed by any bank or financial institution under sub-section (1) in favor of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty. 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. 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.*

*13. Further, it is pertinent to note 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., CFM Asset Reconstruction Private Limited would step into the shoes of SBI (original lender) with the Assignment Deed dated 18.01.2021 executed in its favor. The contentions raised by the Corporate Debtor is accordingly repelled.”*

iii. It is already established by virtue of the decision in ***Bhaskar Raju and Brothers*** (*supra*) that even an insufficiently stamped document is enforceable. Further, in light of the aforesaid decision in ***CFM Asset Reconstruction Pvt. Ltd.***(*supra*), it is clear that Phoenix ARC was not required to pay stamp duty on the assignment deed executed between it and the Financial Creditor.

iv. Further, in the matter of ***Prem Singh & Ors vs. Birlal & Ors***<sup>7</sup> the Apex Court has held in paragraph 27 that there is a presumption that a registered document is validly executed. Paragraph 27 is reproduced hereinunder:

*“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”*

v. Further, in ***Lalan Kumar Singh v. Phoenix ARC (P) Ltd.***<sup>8</sup>, the Hon’ble NCLAT has held as follows:

*“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. 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.”*

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<sup>7</sup> (2006) 5 SCC 353

<sup>8</sup> MANU/NL/0345/2018

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- vi. It is also pertinent to note in this regard that as per Rule 46 of the Maharashtra Registration Rules 1961, when a document, which is not duly stamped, is presented for registration and the registering officer impounds it under the Indian Stamp Act, 1899 or the Bombay Stamp Act, 1958, he shall not forward the document to the Collector until the executant or executants appear before him for the purpose of enquiry under section 34 or until the expiration of the period of four months specified in section 34 whichever is earlier. The endorsements under rules 39 and 43 section 58 shall be made on the document before it is sent to the Collector but it shall not be copied or certified as registered until it has been returned to the registering officer with the Collector's certificate that the proper stamp duty has been paid thereon. further, if a document is impounded under the Indian Stamp Act, 1899 or the Bombay Stamp Act, 1958, the registering officer shall record a statement immediately below the endorsement made under rule 39 that such document is impounded under section 33 of the Indian Stamp Act, 1899 or section 33 of the Bombay Stamp Act, 1958 and shall sign such statement.
- vii. In the instant matter, the onus of proof lied with the Corporate Debtor to prove that the assignment deed was not properly registered and he has failed to establish his case, As such, it shall be presumed that the registration of the assignment deed was validly executed.
- viii. Furthermore, it is noted that any lacunae regarding the registration of the said assignment deed need not be adjudicated upon by this Adjudicating Authority under IBC's summary jurisdiction. The Adjudicating Authority is only required to determine the existence of debt and default while adjudicating a petition filed under section 7 of the Code. The Hon'ble Supreme Court of India in ***Innoventive Industries Ltd. v. ICICI Bank***<sup>9</sup> has held as follows:
- “28.....It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a*

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<sup>9</sup>2017 SCC SC 1025

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*disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”*

- ix. Furthermore, Hon’ble National Company Law Tribunal (NCLAT) in the matter of **K. Kesava Vs. Ajay Gopaldas Samat (HUF) &Ors.**<sup>10</sup> referring to the aforesaid decision in **Innoventive** (supra), held that:

*“ 10. Therefore, Adjudicating Authority while dealing with such application under Section 7 is required to ascertain the ‘existence of a default’ from the records of the information utility or on the basis of evidence furnished by financial creditor. The corporate debtor is entitled to point out to the Adjudicating Authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, is not due i.e. it is not payable in law or in fact.”*

- x. We would also like to rely on the decision of the Hon’ble National Company Law Appellate Tribunal (NCLAT) in the matter of **Mr. Praful Nandi Stara vs. Vistra ITCL (India) Limited & Ors.**<sup>11</sup> wherein the Appellate Authority has held as follows:

*“ 28. We also consider the judgment in the matter of Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407, wherein Hon’ble Supreme Court has held as follows :-*

*“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating*

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<sup>10</sup>Company Appeal (AT) (Insolvency) No. 36 of 2018, decided on 18.07.2018

<sup>11</sup> Company Appeal (AT) (Ins.) No. 713 of 2020

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*authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

*We note that that the issue of debt being due and payable in the present case is not interdicted by any law but only a technical deficiency of insufficiency of their stamping has been raised which can be cured.”*

- xi. In the present case, much alike the Vistra ICTL (supra), it is clear that the insufficiency of stamp duty paid, if at all, is a technical defect that is curable. The said defect has no bearing on the debt and default of the Corporate Debtor. As such, this Adjudicating Authority need not delve further into the technicality of registration of the assignment deed dated 29.03.2022, in order to adjudicate the matter under section 7 of the IBC. The fact that both the parties to the said assignment deed have arrived a consensus so as to the transfer of the debt to Phoenix Arc Pvt. Ltd. is sufficient for the said agreement to be enforced. Further, it is very much clear to us that the said assignment of debt has no effect on the liability of the Corporate Debtor and as such this Adjudicating Authority is satisfied that the Applicant ought to be substituted as the Financial Creditor and be allowed to continue with the proceedings in the capacity of the Financial Creditor.
- xii. Lastly, we would also like to refer to an earlier decision made by this Adjudicating Authority in the matter of ***Indian Bank Vs. Machine Works International Limited***<sup>12</sup> wherein this Adjudicating Authority, while relying on various precedents, held as follows:

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<sup>12</sup> I.A. (IB) No. 1585/KB/2023 in C.P (IB) No. 200/KB/2022

**In the National Company Law Tribunal,  
Kolkata Bench (Court- II)**

I.A. (I.B.C.) 504/KB/2022 & I.A.(I.B.C.) 1371/KB/2023  
in C.P (IB) 634/KB/2020

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*“ 22. Hence, in the backdrop of aforesaid legal provisions and propositions, we are of the considered opinion that validity of an assignment on the basis of adequacy or inadequacy of the stamp duty etc., cannot be gone into in a summary proceeding as the present one.”*

- xiii. Keeping in mind the aforesaid findings, we are of the considered opinion that the original assignment deed need not be impounded by this Adjudicating Authority. As such the reliefs sought in I.A.1371/KB/2023 are not granted.
8. In light of the aforesaid facts, findings and precedents, we hereby allow I.A. No. 504/KB/2022. Phoenix ARC Pvt. Ltd. is permitted to carry out the necessary amendments to the company petition thereby giving effect to the substitution of **Phoenix ARC Pvt. Ltd.** in place of **L&T Finance Ltd.** (*Financial Creditor*) in C.P.(IB) 634/KB/2020. **I.A 504/KB/2022** is disposed off accordingly.
9. **I.A.1371/KB/2023** shall stand *rejected*. List **CP (IB) 634/KB/2020** for further consideration on 26.04.2024.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
11. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

The order is pronounced on the 4<sup>th</sup> day of April, 2024

SM(LRA)