NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1094 of 2021

IN THE MATTER OF:

Abhishek Gupta **....Appellant**
S/o Sh. Ajay Gupta
R/o 6, Shyamnath Marg,
Civil Lines, Delhi – 110054

Versus

Asset Reconstruction Company (India) Pvt. Ltd.
Through Director/Authorized Person
Registered Office: The Ruby, 10th Floor,
29, Senapati Bapat Marg, Dadar (West),
Mumbai – 400028. **....Respondent No. 1**

Uday Estates Pvt. Ltd.,
Through IRP Mr. Nilesh Sharma
At: 10, LGF, Lajpat Nagar – III,
New Delhi – 110024. **....Respondent No. 2**

Present:

For Appellant: **Mr. Mohit Chaudhary, Mr. Paras Mittal and Mr. Kunal Sachdeva, Advocates.**

For Respondents: **Mr. Dinkar Singh, Mr. Gagan Garg, Mr. Rohit Singh, Advocates for R – 1**
Ms. Aditi Sharma, Advocate for RP

Judgment
(Date: 02.03.2022)
(Virtual Mode)

{Per: Dr. Alok Srivastava, Member (Technical)}

1. The present appeal, filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') arises out of order dated 15.11.2021 (hereafter called 'Impugned Order') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in CP (IB) No.393/ND/2021 whereby the Adjudicating Authority has admitted the Section 7 application filed by Respondent No. 1/Asset Reconstruction Company (India) Limited (hereafter called 'ARCIL') and ordered initiation of Corporate Insolvency Resolution Process (hereafter called 'CIRP')in respect of Respondent No. 2/Uday Estates Private Limited.

2. The brief facts of the case, as stated and argued by the Appellant, are that the Corporate Debtor/Uday Estates Private Limited received financial facilities from the Bank of Baroda through two term loans – the first loan(Term Loan – I) for an amount of Rs. 60 crores vide loan agreement dated 28.7.2009 and the second loan (Term Loan – II) for an amount of Rs.13 crores vide loan agreement dated 8.1.2011.As the Corporate Debtor could not adhere to the schedule of payment as per the loan agreements, the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 31.12.2011. Thereafter, the Bank of Baroda sent a demand notice dated 11.6.2012 under Section 13(2) of the SARFAESI Act, 2002 demanding payment of total amount in

default Rs.79,93,84,596 (Rupees Seventy Nine Crore Ninety Three Lakh Eighty Four Thousand Five Hundred and Ninety Six only) as on11.6.2012. The Bank of Baroda, through a deed of assignment dated 13.3.2013 executed under Section 5 of the SARFAESI Act, 2002, assigned the debt of the Corporate Debtor in favour of Respondent No. 2/ARCIL. Thus, ARCIL stepped into the shoes of Bank of Baroda as financial creditor.

3. The Appellant has further stated that the Corporate Debtor, in its balance sheet for FY 2011–12, duly signed on 3.9.2012 and adopted in its AGM held on 13.9.2012, acknowledged the grant of loan by the Bank of Baroda and default committed by the Corporate Debtor. Further, the Corporate Debtor, in its balance sheet for FY 2012-13 duly signed on 4.9.2013 and adopted in its AGM acknowledged the assignment of the debt by Bank of Baroda in favor of ARCIL. The Corporate Debtor, upon being aggrieved by the action taken by Bank of Baroda pursuant to demand notice under Section 13(2) of the SARFAESI Act, 2002 dated 11.6.2012,filed an application under Section 17 of the SARFAESI Act, 2002 before the Debt Recovery Tribunal. The Debt Recovery Tribunal, vide its judgment dated 29.4.2016, directed the Corporate Debtor/Uday Estates Private Limited to pay dues of the Respondent within nine months by way of three quarterly

installments, which the Corporate Debtor failed to pay within the specified time schedule. Thus, a final judgment and order/decree became binding on the judgment debtor/Corporate Debtor. The Corporate Debtor thereafter, filed review petition before DRT–III at Delhi for reviewing/recalling its final order dated 29.4.2016, praying inter alia, among other things, that the Corporate Debtor be permitted to sell property at Shastri Park, Delhi in whole or in part, to enable him to start paying the dues of ARCIL and requesting for the nine months' time for making payment to ARCIL. The DRT-III, Delhi vide its final order dated 27.7.2016, disposed of the review petition ordering, inter alia, that the Applicant (Corporate Debtor) be permitted to bring better buyer for sale, floor-wise, of the property in question, subject to the satisfaction of the Respondent/ARCIL. Also, the Corporate Debtor, aggrieved by the judgment dated 29.4.2016 passed by DRT-III, Delhi preferred an appeal - registered as Appeal No. 318/2016 - before the Debt Recovery Appellate Tribunal (DRAT) at Delhi, which was dismissed vide DRAT's judgment dated 29.1.2018. The Appellant has subsequently filed an application under Section 7 of the IBC as financial creditor, which was admitted by the Adjudicating Authority vide the impugned order dated 15.11.2021.

4. We heard the arguments advanced by Learned Counsel for

both the parties. The Ld. Counsel for the Appellant based his arguments on two issues viz. (i) The appeal is time-barred; and (ii) The Section 7 application, filed by the Respondent No. 1 purporting to be financial creditor, is not maintainable since he is not an investor but a partner of the corporate debtor.

5. The Learned Counsel for Appellant has referred to the two letters dated 3.7.2018 (attached at pp. 517-526 of the Appeal Paperbook Vol.-3) and 11.8.2018 (attached at pg. 527 of the Appeal Paperbook Vol.-3) to claim that these letters were written "Without Prejudice" and, therefore, these letters cannot be relied upon for extension of limitation of the Section 7 application. He has referred to the judgments of the Hon'ble Supreme Court in **BK Educational Services Private Limited versus Parag Gupta and Associates (2019 11 SCC 633)** and **Jignesh Shah and Anr. versus Union of India and Anr.(2019 10 SCC 750)** to claim that Limitation Act and its provisions are applicable to the applications under IBC. He has argued that any communication which is sent with the remark "Without Prejudice" cannot be used as an evidence under Section 23 of the Evidence Act as admission by the sender of the communication. Expatiating, he has argued that Section 23 of the Indian Evidence Act lays down that in civil cases no admission is relevant if it is made either on an express

condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given. In support of his claim he has cited the following judgments:

(i) Union of India vs Shew Bux Satyanarayan (AIR 1965 Cal 636)

(ii) Shibcharan Das vs Gulabchand Chhoteylal (AIR 1936 All 157)

(iii) Sanjay Kumar Aggarwal vs Central Bank of India and Ors, Suit No. 2294 of 2007 (MANU/MH/3475/2016)

(iv) Peacock Plywood Private Limited vs the Oriental Insurance Company Limited (2006 12 SCC 673).

6. On the basis of ratios in the above-mentioned judgments, the Ld. Counsel for Appellant has claimed that the two said letters sent by the Appellant/Corporate Debtor referred to above, cannot be relied upon by the opposite side for admission/acknowledgment of the debt and, therefore, for extension of limitation under Section 18 of the Limitation Act. The Ld. Counsel for Appellant has also argued that ARCIL is actually a partner of the corporate debtor and is not an investor who can prefer Section 7 application as financial debtor.

7. The Learned Counsel for Appellant has also cited the judgment of Hon'ble Supreme Court in **ITC Limited versus Blue**

Coast Hotels Limited and Ors. (2018 15 SCC 99) and a judgment of the NCLAT in **Manesh Agarwal vs Bank of India and Anr. [Company Appeal (AT) (INS) No. 1182 of 2019)** to claim that it is a settled law that any communication that does not contain the remark “Without Prejudice” may be taken to extend the period of limitation but in the instant case, since the communications were sent with the explicit note of “Without Prejudice" in them, they cannot be relied upon for the purpose of extension of limitation.

8. In reply, the Learned Counsel for Respondent/ARCIL has argued that it is an admitted fact that the Corporate Debtor availed two loans, namely Term Loan–I and Term Loan–II from Bank of Baroda/Financial Creditor of amounts Rs. 60 crores and Rs. 13 crores vide two separate loan agreements dated 28.7.2009 and 8.1.2011 respectively. The loan account of Corporate Debtor was declared as NPA on 31.12.2011 and the Bank of Baroda assigned the debt of the Corporate Debtor to ARCIL vide deed of assignment dated 13.3.2013. Earlier, the Bank of Baroda sent a demand notice dated 11.6.2012 under Section 13(2) of SARFAESI Act, 2002 demanding payment of Rs.79,93,84,596 which is the debt amount in default of payment as on 11.6.2012 from the Corporate Debtor. He has further argued that after declaration of the loan account of

the Corporate Debtor as NPA, the Corporate Debtor acknowledged the outstanding loan amounts along with interest in its balance sheet for financial Year 2011–12, signed on 3.9.2012 and again in its balance sheet for financial year 2012–13 signed on 4.9.2013. He has also claimed that the ARCIL, which had stepped into the shoes of the erstwhile financial creditor/Bank of Baroda, filed a case before DRT and obtained judgment in its favour on 29.4.2016whereby the Corporate Debtor was directed to pay the dues of the Respondent No. 1/ARCIL within nine months by three quarterly instalments. A review filed by the Corporate Debtor against DRT's judgment dated 29.4.2016 was also adjudicated in favour of the financial creditor vide order dated 27.7.2016. He has also pointed out that the order dated 29.4.2016 passed by DRT–III was assailed in appeal by the Corporate Debtor before DRAT which was dismissed vide judgment dated 29.1.2018.

9. The Learned Counsel for Respondent claims that the period of limitation will get extension by virtue of DRT's judgment/order. For this he placed reliance on the judgment of Hon'ble Apex Court in the matter of **Dena Bank (now Bank of Baroda) vs C. Shivakumar Reddy and Anr. (2021 SCC Online SC 543)** wherein it is held as follows:-

"143. Moreover, a judgment, and/or decree for money in

favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, could give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Creditor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

10. Applying the principle settled by Hon'ble Supreme Court in **Asset Reconstruction Company (India) Limited vs Bishal Jaiswal and Anr. (Civil Appeal No. 323/2021)**regarding extension in limitation as a result of acknowledgement in the corporate debtor's balance sheet in the instant case, the Ld. Counsel for Respondent No. 1has explained that after the Loan Account of Corporate Debtor was declared as NPA on 31.12.2011, the acknowledgment of the Corporate Debtor in its balance sheet for FY 2011–12, which was signed on 3.9.2012,would extend the period of limitation upto 2.9.2015. Relying on the same principle, the acknowledgment in the balance sheet for FY 2012-13,which was signed on 4.9.2013, would extend the limitation upto 3.9.2016 and the order of DRT-III dated 29.4.2016 would extend the limitation upto 28.4.2019. He has argued that in this manner the application under section 7 filed by the financial creditor/ARCIL comes within limitation as required by the provision of Limitation

Act.

11. On the issue of the import of the remarks "Without Prejudice" for acknowledgement of the loans, the Learned Counsel for Respondent No.1 has cited the judgment of Hon'ble Supreme Court in **ITC Limited versus Blue Coast Hotels Limited and Ors (supra)** to emphasize that the note "Without Prejudice" does not have any significance in the present matter, and both the letters dated 3.7.2018 and 11.8.2018, which contain the remark "Without Prejudice", provide valid acknowledgment of the debt by the Corporate Debtor and that is what is relevant for calculating limitation of the Section 7 application. He has also pointed out that the corporate debtor has explicitly admitted the debt amount which was adjudicated by the DRT-III which is also an implicit admission/acknowledgement of the debt. He has also claimed that in view of the acknowledgment of the debt in the balance sheets for FY 2011-12, FY 2012-13, FY 2017-18, FY 2018-19 and FY 2019-20, all of which are on record, his case of extension of limitation is made out, even if he doesn't rely on the two letters dated 3.7.2018 and 11.8.2018 for extension of limitation.

12. On the basis of his arguments, the Learned Counsel of Respondent No. 1 has urged that since the debt is clearly within

limitation in accordance with Section 18 of Limitation Act, the Adjudicating Authority has committed no error in admitting his Section 7 application.

13. We have duly considered the detailed arguments advanced by Learned Counsels for both parties and perused the record.

14. The relevant portion of the impugned order wherein the finding regarding limitation and the remark of "Without Prejudice" which are contained in the two letters dated 3.7.2018 and 11.8.2018 (supra) is reproduced below –

> "5. In the light of the aforesaid discussions, when we consider the case in hand, then we find that the application is complete and the term loan facility has been availed by the Corporate Debtor and the same has not been repaid by the Corporate Debtor, therefore there is default in payment of debt. That there is a valid Assignment of Debt and before the expiry of limitation period to initiate proceedings, there is a payment of Rs. 15 crore pursuant to the order of DRT and order of DRT is placed on record. Aggrieved by the order of DRT, Corporate Debtor went to Writ Petition before the Hon'ble High Court, Delhi. Hon'ble High Court's judgment is also placed on record.
>
> 6. There is a valid acknowledgment on the part of the Corporate Debtor in the form of Settlement Proposal and there is settled law as declared by Hon'ble NCLAT in the matter of **Manesh Agarwal vs. Bank of India & Anr.** (Company Appeal 1182/2019).
>
> 7. We are of the opinion that, the term "Without Prejudice to the rights and contentions of the Corporate Debtor" does not negates the admission of the liability of the debt. Acknowledgment of liability under section 18 of the

Limitation Act, 1963 itself demands a broader interpretation to serve the ends of justice. That is why Section 18(2)(a) of the Limitation Act states that:-

"an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right."

15. We shall, therefore, first look at the import of remark of "Without Prejudice" mentioned in the two letters dated 3.7.2018 and 11.8.2018 (supra)in the light of the submissions of both the parties.

16. The letter dated 3.7.2018 (attached at pg. 517 of Appeal paperbook Vol.-3) includes the following: –

"Dear Sir,

This is in reference to our meeting held on 26 June, 2018 at the office of ARCIL in Mumbai, where Uday Estates were represented by the Director of the company Mr. Ajay Gupta and Mr. S.M. Sharma CFO with the officers of the ARCIL, where it was decided that the company will submit afresh settlement proposal and will engage Jones Lang LaSalle (JLL), the esteemed real estate company, to sell the project of the company in parts.

The submission of the settlement proposal is "Without Prejudice" to our rights and contentions as the matter is presently pending at the courts. This settlement proposal is being given in principle-to-principle for this proposal only and without going in the merits and demerits of this case."

17. This letter then goes on to provide calculation of interest in

three scenarios and a proposal is then put forward regarding disposal of various floors, basements and terrace of the hotel to achieve the best sale price. The letter goes on to state as follows: –

> "If proposal is acceptable to ARCIL, then outstanding liability should be freezed as on 30th June, 2018. After 30 June, 2018, we would be paying simple interest @ 8.5% p.a. till the entire dues are paid.
>
> xxx xxx xxx
>
> We, kindly request you to stop any coercive action initiated by you. We are sending you this proposal by e-mail/post, so that you can do your due diligence before our proposed meeting on 7th July 2018."

Furthermore, the letter dated 11.8.2018, which is addressed to Mr. Debasish Bose, Authorized Officer of ARCIL, and signed by the Appellant as Director of Uday Estates Private Limited, states as follows: –

> "You are aware that the Ld. DRT – III, New Delhi vide its order dated 29.4.2016 and 27.7. 2016 has already crystallized the dues payable by us to ARCIL by charging simple interest @ 11% on the amount of Rs. 81.60 crores with reducing base amount. On the said basis, please calculate the dues and deduct the amount of Rs. 15 crores paid by us from the said dues. After adjusting your dues as per Ld. DRT's order, please refund our balance amount at the earliest."

18. We now look at the two judgments referred to by the Learned Counsel for Appellant regarding the import of the words "Without Prejudice" in the two above-mentioned letters of the corporate

debtor in the context of the present case. In the matter of **ITC Limited vs Blue Coast Hotels Limited and Ors (supra)**, the letter of undertaking which was given "Without Prejudice" pertains to an undertaking given by the corporate debtor regarding payment/settlement. The mention of the words "without prejudice" in a letter of undertaking which is given in the process of settlement protects the legal rights of the sender in the event the settlement proposal does not fructify. Hence the words "Without Prejudice" have a very important implication in such cases. In the present case, the issue is not about protecting the right of sender vis-a-vis any legal remedy in case the settlement does not fructify, but is about the fact of the existence of the loan. Hence in our view the context in the case of **ITC Limited (supra)** is quite different and the ratio would not apply in the facts of the present case. The other judgment in **Manesh Agarwal versus Bank of India and Anr. (supra)** is distinguished by the Learned Counsel for Appellant as the communication considered in the case does not have a noting of "Without Prejudice". We tend to agree with the view that the two judgments do not provide support to the contentions of the Appellant.

19. On the other hand, the Learned Counsel for the Respondent No. 1/ARCIL has relied on another paragraph 35 of Hon'ble

Supreme Court's judgment in **ITC Limited case(supra)** which is as follows:-

"**LETTER OF UNDERTAKING "Without Prejudice"**

"35. Much was sought to be made of the words 'without prejudice' in the letter containing the undertaking that if the debt was not paid, the creditor could take over the secured assets. The submission on behalf of the debtor that the letter of undertaking was given in the course of negotiations and cannot be held to be an evidence of the acknowledgment of liability of the debtor, apart from being untenable in law, reiterates the attempt to evade liability and must be rejected. The submission that the letter was written 'without prejudice' to the legal rights and remedies available under any law and therefore, the acknowledgment or the undertaking has no legal effect must likewise be rejected. This letter is reminiscent of a letter that fell for consideration in Spencer's case as pointed out by Mr. Harish Salve, "*as a Rule the debtor who writes such letters has no intention to bind himself further than is bound already, no intention of paying so long as he can avoid payment, and nothing before his mind but a desire, somehow or other, to gain time and avert pressure."*

It was argued in a subsequent case that an acknowledgment made "without prejudice" in the case of negotiations cannot be used as evidence of anything expressly or impliedly admitted. The House of Lords observed as follows:-

> *But when a statement is used as acknowledgment for the purpose of section 29 (5), it is not being used as evidence of anything. The statement is not an evidence of an acknowledgment. It is the acknowledgment.*

Therefore, the 'without prejudice' Rule could have no application.

It said:

> *Here, the Respondent, Mr. Rashid was not offering any concession. On the contrary, he was seeking one in respect of an undisputed debt. Neither an offer of payment nor actual payment.*

> We, thus, find that the mere introduction of the words "without prejudice" has no significance and the debtor clearly acknowledged the debt even after the action was initiated under the Act and even after payment of a smaller sum, the debtor has consistently refused to pay up."

20. We tend to follow the view taken in the paragraph 35 of the judgment in **ITC Limited case (supra)** with regard to the words "Without Prejudice" and are of the opinion that this view corresponds to the context as contained in the two letters in the present appeal.

21. The Ld. Counsel for Appellant has also cited the judgment of Hon'ble Apex Court in the case titled **Peacock Plywood Private Limited vs. The Oriental Insurance Company Limited (2006 12 SCC 673)** to claim that the said letters cannot be taken as evidence of the existence of debt, and consequently of its acknowledgement. The relevant portion of the judgment is reproduced below:

Paragraph 22(c)

> *"(c) When is correspondence treated as within rule?*
>
> *The first question is to determine what communications attract without prejudice privilege. The second stage is to consider when the court will, nevertheless admit such communications.*
>
> *Correspondence will only be protected by without prejudice privilege if it is return for the purpose of a genuine attempt to compromise a dispute between the parties. It is not a precondition that the correspondence bears the heading without prejudice. If it is clear from the surrounding*

circumstances. That the parties were seeking to compromise the action, evidence of the content of those negotiations will, as a general rule, not be admissible. The converse is that there are some circumstances in which the words are used but where the documents do not attract without prejudice privilege. This may be because although the words without prejudice were used, the negotiations were not for the purpose of a genuine attempt to settle the dispute. The most obvious cases are first, where the party writing was not involved in genuine settlement negotiations, and secondly, where although the words were used, they were used in circumstances which had nothing to do with negotiations. Surveyors' reports, for example, are sometimes headed without prejudice, although they have nothing to do with negotiations. The third case is where the words are used in a completely different sense."

22. We find that the said letter dated 11.8.2018 (supra) very clearly mentions the debt as it is crystallized in the judgment of DRT-III and also shows inclination to pay the requisite amount. Thus the said letter does not refer to any settlement that is being discussed and hence the judgment in Peacock Plywood case also does not come to the aid of the Appellant's case.

23. Thus it is clear that the mention of "Without Prejudice" in the two letters dated 3.7.2018 and 11.8.2018(supra) do not imply denial/rebuttal of the debt. The admission of the debt which is explicitly contained in the letter dated 11.8.2018(supra)is quite clear, wherein the corporate debtor has not only admitted the debt, but has also undertaken to pay the amount as decided by DRT-III in its judgment dated 29.4.2016.

24. We now turn our attention to examine the fact whether the

various acknowledgments as claimed by Respondent No. 1/ARCIL provide extension of limitation in accordance with section 18 of the Limitation Act.

25. Based on the documents and judgments presented by the Ld. Counsel of Respondent No. 1 we find that they provide acknowledgement of the corporate debtor's debt and consequently the extension of limitation in the following manner:

(i) The loan account of the Corporate Debtor declared NPA on 31.12.2011. Hence the limitation would extend for three years, i.e. upto 30.12.2014.

(ii) Bank of Baroda sends demand notice under section 13(2) of the SARFAESI Act on11.6.2012.

(iii) While the period of limitation is running, Corporate Debtor's balance sheet for FY 2011-12 which was signed on 3.9.2012, is relied upon to extend limitation upto 3.9.2015.

(iv) Again while the limitation is running, Corporate Debtor's balance sheet for FY 2012-13 which was signed by the Corporate Debtor on 4.9.2013,is relied upon to extend limitation upto 3.9.2016.

(v) Judgment dated 29.4.2016 of DRT-III gives a fresh cause of action to the Respondent/ARCIL while the

limitation period is running, helps to extend the limitation period from 29.4.2016 for another three years till 28.4.2019.

(vi) The two letters dated 3.7.2018 and 11.8.2018 sent by the Corporate Debtor to Financial Creditor/ARCIL contain reference to settlement proposal submitted to the Financial Creditor which is in relation to the debt of the corporate debtor. The letter dated 11.8.2018contains admission of the Corporate Debtor about the quantum of dues (debt) payable by the Corporate Debtor to ARCIL by charging simple interest @ 11% on an amount of Rs. 81.60 crore with reducing base amount. Thus the letter dated 11.8.2018 provides a further extension to the limitation period upto 10.8.2021.

(vii) Finally before the extended limitation period expires on 10.8.2021, the section 7 application is filed on 28.7.2021, and hence the application is within limitation.

26. Thus the Adjudicating Authority has correctly considered the relevant documents and judgments presented for the purpose of extending limitation and inferred that the Section 7 application

submitted by ARCIL is within limitation for the purposes of the IBC.

27. Regarding the other issue raised by the Appellant as to whether ARCIL is a financial creditor or an investor, we note that ARCIL is an assignee of the debt vide deed of assignment dated 13.3.2013 executed by the Bank of Baroda, which had provided Term Loan-I and Term Loan-II to the Corporate Debtor. ARCIL, therefore, steps into the shoes of Bank of Baroda as Financial Creditor in accordance with the definition of 'Financial Creditor' as defined in Section 5 of the IBC which is reproduced below:

> **"*5. Definitions.*-**
>
> *Xxx xxx xxx*
>
> *(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to."*

It is admitted fact that Bank of Baroda is a financial creditor and by a valid and legal deed of assignment Bank of Baroda assigns the debt to ARCIL. Hence, ARCIL is without doubt a financial creditor which is entitled to submit an application under section 7 of the IBC for relief.

28. In the light of the detailed discussion above, we are of the

clear view that the Adjudicating Authority has committed no error in passing the Impugned Order. Therefore, we find no reason to interfere with the Impugned Order and consequently disallow the appeal. The appeal is thus disposed of.

29. There is no order as to costs.

(Justice Ashok Bhushan)
Chairperson

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
2nd March, 2022

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