

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

I.A.(IB) No. 1062/KB/2023
In
Company Petition C.P. (IB)/62(KB)2019

*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:

STATE BANK OF INDIA

... Financial Creditor.

Verses

MAYUR PLY INDUSTRIES PVT LTD

... Corporate Debtor.

And

IN THE MATTER OF:

PHOENIX ARC PRIVATE LIMITED,

A Company registered as an Asset Reconstruction Company with the RBI

... Applicant.

Verses

MAYUR PLY INDUSTRIES PRIVATE LIMITED

... Respondent.

Date of Pronouncement: November 10, 2023.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI, MEMBER (TECHNICAL)

Appearance:

For Phoenix ARC in IA 1062/2023:

- 1. Mr. Ritoban Sarkar, Adv.**
- 2. Mr. Saptarshi Saha, Adv.**
- 3. Mr. Arinam Mrinal, Adv.**

For the Corporate Debtor:

- 1. Mr. Shaunak Mitra, Adv.**
- 2. Mr. Sidhartha Sharma, Adv.**
- 3. Ms. Shalini Basu, Adv.**

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ORDER

1. This Court is congregated through hybrid mode.
2. Heard the Ld. Counsel for the Applicant.
3. This instant application is filed by Phoenix ARC Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for brevity “I&B Code”) against Mayur Ply Industries Private Limited (Respondent) seeking direction from this Adjudicating Authority as follows:
 - a) *Allow substitution of the present Applicant in place of the State Bank of India (Original Financial Creditor) in the captioned Company Petition being CP(IB) 62/KB/2019 (“Parent Application”) filed against the Mayur Ply Industries Private Limited (Respondent/ Corporate Debtor);*
 - b) *Allow the Applicant to amend the Company Petition as mentioned in Annexure “X” of this Applicant;*
 - c) *Allow the Applicant to re-verify, re-affirm and file the duly amended copy of the Company petition with the Registry of this Adjudicating Authority;*
 - d) *Service of fresh notice upon the Corporate Debtor be waived;*
 - e) *Ad interim Orders;*
 - f) *Any other order may be deemed fit and proper.*
4. Ld. Counsel for the Applicant submits that the Original Financial Creditor filed the Parent Application, being company Petition CP (IB) 62/KB/2019, against the Corporate Debtor, on or about January 02, 2019.
5. Ld. Counsel for the Applicant further submits that the State Bank of India, in its capacity as the Original Financial Creditor, has unconditionally and irrevocably assigned, transferred and released in favour of Phoenix ARC Private Limited (“Substitute Financial Creditor”), all the financial assistance, granted by the Original Applicant to Mayur Ply Industries Private Limited (“Borrower”/ “Corporate Debtor”) together with all its rights, title and interest therein and all collateral and underlying security interest and/or mortgages and/or pledges created to secure and/or guarantees issued in respect of the repayment of the financial assistance and to which the Original Financial Creditor (in its capacity as the Assignor) is entitled to, in terms of Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in accordance with the terms and conditions contained in Deed of

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Assignment, dated October 12, 2022, annexed at Page 19-77 to this Application an Annexure “A”.

6. It is further stated that the said Deed of Assignment, dated October 12, 2022, has been registered with the Office of the Additional Registrar of Assurances-II, Kolkata and recorded as Deed No. 190215213/ 2022, Book No. I, Volume 1902-2022, Pages 508844 to 508892.
7. It is further contended that in terms of the Deed of Assignment, dated October 12, 2022, Phoenix ARC Private Limited (“Substituted Financial Creditor”) is the full and absolute legal owner and the only person legally entitled to enforce and recover the Financial Facilities availed by the Respondent/Corporate Debtor from the Original Financial Creditor and continue/defend all suits, applications or appeal, filed before any court or tribunal. Further, in view of such assignment of debts by the **State Bank of India** (“Original Financial Creditor”) in favour of **Phoenix ARC Private Limited** (“the Substituted Financial Creditor”), the Substituted Financial Creditor has stepped into the shoes of the Original Applicant/ Original Financial Creditor and thus has become entitled to continue proceedings initiated by or against the Original Applicant/ Original Financial Creditor.
8. We would rely upon the judgment passed by the Hon’ble NCLAT in ***Siti Networks Ltd. v. Assets Care and Reconstruction Enterprises Ltd.*** [Comp. App. (AT) (Ins.) No. 1449 of 2022]

“6. Learned Counsel for the Respondent has rightly referred to the provisions of Order XXII Rule 10 of CPC which contemplates continuance of proceeding on the basis of devolution of rights with the leave of the Court which is applied generally in civil proceeding and suit.”

“7. ... As has been observed rightly by the Adjudicating Authority, 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. ...”

(Emphasis Added)

9. In terms of the view above, we allow the prayer of the application and direct the Applicant to file the amended Company Petition being CP(IB) No. 62/KB/2019 with the Registry of this Adjudicating Authority. Accordingly, this Application being I.A. (IB) No. 1062/KB/2023 is **disposed of** without any cost.

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10. Certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.
11. Post this main Company Petition on 28/11/2023 for hearing.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 10th Day of November, 2023.

Bose, R. K. [LRA]