



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

(SPECIAL)

CP(IBC)/08/KOB/2023

(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

Asset Reconstruction Company (India) Limited, The Ruby, 10th Floor 29,
Senapati Bapat Marg, Dadar (West), Mumbai- 400 028;

... Financial Creditor

-Versus-

Cochin Frozen Food Exports Pvt. Ltd., IV/475, Arookutty Ferry Road, Aroor,
Alleppey District, Kerala- 688 534.

... Corporate Debtor

Coram:

Shri. P. Mohan Raj : Member (Judicial)

Shri. Satya Ranjan Prasad : Member (Technical)

Parties / Counsel present (through video conference):

For Financial Creditor : Mr. B.S. Suresh Kumar, Adv.

: Mr. John Vadassery, PCS.

For Corporate Debtor : Mrs. Jaya P. Adv.,

: Mr. Sankar P. Panicker, Adv.,

: Mr. M.G. Sreejith, Adv.,

: Mr. Krishnakumar G., Adv.,

: Mr. Pradeep Joy, Adv.

Order reserved on: 13.07.2023

Order pronounced on:13.10.2023

ORDER

1. Under consideration is Petition No. CP(IBC)/08/KOB/2023 filed by Financial Creditor M/s. Asset Reconstruction Company (India) Limited against the Corporate Debtor M/s. Cochin Frozen Food Exports Pvt. Ltd



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate a Corporate Insolvency Resolution Process (hereinafter referred as CIR Process) against the Corporate Debtor for the total default amount of **Rs. 41,54,95,227/- (Rupee Forty-One Crore Fifty-Four Lakh Ninety-Five Thousand Two Hundred Twenty-Seven Only)** in respect of credit facility availed by them from the Financial Creditor.

- 2. The Brief contents of the petition are as follows:** The petitioner/Financial creditor is assignee of The South of India Bank Ltd. filed this petition. The Respondent/corporate debtor availed a loan of Rs.37,70,000/- from the South Indian Bank Ltd on 30.06.2016 on the security of machinery/vehicles, stock in trade, other movable properties including the actionable claims, book debts, Government supply bills on executing deed of hypothecation. The loan amount was modified on 17.02.2017 to Rs.47,70,00,000/- on executing letter of confirmation and by deposit of title deeds of the land and building of the corporate debtor situate at Aroor Village, Cherthala Taluk. The loan was again modified on 16.11.2017 revising the loan amount to Rs.43,86,00,000/- on execution supplementary deed of hypothecation. The loan was subsequently modified on 07.03.2018 and 20.03.2019. The loan was finally modified on 20.10.2020 revising loan amount to Rs.48,64,00,000/ by executing memorandum of charge. The respondent defaulted in payment of loan amount, several reminders were sent by the South India Bank Ltd to respondent, despite of reminders the respondent failed to pay the amount. Then the loan was classified as NPA on 30.06.2020. The loan was then assigned by the South Indian Bank Ltd in favour of the petitioner by an assignment deed dated 23.02.2022. The petitioner also persuaded the respondent for the repayment of loan but failed. Hence this petition.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

3. **The Brief contents of the reply are as follows:** The petitioner being the Asset Reconstruction company under the SARFAESI Act 2002, can only perform business to recover the amount but not entitled to file the company petition under the IBC 2016. The respondent is MSME, the petitioner filed this petition in mala fide intention to coerce the respondent, The act of petitioner violates the fundamental rights enshrined in the constitution. The petitioner not validly acquired the assignment of debt from the South Indian Bank Ltd. The petitioner claims a security interest in immovable property pursuant to the deed of assignment hence the assignment deed ought to have been registered and the stamp duty also ought to have been paid at 8% under Articles 21 & 22 of the Kerala Stamp Act,1959. Further, it is stated that the assignment deed is executed on insufficient stamp duty hence the assignment deed is invalid, unenforceable, and non-est in law. In this regard, the respondent relies upon the information collected from the registration department under the Right to Information Act,2005. The amount claimed in the calculation worksheet is incorrect, the petitioner cannot invoke the benefits under the Bankers Books Evidence Act. The non-production of the certificate by the named IRP along with the petition is grounds for rejection of petition.
4. **The Brief contents of the rejoinder are as follows:** The petitioner is ‘financial creditor’ as defined under section 5(7) of IBC 2016, and the respondent committed default accordingly the petitioner is competent to file petition under section 7 of IBC 2016. The assignment agreement entered with the South Indian Bank Ltd dated 23.02.2022 is executed in Mumbai with adequate stamp duty as provided in the Stamp Act applicable to the state of Maharashtra. The assignment deed executed between the petitioner and the South Indian Bank Ltd dated 23.02.2022 is not a conveyance deed as defined as under section 2(d) of Kerala Stamp Act 1959. The petitioner



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

submitted the written communication of the proposed interim resolution professional.

5. The points for consideration are:

- (i) Whether the petitioner is competent to maintain the petitioner under section 7 of IBC 2016?
- (ii) Whether the assignment deed dated 23.02.2022 executed between the Petitioner and the South Indian Bank Ltd is valid and enforceable?

6. Point No.1: The petitioner is an assignee of the South Indian Bank Ltd filed this petition under section 7 of IBC 2016. The petitioner is an Asset Reconstruction company registered under the provision of SARFEASI Act 2002. According to respondent the petitioner as an assignee is entitled to file proceeding only to recover the dues, it has no right to file petition under the IBC 2016 for an initiation of insolvency process. This contention is unsustainable the debtor cannot dictate terms upon the creditor or its assignee, what kind of legal action has to be taken against him. Section 5(7) of IBC 2016 defines the term "financial creditor" is defined to include an assignee of such creditor as well', which is evidenced by the words includes a person to whom such debt has been legally assigned or transferred to. When the petitioner is comes under the definition of financial creditor under IBC 2016, as such the petitioner can file the petition under section 7 of IBC 2016. The section 7 of IBC 2016 given a caption that "Initiations of corporate insolvency resolution process by financial creditor'. The NCLAT in **Degree Cotsyn Pvt Ltd vs Phoenix Arc Pvt Ltd, Company Appeal (AT) (Insolvency) No. 480 of 2019** held that a person who is an assignee of debt under the SARFAESI Act 2002 can also maintain an application under section 7 of the IBC 2016. Similarly, the NCLAT in **Kanti Commercial Pvt Ltd vs Edelweiss Asset Reconstruction Co. Ltd Company Appeal (AT) (Insolvency) No. 250 of 2018** held as follows:



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

In view of the aforesaid fact, the submission made by the counsel for the Appellant that the 'Edelweiss Asset Reconstruction Company Ltd.' cannot be treated to be a Financial Creditor is rejected. Admittedly, there is a debt owed by the Corporate Debtor in favour of the South Indian Bank Ltd., now in favour of the Assignee - 'Edelweiss Asset Reconstruction Company Ltd.' and Corporate Debtor defaulted to pay the loan. The application under Section 7 of the I&B Code being complete and there being a debt and default, the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 1st May, 2018 admitted the application, passed order of moratorium and appointed Interim Resolution Professional with certain directions.

Thus, it is clear that in terms of section 5(7) of the IBC 2016, an assignee of a financial creditor is a financial creditor and such an assignee may also maintain an application under section 7 of the IBC. Thus, this point is answered.

- Point No.2:** The respondent challenged the validity of the assignment deed stating that the instrument is not engrossed on sufficient value of stamp as per the Kerala Stamp Act 1959. The instrument was registered at Andheri in the State of Maharashtra bearing Document No.3292 of 2022, paid stamp duty of Rs.1,01,500/-under the Maharashtra Stamp Act 1958. The Stamp duty payable is as per Article 25 of the Maharashtra Stamp Act 1958. The Government of Maharashtra issued the following notification reducing the stamp duty payable on the assignment deed putting a maximum cap of Rs.1 Lac.

Bombay Stamp Act, 1958. 'Order dated 11th May 1994, No. STP. 1094/CR-369/(C)-M-1 – In exercise of the powers conferred by Clause



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

(a) of Section 9 of the Bombay Stamp Act, 1958 (Bom. LX of 1958), the Government of Maharashtra hereby reduces with effect from 1st April 1994 the duty with which an instrument of securitisation of Loans or Assignment of Debt with underlying securities is chargeable under Clause (a) of Article 25 of Schedule 1 to the said Act, to 'Fifty Paise' for every rupees 500 or part thereof of the loan securitised or debt assigned with underlying securities subject to a maximum of Rs 1 lakh and in case of instrument of Assignment of Receivables in respect of use of credit cards to 'Two Rupees and Fifty Paise for every rupees 500 or part thereof.' subject to a maximum of Rs 1 lakh.[7]

The present assignment deed is executed at Mumbai, where the Registered office of the financial creditor situate and stamp duty also paid as per the Maharashtra Stamp Act 1958.

8. The contention of the respondent is, the Kerala Stamp Act 1959 alone applicable in this case hence the Stamp duty payable is as per the Kerala Stamp Act 1959. According to respondent, in the assignment deed, the security right over the mortgaged immovable property situated in the State of Kerala at Aroor Village, Cherthala, also assigned hence the Kerala Stamp Act 1959 is applicable. In this regard, the respondent relies upon the "Conveyance" defined under section 2(d) of the Kerala Stamp Act 1959. On the petitioner side argued that the assignment deed involves in the case does not fall under the definition of "conveyance" as defined under the Kerala Stamp Act 1959, since there is no covenant for transfer property *inter vivos*. Section 2(d) of Kerala Stamp Act 1959 runs as follows:

Section 2. Definitions: In this Act, unless the context otherwise requires:

(d) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided for by the Schedule;



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

9. This section is identical replica of section 2(10) of Indian Stamp Act 1899. In Kerala Stamp Act, Articles 21 and 22 deals with the stamp duty payable on conveyance, and Article 23 of Indian Stamp Act 1899 deals with the duty payable on conveyance. The Allahabad High Court while discussing about Article 23 of Indian Stamp Act 1899 in reference jurisdiction **Kotak Mahindra Bank Ltd vs State of U.P. and others** <https://indiankanoon.org/doc/185053612/> three-member Bench held as follows:

On a plain reading of Article 23, it is evident that the said Article is applicable in the cases where any immovable or movable property is sought to be transferred. The restricted applicability of Article 23 is explicitly clear from opening words of the entry, whereby, transfers charged or exempt under Article 62 of Schedule 1-B are excluded from the purview of Article 23. Thus, where a transaction does not affect the transfer of any immovable or movable property under Article 23 of Schedule 1-B cannot have any applicability. Article 62(c) deals with chargeability of stamp duty on transfer of an interest secured by a bond or mortgage deed. In the instant case, debt along with underlying securities is an interest secured by bonds and/or mortgages. Thus, transfer of debts along with underlying securities would, in our considered opinion, be chargeable under Article 62(c).

The next argument of the State that is required to be considered is whether transfer of debts, accompanied by underlying securities is sale/transfer of immovable property. The agreement in the instant case, is an "Instrument" defined in Section 2(14) of the Stamp Act, seeks to transfer the debts along with rights/interest in the security underlying such debts. No immovable property has been transferred or sold. Merely the right under the contract to recover the debts has been transferred by



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

way of assignment deed. The Assignor could have transferred only those rights, it had in the underlying securities. Since the borrower(s) had never transferred the title in the immovable property given in security to the Assignor, therefore, the latter, (by the instrument in question), could merely transfer its rights i.e., mortgagee's rights in the property to recover the debts.

10. In the above referred citation, it is observed that the assigning the debts with underlying security, the borrowers had never transferred the title in the immovable property given in security to the Assignor, therefore the Assignment deed merely transfers its mortgagee's rights in the property to recover the debts. The right so transferred was primarily the right to recover the debts in accordance with law by proceeding against the security furnished by the mortgage deeds. In the situation the assignment deed is not a conveyance relating to immovable property situated in Kerala hence the contention of the respondent that the assignment deed needs to be stamped under the Kerala Stamp Act ,1959 is unsustainable. In fine, it is answered that the assignment deed dated 23.02.2022 executed between the Petitioner and the South Indian Bank Ltd is valid and enforceable.

11. It is correct that as pointed out by the respondent the non-submission of form 2 by the named interim resolution professional is defect, but the said defect is curable defect, now the said form 2 is filed along with rejoinder the defect is cured. In part IV of the petition the date of default is not specifically mentioned but given number of days of default as on 13.02.2023, so it cannot be construed that no default is given. In fact, the date of default is given/used to determine the limitation, in this case, if we look back 1058 days from 13.02.2023 the default date/period falls during covid 19 period, hence as per Apex court, Suo Motu Writ Petition (c) No. 3 of 2020, the period from 15.03.2020 to 28.02.2022 to be excluded from the period of



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

limitation, however respondent side not raised the limitation as defence. In the situation default date not specifically mentioned, is not affect the petition in any manner.

12. The application made by the Financial Creditor is complete in all respects as required by law, and it clearly shows that the debt has not been paid by the Corporate Debtor. So, we decided to admit the petition of the Petitioner/Financial Creditor under Section 7 of the IBC, 2016 and CIRP initiated against the Corporate Debtor.

13. In view of the aforesaid admission of the petition, we hereby pass the following Orders.

14. The petition bearing CP (IBC) No. 08/ KOB /2023, filed by M/s. Asset Reconstruction Company (India) Limited, the Financial Creditor, under Section 7 of Insolvency and Bankruptcy Code 2016 for initiating CIRP against the Corporate Debtor M/s. Cochin Frozen Food Exports Pvt. Ltd., (CIN: U51909KL1989PTC005515), is **ADMITTED**.

- i. There shall be a moratorium under Section 14 of the Code.
- ii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the Resolution Plan under Sub-Section (1) of Section 31 of IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- iii. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- iv. The Financial Creditor has proposed the name of one **Mrs. Annie Abraham** having Registration Number: **IBBI/IPA-001/P-P-02405/2021-2022/13758** as Interim Resolution Professional (IRP) and a written communication in the



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 along with valid authorization has been filed by the proposed IRP, who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically specified in Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulations, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out its functions as contemplated by Sections 15, and 21 of the Code.

- v. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be the RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.
- vi. The IRP/RP shall submit to this Adjudicating Authority periodical reports as per Regulations/Rules concerning the progress of the CIRP in respect of the Corporate Debtor.
- vii. The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims etc. These expenses are subject to approval by the Committee of Creditors (CoC).
- viii. In terms of Section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the Corporate



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/08/KOB/2023

In re: M/s. Asset Reconstruction Company (India) Limited Vs. M/s. Cochin Frozen Food Exports Private Limited.

Debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.

- ix. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this order.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.10.13 14:42:29 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.10.13 17:24:27 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this, the 13th day of October, 2023

Rajasree R. Nair/Supriya P.S