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

I.A. (IB) No. 658/KB/2024
And
I.A. (IB) No. 451/KB/2025
In
Company Petition (IB) No. 37/KB/2023

IN THE MATTER OF:
UNION BANK OF INDIA

... Financial Creditor.

Versus

M/s. SDB DEVELOPERS PRIVATE LIMITED

... Corporate Debtor.

And

I.A. (IB) No. 658/KB/2024

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:
CFM Asset Reconstruction Private Limited

... Applicant.

And

I.A. (IB) No. 451/KB/2025

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:
SDB Developers Private Limited

... Applicant.

Versus

Union Bank of India

... Respondent No. 1.

And

CFM Asset Reconstruction Company Private Limited

... Respondent No. 2.

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

I.A. (IB) No. 658/KB/2024
I.A. (IB) No. 451/KB/2025
Company Petition (IB) No. 37/KB/2023

Date of Pronouncement: October 30, 2025

CORAM:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Union Bank of India:	**Mr. Ranajit Chowdhury, Adv.** **Mr. Purnedu Modak, Adv.** **Mr. Sudipto Chowdhury, Adv.** **Ms. Sampoorna Saha, Adv.**
For the Corporate Debtor:	**Mr. S.N. Mookherjee, Sr. Adv.** **Mr. Rishav Banerjee, Adv.** **Mr. Yash Singhi, Adv.** **Mr. Gaurav Kumar, Adv.** **Ms. Nimisha Agarwal, Adv.** **Mr. H. Tiwari, Adv.**
For CFM ARC:	**Mr. Mainak Bose, Sr. Adv.** **Ms. Aparajita Rao, Adv.** **Mr. Sanwal Tebriwal, Adv.** **Ms. Nabanita Dutta, Adv.**

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court congregated through a hybrid mode.

2. Heard the Learned Senior Counsels/ Learned Counsel for the parties *in extenso*.

Factual Conspectus:

3. Facts of the case in a nutshell:

3.1. By way of a notice dated 01.06.2019, the corporate debtor – SDB Developers Private Limited, hereinafter referred to as "SDB" was declared NPA on 31.05.2019 by Union Bank of India, financial creditor herein for an outstanding amount of Rs. 90,90,28,081/- (principal loan amount of Rs. 87,31,92,302/- and interest of Rs. 3,58,29,779/-).

3.2. Union Bank on 26.06.2019 issued a notice under Section 13(2) read with Section 13(3) of the SARFAESI Act to SDB. Further, on 29.10.2021, Union Bank issued another notice under Rule 8(1) of The SARFAESI Security Interest (Enforcement) Rules, 2002, read with Section 13(4) of the SARFAESI Act, informed SDB that they had taken a symbolic possession of the mortgage property.

3.3. Thus, the SDB rushed to the Ld. Debt Recovery Tribunal Kolkata, hereinafter referred to as "Ld. DRT", vide an application being SA/ 222 of 2021 filed on 23.11.2021, against Union Bank praying for inter alia setting aside and quashing the notice dated 01.06.2019, 26.06.2019 and 29.10.2021.

3.4. Between 30.03.2022 to 29.12.2023, Union Bank issued auction notices 22 times for auctioning the property (the Amaya Resort) under Rules 6(2) and 8(6) of the SARFAESI Security Interest (Enforcement) Rules, 2002. SDB gave several OTS offers trying settle and negotiate its dues to the bank, however, the same were not accepted.

3.5. Union Bank preferred the present Section 7 petition in December 2022 to initiate CIRP in respect of the SDB.

3.6. SDB gave an OTS offer of an amount of Rs. 56 Crore to Union Bank on 24.03.2023, which was rejected on 27.03.2023 on the ground that the OTS offer is very low, and the Bank advised to improve the offer. The offer was enhanced to the tune of Rs. 59 Crore by SDB and communicated the same on 28.08.2023 to the Bank which was again rejected the same on 15.09.2023 on the ground that the outstanding amount is very high compared to the OTS offer and further stating that the bank will continue its recovery proceedings until the entire dues are paid.

3.7. The Bank issued the Request for Bid, hereinafter referred to as "RFB", on 19.01.2024, from NBFCs and Assets Reconstruction Companies (ARC) calling for assignment of debt with auction scheduled on 13.02.2024.

3.8. The Bank issued 23rd Auction Notice on 25.01.2024 under SARFAESI Act, and the auction scheduled on 13.02.2024.

3.9. In continuation of earlier OTS offers, an OTS offer of Rs. 68 Crore given on 29.01.2024 by Pawan Bhimsaria, who gave guarantee against the loan availed by SDB. The offer was enhanced by Pawan Bhimsaria on 02.02.2024, prior to the auction conducted on 13.02.2024, to an amount of Rs. 70 Crore, which was the same as the reserve price for the sale of the secured asset i.e., The Amaya Resort.

3.10. The auction for sale of property as well as the assignment of debt was conducted separately on 13.02.2024. For auction of property only, the reserve price of the secured assets, i.e., The Amaya Resort was fixed at Rs. 70 Crore, however, no bid was received by the Bank. Further, for the auction for assignment of debt, the reserve price was fixed at Rs. 68 Crore, and only bid was received from CFM Assets Reconstruction Private Limited, hereinafter referred to as "CFM".

3.11. By a notice dated 13.02.2024, the Bank declared the CFM as the only highest bidder and accordingly, decided to conduct a Swiss Auction process in respect of SDB's account, and the same was fixed to be convened on 21.02.2024 between 12:00 PM to 1:00 PM. As per RFB, any successful bid had to be open for a period of 30 days in case the borrower could present a higher OTS offer. Thus, if the highest bidder is declared on 21.02.2024, the bid should have remained mandatorily open till 20.03.2022, in case SDB presents a higher OTS offer in the said period of 30 days.

3.12. In continuation of earlier OTS offers, OTS offer was enhanced to Rs. 70.51 Crore by Pawan Bhimsaria, guarantor of SDB, on 14.02.2024, which is higher than the CFM's offer i.e., of Rs. 68 Crore.

3.13. On 19.02.2024, G. R. Associates provides an offer for purchase of property at Rs. 70.01 Crore along with at Demand Draft of 25% amounting to Rs. 17.50 Crore.

3.14. On 21.02.2024, Swiss Auction was conducted with respect to the assignment of debt by Union Bank as per RFB guidelines and the same was concluded by 1:00 PM. No counter bid was received and accordingly, CFM was declared as highest bidder with a bid of Rs. 68 Crore.

3.15. Further, on 22.02.2024, Mr. Pawan Bhimsaria (Guarantor and Director of SDB) increased his OTS offer to an amount of Rs. 72.51 Crore, which was rejected by the Bank on 26.02.2024 on the ground that SDB had never cooperated with the Bank in resolution of the account and did not improve the offer till the last auction date 13.02.2024, when the reserve price was Rs. 70 Crore. Further, other promoter director Mr. Sanjay Bhimsaria has vehemently objected to any OTS proposal submitted by Mr. Pawan Bhimsaria as the same was given to the Bank without the consent of Mr. Sanjay Bhimsaria, and the Bank cannot be a party to any dispute between the directors of the company.

3.16. Mr. Pawan Bhimsaria further increased its OTS offer to Rs. 72.65 Crore on 28.02.2024, the same was also rejected by the Bank on 29.02.2024.

3.17. Further, OTS proposal was enhanced to Rs. 72.75 Crore, by Mr. Pawan Bhimsaria on 02.03.2024 which was also rejected by Bank on 06.03.2024. The Bank informed SDB that the credit exposure has been assigned to CFM on 05.03.2024, by way of an agreement of assignment and the same was executed on 06.03.2024.

3.18. Thus, SDB preferred to an application being I.A. 501 of 2024 before the Ld. DRT, on 06.03.2024, praying for a stay on the auction convened on 13.02.2024. On 07.03.2024, Ld. DRT passed an interim order directing the parties to maintain the properties as on the date.

3.19. Mr. Pawan Bhimsaria wrote a letter on 26.03.2024 to Hare Street Police Station wherein he explained the detailed fraud committed against him by the officials of the bank in collusion with CFM.

3.20. CFM preferred I.A. (IB) No. 658/KB/2024 before this Tribunal on 30.03.2024 for substitution as financial creditor in place of Union Bank of India in the main Section 7 proceeding in C.P. (IB) No. 37/KB/2023.

3.21. G. R. Associates preferred a Writ Petition being WPA No. 12929 of 2024 on 01.05.2024 before the Hon'ble High Court at Calcutta praying for quashing the sale of Non-Performing Assets (NPAs) to NBFCs and ARCs and challenges the request for bid for sale of NPAs to NBFCs/ ARCs/ FIs/ Bank dated 19.01.2024, and consequential action.

3.22. The Hon'ble High Court at Calcutta on 22.05.2024, dismissed the said Writ Petition on the ground that:

> "*57. We have also to keep in mind that <u>there were about 22 previous failed attempts by the Bank to transfer the assets. The petitioners chose not to participate in any of those, including the last auction sale and, thus, cannot claim a premium for being an opportunist, coming up conveniently with a subsequent private treaty offer after conclusion of the auction sale and the</u>*

> *invitation for bids to acquire the NPA accounts.*
>
> *58. It was entirely within the discretion of the Bank to choose one of the two offers, and in the facts, to choose the better of the two which was given by respondent no. 6.*
>
> *59. Thus, this court does not find any illegality, arbitrariness or unreasonableness in the action of the Bank in accepting the offer of the respondent no. 6 to acquire the financial assets over that of the petitioner to have a transfer by private treaty of only the secured assets.*
>
> *60. In such view of the matter, WPA No. 12929 of 2024 is dismissed on contest without, however, any order as to costs.*"

3.23. The order dated 22.05.2024 was assailed higher up before the Division Bench of the Hon'ble High Court at Calcutta on 12.06.2024. The Division Bench on 15.01.2025, has held that:

> "*3. Learned senior advocate appearing for the respondent no.6 submits that an application has been filed by the respondent no.6/ CFM Asset Reconstruction Company Private Limited for substitution of the name of the company in the proceedings pending before the National Company Law Tribunal, Kolkata Bench. However, hearing of the said application is deferred on the ground of pendency of this appeal.*
>
> *4. We make it clear that pendency of this appeal will not be a bar for the National Company Law Tribunal, Kolkata Bench to proceed to hear the application and take a decision* ***on merit****.*

> *5. As prayed for by the learned senior advocate for the appellant, list the matter on 5th February, 2025.*"

3.24. The Division Bench on 12.02.2025 dismissed the appeal by holding that:

> "*7. It may not be necessary for us to dwell into all the issues which have been dealt with by the learned Single Bench, which in our considered view, is in a very detailed fashion that suffice to note a few factors, more particularly the issue relating to the locus standi of the appellant/writ petitioners. The learned Single Bench noted that on 22 occasions the bank attempted to transfer the assets and they had failed. The appellant/writ petitioners did not choose to participate in any of those including the last of such auction/bid which was notified in January, 2024.*
>
> *8. Therefore, the learned Single Bench was right in its observation that the appellants having not participated in the bid/auction notified by the respondent/bank cannot claim a premium on the strength of a private treaty offered that too after the conclusion of the auction sale and the invitation for bids to acquire the NPA accounts.*"

The Division Bench would record the submissions of Ld. Sr. Counsel appearing for SDB that:

> "*9. Mr. S.N. Mookherjee, learned senior advocate appearing for the private respondent submitted that the private respondent is the borrower/guarantor and the assets of the company, personal assets*

> *as well as personal guarantee of the private respondent had been given and the private respondent has moved the learned Debt Recovery Tribunal on the ground that their offer is much higher than the amount which has been offered by Asset Reconstruction Company to take over not only the debt as well as the underlying security and there is an interim order passed by the learned Debt Recovery Tribunal.*"

Further, the submissions advanced by the Ld. Sr. Counsel for ARC is recorded as:

> "*10. Mr. Mainak Bose, learned senior advocate appearing for the Asset Reconstruction Company submitted that the interim order granted by the learned Debt Recovery Tribunal does not relate to the assignment.*"

Accordingly, the Hon'ble Division Bench has come to an inference that:

> "*11. In this matter we are not here to adjudicate the rights of the private respondent qua the Asset Reconstruction Company, it is upto the parties to agitate their claims in the pending proceedings before the learned Debt Recovery Tribunal.*
>
> *12. Thus, we are of the clear view that the learned Single Bench was fully right in not entertaining the writ petition nor granting the relief sought for.*
>
> *13. Thus, we find no ground to interfere with the order passed by the learned Single Bench.*

> *14. Accordingly, the appeal fails and the same is dismissed.*"

3.25. SDB preferred an application being I.A. No. 1452 of 2024 before the Ld. DRT praying for cancelling rescinding terminating, setting aside, and quashing the deed of assignment dated 06.03.2024. On 03.07.2024, the Ld. DRT passed an order in the application that:

> "*Prima facie Ld. Advocate for the Applicant has established his case as higher price is offered by the Applicant and balance of convenience goes in favour of the Applicant who is the guarantor and owner of the property. Therefore Respondent bank is directed not to take any coercive steps against the subject property until hearing of this IA.*"

3.26. Notably, the SA 222 of 2021 along with all connected applications are pending for consideration before the Ld. DRT Kolkata (I), and the matter is adjourned to 03.11.2025.

3.27. On an earlier occasion, on 13.11.2024, this Bench has noted that:

> "*2. Ld. Counsel for the parties brought to our notice that the G R Associates challenge to the assignment deed has failed before the Hon'ble Single Bench of the Calcutta High Court. The said order dated 22.05.2024 is under challenge before the Division Bench. Meanwhile, the SDB Developers has given a higher offer to the Bank for settling the amount of the claim. Since the said offer was not brought to the notice of the Hon'ble Single*

Bench, it was not considered by the Hon'ble Calcutta High Court at that point of time. However, in view of the pendency of the appeal before the Division bench of Hon'ble High Court, we direct the parties to bring it to the notice of the Hon'ble High Court and as such we adjourn the matter.

3. The parties are also requested to bring the order passed by the Hon'ble Division Bench of Calcutta High Court on the next occasion.

4. Post this matter for further consideration on 12.12.2024."

4. Before this Tribunal, **I.A. (IB) No. 658/KB/2024** has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", by CFM Assets Reconstruction Private Limited ("Applicant") praying for substitution as financial creditor in place of Union Bank of India who is the petitioner of the main Section 7 petition being Company Petition (IB) No. 37/KB/2023.

Submissions Advanced by the Parties:

5. Mr. Mainak Bose, Ld. Sr. Counsel arguing on behalf of the applicant – CFM would submit that by way of an Assignment Agreement dated 05.03.2024, executed on 06.03.2024 annexed at page 11-74 to the application, the Union Bank of India assigned the loans disbursed to corporate debtor together with all right title and interest, pledges and/or guarantees in respect of the said loan in favour of the CFM.

6. Ld. Sr. Counsel for CFM would further submit that in view of such assignment agreement, the debts in the account of the respondent – corporate debtor stands transferred and rests with the CFM and CFM has stepped into the proceedings in place and stead of Union Bank of India and is entitled to proceed against the corporate debtor in the main Section 7 company petition.

7. The prayer of Mr. Bose, Ld. Sr. Counsel for CFM has been vehemently opposed by Mr. S.N. Mookherjee, Ld. Sr. Counsel assisted by Mr. Rishav Banerjee, Ld. Counsel appearing on behalf of the Corporate Debtor – SDB Developers, and an application being **I.A. (IB) No. 451/KB/2025** has been filed by SDB Developers to that effect.

8. Mr. Mookherjee, Ld. Sr. Counsel for the SDB Developers would submit that the Section 7 petition as well as the substitution application deserves to be stayed *sine die* or dismissed, as the assignment of debt dated 05.03.2024 as well as the auction process has been challenged before the Ld. DRT Kolkata (I) and the matter is still pending for consideration. If the said assignment along with the Swiss Auction process is set aside by the Ld. DRT, case of the CFM as well as the Union Bank of India before this Tribunal would frustrate.

9. During the course of argument, Mr. Mookherjee, Ld. Sr. Counsel appearing for SDB would take us through his submissions advanced before the Division Bench of the Hon'ble High Court at Calcutta, recorded at para 9 of the Judgment dated 12.02.2025 of the Division Bench that SDB is the borrower/guarantor and the

assets of the company, personal assets as well as personal guarantee of SDB had been given and SDB has moved the learned Debt Recovery Tribunal on the ground that their offer is much higher than the amount which has been offered by Asset Reconstruction Company to take over not only the debt as well as the underlying security and there is an interim order passed by the learned Debt Recovery Tribunal.

10. In counter, Mr. Mainak Bose, Ld. Sr. Counsel appearing for CFM/ ARC would take us through his submissions recorded at para 10 of the Division Bench's judgment dated 12.02.2025 that interim order granted by the Ld. DRT does not relate to the assignment in question. During the course of argument before this Bench, he would rely on ***Paras Builders and Promoters v. ASSREC India Ltd.*** reported in (2024) ibclaw.in 436 NCLAT; ***Terry E D'souza v. Omkara Asset Reconstruction Company*** reported in (2024) ibclaw.in 561 NCLAT, ***Indian Bank v. Motijug Agencies*** in C.P. (IB) No. 91/KB/2022 Order dated 01.04.2024, passed by this Tribunal, and ***JM Financial Asset Reconstruction Company v. Howrah Mills Company Ltd.*** in Company Appeal (AT) (Insolvency) 521 of 2024, Order dated 12.07.2024, to submit that the jurisdiction of this Tribunal while considering a Section 7 petition is confined only to debt and default. If the NCLT, being an Adjudicating Authority is satisfied that there is an existing debt which is defaulted on part of the corporate debtor, the debt is in excess of threshold limit, the petition is complete and the same is within the limitation, the petition deserves admission into CIRP.

11. Mr. Mookherjee, Ld. Sr. Counsel for SDB would argue that the aforesaid decisions are clearly distinguishable and have no applicability to the instant dispute, as in all the above case, no challenge to the assignment of debt was under consideration. In the present case at hand, the Division Bench of the Hon'ble High Court at Calcutta in its judgment dated 12.02.2025, has directed the parties to raise the disputes before the Ld. DRT and the assignment of debt has been challenged before the Ld. DRT. Further, in the present case, there is no embargo or legal restraint upon the secured assets property wherein the Ld. DRT has directed the parties to maintain status quo in its Order dated 03.07.2024 and directed the bank not to take any coercive steps against such secured assets in its Order dated 07.03.2024.

Moot Question for determination:

12. The only issue that has cropped up for determination whether an ongoing proceeding on challenging the assignment of debt, would refrain the assignee to initiate CIRP under Section 7 of the I&B Code against the debtor.

Analysis and Findings:

13. In respect of challenge to the assignment of debt, we have noticed that in ***T. Johnson v. Phoenix ARC (P) Ltd.,*** reported at 2019 SCC OnLine NCLAT 244, the Hon'ble NCLAT held that:

> **"***In cases involving assignment of debts, another issue arises. Often, the corporate debtor, whilst not challenging the locus of the*

> *assignee, may challenge the very assignment before the NCLT. In such cases , the process adopted for such assignment, the consideration paid for such assignment, etc, may be challenged* . ***The NCLT, being a tribunal of summary jurisdiction , does not have any jurisdiction to deal with such challenges****. The consideration for assignment of debt is of no relevance in so far as the liability and obligation on the part of Corporate Debtor is concerned. The assignment only changes the hands of the creditor clothing the assignee with authority to enforce the claim. The liability in regard to claim as regards ther Corporate Debtor remains intact and does not get diluted in any manner whatsoever***.”**
>
> (Emphasis added)

14. Similarly, the Hon'ble NCLAT in ***Lalan Kumar Singh v. Phoenix ARC Pvt Ltd.*** reported at 2018 SCC OnLine NCLAT 835, has held that **"**[…] *declaration that the assignment made by HSBC to 'Phoenix' as illegal, … can be raised only in a civil suit. The applicant is trying to convert the proceedings under the IBC as civil proceedings akin to a trial which is not the legislative intent.***"**

15. In ***Ranjit Kapoor v Asset Reconstruction Co (India) Ltd.,*** reported in **2018 SCC OnLine NCLAT 1041,** the Hon'ble NCLAT held that **"***the question of validity of such assignment agreement cannot be gone into by the NCLT or the NCLAT, even in an application under section 65 of the IBC***."**

16. Further, in ***M/s. Manavta Tradelink Private Limited v. M/s. Manikaran Vincom Private Limited*** in **C.P. (IB) No. 80/KB/2023** at Para 12 reported at **(2023) ibclaw.in 733 NCLT**, this Bench has laid down that:

> "*We hold that registration of assignment is not mandatory. Even otherwise the Corporate Debtor never disputed the assignment till date. The Corporate Debtor was in correspondence with the applicant seeking time to repay the loan with interest and therefore, at this stage, the Respondent cannot question the validity of assignment. We would rely upon the decision passed by the* ***NCLT, New Delhi Bench*** *in the matter of* ***CFM Asset Reconstruction Private Limited v. Nikhil Footwears Private Limited,*** *order dated* ***28.02.2023****, reported in* ***MANU/NC/1088/2023*** *as observed:*
>
> ***"8.*** *At this juncture it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim: -*
>
> ***5. Definitions: -***
> ***(7) "financial creditor" means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to****;"*
> ***"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."*
>
> xxx xxx xxx
>
> ***"11. [...]*** *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.* **"**
>
> (Emphasis Added)

17. Further, the Collateral Bench of this Adjudicating Authority in ***CFM Asset Reconstruction private Limited v.***

Jagdamba Industries Limited in **C.P. (IB) No. 203/KB/2021** has also held that:

> **"***40. So, in other words, the Corporate Debtor has not denied or disputed existence of assignment deed with respect to financial assistance/loan granted by Central Bank of India. …*
>
> ***41. Further, as brought herein above, all right in favour of assignor Bank created by virtue of loan agreement dated 30.08.2013, referred above continued in terms of above stipulation in favour of assignee, financial creditor in this petition and the financial creditor was lawfully entitled to have filed this petition. This situation squarely fits into law laid down in M/s CFM Asset Reconstruction Private Limited v. M/s Nikhil Footwears Private Limited12 (supra), therefore, plea raised by Corporate Debtor is found to be incorrect***.
>
> *42. The case law cited by the Ld. Senior Counsel for the Corporate Debtor is thus distinguishable on the basis of facts noted hereinabove in para 38 to 41 above. 43. In addition to the above, there is nothing on record put forth by Corporate Debtor to disprove existence of debt or default- the only two things as required to be established as per law laid down by Hon'ble Supreme Court in above referred case of Innoventive Industries. Arguments of Ld Counsel for Corporate Debtor raised and as noted above also do not hold water in view of two orders of NCLT Mumbai and NCLT Delhi Bench, referred herein above.***"**
>
> (Emphasis Added)

18. However, in the present case at hand, the assignment of debt has not been challenged before this Tribunal, it has been challenged before the Learned Debt Recovery Tribunal and accordingly, we have framed the issue for determination that the proceedings before the Ld. DRT in respect the challenge to the debt assignment would bar the admission of CIRP against the corporate debtor. Thus, the present case is distinguishable in respect of facts and circumstances comparing the case cited above.

19. However, we would note that the Hon'ble NCLAT, Chennai in ***Mr. G. Sundaravadivelu vs. Indian Overseas Bank*** reported in (2023) ibclaw.in 404 NCLAT, has categorically held that the pendency of the proceedings before the DRT is not a bar for the financial creditor to initiate CIRP against the corporate debtor, the NCLT need not wait for the decision of the DRT while rendering its findings. What is essential is to consider that the there is a debt existing, and a default on part of the corporate debtor. If the petition is complete in all respect, amount claimed to be in default is in excess to the threshold limit in terms of Section 4 of the I&B Code, and the petition is not barred by limitation, the Adjudicating Authority has no scope to reject the same, as held in ***Innoventive Industries Limited v. ICICI Bank & Anr.***, reported in (2018) 1 SCC 407 by the Hon'ble Apex Court. The extract of the judgment of ***Mr. G. Sundaravadivelu*** **(Supra)** is reproduced hereunder:

> *"**94.** Under the I & B Code, 2016, the shift is from `inability to pay', to an `existence of Default'. The circumstances under which a `Corporate Debtor', could not repay the*

> *`Financial Debt', need not be taken as a defence in a proceeding, under the I & B Code, 2016.*
>
> ***95.** What is essential is to exhibit that the `Debtor', had committed a `Default', after the `Debt', had become `Due' and `Payable', by a `Debtor' and no more.*
>
> ***96.** It is pointed out that the pendency of proceedings before the `Debt Recovery Tribunal', is not a bar, for the `Financial Creditor', to initiate an action against the `Corporate Debtor'. That apart, an `Adjudicating Authority', need not wait for the decision of `Debt Recovery Tribunal', while rendering its findings."*
>
> (Emphasis Added)

20. In the instant case, notably, the Division Bench of the Hon'ble High Court at Calcutta was pleased not to entertain and adjudicate the rights of SDB qua CFM, and recorded the same in the profound judgment dated 12.02.2025, at para 11, with an observation that it is upon the parties to agitate their claims in the pending proceedings before the learned Debt Recovery Tribunal, and accordingly, the Division Bench was of the view that the learned Single Bench of the Hon'ble High Court at Calcutta was fully right in not entertaining the writ petition nor granting the relief sought for.

21. It is discernible that SDB on several occasions enhanced its OTS offer and as on the date, SDB has given the higher offer than the Assets Reconstruction Company, CFM herein, which has been rejected by the Bank. Being aggrieved by Bank's decisions, SDB has chosen the path of Ld. DRT, by challenging the assignment

as well as the entire auction process conducted by the petitioner Bank herein. In the said proceedings, the Ld. DRT has passed an order on 07.03.2024 directing the parties to maintain the status quo on the secured assets in question, and the Union Bank has been directed not take any coercive steps against the secured assets until the hearing of I.A. 1452 of 2024 pending before the Ld. DRT.

22. As, in the present case, the assignment of debt in question is under challenge before the Ld. DRT, and the Division Bench of the Hon'ble High Court at Calcutta in its judgment dated 12.02.2025, has also observed that it is up to the parties to agitate their claims in the pending proceedings before the Ld. DRT, that restrains us to proceed with this Section 7 petition in hand.

23. We would note that in ***E.S. Krishnamurthy and Ors. vs. Bharath Hi Tech Builders Pvt. Ltd.*** reported in MANU/SC/1249/2021, the Hon'ble Apex Court has held that the Adjudicating Authority is not weaponed with for being a Court of equity, it must be confined verify whether a default has occurred or if a default has not occurred. The extract of the judgment is as under:

> "*27. The Adjudicating Authority has clearly acted outside the terms of its jurisdiction Under Section 7(5) of the IBC.* ***The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred****. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action*

which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.

28. Undoubtedly, settlements have to be encouraged because the ultimate purpose of the IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of the IBC is to facilitate insolvency resolution "in a time bound manner" for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders. What the Adjudicating Authority and Appellate Authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition Under Section 7 by directing the Respondent to settle the remaining claims within three months and leaving it open to the original Petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law. Such a course of action is not contemplated by the IBC.

29. The IBC is a complete code in itself. The Adjudicating Authority and the Appellate Authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelises and circumscribes the ambit of such jurisdiction. ***Thus, while the Adjudicating Authority and Appellate Authority can encourage***

> ***settlements, they cannot direct them by acting as courts of equity***."
>
> (Emphasis Added)

24. While considering an issue quite identical to the instant case, we would note that the Hon'ble NCLAT in ***Rajesh Vilasrao Patil and Ors. vs. Savannah Lifestyle Pvt. Ltd. and Ors.*** reported in MANU/NL/0691/2025, set aside the admission order passed by the NCLT Mumbai Bench, Court No. II, stating that the admission of application under Section 7 of the I&B Code was based on the debt assignment as recorded in settlement minutes which has been held unauthorized and unlawful by the Hon'ble Bombay High Court, and thus, no right can be claimed by the respondent being financial creditor against the corporate debtor. The extract of the judgment is reproduced hereunder:

> "*16. We have already noticed that the Cooperative Bank in Section 7 application filed by Respondent No.1 has filed an application seeking intervention on 15.02.2023 being IA No.2595 of 2023, when Adjudicating Authority directed the parties to file the reply. In IA No.2595 of 2023, all relevant facts including cancellation of the OTS was brought by the Cooperative Bank. However, the said application was pending consideration when the impugned order dated 28.07.2023 was passed, admitting Section 7 application. The CD before the Adjudicating Authority has categorically pleaded that OTS entered by Respondent No.1 with the Cooperative Bank is illegal and not in accordance with law. It was pleaded that on behalf of the CD before the Adjudicating Authority that under the Reserve Bank of India directives the*

Cooperative Bank cannot make an assignment to private parties. The said submission has been noticed in paragraph-13 of the impugned order, which is as follows:

> *"**13.** Further, vide circular dated 24.09.2021, Reserve Bank of India issued master directions namely the Reserve Bank of India (Transfer of Loan Exposures) Direction, 2021 which provided guidelines on assignment of loans by Banks or other financial institutions. The said directions clearly stipulated that the assignment/transfer/acquiring of any loans can only be done to the entities referred to as 'lenders' which do not include private parties. Therefore, the assignment of loan by the Bank to the Financial Creditor is illegal."*

17. The Cooperative Bank has made an assignment in favour of Respondent No.1 as recorded in the Minutes dated 20.12.2022, which assignment was withdrawn by the Cooperative Bank informing Respondent No.1 and returning the amount received. Respondent No.1 aggrieved by the cancellation of the OTS also filed Writ Petition in the Bombay High Court. The CD was, thus, challenging the very eligibility of action of the Cooperative Bank entering into OTS with Respondent No.1. The Adjudicating Authority did not advert to the said issues and by the impugned order has admitted Section 7 application, relying on claim of assignment of Respondent No.1 on the basis of Minutes of the proceedings dated 20.10.2022.

18. The judgment of the Bombay High Court dated 11.03.2025 passed in Review Petition and IA in Writ Petition No.11610 of 2022 now recalled the order dated 21.20.2022 passed by it as well as Minutes of the proceedings dated 20.10.2022, noted in the Writ Petition. The very basis and foundation of the case of Respondent No.1, thus is knocked out. The claim of assignment of Respondent No.1 from Cooperative Bank having been held to be unlawful , there is no right in Respondent No.1 to claim to be Financial Creditor of the CD. By order dated 11.03.2025, the Bombay High Court has allowed the Review Petition filed by the Director of the CD. The judgment of the Bombay High Court dated 11.03.2025 is a detailed judgment, <u>noticing submissions of Respondent No.1 and submissions of review Petitioner.</u> <u>The Bombay High Court has noticed the correspondence between the Liquidator of the Cooperative Bank and Respondent No.1, letter of Respondent No.1 dated 11.08.2022, letter dated 17.11.2022 issued by the Suspended Director of the CD objecting to the OTS</u>. The Liquidator has filed an affidavit in the Writ Petition No.11610 of 2022, where on 21.11.2022 pleading that OTS in favour of Respondent No.1 was incorrect. <u>The Bombay High Court after considering all aspects of the matter has recorded its finding in paragraphs 51 and 52 that transfer of loan account of Shaila Clubs in favour of Respondent No.1 was clearly unlawful and the compromise entered between the Cooperative Bank and Respondent No.1, could not have been accepted by the High Court for disposal of Writ Petition.</u> In paragraphs 51 and 52, the Bombay High Court held following:

> *"51) I am therefore of the view that the transaction of assignment of loan of*

Shaila Clubs by the Bank in favour of Savannah is specifically prohibited under the 2021 RBI Directives as Savannah is not an eligible transferee. One of the objectives behind the RBI Directives is to ensure that the Banks do not transfer loan accounts to ineligible transferees. Otherwise, Banks would transfer loan accounts to private money lenders. Since Savannah is not one of the recognized transferees under the 2021 RBI guidelines, transfer of loan account of Shaila Clubs in favour of Savannah would clearly be unlawful. Therefore, the compromise entered into between the Bank and Savannah is something which this Court could not have accepted for the purpose of disposal of Writ Petition No.11610 of 2022.

52) More glaring is the fact that the compromise executed between the Bank and Savannah affects the interests of Shaila Clubs, which is not signatory to the Minutes of Order. The effect of Minutes of Order is that upon a payment of amount of Rs.3.37 crores in the loan account of Shaila Clubs, Savannah has secured right to recover outstanding loan amount of Rs.8,97,73,093/- (as on 20 October 2022) from Shaila Clubs. As observed above, Savannah is possessing a valuable asset of Shaila Clubs being Club premises at Bandra in Mumbai. By transfer of loan, it became mortgagee of the Club's property. On the basis of assignment of loan of Shaila Clubs in its favour, Savannah has instituted CIRP against Shaila Clubs and would ultimately realise the outstanding loan

> *amount alienating the property of Shaila Clubs. Thus, the Minutes of Order directly affect the rights of Shaila Clubs. The objective behind RBI Directives of not permitting ineligible lender to purchase NPA is totally frustrated in the present case, where Savannah is actually eyeing to secure ownership of property under its management as mere Conductor by paying sum of Rs.3.37 crores in Shaila Clubs' loan account. The compromise effected between Bank and Savannah actually affects the interest of Shaila Clubs, who is not the signatory to the compromise. Mere presence of Advocate of Shaila Clubs before the Court on 21 October 2022 or failure on the part of the Advocate to raise any objection to disposal of the petition in view of the Minutes of Order would not convert unlawful compromise into lawful one."*

19. ***The Bombay High Court held that compromise itself being unlawful the seal of the High Court on such compromise must be removed****. In paragraph 58, following has been held:*

> *"58) It sought to be contended by Dr. Tulzapurkar that as far as the Bank and Savannah are concerned, the compromise is lawful as the Bank itself walked up to Savannah with an offer to settle the loan account of Shaila Clubs under OTS for an amount of Rs.77,16,350/-. It is suggested that so far as the Bank is concerned, the compromise is lawful as the Bank always intended to close Shaila Clubs' loan account upon acceptance of ascertained amount of Rs.77,16,350/-*

under the OTS. It is contended that the Liquidator had all the powers to ascertain the figure at which Shaila Clubs' loan account could be settled under the OTS and the Bank has taken independent commercial decision of closing the loan account of Shaila Clubs by accepting the amount of Rs.77,16,350/-, in addition to the amount of Rs.2.50 crores already paid into the said loan account. Dr. Tulzapurkar has contended that so far as validity of assignment of loan account from Bank to Savannah is concerned, Shaila Clubs has already raised objection to the validity of such transfer in the CIRP initiated before NCLT and the said issue can be decided in those proceedings. It is sought to be contended that NCLT is competent to decide whether assignment of the loan of Shaila Clubs from the Bank to Savannah is valid or not. Dr. Tulzapurkar has accordingly contended that alleged invalidity of assignment of loan account cannot be a reason for seeking recall/ review of order dated 21 October 2022. ***I am unable to agree with his contentions.*** *The Minutes of Order dated 20 October 2022 has a seal of this Court in the form of order dated 21 October 2022. If the compromise is itself unlawful, the seal of this Court put on* ***such compromise must be removed so that no party is permitted to rely on the same in any collateral proceedings by contending that that the compromise has been accepted by the High Court and that the same is therefore valid****. This is the first reason why the specious plea sought to be*

> *adopted by Savannah about part of the compromise dealing with rights of Bank being lawful must be rejected. Secondly and more importantly, the compromise ultimately affects the rights of Shaila Clubs, which has sought review of the order dated 21 October 2022. Therefore, the review petition filed by the Shaila Clubs cannot be dismissed by relegating it to remedy of raising objection in CIRP before NCLT which does not have the jurisdiction to declare that the compromise effected through the Minutes of Order accepted by this Court is unlawful. NCLT would always treat the Minutes of Order, with seal of this Court, to be lawful. It is therefore necessary that the order dated 21 October 2022 is recalled."*

20. Ultimately, the High Court recalled the order dated 21.10.2022 on the applications filed by the Cooperative Bank as well as the Review Petition filed by the CD. In paragraph 66 of the judgment, following has been held:

> *"66) After considering the overall conspectus of the case, I am of the view that the order passed by this Court on 21 October 2022 on the basis of Minutes of Order dated 20 October 2022 deserves to be recalled both in application filed by the Bank as well as in the Review Petitions filed by Shaila Clubs and its suspended director."*

21. It is relevant to notice that Respondent No.1 has filed a Special Leave Petition No.10922-10924/2025 before the Hon'ble Supreme Court, challenging the order of the Bombay High Court dated 11.03.2025, which Appeal has been dismissed by the

Hon'ble Supreme Court by following order passed on 25.04.2025:

> *"1. We are not inclined to interfere with the impugned judgment passed by the High Court. Hence, the Special Leave Petitions are dismissed.*
>
> *2. Pending applications, if any, shall stand disposed of.*

22. We may further notice that a Writ Petition No.3543 of 2024 was also filed by Respondent No.1, challenging the cancellation of the OTS by Cooperative Bank, which Writ Petition also claimed to be dismissed on 30.04.2025 by the Bombay High Court.

23. In view of the above adjudication by the Bombay High Court and recalling of its order dated 21.10.2022 passed by it, on the basis of the Minutes dated 20.10.2022, under which Minutes, Respondent No.1 has claimed the assignment of debt of the CD by the Cooperative Bank in its favour having been recalled, the very basis of Section 7 application filed by Respondent No.1 has been knocked out. There is no right left in Respondent No.1 to claim itself as Financial Creditor of the CD. We have already noticed that Adjudicating Authority without considering the application filed by the Cooperative Bank, from whom Respondent No.1 claimed assignment, passed the impugned order. The Cooperative Bank having brought on record all relevant facts, it was incumbent on the Adjudicating Authority to take note of the averments of the Cooperative Bank and keeping the application pending and admitting Section 7 application itself becomes unsustainable.

We, thus, are of the view that Section 7 application filed by Respondent No.1 did not merit admission.

24. Now coming to the submissions advanced by Shri Sandee Bajaj, learned Counsel appearing on behalf of Respondent No.1 that application filed by Respondent No.1 is maintainable by virtue of Section 7 sub-section (1), Explanation, for the default committed by CD, towards the debt of Cooperative Bank, we need to deal with the said submissions also. Section 7, sub-section (1), Explanation provides as follows:

xxx xxx xxx

25. There are more than one reason, due to which the above submissions of Respondent No.1 cannot be accepted.

(i) Section 7 application filed by Respondent No.1 is founded only on the basis of assignment by the Cooperative Bank as recorded in the Minutes of the Order dated 20.10.2022 and as noted in the order of the Bombay High Court. Section 7 application is based on the assignment in favour of Respondent No.1 only. The application is not founded or based on the fact that Respondent No.1 claiming to be a Financial Creditor independently, or separately, on the basis of any disbursement made to the CD. When the application is founded only on assignment made in favour of Respondent No.1, ***Respondent No.1 cannot be allowed to raise any other submission in support of Section 7 application, which was***

***neither pleaded nor advanced before the Adjudicating Authority*.**

(ii) For maintaining an application for default of another Financial Creditor, the essential ingredients to be fulfilled by the Applicant is that the Applicant has to be a Financial Creditor on its own facts. Respondent No.1 cannot be held to be a Financial Creditor of the CD. There is no disbursement by Respondent No.1 to the CD for time value of money in any commercial transaction. The amount, which is claimed to be paid by Respondent No.1 under the orders of the Bombay High Court totaling to Rs.2.5 crores was made by Respondent No.1 in Writ Petition filed by Respondent No.1 to protect its possession as it was carrying out its business form the Club premises under the Conducting Agreement entered with the CD. The amount deposited by Respondent No.1 was to show its bonafide to protect its possession, which was sought to be taken over by Cooperative Bank in pursuance of the Recovery Certificate issued under the Maharashtra Cooperative Societies Act. Thus, the amount paid by Respondent No.1 was to protect its possession and cannot be treated as any disbursement made to the CD.

26. In the above context, we may refer to the judgment of this Tribunal in ***Gp. Capt Atul Jain vs. Tripathi Hospital Pvt. Ltd. and Ors. - MANU/NL/0667/2023****, which was relied by learned Counsel for Respondent No.1 itself, where it was held that for application under Section 7, sub-section (1),* *claiming to be Applicant on behalf of default of another Financial Creditor, the non-negotiable requirement is to establish himself as a Financial Creditor of the CD. In paragraph 21 of the judgment, following was laid down:*

> *"21...... Be that as it may, the Appellant is however required, in the first place, to establish himself as a Financial Creditor of the Corporate Debtor in terms of Section 5(7) of IBC before being allowed to take advantage of the explanation clause to Section 7 to establish default owed not only to himself as a financial creditor but to any other financial creditor of the corporate debtor on the basis of NeSL data for initiation of CIRP against the Corporate Debtor. The Appellant has clearly misconstrued the provisions of IBC by taking shelter of Explanation to Section 7 in isolation instead of reading it harmoniously with the non-negotiable requirement of Section 7(1) of firstly establishing himself as a Financial Creditor qua the Corporate Debtor."*

27. Respondent No.1 has been conducting its business from the Club premises under the Conducting Agreement. Respondent No.1 is not a Financial Creditor of the CD, so as to maintain an application as Financial Creditor under Section 7, sub-section (1). Moreso, the entire transaction culminating into the Minutes dated 20.10.2022 of the Cooperative Bank entering into an OTS with ***Respondent No.1 was held to be unauthorized and unlawful, on the basis of which, no right can be claimed by Respondent No.1 against the CD. Respondent No.1 illegally attempted to***

take the possession of the CD, on the basis of illegal assignment obtained from Cooperative Bank, which assignment came to be declared as illegal and withdrawn by the Cooperative Bank on 18.11.2022 *itself. As noted above, the Cooperative Bank itself has filed an application in the Bombay High Court, praying for review of the judgment dated 21.10.2022, which was ultimately allowed. The Cooperative Bank has also filed an Appeal in this Tribunal, being Company Appeal (AT) No.1213 of 2023 and also written submission, praying to set aside the order dated 28.07.2023 initiating CIRP against the CD. The Cooperative Bank has further stated that it is desirous to carry forward the recovery proceedings against the CD, in accordance with the Maharashtra Cooperative Societies Act. In view of the above, we do not find any substance in the submission of learned Counsel for Respondent No.1 that application filed by Respondent No.1 under Section 7 against the CD is maintainable by virtue of Section 7, sub-section (1), Explanation.*

28. In any view of the matter, in view of the judgment of the Bombay High Court dated 11.03.2025, which has been brought on the record, the very basis of the claim of Respondent No.1 has become non-existent. The Appellant(s) are entitled to reliefs in this Appeal.

29. In result, both the Appeal(s) are allowed. The impugned order dated 28.07.2023 passed in CP(IB)-37/(MB)/2023 is set aside. Section 7 application filed by Respondent No.1 is dismissed. Pending IAs, if any, are also disposed of. Parties shall bear their own costs."

(Emphasis Added)

25. Thus, it appears that the assignment of debt in question based on which the Assets Reconstruction Company qua CFM herein has made its case before this forum against the corporate debtor, is pending consideration before the Ld. DRT. The status of the financial creditor being ARC CFM as assignee being itself under consideration before a competent forum, the assignee cannot be allowed to be substituted in place of the bank. In view of such, we find no ground to keep this CP pending before this Tribunal. In view of such, this company petition and the connected applications are **disposed of**.

26. Parties are at the liberty to approach this Tribunal by way of a fresh company petition if required, when the issues relating to the debt, assignment and the auction process are decided by the Ld. Debt Recovery Tribunal, Kolkata (I). Till then the present board may continue.

27. We make no order as to costs.

28. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Cmde. Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 30th Day of October, 2025

Bose, R. K. [LRA]