NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 350 of 2023

[Arising out of Order dated 09.02.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court II, in I.A./2973//2022 in CP(IB)/1027/(MB)/2022]

IN THE MATTER OF:

ABHIRUCHI VISION PRIVATE LIMITED,

10, Princep Street, 3rd Floor,

Kolkata WB 700071 IN **...Appellant**

Versus

JAYASWAL NECO INDUSTRIES LIMITED,

F-8, MIDC Industrial Area, Hingna Road,

Nagpur MH-440016

Email: contact@necoindia.com **...Respondent**

Present:

For Appellant:	Mr. Krishnendu Datta, Sr. Advocate with Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Vasudha Chadha, Ms. Varsha Himatsingka, Mr. Rajat Sinha, Advocates
For Respondents:	Mr. Ramji Srinivasan, Sr. Advocate with Mr. Rahul Pandey, Mr. Shivam Shukla, Mr. Devansh Srivastava, Mr. Mahesh Agrawal, Ms. Shurti Pandey, Ms. Namrata Saragoi, Mr. Shreya Edupuganti, Mr. Diwakar, Advocates

J U D G M E N T

ASHOK BHUSHAN, J.

1. This Appeal has been filed by the Appellant challenging Order dated 09.02.2023 passed by National Company Law Tribunal, Mumbai Bench, Court-II (hereinafter referred to as **"The Adjudicating Authority"**) by which order, the Adjudicating Authority allowed I.A. No. 2973 of 2022 filed by the Corporate Debtor-Jaiswal Neco Industries Limited, Respondent (hereinafter referred to as "**JNIL**") praying for dismissal of Section 7 Application of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"The Code"**) filed by the Appellant.

2. The Adjudicating Authority heard the parties on I.A. No. 2973 of 2022 and by Impugned Order allowed the Application dismissing Section 7 Application of the Code as not maintainable.

3. Background facts and sequence of events necessary to be noted for deciding this Appeal are:-

a. An Indenture of Family Settlement (hereinafter referred to as "**IFS**") was executed between Basant Lal Shaw (BLS) and his sons. Under the IFS, Jayaswal Family was divided into two Groups; one Group consisted BLS and two sons along with their family members known as **"BLS Group"**and other group consisted of one son of BLS namely Manoj Kumar Jayaswal and his sons knows as "**MKJ Group**".

b. Under the IFS, BLS Group was allotted "Jayaswal Neco Industries Limited" (**JNIL** in short) and MKJ Group was allotted "Corporate Ispat Alloys Limited" (**CIAL** in short).

c. The IFS further provided that JNIL would be entitled to the Strip Mill Division of CIAL for the purpose CIAL was to demerge the Strip Mill Division from it which would thereafter be amalgamated with

JNIL. Demerger and subsequent amalgamation was to be completed in 90 days i.e. by 29th October, 2008.

d. IFS in paragraph 7 (l) provided that said merger of the units Strip Mill Division with JNIL, the system of running the Units on Lease Rental Basis shall continue and out of lease rental accrual, installments and liabilities continued to be provided for payment to the Lenders of the Units by JNIL. CIAL Strip Mill Division had taken various loans which were required to be repaid to the lenders. JNIL made payment to CIAL towards lease rental for the Strip Mill Division till 31st August, 2010. JNIL stopped making any payment thereafter. Between August, 2010 to December, 2012, CIAL had made payment to its lenders of the Strip Mill Division amounting to Rs. 104,43,67,347.94/-.

e. MKJ Group filed a Civil Suit No. 584/2011 before the Civil Judge, Nagpur seeking declaration that non-payment of monthly installments owed by CIAL to the Lenders of Strip Mill Division by the BLS Group from August, 2010 to March, 2011 was illegal and contrary to IFS. MKJ Group prayed for various directions including direction to reimburse the amount paid to Lenders by CIAL. In the aforesaid suit, BLS Group filed an Application under Section 8 of the Arbitration and Conciliation Act, 1996 which although initially was rejected by the Civil Judge but the Order was reversed by Hon'ble Bombay High Court vide Judgment and Order dated 28th July, 2011. The Hon'ble High Court held that suit was not maintainable in view of the arbitration clause.

f. On 20th June, 2011, BLS Group initiated arbitration proceeding against MKJ Group alleging delay in adjudication on the part of the MKJ Group in implementing the IFS. In the arbitration, various claims were raised by the BLS Group including monetary claims with interest. Hon'ble Bombay High Court appointed on 12th August, 2011 sole arbitrator. In the arbitration proceeding, MKJ Group filed an Application under Section 31(6) of the Arbitration and Conciliation Act, 1996 seeking Interim Award for an amount of Rs. 102,26,78,728/- being the amount allegedly admitted by BLS Group owed to CIAL which was payment towards lenders of Strip Mill Division. The Counter Claim was filed by MKJ Group in the Arbitration.

g. On 16th April, 2013, Hon'ble Bombay High Court approved the scheme of merger, the Strip Mill Division was eventually demerged and absorbed by GNIL. GNIL thereafter serviced the Bank Loans of Strip Mill Division from April, 2013. The sole arbitrator dismissed the Application filed by MKJ Group under Section 31(6) vide Judgment dated 26.11.2014.

h. CIAL issued winding up notice to JNIL with respect to debt of Rs. 104,43,67,347.94/- . On 06th April, 2015, Company Petition No. 11/2015 was filed by CIAL under Section 439 of the Companies Act, 1956 before the Hon'ble Bombay High Court. Hon'ble Bombay High Court passed an order on 15.10.2015 observing that it would be prudent to await the outcome of the arbitration proceeding pending before the Sole Arbitrator. The Order of Hon'ble Bombay

High Court was challenged by CIAL. Division Bench vide order dated 29.01.2016 allowed the Appeal filed by CIAL and quashed the Order dated 15.10.2015. The JNIL filed an Appeal before Hon'ble Supreme Court against the Division Bench Judgment of the High Court. Hon'ble Supreme Court on 29.03.2016 disposed of the Appeal directing the Learned Single Judge of the Bombay High Court to consider the objection of JNIL at the preliminary stage. On 24th March, 2017, CIAL assigned debt Rs. 102,26,78,728/- to the Appellant allegedly due from Borrower JNIL.

i. An application under Section 7 was filed by the Appellant the assignee before NCLT, Mumbai Bench being CP (IB) No. 717/MAH/2017 which was withdrawn on 01st May, 2017 by the Appellant. The Appellant thereafter filed an Application in Company Petition seeking its impleadment in Company Petition filed under Section 439 by CIAL which was withdrawn on 25.02.2021. On 23.07.2021, joint pursis were filed by the parties before the Sole Arbitrator for withdrawal of the arbitration proceedings and their respective claims. On 07th August, 2021, BLS Group and MKJ Group filed joint pursis before sole arbitrator withdrawing the respective claims and counter claims. The Sole Arbitrator vide its order dated 07th August, 2021 disposed of and terminated the arbitration proceeding at the instance of the parties.

j. The Appellant on 2nd May, 2022 filed Section 7 Petition before the NCLT, Mumbai Bench being CP No. 1027/MB/2022 claiming a Financial Debt of INR 104,43,67,347.94/- In Company Petition, the

Respondent-JNIL filed an I.A. No. 2973 of 2022 praying for dismissal of Section 7 Petition challenging the very maintainability of the Petition.

k. The Adjudicating Authority heard both the parties on I.A. No. 2973 of 2022 and by Impugned Order dated 09.02.2023 allowed the I.A. and dismissed Section 7 Application.

l. The Adjudicating Authority by the Impugned Order held that claim made by Financial Creditor emanates from an IFS dated 31st July, 2008 between the members of the Jayaswal Family, alleged debt was the subject matter of arbitration proceedings which having been amicably settled and compromised between the parties, nothing can be said to be due and payable from the Corporate Debtor.

m. The Adjudicating Authority further held that CIAL has paid certain banks and institutions money against loans availed by the Strip Mill Division which according to the CIAL was liable to be paid by the JNIL. The Adjudicating Authority held that there has been no disbursement to the Corporate Debtor-JNIL and no money has been received by JNIL for time value of money. The Adjudicating Authority held that there is no financial debt.

n. Aggrieved by the order of the Adjudicating Authority, this Appeal has been filed.

4. We have heard Mr. Krishnendu Datta, Learned Sr. Counsel for the Appellant and Mr. Ramji Srinivasan, Learned Sr. Counsel for the Respondent.

5. Mr. Krishnendu Datta, Learned Sr. Counsel appearing for the Appellant submits that impugned order is a non-speaking order which does not deal with contentions raised by the Appellant. It is submitted that financial debt and default was fully established. It is submitted that closure of the arbitration proceedings which have been relied by Ld. Adjudicating Authority has no bearing on the claim of the Appellant since neither the Appellant nor its assignor and nor Corporate Debtor were parties to the arbitration proceedings. It is submitted that liability of the corporate debtor to make payment qua the Strip Mill Division was clearly set out in the scheme of arrangement between CIAL and JNIL. It is submitted that debt in question was assigned to the Appellant in the year 2017 by which time Arbitration Proceeding has not even come to an end. It is submitted that Company Petition filed by the CIAL was withdrawn without any information or knowledge of the Appellant which shall have no bearing on the rights of the Appellant. It is submitted that *inter se* claim between CIAL and JNIL were not subject matter of the arbitration proceedings between BLS Group and MKJ Group. The Corporate Debtor in balance sheet from the year 2013-14 has shown the liability of Rs. 104,43,67,347.94/- Crores towards CIAL. Learned Sr. Counsel for the Appellant has also referred to email dated 27th March, 2014 where credit balance of Rs. 104,43,67,347.94/- has been acknowledged by the Corporate Debtor. Learned Sr. Counsel for the Appellant further submitted that Adjudicating Authority erred in not adverting to the entries in the balance sheet which contains clear acknowledgement of the debt.

6. Mr. Ramji Srinivasan, Learned Sr. Counsel appearing for the Respondent refuting the submissions of Learned Sr. Counsel for the Appellant submits that the Adjudicating Authority has rightly returned a finding that there is no financial debt. It is submitted that *sine qua non* of the financial debt is disbursal of money for time value of money. The Strip Mill Division of CIAL was being run by Corporate Debtor on lease rental basis and payment of lease rental by Corporate Debtor was not akin to any disbursement by the Lenders in favour of the Corporate Debtor. Corporate Debtor after the Strip Mill Division was demerged from CIAL and merged with Corporate Debtor from April, 2019 have been discharging all its loans liabilities. The claim of the CIAL against the Corporate Debtor for an amount of Rs. 104,43,67,347.94/- was stemmed from IFS and the same debt was under consideration in the arbitration proceeding by virtue of counter claim filed by MKJ Group. MKJ Group filed counter claim of same amount of Rs. 104,43,67,347.94/- and also filed an Application under Section 31(6) of the Arbitration and Conciliation Act for interim award which came to be rejected. Arbitration Proceedings having been amicably settled between the parties there can be no debt subsisting. It is submitted that in the arbitration proceedings monetary claim which was claimed by the JNIL for losses and damages suffered for running the Strip Mill Division was much more than the amount of Rs. 104,43,67,347.94/-. It is submitted that payments claimed based on the balance sheet entry is hopelessly misplaced since JNIL had categorically disputed the debt in its different balance sheet notes. Appellant has referred to balance sheet of 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 and referred to the notes where the claim was disputed. Balance sheet has to be read with the notes on to account hence the case of the Appellant that there is acknowledgement of debt is wholly incorrect. The claim of the Appellant was hopelessly barred by time. Assignment deed was executed on 24th March, 2017 where Section 7 Application has been filed in the year 2022 after more than five years.

7. We have considered the submissions of Learned Counsel for the parties and have perused the record.

8. IFS was entered into between Members of Jayaswal Family. The assets and properties including CIAL and JNIL were distributed among the two groups i.e. BLS Group and MKJ Group. CIAL was allocated to MKJ Group whereas JNIL was given to BLS Group. Strip Mill Division of CIAL was to be demerged from CIAL and was to be merged with JNIL. IFS provided for payment of lease rental by JNIL and payment towards loan and interest was from out of lease rental. IFS further clearly contemplated that after units are merged with JNIL, the liability for payment of the balance loans and interest shall be on JNIL. Clause 7(l) contains following stipulation:

> *"……….All these units referred above are being run by Jayaswal Neco Industries Limited under lease on payment of monthly rentals and as per the understanding monthly / quarterly installments alongwith interest thereon payable to respective Banks/Institutions are being provided by JNIL out of accrual of monthly lease rentals, bearing only for the Strip Mill acquired by CIAL as the Strip Mills' improvisation is still not complete due to lack of funds*

and once the additional sanctioned Term Loan is released by Bankers for completion of improvisation, the same shall be operated under lease from CIAL and the accrued lease rent provided by JNIL shall be paid to be Bankers/ Institutions funding the CIAL-Strip Mill towards part payment of principal and interest till the date of merger of the Units with JNIL. Once all the units are merged with JNIL the liability for payment of the balance loans and its interest shall be on JNIL. Till merger of the units with JNIL the system of running the units on lease rental basis shall continue and out of the lease rental accruals, installments and interests shall continue to be provided for payment to the Lenders of the Units by JNIL through a designated account to be operated by the nominees of both the Groups. It is hereby clarified and accepted by the Parties that the system of Lease of Units has been adopted by BLS Family for commercial convenience and the lease rentals are no way connected to the actual repayment of interest and principle of the Units. BLS Group agrees to pay total interest and principle payments in priority in accordance with the Sixth Schedule, including all other incidental amounts due to the Bankers of the Units on due dates."

9. Clause 18 of the IFS contemplated that demerge/merger/settlement of all inter company shall be completed within three months. There is no doubt between the parties that initially till August, 2010 payments of interest and loans were serviced and thereafter from August, 2010 till March, 2013, CIAL made payment of interest of the loan to the Lenders and according to the CIAL the payment made during the said period by CIAL was Rs. 104,43,67,347.94/-. We have noticed above that after August, 2010 when CIAL had to make payment of interest to the Loan, a suit No. 584/2011 was filed by MKJ Group seeking declaration that non-payment of the debt of lenders by BLS Group was contrary to the IFS and direction was sought to BLS Group to reimburse the amount of more than Rs. 30 Crores which was paid by CIAL till March, 2021. Suit was ultimately dismissed on account of arbitration clause i.e. Clause 27 in the IFS. Arbitration Proceedings were initiated by the BLS Group where counter claim was also filed by MKJ Group. One of the claims, claim "c" by the MKJ Group was "a claim towards non-payment of installments in the matter of Strip Mill Division of Corporate Ispat Alloys Limited (CIAL) in terms of Clause 7 (l)".

10. While noticing the facts, we have noted that in the arbitration proceedings MKJ Group filed an Application under Section 31(6) of the Arbitration and Conciliation Act claiming for an Interim Award for an amount of Rs. 102,26,78,728/- which amount according to the MKJ Group was admitted in the balance sheet of Corporate Debtor JNIL. The Application praying for Interim Award for aforesaid amount by MKJ Group was dismissed by Sole Arbitrator on 26th November, 2014 which order was not challenged. It is clear that in the arbitration proceedings which was between two groups i.e. BLS and MKJ Groups. MKJ Group claimed the amount paid by CIAL towards installments to the lenders and claim of Rs. 102,26,78,728/- was made which claim was repelled in the arbitration proceedings thus the claim of assignor of the Appellant was very much raised as a counter claim. As noted above, the Arbitration Proceedings were ultimately settled between the parties and by joint pursis claims and counter claims were withdrawn. The Adjudicating Authority has returned a finding in paragraph 17 that alleged debt which arose out of IFS dated 31st July, 2008 having been amicably settled and compromised by the parties on 07th August, 2021 i.e. before filing Section 7 Application, no debt remained to be paid by Corporate Debtor. The said findings are based on relevant materials on record and cannot be faulted.

11. The Adjudicating Authority has returned another finding that no financial debt has been proved. In the Application under Section 7, there being no financial debt, the Application under Section 7 of the Code is not maintainable. The financial claim which is subject matter of Section 7 Application is based on assignment dated 24th March, 2017 which was assignment executed by CIAL in favour of Appellant of debt of Rs. 104,43,67,347.94/-. The aforesaid amount of Rs. 104,43,67,347.94/-was amount which was paid by CIAL towards lenders for loan of Strip Mill Division. Admittedly the Loan was taken by CIAL for its Strip Mill Division and amount was disbursed to CIAL which liability of repayment of the loan along with interest was on the CIAL. IFS contemplated demerger of Strip Mill Division of CIAL from CIAL to JNIL. All units were being run by JNIL on lease rental basis. We have noticed clause 7(l) of the IFS which clearly contemplates that all units are being run by JNIL on lease rental basis and on basis of payment of monthly rentals, repayment of loan and interest is being provided. IFS does not transfer the liability of payment of loan on JNIL nor the said transaction can be treated to be any kind of disbursement to the Corporate Debtor for time value of money. The clause clearly contemplated that once all the units are merged with JNIL the liability for the payment of balance loans and interest shall be on the JNIL. It is admitted fact that after approval of the scheme of arrangement by the High Court on 13th April, 2013, payment of servicing of the loan is being done by the JNIL for which there is no dispute. We do not find any error in the finding of the Adjudicating Authority that there is no financial debt owed by JNIL to the CIAL on basis of which an Application under Section 7 to be filed either by CIAL or its assignee. From the sequence of events as noted above it is clear that assignor had assigned its debt of Rs. 104 Crores to the Appellant on 24th March, 2017 when it failed to obtain an Interim Award from the sole arbitrator by filing an application under Section 31(6) of the Arbitration and Conciliation Act which was rejected on 23rd September, 2016. CIAL failed to obtain any order in its favour although it raised its claim for the said amount as noted above a suit was filed by MKJ Group No. 584 of 2011 with regard to installments paid by CIAL from August, 2010 which suit was ultimately dismissed by Hon'ble Bombay High Court and all claims and counter claims were taken before the Sole Arbitrator including claim of Rs. 102,26,78,728/- raised by CIAL in an Application for interim award. The assignment in favour of Appellant made on 24th March, 2017 was thereafter and sequence and events makes it clear that assignment was nothing but transfer of litigation in favour of the Appellant.

12. Now we come to the submissions which have been pressed by the Learned Sr. Counsel for the Appellant regarding entries in balance sheets of the Corporate Debtor. Annual Report of 2013-14 contains an entry of unsecured loan to CIAL of Rs. 10432.79/- Lakhs. Learned Counsel for the

Respondent has explained the said entry by stating that the said was balance shown in the books of account of CIAL. Learned Counsel for the Respondent has relied on note in the Annual Financial Year 2015-16 and subsequent financial year where the claim of amount of Rs. 104 Crores was clearly disputed. Learned Counsel for the Respondent has referred to an Annual Report of 2016-17 where with regard to amount of Rs. 10432.79/- lakhs in note 23 which dealt with current financial liabilities –borrowings. Following statement was made in paragraph 23.05:

> *"23.05 Inter Corporate Deposits from others include a sum of Rs. 10432.79 lakhs outstanding towards Corporate Ispat Alloys Limited (CIAL) being the amount credited in the books at the time of merger of Strip Mill Division of CIAL with the Company. CIAL has filed a winding up petition under the provisions of Section 434 of the Companies Act, 1956 before the Hon'ble Bombay High Court, Nagpur Bench, Nagpur against the Company and the Company has disputed the same amount. The petition is still at pre admission stage and as per the Company the petition is not sustainable.*
>
> *Further the company has filed a civil suit claiming a sum of Rs. 70027.00 lakhs from CIAL towards the loss suffered by it due to delay/withholding the merger of Strip Mill Division of CIAL with a mala fide intention which is pending before the Hon'ble Civil Judge Senior Division, Nagpur."*

13. From the sequence of events as noted above it is clear that the JNIL has been disputing the claim of Rs. 10432.79/- lakhs as reflected in the balance sheet of Corporate Debtor as credited in the books of account at the time of merger of Strip Mill Division which liability was disputed by JNIL which is apparent from proceedings in the arbitration as noted above. Appellant itself in his Appeal has brought on record Annexure A-16 Letter dated 20th September, 2014 which was written by the Respondent denying its liability. It is useful to extract letter dated 20th September, 2014 written by the Respondent filed as Annexure A-16 by the Corporate Debtor. The Letter dated 20th September, 2014 was written in response to the Letter dated 15th September, 2014 written by CIAL claiming an amount of Rs. 102,26,78,728/-. It is useful to extract the entire Letter dated 20th September, 2014:

> *"To*
> *Millind Bodhankar*
> *Abhijit Group*
> *Behind Mount Carmel School,*
> *Prashant Nagar, Near Food*
> *Corporation Office,*
> *Ajanl, Nagpur*
> *Reference:- Your Letter dated 15.09.2014.*
> *Dear Mr. Bodhankar*
>
> *We are in the receipt of your letter dated 15/09/2014 wherein you have raised a claim of Rs. 102,26,78,728 (Rs. One Hundred and Two Crores Twenty Six Lakh Seventy Eight Thousand Seven Hundred and Twenty Eight) being so called admitted liability of Jayaswal Neco Industries Ltd.*
>
> *At the outset the contents of the letter dated 15.09.2014 are denied in toto. It is pertinent to mention here that the instant subject matter is subjudice before the Hon'ble Arbitrator Justice (Ret) V.C. Daga arising out of the Arbitration Proceedings between Arvind Kumar Jayaswal and Others Vs. Manoj Kumar Jayaswal and*

> *Others for adjudicating the dispute arising of the Indenture Family Settlement dated 31.07.2008.*
>
> *That MKJ Group (the Respondent in Arbitration Proceedings) is actively participating in the Arbitration Proceedings and is well aware about the same.*
>
> *Without prejudice to the above we reserve our right to reply to the contents of this letter at the later stage as and when situation demands.*
>
> *Thanking You*
>
> *S.A. Nigudkar*
>
> *Vice President (Accounts)*
>
> *JNIL, Nagpur"*

14. When at the relevant time i.e. Annual Year 2014, it is immediately after demerger, dispute arose with regard to payments made by CIAL to Lenders of the Strip Mill Division which CIAL claimed from the Corporate Debtor which liability were denied by the Corporate Debtor, we are of the view that claim of the Appellant that JNIL has acknowledged its debt in the balance sheet cannot be accepted as admission of any liability by JNIL. The record indicates that from the year 2015-16 till 2020-21 in the financial statements of the Corporate Debtor there was categorical note denying the liability of 102,26,78,728/- as claimed, financial statement thus cannot be read as acknowledgement of the debt by Corporate Debtor.

15. Learned Counsel for the Appellant has placed reliance on judgment of Hon'ble Supreme Court in **2021 6 SCC 366, Asset Reconstruction Company India Limited Vs. Bishal Jaiswal.** In the above case, the Hon'ble Supreme Court was considering the question of acknowledgement for the purposes of extension of limitation under Section 18 of the

Limitation Act, 1963. Hon'ble Supreme Court has emphasized that it has to be looked into as to whether any entry is unqualified or has been entered into with caveats which has to be examined on case to case basis. In 35 of the Judgment, following has been laid down:

> *"35. A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgements made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills (supra), that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act."*

16. We however cannot be oblivious to the fact that ledger account of CIAL Strip Mill Division which was demerged in JNIL by virtue of order dated 13.02.2013 reflected the position of ledger as it was existed and maintained by CIAL prior to merger. Reflection of the entry annual statement of 2013-14 as incorporated in the Annual Financial Statement of GNIL was reflection of the ledger account. Subsequent financial statement beginning from 2015-16 contained a caveat disputing the claim of Rs. 104 and odd Crores. We have noticed above that CIAL had filed a Company Petition before the High Court claiming non-payment of debt of Rs. 104,43,67,347.94/- by the JNIL in which company petition the claim was disputed and ultimately company petition stood withdrawn. We thus are not persuaded to accept the submission of Appellant that there is acknowledgement of debt by Corporate Debtor towards CIAL i.e. assignor of Appellant. The claim of amount of Rs. 104,43,67,347.94/- was throughout disputed by the BLS Group/Corporate Debtor which sequence of the events we have noticed above. The sequence of events and facts noticed above clearly indicate that MKJ Group who did not succeed in any proceedings to establish the claim of Rs. 104,43,67,347.94/- against the Corporate Debtor assigned its debt to the Appellant to further litigate and involve the corporate debtor in proceedings. MKJ Group despite raising the claim in the arbitration proceedings by means of counter claim and despite their application for Interim Award for an amount of Rs. 102,26,78,728/- having been dismissed in the year 2016 assigned the debt to Appellant, Appellant by means of assignment only purchased the litigation.

17. We are satisfied that no error has been committed by the Adjudicating Authority in allowing I.A. filed by the Corporate Debtor for dismissing the Section 7 Application.

18. The submission of Learned Counsel for the Appellant that order of the Adjudicating Authority is non-speaking order also cannot be accepted. The Adjudicating Authority has noticed the entire facts and sequence of the events and has recorded reasons for allowing I.A. filed by the Corporate Debtor and dismissing Section 7 Application.

19. We thus are of the view that there is no merit in the Appeal, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

04th July, 2023

Basant