



INSOLVENCY & BANKRUPTCY

IBC: AN ASSIGNEE IS a financial creditor under ibc and can continue CONTINUING PROCEEDINGS initiated under SECTION 7 by the assignor – nclat

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The Hon'ble Division Bench, National Company Law Appellate Tribunal, (NCLAT) comprising of Justice Ashok Bhushan (Chairperson) and Baru Mitra, Member (Technical) in [*Siti Networks Ltd. vs Assets Care & Reconstruction Enterprise Ltd. & Anr \(Comp. Appl. \(AT\)\(Ins.\) No. 1449 of 2022.*](#) on 13th December 2022 held that an Assignee is a Financial Creditor within the meaning of Section 5(7) of the [*Insolvency & Bankruptcy Code, 2016*](#) ("Code") and has every right to continue proceeding under Section 7 of the Code initiated by the Assignor.

Factual Summary:

In the present case, various facilities were sanctioned and disbursed to Siti Networks Ltd ("**Corporate Debtor**") by 'Housing Development Finance Corporation Limited' ("**HDFCL**"). Subsequently on account of failure to maintain financial discipline the account of the Corporate Debtor was categorized as NPA and HDFCL proceeded to initiate Corporate Insolvency Resolution process under Section 7 of the Code against the Corporate Debtor. Thereafter, HDFCL assigned the Debt to Assets Care and Reconstruction Enterprise limited ("**ACRE**") vide registered Assignment Deed dated 29.06.2022. Hence, ACRE filed an Application seeking substitution as Financial Creditor in the Company Petition filed by HDFCL before Hon'ble NCLT, Mumbai. The same was vehemently opposed by the Corporate Debtor on the basis of judgment passed by the co-ordinate Bench of the Hon'ble NCLT, Bengaluru whereby such an Application was dismissed.

The Hon'ble NCLT, Mumbai however was pleased to allow substitution of the Financial Creditor on the grounds of valid Assignment of debt, lack of precedents set by higher forums, and no express prohibition in the code preventing an Assignee to come on record and continue the pending proceedings. Aggrieved by the order passed by the Hon'ble NCLT, Mumbai the Corporate Debtor has approached the Hon'ble NCLAT by way of the present Appeal.

Contentions of parties:

Learned counsel for the Corporate Debtor argued, that the Assignee couldn't have been permitted to continue proceedings initiated by HDFCL under Section 7 and may file a fresh Petition on the basis of Assignment. Further, the Counsel placed reliance on the judgment of the Hon'ble NCLT, Bengaluru Bench whereby it was held that it is a prerogative of the Assignor to file a miscellaneous Application impleading the necessary party and where such Application is not pursued, the Assignor having assigned the debt cannot prosecute and the Assignee cannot substitute itself as Applicant.

Learned Counsel for the ACRE vehemently argued that in the light of Section 5(4) of the SARFAESI Act, 2002 which provides for the continuation of all proceedings by an Assignee who acquires any Financial Asset, the Respondent is well within their rights to continue proceedings initiated by the Assignor, on the grounds of a valid assignment of debt. The Learned Counsel further referred to Order XXII Rule 10 of the Civil Procedure Code, 1908 ("**CPC**") which categorically recognizes the right of an Assignee to continue a proceeding with the leave of the Court on the basis of devolution of rights.

Findings of NCLAT:

The Hon'ble NCLAT after hearing the submissions of the Learned Counsels for the parties upheld the contention that an Assignee can very well continue proceedings initiated by the Assignor on the premise of Section 5(4) of the SARFAESI Act, 2002 and Order XXII Rule 10 of CPC as correctly interpreted by the Learned Counsel for ACRE.

Further, the Hon'ble Bench clarified that the judgment of the Hon'ble NCLT, Bengaluru relied upon by the Learned Counsel for the Corporate Debtor was erroneous in law and cannot be relied upon as a binding precedent.

The Hon'ble NCLAT while confirming the order passed by Hon'ble NCLT, Mumbai reiterated that neither the Code nor any Regulations in any manner prohibit the continuation of proceedings by an Assignee. The Hon'ble NCLAT relied on the language in Section 5(7) of the Code which squarely covers a person to whom a financial debt is legally assigned or transferred to, within the definition of a 'Financial Creditor.'

Accordingly, the Appeal was dismissed for lack of merit.