

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 905 of 2024

[Arising out of order dated 24.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA 724 of 2024 in C.P. (IB) No.530/MB/2020]

IN THE MATTER OF:

1. Peanence Commercial Private Limited

61/62, 4th Floor, Gaya Building,
109 Y.M. Road, Masjid (West),
Mumbai – 400 003.

2. Rolta Private Limited

211, 21st Floor, Maker Tower “F”,
Cuffe Parade, Mumbai – 400 005.

...Appellants

Versus

1. Mamta Binani,

Resolution Professional for Rolta India Limited,
2nd Floor, Nicco House, 2 Hare Street,
Kolkata – 700 001.

...Respondent

Present:

For Appellants: **Mr. Arun Kathpalia, Sr. Advocate and Mr. Abhijeet Sinha, Sr. Advocate with Ms. Priyambada Mishra, Advocate.**

For Respondent: **Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms, Gunjan Nayyar, Advocates for RP.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 24.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in I.A. 724 of 2024. By the impugned order I.A. 724 of 2024 filed

Cont'd.../

by Appellant No.2 has been dismissed. Aggrieved by which order this appeal has been filed. Brief facts of the case necessary for deciding this appeal are:

- (i) CIRP commenced against the Corporate Debtor – Rolta India Limited by order dated 19.01.2023.
- (ii) Pursuant to the admission order in the CIRP, Rolta Private Limited filed its claim of Rs.634,55,43,228/-. The claim of Rolta Private Limited was admitted by the Resolution Professional, however, Rolta Private Ltd. being a related party of the Corporate Debtor, the Rolta Private Limited was not permitted representation, participation or voting right in the Committee of Creditors (CoC).
- (iii) Rolta Private Limited entered into MoU dated 15.01.2024 with Peanence Commercial Private Limited for assignment of debt for a one-time consideration of Rs.50 Crores on as is where is basis.
- (iv) Appellant – Rolta Private Limited sent a letter to the Resolution Professional dated 06.02.2024 seeking in principle approval of the assignment dated 15.01.2024.
- (v) The Resolution Professional sent email dated 08.02.2024 to the Applicant informing that the Resolution Professional has no authority or jurisdiction to grant approval for the Deed of Assignment. It was further mentioned that on the basis of the

documents shared, no information is found which requires any claim to be updated.

- (vi) On 15.02.2024, the Resolution Professional wrote to the Applicant that the Resolution Professional is unable to issue confirmation in relation to the Deed of Assignment and nature of the debt would not change and no voting rights would be available to Peanence Commercial Private Limited.
- (vii) Aggrieved by the response of the Resolution Professional dated 15.02.2024, I.A. 724 of 2024 was filed by the Appellant, which I.A. has been rejected by the Adjudicating Authority on 24.04.2024.
- (viii) Challenging the order dated 24.04.2024, this Appeal has been filed.

2. We have heard Shri Arun Kathpalia, learned senior counsel for the Appellant and Shri Sandeep Bajaj, learned counsel appearing for the Resolution Professional.

3. Learned counsel for the Appellant submits that the assignment dated 15.01.2024 could not have been refused to be acknowledged by the Resolution Professional. The Appellant - Peanence Commercial Private Limited is not a related party to the Corporate Debtor nor there is any disqualification attached to the Assignee to be part of the Committee of Creditors. It is submitted that the Adjudicating Authority has not correctly appreciated the judgment of Hon'ble Supreme Court in **“Phoenix ARC**

Private Limited vs. Spade Financial Services Limited & Ors., (2021) 3

SCC 475”. The Assignment for consideration of Rs.50 Crore is an arm-length transaction. The Adjudicating Authority committed error in rejecting the claim. It is submitted that Appellant No.1 - Peanence Commercial Private Limited is entitled to avail benefits of an unrelated Financial Creditor of the Corporate Debtor. The application filed before the Adjudicating Authority was not premature. Findings returned by the Adjudicating Authority are based on issues which were not raised by any party.

4. Learned counsel for the Resolution Professional refuting the submission of learned counsel for the Appellant submits that the application filed by the Applicant was misconceived and entire proceeding on the basis of which application was filed are pre-mature. The MoU relied by the Appellant indicate that no Assignment Agreement has taken place between Appellant No.1 and Appellant No.2. MoU is only an agreement to enter into an Assignment in future. The Deed's terms are contingent in nature, upon the approval being granted by the Resolution Professional to recognize the Assignee as a non-related secured financial creditor and further to recognize its right to participate in the CoC. It is submitted that the Resolution Professional has no authority to recognize any assignment. It is submitted that the assignment dated 15.01.2024 is nothing but malafide exercise by the Appellants to enter into the CoC which has been denied to Rolta Private Limited being related party. The Adjudicating Authority has rightly relied on the judgment of Hon'ble Supreme Court in

“Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors.”.

It is submitted that the resolution process of the Corporate Debtor is at a conclusionary stage. The purpose and intend of the assignment is to somehow put an entity in the CoC by Rolta Private Limited who could not itself get a berth in the CoC it being a related party. The entire exercise is wholly malafide and rightly not recognized by the Adjudicating Authority.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. From the facts as noticed above, it is clear that the entire claim filed by Rolta Private Limited, a related party of the Corporate Debtor, has been admitted in the CIRP. The Rolta Private Limited, however, being a related party has not been given a berth in the CoC. The copy of the Assignment Agreement dated 15.01.2024 has been brought on the record. ‘Purchase Consideration’ and ‘Purchase Consideration Due Date’ has been defined in following words:

““Purchase Consideration” means a sum of Rs. 50,00,00,000 (Rupees Fifty crores) payable by the Assignee to the Assignor for the purchase of the Financial Assistance;

“Purchase Consideration Due Date” means the date agreed upon by the Assignee and Assignor for payment of the Purchase Consideration which will be immediately upon obtaining the approval of the resolution professional of the Borrower on the recognition of the Assignee as a non-related secured

financial creditor in the Insolvency Proceedings with the confirmation that the assignee will have the full voting rights for an amount of Rs.634,55,43,228/- as financial creditor in the Committee of Creditor of the Borrower (Corporate Debtor);”

7. Clause 2 deals with ‘Assignment of loans’. Clause 2.5 is as follows:

“2.5 From the date of the Confirmation Notice, all economic benefits pertaining to the Financial Assistance, including all realization and recoveries, if any made on and after the date of Assignment Agreement, shall be for the benefit of the Assignee.”

8. We have noticed the sequence of the events where after the Assignment Agreement dated 15.01.2024, an email was sent to the Resolution Professional seeking conformation by the Resolution Professional to the Assignment Agreement dated 15.01.2024. By email dated 06.02.2024, the Appellants requested for confirmation at the earliest. Para 6 of the email is as follows:

“6. Accordingly, in view of the foregoing, we request for your confirmation at the earliest that, in the present circumstances, the Assignee would be recognized as a non-related financial creditor of the Corporate Debtor.”

9. The Resolution Professional immediately replied to the Appellants on 08.02.2024 informing that the Resolution Professional has no authority or jurisdiction to grant any such approval as prayed for. The Resolution

Professional on 15.02.2024 wrote to the Appellant communicating that the Resolution Professional is unable to issue any confirmation as has been sought with regard to proposed assignment. Reply dated 15.02.2024 is as follows:

“Subject: FW: Assignment of financial debt due to Rolta Private Ltd, Assignment of financial debt due to Rolta Private Ltd.

Attachments: Rolta India Limited Legal opinion-related party assignment-14.02.2024 with Judgments.pdf

Importance: High

15.02.2024

Sir

Greetings!

We are in receipt of communication dated 07.02.2024 and a preliminary response to the same was issued on 08.02.2024. As stated therein, we have now received the legal opinion (attached to this email) and in pursuance of the advice received, our final response to your query is as follows:

a. Your communication seeks prior confirmation from the resolution professional that the said assignment would enable re-categorisation of a related party's claim to non-related party even prior to the actual assignment taking place and makes such confirmation a condition precedent.

b. The ratio decidendi of the judgment dated 01.02.2021 passed by the Hon'ble Supreme Court in the case of Phoenix Are Private Limited vs Spade Financial Services Limited & Ors, reported at 2021 (3) SCC 475 is clear that the actions of a related party of the corporate debtor have to be viewed with serious and intricate circumspection, especially as what is being sought vide your communication is a confirmation that the existing voting rights of the members of the committee of creditors would be revised or not.

c. In this regard, I have been advised that there is no provision under the Code which empowers/entitles a resolution professional to grant such confirmation in advance or be party to the assignment of debt by one creditor in favour of third parties.

d. I have also been advised that the position of law that has remained uncontroverted is that assignment is the transfer of one's right to recover the debt of another person as a contractual right and hence, the rights of an 'assignee' are no better than those of the 'assignor' as the 'assignee' merely steps into the shoes of the 'assignor'. The 'assignee' accordingly would take over the rights and the allied disadvantages as well.

e. Furthermore, on the aspect of taking cognizance of the proposed assignment, I have been advised that the IRP/RP are responsible for collating the claims, revising the claims from time to time based

upon information coming into their possession or being provided by the creditors. However, there are no provision in the Code or CIRP Regulations which permit for review of the status of a creditor. Secondly, the power to constitute Committee of Creditors cannot include a power to re-constitute Committee of Creditors except in the manner provided in the Code or CIRP Regulations.

In regard to the above, I have also perused the Assignment Deed along with the legal opinion shared by your goodself and the legal opinion as sought by me (attached to this email). Accordingly, keeping in mind the current stage of the corporate insolvency resolution process of the Corporate Debtor, contents of the Said Assignment Deed and the legal opinion received by me, following is my response:

a. I am unable to issue confirmation as has been sought in respect of the proposed assignment

b. Furthermore, even if the steps are undertaken as envisaged under the Said Assignment Deed, the nature of the debt that has been assigned would not change and no voting rights would be available to such assignee, as the assignee would simpliciter step into the shoes of the assignor and not be entitled to enjoy any better rights than that of assignor.

c. Even otherwise, revision of the voting share cannot be undertaken by the resolution professional at this stage even on account of the assignment, as

the same falls beyond the purview of the scope of 'upgradation of claim'.

Thanking you

Warm Regards

Dr. CS Adv Mamta Binani

Resolution Professional (RP)

In the matter of Rolta India Limited

Registration No.: IBBI/IPA-002/IP-N00086/2017-18/10227

AFA valid till 03.12.2024

+91 98310 99551

roltaindia.cirp@gmail.com (process specific)

mamtabinani@gmail.com (registered with IBBI)

Address of the RP registered with IBBI: Second Floor, Nicco House, 2 Hare Street Kolkata 700001, West Bengal”

10. It was thereafter the application was filed and the Adjudicating Authority by the impugned order has rejected the application. The Adjudicating Authority in Para 4.2 and 4.4 has made following observations:

“4.2. The Applicant is stated to have written a letter dated 06.02.2024 to the Respondent Resolution Professional seeking confirmation that the assignee will be recognized as a non-related financial creditor of the Corporate Debtor contending that Justice (Retd.) Suresh C. Gupte has opined that the disqualification under the first proviso to Section 21(2) would not be attracted to an assignment that the bonafide and at arm's length to an unrelated party. However, the RP is stated to have refused to give confirmation stating that assignment of agreement has yet to take place vide Email dated 14.02.2024.

4.4. In the present case the consideration of Rs.50 crore on assignment of debt of Rs.634,55 crores is payable only upon approval of the resolution professional of the borrower a non-related secured financial creditor having full voting rights. It is undisputed fact that the Assignor Rolta Private Limited is related party of the Corporate Debtor and the suspended board of the Corporate Debtor has a right of representation on the CoC where at the resolution plans of prospective resolution application are placed and discussed. This resolution plans clearly show the amounts set aside in each plan towards payment related as well as unrelated financial creditors. In other words the suspended board of the Corporate Debtor is privy to the amounts set aside for payment to Rolta Private Limited in the plan and in this case the amounts so set aside towards related party creditors payment is nil. It is also an undisputed fact that Rolta Private Limited does not have voting rights in the CoC because of disqualification attached to it in terms of proviso to Section 21(2) of the Code. In view of these facts we are of the considered view that the assignment becoming affecting only upon confirmation from Resolution Professional of treating the Applicant as unrelated secured financial creditor with voting rights in itself cannot be said to be a bonafide transaction.”

11. The Adjudicating Authority in the impugned order has also relied on Para 103 and 104 of the judgment of Hon’ble Supreme Court in **“Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors.,**

(2021) 3 SCC 475”. Para 4.3 of the order of the Adjudicating Authority is as follows:

*“4.3. The Hon'ble Supreme Court in the case of **Phoenix Arc (P) Ltd. vs Spade Financial Services Ltd. (2021) 3 SCC 475** held that –*

103. Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing the financial creditor party financial creditor and the corporate debtor. As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso.

104. Hence, while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the CoC, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder. Mr Kaul has argued, correctly in our opinion, that if this interpretation is not given to the first proviso of Section 21(2), then a related party financial creditor can devise a mechanism to remove its label of a "related party" before the corporate debtor undergoes CIRP, so as to be able to enter the CoC and influence its decision making at the cost of other financial creditors."

12. When we look into the facts and sequence of events, it is clear that present is a case where in fact no assignment has taken place. What is entered between the parties is agreement for assignment that is contingent on approval by the Resolution Professional that Assignee will be given a seat in the CoC. The Adjudicating Authority has rightly taken the view that the whole exercise is a malafide exercise by Rolta Private Limited whose claim has been admitted and who being related party has not been given berth in the CoC and by means of alleged assignment is trying to bring Peanence Commercial Private Limited into the CoC. The real intent of the assignment is clear from the email send to the Resolution Professional where the Resolution Professional has been requested to confirm that Assignee would be declared as nonrelated party to the Corporate Debtor, meaning thereafter the Assignee shall get a berth in the CoC.

13. The Adjudicating Authority has rightly noticed the judgment of the Hon'ble Supreme Court in ***"Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors."***. It has also been noticed that the Assignor is a related party of the Corporate Debtor and the Suspended Board of Corporate Debtor. Resolution Plan of the respective Resolution Applicants being placed and discussed, the Suspended Board of the Corporate Debtor is privy to the amounts which has been set aside for payment to Rolta Private Limited in the plan. At this stage, the Assignment Agreement which has been entered by the parties and has been communicated to the Resolution Professional, clearly indicates that Rolta

Private Limited is trying to bring its Assignee to create hurdles and delay in the CIRP of the Corporate Debtor.

14. The Adjudicating Authority has given ample reasons in the impugned order for not allowing the prayers made by the Applicant/ Appellant in the application. We are of the view that no error has been committed by the Adjudicating Authority in rejecting I.A. filed by the Appellants by the impugned order dated 24.04.2024. There is no merit in the appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

30th May, 2024

Archana