

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 460 of 2024

[Arising out of order dated 09.12.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-IV in CP (IB) 970/MB-IV/2022]

IN THE MATTER OF:

Metamorphosis Trading LLP
4th Floor, Paville House,
Twin Tower Lane Off Veer Savarkar Marg,
Prabhadevi, Mumbai City,
Mumbai, Maharashtra, India, 400025.

....Appellant

Versus

Sankalp Engineering and Services Pvt. Ltd.
Gat No. 1093/1 & 1093/2,
Chakan Shikrapur Road,
Village Karandi, Tal: Shirur,
Pune, Maharashtra-412208.

...Respondent

Present:

Appellant:	Mr. Aman Kacheria, Mr. Siddharth Shankar, Advocates.
For Respondents:	Mr. Abhijeet Sinha, Sr. Advocate with Mr. Yohaann Limathwalla, Ms. Pallavi Kumar, Advocates.

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated

09.12.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV) in CP (IB) 970/MB-IV/2022. By the Impugned Order, the Adjudicating Authority rejected the said Company Petition filed by Metamorphosis Trading LLP-Financial Creditor seeking initiation of Corporate Insolvency Resolution Process ('**CIRP**' in short) against the Sankalp Engineering & Services Pvt. Ltd.- Corporate Debtor. Aggrieved by this impugned order, the present appeal has been preferred by the Appellant.

2. Mr. Aman Kacheria, Learned Counsel appeared for the Appellant. Mr. Abhijeet Sinha, Learned Senior Counsel appeared on behalf of the Respondent.

3. The Learned Counsel for the Appellant while making his submissions outlined the factual matrix of the case which are as follows:

- Sankalp Engineering and Services Pvt Ltd- Corporate Debtor was incorporated as a wholly owned subsidiary of Innovative Industries Ltd. ('**IIL**' in short) wherein IIL was holding more than 50% of the shares.
- The Corporate Debtor had approached IIL for financial assistance which assistance was received. On 24.05.2014, the Corporate Debtor had sent an email to IIL confirming an amount of Rs. 5.58 cr as due and payable by them to IIL.
- The IIL was admitted into CIRP on 23.01.2017.

- The Information Memorandum dated 15.02.2017 prepared by the Resolution Professional showed Rs. 5.11 cr as receivable from the Corporate Debtor.
- IIL had sent a letter to the Corporate Debtor on 12.04.2017 for the purpose of obtaining confirmation of amounts owed by them to IIL in which letter Rs. 5.16 cr was mentioned as receivable from the Corporate Debtor.
- On 02.05.2017, the statutory auditor of the Corporate Debtor issued a balance confirmation to IIL stating that there were outstanding payables due to IIL and sought confirmation thereof. The balance confirmation sought was for Rs.2.26 cr as on 31.03.2017 as appearing in the books of account of the Corporate Debtor.
- Liquidation proceedings were admitted against IIL on 08.12.2017. The liquidator published the Process Memorandum on 14.06.2021 wherein the amount in default by the Corporate Debtor was recorded as Rs 5.10.
- The Appellant/Financial Creditor - Metamorphosis Trading LLP had bid for the assets/receivables of IIL and entered into a Deed of Assignment on 21.07.2021 with the Liquidator of IIL whereby the assets of IIL were transferred in favour of the Appellant. In terms of the Deed of Assignment, the debt of Rs.5.10 cr of the Corporate Debtor was transferred in favour of the Appellant/Financial Creditor.
- The Appellant issued legal notice on 16.09.2021 calling upon the Corporate Debtor for repayment of the said debt. The Corporate Debtor sent replies to the legal notice on 30.09.2021 and 26.10.2021 denying the claims of the Appellant.

- The Appellant not having received any amount from the Corporate Debtor filed a Section 7 application before the Adjudicating Authority.
- The Section 7 application was rejected on 19.12.2023 by the Adjudicating Authority on the ground that debt and default does not exist. The Appellant feeling aggrieved has preferred the appeal assailing the impugned order.

4. Making his submissions, the Learned Counsel for the Appellant submitted that the liquidator had assigned receivables of IIL amounting Rs.5.10 cr which was due from the Corporate Debtor to the Respondent/Financial Creditor vide a Deed of Assignment. The Appellant while executing the Deed of Assignment had satisfied itself regarding these outstanding dues payable by the Corporate Debtor to IIL. Further the Information Memorandum dated 15.02.2017 prepared by the Resolution Professional during the CIRP of IIL had reflected Rs.5.10 cr as receivable from the Corporate Debtor which all go to show that debt was due and payable by the Corporate Debtor.

5. It was also contended that there is other evidence which show that the Corporate Debtor had admitted the financial assistance provided by IIL which included an email dated 24.05.2014 sent by the Corporate Debtor to the IIL confirming Rs.5.58 cr as due and payable to them. Further there is a balance confirmation letter dated 12.04.2017 sought from the Corporate Debtor for an amount of Rs. 5.16 cr as receivable from the Corporate Debtor. Moreover, the Corporate Debtor in its financial statements for F.Y. 2015-16 and 2016-17

had admitted that there were amounts due and payable to IIL. The debt due and payable is also recorded with the Information Utility.

6. It was further pointed out that the Adjudicating Authority had failed to appreciate that both the liquidator of IIL and the auditor of the Corporate Debtor having categorically stated that the Corporate Debtor had outstanding dues payable to IIL and that the Appellant had the debt assigned from IIL, it shows that it was an undisputed fact that there was a debt and that the debt is due, valid and subsisting. Moreover, the Corporate Debtor has failed to place any material on record to demonstrate repayment to IIL which could have justified their act of writing off of the debt.

7. Refuting the contentions made by the Appellant, the Learned Senior Counsel for the Respondent stated that there is no documentary evidence which has been placed on record by the Appellant to establish the alleged financial debt. There is no proof of disbursement of the alleged loan to the Corporate Debtor either by way of any financial contract or loan agreement. The Deed of Assignment has been treated by the Appellant as the principal financial contract for the alleged loan but at the time of execution of the Deed of Assignment on 21.07.2021, no debt was due and payable by the Corporate Debtor to IIL as the financial statements from the year 2017-18 onwards reflect no debt on the part of the Corporate Debtor payable to IIL. The block of assets assigned to the Appellant under this Deed of Assignment, by which the purported financial debt was assigned to the Appellant included trade receivables. When the alleged debt has been shown as trade receivable, it

cannot be held as a loan particularly so when there is no contract/agreement between the Corporate Debtor and IIL recording advance of any loan.

8. Submission was pressed that proof of existence of financial debt which is in default is an essential ingredient which requires to be proven for filing a Section 7 application. Without satisfying this basic requirement of the existence of financial debt being owed by the Corporate Debtor to the Appellant/Financial Creditor and a default thereto having been committed by the Corporate Debtor, no Section 7 application can be admitted. It was submitted that the Appellant is attempting to recover monies from the Corporate Debtor on the basis of unfounded information. This amounts to the Appellant misusing the provisions of the IBC to defeat the objectives of IBC which aims at resolution of stressed assets and not for debt recovery purposes.

9. We have duly considered the arguments advanced by the Learned Counsels for both parties and perused the records carefully. Having noted their rival contentions as summarised above, the short question which arises for our consideration is whether the Appellant had a financial debt which had become due and payable by the Corporate Debtor and whether there was an incidence of default thereof.

10. Before we dwell into the facts of the case, it maybe useful to refer to the definition clauses of IBC which deal with ‘financial creditor’ and ‘financial debt’ as enshrined in Sections 5(7) and 5(8) of the IBC which is to the effect:

“5(7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

5(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes –

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standard as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate of price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

11. A plain reading of the above definitions shows that for any creditor to become financial creditor under Section 5(7) of IBC, there must be a financial debt and for any debt to qualify as a financial debt, that debt along with

interest, if any, should have been disbursed against the consideration for the time value of money. Use of expression ‘if any’ as suffixed to the word ‘interest’ leaves no shadow of doubt that the component of interest is not a *sine qua non* for bringing the debt within the fold of financial debt. What is material however is that the disbursement of debt should be against consideration for the time value of money irrespective of whether the debt is interest bearing or not.

12. The scheme of the IBC as to when a financial creditor can trigger the provisions of Section 7 against the Corporate Debtor has been lucidly explained in the judgement of the Hon’ble Supreme Court in ***Innoventive Industries Ltd. Vs ICICI Bank (2018) 1 SCC 407*** wherein it has been observed:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long

as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise”.

13. Basis the above-cited definition clauses of ‘financial debt’ and ‘financial creditor’ and the guiding legal precepts of the ***Innoventive judgement supra***, we can safely conclude that for any creditor to become financial creditor under Section 5(7) of IBC, there must be a financial debt which is owed to that person and such a person can either be the principal creditor to whom the financial debt is owed or may be a legal assignee to whom such debt has been transferred. Furthermore, for a debt to become financial debt under the various transactions stated in subclauses (a) to (i) of Section 5(8) of IBC, the basic non-negotiable ingredients are that there has to be a disbursal against the consideration for time value of money as carved out in the principal clause which we have already noted above. Further, a Financial Creditor may file an application under Section 7 for initiating CIRP against the Corporate Debtor when the default in respect of the financial debt owed to him has occurred. It is for the Financial Creditor to file an application along with the proof of default. If there is a financial debt, which is more than the prescribed threshold level and there is a default and if the application is complete, the application is required to be admitted by the Adjudicating Authority. It is for the Adjudicating Authority to look into the various documents, records and evidence of default as furnished in Part V of Form 1 of the application filed under Section 7 of IBC.

14. Coming to the case at hand, it is the case of the Appellant that IIL had provided financial assistance to the Corporate Debtor on their request and that these amounts were transferred in favour of the Corporate Debtor during November 2013 to March 2014. It is also contended that the Corporate Debtor had admitted the financial assistance provided by IIL by an email dated 24.05.2014 sent by them to the IIL confirming Rs.5.58 cr as due and payable to IIL. Moreover, the Corporate Debtor in its financial statements for F.Y. 2015-16 and 2016-17 had admitted that there were amounts due and payable to IIL. Subsequently, this financial debt of the Corporate Debtor qua IIL was assigned to the Appellant by way of a Deed of Assignment which was executed on 21.07.2021. It is also their case that the debt was due and payable is recorded with the Information Utility. It is also an admitted fact that the Appellant had served a legal notice on the Corporate Debtor on 16.09.2021 calling upon the Corporate Debtor for repayment of the said debt.

15. It is the rival submission of the Corporate Debtor that they did not owe any debt to the IIL and that in their replies to the legal notice of the Appellant which was sent on 30.09.2021 and 26.10.2021 the claims of the Appellant were categorically denied. It has also been contended that there is no documentary evidence on record to establish the alleged financial debt. Besides lack of material particulars produced by the Appellant to establish the alleged financial debt there is lack of proof of disbursement of the alleged loan to the Corporate Debtor either by way of any financial contract or loan agreement; lack of bank account details from which the alleged loan was provided to the Corporate Debtor to establish disbursement/transfer of funds

to the Corporate Debtor and there is nothing to show that the debt had become due and payable and that the Corporate Debtor had committed a default thereof. On the Deed of Assignment which has been relied upon by the Appellant, it has been submitted that the alleged debt in the Deed of Assignment has been shown as 'trade-receivables' which cannot be held as a loan particularly so when there is no contract/agreement which was entered into between the Corporate Debtor and IIL recording advance of any loan.

16. To find an answer to the question before us, we may begin our analysis by finding out whether there was a disbursal of debt in the first place. The grounds raised by the Appellant in support of their contention to prove debt and default are the Financial Statements of the Corporate Debtor for F.Y. ending on 31.03.2017; the Deed of Assignment assigned the financial debt to the Appellant besides the data available on Information Utility.

17. Coming to the financial statements placed on record in juxtaposition to the confirmation letter of the Corporate Debtor dated 24.05.2014 confirming Rs.5.58 cr as due and payable to IIL, we find that it is an undisputed fact that the dues of the Corporate Debtor figure in the balance sheets of IIL upto 2016-17 but not thereafter. The financial statements from the year 2017-18 onwards however clearly reflect no debt on the part of the Corporate Debtor qua IIL.

18. When we peruse the impugned order, we find that the Adjudicating Authority has taken painstaking efforts to get to the bottom of the matter. We notice that the Adjudicating Authority had directed the Statutory Auditor for the Corporate Debtor on 26.06.2023 to look into the audit working papers for

the year 2016-17 and 2017-18. It has been noted in the impugned order that the statutory auditor in his affidavit dated 25.09.2023 has categorically submitted that the request for balance confirmation sought from the IIL on 02.05.2017 of an amount of Rs.2.26 cr being owed by the Corporate Debtor to the IIL remained un-responded by IIL. Hence, in the absence of balance confirmation from IIL for F.Y. 2016-17, it has been stated by the statutory auditor that the amount of Rs.2.26 cr was reflected as “*unsecured borrowing from Corporate Debtor to IIL*” with the qualifying remark that “*The company has certain balances payable/receivable from its erstwhile holding company namely Innoventive Industries Ltd. In the absence of balance confirmation, we are not in a position to ascertain and comment on the correctness of the outstanding balances and resultant impact on the financial statements of the company.*” Further, we also notice that the Adjudicating Authority directed the current statutory auditors for the Corporate Debtor on 16.10.2023 to produce the audited accounts from 2013-2014 onwards. The auditors in their explanation stated that the opening balance of borrowing was shown as Rs.2.26 cr as on 01.04.2017 but reflected as Nil as on 31.03.2018 since the amount had been written back through journal entry.

19. In addition, the Liquidator of IIL was also directed by the Adjudicating Authority on 16.10.2023 to produce all financials of IIL from F.Y. 2013-14 to September 2021. The Liquidator clarified that receivables assigned to the Appellant under the Deed of Assignment was on ‘*as is where is*’, ‘*as is what is*’ and ‘*whatever there is*’ and ‘*no recourse*’ basis and no representation or warranties was provided with respect to the receivables including its amount,

outstanding balances or recoverability. It has also been clarified by the Liquidator that the receivables from the Corporate Debtor did not appear separately in the financials of IIL from 2017-18 onwards and that it was included under the overall trade receivables. It is therefore clear that no trade receivables specific to the Corporate Debtor was clearly earmarked since 2017-18 in the financial statements of IIL.

20. At this stage we may look at the impugned order to see how it has analysed the findings of the Auditors for the Corporate Debtor and the Liquidator which is as reproduced below:

“5.10 This Bench notes that the as per the Auditors affidavit dated 25.09.2023, the auditor has stated that he showed the amount as payable to Innoventive Industries because in the absence of balance confirmation by Innoventive Industries they were not in position to ascertain the position of the outstanding amount (this was also stated by them in the auditor’s report which is a part of the Financial Statements of the Corporate Debtor). This bench also takes note of the fact that the said amount was written off through a journal entry in the Corporate Debtor’s book on 01.04.2017 and that no amount is shown as payable by the Corporate Debtor to Innoventive Industries as on 31.03.2018. Therefore, in view of the Financial Statements of the year ending on 31.03.2018 showing otherwise, confirmation of loan by the Corporate Debtor in the year 2014 has no bearing. The Bench also takes note of the written submissions of the Liquidator of Innoventive Industries Ltd. stating that receivables from Sankalp are not shown in the Financials for the year 2017-18 as they would have been included under the general head in the Financials. However, in the absence of schedules to the balance sheet of Innoventive for Financial year 2017-18 it is not feasible for the bench to cross verify this statement.

5.11 While adjudicating upon an application for admission into Resolution Process filed by a Financial Creditor, it is mandated to ascertain the existence of the debt, and any default in payment of such debt. In the facts and circumstances state supra, it is clear that the Applicant is unable to show the existence of Financial debts and default of the amount claimed in the petition.”

21. On perusing the financial statements of IIL for F.Y. ending on March 31, 2017 at page 2145 of the Appeal Paper Book ('**APB**' in short), we find that it is stated therein that: *"The holding company control was diluted on account of fresh issuance of shares as on 19th December, 2016. Accordingly, the Consolidated financial statement includes profit/(losses) of Sankalp Engineering and services Private Limited till the date the control ceases to exist. Further all assets and liabilities pertaining to this subsidiary have been derecognised from the financial statements"*. From the above statement in the financial statements, the accurate factual position is that there is no balance confirmation of the alleged unsecured loan either by IIL or by the Corporate Debtor as on 31.03.2017. We also cannot be unmindful of the fact that even there is inconsistency in the quantum of alleged debt shown has varied. In terms of the NeSL data, the Debt Contract Date and Debt Start Date is 21.07.2021 and the quantum is Rs. 5.10 cr as placed at page 2086 of APB. The Information Memorandum dated 15.02.2017 prepared by the Resolution Professional during the CIRP of IIL had reflected Rs.5.10 cr as receivable from the Corporate Debtor with the observation that it was qualified by the auditors for non-provision of doubtful recovery. Moreover, the quantum of receivables has been shown as Rs.5.02 cr at the beginning of the F.Y. 2016-17 and shown as Rs.5.10 cr at the end of F.Y. without substantiating the reasons for this difference.

22. Given this background that there is no balance confirmation of the alleged unsecured loan coupled with admitted fact that the receivables due

from the Corporate Debtor was no longer reflected separately in the balance sheet of IIL from 2017-18 onwards, we are of the view that the Adjudicating Authority has not erred in holding that confirmation letter of 25.05.2014 lacks relevance and cannot be relied upon to establish debt. We find no cogent reasons to differ with the findings of the Adjudicating Authority that debt and default on the part of the Corporate Debtor has not been brought out in clear, precise and specific terms which is the mandate of Section 7 of IBC.

23. This brings us to the contention of the Appellant that being an assignee, the Appellant is not required to prove the existence of the debt specially because the debt was an admitted position between the Corporate Debtor and IIL. The Learned Counsel for the Appellant submitted that the liquidator had assigned trade receivables of IIL amounting Rs.5.10 cr which was due from the Corporate Debtor to the Respondent/Financial Creditor vide a Deed of Assignment. The Appellant had thus acquired the debt of IIL legally as an assignee. The onus to prove that a debt existed cannot fall on the Appellant and the burden of proof should instead lie on the Corporate Debtor who needs to explain why it had summarily written off the debt.

24. To appreciate the issue at hand, it may be constructive to go through some of the relevant clauses of the Deed of Assignment which is as extracted below:

*“D. In pursuance of his powers and duties under the IBC, the Liquidator had issued a process memorandum dated 14 June 2021 (**“Process Memorandum”**) inviting bids for the auction of certain Claims/Transferred Assets of the Company and an electronic auction for such Transferred Assets of the Company was conducted on 25 June, 2021. The Assignee, having read the terms and conditions of the Process*

*Memorandum and after undertaking their own diligence, bid for the Transferred Assets at a price of INR 25,00,000 (Indian Rupees Twenty Five Lacs only) (**"Consideration"**) and was selected as the successful bidder.*

*E. Consequently, the Assignee and the Liquidator (on behalf of the Assignor) entered into a Letter of Intent dated 1 July 2021 (**"LOI"**), wherein the Assignee had agreed to acquire from the Assignor all the rights, title and beneficial interest/property of the Assignor in the Transferred Assets, on "As is where is basis", "As is what is basis", "whatever there is basis" and "No recourse" basis, which the Assignor has agreed to do upon the terms and conditions recorded hereinafter in this Deed.*

NOW THIS DEED WITNESSETH THAT AND IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. In pursuance of the aforesaid and for the consideration paid by the Assignee and received by the Assignor being the full and final consideration payable by the Assignee to the Assignor (the payment and receipt whereof the Assignor does hereby admit and acknowledge), the Assignor thereby agrees to assign and hereby assigns or, as the case may be, assigns in advance to Assignee and the Assignee hereby agrees to accept and accepts or, as the case may be, accepts in advance from the Assignor the assignment of the Transferred Assets on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse" basis.

4. Upon the assignment of the Transferred Assets, the Assignee shall stand in the shoes of Assignor in respect of the Transferred Assets including right to property and shall have the right, at his own expense and responsibility, and without any reference or recourse to the Assignor, to take all steps in respect of recovery of the Transferred Assets including in place and stead of the Assignor, to demand, sue for, litigate, compromise, settle and recover all Claims and to take such further actions as may be necessary or desirable to uphold, defend or institute any legal proceedings including its corresponding inherent right of action in respect of the Claims. Assignor hereby transfers upto Assignee full authority to do all things necessary to enforce the Claims and all of Assignor's rights and obligations in respect of the Claims including right to substitute the Assignor in all, pending legal proceedings in respect of the Claims. The Assignee agrees to bear all costs and expenses, including attorney fees, in case the Assignor is required to be represented before or file any

applications/pleadings/affidavits etc. in any legal proceedings in respect of the Claims.”

25. A plain reading of the Deed of Assignment shows that ‘receivables’ of IIL were assigned at a sum of Rs.25 lakh only on an ‘as is where is’, ‘as is what is’ and ‘whatever there is’ and ‘no recourse’ basis. When we look at the Annual Report of IIL for F.Y. 2015-16 as placed at page 1579 of APB the exposure of IIL has been shown under the Head of “Receivables” and not under the Head of “Intercompany Loan” which should have been the treatment in case the amount was a loan. It is also admitted by the Appellant that the block of assets assigned to the Appellant under this assignment deed included trade receivable of Rs.5,10,61,270/- due from Corporate Debtor. Given the fact that it is well settled that an assignee steps into the shoes of the assignor and the rights of the assignee are no better than that of the assignor, we find substance in the contention of the Respondent that when the assigned amount has been clearly shown as trade receivable in the Deed of Assignment, it cannot be viewed as a loan particularly so when there is no contract/agreement between the Corporate Debtor and IIL recording advance of any loan. Nothing has been placed on record either by the Appellant to substantiate that the disbursement had been made for consideration for time value of money. For the reasons discussed above, we find no good reasons to disagree with the findings of the Adjudicating Authority that the facts of the present case are such that the debt qua the Appellant lack the trappings of a financial debt and that it had become due and payable and that there has arisen non-payment of the same beyond the threshold limit.

26. In result, we are of the view that the Adjudicating Authority did not commit any error in rejecting the Section 7 application filed by the Appellant. The impugned order does not warrant any interference. There is no merit in the Appeal. Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

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

Place: New Delhi

Date: 08.05.2024

Ashok Kumar