

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

16th December, 2022

Subject: Judgment^[1] dated 13th December, 2022, in the matter of Siti Networks Ltd. Vs. Assets Care and Reconstruction Enterprises Ltd. & Anr. [Company Appeal (AT) (Ins.) No. 1449 of 2022]

I. Brief Background:

1. FC (Housing Development Finance Corporation Limited) has sanctioned a loan to the CD (Siti Networks Ltd.) on 06.09.2016. The CD was classified as non-performing asset on 30.06.2019. On 17.02.2022 FC filed application under section 7 of the Code seeking initiation of CIRP against the CD .
2. On 29.06.2022, FC vide registered assignment deed assigned the debt of the CD to the Assets Care and Reconstruction Enterprise Limited (ACREL) i.e., Assignee. The CD was also informed about the assignment vide letter dated 06.07.2022. The assignee filed an application before AA seeking to be substituted as FC in place of original FC and to be permitted to pursue the section 7 petition filed by FC.
3. The AA vide an order on 01.11.2022 allowed ACREL (Assignee) to be substituted on the basis of assignment. The AA held that there was no binding precedent from higher forum and there is no express prohibition in the Code to prevent the assignee to come on record and continue the pending proceedings. The CD challenged the order dated 01.11.2022 before NCLAT. It contended that the Assignee could not have been permitted to continue section 7 proceedings although it is open for it to file a fresh application under section 7 on the strength of assignment. Reliance was placed on the order of the NCLT, Bengaluru Bench dated 26.08.2019 where the Bengaluru Bench has taken the view that although the assignment was made during pendency of the proceeding but it is the prerogative of the Applicant to file miscellaneous application to implead proper and necessary party and the State Bank of India who was Applicant having assigned could not prosecute the Application and the assignee also cannot substitute itself as Applicant.
4. NCLAT observed that section 5(4) of the SARFAESI Act does contemplate continuation of all proceedings after acquisition of financial assets by an assignee. There is no dispute that ACREL was assigned the debt by original FC during pendency of section 7 proceedings. Further, Order XXII Rule 10 of Civil Procedure Code, 1908 contemplates continuance of proceeding on the basis of devolution of rights with the leave of the Court, which is applied generally in civil proceedings and suit. It held that there is no prohibition in the Code or the Regulations from continuing the proceeding by an assignee. 'Financial Creditor' as defined under section 5(7) also includes a person to whom such debt has been legally assigned or transferred to. By virtue of the assignment, ACREL become the Financial Creditor and having stepped in the shoes of Housing Development Finance Corporation Limited, it has every right to continue the proceeding which was initiated by the FC.
5. NCLAT upheld the order of the AA and dismissed the appeal.

II. Analysis: - In case of assignment of debt during section 7 application pending before the AA, there is no prohibition in the Code from continuing the proceeding by an assignee.

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