

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 895 & 896 of 2024**

[Arising out of Order dated 04.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court-II) in IA (IBC) 504/KB/2022 and IA (IBC) 1371/KB/2023 in CP (IB) 634/KB/2020]

**In the matter of:**

**Emta Coal Ltd.**

**...Appellant**

**Vs.**

**L&T Finance Ltd. & Anr.**

**...Respondents**

**For Appellant:**

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Rishab Banerji, Mr. Animesh Kumar, Mr. Kunal Godhwani, Mr. Zeeshan Haque and Mr. Tanay Agarwal, Advocates

**For Respondents:**

Mr. Vishesh Kalra, Mr. Sourabh Tandon, Ms. Alka Chaturvedi, Advocates for R-1  
Mr. Krishnendu Datta, Sr. Advocate with Ms. Smriti Churiwal, Mr. Jaiveer Kant and Mr. Hardik Khatri, Advocates for R2.

**J U D G M E N T**  
**(28<sup>th</sup> May, 2024)**

**Ashok Bhushan, J.**

The Appeal by Corporate Debtor has been filed challenging the order dated 04.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court-II) in IA (IBC) 504/KB/2022 and IA (IBC) 1371/KB/2023. An application under Section 7 was filed by 'L&T Finance Ltd.' against the Corporate Debtor claiming the total default of Rs.74,99,25,691/- and date of default as 15.08.2016 on 27.01.2020. During the pendency of Section 7 application, by Assignment Agreement dated

29.03.2022, the debt was assigned to 'Phoenix Arc Pvt. Ltd.'- Respondent No.2 herein and an IA (IBC) 504/KB/2022 was filed by 'Phoenix Arc Pvt. Ltd.' praying for its substitution in place of 'L&T Finance Ltd.'. Subsequent to filing of the IA (IBC) 504/KB/2022, the Corporate Debtor filed an IA (IBC) 1371/KB/2023 seeking a direction to 'L&T Finance Ltd.' to produce the original Assignment Agreement dated 29.03.2022 and to impound the original agreement. Adjudicating Authority heard the parties on both the applications and by impugned order has allowed the IA (IBC) 504/KB/2022 permitting substitution of 'Phoenix Arc Pvt. Ltd.' and dismissed the IA (IBC) 1371/KB/2023. Challenging the impugned order, this appeal has been filed by the Corporate Debtor.

2. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant, Shri Vishesh Kalra, Learned Counsel for the Respondent No.1 and Shri Krishnendu Datta, Learned Senior Counsel for the Respondent No.2.

3. Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant challenging the order contends that the Assignment Agreement dated 29.03.2022 was not duly stamped and a document which was not properly stamped under the Maharashtra Stamp Act, 1958 could not have been admitted, in event the Adjudicating Authority committed error in relying on the Assignment Agreement and permitting 'Phoenix Arc Pvt. Ltd.' to be substituted whereas the document which was not adequately stamped was required to be impounded and the application filed by the Corporate Debtor for impounding the document has been wrongly rejected. It is submitted that under Section 35 of the Stamp Act, no document which is not adequately

stamped can be received in evidence. Adjudicating Authority committed error in relying on the Assignment Agreement. It is submitted that the provision of Section 5(1A) of the SARFAESI Act, 2002 which grant exemption of payment of stamp duty is not applicable in the State of Maharashtra. It is submitted that the relief which was granted in payment of stamp duty in the State of Maharashtra with regard to Assignment Agreement by Government Order dated 06.05.2002 was subsequently withdrawn by order dated 26.08.2005. Hence, for Assignment Agreement, stamp duty as is required to be paid under the Maharashtra Stamp Act, 1958 is required to be paid.

4. Shri Krishnendu Datta, Learned Senior Counsel for the Respondent refuting the submissions of the Counsel for the Appellant submits that the Assignment Agreement being registered document has rightly been relied by the Adjudicating Authority. With regard to document which is registered there is presumption that document is also adequately stamped. It is submitted that the Adjudicating Authority has rightly allowed the substitution application filed by 'Phoenix Arc Pvt. Ltd.'. It is submitted that Section 7 application filed by 'L&T Finance Ltd.' has been permitted to be prosecuted by 'Phoenix Arc Pvt. Ltd.' as per the provisions of the SARFAESI Act, 2002. Counsel for the Respondent has relied on the recent judgment of this Tribunal in ***"Pawan Kumar Manguturam Bairagra vs. Encore Asset Reconstruction Company Ltd. & Anr.- Company Appeal (AT) (Insolvency) No.701 of 2023"*** decided on 30.04.2024.

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

6. There is no dispute between the parties that the Assignment Agreement dated 29.03.2022 is a registered document. Counsel for the Respondent has relied on the provision of SARFAESI Act, 2002 which empowers the assignee to continue prosecute and enforce all applications, appeals and legal proceedings which were pending on the date of assignment. Section 7 application filed by 'L&T Finance Ltd.' was pending on the date of assignment. Hence, 'Phoenix Arc Pvt. Ltd.' has jurisdiction to prosecute the application.

7. We may refer to the provision of the SARFAESI Act. Section 5 of the SARFAESI Act, 2002 is as follows:-

***“5. Acquisition of rights or interest in financial assets.—(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any [asset reconstruction company] may acquire financial assets of any bank or financial institution—***

*(a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or*

*(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.*

*[(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of*

*the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 (2 of 1899):*

*Provided that the provisions of this subsection shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.]*

*(2) If the bank or financial institution is a lender in relation to any financial assets acquired under subsection (1) by the [asset reconstruction company], such [asset reconstruction company] shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.*

*[(2A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under subsection (1).]*

*(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and*

*which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the [asset reconstruction company], as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, [asset reconstruction company], as the case may be, had been a party thereto or as if they had been issued in favour of [asset reconstruction company], as the case may be.*

*(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the [asset reconstruction company], as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the [asset reconstruction company], as the case may be.*

*[(5) On acquisition of financial assets under sub-section (1), the [asset reconstruction company], may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the*

*purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the [asset reconstruction company] in such pending suit, appeal or other proceedings.]”*

8. This Tribunal has occasion to consider the provisions of Section 5 of the SARFAESI Act, 2002. Sub-Section (2) of Section 5 which contain a deeming clause. Paragraphs 24, 25 and 26 of the **“Pawan Kumar Manguturam Bairagra”** (supra) are as follows:-

*“24. Learned counsel for the Appellant referring to Section 5 Sub-section (1A) submits that although by virtue of above provision there was exemption from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 but the Indian Stamp Act having been repealed by virtue of Maharashtra Stamp Act, 1958, the exemption of stamp duty is not available with regard to acquisition of rights and interest by Asset Reconstruction Company. Learned counsel for the Appellant has referred to Schedule-II r/w Section 76 of Maharashtra Stamp Act by virtue of which Indian Stamp Act, 1899 has been repealed in the State of Maharashtra.*

*25. Section 5 of the SARFAESI Act, 2002 begin with expression “Notwithstanding anything contained in any agreement or any other law for the time being in force”. Thus, overriding effect has been given to the provision of Section 5(1) by virtue of which an Asset Reconstruction Company may acquire financial assets*

*of any bank or financial institution. Sub-section (1A) granting exemption from stamp duty was inserted w.e.f. 01.09.2016. We may also look into Sub-section (2) of Section 5 which contains a deeming clause by which on acquisition by an Asset Reconstruction Company, the Asset Reconstruction Company shall be deemed to be a lender.*

*26. Section 5(2) came for consideration before this Tribunal in “Naresh Kumar Aggarwal vs. CFM Asset Reconstruction Pvt. Ltd. & Ors., Company Appeal (AT) (Ins.) No.470 of 2023” where this Tribunal considered Sub-section (2) of Section 5 of SARFAESI Act, 2002. It was held that when acquisition of assets by Asset Reconstruction Company is made under Section 5(1), deeming provision shall come into play and Asset Reconstruction Company shall be deemed as Lender for all purposes. In Para 7 to 9 following was held:*

*“7. Section 5 Sub-section (1) begins with nonobstante clause with the words "Notwithstanding anything contained in any agreement or any other law for the time being in force...". Section 5 is an enabling provision to empower the Asset Reconstruction Company to acquire financial assets in the manner provided in Sub- section (1). The Assignment Agreement dated 18.01.2021 was in accordance with Section 5(1)(b) i.e. by entering agreement with State Bank of India. Sub-section (2) of Section 5 contains a deeming clause. Sub- section (2) provides that Asset Reconstruction Company on such acquisition be deemed to be the lender and all the rights of such bank or financial institution shall vest in such*



*company. When the legislature uses the deeming fiction it is always for purpose and object.*

*8. Hon'ble Supreme Court had occasion to consider provision of Section 43 of the Indian Contract Act, 1872 which contains the deeming provision and on fulfilling the ingredients as provided in the statute, legal fiction will come into play, irrespective whether the transaction was in fact intended or even anticipated to be so. We may refer to Para 22.2.1, 22.2.2 and 22.3 of the judgment of the Hon'ble Supreme Court in "Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited vs. Axis Bank Ltd. & Ors., MANU/SC/0228/2020: (2020) 8 SCC 401", which is to the following effect:*

*"22.2.1. As regards construction of a deeming fiction, this Court pointed out the basic and settled principles in the following:*

*"88. In every case in which a deeming fiction is to be construed, the observations of Lord Asquith in a concurring judgment in East End Dwellings Co. Ltd. v. Finsbury Borough Council: 1952 AC 109 (HL) are cited. These observations read as follows: (AC pp. 132-133)*

*"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must Imagine a certain state of affairs. It does not say that, having done so, you must cause*

*or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

*These observations have been followed time out of number by the decisions of this Court. (See, for example, M. Venugopal v. Divisional Manager, LIC: MANU/SC/0310/1994: (1994) 2 SCC 323 at page 329).*

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*94. Although a deeming provision is to deem what is not there in reality, thereby requiring the subject matter to be treated as if it were real, yet several authorities and judgments show that a deeming fiction can also be used to put beyond doubt a particular construction that might otherwise be uncertain. Thus, Stroud's Judicial Dictionary of Words and Phrases (7th Edition, 2008), defines "deemed as follows:*

*"Deemed" as used in statutory definitions "to extend the denotation of the defined term to things it would not in ordinary parlance denote", is often a convenient device for reducing the verbiage or an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words "deem" and "deemed" when used in a statute thus simply state the effect or meaning which some matter or things has-the way in which it is to be adjudged; this need not import artificiality or fiction; it may simply be the statement of an indisputable conclusion."*

22.2.2. In *Pioneer Urban*, this Court further extracted extensively from the decision in *Hindustan Cooperative Housing Building Society Limited v. Registrar, Cooperative Societies and Anr.*: MANU/SC/0203/2009: (2009) 14 SCC 302 on various features of the processes of construction of different deeming provisions in different contexts. Some of the relevant parts of such extraction (as occurring in paragraph 95 of *Pioneer Urban*) read as follows (in SCC at pp. 524):

“ ‘... The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.

(Per Lord Radcliffe in *St. Aubyn v. Attorney General*: 1952 AC 15 (HL), AC p. 53)

14. 'Deemed', as used in statutory definitions [is meant]

'to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage of an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words "deem" and "deemed" when used in a statute thus simply state the effect or meaning which some matter or thing has the way

*in which it is to be adjudged; this need not import artificiality or fiction; it may simply be the statement of an undisputable conclusion.'*

*(Per Windener, J. in Hunter Douglas Australia Pty. v. Perma Blinds: MANU/AUSH/0055/1970: (1970) 44 Aust LJ R 257)*

*15. When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per Cave, J., in R. v. Norfolk County Court: (1891) 60 LJ QB 379).*

*'When a statute gives a definition and then adds that certain things shall be "deemed to be covered by the definition, it matters not whether without that addition the definition would have covered them or not.'* *(Per Lord President Cooper in Ferguson v. McMillan 1954 SLT 109 (Scot))*

*16. Whether the word "deemed" when used in a statute established a conclusive or a rebuttable presumption depended upon the context (see St. Leon Village Consolidated School District v. Ronceray: (1960) 23 DLR (2d) 32 (Can)).*

*'... I regard its primary function as to bring in something which would otherwise be excluded.'* *(Per Viscount Simonds in Barclays Bank Ltd. MANU/WB/0296/1959: 1961 AC 509 at AC p. 523.) V. IRC: "Deems" means "is of opinion" or "considers" or "decides" and there is no implication of steps to be taken before the opinion is formed or the decision is taken."* *[See R. v. Brixton Prison (Governor), ex p Soblen: (1963) 2 QB 243 at QB p. 315.]"*

22.3. On a conspectus of the principles so enunciated, it is clear that although the word 'deemed' is employed for different purposes in different contexts but one of its principal purpose, in essence, is to deem what may or may not be in reality, thereby requiring the subject-matter to be treated as if real. Applying the principles to the provision at hand i.e., Section 43 of the Code, it could reasonably be concluded that any transaction that answers to the descriptions contained in sub-sections (4) and (2) is presumed to be a preferential transaction at a relevant time, even though it may not be so in reality. In other words, since sub-sections (4) and (2) are deeming provisions, upon existence of the ingredients stated therein, the legal fiction would come into play; and such transaction entered into by a corporate debtor would be regarded as preferential transaction with the attendant consequences as per Section 44 of the Code, irrespective whether the transaction was in fact intended or even anticipated to be so."

9. Following the law laid down by the Hon'ble Supreme Court in the above case, when acquisition of assets by Asset Reconstruction Company is made as per Section 5(1), deeming provision contained in Sub-section (2) of Section 5 shall come into play and the Asset Reconstruction Company shall be deemed to be Lender for all purposes. As a Lender, the Respondent No.1 was fully entitled to exercise its right to initiate proceeding under Section 7."

9. By virtue of Section 5(2) of the SARFAESI Act, 'Phoenix Arc Pvt. Ltd.' is fully entitled to prosecute the application which was filed by 'L&T Finance Ltd.'. Present is a case where Assignment Agreement is a registered document. This Tribunal in **“Pawan Kumar Manguturam Bairagra”** (supra) in paragraph 27 has laid down following:-

*“27. We, thus, are of the view that on the strength of Sub-section (2) of Section 5 of SARFAESI Act when Respondent No.1 has acquired the assets of the Cooperative Bank, the Respondent No.1 shall be deemed to be lender and shall be entitled to file Section 7 application against the Corporate Debtor who has mortgaged its immovable property as well as executed Deed of Guarantee to secure the loan facility. The above provision is sufficient to hold that Respondent No.1 was fully competent to file Section 7 application as a lender to the facilities extended to Borrower-1 and Borrower-2 of which Corporate Debtor was Guarantor and Mortgagor.”*

10. Coming to the Notification dated 06.05.2002 which was noticed in the above judgment. Submission of the Appellant is that the said Notification has been subsequently withdrawn on 26.08.2005. Copy of the Notification dated 26.08.2005 has been brought on the record where the earlier Notification dated 06.05.2002 has been rescinded. It is to be noted that when a document is presented before the Registering Authority, Registering Authority is to satisfy itself with regard to stamp duty paid on the document and in event Registering Authority finds that document is inadequately stamped, it may send the document to the Collector for determining the deficiency. In the

present case, document was registered without raising any objection regarding inadequacy of the stamp.

11. In the facts of the present case where Assignment Agreement is registered and has been filed in the proceedings under Section 7, we are of the view that by virtue of Section 5(2) of the SARFAESI Act, 'Phoenix Arc Pvt. Ltd.' is entitled to prosecute and deeming clause as contained in Section 5(2) fully protects and entitled the 'Phoenix Arc Pvt. Ltd.' to prosecute Section 7 application. We, thus, do not find any error in the order of the Adjudicating Authority allowing IA (IBC) 504/KB/2022 filed by 'Phoenix Arc Pvt. Ltd.'.

12. In the present case, the Adjudicating Authority itself has noticed the larger Bench Judgment of the Hon'ble Supreme Court in ***"M/s. Bhaskar Raju and Brothers and Anr. vs. M/s. Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram Other Charities and Ors.- Curative Petition (C) No. 44/2023 in R.P.(C) No. 704/2021 in C.A. No. 1599/2020 with Arbitration Case (C) No. 25/2023"*** and has extracted the conclusion of the Hon'ble Supreme Court' judgment in paragraphs (ii) to (iv). Paragraph (iii) under Issue No.II is as follows:-

*"(iii) The Apex Court has concluded the judgment as follows:*

*"224. The conclusions reached in this judgment are summarised below:*

*a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;*

*b. Non-stamping or inadequate stamping is a curable defect;*

*c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;*

*d. Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and*

*e. The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent."*

13. Counsel for the Appellant sought to distinguish the judgment of this Tribunal in **“Pawan Kumar Manguturam Bairagra”** (supra) on the ground that in the said case, complaint was filed by the Appellant himself regarding deficiency of stamp duty before the Collector which complaint was pending and in the present case, no complaint has been filed by the Corporate Debtor before the Collector. The factum of filing complaint by the Appellant in **“Pawan Kumar Manguturam Bairagra”** (supra) is not relevant nor is the reason to not follow the judgment of this Tribunal in **“Pawan Kumar Manguturam Bairagra”** (supra). Judgment of this Tribunal noticing Section 5(2) of the SARFAESI Act, 2002 and holding that assignee was entitled to prosecute the application need to be followed while deciding this Appeal.

14. In the facts of the present case, we are of the view that the Adjudicating Authority did not commit any error in rejecting the application of the Corporate Debtor praying for impounding of the document. We, thus, do not



find any error in the order passed by the Adjudicating Authority deciding both the applications as noted above. There is no merit in the Appeals. The Appeals are dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

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

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

**New Delhi  
Anjali**