

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

**Company Appeal (AT) (Insolvency) No. 521 of 2024  
& I.A. Nos. 1824, 3031 of 2024**

[Arising out of Order dated 25.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata, Court No-II in C.P. (IB) No. 4/KB/2019]

**IN THE MATTER OF:**

**JM Financial Asset Reconstruction Company Ltd. ....Appellant**

**Vs.**

**Howrah Mills Company Ltd & Anr. ...Respondents**

**For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Chitranshul A. Sinha, Advocate.**

**For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Ms. Sadapurna Mukherjee, Advocate for R-1.**

**Mr. Sunil Fernandes, Sr. Advocate with Ms. Diksha Dadu, Ms. Rajshree Chaudhary and Mr. Abhimanyu Walia, Advocates.**

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

**Ashok Bhushan, J.**

1. This Appeal by the Financial Creditor has been filed challenging the order dated 25.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court No.II, Kolkata rejecting Section 7 application filed by the Appellant- Financial Creditor. Aggrieved by the order rejecting Section 7 application, the Financial Creditor has filed this Appeal.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:-

2.1. Federal Bank had advanced various loans to Howrah Mills Company Limited (Corporate Debtor) in the year 2013 amounting to Rs.40.38 Crores. Federal Bank declared the loan accounts of the Corporate Debtor as Non-Performing Asset (NPA) on 30.12.2015. Federal Bank assigned the loans given to the Corporate Debtor with all right, title and security interest in favour of the Appellant vide a Registered Assignment Agreement dated 30.03.2016. Due to continued defaults by the Corporate Debtor, Appellant preferred a Company Petition bearing C.P.(IB) No. 4/KB/2019 to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. During pendency of Section 7 application, the Appellant entered into an Agreement to Assign dated 15.01.2020 with Respondent No.2- 'Abhinandan Holdings Pvt. Ltd.' (hereinafter referred to as 'Intending Assignee') under which agreement, Appellant agreed to assign the loan along with security interests upon receipt of total consideration of Rs.26.01 Crores. After Agreement to Assign, Appellant filed an application to withdraw Section 7 application which was allowed by the Adjudicating Authority by order dated 23.01.2020 while granting the Appellant the liberty to revive the Company Petition in case the settlement (Agreement to Assign) failed. As per Assignment Agreement, an amount of Rs.4.50 Crores was to be paid by intending assignee by 31.01.2020 which having not paid, on 27.02.2020, Appellant wrote to Respondent No.2 to make the payment along with interest otherwise it would be considered as an event of default under the Agreement

to Assign. Respondent No.2 having failed to honour the terms of the Agreement to Assign, letter dated 02.03.2020 was issued by the Appellant to the intending assignee revoking and cancelling the Agreement to Assign and further forfeiting the amount paid by the Respondent No.2 with observations that amount submitted shall be adjusted to the outstanding dues payable by the Corporate Debtor. After receiving the letter dated 02.03.2020, there were certain correspondences made by the Respondent No.2 with Appellant proposing payments in September 2020. A pay order of Rs. 1 Crore was also sent to the Appellant which was not encashed by the Appellant. Appellant on 31.07.2020 filed an application for Restoration of the Company Petition being RST.A. 842/KB/2020. Adjudicating Authority vide order dated 02.02.2021 allowed the restoration. The Corporate Debtor filed an appeal being Company Appeal (AT) (Insolvency) No.339 of 2021 challenging the order dated 02.02.2021. This Tribunal vide order dated 11.01.2023 disposed of the Appeal refusing to interfere with restoration order with observations that the Adjudicating Authority to pass order on Section 7 application after hearing the Appellant, Corporate Debtor and Respondent No.2. Respondent No.2 impleaded itself as party in the Company Petition on 21.03.2023. Respondent No.2 filed a reply in Company Petition contending that in the Civil Suit being T.S. No.22 of 2020 filed in Commercial Court an interim injunction has been passed on 29.09.2021 restraining the Appellant from giving effect to the revocation letter dated 02.03.2020. Reference of another suit being T.S. No. 322 of 2020 was also made which was filed by the corporate debtor before the Civil Judge, Senior Division, 3<sup>rd</sup> Court, Howrah wherein an interim order was passed on 20.10.2020 restraining the

Appellant from giving effect to the letter dated 02.03.2020. Appellant filed a rejoinder to the reply filed by the Respondent No.2. Adjudicating Authority after hearing the parties by impugned order has rejected Section 7 application filed by the Appellant. Adjudicating Authority held that the Appellant cannot proceed against 'Howrah Mills Company Ltd.'. However, it can proceed against the Respondent No.2 for any default committed by the Respondent No.2 in terms of the Agreement but not against Howrah Mills, its financial assets being already purchased by Respondent No.2. Adjudicating Authority held that in view of the interim injunction dated 29.09.2021, the assignment agreement is still enforced and the Appellant has been restrained by Civil Court of Competent jurisdiction from giving effect to the notice dated 02.03.2020. It was further held that the default against 3<sup>rd</sup> and 4<sup>th</sup> tranche falls within 10A and application under Section 7 against the corporate debtor is not maintainable. Aggrieved by the impugned order, this appeal has been filed.

2.2. An IA No.3031 of 2024 has been filed by Respondent No.1- Corporate Debtor praying for deletion of Respondent No.1 from the memo of parties of the appeal.

3. We have heard Shri Abhijit Sinha, Learned Senior Counsel for the Appellant, Shri Krishnendu Datta, Learned Senior Counsel and Ms. Sadapurna Mukherjee for the Respondent No.1 and Shri Sunil Fernandes, Learned Senior Counsel for the Respondent No.2.

4. Learned Senior Counsel for the Appellant submits that the Adjudicating Authority in the impugned order has misconstrued the Agreement to Assign while holding that application under Section 7 is not maintainable against Howrah Mills Company Ltd., the Corporate Debtor. It is submitted that the agreement dated 15.01.2020 entered between the Appellant and the Respondent No.2 was Agreement to Assign which was dependent on payment of consideration amount of Rs.26.01 Crores. The Agreement mentioned the Appellant as 'intending assignor' and Respondent No. 2 as 'intending assignee' which clearly indicates that agreement dated 15.01.2020 was not an assignment agreement, hence, corporate debtor continues to be liable for its debt and default. It is further submitted that Company Petition was withdrawn by order dated 23.01.2020 with liberty to revive, if agreement fails. Respondent No.2 having not made the payment which was due by 31.01.2020, default was committed and the Appellant was entitled for revival which restoration application was filed on 31.07.2020 and was allowed by the Adjudicating Authority on 02.02.2021. Order of restoration was challenged by the corporate debtor in this Tribunal by filing Company Appeal (AT) (Insolvency) No.339 of 2021 in which the order of revival of company petition was not interfered with and only observation made was that the Adjudicating Authority to pass order after hearing Appellant, Respondent No.1 and Respondent No.2. Adjudicating Authority has unduly relied on interim injunction dated 29.09.2021 passed by Commercial Court in suit filed by Respondent No.2 being T.S No. 22 of 2021 where only injunction granted was that *"the Respondent No.1 and or his men and agents is restrained from giving any further effect or acting on the basis of*

*the letter March 02, 2020 till 8.10.2021*". It is submitted that the said order has no effect on the maintainability or continuance of Section 7 application filed by the Appellant against the corporate debtor. By continuing Section 7 application, Appellant was not giving any further effect or acting on the basis of the letter dated 02.03.2020. Letter dated 02.03.2020 was letter revoking the agreement dated 15.01.2020. Since Respondent No.2 failed to honour its commitment which agreement was revoked and cancelled and the application for restoration was filed on 31.07.2020 much before passing of the order of interim injunction. The order of interim injunction in no manner affect the debt and default which is committed by the corporate debtor and the said order cannot be relied for rejection of Section 7 application filed by the appellant. Debt and default having been committed by the corporate debtor which debt and default is still continuing since amount payable by the corporate debtor has not been paid Appellant was fully entitled to pursue Section 7 application and the Adjudicating Authority committed error in rejecting Section 7 application. The order passed by the Adjudicating Authority deserves to be set aside and Section 7 application filed by the appellant be admitted.

5. Shri Sunil Fernandes, Learned Senior Counsel appearing for the Respondent No.2 supported the impugned order of the Adjudicating Authority and submits that in view of the Agreement to Assign dated 15.01.2020, it is the Respondent No.2 who has come into picture as assignee of the debt of the corporate debtor and on payment of 25% of the amount i.e. Rs.6.5 Crores on signing of the agreement, the Appellant was precluded from

pursuing Section 7 application. Counsel for the Respondent No.2 has relied on clause 7.4.5 of the Agreement to support his submission that Appellant was legally not entitled to prosecute Section 7 application. After receipt of 25% of the consideration as per agreement, Appellant is bound by the agreement and could not have proceeded with Section 7 application. It is submitted that at best the appellant has remedy against Respondent No.2 but could not have proceeded with Section 7 application and the Adjudicating Authority has rightly dismissed Section 7 application with liberty to the Appellant to proceed against Respondent No.2. It is submitted that injunction order dated 29.09.2020 passed by the Commercial Court is still operative and binds the appellant. The injunction order cannot be ignored on the spacious plea of the appellant that injunction order is without jurisdiction and till the order is set aside, order continues to operate. Counsel for Respondent No.2 relied on judgment of the Hon'ble Supreme Court in ***"Anita International vs. Tungabadra Sugar Works Mazdoor Sangh and Ors.- (2016) 9 SCC 44"***.

6. Shri Krishnendu Datta, Senior Counsel and Ms. Sadapurna Mukherjee, Counsel for the Respondent No.1 has supported the impugned order and submitted that the Respondent No.1 be deleted from the array of parties in the appeal.

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

8. There is no dispute between the parties that the Corporate Debtor has availed financial facilities from Federal Bank which stood assigned to appellant on 30.03.2016 by registered Assignment Agreement. Section 7 application was filed by the Appellant against the corporate debtor claiming debt and default of Rs.40.38 Crores. During pendency of the Company Petition, agreement to assign dated 15.01.2020 was entered between the parties. Clauses of the Agreement to Assign having come up for consideration in the appeal, it is necessary to notice certain clauses of the agreement. Agreement itself admit that borrower has taken financial assistance from Federal Bank and the appellant is predecessor-in-interest and the loan account was subsequently assigned to the appellant by registered agreement dated 30.03.2016. Clause 1(d) defines 'purchase consideration', which is as follows:-

**"1. Definitions**

xxx

xxx

xxx

**d. Purchase Consideration** means an amount agreed amongst the Parties which shall be the aggregate purchase consideration for the Agreement to Assign the Financial Assets OR means an amount of Rs. 26,01,00,000/-, (Rupees Twenty Six Crores and One Lakh Only) being the aggregate purchase consideration for the Loans. The Purchase Consideration shall be paid as per the schedule mentioned below, subject to cure period as stipulated under clause 7.4.2 of this agreement.

<b>Sr.</b>	<b>Particulars</b>	<b>Instalment%</b>	<b>Instalment</b>
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<b>No.</b>			
1.	<i>Since Paid</i>	25.00%	6.50
2.	<i>On or before January 31, 2020</i>	17.30%	4.50
3.	<i>On or before February 29, 2020</i>	26.91%	7.00
4.	<i>On or before March 25, 2020</i>	30.79%	8.01
	<b>Total</b>	<b>100%</b>	<b>26.01</b>

WHEREAS:

*(A) The Intending Assignor has expressed its desire to assign to Intending Assignee, the Financial Assets (as hereinafter defined) of the Borrower more particularly described in Schedule I and the Intending Assignee is agreeable to acquire the said Financial Assets.*

*(B) The Parties are desirous of setting forth the terms and conditions, representations, warranties and principles relating to the assignment of Financial Assets and all its rights, title and interest thereunder.”*

9. Clause 2 deals with ‘assignment’. Clause 2 of the agreement is as follows:-

**“2. ASSIGNMENT**

*(a) For and against the Purchase Consideration paid by the Intending Assignee to the Intending Assignor and upon terms and conditions set forth herein, the Intending Assignor hereby agrees to sell, assign and transfer all its rights, title and interest in the Financial Assets to the*

*Intending Assignee/nominee appointed by Intending Assignee and the Intending Assignee hereby agrees to purchase from the Intending Assignor or arrange purchase by its nominee from Intending Assignor, so that the Intending Assignee/ its nominee shall become the full and absolute legal owner and the only person legally entitled to the Financial Assets or any part thereof as defined herein above in the instant agreement.*

*After the payment of Purchase Consideration, the Intending Assignor shall transfer/deliver or cause to be transferred/ delivered to the Intending Assignee / its nominee all such available original loan documents, deeds and/or writings related to Financial Assets.*

*(c) The Parties irrevocably and unconditionally agree that on or before March 25, 2020 (subject to cure period as per clause 7.4.2 of this agreement) the Intending Assignee should make the payment as mentioned in clause 1.d above and the Parties shall enter into a Deed of Assignment / Assignment Agreement on or after receipt of the entire Purchase Consideration by the Intending Assignor as per mutually acceptable terms and conditions to complete the transaction envisaged herein.”*

10. Clause 5.1 contains the ‘undertaking by the intending assignor’ that after receipt of the entire purchase consideration within the stipulated timelines, Appellant to execute the Deed of Assignment Agreement. Clause 5.1 is as follows:-

**“5. UNDERTAKING BY THE INTENDING ASSIGNOR**

*5.1 The Intending Assignor irrevocably and unconditionally undertakes to execute the Deed of Assignment/ Assignment Agreement at the request of the Intending Assignee only after receipt of the entire Purchase Consideration within the stipulated timelines.”*

11. Clause 7.4 deals with ‘performance’ which contemplated that immediately after execution of the agreement, company petition filed by the appellant shall be withdrawn. Clauses 7.4.1, 7.4.2, 7.4.4 and 7.4.5 are as follows:-

**“7.4 Performance**

*7.4.1. If by the terms of this Agreement, any act would be required to be performed on or within a period ending on a day, which is not a business day, then it shall be performed, on or by the immediately succeeding business day. Time is of the essence of the contract.*

*7.4.2 Any delay in making payment of any single instalments of the Consideration under Sr. No. 2, 3, and 4 of the table under clause 1.d above beyond a cure period of 30 days from the respective due dates of payments shall be considered as Event of Default (hereinafter referred to as "Event of Default"). However, JMFARC shall permit delay up to 30 days from the respective due dates*

*for the payments by Intending Assignee subject to Intending Assignee paying simple interest computed @ 12% p.a. for the period of delay, on the delayed amount of instalment. In case of Event of Default, JMFARC shall have the right to forfeit the amounts received till the Date of Default and also to cancel this arrangement. Any such amount received shall be adjusted against the outstanding dues owed by the Borrower to JMFARC.*

*7.4.3 The Stamp duty on the assignment agreement/deed of assignment and the expenses towards registration of the documents between the Intending Assignor and Intending Assignee and any other legal expenses shall be borne by the Intending Assignee.*

*7.4.4 Immediately upon execution of this Agreement, JMFARC shall file petition to National Company Law Tribunal (NCLT), Kolkata Bench, Kolkata for withdrawal of its application under Insolvency and Bankruptcy Code (IBC) filed before National Company Law Tribunal, Kolkata Bench, Kolkata being C.P (IB) No. 4/KB/2019 against Howrah Mills Company Ltd (hereinafter referred to as "Howrah Mills"). If however, the application filed by JMFARC is admitted by NCLT, Kolkata Bench, Kolkata before execution of registered Deed of Assignment between JMFARC and Intending Assignee/its nominee, then this Agreement shall become null and void and all sums received by JMFARC from Assignee till date of admission shall be refunded back to the Intending Assignee preferably within 4 (four) weeks.*

*7.4.5 Upon receipt of initial 25% of the consideration, JMFARC shall keep in abeyance all legal actions and*

*legal proceedings initiated by JMFARC against Howrah Mills and its guarantors.”*

12. From the clauses of the agreement to assign, following is decipherable:

(i) Agreement dated 15.01.2020 is not an assignment agreement rather it was agreement to assign on fulfilment of the condition and receipt of the purchase consideration.

(ii) Clause 2(b) as extracted above clearly indicate that after the payment of purchase consideration, the intending assignor shall transfer/deliver or cause to be transferred/ delivered to the intending assignee/ its nominee all such available original loan documents, deeds and/or writings related to financial assets.

(iii) Further clause 2(c) clearly contemplated that the parties shall enter into a Deed of Assignment/ Assignment Agreement on or after receipt of the entire purchase consideration by the intending assignor. Thus, by agreement to assign the financial facilities which were taken by the corporate debtor continuous to bind the corporate debtor and the Respondent No.2 has not stepped into the shoes of the financial creditor mainly by agreement to assign.

(iv) Clause 7.4.2 deals with event of default. Clause clearly provides that *“any delay in making payment of any single instalments of the consideration under Sr. No. 2, 3 and 4 of the table under clause 1.d above beyond a cure period of 30 days from the respective due dates of*

*payments shall be considered as event of default*". Under clause 1(d) table no.2 before 31.01.2020 amount of Rs.4.5 Crores was to be paid giving benefit of cure period of 30 days. 30 days period came to an end on 01.03.2020. Thereafter the financial creditor has rightly issued a letter dated 02.03.2020 revoking and cancelling the agreement to assign, event of default having happened.

13. In any view of the matter, the debt of financial creditor has not been assigned to Respondent No.2 till date. The Appellant continue to be creditor and the Respondent No.1- Corporate Debtor as a debtor. Further, it is relevant to notice that the order of the Adjudicating Authority dated 23.01.2020 itself contemplated that the financial creditor will be entitled to revive the company petition if assignment fails. Assignment having been failed, financial creditor filed an application for revival on 31.07.2020 which was also allowed by the Adjudicating Authority on 02.02.2021 which order was also not interfered by this Tribunal vide order dated 11.01.2023 in Company Appeal (AT) (Insolvency) No.339 of 2021. Company Petition having stood revived, there was no impediment in proceeding with company petition under Section 7 filed by the appellant.

14. Adjudicating Authority has based its order on the interim injunction passed by Commercial Court dated 29.09.2021 in T.S. No.22 of 2020 filed by the Respondent No.2. The order of the Commercial Court has been quoted by the Adjudicating Authority in the impugned order, copy of which order has also been brought on record by Respondent No.2 in its reply which order has been extended from time to time. The order passed by the Commercial Court

was Order under 39 Rule 1 and 2 read with Section 151 CPC i.e. Order of temporary injunction. Temporary injunction granted by Trial Court is as follows:-

*"Hence, it is,*

**ORDERED**

*"The respondent No. 1 and or his men and agents is restrained from giving any further effect or acting on the basis of the letter March 02, 2020" till 08.10.2021.*

*Plaintiff/petitioner is directed to comply the provisions U/O 39 rule 3(a) and (b) of the code of Civil Procedure at once and furnish to the respondents:*

- 1. a copy of the injunction application;*
- 2. a copy of the affidavit filed in support of the temporary injunction application:*
- 3. a copy of the plaint;*
- 4. copies of documents on which the plaintiff/petitioner relies and*
- 5. an affidavit stating that the copies stated above have been so delivered or sent. Requisites to be filed immediately.*

*Todate for S/R and appearance, hearing of temporary injunction application, W.O, if any, in the meantime and also for filing the WS by the respondents."*

15. Temporary injunction which was granted was that *“Respondent No.1 and or his men and agents is restrained from giving any further effect or acting on the basis of the letter March 02, 2020 till 08.10.2021”*. The injunction order in no manner interdicted the proceeding under Section 7 which was initiated and revived by the appellant. Only restrain on appellant was that ***“it shall not give any further effect or acting on the basis of the letter March 02, 2020”***. By prosecuting Section 7 application, appellant was not giving any further effect or acting on the basis of the letter dated 02.03.2020. Section 7 application was filed on the debt and default by the corporate debtor, which was withdrawn on Agreement to Assign between the parties dated 15.12.2020 which agreement has been breached and as per liberty granted by the Adjudicating Authority, the company petition was revived which order was also affirmed by this Tribunal. Thus, there is no impediment in proceeding under Section 7 application. As observed above, agreement dated 15.01.2020 was only agreement to assign and was not assignment agreement. Purchase consideration has not been paid. No document of assignment has yet been executed by the appellant in favour of Respondent No.2. Thus, the debt on the part of the corporate debtor still continues and having not assigned to Respondent No.2, the corporate debtor continues as debtor and cannot be absolved from its liabilities to pay its debt.

16. Learned Counsel for the Respondent has placed much reliance on Clause 7.4.5 of the Agreement to Assign. The contention has been advanced that in view of Clause 7.4.5, upon receipt of initial 25% of the consideration,



JMFARC shall keep in abeyance all legal actions and legal proceedings initiated by JMFARC against Howrah Mills and its guarantors. We have already extracted the relevant clauses of Agreement to Assign dated 15.01.2020 in paragraphs 8 to 11 of this judgment. Purchase consideration is Rs.26.01 Crores out of which 25% i.e. Rs.6.50 Crores was paid on execution of the Agreement. Clauses of the Agreement further provided that on receipt of 25% of the consideration, JMFARC shall withdraw the application under Section 7 filed before the NCLT, Kolkata Bench, Kolkata which contemplation is in Clause 7.4.4. There is no dispute that after receipt of 25% of the consideration, Section 7 application was prayed to be withdrawn which was permitted by order dated 23.01.2021. Clause 7.4.5 has to be read along with Clause 7.4.4 where withdrawal was contemplated of Section 7 application and upon receipt of initial 25% of the consideration, JMFARC had to keep in abeyance all legal actions and legal proceedings initiated by JMFARC. Clause 7.4.5 was complied with as noticed above and application to revive Section 7 application i.e. Restoration Application was filed only on 31.07.2020 when further consideration as per time schedule of the Agreement to Assign was not complied with by Respondent No.2. Clause 7.4.5 thus, only contemplated of keeping in abeyance of all legal actions and legal proceedings initiated by JMFARC after receipt of 25% of the consideration but the said clause cannot prohibit the JMFARC not to take any proceeding when further instalments of purchase consideration were not paid as per the Agreement dated 15.01.2020. In any view of the matter, the Restoration Application having already been allowed by the Adjudicating Authority by order dated 02.02.2021 which was also affirmed by this

Tribunal in Company Appeal (AT) (Insolvency) No.339 of 2021, the submission of the Counsel for the Respondent that Section 7 application had to be kept in abeyance cannot be accepted.

17. We, thus, are of the view that the submission of the Respondent No.2 that on payment of 25% of the consideration, JMFARC was precluded from taking any legal action even though Respondent No.2 committed breach of the Agreement dated 15.01.2020 cannot be accepted.

18. We may also refer to Section 231 of the IBC which contains an injunction which is couched in negative term that “no civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order”. Section 231 is as follows:-

***“231. Bar of jurisdiction. - No civil court shall have jurisdiction in respect of any matter in which the [Adjudicating Authority or the Board] is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such [Adjudicating Authority or the Board] under this Code.”***

19. In the present case, Section 7 application is within the jurisdiction of the Adjudicating Authority which application although initially was withdrawn but having been restored by subsequent order of the Adjudicating

Authority has to be continued and interim injunction order dated 29.09.2021 issued by the Commercial Court can have no effect on continuance of proceeding under Section 7. We may also refer to Section 238 which gives Code an overriding effect. Section 238 is as follows:-

***“238. Provisions of this Code to override other laws. - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”***

20. The Adjudicating Authority in the impugned order after noticing the injunction order dated 29.09.2021 came to the following conclusion in paragraph 5:-

*“5. Such being the legal position, for all practical purposes*

*i. JMFARC cannot proceed against Howrah Mills anymore.*

*ii. However, JMFARC can proceed against Abhinandan for any default committed by Abhinandan in terms of agreement but not against Howrah Mills, its financial assets being already purchased by Abhinandan as explained above.”*

21. The view of the Adjudicating Authority that Appellant cannot proceed against Howrah Mills Co. Ltd. anymore is wholly erroneous and not in accordance with law. Appellant was entitled to proceed against the corporate

debtor since debt and default continues and debt against the corporate debtor is not wiped off and in any manner or diminished. The interim injunction order dated 29.09.2021 can have no effect on continuous of Section 7 application.

22. Now we come to the judgment of the Hon'ble Supreme Court relied by Counsel for the Respondent No.2 i.e. judgment in Anita International (supra). Appellant has relied on paragraphs 54 and 55 of the judgment, which is as follows:-

*“54. We are also of the considered view, as held by the Court in Krishnadevi Malchand Kamathia case, that it is not open either to parties to a lis or to any third parties to determine at their own that an order passed by a court is valid or void. A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a competent court is set aside as was also held by this Court in Official Liquidator and Jehal Tanti cases, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in Jehal Tanti case. In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is*

*liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted.*

*55. To be fair to the learned counsel for the appellants, it needs to be noticed that reliance was also placed on behalf of the appellants on Kiran Singh, Sadashiv Prasad Singh, and Jagmittar Sain Bhagat cases to contend that a decree passed by a court without jurisdiction was a nullity and that its invalidity could not be corrected even by the consent of the parties concerned. We are of the considered view that the proposition debated and concluded in the judgments relied upon by the learned counsel for the appellants (referred to above) is of no relevance to the conclusions drawn in the foregoing paragraph. In our determination hereinabove, we have not held that a void order can be legitimised. What we have concluded in the foregoing paragraph is that while an order passed by a court subsists, the same is liable to be complied with, till it is set aside.”*

23. There is no dispute to the proposition laid down by the Hon’ble Supreme Court in the above case. An order of court continues to bind the parties till it is set aside. Till the order of the court subsist, same is liable to

be complied with. By proceeding with Section 7 application by the Appellant, no non-compliance of the interim injunction order dated 29.09.2021 can be read. Present is a case where the Appellant is not contending that order dated 29.09.2021 be ignored rather the submission is that the said order has no effect on continuance of Section 7 application which has been revived by the Adjudicating Authority itself to proceed.

24. In view of the foregoing discussions, we are of the considered opinion that debt and default on the part of the corporate debtor still continues. The intending assignment having never taken place, the debt cannot be held to be assigned to Respondent No.2 so that the Respondent No.2 may step into the shoes of the financial creditor of the corporate debtor. Adjudicating Authority committed error in dismissing Section 7 application filed by the financial creditor. Debt and default having been proved, we are of the view that the Adjudicating Authority ought to have admitted Section 7 application and initiated CIRP against the corporate debtor.

25. By IA No. 3031 of 2024, Respondent No.1 has prayed that Respondent No.1 may be deleted from array of the parties. Respondent No.1 being corporate debtor against whom Section 7 application was filed, there is no occasion to delete Respondent No.1 from the array of parties. Application IA No. 3031 of 2024 is misconceived and is rejected.

26. In result, we allow the appeal in following manner:-

- (i) The order dated 25.01.2024 is set aside.

(ii) The application under Section 7 filed by the appellant deserves to be admitted. Adjudicating Authority may pass an order of admission along with consequential order within 30 days from the date copy of this order is produced before the Adjudicating Authority.

(iii) During the period of 30 days, it shall be open for the Respondent to discharge the debt and enter into any settlement with Appellant, if any.

27. Parties shall bear their own costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

**New Delhi**  
Anjali