

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 809 of 2020**

[Arising out of Order dated 12<sup>th</sup> August, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench in I.A. No. 486 of 2020 in C.P. (IB) No. 192/7/HDB/2017]

**IN THE MATTER OF:**

**1. M/s. Palm Products Pvt. Ltd.**

A company registered under the  
Companies Act, 1956, registered office  
At 2, Garstin Place, Level – 2, Suite-205,  
Kolkata, West Bengal-700001  
India

**...Appellant**

**Versus**

**1. T.V.L. Narsimha Rao,**

Insolvency Professional, RP for M/s.  
Amrit Jal Ventures Pvt. Ltd.,  
C/o. OMNE Insolvency Solutions,  
#G-1 & G-2, Mani Plaza, 6-2-101/7/A&B,  
New Bhoiguda, Secunderabad – 500003.

**...Respondent No. 1**

**2. SREI Infrastructure Finance Ltd.,**

Registered office at Vishwakarma,  
86C, Topsia Road (South), Kolkata-700046  
And its Corporate Office at Room 12 and 13,  
6A, Kiran Shankar Roy Road Kolkata – 700001

**...Respondent No. 2**

**Present:**

**For Appellant: Mr. Rishav Banerjee, Ms. Bhavya Sethi,  
Mr. Aman Garg, Advocates.**

**For Respondent: Mr. T.V.L. Narsimha Rao, in person.  
Ms. Akanksha Kaushik, Advocate for R-2.**

**J U D G M E N T**  
**(08<sup>th</sup> March, 2021)**

**A.I.S. Cheema, J.**

**1.** Microscopic gist of the dispute in present matter is that Respondent No. 2 Non-Banking Financial Company (NBFC in short) on being held by Adjudicating Authority to be related party under Section 29A of Insolvency and Bankruptcy Code, 2016 (IBC in short) kept the shares and transferred debt to the Appellant (Another NBFC) in the course of 'Corporate Insolvency Resolution Process' (CIRP in short) and then Appellant claimed to be entitled to be included in Committee of Creditors (CoC in short) and this was not accepted. Thus, the dispute.

**2.** This Appeal arises out of Impugned Order dated 12<sup>th</sup> August, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, vide I.A. No. 486 of 2020 in C.P. (IB) No. 192/7/HDB/2017. By the said Impugned Order, the Application of the Appellant was rejected which sought directions against Respondent No. 1-Resolution Professional of Corporate Debtor "M/s. Amrit Jal Ventures Pvt. Limited". Appellant sought acceptance of claim of Rs. 60,47,38,233 and to declare Appellant Financial Creditor accepting Assignment Deed and entry in CoC.

**3.** The Appeal claims and it is argued on behalf of the Appellant that the Adjudicating Authority wrongly concluded that the Resolution Professional has rightly observed serious circumstances with regard to the assignment of debt of

Respondent No. 2, to the Appellant. That, it was wrongly held by Adjudicating Authority that the Assignment Deed is unregistered. It is argued that under Section 23 of the Registration Act, Appellant had time of four months to get the Assignment Deed dated 18<sup>th</sup> May, 2020 registered but got it registered on 15<sup>th</sup> July, 2020 (Appeal Page 93), within two months and thus the Adjudicating Authority wrongly held that it was unregistered document.

**4.** The Learned Counsel for Appellant placed reliance on Judgment of the Hon'ble Supreme Court in the matter of *"ICICI Bank Ltd. Vs. APS Star Industries Ltd."* (2010 10 SCC 1) to state that in that matter it was held by Hon'ble Supreme Court that even when an assignee has purchased the debt for considerably discounted price, that by itself is not contrary to public policy. It is argued that on such basis, doubt could not have been made on the Assignment Deed even if debt of Rs. 60.48 Crores was assigned to the Appellant by Respondent No. 2 for Rs. 10 Lakhs. The Learned Counsel for the Appellant referred to document at Page 92 (Annexure A-2) and submitted that the Appellant was registered as NBFC in January, 2003. It is argued that the document was filed by the Appellant with the Written-Arguments submitted but still the Adjudicating Authority wrongly observed that the Appellant was a non-financial institution and non-ARC.

**5.** According to the Appellant, the Appellant is not holding any shares in the Corporate Debtor and thus it is not a related party under Section 5 sub-Section 24 of IBC since the assignor (Respondent No. 2) did not assign the shares held by the assignor in the Corporate Debtor. According to the Learned Counsel

after the Respondent No. 2 was held to be related party in I.A. No. 677 of 2019 by Order dated 20.11.2019 (Page 221), the assignor did not transfer the shares to the Appellant but only the debt and thus the Appellant could not have been debarred holding that the Appellant has stepped into the shoes of Respondent No. 2.

**6.** It is claimed that the Appellant has a valid legally enforceable debt assigned by Respondent No. 2 and should have been included as Financial Creditor and to be member of CoC. It is argued that it has been held in Judgment of Hon'ble Supreme Court in the matter of "*Swiss Ribbons (P) Ltd. & Anr. Vs. Union of India & Ors.*" (2019 4 SCC 17) that the Resolution Professional does not have adjudicatory powers and thus, the Resolution Professional could not have found the Assignment Deed to be not enforceable.

**7.** The Learned Counsel for Respondent No. 2 supported the case being put up by the Appellant.

**8.** The Respondent No. 1-Resolution Professional argued the Appeal in person. The Ld. Resolution Professional submitted that in CIRP he has got three Resolution Plans pending in CoC to take decision however CoC could not proceed ahead due to the stay granted by this Tribunal on 22.09.2020 that Adjudicating Authority will not take a decision with regard to the approval of the Resolution Plan. The said direction has continued during the pendency of the Appeal.

9. Learned Resolution Professional submitted that one of the Resolution Plans submitted is by *M/s. Shree Multi Asset Investment Trust Region India Fund* which is a group entity of Respondent No. 2 assignor. It is submitted by the Ld. Resolution Professional that Respondent No. 2 claiming to be Financial Creditor was found to be related party. He has assigned debt of Rs. 60.48 Crores due from the Corporate Debtor in favour of the Appellant by Assignment Deed dated 18<sup>th</sup> May, 2020 for a mere consideration of Rs. 10 Lakhs at the fag-end of CIRP. It is argued that on the basis of such Assignment Deed, the Appellant is wrongly claiming status of “Financial Creditor (non-related party)” and is wrongly claiming that he should be in CoC. The Resolution Professional submits that Respondent No. 2 which has been found to be related party is surreptitiously through its surrogate i.e. Appellant trying to enter the CoC. The Resolution Professional submits that apart from the Assignment Deed showing on the face of it under-valued transfer of debt, even that amount of Rs. 10 Lakhs has not been shown by the Appellant or by Respondent No. 2 by any document showing amount transferred by the Appellant in the Bank Account of the Respondent No. 2. The Learned Resolution Professional submitted that Respondent No. 2 recorded receipt on Letterhead which cannot be said to be accounting practice. The Resolution Professional submitted that he is not adjudicating on the transaction but it is his duty to see whether the assignment document on face of it is in Order. That, only a Letter-head receipt was shown and so he could not accept assignment.

**10.** At the time of arguments, Learned Counsel for Respondent No. 2 accepted that Respondent No. 2 has not filed Statement of Account from Bank to show receipt of consideration as recorded in Assignment Deed.

**11.** The Learned Resolution Professional argued that the Respondent No. 2 and Appellant are in collusion as they have filed documents from confidential meetings of 6<sup>th</sup> and 7<sup>th</sup> CoC meeting which were filed in I.A. No. 486 of 2020 before NCLT although both of them were never members of the CoC. The I.A. No. 677 of 2019 filed by Respondent No. 2 was dismissed on 20.11.2019 (Page 221) holding it to be related party and no Appeal against the order was passed and thus the order became final. The Resolution Professional submitted that on 28.02.2020 the Appellant which has been incorporated on 28<sup>th</sup> February, 1995 opened a new zero balance current account in the same Bank where Respondent No. 2 has current account. Subsequently on 18<sup>th</sup> May, 2020, Respondent No. 2 and Appellant entered into Assignment Agreement. It was unregistered although there was substantial immovable security backing the Assignment Agreement. The clauses of the Agreement provided that the Appellant will pay consideration in future to Respondent No.2. The assigned amount includes 60.48 Crores which included unreconciled and non-admitted amount of Rs. 17.76 Crores. It is submitted by the Resolution Professional that in the new zero balance current account opened by the Appellant, Appellant deposited Rs. 15 Lakhs on 05<sup>th</sup> June, 2020 which was only Rs. 10, 000/- since opening of the Account. According to the Resolution Professional, the Appellant then issued cheque bearing back date of 18<sup>th</sup> May, 2020 for Rs. 10 Lakhs in

favour of the Respondent No. 2. The Account of the Appellant Assignee was debited for Rs. 10 Lakhs on 06<sup>th</sup> June, 2020. However, Respondent No. 2 Assignor avoided to show its Bank-Statement to show that consideration of Rs. 10 Lakhs was received by the Respondent No. 2 (and not some endorsee). According to the Resolution Professional, consequently on 11<sup>th</sup> June, 2020, the Resolution Professional declined to act on Assignment Deed and the Appellant filed I.A. No. 486 of 2020 which has come to be dismissed vide the Impugned order. Learned Resolution Professional is relying on the Judgment in the matter of “Fortune Pharma Pvt. Ltd.” decided by the Ld. NCLT, Mumbai Bench (Copies of which are filed with the Reply-Affidavit) to submit that in that matter Ld. NCLT held that rights of the assignee are no better than those of the assignor and that assignee steps into the shoes of assignor. The Resolution Professional did not dispute that the Appellant is an NBFC.

**12.** We have heard the parties.

**13.** It is a matter of record that earlier Respondent No. 2 had in the CIRP in the matter of Corporate Debtor M/s. Amrit Jal Ventures Pvt. Ltd., filed claim before the Resolution Professional. The Letter sent by the Resolution Professional on 11.06.2020 to the Appellant and Respondent No. 2 (in which date is wrongly typed as 11.06.2016) the Resolution Professional had informed Respondent No. 2 with regard to Form C submitted by Respondent No. 2 on 31<sup>st</sup> May, 2019 and that it was admitted for Rs. 43,24,16,087/- leaving behind non-admitted portion of Rs. 17,76,13,007/- pending reconciliation of the Accounts between Respondent No. 2 and the Corporate Debtor. The then

Insolvency Resolution Professional had treated Respondent No. 2 as “Financial Creditor (related party)”.

**14.** When Respondent No. 2 was treated as “Financial Creditor (related party)” Respondent No. 2 had challenged the decision of Insolvency Resolution Professional before the Adjudicating Authority vide I.A. No. 677 of 2019. There is order dated 20.11.2019 (Page 221 of the Appeal Paper Book) which shows that for reasons recorded in that order, especially in paragraph 10 benefit of 2<sup>nd</sup> Proviso to Section 21(2) of IBC was not given and the claim of the Respondent No. 2 that it was not a related party, was rejected. In paragraph 11 of the Order the acceptance of Part claim of Respondent No. 2 was not disturbed and for balance liberty was given to approach Resolution Professional. There is no dispute with regard to the fact that such Order of the Adjudicating Authority was not challenged by anybody and especially Respondent No. 2 and that the Order has attained finality.

**15.** The further fact is also not in dispute that Respondent No. 2 executed an Assignment Deed copy of which is at Page 93 (Annexure A3) assigning debt to the Appellant. Learned Counsel for the Appellant has claimed that in the Assignment Agreement only the debt was assigned alongwith underlined securities and not the shares. Learned Counsel referred to written-submissions of the Resolution Professional (filed before the Adjudicating Authority (Page 247)) in which in Paragraph 13 Resolution Professional accepted that in the Assignment Agreement dated 18<sup>th</sup> May, 2020 Respondent No. 2 has chosen to assign debt receivable of Rs. 60.48 Crores except shares of the Corporate



Debtor held by Respondent No. 2 as pledged by third parties. Thus, what appears is that the Respondent No. 2, keeping back the shares, transferred receivables to the Appellant.

**16.** The Resolution Professional by the letter dated 11.06.2020 informed the Appellant and Respondent No. 2 regarding the Order dated 20.11.2019 and also informed that the Assignment Agreement dated 18<sup>th</sup> May, 2020 was not registered as required under Section 17 of the Registration Act, 1908; that proof of receipt of consideration by Respondent No. 2 had not been satisfactorily provided and that there was no provision to submit fresh Form C as Financial Creditor (Non-Related Party) after the assignor had already submitted Form C (Related Party). For such reasons recorded in details, the Resolution Professional informed Appellant and Respondent No. 2 that the submitted documents were inadequate and defectively furnished by Appellant and Respondent No. 2 and so he was unable to accept the assignment of debt.

**17.** The Appellant challenged such action before the Adjudicating Authority vide I.A. No. 486 of 2020 and the present Impugned Order came to be passed.

**18.** The Learned Counsel for the Appellant submitted that under Section 23 of the Registration Act, the Appellant had time of four months from the date of execution of the Assignment Agreement to get the same registered and the document was got registered on 15<sup>th</sup> July, 2020 as can be seen from Annexure A3 and thus it is claimed that the document would relate back to the date of execution if Section 47 of the Registration Act is kept in view. The Learned

Counsel for the Appellant criticized Impugned Order where it has proceeded on the basis that it was unregistered Assignment Agreement.

The Adjudicating Authority observed in Paragraph 15 of the Impugned Order as under:

*“The question is whether claim can be admitted basing on the un-registered document when it was filed before the Resolution Professional. The unregistered documents cannot be taken into account for admission of the claim. The document must have been registered on the date on which the claim is made. No doubt for registration, four months are available under Section 23 of the Registration Act. The question is whether Assignment Agreement was registered on the date on which claim was made before the Resolution Professional. The documents must have been registered by the date the claim was made before the Resolution Professional. So when claim was made, the documents was not registered. Therefore, the document cannot be looked into. The Resolution Professional had not committed any error by not relying on the unregistered Assignment Agreement because it was not registered and claim could not be admitted.”*

**19.** Undisputedly, when the claim was made before the Resolution Professional, at that point of time the Assignment Deed dated 18<sup>th</sup> May, 2020 was not yet registered and the Resolution Professional mentioned this in his letter dated 11<sup>th</sup> June, 2020 as one of the reasons why he was not acting upon the same. At the time of arguments, we had asked specifically asked the Counsel for Appellant if the Appellant again made a claim before the Resolution Professional after registering the document on 18<sup>th</sup> May, 2020. The Learned

Counsel stated that the Appellant was pursuing dispute before the Adjudicating Authority and did not again make a claim with the Resolution Professional after Registering the document. We do not find fault with the Adjudicating Authority for the observations that when the claim was made before the Resolution Professional the document being unregistered, the Resolution Professional rightly ignored the same.

**20.** The Learned Counsel for Appellant claimed that the Appellant is also an NBFC as can be seen from copy of document at Page 92 (Annexure A2) and submitted that the observations of the Adjudicating Authority in Paragraph 12 of the Impugned Order that the Appellant is non-financial institution and non-ARC is erroneous. What appears from Paragraph 12 of the Impugned Order is that the Resolution Professional claimed before the Adjudicating Authority that the Applicant is a non-financial institution. Learned Counsel for the Appellant claimed that along with written-submissions filed on 23<sup>rd</sup> July, 2020 before the Adjudicating Authority vide Annexure A9 Page 300. The Appellant had filed copy of the NBFC Certificate as has now been filed in the Appeal at Page 92. Considering the document of Appellant being NBFC, the observations of the Adjudicating Authority in this regard may have to be ignored where it accepted submission made by the Resolution Professional that the Appellant is non-financial institution and non-ARC. The Resolution Professional is now no more claiming that Appellant is non-financial institution.

**21.** In paragraph 12 of the Impugned Order the Adjudicating Authority accepted the argument of the Appellant that inadequacy of consideration was

by itself not a ground to entertain a doubt about the transaction. The Appellant is relying on Judgment in the matter of *“ICICI Bank Ltd. Vs. APS Star Industries Ltd.”* (2010 10 SCC 1) which has been referred supra. In a summary proceeding like the present one, it would be difficult to go into the details as regard the motive of executing of the Assignment Agreement. However, the fact remains that the Appellant and Respondent NO. 2 did not satisfy and even now on record there are no Bank-Accounts shown of receipt of consideration by Respondent No. 2 under the said Assignment Agreement.

**22.** The Learned Counsel for the Appellant tried to make attempt to show defect in the Order dated 20.11.2019 passed in I.A. No. 677 of 2019 vide which the Respondent No. 2 was held as related party. We are unable to go into those particulars as the said order was not challenged and has become final. This being so, even if the Respondent No. 2 kept back the shares and assigned the receivables, the position would remain that, in the facts of the matter, Appellant must be treated to have stepped into the shoes of Respondent No. 2. If Appellant and Respondent No. 2 can place evidence with regard to the passing of consideration before the Resolution Professional, the Resolution Professional may treat the Appellant as having stepped into the shoes of Respondent No. 2 as “Financial Creditor Related Party” to the extent of claim admitted/non-admitted pending reconciliation, as was done by Interim Resolution Professional. The Resolution Professional has stated that the stage of CIRP is that three Resolution Plans are pending for decision to be taken by CoC.

For reasons recorded above, we decline to interfere with the Impugned Order. The Appeal is dismissed, accordingly.

**[Justice A.I.S. Cheema]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**New Delhi**  
**08<sup>th</sup> March, 2021**  
Basant B.