

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 359 of 2021

IN THE MATTER OF:

S.A.R.E Public Company Ltd.

....Appellant

Vs.

Sare Gurugram Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Pooja M. Saigal and Mr. Shantanu Chaturvedi, Advocates

**For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Mr. Rajat Joneja, Ms. Ananya Kumar and Mr. Kartikey Gupta, Advocates for R-2.
Mr. Bhargav and Mr. Aditya Mehta, Advocates for R-1.
Mr. Saurabh Kirpal, Sr. Advocate with Mr. Siddharth Dutta, Advocate**

ORDER
(Virtual Mode)

13.05.2021: The appellant challenges the order of admission dated 9 March 2020 passed by the Adjudicating Authority /Principal Bench, NCLT, New Delhi in CP (IB)300(PB)2020 whereby corporate insolvency resolution process has been initiated against "SARE Gurugram Pvt Ltd".

2. The appellant contends that the section 7 petition filed under the Insolvency and Bankruptcy Code 2016 was fraudulent and collusive. The Adjudicating Authority has proceeded to admit the petition, in derogation of the principles of comity of courts and jurisdiction, by disregarding the categorical restraint orders passed by Hon'ble Delhi High Court in a civil suit filed by the appellant company. Furthermore, the Adjudicating Authority exceeded its
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jurisdiction while passing the impugned order of initiation of CIRP against 'SARE Gurugram Pvt. Ltd', even though the proceedings are pending before the Hon'ble High Court of Delhi.

3. The facility agreement on which the claim of 'ACRE' is based has been impugned by the appellant in the civil suit pending before the Hon'ble High Court of Delhi, and the matter is subjudice. Despite the same, the NCLT has proceeded to allow the petition in defiance to the orders and jurisdiction of the Hon'ble High Court of Delhi.

4. The 'ACRE' claim to be the assignee of the financial debt and underlying securities from 'Altico Capital'. However, there was no valid assignment in favour of 'ACRE' from 'Altico Capital' because the assignment of debt in favour is in contravention of the restraint order dated 12 October 2018 passed by the Hon'ble High Court of Delhi in CS (Comm) No 179 of 2018 titled as 'SARE Public Company Limited' through its receiver/manager, Mr Augoustinos Papathomas vs. Avon Infracon private limited. The assignment alleged to have taken place on 23 March 2019 itself was in contravention of restraint orders. Thus, being non-est at law was, in any event, aimed fraudulent and motivated, i.e. to circumvent and scuttle the orders passed by the Hon'ble High Court.

5. The Appellant alleges that there could not have been any legally sustainable action initiated or a valid exercise of alleged creditors right by invoking the provisions of Insolvency and Bankruptcy Code 2016 since the

unlawful assignment of rights changes the entire proceedings before the Adjudicating Authority/NCLT. The date of assignment dated 23 March 2019 on which 'ACRE' had predicated its status as a financial creditor having been executed in derogation of the order dated 12 October 2018, being a document executed in contempt of restraint order could not clothe 'ACRE' with any legal status much less by the status of the financial creditor. The Adjudicating Authority is not vested with any jurisdiction to adjudicate upon whether the assignment deed violates the order passed by the Hon'ble High Court of Delhi in its original commercial jurisdiction. Consequently, the exercise of jurisdiction by the learned Adjudicating Authority by proceeding on an erroneous assumption of the assignment deed being valid and entertaining the insolvency petition submitted by 'ACRE' as an alleged assignee of 'Altico Capital' is an act in excess of the jurisdiction vested upon it under the provisions of IBC 2016.

6. The appellant contends that section 7 petition filed before the Adjudicating Authority/NCLT by respondent number 2 as a result of connivance and collusion between respondent number 1 and 2 and fraud perpetrated by them to defeat the rights of the receiver appointed by Wafra capital (financial creditor of the appellant company) is also to circumvent orders passed by Hon'ble High Court and also the Hon'ble Supreme Court of New York. The fact that 'SARE Gurugram', which is contesting the suit proceedings and has persistently sought permission to deal with its assets to

raise finance to complete real estate project before the Hon'ble court, actually and not even to contest the section 7 petition before the NCLT is itself a proof of collusion between the respondents herein. Therefore, 'ACRE' had initiated the insolvency proceedings against 'SARE Gurugram' in collusion, fraudulently and with malicious intent, for the purpose other than the resolution of insolvency and hence the impugned order of admission is liable to be set aside.

7. The learned Senior counsel representing respondents submits that for initiation of corporate insolvency resolution process, the only point that is to be decided is whether the debt and default have been proved by the petitioner, who has filed an application regardless of the proceeding pending before various courts. The corporate debtor being a subsidiary company, therefore is presumed that whatever decisions taken in the subsidiary companies is within the knowledge of the holding company. Since there are two transactions, one is 'Debenture Transaction'. Another is 'Facility Agreement', out of these two, none being repaid by the corporate debtor despite notice has been served upon it, even if Facility Agreement issued is excluded as per the orders of the Hon'ble High Court of Delhi passed on 12 October 2018 then also, the financial creditor could establish its case by saying that assignment with respect to debentures is valid and not in violation of the orders of Hon'ble High Court. There is no contest about the debt and default from the corporate debtor side. The applicant /respondents herein have proved the existence of debt and default in relation to debentures issued for an amount of ₹ 95 crores & 220 crores

along with interest. Therefore, the Adjudicating Authority was fully justified in admitting the petition for initiation of CIRP taking default of the repayment of debenture amounts by the corporate debtor.

8. Admit issued notice on the respondents. The learned counsel representing the resolution professional informed that COC is already constituted. We do not think it appropriate to pass interim orders to restrain the corporate insolvency resolution process.

9. Let the matter be fixed for 'Admission (After Notice)' on **04th June, 2021**.

[Justice Jarat Kumar Jain]
Member (Judicial)

[V.P. Singh]
Member (Technical)

sa/gc