

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH, COURT-II**

**I.A (I.B.C) 543/KB/2024**

**And**

**Company Petition (IB) No.318/KB/2021**

**An application under Section 60(5) of the insolvency and bankruptcy  
code 2016 read with rule 11 of the NCLT Rules, 2016**

**In the matter of:**

**UV Assets Reconstruction Company Limited**

**...FINANCIAL**

**CREDITOR**

**Versus**

**Ramesh Chandra Bardia**

**...RESPONDENT/PERSONAL GUARANTOR**

**Coram**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri. D. Arvind, Member (Technical)**

**Date of Pronouncement: 15 /7/2024**

**Appearance (via Hybrid Mode)**

**Debasish Chakraborty, Adv ] For the UVARCL**

**Snehasish Chakraborty, Adv**

**Mainak Bose, Adv ] For the Respondent/ Personal Guarantor**

**Urmila Chakraborty, Adv**

**Pranav Sharma, Adv**

**Ashok Kumar Agarwal, RP ] for Resolution Professional**

## **ORDER**

### **Per: D. Arvind, Member (Technical)**

1. The court is convened through hybrid mode.
2. The present **application I.A (IB) No. 543/KB/2024** is filed by the applicant seeking the following relief:
  - a. Directing the substitution of UV Asset Reconstruction Company instead of IFCI ltd in the cause title and all other places where the name of IFCI ltd has been mentioned as the Financial Creditor in the present section 95 application .
  - b. Kindly allow the applicant to carry out the consequential amendments in the present section 95 application.
  - c. Such other order/ orders as this Hon'ble Tribunal may deem fit and proper.

### **3. Submission on behalf of applicant**

- 3.1 This present section 95 application is filed by the Financial Creditor IFCI limited against the Personal Guarantor i.e Ramesh Chandra

Bardia praying for initiation of Personal insolvency resolution process against the Personal Guarantor.

3.2 During the pendency of section 95 application before this Adjudicating Authority, the Financial Creditor transferred and assigned the loan account together with security interest and/or guarantees in favour of UV Asset Reconstruction Company vide assignment deed dated **13<sup>th</sup> November 2023**.

3.3 Pursuant to assignment deed, UV Asset Reconstruction Company limited has acquired the status of Financial Creditor in place of IFCI Ltd. in the present section 95 application.

#### **4. Submission of Respondent**

4.1 The assignment dated 13<sup>th</sup> November 2023 has been done without giving notice to the Respondent. The assignee has not taken any consent/approval of the Personal Guarantor. Further, the assignment was not notified even to the Principal Borrower i.e EMC limited.

4.2 Since no notice/ consent/ approval has been taken from the Personal Guarantor, as a result variance has occurred in terms of section 133 of the Indian contract act 1872. Therefore, the Respondent stands discharged from liability.

4.3 The assignment deed is insufficiently stamped and not properly executed.

#### **5. Analysis and Finding**

**5.1** We have heard the learned counsel and perused the record.

**5.2** Upon perusal of the record, we found that the Respondent is making allegation without showing any supporting material evidence.

Further, there no variance in terms of contract as per section 133 of the Indian contract act 1872. Only assignment was done as per the assignment deed.

- 5.3** We rely on the judgment of Hon'ble NCLAT in T Johnson V phoenix ARC wherein the Tribunal held that:

**“The consideration for assignment of debt is no relevance in so far as the liability and obligation on the part of Corporate Debtor is concerned. The assignment only changes the hands of the creditor clothing the assignee with authority to enforce the claim. The liability in regard to claim as regard the Corporate Debtor remains intact and does not get diluted in any manner whatsoever.”**

**We also rely on the judgment of the Hon'ble NCLAT, COMPANY Appeal (AT)(insolvency) No.485 of 2018 wherein the Tribunal held that:**

**“In the present we find that the appellant sought declaration that the assignment made by HSBC to phoenix as illegal which can be raised only in a civil suit. The appellant is trying to convert the proceeding under the I&B Code as civil proceeding akin to a trial which is not the legislative intent.”**

- 5.4** In view of the said assignment agreement, we allows the substitution of the Financial Creditor UV Asset Reconstruction Company in the place of IFCI limited and the applicant is allowed to make necessary amendment in the application/Petition.

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6. The, **I.A (I.B.C) 543/KB/2024 seeking substitution of UV Asset Reconstruction Company instead of IFCI Ltd is allowed.**
7. The Registry is directed to send e-mail copies of the order forthwith to the Board and all the parties and their Ld. Counsel for information and for taking necessary steps.
8. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
9. List the C.P on **23/08/2024.**

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed this, on the 15<sup>th</sup> day of July 2024**

NKS(LRA)