

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1357/KB/2023

In

Company Petition (IB) No. 1878/KB/2019

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, for brevity "I&B Code" read with
Rule 11 of National Company Tribunal Rules, 2016.***

IN THE MATTER OF:

Reliance Home Finance Limited

... Financial Creditor.

Versus

MKHS Realty

... Corporate Debtor.

And

IN THE MATTER OF:

Reliance Commercial Finance Limited

... Applicant.

Versus

MKHS Realty

... Respondent/ Corporate Debtor.

Date of Pronouncement: April 25, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

**For the Financial Creditor: Mr. Snehashis Sen, Adv.
Mr. Danyal Ahmed, Adv.**

**For the Corporate Debtor: Mr. Pratip Mukherjee, Adv.
Mr. Ranjit Rajak, Adv.**

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ORDER

Per: D. Arvind, Member (Technical)

1. The Court congregated through hybrid mode.
2. We have heard the Learned Counsel for both parties.
3. This application has been preferred by Reliance Commercial Finance Ltd, hereinafter referred as “Applicant” against MKHS Reality, an LLP having registered office at Kolkata, hereinafter referred as “Respondent”/ “Corporate Debtor” seeking substitution of the name of the applicant i.e., Reliance Commercial Finance Ltd in place and instead of Reliance Home Finance Ltd., erstwhile financial creditor.
4. **Brief Facts of the Case:**
 - 4.1. The erstwhile financial creditor Reliance Home Finance Ltd advanced credit facilities to the tune of Rs. 23,50,00,000/- to the Corporate Debtor in terms of a loan agreement dated 28.02.2017. It was executed as per sanction letter dated 24.02.2017.
 - 4.2. The Corporate Debtor initially made payments of instalment but from 30.06.2019 failed and neglected to pay the agreed sums of instalment as per the loan agreement. Thus, the account of the corporate debtor was declared as a nonperforming asset on 13.05.2019.
 - 4.3. The erstwhile Financial Creditor issued a loan recall notice on 22.01.2019 claiming a sum of Rs. 11,34,13,847/-.

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The erstwhile financial creditor also issued a notice dated 06.07.2019 to the corporate debtor in terms of Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for brevity "SARFAESI Act".

4.4. As on 18.09.2019 a sum of Rs. 12,79,80,498/- due and receivable from the corporate debtor to the erstwhile financial creditor.

4.5. Since there was a default of the financial debt the erstwhile financial creditor made an application under Section 7 of I&B Code for initiation Corporate Insolvency Resolution Process of the Corporate Debtor.

4.6. During the pendency of the instant application, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP), and a resolution plan submitted by Authum Investment and Infrastructure Ltd (AAIL) was ultimately approved after several challenges, by the Honourable Supreme Court which directed AAIL to implement the plan.

4.7. Meanwhile a Business Transfer Agreement was executed between the erstwhile Financial Creditor and the Applicant herein. A Business Transfer Agreement dated 29.03.2023 executed between the erstwhile financial creditor, Reliance Home Finance Ltd. and the Applicant herein,

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according to which the entire business of the erstwhile financial creditor has been transferred to the Applicant.

4.8. Consequent to this agreement, Applicant has filed this instant application seeking substitution of his name instead of the erstwhile financial creditor, as financial creditor.

5. Submissions made by the Applicant:

5.1. The learned counsel for the Applicant took us through the business transfer agreement dated March 29th, 2023, executed between the erstwhile financial creditor and the applicant herein.

5.2. Further, he relies on Clauses 1.1.86., 1.1.87. and 1.1.90. of the Agreement to Transfer Business dated 29.03.2023, which reads as under:

“1.1.86. “Transferred Assets – Accounts Receivables”

means the entire loan book of the Seller, right, title, and interest to all monies and amounts which are, may be, or become receivable or recoverable including all those assets which are written off or provided for by the Seller and whether or not appearing in the books of the Seller (including any interest, penalties, fees, etc.) by the Seller from the Customers or Obligors, which may be in any form including but not limited to cheques (regardless of whether they are pre-dated or post-dated), promissory notes, whether current or non- current, including any value added

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*taxes or similar Taxes levied on such receivables, or on any such receivables and any security or collateral related thereto, all file documentation related to such receivables, including invoices, documents, communications and correspondence submitted to or received from Customers related to such receivables which relate to the Transferred Business, the right, title, and interest in each of the documents pertaining to any such monies or amounts and also all claims, causes of action, notices, actions, Obligor Legal Proceedings, in relation to each of the above, including but not limited to the assets/claims listed in Part A of **Schedule 2.***

“1.1.87. “Transferred Assets – Investments” means, in relation to the Seller, all right, title, and interest in any and all direct or indirect investments or beneficial ownership interest, whether by means of purchase or other acquisition of equity or debt or other securities, pass through certificates, fixed deposits, security receipts, deposits, capital contribution, equity or debt participation, cash or cash equivalents, or interest in any other Person, the right, title, and interest in each of the documents pertaining to any such assets and also all claims, causes of action, notices, actions, in relation to each of the above, including but not limited to the assets listed in Part B of **Schedule 2.**”

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“1.1.90. “Transferred Agreements” means all right, title and interest in, and claims under, all the Contracts that are assumed by or transferred to or are to be assumed by or to be transferred to the Buyer pursuant to the transfer of the Transferred Business, including but not limited to the Customer agreements, contracts, supplier orders and the Contracts, and as provided under the heading Particulars & Dates of Customer Agreements in Part A of **Schedule 7**, under the heading Particulars & Dates of Vendor Agreements in Part B of **Schedule 7**, und in Part C of **Schedule 7**.”

5.3. He further relies on Clauses 2.1. and 2.2. of the said Agreement to Transfer Business dated 29.03.2023 which are reproduced herein below:

“2.1. Transferred Business/Transferred Undertaking.

The Seller hereby agrees to sell, convey, assign, transfer and deliver to the Buyer, on the Closing Date, the Transferred Undertaking, together with all rights, titles. and interests attached thereto, free and clear of all liens, claims, and Encumbrances of any nature, as a going concern business and on a slump sale basis for a lumpsum consideration which shall have been received by the Seller (without any consideration being assigned to any individual assets), on or prior to the Closing Date.”

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“2.2. Transferred Assets. Parties hereby agree that the Seller shall absolutely sell, transfer, assign, deliver and convey all of its rights, title, in and under its Transferred Assets and the Transferred Agreements to the Buyer, free and clear of all Encumbrances.”

5.4. He also relies on Clauses 9.3.3., 9.3.4. and 9.3.5. of the said Agreement to Transfer Business dated 29.03.2023 which are reproduced herein below:

“9.3.3. The Seller confirms that on and from the Closing Date, the Customers, Obligors, and Vendors, shall become the customers, obligors, and vendors of the Buyer.”

“9.3.4. The Seller confirms that on and from the Closing Date, all rights, titles, and interests of the Seller under the Transferred Agreements shall solely vest with the Buyer, free and clear of all Encumbrances. The Seller confirms and undertakes to enter into all deeds, documents or agreements to assign/novate all the Transferred Agreements, as may be required by the Buyer from time to time. In the event that the rights of the Seller under any of the Transferred Agreements are unassigned at Closing, the Seller will undertake all actions and do all deeds as required by the Buyer to achieve the commercial objective of this Agreement and the transactions contemplated hereunder.”

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“9.3.5. The Seller confirms that on and from the Closing Date, the Seller shall not have any right, interest or entitlement under or in relation to any such unassigned Transferred Agreements, and all the risks and liabilities relating to or arising from such unassigned Transferred Agreements prior to Closing Date, or after Closing Date but due to an action prior to Closing Date, shall not be an Assumed Liability.”

5.5. He submits that this is a valid business transfer agreement duly executed as per the applicable laws of this country. Further, all the compliances relating to stock exchange and SEBI has been duly complied with.

5.6. Further, he submits that by virtue of this agreement, all the assets of the erstwhile financial creditors including loans and advances to various customers would become assets of the applicant and consequently applicant is entitled to take action for recovery of the loans advanced, the applicant is also entitled to maintain the application preferred by the erstwhile financial creditor under Section 7 of the I&B Code.

5.7. It is further contended that, such a transfer be within the definition of financial creditor as defined in Section 5(7) of I&B Code as the “debt” has been **legally assigned** or transferred to the applicant herein by the erstwhile financial creditor by virtue of the said Agreement to Transfer Business dated 29.03.2023.

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5.8. Therefore, he submits that substitution of his name instead of erstwhile financial creditor may be allowed.

6. Per contra submissions by the Respondent:

6.1. The Learned Counsel of the Respondent submits that the substitution application preferred by the erstwhile financial creditor during the pendency of CIRP is not maintainable since the board of directors of the financial creditor stood suspended. It is only the resolution professional who could have taken steps in filing the said application.

6.2. He further submits that by virtue of the Agreement to Transfer Business dated 29.03.2023, it is merely the business of financial creditor which stood transferred and vested upon the present applicant, but the customers of the financial creditor could not ipso facto become the customers of the applicant.

6.3. He further submits that there is no clause in the said Agreement to Transfer Business dated 29.03.2023 with regard to assignment of debt in relation to pre-existing loans and finances of corporate debtor. Therefore, in the absence of any specific deed of assignment or specific clause with regard to assignment of debt in relation to pre-existing loans, the said business transfer agreement dated 29.03.2023 cannot automatically replace the erstwhile financial creditor.

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6.4. He also submits that the corporate debtor was not given any prior notice about asset transfer agreement between the erstwhile financial creditor and applicant herein although the same substantially affected the rights of the corporate debtor. He further submits that in view of above submissions, the assignment of debt I any has not been legally assigned.

6.5. In view of above, he submits that the substitution application is not maintainable.

7. Analysis and Findings:

7.1. As per Section 5(7) of the I&B Code, financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been **legally assigned or transferred.**

7.2. In the present case, we would note that in terms of business transfer agreement, the entire loan book of the seller, right, title and interest, all monies and amounts which are maybe and become receivable or recoverable stood transferred in terms of Clause 1.1.86 read with Clause 2.1 and Clause 9.3 of the Agreement to Transfer Business dated 29.03.2023.

7.3. We find there is no bar on the applicant to make this application under I&B Code seeking substitution of his name in place of erstwhile financial creditor and therefore the argument that only the Resolution Professional could have filed the application, in our view is not correct.

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7.4. The legality of the agreement executed between the parties has not been questioned and therefore it can be said that the entire loan book of the erstwhile financial creditor has been **legally assigned** to the applicant and the applicant became financial creditor in terms of Section 5(7) of I&B Code.

7.5. The argument taken by respondent that there is no specific clause in the agreement for transferring pre-existing loan, is incorrect in view of specific clauses of business transfer agreement mentioned in this order, which contemplates transfer of all such debt (assets) to the applicant by the erstwhile financial creditor.

- 8.** In terms of the foregoing discussions and findings, we **allow** instant application. Accordingly, the application (I.A. (IB) No. 1357/KB/2023) is **disposed of**.
- 9.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties for compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This order is signed on the 25th Day of April, 2024.

Bose, R. K. [LRA]