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

Company Petition (IB) No. 40/KB/2022

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016.

IN THE MATTER OF:
Korea Trade Insurance Corporation (Ksure)

... Operational Creditor/ Applicant.

Versus

Ado Additives MFG Private Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: June 05, 2024.

CORAM:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Operational Creditor:	**Mr. Manish Dhir, Adv.**
For the Corporate Debtor:	**Mr. Shaunak Mitra, Adv.** **Mr. Saurav Jain, Adv.**

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Tribunal congregated through a hybrid mode.

2. We have heard the Learned Counsel Mr. Manish Dhir appearing on behalf of the Applicant and the Learned Counsels Mr. Shaunak Mitra leading Mr. Saurav Jain, for the Respondent, in full.

3. This Application has been preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" by **Korea Trade Insurance Corporation (Ksure)**, hereinafter referred to as the "Applicant" or "Operational Creditor" against **M/s Ado Additives MFG Private Limited**, hereinafter referred to as the "Respondent" or "Corporate Debtor", seeking a direction to initiate Corporate Insolvency Resolution Process, in respect to the Corporate Debtor Ado Additives.

4. The Debt due, as on the date of filing this application before this Adjudicating Authority is of USD 211,680 equivalent to INR 1,60,64,395/- at the exchange rate of Rs. 75.89 per USD, along with agreed contractual interest at the rate of 1% per month from the due date till the date of actual realization.

Factual Matrix:

5. The Corporate Debtor had approached M/s Silk Road C&T, Korea, for the supply of goods from Korea to India.

6. Pursuant to that, M/s Silk Road C&T, Korea supplied and delivered the goods to the Corporate Debtor as per their specifications and requirements and issued invoices of an aggregated sum of USD 233,520 equivalent to INR 1,77,20,898/-.

7. The particulars of the invoices, claiming the outstanding amount with the due date as provided in the application, are as under:

Invoice No.	Invoice Date/BL Date	Due Date	Amount Outstanding (USD)
SR-INADK 181 126-03	November 26, 2018	March 1, 2019	42,420.00
SR-INADK 181 212-04	December 12, 2018	March 23, 2019	43,26000
SR-INADK 190 117-08	January 17, 2019	April 25, 2019	21,840.00
SR-INADK 190 305-09	March 5, 2019	June 6, 2019	21,000.00
SR-INADK 190 307-10	March 7, 2019	June 10, 2019	21,000.00
SR-INADK 190 315-11	March 15, 2019	June 18, 2019	42000.00

Invoice No.	Invoice Date/BL Date	Due Date	Amount Outstanding (USD)
SR-INADK 190 322-12	March 22, 2019	June 27, 2019	42000.00
	TOTAL		233,520.00

8. M/s. Silk Road C&T assigned its claim to Korea Trade Insurance Corporation (Ksure), the Applicant herein who is one of the official Export Credit Agencies wholly operated by the Korean Government.

9. The applicant had demanded a plethora of time from the Corporate Debtor, the outstanding amount payable to the M/s Silkroad C&T, however, the Corporate Debtor failed to make the payment.

10. Having failed in its attempts to get the dues paid, the applicant was constrained to issue the statutory notice of demand under Section 8 of the I&B Code, 2016, on 15.09.2021, calling upon the Corporate Debtor to make full and final payment of its admitted outstanding to the applicant.

11. The Corporate Debtor did not respond to the Section 8 notice within prescribed period from the receipt of the same. However, the Corporate Debtor has made a part payment of Rs. USD 21,840.00 on 06.10.2021, thereby admitting its liability to pay the Debt Due.

12. Hence, this application has been preferred.

Applicant's contention:

13. The Learned Counsel for the applicant submits that the corporate debtor had acknowledged the receipt of the goods and admitted the sums payable to M/s. Silk Road C&T, yet it failed to make the payment of the goods supplied. Hence, there is a debt, and it is default.

14. The Learned Counsel submits that M/s Silk Road C&T assigned its claim to the applicant on 17.09.2020. The applicant has reimbursed M/s Silkroad C&T, the loss caused to the in the truncation made between the M/s. Silkroad C&T and the Corporate Debtor and has

acquired by the assignment all its rights against the Corporate Debtor under or in relation to the invoices raised.

15. It is claimed that the corporate debtor has, vide its email admitted its liability and sums payable on 13.06.2019, 16.07.2019 and 11.10.2019 to M/s. M/s Silk Road C&T, annexed at pages 137-150 to the application.

16. Further, it is contended that the Corporate Debtor has been informed of the fact of assignment vide email dated 15.04.2021 by the Applicant, annexed at pages 173-174 to the application.

17. It is asserted that after issuance of the demand notice under Section 8 of the Code, the Respondent did not respond to the same. However, a part payment of USD 21,840 has been made on 06.10.2021. Thus, the amount due and payable is of USD 211,680 equivalent to INR 1,60,64,395/- at the exchange rate of Rs. 75.89 per USD, along with agreed contractual interest at the rate of 1% per month from the due date till the date of actual realization.

Arguments advanced by the Learned Counsel for the Respondent:

18. Per contra, the Learned Counsel for the Respondent would vehemently deny and dispute the case of the Applicant and submit that the application is neither maintainable in law, nor in facts, nor in the present form.

19. The Learned Counsel for the Respondent would submit that the power of attorney dated 19.03.2019, authorizing Mr. Abhisekh Aggarwal to file this application, is not in accordance with law and has not disclosed the proper authorization. Further, the minutes of the board

meeting dated 20.02.2019 is not also as per the provision of law. Thus, Mr. Abhisekh Aggarwal has no locus standi to file this application.

20. It is denied that M/s Silkroad can assign its claim to the applicant herein. As there is no direct contract between the applicant and the corporate debtor, the assignment agreement cannot be considered before this Adjudicating Authority.

21. The Learned Counsel would argue that the amount claimed to be in default in this application is wrongly alleged and claim that there are the pre-existing disputes relating to the quality and specification of the goods supplied by M/s Silkroad C&T, Korea.

22. The Learned Counsel would assert that the tax invoices issued in respect of the consignment clearly mentions M/s Silkroad C&T, Korea as the seller of the goods in question, and the assignment has not been done in a proper manner. Thus, the assignee is not the proper operational creditor.

In counter, the Applicant submits:

23. That, the Corporate Debtor has failed to produce any document in support of any pre-existing dispute as alleged and the Corporate Debtor has even failed to point out the specific issue or portion of any invoice or against which invoice its claim of a pre-existing dispute lies.

24. That, the Corporate Debtor has, vide its successive emails dated 20th December 3019, 1st March 2020, 12th March 2020,8th April 2020, 10th September 2020 and 04th February 2021, 19th April 2021, 16th July 2021, emphatically admitted its liability to pay the outstanding amount due and payable to the Operational Creditor, as annexed at pages 156-172 to the Application.

25. It is asserted that the assignment of debt by M/s Silkroad C&T in favour of the Applicant is legal with proper documentation as per the provisions of existing law.

26. Further that, the Corporate Debtor has admitted its liability towards the Operational Creditor of the outstanding amount due and payable even after the issuance of Section 8 demand notice, through a plethora of emails dated 03.01.2022, 01.09.2022, 12.10.2022, 14.10.2022 and in email dated 10.11.2022 and 30.01.2023, whereby the Corporate Debtor assured the payment of the same by April 2023. The said emails are annexed at pages 26-36 to the Rejoinder filed by the Applicant.

27. We have duly considered the rival contentions and perused the documents available to us.

Analysis and Finding:

On Debt and Default

28. It is evident that M/s Silkroad C&T, upon supply of the goods from Korea to India, has raised invoices from 26.11.2018 to 22.03.2019. The Applicant has failed to refute the allegation that the goods were supplied by M/s Silkroad C&T, by payments against the invoices were not rendered by the Corporate Debtor, Ado Additives. and the amount raised in those invoices is due and payable from 01.03.2019 to 27.06.2019. The copies of invoices raised by the M/s Silkroad C&T are annexed at pages 52-136 to the application.

On Acknowledgment

29. Further, the Applicant has claimed that the Respondent after issuance of Section 8 Demand Notice dated 15.09.2021, has paid a part

payment of USD 21,840.00, which amounts to the acknowledgment of liability on the part of the Debtor.

On Pre-existing Disputes

30. We have failed to decipher any material that would constitute a pre-existing dispute between the parties as on the date of issuance of the Section 8 Demand Notice.

31. The Respondent Debtor Ado Additives has miserably failed to substantiate its stand that the application under Section 9 of the Code is hit by existence of "pre-existing disputes".

On the Legality of the Assignment

32. An objection has been raised by the Corporate Debtor to the legality of the assignment of debt. We find that the Letter of Assignment dated 17.09.2020, annexed at pages 151-155 to the application, irrevocably assigns to the Applicant (Ksure) all the claims, demands, authority, powers, privileges and all rights of whatsoever nature which the M/s Silkroad C&T had against the Corporate Debtor under the contract executed between the M/s Silkroad C&T and the Corporate Debtor herein. For the sake of convenience and clarity, we reproduce the Letter of Assignment dated 17.09.2020 hereunder:

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한국무역보험공사 귀중
To: Korea Trade Insurance Corporation

※ 간인(수출자 인감) 요망

양 도 증 서
Letter of Assignment

o 수출자의 상호와 주소(Name and Address of the Exporter)
: (주)실크로드시앤티, 서울특별시 강남구 강남대로 308(랜드마크타워) 9층
(SILKROAD C&T, 9TH FL., LANDMARK TOWER 308, GANGNAM-DAERO, GANGNAM-GU, SEOUL, KOREA)

o 수입자의 상호와 주소(Name and Address of the Importer)
: ADO ADDITIVES MFG PRIVATE LIMITED,
NO.7, MONMOHAN BOSE STREET, KOLKATA-700006, WEST BENGAL, INDIA
BD-64, SALTLAKE CITY SECTOR-1, NEAR-BD MARKET,
KOLKATA - 700064, WEST BENGAL, INDIA (CORPORATE OFFICE ADDRESS)

o 매입은행(Negotiating Bank) :

o 어음금액, 발행인, 발행일 및 만기일(Amount, Drawer, Date of Issue and Maturity of the Draft)

o 양도대금(Amount of Assignment) : USD 254,520

※ 한국무역보험공사(이하 K-SURE)로 양도된 채권의 세부 목록은 "붙임 1"을 참고하시기 바랍니다.
※ Refer to "Annex 1" for the detailed list of the claims assigned to Korea Trade Insurance Corporation (hereinafter "K-SURE").

o 추심은행의 상호와 주소(Name and Address of the Collection Bank)

위 수출자는 위 수입자와 2018. 11. 14. 자로 수출계약(이하 "수출계약"이라고 합니다.)을 체결하고 수출상품을 선적하였으나 수입자가 수출대금을 지급하지 아니하여 귀 공사로부터 2020. 09 .17. 자에 보험금이 지급되었습니다.

The Exporter made and entered into an export contract(s) with the Importer on December 02, 2018(hereinafter the "Contract") and shipped the goods in accordance with the terms and conditions of the Contract. However, the Importer did not pay the sale price(s) to the Exporter and as a result, the insurance money was paid by K-SURE, on September 17, 2020.

For KOREA TRADE INSURANCE CORPORATION

Authorised Signatory

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따라서, 수출자는 다음과 같이 약정합니다.
NOW, THEREFORE, the Exporter hereby undertakes as follows :

제1조 채권의 양도(Assignment)

(1) 수출자는 수출계약과 관련하여 수입자에 대하여 가지는 계약대금 청구권, 물품반환청구권, 손해배상청구권, 계약해제권, 부당이득반환청구권, 어음금청구권, 구상권 등 일체의 모든 권리와 권한을 귀 공사에게 양도합니다. 명의상의 수입자 이외에 실제의 수입자가 별도로 있는 경우에는 이 양도증서에서의 "수입자"는 명의상의 수입자뿐만 아니라 실제의 수입자도 포함합니다.
The Exporter irrevocably assigns to K-SURE all claims, credits, demands, authority, powers, privileges, and all rights of whatsoever nature, which the Exporter has against the Importer under or in relation to the Contract, including but not limited to all claims for the sale price(s), all claims for the return of the exported goods, all claims for compensation for loss and damage arising from breach of the Contract, the right to terminate, rescind, repudiate or cancel the contract, the claim based on unjust enrichment, and all claims based upon the draft(s) and all subrogated claims. In the event that there is an actual or beneficial importer other than the above named Importer, the reference to the "Importer" hereunder shall include such an actual or beneficial importer as well as the above named Importer.

(2) 수출계약과 관련하여 신용장이 발행되었거나 선하증권, 운송장, 창고증권, 보증서 등이 발행된 경우에는 그러한 증서의 채무자들에 대한 수출자의 일체의 권리와 권한도 아울러 귀 공사에게 양도합니다. 이러한 경우에는 위 채무자들에 대하여 수입자에 준하는 조치를 취하겠습니다.
In the event that a letter of credit, bill of lading, air or sea waybill, warehouse receipt and/or a letter of guarantee or any other documents of whatsoever nature has or have been issued under or in connection with the Contract, the Exporter irrevocably assigns to K-SURE all claims, credits, demands, authority, powers, privileges, and all rights of whatsoever nature which the Exporter has against the responsible parties on such documents or transactions. In such a case, the Exporter hereby agrees to take all necessary measures hereunder as if such responsible parties are the Importer hereunder.

제2조 양도의 통지(Notification)

수출자는 이 양도증서 작성 후 즉시 수입자에게 이 증서에 따른 채권양도의 사실을 통지하겠으며, 통지는 수입자 및 다른 모든 제3자에게 대항할 수 있는 방법으로

For KOREA TRADE INSURANCE CORPORATION

Authorised Signatory

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하겠습니다. 수출자는 위와 같은 통지의무를 부담함과 아울러, 귀 공사가 직접 수출자를 대리하여 채권양도에 관한 통지를 수입자에게 하는 권한도 귀 공사에게 부여합니다.
The Exporter hereby agrees to notify the Importer of the fact of assignment hereunder immediately after the signing of this Letter of Assignment in such methods that will make the assignment fully effective and valid with respect to the Importer and any third parties. Without prejudice to the above obligation to notify the Importer of the assignment, the Exporter hereby grants to K-SURE the full power and authority to notify the Importer of the assignment on behalf of the Exporter.

제3조 어음 및 증서(Draft and Other Documents)

수출자는 이 양도증서 작성 후 즉시 관련 어음 및 증서를 귀 공사앞으로 배서양도하겠습니다.
Immediately upon signing this Letter of Assignment, the Exporter hereby agrees to endorse and deliver the draft(s) and all other relevant documents to K-SURE.

제4조 명의 사용 권한(Right to Use Name)

수출자는 귀 공사가 양수한 채권을 어떠한 방법으로든 행사하거나 관련 소송, 중재 등을 수행함에 있어서 필요한 경우 수출자의 명의를 사용할 수 있는 권한을 귀 공사에게 부여합니다.
The Exporter hereby grants to K-SURE the full power and authority to use the name of the Exporter, as K-SURE deems necessary or appropriate, in order to collect, to bring an action or to arbitrate, or to exercise the above-mentioned assigned rights in any other manner.

제5조 협조의무(Cooperation)

수출자는 귀 공사가 양수한 채권을 어떠한 방법으로든 행사하거나 관련 소송, 중재 등을 수행함에 있어서 최대한의 모든 협조를 다할 것을 약정합니다. 이와 같은 협조는 귀 공사가 요청하는 경우 관련 자료 및 정보 일체를 제공하는 것, 사실관계를 상세히 조사하는 것, 그리고 법정증언을 하는 것을 포함하되 여기에 한정되지는 않는다는 것을 확인합니다.
The Exporter hereby agrees to provide full cooperation to K-SURE in support of K-SURE's efforts to collect, to bring an action or to arbitrate, or to exercise the above-mentioned assigned rights in any other manner including but not limited to providing and producing any relevant documents, materials and information, investigating the detailed facts and circumstances and providing oral testimony, if requested by K-SURE.

For KOREA TRADE INSURANCE CORPORATION

Authorised Signatory

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날짜(Date) : 2020년 9월 17일 September 17, 2020

수출자(Exporter) 영문명판, 인감 Company name stamp and official corporate seal

SILKROAD C & T

MIN HOAN PARK / C. E. O.

For KOREA TRADE INSURANCE CORPORATION

Authorised Signatory

<붙임 1>(Annex 1)

	Commercial Invoice No.	Commercial Invoice Date	Due Date	Invoice Amount	Paid Amount	Balance
1	SR-INADK181126-03	Nov.26.2018	Mar.02.2019	U$42,420.-	-	U$42,420.-
2	SR-INADK181212-04	Dec.12.2018	Mar.25.2019	U$43,260.-	-	U$43,260.-
3	SR-INADK181224-05	Dec.24.2018	Apr.04.2019	U$21,000.-	U$21,000.-	-
4	SR-INADK190108-06	Jan.08.2019	Apr.11.2019	U$21,000.-	U$21,000.-	-
5	SR-INADK190111-07	Jan.11.2019	Apr.18.2019	U$21,000.-	-	U$21,000.-
6	SR-INADK190117-08	Jan.17.2019	Apr.26.2019	U$21,840.-	-	U$21,840.-
7	SR-INADK190305-09	Mar.05.2019	Jun.07.2019	U$21,000.-	-	U$21,000.-
8	SR-INADK190307-10	Mar.07.2019	Jun.11.2019	U$21,000.-	-	U$21,000.-
9	SR-INADK190315-11	Mar.15.2019	Jun.19.2019	U$42,000.-	-	U$42,000.-
10	SR-INADK190322-12	Mar.22.2019	Jun.28.2019	U$42,000.-	-	U$42,000.-
Total	-	-	-	U$296,520.-	U$42,000.-	U$254,520.-

33. We find that the Applicant (Ksure) has informed the Corporate Debtor (Ado Additives) regarding the fact of this Letter of Assignment dated 17.09.2020 and called upon it to make the outstanding payment through an email on 15.04.2021, annexed at Pages 173-174 to the application.

34. It is a settled position of law, as well as the view stands already adopted by this Adjudicating Authority on numerous occasions, relying upon catena of decisions rendered by the Hon'ble NCLAT that the validity or enforceability of an assignment cannot be challenged by the debtor in a summary proceeding under the I&B Code. It is trite, axiomatic and settled law that the assignment only changes the hands of the creditor clothing the assignee with the authority to enforce the claim. The liability of a debtor in regarding to creditor's claim remains intact and does not get diluted in any manner whatsoever. Thus, in the present case, the Respondent cannot question the validity of assignment in a proceeding under Section 9 of the I&B Code.

35. We would refer the judgments of the Hon'ble NCLAT in the context as under:

a) ***T. Johnson v. Phoenix ARC (P) Ltd.,*** reported at **2019 SCC OnLine NCLAT 244,** wherein the Hon'ble NCLAT held that:

> "*In cases involving assignment of debts, another issue arises. Often, the corporate debtor, whilst not challenging the locus of the assignee, may challenge the very assignment before the NCLT. In such cases, the process adopted for such assignment, the consideration paid for such assignment, etc, may be challenged.* ***The NCLT, being a tribunal of summary jurisdiction, does not have any jurisdiction to deal with such challenges****. The consideration for assignment of debt is of 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 regards the Corporate Debtor remains intact and does not get diluted in any manner whatsoever."

(Emphasis added)

b) ***Lalan Kumar Singh v. Phoenix ARC Pvt Ltd.*** reported at **2018 SCC OnLine NCLAT 835,** has held that "[...] *declaration that the assignment made by HSBC to 'Phoenix' as illegal, ... can be raised only in a civil suit. The applicant is trying to convert the proceedings under the IBC as civil proceedings akin to a trial which is not the legislative intent.*"

c) **In *Ranjit Kapoor v Asset Reconstruction Co (India) Ltd.*,** reported in **2018 SCC OnLine NCLAT 1041,** the Hon'ble NCLAT held that "*the question of validity of such assignment agreement cannot be gone into by the NCLT or the NCLAT, even in an application under section 65 of the IBC.*"

A similar view has been adopted by us in:

a) ***M/s. Manavta Tradelink Private Limited v. M/s. Manikaran Vincom Private Limited*** in **C.P. (IB) No. 80/KB/2023** at Para 12 reported at **(2023) ibclaw.in 733 NCLT**.

b) ***CFM Asset Reconstruction private Limited v. Jagdamba Industries Limited*** in **C.P. (IB) No. 203/KB/2021.**

c) ***CFM Asset Reconstruction Pvt. Ltd. v. Machine Works International Ltd.*** in **I.A. (IB) No. 1585/KB/2023 in Company Petition (IB) No. 200/KB/2022** reported at **(2024) ibclaw.in 350 NCLT.**

36. In the aforesaid backdrop, that emanates from the legal proposition discussed above, we are of the considered opinion that validity of an assignment cannot be gone into in a summary proceeding as this one, and the question whether the assignor can assign its claim to the assignor, cannot be considered in an insolvency proceeding under I&B Code. The liabilities of the assignor concerning the very same assets which is assigned to the assignee would remain protected. The role of the assignee will only be to step into the shoes of the assignor as a creditor.

On the Validity of the Authorization

37. On the issue relating to the authorization to Mr. Abhishek Aggarwal to pursue the instant application, it is the averment of the Corporate Debtor that the Board Resolution and Power of Attorney is not in accordance with law. We find that the Power of Attorney as issued in favour of Mr. Abhishek Agarwal has been apostilled under the provisions of the "Hague Convention of 1961". India is one of the signatories among 126 countries to the Hague Convention of 5th Day of October 1961 (HCCH 1961 Apostille Convention), that abolishes the requirement of Legalisation for Foreign Public Documents and facilitates the use of public documents abroad. It is the objective of the Convention to abolish the traditional requirement of legalisation, replacing the often long and costly legalisation process with the issuance of a single Apostille certificate by a Competent Authority in the place where the document originates. The electronic Apostille

Programme (e-APP) was launched in 2006 to support the electronic issuance and verification of Apostilles around the world.

38. Further, the Ministry of External Affairs (CPV Division) on November 18, 2020, being No. Q/OI/433/2/2020 has officially notified that:

> " *The Hague Apostille Convention, 1961, abolishes the requirement of legalization of foreign documents for use in any member country, once an Apostille certificate (including e-Apostille) has been issued by a competent authority of the country where the document originates.*
>
> *2. It has been brought to the notice of this Ministry that some institutes/organizations/establishments in India demand an apostilled document of a member country to be further attested by the Indian Mission/Post in that country. It is clarified that no further attestation or legalization of an apostilled document should be required in India as India is a member of the Hague Apostille Convention. An apostilled document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.*
>
> *3. Copy of a Note on "Issuing and Accepting Apostilles" is enclosed for ready reference. The full text of the Hague Apostille Convention and list of its member countries are available at: https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille*
>
> *4. To avoid unnecessary hassle caused to general public by demand of further legalization or attestation of an apostilled document, all concerned are requested to disseminate the information contained in paras 1, 2 & 3 above, among organizations/academic establishments, which are under their charge/in their jurisdiction or are*

> *affiliated with them. The information may also please be prominently displayed on the official websites*."

39. Further, the Hon'ble Apex Court in ***Lakshmi Kant Pandey v. Union of India*, (2010) 12 SCC 735: (2010) 4 SCC (Civ) 736** has laid down that:

> "***4.*** *[…] we deem it appropriate that the procedure prescribed in the Hague Apostille Convention be accepted and followed by the Indian courts ….*
>
> **xxx xxx xxx**
>
> **6.** *We accordingly allow this application in terms of Prayer clauses (a) and (b) which are as under:*
>
> > *(a) Direct the courts of competent jurisdiction … **to accept documents authenticated by officers competent to issue certification by "Apostille" in the country of their execution as provided and covenanted in the Hague Apostille Convention**;*"
>
> **(Emphasis Added)**

40. Further, in the Hon'ble High Court of Allahabad, in ***Naromattie Devi Ganpat v. Union of India*** reported at **2024 SCC OnLine All 136 : (2024) 2 All LJ 359** held that:

> "*48.* ***The Government of India has been signatory of the Hague Convention, and accordingly, the Ministry of External Affairs had issued Office Memorandum on 18.11.2020 treating the 'Apostille' document as a legal document****. Here, when the petitioner had given 'Apostille' document showing her ancestry, it is not open for respondent nos.1 to 3 to disbelieve the same and not follow the Treaty, even though they themselves had signed*."
>
> **(Emphasis Added)**

41. Furthermore, we would refer to the judgment rendered by the Hon'ble Bombay High Court in ***Zhejiang Medicines and Health***

Products Import and Export Co. Ltd. and Ors. vs. Devanshi Impex Pvt. Ltd. reported in **MANU/MH/2737/2016** wherein it was held that in order to examine the authenticity of a Power of Attorney, the Court needs to look into the provisions as enshrined under Sections 57 and 85 of the Evidence Act, 1872. The Hon'ble High Court observed that:

> "*5. At the outset, it needs to be noted that authority to do something can be conferred in various modes. Power of attorney is not the only mode of conferring such authority. In fact, the requirement of a power of attorney to confer such authority is to be found only in the Registration Act, 1908. Section 32 of the Registration Act, 1908 requires that every document for registration under the Act must be presented by any of the persons named therein. One of the named persons is an agent of the person executing or claiming under the same, duly authorized by a power of attorney executed and authenticated in a manner mentioned in the Act. Section 33 provides for powers of attorney, which are recognizable for the purposes of Section 32. One of the recognized powers of attorney is a power of attorney executed before, or authenticated by, a Notary Public. Barring these special requirements, an authority can be created in different modes. Particularly, a corporate organization confers authority by its resolution. Authority may be created also by making of an affidavit. Inasmuch as there is no legal requirement for creation of an authority by a power of attorney executed before a Notary Public, we are not really concerned in this matter with the validity of the authority as such. This is particularly so since the authority is created in People's Republic of China and the question whether or not the authority was duly conferred or created has to be answered with reference to the law applicable in that country. No arguments were advanced in this behalf before me.* ***Considering, however, that the authority in the present case is claimed on the basis of a duly executed power of attorney before a Notary Public in China, the question that we still need to answer is whether or not the Petitioner can rely on the particular power of attorney in evidence. It is only in that context that***

we need to consider the provisions of the Evidence Act and the Notaries Act cited before me.

6. ***Section 85 of the Evidence Act creates a legal presumption in favour of execution and authentication of a document purporting to be a power of attorney executed before, or authenticated by, a Notary Public***. *There are a number of judgments of different High Courts, which hold that Section 85 applies to powers of attorney executed before and authenticated by all Notaries and not necessarily Notaries defined under the Notaries Act, 1952. Delhi High Court in the case of National and Grindlays Bank Ltd. v. M/s. World Science News and others MANU/DE/0106/1976 : AIR 1976 Delhi 263, Allahabad High Court in the case of Abdul Jabbar v. IInd Addl. District Judge, Orai MANU/UP/0256/1980 : AIR 1980 Allahabad 369 and Calcutta High Court in the case of in Re K.K. Ray (Private) Pvt. Ltd. MANU/WB/0150/1967 : AIR 1967 Calcutta 636 (V 54 C 136) have held so. Even the judgment of the Supreme Court in the case of Jugraj Singh v. Jaswant Singh MANU/SC/0413/1970 : 1970 (2) Supreme Court Cases 386 suggests that a power of attorney executed before a Notary Public not covered by the Notaries Act, 1952 comes within the expression "Notary Public" under Section 85, though this case does not in terms deal with this question.*

7. ***We also need to consider the effect of Section 57 of the Evidence Act, which requires the Court to take judicial notice of all seals of Notaries Public. Once again, these Notaries Public include Notaries operating in other countries as well and are not confined to Notaries under the Notaries Act, 1952***.

8. Now the question is whether Section 14 of the Notaries Act, 1952, which is in the context of reciprocal arrangements for recognition of notarial acts done by foreign Notaries, in any way, controls the interpretation of Sections 85 or 57 of the Evidence Act. ***Section 14 provides that if the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by Notaries in India are recognized***

for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by the Notaries within that country or place shall be recognized within India for all purposes or, as the case may be, for such limited purposes, as may be specified in the notification. *Section 14 no doubt provides for a declaration by the Central Government of recognition within India of all notarial acts done by Notaries of a foreign country but does it imply that no other notarial acts, that is to say, except the acts so recognized by declaration by the Central government, are recognized in India. The query is more pertinent in the context of Sections 85 and 57 of the Evidence Act. In the first place, Sections 85 and 57 particularly deal with powers of attorneys executed before and authenticated by Notaries Public which are presumed to have been duly so executed and authenticated, with the seals of the notaries being judicially noticed, whereas Section 14 generally provides for recognition of "notarial acts". There is no reason why, as far as powers of attorney with notarial seals are concerned, we should not go by the provisions of Sections 85 and 57, which particularly deal with such matters, rather than the general provisions of Section 14 which bear on recognition of notarial acts generally. (There are various other notarial acts which fall for recognition within India.)* ***For raising the statutory presumption, Sections 85 and 57 do not require any recognition of notarial acts of the country or place, as the case may be, where such power of attorney is executed or authenticated. Secondly, there is nothing in the language of Section 14, which requires that only those notarial acts, which are declared as recognized by the Central Government by notification in the Official Gazette, are to be recognized in India****. Delhi High Court in the case of Rajesh Wadhwa v. Dr. (Mrs.) Sushma Govil MANU/DE/0335/1988 : 37 (1989) DLT 88 dealt with this aspect. The Court, after considering judgments of various courts in and outside India, came to hold that the provisions of Section 14 of the Notaries Act, 1952, do not create any bar in recognizing the notarial acts of such countries, which are not declared as recognized by a notification of the Central Government. Even the*

Allahabad High Court in Abdul Jabbar's case (supra) held that Section 85 of the Evidence Act applies equally to documents authenticated by Notaries Public of other countries and there is no reason to import the provisions of Notaries Act for interpreting the provisions of the Evidence Act. Another judgment of Delhi High Court in La Chemise Lacosle v. Crocodile Indl. Pte. Ltd. CS (OS) No. 894/2001, holds that even though there might not be reciprocity between India and another country within the meaning of Section 14 of the Notaries Act, 1952, acts of Notaries in that foreign country could be given legal recognition by courts and authorities in India. The notification under Section 14 of the Notaries Act, in other words, is not held to be mandatory. I am respectfully inclined to agree with these views of Delhi and Allahabad High Courts.

9. Mr. Andhyarujina, learned Counsel for the Respondent, referred to the cases of Calcutta High Court in REI Agro Ltd. Vs. UBS AG MANU/WB/0230/2015 and Chandra proteco Ltd. and Hopgoodganim MANU/WB/1295/2015 as also the judgment of Allahabad High Court in Tayal Potteries v. Macroplast (P.) Ltd. MANU/UP/0539/1998 in support of his case that in the absence of recognition of reciprocity as contemplated under Section 14 of the Notaries Act, unilateral recognition of notarial acts done by a foreign Notary by an Indian Court is impermissible. In the first place, the judgment of the Calcutta High Court in the case of REI Agro Ltd. (supra) curiously does not refer to the earlier judgment of that Court in the case of Re K.K. Ray Pvt. Ltd. (supra). ***In that case, after an elaborate discussion on the various provisions of law, which bear on the subject, a learned Single Judge of Calcutta High Court had come to a conclusion that notification under Section 14 of the Notaries Act recognizing reciprocity of notarial acts was not a legal requirement for recognizing a power of attorney in India****. Besides, none of the two judgments of Calcutta High Court cited by Mr. Andhyarujina discusses the existing law on the subject, particularly on the interpretation of Section 85 of the Evidence Act, as noted by several other High Courts as I have indicated above. These two judgments rather approach the subject on a first principle basis. The judgments do not elaborate on why recognition by Indian Courts is*

impermissible in the absence of recognition of reciprocity as contemplated under Section 14 of the Notaries Act. The only reason, broadly stated, is that "if it is otherwise, the sanctity of the sovereign power being exercised by an Indian Court will be compromised". One is at a loss to understand why it should be so. After all, it is by law made by the Indian legislature, namely, Section 85 of the Evidence Act, that the Indian Courts recognise all powers of attorney led in evidence in India. The judgment of Allahabad High Court cited by Mr. Andhyarujina does not deal with a power of attorney in connection with verification of a petition. ***The authority to verify the petition was claimed in that case by a "pairokar", who was said to be "well acquainted with the facts deposed to below." The Court found that the affidavit filed by this "pairokar" nowhere stated that the said person was duly authorised by the petitioners to file the affidavit in support of the petition. The facts in that case are, thus, clearly distinguishable****.*

*10. Mr. Andhyarujina, learned Counsel for the Respondent, also submitted that unlike in the case of Re K.K. Ray Pvt. Ltd., where the Court in fact had material before it to find a factual reciprocity between notarial acts in US and India, there is no such factual material available in the present case. I am afraid I cannot accept this argument from the Respondent. It is, firstly, for the Respondent to aver that there is no such factual reciprocity. In the absence of such plea from the Respondent, the Petitioner cannot be required to prove factual reciprocity. Secondly, I have held as a matter of law that Section 14 of the Notaries Act, 1952 has no bearing on the construction to be put on Section 85 of the Evidence Act, in which case factual reciprocity of notarial acts is quite besides the point.***"*

(Emphasis Added)

42. In the present case, the Power of Attorney issued in favour of the applicant herein has been apostilled under the provisions of Hague Convention of 1961 and the Apostille Certificate dated 28.03.2019 has also been submitted through the Supplementary Affidavit dated 13.10.2023 before us. Hence, we have found no infirmity in the alleged

Power of Attorney which legally authorises the Power of Attorney holder to pursue the instant proceedings under Section 9 of the I&B Code.

43. We find that the amount claimed to be in default is of USD 211,680 equivalent to INR 1,60,64,395/- which is in excess of the prescribed threshold limit as per Section 4 of the I&B Code and the application has been filed within the limitation period. Further, no testimony has been placed that substantiates the alleged claim containing pre-existing dispute. Further, we find that vide an email dated 30.01.2023, the Corporate Debtor has acknowledged its liability towards the applicant and shown its intention to liquidate the overdue amount owed by them to the applicant by April 2023. The same is annexed at page 36 to the Rejoinder filed by the Applicant here.

Conclusion:

44. In the light of the enumerations supra, the application bearing **C.P. (IB) No. 40/KB/2022**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

i. The Application filed by the **Korea Trade Insurance Corporation (Ksure), Operational Creditor** under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Ado Additives MFG Private Limited, Corporate Debtor.**

ii. As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the

provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

a) *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority;*

b) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;*

c) *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

d) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vi. The Applicant has not proposed any name as the "IRP". Hence, we appoint **Mr. Manish Agarwal,** Registration No. IBBI/IPA-001/IP-P-02723/2022-2023/14176, Email ID: camanishagarwal1508@gmail.com as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 9 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of

Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

viii. During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

ix. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.

x. The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

xi. The Operational Creditor shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

xii. In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

xiii. Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), to whom the companies are registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

xiv. The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xv. The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

45. Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

46. Post the matter on **18/07/2024** for hearing the Periodical Progress Report by the IRP/RP.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 05th Day of June, 2024.

Bose, R. K. [LRA]