

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/1586(KB)2023**

**In**

**C.P. (IB)/480(KB)2018**

An application under Section 60 (5) of the Insolvency & Bankruptcy  
Code, 2016 read with Rule 11 of the NCLT Rules, 2016

Indian Bank (Erstwhile Allahabad Bank

... .. Financial Creditor

Versus

Ural India Limited

... .. Corporate Debtor

And

In the matter of:

CFM Asset Reconstruction Private Limited

A Company within the appropriate meaning of the Companies Act, 2013  
having its registered Office at 1<sup>st</sup> Floor, Wakefield House, Sprott Road,  
Ballard Estate, Mumbai 400038 and camping at AKAG & Co., 11 & 11/1,  
B.B. Ganguly Street, 1<sup>st</sup> Floor, Kolkata – 700012.

... .. Applicant

Date of pronouncement: 1<sup>st</sup> May, 2024

**CORAM:**

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

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

**Appearance (via video conferencing/physically)**

Mr. Shaunak Mitra, Adv. ] For the Liquidator

Ms. Zeenat Shabab, Adv. ]

Mr. Amandeep Singh, Adv. ]

Mr. Sanjit Kumar Nayak ] Liquidator-in-Person

Mr. Joy Saha, Sr. Adv. ] For the Applicant in

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Mr. Subhankar Nag, Adv.	] IA(I.B.C)/666(KB)2022 and
Mr. Avishek Guha, Adv.	] IA(I.B.C)/774(KB)2021
Ms. Arunika Dutta, Adv.	]
Mr. Kaustav De Sarkar, Adv.	]
Mr. Jishnu Chowdhury, Adv.	] For the Applicant in
Mr. Rajarshi Banerjee, Adv.	] IA(I.B.C)/62(KB)2024
Mr. Siddhartha Chatterjee, Adv.	] For the Applicant in
Mr. Abir Lal Ghosh, Adv.	] IA(I.B.C)/1586(KB)2023

**O R D E R**

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

1. The Court convened in a hybrid mode.
2. Heard both the learned Counsel for the parties.
3. This is an application preferred by CFM Asset Reconstruction Private Limited (hereinafter referred to as “the Applicant”) seeking substitution in the proceeding in C.P. (IB)/480(KB)2018 which was filed by the erstwhile Financial Creditor, Indian Bank.
4. The Applicant “CFM Asset Reconstruction Private Limited” by virtue of Deed of Assignment became assignee executed by and between the erstwhile Financial Creditor, Indian Bank and the Applicant, got the debt of the Corporate Debtor, Ural India Limited assigned in its favour.
5. Assignment as per Section 5 (1) of the SARFAESI Act confers assignee the full and absolute ownership in respect of the assigned loans and shall be the only person legally entitled to recovery of such loans, institute and carry-on legal proceedings for recovery in its own capacity and not as an agent of the assignor bank. In other words, all rights, title and interests in the loan are assigned to the assignee.

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6. Therefore, this application has been preferred seeking substitution of the name of the Applicant in place of the erstwhile Financial Creditor, Indian Bank.

7. **Learned Counsel for the Applicant:**

(a) Learned Counsel for the Applicant brought to our notice the relevant clauses in the Deed of Assignment which are as follows:

<b>Relevant clauses in the Deed of Assignment</b>	<b>Particulars in brief</b>
Clause 1.1 (a)	The Deed of Assignment defines the term “Amounts Due” and it means all amounts due and payable by the borrower to the Assignor in respect of the loans availed of under various financing documents.
Clause 1.1 (j)	The Deed of Assignment defines the term “Loans” and it means any financial assistance by way of loan, debentures, or in any other form being the aggregate amount of dues payable under the financing documents by the borrower to the assignor bank, including proceeds of enforcement of security interest but does not include A) any undisbursed commitments made by the assignor bank to the borrower; and B) does not include any amounts actually paid by the borrower towards the amounts

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	due before the cut-off date being 10.08.2023 as such amounts cannot be considered as part of the loan.
Clause 1.1 (l)	It means 21 crores and 1 lakh rupees only being the Purchase Consideration.
Clause 2.1.1 and 2.1.2.	Assignment as per Section 5 (1) of the SARFAESI Act and Assignee shall be deemed to be the full and absolute owner in respect to the assigned loans and shall be the only person legally entitled to the loans, to recover and receive all amounts due from such loans, to institute and carry on legal proceedings for such recovery purposes in its own capacity and not as an agent of the assignor bank. All rights, title and interests in the loans are assigned to the assigned.
Clause 2.2.6	<u>The grant of consent by the assignor to the assignee in terms of Section 5 (5) for filing of applications before DRT, DRAT or the Court or such other authorities as may be required for the purposes of substitution of its name in place and stead of the name of bank.</u>
Clause 2.3	Only “financial assets” are assigned and nothing else on an “as is where is” and “as is what is” and “without any recourse” basis.

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Clause 11.5	Any provision of the instant deed if found illegal, such provisions shall be fully severable; and the rest of the provisions of the deed shall have the same effect as legally enforceable covenants would have and shall remain in force.
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- (b)** He also brought to our attention Section 5 (2) of the SARFAESI Act which states upon acquisition of the financial assets, the assignee shall be deemed to the lender and all the rights of the bank in relation to the financial assets assigned vest in the assignee.
- (c)** In terms of Section 5 (3) of the said Act, all contracts, deeds, agreements etc. which relate to the financial asset are to be enforced or acted upon by the assignee, post assignment.
- (d)** As per Section 5 (4) of the said Act, after acquisition of the financial assets, all the legal proceedings relating to the financial assets have to be continued, prosecuted and enforced by or against the assignee. He submits that necessary consent from the assignor has been obtained for substituting his name.
- (e)** He relies on the decision of the Hon'ble National Company Law Appellate Tribunal, New Delhi in ***Naresh Kumar Agarwal vs. CFM Asset Reconstruction Private Limited*** passed in ***Company Appeal (AT) (Insolvency) No.470 of 2023*** wherein it has been held that upon assignment, all rights of a bank or financial institution vests with the asset reconstruction company and it is deemed to be the lender for

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all purposes and the assignee is entitled to in law to proceed against the borrower as well as the guarantor as has been held in the case of ***LaxmiPat Surana vs. Union of India & Anr.*** reported in ***(2021) 1 SCC 481***.

**8. Learned Counsel for the Respondent:**

- (a)** Learned Counsel for the Respondent submits that the Committee of Creditors/Resolution Professional and Liquidator are responsible for devaluation of the assets of the company in liquidation resulting in devaluation of its assets from Rs.21.46 crores to Rs.1.20 crores.
- (b)** Learned Counsel further submits that the assignee has taken over only the assets (the loan account) and not liabilities in respect of the loan account which is not legally permissible. He submits that there is a suit pending before the learned Alipore Commercial Court in Title Suit No.26 of 2021 filed by the Corporate Debtor seeking several reliefs and damages from the erstwhile Financial Creditor. Therefore, Indian Bank has to be retained as a party to the said proceedings and has as well, as otherwise the respondent would be rendered remediless.
- (c)** He also relies on learned Debt Recovery Tribunal's order dated 7<sup>th</sup> February, 2024 wherein it has been held that the Applicant to be added as a party and it cannot be substituted.
- (d)** In view of the above submissions, he prays for dismissal of the application or add the Applicant as a party along with

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Indian Bank but the Applicant should not be substituted in place of Indian Bank.

**9. Per contra by the Applicant:**

- (a)** Relied on the balance sheet for the year 2018-19 and the balance sheet for the your 2019-20, the learned Counsel submits that in the balance sheet for the year 2018-19 the value of the assets shown as Rs.21.46 crores whereas in the next year it was shown as Rs.1.20 crores. Both the balance sheets have been prepared by the Corporate Debtor prior to commencement of CIRP.
- (b)** He further brought to our notice that the minutes of the 6<sup>th</sup> COC Meeting held on 24<sup>th</sup> September, 2020 wherein it has been specifically recorded that the valuation of the Corporate Debtor for the year 2019 was based on leasehold land, the factory and other buildings standing thereon. However, pursuant to the order of the Court, it was held that no leasehold interest had been created in favour of the Corporate Debtor and accordingly, the Corporate Debtor was evicted and the Chief Revenue Officer, Haldia took possession of the land and this has resulted in a drop in valuation of assets. All this happened much prior to CIRP commencement of the Corporate Debtor and, therefore, the contention is absolutely not tenable.
- (c)** He further submits that the Applicant can only acquire financial assets and need not acquire the liabilities of the assignor bank, with reference to the loan assigned.

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- (d)** He further submits that in ***ICICI Bank Limited vs. Official Liquidator of APS Star Industries Limited & Ors.*** reported in ***(2010) 10 SCC 1*** wherein it has been held that once an assignment takes place the only course of action is to substitute the assignee in place of the assignor.
- (e)** With reference to Civil Suit pending before the learned Alipore Commercial Court against the Financial Creditor, learned Counsel submits that the pendency of the suit in different forum cannot constitute a ground for disallowing substitution in a Company Petition before this Tribunal.
- (f)** He submits that the Corporate Debtor may independently proceed against the erstwhile Financial Creditor in respect of the liabilities if at all, that may arise in terms of the Civil Suit filed in the learned Alipore Commercial Court and that has nothing to do with this application.
- (g)** He further submits that decision of Hon'ble Debt Recovery Tribunal does not have any precedential value and its decision cannot bind this Tribunal.
- (h)** Reference made to the decision of ***Kapilaben & Ors. vs. Ashok Kumar Jayanti Lal Sheth & Ors.*** reported in ***(2020) 20 SCC 648*** that the rights can be assigned and not the obligations and in certain cases where the rights and obligations are intervened, such right or benefit cannot be assigned without the consent of the person to whom the co-extensive burden or liability is owed.
- (i)** Learned Counsel submits that it is not applicable to assignments made by the banks or financial institutions



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under Section 5 of the SARFAESI Act. The general principles stand overridden by the mandate of the special statute.

- (j) He submits that when assignment has been made in favour of an ARC, the proceedings has been laid down in Section 5 of the SARFAESI Act, 2002 has to be followed.

**10. Findings:**

We find that the three issues needs our consideration:

- (i) Whether an assignment can be made to take over the only assets and not liability of the said bank with reference to the assigned debt;
- (ii) Whether change of valuation of the Corporate Debtor that too before the commencement of CIRP as any bearing on this application for substitution;
- (iii) Whether the Respondent would be rendered remediless in case the Indian Bank is not retained as a party to this application.

11. We find that as per the SARFAESI Act only asset can be assigned without assigning the corresponding liabilities with regard to the concerned assigned debt. This is very clear on perusal of Section 5 read with Section 2 (l) of the SARFAESI Act, 2002.

12. In this context, we rely on paragraphs 45 to 51 of the judgment of the Hon'ble Supreme Court in **ICICI Bank Limited vs. Official Liquidator of APS Star Industries Limited & Ors.** reported in **(2010) 10 SCC 1**

*“45. In the alternative, since the borrower(s) has relied on Section 130 of the said TP Act, one needs to analyse the contentions raised in the that regard. According to the borrower(S) assignment of financial instruments in*

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*possession of ICICI Bank Ltd. to Kotak Mahindra Bank Ltd. transfer not merely the right to recover the debt but also transfers the obligations under the financial instruments “as if they were executed by the clients of ICICI Bank in favour of the assignee” i.e. Kotak Mahindra Bank Ltd. According to the borrower (s), and assignment of a debt can never carry with it the contract by all parties. Therefore, according to the borrower(s), the impugned deed of assignment is legally unsustainable without novation of original contract between ICICI Bank Ltd. (assignor) and the borrower(s) (assignee). We find no merit in the above arguments.*

*46. As stated above, an outstanding in the account of a borrower(s) (customer) is a debt due and payable by the borrowers (s) to the bank. Secondly, the bank is the owner of such debt. Such debt is an asset in the hands of the bank as a secured creditor or mortgagee or hypothecate. The bank can always transfer its asset. Such transfer in no manner affects any right or interest of the borrower(s) (customer). Further, there is no prohibition in the B R Act, 1949 in the bank transferring its assets inter se. Even in the matter of assigning debts, it cannot be said that the banks are trading in debts, as held by the High Court (s). The assignor Bank has never purchased the debt(s). It has advanced loans against security as part of its banking business. The account of a client in the books of the bank becomes non-performing asset when the client fails to repay. In assigning the debts with underlying security, the bank is only transferring its asset and is not acquiring any rights of its client(s). The bank transfers its asset for a particular agreed price and is no longer entitled to recover anything from the borrower(s). The moment ICICI Bank Ltd. transfers the debt with underlying security, the borrow(s) ceases to be the borrower(s) of the ICICI Bank*

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*Ltd. and becomes the borrower (s) of Kotak Mahindra Bank Ltd. (assignee).*

*47. At this stage, we wish to once again emphasis that debt are assets of the assignor Bank. The High Court (s) has erred in not appreciating that the assignor Bank in only transferring its rights under a contract and its own asset, namely, the debt as also the mortgagee's rights in the mortgaged properties without in any manner affecting the rights of the borrower(s)/ mortgagor (s) in the contract or in the assets. None of the clauses of the impugned deed or assignment transfers any obligations of the assignor towards the assignee.*

*48. In Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd. The Supreme Court has held that the law on the subject of assignment of a contract is well settled. An assignment of a contract might result by transfer either of the rights or by transfer of obligations thereunder. There is a well-recognized distinction between the two classes of assignments. As a rule, obligations under a contract cannot be assigned except with the consent of the promise, and when such consent is given, it is really a novation resulting in substitution of liabilities. That, rights under a contract are always assignable unless the contract is personal in its nature or unless the rights are incapable of assignment, either under the contract can always be assigned. That, there is, in law, a clear distinction between assignment of rights under a contract by a party who has performed his obligation thereunder and an assignment of a claim for compensation which one party has against the other for breach of contract.*

*49. In Camdex International Ltd. v. Bank of Zambia the following observation which is relevant to the present case needs to be quoted:*

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*“The assignment of a debt will not be contrary to public policy solely on the grounds that the assignee has purchased the debt for a considerable discounted price or because that price is only payable after a period of credit. Nor will the assignment be contrary to public policy simply because the assignee may make a profit on the transaction at the end of the day. If there was no prospect of a profit, Hobhouse, L.J. observed, commercial entities would never purchase debts.”*

50. Similarly, the following proposition in *Chitty on Contracts*, 27<sup>th</sup> Edn. (1994) at Para 19.027 is relevant to be noted:

*“It is also well established that a claim to a simple debt is assignable even if the debtor has refused to pay. The practice of assigning or ‘selling’ debts to debt collecting agencies and credit factors could hardly be carried on if the law were otherwise.”*

51. In view of the above exposition of law, we find that under the impugned deed of assignment only the account receivables in the books of impugned deed of assignment only the account receivable in the books of ICICI Bank Ltd. has been transferred to Kotak Mahindra Bank Ltd. The obligations of ICICI Bank Ltd. towards its borrower(s) (customer) under the loan agreement secured by deed of hypothecation/ mortgage have not been assigned by ICICI Bank Ltd. to the assignee Bank, namely, Kotak Mahindra Bank Ltd. Hence, it cannot be said that the impugned deed of assignment is unsustainable in law. The obligations referred to in the impugned deed of assignment are the obligations, if any, of ICICI Bank Ltd. towards Kotak Mahindra Bank Ltd. (assignee) in the matter of transfer of NPAs. For example, when an account receivable is treated as NPA and assigned to the assignee Bank, the parties have to follow certain guidelines issued by RBI. If there is

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*a breach of the guidelines or statutory directions issued by RBI by the assignor in regard to transfer of NPA then the assignee Bank can enforce such obligations vis-a-vis the assignor Bank. It is these obligations which are referred to in the impugned deed of assignment. That, an account receivable becomes an NPA only because of the default committed by the borrower(s) who fails to repay. Lastly, it may be mentioned that the said SARFAESI Act, 2002 was enacted enabling specified SPVs to buy NPAs from the banks. However, from that it does not follow that the banks inter se cannot transfer their own assets. Hence the said SARFAESI Act, 2002 has not relevance in this case.*

- (i)** In light of above, we are of the view that the Indian Bank being the owner of such debt can always transfer its assets. Such transfer in no manner affects any right or interest of the borrower. There is no prohibition in the Banking Regulation Act, 1949 in the bank transferring *inter se* its assets. Therefore, we find no error in the application on this count.
- (ii)** We find no substance in the contentions raised by the Respondent on valuation particularly when the balance sheets for the year 2019-20 were prepared by the Corporate Debtor himself. Wherein the year 2019 the valuation was Rs.21.46 crores and in 2020 the valuation is dropped to Rs.1.20 crores. The drop in valuation is only on account of cancellation of leasehold interest pursuant to the Court order which held that no leasehold interest had been created in favour of the Corporate Debtor and accordingly the Corporate Debtor was evicted and the Chief Revenue Officer,

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Haldia took possession of the land on which the factory building of the Corporate Debtor was located. In any event, this has nothing to do with the substitution application in hand and, therefore, we reject the plea taken by the Respondent.

**(iii)** We are of the view the Corporate Debtor will not be rendered remediless and still proceeded against Indian Bank with reference to the liabilities. We have already noted that there is a suit pending before the learned Alipore Commercial Court filed by the Respondent against the Indian Bank, the erstwhile Financial Creditor for recovery of damages. Therefore, the plea taken on this account is also does not merit consideration.

- 13.** Accordingly, this Tribunal allow the application for substitution of Applicant instead of Indian Bank in C.P. (IB)480(KB)2018.
- 14.** Accordingly, IA(I.B.C)/1586(KB)2023 is disposed of.
- 15.** Urgent Certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order signed on this, the 1<sup>st</sup> day of May, 2024.**

Sayon (Steno)