

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

Company Petition (IB) No. 308/KB/2022

*An application under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of the Insolvency
and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016*

IN THE MATTER OF:

**Pegasus Assets Reconstruction Private Limited
(CIN: U65999MH2004PTC144113)**

... Applicant/Financial Creditor.

Versus

**M/s. Fairdeal Supplies Limited
(CIN: U51909WB1987PLC097552)**

... Respondent/ Corporate Debtor.

Date of Pronouncement: March 19, 2024.

CORAM:

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

APPEARANCE:

**For the Financial Creditor: Mr. Ratnanko Banerji, Sr. Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Sudarshan Kr. Agarwal, Adv.**

**For the Corporate Debtor: Mr. Joy Saha, Sr. Adv.
Mr. Rishav Banerjee, Adv.
Mr. Zeeshan Haque, Adv.
Mr. Kaushik Banerjee, Adv.
Mr. Sayak Chakraborty, Adv.**

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

C.P. (IB) No. 308/KB/2022

ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through hybrid mode.
2. Heard the Learned Senior Counsels/ Learned Counsels for both parties at length.
3. This is an application preferred by **Pegasus Assets Reconstruction Private Limited** (hereinafter referred to as **Financial Creditor/ Applicant/ FC**) against **Fairdeal Supplies Limited** (hereinafter referred to as **Corporate Debtor/ Respondent/ CD**) under Section 7 of Insolvency and Bankruptcy Code (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) of the corporate debtor.

Factual Matrix:

4. The financial creditor is the assignee of the loan granted by Allahabad Bank to the corporate debtor in terms of a registered assignment agreement dated 27.09.2013, which is annexed at Page 25 to the Company Petition. The date of default claimed is 30.09.2011, whereas this application has been filed on 18.08.2022.
5. Allahabad Bank, the erstwhile financial creditor *vide* sanction letter dated 05.03.2010, granted and disbursed a term loan of Rs.35.5 crores to the corporate debtor to purchase a property in Coimbatore through auction sale in a liquidation proceeding.

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

C.P. (IB) No. 308/KB/2022

6. When the corporate debtor started defaulting, reconstructing of the loan was made *vide* Allahabad Bank's sanction letter dated 03.03.2011. On 27.09.2013, the total due amount of Rs. 30,31,02,000/- which includes a principal amount of Rs. 22,02,51,721/- and interest of Rs. 8,28,50,279/- was assigned to the financial creditor.
7. It is the claim of the financial creditor that unconditional, unequivocal, and unambiguous acknowledgement of the debt and default in balance-sheet of the corporate debtor from 2013-2014 till 2019-2020 has been made. Considering that this application has been filed within the prescribed timelines, the loan and default are more than the threshold limit, this application is maintainable, under Section 7 of I&B Code.

Submissions made by the Applicant:

8. The Ld. Senior Counsel for the applicant submits that the date of default is not disputed. However, for the reasons best known to the corporate debtor, the corporate debtor failed to recognize the assignment made by Allahabad Bank in its favour in the books of the corporate debtor when the assignment between the Allahabad Bank and the applicant has been executed through a registered assignment agreement.
9. The Ld. Senior Counsel further submits that in terms of Section 5(8) of I&B Code, the debt owed by the corporate debtor to the applicant is a financial debt.

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

C.P. (IB) No. 308/KB/2022

- 10.** The Ld. Sr. Counsel further brings to our notice the definition of Section 5(7) relating to financial creditors. As per this definition, “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**. Ld. Senior Counsel submits that in this case the assignment was made by way of registered agreement and therefore it has been legally assigned which would make the applicant qualify as a financial creditor in terms of said Section 5(7) of I&B Code.
- 11.** While the Ld. Sr. Counsel submits that the deed of assignment was challenged by way of a suit on 14.07.2023, the Hon’ble High Court at Calcutta has transferred the dispute to Commercial Court and therefore the said challenge is still pending before the Learned Commercial Court. He submits that challenge is not on the assignment per se but on the technicalities involved in execution.
- 12.** The Ld. Sr. Counsel submits that applicant issued notice under Section 13(2) of the SARFAESI Act, for taking possession of the mortgaged property located at Coimbatore in the State of Tamil Nadu, which resulted in a dispute leading to an order issued by the Hon’ble Debt Recovery Tribunal, Kolkata in SA No. 88 of 2019. In that Order, the Hon’ble Tribunal held as under:
- “1. Applicant’s next argument was that aforesaid two lands at Tirunelveli and Coimbatore were not assigned to the assignee ARC. When the debt availed by the applicant was assigned by the original lender to the ARC it would be*

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

C.P. (IB) No. 308/KB/2022

consequential that registered agreement executed by the applicant confirming mortgage was also form part of that assignment agreement. Applicant argued that assignment agreement was registered in Mumbai whereas mortgaged property was in Tamil Nadu. As per Registration Act, an instrument can be registered at any of the place of the parties to the agreement. In this case I find that registered office of ARC was in Mumbai as such registration was made in Mumbai. Applicant tried to raise some frivolous argument to delay the recovery proceeding. The history of multiplicity of litigations and observation made by the Learned Presiding Officer while dismissing aforesaid S.A shows conduct of the applicant Appellant tried to mislead the Tribunal by dragging Coimbatore land into this case which they purchased on auction sale by availing impugned term loan. Fact remains case related to Coimbatore land was dismissed. This case relates to Tirunelveli land which was the secured asset of the respondents and they are entitled to enforce the same by due process of law.

- 2.** *It is true that applicant has filed a civil suit challenging the assignment and respondent filed application under Order VII Rule 11 of the CPC for dismissing the Civil Suit. So far as Wind Mills are concerned when land is mortgaged all building and structure as well as equipment embedded on the earth are also mortgaged property. SARFAESI Act provided that after recovery of outstanding dues, rest amount shall be returned to the borrower. The history of*

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

C.P. (IB) No. 308/KB/2022

multiplicity of litigations arises from this case reveals that applicant tried earnestly to stall the way of recovery of public money.

- 3. In this case appellant did not advance any argument contending any irregularity in the demand notice and possession notice as far as provisions of Section 13 read with Rule 3 and 8 are concerned.** *I, therefore, hold that impugned demand notice and possession are free from any infirmity and as such deserves to be held as sustainable in law.*
 - 4.** *In view of the above discussion, I have no hesitation to hold that this SA is liable to be dismissed. However, since a Civil Suit is pending before Hon'ble Calcutta High Court challenging assignment of debt, the respondent ARC shall not confirm the sale till disposal of the aforesaid civil suit, however, the process of SARFAESI is allowed to be processed in accordance with law. Respondent ARC shall take all endeavors to follow the proceedings pending before Hon'ble High Court at Calcutta.*
 - 5.** *Accordingly, S.A. is dismissed. Respondent ARC may proceed with the SARFAESI proceeding in accordance with law, if so desire, however, shall not confirm the sale till disposal of the civil suit pending for adjudication before the Hon'ble High Court. No costs."*
- 13.** *Ld. Sr. Counsel further submits that the respondent has challenged the assignment deed before the Hon'ble High Court*

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

C.P. (IB) No. 308/KB/2022

at Calcutta in the year 2017, which is beyond three years from the date of execution of the assignment and consequently, in any event, it is time-barred. Ld. Sr. Counsel submits that acknowledgement of debt in the balance sheet of the corporate debtor has been made from the Financial Year 2013-2014 to the Financial Year 2019-2020. Ld. Sr. Counsel took us to various pages of the balance sheets filed with the application to demonstrate this.

- 14.** In view of the above submissions, the Ld. Sr. Counsel for the applicant states that the debt is more than the threshold limit; the debt has been legally assigned to the applicant by way of an assignment deed executed on 27.09.2013; this application has been filed within the time limit prescribed; the application is complete in all respect and therefore merits admission.

Per contra, submissions of the Respondent:

- 15.** The Ld. Sr. Counsel for the respondent would claim that the financial creditor has not placed anything on record to disclose any board resolution or document of like nature that would confer any authority on the deponent namely, Sudip Das to file the company petition on behalf of the financial creditor. Thus, on this ground alone the company petition is liable to be dismissed.
- 16.** The Ld. Sr. Counsel further submits that the financial creditor deliberately suppressed the fact that the corporate debtor has challenged the purported assignment agreement dated 27.09.2013, executed by Allahabad Bank in favour of the

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

C.P. (IB) No. 308/KB/2022

financial creditor in a Civil Suit filed on 25.08.2017, which has been registered as C.S. No. 195 of 2017 and it is pending before the Hon'ble High Court at Calcutta.

- 17.** In the said petition, apart from challenging the assignment agreement, the respondent has also prayed for a decree for Rs. 289 crores along with interest for alleged wrongdoing /deficiency in service etc. on the part of financial creditors. When that being the case, the question of entertaining this application does not arise, as the matter relating to the assignment and counter claim of the corporate debtor is in excess of the due claimed, and the matter is sub judice.
- 18.** Ld. Sr. Counsel submits that the purported assignment agreement is inadequately stamped and consequently, in terms of Section 33 and 35 of the Indian Stamp Act, 1899, the said instrument is inadmissible as evidence before this Tribunal.
- 19.** Ld. Sr. Counsel further submits that the agreement was executed in Bombay, whereas it has been registered in Calcutta. He further submits that the deed of assignment is also about the assignment of a mortgage of an immovable property situated at Coimbatore. Therefore, the same cannot be enforced in the eyes of the law as registration of any document with reference to immovable properties should be done in the same State with the concerned Registering Authority where such immovable properties are situated.

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

C.P. (IB) No. 308/KB/2022

- 20.** Therefore, Ld. Sr. Counsel submits that an instrument of assignment of a deed executed at Bombay which is secured by an immovable property located at Coimbatore, registered in Calcutta, that too inadequately stamped, **is not a valid piece of evidence to maintain this application.**
- 21.** Ld. Sr. Counsel further submits that it is not the case of the applicant that the corporate debtor has shown in his balance sheet the “applicant” as the financial creditor. In other words, the corporate debtor has not recognized the applicant as a financial creditor in any of his balance sheets. Therefore, this application on the strength of acknowledgment debt in favor of Allahabad Bank and not in the name of the applicant in the balance sheets is hopelessly time barred.
- 22.** Ld. Sr. Counsel further submits that challenge to the assignment deed was made in the year 2017, is not barred by limitation as it is the date of knowledge of the corporate debtor of such assignment deed executed between Allahabad Bank and the financial creditor is relevant for the purpose of determining limitation period under the Limitation Act

Submissions made by the Applicant in counter:

- 23.** Ld. Sr. Counsel through rejoinder submits relying on the record of default in Form – D, issued by National E-governance Service Limited which is an Information Utility, the debt owed to the financial creditor has not been disputed.

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

C.P. (IB) No. 308/KB/2022

- 24.** As per the record, the debt due to the financial creditor has been **deemed to be authenticated** for an amount of Rs.158,29,06, 33.95/- and authentication was completed on 01.04.2023. Therefore, the Ld. Sr. Counsel submits that the default committed by the corporate debtor to the financial creditor has been established beyond any doubt.
- 25.** With reference to stamping, the Ld. Sr. Counsel submits that the instrument has been correctly stamped for Rs.1,00,001/- and it has been correctly registered as registration can be done in the place where any of the concerned parties are located.
- 26.** He submits that in this case, the Registered office of the (Financial Creditor) ARC is in Mumbai and the registered office of the corporate debtor is in Calcutta. Therefore, the document has been correctly registered in Calcutta.
- 27.** The Ld. Sr. Counsel submits that in any event, cases under Section 7 of the I&B Code, being summary proceedings, all that Adjudicating Authority is required to see is whether there exists debt and default, and the defaulted amount is above the threshold limit. Once the above three exist, the application has to be admitted if the same has been filed within the time limit prescribed when the application is complete as per law.

Analysis and Findings:

- 28.** We find no dispute to the fact that debt due to Allahabad Bank has been assigned by Allahabad Bank to the applicant on 27.09.2013 and on the date of assignment the amount due was

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

C.P. (IB) No. 308/KB/2022

Rs.30,31,02,000/-, which includes the principal amount of Rs. 22,02,51,721/- and interest of Rs.8,28,50,279/-. The assignment per se has not been questioned but certain defects/technicalities involved in executing the assignment deed have been raised and accordingly, the validity of the execution has been questioned on the following counts:

- a) The place of registration is not the correct jurisdiction for registration.
 - b) Inadequate stamp duty paid.
 - c) With reference to immovable property located in Coimbatore, the registration of assignment done at Calcutta has been questioned.
- 29.** Ld. Sr. Counsel for both parties relied on several notifications relating to stamp duty, the Registration Act and relevant case laws in this regard to canvass their points.
- 30.** It is clear that in terms of section 5(7) of the I&B Code, even an assignee of a financial creditor is a financial creditor, and such an assignee may also maintain an application under section 7 of the I&B Code.
- 31.** As the issues relating to the alleged defects in the execution of the assignment agreement are pending before the Learned Commercial Court for decision and disposal, we are of the view that defects canvassed in executing the agreement, need not and should not be dealt with by this Adjudicating Authority,

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

C.P. (IB) No. 308/KB/2022

being a tribunal of summary jurisdiction and therefore we desist from doing so, but proceed with this application for adjudication.

- 32.** To fortify our view, we would rely upon the judgment rendered in **T. Johnson v. Phoenix ARC (P) Ltd.**, reported at **2019 SCC OnLine NCLAT 244**, wherein the Hon'ble Apex Court 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 ther Corporate Debtor remains intact and does not get diluted in any manner whatsoever.”*

(Emphasis added)

- 33.** Further, to fortify our view, we would rely upon the judgment of the Hon'ble NCLAT in **Lalan Kumar Singh v. Phoenix ARC**, reported at **MANU/NL/0345/2018** rejecting a challenge to the legality of the assignment noted that it did not have jurisdiction to determine such question of legality, which fall within the domain of the Civil Court by observing as under:

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

C.P. (IB) No. 308/KB/2022

*“In the present case we find that the appellant has 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 proceedings under the ‘I&B Code’ as civil proceedings akin to a trial which is not the legislative intent.”*

(Emphasis Added)

- 34. Further, in *Ranjit Kapoor v. Asset Reconstruction Co (India) Ltd* reported at (2018) ibclaw.in 170 NCLAT it was held that that the question of validity of an assignment agreement cannot be gone into by the Adjudicating Authority or even in an application under Section 65 of the I&B Code. Accordingly, rejecting the contention of the party which challenged legality of assignment, the Hon’ble NCLAT held that the application filed by an assignee is to be treated as appropriate under Section 7 of the I&B Code.**
- 35. Thus, we are of the view that in a summary proceeding under I&B Code, the issue regarding the validity of assignment deed need not to be dealt with by the Adjudicating Authority. It is a settled position of law that in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has to check the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. In this context, the Hon’ble Apex Court in the case of *Innoventive Industries Ltd. v. ICICI Bank* reported at (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:**

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

C.P. (IB) No. 308/KB/2022

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”**

XXX XXX XXX XXX

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, **the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.**

(Emphasis added)

36. In the case in hand, the applicant has filed the record of default in Form D issued by “National e-Governance Services Limited” (NeSL) wherein, it has been mentioned that the total outstanding is Rs.1,58,29,60,033.95/- dated 30.09.2011. This

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

C.P. (IB) No. 308/KB/2022

has been adjudicated on 01.04.2023, record of communication with respect to the default filing is reproduced:

Record of communication with respect to the default filing

Communication details in respect of M/s FAIR DEAL SUPPLIES LIMITED (Debtor)
Fair Deal Supplies Limited (Debtor)

Email Communication

Email category	Mail Type	Requested On	To Address	Mail Status	Acknowledgement Date/Time
Form C-Primary	Initial	16 March 2023 Thursday 18:45:52 PM	fdspl43@gmail.com	Mail Delivered and Opened by Addressee	19 March 2023 Sunday 12:51:53 PM
Form C-Primary	Reminder - 1	20 March 2023 Monday 00:20:25 AM	fdspl43@gmail.com	Mail Delivered and Opened by Addressee	20 March 2023 Monday 16:05:46 PM
Form C-Primary	Reminder - 2	24 March 2023 Friday 07:48:26 AM	fdspl43@gmail.com	Mail Delivered and Opened by Addressee	25 March 2023 Saturday 12:13:15 PM
Form C-Primary	Reminder - 3	28 March 2023 Tuesday 08:30:29 AM	fdspl43@gmail.com	Mail Delivered and Opened by Addressee	28 March 2023 Tuesday 10:32:47 AM

- 37.** We also find that corporate debtor has not disputed the receipt of communication from Information Utility and on the other hand in its reply in the form of a supplementary affidavit, it has been stated that, since the agreement is unregistered and unstamped, the same has been challenged and therefore, the communications received from Information Utility was not replied.
- 38.** We are of the view that nothing prevented the corporate debtor from disputing the legality of the execution of the deed of assignment etc. when the Corporate Debtor received

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

C.P. (IB) No. 308/KB/2022

communications from the Information Utility as per the table mentioned in Para 35 of the order above.

- 39.** It may be relevant to note that the Corporate Debtor has not even disputed the time bar aspect which is one of the major arguments advanced in the proceedings before us. No responses to the communications received from Information Utility would amount to acceptance of debt as per the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017, as in that case the debt is deemed to be authenticated.
- 40.** In ***Vipul Himatlal Shah Vs. Teco Industries, Corporate Debtor: M/s. Superdrawn Wire Industries Pvt. Ltd.*** in order dated 18.05.2022, **Company Appeal (AT) (Insolvency) No. 470 of 2022, reported in (2022) ibclaw.in 379 NCLAT** the Hon'ble NCLAT laid down that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility. The relevant extract of the order as under:

*“16. In the light of the detailed discussion as above, it is clear **that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, more so when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record***

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

C.P. (IB) No. 308/KB/2022

has been done by the corporate debtor earlier. We also note that in the judgment of Rushabh Civil Contractors Pvt. Ltd. vs. Centrio Lifespaces Ltd. (supra), which has been cited by the Learned Counsel for Appellant, the record that formed the basis for financial debt and default was found to be forged and fabricated, which is not the case in the present appeal. Therefore, this judgment does not come to the rescue of the Appellant.’

“17. In view of the detailed discussion in the aforesaid paragraphs, we are of the opinion that the Adjudicating Authority has not committed any error in admitting the section 7 application filed by the financial creditor M/s. Teco Industries. The appeal is therefore dismissed as being devoid of merit and disposed of accordingly.”

(Emphasis added)

- 41.** Therefore, the due of debt in favour of the applicant by the corporate debtor has been clearly established. Now we will have to examine whether the bar of limitation would come to the rescue of the respondent. Admittedly the date of default is on 30.09.2011. The debt should have been acknowledged within three years from the date of default which is 30.09.2014. We have pursued the balance sheets of the corporate debtor from the Financial Year 2013-2014 till the Financial Year 2019-2020. In all these balance sheets, debts have been acknowledged as due to Allahabad Bank and not to the applicant. There is no whisper in any of the balance sheets about the assignment deed executed in favour of the applicant herein for the reasons best known to the Corporate Debtor. After the execution of assignment on 27.09.2013, Allahabad

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

C.P. (IB) No. 308/KB/2022

Bank has no locus standi to continue as a financial creditor and the bank is not even claiming to be so.

- 42.** When that being the case the applicant is legally entitled to become the financial creditor of the corporate debtor in terms of the said assignment. Merely, because the balance sheet does not record the name of the applicant herein as a financial creditor from the Financial Year 2013-2014 to 2019-2020 will not take away the fact that the applicant has become a financial creditor, by virtue of the assignment deed executed.
- 43.** In fact, Form D issued by Information Utilities, which authenticates the debt is also in favour of the financial creditor and the authentication has taken place as late as 01.04.2023. As already stated, neither the validity of the assignment nor the time bar was ever disputed even after receipt of three communications from Information Utility.
- 44.** We also note that Allahabad Bank preferred an application before the Learned Debt Recovery Tribunal, Kolkata Bench initially a proceeding against the corporate debtor in the year 2012. The Learned DRT, Kolkata Bench passed an Order on 07.04.2015, substituting the applicant as financial creditor in place of the bank. From the records placed, we find that this Order dated 07.04.2015 is not under challenge and has attained finality.
- 45.** Another Order dated 01.08.2016, was passed by the Learned DRT in an application filed by the applicant wherein injunction

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

C.P. (IB) No. 308/KB/2022

was granted on corporate debtor not to transfer, alienate or create third party interest on Coimbatore property admeasuring 254 acres.

- 46.** Thus, looking at any angle the applicant herein is entitled to be treated as the financial creditor. Once this is established, the limitation will not come in the way of the Applicant as there is clear and unequivocal acknowledgement of debts in the balance sheets of the corporate debtor as mentioned above.
- 47.** We also find that the application has been verified and signed by a person duly authorized by the applicant and therefore, this challenge is also not maintainable.
- 48.** Thus, we are of the view that this application is squarely maintainable. The amount involved in the application is far more than the threshold limit as prescribed under Section 4 of the I&B Code. Further, the application is not time-barred.
- 49.** Thus, in terms of the enumerations above, we **ALLOW** this instant application bearing **Company Petition (IB) No. 562/KB/2020** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of the **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:
- i.** The Application filed by **Pegasus Assets Reconstruction Private Limited (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby,

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

C.P. (IB) No. 308/KB/2022

ADMITTED for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s. Fairdeal Supplies Limited (Corporate Debtor)**.

- ii.** As a consequence of this Application being admitted in terms of Section 7 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/Corporate Debtor, 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.*

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

C.P. (IB) No. 308/KB/2022

[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 the moratorium period.
- v.** The provisions of sub-section (1) of 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 proposed the name of **“Mr. Bijay Murmuria”**, Address: Sumedha Management Solution Pvt. Ltd. 6A, Geetanjali Apartment, 8B Middleton Street, Kolkata 700 071, Registration No. IBBI/IPA-001/IP-N00007/2016-2017/10026, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him

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

C.P. (IB) No. 308/KB/2022

that there are no disciplinary proceedings pending against him with the Board or IIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Bijay Murmuria”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Bijay Murmuria”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor 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 7 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 the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to

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

C.P. (IB) No. 308/KB/2022

Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIR Process 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 I&B Code. 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, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors 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

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

C.P. (IB) No. 308/KB/2022

(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 7(5) and 7(7) 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 company(ies) 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 a 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,

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

C.P. (IB) No. 308/KB/2022

with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 50.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 51.** Post the Company Petition **29/04/2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 19th Day of March, 2024.

PH (PS)/ Bose, R. K. [LRA]