

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 1449 of 2022**

In the matter of:

Siti Networks Ltd.

....Appellant

Vs.

**Assets Care and Reconstruction Enterprises Ltd. &
Anr.**

...Respondents

For Appellant: Mr. Bharat Sood, Advocate.

For Respondents: Appeared but not marked appearance.

ORDER

13.12.2022: Heard Counsel for the parties.

2. This Appeal has been filed against the order dated 01.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V disposing IA No. 3105 of 2022 in C.P. (IB)/414(MB)2022. The brief facts of the case necessary to be noticed for deciding this Appeal are:

2.1. 'Housing Development Finance Corporation Limited' has sanctioned a loan to the Corporate Debtor on 06.09.2016. The Corporate Debtor was classified as Non-Performing Asset on 30.06.2019. 'Housing Development Finance Corporation Limited' issued a Recall Notice on 03.03.2020 and thereafter 'Housing Development Finance Corporation Limited' on 17.02.2022 filed C.P. (IB)/ 414(MB)2022 under Section 7 of the IBC seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. On 30.03.2022, notices were issued in Section 7 Application. 'Housing Development Finance Corporation Limited' vide Registered Assignment Deed dated 29.06.2022 assigned the debt of the Corporate Debtor to the Respondent No.1- 'Assets Care and Reconstruction Enterprise Limited'. The Corporate Debtor was also informed about the assignment vide letter dated 06.07.2022. The Respondent No.1- 'Assets Care and Reconstruction Enterprise Limited'

filed an I.A. No. 3105/2022 on 08.10.2022 seeking to be substituted as Financial Creditor in place of original Applicant and to be permitted to pursue the C.P.(IB)/414(MB)2022 filed by the 'Housing Development Finance Corporation Limited'. On the said I.A, the Adjudicating Authority has passed an order on 01.11.2022 allowing the Application filed by 'Assets Care and Reconstruction Enterprise Limited' for substitution of its name on the basis of assignment. Before the Adjudicating Authority, an order passed by the coordinate Bench of NCLT, Bengaluru in I.A. No. 200 of 2019 was also filed. However, the Adjudicating Authority took the view that there is no binding precedent from higher forum and there is no express prohibition in the code preventing the assignee to come on record and continue the pending proceedings. Challenging the said order, this Appeal has been filed.

3. Learned Counsel for the Appellant submits that the assignee could not have been permitted to continue Section 7 proceedings although it is open for the assignee to file a fresh Application under Section 7 which was permissible on the strength of assignment. He submits that he has placed reliance on the judgment of the NCLT, Bengaluru Bench dated 26.08.2019 where the Bengaluru Bench has taken the view that although the assignment was made during pendency of the proceeding but it is the prerogative of the Applicant to file miscellaneous application to implead proper and necessary party and the State Bank of India who was Applicant having assigned could not prosecute the Application and the assignee also cannot substitute itself as Applicant.

4. Learned Counsel for the Respondents refuting the submissions of the Learned Counsel for the Appellant submits that by virtue of assignment which happened after filing of the Application by 'Housing Development Finance Corporation Limited', the Respondent has every right to be substituted to continue the proceeding. He has relied on sub-section (4) of Section 5 of the SARFAESI Act, 2002 which clearly contemplate continuation and prosecution of any proceeding by an assignee who acquire financial asset. Sub-section (4) of Section 5 of the SARFAESI Act, 2002 is as follows:-

“5. Acquisition of rights or interest in financial assets.-..... (4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the [asset reconstruction company], as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the [asset reconstruction company], as the case may be.”

5. The above provision of sub-section (4) of Section 5 does contemplate continuation of all proceedings after acquisition of financial assets by assignee. In the present case, there is no dispute that Respondent No.1 was assigned the debt by the ‘Housing Development Finance Corporation Limited’ during pendency of the proceeding under Section 7.

6. Learned Counsel for the Respondent has rightly referred to the provisions of Order XXII Rule 10 of CPC which contemplates continuance of proceeding on the basis of devolution of rights with the leave of the Court which is applied generally in civil proceeding and suit.

7. The order of the Bengaluru Bench NCLT dated 26.08.2019 on which reliance has been placed by the Appellant cannot be said to be laying down a correct law to be followed as a precedent. As has been observed rightly by the Adjudicating Authority, there is no prohibition in the IBC or any of the

Regulations from continuing the proceeding by an assignee. Section 5(7) of the IBC which defines 'Financial Creditor' also includes a person to whom such debt has been legally assigned or transferred to. By virtue of assignment, Respondent No.1 become the Financial Creditor and having stepped in the shoes of 'Housing Development Finance Corporation Limited', it has every right to continue the proceeding which was initiated by Respondent No.2.

8. We, thus, are satisfied that no error has been committed by the Adjudicating Authority in allowing I.A. No. 3105/2022. We do not find any merit in this Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Anjali/nn