

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.96 of 2021 in
C.P. (IB) No.71/BB/2020
U/s 60(5)(C) of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016

BETWEEN:

**M/s. Assets Care and Reconstruction
Enterprise Limited**

02nd Floor, Mohandev Building,
13, Tolstoy Marg,
New Delhi – 110 001.

- Applicant

AND

M/s. Altico Capital India Limited

21, 2nd Floor, 5 North Avenue,
Maker Maxity,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051.

- Respondent No.1/ Financial Creditor

M/s. Yusun Estates Pvt. Ltd.

No.333, 01st Floor, Nova Miller,
Thimmaiah Road,
Bangalore - 560 052.

- Respondent No.2/ Corporate Debtor

Order Pronounced on: 13th May, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Applicant : Mr. Shrishail Navalgund
For the Respondent No.1 : Mr. Pradeep Nayak
For the Respondent No.2 : Mr. Aditya Narayan

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A. No.96 of 2021 in C.P. (IB) No.71/BB/2020 is filed by M/s. Assets Care and Reconstruction Enterprise Ltd. ('Applicant'), U/s 60(5)(C) of the IBC, 2016, R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to substitute the Applicant in place of Respondent No.1/Financial Creditor, and permit the Applicant continue prosecuting the instant proceedings against the Respondent No.2/Corporate Debtor, in place of the Respondent No.1/Financial Creditor etc.
2. Brief facts of the Application, which are relevant to the question, are as follows:
 - (1) Initially, C.P. (IB)No.71/BB/2020 filed by M/s. Altico Capital India Ltd., U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (AAA) Rules, 2016 by inter alia seeking to initiate CIRP against the Corporate Debtor/Respondent No.2 herein, in light of default committed by the Corporate Debtor/R-2 with respect to the term loan issued by the Financial Creditor/R-1 to the Corporate Debtor/R-2 under a Facility Agreement dated 20 December 2018 (Facility).
 - (2) M/s. Assets Care and Reconstruction Enterprise Ltd. (hereinafter referred to as 'Applicant') is an asset reconstruction Company, registered as such, pursuant to Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002.
 - (3) It is stated that during the pendency of the instant Petition, particular loan assets of the Respondent No.1/Financial Creditor, including the right title and interest over the Facility have been assigned to the Applicant (in its capacity as the trustee of India Real Estate 2021 Trust) herein by virtue of an assignment agreement dated 04th March 2021 ('Assignment Agreement') with effect from 10th March 2021. In terms of the Assignment Agreement, the Applicant is the full and absolute legal and beneficial owner of the Facility and is legally entitled to *inter alia* recover and receive all amount due thereunder, including the right to file a suit or institute such other recovery proceedings



and take such other action as may be required for the purpose of recovery of the amounts due, in its own name and right and as an assignee and to exercise all other rights of the Respondent No.1/ Financial Creditor herein in relation thereto. The Applicant is also entitled to get itself substituted in place of the Respondent No.1/Financial Creditor in any pending proceedings initiated by the Financial Creditor in relation the NCDs, by following due process of law.

- (4) The assignment of the Facility has taken place in terms of the Section 5 of the SARFAESI. Accordingly, in terms of the Section 5(2) of SARFAESI, the Applicant is deemed to be the lender and the rights of the Respondent No.1/Financial Creditor now vests with the Applicant in relation to Facility. Further, it is submitted that in terms of the Section 5(4) of SARFAESI, the instant proceeding can be continued, prosecuted and enforced by the Applicant, and the same will not be abated or be discontinued or be, in any way, prejudicially affected by reason of this assignment.
- (5) No prejudice will be cause to the Respondents/Corporate Debtor if the accompany application is allowed. On the other hand, the Applicant will put to great hardship and irreparable loss if the irreparable loss if the application is not allowed.

3. The Respondent No.1 has filed Memorandum dated 22.04.2021, by inter alia stating as follows:

- (1) It is stated that by virtue of an Assignment Agreement dated 04th March 2021('Assignment Agreement') entered into between the Applicant and the Financial Creditor/Respondent No.1, the Financial Debt which is the subject matter of the present proceedings U/s 7 of the IBC, 2016 has been assigned to the Applicant (in its capacity as trustee of India Real Estate 2021 Trust). This Assignment, including all rights, title and interests including over the underlying security interest under the term loan issued by the Financial Creditor to the Corporate Debtor under the Facility Agreement dated 20th December 2018



('Facility') has been carried out in accordance with and U/s 5 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002.

- (2) It is submitted that the Assignment Agreement came into effect on 10th March 2021 when the Purchase Consideration paid by the Applicant under the assignment Agreement was received by the Financial Creditor. Hence, in terms of the Assignment Agreement and also U/s 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, on and from 10th March 2021, the Applicant, being the full and beneficial owner of the Facility has the right to continue, prosecute and enforce the present proceedings.
- (3) It is also stated that the Financial Creditor/Respondent No.1 has no objections to the Applicant being substituted in the place of the Financial Creditor/ Respondent No.1 and for the Applicant to continue prosecuting the instant proceedings against the Corporate Debtor/Respondent No.2.
4. Heard Mr. Shrishail Naval Gund, learned Counsel for the Applicant and Mr. Pradeep Nayak, learned Counsel for the Respondent No.1 and Mr. Aditya Narayan, learned Counsel for the Respondent No. 2, through video conference. We have carefully considered the pleadings of the parties and the Rules made thereunder.
5. During the course of the proceedings dated 22.03.2021, the learned Counsel for the Respondent No.1/Financial Creditor has submitted that the debt in question has been assigned to the Applicant i.e. Assets Care & Reconstruction Enterprise Ltd in place of Respondent No.1/Financial Creditor i.e. M/s. Altico Capital India Ltd against the Respondent No.2/Corporate Debtor i.e. M/s. Yusun Estates Pvt. Ltd.. He has also submitted in his Memorandum dated 22.04.2021 that the Respondent No.1/Financial Creditor has no objections to the Applicant being substituted in the place of the Respondent No.1/Financial Creditor. Mr Aditya Narain, Ld Counsel for the Respondent No 2, the Corporate Debtor while according his no objection submitted that the approval may be granted subject to



all the conditions as agreed to between the Applicant and the Respondent 1 are fulfilled. Subject to this Respondent No. 2 against whom the Petition has been filed u/s 9 of the Code has no objection. In view of the foregoing, we are inclined to allow the IA.

6. In the result, I.A. No.96 of 2021 in C.P. (IB) No.71BB/2020 is allowed, subject to however, that all conditions agreed to between the Applicant and the Respondent No.1 in taking over the debt are fulfilled in all respects, by substituting the Applicant, namely, M/s. Assets Care and Reconstruction Enterprise Ltd. in place of Respondent No.1/Financial Creditor, namely, M/s. Altico Capital India Ltd. and also permit the Applicant to continue prosecuting the instant proceedings against the Respondent No.2/Corporate Debtor, namely, M/s. Yusun Estates Pvt. Ltd. in place of Respondent No.1/Financial Creditor. No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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