

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

C.A. NO. 57 OF 2017 IN
CP (IB) No. 01/HDB/2017
U/s 60(5)(C) of IBC, 2016 ,R/w Rules, 14
& 34 of NCLT Rules, 2016

In the matter of:

Edelweiss Asset Reconstruction Company Limited
Acting in its capacity as trustee of EARC Trust SC 23
Having its office at Edelweiss House, Off CST Road,
Kalina, Mumbai 400 098Applicant / Financial Creditor

Versus

1. Synergies-Dooray Automotive Limited
(under Corporate Insolvency Resolution Process)
Through Ms. Mamta Binani,
(Reg. No. IBBI/IPA-02/2016-17/01)
Interim Resolution Professional
Having its registered office at
6-3-855/10A, Sampathji Appts,
Saadat Manzil, Ameerpet,
Hyderabad- 500 038
2. Synergies Casting Limited
Having its registered office at
Flat No. 4A, Sampathji Aprts,
6-3-855/10/A, Saadat Manzil,
Ameerpet, Hyderabad, 500 016
3. Millennium Finance Limited
Having its registered office at
402, 4th Floor, MGR Estate,
Punjagutta, Hyderabad, 500 082
4. Ms. Mamta Binani
(Reg. No. IBBI/IPA-02/2016-17/01)
Interim Resolution Professional
Synergies-Dooray Automotive Limited
(under Insolvency Resolution Process)
Room No. 6, 4th Floor, Commerce House,
2A, Ganesh Chandra Avenue, Kolkata 700 013
West Bengal

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**



...Respondent

Date of order: 02.08.2017

CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Membher (Technical)

Parties present:

Counsels for the Applicant:	Shri S. Niranjan Reddy, Senior Advocate Shri Jyoti Singh, Advocate Ms. Rubaina Khatoon, Advocate Shri P. Mohith Reddy, Advocate
Counsel for the Respondent. 1	Shri A.D. Gupta, Advocate
Counsel for Respondent No. 2	Shri S.Chidambaram, PCS
Counsel for Respondent No.3	Shri Deepak Bhattacharjee, Senior Advocate alongwith Shri Dishit Bhattacharjee, Advocate
Counsel for Respondent No. 4	Ms. Mamta Binani, Resolution Professional along with Krishnendu Datta, P. Vikram, & Nitish Bandary, Advocate

Per: Rajeswara Rao Vittanala, Member (J)



ORDER

1. The present application bearing CA No. 57 of 2017 in CP(IB) No 01/HDB2017 filed by Edelweiss Asset Reconstruction Company Limited, the applicant/Financial Creditor, under Section 60(5)(C) of IBC, 2016 ,R/w Rules, 14 and 34 of NCLT Rules, 2016 by inter-alia seeking to declare three assignment agreements, all dated 24th November, 2016 entered into between Respondent No. 2 & 3 as invalid and un-reliable for the purpose of determining claims against Corporate Debtor under CIRP admitted as CP (IB) NO. 01/HDB/2017; inclusion of respondent No. 3 as financial creditor etc.

2. Brief facts as stated by the applicant , which are relevant to issue raised in present case, are as follows:

- (1) The Applicant (is an asset reconstruction company), incorporated and constituted under the Companies Act, 1956 and having its registered office at Edelweiss House, Off CST Road, Kalina, Mumbai, Maharashtra 400 098. The Applicant has become one of the largest secured financial creditors of the Respondent No. 1 -Corporate Debtor, i.e. Synergies-Dooray Automotive Limited (**Corporate Debtor**) vide an Assignment Agreement dated January 6, 2014, executed with Exim Bank which was one of the original lenders of the Corporate Debtor. The total amount claimed by the Applicant against the Corporate Debtor as on January 23, 2017 as per the revised proof of claims submitted by the Applicant on February 20, 2017 to the Respondent No.1/ the Interim Resolution Professional (IRP) is Rs.88,20,28,260.97 (Rupees Eighty Eight Crores Twenty Lakhs Twenty Eight Thousand Two Hundred and Sixty and Ninety Seven Paise Only).
- (2) The Respondent No. 1 is the Corporate Debtor in respect of which the Corporate Insolvency Resolution Process (CIRP) is ongoing under the IBC pursuant to the order dated January 23, 2017 passed by this Hon'ble Tribunal.
- (3) The Respondent No.2 is a related party of the Corporate Debtor as defined under Section 5 (24) of the IBC having its registered office at the address mentioned in the cause title. The Respondent No.2 also allegedly holds a share in the Corporate Debtor's total debt. The Applicant states that the calculation of the total claim of the Respondent No.2 against the Corporate Debtor as determined, verified and admitted by the IRP is questioned.
- (4) The Respondent No.3 is a Non-Banking Financial Company incorporated under the Companies Act, 1956 having its registered office at the address mentioned in the cause title. The Applicant states that the Respondent No.3 came into the picture insofar as the Corporate Debtor is concerned only on November 24, 2016 vide



three Assignment Agreements, all dated November 24, 2016 (collectively, **said Assignment Agreements**) that the Respondent No.3 has entered into with the Respondent No.2, and by way of which the Respondent No.2 has purportedly assigned a substantial portion of its share in the Corporate Debtor's total debt to the Respondent No.3.

- (5) The Applicant states that it is also pertinent to note that various banks/ financial institutions/ asset reconstruction companies in the year 2008, 2011 purportedly assigned their debts in respect of the Corporate Debtor to the Respondent No.2 (which acquired it by entering into a onetime settlement with the said creditors). The Applicant states that these purported assignment of debts from various banks/ financial institutions/ asset reconstruction companies to the Respondent No.2, which is not a bank/ financial institution and/ or asset reconstruction company, but a related party of the Corporate Debtor, took place prior to the Applicant becoming a financial creditor of the Corporate Debtor. The Applicant further states that the assignment agreements executed between the banks/ financial institutions/ asset reconstruction companies and the Respondent No.2 in 2008, 2011 are inadequately stamped, unregistered and not legally enforceable. The Applicant craves leave to refer to and rely upon documents pertaining to the aforementioned purported assignment of debts as and when produced.
- (6) The Applicant states that on November 24, 2016, i.e. immediately prior to the reference of the Corporate Debtor the Respondent No.2 & No.3 entered into the said Assignment Agreements by which the Respondent No.2 has assigned nearly 92.93% (as per Form A filed in BIFR) of its share in the total debt of the Corporate Debtor to the Respondent No.3. Assignment Agreements in question were entered with the *mala fide* and ulterior motive of fraudulently abusing provisions of the IBC to the detriment of the Applicant as and when the Corporate Debtor initiates proceedings under the IBC after the abatement of the BIFR reference.



- (7) The Applicant states that public announcement of initiation of CIRP and call for submissions of claims under section 15 of the IBC read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) was made by the IRP on January 28, 2017 in Deccan Chronicle, wherein the insolvency commencement date was mentioned as January 25, 2017 with the estimated date of closure of IRP as July 23, 2017. Accordingly, the Applicant electronically submitted its proof of claim dated February 6, 2017 in the format provided in Form C of the CIRP Regulations along with the supporting documents vide its email dated February 7, 2017 in accordance with Regulation 8 of the CIRP Regulations to the IRP. However, the Applicant thereafter noticed that there was an error in the calculation of the total amount due from the Corporate Debtor to the Applicant as on January 31, 2017 in Clause 4 of proof of claim dated February 6, 2017. Accordingly, the Applicant by its email dated February 20, 2017 submitted its revised claim amounting to Rs.88,20,28,260.97 (Rupees Eighty Eight Crores Twenty Lakhs Twenty Eight Thousand Two Hundred and Sixty and Ninety Seven Paise Only) and requested the IRP to revise the total claim of the Applicant against the Corporate Debtor in accordance with Regulation 14 (2) of the CIRP Regulations.
- (8) It is alleged that Respondent No.2 had entered into the said Assignment Agreements with the Respondent No.3 in a fraudulent attempt to reduce the voting share of the Applicant in the committee of creditors of the Corporate Debtor under the IBC. The Applicant raised objection to it.
- (9) The applicant filed C.A. No. 43 of 2017 in CP (IB) No. 01/HDB/2017 by objecting continuation of Insolvency proceedings.
- (10) It is a settled principle of law that what may not be done directly cannot be allowed to be done indirectly. The Applicant states that prior to the execution of the said Assignment Agreements, the Respondent No.2 allegedly held a major share of the total debt of the Corporate Debtor. It is a matter of fact that the Respondent No.2



is a related party of the Corporate Debtor. The Respondent No.2 being a related party of the Corporate Debtor is not permitted to participate or vote in the meetings of the Committee of Creditors of the Corporate Debtor as expressly stated in the proviso to Section 21 (2) of the IBC. Therefore, it necessarily follows that the Respondent No.3 having been assigned the debt-holding of the Respondent No.2, cannot be permitted to do what the Respondent No.2 itself cannot do under law, i.e. to participate and vote in the meetings of the Committee of Creditors, which the IRP has illegally permitted during the meeting of the Committee of Creditors on February 22, 2017.

(11) BIFR was also not informed when the alleged assignments Agreement were executed.

3. Sri Chidambaram, the learned PCS for SCL, Respondent No. 2, on the other hand, has strongly opposed the application and also filed a reply dated 3rd June, 2016. The following are his main contentions:

(1) It is stated that M/s. Synergies Dooray Automotive Ltd.,(SDAL) who is the Petitioner / Corporate Debtor had 7 creditors namely :EXIM Bank, HSBC, Indian Overseas Bank, Andhra Bank, State Bank of India IDBI and ICICI . Out of these 7 creditors, ICICI assigned its debt to ARCIL and HSBC assigned its debt to J.P. Morgan Chase Bank, Indian Overseas Bank, Andhra Bank, State Bank of India, IDBI and ARCIL assigned their debt to SCL, and J.P. Morgan Chase Bank assigned its debt to a Securitization Company called Alchemist Asset Reconstruction Company Ltd. (AARC)

(2) Thereafter, EXIM Bank assigned its debt to Edelweiss Asset Reconstruction Company (EARC), who is the Applicant herein. Subsequent to the assignment of EXIM Bank's debt to EARC, SCL assigned the debt of ICICI, SBI and IDBI to Millennium Finance Ltd. (MFL) vide three Deeds of Assignment dated 24.11.2016. Therefore, the List of Creditors as on date are: EARC: AARC: MFL & SCL.

(3) That as per the Master Restructuring Agreement, EARC represented less than 9% of the creditors of SDAL. Even now as per the List of



Creditors prepared by the Resolution Professional in accordance with the provisions of the IBC, 2016, EARC represents less than 10% of the creditors of SDAL. Admittedly, in the Master Restructuring Agreement, which executed way back in 2007, and even now, i.e. in 2017, EARC continues to be a minority creditor of SDAL.

- (4) SCL was created as a Special Purpose Vehicle (SPV) having the approval of all the Lenders of the Corporate Debtor. It was in furtherance of the restructuring scheme of the Corporate Debtor, that it was mutually decided between the Debtor and its Creditors that the unit of the Corporate Debtor shall be leased to the said SPV i.e. SCL to ensure continued operations of the Corporate Debtor and its sustained rehabilitation under the CDR Scheme. It is clear that the Applicant is trying to retract back on the said consent, which otherwise the Applicant is bound by, since its assignor had also expressly consented to the same. Therefore, the lease in favour of SCL and the continuation of the same is actually abiding by the Master Restructuring Agreement and the subsequent CDR Scheme in letter and spirit.
- (5) It is also pertinent to state that having voting rights is a secondary issue and admittedly SCL is also a Financial Creditor of the Corporate Debtor and all Financial Creditors should collectively work towards the resolution of the Corporate Debtor since the liquidation value of the Corporate Debtor is less than Rs. 7 Crores and if the Corporate Debtor is forced into liquidation, then Financial Creditors like SCL and the Applicant herein would not be able to recover their legitimate dues. The Application smacks of malafide. It is strongly denied all allegations made by the applicant with regard to three Assignment Agreements in question and the allegation of related party etc as they are baseless and un-tenable.
- (6) A Deed of Assignment entered into between two parties cannot be challenged by a rank outsider, who is not even a party to the said assignment. Permitting a third party to challenge the assignment between two Financial Creditors would set a dangerous precedent



which could be exploited by fraudulent and malafide parties like EARC.

- (7) Admittedly, SCL is a related party to the Corporate Debtor. However, the debt of the Corporate Debtor held by SCL has been assigned to a complete third party, which is a Non Banking Financial Company (NBFC), registered with the Reserve Bank of India and also with SEBI. EARC has failed to bring on record any evidence to demonstrate that the assignee of SCL is a related party to the Corporate Debtor. EARC is only raising frivolous allegations, which are wholly unsubstantiated. In the absence of any proof to establish that the assignee of SCL is a related party as defined under Section 5(24) of the Code, the allegation that MFL ought not to have any voting share in the committee of creditors deserves to be rejected in totality.
- (8) EARC has also sought to project that the Assignment of Debt to SCL from the assignors, i.e. SBI, IDBI and ARCIL (formerly ICICI) is unregistered. This is a self defeating and frivolous argument which also deserves to be rejected in totality. For the sake of arguments, if it is considered that the assignment from the original creditors of the Corporate Debtor to SCL is invalid, that would revert back the position to as existed in the Master Restructuring Agreement, which included ICICI, SBI, IDBI, IOB, Andhra Bank, HSBC and EXIM Bank. Even in such a scenario, the assignors of SCL and MFL, all being Banks would be unrelated parties permitting them to have voting share in any meeting of the Committee of Creditors. Even in such a scenario, EARC as an alleged Lender would continue to be a minority having less than 9% voting share. Therefore, this argument is untenable and deserves to be rejected out rightly.
- (9) That with respect to the timing of the assignment, no fault can be found since the said assignments have been made in the ordinary course of business without any fraud or malice as is being alleged by EARC. In fact, there was no restraint order passed by BIFR about any assignment of financial debt to any other unrelated financial creditor. Such an argument that SCL preempted the notification of



the Repeal Act is outrageous and untenable. Such frivolous arguments and allegations against SCL, give rise to suspicion regarding the locus and intention of EARC, who had also taken assignment of debt during the pendency of the matter before BIFR. That apart from the above, the assignment of debt by EARC, apart from being suspicious is also blatantly in the teeth of the status quo order passed by the Debts Recovery Tribunal at Visakhapatnam. Without prejudice to the same, it is reiterated that the assignment of debt from one part to another cannot be challenged before this Hon'ble Tribunal.

- (10) In the instant application under reply, EARC has also raised objection pertaining to the continuation of lease in favour of SCL. It is not understood as to how the said objection has relevance to the adjudication of the instant Application which seeks to challenge the assignment of debt from SCL to an unrelated NBFC. However, it is submitted that the Resolution Professional of the Corporate Debtor is duty bound to ensure that the Company continues to function on a "going concern basis". Even during the pendency of the reference of SDAL before BIFR, the land of SDAL was leased to SCL, which was functioning to ensure that SDAL continues to receive lease rentals, which will ensure its survival. Instead of giving any fruitful or meaningful suggestion regarding the same at the first meeting of the Committee of Creditors, EARC continued to crib and put a spanner in the works by disagreeing with every proposal put forth therein.



4. It is stated that , Regulation 28 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 would not applicable in the instant case, the assignment in question were executed much prior to the commencement of the CIR *In any event, the assignment of debt is a contractual right for which no permission is required from any judicial or quasi-judicial body or any Tribunal, unless such judicial / quasi-judicial body or tribunal has expressly restrained such party from assigning its debts. In view of the same, there is no question of seeking the permission of BIFR for assigning the debt. Therefore, it is*

prayed that the application under question should be dismissed with exemplary costs.

5. Shree Deepak Bhattachee, learned senior counsel for the respondent No. 3 (MFL) also strongly opposed the application under question, and filed a comprehensive reply dated 5th June, 2017 by adverting each and every averments and allegations/assertions made by the applicant in the application. The following are his main contentions urged before us.
6. It is stated that MFL is the single largest Financial Creditor of the Corporate Debtor as on date having an admitted outstanding due of Rs. 673.91 Crores on account of the Corporate Debtor i.e. M/s. Synergies Dooray Automotive Limited. The instant application is filed with sole intent of frustrating the cause of the other Financial Creditors of the Corporate Debtor, and derive illegal and unjust claims out of the Corporate Debtor. The prayers as sought by the Applicant are not only outside the purview of this Hon'ble Tribunal, but the same are being sought with the sole intent of arm-twisting the Corporate Debtor as well as the other Financial Creditors of the Corporate Debtor.
7. The three Deeds of Assignments in question pertaining to the original debt of ICICI, SBI and IDBI have stand registered as on date. The requisite stamp duty, including transfer duty and the registration fees stands paid. Copies of registered Assignment Agreements between SCL and MFL in question filed in support of its contentions.
8. The Applicant itself is not one of the original Lenders of the Corporate Debtor as the debt of the Corporate Debtor as owned by the Applicant as on date was originally disbursed by EXIM Bank. The Applicant during the pendency of the reference of the Corporate Debtor with the BIFR, took over the debts of EXIM Bank, pursuant to which, the Applicant, at best, stepped into the shoes of the original Lender of the Corporate Debtor i.e. EXIM Bank. It is noteworthy that in the present case, the Applicant vide the Assignment Agreement dated 06.01.2014 acquired the debt of EXIM Bank, during the subsistence of a status quo order passed by the Debts Recovery Tribunal, Visakhapatnam under the provisions of the SARFAESI Act and also during subsistence of the order dated 29.05.2012 passed by the BIFR, wherein the BIFR categorically directed EXIM Bank to accept the



offer of the Corporate Debtor for settlement of its dues at 26.66% of the principal dues in line with the settlement offered and agreed by other Secured Lenders of the Corporate Debtor. Thus, it is evident that on the date of acquisition of the debt in the instant case, the Applicant was not only aware about the factum of pendency of reference of the Corporate Debtor with the BIFR indicating its financial stressed position but also aware about its limited rights and exposure in the total secured debts of the Corporate Debtor in terms of the order dated 29.05.2012 passed by the BIFR and the orders dated 01.02.2013 & 20.06.2013 passed by the DRT, Visakhapatnam. However, despite the same, the Applicant acquired the debts of the Corporate Debtor and thereafter in the proceedings not only before the BIFR but before this Hon'ble Tribunal making systemized efforts to derail and delay the revival prospects of the Corporate Debtor.

9. BIFR has subsequently also passed an order dated 25.06.2013, wherein also the BIFR returned a finding as to the exposure of the dues of the Applicant in the Corporate Debtor under the provisions of the SARFAESI Act. The BIFR vide its order dated 25.06.2013, specifically stated that between the Applicant and Alchemist Asset Reconstruction Company Ltd. (AARC), it is apparent that the exposure of Applicant is in the ratio of 34.15%: 65.85%. Therefore, the Applicant in the present case is a minority creditor of the Corporate Debtor and thus single handedly not entitled under law to interject and interfere in an appropriate resolution plan having the consent of the majority Financial Creditors of the Corporate Debtor.

10. It is stated that all the Financial Creditors of the Corporate Debtor has been duly agreed and admitted in terms of Master Restructuring Agreement dated 06.03.2007 (referred to as MRA)and the following are the details of the dues of the various Financial Creditors along with their percentage exposure in the Corporate Debtor:

Lenders	Outstanding (Rs. in Crores)	Percentage
IDBI	65.66	30.93%
ICICI	66.30	31.23%



EXIM Bank of India	18.36	8.65%
State Bank of India	25.28	11.91%
Indian Overseas Bank	9.89	4.66%
Andhra Bank	8.35	3.93%
JP Morgan Chase (HSBC Share)	9.52	4.48%
IDBI Bank	8.91	4.21%
Total secured loans	212.27	100%

- 1) The said MRA was duly signed by all the Financial Creditors of the Corporate Debtor including EXIM Bank. The said MRA at Clause 3.2 specifically provided for Lenders' admission as to their exposure in the total dues of the Corporate Debtor. Clause 3.2. reads as under

"3.2 Lender Representation on Scope of Existing Loans

Each of the Existing CDR Lenders hereby represents and warrants to each other Lender that, in the absence of any manifest error, the details of its Existing Loans as set out in Annexure III are complete and accurate in all respects."

So it is beyond doubt that Applicant is a minority Financial Creditor in the case of the Corporate Debtor. However, the Applicant in the garb of instant Application is attempting to improve its position and exposure as one of the Financial Creditors of the Corporate Debtor by non suiting MFL which is legally impermissible and accordingly warrants no indulgence of this Hon'ble Tribunal.

- 2) It is further stated that MFL is not a related party as regards the Corporate Debtor as alleged by the



applicant and thus it cannot be eliminated from the Committee of Creditors. MFL is a Non Banking Financial Institution, which had acquired the debts from Synergies Castings Ltd. and being an independent party and the single largest Financial Creditor of the Corporate Debtor entitled to voting in the meeting of Committee of Creditors. The date of the Assignment Agreement being just a date precedent to the issuance of notification by the Central Government for the purpose of repeal of SICA is no ground to eliminate MFL from the Committee of Creditors. MFL in its ordinary course of business entered into an Assignment Agreement dated 24.11.2016. There is neither any mechanism nor any manner by which MFL can be attributed with any malafide intent of entering into an agreement immediately prior to coming into force of SICA Repeal Act. The submissions and averments made by the Applicant on the proximity of the Assignment Deed with the coming into force of the SICA Repeal Act are mere surmises, which have no legal basis and thus liable to be rejected by this Hon'ble Tribunal.



- 3) It is contented that even in absence of any voting right in the meeting of Committee of Creditors, the Financial Creditor whether it is SCL or MFL will continue to be equitably treated for the purpose of settlement of its dues. Thus, in no eventuality, the Applicant can steal a march and seek better dispensation than either SCL or MFL, which appears to be sole vested interest of the Applicant herein.
- 4) The allegation that MFL becoming a related party by virtue of assignment from a related party the same is frivolous and unsubstantiated. MFL does not fall within any of the definitions of related party as mentioned

from 5(24)(a) to 5(24)(m). Edelweiss ARC is put to strict proof of establishing the same.

- 5) Therefore, the learned Senior Counsel prayed the Tribunal to dismiss the application under reply with exemplary costs.

12. Ms. Mamta Binani, the learned Resolution professional (Respondent No. 4 herein) has also strongly opposed the application under question by filing a reply dated 12th June, 2017 through her legal counsels Mr. P. Vikram and Nitish Bandary. The following are some of his their main contentions:

- 1) It is prayed to read reply filed in C.A. No. 43 of 2017 as part and parcel of this reply also for the sake of brevity. It is strongly denied casts aspersions made on her and it is nothing gross abuse of the process of the Court, wherein a minority Financial Creditor has resorted to accusing the Resolution Professional of dereliction of duty.
- 2) It is stated that Resolution Professional is not empowered under law to examine and test the validity of an Assignment Agreement. The validity of an Assignment Agreement can only be tested before a Civil Court having competent jurisdiction, wherein the Applicant herein will be required to file a suit for declaration and wherein evidence will have to be led.
- 3) That with respect to the objections / allegations regarding the transaction between SCL and MFL, the Applicant was duly informed by the Answering Respondent that she was not going into contentious issues of law and fact and that the claims are verified on the basis of relevant records, documents and other proof of claims placed before her. It was also informed the Applicant that MFL was an NBFC who was currently holding a financial debt against the Corporate Debtor and was having a valid claim, which had been verified and accepted on the basis of documentary evidence placed before her..



- 4) It is averred that Resolution Professional is duty bound to give cognizance to a Deed of Assignment (which has also been placed on record along with the main application filed by the Corporate Debtor), unless and until a court of competent jurisdiction holds to the contrary.
- 5) Even in the Master Restructuring Agreement, EXIM Bank (Assignor of the Applicant) was a minority creditor. The Respondent Nos. 2 and 3 are assignees of Public Sector Banks, who were part of the Master Restructuring Agreement, therefore, Respondent Nos. 2 and 3 are similarly placed to the Applicant.
- 6) Therefore, it is prayed that the application under reply to be dismissed with exemplary costs.

13. Heard Shri Shri S. Niranjan Reddy, Senior Advocate, Shri Jyoti Singh, Advocate, Ms. Rubaina Khatoon, Advocate, Shri P. Mohith Reddy, Advocate for the Petitioner and Shri A.D. Gupta, Advocate Shri S. Chidambaram, PCS, Shri Deepak Bhattacharjee, Senior Advocate alongwith Shri Dishit Bhattacharjee, Mrs. Mamta Binani, Resolution Professional along with Shri Krishnendu Datta, Shri P. Vikram, Advocate Shri Nitish Bandary, Advocate for the Respondents , and have also carefully perused all the pleadings made by the respective parties along with material papers filed in their support.

14. In the light of above facts and circumstances of the case, the following main points arise for our consideration:-

- (1) What is the status of the Applicant vis-à-vis Corporate Debtor and what rights it accrues by virtue of assignment from the Exim Bank and what is locus standi of it vis-a-vis other similar assignees like SCL and MFL ;
- (2) Whether three Assignment agreements commonly dated 24.11.2016 entered into between SCL and MFL are properly registered or not;



- (3) Whether the applicant has any locus standi to question the assigned agreements made between SCL and MFL since the applicant is not a party to these assignment deeds;
- (4) What is the enforceability of various orders passed by BIFR before its abatement and DRT when they have not passed any final orders adjudicating the issues raised in those case;
- (5) Whether SCL and MFL are related parties:
- (6) If so, what are the reliefs the Applicant is entitled for?

15. It is to be noted that the applicant has not filed copies of three Assignment Agreements in question even though they have expressed several apprehensions, allegations, malafide etc against its execution. However, the Respondent No. 3(MFL) has filed all three Assignment Agreements to substantiate its case and repelling the allegations of applicant. We have examined all the three assignment agreements in question.

16. The important question to be considered in this case is what are the right accrued to an assignee by virtue of assignment agreements. The word assignment is defined "as a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or any estate or right therein. It is defined as the transfer by a party of all rights to some kind of property usually intangible property such as rights in a lease, mortgage, agreement of sale of partnership. Assignment is a transfer of interest or title usually expressed in writing whereby contracting parties covenant for themselves and assigns so that upon the happening of certain events the assigns may stand in the shoes of the original covenanters

17 In the instant case, admittedly both the applicant (EARCL) and Respondent No. 2 & 3 are assignees of original lenders to the borrowers (SDAL).The list of existing term lenders and existing term loans and list of existing CDR lender and on CDR lenders are as per master restructuring agreement dated 6th March, 2007 made by and between SDAL, ICICI Bank Limited, Indian Overseas Bank and Andhra Bank (more particularly set forth in part



C of Schedule 1 herein and herein after individually referred to as the “Existing CDR Lender” and collectively as the “Existing CDR Lenders”, are as follows

LIST OF EXISTING TERM LENDERS AND THE EXISTING TERM LOANS

Reconciled secured term loans outstanding as on 30.9.2004 as provided by the Company

PART-A

Lenders	Outstanding (Rs in millions)
IDBI	656.6
ICICI BANK	663.0
EXIM BANK OF INDIA	183.6
STATE BANK OF INDIA	252.8`
INDIAN OVERSEAS BANK	98.9
ANDHRA BANK	83.5
JP MORGAN CHASE (HSBC HARE)	95.2
INDBI BANK	89.1
TOTAL SECURED LOANS	89.1
TOTAL SECURED LOANS	2122.7

PART-B

LIST OF EXISTING CDR LENDERS

ICICI BANK
 IDBI BANK
 STATE BANK OF INDIA
 EXPORT IMPORT BANK OF INDIA
 INDIAN OVERSES BANK
 ANDHRA BANK
 PART C

LIST OF EXISTING ‘NON-CDR LENDERS

JP MORGAN CHASE BANK

18. The first assignment agreement dated 24.11.2016 was executed between SCL and MFL. This assignment originally relates to ICICI Bank. ICICI Bank Limited vide its assignment dated 28.09.2011 assigned the loans together



with all its rights, title and interest in financing documents etc in favour of the assignor (SCL) herein. In turn, the assignee of ICICI Bank, SCL herein, assigned its rights accrued from ICICI Bank to MFL. This document is duly registered with the District Registrar Anakapalli vide proceedings No. 197/G1/2017, dated : 28.04.2017 on payment of fine (5 times equal to registration fee) of Rs. 1,50,000/- for a delay of 1 month 1 day in presentation of the document under section 25, section 34 of the Registration Act, 1908. The purchase consideration for these rights is Rs. 16,50,00,000/- .

19. The Second assignment agreement dated 24.11.2016 was executed between SCL and MFL. This assignment originally relates to SBI Bank. SBI Bank Limited vide its assignment dated 30.05.2008 assigned the loans together with all its rights, title and interest in financing documents etc in favour of the assignor (SCL) herein. In turn, the assignee of SBI Bank, SCL herein, assigned its rights accrued from SBI Bank to MFL. This document was duly registered with the District Registrar, Anakapalli vide proceedings No. 197/G1/2017, Dated : 28.04.2017 on payment of fine (5 times equal to registration fee) of Rs. 1,50,000/- for a delay of 1 month 1 day in presentation of the document under section 25, section 34 of the Registration Act, 1908. The purchase consideration for these rights is Rs. 6,10,00,000/-.



20. The third assignment agreement dated 24.11.2016 executed between SCL and MFL. This assignment originally relates to IDBI. IDBI Bank Limited vide its assignment dated 11.03.2008 assigned the loans together with all

its rights, title and interest in financing documents etc in favour of the assignor (SCL) herein. In turn, the assignee of IDBI Bank, SCL herein, assigned its rights accrued from IDBI Bank to MFL. This document was duly registered with the District Registrar, Anakapalli vide proceedings No. 197/G1/2017, Dated : 28.04.2017 on payment of fine (5 times equal to registration fee) of Rs. 1,50,000/- for a delay of 1 month 1 day in presentation of the document under section 25, section 34 of the Registration Act, 1908. The purchase consideration for these rights is Rs. 16,78,00,000/- .

21. On perusal of above three assignment agreements, it is clear those documents are duly executed with the concerned authorities, and they are not questioned by any party to those proceedings. Applicant herein, being similarly situated like that of SCL and MFL, do not have any locus standi to question the veracity of those documents on mere apprehensions, malafides, fraudulent etc. Admittedly, it is not a party to those Assignment agreements. It is not tenable to raise apprehensions before a court of law to adjudicate and courts usually adjudicate issues basing on cause of action arisen in a particular case, and it will not enter into roving enquiry into mere apprehensions, baseless allegations. As stated supra, whatever the rights the original assignor got it from the original lender will automatically accrues to subsequent assignees basing on executing appropriate legal documents in accordance with law. . Here, in this case, MFL has got all the rights as per the assignment agreements commonly dated 24.11.2016. Hence, the allegations/ apprehensions made by the applicants herein are baseless and mere apprehensions, and



they are deemed to have been executed in accordance with law especially in the absence of any challenge to those documents by a party to those documents. The applicant doesn't have any locus standi to question those documents in the insolvency proceedings initiated under IBC, 2016 on a farfetched argument that they are going to be effected if the rights of SCL and MFL are recognized basing on the Assignment Agreements in question. And the applicant cannot assume jurisdiction to question the documents in question basing on baseless allegations, apprehension etc. Therefore, we hereby summarily rejected the contentions/allegations of the Applicant with regard to documents in question. In the result, we hereby declare that both SCL and MFL are eligible to execute the assignment agreements in question and all rights flow those agreements to MFL. After getting assignment of rights, the MFL is fully competent to participate in COC in question and it cannot be called a related party as explained.

22. The next question arises is whether the above documents were executed without making reference to BIFR is valid or not. Admittedly, the applicant herein and the respondent No.3 are assignees of original lenders to SDAL. It is not the case of the Applicant that Assignors have no right to the rights in question to transfer their rights / interest to the assignee. It is the case of the Applicant that the Respondent No. 3 was assigned the rights / interest in question in order to deprive / reduce the interest of the applicant herein in the CoC. As long as the assignment agreement deeds are valid and legally enforceable, the applicant has no locus standi to question its object, modus operandi behind its execution. The



contentions of the Applicant that the Respondent No.3 would become an admitted party by virtue of Section 5 (24) is not at all tenable.

23. The other question arises for consideration is about the status of various orders passed by BIFR and also by DRT Vishakapatnam in case no. 135/05 and consequential MRA dated 6.3.2007. It is settled position of law that various interim orders passed in the various cases will merge in the final orders that are going to be passed. In the instant case, as stated supra, the BIFR/AAIFR proceedings stands abetted by virtue of the Companies Act, 2013 came into force w.e.f 01.12.2016. However, it is necessary to examine all the orders passed by BIFR/AAIFR and DRT and also various agreements entered into by the parties. In the instant case, there are so many developments taken place and all the original lenders have assigned their interest / rights to several assignees as stated supra. So all the documents executed and all the orders passed required to be examined as we are finally deciding the case. We cannot go and examine each and every documents right from the grant of loans to the borrowers to the original lenders and subsequent assignments. The issue arising in this IBC is to resolve the issue and restore the company as far as possible and if not possible it should be sent for liquidation.

- 24 The BIFR recorded a finding on 26.05.2012 with regard to the settlement of the issue on the whole by recording that out of Seven Creditors, 5 already been settled and only the remaining two namely EXIM bank and another remains to be settled. Their percentage of due also prescribed.



25. The Corporate Debtor had suppressed several material facts especially with regard to leasing out all its assets to Respondent No. 2 herein before BIFR. The Applicant and its Assignor viz. Export Import Bank of India (Exim Bank) has filed various applications before BIFR / AAIFR questioning the determination of the Corporate Debtor as a sick industrial company.

(1) It is stated that various banks and financial institutions/ assets reconstruction companies in the year 2008-11 have assigned their debts in respect of the Corporate Debtor to Respondent No.2. However, it is alleged that these assignments took place prior to Applicant becoming Financial Creditor of the Corporate Debtor and these assignments in favour of Respondents No. 2& 3 are defective and not legally enforceable.

(2) By virtue of the assignments dated 24.11.2016, Respondent No. 2 has assigned nearly 92.93% of its share of debt in the Corporate Debtor to Respondent No.3. The Applicant has filed CA 43/2017 in CP 1/HDB/2017 by inter-alia seeking direction to IRP to cancel / to defer the first CoC scheduled to be held on 22.02.2017 consequently consider the objections of the Applicant and to reconstitute CoC in accordance with the law. This Tribunal, by an order dated 22/2/2017 permitted to go ahead with the scheduled meeting of CoC by observing that any decision taken in the meeting of CoC would be subject to further order of the this Tribunal. This CA No. 43/2017 is dismissed by way of separate order dated 02.08.2017.



(3) The Applicant alleges that in the first meeting of CoC held on 22.02.2017, the objections / submissions made by the authorised representative of the Applicant were not recorded in the minutes.

(4) The Respondent No.2 is a related party of Corporate Debtor and it cannot be permitted to participate or vote in the meetings of the CoC of Corporate Debtor. It is nothing but allowing Respondent No.3 to do what Respondent No.2 cannot do and this amount to gross subversion and evasion of the provisions of the IBC. As per Section 21(5) of the IBC, the Assignee / Transferee / Financial Creditor can be considered as Operational Creditor in respect of the assigned debt. So Operational Creditor is just like a related party does not have the right to participate or vote in the meetings of the CoC Save and except where Corporate Debtor has no financial creditors and only has operational creditors.

(5) The assignments in question are against public policy and they are fraudulent, malafide and ex-facie bad in law. The Applicant made several allegations with regard to those assignments and BIFR was also not informed as required under law, by the Corporate Debtor.

26. The Company Petition bearing CP(IB) No.01/HDB/2017 has been filed by Synergyies Dooray Automotive Limited (SDAL) under section 10 of IBC Code 2016, R/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Bankruptcy Rules 2016) to initiate Corporate Insolvency Resolution Plan (CIRP) in respect of SDAL.

27. The CP (IB) 01/HDB/2017 was heard by this Bench and admitted the case on 23.01.2017 on being satisfied that the Application filed by the Corporate Debtor is complete in all respects with respect to the committing a default by the Corporate Debtor / Corporate Applicant; basing on examination of book of accounts and other related documents



with regard to the debt in question and on being found that Interim Resolution Professional fulfills all the extant rules. The only question arises is the procedure adopted by IRP/RP is in accordance with IBC or IBC Rules.

28. The other question whether the learned Resolution professional has duly followed procedure in accordance with law or not, after initiation of Resolution process by Corporate Debtor, we have duly considered all those allegations and found those allegations are found to be baseless and upheld the proceedings of the Resolution Professional.
29. The Assignment deeds of various Banks / Financial Institutions/ ARCs in favour of Respondent No.2 happened way back in the years 2008-2011 and that too from SBI, IDBI, ICICI (ARCIL). Therefore, we cannot find any fault with these assignment deeds. With respect to the allegation of SCL assigning its debt to MFL on 24.11.2016, we find no merit in this argument as well. As commonly known the promulgation of IBC Code, 2016 was widely discussed / debated / publicized in various media and not out of the blue. Therefore, the assignment deeds between the two entities also legal and permissible. At most it can be said to be similar to "tax planning" rather tax avoiding. Because of this assignment deed, not only the applicant's share in total debt is reduced, but other financial creditors/ Assignees share also proportionately reduced and they did not object to the same but only the applicant agitates with oblique motive / reasons best known to it. Therefore, a fraudulent attempt made to reduce the Applicant's share in the total voting rights is not a plausible pleas by the



Applicant. In the absence of any documentary proof/ evidence to the claim of the Applicant, the same is liable to be rejected. Accordingly, the bench rejects the above allegations / claim of the applicant.

30. In the result, the Company application bearing .C.A. No. 57 of 2017 IN CP (IB) No. 01/HDB/2017 is dismissed.

No order as to costs.



Sd/-
RAVIKUMAR DURAISAMY
Member (T)

Sd/-
RAJESWARA RAO VITTANALA
Member (J)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *C.A. No. 57 of 2017 IN*
निर्णय का तारीख *CP(IB) No. 01/HDB/2017*
DATE OF JUDGEMENT *2-8-2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *8-8-2017*

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.