NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.81/2023
(IA No.294/2023)

In the matter of:

PHOENIX ARC PRIVATE LTD.
Trustee of Phoenix Trust FY17-8 5th Floor,
Dani Corporate Park 158, CST Road,
Kalina, Santacruz(E), Mumbai - 400 098
Represented by its Authorised Signatory,
Mr. Suresh Mangattu Variyam **… APPELLANT**

V

CHERUPUSHPAM FILMS PRIVATE LIMITED
4th Floor, Cherupushapam Building,
Shanmugham Road, Ernakulam- 682031 **…RESPONDENT**

Present :

For Appellant : Mr. Suresh Dutt Dobhal &
Mr. Shikhar Kumar, Advocates
For Respondent : Mr. Pradeep Joy, Advocate

O R D E R
(Hybrid Mode)

[ORAL JUDGMENT: Justice Sharad Kumar Sharma, Member (Judicial)]

03.07.2026:

The Appellant is an applicant to application preferred under Section 7 of the I & B Code, 2016, praying for initiation of the CIRP process as against the Respondent (Corporate Debtor), on various grounds those were taken in the application, as regards to the aspects pertaining to the availing of the loan facilities for the purposes of construction of a building on a joint venture basis which was entered into between the Principal Borrower (M/s. Kerala Chamber of Commerce) and the Corporate Debtor, (M/s. Cherupushpam Films Private Limited) and because of occurrence of default and non-remittance of debt despite demand notice issued for same. Further, it is noted that the Appellant is an Asset Reconstruction Company, which happens to be registered under the SARFAESI Act and it had got the debt assigned to it by the original financial credit South Indian Bank in consonance to the statutory provisions under Section 3 and 5 of the SARFAESI Act, by execution of a deed of assignment in its favour.

2. When the proceedings were taken up before the Ld. Tribunal, the Corporate Debtor had opposed the proceedings on the ground of limitation and further on the ground that, the signatures appearing on the loan document were forged, and since the proceedings have been initiated under PMLA, the petition under IBC was not maintainable.

3. During the course of arguments, though without any pleading, a plea was taken by Respondent, while opposing the application initiated under Section 7 of the Code is that, the assignment deed in favour of the Appellant is not admissible in evidence because it has not been sufficiently "stamped and registered", as per law, and therefore it cannot be taken into consideration and besides that the copy of the Trust Deed, which was placed to be read for the purposes of conferring an authority on the Appellant to initiate the proceedings has not been produced in

original, and therefore the proceeding would not be maintainable at the behest of the Appellant.

4. During the course of the proceedings, what has been reflected from the evidences adduced between the parties is that, there is no dispute on the debt due, and on the occurrence of default in the payment of the said debt and on the validity of commencement of CIRP proceedings against the Principal Borrower, i.e., M/s. Kerala Chamber of Commerce. Further, there is no dispute on the liability of repaying the debt devolving upon the Respondent, being the Corporate Guarantor because there was a debt and there was a default, which stood proved as a result of which CIRP proceedings had been commenced as against the Principal Borrower and since the Corporate Guarantor had guaranteed the debt and there was an acknowledgement of debt by the Corporate Guarantor through the acknowledgement of the Principal Borrower, the invocation of the proceedings under Section 7 of the Code against the Respondent (Corporate Guarantor) cannot be said to be barred by law. However, in the proceedings before Ld. NCLT CP(IBC)/51/KOB/2022, the Respondent primarily argued and questioned the validity & enforceability of the Assignment Deed dated 17.03.2017 based on which Section 7 application was filed.

5. Under the aforesaid backdrop, the Ld. Tribunal framed two prime questions for consideration:

I. Whether the deed of assignment dated 17.03.2017 is an enforceable instrument?

II. Whether the Petitioner had proved its authority to institute the petition?

6. After hearing both sides and perusing the documents. Ld. NCLT came to the conclusion that the assignment deed dated 17.03.2017 is unenforceable and that Petitioner (Appellant herein) has not proved his authority to institute Section 7 petition and accordingly proceeded to dismiss the Section 7 application challenging the said order, the instant appeal has been filed by the Appellant.

7. Reference has been made by the Appellant to the provisions contained under Section 25 of the Kerala Stamp Act, 1959, in order to contend, that Ld. Tribunal had erred by holding, the agreement of assignment of debt dated 17.03.2017, to be insufficiently stamped based on provision of said Section 25 because the said section has no application in the case of the assignment of debt, and it relates to the transfer of property in consideration of a debt. Section 25 of Kerala Stamp Act, 1959 reads as under: -

> *"**25**. How transfer in consideration of debt, or subject to future payment etc, to be charged.*
>
> *Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not such debt,*

money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty:

Provided that nothing in this section shall apply to any such certificate of sale as in mentioned in Article 16 of the Schedule.

Explanation: - In the case of a sale of property subject to a mortgage or other encumbrance any unpaid mortgage money or money charged, together with the interest, if any, due on the same, shall be deemed to be part of the consideration for the sale:

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage."

8. The Appellant has stated that on reading the provisions of Section 25 of the Kerala Stamp Act, 1959, it is clear that it prescribes imposition of stamp duty for "transfer of property" in consideration" of a debt or subject to further payment, and therefore, the said provisions will not be governing the Assignment Deed because provisions under Section 25, Kerala Stamp Act, 1959, are in relation to the transfer of properties in consideration of a debt / payment to be made in future and will not apply to assignment of debt because no property is being transferred. Therefore, it cannot be said that the assignment deed was required to be stamped in accordance with Section 25 of Kerala Stamp Act, 1959. Having said so, we are not required to dwell in the matter any further, owing to the fact that the Assignment Deed under consideration herein, has since been registered and placed before this Appellate Tribunal. Accordingly, the observations and reasons

which were assigned by the Ld. NCLT for declining to entertain the application under Section 7 of the Code by implication of law, stand negated and as a consequence, the proceedings under Section 7 of the Code, is required to be considered on its merits, sans the effects of Section 25 of Kerala Stamp Act 1959.

9. He has further submitted that, as regards to the issue pertaining to the supplying of the sufficient stamp duty in relation to the assignment agreement, assigning the debt, the said issue was still a subject matter of consideration before the Hon'ble High Court of Kerala and therefore, in the absence of there, being a clarity in the provisions contained under Section 25 of the Kerala Stamp Act, 1959, on the issue of levy of stamp duty on the assignment deed, no specific levy was required under the law and hence dismissal of the petition on the ground of insufficiency of stamp duty being paid on the assignment deed was erroneous.

10. Besides that, it was also contended that, it has been determined by Hon'ble Apex Court and various High Courts, that, the assignment of debt is not a transfer of interest in immovable property itself.

11. When the proceedings came up for consideration before the Ld. Tribunal, by way of CP (IBC)/51/KOB/2022, the Ld. Tribunal, while briefly narrating the facts of the application under Section 7 of the Code, while observing thereof that the Financial Creditor had various credit facilities with M/s. Kerala Chambers of Commerce and Industry, and they were engaged in the construction of buildings, construction of commercial establishments, which included the project in

question, that is, the Kerala Trade Centre, being raised on the land that belonged to the Corporate Debtor.

12. The Corporate Debtor also stood as a Guarantor of the credit facilities, to the Principal Borrower. Since the construction process being agreed to be carried under a joint venture, between the Principal Borrower and the Corporate Debtor, the necessary documents were executed for each of the credit facilities. However, M/s. Kerala Chambers of Commerce and Industry, the Principal Borrower, had already availed other credit facilities with the bank prior to the said sanction. Be that as it may.

13. An amount of Rs 1.10 Crores was sanctioned on 15.09.2010, as a fully secured loan, and a credit facility agreement was executed on 16.09.2010 by the Principal Borrower. For the purposes of securing the loan, a guarantee agreement was executed on 16.09.2010 by the Corporate Debtor and to secure the payment to be made to the Principal Borrower, and had executed a Guarantee Agreement accordingly on the said date.

14. A collateral mortgage was also created, by the Corporate Debtor, in respect of 43.95 cents of land with building thereon on existing on Survey No. 843 of a property situated at Ernakulam village, Kanayannur Taluk, Ernakulam District. In relation thereto, and as evidenced by letter of deposit of title deeds dated 17.10.2010. Again, fully secured loan of Rs. 5 Crores sanctioned on 30.12.2010 for the same, Corporate Debtor, had executed a guarantee on 30.12.2010, also

Corporate Debtor had given collateral. Another loan, of Rs. 2.5 Crores was sanctioned on 01.01.2013, the Corporate Debtor had executed a guarantee agreed for the same loan on 01.01.2013 and had given a collateral security for the said facility.

15. While considering the aspect of sustainability of the proceedings, it was observed that the accounts were declared as to be NPA on 30.09.2013, the Principal Borrower had admitted and acknowledge the liability from the annual financial statement, it was taken as to be a valid acknowledgement for the purposes of Section 18 of the Limitation Act of 1963.

16. But the Ld. Tribunal, instead of venturing to record any finding on the merit of the controversy between the parties, after hearing the Ld. Counsel for the Parties have framed the following questions,

A. enforceability of the assignment deed dated 17.03.2017 and

B. authority to institute the petition under Section 7 of the Code

17. The Ld. Tribunal took the view, since the deed of assignment, based on which, the alleged loan facility is said to have been assigned to the Appellant, was executed by the South India Bank Limited, the original lender in favor of the Petitioner, at Ernakulam on a Rs. 500 value non-judicial stamp paper, in which an assignment of Rs. 79,25,00,000/- value of the loan was made to the Petitioner,

the assignment is insufficiently stamped and hence the proceedings under Section 7 of the Code, based on it cannot be initiated.

18. Ld. NCLT held that the deed of assignment was executed, South Indian Bank at Ernakulam which is situated in Kerala and hence only the provisions of Kerala Stamp Act will be applicable and the exemption provided under Section 8F of the Indian Stamp Act, 1899 will not be applicable to the said deed executed on 17.03.2017 within the State of Kerala, and in the absence of there being any exemption on the payment of the stamp duty payable under the Kerala Stamp Act, the deed of assignment dated 16.09.2010 cannot be considered to form the basis of judicial proceedings, under Section 7 of the Code being insufficiently stamped.

19. The Ld. Tribunal took the view that, the provisions contained under Section 8F of the Indian Stamp Act, even exempting payment of duty on the assignment of a right or an interest in financial assets, will not be applicable in this case as Kerala Stamp Act, 1959 has repealed Indian Stamp Act, 1899. Section 8F is extracted hereunder: -

> ***"8F. Agreement or document for transfer or assignment of rights or interest in financial assets not liable to stamp-duty.****-- Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement or other document for transfer or assignment of rights or interest in financial assets of banks or financial institutions under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), in favour of any asset*

reconstruction company, as defined in clause (ba) of sub-section (1) of section 2 of that Act, ***shall not be liable to duty under this Act****."*

20. Thereafter, Ld. Tribunal took into consideration the provisions contained under Section 34 of the Kerala Stamp Act of 1959, and observed that, if a document is insufficiently stamped, the instrument cannot be used for any judicial purposes unless the stamp duty and the penalty payable on it is paid upon it, and for the said purpose, the reference was made to the provisions contained under Section 34 of the Kerala Stamp Act, which lays down the embargo in a document to be considered where a document entails a transfer of rights when the same is not sufficiently stamped.

21. Hence the Ld. Tribunal, took the view that the assignment deed of 17.03.2017 was required to be properly stamped in view of the assessment of the stamp value as it was made as per Article of the Kerala Stamp Act, 1959 and observed that, since the assignment deed was made on 500 rupees stamp paper, it ought not to be read in evidence, in the light of the provisions contained under Section 34 of the Kerala Stamp Act.

22. Based upon the aforesaid interpretation, the Ld. Tribunal recorded that since the assignment deed of 17.03.2017, was not a sufficiently stamped instrument, which has been produced for the purposes of sustainability of the proceedings under Section 7 of the I & B Code, it was observed that, it should be impounded as per Section 33 of the Kerala Stamp Act, which was a pari materia

provision to Section 33 of the Indian Stamp Act, and thus the Ld. Tribunal took the view that since the Assignment Deed will be falling within the definition of instrument as defined under Section 2(14) of the Act, it cannot be read in evidence, and since a photocopy of the document has been presented, the same cannot be taken into consideration, and accordingly, answered the question number one framed by it, holding the deed of assignment dated 17.03.2017 as unenforeceable.

23. Similarly, while considering the authority to initiate a proceeding under Section 7 of the Code particularly in the absence of there being any authority granted under the Trustee Deed, and since the Trust Deed itself having not been placed on record before the Ld. Tribunal, the Ld. Tribunal took the view that, the cause title of the Phoenix ARC Private Limited Company as referred to as trustee of Phoenix Trust, as depicted in the petition filed by the Phoenix ARC Private Limited Company, cannot be conclusively considered under the Trust Deed that was filed on record.

24. Since a trust being a non-living juristic person, it could have only functioned through a person who holds an authority on its behalf to initiate proceedings. In the case at hand, the Ld. Tribunal took the view that since a non-living juristic person has filed a petition through the Petitioner, who was not holding an authority under the Trust Deed, and hence in the absence of the Trust

Deed having been produced on record, which is vital, the proceedings initiated under Section 7 of the Code, were held to be not maintainable.

25. When this company appeal was preferred, as against the impugned order, as passed in CP (IBC)/51/KoB/2022 the Appellant herein, by virtue of IA No. 295 of 2023 and IA No. 870 of 2024, had sought to place on record the original Trust Deed dated 06.02.2017, as well as the order dated 07.12.2023 that was passed in a Writ Petition, being **Writ Petition (C) No. 19371 of 2017,** directing registration of the Registered Deed of Assignment of the Appellant which was registered on 30.03.2024 in compliance to the order of Hon'ble High Court of Kerala.

26. While passing an order on those applications, this Appellate Tribunal on 11.03.2025 had ordered that, the additional documents, which has been placed on record while taking recourse to the provisions contained under Rule 73 of the NCLAT Rules, these documents were permitted to be taken on record to be considered at the stage of final hearing.

27. Upon considering the applications by virtue of, which the Appellant has placed the documents on record, we could see that, the Assignment Deed was ultimately registered in furtherance of the order passed by the High Court on 07.12.2023, and thus, the embargo of its non-registration, which has been derived by the Ld. Tribunal as to be the basis, while deciding Point No. 1, stands overruled as on date because fact remains that the Assignment Deed of 17.03.2017 has now

been registered, and thus it has to be taken into consideration in the shape as it is existing as of now for the purposes of deciding the application under Section 7 of the Code.

28. Similarly, the restrictions which were imposed by the Ld. Tribunal, while deciding the question number (2) pertaining to the non-availability of the Trust Deed on record to express the authority to institute proceedings, now stand satisfied by the Trust Deed being placed on record by the Appellant before this Appellate Tribunal by virtue of IA/295/2023. In the light of the decision of the High Court in Writ Petition (C) No. 19371 of 2017, when the direction was issued to the competent Registrar to register the Assignment Deed at the rate of stamp payable on it as suggested in the scheduled contained to the Stamp Act, the Assignment Deed thereafter has been registered on 30.03.2024 and from now on it will, for all practical purposes, be treated as to be a document that could be read in evidence in the light of the provisions contained under Section 47 of the Registration Act. Section 47 of the Registration Act is extracted hereunder: -

> ***"47. Time from which registered document operates***.*—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."*

29. In the light of the language used under Section 47 of Registration Act, as extracted above, the deed of assignment, even though it was not stamped as per the provisions of the Kerala Stamp Act, to be read in consonance with the

provisions of the Registration Act, will operate from the date of its execution, i.e., 17.03.2017 even though it was insufficiently stamped at that point of time and it was registered only on 30.03.2024 in compliance to the directions issued by the orders of the Hon'ble High Court. Further, since the registered Assignment Deed has been placed on record, that itself would sustain the proceedings under Section 7 of the I & B Code, which otherwise now deserves to be decided on its own merits.

30. Further, whether the question of whether the Appellant had the authority to initiate CIRP due to non-presentation of the Trust Deed also stands satisfied, since the said document too has already been supplied, by the Appellant with IA No. 295 of 2023, which had been directed by this Appellate Tribunal to be considered at the stage of final hearing by an order passed by this Appellate Tribunal on 11.03.2025.

31. The impugned decision rendered by the Ld. Tribunal rejecting the Section 7 application filed by the Appellant was solely on the ground of the aforesaid two procedural anomalies, and as of now the said anomalies stand rectified by the Appellant by supplying the registered Assignment Deed, which ultimately got registered in compliance with orders passed by the Hon'ble High Court, and which can be read in evidence and similarly by supplying the Trust Deed.

32. Since the Ld. Tribunal had not ventured on merits of the application under Section 7 of the Code, and it has proceeded to decide the same, on these limited

questions of restrictions, which now stand rectified because of satisfying the aforesaid lacunas, we are of the view that the application under Section 7 of the Code requires consideration, on merits.

33. Thus, the impugned order dated 15.02.2023 is hereby quashed. The application preferred by the Appellant under Section 7 of the I & B Code is relegated back to the Ld. Tribunal which is to be decided on merits afresh, without drawing the embargoes of the Assignment Deed having been not registered or non-presentation of the Trust Deed.

34. Subject to the above, the 'company appeal' stands 'allowed' and the matter is remitted back to the Ld. NCLT to re-decide the matter afresh.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SN/MS/AK