

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 28 of 2018

**[arising out of Order dated 13th November, 2017 by NCLT, Mumbai Bench,
in Case No. MA 560 IN CP No. 1148/I&BC/NCLT/MB/MAH/2017]**

IN THE MATTER OF:

- 1. Pankaj Yadav,**
Flat No. 802, Bldg. No. 23,
Evershine Millennium Paradise,
Thakur village,
Mumbai – 400 101

- 2. Brainer Impex Limited,**
102, Shree Gajanan Apartment,
Chincholi Bunder Road,
Opp. Infant Jesus School,
Malad West,
Mumbai – 400 064.

...Appellants

Versus

- 1. State Bank of India Ltd.**
Stressed Assets Management Brnach-II,
Raheja Chambers,
Free Press Journal Road,
Nariman Point,
Mumbai – 400 021.

- 2. Fortune Pharma Pvt. Ltd.,**
Tapadiya Terrace,
Adalat Road,
Aurangabad – 431 001.

...Respondents

Present:

For Appellants: Mr. Dhaval Deshpande, Advocate

**For 1st Respondent: Mr. P. V. Dinesh, Mr. Rajendra Beniwal and
Mr. Sindhu T.P., Advocates**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The appellant, an 'assignee' of Mr. Sudhakar Mulay (Promoter), was inducted by 'Resolution Professional' as a member of the 'Committee of Creditors', which was challenged by 'State Bank of India' (Financial Creditor) on the ground that the appellant is a 'related party'. The Adjudicating Authority (National Company Law Tribunal) Mumbai Bench by the impugned order dated 13th November, 2017 having held the appellant as 'related party', the appellants have preferred this appeal.

2. The only question requires for determination in this appeal is whether the 1st appellant is a 'related party' or not?

3. The brief facts of the case are that one Mr. Sudhakar Mulay and another Mr. Vikram Sudhakar Mulay the Directors/Promoters of M/s. Fortune Pharma Private Limited had executed the 'personal guarantee' in favour of the 'State Bank of India'. Against the said company and the Directors/Promoters, the 'State Bank of India' enforced SARFAESI Act and by order dated 23rd March, 2016 directed the company to hand over possession of the factory premises situated at Aurangabad to 'State Bank of India.'

4. It was at this stage, the company filed an application under Section 10 of the Insolvency & Bankruptcy Code, 2016 ((hereinafter referred to as the 'I&B Code') which was admitted. After filing of the application under Section 10 of the I&B Code, Mr. Sudhakar Mulay, Director/Promoter assigned his 'debt' in favour of the 1st appellant on 1st July, 2017.

5. Learned counsel appearing for the appellants refers to Section 5(7) r/w (8) to suggest that the 1st appellant comes within the meaning of 'Financial Creditor'. Reliance was also placed on Section 5(24) of the I&B Code which defines 'related party' in relation to a 'Corporate Debtor' which means a 'Director or partner' of the 'Corporate Debtor' or a relative of a 'Director or partner' of the 'Corporate Debtor' etc. According to the learned counsel for the appellants Mr. Sudhakar Mulay having assigned debt in favour of the 1st appellant and he being not the Director of the 'Corporate Debtor' or relative of the Director of the 'Corporate Debtor' cannot be treated to be a 'related party' within the meaning of Section 5(24) of the I&B Code.

6. The Adjudicating Authority taking into consideration the facts and circumstances of the case observed that meticulous planning was made by the Director of the 'Corporate Debtor' to execute 'Assignment Deed' with the sole intention to bring down the voting power to the 'State Bank of India' which cannot be regarded as a natural business decision. The Adjudicating Authority also observed that 'related party' cannot suddenly become a 'non-related party' because he just washes off his hands and hands over the paper to other party who had no valid reasons for taking up the assignment of a debt.

7. It is not in dispute that the assignor Mr. Sudhakar Mulay was the Director/promoter of the 'Corporate Debtor'. Therefore, he is 'related party' within the meaning of Section 5(24). A legal transfer of 'debt' account from a 'creditor' (assignor) to a third party (assignee) provides the rightful ownership to the assignee. The 'debt assignment' is a transfer of debt with all the rights and obligations associated with it from a creditor to a third party, who is 'assignee'.

The 'debt' is in the form of loan from a 'financial institution', the debtor is referred as a 'borrower' and if the debt is in the form of securities, such as bonds, the debtor is referred to as an 'issuer'. Undisputedly, the assignment is the transfer of one's right to recover the debt of another person as a contractual right. Rights of an 'assignee' are no better than those of the 'assignor'. It can be, therefore, held that 'assignor' assigns its debt in favour of the 'assignee' and 'assignee' steps in the shoes of the 'assignor'. The 'assignee' thereby takes over the right as it actually did and also takes over all the disadvantages by virtue of such assignment.

8. What cannot be achieved directly by Mr. Sudhakar Mulay, he did it indirectly assigning his debt in favour of the 1st appellant. Mr. Sudhakar Mulay being the 'related party', with the assignment of 'debt', the disadvantage also goes to the 1st appellant. For the reasons aforesaid, we hold that the issue has been rightly decided by the Adjudicating Authority and no ground has been made out to interfere with the impugned order. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

New Delhi

7th August, 2018

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