

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Title Suit 07 of 2019
(Renumbered as TS (Com) 04 of 2019)
CNR No. WBSP18-000022-2019

Order No. 63

Date: 28.02.2024

In the matter of:

Suit for declaration and injunction valued at Rs. 12 Crores.

AND

In the matter of:

VISA Infrastructure Ltd.

Vs.

State Bank of India & 02 Ors.

Order

Today is fixed for hearing of the application under Order XX Rule 10 of the CPC, 1908 being I.A. no. 07 of 2023 and affidavit in opposition by the plaintiff as a last chance in the meantime, and also for filing affidavit in reply by the Defendant no. 1 to the application under Section 11 of the Commercial Court Act, 2015 being I.A. no. 05 of 2022 after serving the copy to the other side and also for filing rejoinder, if any, by the defendant no. 1 to the application being I.A. no. 06 of 2023.

Plaintiff and defendant no. 1 file their respective haziras.

Now, the record is taken up for hearing of I.A. no. 07 of 2023.

Ld. Lawyer on behalf of the plaintiff submits that they will not file any affidavit in opposition against the instant application filed by the applicant/Assets Care and Reconstruction Enterprise Limited (acting in its capacity as trustee of the ACRE-131-TRUST) and indeed, factually and legally they have nothing to say anything in this regard and they are not opposing the instant application as filed by the said applicant.

Heard Ld. Lawyer for the applicant/ Assets Care and Reconstruction Enterprise Limited, who submits before this Court as follows.

The present application under Order 22 Rule 10 of the CPC is being filed on behalf of the Assets Care and Reconstruction Enterprise Limited (hereinafter referred to as ACRE) registered as an Asset Reconstruction Company in terms of Section 3 of the SARFAESI Act, 2002.

It is pertinent to mention that prior to the assignment of the Facilities by State Bank of India being the Defendant no. 1, State Bank of India had filed an application under Section 11 of the Commercial Courts Act, 2015. The defendant no. 1 had also filed an application under the Proviso to Section 15(4) of the Commercial Courts Act, 2015. Both these applications are currently pending adjudication.

Subsequently, the plaintiff filed oppositions to the applications filed by the defendant no. 1 under Section 11 and the Proviso of Section 15(4) both of the Commercial Courts Act, 2015.

Thereafter, the defendant no. 1 had filed its rejoinder to the opposition filed by the plaintiff, in respect of the defendant no.1's application under the Proviso to Section 15(4) of the Commercial Courts Act, 2015. On 22nd May, 2023, the defendant no. 1 bank being State Bank of India has by way of an assignment agreement has unconditionally and irrevocably assigned, transferred and released in favour of the ACRE-Proposed defendant no. 1, all the Financial Assistance granted by it to the group company of the plaintiff being Visa Steel Limited (the Defendant No. 22), together with all its rights, title and interest in the Financing Documents and all collateral and/or guarantees issued in respect of repayment of the Financial Assistant to which the erstwhile defendant no. 1 bank is entitled to, to ACRE/Proposed defendant no. 1. The Assignment of Loans are more-fully described in Clause 2 of the Assignment Agreement along with Schedule 1-B of the Assignment Agreement. The Assignment Agreement has been registered on 1st July, 2023. In view of the Assignment Agreement dated 25th May, 2023, ACRE has become the full and absolute legal owner, and the only person legally entitled to the Loans or any part thereof, free from any or all encumbrances, and to recover and receive all amounts due, 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 loans, in its own name and right and as an assignee and exercise all other rights of the assignor in relation thereto. By virtue of the registered Assignment Agreement

dated 25th May, 2023, the right, title and interest of the SBI under the Financing Documents have now devolved to ACRE, and therefore, the present suit being TS 7 of 2019 be amended by substituting Assets Care and Reconstructing Enterprise Limited in place and stead of SBI and to permit to ACRE to contest TS 7 of 2019.

As per the provisions of Section 5(4) of the SARFESI Act, 2002 and covenants of the said registered Assignment Agreement, ACRE is entitled to continue, prosecute and enforce all applications and legal proceedings which were pending on the date of the Assignment Agreement dated 25th May, 2023 with regard to the instant Assignor including the instant proceedings being TS 7 of 2019 as evident from Schedule 1B of the Assignment Agreement.

In view of the said Assignment Agreement and for reasons stated hereinabove, all rights and claims in the instant proceeding herein stood transferred, assigned and vested in favour of ACRE and ACRE has stepped into the shoes of the Assignor. In the facts and circumstances and for the reasons stated hereinabove, ACRE is required to be substituted in place and stead of the SBI to enable it to proceed with the instant proceeding.

Lastly, Ld. Lawyer submits that in the facts and circumstances and for the reasons set out hereinabove, the applicant/proposed defendant no. 1 is required to be substituted in place and stead of the erstwhile defendant no. 1 bank being State Bank of India.

Having heard the submission of the Ld. Lawyer for the applicant/proposed defendant no. 1 as well as going through the Deed of Assignment in context, the instant application filed by the application is hereby allowed on contest and as such applicant/proposed defendant no. 1 being Asset Care and Reconstruction Enterprise Limited is hereby substituted in place and stead of the erstwhile Defendant no. 1 being State Bank of India in the instant suit. Accordingly, the I.A. no. 07 of 2023 is hereby **disposed of**.

D.A. to do needful.

Fix the matter on 12.04.2024 at 11:30 a.m. for filing affidavit in reply by the defendant no. 1 to the application under Section 11 of the Commercial Courts Act, 2015 being I.A. no. 05 of 2022 after serving the copy of the other

side and also for filing rejoinder, if any, by the defendant no. 1 to the application being I.A. No. 06 of 2023.

Parties to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram