



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

**15<sup>th</sup> December 2022**

**"More is lost by indecision than wrong decision"**

## ➤ **Future Retail: InGovern seeks insolvency board's action**

InGovern, a corporate governance advisory firm, has sought the insolvency board's urgent intervention against alleged inaction of Future Retail's (FRL) resolution professional (RP) in recovering the debt-laden company's assets.

FRL owes its creditors, including the largest public sector banks in India, more than Rs 17,000 crore which are in danger of being written off. This is because the firm's substantial assets have been frittered away at the anvil of the commencement of the resolution process, InGovern said in a letter to the chairperson of the Insolvency and Bankruptcy Board of India.

Accusing of the resolution professional Vijaykumar Iyer of "complete inaction", InGovern wants the board to direct him to take appropriate action under the Insolvency and Bankruptcy Code (IBC). In its letter, InGovern stated disclosures made by FRL in February-March this year, including shutting down of 835 retail stores due to strained cashflows and inability to pay rentals. These stores also account for about 55-65% of FRL's revenues.

Alleging that such arrangements were never disclosed to stock exchanges and shareholders at relevant times, the proxy advisory firm stated that such arrangements were only entered with one party, the Reliance group.

The letter also said Reliance Industries, which only had unsecured claim against FRL for unpaid rental dues, gained an "unfair and undue advantage" against the entire class of creditors who had a prior and secured claim against FRL.

RL is undergoing corporate insolvency resolution process vide an order dated July 20, 2022, passed by the National Company Law Tribunal's Mumbai bench.

The tribunal had also appointed Iyer as the resolution professional for FRL.

The advisory firm had earlier moved regulators, including Sebi seeking action against the resolution professional.

**Source: Financial Express**

**Read Full news at:** <https://www.financialexpress.com/industry/ingovern-seeks-insolvency-boards-urgent-intervention-in-future-retail-resolution-process/2913625/>

## ➤ **IBC Does Not Prohibit An Assignee From Continuing Pending Section 7 Proceedings: NCLAT DELHI**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Siti Networks Ltd. v Assets Care and Reconstruction Enterprises Ltd. & Anr., has held that there is no prohibition in the IBC or any of the Regulations from continuing the proceeding by an assignee. Section 5(7) of the IBC which defines 'Financial Creditor' also includes a person to whom such debt has been legally assigned or transferred to. By virtue of assignment, an assignee becomes the Financial Creditor and it has every right to continue the proceeding which was initiated by the original Financial Creditor/Assignor.

Housing Development Finance Corporation Limited ("HDFCL") has sanctioned a loan to the Siti Networks Ltd. ("Corporate Debtor") on 06.09.2016. The Corporate Debtor was classified as Non-Performing Asset on 30.06.2019. Thereafter, on 17.02.2022 HDFCL filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and notices were issued.

On 29.06.2022, HDFCL vide Registered Assignment Deed assigned the debt of the Corporate Debtor to the Assets Care and Reconstruction Enterprise Limited ("ACREL/Assignee"). The Corporate Debtor was also informed about the assignment vide letter dated 06.07.2022. the Assignee filed an application before Adjudicating Authority seeking to be substituted as Financial Creditor in place of original Applicant (HDFCL) and to be permitted to pursue the Section 7 petition filed by HDFCL. The Adjudicating Authority vide an order on 01.11.2022 allowed ACREL (Assignee) to be substituted on the basis of assignment. The Adjudicating Authority held that there was no binding precedent from higher forum and there is no express prohibition in the IBC to prevent the assignee to come on record and continue the pending proceedings. The Corporate Debtor challenged the order dated 01.11.2022 before NCLAT.

The Corporate Debtor ("Appellant") argued that the assignee could not have been permitted to continue Section 7 proceedings. Although it is open for the assignee to file a fresh petition under Section 7 of IBC, on the strength of assignment. On the other hand, the Assignee ("ACREL/Respondent") argued that by virtue of assignment, which happened after filing of the Section 7 petition by HDFCL, the assignee has every right to

be substituted to continue the proceeding. The Assignee placed reliance on Section 5(4) of the SARFAESI Act, 2002 which provides for continuation and prosecution of any proceeding by an assignee who acquires financial asset. The relevant portion is as under:

"5. Acquisition of rights or interest in financial assets.-..... (4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the [asset reconstruction company], as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the [asset reconstruction company], as the case may be."

The Bench opined that Section 5(4) of the SARFAESI Act, 2002 does contemplate continuation of all proceedings after acquisition of financial assets by an assignee. There is no dispute that ACREL was assigned the debt by HDFCL during pendency of Section 7 proceedings. Further, Order XXII Rule 10 of Civil Procedure Code, 1908 contemplates continuance of proceeding on the basis of devolution of rights with the leave of the Court, which is applied generally in civil proceeding and suit.

"As has been observed rightly by the Adjudicating Authority, there is no prohibition in the IBC or any of the Regulations from continuing the proceeding by an assignee. Section 5(7) of the IBC which defines 'Financial Creditor' also includes a person to whom such debt has been legally assigned or transferred to. By virtue of assignment, Respondent No.1 become the Financial Creditor and having stepped in the shoes of 'Housing Development Finance Corporation Limited', it has every right to continue the proceeding which was initiated by Respondent No.2."

The Bench held that there is no prohibition under IBC or its Regulations from continuing the proceeding by an assignee. The Bench upheld the order of the Adjudicating Authority and dismissed the appeal.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/ibc-does-not-prohibit-an-assignee-from-continuing-pending-section-7-proceedings-nclat-delhi-216680>

