

**COMPANY LAW BOARD**  
**NEW DELHI BENCH**  
**NEW DELHI**



C. P. NO. 132(ND)11  
CA. NO. 209/C-D/2015

**PRESENT: B.S.V. PRAKASH KUMAR,**  
**HON'BLE MEMBER**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF  
THE COMPANY LAW BOARD ON 11.05.2016 AT 02.00 P.M**

**NAME OF THE COMPANY: M/s James Hotels Ltd.**

**SECTION OF THE COMPANIES ACT: 397/398**

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1	Dinker Singh	Adv	Arcil (substitution in place of S.B.I.)	
2	NITISH K. VASUDEVA	Advocate	for R-1 to R-7	

**Order**

One M/s. Assent Reconstruction Company (India) Limited (Arcil) filed CA 209/2015 on 17/12/2015 to allow this applicant M/s. Assent Reconstruction Company (India) Limited (Arcil) to be substituted in the place of State Bank of India (R8) basing on the assignment agreement dated 3.09.2015 executed by State Bank of India. SBI has assigned the debt of R1 Company and secured interest thereof along with all the rights upon this applicant which were initially conferred upon SBI.

2. In pursuance of this relief, this applicant filed assignment agreement dated 03.09.2015 reflecting that SBI assigned this debt and secured interest in favor of the Applicant. This applicant, as per sub-section 5 of Section 5 of SARFAESI Act 2002, moved this application for substitution of its name in this proceeding in the place of SBI, so as to protect the interest of the applicant.

P.T.O.



3. To which, the counsel appearing on behalf of R1 to R7 raised an objection to substitute this applicant in the place of R8 on the footing that R5 company filed CS 44/2016 on the file of Civil Judge(SR. DIV.), Chandigarh, challenging the assignment of this debt to the applicant herein. In view of the challenge made by R5 against this assignment, the counsel appearing on behalf of R1 to R7 objected to substituting this applicant in the place of R8.

4. On hearing the submissions of either side, it appears on the record, R8 i.e., SBI is already a party to the proceeding, now this applicant filed this application only to substitute it in the place of SBI by invoking sub-section 5 of Section 5 of SARFAESI Act 2002.

5. On reading this sub-section 5 of Section 5 of SARFAESI Act 2002, it is clear that when there is consent from the originator for substitution, the court shall pass orders for the substitution of the Securitization Company or reconstruction company in the proceeding pending.

6. To raise an objection to allowing this application, the respondents counsel placed copy of the Civil Suit aforementioned. Looking at the plaint copy, it appears it is not filed by R1 company; it is filed by one of the shareholders of R1 in individual capacity not on R1's behalf.

7. Moreover, when any SARFAESI proceeding has been initiated, Civil Court has no jurisdiction to entertain any suit or proceeding in respect to the matter pending under SARFAESI Act, no injunction shall be granted in respect of any action taken in pursuance of any power under any SARFAESI Act. For there being an overriding provision under the said Act, this Bench cannot take up this Civil Suit into consideration to stall this applicant stepping into the shoes of R8. Moreover, the plaintiff in the said suit is not representing the interest of R1, I, henceforth, have not found any merit of the arguments of the respondents counsel.

8. Accordingly, this CA is allowed, substituting this applicant in place of R8.

List the matter on 08.08.2016 at 2.00 p.m.



(B.S.V. PRAKASH KUMAR)  
Member (Judicial)