

Once the debenture deed mandates prior approval of the Debenture Trustee for any transfer of rights or liabilities, a transfer made through an Acquisition Agreement without obtaining the required approval is not enforceable

The NCLAT New Delhi in the case of **Anil Biyani, Suspended Director of Future Ideas Company Ltd. Versus Axis Trustee Services Ltd. & Anr. [Company Appeal (AT) (Insolvency) No. 611 of 2025] dated May 19, 2025**, has held that when a debenture deed mandates prior approval of the Debenture Trustee for any transfer of rights or liabilities, any such transfer made through an Acquisition Agreement without obtaining the required approval is in contravention of the principal deed and, therefore, unenforceable. Consequently, the Corporate Debtor (CD) cannot claim that its liabilities towards the debenture holders stood discharged merely by entering into such an agreement.

The Tribunal observed that a Section 7 Application can very well be filed by a Financial Creditor on defaults committed by the CD, which defaults are committed subsequent to the 10A period. The present is a case where Section 7 Application mentions the date of default as April 30, 2021. On the one hand, Clause 12.3 of the transaction documents prohibits the Company from assigning any of its rights, duties, or obligations. In contrast, Clauses 12.1 and 12.2 permit debenture holders to freely transfer their rights. This clear distinction shows that the Debenture Trust-cum-Mortgage Deed (DTMD) never intended the Company to assign its obligations.

The Tribunal further observed that the Corporate Debtor argued that debenture holders, after confirming the principal outstanding of Rs. 1004.24 crores, voted on a scheme concerning the transferred Non-convertible Debentures (NCDs). However, the correspondence relied upon by the Corporate Debtor does not amount to approval or no-objection to the acquisition. Further, the internal email dated December 29, 2021, merely responded to a balance confirmation request and summarized RTVPL's outstanding exposure. Other emails only sought the Acquisition Agreement and information on NCD exposures, and cannot be construed as consent or no-objection from the debenture holders.

The Tribunal further opined that the debenture holders' vote against the scheme publicly announced by the Future Group cannot be construed as waiver or acquiescence regarding the Acquisition Agreement. Thus, the Adjudicating Authority (NCLT) rightly observed that the Acquisition Agreement was part of a broader composite scheme involving the transfer and merger of Future Group entities into Reliance. Since the scheme failed to obtain regulatory approval, the Acquisition Agreement must be viewed as a step within that integral, yet unfulfilled, process.

The Tribunal observed that when the Corporate Debtor itself relied on the Acquisition Agreement to claim it had no further obligations under the NCDs, the Adjudicating Authority was well within its jurisdiction to examine the validity and implications of that agreement. The Tribunal concluded that when the corporate debtor was relying on the conduct and correspondence by the debenture holders for relying on the consent of the debenture holders to the Acquisition Agreement, opposition to the receipt of the financial statements of the debenture holders is unexplained. Accordingly, the appeal was dismissed by the NCLAT.