



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 07 | Number 09

(February 26, 2024)

Gloster Cables Ltd. Vs. Fort Gloster Industries Ltd. and Ors.

Comp. App (AT) (Ins) No. 1343 of 2019 & I.A. No. 3823, 3824, 3825 & 3826 of 2019 & 470 of 2020 & 3655 of 2023

Date of NLACT'S Judgement Date: January 25, 2024

Facts of the Case:-

The present appeal is filed by the M/s Gloster Cables Ltd. (hereinafter referred as 'Appellant') against M/s Fort Gloster Industries Ltd (hereinafter referred as 'Respondent-1') and Gloster Limited (hereinafter referred as Respondent-2) and IRP (hereinafter referred as Respondent-3), after being aggrieved by the AA's order dated 27.09.19.

The Appellant was incorporated as Crest Cables Private Ltd in 1995 to take over the assets of the sick company 'Sputnik Cables Pvt. Ltd.'. In 2004, S. K. Bangur Group was included as an investor with equity participation and the name of the entity was changed from Crest Cables to Gloster Cables Ltd. The Respondent-1 was incorporated in 1890 and owns the Trademark 'GLOSTER' duly registered in Class 9. A former employee of the Respondent-1 filed an application u/s 9 of the IBC and the appointed RP (Respondent-3), filed a Resolution Plan as shared by Respondent-2, which was duly approved by 73.21% of the members of the CoC.

While the plan was pending approval, the Appellant, filed an application before the AA for seeking intervention to exclude the Trademark "GLOSTER" from the list of assets of the Respondent-1 as the same was duly assigned to the Appellant. However, the AA dismissed the application and held that the transaction relied upon by the Appellant is an undervalued transaction, being hit by Section 45(2)(b) of IBC. Further, it held that the registration was done post the imposition of moratorium therefore all deeds executed between the Respondent-1 and the Appellant were void. Aggrieved by the said order, the Appellant has filed the appeal before NCLAT..

The Appellant asserted that he initially had a Technical Collaboration Agreement (TCA) with the Respondent-1 allowing the use of the trademark 'GLOSTER'. Further, a loan agreement in 10.11.2006 hypothecated the trademark to the Appellant. Later, due to a BIFR order, a Supplementary Trademark Agreement in 15.07.2008 assigned the trademark to the appellant.

The Appellant submitted that after the repeal of SICA in 2016, the trademark fully belonged to him. The appellant thereafter executed a Deed of Hypothecation on 20.09.2017 for recordal of the Trademark assignment. Upon the initiation of CIRP in 2018, the trademark had already been firmly transferred to the appellant, with the registration process completed within the same year. The Appellant further asserted that AA has committed an error in declaring that the trademark as a property of the Respondent-1 because that jurisdiction lies with District court.



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NCLAT Observations: -

The Appellate Tribunal relying on the Supreme Court's judgment in *Gujarat Urja Vikas Nigam Ltd. vs Amit Gupta & Ors.* stated that under Section 60(5)(c), the AA has jurisdiction over questions of law or fact related to insolvency resolution, including the ownership of the CD's property during CIRP.

Further, the Tribunal cited the Supreme Court's decision in *Thomson Press (India) Limited Vs. Nanak Builders & Investors Pvt. Ltd. & Ors.* highlighting that the deed of 15.07.2008 stipulated the assignment's effectiveness upon the BIFR order's vacation. With SICA's repeal in 2016, this condition ceased to apply, making Appellant the trademark assignee as of the agreement's date. Thus, the AA's determination that the agreement was void due to the BIFR stay was deemed legally incorrect. Moreover, affirming that the Appellant obtained title to the trademark upon executing the supplemental trademark agreement dated 15.07.08, the Tribunal emphasized that trademark ownership isn't contingent on registration.

The Appellate Tribunal also stated that during its 5th meeting, the CoC was informed that the forensic audit report revealed no evidence of preferential, undervalued, fraudulent, or wrongful trading transactions. Additionally, no related party preferential or fraudulent transactions were found. Hence, the mere difference in amounts between the trademark's hypothecation and assignment cannot be a basis for deeming it undervalued.

Order/Judgement: The Appellate Tribunal set aside the impugned order dated 27.09.19 passed by AA.

Case Review: Appeal is allowed, no costs.