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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2996 OF 2024

GLOSTER LIMITED ...Appellant(s)

VERSUS

GLOSTER CABLES LIMITED & ORS. ...Respondent(s)

WITH

CIVIL APPEAL NO. 4493 OF 2024

J U D G M E N T

K.V. Viswanathan, J.

1. These two appeals arise from the judgment of the National Company Law Appellate Tribunal [for short "NCLAT"], Principal Bench, New Delhi dated 25.01.2024 in Company Appeal (AT) (Ins.) No. 1343 of 2019. While Civil Appeal No. 2996 of 2024 is filed by Gloster Limited – the Successful Resolution Applicant (hereinafter called the

"SRA"), Civil Appeal No. 4493 of 2024 is filed by Respondent No.1-Gloster Cables Limited (hereinafter called "GCL"), challenging the findings in the impugned judgment insofar as it held that the Adjudicating Authority had the jurisdiction to declare on the aspect of title to the trademark "Gloster".

2. It must be pointed out that the National Company Law Tribunal [for short "NCLT"], Kolkata Bench, Kolkata while dealing with C.A. (IB) No. 713/KB/2019, incidentally filed by GCL, recorded the conclusion that though the application filed by GCL is liable to be dismissed, the trademark "Gloster" was the asset of the Corporate Debtor. The consequence of the holding was that the appellant-herein who was the SRA having taken over the Corporate Debtor became entitled to the said trademark "Gloster".

3. On an appeal filed by GCL to NCLAT, the NCLAT, after ruling on the jurisdiction of the NCLT/Adjudicating Authority to go into title ultimately held in favour of GCL and against the SRA. It was held that the finding recorded by NCLT about the trademark "Gloster" being the asset of the Corporate

Debtor was not in accordance with law. It is in this scenario that both the parties are before us. While the SRA is aggrieved by the negation of the findings recorded by the NCLT to the effect that the trademark was the property of the Corporate Debtor and, in turn, of the SRA, the GCL is aggrieved by the pronouncement on the issue of jurisdiction. There was no necessity to issue separate notice in the cross-appeal as both parties have advanced comprehensive arguments covering all aspects in both the appeals.

FACTS OF THE CASE:-

4. Respondent No.2 herein-Fort Gloster Industries Limited, the Corporate Debtor (hereinafter called "FGIL"), was hauled up before the Adjudicating Authority by a former employee, one Shri Jayant Panja, in CP (IB) 61/KB/2018 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the "IBC"). The application was admitted on 09.08.2018 and a Resolution Professional (RP) was appointed. After complying with the procedure prescribed under the IBC for invitation and consideration of resolution

plans, the RP filed an application for approval of the resolution plan of the Corporate Debtor submitted by the appellant-SRA herein which was duly approved by the Committee of Creditors [COC] by a vote share of 72.31%. Today, there is no dispute that the plan is approved and has attained finality.

4.1 However, when the approval application was pending, GCL (R-1)-herein filed an application under Section 60(5) of the IBC seeking the following reliefs:-

> "a) To pass an order thereby allowing the present Applicant to intervene in the present proceeding;
>
> b) To pass an order thereby directing that any Resolution Plan if approved by this Hon'ble Adjudicating Authority shall exclude the rights in the Trade Mark "Gloster" from the assets of the Corporate Debtor, including, exclusion of the Trade Mark "Gloster" from the Corporate name of the Corporate Debtor since the said Trade Mark 'Gloster' is not a property/asset of the Corporate Debtor;
>
> c) To pass an order clarifying that, in approving the CIRP, no presumption may be drawn as to any authorization or right emerging from the aforesaid approval that gives the right to the Corporate Debtor, or the successful H1 to continue to use the Trade Mark "Gloster" or the term "GLOSTER" as part of the Corporate Debtor's corporate name;

d) To pass an ex-parte interim order in terms of prayer (a), (b) and (c);

e) Any other relief or reliefs may be granted as this Hon'ble Tribunal deem fits."

It will be noticed that the prayer of GCL was that in any Resolution Plan that the Adjudicating Authority may approve, it may exclude the rights of the SRA in the trademark "Gloster". This was on the premise that the trademark "Gloster" was not an asset of the Corporate Debtor-FGIL.

4.2 This application was filed on 28.05.2019. In this application, it was averred as under:-

i) That the application was filed by GCL, being the proprietor/owner/holder of registrations for the trademark "Gloster" and its variants bearing No. 690772, 1980867, 3022764 and 3022775 in Class 9. Of this, the present case is concerned with No. 690772.

ii) That GCL entered into a Technical Collaboration Agreement with FGIL, on 02.05.1995, wherein it was mutually agreed that GCL would use the trademark

"Gloster" for manufacturing and marketing of electric cable wires for an agreed royalty of 2% of ex-works prices of the product sold or leased.

iii) That since 1995, GCL has used the trademark "Gloster" and it has expanded its business and is solely responsible for building the brand image and the brand value of the trademark "Gloster". That since 2003, FGIL was non-functional and, as such, FGIL did not make any contribution towards building the brand name.

iv) That FGIL was referred to the Board for Industrial and Financial Reconstruction [BIFR] under the Sick Industrial Companies (Special Provisions) Act, 1985 [SICA].

v) That since 2003, there has been no production of cables by FGIL and no use of the trademark "Gloster" by them.

vi) On 29.07.2004, GCL entered into a Trademark Agreement with FGIL for use of the trademark

"Gloster" bearing No. 690772. Under the License Agreement, a first right to purchase the said trademark was also given. As consideration, a lumpsum amount of Rs. 3 Crores was paid by GCL to FGIL along with an annual royalty of Rs. 2 Lakhs.

vii) In 2006, GCL to help FGIL, extended a loan of Rs. 10 Crores under the Memorandum of Hypothecation wherein the first and exclusive charge on the trademark "Gloster" bearing No. 690772 was created in favour of GCL. Pursuant to the obligation under the 2004 License Agreement and on the offer for sale of the trademark "Gloster" by FGIL-Corporate Debtor, a Supplemental Trademark Agreement dated 15.07.2008 for assignment of the trademark "Gloster" bearing No. 690772 was entered into. Since there was a restraint order passed by the BIFR on 10.08.2001, the assignment was to become effective only on the vacation or discharge of the order of restraint.

viii) That from 01.12.2016, the reference before BIFR under SICA stood abated and there was no reference to the NCLT within the prescribed period. In view of the same, all restraint orders ceased to exist.

ix) On 20.09.2017, a Deed of Assignment was entered into to confirm the assignment of its trademark "Gloster" bearing No. 690772 which became effective from 28.05.2017. The Assignment Deed recorded that the assignment was absolute and the assignee-GCL acquired all the rights of ownership including goodwill in relation to the said trademark "Gloster" without any further action on the part of the assignor.

x) That on 17.09.2018, (The CIRP commenced on 09.08.2018) the GCL was recorded as the registered proprietor of the trademark "Gloster" bearing No. 690772 in Class 9 by the trademark registry.

xi) That GCL enjoys the statutory and proprietary rights to the said trademark. That the trademark "Gloster" does not form part of the assets of the Corporate Debtor and,

as such, GCL has exclusive rights. That if the Resolution Plan assumes ownership of the trademark "Gloster" by FGIL, the same would contravene the provisions of the Trade Marks Act, 1999.

4.3 This application was objected to by the Resolution Professional, the Committee of Creditors and the SRA by contending that: -

i) FGIL was referred to BIFR in the year 2001 and vide order dated 10.09.2001, the BIFR admitted the reference, and directed FGIL (Corporate Debtor) not to dispose of any fixed or current assets of FGIL without the consent of its co-creditors and the BIFR. Hence, Supplemental Agreement dated 15.07.2008 had no legal effect. It was submitted that any transfer made in violation of the order of injunction passed by the BIFR is *void ab initio* and therefore, on the strength of the license granted by FGIL, GCL cannot claim any exclusive rights, ownership or usage of the trademark.

ii) That the claim on the strength of the Assignment Deed dated 20.09.2017 was in violation of Sections 43 and 46 of the IBC; that the assignment came under the purview of preferential transaction under Section 43(2)(a); that the transaction is within the period of one year preceding the insolvency commencement date as provided under Section 46(1)(i) and that the Deed of Assignment dated 20.09.2017 is undervalued and insufficiently stamped and it is a sham document which cannot be acted upon. Hence, based on the Assignment Deed also, no claim over the trademark in dispute could be made by GCL.

iii) The registration of the trademark in the name of GCL is invalid because it was registered in violation of Section 14 of the IBC. It was submitted that the CIRP commenced on 09.08.2018 and the registration of the trademark in the name of GCL was on 27.09.2018.

Hence, based on the said document also, no ownership could be claimed over the trademark.

iv) Reference was made to Section 22A of the SICA to contend that the assignment was in violation of the injunction and, as such, it would not confer any right over the trademark. That the trademark was one of the assets of the Corporate Debtor and this was within the knowledge of GCL and hence the contention that the direction of restraint by BIFR did not extend to the trademark is absolutely untenable.

DECISION OF THE NCLT:-

4.4 The Adjudicating Authority, vide its judgment of 27.09.2019, disposed of both the application filed by GCL as well as the application for approval of the plan filed by the RP (R-3 herein).

4.5 Dealing with the application filed by GCL, which is the subject-matter of these proceedings, the Adjudicating Authority held: -

i) The Assignment Deeds executed between 10.09.2001 and 01.12.2016 did not confer any title as they were in breach of the order of restraint that was passed by the BIFR. Reliance was placed on ***Jehal Tanti*** **and Others** vs. ***Nageshwar Singh (D) through LRs.***[1]***;***

ii) That the order of prohibition did extend to the trademark in question as the fixed current assets of the company as per Schedule-VI read with Section 211 of the Companies Act, 2013 made it clear that they were a part of the assets of the Company;

iii) Notwithstanding the repeal of SICA and the abatement of proceedings any violation in breach of the restraint order when in force, would not render the injunction infructuous and the violation of the injunction would render the assignment invalid. That the only deed executed before passing the order of injunction was the Technical Collaboration Agreement of 02.05.1995. However, the period under the said agreement had

[1] (2013) 14 SCC 689

expired within eight years of the execution and the renewals happened when the prohibitory order of restraint was imposed.

iv) That in view of Section 43 (2)(a) read with Section 46 (1)(2), the Assignment Deed dated 20.09.2017, being within the period of two years preceding the insolvency commencement, would be hit by Section 43 and GCL cannot claim absolute title over the trademark. That the transaction is an undervalued transaction and is hit by Section 45(2)(b) of the IBC.

v) Even in the absence of an application by the Resolution Professional under Sections 43, 44, 45 and 46 of the IBC, the Adjudicating Authority, on the peculiar facts, cannot shut its eyes and ignore the material on record to legitimize the transaction of assignment. The Adjudicating Authority is empowered to look into the material brought to its notice to decide whether there was any preferential transaction benefiting the GCL depriving the rights of the Corporate Debtor.

vi) The registration of the trademark on 17.09.2018 was hit by Section 14(1)(b) of the IBC since by the said date the CIRP had commenced w.e.f. 09.08.2018.

4.6 The Adjudicating Authority, after disposing of the application of GCL, in the above terms in para 96 of its order approved the Resolution Plan of FGIL (Corporate Debtor) as submitted by the appellant herein-Gloster Limited.

4.7 Aggrieved, GCL carried the matter in appeal insofar as rejection of its application No. CA(IB) No. 713 of 2019 was concerned.

FINDINGS OF THE NCLAT:-

4.8 The NCLAT, by virtue of the impugned judgment, recorded the following findings: -

i) That the Adjudicating Authority had jurisdiction to decide the *lis* of the nature that arose before it, in the present case, between the parties and the power is traceable to Section 60(5)(c) of the IBC.

ii) That under the Supplemental Agreement of 15.07.2008, the assignment was to come into effect only after the order dated 10.09.2001 passed by the BIFR is vacated and/or discharged or in the event of FGIL being wound up. Since the assignment under the Supplemental Agreement of 15.07.2008 was contingent, the finding recorded by the Adjudicating Authority that the assignment was during the operation of the restraint order and, as such, is null and void, is not in accordance with law. That the title and the trademark vested with the appellant by the execution of the Supplemental Trademark Agreement dated 15.07.2008 subject to the condition that it became effective after the restraint order passed by the BIFR was vacated or discharged.

iii) In the case of ***Anuj Jain, IRP for Jaypee Infratech Ltd. vs. Axis Bank Ltd.***[2], the Supreme Court has held that specific material was required to be pleaded if a transaction is sought to be brought under the mischief

[2] (2020) 8 SCC 401

sought to be remedied under Sections 45, 46 and 47 or Section 66 of the IBC. Action could not have been taken in the absence of an application moved by the Resolution Professional since it is expected of any Resolution Professional to keep the requirements of Sections 45, 46, 47 and 66 while making a motion before the Adjudicating Authority.

iv) The 5th Meeting of the Committee of Creditors was apprised of the forensic audit report, and the forensic auditor did not find any preferential, undervalued, fraudulent or any wrongful trading transaction. Further, the report did not reveal any related party preferential or fraudulent transactions whatsoever.

v) Only on the basis that the trademark was hypothecated for a bigger amount and has been assigned for a lesser amount, it could not be decided that the transaction was undervalued without there being any sufficient material before the Adjudicating Authority.

5. The NCLAT allowed the appeal of GCL (R-1) and set aside the order of the Adjudicating Authority insofar as the dismissal of application No. 71 CA(IB) No. 713 of 2019 is concerned. It is in that scenario that appeal and cross-appeal have been filed before us as pointed out hereinabove.

CONTENTIONS OF THE PARTIES: -

6. We have heard Mr. Shyam Divan, learned Senior Advocate for the appellant-SRA, Mr. Ranjit Kumar, learned Senior Advocate and Mr. Chander M. Lall, learned Senior Advocate, for the R-1 (GCL). We have also heard Mr. Anand Varma, learned Advocate for R-3 the Resolution Professional.

SUBMISSIONS OF THE APPELLANT: -

7. Mr. Shyam Divan, learned Senior Advocate, for the appellant submitted that the respondent No.1-GCL was estopped from questioning the jurisdiction since they themselves invoked the jurisdiction of the NCLAT/Adjudicating Authority by filing the application out of

which the present proceedings arise. Permitting GCL to question the jurisdiction would be an abuse of process.

7.1 Learned Senior Advocate submits that the questions raised in the application of GCL cannot be said to be "*de hors*" the CIRP of FGIL and, as such, the proceedings were covered within the scope of Section 60(5) of the IBC.

7.2 Learned Senior Advocate submits that the registration of the trademark "Gloster" in the name of GCIL was in the teeth of Section 14(1)(b) of the IBC since the CIRP had commenced on 09.08.2018. Section 14(1)(b) provides a legal embargo against transferring, encumbering or alienating or disposing of by the Corporate Debtor of any of its assets or any legal right or beneficial interest therein.

7.3 Learned Senior Counsel submits that there was inconsistency with regard to the claim of GCL (R-1) about the date on which it acquired title to the trademark. While in the counter affidavit filed before this Court, GCL pleaded that the title of the trademark stood assigned in its favour with effect from 01.12.2016 (the date on which SICA was

repealed), pursuant to the Supplemental Agreement dated 15.07.2008, in the Deed of Assignment it is stated as 28.05.2017. Further, Clause 8 of the Assignment Deed of 20.09.2017 states that the assignment would take effect as and when the name of GCL is entered as the subsequent proprietor and that the License Agreement of 2004 would stand terminated from such date. Attention was drawn to Clause 8 of the Assignment Deed, which read as under:-

> "The parties hereby agree that as and when the Assignment with goodwill is recorded with the Trade Mark office and the name of the assignee is entered as a subsequent proprietor/owner of the Trade Mark, the existing license agreement dated 29th July, 2004 shall stand terminated."

7.4 Learned Senior Counsel contended that the conduct of GCL (R-1) indicates that it acted in accordance with Clause 8 since it paid license fee to FGIL for the financial year ending 31.03.2018 under the License Agreement dated 29.07.2004.

7.5 According to the learned Senior Counsel, if a party genuinely understood that the assignment took effect from 01.01.2016, there would be no reason for GCL to pay the

License Fee to FGIL, which was an associate, for the Financial Year ending 31.03.2018. According to the learned Senior Counsel, the contention that trademark stood vested irrespective of the subsequent registration was an afterthought, contrary to Clause 8 of the Assignment Deed of 20.09.2017 and contrary to its own conduct during the contemporaneous period.

7.6 Learned Senior Counsel contends that GCL(R-1) waived its right under Section 45 of the Trade Marks Act to contend that the trademark should vest on the date of assignment. Learned Senior Counsel contended that the unregistered Assignment Deed could not have been admitted in evidence as proof of title to the trademark.

7.7 Learned Senior Counsel defended the order of the Adjudicating Authority on the issue of exercise of power under Sections 43, 44 and 45 of IBC even in the absence of an application by the Resolution Professional.

7.8 Learned senor counsel contends that the Supplemental Agreement dated 15.07.2008 is in the teeth of prohibitory

order of the BIFR dated 10.09.2001 and, hence, is a void document being opposed to Section 23 of Indian Contract Act, 1872.

CONTENTIONS OF THE RESOLUTION PROFESSIONAL (RP): -

8. Mr. Anand Varma, learned counsel for Respondent No.3-Resolution Professional, submitted as under: -

8.1 That the consistent position of the Corporate Debtor both before and after the execution of the purported agreement of 15.07.2008 has been that there had not been any assignment of the trademark; in fact, there are written letters of FGIL to Allahabad Bank claiming that there is no exclusive right granted to GCL; that even before the BIFR, the stand has been that GCL has been permitted to use the trademark and there has not been any sale or transfer or assignment; that FGIL has stated before the BIFR that FGIL was receiving a royalty of Rs. 2 Lakhs annually initially and, thereafter, took a stand that the trademark has been licensed and there has not been any violation of Section 22A of SICA.

8.2 Learned counsel for the RP submitted that there was no contemporaneous disclosure by FGIL of the existence or execution of the purported Supplemental Trademark Agreement dated 15.07.2008. Though FGIL and GCL claimed that the agreement of 15.07.2008 came into force on 01.12.2016, there is no mention or disclosure of the same in the audited balance sheets for the financial year 2016-17. According to learned counsel for the RP, the audited balance sheet, to the contrary, disclosed that FGIL treated the trademark as its own asset albeit hypothecated in favour of GCL to secure a loan and that the annual audited balance sheets further disclosed that FGIL was receiving annual license fee of Rs. 2 lakhs.

8.3 Learned counsel for the RP contends that during the CIRP the information memorandum included audited balance sheets for the financial year 2016-17 and 2017-18 which treated the trademark as an asset of FGIL. The information memorandum was prepared on 22.09.2018 as per Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate

Persons) Regulations, 2016. As per the statutory mandate, the audited balance sheets for the two financial years mentioned above were included. Hence, during the process of the CIRP, the trademark was understood to be FGIL's own asset in terms of Section 18(f)(iv) of IBC.

8.4 Learned counsel for the RP further contended that the erstwhile management of FGIL as also GCL never disclosed the existence of the purported agreement dated 15.07.2008 as well as other agreements and the same were deliberately concealed and suppressed by the aforesaid parties until the very last stage of the CIRP. According to the learned counsel, this was done to avoid scrutiny by the Forensic Auditors.

8.5 Learned counsel submits that the agreement was disclosed and shared with the RP only in April, 2019 by way of reply dated 01.04.2009 to the email of RP dated 20.03.2009. Further, the copies were made available to the RP only on 03rd/04th April, 2019. This disclosure to the RP was two days before the resolution plans were due for submission, i.e.,

06.04.2019. The RP did disclose the purported agreements and provided the copies of the same to the prospective applicants however, it was too late to be included in the Forensic Audit Report which was submitted by the auditors on 10.04.2019. It was for this reason that Forensic Auditor did not have occasion to examine, analyse, consider and include the said documents in the Forensic Audit Report.

8.6 Learned counsel for the RP suspected the genuineness of the documents and contended that FGIL's trademark was assigned for a mere consideration of Rs. 10 lakhs under the 15.07.2008 agreement whereas the trademark was hypothecated against the loan of Rs. 10 crores on 10.11.2006. According to the RP, the 15.07.2008 agreement was an undervalued transaction designed to defraud the creditors of FGIL.

8.7 Dealing with the aspect of filing of application under Section 43 and 45 of IBC, learned counsel submitted that the said exercise involves rigorous scrutiny of documents, identification of related and unrelated persons and

threadbare examination of transactions and that exercise cannot be carried out superficially. Learned counsel for the RP submitted that the concealment which he characterized as fraudulent, prevented the RP from discharging his statutory obligations and identifying preferential or undervalued transaction through a Forensic Audit and filing appropriate application before the Adjudicating Authority.

8.8 Learned counsel further submitted that GCL by filing an application itself let the Adjudicating Authority to examine the purported agreements between FGIL and GCL and as such no prejudice was caused to GCL.

8.9 Learned counsel submitted that the Adjudicating Authority is duly vested with the jurisdiction to consider and adjudicate issues of fraud arising from concealment and suppression of documents even in summary proceedings. So contending, the learned counsel prayed for allowing the appeal and supported the stand of SRA.

CONTENTIONS OF GCL (R1): -

9. Mr. Ranjit Kumar, learned Senior Counsel for GCL submitted that though GCL filed the application out of which the present proceedings arise, GCL never conceded that the Adjudicating Authority had jurisdiction to decide on the title to the trademark. According to the learned senior counsel, the application was only to ensure that the trademark "Gloster" was excluded while approving the plan and not so much as to invite a verdict on the issue of title. Learned senior counsel contended that under Section 60(5)(c) of the IBC, only questions "in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person" could be gone into by the NCLT. Learned senior counsel relied on a number of judgments to contend that the entitlement to the trademark was not "in relation to insolvency of FGIL" and submitted that the Adjudicating Authority ought not to have passed an order purportedly vesting title in the SRA with regard to the trademark "Gloster".

9.1 Learned senior counsel invited our attention to the statement in the plan to contend that the SRA cannot get more than what is in the approved plan and under the guise of adjudicating the application of GCL a plan approved by COC recognizing existence of rival claimants cannot be modified.

9.2 Learned senior counsel submitted that the BIFR proceedings particularly, the proceedings dated 26.05.2008 indicate that the aspect of GCL using the trademark "Gloster" on account of the Technical Collaboration Agreement with FGIL and the trademark agreement as well as the loan agreement were in the public domain as reflected in the BIFR proceedings.

9.3 Learned senior counsel contended that the FGIL's manufacturing unit being shut down was reflected in the information memorandum and it is undisputed that FGIL never used the trademark "Gloster" ever since 2003.

9.4 Learned senior counsel further drew our attention to para 6.1 of the information memorandum where GCL was shown as a financial creditor to the tune of 15.45 crores; it is

further contended that FGIL was the entity referred to BIFR and they were fully conscious of various agreements entered into with GCL and referred to the auditor's report of 2016-17 and 2017-18 to establish the point.

9.5 Learned senior counsel took the Court through the sequence of events starting with the Technical Collaboration Agreement dated 02.05.1995; the Trademark Agreement dated 29.07.2004; the loan transaction of 2006; the Supplemental Trademark Agreement dated 15.07.2008 which was contingent upon the vacation/discharge of the order of BIFR; the repeal of SICA and the abatement of the reference; the deed of assignment dated 20.09.2017 and the registration of trademark on 17.09.2018 to contend that GCL is the owner of the trademark "Gloster" and to that extent NCLAT was right in setting aside the finding of the Adjudicating Authority.

9.6 Mr. Chander M. Lall, learned senior advocate, who supplemented the arguments of Mr. Ranjit Kumar, learned senior advocate, submitted that under the trademark law

assignment operates forthwith and registration is only a recording of the said event. It was further submitted that the title stood transferred with the assignment. In any event, learned senior counsel submitted that GCL had long user of the trademark "Gloster" when FGIL had admittedly not used the said mark since 2003. According to the learned senior counsel, public perceives GCL as proprietor. Learned senior counsel submitted that a trademark title cannot be summarily decided. Learned senior counsel submitted that unlike immovable property of the value of more than one hundred where title gets transferred on registration, with regard to trademark there is no such mandate in law.

9.7 No right is created by mere registration whereas the right is created by the assignment. Learned senior counsel referred to the plan and reiterated the submission that SRA cannot get more than what is granted in the plan. It is submitted that since with the assignment the title to the trademark has been transferred, registration pending CIRP, makes no difference and will not be hit by the moratorium.

Learned senior counsel submitted that on the date of CIRP the trademark "Gloster" was not an asset of FGIL. Learned senior counsel submitted that the only way registration can be got back is by resort to proceedings under Section 47 and submitted that the appellant has in fact filed an application under the said provision.

PENDENCY OF CIVIL SUIT: -

9.8 The SRA has drawn attention to the fact that GCL has filed a suit against the Corporate Debtor being CS No. 43 of 2019 before Commercial Court, Secunderabad inter alia with respect to trademark "Gloster" belonging to the Corporate Debtor. GCL also filed an application for interim injunction vide IA No. 754 and 755 of 2019, seeking an injunction against Respondent No. 3 and the Appellant from using the trademark "Gloster". The application for injunction was dismissed by the Commercial Court on 27.12.2019, which was upheld by the High Court of Telangana vide order dated 14.02.2022. The Special Leave Petition against the High Court

order dated 14.02.2022 was also dismissed by this Court on 12.05.2022.

QUESTION FOR CONSIDERATION: -

10. Primarily, the question that arises for consideration is, whether the Adjudicating Authority could have, on the facts of the present case, in the process of adjudicating the application of GCL, recorded a finding that the trademark "Gloster" was an asset of the Corporate Debtor (FGIL) and consequently of the SRA (the appellant)?

ANALYSIS AND CONCLUSION: -

11. It will be useful to first extract the relevant part of the plan, as approved by the Committee of Creditors, dealing with the issue of the trademark in question: -

"

6.	Trademark viz. "Gloster" in the name of the CD valid till 14.12.2022.	Trademark Registration no. 690772 in class 9 registered with Trade Marks Registry, Govt. of India.	Illegally assigned to Gloster Cables Ltd. vide a deed of Agreement dated 20th September 2017.	

Trade Mark

The trademark viz. "GLOSTER" bearing Trade mark registration no. 690772 in class 9 was registered in the name of FGIL with Trade Marks Registry, Govt. of India.

FGIL was referred to the Board for Industrial & Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Regulations) Act, 1985 and had been declared as a sick company in the year 2001.

FGIL had granted license right to Gloster Cables Ltd. (GCL) under Agreement dated 29th July 2004. FGIL had granted an exclusive, non-transferrable, long term license to GCL to use the Trademark for an Initial period of 33 years with effect from the date of execution of the said agreement for a fee of Rs. 3,00,00,000 (Three crore only) apart from annual royalty of Rs. 2,00,000 (Two lakhs only) during the existence of the said agreement.

FGIL had also created first and exclusive charge over the Trademark in favour of GCL as security against a loan of Rs. 10 crore granted by GCL to FGIL pursuant to the loan agreement dated 10th November 2006.

FGIL had entered into Supplemental Trade Mark Agreement on 15th July 2008 with GCL wherein FGIL inter alia agreed to assign the Trademark in favour of GCL for an aggregate consideration of Rs, 10,00,000 (ten lakhs only) and the said assignment was to become effective without any further act or deed if the order dated 10th September, 2001 passed by BIFR declaring FGIL as sick undertaking stood vacated and / or discharged or FGIL is wound up under the provisions of the Companies Act,1956

Finally, GCL & FGIL entered into deed of assignment dated 20th September 2017 wherein the above mentioned Trade Mark "GLOSTER" has been assigned and/or transferred to and vested to GCL with effect from the end of the statutory period from 1st December 2016 under the Sick Industrial Companies (Special Provisions) Repeal Act, 2003. Further the said agreement inter alia includes as below.

A. The consideration for the assignment being a sum of Rs. 10,00,000/- (Ten lakhs) has already been paid by the Assignee to the Assignor under the Supplemental Trade Mark Agreement on 15th July 2008 executed between GCL & FGIL.

B. The Assignee shall be responsible and liable to take appropriate steps with the Trade Mark authorities for recording the change of the ownership of the Trade Mark in the statutory records at its own cost and expenses. However, the Assignor agrees to assist and execute at the cost of the Assignee, with furnishing such information, papers, declarations and documents as may be required under the law to be filed with Trade Mark Authorities for recording such change of ownership of the Trade Mark.

C. The Assignor its successors and/or assigns or any person claiming under them or in trust or in their behalf shall henceforth have no right, title, interest in the said Trade Mark or any part thereof and the Assignee shall be the legal and beneficial owner of the Trademark vested with exclusive right to deal with the same in the manner it deems fit and proper at its sole discretion.

The RA believes that the said Agreement/s have been entered into by FGIL with its related party GCL with the intention of transferring the said Trademark to GCL with malafide intention although, the said transfer was barred by the law under SICA and is also barred under IBBI during the moratorium period; the CD entered into the Agreement during the intervening period between the admission under IBBI and repealing of SICA.

The RA therefore, believes that the Trademark 'Gloster' has been assigned and/or transferred to GCL is bad in law. The RA understands that the said Trademark is the lawful property of the CD and that the said Trademark shall remain the absolute property of CD post its acquisition by the RA."

(Emphasis supplied)

12. A careful perusal of the plan as approved indicates that the sequence of events from the original registration in favour of FGIL, the reference of FGIL to BIFR, the license agreement of 29.07.2004, the charge created in favour of GCL towards the loan of 10 crore on 10.11.2006, the Supplemental Trademark Agreement of 15.07.2008 along with contingent right recognized therein and the deed of assignment of 20.09.2017 have all been recorded. The repeal of SICA with effect from 01.12.2016 is also noticed. The payment of consideration by the assignor to the assignee is noticed and the contents of the assignment deed of 20.09.2017 are also set out briefly. Thereafter, it is recorded that the appellant "***believes***" that the agreements have been entered into by FGIL with GCL - the related party with a mala fide intention, although the said transfer was barred by law. It is further recorded that the Resolution Applicant (appellant) *believes* that the assignment to GCL is bad in law. Thereafter, it is recorded that the appellant "***understands***" that the said Trademark is the lawful property of the

Corporate Debtor and the said Trademark shall remain the absolute property of the Corporate Debtor post its acquisition by the Resolution Applicant.

13. On a reading of the above extract, what is clear is that at the very least even in the approved plan it was the understanding of the appellant that there were rival claims over the title of the trademark "Gloster". From the record, it is not discernible that the appellant took any steps to move the RP for taking appropriate measures under the relevant provisions of IBC to set at naught the agreements in question. It is also not in dispute that the RP did not move any application for avoidance of any preferential transaction or undervalued transaction or transactions allegedly defrauding creditors.

14. No doubt, the RP has an explanation which has been set out hereinabove, namely, that the RP became aware of the agreements only in April 2019 by which time it was too late to subject the agreements to a forensic audit. According to the RP, the net result was that the agreements could not be

forensically audited. The RP further submitted that rigorous scrutiny of documents and other exercises are involved for filing appropriate applications under Sections 43 and 45 and because of the delayed disclosure, he was prevented from doing the same.

15. Be that as it may, the factual situation is no application was filed and respondent no. 1 was not put on notice about the alleged suspicion shrouding the agreements.

16. The question is with the plan approved by the COC couched in such terms as to recognize rival claimants to the trademark ‘‘Gloster’’, could the fortuitous circumstance of GCL moving an application, result in a declaration of title enuring to the benefit of the appellant on the facts of the present case? What if the application had not been moved at all by GCL? What would be the scenario then? In any event, does the scope of Section 60(5) on the facts of the case justify the declaration of title by the Adjudicating Authority is the question before us.

17. At this stage, a brief survey of the relevant provisions of the IBC to explain how ultimately a successful resolution plan comes into operation needs to be discussed. As the statement of objects and reasons indicate, the objective of IBC is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The idea is maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. The first segment deals with insolvency resolution. The initial attempt is to see if the entity brought under CIRP could be resolved as a going concern.

18. Unlike the failed experiment under the SICA where the promoters called the shots, the new model under the IBC is creditor driven. After the commencement of the corporate insolvency resolution process, Resolution Professionals are appointed.

19. The resolution plans are invited from willing and eligible entities. The resolution plan has to be approved by the Committee of Creditors and then placed before the Adjudicating Authority for its approval under Section 31 of the IBC. Section 31(1) of the IBC, which is significant, reads as follows: -

> 31. **Approval of resolution plan**.— (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, **it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan:**
>
> Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.
>
> (Emphasis supplied)

It will be noticed that once the resolution plan is approved by the Committee of Creditors and thereafter by the Adjudicating Authority, the plan is binding on the Corporate

Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders involved in the resolution plan.

20. The plan, as approved, is a binding document which would govern the relationship between the stakeholders and on which terms the new management takes over the Corporate Debtor.

21. If in this background, the plan, as approved in the present case, is appreciated it will be clear that the appellant who was a Successful Resolution Applicant (SRA) was fully conscious on the date of submission of the plan about the agreements between FGIL and GCL. The plan records its "***belief***" and ***"understanding"*** that though there was a purported transfer the transfer is mala fide and barred by law. Further, it is their ***"understanding"*** that the Trademark is a lawful property of FGIL.

22. There is no definite assertion about any undisputed claim to the title of trademark "Gloster" and in fact to the contrary as pointed out earlier, it recognizes rival claims. The appellant took FGIL under its fold with this understanding as set out in the plan.

23. It is in this background that GCL came forward with the application expressing its grievance that any approval of the plan should exclude the rights in the trademark "Gloster". We find that the Adjudicating Authority could not have, while approving the plan in the present form, (on which the Committee of Creditors had voted) gone ahead and granted a declaration in favour of the appellant about its entitlement to the Trademark "Gloster". We say so for the following reasons.

24. The application of GCL was under Section 60(5) of the IBC. Section 60(5) reads as under: -

> **60. Adjudicating Authority for corporate persons.—**
> **(5)** Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

25. Primarily, we are concerned with the interpretation of the phrase *"arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code"*. What is the scope, sweep and ambit of Section 60(5)(c) has come up for consideration in several cases before this Court. The issue is no longer *res integra*. From the very nature of things, it is clear that interpretation of the phrase will have to be contextualized with the facts arising in a given CIRP. Hence, the examination in each case will depend on the facts as they present themselves in a given CIRP.

26. In ***Embassy Property Developments Pvt. Ltd.*** v. ***State of Karnataka & Ors.***[3] the Resolution Professional in a pending CIRP moved a miscellaneous application seeking a declaration against the Government of Karnataka that a mining lease is deemed valid and sought the execution of a supplemental lease deed by the said Government. The Adjudicating Authority allowed the application, however, the High Court had entertained a writ petition and granted an interim stay of the order of the Adjudicating Authority. The interim order was challenged by the successful resolution applicant in this Court. This Court held that a decision taken by the Government or a Statutory Authority in a matter relating to the realm of public law cannot be brought under the phrase "arising out of or in relation to the insolvency resolution" occurring in Section 60(5)(c). It was also held that the residuary clause of Section 60(5) cannot be taken advantage of, to short circuit judicial or quasi-judicial proceedings. It was further clarified that wherever corporate

[3] (2020) 13 SCC 308

debtor has to exercise a right that falls outside the purview of IBC, especially in the realm of public law, they cannot, through the Resolution Professional, take a shortcut and go before the Adjudicating Authority for enforcement of such a right. Further, this Court drew attention to Section 25(2)(b) which dealt with the duties of resolution professional including the duty to represent and act on behalf of the Corporate Debtor with third parties and exercise rights for the benefit of the Corporate Debtor in judicial, quasi-judicial or arbitration proceedings. Highlighting the limited nature of jurisdiction of the Adjudicating Authority, the Court held: -

> **"37.** …… The only provision which can probably throw light on this question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. **Clause (*c*) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "*arising out of or in relation to the insolvency resolution*" appearing in clause (*c*) of sub-section (5).** Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. **If Section 60(5)(*c*) of the IBC**

is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "*operational debt*" under Section 5(21), making the Government an "*operational creditor*" in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.

40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1)(*f*)(*vi*) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, *subject to the determination of ownership by a court or other authority*. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word

"assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25(2)(*b*) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in *judicial, quasi-judicial and arbitration proceedings*. Sections 25(1) and 25(2)(*b*) reads as follows:

"**25. *Duties of resolution professional*.**—(1) It shall be the duty of the resolution professional *to preserve and protect the assets of the corporate debtor*, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:

(*a*) ***

(*b*) represent and act on behalf of the corporate debtor with third parties, *exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings*;"

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

41. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.

46. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a

direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non judice*."

(Emphasis supplied)

27. ***Gujarat Urja Vikas Nigam Ltd.*** v. ***Amit Gupta and others***[4] presented a contrasting scenario. In that case, the Adjudicating Authority on an application under Section 60(5) moved by the RP of the Corporate Debtor and Exim Bank stayed the termination of a Power Purchase Agreement effected by the appellant – Gujarat Urja Vikas Nigam Limited with Astonfield Solar (Gujarat) Pvt. Ltd. – the Corporate Debtor. The Appellate Authority upheld the order of the Adjudicating Authority. In the appeal before this Court, it was argued that under the IBC, contractual disputes could not be adjudicated and alternatively that the termination was valid.

28. This Court examined the scope of Section 60(5). This Court held that under 60(5)(c) the Adjudicating Authority had

[4] (2021) 7 SCC 209

jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtors. Administrating a note of caution, this Court observed that in doing so the authorities under IBC should ensure that they do not usurp the legitimate jurisdiction of other Courts, Tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. This Court reiterated that nexus must remain with the insolvency of the Corporate Debtor for adjudication of an issue and grant of relief under Section 60(5)(c). On facts, while applying the law, as set out above, this Court in that case found that the Power Purchase Agreement was terminated solely on the ground of insolvency and that in the absence of insolvency of the Corporate Debtor, there would be no ground to terminate the PPA. It was held that the termination was not on a ground independent of the insolvency and that the dispute solely arose out of and related to the insolvency of the Corporate Debtor.

29. This Court clarified that the validity of the exercise of the residuary power was being adjudged in the case, on the facts obtaining thereon and that they were not laying down a general principle on the contours of the exercise of residuary power by the Adjudicating Authority. It was further reiterated emphatically that the Adjudicating Authority cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters fall outside the realm of IBC.

30. In the said context, this Court observed thus:-

> **"55.** A textual comparison of the provisions of Section 60(5) of IBC with Section 446(2) of the Companies Act, 1956 would reveal some similarities of expression, with textual variations. For the purposes of the present proceedings, it suffices to note that clause (*c*) of Section 60(5) confers jurisdiction on NCLT to entertain or dispose of "any question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the Code". Section 446(2)(*d*) of the Companies Act, 1956 and Section 280(*d*) of the Companies Act, 2013 use the expression any question of priorities or any other question whatsoever whether of law or fact. These words bear a striking resemblance to the provisions of Section 60(5)(*c*) of IBC. But textually similar language in different enactments has to be construed in the context and scheme of the statute in

which the words appear. The meaning and content attributed to statutory language in one enactment cannot in all circumstances be transplanted into a distinct, if not, alien soil. For, it is trite law that the words of a statute have to be construed in a manner which would give them a sensible meaning which accords with the overall scheme of the statute, the context in which the words are used and the purpose of the underlying provision. Therefore, while construing of Section 60(5), a starting point for the analysis must be to decipher parliamentary intent based on the object underlying the enactment of IBC…….

69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in *Innoventive* [*Innoventive Industries Ltd.* v. *ICICI Bank*, (2018) 1 SCC 407] this Court observed that : (SCC p. 422, para 13)

"*13*. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process."

The principle was reiterated in *ArcelorMittal* [*ArcelorMittal (India) (P) Ltd.* v. *Satish Kumar Gupta*, (2019) 2 SCC 1] where this Court held that : (SCC p. 88, para 84)

"*84*. … The non obstante clause in Section 60(5) is designed for a different purpose : to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."

Therefore, considering the text of Section 60(5)(*c*) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist.

71. In the present case, PPA was terminated solely on the ground of insolvency, since the event of default contemplated under Article 9.2.1(*e*) was the commencement of insolvency proceedings against the corporate debtor. In the absence of the insolvency of the corporate debtor, there would be no ground to terminate PPA. The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the corporate debtor.

91. The residuary jurisdiction of NCLT under Section 60(5)(*c*) of IBC provides it a wide discretion to adjudicate

questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5)(*c*) of IBC. Section 60(5)(*c*) would be rendered otiose if Section 14 is held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the corporate debtor and its status as a "going concern". We hasten to add that our finding on the validity of the exercise of residuary power by NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by NCLT. However, **it is pertinent to mention that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC**. Any other interpretation of Section 60(5)(*c*) would be in contradiction of the holding of this Court in *Satish Kumar Gupta* [*Essar Steel (India) Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] .

173. Although various provisions of IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a "going concern", there must be a specific textual hook for NCLT to exercise its jurisdiction. NCLT cannot derive its powers from the "spirit" or "object" of IBC. Section 60(5)(*c*) of IBC vests NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. We hasten to add, however, that NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of IBC. Specifically, NCLT cannot do what IBC consciously did not provide it the power to do.

> **174.** In this case, PPA has been terminated solely on the ground of insolvency, which gives NCLT jurisdiction under Section 60(5)(*c*) to adjudicate this matter and invalidate the termination of PPA as it is the forum vested with the responsibility of ensuring the continuation of the insolvency resolution process, which requires preservation of the corporate debtor as a going concern. In view of the centrality of PPA to CIRP in the unique factual matrix of this case, this Court must adopt an interpretation of NCLT's residuary jurisdiction which comports with the broader goals of IBC."
>
> (Emphasis supplied)

31. In ***Tata Consultancy Services Ltd.*** v. ***SK Wheels (P) Ltd.***[5], the appellant terminated a facilities agreement with the Corporate Debtor-SK Wheels Private Limited the respondent therein. The Corporate Debtor filed a Section 60(5)(c) application before the Adjudicating Authority for quashing of the termination notice. The NCLT and NCLAT respectively, granted interim stay of the termination notice in favour of the respondent therein. On appeal by Tata Consultancy Services Limited, this Court examined the question whether the residuary jurisdiction under Section 60(5)(c) was correctly exercised. This Court distinguished ***Gujarat Urja (supra)*** and

[5] (2022) 2 SCC 583

held that there was nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of the Corporate Debtor. This Court held that the termination was not a smokescreen and allowed the appeal of Tata Consultancy and set aside the order of the fora below. This Court held as under: -

> **"28.** In *Gujarat Urja* [*Gujarat Urja Vikas Nigam Ltd.* v. *Amit Gupta*, (2021) 7 SCC 209], the contract in question was terminated by a third party based on an ipso facto clause i.e. the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of corporate debtor and it was amenable to the jurisdiction of NCLT under Section 60(5)(*c*). This Court observed that : (SCC pp. 262-63, para 69)
>
> "*69. … NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of corporate debtor… The nexus with the insolvency of corporate debtor must exist*."
>
> **Thus, the residuary jurisdiction of NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of corporate debtor**.
>
> **29.** It is evident that the appellant had time and again informed corporate debtor that its services were deficient, and it was falling foul of its contractual obligations. **There is nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of corporate debtor. The trajectory of events makes it**

clear that the alleged breaches noted in the termination notice dated 10-6-2019 were not a smokescreen to terminate the agreement because of the insolvency of corporate debtor. Thus, we are of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of corporate debtor. In the absence of jurisdiction over the dispute, NCLT could not have imposed an ad interim stay on the termination notice. Nclat has incorrectly upheld [*Tata Consultancy Services Ltd.* v. *Vishal Ghisulal Jain*, 2020 SCC OnLine NCLAT 484] the interim order [*BMW Financial Services (P) Ltd.* v. *S.K. Wheels (P) Ltd.*, 2019 SCC OnLine NCLT 28273] of NCLT.

31. The narrow exception crafted by this Court in *Gujarat Urja* [*Gujarat Urja Vikas Nigam Ltd.* v. *Amit Gupta*, (2021) 7 SCC 209 must be borne in mind by NCLT and NCLAT even while examining prayers for interim relief. The order of NCLT dated 18-12-2019 [*BMW Financial Services (P) Ltd.* v. *S.K. Wheels (P) Ltd.*, 2019 SCC OnLine NCLT 28273] does not indicate that NCLT has applied its mind to the centrality of the facilities agreement to the success of CIRP and corporate debtor's survival as a going concern. NCLT has merely relied upon the procedural infirmity on the part of the appellant in the issuance of the termination notice i.e. it did not give thirty days' notice period to corporate debtor to cure the deficiency in service. Nclat, in its impugned judgment [*Tata Consultancy Services Ltd.* v. *Vishal Ghisulal Jain*, 2020 SCC OnLine NCLAT 484] , has averred that the decision of NCLT preserves the ''going concern'' status of corporate debtor but there is no factual analysis on how the termination of the facilities agreement would put the survival of corporate debtor in jeopardy.''

(Emphasis supplied)

32. ***SREI Multiple Asset Investment Trust Vision India Fund*** v. ***Deccan Chronicle Marketeers and others[6],*** is a case closer to our facts. There the Adjudicating Authority contrary to what the plan had provided for to the SRA therein, granted the SRA the exclusive right to use the Trademarks "Deccan Chronicle" and "Andhra Bhoomi" and also made a declaration that Trademarks belonged to Corporate Debtor.

33. This Court, after examining the plan, found that what was granted in the plan was perpetual exclusive right to use the Trademarks "Deccan Chronicle" and "Andhra Bhoomi" without any financial implications. This Court found that nowhere the plan indicated regarding the right of ownership over the Trademarks "Deccan Chronicle" and "Andhra Bhoomi".

34. This Court found that the Adjudicating Authority while ordering an application apart from upholding the exclusive right to use the Trademarks made a further declaration that the Trademarks belongs to the Corporate Debtor which the

[6] (2023) 7 SCC 295

Court said was a modification/alteration in the approved resolution plan is just impermissible.

35. This Court in that case affirmed the finding of the NCLAT thereon which had applying the judgment of this Court in ***Ebix Singapore (P) Ltd.*** v. ***Educomp Solutions Ltd. (CoC)***[7]**,** found that by an order in the application the plan approved by the Committee of Creditors had been modified. It is trite to extract the holdings in ***SREI Multiple Asset*** *(supra).*

> **"9.** After the resolution plan stood approved by the adjudicating authority under order dated 3-6-2019 subject to condition in reference to the rights over the brand name/trade marks of the corporate debtor, the adjudicating authority later decided the application IA No. 155 of 2018 with a direction that the Resolution Professional has established that it is the corporate debtor/DCHL who has an exclusive right to use the trade marks "Deccan Chronicle" and "Andhra Bhoomi" and also made a declaration that the trade marks ("Deccan Chronicle" and "Andhra Bhoomi") belong to the corporate debtor/DCHL under its order dated 14-8-2019 .
>
> **20.** It may be relevant to note that if we look into the resolution plan and particularly Clause 11.12 which has been referred to hereinabove, it is confined to the perpetual exclusive right to use the brands i.e. "Deccan Chronicle" and "Andhra Bhoomi", etc. by the corporate debtor without

[7] (2022) 2 SCC 401

any financial implications for the purpose of running its business and it was approved by the adjudicating authority under its order dated 3-6-2019, but since it was made subject to the result of pending IA No. 155 of 2018, the adjudicating authority had approved so far as the exclusive rights of the corporate debtor to use trade marks, namely, ''Deccan Chronicle'' and ''Andhra Bhoomi'' under its order dated 14-8-2019, but at the same time, a further declaration was made in para 38 holding that trade **marks "Deccan Chronicle" and "Andhra Bhoomi" belong to the corporate debtor, which indeed does not reconcile with the resolution plan approved by the CoC and later by the adjudicating authority under its order dated 3-6-2019**.

24. It clearly indicates that what was approved by the CoC with 81.39% of its voting is to the effect that the corporate debtor has a perpetual exclusive right to use the brands, namely, ''Deccan Chronicle'' and ''Andhra Bhoomi'' and it nowhere indicates regarding the right of ownership over the trade marks/brands, ''Deccan Chronicle'' and ''Andhra Bhoomi'' of the corporate debtor. But the adjudicating authority while adjudicating application IA No. 155 of 2018, apart from upholding the exclusive right to use the trade marks, ''Deccan Chronicle'' and ''Andhra Bhoomi'', made a further declaration that trade marks belong to corporate debtor DCHL under its order dated 14-8-2019, which, in our view, was a modification/alteration in the approved resolution plan which indisputably is impermissible in law and this is what NCLAT in para 32 of its impugned order has observed as under : (*Deccan Chronicle Marketeers case*, SCC OnLine NCLAT)

''*32*. In view of the law declared by the Hon'ble Supreme Court, applying the same to the present appeal, we have no hesitation to conclude that right or ownership, if any, claimed after approval of resolution plan by CoC is

extinguished and if ownership of corporate debtor is declared over the trade marks, it would amount to modification or alteration of approved resolution plan by CoC which is impermissible. Hence, the order of adjudicating authority to the extent of declaring the ownership of corporate debtor over the trade marks "Deccan Chronicle" and "Andhra Bhoomi" is illegal and the adjudicating authority transgressed the jurisdictional limits. Consequently, the order passed in IA No. 155 of 2018 dated 14-8-2019 is liable to be set aside."

25. This Court in *Ebix Singapore (P) Ltd.* v. *Educomp Solutions Ltd. (CoC)*, had held as under : (SCC pp. 541-42, paras 221-22)

221. The residual powers of the adjudicating authority under IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12-A IBC and Regulation 30-A of the CIRP Regulations and in the situations recognised in those provisions. *Enabling withdrawals or modifications of the resolution plan at the behest of the successful resolution applicant, once it has been submitted to the adjudicating authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute*. Since the 330 days' outer limit of the CIRP under Section 12(3) IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the corporate debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification after submission, or a withdrawal after

approval by the CoC and submission to the adjudicating authority, irrespective of the content of the terms envisaged by the resolution plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. *Permitting such a course of action would either result in a downgraded resolution amount of the corporate debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of IBC*.

222. If the legislature in its wisdom, were to recognise the concept of withdrawals or modifications to a resolution plan after it has been submitted to the adjudicating authority, it must specifically provide for a tether under IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the corporate debtor may be sent into liquidation by the adjudicating authority or otherwise, in the event of a failed negotiation for modification and/or withdrawal. These are matters for legislative policy."

26. In other words, in terms of the approved resolution plan, it was the perpetual exclusive right to use the brands, namely, "Deccan Chronicle" and "Andhra Bhoomi", by the corporate debtor which were available to SRA i.e. the appellant herein and once it has been approved by the adjudicating authority, certainly the right to exclusive use of the trade marks belonging to the corporate debtor, on being approved by the adjudicating authority, is always available to the SRA i.e. the appellant, but not the ownership rights of the trade marks of the corporate debtor."

(Emphasis supplied)

36. It is also apposite to recall what this Court held in ***Kalyani Transco*** v. ***Bhushan Power & Steel Ltd. and others***[8]**,** about the sanctity attached to the finality of the resolution plan duly approved. This Court held as follows: -

> "187. As such, the very purpose for which the IBC was enacted—namely, to ensure that the corporate debtor continues as a going concern—has not only been achieved, but the corporate debtor has been transformed from a loss-making to a profit-making entity. If, after the implementation of the resolution plan, the SRA-JSW has converted a loss-making entity into the one making profits, can it be penalised for that ? Suppose if instead of the corporate debtor being converted into a profit-making entity, the losses would have increased, can the corporate debtor claim refund of the amount paid ? **If we permit the claim not to be part of the resolution plan which has been approved by the CoC and the NCLT to be raised at such a belated stage, it could open a pandora's box and the very purpose of the IBC providing sanctity to the finality of the resolution plan duly approved would stand vitiated**."
>
> (Emphasis supplied)

37. In view of the above, we have no doubt in our mind that in exercise of power under Section 60(5)(c) of IBC and while adjudicating the application of GCL on the facts of the present case, the Adjudicating Authority could not have

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declared title in the trademark "Gloster" in favour of the appellant SRA. The issue of the title of the Trademark was not "in relation to the insolvency proceedings", on the facts of the present case. As is clear from the statement in the plan filed by the SRA and approved by the COC, after setting out the series of transactions between FGIL and GCL, all that the SRA does is to assert that the transfer is mala fide and was barred by law. It also records its belief and understanding that the trademark is the lawful property of the Corporate Debtor. It is further alleged that the agreement is between related parties, though the steps available under the IBC to have it neutralized, have not been resorted to.

38. Under the insolvency regime, a plan approved by the COC and ultimately by the Adjudicating Authority is the charter by which stakeholders are governed. As rightly held in ***SREI Multiple Asset*** (supra), the ultimate order of the NCLT recognizing the title in the trademark "Gloster" with the SRA does not reconcile with the resolution plan as approved by the COC and later by the Adjudicating

Authority. Further, any grant of further rights over and above what is recognized in the plan would amount to modification or alteration of the approved plan. It should be remembered that the plan as it exists is the one duly approved by the COC and while adjudicating an application of GCL, no directions could be made by the NCLT conferring better rights. In a case like the present where the SRA has perceived clouds hovering over its title, it is for the SRA to resort to remedies and protect its rights. On the facts of the present case, while adjudicating an application under Section 60(5) of GCL, NCLT could not have passed the direction it ultimately passed.

39. The contents of the application filed by GCL, the response of the appellant, the stand of the RP and the contentions orally advanced before us as well as the averments in the written submissions have been elaborately discussed hereinabove to show the raging dispute that obtains between the SRA and GCL on the issue of title to the Trademark "Gloster" bearing No.690772. While the SRA

questions the veracity of the various agreements and alleges that they were mala fide, contrary to judicial orders and even have gone to the extent of calling it back dated, GCL has its own story to narrate.

40. According to GCL, from time immemorial they have been using the Trademark "Gloster" under various agreements; that there was no breach of injunction since the Supplemental Agreement of 15.07.2008 was contingent on the prohibitory orders being vacated; that after the reference to BIFR abated and before CIRP commenced on 09.08.2018 complete assignment had happened; that assignment itself is transfer of title under law; that registration of assignment is not mandatory for transfer of both like in the case of immovable property above the value of Rs. 100 and that since the Trademark "Gloster" was not the property of Corporate Debtor the commencement of CIRP on 09.08.2018 will not vitiate the registration on 17.09.2018. These are highly contentious issues which are far beyond the ken of the

Adjudicating Authority as observed by us hereinabove. This we say so, on the facts of the present case.

41. Considerable arguments have been advanced as to how GCL cannot raise the issue on the scope of Section 60(5), when they themselves have filed the application. The said issue need not detain this Court. We are concerned with whether in exercise of power under Section 60(5), Adjudicating Authority could have granted a declaration contrary to the terms of a plan approved by COC and also approved by it in those very terms. We have found against the appellant on that issue.

42. Equally, we do not approve of the approach of the NCLT in falling back on Section 43(2)(a) and 45(2)(b) of the IBC to hold that the Assignment Deed dated 20.09.2017 would fall foul of those provisions. We also do not approve of the finding of the NCLT that while adjudicating the application of GCL and in the process of approving the plan, they could have resorted to an enquiry under Sections 43 and 45 of the IBC.

43. As the learned counsel for the Resolution Professional rightly contended, to make out a case under Sections 43 and 45 of the IBC, rigorous scrutiny of documents and threadbare examination of the transactions needed to be undertaken and it could not have been carried out superficially. No doubt, if the Resolution Professional, in a given CIRP does not move an application, resort to Section 47 of the IBC could be had vis-à-vis undervalued transactions by a creditor, member or a partner of a corporate debtor as the case may be and they may move an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with the provisions of the IBC. That is not the scenario here.

44. The NCLT was hearing an application filed by GCL alongside the application of the Resolution Professional to approve the plan. The entire enquiry was focused on the approval of the plan and the contention of GCL that it had certain rights in the trademark "Gloster". On facts, GCL

could not have been rendered worse off in their own application.

45. If any transaction is sought to be set side as preferential or undervalued, the party moving the application should cogently set out the basis on which the claim is made and the party against whom the application is filed should be clearly put on notice as to the basis for claiming that the transaction is preferential or undervalued. Otherwise serious breach of principles of natural justice would ensue.

46. In this case, while adjudicating the application of GCL alongside the application of the Resolution Professional for approval of the plan, by a sidewind as it were, the NCLT had recorded a finding that on the peculiar facts it was not able to shut its eyes or ignore the material on record to legitimize the transaction of assignment. Thereafter, the NCLT found that the Assignment Deed dated 20.09.2017 being within the period of two years preceding the commencement of insolvency, was hit by Section 43 and being undervalued, it would be hit by Section 45(2)(b).

47. The findings of the NCLT are perverse and in gross violation of the principles of natural justice and beyond the scope of the enquiry as far as the present case is concerned. The enquiry was primarily on the approval of the plan and on the application of GCL.

48. The NCLAT has set aside the finding by holding that specific material was required to be pleaded if a transaction is sought to be brought under the mischief of Sections 43, 45, 46, 47 or 66. The NCLAT has recorded a further finding that it would be expected of any Resolution Professional to keep such requirements in view while making a motion to the Adjudicating Authority and, in any case, action could not have been taken without an application moved by the Resolution Professional.

49. Equally, as we find from Section 47 of the IBC, the parties mentioned therein while moving an application under Section 47, ought to set out sufficient materials and the party against whom the relief is sought ought to be put on notice of the averments and the relief prayed. Admittedly, that is not

the scenario in the present case. In that view of the matter, the finding of the NCLT that the assignment could be neutralized in the present matter by resorting to Sections 43 and 45 of the IBC is completely untenable.

50. We make it clear that the observations made hereinabove are only for the purpose of setting aside the finding of the Adjudicating Authority holding that the trademark "Gloster" is the asset of the Corporate Debtor as recorded in para 52 of its order dated 27.09.2019. These observations would not come in the way of any other Court or authority deciding the issue of title to the trademark "Gloster", if the parties herein litigate upon and those proceedings will be decided on their own merits uninfluenced by these observations.

51. We also clarify that the observations of the NCLAT in Para 26 to the following effect:-

> "26. In view of the aforesaid decisions, it is well-nigh proved that the title in the trademark vested with the Appellant with the execution of the supplemental trademark agreement dated 15.07.2008 by which the registered trade mark was assigned by the Corporate

> Debtor to the Appellant as an assignee subject of course to the condition that it will become effective until after the order dated 10.09.2001 passed by the BIFR is vacated or discharged."

cannot be sustained since that is also a matter over which the fora below could not have enquired into in the facts and circumstances.

52. In view of the findings recorded hereinabove, the appeal and cross appeal are disposed of in the above terms. No order as to costs.

.....J.
[**J.B. PARDIWALA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
22nd January, 2026