

Learning Curve-1022

February 06, 2024

The basis that the trademark was hypothecated for a bigger amount and has been assigned for lesser amount would not be a criterion for the purpose of declaring it to be ‘undervalued transaction’.

CASE TITLE	Gloster Cables Ltd. Vs. Fort Gloster Industries Ltd. & Ors.
CASE CITATION	Comp. App (AT) (Ins) No. 1343 of 2019
DATE OF ORDER	January 25, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

BRIEF FACTS:

The case involves a dispute over the validity of a supplemental trademark agreement executed between the CD and the appellant. The AA had found that the agreement was executed during a period when there was an order of prohibition in place by the BIFR and, therefore, declared it null and void. The AA also declared the transaction as undervalued and preferential.

DECISION:

The Hon’ble NCLAT, New Delhi allowed the appeal and held that,

“it was specifically mentioned in the deed of 15.07.2008 that ‘the assignment shall become effective without any further act or deed until after the order dated 10.09.2001 passed by the BIFR, is vacated and/or discharged or in the event FGIL/Corporate Debtor is wound up’. It is needless to mention that the assignment was contingent upon the vacation of the order dated 10.09.2001 and with the repeal of SICA, 2016 w.e.f. 01.12.2016, the condition was lifted and the Appellant became assignee of the trademark w.e.f. the date when the supplemental trademark agreement dated 15.07.2008 was executed, therefore, the finding recorded by the Adjudicating Authority in this regard that because there was a stay by the BIFR and agreement was executed during that period is null and void is not in accordance with law...

the CoC was apprised in its 5th meeting that the forensic audit report found no preferential, undervalued, fraudulent or wrongful trading transactions nor it has found any related party preferential or fraudulent transaction whatsoever, therefore, only on the basis that the trademark was hypothecated for a bigger amount and has been assigned for lesser amount would not be a criteria for the purpose of declaring it to be undervalued transaction without there being sufficient material before the Adjudicating Authority to pass such an order, therefore, in our considered opinion, the finding recorded in this regard is not in accordance with law and thus reversed.”