

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, COURT-II.

I.A.(IBC)No.1553/KB/2022
IN
C.P.(IB) 972/(KB)2018

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the National Company Law Tribunal Rules, 2016;*

AND

In the Matter of:

BELL FINVEST (INDIA) LIMITED

...Financial Creditor

Vs.

DUCKBILL DRUGS PRIVATE LIMITED

...Corporate Debtor

AND

In the Matter of:

1. Paul Brother, a partnership firm under the Partnership Act, 1932, having its office at 7, Kali Prasanna Chatterjee Lane, Kolkata-700034;
2. Asoke Paul, Son of Late Dulal Chandra Paul, Partner of Paul Brothers, being the partner of the partnership firm, Paul Brothers, having his office at 7, Kali Prasanna Chatterjee Lane, Kolkata-70034;

.....Applicants

Versus

1. Swapan Mukherjee, erstwhile director of Duckbill Drugs Private Limited, residing at 18/50, Dover Lane, Sarat Bose Road, Kolkata-70029;

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2. Arjun Mukherjee, erstwhile director of Duckbill Drugs Private Limited, residing at 18/50, Dover Lane., Kolkata-700029;
3. Paulami Mukherjee, Daughter-in-law of Swapan Mukherjee, residing at 18/50, Dover Lane, Sarat Bose Road, Kolkata-700029;
4. Santanu Brahma, Liquidator of Duckbill Drugs Private Limited, Having his office at AH-276, Salt Lake, Sector-II, Kolkata-700091;
5. Trade Marks Registry, Kolkata, a statutory Authority discharging functions under the Trademarks Act, 1999, situated at 234/4, Acharya Jagadush Chandra Bose Road, 2nd MSO Building, Kolkata-700020.

.....Respondents

Coram:

1. Hon'ble Bidisha Banerjee, : Member (Judicial)
2. Hon'ble Balraj Joshi, : Member (Technical)

Counsel/Authorised Representative appeared through physically/video Conference:

Ms. Urmila Chakraborty, Adv.,] For the Applicant in I.A.(IBC)No.1553/KB/2022
Mr. Avishek Guha, Adv.,]
Ms. Arunika Dutta, Adv.]
Mr. Mainak Bose, Adv.,]

Order reserved on:27/06/2023

Order pronounced on:02/08/2023

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard Ld. Counsels/Sr. Counsel for the parties.
2. This application is preferred by a successful purchaser of Duckbill Drugs Private Limited to seek inter alia the following reliefs:
 - a) An order be passed declaring the assignment and-or transfer of the trademarks through the purported Deed of Assignment dated 3rd April 2017 as preferential, fraudulent and undervalued transactions;
 - b) An order be passed requiring the trademarks, being the subject matter of the purported Deed of Assignment dated 3rd April 2017 to be vested in the corporate debtor;
 - c) An order be passed declaring that the applicant no.1 is entitled to commercially exploit the trademarks forming part of the purported Deed of Assignment dated 3rd April 2017 as an asset of the corporate debtor;
 - d) An order of injunction be passed restraining the respondent no. 3 to assert any right over the trademarks forming part of the purported Deed of Assignment dated 3rd April 2017 or give any effect and/or any further effect to the Deed of Assignment dated 3rd April 2017 in any manner whatsoever;
 - e) Ad-interim orders in terms of prayer (d);
3. The summation and summarisation of the grievance is the following:
 - (i) On an application filed under Section 7 of the Insolvency and bankruptcy code, 2016 being C.P. (Ib0 No.972/KB/2018, a Corporate Insolvency

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Resolution Process (in short, “CIRP”) was initiated in respect of the corporate debtor Duckbill Drugs Private Limited by an order dated 17th December 2019 passed by this Tribunal. In view of the failure of the CIRP, this Tribunal passed an order of liquidation on 13th April, 2021 and appointed the respondent no.4 as the Liquidator of the corporate debtor.

- (ii) On or about 23rd April, 2022, an E-Auction Sale Notice was published by the respondent no.4 in the “Business Standard” and “Ajkal” newspapers, proposing to hold a public auction for sale of the corporate debtor as a going concern on 9th May, 2022, under the provisions of Section 35(1) (f) of the IBC 2016 read with Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation process Regulations, 2016). The Reserve Price for such sale including all the assets of the corporate debtor was fixed at Rs.5,00,00,000/-.
- (iii) The applicant no.1/Paul Brothers who participated in the said E-Auction was declared as the highest and most suitable bidder. A Sale Certificate was issued by the respondent no.4 in favour of the applicant no.1 on 11th May 2022, confirming the sale of the corporate debtor as a going concern including the assets mentioned therein.
- (iv) The said Sale Certificate confirmed that the corporate debtor was sold as a going concern including inter alia 14 trademarks thereof more-fully mentioned in Clause 2 of Annexure-A of the Sale Certificate. The said trademarks were a part of the Liquidation Estate of the corporate debtor under Section 36(3) of the Insolvency and Bankruptcy Code, 2016. The said trademarks were the most valuable assets of the corporate debtor and the valuation and/or Reserve

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price fixed for sale of the corporate debtor majorly comprised of the value of the said trademarks.

- (v) While taking steps to formally take over the corporate debtor and while conducting the necessary due diligence in the official website of the corporate debtor, the applicants were shocked and surprised to learn that out of the said 14 trademarks mentioned in the Sale Certificate, 7 (seven) trademarks are registered in the name of one Paulami Mukherjee, i.e., respondent no.3 and not in the name of the corporate debtor. Whereas the respondent no.4 had handed over a copy of an email dated 29th June 2021 to the applicants, by which the respondent no.4 informed the respondent no.5 the Trade Marks Registry about the liquidation proceedings and requested the Trademarks Registry to maintain status quo with the said 14 (fourteen) trademarks, and further not to accept any request for transfer thereof.
- (vi) It further transpired that by way of a purported Deed of Assignment dated 3rd April, 2017, the corporate debtor had purportedly transferred, conveyed, and assigned the said seven trademarks in favour of the respondent no.3 who is the daughter-in-law of Respondent No.1 and the application for assignment before the Respondent No.5 was allowed by the Respondent No.5 on 18th January, 2022. The particulars of the said 7 (seven) trademarks, which are part of the said Deed of Assignment dated 3rd April, 2017 are as follows:

Trademark	Registration No.	Class	Date	Valid till
LAXIT	478572	05	17 th September, 1987	17 th September, 2028
LAXIT	977156	05	14 th	14 th

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LAXATIVE ORAL EMULSION (Label)			December, 2000	December, 2030
HEALZYME	1004330	05	19 th April, 2001	19 th April, 2031
CATALYD (Label)	1803930	05	8 th April, 2009	8 th April, 2029
LAXIT PLUS	2622566	05	1 st November, 2013	1 st November, 2023,
BROFENTOL PLUS (Label)	2622565	05	1 st November, 2013	1 st November, 2023

- (vii) The applicant to his dismay found that those 7 (seven) marks were valid as on the date of 18th January, 2022 and all other marks had already expired by 18th January, 2022, which is the date on which the assignment was applied for before the respondent no.5. the said Deed of Assignment was antedated by the respondent nos.1 to 3 and the said respondents excluded those trademarks which had already expired by 18th January, 2022.
- (viii) Further, the Trademark Certificates attached with the purported Deed of Assignment appeared to be counter signed by the respondent no.3 whereas such signatures could only be affixed after the assignment was formally applied before the respondent no.5, in the presence of the respondent no.3 on or after 18th January, 2022. However, the signatures of the respondent no.3 on the purported Deed of Assignment and those signatures appearing on the Trademark Certificates are perfectly accurate and have no dissimilarities at all, although such documents were signed in between a gap of almost 5 (five) years.
- (ix) The Applicant as such alleges that such fact raises a reasonable suspicion that all such documents were signed on the same date.

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- (x) More so, as the said Deed of Assignment dated 3rd April, 2017 reveals no apparent purpose for which the marks are being assigned and the marks have been assigned for a paltry sum of Rs.7,000/-, whereas the Reserve Price of the assets of corporate debtor which primarily included such Trade Marks was fixed at Rs.5,00,00,000/- Further the said marks have been assigned to a family member, i.e., a related party without any rhyme or reason.
- (xi) Under such circumstances, by a letter dated 7th November, 2022, the applicants had intimated the liquidator/respondent no.4 with regard to the suspicious circumstances in which such purported assignment took place. An application for waiver and concession is also pending before the Hon'ble national Company Law Appellate Tribunal.
- (xii) By an email dated 9th November, 2022 the Respondent No.4 called upon the respondent no.5 to reverse the entire assignment but the respondent no.2 has not taken any steps to undo and/or revoke the assignment. The applicants filed a writ petition being W.P.A. No.24933 of 2022 against the respondents under Section 226 of the Constitution of India which is pending adjudication before the Hon'ble High Court at Calcutta.
- (xiii) The applicant alleges that after being made aware of the order of liquidation dated 13th April 2021 passed by this Tribunal, the respondent no.5 ought not have accepted the request for assignment of the said trademarks on 18th January, 2022. That the conduct and the actions of the respondent nos.1,2,3 and 5 are therefore, in violation of the provisions of the Insolvency and Bankruptcy code, 2016 and the Regulations made thereunder and further in

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violation of the directions of the respondent no.4 discharging duties under the Code. Under Section 34(2) of the code of 2016, only the respondent no.4 had the power to represent the corporate debtor. The action on the part of the respondent no.5 in accepting the application for assignment is clearly motivated and based upon extraneous consideration and, in any event, illegal and in violation of the provisions of the Trademarks Act, 1999 and the Insolvency and Bankruptcy code, 2016 and the Rules and Regulations made thereunder.

- (xiv) The applicant no.1, being the successful purchaser of the corporate debtor as a going concern, is entitled to commercially exploit all 14 (fourteen) trademarks belonging to the CD. The illegal and arbitrary actions on the part of the respondent nos.1,2,3 and 5 have caused immense and grave prejudice to the applicants, inasmuch as the applicants have been deprived of the most valuable asset of the corporate debtor. In view of the above facts and circumstances, the applicant claims the orders as prayed for in the instant application.
- (i) The Corporate Debtor in liquidation was put up of for auction as a going concern as “As is where is”, “As is what is”, “Whatever there is” and “No recourse basis” as on the 23rd of April, 2022.
- (ii) The applicant no.1 being one of the participants in the auction, emerged as the successful bidder and the sale certificate was awarded to the applicant no.1 on the 11th of May, 2022.

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- (iii) The sale certificate clearly provided that the corporate Debtor was sold as going concern comprising of 14 trademarks. The trademarks were represented to form part of the assets of the Corporate Debtor and formed the most valuable assets of the Corporate Debtor.
- (iv) He came to learn that a Deed of Assignment had been executed by the Corporate Debtor in the year 2017 which purportedly transferred, conveyed and assigned 7 out of the 14 trademarks to one Ms. Poulami Mukherjee, respondent no.3, the daughter in law of the erstwhile director of the Corporate Debtor- Mr. Swapan Mukherjee, the respondent no.1.
- (v) The particulars of the 7 (seven) trademarks which are part of the said Deed of Assignment dated 3rd April, 2017 are depicted as follows:

Trademark	Registration No.	Class	Date	Valid till
LAXIT	478572	05	17 th September, 1987	17 th September, 2028
LAXIT LAXATIVE ORAL EMULSION (Label)	977156	05	14 th December, 2000	14 th December, 2030
HEALZYME	1004330	05	19 th April, 2001	19 th April, 2031
CATALYD (Label)	1803930	05	8 th April, 2009	8 th April, 2029
LAXIT PLUS	2622566	05	1 st November, 2013	1 st November, 2023,
BROFENTOL PLUS (Label)	2622565	05	1 st November, 2013	1 st November, 2023
CYAPTIN WITH CALCIUM (Label)	2636634	05	3 rd December, 2013	3 rd December, 2023

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vi) It got further revealed that the application for assignment before the Trade Marks Registry, respondent no.5 was allowed by the Trade Marks Registry on 18th January, 2022, five years after the execution of the Deed of Assignment on 3rd April, 2017.

4. The Respondent No.4, vide his reply-affidavit has responded stating that,

(i) From applications filed by Respondent No.3 with Registrar of Trade Marks on 18.01.2022 it appears that Respondent No.1 had executed an alleged 'Deed of Assignment' on 03.04.2017 whereby 7 (seven) trademarks were allegedly transferred to Respondent No.3 i.e., daughter-in-law of the Respondent No.1 and wife of Respondent No.3, for a paltry sum of INR 7,000/- only. The list of 7 (seven) trademarks that have been allegedly transferred being as follows-

Trademarks	Class	Regd. No.
1) Laxit	5	478572
2) Laxit Laxative Oral Emulsion (Label)	5	977156
3) Healzyme	5	104330
4) Catalyd (Label)	5	1803930
5) Laxit Plus (label)	5	2622566
6) Brofentol Plus (Label)	5	2622565
7) Cyaptin With Calcium (Label)	5	2636634

(ii) The purported document styled as "Deed of "Assignment' dated 03.04.2017 is ex-facie and manufactured document fabricated and concocted as an

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afterthought, designed by Respondent No.1,2 and 3 solely to misappropriate the assets of the Corporate Debtor for their own wrongful gain.

- (iii) The Corporate Debtor was sold to the Applicant as a 'going concern' by way of an e-auction on 09.05.2022 complying with all the provisions of the Insolvency and Bankruptcy code, 2016 and regulations thereunder. Subsequently, on 09.11.2022 the Respondent No.4 received email from the Applicant of transfer of Trademarks by the erstwhile management and their relatives i.e., Respondent No.1, 2 and 3.
- (iv) The assets of the Corporate debtor comprised of old plant and machineries which were valued by the registered valuers of plant and machinery at INR 15.85 Lacs. Expired leasehold premises did not have any value according to the registered valuers of land and building. Financial assets including the value of trademarks of INR 53.76 Lacs excluding cash and bank balance, aggregated to INR 69.61 lacs. A significant portion of the assets forming part of and resulting in successful 'going concern' sale of the Corporate Debtor comprised of the 14 (fourteen) trademarks which were registered in the name of Corporate Debtor, as evident from the records of the Trade Mark Registry, which finds as Annexure 'A'.
- (v) The alleged transaction of transfer of trademarks has been orchestrated with mala fide intention by Respondent Nos. 1, 2 and 3 as afterthought and that too, at a gross undervalue of INR 7,000/- by a purported deed dated 03.04.2017.

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- (vi) The audited financial statement for FY 2017-18 of the corporate debtor does not reflect receipt of even the alleged consideration amount of INR 7,000/- and there is also no disclosure of such significant event.
- (vii) It is evident from records retrieved from the Registry of Trade Marks that during the pendency of the CIRP, i.e., on 29.06.2018, the Respondent No.1 *suo motu* facilitated renewal of registration of 4 (four) trademarks belonging to the Corporate Debtor among the alleged 7 (seven) trademarks in blatant contradiction of the provision of IBC Laws.
- (viii) On 29.06.2021 as the Liquidator he emailed to Trade marks Registry, Kolkata at Kolkata.tmr@nic.in to restrict transfer of the 14 trademarks (if attempted appearing in the name of the corporate debtor.
- (ix) This apparent from the receipt no.31705 issued by The Directorate of Drugs Control, Government of West Bengal, that the drug license of the corporate debtor expired on 15.01.2022.
- (x) The Transfer applications for 7 (seven) trademarks was filed by Respondent No.3 by producing a back-dated 'Deed of Assignment' dated 03.04.2017 which has been executed with Respondent No.1, father-in-law of Respondent No.3. It is inconceivable that an agreement which has been executed in June, 2017 would be filed for registration before the trademark authorities, after 4 ½ years. Such delayed application is not permitted by law in terms of Section 42 of The Trade Mark Act, 1999, that Respondent No.3 in collusion with Respondent No.1 & 2 spearheaded such trademark transfer application by

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engaging M/s. D. Sen & Co., Patent & Trade Mark Attorneys, as its agent on 10.01.2022 with full knowledge of the ongoing liquidation proceedings.

- (xi) On 12.02.2022 the Respondent No.2 finally handed over the possession of factory and assets to the Liquidator without mentioning anything about such alleged transfer prior to handing over the possession of the factory on 12.02.2022. The Respondent Nos. 1 and 2 were carrying out the commercial operations of the corporate debtor under their management and control, in complete derogation of various directions of this Hon'ble Tribunal and were manufacturing as well as selling products using the alleged trademarks thereby enjoying gains arising from the assets of corporate debtor.
- (xii) The Liquidator has summarised the events as under:-
- a) Expiry of drug license took place on 15.01.2022;
 - b) Filing of transfer application of trademarks by Respondent No.3 was on 18.01.2022 – nearly 4 ½ years after the alleged deed of assignment; and
 - c) Handover of possession was on 12.02.2022 – nearly 2 years after CIRP commencement and 10 months after liquidation order. He has alleged that Respondent Nos.1, 2 and 3 have illicitly strategized to take away the valued assets of the corporate debtor by fabricating and portraying the story of 'assignment of trademarks' within the family of Respondents 1,2 and 3. This is purely and 'afterthought'.
- (xiii) Meanwhile on 09.05.2022 at the E-Auction of the corporate debtor as a 'Going Concern' the Applicant, emerged as the highest bidder. Relying on the

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information available from the Registrar of Trademarks, the Liquidator offered the 14 Trademarks, including the 7 trademarks as referred to above, for sale of corporate debtor as 'going concern.' On 11.05.2022 Sale Certificate was issued to the Applicant after receipt of the sale consideration amount of INR 5 (five) Crores and the assets were handed over to the Applicant buyer.

- (xiv) It is alleged that the Respondent No.5 i.e., the Trademark Authorities, issued notice to the Corporate Debtor i.e., Duckbill Drugs Pvt. Ltd., for registering "comments" in respect of such transfer of trademarks. It appears from the documents that Respondent No.5 electronically served that said notice at the email address of the agent of Respondent No. 3 i.e., co.dsen@gmail.com, instead of on the Liquidator.
- (xv) On 02.06.2022 The applicant filed an application bearing no. IA No.521/KB/2022 before this Tribunal seeking 'reliefs and concessions' consequent to the sale of the corporate debtor as a 'going concern' on the strength of the 'Sale Certificate dated 11.05.2022 issued by the Liquidator. It was allowed with appropriate reliefs and concessions in its order dated 24.02.2023.
- (xvi) It is alleged that to effect the trademark transfer application of 18.01.2022, Respondent No.3 clandestinely submitted a false affidavit before the trademark authorities, stating: "3. That no action is pending nor any case has been filed in any Court/Tribunal relating to above Registered Trade Mark Nos. 478572; 977156; 1004330; 1803930; 2622566; 2622565 & 2636634 in Class 5". They are thus guilty of suppression of material fact before this Tribunal.

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- (xvii) Further the Respondent No.5 wrongfully and in violation of law, facilitated the registration of wrongful transfer of 7 (seven) nos. Trademarks belonging to the corporate debtor, in favour of Respondent No.3 in violating of Section 42 of The Trade Mark Act, 1999 where the maximum permissible time period allowed for registering an 'assignment' is of 9 (nine) months. In the circumstances, it has been prayed that the alleged transfers of trademarks being illegal, wrongful, fraudulent, null and void, ought to be set aside.
5. By way of supplementary-affidavit of February, 2023 the applicant has brought in the following additional facts:
- (i) Aggrieved by reason of such fraud and misrepresentation, the applicants have preferred IA 1553 of 2022 praying, inter alia, for restraining respondent no.3 to assert any right over the trademarks forming part of the Deed of Assignment dated 3rd April, 2017 or give any effect and/or any further effect to the Deed of Assignment dated 3rd April, 2017 in any manner whatsoever. The said application was taken up on 16th January, 2023 when this Tribunal was pleased to pass an order directing the parties to not precipitate the issue of trademarks any further.
 - (ii) Post filing of the application on 5th December, 2022, certain even more glaring facts have come to the knowledge of the applicants in relation to the trademarks. The applicants very recently have got hold of copies of certain invoices raised by the Corporate Debtor during the CIRP period as well as the Liquidation period which finds mention of the trademarks already assigned to respondent no.3 vide the purported Deed of Assignment dated 3rd April, 2017

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which having already been assigned by the Corporate Debtor to another entity as far as back in 2017 could not have continued to utilize the trademarks and commercially use the trademarks.

(iii) That very cleverly, in a calculated move, the registration of trademarks had been applied for by respondent no.3 with the respondent no.5 only January, 2022 just when the Corporate Debtor was about to be put up for sale as a going concern by the Liquidator so that the benefit of the trademarks does not accrue to the new entity taking over the Corporate Debtor.

(iv) The Respondent No.3 has continued to give further effect to such wrongful and illegal assignment despite a categorical order passed by this Tribunal on the 17th of January, 2023. An entity named Duckbill Drugs Industries has requested the Bengal Chemists and Druggist Association- West Bengal State body for circulation in their journal "Oushadh-o-Prosadhani". To the astonishment of the applicant, the names/marks of the products mentioned in the price list have been found to be the same as the trademarks that had been illegally and wrongfully assigned to respondent no.3 making it aptly evident that further effect to the illegal and wrongful assignment has been given effect to.

6. We have considered the rival contentions and perused the records.

7. We would note the following Orders passed by the Hon'ble High Court in the pending proceedings:

I. An order dated 12.12.2022 in *FMAT 9 of 2023 with CAN 1 of 2023 (Poulami Mukherjee Vs. Duckbill Drugs Pvt. Ltd. & Ors.)*,

II. An order dated 24.01.2023 in *FMAT 9 OF 2023 With CAN 1 of 2023 (Poulami Mukherjee Vs. Duckbill Drugs Pvt. Ltd. & Ors.)* which reproduces the order dated 12.12.2022 (supra) in the following manner:

“Apart from the respondent no. 2 no other respondent is represented in court.

We extract the following part of the impugned judgement and order dated 12th December, 2022.

“From the copies of documents relied upon, though, it prima facie, appears that notarized deed of assignment dated 03.04.2017 is stranding in the name of the plaintiff to connote that she has been assigned with the trademarks by the defendant/company through the proforma defendant and the permission granted by the plaintiff in favour of the defendant/company has expired with effect from 05.04.2022, yet, it do not find any urgency involved in the matter. Moreover, the loss, if any, suffered or to be suffered by the plaintiff can always be compensated by money value.

Considering all these aspects, I feel that, at this stage, no ad-interim order of temporary injunction, as prayed for by the plaintiff, should be passed and the application is to be considered after service of notice of this suit upon the defendants.

Considered as such, the prayer for ad-interim order of temporary injunction is refused.

Issue notice upon the defendants at once, asking them to show-cause as to why the prayer for an order of interim injunction shall not be granted in favour of the plaintiff.

Requisites at once.

Fix 10.01.2023 for S/R and A/D”

In a trademark action, from the said narration of facts and the prima facie findings which the learned judge has entered, an order of injunction should have necessarily followed.

In those circumstances, we pass an order of injunction restraining the respondents and/or their servants agents and assigns from in any way using the subject trademark till 31st March, 2023 or until further order whichever is earlier, subject to the final order to be passed by the learned judge of the court below.

We set aside the impugned judgement and order dated 12th December, 2022.

The interim application before the learned trial judge may be heard out and disposed of within the above time frame after hearing the parties and by a reasoned order. If it is not disposed of within the time as mentioned above, the learned judge may extend our interim order.

The appeal and the connected application are disposed of”.

III. Order Dated 06.04.2023 in **WPA 24933 of 2022** (*Paul Brothers and another Vs. Union of India and Others.*) by Hon'ble Single Bench which records the following:

“Since the petitioner no.1 purchased the assets of the company liquidation with the trade marks in the Court auction, the petitioners have a legitimate expectation that the Court will come forward to protect the outcome of the auction for which the petitioners paid valuable consideration. Incidentally, the petitioners purchased the company in liquidation and its trade marks for 5 crores whereas the 7 trade marks were assigned in favour of the respondent no.6 for Rs.7000/-.

It is also significant that the official liquidator (respondent no.7) wrote to the Trade mark Registry on 29.06.2021 requesting the latter to maintain status quo with regard to the trade marks and not entertain any request for transfer of the trade marks from the erstwhile promoters of the company in liquidation. The trade marks were registered in the name of the respondent no. 6 on 18th January, 2022 despite the Registry being put on notice that the Official Liquidator has stepped into the shoes of the respondent no. 3 company”.

XXXXX

Therefore, prima facie, the petitioners have made out a case under section 42 with regard to the impugned assignment.

This Court is aware of the fact that any order permitting the petitioners to use the concerned trade marks would militate against the order of the Division Bench which has restrained the respondents in the appeal from using the

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concerned trade marks till 06.07.2023 or until further orders, whichever is earlier. Therefore, in view of the facts shown to the Court and the law relevant to such facts, this Court deems it fit to restrain the respondent no.6 from using the 7 trade marks listed in paragraph 13 of the writ petition till the matter is heard out on affidavits.”

- IV. Order dated 20.04.2023 in **MAT/652/2023, IA No: CAN/1/2023 (Poulami Mukherjee Vs. Paul brothers and Ors.)** by Hon’ble Division Bench which reads:

“We are of the, prima facie, view that the nature of the interim order granted by the learned Single Bench has virtually resulted in the main writ petition being allowed. Furthermore, the important issue as regards maintainability of the writ petition was required to be decided for which, in our opinion, affidavit should have been called for. The learned Single Bench has taken a final decision with regard to the maintainability of the writ petition and held the same to be maintainable.

In our view, such finding returned by the learned Single Judge on maintainability requires to be considered for its correctness since affidavits were not on record when the matter was heard. That apart, we are required to see what would be the effect of the order passed by the Division Bench in the collateral proceedings as already pointed out that the order passed by the learned Single Bench being in effect an order allowing the writ petition. At the very threshold we are inclined to entertain this appeal and also direct the stay

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of the operation of the impugned order till the appeal is heard and disposed of.

For such reason, the appeal is admitted and there will be an interim order of stay of impugned order till the disposal of the appeal

Learned counsel are at liberty to file a compilation containing documents which are not forming part of the stay application.

We make it clear that the appellant should not take advantage of this interim order and create any third party interest on the said trademarks.

Let the appeal be listed on 8th June, 2023.

- V. On 23.06.2023 the judgment in **FMAT 9 of 2023 in (Poulami Mukherjee Vs. Duckbill Drugs Pvt. Ltd. & Ors.)** by Hon'ble Division Bench of Kolkata High Court which records the following:

"The trademark registry could not have registered the purported assignment on 14th June, 2022.

The involvement of the trademark registry in this fraud also needs to be investigated.

*Therefore, **in my considered opinion, prima facie, the purported assignment appears to be non-est and a nullity.***

*Under Chapter V of the Trade marks Act, 1999 the right of assignment and transmission is vested in the registered proprietor. In case of **these seven marks, the registered proprietor was Duckbill, the custodian of whose assets was the liquidator. So the real proprietor was the liquidator.***

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First of all, on 18th January, 2022 the earlier management of the company could not act by presenting the purported 2017 deed of assignment for recording the assignment with the Registrar without the concurrence of the liquidator. The earlier management could not have in January, 2022 brought to life and assignment which was a dead letter. Furthermore, it could not do any act which would deprive the company of its valuable assets.

I am of the view that a deliberate attempt was made by Paulami and her father-in-law to divest Duckbill of its principal assets that is the trademarks and misappropriating them, by backdating a deed of assignment to 2017 and then filing it with the trademark registry five years later.

The Dating of the alleged deed of assignment that is 3rd April, 2017 raises eyebrows for another reason. It was more than two years before the commencement of insolvency proceeding on 17th December, 2019 so as to take it out of scanner and scrutiny under the 2005 Insolvency and bankruptcy code, 2016, as a fraudulent preference.

In those circumstances, the ultimate order passed by the learned trial Judge at the ad interim stage that he was not mined to pass an interim order of injunction was justified, though it should have been for the reasons given above.

Whether our interim order in appeal was obtained by suppression of material facts is redundant because we are ultimately setting aside our interim order on substantive grounds. It is true that if this suppression was not made the interim order may not have been passed at all.

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This appeal is dismissed by vacating our interim order dated 24th January, 2023. The impugned judgment and order is affirmed by substituting therein the reasons given by us in this judgment and order. Nothing remains of the injunction application before the court below. It is disposed of by this order. The suit be expedited and disposed of within two years of communication of this order. On the basis of this order a necessary application be made before the court below to record disposal of the interim application and for expediting the suit.

The appeal and all connected applications are disposed of accordingly.

Our findings and observations are to be treated as prima facie in the suit.

For suppressing the fact that Duckbill had not been served with copies of cause papers when the stay application/injunction application in appeal was moved, we express our greatest displeasure.”

(Emphasis added)

8. In view of the categorical observations of Hon'ble High Court as extracted above, about the sanctity of assignment and use of the trademarks that were unlawfully assigned, this Adjudicating Authority has little left to it to consider. Accordingly, we would allow the application invoking powers under Sections 44, 45, 48, 49 of the IBC 2016, and pass the following directions:

- (i) The purported Deed of Assignment dated 3rd April, 2017 that was never made in good faith is declared as preferential, fraudulent and undervalued transactions and hence non-est in the eye of law.

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(ii) All the 7 trademarks being the subject matter of the purported Deed of Assignment dated 3rd April, 2017 shall vest in the liquidator as an asset of corporate Debtor.

(iii) In view of above, the Applicant No.1 will be entitled to commercially exploit all the 14 trademarks including the seven that form part of the purported Deed of Assignment dated 3rd April 2017, as an asset of the corporate debtor.

(iv) The Respondent No.3 shall not have any right over the trademarks forming part of the purported Deed of Assignment dated 3rd April 2017 or give any effect and/or any further effect to the Deed of Assignment dated 3rd April 2017 in any manner whatsoever.

9. This **IA(IBC)/1553(KB)/2022** is allowed and disposed of.

10. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 2nd Day of August, 2023.

Bibhash (steno)