

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 2729/2021

In

C.P. No. (IB) 4345/MB/2019

Under sections 47 and 74 r/w and section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“the Code”)

Filed by

Standard Chartered Bank,

Group Special Assets Management Crescenzo,

3 A, Third Floor,

C38-39, G Block, Behind MCA

Bandra (E), Mumbai- 4000521

Through its Authorised Representative

Mr. Kamal Vyas, authorised vide Power of

Attorney dated October 5, 2021

...Applicant

Vs.

Piyush Gangji Chheda

Having Registered office at:

Sun Shine Plaza, 1st Floor

Naigaum Cross Road, Dadar (East)

Mumbai- 400014

...Respondent No.1

Rupal Piyush Chheda

Having Registered office at:

Sun Shine Plaza, 1st Floor

Naigaum Cross Road, Dadar (East)

Mumbai- 400014

...Respondent No.2

Harshvardhan Piyush Chheda

Having Registered office at:
Sun Shine Plaza, 1st Floor
Naigaum Cross Road, Dadar (East)
Mumbai- 400014

...Respondent No.3

Amit Chandrashekhar Poddar

Resolution Professional of Prince SWR
Having Registered office at:
Systems Pvt Ltd.
Akshat, 7, Vijay Nagar, Katol Road,
Nagpur, Maharashtra 440013

...Respondent No.4

IN THE MATTER OF

M/s. Midas Impex Pvt. Ltd.

...Petitioner/Operational Creditor

V/s.

M/s. Prince SWR Systems Pvt. Ltd.

...Respondent/Corporate Debtor

Order Reserved on: **30.08.2023**

Order delivered on: **15.09.2023**

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

Appearance:

For the Applicant: Adv. Shyam Kapadia a/w. Adv. Aashdin
Chivawalla & Adv. Vyoma Joshi i/b
Argus Partners

For the Respondent: Sr. Adv. Vikram Nankani a/w. Adv. Amol
Bavare, Adv. Krishna Iyer, Adv. Rahul
Pillai i/b. Pragnya Legal

Per: Shri Charanjeet Singh Gulati, Member (T)

ORDER

1. The above I.A. is filed by the Applicant under sections 47 and 74 r/w and section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code"), praying the following reliefs;
 - a) *This Hon'ble Tribunal be pleased to declare the assignment / transfer / sale of the Trademark "Prince Mumbai India' in favour of the Respondent Nos. 1 and 2 as void and restore the Trademark Prince Mumbai India' to the Corporate Debtor;*
 - b) *This Hon'ble Court be pleased to punish the erstwhile Directors of the Corporate Debtor i.e. Respondent Nos. 1 to 3, for violating the provisions of Section 14 and contravention of moratorium by an order of imprisonment and penalty in accordance with the provisions of the Code;*
 - c) *Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to restrain Respondent Nos. 1 to 3 from utilising the Trademark of the Corporate Debtor in any manner whatsoever;*

- d) *Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to direct Respondent Nos. 1 to 3 to disclose on oath the benefits derived by Respondent Nos. 1 to 3 by utilising the Trademark of the Corporate Debtor and direct that all benefits so obtained/accrued be transferred to the Corporate Debtor;*
- e) *Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to direct the Respondent Nos. 1 to 3, its employees, servants and/or agents or otherwise whosoever be restrained by an order and injunction, from in any manner selling, transferring, or assigning to anyone else or creating any third party right, title or interest or license in favour of anyone else in respect of the Trademark;*
- f) *Pending the hearing and final disposal of the present Application. this Hon'ble Tribunal be pleased to appoint an independent expert/ valuer to carry out the valuation of the Trademark 'Prince Mumbai India';*
- g) *for ad - interim and interim reliefs in terms of prayers (c) to (1) above;*
- h) *For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*

2. The Brief facts of the application are extracted hereunder;

- i. The Applicant is a multinational bank, providing various banking services to customers all over the country.

- ii. The Respondent Nos. 1 to 3 were Directors of the Corporate Debtor and involved in the day-to-day management of the Corporate Debtor, before the Order initiating Corporate Insolvency Resolution Process against the Corporate Debtor was passed on April 16, 2021.
- iii. The Respondent No.4 is an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India under No. IBBI/IPA- 001/IP-P00449/2017-18/10792. Vide Order dated October 18, 2021, passed in Interlocutory Application No. 1646 of 2021, the IRP was replaced by the Respondent No. 4, to act as the Resolution Professional (hereinafter, the RP) of the Corporate Debtor
- iv. The Corporate Debtor is involved in the business of manufacturing PVC pipes and fittings, hose pipes (non-metallic), cords, insulating tape, flexible pipes, insulators, sleeves, non-metallic sheets, rods, tubes, pipes and fittings. The Corporate Debtor has been carrying on business under the tradename 'Prince Mumbai India' since its inception on April 16, 1987. The Trademark has also been registered with the Registrar of Trademarks under registration no. 1823031 under Class 17 which was renewed for a period of 10 years from May 28, 2019, by the Registrar of Trademarks vide Renewal Certificate dated April 2, 2019.
- v. The Corporate Debtor approached the Applicant for credit facilities for its business needs. On the basis of the financial information provided by the Corporate Debtor, the Applicant agreed to provide the Corporate Debtor various

credit facilities, against the collateral security offered by the Corporate Debtor. Accordingly, from time to time, the Applicant granted to the Corporate Debtor various credit facilities.

- vi. Since the Corporate Debtor failed to service the credit facilities provided to it, the Applicant filed the Company Petition. Subsequently order dated 16.04.2021 was passed and CIRP was initiated. The Applicant filed its claim before the IRP claiming a sum of Rs. 43,45,79,090/- (Rupees Forty Three Crores Forty Five Lakhs Seventy Nine Thousand and Ninety only). The said claim filed by the Applicant was admitted by the IRP.
- vii. On July 16, 2021, the IRP issued a Notice in Form G of the Insolvency Regulations in various newspapers, inviting an Expression of Interest.
- viii. In August, 2021, the Applicant became aware that on December 19, 2020, the Corporate Debtor had entered into a Deed of Assignment with the Respondent Nos. 1 and 2, whereby the Corporate Debtor had assigned its right, title and interest in the Trademark to the Respondent Nos. 1 and 2, for a consideration of Rs. 50,000/- (Rupees Fifty Thousand only).
- ix. The Applicant further became aware that on June 8, 2021, i.e. after CIRP had already been initiated against the Corporate Debtor, the erstwhile Director of the Corporate

Debtor, i.e. Respondent No.3 issued a consent / No Objection Letter (hereinafter. 'the No Objection') on behalf of the Corporate Debtor, thereby representing to the Registrar of Trade Marks that the Corporate Debtor had no objection to the transfer of the Trademark in the name of the Respondent Nos. 1 and 2.

- x. Thereafter, the Applicant took a search on the website of the Trademarks Registry (www.ipindiaonline.gov.in) and found out that pursuant to an application made by the Respondent No.3, on behalf of the Corporate Debtor on December 21, 2020, enclosing the Deed of Assignment and pursuant to the No Objection issued by the Respondent No.3, on behalf of the Corporate Debtor, the Trademark had been transferred from the Corporate Debtor to Respondent Nos 1 and 2, on June 17, 2021.
- xi. The Applicant submitted that it was shocked to note that the Corporate Debtor had sold the Trademark for a paltry sum of Rs. 50,00/- (Rupees Fifty Thousand only) to the erstwhile Directors. The Corporate Debtor has been using the Trademark since April 16, 1987, i.e. for more than a period of 30 years. Further, the goods manufactured and sold under the Trademark are being sold all over the country. As per the Balance Sheet of the Corporate Debtor as on March 31, 2019, the total revenue from operations in the year 2018 2019 was Rs. 3,55,10,44,158.71/- (Rupees Three Hundred Fifty Five Crores Ten Lakhs Forty Four Thousand One Hundred Fifty Eight only) and in the year 2017-2018 was Rs. 3,94,61,85,537.03/- (Rupees Three

Hundred Ninety Four Thousand Sixty One Lakh Eighty Five Thousand Five Hundred and Thirty Seven only). The value of the Trademark would therefore be much higher than Rs. 50,000/- (Rupees Fifty Thousand only). Therefore, it is evident that the Trademark has been sold at a preposterously undervalued price to the Respondent Nos. 1 and 2 by the Corporate Debtor with an intent to defraud the creditors and in blatant contravention of the moratorium.

- xii. It is also pertinent to note that at the time of sale / transfer of the Trademark to the Respondent Nos. 1 and 2, various Petitions filed under Sections 7 and 9 of the Code were pending against the Corporate Debtor before this Hon'ble Tribunal. Therefore, to defeat and defraud the creditors of the Corporate Debtor, the erstwhile Directors of the Corporate Debtor sold the Trademark at an undervalued price to its directors i.e. Respondent Nos. 1 and 2.
- xiii. The Applicant vide letter dated August 18, 2021 brought to the notice of the IRP the aforesaid fraudulent transfer of the Trademark to the Respondent Nos. 1 and 2. Further, a copy of the Deed of Assignment and No Objection was also provided to the IRP. Moreover, vide the said letter, the IRP was called upon to take necessary steps for cancellation of the transfer of the Trademark as well as to take immediate action against the erstwhile Directors of the Corporate Debtor for their fraudulent actions.
- xiv. Similarly, the Applicant also addressed a letter to Respondent Nos. 1 to 3 calling upon them to provide copies

of all the transaction documents in relation to the aforementioned undervalued transaction and any other related party transactions. Respondent Nos. 1 to 3 were also called upon to cooperate with the IRP, to assist him in facilitating any steps that may be required under the provisions of the Code to rectify any illegalities.

- xv. The Applicant apprehends that Respondent Nos. 1 and 2 are utilising the Trademark of the Corporate Debtor to unlawfully receive benefits by entering into agreements for jobs/work orders with third parties. The benefits so received are to be refunded to the Corporate Debtor. Therefore, in the interest of justice it is necessary that Respondent Nos. 1 and 2 are restrained from utilising the Trademark and benefits, if any received by them are paid to the Corporate Debtor.

3. The Reply on behalf of Respondent Nos. 1 to 3 are briefly extracted hereinunder:

- i. The affidavit of Reply has been filed by R1, R2 & R3. The Respondents have tendered apology in following terms:

At the outset, these Respondents are tendering their sincere and unconditional apology before this Hon'ble Tribunal and further praying that no any adverse order may be passed against these Respondents since, the act committed by either of these Respondents are not comes under the contraventions of the provisions u/s. 47 r/w.

section 74 along with section 60 (5) of Insolvency & Bankruptcy Code, 2016.

- ii. The Respondents opposed the prayers sought in the present Interlocutory Application.
- iii. The Respondent Nos.1 & 2 had made the Joint Application by way of Form TM -P inter-alia for transferring of the Trade mark of "PRINCE MUMBAI INDIA" (Originally owned by the Corporate Debtor) in favour of the Respondent Nos. 1 & 2 on or about 21 /12/2020, when no such kind of preventive Order was passed against the Corporate Debtor and further No Insolvency Resolution Professional was appointed thereon.
- iv. The Deed of Assignment w.r.t. adopting the Trade mark name of "PRINCE MUMBAI INDIA" by and between the Corporate Debtor and Respondent Nos. 1 & 2, was also executed on 19/12/2020 i.e. much prior to an appointment of IRP.
- v. The Respondent No.3 has given his No Objection (on the bond paper of Rs. 100/-) on behalf of the Corporate Debtor for transferring the Trade mark of "PRINCE MUMBAI INDIA" in favour of the Respondent Nos. 1 & 2 on or about 08/06/2021 subsequent to the admission of the Company Petition and during the pendency and final adjudication of the CIRP proceedings, believing that the Trademark name of "PRINCE MUMBAI INDIA" has already been transferred

in the joint name of respondent Nos. 1 & 2 long back i.e. somewhere in the month of December, 2020 itself and the No Objection was required just to complete the legal formalities to that effect.

- vi. Despite transferring the name of the registered Trademark "PRINCE MUMBAI INDIA" in favour of Respondent Nos. 1 & 2, none of these Respondents have ever taken or made any attempt to take any monetary benefit out of the said Trademark till date.
- vii. These Respondents further state that they are ready and willing to do the compliance and so also to complete all the legal formalities in order to restore the Trademark "PRINCE MUMBAI INDIA" in the name of Corporate Debtor.
- viii. The Respondent No.4 states to support the I.A. filed by the Applicant.

FINDINGS/OBSERVATIONS

- 4. Heard the Ld. Counsel appearing on both sides and perused the material available on record.
- 5. It is the fact of the case that the CIRP of the Corporate Debtor had been admitted by this Bench vide order dated 16.04.2021 in C.P. (IB)-4345(MB)/2019 filed under Section 9 of the IBC. It is also the fact that pursuant to CIRP admission order dated 16.04.2021 moratorium was imposed within the meaning of Section 14 of the IBC, which states that hereinunder-

- 1) *“Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--*
- a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
 - c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
 - d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

¹*[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in*

force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

¹[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]

²[(3) The provisions of sub-section (1) shall not apply to--

³[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.].

4). The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

6. It is also the fact that the Corporate Debtor was carrying on business under Trade Mark of "PRINCE MUMBAI INDIA" since 16.04.1987. The Trade Mark has been registered with Trade Mark Registry and it was renewed vide a renewal certificate for a period of 10 years from 28.05.2019. It is also seen that the Corporate Debtor had entered into a Deed of Assignment dated 19.12.2020, whereby the Corporate Debtor had agreed to sale the Trade Mark to Respondent Nos. 2 & 3 i.e. the Directors of the Corporate Debtor, for a sum of Rs. 50,000/-. Further in spite of the moratorium order passed on 16.04.2021 the Respondent No. 3 issued No Objection Letter dated 08.06.2021 on behalf of the Corporate Debtor representing to the Trade Mark registry that the Corporate Debtor had no objection to transfer the Trade Mark to the Respondent Nos. 1 & 2. On the basis of Deed of Assignment and No Objection Letter as hereinabove mentioned, the Trade Mark Registry transferred the Trade Mark in the name of the Respondent Nos. 1 & 2.

7. From the fact as aforesaid and the chronology of the events, it is clear that after the admission order passed on 16.04.2021 in the Company Petition (IB)-4345(MB)/2019, CIRP was initiated against the Corporate Debtor and consequently the moratorium under Section 14 of IBC was also imposed. Subsequent to the order dated 16.04.2021, the Committee of Creditors was constituted on 14.05.2021 and the first meeting of the COC was held on 29.05.2021. It is well after that the Respondent No.3 have executed a Consent/No Objection Letter on behalf of the Corporate Debtor for transferring of the Trade Mark on 08.06.2021, which is in clear violation of the moratorium under Section 14 of the IBC.

8. During the period of Moratorium, transferring of the any assets belonging to the Corporate Debtor to any other person could only be considered to be a nullity and bad in law. The action particularly of Respondent No.3 as also of Respondent Nos. 1 & 2 being in contravention to the provisions of Section 14, therefore, cannot have any legal sanctity. The Respondent in their Affidavit-in-Reply have clearly admitted to have committed such violation and have tendered unconditionally apology and have further undertaken to do the compliance and so also to complete all legal formalities in order to restore the Trade Mark in the name of the Corporate Debtor.

9. It is seen from the facts of case that the Trade Mark "PRINCE MUMBAI INDIA" was being used by the Corporate Debtor since 16.04.1987 and as per the balance sheet of the Corporate Debtor as on 31.03.2019 the total revenue from the operation for

Financial Year 2018-19 was Rs. 355.10 crores and that in the Financial Year 2017-18 was Rs. 394.61 crores. Given these facts that such Trade Mark was being used by the Corporate Debtor for more than a period of 30 years and that the turnover in excess of 350 crores was achieved, the value of Trade Mark would be substantial. Therefore, a sum of Rs. 50,000/- on which price the Trade Mark was assigned to the Respondent Nos. 1 & 2 by the Corporate Debtor could only be termed to be substantially undervalued. Further, such assignment is in contravention to the provisions of Section 14 of the IBC. Accordingly, such action of the Corporate Debtor, if allowed, clearly would defeat the purpose of proper and fair Resolution of their Corporate Debtor, which IBC seeks to achieve. In the facts and circumstances of the case, the action of the suspended Directors of the Corporate Debtor squarely falls within the provisions of Section 47 of the Act. Therefore and as held while deciding the IA No. 1259 of 2022, the assignment of the Trade Mark done in favour of Respondent Nos. 1 & 2 by issuing of Consent/NOC on behalf of the Corporate Debtor by Respondent No.3 is hereby **annulled** and from the date on which the Trade Mark was transferred in the name of the Respondent Nos. 1 & 2 in the registry of Trade Mark, it would deemed to be belonging to the Corporate Debtor as if there has been no assignment of the Trade Mark had ever taken place.

10. The Applicant in its Application has also sought to make a case for punishment for contravention of the Resolution Plan as provided in the Section 74 of the Act. As has been mentioned and held hereinabove that the actions of the Respondents Nos. 1, 2 and 3 have been found to be falling under Section 47 of the Act.

Further thereto such action of the Respondent Nos.1, 2 and 3 are in blatant disregard and in contravention to the provision of Section 14 of the IBC. If such actions on the part of the Corporate Debtor is allowed to be done, then it would defeat the very basic purpose of fair resolution being achieved of the Corporate Debtor under the provisions of the IBC. Therefore, the acts committed by the Respondent Nos.1, 2 and 3 are found to be fit for the punishment under Section 74 of the Act.

11. However, while arriving at the quantum of punishment all the facts and circumstances would have to be taken into account. It has been submitted by the Respondents that they have not taken any monetary benefit of the said Trade Mark till date. Further thereto it has to be considered that the Trade Mark was assigned in favour of the Respondent Nos. 1 & 2 on 17.06.2021 but the erstwhile IRP had filed one Interlocutory Application which remained to come on the board for the reasons of the defects being not removed, on 20.10.2021 and thereafter the RP made reference to the Trade Mark Authority about the invalidity of the assignment of Trade Mark to Respondent Nos. 1 & 2 with the Trade Mark Registry. Also the Respondents have tendered unconditional apology in their Affidavit-in-Reply. It is also mentioned that the Ld. Counsel for the Applicant has not put any contrary facts in respect of use of Trade mark by the Respondent Nos.1 & 2 and no arguments were made in respect of quantum of punishment by him.

12. The provision of Section 74(1) under which the case falls reads as under:-

“Where the corporate debtor or any of its officer violates the provisions of Section 14, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to three lakh rupees, or with both”

13. Considering the facts and circumstances of the case in its totality as mentioned hereinabove it is deemed fair, just and reasonable to **impose a fine of Rs. 1.5 lakhs** each on Respondent Nos. 1, 2 and 3 to be payable to the “Bharat Kosh” within 4 weeks from the date of pronouncement of this orders.
14. The Respondent Nos. 1, 2 and 3 shall file their compliance Affidavit of submitting necessary documents, if required, before the Trade Mark Registry and also file Affidavit in compliance of the direction of the payments of Rs. 1.5 lakhs by each of the Respondents within two weeks from uploading of this order.
15. With the above observations and directions, the instant Interlocutory Application is **allowed** and stands **disposed of**.

Sd/-
Charanjeet Singh Gulati
MEMBER (TECHNICAL)

---Rajeev--

Sd/-
Lakshmi Gurung
MEMBER (JUDICIAL)