

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 982 of 2019

[Arising out of an order dated 14th August, 2019 passed in I.A. No. 155 of 2018 in C.P.(IB) No. 41/7/HDB/2017 by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad)]

IN THE MATTER OF:

1. **Deccan Chronicle Marketeers,**
a Partnership Firm,
(earlier known as Deccan Chronicle),
147, S.P. Secunderabad -500 003
and is represented by its Partner
Deccan Chronicle Marketeers Pvt. Ltd.
Represented by its Director
E Venkatram Reddy
.. Appellant No. 1

2. **Deccan Chronicle Marketeers Private Limited**
a private Limited Company,
147, S.P. Secunderabad -500 003
represented by its Director
E Venkatram Reddy
.. Appellant No. 2

3. **Mr. T Venkatram Reddy,**
S/o Late Mr. T Chandrasekhar Reddy,
Plot No. 54, House No. 8-2-703/A-6-C,
Road No. 12, Banjara Hills,
Hyderabad-560 034
.. Appellant No. 3

4. **Mr. T Vinayak Ravi Reddy,**
S/o Late Mr. T Chandrasekhar Reddy,
Plot No. 53, House No. 8-2-703/A-6-C,
Road No. 12, Banjara Hills,
Hyderabad-560 034
.. Appellant No. 4

Versus

1. **Deccan Chronicle Holdings Limited,**
36, Sarojini Devi Road,
Secunderabad,

Represented by SREI Multiple Assets
Investment Trust – Vision India Fund

**.. Respondent No. 1
/Resolution Applicant**

2. Canara Bank

Corporate Branch, TSR Complex,
2nd Floor, 1-7-1, S.P. Road,
Secunderabad – 500 003

**.. Respondent No. 2/
/Financial Creditor**

**3. SREI Multiple Assets Investment
Trust Vision India Fund**

‘Vishwakarma’, Topsia Road (South),
Kolkata – 740 0046

Through its authorised signatory, Mr. Avash Jain

**.. Respondent No. 3/
Resolution Applicant**

4. IDBI Bank

Through its authorized signatory
Cuffe Parade,
Mumbai- 400 005

.. Respondent No. 4

Present:

For Appellants: Mr. P. Chidambaram, Sr. Advocate with Ms. Krutika Raghavan, Mr. Bhairav Kuttaiah, Ms. Sameeksha Patil, Ms. Roshni Jacob Advocates.

For Respondents: Mr. Rishav Banerjee, Mr. Saptarshi Mandal, Advocates for R-1

Mr. Abhijeet Sinha, Mr. Arjun Asthana, Mr. Sidharth Sharma, Ms. Mamta Binani, Mr. Saikat Sarkar, Advocates for RP

Mr. Dhruv Mehta, Sr. Advocate with Mr. PBA Srinivasan, Mr. Keith Varghese, Ms. Prerana Sabharwal, Mr. Parth Tandon, Advocates for R-2

Mr. Abhinav Vasisht, Sr. Advocate with Mr. Sidhartha Barua, Ms. Priya Singh, Mr. Praful Jindal, Advocates for R-4

J U D G M E N T

[2nd September, 2022]

(Per Hon'ble Mr. Justice M. Satyanarayana Murthy)

Aggrieved by the order of National Company Law Tribunal, Hyderabad Bench, Hyderabad (hereinafter will be referred as **Adjudicating Authority**) in I.A. No. 155 of 2018 in C.P.(IB) No. 41/7/HDB/2017 dated 14.08.2019 declaring that the Corporate Debtor Deccan Chronicle Holdings is the owner of Trademarks 'Deccan Chronicle and 'Andhra Bhoomi', allowed the application filed by Resolution Professional Ms. Mamta Binanni.

2. The first Appellant is a partnership firm (hereinafter referred to as '**firm**') was formed on 15.09.1993 with the Appellants Nos. 3 & 4 in the name and style 'Deccan Chronicle' to carry on the business of printing, editing and publication of newspaper by the names of a) Deccan Chronicle, b) Andhra Bhoomi, c) Andhra Bhoomi monthly and d) Andhra Bhoomi weekly. To ensure adequate protection of the Trademarks and goodwill, all these leading publications of Deccan Chronicle, the 1st Appellant firm

applied for registration of the Trademarks Deccan Chronicle on 07.10.1996 bearing Application No. 729889.

3. Subsequently, in the year 2002, the business of the firm and the Trademarks 'Deccan Chronicle' and 'Andhra Bhoomi' (hereafter referred to as **Trademarks**) had grown exponentially, 1st Appellant decided that in order to exploit the market value of the Trademarks and build the Trademarks, it would be better to entrust the task to an entity who has sufficient experience and expertise in building and marketing Trademarks, particularly, in the print media namely Deccan Chronicle Marketeers Private Limited (hereinafter referred to as '**DCMPL**') i.e., Appellant No. 2 herein. 1st Appellant firm also believed that it would be commercially prudent to have business transferred to a Public Co. Ltd. Therefore, 1st Appellant firm decided to ensure two separate transactions. Firstly to entrust the task of building value and image of the Trademarks to an existing expert in the field i.e., to DCMPL- Appellant No. 2 herein and secondly to transfer its business of editing, printing and publishing to a new Public Limited Company.

4. In furtherance to its decision to build the value and image of its Trademarks, the firm entered into an agreement with DCMPL- Appellant No. 2 on 16.12.2002 (Memorandum of Agreement) and transferred its right, title and interest in the Trademarks to DCMPL- Appellant No. 2 as a

sole and exclusive owner thereof from the date of execution of the agreement dated 16.12.2002 for consideration of Rs. 98/- (Rupees Ninety Eight only). Further, a Public Limited Company, in the name and style 'Deccan Chronicle Holding Limited' (hereinafter referred to as '**DCHL**') was incorporated on 16.12.2002. It is pertinent to note that as on the date of its incorporation, the business of the firm was not transferred to DCHL, which was merely incorporated.

5. While the matters stood thus, on 27.12.2002, the firm transferred its business and all its rights, assets and liabilities as on that date to DCHL- 1st Respondent, under an agreement (business transfer agreement) and the transfer would take effect from 01.01.2003. Therefore, the firm did not possess any right, title or interest in the Trademarks either as on the date of transfer i.e., 27.12.2002 or the effective date of transfer. A bare perusal of the balance sheet of the firm as on 31.12.2002 and the balance sheet of Respondent No. 1 as on 01.01.2003 and Annual Report as on 31.03.2003 would indicate that the Trademarks did not stand transferred by Business Transfer Agreement. The balance sheet of 1st Appellant and 1st Respondent, as on the relevant date do not indicate transfer of any intangible asset from Appellant No. 1 to Respondent No. 1.

6. On 01.04.2004, the 1st Appellant firm was reconstituted by inducting a new partner, namely, Deccan Chronicle Marketeers Private

Limited (**DCMPL**)- 2nd Appellant under 'Deed of Addendum' to partnership firm executed between the 1st Appellant and 2nd Appellant was renamed 'Deccan Chronicle Marketeers'. Under the Deed of Addendum, the Respondent No. 2, contribution to the partnership firm for transport of Trademarks for consideration was Rs. 98/- and on reconstitution, the partners were entitled to ownership in the trade marks in proportion to their respective contribution i.e. 2nd Appellant was entitled to 98% in the Trademarks, the existing partners i.e., Appellant Nos. 3 & 4 each entitled to 1% ownership.

7. In and around 2004, an agreement was entered into by the 1st Appellant and 1st Respondent wherein it was agreed that the Firm (Appellant No. 1) would license the Trade Marks to DCHL in exchange for obtaining advertising rights in the newspaper of 1st Respondent-DCHL. In the meanwhile, registration of the trade mark 'Deccan Chronicle' was granted to the Firm on 29.03.2008 w.e.f. 10.10.1996. Thus, the certificate of Registration of Trademarks clearly evidencing that the firm and Appellant Nos. 3 & 4 were the owners of the Trademarks. Again on 02.04.2008, another agreement was entered into by the 1st Appellant and 1st Respondent to record their revised understanding regarding purchase of the advertising space in the newspaper of DCHL by the firm 1st Appellant. In both the aforementioned agreements (hereinafter referred to as Article of Agreement), DCHL-1st Respondent acknowledged that the

Trade Marks are owned by the Firm- 1st Appellant herein. Thereafter, due to some financial constraints, Appellant No. 1 was unable to pay the amount due to the 1st Respondent towards the advertising space, it obtained from 1st Respondent and therefore, 1st Appellant and 1st Respondent decided to enter into a Deed of Settlement on 28.09.2012, whereby, the Appellant No. 1 firm agreed to transfer its ownership in the Trademarks to the 1st Respondent in lieu of the amount due to the 1st Respondent-DCHL under a separate agreement. However, the transfer as contemplated was not materialized and therefore the ownership in the Trademarks remained with the 1st Appellant firm. Even as early as 2016, the 1st Appellant firm which applied for renewal of registration of the Trademarks – ‘Deccan Chronicle’, based on the application filed by the 1st Appellant firm, registration was renewed for a further period of 10 years i.e., upto 2026. Thus, it is apparent that since inception of the Firm, it held exclusive and absolute ownership in the Trademarks and at no point of time, there was any assignment made to DCHL- 1st Respondent or any other entity. DCHL- 1st Respondent merely remained as a licensee of the firm, who is owner of the Trademarks even as on today. Even prior to license agreement of the year 2004, the 1st Appellant firm only granted an implied license to DCHL to carry on business, transferred to it but nothing in right, title or interest was transferred in any manner whatsoever. The purpose of license agreement in the year 2004 was to reduce to writing,

the implied license to use Trademarks for the purpose of carrying on business transferred to the 1st Respondent- DCHL. Thus, DCHL at no point of time owned the Trademarks or had any interest in it but was an exclusive licensee under the Appellant No. 1, firm, which owned the Trademarks.

8. The Corporate Insolvency Resolution Process (hereinafter referred as '**CIRP**') was initiated under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as '**IBC**') against DCHL by Canara Bank in C.P.(IB) No. 41/2017 before the Adjudicating Authority, National Company Law Tribunal. The petition filed by Canara Bank was admitted and on 05.07.2017, the Adjudicating Authority imposed Moratorium under Section 14 of IBC staying all pending proceeding in all Courts against DCHL. The Moratorium was extended for a further period of 90 days vide order of Adjudicating Authority dated 10.11.2018 in C.A. No. 5/2018 in C.P.(IB) No. 41/2017. On 11.05.2018, the Resolution Professional on behalf of DCHL filed I.A. No. 155/2018 seeking a declaration that DCHL- 1st Respondent is the owner of the Trademarks and the Trademarks form part of assets of the 1st Respondent-DCHL.

9. First Appellant filed its objection to I.A. No. 155 of 2018 on 04.06.2018 and the same was adopted by Appellant Nos. 2 to 4. Respondent No. 1 also filed its reply to the same on 04.08.2018 and 2nd

Respondent being a formal party also filed its reply. Subsequently, SREI Multiple Assets Investment Trust-Vision India Fund, Resolution Applicant, submitted a Resolution Plan to the Committee of Creditors (hereinafter '**CoC**'). CoC approved the Resolution Plan on 10.12.2018. Thereafter, the Resolution Applicant submitted the Resolution Plan, approved by CoC, on 11.12.2018, to the Adjudicating Authority and CIRP in respect of 1st Respondent under IBC was concluded, wherein the Adjudicating Authority passed an order on 03.06.2019 approving the Resolution Plan submitted by Resolution Applicant under Section 30(6) and Section 31 of IBC read with Regulation 36(4) of the Insolvency and Bankruptcy Board of India (insolvency Resolution Process of Corporate Persons) Regulations, 2016.

10. The Adjudicating Authority passed an order on 14.08.2019 in I.A. No. 155 of 2018 allowed the Application filed by 1st Respondent only on erroneous grounds. Therefore, the same is challenged before this Tribunal on the ground that the Adjudicating Authority had no jurisdiction to decide the right, title and interest in the Trademarks under IBC, in the absence of any provision under IBC contemplating a detailed trial and leading evidence by the parties, the Adjudicating Authority cannot decide the validity and authenticity of documents in CIRP and lacks no jurisdiction. But the Adjudicating Authority without conducting any detailed inquiry or trial, like the Civil Court, declared the right, title and interest in the

Trademarks that the 1st Respondent- DCHL, which is erroneous on the face of it.

11. Specific contention of the Appellant is that when Resolution Plan is submitted to Resolution Professional claiming right to use brands and Trademarks, approved by CoC and Adjudicating Authority, declaration that the Corporate Debtor is the owner of Trademarks is nothing but alteration or modification of Resolution Plan approved by CoC, such modification is impermissible as per law.

12. It is the contention of the Appellants that the Adjudicating Authority has no jurisdiction when such power is conferred on Jurisdictional District Court, to decide the ownership, right, title and interest in Trademarks. Therefore, usurping such power of District Court, the Adjudicating Authority, recording a finding thereon is illegal and such finding cannot be sustained.

13. It is further contended that the findings and observations of the Adjudicating Authority are unsustainable. In different paragraphs the plea of acquiescence is discussed which is unfounded as no such plea was raised by 1st Respondent-Applicant before the Adjudicating Authority. In the absence of any such plea, the findings recorded by the Adjudicating Authority are erroneous. Finally, it is contended that when separate machinery is provided under a separate statute to decide the right, title

and interest in a Trademarks, the Adjudicating Authority ought not to have recorded its finding declaring that the 1st Respondent is the owner of the Trademarks. Therefore, the findings recorded by the Adjudicating Authority are without inherent jurisdiction and liable to be set aside.

14. Finally, the Appellants prayed to set aside the order dated 14.08.2019 passed in I.A. No. 155/2018 in C.P.(IB) No. 41/7/HDB/2017.

15. Successful Resolution Applicant (henceforth referred as '**SRA**') in the CIRP filed reply denying the material allegations, inter alia, contending that the Resolution Plan of SRA has been approved by the Adjudicating Authority at Hyderabad and the Resolution Plan has been filed by the SRA on the basis of information contained in the Information Memorandum, duly prepared by Resolution Professional on the basis of audited balance sheet of Corporate Debtor and on the basis of the discussion with the Members constituting the CoC at the meeting of the CoC that the Trademarks being "Deccan Chronicles" and "Andhra Bhoomi" belongs to the Corporate Debtor and that the SRA has obtained exclusive unconditional right to use the said Trademarks of the Corporate Debtor pursuant to the approval of Resolution Plan by the Adjudicating Authority.

16. During the CIRP, the Resolution Professional had filed an Application being I.A. No. 155 of 2018 seeking declaration by the Adjudicating Authority, brands being "Deccan Chronicles" and "Andhra

Bhoomi” belong to the Corporate Debtor. While passing the orders dated 03.6.2019 and 02.07.2019 by the Adjudicating Authority, approved Resolution Plan regarding usage of the Trademarks subject to the outcome of the said I.A. No. 155 of 2018 but the orders were never challenged by the Appellants herein when certain observations were made in the order dated 03.06.2019, while, approving the Resolution Plan and no clarification was sought on the orders passed by the Adjudicating Authority. Therefore, the present appeal is barred by principles of waiver, estoppel and acquiescence.

17. It is further contended that the Trademarks in question are the assets of the Corporate Debtor and the same was shown as the assets of the Corporate Debtor in its audited balance sheet. The Appellants never challenged the balance sheet of the Corporate Debtor. As such, the Appeal is liable to be dismissed on the grounds of acquiescence, estoppel and waiver. Moreover, the IBC has a non-obstante clause which overrides the provisions of the Trademarks Act, 1999. Hence the Adjudicating Authority is vested with power to decide such issue.

18. SRA further contended that the Corporate Debtor is one of the reputed print media Company in India and is actively engaged in print as well as digital media under the following brands:

i) *“Deccan Chronicle, an English Daily from Hyderabad, Karimnagar, Vijayawada, Rajahmundry, Visakhapatnam, Ananthapur, Nellore, Chennai, Coimbatore, Bengaluru, Kochi, Thiruvananthapuram and Kozhikode.*

ii) *Financial Chronicle, an English financial daily from Delhi, Mumbai, Hyderabad, Bengaluru and Chennai*

iii) *The Asian Age, an English daily from Mumbai, Delhi and Kolkata*

iv) *Andhra Bhoomi, a vernacular (Telugu) daily from Hyderabad, Karimnagar, Vijayawada, Rajahmundry, Vishakhapatnam, Ananthapur, Nellore; and*

v) *Andhra Bhoomi, a vernacular (Telugu) weekly and monthly from Hyderabad.*

“Deccan Chronicle”, the flagship brand of the Corporate Debtor was launched in 1938 and is the largest circulated English newspaper in South India. I say that the Trademarks in question are inseparable from the business of the Corporate Debtor because it is eventually the business activities of the Corporate Debtor which have added value and goodwill to the Trademarks in question.”

19. The first and foremost contention of the Senior Counsel for the Appellants, Mr. P. Chidambaram is that the order of Adjudicating Authority amounts to altering or modification of the resolution plan already approved. Learned Senior Counsel for the Appellants, Shri P. Chidambaram, also contended that the provision of

IBC will have no over-riding effect on the provision of Trademarks Act, which is a complete code by itself to deal with the Trademarks registration, assignment and transfer of Trademarks, renewal etc. Therefore, the method prescribed under the Trademarks Act alone is to be followed to assign and transfer a registered Trademarks. In the absence of any legal transfer or assignment of Trademarks in favour of the Corporate Debtor, DCHL– Respondent No. 1 herein, it cannot be held that Trademarks belonging to Respondent No. 1- DCHL He also further submitted that a declaration that the Respondent No. 1 is the owner of the Trademarks cannot be granted by the Adjudicating Authority under IBC and such declaration can be granted by a competent Civil Court. That apart, the jurisdiction of the Adjudicating Authority under IBC, is limited, either Section 60(5) or Section 238 of IBC, do not permit the Adjudicating Authority to decide such issue of ownership of Trademarks. Therefore, the finding recorded by the Adjudicating Authority declaring that the Respondent No. 1 – DCHL is the owner of the Trademarks, is without jurisdiction and the Adjudicating Authority transgressed its limit of jurisdiction, passed the impugned order and the order is liable to be set aside. However, he reported no objection for the use of the Trademarks by Respondent No. 1 and such finding recorded by the Adjudicating Authority is not challenged during the arguments by the learned Senior Counsel. At the end, he requested to set aside the order dt. 14.08.2019 passed by the

Adjudicating Authority in I.A. No. 155 of 2018 in C.P.(IB) No. 41/7/HDB/2017 whereunder that the Respondent No. 2 is declared as the owner of Trademarks. Learned Senior Counsel for the Appellant has filed brief Written Submission relying on certain judgments of the Hon'ble Supreme Court which will be referred at an appropriate stage while deciding the issue. The Counsel for the Respondents supported the order under challenge in all respects.

20. Considering rival contentions, perusing material available on record including impugned order under challenge, passed in I.A. No. 155 of 2018 in C.P.(IB) No. 41/7/HDB/2017, the points need be answered by this Tribunal are as follows:

- a) Whether declaration of ownership over Trademarks after approval of Resolution Plan by CoC, which is not a part of Resolution Plan amount to modification or alteration of approved resolution Plan by CoC, if so, the order is liable to be set aside?
- b) Whether the Adjudicating Authority under IBC is vested with jurisdiction to decide title or right or ownership over Trademarks, when jurisdiction is conferred on District Judge as per the provisions of Trademarks Act, if not the order passed in I.A. No. 155/2018 dated 14th August, 2019 is liable to be set aside?

POINT NO. 1:

21. One of the major contentions of the Appellants is that granting relief in I.A. No. 155 of 2018 amounts to modification of approved Resolution Plan submitted by Resolution Applicant which is impermissible under law whereas the learned Counsel for the Respondents contended that based on the Information Memorandum issued by Resolution Professional, the Resolution Applicant submitted its Resolution Plan. The Information Memorandum was issued by the Resolution Professional on the basis of entries in the balance sheet of the Corporate Debtor where the Trademarks were shown as assets of the Corporate Debtor. Therefore, it does not amount modification or alteration of the approved Resolution Plan submitted by the Resolution Applicant approved by CoC and Adjudicating Authority.

22. It is not in quarrel that based on Information Memorandum, the Resolution Applicant submitted its Resolution Plan but as per the Plan submitted by the Resolution Applicant, Resolution Applicant did not claim ownership over the Trademarks 'Deccan Chronicle' and 'Andhra Bhoomi' but claim is confined to only the right to use, vide clause 11.12 of Resolution Plan which runs as follows:

“11.12 Adjudicating Authority to pass necessary orders/give appropriate directions to give effect that the Corporate Debtor has the perpetual exclusive right to use the brands namely

(i) DECCAN CHRONICLE; (ii) ANDHRA BHOOMI; (iii) THE ASIAN AGE; (iv) FINANCIAL CHRONICLE; and (v) DECCAN CHARGERS; and (vi) ODYSSEY without any financial implications for the purpose of running its business.”

23. It is also an admitted fact that the Resolution Plan after several, modification, submitted by SRA was approved in the 20th CoC meeting after the due deliberations. Thereafter the Resolution Professional filed an Interlocutory Application under Section 31 of the IBC for approval vide order in I.A. No. 66/2019 dated 03.6.2019, the Resolution Plan was approved by CoC with 81.89% voting, since the Plan complied the requirement under Section 30(2), 30(4) of IBC, the Adjudicating Authority passed an order entitling the Corporate Debtor to use the brand name of ‘Deccan Chronicle’ and ‘Andhra Bhoomi’, subject to order in IA No. 155 of 2018, which was pending as on that date. The order of Adjudicating Authority relating to use of Trademarks is as follows:

“16. The Resolution Applicant has to obtain necessary approval if any required within one year as per Section 31(4) of the Code. The Resolution Applicant further prayed for order/direction to use brand name of the Corporate Debtor. However, an Application was filed claiming exclusive right over the brand name/Trademarks of the Corporate Debtor. Subject to the result of the said Application, the Resolution

Applicant is entitled to use brand name/Trademarks of the Corporate Debtor as stated in Clause 11.12 of the Resolution Plan.”

24. A bare look at Resolution Plan submitted by the SRA and the approval of the same by the CoC clearly establishes that the SRA sought only a direction to use the brand names of ‘Deccan Chronicle’ and ‘Andhra Bhoomi’ by Corporate Debtor as claimed in paragraph 11.12 of the Resolution Plan approved by CoC. The decision of CoC is based on the commercial wisdom, which cannot be interfered by Adjudicating Authority or this Tribunal while exercising power either under Section 60(5) or any other provision of IBC. The commercial wisdom of CoC is supreme, safeguards are provided to such commercial decision vide **“Vallal RCK Vs. Siva Industries Ltd”**¹ dated 03.06.2002. Earlier, Hon’ble Apex Court in **K. Sashidhar Vs. Indian Overseas Bank**, held that commercial wisdom of CoC is supreme; added to that **“Committee of Creditors of ESSAR Steel India Limited (through authorised signatory) Vs. Satish Kumar Gupta and Ors.”**², the Hon’ble Apex Court succinctly held that CoC’s commercial decision will prevail, if the Resolution Plan satisfied the legal requirements under Section 30(2) and 30(4) IBC.

25. Since the Resolution Plan satisfied the legal requirements, it was approved by CoC in its commercial wisdom and also approved by

¹ CIVIL APPEAL NOS. 18111812 OF 2022

² (2020) 8 SCC 531

Adjudicating Authority subject to rider. The Resolution Professional filed IA No. 155/2018 claiming ownership on the brands “Deccan Chronicle” and “Andhra Bhoomi” during pendency of petition under Section 31 of IBC, but the IA No. 155/2018 was allowed by Adjudicating Authority. If for any reason the CoC decision i.e. approval is against any law, the course open to the Adjudicating Authority is to return the Plan for fresh consideration and approval. Instead of following the procedure, the Adjudicating Authority allowed I.A. No. 155/2018 without approval of CoC in its meeting. In the judgment **“Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and others”**³ when a decision was taken by CoC in its commercial wisdom, the same cannot be interfered by Adjudicating Authority exercising power under Section 60(5) of IBC.

26. The role of Resolution professional is only a facilitator, cannot act either as Creditors or Corporate Debtor or Adjudicating Authority but the Resolution Professional has filed the I.A. No. 155/2018, may be to protect the interest of CoC for maximization of value of assets of Corporate Debtor.

27. In the Resolution Plan, vide clause 11.12, the SRA claimed right to use the brand names of ‘Deccan Chronicle’ and “Andhra Bhoomi” but in latter application in I.A No. 155/2018, the Resolution Professional on her own claimed Right and Title to registered Trademarks “Deccan Chronicle”

³ Civil Appeal No. 3395 of 2020, (2022) 1 SCC 401

and “Andhra Bhoomi”. Right to use is distinct from right and title to incorporeal property, right to use is only licence but title creates ownership, which is superior right. Hence creation of superior right in incorporeal property i.e., Trademarks tantamount to alteration or modification of approved Plan by CoC in its commercial wisdom, though conditional and such conditional approval by Adjudicating Authority is contrary to law.

28. In **“Ghanshyam Mishra and Sons Vs. Edelweiss Asset Reconstruction Co. Ltd.”⁴** the full bench of Hon’ble Apex Court held in para 130 of the judgment as follows:

***“... that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.*”**

⁴ CIVIL APPEAL NO.8129 OF 2019

29. If the above principle is applied to the present appeal, the claim of ownership over the Trademarks is claimed for the first time during pendency of petition under Section 31 of IBC, filed after approval of Resolution Plan by CoC in its commercial wisdom. In the Plan, SRA did not claim such right over the Trademarks but only claimed right to use. As such the claim of ownership over Trademarks after approval of Resolution Plan by CoC is deemed to be extinguished in view of law declared by Hon'ble Apex Court. But the Adjudicating Authority did not examine the facts with reference to law.

30. In addition to the law declared by Hon'ble Apex Court in **“Ghanshyam Mishra and Sons Vs. Edelweiss Asset Reconstruction Co. Ltd,** the Hon'ble Supreme Court in **“Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr.”**⁵ the Hon'ble Supreme Court held:

“Resolution Plan is binding and irrecoverable between the CoC and the SRA in terms of the provisions of the IBC and the Insolvency and Bankruptcy Board of India. In the instant case, in view of the principle laid down in the above case, once the plan is approved either with condition or without condition, the same cannot be modified or altered or withdrawn.”

⁵ Civil Appeal No. 3224 of 2020

31. If the principle laid down in “***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr.***” referred supra is applied to the present fact of the case, allowing the Application filed under Section 60(5) declaring that the Corporate Debtor as the owner of the Trademarks would amount to alteration of the Resolution Plan since the plan submitted by SRA is only for use of brand name of Trademarks but whereas the Adjudicating Authority granted relief beyond the claim of SRA annexing a rider to the relief in I.A. No. 155/2018. Therefore, such modification of Resolution Plan is contrary to the law laid down by the Hon’ble Apex Court in “***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr.***” referred Supra. Hence the relief granted by Adjudicating Authority to the Resolution Applicant- 1st Respondent is contrary to the law laid down by the Hon’ble Apex Court in “***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr.***” since the relief claimed and granted in I.A. No. 155/2018 in C.P.(IB) No. 41/7/HDB/2017 is beyond the clause 11.12 of approved Resolution Plan. SRA is contending that the Resolution Plan was submitted based on Information Memorandum, it is for the Applicant to place on record the Information Memorandum to claim a relief of declaration of ownership or right to the brand name of ‘Deccan Chronicle’ and ‘Andhra Bhoomi’, for the reasons best known to them, none of the parties placed on record the

Information Memorandum. Therefore, relief granted by the Adjudicating Authority in I.A. No. 155/2018 in C.P.(IB) No. 41/7/HDB/2017 is contrary to the law laid down in “***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited & Anr.***”. On this ground, the order is liable to be set aside.

32. In view of the law declared by Hon’ble Apex 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 Trademarks, 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 Trademarks “Deccan Chronicle” and “Andhra Bhoomi” is illegal and the Adjudicating Authority transgressed the jurisdictional limits. Consequently, the order passed in I.A. No. 153/2018 dated 14th August, 2019 is liable to be set aside.

33. In view of our findings, the order in I.A. No. 155/2018 dated 14th August, 2019 is hereby set aside holding this point in favour the Appellant and against the Respondents.

POINT NO. 2:

34. Since this point relates to jurisdiction of Adjudicating Authority to decide the ownership of Trademarks, no finding need be recorded in view

of findings on Point No. 1, while leaving it open to the parties to approach appropriate authority or Tribunal at appropriate time, whenever need arises.

35. In the result the Appeal is allowed setting aside the order in I.A. No. 155/2018 in C.P.(IB) No. 41/7/HDB/2017 dated 14th August, 2019 passed by Adjudicating Authority while leaving it open to parties to approach the competent Court or authority or Tribunal at appropriate stage.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Barun Mitra]
Member (Technical)

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