

Any amount due against permission to use trademark in relation to licensed products shall be treated as operational debt: NCLAT

Facts of the case - Somesh Choudhary, Suspended Director at Global Fragrances (P.) Ltd. v. Knight Riders Sports (P.) Ltd. - [2022] (NCLAT-New Delhi)

In the instant case, a Corporate Insolvency Resolution Process (CIRP) was initiated against Corporate Debtor. A license agreement was entered into between the corporate debtor and the respondent, who was the registered trademark owner of the trademark (KKR).

In terms of the agreement, respondent granted an exclusive right and a licence to use its trademark with the licensed products manufactured and sold by the corporate debtor, and the corporate debtor was obliged to pay certain consideration in form of 'compensation' to respondent as stated in the agreement.

Later, respondent raised invoices for an amount towards minimum guaranteed royalties payable by corporate debtor under license agreement. Despite several reminders corporate debtor failed in making payment. Consequently, respondent issued a demand notice and filed application under section 9 and same was admitted by NCLT.

Pursuant to which a appeal was preferred claiming that the appellant-director of the corporate debtor submitted that the claim arose out of non-payment of Minimum Guaranteed Royalties, which did not arise out of non-payment of any goods or services and, therefore, could not be an operational debt.

Decision of the case :

- i. Hon'ble NCLAT observed that, corporate debtor was permitted to use trademark in relation to its licensed products, there was temporary transfer/permission to use, constituting 'provision of service' rendered by respondent and, therefore, same fell within definition of service and any amounts 'due and payable' arising out of such service was an operational debt.

Further, Hon'ble NCLAT held that granting an exclusive right and license to corporate debtor to use trademark in association with licensed products had a direct nexus with business operations and sales also with actual supplied products by corporate debtor and, therefore, claim in respect of such provisions of 'goods and services', under terms of agreement, fell within ambit of definition of operational debt.