

Inventphile Ventures Private Limited ... vs Brinerds Ventures Private Limited & Ors on 12 December, 2023

Author: C.Hari Shankar

Bench: C. Hari Shankar

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 855/2023 & I.A. 23916/2023
INVENTPHILE VENTURES PRIVATE LIMITED
(THROUGH ITS DIRECTOR MR. VAIBHAV SHUKLA)

.....
Through: Mr. J. Sai Deepak, Mr. Gau
H. Sethi, Mr. Anmol Joshi, Mr. Deep
Chandra and Mr. Anant Bajpai, Advs.

versus

BRINERDS VENTURES PRIVATE LIMITED & ORS.

..... De
Through: Mr. Pratyush Miglani, Adv.
D-1 & 3
Mr. Ashim Sood, Mr. Rishad A.
Chowdhury, Mr. Yogesh Malik and Mr.
Shrey Sharma, Advs. for D-5
Ms. Padmaja Kaul, Mr. Yugank Goel and
Mr. Kushagra Sah, Advs. for D-6
Mr. Ankur Sangal, Ms. Sucheta Roy and
Ms. Amrit Shamra, Advs. for D-8

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% 12.12.2023

1. This is a suit instituted by Inventphile Ventures Pvt. Ltd. through its Director, Vaibhav Shukla. The plaintiff alleges that Defendants are infringing the registered trademarks of the plaintiff.

The mark that the plaintiff seeks to assert is . It stands registered in favour of the plaintiff in class 36 in respect of "Financial Affairs, Monetary Affairs, Cyptro Currency Services, Crypto Currency Exchange Services, Brokerage Services, Financial This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:45 Consultancy and Advisory Services Including class 36" with effect from 14 March 2022.

2. According to the assertions in the plaint, the plaintiff owns and operates an online platform called "LetsKrypto", over which users can buy, sell, trade and pay with crypto currencies. "Brine" is stated to be a crypto currency platform created by the plaintiff, which is the decentralised exchange version of the "LetsKrypto" crypto currency platform.

3. It is necessary to identify the defendants before proceeding further. Defendant 5, Shaaran Lakshminarayanan and the plaintiff and Vaibhav Shukla were and continue to be the directors in the plaintiff company Inventphile Ventures Pvt. Ltd. Defendant 2, BRS Tech Services Ltd. is a company incorporated in the British Virgin Islands, of which Defendant 5, Mr. Shaaran Lakshminarayanan, for whom Mr. Ashim Sood appears, claims to be the sole director (as, apparently, the law in the British Virgin Islands permits a company to be incorporated with one director). Defendants 3 and 4 are former employees of the plaintiff and Defendants 6, 7 and 8 are investors in the plaintiff company and in Defendant 2 BRS Tech Services Ltd.

4. The plaintiff is aggrieved by the use, by the defendants, of the marks and which are deceptively similar to the mark of the plaintiff.

5. Mr. Sai Deepak, learned Counsel for the plaintiff submits that Defendants 3, 4, 6, 7 and 8 have been impleaded in the present suit as, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:45 according to the plaintiff, they are in collusion with Defendants 1, 2 and 5 in infringing the plaintiff's registered trademark. Ms. Padmaja Kaul, learned Counsel for Defendants 6 submits that Defendant 6 has neither invested in the plaintiff nor in Defendant 2, BRS Tech Services. Ms. Amrit Sharma, learned Counsel appears for Defendant

8. Ms. Kaul and Ms. Sharma both emphatically refute the allegation of collusion with any of the other defendants. For the purposes of the order being passed today, it is not necessary for me to enter into the allegations of collusion of Defendants 3, 4, 6, 7 and 8.

6. Mr. Miglani, learned Counsel for Defendants 1 and 3 submits that Defendant 1 is not using the impugned mark, and does not intend to use the mark at any future point of time either. As such, he submits that, insofar as the allegation of infringement is concerned, Defendant 1 has no role to play. The statement is taken on record.

7. What has to be seen, therefore, is whether an injunction against use of the impugned marks and by Defendants 2 and 5 ought, or ought not, to be granted.

8. I may, even at this juncture, note that Mr. Sood, learned Counsel who appears on behalf of Defendant 5, has not contested the allegation of deceptive similarity between the plaintiff's mark and the impugned and marks. Even otherwise, the marks are, at a plain glance, deceptively similar, both in respect of the logo forming part of the marks as well as the word "Brine" which is written in white on a black background. On the face This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:46 of it, therefore, the two marks are deceptively similar to each other.

9. Mr. Sai Deepak submits that, as the plaintiff is the registered proprietor of the mark, and the Defendants 2 and 5 possess no registration in respect of the impugned and marks, the law clearly requires Defendants 2 and 5 to be enjoined from using the said marks.

10. Even though we are at a stage of ad interim injunction, the prayer of the plaintiff was seriously contested and detailed arguments have, therefore, been heard, from Mr. Sai Deepak on behalf of the plaintiff and Mr. Ashim Sood on behalf of Defendant 5.

11. Mr. Sood initially raised several preliminary objections. He contended that the plaintiff has not approached this Court with clean hands and has resorted to conscious suppression of facts which, even by itself, disentitles the plaintiff from any equitable relief. Mr. Sood has placed considerable reliance on proceedings instituted by the plaintiff before the learned National Company Law Tribunal ("the learned NCLT"). Vaibhav Shukla, apparently, instituted, initially, one petition on or around 17 April 2023, under Sections 241 and 242 of the Companies Act, which was never pursued, though it was filed. That petition continues to languish at the filing counter of the NCLT and will be referred to, hereinafter, as "the first Company petition".

12. The plaintiff and Mr. Vaibhav Shukla, thereafter, instituted a separate petition under Sections 241 and 242 of the Companies Act ("the second Company petition") before the learned NCLT on or This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:46 around 23 November 2023. Mr. Sood sought to point out that the plaintiff has also incorporated, in the said petition, averments regarding the allegations regarding trademark infringement, by Defendants 2 and 5 of the mark registered in the plaintiff's favour. Mr. Sai Deepak, however, contests the submission and asserts that the averments in the body of the petition filed before the learned NCLT were only regarding unauthorised use of the assets of the plaintiff by Defendants 2 and 5.

13. Mr. Sood has particularly invited my attention to prayer (e) which forms part of the interim relief sought in the second company petition, which reads thus:

"e) To grant ad-interim injunction against any sort of illegal, unauthorized use of assets of the Applicant No. 2 including servers, platforms, technologies, software, trademark, copyrights etc."

14. According to Mr. Sood, prayer (e) encompasses, within itself, the prayer for protection against infringement of the plaintiff's registered trademark, raised in the present suit. Mr. Sood submits that, having raised the issue of infringement of the plaintiff's trademark before the learned NCLT in

the second Company petition, the plaintiff cannot simultaneously maintain the present suit and seek an interlocutory injunction against infringement. At the very least, he submits that the consideration of the plaintiff's prayer for grant of interim injunction ought to await the outcome of the proceedings before the learned NCLT in the second Company petition, as the same relief has been sought in the said proceedings.

15. Mr. Sood has also sought to submit that the plaintiff has This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:46 deliberately concealed both the first and the second company petition from the present proceedings and, therefore, is not entitled to any equitable relief from this Court. He has drawn my attention to paras 13 and 41 of the plaint which read thus:

"13. A comparative analysis of Plaintiff and Defendant(s) marks is given below:

S. No.	Particulars
1	Trade Marks
2	First Adoption
3	Goods/Services provided Cryptocurrency Exchange
4	Earliest Trade Mark

application/registration 2022 in the name Not known in India for Brine of Plaintiff formative marks Inventphile Ventures Private Limited Thus it is crystal clear from the above that Plaintiff is the prior adopter/user/registrant of Plaintiff Mark inter-alai, the device mark and trademark namely BRINE/ and Brine formative marks vis-a-vis the Defendant(s). The dishonesty and mala fide of Defendant(s) is evident since in addition to adoption of identical mark 'BRINE' Defendant(s) has also copied deceptively similar financial products as of Plaintiff. Further Defendant No.1 has also gotten the domain name (<https://www.brine.fi/>) of the Defendant No.1 Company. The Plaintiff also has got knowledge that the Defendant(s) are offering similar/same services with the deceptive mark and misrepresenting the users (innocent investors) of the Plaintiff and causing irreparable loss of profit and goodwill to the Plaintiff. Moreover, it is pertinent to mention that Defendant No.3

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Thereafter, under the illegal conspiracy and in collusion with investors (also Defendants) of the Plaintiff No.1, the Defendant No.3 to 8 through and with Defendant No.1 and 2 tried to secretly and illegally hive off the business of the Plaintiff and eliminated The Director from the line of business. Suitable criminal actions of data breach, data theft and technology theft along with illegal usage of Plaintiff Mark for riding over the goodwill of the Plaintiff has been initiated. Similarly, all the rights and remedies available. Thus, Plaintiff is left with no option but to approach this Hon'ble Court under the extant law suit. Such adoption and use by Defendant(s) is not a coincidence and is aimed at deriving unjust pecuniary benefits at the expense of Plaintiff. Defendant(s) ought to be, inter alia, permanently restrained from using the objectionable marks.

41. The Plaintiff have not previously or concurrently filed or instituted any other legal proceedings in connection with the subject matter of the present suit before this Hon'ble Court or the Supreme Court or any judicial tribunal within the territories of India."

39. He submits that the plaintiff has, in paras 13 and 41 of the plaint, deliberately suppressed the factum of the aforesaid two company petitions having been instituted before the learned NCLT, even though the plaintiff has disclosed the pendency of criminal litigations between the parties. This, therefore, by itself, according to Mr. Sood, forecloses the possibility of grant of any interim relief to the plaintiff. Mr. Sood also submits that the averments in the company petition discloses the existence of a cloud on the authority of Mr. Vaibhav Shukla to represent the plaintiff and that, even for this reason, the averments in the company petition are relevant.

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16. Mr. Sood also sought to raise an objection regarding the authority of Mr. Vaibhav Shukla to institute the present suit. He has drawn my attention to the Board Resolution dated 22 August 2022,

on the basis of which the present suit has been instituted by Mr. Vaibhav Shukla. It reads thus:

"INVENTPHILE VENTURES PRIVATE LIMITED CIN U74999DL2020PTC360293
330 SECTOR-D, POCKET-6, KAVERI BLOCK, VASANT KUNJ, NEW DELHI 110070
E m a i l I d : l e g a l @ l e t s k r y p t o . o r g

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF INVENTPHILE VENTURES PRIVATE LIMITED HELD AT THE REGISTERED OFFICE OF THE COMPANY AT FLAT NO 330 SECTOR-D, POCKET-6 KAVERI BLOCK, VASANT KUNJ, NEW DELHI 110070 ON 22ND DAY OF AUGUST 2022 AT 11:00 AM RESOLVED THAT Mr. Vaibhav Vats Shukla and Mr. L. B. Shaaran, Directors of the Company be and are individually and severally hereby authorized to represent the Company, engage Attorneys and enter into, make, sign, seal, execute, deliver, acknowledge, perform all petitions, deeds, declarations as deemed necessary, proper or desirable in relation to any litigations or actions required to be taken by the Company in any place in India, pertaining to customer complaints, FIRs, police notices, criminal complaints and the like."

17. Mr. Sood submits that the authorisation to Mr. Vaibhav Shukla, as per the afore-extracted resolution did not include the authorisation to institute the present suit for infringement. It only extended to instituting actions pertaining to customer complaints, FIRs, police notices, criminal complaints and the like. Mr. Miglani, who appears for Defendant 1, has supported this contention and has, in this context, placed reliance on the judgment of a learned Single Judge of the High This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 Court of Madras in K.N. Sankaranarayanan v. Shree Consultations and Services Pvt. Ltd.1, from which he places reliance on para 9, specifically to the following statement of law contained in the said paragraph:

"It is true that ordinarily the court will not non-suit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. Order 29, Rule 1 of the Code of Civil Procedure, 1908, does not authorise persons mentioned therein to institute suits on behalf of a corporation - it only authorises them to sign and verify the pleadings on behalf of the corporation. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Such power can be conferred by the Board of Directors only by passing a resolution in that regard."

18. That apart, Mr. Sood submits that one of the grievances of the plaintiff, as the petitioner before the learned NCLT in the second company petition was that Mr. Vaibhav Shukla been illegally ousted from the plaintiff company. Mr. Sood, however, candidly acknowledges that Mr. Vaibhav Shukla

continues to remain a director in the plaintiff company till date. Mr. Sood has specifically placed reliance on paras 31 and 33 of the second company petition, which read thus:

"31. That notwithstanding that it was the Respondent No. 1 who had been acting prejudicially to the interests of shareholders and other stakeholders of the Company, the Applicant No. 2 Company and the Respondent No. 8 Company without any lawful authority from the Board of Directors, issued identical Show Cause Notices dated 09.09.2022 to the Applicant No. 1 raising false and frivolous allegations against the Applicant No. 2. The allegations were pertaining inter alia to the alleged mishandling of pre-seed round, finances, bank accounts and other frivolous allegations.

The Copy of illegal notices dated 09.09.2022 issued by the Applicant No. 1 and Respondent No. 8 Company is marked and herewith annexed as ANNEXURE NO. P 19.

1 1994 1 LW 602 (MAD) This is a digitally signed order.

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33. It is submitted that there were several correspondences being exchanged between the Applicant No. 1, Respondent No. 2 and Respondent No. 1 for possible negotiations and settlement between 17.09.2022 to 25.09.2022. Pursuant to the settlement talks, the Applicant No. 1 even had a meeting with Respondent No. 1, Mr. Avik Biswas and Mr. Ramanuj Gopalan (both on behalf of Respondent No. 2) on 20.09.2022 at the office of Elevation Capital VII DA Holdings Limited) i.e., Respondent No. 2. However, upon failure of negotiations, the Applicant No. 1 was sent a back dated Termination Notice dated 16.09.2022 which was received on 23.09.2022, which shows that constant efforts were being made to illegally oust the Applicant No. 1 from the Company. It is submitted that the Termination Letter dated 16.09.2022 sent by Respondents No. 3 was nothing but an attempt to illegally take over the control of the company to further his and his close aides' vested interests. The said Termination Letter erroneously cited the Show Cause Notice and the Share Subscription Agreement dated 01.03.2022 Shareholders Agreement dated 01.03.2022, terming the Applicant No. 1 as a "Bad Leaver", as the basis of the termination of the Applicant No. 1 from the role of Chief Business Officer and Co-Founder of the company. The company also offered a one-time settlement of Rs. 2,00,000/- (Rupees Two Lac only) which was not acceptable to the Applicant No. 1 for being contrary to, inter alia, the Share Subscription Agreement dated 01.03.2022.

A copy of Termination letter dated 16.09.2022 sent to the Applicant No. 1 is marked and annexed hereto as ANNEXURE P21;

The Copy of emails exchanged between the Applicant No. 1 and Respondent No. 2 and Respondent No. 1 regarding settlement talks is annexed hereto and marked as ANNEXURE P22."

19. Mr. Sood has also placed reliance on the minutes of an Extraordinary General Meeting (EGM) of the member of the plaintiff company, held on 14 October 2022, which contains the following resolution:

"RESOLVED FURTHER THAT pursuant to Section 166, 179 (4) of the of Companies Act, 2013 and other applicable provisions, if any, and rules framed thereunder, including any statutory amendment thereto or modification(s) or re-enactment thereof for the time being in force, the shareholders be and hereby revoke the following powers entrusted to Mr. Vaibhav Vats Shukla (DIN:

o8669255), Director of the Company with immediate effect in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 supersession of all the resolutions passed by the Board of Directors or shareholders of the Company, except to the extent of complying with the statutory requirements of the Company under the Companies Act, 2013 or any other applicable law in force :

1. To operate any existing bank account or open any new bank account in the name of the Company, including but not limited to access to such bank accounts through any banking channels, withdrawal of money, transfer of money, issuing of cheques/guarantees etc.; and
2. To enter into any contracts and commercial arrangements on behalf of the Company."

20. Mr. Sood's submission is that the minutes of the EGM dated 14 October 2022 superseded the resolution dated 22 August 2022 on the basis of which Mr. Vaibhav Shukla claims to be authorized to institute the present suit on behalf of the plaintiff company. To a query from the Court as to whether Mr. Vaibhav Shukla, who remains one of the only two directors in the plaintiff company, was included in the EGM held on 14 October 2022, Mr. Sood answers in the negative, but submits that Mr. Vaibhav Shukla, of his own will and volition, chose not to participate in the said EGM.

21. On the merits of the matter, Mr. Sood submits that it is not an exorable rule that, in every case of infringement, an injunction must follow. He submits that, though grant of injunction is the normal sequitur to a finding of infringement, in a case such as the present, the Court should depart from that principle.

22. Mr. Sood thereafter proceeded to take me through Section 29 of the Trade Marks Act and emphasised the words "permitted use". Mr. Sood's submission is that, if the defendants are using the impugned mark, it is with the implied consent of the plaintiff and that, therefore, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 the plaintiff cannot maintain the present suit and seek an injunction against the said use.

23. Mr. Sood has also questioned the entitlement of the plaintiff to injunction on the argument that the plaintiff has himself not been using the mark which the plaintiff asserts. He submits that there is no averment in the plaint which discloses any such use, by the plaintiff, of the asserted mark, though it was registered in the plaintiff's favour with effect from 14 March 2022. Mr. Sood has, in this context, placed reliance on para 17 of the plaint, which reads as under:

"17. The Plaintiff has played in a pivotal role in setting up the business side of the Plaintiff Company and ensuring that it was compliant with all the regulations so that discussions could be initiated with venture capital fund firms and other investors for seeking investment in the Company. It is pertinent to mention that Defendant No.5 was also the promoter of the Company and still holds the position of other director in the Company, however, his illegal acts against the Company and Director have presently lead to shutting down of the Company including almost all its operation."

24. Thus, submits Mr. Sood, when the plaint contains no assertion of use, by the plaintiff, of the mark and, on the other hand, specifically states that the plaintiff company has shut down, the plaintiff cannot be said to be entitled to any interim injunction. To support his stand that the absence of use, by the plaintiff, of an asserted trademark can itself constitute a basis to deny interim injunction, Mr. Sood places reliance on paras 23 and 26 of the judgment of a Division Bench of this Court in Veerumal Praveen This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 Kumar v. Needle Industries (India) Ltd.² and on paras 17 and 19 of the judgment of a Division Bench of the High Court of Madras in Malar Network (P) Ltd. v. Arun Prasad D3:

Paras 23 and 26 from Veerumal Praveen Kumar

23. The primary aspect in our considered view which needs to be examined is the issue relating to the respondents being the registered user of the trademark and whether the allegations of non-use has any effect of the same. The Counsel for the parties have taken us through the documents placed on record. The respondents had filed various documents to show their sales. These are in the form of invoices and other materials. We find force in the submission of learned Counsel for the appellant that the material placed on record shows sales only for a short period of time from

1977 to 1979. It is an admitted position that the inter se licence agreement between the two respondents did not survive after 1981, which prima facie show that there has been no sales by the respondents after 1981. Though the aspect of global reputation has been mentioned above, as the second issue, it would be pertinent to state at this stage that no material has been placed on record to substantiate this claim of global reputation. The invoices are for a limited period of time and some of the invoices relate to Hong Kong. There is also nothing on record to show any reputation of the goods of the respondents in India in 1960s and 1970s, as observed by the learned Single Judge. Thus we are also unable to agree with the factual finding of the learned Single Judge that there is material on record to show that there were sales by the respondents in India prior to 1981 other than for the period 1977 to 1979.

26. Though delay by itself would not be a defence but if there was a non-user for a long period of time the mark would lose its distinctiveness or the mark is then permitted to die for non-user. The Bombay High Court observed "It is well settled that lapse of time may bring about a change in the state of things in such a manner that to grant injunction in favour of the plaintiffs would be harsh and it may cause irreparable damage or harm to the rights of the defendants." Thus the Bombay High Court was of the view that non-use of trademark does have a bearing in action for infringement specially at the interlocutory stage and equities would have to be balanced in such a situation. The Bombay High Court had further laid down certain principles in this behalf which have 2 (2001) 93 DLT 600 (DB) 3 (2011) 2 MWN (Civil) 828 (DB) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 been reproduced in the impugned judgment. In point (f) of the order dated 28th March, 2000 it is stated that the object of the Act is to protect the right and not be a source of monopoly. In point (j) it has been observed that a mark can lose its distinctiveness by non- user. Thus the enforcement of the right of exclusive use of a trade mark will depend on continuous use of the mark by the proprietor. In point (k) it has been observed that the Court shall not protect the right of proprietor unless there is sale of the articles to which trade mark is attached or related.

Paras 17 and 19 from Malar Network

17. However, the said mark has not been used by the appellant till today. The judgment of Bombay High Court reported in 1998 PTC 18 cited supra would laid down the principle of non-user of the registered trademark. In the said judgment, the trademark even though registered was not used for 30 years without commencing the business under the name of the said trademark. In such occasion, the non-user of the said trademark will not make any reputation of the mark so as to give rise to prima-facie case of the reputation of the said mark. Apart from that it has emphasised that such registration would monopolise the said mark which is not the object of the Act. As far as this case is concerned, even though the name "malar tv" was registered in the year 2003 and the domain names "malartv.com" and "malartv.in" have been registered, there is no commencement of business even

today. The user of the name "malar tv" in the internet as a website had commenced from 16.05.2009 onwards and therefore, the non-user of the name registered by the appellant will not in any way a hindrance to the use of the name "Arun's malar.tv" as directed to be modified by the learned single Judge.

19. Considering the absence of any prima-facie case in favour of the appellant/plaintiff and if for any reason interim injunction has been granted against the respondent/defendant, certainly the reputation earned from the commencement of the website of the respondent/defendant from 16.05.2009 and the goodwill and reputation earned by him either in the name of "malar.tv" or "Arun's malar.tv" as the case may be would be put into jeopardy. Further, the appellant has not at all commenced the business so as to sustain any loss either towards infringement or towards passing off and therefore, the balance of convenience is only in favour of the respondent in not granting the injunction. Therefore, we are of the firm view that the learned single Judge is correct in his view to dismiss the applications after ordering the modification of the name from "malar.tv" as "Arun's malar.tv", which has been promptly complied with by the respondent."

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25. Thus, submits Mr. Sood, the plaintiff is not entitled to any interim relief on several grounds. Firstly, the plaintiff has concealed relevant facts while approaching this Court. Secondly, Mr. Vaibhav Shukla is not duly authorised to institute the present suit. Thirdly, even on merits, the reliefs sought by the plaintiff from the learned NCLT in the second company petition also encompass the relief sought in the present suit. Fourthly, the plaintiff's claim to interim injunction is also liable to be rejected as there is no evidence of use, by the plaintiff, of the asserted device mark.

40. On the aspect of concealment, Mr. Sood places reliance on the decisions in Warner Bros. Entertainment Inc. v. Harinder Kohli⁴ and Seemax Construction (P) Ltd. v. State Bank of India⁵ passed by learned Single Judges of this Court.

26. To the allegation that the defendants' mark is deceptively similar, if not identical, to the plaintiff's, however, Mr Sood offers no traversal.

27. Responding to the submissions of Mr. Sood, Mr. Sai Deepak, in rejoinder, emphatically refutes the allegation of suppression of facts. Apropos the company petitions which were filed before the learned NCLT, Mr. Sai Deepak submits the first company petition was instituted, not by the plaintiff, but by Mr. Vaibhav Shukla in his personal capacity and, in any case, that company petition still languishes with the Registry of the NCLT and has never been 4 (2008) 155 DLT 56 5 AIR 1992 Delhi 197 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 prosecuted. Besides, the said petition is of no relevance, whatsoever, to the present case, as, being a petition instituted by Mr. Vaibhav Shukla in his personal capacity, there was no question of any issue of trade mark infringement being raised therein. Insofar as the second company petition is concerned, Mr. Sai Deepak points out that the petition was instituted on 25 November 2023, whereas the present suit was instituted before this Court on 16 November 2023. As such, there was no question of any reference to the second company petition finding place in the body of the present suit.

28. Apropos the EGM minutes dated 14 October 2022, Mr. Sai Deepak submits that no copy of the said minutes was received by Mr. Vaibhav Shukla.

29. Insofar as the disclosure of the inter se disputes between the plaintiff and the defendants is concerned, Mr. Sai Deepak submits that, in paras 5 to 8 of the plaint in the present suit, there is more than sufficient disclosure of the disputes between them. He has taken me through the said paragraphs. He submits that the plaintiff has also been candid in acknowledging the shareholdings of the various defendants in the plaintiff company, both in the averments contained in the above paragraphs, as well as in a comprehensive document at page 285 of the documents filed with the plaint, which contains the entire shareholding of all shareholders in the plaintiff company. As such, he submits that there can be no question of the plaintiff being held guilty of any suppression or misstatement of facts.

30. Mr. Sai Deepak also refutes Mr. Sood's contention that there is an overlap between the prayers in the second company petition and in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 the present suit. He submits that while acknowledging that there is reference, in the second company petition, to the factum of trademark infringement, by Defendants 2 and 5, of the plaintiff's registered trademark, that, he submits, was but necessary as it is one of the methods by which, according to the plaintiff, as the petitioner before the learned NCLT, Defendants 2 and 5 have entrenched on the assets of the plaintiff company. The proceedings before the learned NCLT being in the nature of oppression and mismanagement, Mr. Sai Deepak submits that the plaintiff had necessarily to seek a relief of protection of the assets of the company, which was all that was sought in the interim prayer (e) on which Mr. Sood placed extensive reliance. The fact that the intellectual property of the plaintiff company was also included in the assets of the plaintiff company and, therefore, the prayer for preservation of the assets of the plaintiff company may also include the plaintiff's intellectual property, he submits, does not mean that the plaintiff has, before the learned NCLT, sought any injunction against infringement of its registered trademark. Infringement proceedings and oppression and management proceedings, submits Mr. Sai Deepak, stand on entirely different pedestals. The mere fact that there may be some degree of overlap in the cause of action which has resulted in the institution of these proceedings, he submits, does not mean either that reliefs sought by the plaintiff before this Court have also been sought before the learned NCLT

or that the present proceedings are required to be kept in abeyance awaiting the outcome of the proceedings before the learned NCLT.

31. He submits that, in fact, this Court is the only competent forum to rule on the aspect of infringement. The plaintiff cannot, therefore, in any case, been non-suited in the present proceedings. Even if it This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 were, for the sake of argument, to be presumed that the prayers sought before the learned NCLT also included a prayer for injunction against infringement, the only consequence, submits Mr. Sai Deepak, would be that the learned NCLT would decline the said prayer. That cannot be a basis to non-suit the plaintiff in the present proceedings.

32. On merits, Mr. Sai Deepak submits that there has been no contest whatsoever, by Mr. Sood, on the aspect of deceptive similarity between the plaintiff's and the defendants' mark, so that the allegation of infringement, within the meaning of Section 29 of the Trade Marks Act has to be deemed to be accepted. He submits that, for deciding the aspect of infringement, use of the mark asserted in the plaint is an entirely irrelevant consideration and also points out that the defendant is not pleading honest and concurrent user.

33. I have heard learned Counsel for both sides at considerable length and considered the rival submissions addressed at the Bar.

34. To my mind, the plaintiff is entitled, prima facie, for an ad interim order at this stage, in terms of the prayers in the present application for the following reasons:

(i) There is no traversal, whatsoever, by the defendants on the aspect of deceptive similarity between the plaintiff's mark and the defendants' and marks. Even otherwise, the marks are, ex facie, deceptively similar to each other. They comprise of the logo This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 " and the word "BRINE". In each case, the logos are similar in design. The word BRINE is written in white letters on a black background. To a consumer of average intelligence and imperfect recollection, there is every possibility of likelihood of confusion between the two marks.

(ii) As such, there is congruence of the three criteria which are cumulatively required to be satisfied for finding of infringement within the meaning of Section 29(2)(b) of the Trade Marks Act to return, viz., (i) similarity - in fact, near identity - of the rival marks, (ii) use of the marks for providing identical services and (iii) as a consequence of (i) and (ii), likelihood of confusion in the minds of the public. The congruence of these three factors make out a prima facie case of infringement within the meaning of Section 29(2)(b) of the Trade Marks Act.

(iii) Mr. Sood's reliance on the pleadings and the prayer in the second company petition do not, prima facie, commend acceptance. There is, no doubt, reference, in the second company petition to the fact that Defendants 2 and 5 had infringed the plaintiff's registered trademark. That, however, as Mr. Sai Deepak correctly points out, is merely part of the recitals in the company petition, to substantiate the charge of oppression and mismanagement. Insofar as prayer (e) in the company petition is concerned, it is obvious that the said prayer, howsoever one may read it, cannot be regarded as seeking an injunction against infringement of the plaintiff's registered This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 trademark, which is the only prayer in the present petition. Prayer (e) in the petition is clearly intended at protection of the assets of the plaintiff company, given the fact that the proceedings allege oppression and mismanagement by Defendants 2 and 5. The prayer for protection and preservation of the assets of the company is but a sequitur to the nature of the proceedings that the plaintiff instituted before the learned NCLT. The fact that the intellectual property of the plaintiff was also part of the assets of the plaintiff company cannot convert the proceedings before the learned NCLT into proceedings seeking an injunction against infringement of the plaintiff's registered trademark. I am not, therefore, able to accept Mr. Sood's contention that the prayers sought in the present petition also form subject matter of the relief sought before the learned NCLT.

(iv) Nor I am able to accept Mr. Sood's contention that, for non-disclosure of the proceedings before the learned NCLT, the plaintiff can be held to have resorted to misstatement, as it has not disclosed the proceedings before the learned NCLT. As Mr. Sai Deepak correctly points out, the present plaint was filed on 16 November 2023, whereas the proceedings before the learned NCLT were instituted on 23 November 2023. There was, therefore, no question of any assertion with respect to the proceedings before the learned NCLT finding place in the averments in the plaint filed in the present suit. Though Mr. Sood also sought to point out that the affidavit in the second company petition was signed and sworn by Mr. Vaibhav Shukla This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 on 16 November 2023, on which date the affidavit and the statement of truth accompanying the plaint in the present suit were also signed and sworn by him, that, to my mind, cannot be of any relevance as there could still be no question of the present plaint making any reference to the proceedings before the learned NCLT.

(v) Insofar as the first company petition filed before the learned NCLT was concerned, that petition was instituted by Mr. Vaibhav Shukla in his personal capacity and was never prosecuted.

(vi) As such, the submission of Mr. Sood that the plaintiff has been less than economical in its disclosure regarding the proceedings between the plaintiff and the defendants before the learned NCLT cannot, prima facie, be accepted.

(vii) Apropos the authority of Mr. Vaibhav Shukla to institute the present suit, I am unable to agree with Mr. Sood on this plea either. The authorisation granted to Mr. Vaibhav Shukla by the Board Resolution dated 22 August 2022 - which, incidentally, also authorised Defendant 5 Shaaran Lakshminarayanan to institute the present proceedings - authorises Vaibhav Shukla and Shaaran Lakshminarayanan to "represent the company, engaged attorneys and enter into, make, sign, seal, execute, deliver, acknowledge, perform all petitions, deeds, declarations as deemed necessary, proper or desirable in relation to any litigations or actions required to be taken by the Company in any place in India, pertaining to customer complaints, FIRs, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 police notices, criminal complaints and the like". The scope and ambit of this resolution is wide and comprehensive and, in my considered opinion, would also, prima facie, cover the authority to institute the present suit. The words "perform all petitions ... in relation to ... consumer complaints, FIRs, police notices, criminal complaints and the like" clearly encompass "performing" - which, in the absence of any limiting caveat, would include institution and prosecution - all litigation. The words "and the like" are also compendious in their import. Preceded as they are by consumer complaints as well as criminal litigation, they would encompass all litigation, as the entire litigative genus stand covered thereby. In that view of the matter, I am of the opinion that the judgment of the learned Single Judge of the High Court of Madras in Sankarnarayanan K.N cannot be cited as a ground to urge that Vaibhav Shukla was not authorised to institute the present suit.

(viii) Insofar as the reliance, placed by Mr. Sood, on the notice dated 7 October 2022 and the EGM minutes dated 14 October 2022 are concerned, there is no dispute about the fact that Vaibhav Shukla did not participate in the meeting dated 14 October 2022. Apparently, the notice of the minutes of the meeting dated 7 October 2022 were received by Vaibhav Shukla, who chose to oppose the holding of the meeting in a written response to the said notice. He, thereafter, did not participate in the meeting. The meeting, therefore, took place behind the back of Vaibhav Shukla. As Vaibhav Shukla, as one of the only two directors of the plaintiff company, at that point This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 of time, did not participate in the EGM, I cannot, prima facie, accept the submission of Mr. Sood that the decision taken in the said meeting superseded the Board Resolution dated 22 August 2022, which authorised Mr. Vaibhav Shukla and Mr. Shaaran Lakshminarayanan to institute the present suit. The reliance of Mr. Sood on the EGM which took place on 14 October 2022, too, therefore, in my considered opinion, cannot, prima facie, disentitle the plaintiff to institute the present suit.

(ix) It cannot, therefore, be alleged that the plaintiff has concealed, in the present plaint, any such fact which, if disclosed, would disentitle him to relief. It is only in such a case that suppression of fact can be cited as a ground to deny relief to a plaintiff, as held by the Supreme Court in S.J.S. Business Enterprises v. State of Bihar⁶.

(x) Insofar as the merits of the matter are concerned, as already noted, there is no dispute on the aspect of deceptive similarity.

(xi) The submission of Mr. Sood that in every case, where there is infringement, an injunction need not follow, is in the teeth of the provisions of the Trade Marks Act and is plainly unacceptable. Section 28(1) of the Trade Marks Act entitles the proprietor of every validly registered trade mark to relief against its infringement. Grant of injunction, in such cases, is the rule, as held by the Supreme Court in *Midas Hygiene Industries P. 6* (2004) 7 SCC 166 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 Ltd. v. Sudhir Bhatia⁷, which goes to the extent of holding that delay would also not operate as a factor inhibiting grant of injunction.

(xii) Mr. Sood sought to clarify his submission by seeking to point out that, in the present case, there is no evidence of user, by the plaintiff, of the mark which is asserted in the plaint. He submits that it is not an inexorable rule that there must be five years' non-user before a plaintiff can be held to be disentitled to an interim injunction against infringement. To accept the submission, one would, in my view, have to rewrite the statute. Section 47(1)(b) of the Trade Marks Act specifically deals with the consequence of extended non-use of a registered trademark. It provides that, where there is no bona fide use of a registered trademark for a continuous period of five years from the date of registration, and the appropriate authority is moved on or after three months from the expiry of the said period of five years, the trademark can be taken off the register. This is the only consequence envisaged in the Trade Marks Act of non-use of a mark. Continuous non-use for a period of five years would render the registration of a trademark vulnerable to evisceration under Section 47(1)(b). Section 28(1) specifically confers, to the holder of a valid trademark registration, the right to obtain relief in respect of infringement of the trademark. The corollary of a conjoint reading of Section 28 and Section 47(1)(b) is that, so long as a trademark has not been in disuse for a continuous period of five years, it cannot be taken off the 7 (2004) 3 SCC 90 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 register of Trade Marks and, so long as it continues to remain on the register of Trade Marks, the proprietor of the registration would be entitled under Section 28(1) to obtain relief against infringement.

(xiii) Of course, this is subject to the registration being valid, as it is only the holder of a valid registration who can obtain relief against infringement. The defendant does not seek to question the validity of the plaintiff's registration.

(xiv) The decisions in *Veerumal Praveen Kumar* and *Malar Network*, on which Mr. Sood places reliance, cannot aid the case that he seeks to canvas. In the first place, both the cases dealt with several years' continuous non-use of the mark asserted by the plaintiff, with the length of non-use

being, in Veerumal, 30 years and in Malar Network, 7 years. Paras 23 and 26 of Veerumal, in fact, would, on the aspect of non-use, operate to disentitle the present plaintiff to injunction. Para 24 of the decision in Veerumal starts with the words "in view of the aforesaid factual position" thereby indicating that the decision was rendered in the facts stated in para 23 of the judgment, which are clearly distinguishable from those in the present case. A reading of paras 23 to 26 of Veerumal reveal that the principle that the Court has sought to enunciate, in the said case, is that continuous non-user of a registered trademark for a long period of time would result in the death of the mark by non-user, in which event the registrant could not, thereafter, plead registration of the mark as a ground to injunct any other person from using the said mark or a mark which was This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 deceptively similar thereto.

(xv) It is obvious that neither of these decisions can apply in the present case, in which the plaintiff's mark was registered only on 14 March 2022. A little over a year and a half is passed since the said registration and it cannot possibly be said that the plaintiff has lost its right to seek relief against infringement, as is statutorily guaranteed to it by Section 28(1) of the Trade Marks Act, on the ground of non-user.

(xvi) Mr. Sai Deepak's submission is that if the plaintiff's activities have been brought to a halt, that is because of the oppression and mismanagement by Defendants 2 and 5. In the facts of the present case, I am obviously not called upon to express any opinion, one way or the other, on the said submission.

(xvii) Mr. Sood's submission that the plaintiff stands disentitled to interim relief as it has not used the asserted mark also fails to convince.

(xviii) The plea of permissive user of the impugned mark, as urged by Mr. Sood, is not supported by any corroborative material. There is no documentary evidence on record to indicate that the defendants were using the mark on the basis of any permission granted from any competent quarter.

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41. The preliminary objections raised by Mr. Ashim Sood, therefore, do not find favour with the Court. On merits, the case is plainly one of the defendants' using a mark which is deceptively similar to that of the plaintiff for providing identical services. The adoption of an identical mark is obviously conscious and deliberate. Ad interim protection must, therefore, necessarily follow.

42. The plaintiff is, therefore, entitled to interim injunction as sought.

43. As such, issue notice on the present application, returnable before the Court on 6 March 2024.

44. Notice is accepted on behalf of Defendants 1 and 3 by Mr. Pratyush Miglani, Defendant 5 by Mr. Ashim Sood, Defendant 6 by Ms. Padmaja Kaul and Defendant 8 by Mr. Ankur Sangal.

45. Let notice issue to the remaining defendants by all modes.

46. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto within four weeks thereof.

47. Though this order is lengthier than an ad interim order should justifiably be, that is only because of the lengthy - and erudite - arguments advanced by both sides.

48. Needless to say, these are only findings returned at the ad interim stage even before the defendants have had an opportunity to This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/12/2023 at 22:09:47 place their stand on record. They cannot, therefore, in any manner, inhibit the Court or even be of persuasive value, when the Court takes up the present application for hearing and disposal after completion of pleadings in the application.

49. Till the next date of hearing, the defendants as well as all others acting on their behalf shall stand restrained from using services under the marks and , "Brine" and/or any mark identical or similar to the plaintiff's marks "Brine" and , in any manner.

50. Dasti.

C.HARI SHANKAR, J DECEMBER 12, 2023 ar [Click here to check corrigendum](#), if any This is a digitally signed order.

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