

IN THE HIGH COURT OF DELHI AT NEW DELHI

**W.P. (C) 3217/2010 & CM APPL Nos. 6437/10 (for stay),
7265/2010**

cGMP PHARMAPLAN PVT LTD Petitioner
Through: Mr. Devashish Bharuka with
Mr. Gaurav Ray, Advocates

versus

REGIONAL DIRECTOR,
MINISTRY OF CORPORATE AFFAIRS & ANR Respondents
Through: Mr. Sachin Datta, Advocate for R-1.
Mr. Sudhir Chandra, Senior Advocate with
Mr. Sagar Chandra and
Mr. Ishani Chandra, Advocates for R-2.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER
16.07.2010

1. The Petitioner is aggrieved by an order dated 21st April 2010 passed by the Regional Director (NR), Ministry of Corporate Affairs, Government of India, Respondent No. 1 herein allowing the representation filed by Respondent No. 2 NNE Pharmaplan India Private Limited under Section 22 of the Companies Act 1956 ('Act') and directing the Petitioner under Section 22 (1) (b) of the Act to delete the word "PHARMAPLAN" from its existing name and change its name to some other name within three months from the date of the said order.

2. Respondent No. 2 NNE Pharmaplan India Private Limited was incorporated initially on 30th December 1997 under the name Pharmaplan (India) Limited. The present Director of the Petitioner Mr. Ravi Saxena joined the Respondent No. 2 company on 5th June 1998. It may be mentioned that the main business of the Respondent No. 2 company was to provide services as technical and industrial consultants and engineers especially to planning, consulting, engineering, plant and equipment supply, pharmaceutical, bio-technology, medical device/products and the health care industries. Respondent No. 2 was also to act as advisers and consultants on all matters and problems connected with or related to pharmaceutical, bio-technology, medical device/product and the health care industries.

3. On 27th June 2008, the name of the Respondent No. 2 was changed to NNE Pharmaplan India Limited.

4. The employment of Mr. Ravi Saxena in the Respondent No. 2 company stood terminated with effect from 11th May 2009. Within two months thereafter on 6th July 2009, the Petitioner was incorporated as a private limited company with the name cGMP Pharmaplan Private Limited.

5. On 17th July 2009, the Respondent No. 2 filed a Civil Suit No. 1307 of 2009 in this Court seeking, inter alia, an injunction to restrain the Petitioner herein (Defendant No. 1 in the above suit) from passing-off the name of the Respondent No. 2 Company as its own. Simultaneously the Respondent No. 2 also filed a representation before the Regional Director on 27th July 2009 under Section 22 of the Act seeking a direction that the Petitioner should

change its name.

6. While disposing of the application filed by the Respondent No. 2 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure 1909 ('CPC') in CS (OS) No. 1307 of 2009, a learned Single Judge of this Court by an order dated 18th December 2010 came to the conclusion that there was no *prima facie* case made out in favour of the Plaintiff/Respondent No. 2 since "the names of the Plaintiff and the Defendant company are in no manner similar; emphasis is essentially on the prefixed words 'NNE' of the Plaintiff and 'CGMP' of the Defendant. They are not only worded differently, the manner and the nature of the composition of alphabets is also distinct; they are not likely to cause confusion or deception in the minds of the proposed customers to whom the Defendant is offering its services."

7. It is stated that the Respondent No. 2 had filed an appeal against the said order which is pending before a Division Bench of this Court. No stay of the operation of the said order has been granted by the Division Bench.

8. In the meanwhile, the hearing in the application filed by the Respondent No. 2 before the Respondent No. 1 proceeded on 18th January 2010. The written submissions were also filed at the conclusion of the hearing.

9. In the impugned order dated 21st April 2010, the Respondent No. 1 observed that the holding company as well as group companies of NNE Pharmaplan India Private Limited already held registration in respect of the trade marks 'PHARMAPLAN' and 'NNE Pharmaplan' and filed

application for the registration of these marks world over. It was concluded that the use by the Petitioner of the word 'PHARMAPLAN' in its name would have a misleading effect in the mind of the general public and as such it was a fit case for issue of direction under Section 22 (1)(b) of the Act. A direction was accordingly issued to the Petitioner to delete the word 'PHARMAPLAN' from its name and change its name to some other name within three months from the date of the order.

10. Pursuant to the notice issued in this petition on 12th May 2010, the Respondent No. 2 had filed a reply to which a rejoinder has been filed by the Petitioner.

11. This Court has heard the submissions of Mr. Devashish Bharuka, learned counsel appearing for the Petitioner and Mr. Sudhir C. Chandra, learned Senior counsel appearing for the Respondent No. 2.

12. It is first submitted by Mr. Bharuka that given the scope of the jurisdiction of this Court under Article 226 of the Constitution, this Court should set aside the impugned order on the sole ground that the basic approach by the Regional Director to the application under Section 22(2) of the Act was erroneous. It is pointed out that instead of determining whether the name of the Petitioner was either identical with or "too nearly resembled" the name of Respondent No. 2, Respondent No. 1 proceeded to examine if the Petitioner's name caused "misleading effects" in the mind of the general public. Thus the Respondent No. 1 had treated this as an action for infringement under the trade marks.

13. Mr. Bharuka refers to para 28 of the guidelines issued by the Department of Company Affairs (DCA) which states that where except for the first word, all other words of the proposed name are “similar to those of an existing company”, then the first word should be considered to be sufficient to distinguish it from the name of the existing company. In other words, he submits that the prefix ‘cGMP’ was sufficient to distinguish the name of the Petitioner from that of the Respondent No. 2. He then submits that a search effected on the website of Respondent No. 1 showed that there were in all four companies registered by a similar name. No action was taken against those companies by Respondent No. 2 and, therefore, the entire action was malafide. It is submitted that Respondent No. 2 was resentful of the Petitioner’s Director Mr. Ravi Saxena having left the services of Respondent No. 2 company and was, therefore, preventing him from functioning by instituting various vexatious proceedings against him and his company. It is urged that two names are dissimilar as determined by the learned Single Judge in the application for injunction in the passing-off suit.

14. Reliance is placed by Mr. Bharuka on the judgment of the Division Bench of the Calcutta High Court in *Kalpna Polytec India Limited v. Union of India 106 (2001) CC 558* to urge that the Respondent No. 1 exceeded its jurisdiction and adopted an approach unwarranted by Section 22 of the Act. Finally without prejudice to the above submissions, it is submitted that in the event this Court is not inclined to accept the Petitioner’s contention then a further period of three months should be granted to the Petitioner to comply with the impugned order of Respondent No. 1.

15. Mr. Sudhir Chandra, learned Senior counsel appearing for the Petitioner points out that the jurisdiction of the civil court in a passing-off suit is distinct from and independent of the jurisdiction that is exercised by the central government through the Respondent No. 1 in dealing with an application under Section 22 of the Act. He refers to the judgment of the Division Bench of this Court in *Montari Overseas Limited v. Montari Industries Limited 1996 PTC (16)*. Mr. Chandra relied on the judgment in *Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675* to urge that unless the Court found that the Respondent No. 1 had acted in violation of the principles of natural justice or committed an error of jurisdiction, it should not interfere under Article 226 of the Constitution merely because another view is possible to be taken in the matter. In other words, if the procedure adopted was just and fair, this court should not sit in appeal over the decision of Respondent No. 1 on merits.

16. The above submissions have been considered. This Court finds no error having been committed by the Respondent No. 1 in coming to the conclusion that the Petitioner's name, i.e., 'cGMP Pharmaplan Private Limited' too nearly resembles the name of the Respondent No. 2 i.e. NNE Pharmaplan India Limited. The prominent part of both names is the coined word 'PHARMAPLAN'. The two names are to be compared as a whole. When so compared, the name of the Petitioner too nearly resembles the name of the Respondent No. 2. In terms of para 28 of the Guidelines, if the dissimilar portions of the names are removed i.e. NNE and cGMP, then the remaining portion is the identical word 'PHARMAPLAN'. The word 'PHARMAPLAN' being a coined word is indeed the prominent and

distinctive part of the names of both the Petitioner and Respondent No. 2. When compared as a whole, it would be apparent that the two names structurally and phonetically too nearly resemble each other.

17. The decision in *Montari Overseas Limited* makes it clear that a civil court exercising its powers in terms of the CPC and determining in a passing-off action if one name is confusingly deceptive or similar to another name, is exercising a jurisdiction independent of the jurisdiction of Respondent No. 1 in respect of the registering of a company's name. The latter is a power vested in the central government in terms of Sections 20 and 22 of the Act. While it is true that the Respondent No. 1 cannot approach the case as it would in a trade mark dispute, it is nevertheless required to come to the conclusion whether the name of which the registration is sought or has been granted too nearly resembles the name of another company. Mr. Chandra is right in his contention that the powers of the central government under Section 22 of the Act are wider inasmuch as there is no need to examine whether there is a likelihood of deception or confusion. It is enough to examine if the name registered too nearly resembles another registered name. The Respondent no. 2 has been able to show that both names too nearly resemble each other.

18. This Court is unable to find anything perverse in the conclusion arrived at by the Respondent No. 1. Respondent No. 2 had indeed made out a case under Section 22(1)(b) of the Act for a direction to the Petitioner to change its name by removing the word 'PHARMAPLAN', within a period of three

months.

19. For all the aforementioned reasons, this Court finds no ground to interfere with the impugned order of the Respondent No. 1. However, the time period for the Petitioner to comply with the impugned order and change its name is extended by two months from today.

20. The petition and the pending applications are dismissed with the above directions.

S. MURALIDHAR, J

JULY 16, 2010
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