



\$~2 (2020)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29th March, 2022

+ **CS(COMM) 367/2020 & I.As. 7801/2020, 1017/2021, 2402/2021, 4794/2022**

EXIDE INDUSTRIES LIMITED Plaintiff
Through: Ms. Suhrita Mazumdar, Mr. Afzal B. Khan, Mr. Vishal Nagpal, Advocates (M: 9903026134)
versus

KRISHNA INTERNATIONAL & ORS. Defendants
Through: Mr. Saurabh Kumar Tuteja, Advocate for D-1&3 (M:9711234754)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff-Exide Industries Limited, seeking permanent injunction restraining the Defendants from infringement of the Plaintiff's registered trademark and trading name 'EXIDE', passing off, rendition of accounts, damages, delivery-up, etc. The Plaintiff is engaged in the business of manufacture and sale of automotive and industrial batteries and claims rights in the mark 'EXIDE' which is used in respect of lead acid storage batteries ranging from 2.5 Ah to 20,200 Ah capacity covering the broadest spectrum of applications. The Plaintiff is also stated to be manufacturing high-end batteries for submarines and for other security related machinery as well. It has various subsidiaries in India and abroad, including in the United Kingdom, Singapore and Sri Lanka. The



Plaintiff's presence in the Indian market with the trademark 'EXIDE' is tangible, widespread, continuous and uninterrupted, especially in view of the fact that the Plaintiff has more than 1750+ Exide Care centres offering servicing of batteries, and 48,000+ direct and indirect outlets, for sale of products.

3. The Plaintiff is the proprietor of several registered trademarks comprising the expression 'EXIDE', including the first registration of the trademark 'EXIDE' in India bearing registration No.694 dated 8th June, 1942 in Class-9. The Plaintiff is also the registered proprietor of the mark 'EXIDE' in Class 25, 11, 99, amongst others. The sales of the Plaintiff were more than Rs.10,000/- crores in the year 2018-2019. The Plaintiff's corporate name is also 'Exide Industries Limited'. The Plaintiff avers that the mark 'EXIDE' has become a well-known mark under Section 2(1)(zg) of the Trademarks Act, 1999 Act.

4. The Plaintiff's case against the Defendants is that the Defendants are engaged in manufacture and sale of various products including the automotive products under the brand name 'EXIDE', which is also used as part of the trading style of the Defendants. The records from the Trademark Registry also reveal that the trademark was applied for by Mr. Rajesh Kumar Tuteja, trading as Defendant No.1-Krishna International. The records from the GST portal are also relied upon to argue that the Defendants are illegally using the mark 'EXIDE'. The LinkedIn profile of Mr. Rajesh Kumar Tuteja also claims association with the Defendant No.2- M/s. Narula & Company, which is also using the mark 'EXIDE' for its batteries. Defendant No.3-Rajesh Led & Phone Network Booster Accessories, is also, admittedly, an entity of Mr. Rajesh Kumar Tuteja.



5. The Plaintiff submits that the listings for the Defendants' products were found on *www.indiamart.com*. Upon discovering the same, the Plaintiff conducted inquiries and it was revealed that Defendant No.1 was marketing the infringing products in packaging which are primarily available in two variants- 'Naveen Exide Power' and 'Made in Exide Power'. The 'X' in the 'EXIDE Power' logo was also similar to the trademark 'EXIDE' used by the Plaintiff. Further investigation also revealed that Defendants were manufacturing a large variety of products like Conceal lights, LED Panel Lights, LED COB Lights bearing the mark 'EXIDE'. All these products use the mark 'EXIDE' blatantly in a prominent form. The Defendants also have various promotional materials bearing the mark 'EXIDE', which has been circulated in the market. The Plaintiff, in fact, effected a purchase of the infringing products bearing the mark 'EXIDE' sold by the Defendants, but no cash memo was issued.

6. According to the Plaintiff, the use of the mark 'EXIDE' and 'EXIDE POWER' is completely illegal. Mr. Rajesh Kumar Tuteja, the sole proprietor of Defendant No.1-Krishna International, has also applied for trademark registration of the mark 'EXIDE' in a logo form represented as



'EXIDE POWER', under Trademark Application No.4033452 in Class 11.

7. In view of the above, the case of the Plaintiff is that the use of the mark 'EXIDE' constitutes infringement of their registered trademark 'EXIDE' as also passing off. Hence, the present suit seeking permanent



injunction and damages has been filed by the Plaintiff.

8. An *ex parte* interim order was granted in favour of the Plaintiff on 14th September, 2020, in the following terms:

“10. Grievance of the plaintiff is that the defendants have dishonestly adopted the plaintiff’s trademark 'EXIDE' and under the said mark are manufacturing and selling bulbs, LED bulbs, power bank, coolant, engine oil, power sub-mitter etc. According to the plaintiff, from its preliminary investigation it has been revealed that the defendant No.1 Krishna International is a sole proprietorship firm of one Mr. Rajesh Kumar Tuteja who has listed the products on Indiamart listing.

11. Defendant No.2 Narula and Company is also a sole proprietorship firm of one Hitin Narula and from the LinkedIn page/profile the same derives reference to Rajesh Kumar Tuteja, that is, defendant No.1. Further both defendant Nos.1 and 2 are selling the infringing products with identical style and packaging and it is believed that both the defendant Nos.1 and 2 firms are being operated by Rajesh Kumar Tuteja under different entities. Further the third entity, that is, defendant No.3 arrayed under the name and style of 'Rajesh Led & Phone Network Booster Accessories' also appears to be related to defendant No.1.

12. Considering the averments in the plaint and the documents filed therewith, the plaintiff has made out a prima facie case in its favour and in case no ex-parte ad-interim injunction is granted, the plaintiff would suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiff and against the defendants.

13. Consequently, till the next date of hearing before this Court, an ad interim injunction is granted in favour of the plaintiff and against the defendants in terms of prayer (a) and (b) of the application under



Order XXXIX Rule 1 and 2 CPC.”

9. Mr. Saurabh Kumar Tuteja, ld. Counsel has entered appearance on behalf of Defendant Nos.1 & 3. He submits that Defendant Nos.1 and 3 have already stopped using the mark ‘EXIDE’, both as a trademark and as a trade name. In support thereof, in the written statement, a plea has been taken that the GST Number of the Defendant has also been cancelled. It is submitted that even though a trading concern by the name ‘EXIDE’ was started by the Defendants in May, 2020, an injunction was granted before the said firm could effectively operate. It is further submitted that the Defendant No.1 and 3 do not intend to use the mark ‘EXIDE’ and are willing to give up the said mark, both as trademark and trading name.

10. Ld. Counsel for the Plaintiff submits that the seizure made by the Local Commissioner, at one of the premises of the Defendants, shows that large quantities of infringing products were found. It is submitted that despite the passing of the injunction order dated 14th September, 2020, the Defendants continued to manufacture and sell the infringing products, which led to the filing of *I.A. 2402/2021* under Order XXXIX Rule 2A. Vide the said order, the court had appointed a Local Commissioner to get the inventory of the infringing goods made. Pursuant to the said Local Commissioner being appointed, the Local Commission was executed at the premises bearing No.A-8, Gali No.12, New Gobindpura, Delhi-110051. The inventory which was prepared by the Local Commissioner would show that a huge seizure was effected, as set out below.



S. No.	Description	Marketed By:	Manufactured By:	Number
1.	Exide Bucket Engine Oil	Made in Exide Lubes India	Not Mentioned	110
2.	Exide 15000 mAh Power bank	Not Mentioned	Not Mentioned	1
3.	Exide Charger (One Box)	Not Mentioned	Not Mentioned	400 pieces (approx.)
4.	Exide Ceiling fans	Not Mentioned	Not Mentioned	7 box of fans with 7 blade sets
5.	Exide Bulb Shells	Not Mentioned	Not Mentioned	1 box (Approx. 700-800 pcs.)
6.	Unnamed Bulb Shells	Not Mentioned	Not Mentioned	6 sacks (Approx. 3000 pcs.)
7.	Hero Honda Engine Oil	Exide Company	Not Mentioned	40 pcs.
8.	Exide LED Bulbs (12 Watt)		Nirula & Company	25 pcs.
9.	Exide LED Bulbs (9 Watt) Red Packing		Nirula Manufacturers	10,000 pcs. (Approx.)
10.	Exide LED (9Watt) Orange Packing		Exide Power	7,000 pcs. (Approx.)
11.	Register with cash Entries (Photocopy)			88 pages (Approx.)



12.	12 Invoices (Photocopy)			12
13.	Pink File (Company Documents) (Photocopy)			39
14.	Blue File (Photocopy)			1 Receipt
15.	Voucher File (Blue File) (Photocopy)			3 vouchers
16.	Delivery Receipts (Photocopy)			9 receipts
17.	Advertising Pamphlets (Yellow and Blue along with calendar)			50 pages (approx.)
19.	Exide Poster (White, Blue and Red)			1 Poster

11. Ld. Counsel for the Plaintiffs submits that the Manager who was found at the premises of the Defendants informed the Local Commissioner that he was reporting to Mr. Rajesh Kumar Tuteja. The Defendant No.1 and Defendant No.2 appear to have been in some kind of business relationship leading to the use of the mark 'EXIDE' commonly by both of them. He submits that in view of the huge seizure which was made, apart from a permanent injunction, damages are also liable to be granted.

12. Since none appears for Defendant No.2 despite service, Defendant No.2 is proceeded against *ex parte*. Under these circumstances, following



the rationale of the judgment of a Id. Single of this Court in *Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors.* [CS (OS) 3466/2012 decided on 20th February, 2014], no *ex parte* evidence would be required in this matter. The same has been reiterated by the Court in *S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors.* [210 (2014) DLT 381], as also, in *United Coffee House v. Raghav Kalra and Ors.* [2013 (55) PTC 414 (Del)]. The relevant observations from the judgment in *Disney Enterprises Inc. (supra)*, are as under:

“3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded *ex-parte* vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of *ex-parte* evidence.

4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading *ex-parte* evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is *ex parte* and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing *ex parte* evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.”

Thus, no *ex parte* evidence is called for, in view of the fact that there is no contest to the Plaintiff's use of the mark 'EXIDE'.

13. Insofar as Defendant No.1 & 3 are concerned, the written statements have been filed with enormous delay of more than 280 days. On the issue of



grant of further time in filing written statements, the recent decision of the Supreme Court in ***Brainlink International Inc. & Anr. v. HT Media Limited & Anr. [SLP (C.) 3579/2022, decided on 14th March, 2022]***, has upheld the judgment of a ld. Single Judge of this Court in ***HT Media Limited & Anr. v. Brainlink International Inc. & Anr. [CS(COMM) 119/2020, decided on 17th December, 2021]***. The relevant portion of the said order of the ld. Single Judge reads as under:

“9. There is no dispute on the dates i.e., the suit came up for hearing for the first time on 28th April, 2020; the defendants filed an application under Order XXXIX Rule 4 CPC on 27th May, 2020, and appeared before the court on 29th May, 2020, through counsel; and, simultaneously, an application under Order XXXIX Rule 2A [I.A.4132/2020] was filed by the plaintiffs alleging violation of the interim directions issued on 28th April, 2020 and the reply was filed thereto by the defendants. It appears that the defendants stated before the court on 9th July, 2020 that the interim order must not be read to mean that the defendant is restrained from approaching the statutory authority for filing objections to the trademark. In fact, the defendants have already filed their objections before the Trademark Registry on 15th May 2020.

10. It is thus, more than apparent that the conditions that prevailed due to the pandemic did not actually impact the defendants to prevent them from interacting with their counsel and filing appropriate applications and replies before this court. To that extent, the orders of the Supreme Court in Cognizance For Extension of Limitation (supra) would not be applicable to the facts of the present case.

...



15. *There is no reason to take a different view in the present case. Here, the defendants were fully aware of the present case. They participated on various dates from 29th May, 2020, including in mediation, and chose not to file their written statement. Had they been not represented by a counsel, a probable view could have been taken that the procedure was unknown to the defendants. However, they have been assisted by counsel throughout and the very number of the case would have flagged to them that this was a commercial suit, which entailed strict timelines. The plea of the learned counsel for the defendants that since the summons had not been served to them, the time had not begun to run, cannot be accepted. Thus, on both grounds, there is no merit found in the present application. The same is dismissed.*

16. *Since the delay has not been condoned, the delayed filing of the written statement cannot be accepted and the written statement cannot be taken on record. It is ordered accordingly.”*

14. The order of the Supreme Court dated 14th March, 2022, in ***Brainlink*** (*supra*) reads as under:

“In the facts and circumstances of the case and keeping in mind the conduct on the part of the petitioners and when even during the pandemic the petitioners participated in the proceedings, which has been reflected in para 3 of the impugned order, we are in complete agreement with the view taken by the High Court.”

15. Considering this legal position, whenever a Defendant is continuing to appear before the Court and has no impediment in filing the written statement, the delay beyond a period of 120 days, even in a commercial suit, would not be liable to be condoned.



16. Even otherwise if the averments in the written statement are taken into consideration, the stand of Defendant Nos.1 & 3 is that they do not claim rights insofar as their businesses under the mark/name 'EXIDE' have already been stopped. Ld. Counsel has also submitted that the Defendants do not wish to continue the said mark and name.

17. On merits, this Court is convinced that this is an appropriate case for grant of permanent injunction and decree in terms of the plaint. The inventory seized by the Defendants, as extracted above, shows that the Defendants were manufacturing various products such as engine oil, power banks, chargers, ceiling fans, bulb shells, LED bulbs, etc, under the mark 'EXIDE'. The Plaintiff being the exclusive owner of the mark 'EXIDE' in India, the use of the mark 'EXIDE' by any third-party in respect of identical goods i.e., batteries would not only be violative of Plaintiff's statutory and common law rights, but also contrary to consumer interest inasmuch as batteries are used in various automobiles and thus, the safety of the passengers and owners who drive these vehicles would be of paramount importance.

18. The Defendants having not contested the suit, the present suit is decreed in terms of paragraph 51 (a) and (b) of the plaint.

19. Insofar as delivery up for the purpose of destruction, as sought in paragraph 51 (c) is concerned, since there is a large quantum of products which has been seized by the Local Commissioner, the representatives of the Plaintiff are permitted to visit the Defendants' premises where the inventory is lying, so as to ensure that the mark 'EXIDE' is effaced or removed completely or the products if not useable are destroyed.

20. The value of the goods seized by the Local Commissioner is stated to



be more than Rs.10 lakhs. Accordingly, the court fee which has been deposited by the Plaintiff in this suit would be liable to be reimbursed by the Defendants to the Plaintiff. Accordingly, Defendant No.1 & 2 are directed to pay Rs.1 lakh each to the Plaintiff towards litigation costs.

21. No further reliefs are being pressed for. Decree sheet be drawn in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

MARCH 29, 2022/aman/ad

