IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.10.2016

PRONOUNCED ON:16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.623 of 2009

SHRIRAM EPC Limited
Chennai-31 Plaintiff

Vs

Soma Enterprises Limited
Pune 411038 Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of CPC read with Sections 27, 29, 134 and 135 of the Trade Marks Act, 1999.

For Plaintiff : Mr.G.Kalyan Jhabakh for M/s.Surana and Surana

For Defendant : Mr.S.V.S.Choudary for Mrs.N.Devi

JUDGEMENT

This civil suit is filed by the Plaintiff to pass a judgement and decree, against the Defendant:-

(a) granting permanent injunction restraining the Defendant and its men, from in any manner, infringing the plaintiff's registered trademark, containing the mark/expression/slogan 'ENGINEERING THE FUTURE' and any mark that is similar/deceptively similar to the said mark.

(b) granting permanent injunction restraining the Defendant and its men, from in any manner, from using or applying the mark/expression/slogan 'ENGINEERING THE

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FUTURE' or any deceptively similar trademark to that of the Plaintiff's mark and from passing off their goods and services of their business as that of the business of the Plaintiff.

(c) directing the Defendant to render accounts of profit made by the Defendant by the use of similar/deceptively similar trade mark/expression/slogan 'ENGINEERING THE FUTURE' on the goods and services referred and a final decree be passed in favour of the Plaintiff for the Defendant to pay the amount of all revenues that has been earned by the Defendant by using or applying the mark/expression/ slogan 'ENGINEERING THE FUTURE', after the Defendant has rendered the accounts.

(d) directing the Defendant to pay a sum of Rs.25,00,000/- towards damages.

(e) directing the Defendant to pay the costs of the suits.

2. The case of the plaintiff, in a nutshell, as set out in the plaint, is as follows:-

a. The plaintiff, a registered Company incorporated under the Companies Act, 1956, is the leading service provider in the field of engineering, procurement and construction throughout India, under its corporate name 'SRIRAM EPC' with the punch line/slogan 'ENGINEERING THE FUTURE'. The trade mark 'SRIRAM EPC' with the punch line/slogan 'ENGINEERING THE FUTURE' is the registered trade mark of the plaintiff vide trade mark numbers 1584547 in Class 37 and 1584548 in Class 42 of the Trade Marks Act, 1999. Since its incorporation in June 2000, the plaintiff

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had acquired considerable market share. It has made huge investments in promoting and advertising the said trade mark, thereby acquired good will and considerable revenue. It has project experience and reach across 16 States and also outside India in Zambia and France. It is also a listed Public Company in the Bombay Stock Exchange and National Stock Exchange. The trade mark 'SRIRAM EPC' with the punch line/slogan 'ENGINEERING THE FUTURE' had been conceived and adopted by the Plaintiff from June 2000. There was no other entity in India, who used similar expression/slogan/trade mark 'ENGINEERING THE FUTURE'.

b. The use of the trade mark/punch line/slogan 'SRIRAM EPC' with the punch line/slogan 'ENGINEERING THE FUTURE' had been an integral part of the plaintiff corporate identity and business. The said slogan is always associated with the plaintiff. The plaintiff is the exclusive user of the said trade mark. The plaintiff had also put up its business and has many important customers, like, Hindustan Copper Limited, Madras Aluminium Company Limited, Bellary Steels and Alloys Limited, Salem Steel Plant, SISCOL, Salem, Jinadal Vidyanagar Steels Limited, Kerala Feeds Limited, Shalivahan Construction Limited, Rithwick Power Project, Ravi Kiran Power Projects Limited and Sterlite Copper Limited. The plaintiff also displays the trade mark 'SRIRAM EPC' with the punch line/slogan

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'ENGINEERING THE FUTURE' in all its productions, communications and advertisements. It has also used it in its letter heads, visiting cards, stationeries, websites and displays at site. The customers are aware that the expression 'ENGINEERING THE FUTURE' is being used by the plaintiff. The public has associated the said trade mark only with the plaintiff company. The annual turn over of the plaintiff has increased substantially from Rs.2,318.10 lakhs in the financial year 2002-2003 to Rs.91,876.55 lakhs in the financial year 2008-2009. The plaintiff has acquired a distinct character by extensive use and reputation and goodwill in the market by use of the said trade mark. The plaintiff has also secured statutory protection by registering their trade mark under the Trade Marks Act, 1999. Consequently, the plaintiff has the exclusive rights and privileges granted under Section 28 of the Act to use the logo 'SRIRAM EPC' with the punch line/slogan 'ENGINEERING THE FUTURE'.

c. While so, the plaintiff had received a legal notice from the defendant, dated 29.6.2009, alleging that the Defendant is the user of the slogan 'ENGINEERING THE FUTURE' from March 2004 and consequently, asking the plaintiff to stop using the trade mark 'ENGINEERING THE FUTURE' and to pay a damages of Rs.1 lakh. The plaintiff had replied to the said legal notice on 14.7.2009, stating

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that the plaintiff is the registered owner of the trade mark 'ENGINEERING THE FUTURE' and consequently, called upon the defendant to stop using the said trade mark. The defendant, by using the trade mark 'ENGINEERING THE FUTURE', is attempting to pass off their goods and services to the public as if it were of the plaintiff. The public would be misled to believe that the plaintiff and the defendant are business partners. The use of the slogan 'ENGINEERING THE FUTURE' by the defendant would cause confusion and would also dilute the goodwill and reputation enjoyed by the plaintiff. The defendant had imitated the expression 'ENGINEERING THE FUTURE' and infringed the statutory right of the plaintiff. The plaintiff is the prior user of the expression 'ENGINEERING THE FUTURE' from June 2000. On the contrary, the defendant had been using it only from March 2004. The plaintiff had been put to much loss owing to the usage of the expression 'ENGINEERING THE FUTURE' by the defendant. In such circumstances, this civil suit has been filed for the reliefs as stated above.

3. In the written statement filed by the defendant, it had been averred that the plaintiff's registered trade mark was only 'SRIRAM EPC' and not 'ENGINEERING THE FUTURE'. The words 'ENGINEERING THE FUTURE' cannot be construed as a trade mark, attracting the provisions of the Act. Section 28 of the Act is not

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applicable to the facts of the case. It had been stated that the suit is a counter blast to the notice issued by the defendant and the plaintiff is trying to create confusion by using the phrases/punch line/slogan/expression with the words 'registered trade mark'. The defendant had not infringed the trade mark of the plaintiff. The defendant had been using the punch line/slogan 'ENGINEERING THE FUTURE' in accordance with the provisions of the Act and has been using the same from May 1996, but whereas the plaintiff was using it only from 2000. It had been further stated that the act of the defendant was covered under the exemption provided under Section 30(1) and (2) of the Act. The defendant is in the business of construction and infrastructure contracts, including executing special infrastructure projects under Public Private Participation of the Central and State Governments. Consequently, their business is unrelated to the business of the defendant. The corporate name of the defendant does not indicate that they are in the business of construction and the punch line does not indicate that the defendant is in the same business as that of the plaintiff. The question of passing off for advantage does not arise. In such circumstances, this civil suit is liable to be dismissed.

4. On perusal of the pleadings of the parties and other materials on record, the following issues were framed

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for determination:-

1. Whether actions of the Defendant amount to 'infringement and passing off' under Sections 27, 29, 134 and 135 of the Trade Marks Act?

2. Whether the provisions of Sections 27, 29, 134 and 135 of the Trade Marks Act are applicable to the suit allegations?

3. Whether the phrase 'Engineering the Future' is eligible for protection under the Trade Marks Act?

4. Whether the acts of the Defendant stand covered under the exemption provided under Section 30(1) and (2) of the Trade Marks Act?

5. Is not the Plaintiff the prior user of the registered trademark "Shriram EPC Engineering the Future"?

6. Does not the punch line 'Engineering the future' attract the provisions of the Trade Marks Act?

7. Is not the Plaintiff entitled to damages because of the usage of the trademark 'Engineering the future' by the Defendant?

5. On the side of the Plaintiff, one V.Padmanabha Sivan the Technical Director in Conveyor Division of the Plaintiff Company, was examined as PW.1 and Exs.P1 to P9 were marked as detailed below:-

On the side of the Defendant, neither any witness was examined nor any document was marked.

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S.No	Exhibit	Description	Date
1	Ex.P. 1	Original power of attorney	20062011
2	Ex.P. 2	Certified copy of the registered trade mark Nos.1584547 and 1584548	
3	Ex.P. 3	Certified copy of the Memorandum of Articles of Association to the plaintiff	
4	Ex.P. 4	Original profile of the company	
5	Ex.P. 5	Certified copy of the Registrar of Companies	
6	Ex.P. 6	Office copy of the communications sent to third parties	
7	Ex.P. 7	Copy of the legal notice	29062009
8	Ex.P. 8	Copy of the reply to the legal notice sent by the plaintiff counsel	14072009
9	Ex.P. 9	Original extract from the Internet showing that the defendant trade mark is abandoned	

6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

7. The issues, which had already been framed, for the convenience sake, may be recast as follows:-

1. Whether the Plaintiff is entitled for a permanent injunction, restraining the Defendant, in any manner, from infringing the Plaintiff's trademark, containing the mark/expression/slogan 'ENGINEERING THE FUTURE'?

   While deciding the above issue (1), the following aspects have also to be decided:-

   a) Whether the mark/expression/slogan 'ENGINEERING THE FUTURE' is registrable under the Trade Marks Act, 1999?

   b) Whether the Plaintiff is the registered owner of the trademark 'ENGINEERING THE FUTURE'?

   c) Whether the Defendant has acquiescence of the mark/expression/slogan 'ENGINEERING THE FUTURE' either by prior registration or by prior usage and whether Sections 27, 29, 134 and 135 of the Trade Marks

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Act, 1999 are applicable to this case?

d) Whether the Defendant is covered under the exemption of Sections 30(1) and 30(2) of the Trade Marks Act, 1999?

2. Whether the Plaintiff is entitled for permanent injunction, restraining the Defendant, in any manner, from using the mark/expression/slogan 'ENGINEERING THE FUTURE' and from passing off their goods and services of their business as that of the business of the Plaintiff?

3. Whether the Defendant is liable to render accounts of profits made by the use of the said mark/expression/slogan 'ENGINEERING THE FUTURE'?

4. Whether the Defendant is liable to pay a sum of Rs.25,00,000/- as damages as claimed by the Plaintiff?

5. To what other relief, the parties are entitled to?

8. **Issue (1):-** This is a case of a hunter being hunted. The entire genesis and origin of the case emanated from the act of the Defendant in issuing the legal notice, dated 29.6.2009 to the Plaintiff. The said notice has been marked as Ex.P7 through PW.1. PW.1, who was the Technical Director in the Conveyor Division of the Plaintiff Company, had filed the proof affidavit, claiming knowledge of the facts and circumstances of the case and also claiming authorisation to let in oral evidence on behalf of the Plaintiff Company. The subject and main allegation made by the Defendant in Ex.P7, which is the legal notice sent by the Defendant to the Plaintiff, is that "falsification and

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passing off' being committed by the Plaintiff with respect to Trademark/Punch Line 'ENGINEERING THE FUTURE' belonged to M/s.Soma Enterprises Limited, Pune.'

9. To substantiate the above allegation, it had been stated in the said notice that the Defendant, to the knowledge of the Plaintiff, had been carrying on its established business as service provider for construction of civil works (roads, bridges, dams), which are marked under the trademark " Soma" and punch line 'ENGINEERING THE FUTURE'. It has been specifically claimed that the said trademark/ punch line had been used in India by the Defendant continuously from March 2004. In the said notice, it had been further claimed that the Defendant had been allotted the trademark registration provisional number 1350661 for the mark ' Soma' and punch line 'ENGINEERING THE FUTURE' by the Government of India, Trade Mark Registry, Mumbai. After stating above two facts, namely, (1) that the Defendant had been using the said punch line from March 2004 and (2) that further, they had been allotted the trademark registration provisional number 1350661, the Defendant had called upon the Plaintiff to desist from using the said punch line 'ENGINEERING THE FUTURE' since it was identical and deceptively similar to their punch line 'ENGINEERING THE FUTURE'. The Defendant had also called upon the Plaintiff to surrender all

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labels, packing materials and such other stationery items and also give a written undertaking that they would not use the trademark. The Defendant had also claimed damages of Rs.1,00,000/- and further stated that the defiance of the same would entitle them to initiate civil and criminal proceedings. These facts lead this court to come to a view that the punch line 'ENGINEERING THE FUTURE' is a unique punch line and is the issue under contest between the two parties and hence, it is registrable.

10. The said punch line had been claimed by the Defendant on two grounds, viz. (1) that they have been using it from March 2004 and (2) that they had also been allotted trademark registration provisional number 1350661 by the Government of India, Trade Mark Registry, Mumbai. This also leads this court to come to a conclusion that the parties to the suit uniformly agreed regarding the exclusive use of the said punch line 'ENGINEERING THE FUTURE'. It denotes 'drive towards the future'. It denotes 'vision for future development'. In fact, it symbolizes the object and vision of the Company. To this notice, the Plaintiff had sent a reply, dated 14.7.2009 under Ex.P8. Instead of cowing down to the admissions of the Defendant, the Plaintiff reared its head and straightened its back and claimed that it was not the Plaintiff, who had infringed the punch line 'ENGINEERING THE FUTURE', but on the other

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hand, on facts presented in Ex.P8, it was the Defendant, who was using the punch line to the detriment of the Plaintiff's interest. In Ex.P8, the Plaintiff had stated that the Plaintiff is the registered Proprietor of the mark 'SRIRAM EPC' and the punch line 'ENGINEERING THE FUTURE' in Classes 37 and 42 of the Trade Marks Act 1999. It had been further stated that as against the claim of the Defendant that they have been using it from March 2004, the Plaintiff contended that the Plaintiff is using it from June 2000 onwards continuously and extensively. The Plaintiff, further through a counter punch against the Defendant, had stated that their enquiries revealed that the alleged claim of the Defendant to have been allotted the trademark registration provisional number 1350661 by the Government of India, Trade Mark Registry, Mumbai, is totally false since the alleged application for allotment of the Defendant had been abandoned by the Trade Mark Registry. Even otherwise, the Plaintiff had claimed that they have been using the mark after authorisation by the Trade Mark Registry and have been further using it from June 2000. It was the Defendant, who should desist from using the said punch line 'ENGINEERING THE FUTURE' and who has to render accounts, extend unconditional undertaking and pay damages. The above facts lead this court to come to a prima facie view that the punch line 'ENGINEERING THE

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FUTURE' signifies the vision of the Company and it was the Plaintiff Company 'SRIRAM EPC', which had actually registered the said trademark. In proof thereof, the Plaintiff had produced Ex.P2, which is the certified copy of the registered trademark 'SRIRAM EPC ENGINEERING THE FUTURE' in Classes 37 and 42, bearing trademark numbers 1584547 and 1584548. To further substantiate the continuous usage, the Plaintiff has relied on Ex.P3, which is the copy of the Memorandum of Association of the Plaintiff Company, dated 12.6.2002, in which the Plaintiff has described themselves as 'SRIRAM EPC ENGINEERING THE FUTURE'. The Plaintiff has also produced a profile as Ex.P4 again with the name 'SRIRAM EPC ENGINEERING THE FUTURE'. The Plaintiff has also submitted letters and communications and documents exchanged with the Trade Mark Registry, bearing the mark 'SRIRAM EPC ENGINEERING THE FUTURE' for the period continuously from July 2001 to June 2003. Further to substantiate the continuous usage, the Plaintiff had produced Ex.P6 (series), which are the copies of letters and communications exchanged with the third parties and in all the communications, the Plaintiff had described themselves as 'SRIRAM EPC ENGINEERING THE FUTURE'. These communications range from September 2000 to October 2004.

11. The learned counsel for the Plaintiff has

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vehemently relied on the above documents during the course of his arguments and stated that the said documents established two facts, which must be taken judicial notice by this court, namely, (1) that the composite term 'SRIRAM EPC' with the punch line 'ENGINEERING THE FUTURE' has been registered by the Registrar of Trade Marks under the Trade Marks Act 1999 under Section 137 and it had been used from 1.3.2002 and (2) that dehors the registration, the Plaintiff has been using the term 'ENGINEERING THE FUTURE' in their communications at least from September 2000. The above has been contrasted to advantage by the learned counsel with the assertion in the notice of the Defendant dated 29.6.2009 Ex.P7, in which the Defendant claimed that they have been using the punch line 'ENGINEERING THE FUTURE' from March 2004 only and that they have only a provisional registration, which provisional registration had actually been abandoned by the Trade Mark Registry. To substantiate this fact that the trademark has been abandoned, the Plaintiff has produced Ex.P9, in which the status of the trademark of the Defendant had been stated as 'abandoned as on date 22.06.2011'.

12. In the written statement, in paragraph 10, even though in Ex.P7, the Defendant had claimed that they have used the trademark only from March 2004 and that the Defendant has been using the trademark right from the date

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of its incorporation, but however, they have not produced any documentary evidence to substantiate the same.

13. These aspects lead this court to come to the conclusion that the provisions under Sections 27, 29, 134 and 137 of the Trade Marks Act, 1999 are applicable. The Plaintiff has established not only the just continuous usage of the trademark from 2000, but also the usage under authorisation after registration with necessary authority. It had been contended by the learned counsel for the Defendant that the registration is only with respect to the name of the Company and not with respect to the punch line 'ENGINEERING THE FUTURE', with which contention, I disagree. The Company and the visionary statement form one composite unit and the name of Company cannot be viewed independently from such statement. In this regard, the objects of the Plaintiff Company will have to be seen. The Plaintiff Company has been in the business as service provider of several projects throughout India. Naturally, they tunnelled the future and with that in mind, they have framed the phrase 'ENGINEERING THE FUTURE' as being unique to their Company alone.

14. The Defendant also claimed uniqueness to its punch line in its notice dated 29.6.2009 marked as Ex.P7. However, they have failed to establish that they are the prior user or that they have registered the said punch line

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in their name. The learned counsel for the Defendant widened the scope of the suit by claiming that the Defendant is exempted under Section 30(1) and 30(2) of the Act. The Defendant claimed that the usage of the words 'ENGINEERING THE FUTURE' is in accordance with the honest practices and there cannot be unfair advantage since both the Plaintiff and the Defendant conduct their business operations by participating in open tenders issued by public authorities and consequently, there will be no scope for confusion in the minds of the general public, with which submission also, again I disagree.

15. Participation in similar public tenders by both the Plaintiff and the Defendant is possible. When a public authority opens tenders and finds two Companies with the same slogan 'ENGINEERING THE FUTURE', the authority is bound to gain an impression that the two companies form part of the same conglomerate or they are a part of a syndicate to break apart the tender process. This would detrimentally affect the reputation of the Plaintiff, since the Plaintiff has been using the slogan 'ENGINEERING THE FUTURE' much earlier to the Defendant and had also registered the same, whereas the Defendant had abandoned its registration and is a later user.

16. Again, during execution of a project, when the Plaintiff exhibits their sign boards and placards during

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execution, the common public, who see such sign boards, will identify the Plaintiff Company with the slogan 'ENGINEERING THE FUTURE' and would develop confidence that the execution of the work would be done in accordance with the tender floated by the public authority. Again the Plaintiff would be put to loss if the Defendant is allowed to continue to use the terms 'ENGINEERING THE FUTURE' since the public would misinterpret the Defendant Company as another unit of the Plaintiff Company. This court, therefore, holds that the Defendant is not exempted under Section 30(1) and 30(1) of the Trade Marks Act, 1999.

17. The learned counsel for the Plaintiff, relying on the decision of this court reported in **2001 4 CTC 417 (Ashok Leyland Limited Vs.S.Venkataraman and Dilip Chabria Design Private Limited)**, has contended that when the Defendant themselves had applied for the trademark, they cannot turn around and state that the said mark is generic in nature. In fact, during the cross examination of PW.1, the witness had asserted that Ex.P2 certificate is genuine, but denied the suggestion that the registered trademark was only "SRIRAM EPC' and not 'ENGINEERING THE FUTURE'. The witness had reasserted that the phrases 'ENGINEERING THE FUTURE' is indeed part of their registered their trademark. It is to be noted that to substantiate their claim, the Defendant did not let in any oral evidence nor mark any

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document. Though the Defendant claimed to have used the said phrase 'ENGINEERING THE FUTURE' from the date of incorporation, but they have not produced any document to substantiate the same. Like wise, though the Defendant claimed in the notice that they have been using the Punch Line from March 2004, no document has been produced to substantiate the same. To substantiate their further claim that they have been allotted provisional registration number also, they have not produced any document much less even the application made for registration. On all these grounds, this court holds that the Defendant has miserably failed in dislodging the case of the Plaintiff and consequently, the Plaintiff is entitled to the relief of permanent injunction, restraining the Defendant from infringing the trademark 'ENGINEERING THE FUTURE'. Accordingly, the issue (1) is answered in favour of the Plaintiff and against the Defendant.

18. **Issue (2):-** With respect to this issue, it had been determined that the Plaintiff has been using the trademark 'ENGINEERING THE FUTURE' from 1.3.2002, as given in Ex.P2, which is the certificate issued by the Registrar of Trade Marks. The Plaintiff had also filed Ex.P3, copy of the Memorandum of Association dated 12.6.2002, in which the logo of the Plaintiff Company is very clearly given as 'SRIRAM EPC ENGINEERING THE FUTURE'. This is a document,

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which was registered before the Registrar of Companies. Again, the Plaintiff has produced a copy of the Company profile marked as Ex.P4, in which the Plaintiff has set out the nature of business conducted by it and also the various projects undertaken by it and such other details and in each and every page, the Plaintiff has continuously described themselves as 'SRIRAM EPC ENGINEERING THE FUTURE'. It is seen that the Plaintiff has conducted the projects for public sector companies and other public limited companies.

19. The Defendant, on the other hand, in their notice, dated 29.6.2009, marked as Ex.P7 had stated that they have been using the expression 'ENGINEERING THE FUTURE' only from March 2004. They have also claimed that the trademark registration provisional number 1350661 had been allotted to them with the mark 'Soma' and punch line 'ENGINEERING THE FUTURE'. However, the contention of the Plaintiff that the application of the Defendant had been abandoned has been established by Ex.P9, which is the document, which shows that the application of the Defendant has been abandoned as on date 22.06.2011. The Plaintiff has also filed Ex.P6, which are copies of letters and communications exchanged with the third parties, bearing mark 'SRIRAM EPC ENGINEERING THE FUTURE' and these communications range from September 2000 to October 2004.

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These letters had been issued to various customers of the Plaintiff. The Plaintiff has also produced Ex.P5 certified copies of documents, bearing the mark 'SRIRAM EPC ENGINEERING THE FUTURE' from the period July 2001 onwards, submitted with the Registrar of Companies. All these documents conclusively prove that the Plaintiff has been continuously using the said mark from July 2001 onwards. On the other hand, the Defendant has not produced even a single piece of paper to show that they had been using the mark prior to the usage of mark by the Plaintiff or even subsequently.

20. The learned counsel for the Defendant relied on the decision of the Honourable Supreme Court reported in **2001-5-SCC-73 (Cadila Health Care Limited Vs. Cadila Pharmaceuticals Limited)** and in particular, relied on paragraph 15 of the said decision, wherein it had been held that there should be comparison of two marks and that the onus was on the Plaintiff to show that the mark used by the Defendant was deceptively similar. In the present case, the mark as admitted by the Defendant themselves in their notice dated 29.6.2009 Ex.P7 is exactly the same, namely, the three words, 'ENGINEERING THE FUTURE'. There need not be any comparison of two exactly similar words. Both these words are the same, which are used by the Plaintiff and the Defendant. As mentioned earlier, even though the Plaintiff

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and the Defendant participated in open tender process, since the nature of the business of both the companies are also similar, when they participate in common tenders, the presence of the words 'ENGINEERING THE FUTURE' used by both the Plaintiff and the Defendant would definitely lead to a conclusion to be drawn by the parties that both the companies are part of the same conglomerate or both the companies have joined as a syndicate in the tender process. This would certainly affect the business of the Plaintiff.

21. From the cross examination of PW.1, the Defendant had not been able to extract any admission. The witness had reiterated with emphasis that the trademark involves 'SRIRAM EPC ENGINEERING THE FUTURE'. To counter this, the Defendant had not let in any positive evidence nor did they produce any document. Consequently, this court holds that the Plaintiff is entitled for permanent injunction restraining the Defendant in any manner from using the mark/expression/slogan 'ENGINEERING THE FUTURE' and from passing off their goods and services of their business as that of the Plaintiff. This issue (2) is also answered in favour of the Plaintiff and against the Defendant.

22. **Issue (3):-** This issue is relating to rendering of accounts of profits made by the use of the said mark/expression/slogan 'ENGINEERING THE FUTURE' by the

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Defendant. The Plaintiff has not established that prior to the institution of the suit, they and the Defendant had jointly participated in any tender process or in any business venture as rivals and that because of the use of the mark 'ENGINEERING THE FUTURE' by the Defendant, the Plaintiff had suffered loss of any contract. The Plaintiff also did not produce any evidence to show that till the institution of the suit, the Defendant had unlawfully gained against the Plaintiff in the business ventures by using the expression 'ENGINEERING THE FUTURE'.

23. As observed above, the Defendant has been restrained by a permanent injunction from infringing the trademark and from using the said trademark 'ENGINEERING THE FUTURE' owing to the fact that the Plaintiff is the prior user and also the registered user. This injunction has been granted from the date of knowledge when the Plaintiff came to know that the Defendant had been using the said trademark 'ENGINEERING THE FUTURE'. This date was on and from 29.6.2009, which is the date on which the Defendant had issued the legal notice Ex.P7. In the absence of any evidence, showing that the Plaintiff has directly suffered and incurred business loss owing to the usage of the words 'ENGINEERING THE FUTURE' by the Defendant, this court holds that the relief sought for by the Plaintiff for a direction to render accounts of profits would not lie and

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consequently, this issue (3) is answered against the Plaintiff.

24. With respect to the issue (4) as to whether the Defendant is liable to pay damages, it has been decided that that the Defendant must be restrained by an order of injunction from infringing the Plaintiff's trademark and from using the said trademark 'ENGINEERING THE FUTURE'. The Defendant had been using the same along with the name of their Company "Soma". The Plaintiff has also been using the same along with their name "SRIRAM EPC". The Plaintiff has been determined to be the prior user and also the registered trademark user. Even though there is no direct evidence that the Defendant had gained unlawfully, causing loss to the Plaintiff by usage of such expression 'ENGINEERING THE FUTURE', the Defendant had admitted that they have been using the said expression 'ENGINEERING THE FUTURE'. This admission would entitle the Plaintiff for damages, but in the absence of evidence, hidden loss can never be determined. It is a fact that both the Plaintiff and the Defendant are engaged in the business of engineering, procurement and construction. Consequently, this court holds that the Plaintiff is entitled to nominal damages, which this court determines at Rs.1,00,000/- (Rupees one lakh only). This issue (4) is answered accordingly in favour of the Plaintiff.

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25. In the result, this civil suit is partly decreed to the extent indicated above with costs. Time for payment is three months. Accordingly, there will be a judgement and decree:-

1. granting permanent injunction, restraining the Defendant, in any manner, from infringing the Plaintiff's trademark, containing the mark/expression/slogan 'ENGINEERING THE FUTURE.

2. granting permanent injunction, restraining the Defendant, in any manner, from using the mark/expression/slogan 'ENGINEERING THE FUTURE' and from passing off their goods and services of their business as that of the business of the Plaintiff.

3. directing the Defendant liable to pay a sum of Rs.1,00,000/- (Rupees one lakh only) as damages to the Plaintiff within three months.

sd/.C.V.K.J

16.11.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/04.04.2017 COURT OFFICER

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