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

+ **W.P.(C) 12361/2018**

VACMET ENTERPRISES PRIVATE LIMITED Petitioner

Through: Ms Arveena, Advocate.

versus

REGIONAL DIRECTOR AND ANR. Respondents

Through: Ms Saroj Bidawat and Mr Mohan
Kumar, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.11.2018**

CM No.47925/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 12361/2018 & CM No.47924/2018

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 15.05.2018 passed by respondent no.2 (Regional Director), directing the petitioner to change its corporate name. The said order was passed under Section 16 of the Companies Act, 2013 (hereafter 'the Act') on an application filed by respondent no.2.

3. Before proceeding further, it would be relevant to refer Section 16(1) of the Act, which reads as under:-

“16. Rectification of name of company.— (1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name

which,—

(a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.”

4. The petitioner had incorporated its name under the corporate name Vacmet Enterprises Private Limited on 04.08.2017. Respondent no2 (Vacmet India Limited) was an existing company as on that date, and it was incorporated much earlier in the year 1993. It is also not disputed that respondent no. 2 is a registered proprietor of trademarks containing the word ‘VACMET’.

5. The learned counsel appearing for the petitioner states that although respondent no.2 has registered trademarks including the word ‘VACMET’, the same is in Class 16 and 17 and not in Class 35. She further submits that respondent no.2’s application for registration of a trademark in Class 35 has

been opposed by the petitioner and the said opposition is pending. It is also the petitioner's case that the petitioner's business was commenced by a firm in the name of Vacmet Enterprises in the year 1985. In addition, it is submitted that the petitioner's business is different from that of respondent no.2. Whereas respondent no.2 is engaged in the manufacture and sale of Polyester Films, BOPP Films, Metalized & Lacquered Coated Films, and Papers etc, the petitioner is engaged in carrying on the business in leather.

6. The Regional Director, who exercises the delegated authority of the Central Government, has passed the order as the petitioner's corporate name includes the word 'Vacmet' and it resembles respondent nos.2's corporate name. The Regional Director has further considered the fact that respondent no.2 has a registered trademark including the name 'Vacmet' since 04.03.2011.

7. It is relevant to note that there is no dispute that the word 'Vacmet' is not a word in English or any other language. It is coined word and is, thus, intrinsically distinctive. It is also not disputed by the learned counsel for the petitioner that there are only two companies registered with Registrar of Companies, which use the said name as part of their corporate name – the petitioner and respondent no.2.

8. In view of the above, this Court finds no infirmity with the decision of the Regional Director in finding that the petitioner's name too nearly resembles the corporate name of respondent no.2. Plainly, the condition as indicated in Section 16(1)(a) of the Companies Act, 2013 is satisfied. It is also relevant to note that the petitioner's company was incorporated recently (on 04.08.2017) and respondent no.2 was incorporated way back in the year

1993.

9. The fact that business of the two companies is not identical is of little relevance, given the near resemblance in their names. Further, respondent no. 2 is also a registered proprietor of trademarks including the word 'Vacmet'. The fact that the same are in a class other than the goods dealt with by the petitioner is not sufficient to deny respondent no. 2's application considering that the petitioner is not a registered proprietor of any trademark, which includes the word 'Vacmet'.

10. In view of the above, this Court finds no ground to interfere with the impugned decision. The petition is, accordingly, dismissed. The pending application stands disposed of.

VIBHU BAKHRU, J

NOVEMBER 19, 2018
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