

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 275 of 2015 (O&M)

Date of decision: 23.01.2019

M/s Mind Tree Eduvation Private Limited

.....Appellant

Vs.

Mindtree Limited and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Rohit Khanna, Advocate for respondent No.1.

Mr. Alok Jain, Advocate for respondent No.2.

Manjari Nehru Kaul,J.

1. In this intra Court appeal filed under Clause X of the Letters Patent, the appellant-Company assails the order dated 22.12.2014 vide which the learned Single Judge set aside the order dated 28.05.2013, Annexure P.8 passed by Regional Director, Northern Region, Ministry of Corporate Affairs-respondent No. 2 rejecting the application filed by respondent No.1 under Section 22 of the Companies Act, 1956 (in short, "the Companies Act") and directed the appellant to rectify the name of the company by dropping the name "Mindtree" and also imposed costs in the amount of ₹25,000/-.

2. We have heard learned counsel for the parties and gone through the impugned order passed by the learned Single Judge as well as the order passed by respondent No.2.

3. The controversy that needs to be addressed is whether the corporate name of the respondent-company i.e. Mindtree Limited is similar to or nearly resembles the appellant's trademark or its corporate name so as to deceive or cause confusion in the mind of a user.

4. Brief facts of the case, which are relevant for deciding the controversy are that the appellant-company is engaged in imparting education since the year 2006. It has been running three schools in three different cities and is not engaged in any other activity. It was incorporated and registered with the Registrar of Companies, Chandigarh on 21.07.2009 and had filed an application for registration of the trademark "Mindtree Eduvation Private Limited" with the Trade Mark Authorities on 16.02.2016. The respondent-company is a mid-sized International Information Technology Consulting and Implementation Company, which started its operations in the year 1999 with headquarters at Warren, New Jersey. It is engaged in providing service relating to Information Technology, Independent Testing, Infrastructure Management and Technical Support, Knowledge Services and Product Engineering and next in Mobility. In the year 2008, respondent-company changed its name from Mindtree Consulting Limited to Mindtree Limited. On 23.11.2010, respondent-company filed an application under Section 22 of the Companies Act before respondent No.2 for rectification of the name of the appellant, on the ground that the name of the appellant resembled the name of the respondent-company and had an identical registered trade mark. After issuing notice to the appellant-Company and providing an opportunity of hearing to both the companies and considering the various documents produced by them, respondent No.2 vide order dated 28.05.2013 rejected the said application while holding that the trademark of the appellant-company

the trademark of the Applicant-company as it contained one additional different word i.e. “Eduvation”.

5. The respondent-company challenged the aforesaid order passed by respondent No.2 by filing CWP No. 17150 of 2013, which was allowed by the learned Single Judge vide impugned order dated 22.12.2014.

6. Learned counsel for the appellant assailed the said order by submitting that the appellant-company was involved in imparting education since 2006 and the word “Mind Tree” symbolized growth of brain. They were running three schools in three different cities and is not engaged in any other activity other than providing education. He further submitted that besides there being a phonetic difference between term “Mind Tree” as used by it and term “Mindtree” as used by respondent No.1, there was also a difference in the way both the appellant and respondent No.1 had been writing “Mind Tree”. As per the learned counsel for the appellant, the appellant was registered as “MIND TREE EDUVATION PRIVATE LIMITED” whereas respondent No.1 was registered as “MINDTREE LIMITED”. Since both the appellant and respondent No.1 were dealing in different fields, they had no concern with the business of each other and moreover, there was no resemblance whatsoever between the names of the two companies. Learned counsel for the appellant in support of his contentions placed reliance upon the judgment of the Supreme Court in *Vishnudas Trading as Vishnudas Kishandas Vs. Vazir Sultan Tobacco Co. Limited, Hyderabad and another*, 1997(4) SCC 201 as well as judgments passed by the Delhi High Court in *Nestle’s Products Limited and others Vs. M/s Milkmade Corporation and another*, 1974 AIR (Delhi) 40 and *Roshan Lal Oil Mills Ltd. Vs. Assam Company Ltd.* 1996(64) DLT 52.

7. On the other hand, learned counsel for the respondent contended that the respondent-company was registered in 1999 and the trademark had been registered as class 19, 9 and 16 (computer hardware printed matter etc.) on 24.02.1999. He further submitted that the respondent-company was started in 1999 and had its offices not only in India but in Asia, Europe and the United States. It was urged that the respondent-company was ranked No.18 in Indian I.T. Companies and at 445 in Fortune India 500 list of 2011 and if the appellant-company was not restrained from using the trademark “Mind Tree”, it would amount to infringement of its rights and affect the goodwill and reputation built by the respondent-company. Learned counsel for the respondents has placed reliance upon the judgment of this Court in *M/s Vardhaman Crop Nutrients Pvt. Ltd Vs. Union of India and others* (LPA No.101 of 2015) decided on 12.05.2015 as well as the judgment of the Delhi High Court in *Montari Overseas Ltd. Vs. Montari Industries Ltd*, (1997) ILR1 Delhi 64 and the Bombay High Court in *MRC Logistics Pvt. Ltd. Vs. Regional Director Western Region, Ministry of Corporate Affairs*, 2009 (4) BomCR 600.

8. After hearing the arguments advanced by learned counsel for the parties and perusing the material available on record, we do not find any substance in any of the contentions raised by the learned counsel for the appellant-company.

9. In this case, it is undisputed that the respondent-company got itself incorporated under the Companies Act on 24.02.1999 with the name “MINDTREE CONSULTING PRIVATE LIMITED” whereas the appellant-company got itself incorporated under the Companies Act on a later date i.e.

on 16.02.2006 with the name “MIND TREE EDUVATION PRIVATE LIMITED”.

10. The contention of the appellant-company is that the fields in which the appellant-company and the respondent-company are operating, are completely different and there is no resemblance whatsoever in their registered trade mark. This contention was not accepted by the learned Single Judge, who set aside the order passed by respondent No.2 and directed the appellant-company to rectify its name by dropping the name “Mind Tree” by placing reliance upon the provisions of Sections 20 and 22 of the Companies Act. We are in agreement with the view taken by the learned Single Judge.

11. To decide the controversy in the present appeal, it is essential to reproduce Sections 20 and 22 of the Companies Act, which are as follows:

“20. Companies not to be registered with undesirable names:-

- (1) No company shall be registered by a name which, in the opinion of the Central Government, is undesirable.
- (2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles,
 - (i) the name by which a company in existence has been previously registered; or
 - (ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999,may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).
- (3) The Central Government may, before deeming a name as undesirable under clause (ii) of sub-section (2), consult the Registrar of Trade Marks.”

“22. 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,

(i) in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous companies law, the first-mentioned company, or

(ii) on an application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade mark of such proprietor under the Trade Marks Act, 1999, such company)

a) may, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name; and

b)

Provided that.....

(2).....”

12. A plain reading of Section 20 of the Companies Act shows that the name of a company which is identical with or too nearly resembles the name by which a company is in existence, may be deemed to be undesirable by the Central Government within the meaning of sub section (1) of Section 20 of the Companies Act. Section 22 of the Companies Act deals with rectification of name of company. In the case in hand, Section 20 of the Companies Act would be attracted as the name of the appellant-Company is

identical or nearly resembles the registered trade mark of the respondent-Company under the Trade Marks Act, 1999. Needless to add, the name of the company is not merely the identity of a Company but also reflects its goodwill and credibility. The name of the appellant-company carries a trademark and corporate name having a deceptive similarity and resemblance to that of the respondent-company, which was registered in earlier point of time, and can create confusion in the minds of their business associates and clients.

13. Adverting to the judgments relied upon by the learned counsel for the appellant, it may be noticed that in *Vishnudas Trading as Vishnudas Kishandas's* case (supra), it was held by the Apex Court that if a trader or manufacturer actually trades in or manufacturers only one or some of the articles coming under a broad classification and such trader or manufacturer has no bonafide intention to trade in or manufacture other goods or articles which also fall under the said broad classification, such trader or manufacturer should not be permitted to enjoy monopoly in respect of all the articles which may come under such broad classification and by that process preclude the other traders or manufacturers to get registration of separate and distinct goods which may also be grouped under the broad classification.

14. In *Nestle's Products Limited's* case (supra), it was held by the Delhi High Court that to find out whether plaintiff's trademark was infringed or not, nature and kind of goods regarding which the defendants had adopted plaintiff's trademark must be considered. Mere registration of trademark in favour of the plaintiff was not sufficient to constitute infringement.

15. In *Roshan Lal Oil Mills Limited's* case (supra), the question for consideration was whether the words 'JUMBO LABEL' with device of aeroplane and 'JUMBO' with device of elephant could be said to be

descriptive and common in the business parlance and/or whether these two words were deceptively similar to each other. It was held by the Delhi High Court that the two words although had a common word 'JUMBO' but they did not look to be similar. The goods in question were different and fell in different class and the evidence used by both were also different. There was innocent resemblance of the word 'JUMBO' between the two trade marks. It was held that trade mark of the plaintiff denoted 'JUMBO' aeroplane whereas that of the defendant denoted 'JUMBO' elephant. Thus, no interim injunction was issued.

16. The propositions of law enunciated in these decisions are unexceptionable. However, the factual matrix in the present case being different, the appellant cannot derive any advantage therefrom.

17. Coming to the judgments relied upon by the learned counsel for the respondents, it may be noticed that in *M/s Vardhaman Crop Nutrients Private Limited's case (supra)*, the appellant and the respondent companies were engaged in the business of manufacturing and marketing class I fertilizers, water soluble fertilizers and micro nutrients. They were operating in the same field and business. The other companies were using the word 'VARDHAMAN' but were engaged in different businesses. The respondent company filed application under Section 22 of the Companies Act only against the appellant company. On that application, respondent No.2 after satisfying himself that registration of the appellant company was undesirable, directed the appellant company to delete the word 'VARDHAMAN' from its existing name. Thus, no illegality was found in the said direction by this Court. The relevant part of the judgment reads thus:-

“In support of the fourth contention that there are 401 different Companies registered under the Companies Act with the Registrar of Companies with the name “VARDHAMAN”, learned counsel for the appellants has drawn our attention to the list of 401 Companies, annexed with the writ petition as Annexure P-22. This contention is also devoid of any merit, because out of this list, only the appellant and the respondent Company are engaged in the business of manufacturing and marketing Class I fertilizers, water soluble fertilizers and micro nutrients. They are operating in the same field and business. The other companies are using the word “VARDHAMAN”, but are engaged in different businesses. Even otherwise, it is for the already registered company to raise grouse to the Central Government under Section 22 of the Companies Act. If the newly registered company is infringing the rights of the already registered company under the Trade Marks Act, the later can approach the Central Government under Section 22 of the Companies Act. In the present case, the respondent Company had filed application under Section 22 of the Companies Act only against the appellant Company. On that application, respondent No.2, after satisfying himself that registration of the appellant Company is undesirable, directed the appellant Company to delete the word “VARDHAMAN” from its existing name. Thus, we do not find any illegality in the said direction issued by respondent No.2. In view of the above, we do not find any merit in the instant appeal and the same is, hereby, dismissed. However, the appellant Company is granted three months' time from the date of receipt of certified copy of this order, to change its name to some other name, after deleting the word “VARDHAMAN” from its existing name.”

18. In *Montari Overseas Limited's* case (supra), there was a use of similar trade names. There was a likelihood of confusion and deception. No explanation was given as to how the defendant adopted trade name which consisted of a unique word. The adoption of similar trade name was likely to

result in appropriation of reputation and good will of the defendant. It was held by the Delhi High Court that injunction restraining the use of similar trade name by the defendant company was granted under Section 20 of the Companies Act. The relevant observations of the Bench read thus:-

“(22) In considering the question whether the activities of the appellant are likely to cause confusion or pose a real and tangible risk of injuring the respondents reputation or goodwill, regard must be had to the fact that appellant is using a name similar to that of the respondent and it will amount to making a representation that the appellant is associated with the defendant. The appellant cannot be permitted to appropriate the reputation and goodwill of the respondent to promote its business interests.

(23) Regard must also be had to the fact that the expansion of business by the appellant and respondents in future may bring the parties into competition (See *The Dunlop Pneumatic Tyre Co. Ltd. Vs. The Dunlop Lubricant Co.* 1899(XVI)RPC 12 (10) at page 15 and *Crystalate Gramophone Record Manufacturing Co. Ltd. Vs. British Crystalite Co. Ltd.* 1934 (51) Rpc 315 at page 322(11).

(24) The quality of goods and services and kind of business which a new company undertakes and the credit which it enjoys may injure the reputation of the existing company due to adoption of a name by the former which is similar to the name of latter as they may be assumed to be connected with each other (See. *Ewing Vs. Buttercup Margarine Company Ltd.* 1917 Vol. II (12) Chancery Division 1 at page 3 and Ewing (*Trading as the Buttercup Dairy Company Vs. Buttercup Margarine Company Ltd.* 1917 (Vol. 34) Rpc 232 at page 239) (13).

(25) There is another aspect of the matter. [Section 20](#) of the Companies Act 1956 treats a name of the company to be undesirable if it is identical with or too nearly resembles the name by which a company in existence has been previously

registered. Since the legislature itself considers name of a company which is identical with the name of the other pre existing company to be undesirable, the legislative intent must be given effect to by giving injunctive relief to a plaintiff against a defendant who has copied the corporate name of the plaintiff.”

19. In view of the above discussion, we do not find any merit in the appeal and hence, no interference is warranted.

20. Accordingly, the present appeal is dismissed.

(Ajay Kumar Mittal)
Judge

January 23, 2019
‘gs’/sonia
Whether speaking/reasoned
Whether reportable

(Manjari Nehru Kaul)
Judge
Yes
Yes