

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

**CWP No.8448 of 2015
Pronounced on:10.12.2019**

M/s Lehra Bio Fuel Technology Private Limited

...Petitioner

Versus

The Regional Director, Northern Region, Ministry of Corporate Affairs and
another

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Shalin Bhatia, Advocate and
Mr.Vikas Bali, Advocate
for the petitioner

Mr.Piyush Khanna, Advocate
for respondent No.1

Mr.Ajay Sahni, Advocate with
Mr.Sham Lal Bhalla, Advocate and
Mr.Rahul Rajput, Advocate
for respondent No.2

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to the order dated 3.2.2015 (Annex P11) passed by the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida, whereby the petitioner-Company has been directed to change the name and style of company other than using the prefix "Lehra", with a direction to make the change within three months from the date of issue of the order.

2. The name of the petitioner-Company is M/s Lehra Bio Fuel

Technology Private Limited (for short, 'BF'), while respondent No.2 is M/s Lehra Fuel-Tech Private Limited (for short, 'FT'). They both are engaged in the business of manufacturing of briquettes. "Lehra" is a geographical area which comes from village Lehra in Punjab.

3. FT started its business of making briquettes in village 'Lehra' in the year 1995. It was a partnership concern and started its business of manufacturing and marketing of Fully Automatic Fuel Briquetting Machines, Equipments and Biomass Fuel Briquettes. They inter alia make briquettes. The products are sold in different States of India and outside India under the trademark "Lehra". It is registered under the Trade Marks Act, 1999. The Company holds 28 such trade marks for different products under the same trade mark "Lehra". The Company has acquired goodwill during the course of business over a long period of time in the local and other markets. The promoters, who are natives of village "Lehra" where the manufacturing unit is located, started as partnership firm in the year 2004 under the name and style 'Lehra Agro Fuel Industries'. FT was registered as a company in the year 2012 and a valid registration certificate was issued.

4. BF challenged the trademarks of FT with the prefix "Lehra", before the Intellectual Property Appellate Board, somewhere in the year 2012. FT filed an application under Section 22 of the Companies Act, 1956 (for short, 'the Act'), before the Regional Director (NR), Delhi-respondent No.1, seeking rectification of the name of BF. FT was engaged in business as an incorporated company on 23.1.1995, while the petitioner-BF was incorporated on 5.11.2012. The respondent No.2-FT, in its application under Section 22 of the Act pleaded that they never gave permission to anyone to use the name or to apply for incorporation with that name. They

claimed that approval of registration of company with the name “Lehra Bio Fuel Technology Private Limited” is against Section 20 of the Act and the Companies (Name Availability) Rules, 2011 issued by the Ministry of Corporate Affairs. The registered offices and factories of both the petitioner and respondent No.2-FT are 5 kms from each other and are engaged in similar line of business.

5. Respondent No.2-FT pleaded before the Regional Director (NR)-respondent No.1 in its rectification application that the promoters of the petitioner-Company had intentionally floated company similar to the applicant in name and business to usurp the business of the company. FT had a turnover of Rs.16.28 crores as on 31.03.2012. The petitioner had also made a website at the address www.lehraagrofuel.net, which is similar to the respondent-FTs website name i.e. www.lehrafuel.com.

6. Applicant/respondent-FT also alleged that the logo used by the petitioner-BF is similar to their logo by the name of “Lehra”. The respondent-FT submits that this shows the intention of the petitioner to use applicant's name, brand name as well as logo as a means of deception and passing off the trade name to cause loss of business to FT. Indisputably, they are both engaged in the same business of manufacturing and supply of fully automatic fuel briquetting machines etc. FT issued a cease and desist notice on the petitioner BF to stop using the name and trade mark of the respondent but the petitioner failed to comply with the notice and did not refrain from using the trade mark and to delete the word “Lehra” from its name. When they refused to act, the respondent-Company preferred the application under Section 22 of the Act.

7. In defence of trade mark and use of the word “Lehra”, the

petitioner contended before the authority that the word “Lehra” is geographical in nature and no one can create a trade mark on a name of a place but they did not dispute that both the companies operate in the same village “Lehra” and all Lehrians are entitled to use the word “Lehra” for doing business. The petitioner would argue that the respondent name is a geographical location which cannot be monopolized by a one single person. The petitioner also stated before the authority in defence of the action that they had moved a rectification petition against the registration of trade mark by FT under Section 124 of the Trade Marks Act, 1999. No one can have an exclusive right to use the name of the village.

8. The Regional Director, Northern Region-respondent No.1, in the impugned order, after exchanging of the pleadings and upon hearing arguments, formulated the following findings of fact, as emerging in the case:

- i. That the applicant was incorporated on 23.1.1995 while the respondent was incorporated on 5.11.2012 i.e. much after incorporation of the applicant.*
- ii. The registered office and plant of the respondent company is just within 5 kms from the registered office and plant of applicant company.*
- iii. That the applicant company is proprietor of registered Trade Mark 'Lehra' through the applicant admitted that there are appeals filed before the Intellectual Property Appellate Board, Chennai, which have filed by the proprietorship firm Lehra Agro Fuel Industries and not in the name of the respondent company.*
- iv. It is also admitted fact that the Proprietorship Firm namely M/s Lehra Agro Fuel Industries was made in the year 2004 much after incorporation of the applicant-Company.*
- v. The applicant has also placed on record a statement of*

turnover, net profit, advertisement and business promotion while the respondent have not placed on record any facts regarding their business turnover or the counter claim over the registered trade mark. On the other hand, the respondent has claimed the protection under Section 12 of the Trade Mark Act 1999 for having an honest and concurrent user. This forum is unable to accept this contention of the respondent since this forum has no jurisdiction under Trade Marks Act. Only after various Trade Marks registered by the Registering Authority under Trade Marks Act 1999, application were filed during the same period when the respondent company was incorporated. This fact alone can establish that applicant has balance of equity in his favour rather than respondent.

vi. The trade marks were registered in an around between 2007 to 2010 under various classes of Trade Marks Act and rules made thereunder. The contention of respondent that “Lehra” is a geographical word like name of State of Maharashtra, Punjab or city like Mumbai, Delhi etc. and as such respondent should be allowed to use the name “Lehra” is not acceptable. The main dispute is resemblance of name and the similarity in the trade or business.

9. The authority correctly identified the main dispute, which was resemblance of name and the similarity in the trade and business. The findings returned is that the applicant-responder FT's name exists prior to the petitioner BF's name and FT has earned goodwill, reputation and domain knowledge in the eyes of the general public and buyers of the products and goods in variety of trades by which they are well known for, in their area and the markets. On these premises, the authority proceeded to allow the petition by order dated 20.1.2015, with a direction that the petitioner BF shall change its name to other than use of the prefix “Lehra”

as per the procedure under the Companies Act. The correctness of this

order has been questioned by the petitioner-BF.

10. In my view, the close proximity in which the two companies have their manufacturing units is an important factor to be considered. There is no dispute that respondent-FT started business of briquettes in 1988-89 while the petitioner came on the scene much later in 2004. The business of FT in a small village in 1988-89 had rival till 2004 and thus would have acquired an established brand name in the markets for its line of products. There would have been no actionable issue if BF was doing some other business.

11. BF applied for trade mark in the year 2007 and the company was incorporated in the year 2012. It is relevant to mention that the respondent-FT filed a suit for infringement of trademark and passing off against the petitioner of trademark "Lehra". Learned Additional District Judge, Ludhiana, allowed the respondent's application under Order 39 Rule 1 and 2 CPC, vide order dated 17.11.2015, and the petitioner was restrained from using the trademark "Lehra". The petitioner was aggrieved against the order dated 17.11.2015 and filed FAO No.1293 of 2016, before this Court, which was dismissed on 11.3.2016. The contentions raised by the petitioner in the appeal were the same that being a geographical name, he could use the trademark "Lehra" and even other persons are using the same name "Lehra" for their business. That is why he has a right to use the impugned trademark but the said contention did not find favour and the case was dismissed. In the further litigation SLP No.16568 of 2016 stands dismissed on 27.11.2017. The same was pending adjudication when the written statement was filed by the respondent-FT. A Division Bench heard that matter involving the controversy of mark deceptively similar to the

trademark of FT noticing that the mark has been registered under several classes including classes 7 and 35. The applications for registration were made from the year 2007 onwards claiming Trade mark user from the year 1995. It has been recorded in the order that respondent No.1's user of the mark since the year 1995 has not been contested.

12. On the other hand, the petitioner, who was the appellant in the appeal, admitted use of the trade mark since the year 2007. Interestingly, FT relied upon BF's application for registration of the identical mark also under classes 7 and 35 claiming user from the year 1994 but the application was made on 12.10.2012 coinciding with the date when the suit was filed at Ludhiana. The application was for a devise mark wherein the word "Lehra" is a prominent and dominant feature. This argument was advanced by FT to counter BF's contention that the word "Lehra" can never be registered. BF had argued that the mark is not distinctive to FT's products as it is the name of the village and no one has a right over the name of the village. The Division Bench found that FT's reliance on BF's application for registration of mark "Lehra" was well founded at least at the interlocutory stage. While dismissing the appeal, the Court prima facie observed that the contention on behalf of BF that the mark cannot be registered being the name of the place is not well founded. But a conclusive finding was not recorded since the rectification proceedings adopted by BF against FT was pending and still remains pending. When the trademark sounds deceptively similar there is a case of passing off. This is a case of two companies dealing in the same product under the same trademark with word "Lehra" as a prefix.

13. Mere similarity of name may not have been the sole factor to peg the case on, but when it is linked with the use and commonality in

business then I have no doubt that pre-registering of Trade Mark/Trade Name by FT both located in the same village in Punjab would be an active infringement of trademark to cause loss to FT.

14. Learned counsel for BF has placed reliance upon the decision of the Bombay High Court in the case, *“Reliance Industries Ltd. vs. Reliance Polycrystalline Ltd.”* 1997 PTC(17). He has further placed reliance upon decision in the case of *“Imperial Tobacco Co.of India vs. Registrar of Trade Marks and another”* AIR 1968 Calcutta 582. Further reliance is placed upon *“Imperial Tobacco Co.of India vs. Registrar of Trade Marks and another”* AIR 1977 Calcutta 413. Reliance was also placed upon *“Marico Limited vs. Agro Tech Foods Limited”* 2010 (44) PTC 736 (Del.).

15. Learned counsel for the FT has placed reliance on a decision of this Court in *“Mindtree Limited and others vs The Regional Director, Northern Region, Ministry of Corporation Affairs and others”*, (2015) 178 PLR 161, para Nos. 5 and 7 of the judgment which are reproduced as under:

If MindTree is a fairly well grown Company which has its roots in India and branches in India and Asia and it has also registered the trade mark MindTree, it requires no forensic skill to infer that the name of a Company that has the same prefix viz. MindTree Eduvation is identical. The difference lies in the fact that one is MindTree Technology and another is MindTree Eduvation. Neither Section 20 nor Section 22 requires a complete congruity of names. It only requires a name which is identical or nearly resembling the first registered Company.

The impugned order is erroneous in trying to make a difference by the only fact that in the name of the respondent-Company MindTree is suffixed with Eduvation in the place of technologies. It is not merely the identity of the name of a Company that is relevant. Even if the name of the respondent-

Company carries the trade mark of the first registered Company, it would give rise to a situation of a Company with an undesirable name. The decision of the authority below is erroneous and it is set aside.

16. He has also referred to the Division Bench judgment of this Court in “Vardhaman Crop.Nutrients Private Limited vs. Union of India and others” (2015)128 CLA 162 (Punj & Har.) and refers to the following extracts:

In our opinion, if any one of these two facts are established, i.e. (i) that name of the new company to be registered is identical with, or too nearly resembles, the name by which a company in existence has been previously registered; and (ii) if the previously registered company is having a registered trade mark in the same name, in that situation, it will be deemed to be undesirable by the Central Government to register the said company in the same name.

In the facts and circumstances of the instant case, it has been proved that the appellant Company got itself incorporated with the name “M/s Vardhaman Crop Nutrients Private Limited”, which was identical to the already incorporated respondent Company; that “VARDHAMAN” was already registered trade mark of the respondent Company; and that both the companies are dealing in the same business. On the basis of these facts, inference could have been drawn that the act of the appellant Company was undesirable. Thus, we do not find any force in this contention.

17. Learned counsel for the petitioner has made much of an application filed by FT under Order 6 Rule 17 CPC for amendment of plaint in the trial Court. In the original suit, the word “trademark” has been used.

At several places including in the prayer and by amendment FT wants to amend and insert the word “trade name” to read “trade mark/trade name” for

deciding the entire controversy on the pleadings already put in with minor changes. From this, he submits that suit was defective and the mistake was realized in the application of FT late on 10.7.2018 with the application filed. Nothing hinges on this application for the determination of this case. The names/logos/E-mail addresses cumulatively apparently suggest that there has been breach of trade mark and trade name and accordingly, I do not find any patent error in the impugned order dated 3.2.2015 passed by the Regional Director-respondent No.1 warranting interference.

18. However, this order will remain subject to the rectification application filed by BF.

19. The petition is accordingly dismissed. No costs.

10.12.2019

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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No