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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13th September, 2019

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W.P.(C) 9490/2019 and CM APPL. 39051/2019

M/S GOLDEN TOBACCO LIMITED AND ANR. Petitioners

Through: Mr. Raj Bahadur Srot and Mrs.
Svyatha N. Shirolker, Advocates (M:
9212092763).

versus

ITC LIMITED AND ANR.

..... Respondents

Through: Mr. Mukul Rohatgi, Sr. Advocate
with Mr. Rajiv Nayar, Sr. Advocate
with Mr. Mahesh Agarwal, Mr. Rishi
Agarwal, Mr. Karan Luthra and Ms.
Aarushi Tikku, Advocates for R-1 (M:
9818931119).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 1st November, 2018 passed by the Intellectual Property Appellate Board (*hereinafter*, "IPAB"). The background is that Respondent No.1 herein had filed two rectification petitions seeking cancellation of the Petitioner's Trade Mark Nos. 347870 and 1387061 in class 34. The case of the Respondent before the IPAB is that the Petitioner's Trade Marks are wrongly registered and wrongly remain on the register as also on the grounds of non-use.

2. Ld. counsel for the Petitioner submits that during the pendency of the cancellation petitions, the Petitioner filed an application seeking to take on record additional documents in the form of a Chartered Accountant's certificate, sales invoices and advertisements. The same was moved before

the IPAB but was rejected by the impugned order. Ld. counsel for the Petitioner further submits that if the said documents are not taken on record it would severely prejudice its case as it had filed the documents as per the advice of its counsel.

3. On behalf of the Respondents, it is submitted that the writ petition is writ large with incorrect and false statements. The dates which have been pleaded in the application do not match up and in fact, show the *malafides* in filing the application itself. It is the contention of the ld. Senior counsels that the intention is to delay the matter and to ensure that it is not finally heard before the IPAB.

4. Admittedly, the matter is listed for final hearing on 16th September, 2019 before the IPAB on which date, as per the ld. counsels for the parties, the rectification petitions are slated to be finally heard. IPAB, has, in the impugned order noted various dates on which the matter has been adjourned since 2016. The Petitioner herein had filed the counter statement belatedly and the delay was condoned by the IPAB. Thereafter, the matter was argued in part, on 6th August, 2018. Part arguments were thereafter heard again on 20th September, 2019. It was under these circumstances that the IPAB felt that the Petitioner is unnecessarily delaying final hearing of the matter and rejected the application for additional evidence.

5. This court has perused the impugned order and there is no doubt that the Petitioner has not been diligent in following up the matter and filing its documents as per the timelines prescribed. The request for additional documents at a belated stage, after the matter was part heard before the IPAB, has been considered by the IPAB and rejected. There are contentions which have been raised by the Respondents on the merits of the documents

i.e., that the Chartered Accountant's certificate is not genuine, the invoices and advertisements are not in original and that they have not been counter signed by the Excise Officer.

6. Considering the fact that rectification petitions are decided on the basis of documentary evidence, the main issue is of the quality and period of user of the mark. The Petitioner ought to have placed the relevant documents at the time of filing the counter statement itself. The manner in which the documents are sought to be introduced at the stage of final hearing has led to the impugned order being passed rejecting the documents and the additional evidence. The matter is listed for final arguments on 16th September, 2019. If the Petitioner is able to produce the original documents or authentic documents/certified copies, during the course of hearing, in a compilation, on 16th September, 2019, it may do so, subject to payment of Rs. 2,00,000/- as costs to the Respondents. If the original/certified copies are not produced on 16th September, 2019, the final hearing before the IPAB will go on. No adjournment shall be sought by the Petitioner.

7. In case the Petitioner is unable to produce the documents and the matter is decided against the Petitioner, liberty is granted to the Petitioner to agitate the ground as to non-taking of additional documents, in any challenge to the final order of the IPAB, which it may avail, if the need so arises.

8. The present petition and all pending applications are disposed of.

9. Order *dasti* under signature of the Court Master.

PRATHIBA M. SINGH, J.

SEPTEMBER 13, 2019
MR