

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 16..10..2019
Orders Pronounced on : 13..01..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.40035 of 2005
and

W.P.M.P.No.42926 of 2005

&

M.P.No.1754 of 2006

Congruent Info-tech Pvt. Ltd.,
Type II/4, Dr.V.S.I. Estate,
Thiruvanmiyur, Chennai 600 041.
Rep. by its Director,
Mr.Shaileshkumar Limaye

... Petitioner

-Versus-

1. The Regional Director,
Southern Region,
Ministry of Company Affairs,
Shastri Bhavan, 5th Floor,
26, Haddows Road,
Chennai 600 006.
2. M/s.Congruent Solutions Pvt. Ltd.,
Lotus Towers, 8th Floor,
Anna Salai, Guindy,
Chennai 600 032.
3. The Registrar of Companies,
Shastri Bhavan, 3rd Floor,
26, Haddows Road,
Chennai 600 006.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for the entire records leading to the passing of the impugned order dated 10.10.2005 passed by the 1st respondent and to quash the same.

For Petitioner

: Mr.R.Venkatavaradan Assisted
by Mr.Sai Sudharsan

For Respondent(s)

: Mr.D.Ramesh Kumar for RR1
and 3

For Petitioner

: Mr.R.Venkatavaradan Assisted
by Mr.Sai Sudharsan
Mr.S.K.Srinivasan for R2

ORDER

This writ petition has been filed challenging the order passed by the 1st respondent - Regional Director, Ministry of Company Affairs, under Section 22, of The Companies Act, 1956, (herein after called as 'Act') directing the petitioner to delete the word "congruent" from its existing name.

2. The case of the petitioner in brief is as follows:- The petitioner company was incorporated in the year 2000, with the name Rx Solutions Private Limited, promoted by one Mr.Mani Krishnamurthy, a NRI, based in Seattle, in USA. The petitioner company's parent is in the USA with the name "Congruent". Subsequently, the petitioner company applied for change of name for the Indian subsidiary in order to identify with the US parent company and to maintain business relationship with multinational companies across the border. Accordingly, the petitioner's name was changed as Congruent Info-tech Pvt Ltd with effect from 12.10.2004. According to the petitioner, while filing the application, they had submitted all particulars and facts that were required for effecting change of name, the 3rd respondent after having considered all the materials, after being fully satisfied about the need and necessity for the change of name and also fully aware of the fact that the 2nd respondent company and one more company have similar name, ordered for change of name in favour of the petitioner by order dated 12.10.2004 and issued a fresh certificate of incorporation with the name as "Congruent Infotech Private Limited".

3. While so, the 2nd respondent had lodged a complaint before 1st respondent under Section 22 of the Act, 1956, seeking a direction to the petitioner to change the name. On such complaint, the petitioner had submitted his detailed reply to the 1st respondent and also appeared in person for the hearing on 02.09.2005. Thereafter, the 1st respondent passed the impugned order.

4. According to the petitioner, the power under Section 22 of the Act, can be invoked only in the event that, the name has been changed inadvertently, whereas the name change has been effected by the 3rd respondent after being fully aware of the fact that already two more companies are existing in the same name. As the 3rd respondent had effected name change after applying his mind and after considering the entire materials available on record, passed an order in favour of the petitioner

thereby issued a fresh certificate of incorporation to the petitioner with the name "Congruent Infotech Private Limited". Therefore, the same cannot be set aside by the 1st respondent invoking his power under Section 22 of the Act, on the ground that the change of name was effected inadvertently without considering the materials available on record. That apart, the 1st respondent has committed a factual error in reaching at a conclusion that using the word "congruent" would adversely affect the business interest of the 2nd respondent without any substantial proof whatsoever. Further, the 1st respondent has miserably failed to take note of the fact that the petitioner never claimed any exclusive right to the use of the word "congruent" excepting to the extent necessitated for business purposes and in order to show its connection with the parent company. During enquiry though the 2nd respondent submitted a reply, a copy of the same has not been furnished to the petitioner and therefore, the impugned order has been passed not only against the law but also in violation of the principles of natural justice. Hence, this writ petition.

5. The 2nd respondent filed a detailed counter affidavit inter alia contending that, the petitioner's parent company was registered as "Congruent Solutions Inc. The petitioner registered the name only as "RX Solutions Private Limited" in the year 2000, instead of using the word "congruent". The 3rd respondent has changed the name inadvertently and that mistake has been rectified by the 1st respondent by way of the impugned order. The 2nd respondent has been in existence ever since 1986 whereas the petitioner company was originally registered in the year 2000 in some other name, subsequently in the year 2004, the name of company has been changed as "Congruent Infotech Private Limited". The 2nd respondent has been in existence since 1986 in the software development business, the grant of a name by the third respondent containing the word "Congruent" to another company, which is also engaged in the similar software services business, was certainly undesirable within the meaning of Section 20 of the Act, and granting such name would not only cause serious prejudice, irreparable loss and damage to the 2nd respondent, it would cause a lot of confusions in the market and provide the petitioner an unfair mileage through the efforts of the 2nd respondent. The name of the petitioner was sought to be changed with a malafide intention in order to disturb and passing of the business of the 2nd respondent and to confuse the customers with a deceptively similar name so to derive undue advantage in the process.

6. The learned counsel for the petitioner submitted that, while dealing with the application under Section 22 of the Act, 1956, the 1st respondent has to necessarily consider various aspects involved in the issue, merely because the name of the

company subsequently registered is identical with the existing company, the 1st respondent cannot direct the subsequent company to delete the name as a matter of course. The 1st respondent should apply his mind and satisfy himself that the name by which the subsequent company was registered is undesirable. That apart, Section 20 of the Act, 1956, also does not create any bar on the 3rd respondent from registering any company in the identical name, unless the 3rd respondent comes to a conclusion that the name is undesirable within the meaning of sub section (1) of Section 22 of the Act, 1956. Thus, according to the learned counsel, the 1st respondent without considering the legal aspects of the matter, merely following certain guidelines issued by the department, which does not have any statutory force and also by considering the extraneous facts, has passed the impugned order which is not only against law but also in violation of principles of natural justice.

7. Per contra, the learned counsel for the 2nd respondent would contend that under Section 22 of the Act, 1956, when the name of existing company is identical, or too nearly resembles to the subsequent company, whether name has been registered by inadvertences or otherwise, the name of the subsequent company should necessarily be deleted.

8. The learned counsel for the 2nd respondent would further submit that, the company cannot adopt a name which is being used by any established company as that name would be undesirable and the same would cause confusion in the mind of the public. Therefore, the petitioner is expected not to disturb the goodwill and reputation of the 2nd respondent company. After registering its company name in the year 2000 as Rx Solutions Private Limited, in an deliberate attempt the petitioner sought to change its name to similar that of the 2nd respondent company. Considering all those aspects, the 1st respondent has rightly directed the petitioner to delete the name "Congruent" from its company name "Congruent Infotech Private Limited" and therefore, no illegality or irregularity can be attached to the same.

9. Before considering the rival submissions, it would be useful to refer to Sections 20 and 22 of The Companies Act, 1956. Section 20 of the Act, expressly provides that no company shall be registered by a name which, in the opinion of the Central Government, is undesirable, which reads 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.

10. Section 22 of the Act, 1956 deals with rectification of the name of the company which has been registered under Section 20 of the Act, reads as follows:-

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) shall, if the Central Government so directs within twelve months of its first registration or

registration by its new name, as the case may be, or within twelve months of the commencement of this Act, whichever is later, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name within a period of three months from the date of the direction or such longer period as the Central Government may think fit to allow.

Provided that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to notice of registration of the company shall be considered by the Central Government."

11. The provisions in Section 22 of the Act should be read conjointly with the provisions in Section 20. Under Section 20 of the Act, no company shall be registered by a name which, in the opinion of the Central Government, is undesirable. Under sub-section 2(i) of Section 20, the name by which a company in existence has been previously registered, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1) of Section 20 of the Act. Further, under Section 22 of the Act, the Central Government is empowered to rectify the mistake which has been committed through inadvertence or otherwise under Section 20 of the Act. A careful reading of Sections 20 and 22 of the Act, it is clear that, merely because a name of the company which was registered subsequently is identical or too nearly resembles the name of the company which was previously registered, the order of rectification cannot be passed as a matter of course.

12. In the instant case, already registration has been made which was sought to be rectified under section 22 of the Act. Hence, the 1st respondent while exercising his jurisdiction under Section 22 of the Act is expected to confine himself within the scope of Section 22 of the Act and not beyond that, and the 1st respondent shall satisfy himself that the name in which the subsequent company was registered through inadvertence or otherwise is undesirable. Merely because the name of the company subsequently registered is identical with that of the existing company, the 1st respondent cannot direct the subsequent company to delete the name of the subsequent company unless the 1st respondent get satisfied himself that the name of the subsequent company is undesirable. The identity of the name between the two companies cannot be a sole criterion to effect the change of name of a company.

13. A Division Bench of the Bombay High Court in VOV Cosmetics Pvt Ltd v. Union of India [2013(4) Mh.L.J.] 168 at paras 17 & 21 has held as follows:-

"17.The submission is not well founded. Section 22 also confers a discretion upon the Central Government in such cases. Section 22(1), in the present case, would read as under:-

... ..

Thus, even assuming that the subsequent company is, through inadvertence or otherwise, registered by a name which is identical with or too nearly resembles a name by which a company in existence has been previously registered, it does not follow as a matter of course that it should be directed by the Central Government to change its name. This is clear from the use of the words "if the Central Government so directs" in section 22 (1) (b). The word "if" indicates that it does not follow as a rule that merely because a company is, through inadvertence or otherwise, registered by a name which is identical with or too nearly resembles the name by which a company in existence has been previously registered, it is bound to be ordered to change its name. The Central Government must satisfy itself that the name by which the subsequent company registered through inadvertence or otherwise is undesirable. Section 22 complements section 20 for it takes care of a situation where despite the provisions of section 20, a company is, through inadvertence or otherwise, registered by a name that is undesirable by providing for the rectification of the name of such company.

21. In an application for rectification of a name under section 22, it is necessary for the Regional Director to consider various aspects. It is neither possible nor desirable to exhaustively enumerate them. Suffice it to state that merely because the name of a company subsequently registered is identical with or too nearly resembles the name of a company which has already been registered, albeit, through inadvertence or otherwise, it does not follow that an order for rectification is bound to be passed."

14. That apart, the 1st respondent is expected not go into the other factors which are not relevant for exercising his jurisdiction under Section 22 of the Act. In the instant case,

the 1st respondent after considering the application of the 2nd respondent passed the impugned order mainly on the ground that the first name of the petitioner company as well as the 2nd respondent company are identical and the 3rd respondent registered the name without considering the promotions of the existing company inadvertently when 2nd respondent company is already engaged in the very same filed since 1986 and acquired brand value for the name congruent and the petitioner has failed to establish that they have exclusive right to use the key word as part of its name. The relevant portion of the impugned order read as follows:-

"23. In the back drop of the applicant company having been engaged in software development and Infotech activities since 1986 and the name has been changed to Congruent Solutions Ltd., and keeping in mind the nature of business and in view of the fact that the applicant company's statement that it is making investments to build a brand value for the name "Congruent", the respondent company's contention cannot be considered as proper. In the absence of any proof to the effect that promoters of Rx Solutions Private Limited have exclusive right to the use of the key word Congruent as part of the name, the contentions of the respondent company do not gain credence."

15. In the considered opinion of this court, such a finding of the first respondent is totally unwarranted and also beyond the scope of Section 22 of the Act. The 1st respondent had taken into consideration certain irrelevant facts which are not relevant and failed to consider the relevant factors which are germane for consideration while exercise his jurisdiction under Section 22 of the Act.

16. For the foregoing reasons, this court is inclined to set aside the order of the 1st respondent and remit the matter back to the 1st respondent for reconsideration and pass orders afresh by considering relevant facts. This writ petition succeeds accordingly to the extent indicated above.

In the result, this Writ Petition is allowed and the order of the 1st respondent impugned in this writ petition is set aside and the matter is remitted back to the 1st respondent for fresh consideration and orders on merits and in accordance with law by giving sufficient opportunities to both the parties including an opportunity of personal hearing. The above said exercise shall be completed within a period of eight weeks from

the date of receipt of a copy of this order. No costs.
Consequently, connected MPs are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

kmk
To

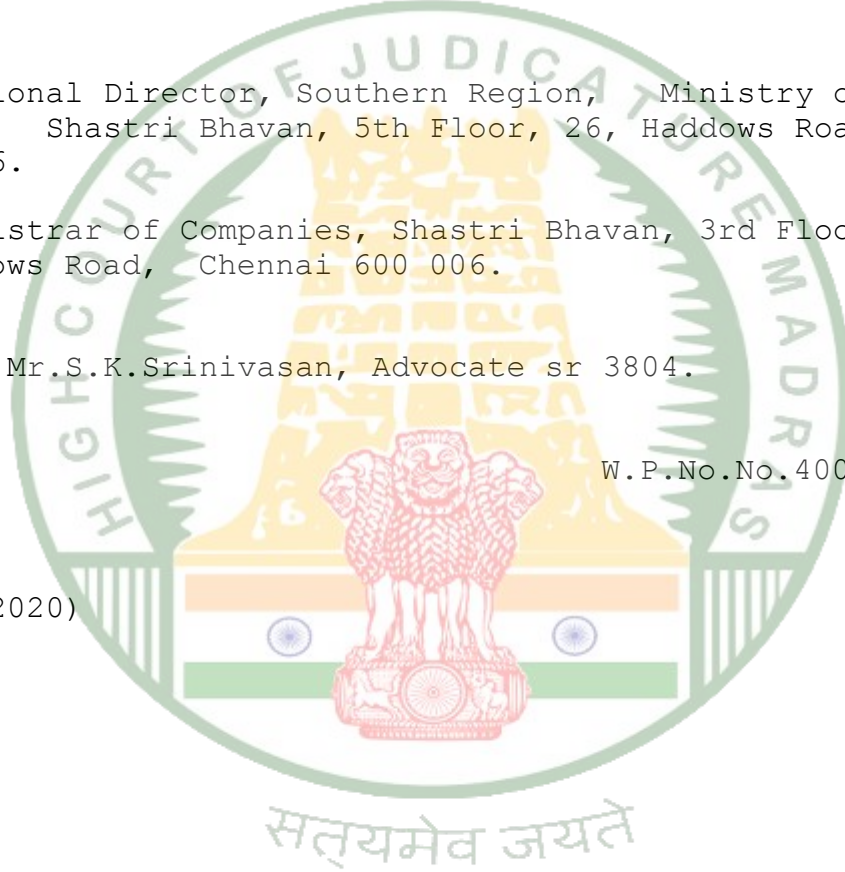
1.The Regional Director, Southern Region, Ministry of Company
Affairs, Shastri Bhavan, 5th Floor, 26, Haddows Road,
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2.The Registrar of Companies, Shastri Bhavan, 3rd Floor,
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+2 Ccs to Mr.S.K.Srinivasan, Advocate sr 3804.

W.P.No.No.40035 of 2005

PM(CO)
SP(25/02/2020)



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