

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.9715 OF 2021
IN
COMMERCIAL IP SUIT NO.157 OF 2014**

Euro Panel Products Pvt Ltd.

...Applicant/plaintiff no.1

IN THE MATTER OF

Euro Panel Products Pvt Ltd. & Anr

...Plaintiffs

V/s.

Eurobond Industries Pvt Ltd.

presently known as 4Mann Industries pvt Ltd.Defendant

Mr. Naushad Engineer a/w. Mr. Aditya Thakkar, Mr. Murtuza Federal, Mr. Krunal Mehta and Mr. Gaurav Saxena i/b. Federal and Co. for plaintiff no. 1/applicant in IAL/10981/2021.

Mr. Ashish Kamat a/w Mr. Gautam Sahni and Ms. Prakriti Shah i/b. Vesta Legal for defendant/applicant in IAL/9715/2021.

Mr. Pravin Nardele, OSD, Court Receiver present.

CORAM : K.R.SHRIRAM, J.

DATED : 3rd MAY 2021

P.C. :

1 Mr. Kamat states that the matter has been worked out between the parties. Mr. Engineer for plaintiff no.1 states that plaintiff no.1 has taken out an Interim Application (L) No.10981 of 2021, by which, plaintiff no.2 is being transposed as defendant no.2 and for leave to amend the plaint. Mr. Kamat has no objection. Mr. Engineer states that plaintiff no.1 is the sole and lawful proprietor of the Trade Mark EUROBOND (device) and plaintiff no.2 had no right, title and interest in EURO (word), EUROBOND (word) and EURO DEVICE (label) as mentioned in paragraph between paragraph

nos.5 and 6 of the Interim Application (L) No.10981 of 2021. In the plaint in paragraph 14, it is also stated that by an assignment deed dated 16th May 2004 entered into between plaintiff no.2 and plaintiff no.1, plaintiff no.2 has assigned the Trade Mark EUROBOND to plaintiff no.1 alongwith good will.

2 In the circumstances, Interim Application No.10981 of 2021, which is not listed today, but taken up for hearing by consent, is allowed and disposed in terms of prayer clause (a). Amendment to be carried out within one week from today.

3 Mr. Engineer seeks leave to withdraw the suit against newly added defendant no.2, who was originally plaintiff no.2. The suit accordingly stands dismissed against newly added defendant no.2.

4 Plaintiff and Defendant no.1 have entered into consent terms dated 30th April 2021. The consent terms signed by the Director of plaintiff and authorised signatory of defendant no.1, who is also the Managing Director of defendant no.1 and their respective advocates, is taken on record and marked "X" for identification. Mr. Engineer and Mr. Kamat state that plaintiff's representative and defendant no.1's representative are present online (though, I cannot see them). For ease of reference, the consent terms without enclosures (13 pages) is scanned and reproduced hereinbelow:

X
21/5/2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL IP SUIT NO. 157 OF 2014

Euro Panel Products Private Limited	)	
a company incorporated under the	)	
provisions of Companies Act, 1956 and	)	
having its registered office 702, 7 th floor,	)	
Aravalli Business Centre,	)	
Ramdas Sutrale Road, Borivali (West),	)	
Mumbai - 400 092	)	...Plaintiff

Versus

1) 4MANN Industries Pvt. Ltd.	)	
a company incorporated under the	)	
provisions of Companies Act, 1956 and	)	
having its office at: C-5, Gala and Sethia	)	
Enterprises Building, 3 rd Floor,	)	
Road No. 11, MIDC, Near Zenith House	)	
Opposite Rulta Tower-1, Andheri (East),	)	
Mumbai - 400 093.	)	
2) Euro Ceramics Limited	)	
a company in Liquidation through its	)	
Liquidator CA Mr. Nirav Anupam Tarkas,	)	
having its registered office at:	)	
206, Sangam Arcade, Vallabhji Patel Road,	)	
Vile Parle (W) Mumbai - 400 056.	)	...Defendants

CONSENT TERMS

1. The Defendant No.1 hereby agrees, declares, undertakes and confirms to this Hon'ble Court that

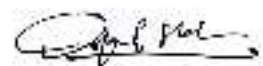
- A. the Plaintiff is the sole owner/ proprietor of the trademarks EURO (word), EUROBOND (word) and EURO DEVICT (label) in black and white as also for the colour scheme (depicted in Schedule I hereto) as also the registered trademark bearing Registration No. 1165712 either alone or in combination with any other mark in respect of manufacturing, trading, selling, offering to sell, distributing and/or offering to distribute and/or offering to manufacture, trade etc. in respect of the goods included in Class 6 of the Fourth Schedule to the Trade Mark Rules, 2002;
- B. the Plaintiff is the registered proprietor of the trademark EUROBOND and the EUROBOND artistic label bearing Registration No. 1165712, as also all the parts of the said trademark, registered in respect of goods specified in Class 6 of the Schedule to the Trade Mark Rules, 2002;
- C. it shall not apply for registration of any mark/(s) which is/ are identical and/ or is/are deceptively/ substantially similar to the trademarks EURO (word), EUROBOND (word) and EURO DEVICT (label) in black and white and colour scheme (depicted in Schedule I hereto) as also the registered trademark bearing Registration No. 1165712 either alone or in combination with any other mark;

D. it shall not and it cannot oppose, object, file, Notice of Opposition and/ or cause obstructions in any manner in respect of any applications for registration filed by the Plaintiff in future with the Trade Mark Registry, in respect of the trademarks identical/ similar and/ or related to the trademarks EURO (word), EUROBOND (word) and EURO DEVICE (label) in black and white and colour scheme (depicted in Schedule I hereto) as also the registered trademark bearing Registration No.1165712 either alone or in combination with any other mark:

E. it shall not in any manner infringe the trademarks EURO (word), EUROBOND (word) and EURO DEVICE (label) in black and white and colour scheme (depicted in Schedule I hereto) as also the registered trademark bearing Registration No. 1165712 alone or in combination with any other mark nor shall it pass off its goods as and for the goods of the Plaintiff sold, marketed, distributed under the well-known trademarks EURO (word), EUROBOND (word) and EURO DEVICE (label) in black and white and colour scheme (depicted in Schedule I hereto) as also the registered trademark bearing Registration No. 1165712.

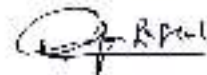
2. The Defendant No. 1 further declares and confirms to this Hon'ble Court that:

(i) the Defendant No. 1 has caused Mr. Dhīraj D. Gala to unconditionally withdraw the following trademark applications

made with the Trade Mark Registry, (a) Application bearing no. 2745694 in Class 6 for the mark "EURO MANN"; (b) Application bearing no. 2745698 in Class 19 for the mark "EURO MANN"; upon execution of these Consent Terms and has tendered to the Plaintiff, the acknowledgment received for withdrawal of the aforesaid marks and the final withdrawal confirmation receipts issued by the Trade Mark Registry, Mumbai prior to the filing of the present Consent Terms.

- (ii) the Defendant No. 1 shall upon execution of these Consent Terms, unconditionally withdraw the Notice of Opposition bearing no. 894770 filed by them with the Trade Mark Registry thereby opposing the Plaintiff's trademark Application bearing no. 3492551 in Class 6 for the mark "EUROBOND". Defendant No.1 shall prior to the filing of the present Consent Terms, tender to the Plaintiff the acknowledgment received for withdrawal of the Notice of Opposition and the final withdrawal confirmation receipt issued by the Trade Mark Registry, Mumbai.
- (iii) the Defendant No. 1 shall upon execution of these Consent Terms, unconditionally withdraw their Cancellation Application/ Application for Removal of Plaintiff's registered trademark under No. 1165/12 in Class 6 filed with the Intellectual Property Appellate Board (ORA/180/2015/TM/MUM). Defendant No.1 shall prior to the filing of the present Consent Terms, tender to the Plaintiff the acknowledgment received for withdrawal of the cancellation application/ application for removal of Plaintiff's registered trademark under No. 1165/12 in Class 6 and the final withdrawal



confirmation receipt issued by the Intellectual Property Appellate Board.

- (iv) upon execution and prior to the filing of the present Consent Terms, the Defendant No. 1 shall hand over a copy of all the letters/ applications etc. addressed/ filed by itself and/ or its Directors/ agents/ authorized representatives and any other person acting for/ through and/ or on their behalf, with the Trade Mark Registry, Mumbai and the Intellectual Property Appellate Board, with respect to the withdrawal of all the applications/ opposition/ cancellation addressed/ filed before the Trade Marks Registry and the Intellectual Property Appellate Board respectively, as mentioned in Clauses 2(i), 2(ii) and 2(iii) above.

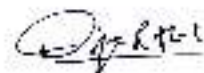
3. The Defendant No. 1, accordingly, submits to this Hon'ble Court for a Decree in favor of the Plaintiff in terms of Prayers (a) to (c) of the Suit, which read as under:-

- a) *that the Defendant by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner using the impugned Euro trademark and device or any other mark identical to or deceptively similar to the Plaintiff's registered trademark under No. 1165712 in Class 6 in respect of any goods falling in Class 6 of the IV Schedule of the Trade Mark Rules, 2002, so as to infringe the same;*
- b) *that the Defendant by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner using the word "Eurobond" or "Euro", or any part thereof, as part of their corporate name or trading style or any other deceptively similar corporate name or trading style;*

- c) *that the Defendant by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner using the mark "EURO" or "EUROBOND" or the EURO Logo, or any part thereof, in any manner whatsoever, either in relation to goods or as part of its corporate name or trading style, so as to pass off their goods and/ or business as and for the goods or business of the Plaintiffs."*

4. Goods bearing the trademarks of the Plaintiff have been seized from the Defendant No. 1, by the Police and by the Court Receiver, High Court, Bombay pursuant to Orders passed by this Hon'ble Court. These goods, details whereof are set out in the letter dated 15th March, 2019 received from Narpoli Police Station and Court Receiver's Report dated 29th May, 2019 are annexed as Annexure "A" and Annexure "B" hereto respectively. The goods seized by the Police and by the Court Receiver (Annexure A plus Annexure B) are hereinafter, referred to as "the said infringing goods".

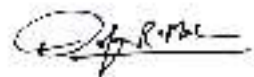
5. The goods seized under Annexure "A" is pursuant to a complaint filed by Mr. Mangesh Prakash Shiradkar with Narpoli Police Station. Upon these Consent Terms being taken on record and Order and Decree being passed thereon and within 7 days thereof, the Plaintiff shall assist and provide necessary co-operation to the Defendant No. 1 to ensure that the Complainant makes an application to withdraw the complaint and that the seized infringing goods be released from the custody of the Police. The Plaintiff shall also within 7 days of the Consent Terms being taken on record and Order and Decree being passed thereon, make an application to the Court Receiver informing them of these terms and seeking release of the said infringing goods to the Defendant No. 1 solely for the purposes

mentioned below and subject to the strict compliance of the conditions mentioned below.

f. The Defendant No. 1 has informed the Plaintiff that it is desirous of selling the aluminium sheets which have been seized as the said infringing goods however, it would be extremely difficult to remove all the labels and laser printing which depict the Plaintiff's trademarks on the said infringing goods. The Defendant No. 1 states that considering its above undertakings and the Decree being passed against it, Defendant No. 1 is unable to utilize the underlying aluminium sheet on which the trademarks of the Plaintiff have been depicted. The Defendant No. 1 has thus, requested the Plaintiff to take over the said infringing goods and deal with them as the Plaintiff deems fit, to avoid the aluminium sheets from being destroyed and no value recovered therefrom. The Plaintiff as part of the amicable resolution of disputes has agreed to acquire the said infringing goods, subject to, the terms and conditions mentioned herein below. The Parties hereto agree, confirm and declare that:

- (i) Defendant No. 1 shall pay and bear all the expenses and charges of the Court Receiver and/or Police with respect to the said infringing goods;
- (ii) the said infringing goods, will then be delivered directly from the custody of the Court Receiver and/or Police to the godown of the Plaintiff situated at Mumbai and Delhi. In the event, the Plaintiff requires to inspect the said infringing goods at the depots, warehouses, units, godowns of the Defendant No. 1 itself at its sole discretion, in such an event, the Plaintiff shall be entitled to inspect the same and thereafter take delivery of the retained goods, as



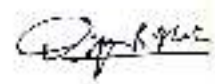
defined hereinafter. The entire costs of transport shall be borne by the Defendant No. 1. The entire exercise of getting the said infringing goods transferred to the godown of the Plaintiff, once the same are released, shall be completed within a period of 30 days from the date of the release;

- (iii) the said *infringing* goods shall then be inspected by the Plaintiff. Upon inspection, the Plaintiff shall retain at its sole and unfettered discretion only such aluminium sheets as are not defective in the sole opinion of the Plaintiff ("retained goods"). The process of inspection of the said *infringing* goods shall be concluded within 15 days from the date on which the said *infringing* goods are received at the depot/ depots of the Plaintiff;
- (iv) subject to the provisions of clause 6(iii), the Plaintiff hereby expressly agrees, acknowledges and undertakes that on and from the date of acceptance of the retained goods, the Plaintiff and/or its representatives shall not raise any claim/ demand/ dispute of any nature whatsoever, whether in relation to the quality of the retained goods or otherwise, against Defendant No.1 and/or any of its affiliates and/or its directors and/or Mr. Suresh Gala;
- (v) Defendant No.1 agrees, acknowledges and undertakes that insofar as the said *infringing* goods which are not retained goods, are concerned, the same shall be scrapped by Defendant No.1 at the Plaintiff's depot/ warehouse/ unit/ godowns in the presence of the Plaintiff/ its Authorized Representatives, at Defendant No.1's cost and expense and the scrap material shall be sold/ dealt with by Defendant No.1;

- (vi) in so far as the consideration payable by the Plaintiff for the retained goods is concerned, the same shall be arrived at in accordance with/ the manner as set out in the table annexed hereto as Annexure "C" ("Consideration"). The said table provides the rate per sq. ft. depending on the size, grade and sub group of the aluminium sheet. The Consideration for the retained goods shall be payable by the Plaintiff to Defendant No.1 in 6 (six) equal monthly installments which instalments shall start from the date of acceptance of the retained goods by the Plaintiff. The manner for ascertaining the Consideration as set out in the table at Annexure "C" has been agreed by the parties on the basis that the retained goods are of 'B-grade' quality, which shall be printed by Defendant No.1 on the back side of the aluminium sheets at its own costs. This is subject to the deduction with respect to the defective goods as provided hereinbelow. The Parties hereto agree, confirm and declare that the Plaintiff shall be entitled to deal with the retained goods on the basis that it is of sub-standard and inferior quality. The Plaintiff at its sole, absolute, unfettered discretion be entitled to deal with the retained goods, in a manner as it deems fit and the Defendant No. 1 agrees, confirms and declares that it has no objection whatsoever in a manner in which the Plaintiff deals with the retained goods;
- (vii) it shall be the sole responsibility of Defendant No. 1 and the Defendant No. 1 undertakes to this Hon'ble Court that it shall ensure that the said infringing goods are delivered to the godown of the Plaintiff directly and no other person or entity has access to the infringed goods on the way and/or in no way whatsoever are the

said infringing goods taken out of the sole custody of the Defendant No. 1, whilst in transit;

- (viii) Defendant No. 1 has represented and warranted to the Plaintiff and undertakes to this Hon'ble Court that the labelling on the said infringing goods, to the extent it includes material other than the trademarks of the Plaintiff is either non-proprietary in nature or proprietary to the Defendant No. 1 such as the trademark "4MANN," Defendant No. 1 agrees, confirms and undertakes to this Hon'ble Court that the retained goods can be sold or dealt with without removing these labels and with or without further labels being placed thereupon. The Defendant No. 1 shall have no right and will not claim any right in such utilization of the existing labels including its trademark. Defendant No. 1 has further undertaken to indemnify and keep indemnified the Plaintiff from and against any and all losses, damages, litigations, claims, demands, costs including litigation costs, interest, penalties, charges and expenses that may be incurred, sustained or suffered by the Plaintiff due to any claim made and/ or disputes raised by any person and/ or entity and/ or organization and/ or company claiming any right and/ or interest in the said trademark "4MANN" or any part thereof and/ or for using any of the labels that are existing on the said infringing goods except for the trademarks of the Plaintiff. In this regard, the Defendant No. 1 identifies Mr. Suresh Gala on its behalf to be personally liable and who has been identified to provide the indemnities and undertakings by the Board Resolution dated 3rd March, 2021 of Defendant No. 1. The extract of the Board Resolution



dated 3rd March, 2021 of Defendant No. 1 in this regard is hereto annexed as Annexure "D".

7. The Defendant No. 1 is currently using a code name in the name and style of 'ER' which is used by Defendant No.1 to identify the goods and accordingly is being exhaustively used in all goods manufactured by Defendant No.1 as well as all promotional materials, brochures, pamphlets etc. which is objected to by the Plaintiff. The code name 'ER' is being used by both the Plaintiff as well as Defendant No.1 thereby creating confusion in the minds of the public. Though code name 'ER' is not a registered trademark, Defendant No.1 agrees, confirms, declares and undertakes to this Hon'ble Court that the Defendant No.1 has already ceased and refrained from manufacturing its goods/ products using the said code name 'ER' as on 29th September, 2020. It is further agreed by and between the Plaintiff and Defendant No.1 that the restriction on using the code name 'ER' as contemplated in this clause shall only operate in relation to manufacturing of the goods/ products by Defendant No.1 and shall not be applicable to the sale of goods/ products manufactured by Defendant No.1 till 29th September, 2020 provided that the same are sold on or before 31st March, 2023 and there can be no sale of such goods/ products by Defendant No. 1 bearing the 'ER' code post 31st March, 2023, even though they were manufactured prior to 29th September, 2020.

8. The Plaintiff agrees, declares, confirms and undertakes to this Hon'ble Court to provide such assistance that may be required by the Defendant No. 1 for quashing of the First Information Report dated 15th March 2019 and bearing No. 150 of 2019, filed with the Narpoli Police Station on the Complaint of Mr. Mangesh Prakash Shirodkar, at the cost and expense of Defendant No. 1 to be borne in this



regard, within 7 (seven) days from the date of the filing of the present Consent Terms.

9. The Defendant No. 1 agrees, confirms & declares that there are presently no pending proceedings/ orders against the Defendant No. 1 including under the Insolvency & Bankruptcy Code, 2016, at the time of the execution of the present Consent Terms due to which the Defendant No. 1 is disabled in any manner to enter into these terms and that the Defendant No. 1 is fully entitled and capable to enter into these present Consent Terms and submit to a Decree as provided herein or comply with its obligations as provided herein and provide undertakings to this Hon'ble Court.

10. Defendant No. 2 has already executed Consent Terms dated 11th May, 2018 with the Plaintiff which Consent Terms have been filed and taken on record by this Hon'ble Court in Criminal Writ Petition No. 881 of 2017. By the said Consent Terms, the Defendant No. 2 has expressly admitted and undertaken that it has no right, title or interest in trademarks FIRO (word), EUROBOND (word) and FIRO DEVICE (label) in black and white and colour scheme (depicted in Schedule 1 hereto) as also the registered trademark bearing Registration No.1165712 and that it shall not use any of these marks either alone or in combination with any other mark. Hence, Defendant No. 2 is having no right, title or interest in the subject trademarks and the Suit against it is hereby withdrawn.

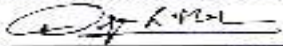
11. In addition to the above, the Defendant No. 1 agrees, confirms and undertakes to this Hon'ble Court to bear the Plaintiff's expenses/ costs in the matter and the same has been quantified at an amount of Rs.10,00,000/- (Rupees



Ten Lacs Only) which have been reimbursed to the Plaintiff on or prior to the filing of the terms.

12. The Parties hereto agree, declare and confirm that save and except for the payment obligations of the Parties, the timelines and undertakings provided are subject to the restrictions imposed as a result of the present COVID-19 situation including lockdowns and protocols imposed by the respective State governments to curb the spread of COVID-19 from time to time.

Dated this 30th day of April, 2021

Euro Panel Products Private Limited FOR EURO PANEL PRODUCTS PVT. LTD.  Plaintiff DIRECTOR  M/s. Ifederal & Company  Advocates for Plaintiff	4MANN Industries Pvt. Ltd. For 4MANN Industries Pvt. Ltd.  Authorized Signatory Defendant No. 1  M/s. Westa Legal  Advocates for Defendant No. 1
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- 5 Order in terms of consent terms.
- 6 All statements accepted and all undertakings accepted.
- 7 Suit stands disposed in terms of consent terms. Refund of court fees, if any, in accordance with rules.
- 8 All interim applications accordingly stands disposed.

9 Court receiver accordingly stands discharged without passing of accounts. Statement of Mr. Kamat that all charges and expenses of the court receiver shall be paid within 15 days of receiving a communication from the court receiver, is accepted.

9 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)