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WPO 1174 of 2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

TOPLAND ENGINES PRIVATE LIMITED AND ANOTHER
VERSUS
UNION OF INDIA AND OTHERS

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 30th March, 2022.

Appearance:

Mr. Sarathi Dasgupta,Adv.

Mr. Chiranjib Sinha,Adv.

Mr. Nandlal Singhania,Adv.

Ms. Ankita Choudhury,Adv.

The Court :- The subject matter of challenge is an order passed by the Regional Director, Eastern region, Ministry of Corporate Affairs, Kolkata dated 25th August, 2021. By the impugned order, the petitioner's prayer for a direction under Section 16 of the Companies Act, on the private respondent, to change its name, was rejected. The petitioner's grievance is that the respondent no. 3, Topoland India Private Limited is phonetically the same as the writ petitioner, i.e. Topland Engines Private Limited.

It is submitted that similarity in names has the effect of confusing and deceiving the community at large into believing that the respondent no. 3 is, in fact, the petitioner. The Regional Director in the impugned order has segregated the word "Top" from "Topoland". He has also segregated the word "Topo" from the name of the respondent "Topoland".

This court is clearly of the view that the Regional Director has committed manifest error in so segregating the nouns Topland and Topoland into two words. It

is only after segregation, that the Regional Director has come to the conclusion that the meaning and expression of the word “Top” is completely different from the word “Topo”. It was required to be considered as to whether, as a whole, the expressions “Topland” and “Topoland” are visually or phonetically deceptive.

Despite service of notice, specially by substituted means i.e. by newspaper publication, on the direction of this Court, the respondent no. 3 is not represented.

The reference to the judgment of this Court in the case of Kalpana Polytec India Limited vs. Union of India reported in 106(2001) Company Cases 558, the decision of the Delhi High Court in the case of CGMP Pharmaplan Pvt. Ltd. vs. R.D., Ministry of Corp. Affairs & Anr. reported in 2010 (118) DRJ 155 and the decision of the Madras High Court in the case of M/s. Lords Insulations India Private Limited vs. The Regional Director, Department of Company Affairs & Another reported in (2004) 4 Law Weekly 119 is deemed appropriate by this Court. The respondent no. 3 is directed to change its name from Topoland India Private Limited to any other name which is not phonetically or visually similar to the expression “Topland”.

The impugned order dated 25th August, 2021 shall stand set aside. The Regional Director shall take steps as specified under the Act in terms of this order.

WPO No. 1174 of 2022 is, accordingly, disposed of.

(RAJASEKHAR MANTHA, J.)