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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 1st November, 2022

+ **FAO(OS) (COMM) 278/2022, CAV 295/2022 & C.M.
APPLS. 41760-64/2022**

TENSBERG BREWERIES AND INDUSTRIES PVT LTD & ORS.
..... Appellants

Versus

CARLSBERG BREWERIES A/S & ANR. Respondents

Advocates who appeared in this case:

For the Appellants: Mr. Chander M. Lall, Senior Advocate with
Ms. Nancy Roy, Mr. Mimansak Bhardwaj,
Mr. Sunny, Ms. Ananya Garg, Mr. Prashant
and Ms. Aastha, Advocates.

For the Respondents: Mr. Anirudh Bakhru, Mr. S.K. Bansal, Mr.
Rishi Bansal, Mr. Aditya Rajesh, Mr. Neeraj
Bhardwaj, Ms. Tejaswini and Ms. Umang,
Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J (Oral)

1. Appellant impugns order dated 16.09.2022, whereby on an application under Order XXXIX Rule 1 and 2, an ad-interim injunction has been granted in terms of prayers 5 (i) and 5 (ii) of the

application.

2. Prayers 5 (i) and 5(ii) of the application read as under:-

“5. Under the circumstances, it is humbly prayed that during the pendency of this suit, this Hon’ble Court be pleased to:

i. For an *ex parte* interim injunction restraining the Defendants, their partners, principals, directors, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies and assigns restraining them from manufacturing, or authorizing the manufacture, distributing, exporting, selling, offering for sale, displaying and/or using, in any manner whatsoever, the impugned goods as tabulated under paragraph 31 of the plaint under the impugned marks/label namely ‘TENSBERG’ (Word



Mark) and and under the impugned trade dress and/or any other goods bearing any other mark/label/trade dress deceptively similar and/or confusingly similar to the Plaintiff’s said trademarks/labels/trade dress as a trade mark/label or part of trademark/label, trade name or a part of trade name, domain name www.tensberg.com and its social media platforms, including but not limited to, Facebook and LinkedIn or a part of domain name or in any other manner whatsoever amounting to or likely to:

a. Infringement of Plaintiff’s registered trademarks/labels;

- b. Passing off their goods as that of the Plaintiff's and in violation of the Plaintiff's common law rights in its said trademarks/labels;
- c. Infringement of copyright in the artwork of the said trademarks/labels;
- d. Falsification, unfair and unethical trade practices;

ii. An *ex parte* interim direction restraining the Defendants from disposing off or dealing with its assets including its shops, facilities and premises including those at the addresses mentioned in the Memo of Parties and its stocks-in-trade or any other assets as may be brought to the notice of this Hon'ble Court during the course of the proceedings and on the Defendants disclosure thereof and which the Defendants are called upon to disclose and/or on its ascertainment by the Plaintiff/Applicant as the Plaintiff/Applicant is not aware of the same as per Section 135 (2) (c) of the Trade Mark Act, 1999 as it could adversely affect the Plaintiff/Applicants ability to recover the costs and pecuniary reliefs thereon;"

3. It is noticed that the impugned order was passed on the very first date of hearing. Though the appellants were on caveat, no reply or written statement was filed by them either prior or on the said date of hearing. Since it was the first date, there was no opportunity available to the appellants to file their response to the suit or the application.

4. It is informed that written statement has now been filed before the learned single Judge.

5. With the appeal, appellant had furnished the stock details, stock

of finished goods and stock of raw material as on 18.09.2022. The list is as under: -

INDUS BIRRA BEVERAGES				
Stock Details as on 18.9.22				
Particulars	Bottle 650 MI in Case	Can 500 MI in Case	Lager 330 MI in Case	Total in Case
Stock At Custom Bond Delhi	3325	1501	2830	7656
Stock In Transit	0	4050	0	4050
Total Stock includes in Transit	3325	5551	2830	11706

Stock of Finished Goods Pending as on 18.9.22				
Particulars	Bottle 650 MI in Case	Can 500 MI in Case	Lager 330 MI in Case	Total in Case
Stock of Finished Goods Pending	7800	10800	6000	24600
Total Stock of Finished Goods Pending	7800	10800	6000	24600

Stock of Raw Material as on on 18.9.22				
Particulars	Bottle 650 MI in Case	Can 500 MI in Case	Lager 330 MI in Case	Total in Case
Stock of Raw Material in Factory , Nepal	100000	0	0	100000
Total Stock of Raw Material	100000	0	0	100000

6. On 23.09.2022, purely as an interim arrangement and without prejudice to the rights and contentions of the parties, it was agreed that the appellant may exhaust the stock of finished goods as on 18.09.2022 i.e., stock shown in table 1 and 2 extracted hereinabove, subject to maintaining full accounts as well as furnishing the same before this Court.

7. A prayer has been made by learned senior counsel for the

appellant on behalf of the appellant to permit the appellant to bottle/can the stock of raw material as shown in table 3 above i.e., 100000 cases of 650 ML bottles.

8. Appellant has also produced a list dated 30.10.2022, which is signed by the Production Manager and Brew Manager giving the beer quantity in the 14 tanks. The same is taken on record. The quantity is as under:-

S.No. 2017

Date : 30-10-2022

Please find the brewed date and tank data is as under:

Brewing Date	Tank No.	Brew Quantity	Unit	Brand
02-06-2022, 05-06-2022	1	60000	LTR	Tenaberg Strong Craft
29-07-2022	2	60000	LTR	Tenaberg Strong Craft
15-08-2022	3	60000	LTR	Tenaberg Strong Craft
09-09-2022	4	60000	LTR	Tenaberg Strong Craft
10-09-2022	5	60000	LTR	Tenaberg Strong Craft
21-09-2022, 22-09-2022	6	60000	LTR	Tenaberg Strong Craft
04-09-2022	7	60000	LTR	Tenaberg Strong Craft
08-09-2022	8	60000	LTR	Tenaberg Strong Craft
25-09-2022	9	60000	LTR	Tenaberg Strong Craft
12-09-2022	10	60000	LTR	Tenaberg Lager Craft
14-09-2022, 15-09-2022	11	1,80,000	LTR	Tenaberg Strong Craft
05-09-2022, 06-09-2022	12	1,80,000	LTR	Tenaberg Strong Craft
01-09-2022, 02-09-2022	13	1,80,000	LTR	Tenaberg Strong Craft
12-09-2022, 13-09-2022	14	1,80,000	LTR	Tenaberg Strong Craft

Production Manager

Brew Manager

Corporate Office
Kalamandir, G. Noida
T: 31-4457205, E: info@tigerbrewery.com, W: www.tigerbrewery.com

Factory
S. K. Road, Buzurg, Muradpur, G.
District: Ghaziabad, Haryana

9. Learned senior counsel for the appellants submits that since brewing of the beer has commenced, it would have a limited shelf life and is likely to become unconsumable, so it is prayed that appellants be permitted to import the said quantity and sell in the Indian market subject to making compliances with the statutory requirements, *inter-alia*, of custom and excise.

10. After some arguments, it is agreed between the parties that without prejudice to the rights and contentions of the parties and subject to appellant depositing a sum of Rs.25,00,000/- with the Registrar General of this Court, appellants would be permitted to bottle/can the above quantity in the alleged impugned bottles and cans and market the same in India subject to making the necessary statutory compliances. The amount to be deposited shall be subject to further orders to be passed by the learned single Judge in the suit.

11. Learned senior counsel for the appellant submits that certain additional documents are required to be filed in support of their contentions in the written statement. Let the same be filed within a period of two weeks from today on the record of the suit. Replication, if any, be filed within four weeks.

12. It is directed that the learned single Judge shall re-visit the order in view of the stand taken by the appellants in their written statement as well as the additional documents filed by the parties. It is clarified that this Court has neither considered, nor expressed any opinion on

the merits of the contentions of either party. This order has been passed with the consent of the parties and without prejudice to the rights and contentions of the parties and no special equities shall flow in favour of either party because of this order.

13. The amount be deposited within a period of four weeks. Appellant shall also place on record of the Suit the accounts of the sales earlier made as well as of the quantity that is now being permitted. They shall also place on record of the Suit all custom and excise documents including the batch number and details of import and sale.

14. The Appeal is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J.

TUSHAR RAO GEDELA, J.

NOVEMBER 01, 2022

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