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

Date of Decision: 4th November, 2022

+ **C.A. (COMM.IPD-TM) 155/2022**

NETAFIM LTD.

..... Appellant

Through: Mr. Peeyoosh Kalra, Mr. Gaurav Mukherjee, Mr. Suryansh Malhotra, Advocates (M-9810009769).

versus

JAIN IRRIGATION SYSTEMS LIMITED
AND ANR.

..... Respondents

Through: Ms. Mahua Roy Chowdhury, Ms. Aparna Jain and Mr. Ishan Berry, Advocates for R-1.
Mr. Harish Vaidyanathan Shanker, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates (M: 9810788606).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

Review Petition. 265/2022

2. The present review application is listed before this Court seeking review of the order dated 21st January, 2021 passed by the IPAB. In the said order, the IPAB had dismissed the Opposition No. 166784 filed by the Review Applicant/Respondent- M/s. Jain Irrigation Systems Limited (*hereinafter 'Review Applicant'*) opposing the application for registration of the mark 'NETAFIM' in Class 11 by the Appellant.

3. Ms. Mahua Roy Chowdhury, Id. Counsel appearing for the Review

Applicant/Respondent submits that the said order was passed without hearing the Respondent and no notice was issued by the IPAB for the said hearing in accordance with the IPAB Rules. She further submits that the order dated 21st January, 2021 has not been passed on merits as the Respondent could not make any submissions.

4. This position is denied by Mr. Kalra, Id. Counsel for the Appellant who submits that the order sheet of the IPAB would show that despite knowledge and despite service, the Respondent chose not to appear or file a reply before the IPAB.

5. A perusal of the order sheets of the IPAB shows that on 20th July, 2020, it was represented to the IPAB that Id. Counsel for the Review Appellant will appear for the hearing on the said date. However, Id. Counsel for the Review Applicant did not appear. The Review Applicant did not appear on hearings dated 24th July, 2020, while informing that the counter affidavit could not be filed in view of the crisis of Covid-19. Subsequently, on the hearing of 9th November, 2020 also, the Review Applicant did not appear without even filing any counter affidavit or application for adjournment. Therefore, a perusal of the order sheets of the IPAB in the present case show that the Review Applicant was indeed served, had sought time to file counter, had corresponded with Id. Counsel for the Petitioner. Thus, the non-appearance of the Respondent before the IPAB on all four dates of hearing is inexplicable.

6. The present Review petition was preferred some time in March 2021. However, in view of the enactment of the Tribunals Reforms Act, 2021, by which the IPAB was abolished, the Respondent's Review Petition has been listed belatedly before this Court. Therefore, Id. Counsel for the Review

Applicant submits that her client is willing to avail its remedies in accordance with law to challenge the order dated 21st January, 2021 on merits but the period during which Review was pending may be condoned.

7. Considering the fact that the order was passed in January 2021 and the review application was filed in March 2021, the delay in deciding the Review is clearly due to the abolishing of the IPAB which was beyond the control of the Review Applicant. The order dated 21st January 2021 is appealable. Since the Respondent is willing to avail of its available remedies, the review application is dismissed as withdrawn with liberty given to the Review Applicant to prefer its appeal in accordance with law challenging the order dated 21st January, 2021. If such an appeal is filed within 30 days, from the date of this order, the period between the filing of the Review Petition till today would be excluded for the purposes of computing the period of limitation in filing the appeal.

8. The appeal is disposed of with these terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 4, 2022
MR/AM