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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL MISCELLANEOUS PETITION NO.17 OF 2023

Acutronic Holding AG

...Petitioner

Versus

The Senior Examiner of Trade Marks

...Respondent

Aditya Mahadevia with Karan Khiani i/b. Rashmi Singh for the
Petitioner.

Amogh Singh with Pranav Thackur for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 21 JUNE 2023

ORDER :

1. By this Commercial Miscellaneous Petition, the Petitioner is seeking setting aside of the order dated 27th August, 2021 passed by the Respondent. The learned Counsel appearing for the Petitioner has submitted that the impugned order is without reasons and there is non consideration of submissions and / or material produced by the Petitioner in their Reply.

2. The learned Counsel appearing for the Respondent has submitted to the orders of this Court.

3. Having considered the impugned order, it does appear that the impugned order has not considered the submissions and / or material produced by the Petitioner in their Reply dated 7th May, 2021. There is only reference to Section 11(1) of the Trade Marks Act, 1999 being applicable and to certain cited marks in order to arrive at a finding that the applied for mark is non registrable in view of the cited marks in the Provisional Refusal being for identical / similar goods / services. There is a mere statement that the documents produced by the Petitioner in support of the applied for mark have been perused. However, these documents and / or submissions have not been dealt with. In spite of which there is a finding that the submissions are not sustainable as the goods of the applied for mark are of wide description.

4. In that view of the matter, the impugned order is required to be set aside and the matter is to be remanded back to the Senior Examiner of Trade Marks for fresh consideration of the submissions and / or material produced by the Petitioner. Hence, the

following order:-

- (i) The impugned order dated 27th August, 2021 is set aside.
- (ii) The Respondent / Senior Examiner of Trade Marks shall give fresh hearing to the Petitioner and pass reasoned order after considering the submissions and material produced by the Petitioner.
- (iii) The Respondent / Senior Examiner, Trade Marks shall pass the order within a period of 12 weeks from the date of this Order.
- (iv) The Commercial Miscellaneous Petition is accordingly disposed of.

[R.I. CHAGLA J.]