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C.S.No.175 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.12.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.175 of 2005

1. M/s.Mohan Meakin Ltd.,
Rep. by its Authorised Signatory &
Power of Attorney,
Shri. T.Krishnamurthy,
Mohan Nagar, Ghaziabad,
Uttar Pradesh - 201 007.

2. M/s. Mohan Breweries and Distilleries Ltd.,
Rep. by its Company Secretary &
Vice President (Finance),
Shri. T.Krishnamurthy,
Rayala Towers, Chennai - 600 002.

... Plaintiffs

Vs.

M/s.Empee Distilleries Ltd.,
693, Mount Road, Chennai - 600 006.

... Defendant

PRAYER: Plaint filed under Order IV Rule 1 of Original Side Rules read with Sections 134 and 135 of the trademarks Act, 1999 seeking the following reliefs:

a) Permanent injunction restraining the defendant, its men, agents, assignees, dealers and/or retailers from infringing the 1st Plaintiff's registered trademark 'Old Monk Vide T.M. No.273257 by using offending



mark "Old Secret" or any other mark deceptively similar or identical with that of the plaintiff's registered trade mark "Old Monk" for marketing XXX Rum and/or any alcoholic beverage classifiable in class 32 or 33 of the IV schedule to the Trade Marks Rules, 2002;

b) Permanent injunction restraining the defendant, its men, agents, assignees, dealers and/or retailers from infringing the 1st Plaintiff's "Old Monk" label registered Vide T.M. No. 432911 by using offending label having similar getup and colour scheme bearing words "Old Secret" or any other label deceptively similar or identical with that of the plaintiff's "Old Monk" label for marketing XXX Rum and/or any Alcoholic beverage classifiable in class 32 or 33 of the IV schedule to the Trade Mark Rules, 2002;

c) Permanent injunction restraining the defendant, its men, agents, assignees and dealers, retailers from selling and/or using and/or adopting the offending label for their "Old Secret" XXX Rum similar and/or deceptively identical with that of the 'Old Monk' label of the plaintiffs;

d) Permanent injunction restraining the defendant, its men and agents from diluting the plaintiff's "Old Monk" XXX Rum label by using or adopting similar and/or deceptively or identical label with a similar colour scheme, get-up for marketing their alcoholic beverages in particular "Old Secret" XXX Rum;



e) Permanent injunction restraining the defendant from using or adopting bottles bearing the MBDL logo for selling their XXX Rum or any other alcoholic beverage;

f) Direct the defendant to deliver to the plaintiff for destruction all offending labels, packing materials, and "Old Secret" XXX Rum bearing offending label manufactured by the defendant offered for sale or proposed to be offer for sale in violation of plaintiffs proprietary rights over the "Old Monk" XXX Rum Label;

g) Direct the defendant to render true account of profit made by them on sale of "Old Secret" XXX Rum bearing offending label in violation of the first plaintiff's proprietary rights over the "Old Monk" XXX Rum Label;

h) to pay cost of the suit.

For Plaintiffs : Mr.R.Anish Kumar

For Defendant : Mr.Bijesh Thomas

JUDGMENT

The suit has been filed for infringement and passing off.

2. The plaintiffs are the registered proprietors of the trademark "Old Monk" XXX Rum. The plaintiffs were aggrieved by the defendant, using the



label "Old Secret" XXX Rum label which according to the plaintiffs is deceptively similar to that of the "Old Monk" XXX Rum label of the plaintiffs. Under those circumstances, the reliefs sought for in the plaint has been claimed. Pleadings are complete in the suit. However, it is an admitted fact that the defendant has gone under liquidation pursuant to the orders passed by the National Company Law Tribunal (NCLT), Chennai.

3. A liquidator was also appointed by the NCLT, Chennai since the resolution plan, proposed, ended in failure. The defendant Company has also now been taken over by a new management pursuant to the orders passed by the NCLT, Chennai. Admittedly, the plaintiffs have not taken any steps to serve notice in this proceeding on the I.R.P. appointed by the NCLT, Chennai, pursuant to the moratorium order passed by the NCLT, Chennai under Section 14 of the Insolvency and Bankruptcy Code, 2016.

4. As observed earlier, the resolution plan, proposed, also ended in failure and the liquidator appointed by the NCLT, Chennai, pursuant to orders passed by the NCLT, Chennai, has sold the Company to a third party who has now taken charge of the assets of the Company.



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5. The Honourable Supreme Court in the case of ***Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction*** by its decision dated 13.04.2021 has made it clear in paragraph No.95 of the said judgment that once a resolution plan is duly approved by the adjudicating Authority under Sub Section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

6. Admittedly, the plaintiffs' claim was not part of the resolution plan, which was placed before the NCLT, Chennai which is the adjudicating authority. The plaintiffs did not also take any steps during the pendency of the proceedings before the NCLT, Chennai, to either make a claim which is



the subject matter of the suit or serve notice of the present proceedings on the I.R.P. appointed by the NCLT, Chennai.

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7. The suit is of the year 2005. The liquidator was earlier appointed by the NCLT, Chennai and thereafter, the management of the defendant Company has also changed hands pursuant to the orders passed by the NCLT, Chennai due to the insolvency of the defendant Company. Though, the learned counsel for the plaintiffs may contend that the present suit is a trademark suit and therefore, it cannot be treated as a claim coming within the purview of Section 31 of the Insolvency and Bankruptcy Code, 2016, the said contention has to be rejected as the plaintiffs have admittedly not taken steps to prosecute their claim in a diligent manner by taking steps to serve the I.R.P. appointed by the NCLT, Chennai pursuant to the moratorium order passed by the NCLT, Chennai under Section 14 of the Insolvency and Bankruptcy Code, 2016.

8. The petitioner having not prosecuted the claim diligently, that too when the management of the defendant Company has changed hands in view of the insolvency of the defendant Company pursuant to the orders



C.S.No.175 of 2023

passed by the NCLT, Chennai, the question of prosecuting this claim before this Court at this stage cannot be entertained by this Court.

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9. For the foregoing reasons, nothing survives for further adjudication in this suit. Accordingly, this suit is closed.

08.12.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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WEB COPY



C.S.No.175 of 2005

ABDUL QUDDHOSE. J.,

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C.S.No.175 of 2005

08.12.2023