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

Date of Decision: 19th January, 2023

+ **W.P.(C) 5967/2020 and CM APPL. 21572/2020, 32451/2021, 4989/2022, 32266/2022**

PURE CURE AYURVEDA PRIVATE LIMITED & ANR.

..... Petitioners

Through: Mr. Hrishikesh Baruah, Mr. Joy Banerjee, Mr. Kshitij Singh & Ms. Aporva Jain, Advocates.

versus

THE UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal Digpaul & Ms. Swati Kwatra, Advs. for R-1 & 2. (M:9811157265)
Mr. Naveen Chawla & Mr. Rishabh Kr. Thakur, Advocate for R-3.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The writ petition has been filed by Petitioner No.1- Pure Cure Ayurveda Pvt. Ltd., which was incorporated in 2017, and Petitioner No.2- Arun Thamarasseri Narayanan challenging the incorporation of the Respondent No.3 under the name 'Purecure Pvt. Ltd.' which was incorporated on 11th April, 2020.
3. The case of the Petitioner is that, post its incorporation in 2017, it has been dealing with ayurvedic products under the following trademark:



4. The Petitioners seek cancellation/ rectification of the name of Respondent No.3 on the ground that it resembles the name of its company and its business. The prayer in this writ petition is as under:

*“[A] Issue a Writ, Order or Direction in the nature of Certiorari or any other Writ, Order or Direction thereby calling the records from the Respondent and thereafter setting aside/quashing the incorporation of the Respondent No. 3 as a company bearing Corporate Identity No. U24290DL2020PTC363236 with the corporate name 'PURE CURE PRIVATE LIMITED' as well as the Certificate of Incorporation dated 11.04.2020 (Annexure-L); and
[B] Pass such other and further Order[s] as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.”*

5. Mr. Hrishikesh Baruah, Id. Counsel submits that, initially, the Petitioners had filed an application in terms of Form No.INC 1 seeking ‘reservation’ of the name *"Pure Cure Ayurveda Private Limited"* which was rejected by the ROC on the basis of the existence of another company by the name *"Pure and Cure Healthcare Private Limited"*. However, surprisingly, a name almost identical to what was sought to be reserved by the Petitioner was, thereafter, permitted to be used by Respondent No.3. He, further, submits that both the names of the Petitioner and the Respondent No.3 are similar. The Petitioners have substantial revenues of more than Rs.3 crores in the financial year 2019-20. It is, thus, submitted that the incorporation of

Respondent No.3 company is contrary to law as is evident from a reading of Sections 4 and 16 of the Companies Act, 2013.

6. After notice was issued in this writ petition, Respondent No.3 has filed an affidavit stating as under:

“3. I state that without prejudice to the submissions made by Respondent no.3 in its Reply filed before this Hon'ble Court in the present proceedings, the management of Respondent 3 has now decided to approach Respondent No.2 with appropriate application seeking striking down of Respondent No.3 Company under the provisions of the Companies Act, 2013 as it does want to continue in any litigation or unhealthy competition with the Petitioner. Further, in the wake of disruptions caused by COVID-19 pandemic, Respondent No.3 intends to minimize its litigation and compliance costs and expenses.

4. I state that however, Respondent No.3 is unable to file such an application for striking off the company i.e. Pure Cure Private Limited in view of pendency of the present Writ Petition.

5. I state that Respondent No.3 undertakes to file appropriate application before Respondent No.2 seeking striking down of the Respondent No.3 Company under the provisions of the Companies Act, 2013, and therefore, in the interest of justice Respondent No.3 may be absolved from the present proceedings and the present writ petition may be disposed off with directions to the Respondent No.2 to consider such application, as and when filed by Respondent No.3, in accordance with law.”

7. A perusal of the above paragraphs of the affidavit filed on behalf of Respondent No.3 shows that the said Respondent has in fact approached the ROC for striking down of its name and it does not wish to continue with the name which is under challenge. As per Id. Counsel for Respondent no.3 the

promoters of the company have already decided not to continue with the company.

8. Today, Id. Counsel for Respondent No.3 submits that there is a technical issue which is preventing the said Respondent from seeking cancellation/ rectification of its name. In the form which is to be filed, if the pendency of the present writ petition is disclosed, the cancellation is not being allowed on the MCA's portal.

9. Heard. A perusal of Section 4(2)(a) as also Section 16 of the Companies Act, 2013 makes it clear that the name of a company which too nearly resembles an earlier existing name cannot be allotted to a company. The said provisions read as under:

“4. Memorandum.—

(2) The name stated in the memorandum shall not—

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company—

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the Central Government.

XXXX

16. Rectification of name of company— (1) *If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—*

(a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and

the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of Section 13."

10. The purpose of these two provisions is to ensure that companies do not register names which are identical or similar to earlier registered corporate names or registered trademarks so as to avoid any confusion in the market place between similarly sounding or identical businesses. The perusal of the two names, in the present case, "*Pure Cure Ayurveda Private Limited*" and "*Purecure Private Limited*" leaves no doubt in the mind of the Court that they are resembling each other and there is likelihood of confusion between the two businesses. The Petitioner's company is registered prior in point of time than the Respondent no.3.

11. The Respondent no.3 is willing to cancel and give up the objectionable name. In view of the stand of Respondent No.3, the writ petition is disposed of directing the ROC to remove/modify the Register of Companies by removing the name of Respondent No.3 from the said register and rectifying the name of the company of Respondent No.3. For the said purpose, if any forms are to be filed, the same shall be filed by Respondent No.3 within three weeks.

12. The rectification shall be given effect to in two months after filing of the relevant form by Respondent No.3. No further orders are called for.

13. With these observations, the present petition, with all the applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 19, 2023/dj/sk