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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.O. (COMM.IPD-TM) 351/2022**
M/S OKAYA POWER PVT. LTD. Petitioner
Through: **Mr. Chirag Ahluwalia and Mr. Mohit**
Maru, Advocates.

versus

SH. LAL SINGH AND ANR. Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
29.02.2024

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1. This rectification petition has been filed for removal of the respondent no. 1's mark registered under No.2073927 in Class-7 being "NASAKA". The said impugned mark was registered pursuant to an application dated 23rd December, 2010 by the respondent Lal Singh, claiming user from 01st April, 2007 in Class 7 (*sewing machines, back closure machines and parts thereof*). The said registration was granted on 14th March, 2018.
2. No one has appeared on behalf of the respondent despite notice. The matter was initially filed before the Intellectual Property Appellate Board ("IPAB") and consequent to the violation of IPAB in 2021, the matter was transferred to this Court. Throughout, no one has appeared on behalf of the respondent. Their right to file reply was also closed by the Joint Registrar's order dated 30th November, 2023.
3. The petitioner's claim is on the basis of their prior registration in the



mark “NASAKA” and other formative marks in Class-7 and 11, as per the following details:

APP. NO.	CLASS	DATE OF REGISTRATION
1572633	07	26.06.2007
1947887	07	08.04.2010
3429044	07	08.12.2016
1572636	11	26.06.2007

1947891	11	08.04.2010
1977982	11	10.06.2010
3429045	11	08.12.2016

4. The petitioner had commenced its water purifier business under the trademark “NASAKA”, having first adopted the mark in the year 2007 and have been continuously using the same on a much more voluminous basis 2009 onwards. Counsel for the plaintiff has adverted to the certificate by the Chartered Accountant appended in the petition for the turnover under the brand “NASAKA” since Financial Year 2009-10 onwards. For that Financial Year, sale of Rs. 55,85,000/- approximately, has been registered which progressively increases to Rs. 24.71 Crores approximately for Financial Year 2017-18 and has increased since, as stated by counsel for the petitioner.

5. Invoices of products under the brand name “NASAKA” have been shown to exist from May, 2010 onwards, since when records were available.



The counsel for the petitioner has also pointed out to series of newspaper advertisements in the main national dailies including “Hindustan Times”, which show there are advertisements since October, 2010.

6. In these circumstances, and considering that the petitioner’s averments have not been rebutted by the respondent, who has chosen not to appear despite notice, the said petition would have to be allowed on the basis of the facts as evident and manifest from the documents on record. It is clear that the petitioner’s earliest registration was in June, 2007 under Class 7, whereas the respondent’s application was filed only in December, 2010.

7. The counsel for the plaintiff points that there was a cease and desist notice issued to them in April, 2012, pursuant to which the respondents have averred that they will not pursue the said application, however, they resiled from the same. Petitioner has also relied upon the decision of this Court in *Sun Pharma Laboratories Ltd. vs. Cian Healthcare Ltd. & Ors.*, C.O.(Comm. IPD-TM) 723/2022, decided on 01st May, 2023.

8. In this view of the matter, the rectification petition is allowed.

9. The said impugned mark of “NASAKA” in Class 7 registered in favour of respondent no.1 may be removed and expunged from the register, the trademark register and the website be updated accordingly.

10. Let the present order be given effect to within four weeks.

11. Registry to supply a copy of the present order to Trade Mark Registry at llc-ipo@gov.in for compliance

12. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 29, 2024/kct/ig