



\$~3

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

+ **C.A.(COMM.IPD-TM) 140/2021**

MEX SWITCHGEARS PVT LTD Appellant

Through: Mr. Amit Jain, Advocate.

versus

TWINKLE LUMINAIRES PVT LTD AND ANR Respondent

Through: Mr. Harish Vaidyanathan Shankar,
CGSC, with Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday and
Mr. Krishnan V., Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

16.01.2024

%

1. As recorded in the previous order dated 26th September, 2023, counsel for appellant had raised an issue of the counter statement (to the opposition filed by the appellant) not being served to the appellant.
2. Today, attention was drawn to email dated 12th December, 2017 sent by the Trade Marks Registry, which was addressed to “Twinkle Luminaries Private Limited”. On this basis, counsel for appellant states that the notice regarding the service of counter statement was inadvertently addressed by the Trade Marks Registry to respondent No.1 (the trade mark applicant) instead of the appellant herein (the opposing party).
3. However, counsel for respondent No.1 has drawn attention to the fact that this email was also addressed to “madamser@gmail.com” which was the email provided by the appellant in form TM-O (for filing the opposition).



4. Accordingly, as per counsel for respondent No.1, service was complete on the appellant in accordance with Rule 17 and 18 of the Trade Marks Rules, 2017 which permits the Registrar to serve all communication and documents in relation to the application or the opposition by sending them through post on the address for service or by email communication.

5. Counsel for appellant raises an issue on the basis of Section 143 of the Trade Marks Act, 1999 (“**the Act**”) which states that an address for service ought to be provided for notice of opposition which shall be deemed to be the address of the opponent, and all documents in relation to the same may be served at that address. He states that Rules 17 and 18 of the Trade Marks Rules, 2017 are beyond the scope of the main Act and, cannot be countenanced. Therefore, he states, that service by email cannot be permitted.

6. It is noted that this issue has already been taken into account by a Coordinate Bench of this Court in C.A. (COMM. IPD.-TM) 69/2022, titled as *M/s Mex Switchgears Pvt. Ltd 9 TH Kilometer, Mex Estate, Pathankot Road, Jalandhar v. Vikram Suri Trading As M/s Armex Auto Industries*, judgment dated 13th October, 2023. After considering the relevant provisions, this Court held that when an email ID is provided, it is not open for the opponent to contend that service by email will not constitute proper service.

7. Moreover, it is pointed out by counsel for respondent No.1 that even in their appeal, the appellant has not specifically stated that they were not served by email, instead they make a statement to the effect that “*the counter statement was never served by post on the appellant/its counsel*”

8. A perusal of ground C & D of the appeal would also bear out that the objection of the appellant is not that they were not served by email but that service by email was contrary to Section 143 of the Act, which aspect has



already been dealt with above.

9. It is also pointed out by counsel for respondent No.1 that in the impugned order 12th April, 2018, it is noted that Advocate Mr. Nitin Sharma had appeared for the opponent and considering that the opponent/appellant was represented, they are now estopped from raising the issue of service relating to the counter statement.

10. In view of these facts and circumstances, this Court is of the view that the appellant was duly served with the counter statement and chose not to respond to the same and therefore, the impugned order declaring the opposition to be abandoned under Rule 45(2) of the Trade Marks Rules, 2017, does not need any interference.

11. Accordingly, the appeal is dismissed.

12. Counsel for appellant seek liberty to file a rectification application in respect of the said Trade Mark.

13. Needless to say, the appellant will be at liberty to pursue whatever remedies are available to them under the applicable law and rules.

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

ANISH DAYAL, J

JANUARY 16, 2024/RK/rj