

OIP-39

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Intellectual Property Rights Division

IPDAID/1/2024
IA NO: GA-COM/1/2024

KOHLER CO
VS
CONTROLLER OF PATENTS AND DESIGNS AND
ANR

Before:

The Hon'ble Justice RAVI KRISHAN KAPUR

Date: 15th July, 2025

Appearance:

Mr. Rahul Beruar, Adv.

Ms. Rituparna De Ghose, Adv.

Mr. Arnab Sardar, Adv.

....for appellant.

Mr. Sunil Singhania, Adv.

Mr. Madhu Jana, Adv.

... for the respondents.

The Court: GA-COM/1/2024 is an application for condonation of delay. It is submitted on behalf of the appellant that due to unavoidable reasons, they have been unable to file the appeal within the prescribed period and there is delay of 34 days. I have considered the above averments and am satisfied that there was sufficient cause and cogent reason as to why the appellant was unable to file this appeal within the prescribed period. There shall be an order in terms of the prayers (a) and (b) of the Notice of Motion. In such circumstances, the application for condonation of delay stands allowed. GA-COM/1/2024 stands disposed of.

This is an appeal directed against an order dated 12 February, 2024 whereby Design application no. 387167-001 dated 27 May, 2023 under Class-14-02 filed by the appellant stood rejected as abandoned.

It is submitted on behalf of the appellant that despite the response to the First Examination Report having been forwarded on 27 November, 2023 at around

10:02 pm by way of an e-mail since the e-filing portal was not functioning, the respondent authorities have erred in passing the impugned order treating the subject application as having been abandoned.

Significantly, the subject application had been filed on 27 May, 2023 and the response though filed within the statutory period of six months was not uploaded for unavoidable reasons beyond the control of the appellant.

It is contended that due to non-functionality of the design portal, the appellant was unable to file the response to the First Examination Report. This fact has neither been considered, nor been taken into account in passing the impugned order.

On behalf of the respondent Controller, it is submitted that the ground as urged by the appellant is without any basis and is no ground exist for which any kind of leniency should be afforded to the appellant.

Indisputably by communications dated 27 November, 2023 and 29 November, 2023, the appellant has requested the Controller to take into consideration the e-mail which had been sent on 27 November, 2023 as well as the ground of non-filing because of non-functionality of the design portal. There is no mention of this fact in the impugned order. The impugned order has been mechanically passed without taking any of the above relevant facts and circumstances into account.

The mere remark “abandoned” which is the only ground for passing the impugned order passed by the respondent authorities is in violation of the principle of natural justice and bereft any reasons.

In view of the above, there shall be an order in terms of the prayers (a) and (b) of the Notice of Motion.

It is made clear that the above order has been passed on the procedural aspect of the matter and all points are left open for the Controller to decide in accordance with law insofar as the merits are concerned.

The petitioner is also directed to comply with all the necessary formalities and cure any defects for effective hearing of the subject application.

With the above directions, IPDAID/1/2024 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

Arsad, AR(CR)