



O.A.Nos.778 to 780 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2025

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CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.Nos.778 to 780 of 2024

in C.S.(Comm.Div)No.202 of 2024

In all three OAs.

Dr. Jitendra Das Maganti,
Residing at JBR Marina, Dubai UAE,
Through his Constituted Attorney,
Mr.Raghuram Chivikula,
Flat No. 203, Vijay Vihar Apartments,
Seethammadhara, Visakhapatnam – 530013. ... Applicant/Plaintiff

vs.

MGM Healthcare Pvt. Ltd.,
No.126, 4th Floor,
BNT Connections Building,
Nelson Manickam Road,
Aminjikarai, Chennai – 600 029. ... Respondent/Defendant

Prayer in O.A.No.778 of 2024: Original Application is filed under Order XIV Rule 8 of Original Side Rules Read With Order XXXIX Rule 1 & 2 of Civil Procedure Code, 1908, to grant ad interim injunction restraining the Respondent/Defendant, its partners, its employees, officers, servants, agents, and all others acting for and on its behalf from offering any services; manufacturing, selling, distributing, exporting, advertising,



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offering for sale, online or offline any products and in any other manner, directly or indirectly, dealing with any products in the name of

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SEVEN HILLS or any other mark which is deceptively similar or identical to the Applicant /Plaintiff's registered trademark as a part of any domain name, company name, corporate name, websites, social media platforms, mobile application and other intermediaries in any language, amounting to an infringement of the Applicant/Plaintiff's registered trademarks pending disposal of suit.

Prayer in O.A.No.779 of 2024: Original Application is filed under Order XIV Rule 8 of Original Side Rules Read With Order XXXIX Rule 1 & 2 of Civil Procedure Code, 1908, to grant ad interim injunction restraining the Respondent/Defendant, its partners, its employees, officers, servants, agents, and all others acting for and on its behalf from offering any services; manufacturing, selling, distributing, exporting, advertising, offering for sale, and in any other manner, directly or indirectly, dealing with any products or as a part of any domain name, company name, corporate name, websites, social media platforms, mobile application and other intermediaries in any language in the name of SEVEN HILLS,



or any other mark and packaging which is deceptively similar or identical to the trademark SEVEN HILLS and/or ,



amounting to reverse passing off pending disposal of suit.



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Prayer in O.A.No.780 of 2024: Original Application is filed under Order XIV Rule 8 of Original Side Rules Read With Order XXXIX Rule 1 & 2 of Civil Procedure Code, 1908, to grant an ad interim injunction restraining the Respondent/Defendant, its partners, directors, proprietors, subsidiaries, affiliates, franchisees, officers, servants, agents, distributors, stockists, representatives, licensees and anyone acting for or on their behalf directly or indirectly, as the case may be from performing any actions, especially using artistic works identical to plaintiff's original artistic works in its



label, amounting to infringement of copyright therein pending disposal of suit.

In all three OAs.

For Applicant/Plaintiff : Mr.M.S.Bharath

For Respondent/Defendant : Mr.Abhishek Jenasenan
Ms.Aparajitha Vishwanath
Ms.Subhadra Madhavan

COMMON ORDER

The plaintiff promoted and incorporated a company called Sevenhills Hospitals Private Limited (Sevenhills Hospitals') in the year 1988. Later, in 2004, the plaintiff promoted and incorporated another entity, Sevenhills Healthcare Private Limited ('Sevenhills Healthcare'). In order to consolidate the business, Sevenhills Hospitals was merged into Sevenhills Healthcare in the year 2009. In 2009, the plaintiff applied for



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registration of about five device marks, each containing the words 'SEVEN HILLS'. These registrations were granted and remain in force as on date.

2. Sevenhills Healthcare was unable to repay debts due to creditors. A financial creditor, Axis Bank Limited, initiated proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) before the adjudicating authority, i.e. the National Company Law Tribunal, Hyderabad Bench (the NCLT). By order dated 13.03.2018, the petition was admitted and, consequently, the company entered the Corporate Insolvency Resolution Process (the CIRP). The defendant submitted a resolution plan, which came to be accepted and sanctioned by order dated 10.06.2024. The present suit was filed in the above context seeking relief in respect of alleged infringement and passing off.

3. Mr.M.S.Bharath, learned counsel for the plaintiff, invited my attention to the legal use certificates obtained by the plaintiff in respect of the five device marks described in paragraph 11 of the plaint. Therefore, he submits that the plaintiff is undoubtedly the registered proprietor of these trade marks.



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4. His next submission is that the resolution professional disclosed to prospective resolution applicants, including the defendant, that the trade marks were registered in the name of the plaintiff and not in the name of the limited company or corporate debtor. In support of this contention, he refers to the disclosure schedule at page 167 of the typed set filed by the plaintiff in W.P.No.29724 of 2024 before the High Court for the State of Andhra Pradesh at Amaravati. This volume of documents was placed on record in these applications. Therefore, he contends that the defendant submitted the resolution plan knowing fully well that the corporate debtor was not the owner of the relevant trade marks.

5. By referring to the judgment of the Supreme Court in *Srei Multiple Asset Investment Trust Vision India Fund v. Deccan Chronicle Marketeers and others*, MANU/SC/0273/2023 (*Srei Multiple Asset*), particularly paragraphs 1, 11, 19 and 26 thereof, learned counsel submits that in substantially similar circumstances, the Supreme Court held that the resolution applicant cannot claim ownership rights over the trade marks of the corporate debtor when only a perpetual exclusive right to use the brands was granted under the resolution plan. By analogy, he



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contends that the defendant did not acquire any rights in the trade marks of the plaintiff. According to him, only the assets described in the schedule to the resolution plan were transferred to the defendant. By referring to such schedule, he points out that the assets transferred to the resolution applicant were limited to 1.04 acres of land along with buildings thereon, 33875 sq.ft of buildings taken on lease and the hospital business of the demerged undertaking. As regards the trade marks, learned counsel submits that only a conditional 'no objection' was given for use of the trade marks by Sevenhills Healthcare, as recorded in the minutes of the board meeting of 30.06.2009, provided the plaintiff remained the chairman or shareholder of the said entity.

6. The third contention of learned counsel is that only the jurisdictional civil court, such as this Court, and not the adjudicating authority/NCLT is entitled to adjudicate on issues relating to ownership of assets. In support of this proposition, learned counsel referred to and relied upon paragraph 39 of the judgment of the Supreme Court in *Embassy Property Developments Private Limited v. State of Karnataka and others*, MANU/SC/1661/2019.



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7. The fourth contention of learned counsel is that the balance of convenience is entirely in favour of the plaintiff inasmuch as the defendant admittedly owns the brand MGM and is running multiple hospitals under the said brand. Therefore, even if orders of interim injunction were to be granted, the defendant would be in a position to continue to operate the Visakhapatnam Hospital under the brand or trade mark MGM. In support of this contention, learned counsel relied on the judgment of the Delhi High Court in *Moonshine Technology Private Limited v. Tictok Skill Games Private Limited and others*, order dated 31.01.2022 in C.S.(Comm.)No.331 of 2021, particularly paragraphs 47 to 49 thereof. For the same principle, he also relied upon paragraph 56 of the judgment of the Delhi High Court in *V Guard Industries Limited v. Crompton Greaves Consumer Electricals Limited*, 2022 SCC OnLine Del 1593.

8. In response to these contentions, Mr.Abhishek Jenasenan submitted that the suit was presented in November 2024 and that the plaintiff has not enjoyed the benefit of interim orders till date. His next contention is that the plaintiff admittedly promoted the first corporate entity in 1988 and the second in 2004. These entities used the trade mark



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'Seven Hills' and not the plaintiff. By relying upon Section 18 of the Trade Marks Act, 1999 (the TM Act), learned counsel contends that the real proprietor of the trade mark is, therefore, Sevenhills Healthcare Private Limited, i.e. the transferee or resulting company under the merger, and not the plaintiff. Consequently, he submits that the defendant has filed several applications for permission to file rectification petitions.

9. By referring to the minutes of the board meeting of Sevenhills Healthcare on 30.06.2009, learned counsel submits that it merely records information provided by the plaintiff as the Chairman of the company, but does not record the company's acceptance of the alleged conditional consent. By referring to the resolution plan, learned counsel points out that the resolution plan expressly dealt with the revival of the brand by way of an intense brand make over. He also pointed out that the clause 3.1 of part 2 thereof categorically declared that the resulting company seeks to retain and run the hospital at Visakhapatnam under the name 'MGM Seven Hills'. After further referring to the minutes of the 47th meeting of the committee of creditors of the corporate debtor on 14.12.2023, learned counsel submits that the plaintiff participated in the said meeting and was, therefore, fully aware of the contents of the



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resolution plan. As per the order of the NCLT dated 10.06.2024, learned

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counsel submits that the request in the resolution plan to run the hospital on a going concern basis under the name 'MGM Seven Hills' was considered and granted by the adjudicating authority/NCLT. He also points out that the plaintiff should have assailed the order of the NCLT, if aggrieved by the same, and that even the appeal lodged by the plaintiff's wife did not raise the objection that the successful resolution applicant is not entitled to use the trade marks.

10. By way of rejoinder, learned counsel for the plaintiff submitted that both the entities promoted by the plaintiff are private limited companies and that the plaintiff cannot be accused of breach of fiduciary duty because the trade marks were registered in the name of the plaintiff. As regards the no objection letter dated 29.04.2009 and the minutes of the board meeting of 30.06.2009, learned counsel reiterates that this was by way of conditional consent to Sevenhills Healthcare to use the plaintiff's trade marks provided the plaintiff continues as Chairman and share holder thereof. Consequently, he contends that such conditional consent cannot be equated with a licence. He concluded his submissions by reiterating that the balance of convenience is entirely in favour of the



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plaintiff and that the plaintiff would be unable to extract any value from the trade marks owned by him if dilution at the hands of the defendant is permitted.

11. The first issue that arises for consideration is with regard to the ownership of the trade marks. The plaintiff has placed on record the relevant legal use certificates. On perusal, it is clear that each trade mark is registered in the name of the plaintiff with effect from 21.04.2009. Although learned counsel for the defendant contended that the plaintiff is only the ostensible and not real owner, such issue cannot be determined at the interlocutory stage.

12. The second issue that falls for consideration is with regard to the assets transferred under the sanctioned resolution plan. Schedule A to the resolution plan discloses that fixed assets and the hospital business were transferred, and that the transfer of the hospital business was on a going concern basis. Learned counsel for the plaintiff pointed out that the resolution professional had disclosed that the plaintiff was the owner of the relevant trade marks and not the corporate debtor. On examining the disclosure made by the resolution professional, this contention is *prima*

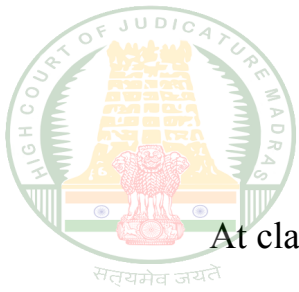


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facie liable to be accepted. This leads to the question whether the defendant becomes disentitled to use the trade marks on that account.

13. Clause 3.11 of the resolution plan deals with licences, permits and the like. The said clause is as under:

“3.11. With effect from the Appointed Date and upon the Scheme becoming effective, all permits, quotas, rights, entitlements, licences, registrations, trademarks, patents, copy rights, privileges, powers, facilities, subsidies, rehabilitation schemes, special status and other benefits or privileges (granted by any Government body, local authority or by any other person) of every kind and description of whatsoever nature in relation to the Demerged Undertaking of the Demerged Company, or to the benefit of which the Demerged Undertaking of the Demerged Company may be eligible, or having effect immediately before the Effective Date, shall be and remain in full force and effect in favour of or against the Resulting Company, as the case may be, and may be enforced fully and effectually as if, instead of the Demerged Company, the Resulting Company had been a beneficiary or obligee thereto.”



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At clause 3.1 of the resolution plan, in relevant part, it is stated as under:

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“3.1 The Resulting Company seeks to retain and run the hospital at Visakhapatnam (Identified Undertaking) on a going concern basis and plans to operate the hospital under the name 'MGM SevenHills'....”

On a conjoint reading of the above clauses, it appears that the resolution plan envisaged transfer of physical assets and the business, including man power, on a going concern basis, along with all permits, licences, privileges, trade marks, etc., which were granted to the demerged undertaking of the demerged company. Clause 3.11 is wide in ambit and embraces all benefits that were granted to or for which the demerged undertaking was eligible.

14. Learned counsel for the plaintiff submitted that only conditional consent was given in favour of the corporate debtor under letter dated 29.04.2009, as recognised and recorded in the minutes of the board meeting of 30.06.2009. The credibility of these documents are questioned by learned counsel for the defendant particularly on the ground that the trade marks were being used only by the corporate debtor



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and not by the plaintiff. This aspect warrants closer examination in course of final disposal.

15. For present purposes, the limited question to be examined is whether the defendant should be restrained from using these trade marks pending disposal of the suit. While it appears *prima facie* that the defendant was aware that the trade marks were registered in the name of the plaintiff, it also appears from the resolution plan that the defendant submitted the bid on the basis that the defendant should be in a position to run the hospital under the name 'MGM Sevenhills Hospital'. In the order of the NCLT, this was considered and sanctioned as under:

Sl.No	Reliefs and/or concessions and approvals sought by the resolution applicant (clause 5.13 of the resolution plan)	Orders thereon
10.	<i>The entire Identified Undertaking which includes business along with all the assets and liabilities associated thereto of the Category 1 - Visakhapatnam Hospital belonging Applicant through MHCPL on a going concern basis by way of a Scheme of Demerger / Reconstruction, as provided in the Annexure – I, which forms an integral part of this Resolution Plan shall be deemed to be approved by the NCLT by virtue of the order of the NCLT approving this Resolution</i>	Granted



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SLN o	Reliefs and/or concessions and approvals sought by the resolution applicant (clause 5.13 of the resolution plan)	Orders thereon
	Plan under Section 31 of the IBC. Identified Undertaking of the CORPORATE DEBTOR shall be free and clear of all encumbrances, on implementation of this Resolution Plan. The Resolution Applicant will continue to run the hospital and other facilities at Visakhapatnam (Identified Undertaking) on a going concern basis and plans to operate the hospital under the name 'MGM Seven Hills'.	

16. A licence is permission to do something which cannot be done without such permission. Under clause 3.11 of the resolution plan, all licences, permits, privileges and benefits of the demerged undertaking were transferred to the defendant. It is common ground that the demerged undertaking was running a hospital under the name and style of Seven Hills. Notwithstanding the contention that only a conditional 'no objection' and not a licence was granted, in my view, the resolution plan and, in particular, clause 3.11 thereof *prima facie* encompasses the right or permission to use 'Seven Hills' as a trade mark or otherwise. In the factual context of the successful resolution applicant submitting a resolution plan envisaging the operation of the hospital under the name



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'MGM Seven Hills', which was duly sanctioned by the adjudicating authority, without demur or protest by the plaintiff, in my view, the plaintiff is not entitled to the interim relief claimed in the suit. Given the fact that an entity promoted and controlled by the plaintiff became insolvent and the defendant agreed to and paid a fair value for the demerged undertaking, as per the resolution plan, so as to resolve the insolvency and run a hospital under the name 'MGM Seven Hills' leads to the conclusion that the balance of convenience is in favour of declining interim relief.

17. For reasons aforesaid, O.A.Nos.778 to 780 of 2024 are dismissed without any order as to costs.

17.04.2025
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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

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SENTHILKUMAR RAMAMOORTHY J.

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