



\$~2

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

+ **C.A.(COMM.IPD-TM) 35/2024**

TUF METALLURGICAL PVT LTD.

.....Appellant

Through: Mr. Krish Kalra and Ms. Rashi Arora,
Advocates

versus

REGISTRAR OF TRADE MARK

.....Respondent

Through: Mr. Jivesh Kr. Tiwari, Sr. Panel
Counsel

Mob: 9811612855

Email: jivesh1872@gmail.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

17.02.2025

%

1. The present appeal has been filed under Section 91(1) of the Trade Marks Act, 1999, challenging the order dated 28th February, 2024 passed by the respondent, *vide* which application no. 4929560 filed by the appellant seeking registration of the mark 'TUF' in Class 6, was dismissed.
2. Perusal of the impugned order dated 28th February, 2024, shows that the application of the appellant has been dismissed as '*abandoned*' by the Registrar of Trade Marks, on the ground that no reply had been filed on behalf of the appellant.
3. The impugned order dated 28th February, 2024, reads as under:

"xxx xxx xxx

Due to no Reply filed or non-compliance of the documents mentioned in the examination report at the time of Hearing held on the above-said date, the above-said application is ordered as abandoned in lack of prosecution as per the provisions of Trade Marks Act and Rules.

xxx xxx xxx"



4. This Court records the statement made by learned counsel appearing for the respondent, i.e., Registrar of Trade Marks that the reply of the appellant was duly considered and since the same was not found satisfactory, the appellant was called for hearing, as per Rule 33 of the Trade Marks Rules. However, the appellant did not appear before the Registrar of Trade Marks on four dates.

5. *Per contra*, learned counsel appearing for the appellant submits that the server of the respondent was down, on account of which, he could not join the proceedings.

6. Be that as it may, perusal of the record shows that reply dated 25th May, 2021, had been filed on behalf of the appellant herein before the Registrar of Trade Marks, along with documents.

7. However, reading of the impugned order does not manifest that the reply filed on behalf of the appellant before the Registrar of Trade Marks, has not been considered at the time of passing of the impugned order.

8. Accordingly, the present appeal is allowed. Application no. 4929560 filed by the appellant is restored to its original number, to be decided by the respondent on merits, as per law.

9. The Registry is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on E-mail Id: llc-ipo@gov.in, for compliance.

10. With the aforesaid directions, the present appeal is accordingly disposed of.

MINI PUSHKARNA, J

FEBRUARY 17, 2025/ak