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

+ **C.A.(COMM.IPD-TM) 37/2024**

KUNJ BEHARI SARRAF

.....Appellant

Through: Mr. Anshuman Upadhyay, Mr.
Naseem and Mr. Manish Kumar
Mishra, Advs.
M: 7916608432

versus

REGISTRAR OF TRADE MARKS

.....Respondent

Through: Ms. Saumya Tandon, CGSC
(Through VC)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

11.03.2025

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1. The present appeal has been filed under Section 91 of the Trademarks Act, 1999, read with Rule 156 of The Trade Marks Rules, 2017, assailing the order dated 26th April, 2024, whereby, the respondent has rejected the trademark application bearing no. 5443541, seeking registration of the mark



in Class 43, on the ground that it is devoid of distinctive character.

2. This Court, on the last date of hearing, had noted the submission made on behalf of the appellant that for a similar mark, registration has already been granted to the appellant.

3. Accordingly, directions had been issued to the appellant to file the requisite documents, with regard thereto.



4. The concerned documents pertaining to the registration in favour of the appellant, have been filed on behalf of the appellant.
5. The document pertaining to the registration of the device mark for the mark DHABA *vide* application no. 3653885 in Class 43, is reproduced as under:

(NOT FOR LEGAL USE)

As on Date : 17/03/2025
Status : **Registered**

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T.M. Application No.	3653885
Class	43
Date of Application	10/10/2017
Appropriate Office	DELHI
State	DELHI
Country	India
Filing Mode	Branch Office
T.M. Applied For	The Dhaba
T.M. Category	TRADE MARK
Trade Mark Type	DEVICE
Use Detail	Proposed to be used
Certificate Detail	Certificate No. 3814426 Dated : 28/12/2024 Notified in Journal No : 2190
Valid upto/ Renewed upto	10/10/2027
Proprietor name	(1) KUNJ BEHARI SARRAF Single Firm
Proprietor Address	78-79, SHEV ARCADE ACHARYA NIKETAN, MAYAPUR VIHAR PHASE-I, NEW DELHI-110091
Email Id	****act@tmsarp.com
Attorney name	NAWAZIP ADVOCATES[25614]
Attorney Address	1081, B-13, Ward 7 Mehrauli, New Delhi- 110030, India
Goods & Service Details	(CLASS : 43) SERVICES FOR PROVIDING FOOD AND DRINK; TEMPORARY ACCOMMODATION & AS PER CLASS 43
Publication Details	Published in Journal No : 2169-0 Dated : 11/06/2024

Trade Mark Image : (1)

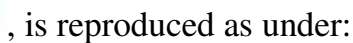


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OCCURS IN THE DATA PLEASE CONTACT OR SUBMIT AT APPROPRIATE TRADE MARKS REGISTRY ALONGWITH SUPPORTING
DOCUMENTS. THIS WILL HELP IN CREATION OF ELECTRONIC RECORDS.

6. Certificate of Registration issued by the Trade Marks Registry, Government of India in favour of the appellant for the device mark



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7. Noting the aforesaid, it is manifest that for similar marks, the appellant has already been granted registration.

8. Accordingly, this Court is of the view that since the registrations of similar marks have already been allowed in favour of the appellant, there is no impediment in granting registration in favour of the appellant with respect to the trademark application bearing no. 5443541, which has been rejected by the impugned order.

9. Learned counsel appearing for the respondent, at this stage, submits that considering the fact that registrations have already been granted in favour of the appellant herein, the matter can be remanded back to the Trade



Marks Registry for fresh consideration of the application of the appellant.

10. Accordingly, considering the aforesaid, the impugned order dated 26th April, 2024, passed by the Trade Marks Registry, is set aside.

11. The trademark application, bearing no. 5443541 filed by the appellant before the Trade Marks Registry, is revived to its original number.

12. The Trade Marks Registry shall deal with the aforesaid application of the appellant, in accordance with law and proceed to advertise the same for the purposes of grant of registration.

13. The present appeal is accordingly allowed, in terms of the aforesaid directions.

14. 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.

MINI PUSHKARNA, J

MARCH 11, 2025/kr