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

\+ C.A.(COMM.IPD-TM) 156/2022

M/S HATSUN AGRO PRODUCTS LIMITED ..... Appellant

Through: Ms. Lakshimi Devi Somnath, Advocate.

versus

M/S BUNGE INDIA PRIVATE LIMITED & ANR. ..... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates for R-2.
Mr. S. Vohra, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 18.01.2023

1. Present appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter '***the Act***'] impugns order dated 28th April, 2022, issued by Respondent No. 2 [Deputy Registrar of Trademarks] [hereinafter '***Impugned Order***'], whereby Respondent No. 1's request under Rule 34 of the Trade Mark Rules 2017 [hereinafter '***2017 Rules***'], for expediting registration process for application No. 3544623 for the mark "HUDSON", has been allowed.

2. Before adverting to the grounds of appeal, it is important to mention

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that following the impugned order, on 10th August, 2022, registration process has been finalised with registration of the mark in Respondent No. 1's name. Appellant has also has also impugned said registration in a separate rectification petition under Section 57 of the Act, stated to be pending before this Court.

3. Be that as it may, the Court is of the opinion that present appeal is misconceived and infructuous for following reasons, which shall be discussed hereinafter: (*i*) registration process has attained finality, (*ii*) Impugned Order, being interlocutory in nature, merely expedited the registration process, and (*iii*) the reasoning in the Impugned Order is reasonable and in consonance with the Act. Therefore, the Impugned Order warrants no interference.

4. Ms. Lakshimi Devi Somnath, counsel for Appellant, argues that the Impugned Order should be set-aside as Respondent No. 2 unlawfully accelerated the proceedings without any valid reason, and in violation of the statutory provisions. She argues that Rule 34 of the 2017 Rules does not enable Respondent No. 2 to speed-up the registration process that had already reached the final stage. The afore-noted provision can be invoked only after receipt of application number, and prior to examination of the application. This, Ms. Somnath emphasises is evident from the expression "*Thereafter*" appearing in the aforesaid Rule, which in common parlance connotes '*only after*' – a condition precedent. The intent to permit filing of application for expedited processing at any stage is not expressly mentioned in the provision. Reference is also made to the expression "*shall also*" in said Rule which indicates that all post examination procedures are to be dealt expeditiously as

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an addendum to expedited examination procedure, and not on a standalone basis. If application under Rule 34 is not made before examination, the question of expediting various stages of examination such as the report, scheduling of show cause hearing, publication etc. (mentioned in the provision) will not arise thereby proving that the Rule allows for applications to be entertained only prior to examination.

5. The Court has considered the aforenoted submissions. Rule 34 of the 2017 Rules, around which the arguments pivot, reads as under:

> *"34. Expedited Processing of Application - (1) The applicant may, after the receipt of the official number of the application, request for expedited processing of application made for the registration of a trademark in Form TM-M on payment of fee as specified in First Schedule. Such an application shall be examined expeditiously and ordinarily within three months from the date of submission of the application. Thereafter, the following proceedings viz. the consideration of response to the examination report, scheduling of show cause hearing, if required, the publication of the application and the opposition thereto, if any, till final disposal of the application shall also be dealt with expeditiously subject to such guidelines as may be published in this regard by the Registrar in the trademarks Journal.*
> *(2) The Registrar may limit the number of applications for expedited processing of trademark applications by publishing the same in the trademarks Journal."*
> [Emphasis Supplied]

6. On a plain reading, the above provision provides an opportunity to all registrants to apply for expedited processing of application after receipt of an official number from the Registry. When such an application is filed, the same has to be examined expeditiously, and ordinarily within three months from the date of submission. The only pre-condition contemplated in Rule 34 is of issuance of an official number; the Rule does not put any embargo on its invocation even if registration process has advanced beyond the stage of 'examination'. The portion of the Rule beginning with the word "*Thereafter*"

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elucidates that all proceedings *viz*. consideration of response to the examination report, scheduling of show cause hearing, publication of application and the opposition thereto, till the final disposal of the application, shall be dealt with expeditiously.

7. The Deputy Registrar of Trade Marks has interpreted the Rule, finding no embargo or limitation in its application, and held as under:

> *"40. Now, if the interpretation attributed to Rule 34 by Shri Khanna is accepted that an application for expedite processing of trademark application can only be filed before the examination stage, it would mean that despite there being clear and sufficient data available regarding humongous pendency at stages beyond the examination stage, the rule making authority drafted Rule 34 to operate in a manner which would exclude a huge number of applications pending at various stages beyond the examination stage from being processed expeditiously, and that either the rule making authority was oblivious to the factum of pendency at stages beyond the examination stage or focused primarily on pendency at the examination stage, which can't be the case for if that is so, the rule making authority could have simply retained Rule 38 as existed under the 2002 Rules which already provided expedited examination of trademark applications and there was no need to evolve Rule 34 in the 2017 Rules. To my mind, to accept the interpretation given by Shri Khanna would be to understand the intention of the rule making authority all wrong and frustrates the entire purpose of the Rule 34, which is to fast-track processing of applications stuck in the system due to pendency at various levels and to provide relief to persons whose interests are hampered due to such pendency and who are willing to pay extra fee for expediting the process.*
>
> *41. It is also to be borne in mind that by the time the 2017 Rules were finally notified and came into force on 06/03/2017, the pendency in the examination had substantially reduced to approx. 60 thousand cases in January, 2017 while the cumulative pendency at other stages had significantly increased to approx. 6.75 lakh cases, still, the rule making authority did not bring any changes to the language of the Rule as was first published in the official gazette on 17/11/2015 for inviting objections and suggestions from the public to save it from having limited applicability to only 60 thousand cases awaiting examination. The legitimate explanation to this is that the rule making authority was well aware of the huge pendency that existed at stages beyond the examination stage in addition to the pendency at the examination stage and it knew and intended Rule 34 to provide a mechanism to expedite processing of trademark applications stuck at any stage till final disposal.*
>
> *42. Reading the Rule 34 in the light of foregoing analysis and discussion and the decision of the Hon'ble Supreme Court in the **Jamnalal's case** (supra), in the first*

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*limb, the rule unequivocally lays down the receipt of official number of the application for registration of trademark as a condition precedent for filing of the application for expedited processing of application i.e. an application for expedited processing can't be filed before or simultaneously with the application for registration of trademark. The other conditions are that the application for expedited processing is required to be made in Form TM-M and the applicant is required to pay The prescribed fee as specified in First Schedule. No further condition has been prescribed. After prescribing the conditions, in the second limb, the rule explains how once an application for expedited processing is filed, the trademark application shall be treated. As there are various proceedings and actions in the registration of a trademark application starting with the examination of application, the rule prescribes that the examination of the application shall be done expeditiously and ordinarily within three months from the date of submission of trademark application and all other proceedings that follow thereafter till the final disposal of the trademark application shall also be dealt with expeditiously subject to such guidelines as may be published in this regard by the Registrar hi the trademarks Journal. The interpretation given by Shri Khanna to the word 'thereafter' used in the Rule as invariably laying down a `pre condition' or as meaning 'only after' having proven to be erroneous in the wake of **Jamnalal's case** (supra), the Rule certainly can't be said to be laying down any condition that the application for expedited processing shall be filed only before the examination of the trademark application and not afterwards as otherwise it would mean that until unless the application is examined expeditiously, the other proceedings can't be dealt with expeditiously, which seems to be a little absurd.*

xx .. xx .. xx

45. The contention of Shri Khanna that the Registrar derives the powers to adjudicate proceedings under 34 by virtue of Rule 36 whereas for deciding ordinary opposition proceedings without expedite application, the Registrar derives the powers from Rule 50 is completely misconceived as - firstly, there is no adjudication in law by the Registrar under Rule 34. At best, the Registrar may look into the sufficiency of reasons declared by the applicant for expedited processing in TM-M or whether the application conforms to the guidelines, if any framed, or to the limits which have been set regarding the number of applications for expedited processing; Secondly, expedite processing of application in no case means dilution of the prescribed time lines. It only means fast tracking the administrative process and steps; and thirdly, irrespective of whether or not an expedite application has been filed, the opposition in any case is required to be heard and decided as per the provisions of Rule 50 only and not under Rule 34 or 36.

46. Lastly, the contention of Shri Khanna that an interpretation to the effect that an application can be expedited at any stage on the mere basis of payment of money sets an example that justice is only for the rich and who can afford heavy costs in proceedings and that the same would lead to the applicants abusing the due process prescribed under the Rules which may deter the interests of parties

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whose matters are pending final arguments since long as their chance/ opportunity of hearing would be substituted by such applicants is again completely misconceived. Trademarks are commercial property and represent commercial and business interests. Commercial disputes require speedy resolution for ease of doing business, to encourage business activity, to spur entrepreneurship and to protect the economic interests of traders, manufacturers and service providers be the individuals, companies or large conglomerates. They justify payment of extra fee. However, it is important to mention that the Trade Marks Registry has one of the lowest fee slabs internationally. Those who file or have filed international trademark applications would vouch for the same. I am sure Shri Khanna is well aware of it. Further, as already mentioned above, expedited processing in no case means compromising and dilution of prescribed procedure. It only means fast tracking of administrative process and steps, which obviously would require allocation of additional resources and hence extra fee. The fee is not for the costs of justice but for the delivery mechanism and to act as a check on the number of requests to prevent clogging of the system and changed priorities affecting normal and routine flow of work. The new Rules enable formulation of guidelines and setting limits on the number of applications for expedited processing to streamline the process. The same would certainly follow once there are sufficiently large number of such requests requiring prioritizing, therefore, stream lining to prevent the system from getting overburdened. Therefore, there is no question of abuse of process of law or substitution of chance / opportunity of hearing of applicants by those who apply for expedite processing of their applications. In making his argument, Shri Khanna overlooks the redefining of roles of bodies like Trade Marks Registry which perform both administrative as well as quasi-judicial functions from being typical government departments performing sovereign functions to citizen centric and service-oriented organizations in modern times. Shri Khanna also conveniently omits reference to Rule 38 of the old Rules which can be said to be the predecessor of the present Rule 34 and which already provided for expedited examination of trademark application on payment of five times the application fee. I am sure that Shri Khanna must have availed the benefit of Rule 38 of the old Rules on many occasions himself. Therefore, Shri Khanna's contention is more of a moral and emotional outcry rather than based on sound legal basis.

47. To my mind, the above analysis safely matches the text with the context, the object and its intent, the problem and its solution and the remedy and its cure and is in accordance with the relevant principles of law as summarized above.

48. On the contrary, the interpretation given by Shri Khanna to Rule 34 is in complete ignorance of the prevailing circumstances in the Trade Marks Registry, the evolution of the Rule 34 and the settled principles of law. It dilutes rather frustrates the very object and purpose of the Rule and fails to comprehend the true intention of the rule making authority and the legislative scheme correctly, therefore, requires to be rejected. The foreign references and case law cited by Shri Khanna are of no avail to him in view of the authoritative pronouncements of the Hon'ble Supreme Court cited above.

[Emphasis Supplied]

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8. The Court finds no ground whatsoever to interfere with the Impugned Order as it is in consonance with the intent behind framing of Rule 34. Registrar's decision is well-reasoned, makes detailed analysis of the Rule in light of the judicial precedents, erstwhile rules, changes inducted in 2017 Rules, as also the data available *qua* pendency of applications at various stages prior to the introduction of 2017 Rules. To hold that benefit of Rule 34 is not available to applicants whose applications have advanced beyond the examination stage, would be a misreading of the language of the Rule, which does not contain any such limitation. Indeed, as rightly observed by the Registrar, the entire purpose of Rule 34 will be defeated if the Rule is interpreted narrowly. This provision has been introduced to fast-track processing of applications that are stuck in the system due to backlog and pendency at various levels, upon payment of prescribed fee.

9. It would be worth mentioning that Rule 38 of erstwhile Trade Mark Rules, 2002 gave discretion to Deputy Registrar as to whether examination of an application warrants expedition. However, under 2017 Rules, no such discretion is contemplated and all applicants are provided an opportunity to request for expedited processing of their application on payment of requisite fee. Appellant's allegation that Respondent No. 2 has unnecessarily expedited the matter is a suggestion of bias, without any lawful foundation. In absence of manifest bias, Court would not like to question the subjective satisfaction of Deputy Registrar. The allegations of bias without clear evidence are an unwarranted attack of no consequence *qua* the credibility of registration process.

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10. For the foregoing reasons, the present appeal is dismissed with a cost of Rs. 10,000/- to be paid by Appellant to the Delhi High Court Legal Services Committee.

SANJEEV NARULA, J

JANUARY 18, 2023/*nk*
(Corrected and released on 27th January, 2023)

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