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

\+ C.A.(COMM.IPD-TM) 42/2022

VARDHMAN HOLDINGS LIMITED ..... Appellant

Through: Mr. Siddhant Chamola, Mr. Shivang Sharma and Ms. Vaishali Sharma, Advocates.

versus

THE REGISTRAR OF TRADEMARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**O R D E R**

**% 14.03.2023**

1. Present appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter "*the Act*"], is directed against order dated 08th January, 2019 [hereinafter "*impugned order*"], passed by Senior Examiner refusing Appellant's application no. 2725139 for trademark (word) "VARDHMAN GROUP" [hereinafter "*subject mark*"] in Class 06 in respect of steel and steel alloys.

2. Appellant did not apply for statement of grounds of decision and therefore, reasons for refusal are to be gathered from impugned order, relevant portion whereof is as follows:



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> *"A Hearing in respect of the above matter came up before me on 13/12/2018 and the following is to be communicated to the applicant/agent:*
>
> ** Ms. Priyanka applicant/Advocate/Agent appeared before me and made his submissions. I have heard arguments, gone through the records and passed the following Order.*
>
> ** The trade mark applied for is objectionable under Section 9/11 of the Act. The application is accordingly refused.*
>
> *Attention is invited under Rule 36(1) of the Trade Marks Rules, 2017 where the application is refused a request may be made in form no TM-M along with the prescribed fee to communicate in writing the grounds of decision and materials used by the Registrar in arriving at his decision to refuse the said application. The said request on form TM-M should be tendered within 30 days of receipt of the order of refusal."*

3. From the above, it transpires that subject mark has been refused under Section 9, being devoid of distinctiveness, as well as Section 11 of the Act in light of the conflicting marks, contained in the examination report.

4. Mr. Siddhant Chamola, counsel for Appellant, states that Appellant holds registrations of mark "Vardhman" and formative marks thereof across various classes, details whereof have been produced in the documents filed with the appeal. Subject mark has been in use since 1988 and in fact, the identical mark already stands registered under Classes 23, 24, 25.

5. In light of the above, in the opinion of the Court, the ground of lack of distinctiveness under Section 9 of the Act cannot be attracted. This brings us to the second objection i.e., under Section 11 of the Act on account of the conflicting marks, reproduced hereunder:



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2/11/2020 Examination Report

GOVERNMENT OF INDIA
TRADE MARKS REGISTRY

INTELLECTUAL PROPERTY INDIA

LOCATION:
SECTION: EXM
REPORT: EXM007

WORD MARK SEARCH REPORT
APPLICATION NUMBER: 2725139
Class : ---
TRADEMARK: 'VARDHMAN GROUP'

USER : RDV
PAGE:1
DATE: 01/07/2015

| APPL NO | CLASS | CONFLICTING MARK | JOURNAL No | PROPRIETOR NAME | PROPRIETOR ADDRESS | STATUS | TM IMAGE |
|---|---|---|---|---|---|---|---|
| GOODS SERVICES | | | | | | | |
| 1642133 | 6 | VARDHMAN WITH LABEL | 1618 | VARDHMAN TEXTILES LIMITED | CHANDIGARH ROAD LUDHIANA-141001 PUNJAB | Registered | Vardhmān |
| APPLICATION DATE 17/01/2008 11:06:40 | | | | | | | |
| GOODS/SERVICE STEEL AND STEEL ALLOYS INCLUDED IN CLASS 06. | | | | | | | |
| 1651291 | 6 | VARDHMAN | 1698 | VARDHMAN TEXTILES LIMITED | CHANDIGARH ROAD LUDHIANA-141001 PUNJAB | Accepted & Advertised | |
| APPLICATION DATE 08/02/2008 11:46:16 | | | | | | | |
| GOODS/SERVICE STEEL AND STEEL ALLOYS INCLUDED IN CLASS 06. | | | | | | | |
| 2295933 | 6 | VARDHMAN | 1626 | VARDHMAN ADRASH ISPAT (P) LTD. | G.T ROAD, VILL AMBEY MAJRI, MANDI GOBINDGARH, PUNJAB | Opposed | |
| APPLICATION DATE 07/03/2012 | | | | | | | |
| GOODS/SERVICE IRON & STEEL TMT BARS, ANGLE, CHANNEL, STRUCTURE STEEL, ROUND, FLAT, T-LRON. HR/CR MATERIAL, PIPE, SQUARE | | | | | | | |

RAMA DEVI VERMA
For REGISTRAR OF TRADE MARKS

6. The first two cited marks [application nos. 1642133 and 1651291] belong to Vardhman Textiles Limited. Mr. Siddhant Chamola, counsel for Appellant, clarifies that Vardhman Textiles Limited, Appellant's sister concern, belonging to the same group of companies has no objection to the registration of subject mark and a certificate to that effect can be furnished. As regards third cited mark [application no. 2295933], he submits that the same stands abandoned post opposition filed by Appellant. In light of the same, objections under Section 11 also do not sustain.

7. Mr. Alexander Mathai Paikaday, counsel for Respondent, states that



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subject mark should be accepted only after submission of no-objection certificate issued by Appellant's sister concern *viz*. Vardhman Textiles Limited

8. Considering the foregoing, present appeal is allowed with the following directions:

(i) Impugned order dated 08th January, 2019 is set aside.

(ii) Appellant shall within a period of two weeks from today submit before the Trade Marks Registry a no-objection certificate/ affidavit from the proprietor of the cited marks [application nos. 1642133 and 1651291]

(iii) Subject to above compliance, Trade Marks Registry is directed to process the registration application no. 2725139 for the subject mark and proceed to advertise the same, within a period of three months from date of filing of the no-objection certificate/ affidavit.

(iv) It is clarified the subject mark shall not grant any exclusive rights in the word 'GROUP', separately or individually. This disclaimer shall be reflected in the Trade Marks Journal at the time of advertisement and also if the subject mark ultimately proceeds for registration.

9. With the above directions, the appeal is disposed of.

10. Registry is directed to supply a copy of the present order to the Trade Marks Registry at llc-ipo@gov.in for compliance.

**SANJEEV NARULA, J**

**MARCH 14, 2023**
as



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