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

\+ C.A.(COMM.IPD-TM) 136/2022
ECOS(I) MOBILITY AND HOSPITALITY PVT LTD.

..... Appellant

Through: Mr. Shivendra Pratap Singh and Mr. Navdeep Suhag, Advocates.

versus

REGISTRAR OF TRADE MARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, Central Government Standing Counsel 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

% 12.04.2023

1. The present appeal is directed against Refusal Order dated 20th December, 2018 read along with Statement of Grounds of decision dated 08th March, 2019 whereby Appellant's Trade Mark Application No. 2395804 under Class-39[1] for the device mark – ' TOURMART India ' [hereinafter "*subject mark*"], has been rejected [hereinafter collectively "*Impugned Orders*" and separately "*Refusal Order*" and "*Statement of Grounds of decision*"]. Reasoning reflected in the Statement of Grounds of

[1] As per Form TM-1 – "agency services for arranging tours, coast tours, conducting sight seeing tours, tourist guide services, tour reservation services, tour organizing services, tour operating services, services

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decision is culled out below:

> "*With reference to the above and request on Form TM-M dated 11/02/2019. It has been decided by the Registrar of Trade Marks to inform you that hearing in respect of above application was held on 20/11/2018* **[sic.]** *and the said application is refused on the following Grounds;*
>
> ** Adv. Neha appeared and made submissions. Heard. Perused. Objection under Section (9) sustained. Application is devoid of any distinctive character. Trademark Refused.*
> ** 9(1)(a) - The trade mark is devoid of any distinctive character, that is to say, not capable of Distinguishing the goods or services of one person from those of another person:*
> ** 9(1)(b) - The Trade Mark consist exclusively of marks or indications which serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or services.*"

2. According to the Appellant, the subject mark has been in use since 18th April, 2001 and affidavit of user enclosing therewith includes all relevant documents, which were duly furnished to the Senior Examiner of Trade Marks, however, the same has not been considered at all.

3. Heard. Evidently, the Senior Examiner has not taken into consideration the user affidavit *qua* the subject mark. The Impugned Orders indeed do not provide any discussion regarding Appellant's reliance on the proviso to Section 9 of the Trade Marks Act, 1999. For the fore-going reasons, the Impugned Orders are unsustainable and accordingly, ought to be set-aside.

4. In view of the above, the present appeal is allowed and the following directions are issued:

(i) Impugned Orders are set-aside and the matter is remanded back the Respondent for *de-novo* consideration.

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for arranging excursions for tourist, provision of information on matter relating to tourism."

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(ii) Let the afore-said exercise be completed within a period of three months of today. Respondent shall take into account all documents (including the user affidavit) before proceeding to pass an order.

5. Needless to say, Respondent shall proceed completely uninfluenced by the Impugned Orders. All rights and contentions of the parties are left open.

6. With the above directions, the present appeal is disposed of.

7. 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

APRIL 12, 2023
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