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

\+ C.A.(COMM.IPD-TM) 125/2022

A.O. SMITH CORPORATION ..... Appellant

Through: Mr. Ranjan Narula and Mr. Shashi P. Ojha, Advocates.

versus

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

% 28.02.2023

1. Present appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter "***the Act***"], arises from order dated 25th June, 2020 [hereinafter "***impugned order***"] passed by Senior Examiner refusing Appellant's application no. 3570646 for the mark " " in Class 11 [hereinafter "***subject mark***"]. The relevant portion thereof is as follows:

> *"The applied trademark "ADVANCED RECOVERY TECHNOLOGY (Logo)" for the applied goods "WATER TREATMENT EQUIPMENTS AND APPARATUS, WATER FILTER EQUIPMENTS AND APPARATUS,*

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WATER PURIFICATION EQUIPMENTS AND APPARATUS AND PARTS AND FITTINGS THEREOF, WATER HEATERS AND PARTS AND FITTINGS THEREOF" Is devoid of any distinctive character. The applied trademark "ADVANCED RECOVERY TECHNOLOGY (Logo)" is a combination of common dictionary words. The mark is descriptive in nature as it shows the kind and intended purpose in reference of the goods.

The Present case also does not fall in category of "proviso" to Section 9 (1) as the subject application is filed on proposed to be used basis and case of any acquired distinctiveness is not proved by satisfactory evidence.

The objections raised in the Examination Report under section 9(1) (a) and 9(1) (b) of the Trade Marks Act, 1999 cannot be waived. After perusal of records and submissions by the attorney in this regard, the registration of the mark is objectionable under section 9(1) (a) and 9(1) (b) of the Trademarks act, 1999.

After perusal of all the documents on record and submission made by the applicant / authorised agent it is concluded that applied mark is not registrable because of the reason stated as above. Hence application no 3570646 cannot be accepted and refused accordingly."

2. Mr. Ranjan Narula, counsel for Appellant, states that Appellant is the largest manufacturer and marketer of water heaters in North America, and subject mark has been applied for water treatment equipment and apparatus, water filter equipment and apparatus, water purification equipment and apparatus etc. and parts and fittings thereof, on '*proposed to be used*' basis. The subject mark is distinctive and unique, comprising of an artwork and expression "Advance Recovery Technology" along with acronym "(ART)" and therefore, the objections under Section 9(1)(a) & (b) of the Act are not sustainable. He emphasises that the subject mark as a whole, does not describe the kind and purpose of the goods for which it has been applied for, and it is clearly distinctive and capable of distinguishing Appellant's goods from another. Mr. Narula also states that the expression contained in the subject mark is a slogan/ tagline which are accepted as trademarks within

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the meaning of Section 2(m) and (zb) of the Act.[1]

3. *Per contra,* Mr. Harish Vaidyanathan Shankar, CGSC for Respondent, opposes the application and submits that subject mark contains expression "Advance Recovery Technology" which are three generic words with dictionary meaning. No one can be allowed to monopolise such an expression and specifically, the accompanying generic expression/ acronym "ART". Further, the expression "Advance Recovery Technology" could have application relating to technologies across other fields with possibility of 'recovery' of any sort and therefore, Appellant should not be permitted to claim monopoly on this expression.

4. The Court has considered the afore-noted contentions. Subject mark comprises of an artwork as well as the expression "Advance Recovery Technology" and acronym "(ART)". The artwork comprises a water droplet covered by a green leaf in the shape of a hand, is unique and creative and is clearly distinctive, and to that extent, there cannot be any quarrel that the said mark can be registered. However, the word combination which is a slogan - "Advance Recovery Technology" used along with its acronym - "(ART)", is the aspect that requires little deeper scrutiny. This slogan/tagline refers to water conservation process in water purification *et al*. Court enquired whether the expression refers to any patented technology, to which Mr. Narula, on instructions, confirms that there is no patented technology under the said expression or acronym. Court has also queried from both counsel, as to whether 'Advance Recovery Technology' is common to the trade in relation to products associated with subject mark. Mr. Narula

[1] Reliance is placed upon decision of the Division Bench of this Court in *Procter & Gamble Manufacturing (Tianjin) Co. Ltd. and Ors. v. Anchor Health & Beauty Care Pvt. Ltd*., 2014 SCC OnLine Del 3374.

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responds in the negative. Mr. Vaidyanathan, on the other hand, responds in the affirmative. However, he is unable to show any material to support his view. With that being the position and no material on record to indicate that "Advance Recovery Technology" or "(ART)" is common to trade or descriptive of any feature in water treatment, water filter products etc., the Court is inclined to allow the appeal. Further, subject mark has to be seen as a whole and the expression "Advance Recovery Technology" with its acronym "(ART)" is only part of it, although a prominent one. It cannot be held as descriptive or devoid of distinctiveness. Objections under Section 9(1)(a) and (b) of the Act, are thus unstainable.

5. For the fore-going reasons, the present appeal is allowed with the following directions:

(i) Impugned order dated 25th June, 2020 is set aside.

(ii) Trade Marks Registry is directed to process the registration application no. 3570646 for the subject mark and proceed to advertise the same, within a period of three months from today.

(iii) If there is any opposition, the same shall be decided on its own merits, uninfluenced by observations made hereinabove.

(iv) The rights in subject mark shall be restricted to combination of words "Advance", "Recovery" or "Technology", as depicted above.

(v) The acronym "ART" shall be used only along with the expression "Advance Recovery Technology".

(vi) It is clarified the subject mark shall not grant any exclusive rights in the words "Advance", "Recovery" or "Technology", separately or individually.

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(vii) The disclaimers/ conditions mentioned above shall be reflected in the Trade Marks Journal at the time of advertisement, and also if the subject mark ultimately proceeds for registration.

6. With the above directions, the appeal is disposed of along with pending application(s), if any.

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

FEBRUARY 28, 2023
as
(Corrected and released on 07th March, 2023)

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