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

% *Date of decision: 12th December, 2024*

\+ C.A.(COMM.IPD-PAT) 42/2024

SPV LABORATORIES PRIVATE LIMITED .....Appellant
Through: Ms. Aparna Jain, Adv.

versus

THE CONTROLLER GENERAL OF PATENTS AND DESIGNS .....Respondent
Through: Ms. Ridhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present appeal has been filed under Section 117A of the Patents Act, 1970 (hereinafter the 'Patents Act') and is directed against impugned order dated 14th June, 2024 passed by the Assistant Controller of Patents and Designs, Delhi (hereinafter the 'Assistant Controller'), whereby the Assistant Controller has refused to restore the lapsed Patent No. 403793 bearing patent application no. 201911016376 titled as '*An Improved Herbal Anti-Pollution Skin Care composition, and a method of preparation thereof*' (hereinafter the 'lapsed patent').

2. Brief facts necessary for deciding the present appeal are set out below:

2.1. The appellant had applied and was granted a patent being Patent No.

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403793 in respect of '*An Improved Herbal Anti-Pollution Skin Care composition, and a method of preparation thereof*'.

2.2. The appellant filed the aforesaid application for grant of the said patent on 25th April, 2019 and was granted the same on 18th August, 2022. The renewal fee was to be paid within three months, further extendable by six months, in accordance with proviso to Section 142(4) of the Patents Act.

2.3. The appellant was unable to pay first renewal fee upon grant of the patent before the prescribed date i.e., 18th November, 2022 due to an exigency in the family of the appellant's attorney. Since the appellant failed to pay the renewal fee within the prescribed time period, the Assistant Controller ceased the patent.

2.4. The appellant filed an application under Section 60 of the Patents Act read with Rule 84 of the Patents Rules, 2003 (hereinafter, the 'Patents Rules') on 9th June, 2023 for restoration of the patent in the prescribed Form-15 stating that the patent attorney of the appellant missed the renewal deadline due to an unfortunate exigency in the family of its attorney.

2.5. It is stated that the aforesaid application was filed within the permissible period of 18 months from the date on which the patent ceased.

2.6. Thereafter, the Assistant Controller issued an intimation under Rule 84(2) of the Patents Rules on 3rd January, 2024. The agent of the patentee sent a reply on 17th January, 2024 and requested a hearing under Rule 84(3) of the Patents Rules, pursuant to which a hearing was scheduled on 19th February, 2024.

2.7. During the hearing, the Assistant Controller objected to the statement made by the patentee in Form-15 with respect to non-payment of the renewal fee and observed that the agent of the patentee has not provided any

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concrete evidence in support of the said statement.

2.8. On 4th March, 2024, the agent of the patentee filed the post-hearing written submissions.

2.9. *Vide* the impugned order dated 14th June, 2024, the Assistant Controller refused to restore the lapsed patent on the ground that the patentee failed to meet the requirements of Section 60 (3) of the Patents Act read with Rule 84(3) of the Patents Rules.

3. Notice in this appeal was issued on 9th July, 2024 and the counsel appearing on behalf of the respondent sought time to seek instructions.

4. Counsel appearing on behalf of the appellant submits that the application for restoration of the lapsed patent was filed within 7 months from the date on which the patent was ceased, and the said delay in payment of the renewal fee was on account of family exigency i.e. the death of mother of the attorney.

5. Counsel for the respondent submits that the patentee has authorized two attorneys, namely Ms. Aparna Jain and Ms. Harinder Narvan and both along with the patentee are responsible to fulfil the requirements of the Patents Act, 1970 and pay the required renewal fees within the prescribed time. The patentee's submission does not clarify whether the family emergency affects either both the attorneys or just one attorney. Hence, it was rightly held that the patentee had failed to meet the requirement of Section 60(3) of the Patents Act, 1970 and Rule 84(3) of the Patents Rules.

6. I have heard the counsel for the parties.

7. The record bears out that the appellant was diligently pursuing its patent application. The appellant also filed Form 27, the statement regarding the working of the patent, for the financial years 2022 and 2023 on 5th

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January, 2023 and 4th January, 2024 respectively. There is no reason to disbelieve the reason offered by the appellant for not paying the renewal fee in time. At the highest, it is a procedural lapse and on this account alone a granted patent should not be refused.

8. Admittedly, the intimation regarding the renewal fees was sent by the Patents Office to the old agent of the appellant and not the current one.

9. It is also a matter of record that restoration application was filed by the appellant within the prescribed period under Section 60 of the Patents Act, which shows that the appellant had no intention to abandon the patent. In my view, once the restoration application was filed by the appellant in a timely manner, the Assistant Controller should have taken a liberal view of the matter and restored the patent.

10. Accordingly, the appeal is allowed and the impugned order passed by the Assistant Controller is set aside.

11. The Assistant Controller shall restore the granted patent bearing no. 403793 and accept the renewal fees along with penalty, if any.

12. The Registry is directed to send a copy of the present order to the Office of the CGPDTM at e-mail - llc-ipo@gov.in for compliance.

AMIT BANSAL, J

DECEMBER 12, 2024
Corrected and uploaded on: 03rd January, 2025
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