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

+ CS(COMM) 910/2024 & I.A. Nos. 42507/2024, 42508/2024,
42509/2024 & 42510/2024

MS KHATEMA FIBRES LIMITED

.....Plaintiff

Through: Mr. Saikrishna Rajgopal with
Mr. Sahil Sethi, Ms. Snehima Jauhari,
Mr. Sohrab Singh Mann, Mr. Samridh
Bindal, Ms. Srishti Dhoundiyal and
Mr. Aman Sagar, Advocates.
(M): 9910634753

Email: s.dhoundiyal@saikrishnaassociates.com

versus

DR RAKESH CHANDRA RASTOGI & ORS.

.....Defendants

Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

18.10.2024

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I.A. 42509/2024 (Exemption from filing certified and clear copies of documents)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing certified/clearer/proper/translated copies of documents with proper margins.
2. Exemption is granted, subject to all just exceptions.
3. Plaintiff shall file legible, clear, and translated copies of the



documents, on which the plaintiff may seek to place reliance, before the next date of hearing.

4. Accordingly, the present application is disposed of.

I.A. 42508/2024 (Exemption from instituting Pre-Institution Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC, seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of *Yamini Manohar Versus T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, and Division Bench of this Court in *Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd.*, 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of.

I.A. 42510/2024 (Application seeking leave to file additional documents)

8. This is an application under Order XI Rule 1(4) read with Section 151 CPC as amended by the Commercial Courts Act, 2015, seeking leave to file additional documents.

9. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015, and the Delhi High Court (Original Side) Rules, 2018.

10. The application is disposed of, with the aforesaid directions.

CS(COMM) 910/2024

11. None appears for the defendants, despite advance service.

12. Attention of this Court has been drawn to the affidavit of service to show that the defendants have been served on their authorised emails.



13. Let the plaint be registered as suit.
14. Upon filing of the process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement be filed by the defendants within thirty days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.
15. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendants, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.
16. List before the Joint Registrar (Judicial) for marking of exhibits, on 10th December, 2024.
17. List before the Court on 04th March, 2025.

I.A. No. 42507/2024 (Application under Order XXXIX Rules 1 and 2 CPC)

18. The present suit has been filed for permanent injunction restraining infringement of trademark, copyright, passing off, unjust enrichment, unfair competition, rendition of accounts, damages and delivery up.
19. Learned counsel appearing for the plaintiff submits that the instant suit is being filed by the plaintiff in order to protect the interest in its intellectual assets viz. its registered KHATEMA trademark and artistic work, against defendant nos. 1-4, who are infringing, passing off and



misappropriating the KHATEMA brand of the plaintiff company and making unjust enrichment thereof.

20. It is submitted that the defendant no. 1, Dr. Rakesh Chandra Rastogi, is the erstwhile Chairman and Managing Director of the plaintiff. The plaintiff company was admitted for Corporate Insolvency Resolution Process (“CIRP”) vide order dated 13th October 2023 passed by the National Company Law Tribunal (“NCLT”). The NCLT vide order dated 13th October 2023 *inter-alia* appointed Mr. Satya Prakash as the Interim Resolution Professional and also suspended the then board of directors of the plaintiff company, including suspending the powers of defendant no. 1. Mr. Satya Prakash was thereafter confirmed as the Resolution Professional and the powers of the board of directors stood vested with him.

21. It is further submitted that consequently, the CIRP of the plaintiff company commenced in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC”), and the Committee of Creditors (“CoC”) approved the Resolution Plan submitted by Mogli Labs (India) Private Limited with 100% voting share on 1st June, 2024. Accordingly, an application was filed before the NCLT seeking final approval of the Resolution Plan. The NCLT vide order dated 06th August, 2024 approved the Resolution Plan and concluded the CIRP pending against the plaintiff company. Consequently, the shareholding and the directorship of the plaintiff company is under process of change as per the process of the IBC.

22. It is submitted that while the management of the plaintiff company is under process of change in accordance with the provisions of the IBC, the defendant no. 1, an erstwhile director and chairman of the plaintiff, has attempted to usurp the plaintiff’s KHATEMA trade marks by filing



applications before the Trade Marks Registry, being *Applications nos. 6399246 and 6397561* in Class 16 for the registration of KHATEMA word mark and device mark, respectively, in his own name vide applications dated 22nd April 2024, and 20th April 2024 respectively, which after the CIRP was admitted and the powers of defendant no.1 were suspended vide order dated 13th October 2023. It is submitted that impugned applications have been filed by defendant no.1 on ‘*Proposed to be used*’ basis, thereby, implying that the use of the impugned marks has not commenced. The trademark KHATEMA belongs to the plaintiff company and is an asset of the plaintiff company. The defendant no.1 or his associates and/or anyone deriving any right or title under defendant no.1 do not have any right whatsoever, over the trademark KHATEMA, which is an asset of plaintiff-company. Thus, the defendant no.1 has no right whatsoever to assert or seek trademark registration rights, or any form of property rights over trademark KHATEMA and/or any intellectual property belonging to the plaintiff, and its accompanying goodwill and reputation.

23. It is further submitted that, the defendant no. 1, in support of the impugned applications filed for registration of the KHATEMA trade marks in his name, has filed fraudulent No Objection Certificates (“NOCs”) ostensibly on behalf of the plaintiff with the Trade Marks Registry, executed by the defendant no.1 himself, in order to overcome the objections raised by the registry for the registration of the marks applied by the defendant no.1. It is submitted that one of these NOCs were filed by the defendant no. 1 on 22nd July, 2024, i.e., during the pendency of the CIRP, when his directorship in the plaintiff company had already been suspended in terms of Section 17 of the IBC, whereas, another such No Objection Certificate was filed by the



defendant no. 1 on 12th August, 2024, i.e., after the CIRP had concluded and the successful resolution applicant of the plaintiff company is under process of stepping in, post approval of the Resolution Plan, vide order dated 06th August, 2024. Thus, at neither point in time was the defendant no. 1 empowered to issue such NOCs on behalf of the plaintiff.

24. It is submitted that it is apparent from the details/documents filed along with the impugned applications, that the defendant no.1 in nexus with the defendant no. 3 & 4, have incorporated a corporate entity named i.e., ‘Khatema Speciality Papers Private Limited’ which malafidely uses the plaintiff’s KHATEMA trade mark/ trade name as part of its corporate name. The corporate name of the defendant no.2 entity suggests that it is in the same business as that of the plaintiff.

25. It is further submitted that the plaintiff is a 38 years old Public Limited Company (unlisted) which was incorporated on 3rd October, 1985. He submits that the plaintiff is a pioneer in producing a wide range of eco-friendly papers to suit a variety of applications and requirements.

26. It is submitted that the plaintiff is also the registered proprietor of various KHATEMA trademarks/logos, which registrations are valid and subsisting. In order to distinguish its range of products, the plaintiff has been extensively and continuously using, the trade mark ‘KHATEMA’ as part of




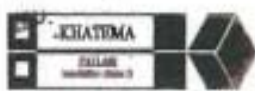
its corporate name and the logo i.e.,



in relation to its products. Thus, as on date, all the valid and subsisting KHATEMA trademark registrations and its various iterations



as given in the plaint, are reproduced as under:-

#	Mark	Application No.	Class	Status	User Date
1.	<p>KHATEMA (LABEL)</p> 	1200166 dt. 21.05.2003	16	Registered	31.01.1985
2.	<p>KHATEMA (LOGO)</p> 	1200167 dt. 21.05.2003	16	Registered	31.01.2003

27. It is further submitted that thus, the plaintiff is the rightful and exclusive owner and proprietor of the trademark 'KHATEMA' and



, and has the exclusive right to use, and/or authorize/license the use, in any manner whatsoever, of the KHATEMA marks. He submits that the plaintiff, additionally, owns all rights, title and interest in and to, and holds the exclusive rights to, market and sell various goods and services in connection with the word mark 'KHATEMA'. The



plaintiff has enjoyed trade mark registrations in the marks KHATEMA under nos. 1200167 and 1200166 for many years.

28. It is submitted that the plaintiff's bleached and unbleached kraft liner board products have gained immense popularity and have become synonymous with the quality that is exclusive to the plaintiff. The plaintiff has played a pivotal role in popularizing its trademark 'KHATEMA' and the



logo in relation to its business. In the course of its business, plaintiff due to long, continuous, extensive and uninterrupted use has acquired enviable goodwill and reputation with respect to its business under the plaintiff's trademarks. He submits that the plaintiff has honestly, bonafidely, continuously, commercially, openly and exclusively (and to the exclusion of others), been using the 'KHATEMA' mark, as its corporate identity in the course of trade and has acquired immense goodwill for the same as well. The revenue generated has consistently increased year after year, since its inception.

29. It is further submitted that the plaintiff is the registrant of the domain name <http://www.khatemafibres.com> since the year 2003 and also enjoys an active presence on e-commerce marketplace such as Indiamart.com.

30. It is submitted that as such, the use of the KHATEMA mark forms an invaluable and indispensable component of plaintiff's intellectual property assets. Consequently, use of the KHATEMA marks in relation to any goods or services, by any entity or person other than plaintiff, in any manner whatsoever, would infringe plaintiff's trademarks right within the meaning



of Section 29 of the Trade Marks Act, 1999. It is further submitted that in view of the CIRP, grave prejudice shall be caused to the new management of the plaintiff-company, which has invested huge amounts to revive the plaintiff-company, if the invaluable/ indispensable asset of the plaintiff, i.e., the plaintiff's Trade Marks and the goodwill associated with them, are misappropriated by any entity.

31. Further, it is submitted that such unauthorized use and/or misappropriation of KHATEMA mark by the defendants, would also result in causing a high degree of confusion and deception amongst a substantial part of the purchasing public, leading to dilution of the plaintiff's reputed trademark KHATEMA and a violation of their common law trademark rights, amounting to passing off. Such unauthorized use of the KHATEMA mark would also amount to unfair competition. Any unauthorized use/exploitation of the KHATEMA mark by the defendants, would result in a substantial loss of revenue and incalculable damages to plaintiff herein.

32. It is further submitted that the plaintiff is also the owner of the artistic work comprised in the distinctive get-up, lay out, plan, lettering style and



colour scheme of the logo, i.e., The KHATEMA artistic work has been used continuously, extensively and exclusively by plaintiff since the year 1985. The green and yellow colour scheme with a structure broadly forming letter 'K' i.e., the initials of the plaintiff, constitutes an artistic work and are subject matter of the copyright protection.

33. It is submitted that by virtue of ownership of copyright in the KHATEMA artistic work, no person can reproduce, distribute,



communicate, issue copies of, translate, adapt or do any other activity in relation to the said KHATEMA artistic work without plaintiff's consent. Any such action would amount to infringement of plaintiff's exclusive copyrights in the KHATEMA artistic work under Section 51 of the Copyright Act, 1957.


34. It is submitted that in last week of September 2024, the plaintiff learnt about the *Application no. 6399246* for 'KHATEMA'(word) filed by the defendant no.1, claiming himself to the proprietor thereof, *vide Journal No. 2175* dated 23rd September, 2024. Through further searches on the web portal of the Trademarks Registry, it was discovered that another application dated 20th April 2024, the following KHATEMA mark had been advertised



in the Trade Mark Journal: *vide Application no. 6397561* which was also filed by the defendant no.1 and was published in Trade Mark *Journal No. 2171* dated 26th August, 2024.

35. It is further submitted that the impugned applications have been filed under the Class 16 for Paper and cardboard, Printed matter, bookbinding material, Photographs, etc. Therefore, the registration has been sought for the same goods and services as provided by the plaintiff, hence, targeting the same clientele and market. Details of the impugned applications as given in the plaint, are reproduced as under:-



#	Mark	Application No.	User Detail	Status
1.	KHATEMA (word)	6399246 Dt. 22.04.2024	Proposed to be used	Accepted & advertised
2.	KHATEMA (logo) 	6397561 Dt. 20.04.2024	Proposed to be used	Accepted & advertised

36. It is submitted that the impugned applications have been filed on a “Proposed to be used” basis, meaning thereby that the defendant no. 1 has not started actual use of the applied for marks, whereas, plaintiff’s KHATEMA marks have been continuously, uninterruptedly, and extensively used since 1985.

37. It is further submitted that it appears from the details available on the official website of the Trade Mark Registry that the hearing was scheduled for 22nd August 2024, and defendant no. 1 filed his document on 12th August 2024 in support of the Show Cause hearing. This document is an undated NOC on the letter head of the plaintiff. This NOC, filed on 12th August, 2024, is purportedly issued on behalf of plaintiff signed by Dr. Rakesh Chandra Rastogi, the defendant no.1 herein, in the purported capacity of the Chairman and Managing Director of the plaintiff. The NOC filed on 12th



August, 2024 states that the plaintiff, through its director Rakesh Chandra Rastogi, had *"no objection to the acceptance/registration and use of the mark "KHATEMA" (Application No. 6397561) by RAKESH CHANDRA RASTOGI, represented by its Proprietor RAKESH CHANDRA RASTOGI, having its office at 142, Madhuban NEW DELHI DELHI 110092 India, in their upcoming trademark filing"*.

38. It is submitted that the impugned NOCs are not issued under the authority of the plaintiff, and defendant no.1 has fraudulently signed and affixed seal of the plaintiff in the said impugned NOCs. The said NOCs are illegal, unauthorised and invalid. He submits that the NCLT, vide order dated 13th October 2023, had suspended the powers of the directors of the plaintiff company, including defendant no. 1 in accordance with Section 17 of the IBC. Furthermore, Section 14(b) of the IBC specifically prohibits the transfer, encumbrance, alienation, or disposal of any assets or legal rights or beneficial interests of the plaintiff company. Therefore, the NOCs given by defendant no. 1, are illegal and fraudulent.

39. It is further submitted that it appears that post the submission of the impugned NOCs, the Trade Mark Registry accepted these documents and permitted impugned *Application no. 6397561* to proceed to publication in the Trade Mark Journal on 12th August 2024 itself and was advertised in the *Trade Marks Journal no. 2171-0* dated 26th August 2024. Through the website of Ministry of Corporate Affairs, the plaintiff learnt that the defendant no.2's registered office is the same as that of the plaintiff's office when plaintiff was under the control of defendant no. 1 and where the plaintiff used to maintain its books of account, i.e., at 403-405, *Vikas Deep Building, District Centre, Laxmi Nagar, Delhi- 110092*, prior to CIRP.



40. It is submitted that the defendant nos. 2-4, in connivance with defendant no. 1, are attempting to appropriate the KHATEMA trademarks, and thereby, usurp the long-standing goodwill and reputation acquired by the plaintiff. He further submits that there is an apprehension that the defendants have also set up a factory adjacent to the premises of the plaintiff's factory in Uttarakhand with the aim of usurping the trademark and business of the plaintiff company.

41. It is submitted that the defendants clearly intends to pass off their services as services connected/affiliated with plaintiff. It is submitted that the adoption of the identical marks KHATEMA is clearly not a mere coincidence, but is deliberately and intentionally calculated to ride upon the goodwill and reputation of plaintiff's KHATEMA mark and pass off the services of the defendants, as associated with plaintiff. The said defendants' adoption and use of the impugned marks are neither honest nor *bona fide*, for the said defendants are evidently aware of the considerable popularity, goodwill and reputation of plaintiff's KHATEMA marks. He submits that the said defendants could have no possible justification for the adoption and use of the plaintiff's unique and distinctive KHATEMA Mark.

42. It is further submitted that the defendant no.1's unauthorized and illegal acts of adopting and using and seeking registrations for the impugned mark as a prominent part of its trade/business, without plaintiff's consent/permission/license, is a blatant violation of plaintiff's statutory as well as common law rights in the KHATEMA mark. The activities of the defendant no.1 are causing irreparable harm and injury to plaintiff. Unless enjoined, the said defendant's adoption of the impugned mark in respect of its paper business, will continue to significantly harm the plaintiff's interests.



43. It is further submitted that the adoption and use by the defendants of the impugned mark, also amounts to infringement of copyright in the KHATEMA artistic work considering the impugned marks reproduce and copy the KHATEMA artistic work in their entirety. Thus, he submits that the said defendants have also infringed copyrights in the KHATEMA artistic works under Section 51 of the Copyright Act.

44. Mr. Saikrishna Rajgopal, learned counsel appearing for the plaintiff has drawn the attention of this Court to the various documents filed along with the plaint, to submit that the plaintiff company was incorporated on 03rd October, 1985. Documents pertaining to the trademark registration in favour of the plaintiff have also been shown to this Court.

45. Learned counsel appearing for the plaintiff submits that the plaintiff was admitted to the CIRP process on 13th October, 2023. Subsequently, Resolution Plan was submitted on 27th May, 2024, which was approved on 06th August, 2024. Thus, he submits that the plaintiff-company is on the path of revival.

46. He submits that the defendant no. 1 is the erstwhile Chairman and Director of the plaintiff-company. Attention of this Court has been drawn to the document showing where the initial application for trademark registration on behalf of the plaintiff, was signed by the defendant no. 1 in his capacity as Chairman and Managing Director of the plaintiff-company.

47. Attention of this Court has also been drawn to the GST registration document, which shows the defendant no. 1 as the Director of the plaintiff-company. Thus, it is submitted that defendant no. 1 has always been aware about the registered trademark in favour of the plaintiff-company.

48. It is submitted that despite the aforesaid knowledge, the defendant no.



1 had filed an application on 22nd April, 2024 with the Trade Mark Registry seeking registration of the trademark of the plaintiff-company, on a ‘*proposed to be used basis*’, which was published in the Trade Mark Journal on 23rd September, 2024.

49. It is submitted that the marks of the plaintiff-company were cited in opposition to the Examination Report by the Trade Mark Registry. In response, the defendant no. 1 had submitted a document purportedly to be a NOC issued by the plaintiff-company, which was signed by defendant no. 1 himself, vide letter dated 12th August, 2024. He submits that no such NOC could have been issued by the plaintiff-company on 12th August, 2024, since in terms of Section 17(2) of the IBC, the board of the plaintiff-company was in suspension during the said time. Thus, he submits that there is blatant dishonestly and *mala fide* on part of defendant no. 1.

50. This Court also notes that none appears for the defendants, despite advance service.

51. Considering the submissions made before this Court, plaintiff has demonstrated a *prima facie* case for grant of injunction and, in case, no *ex parte ad interim* injunction is granted, the plaintiff will suffer an irreparable loss. Further, balance of convenience also lies in favour of the plaintiff, and against the defendants.

52. Accordingly, till the next date of hearing, the defendants, their partners or associates, their servants, representatives, agents and all persons, firms, corporations and associations in active concert or participation with the said defendants, are restrained from adopting and using, in any manner whatsoever, any mark which may be identical with or deceptively similar to



Trademark/trade name 'KHATEMA', and the logos, i.e.,



owned by the

plaintiff, which may amount to infringement/passing off/misrepresentation of the plaintiff's trademark; and infringement of the copyright in plaintiff's KHATEMA related artistic work.

53. Issue notice to the defendants by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

54. Reply be filed within a period of four weeks, from the date of service.

55. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

56. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week.

57. List before the Court on 04th March, 2025.

MINI PUSHKARNA, J

OCTOBER 18, 2024

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