

OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF NOVEMBER 2025



PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

ORIGINAL SIDE APPEAL NO. 8 OF 2023

C/W

ORIGINAL SIDE APPEAL NO. 2 OF 2023

ORIGINAL SIDE APPEAL NO. 3 OF 2023

ORIGINAL SIDE APPEAL NO. 4 OF 2023

ORIGINAL SIDE APPEAL NO. 5 OF 2023

ORIGINAL SIDE APPEAL NO. 6 OF 2023

ORIGINAL SIDE APPEAL NO. 7 OF 2023

ORIGINAL SIDE APPEAL NO. 9 OF 2023

ORIGINAL SIDE APPEAL NO. 10 OF 2023

ORIGINAL SIDE APPEAL NO. 11 OF 2023

ORIGINAL SIDE APPEAL NO. 12 OF 2023

ORIGINAL SIDE APPEAL NO. 13 OF 2023

IN OSA No. 8/2023:

BETWEEN:

1. CLASSIC LEGENDS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
MAHINDRA TOWERS, P.K.KURNE CHOWK,
WORLI, MUMBAI, MAHARASHTRA-400 018,
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
MR. ASHISH JOSHI.

...APPELLANT

(BY SRI S.S.NAGANAND, SENIOR COUNSEL FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)



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AND 9 OTHERS**

AND:

1. TIDE WATER OIL. CO. (INDIA) LTD.,
YESHWANTHPUR INDUSTRIAL AREA,
PHASE-1, YESHWANTPUR, BENGALURU,
KARNATAKA-560 022.
REPRESENTED BY ITS DIRECTOR.
2. THE OFFICIAL LIQUIDATOR OF
M/S. IDEAL JAWA PRIVATE LIMITED
ATTACHED TO THE HIGH COURT OF KARNATAKA,
CORPORATE BHAVAN, NO. 26-27, 12TH FLOOR,
RAHEJA TOWERS, M.G. ROAD,
BENGALURU-560 001.
3. IDEAL JAWA (INDIA) EMPLOYEE'S ASSOCIATION
NO. 1867/SAYYAJI RAO ROAD, MYSURU,
REPRESENTED BY ITS PRESIDENT, P. KUNHI
KANNAN.

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S.MAHADEVAN, ADVOCATES FOR OL/R-2;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL
A/W MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-3)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT 1961, PRAYING TO SET ASIDE
THE ORDER DATED 16.12.2022 IN C.A.NO.126 OF 2020 AND
CONNECTED MATTERS (ANNEXURE-A) AND CONSEQUENTLY
DISMISS C.A.NO.126 OF 2020 AND ETC.

IN OSA NO. 2/2023:

BETWEEN:

1. MR. BOMAN R. IRANI
S/O RUSTOM S. IRANI

AGED ABOUT 53 YEARS,
702, NATRAJAN M V ROAD,
JUNCTION ANDHERI EAST
MUMBAI MAHARASHTRA-400069
INDIA

...APPELLANT

(BY SRI UDAYA HOLLA, SENIOR COUNSEL, FOR
SRI P CHINNAPPA, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S. IDEAL JAWA (INDIA) LIMITED
(IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA
CORPORATE BHAVAN, NO.26-27
12TH FLOOR, RAHEJA TOWERS,
M G ROAD, BANGALORE,
KARNATAKA-560001, INDIA.
2. IDEAL JAWA (INDIA) EMPLOYEE'S ASSOCIATION
NO.1867, SAYYAJI RAO ROAD
MYSURU, KARNATAKA-570001, INDIA
REPRESENTED BY ITS PRESIDENT.
3. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA TRADE MARKS REGISTRY
INTELLECTUAL PROPERTY BHAVAN
PLOT NO.32, SECTOR 14,
DWARAKA, NEW DELHI-110075, INDIA
REPRESENTED BY THE REGISTRAR
4. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
TRADE MARKS DIVISION
INTELLECTUAL PROPERTY BHAVAN,
BESIDE ANTOP HILL POST OFFICE
S M ROAD, ANTOP HILL, MUMBAI
MAHARASHTRA-400037, INDIA.
REPRESENTED BY THE REGISTRAR

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5. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
15/27, NATIONAL CHAMBERS, 1ST FLOOR,
ASHRAM ROAD, AHMEDABAD
GUJARAT-380009, INDIA

6. CLASSIC LEGENDS PVT LTD
MAHINDRA TOWERS,
P K KURNE CHOWK,
WORLI, MUMBAI
MAHARASHTRA-400018, INDIA
REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE.

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL
A/W MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-2;
SRI M.N.KUMAR, CGC FOR R-3, R-4 & R-5)

THIS OSA IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956 READ WITH SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 AND RULES 1 & 2 OF THE HIGH COURT OF KARNATAKA RULES, 1959, PRAYING TO CALL FOR THE RECORDS IN CA No.71/2018 (AND CONNECTED MATTERS) IN CO.P.NO.76/1991 C/W CO.P.NO.5/1992 AND CO.P.NO.126/1992 FILED BEFORE THE LEARNED SINGLE JUDGE OF THIS COURT.

IN OSA NO. 3/2023:

BETWEEN:

1. MR. BOMAN R IRANI
S/O RUSTOM S IRANI,
AGED ABOUT 53 YEARS,
702, NATRAJAN M V ROAD
JUNCTION ANDHERI EAST

MUMBAI,
MAHARASHTRA-400069, INDIA

...APPELLANT

(BY SRI UDAYA HOLLA, SENIOR COUNSEL FOR
SRI P CHINNAPPA, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR
OF M/S IDEAL JAWA (INDIA) LIMITED
(IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN", NO.26-27,
12TH FLOOR, RAHEJA TOWERS, M G ROAD,
BANGALORE-560001, INDIA
2. IDEAL JAWA (INDIA) EMPLOYEE'S ASSOCIATION
NO.1867, SAYYAJI RAO ROAD,
MYSURU, KARNATAKA-570001, INDIA.
REPRESENTED BY ITS PRESIDENT.
3. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
INTELLECTUAL PROPERTY BHAVAN
PLOT NO.32, SECTOR 14,
DWARKA, NEW DELHI-110075, INDIA,
REPRESENTED BY THE REGISTRAR.
4. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
TRADE MARKS DIVISION
INTELLECTUAL PROPERTY BHAVAN
BESIDE ANTOP HILL POST OFFICE,
S.M.ROAD, ANTOP HILL, MUMBAI,
MAHARASHTRA-400 037, INDIA,
REPRESENTED BY THE REGISTRAR.
5. REGISTRAR OF TRADE MARKS,
GOVERNMENT OF INDIA

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TRADE MARKS REGISTRY,
15/27, NATIONAL CHAMBERS,
1ST FLOOR, ASHRAM ROAD,
AHMEDABAD, GUJARAT-380009, INDIA.

6. CLASSIC LEGENDS PVT LTD
MAHINDRA TOWERS, P K KURNE CHOWK
WORLI, MUMBAI-400018, INDIA,
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE.

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL
A/W MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-2;
SRI M.N. KUMAR, CGC FOR R-3, R-4 & R-5)

THIS OSA IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 AND RULES 1 & 2 OF THE HIGH COURT OF KARNATAKA RULES, 1959, PRAYING TO CALL FOR THE RECORDS IN OLR NO.343/2015 (AND CONNECTED MATTERS) IN CO.P.NO.76/1991 C/W CO.P.NO.5/1992 AND CO.P.NO.126/1992 FILED BEFORE THE LEARNED SINGLE JUDGE OF THIS COURT.

IN OSA NO. 4/2023:

BETWEEN:

1. CLASSIC LEGENDS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
MAHINDRA TOWERS, P K KURNE CHOWK
WORLI, MUMBAI, MAHARASHTRA-400018
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR ASHISH JOSHI

...APPELLANT

(BY SRI S.S. NAGANAND, SENIOR COUNSEL FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)

AND:

1. TIDE WATER OIL CO. (INDIA) LTD
YESHWANTHPUR INDUSTRIAL AREA
PHASE-1, YESHWANTHPUR
BANGALURU, KARNATAKA-560022
REPRESENTED BY ITS DIRECTOR.
2. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA PRIVATE LIMITED
ATTACHED TO THE HIGH COURT OF KARNATAKA
CORPORATE BHAVAN
NO.26-27, 12TH FLOOR
RAHEJA TOWERS, M G ROAD
BENGALURU-560001
3. MR. BOMAN R IRANI
S/O MR. RUSTOM S IRANI
702, NATARAJ M V ROAD
JUNCTION, ANDHERI EAST
MUMBAI-400069
4. IDEAL JAWA (INDIA)
EMPLOYEE'S ASSOCIATION
NO.1867/SAYYAJI RAO ROAD, MYSURU
REPRESENTED BY ITS PRESIDENT
P KUNHI KANNAN

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-2;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-4)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT 1961, PRAYING TO SET
ASIDE THE ORDER DATED 16.12.2022 IN CA NO.125/2020
AND CONNECTED MATTERS (ANNEXURE-A) AND
CONSEQUENTLY DISMISS CA NO.125/2020.

IN OSA NO. 5/2023:

BETWEEN:

1. CLASSIC LEGENDS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
MAHINDRA TOWERS,
P.K KURNE CHOWK, WORLI,
MUMBAI, MAHARASHTRA-400018
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. ASHISH JOSHI

...APPELLANT

(BY SRI S.S. NAGANAND, SENIOR COUNSEL FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA PRIVATE LIMITED
ATTACHED TO THE HIGH COURT OF KARNATAKA
CORPORATE BHAVAN, NO. 26-27,
12TH FLOOR, RAHEJA TOWERS,
M.G. ROAD, BANGALORE-560001
2. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
INTELLECTUAL PROPERTY BUILDING,
G.S.T ROAD, GUINDY, CHENNAI-600032
3. MR. BOMAN R IRANI
S/O MR. RUSTOM S IRANI,
702, NATARAJ M.V ROAD,
JUNCTION ANDHERI EAST,
MUMBAI-400069
4. IDEAL JAWA (INDIA)
EMPLOYEE'S ASSOCIATION

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NO. 1867/SAYYAJI RAO ROAD,
MYSURU
REPRESENTED BY ITS PRESIDENT
P KUNHI KANNAN

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SMT. ANUPAMA HEGDE, ADVOCATE FOR R-2;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI. POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-4)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT 1961, PRAYING TO SET
ASIDE THE ORDER DATED 16.12.2022 IN OLR
NO.343/2015 AND CONNECTED MATTERS (ANNEXURE-A)
AND CONSEQUENTLY DISMISS OLR NO.343/2015.

IN OSA NO. 6/2023

BETWEEN:

1. CLASSIC LEGENDS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
MAHINDRA TOWERS,
P.K KURNE CHOWK, WORLI,
MUMBAI, MAHARASHTRA-400018
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. ASHISH JOSHI

...APPELLANT

(BY SRI S.S. NAGANAND, SENIOR COUNSEL FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA PRIVATE LIMITED
ATTACHED TO THE HIGH COURT OF KARNATAKA

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
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AND 9 OTHERS**

CORPORATE BHAVAN
NO.26-27, 12TH FLOOR,
RAHEJA TOWERS, M.G. ROAD,
BANGALORE-560001

2. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY,
INTELLECTUAL PROPERTY BHAVAN
PLOT NO. 32, SECTOR 14, DWARKA,
NEW DELHI-110075
3. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
TRADE MARKS DIVISION
INTELLECTUAL PROPERTY BHAVAN
BESIDE ANTOP HILL POST OFFICE
S M ROAD, ANTOP HILL
MUMBAI-400 037
4. REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
15/27, NATIONAL CHAMBERS, 1ST FLOOR,
ASHRAM ROAD, AHMEDABAD-380 009
GUJARAT
5. MR. BOMAN R IRANI
S/O MR. RUSTOM S IRANI,
702, NATARAJ M V ROAD
JUNCTION, ANDHERI EAST
MUMBAI-400069

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SMT. ANUPAMA HEGDE, CGC FOR R-2 TO R-4)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

ASIDE THE ORDER DATED 16.12.2022 IN CA.NO.71/2018
AND CONNECTED MATTERS (ANNEXURE-A) AND
CONSEQUENTLY DISMISS CA NO.71/2018.

IN OSA NO. 7/2023:

BETWEEN:

1. CLASSIC LEGENDS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
MAHINDRA TOWERS,
P.K KURNE CHOWK, WORLI, MUMBAI
MAHARASHTRA-400018
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. ASHISH JOSHI

...APPELLANT

(BY SRI S.S. NAGANAND, SENIOR COUNSEL FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)

AND:

1. TIDE WATER OIL CO (INDIA) LTD
YESHWANTHPUR INDUSTRIAL AREA
PHASE-1, YESHWANTPUR, BENGALURU
REPRESENTED BY ITS DIRECTOR.
2. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA PRIVATE LIMITED
ATTACHED TO THE HIGH COURT OF KARNATAKA
CORPORATE BHAVAN,
NO.26-27, 12TH FLOOR, RAHEJA TOWERS,
M G ROAD, BENGALURU - 560001
3. MR. BOMAN R IRANI
S/O MR. RUSTOM S IRANI
702, NATARAJ M V ROAD,
JUNCTION, ANDHERI EAST
MUMBAI - 400069

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

4. IDEAL JAWA (INDIA)
EMPLOYEE'S ASSOCIATION
NO. 1867/SAYYAJI RAO ROAD, MYSURU
REP BY ITS PRESIDENT
KUNHI KANNAN

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-2;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-4)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET
ASIDE THE ORDER DATED 16.12.2022 IN C.A.NO.128 OF
2020 AND CONNECTED MATTERS (ANNEXURE-A) AND
CONSEQUENTLY DISMISS C.A.NO.128 OF 2020 AND ETC.

IN OSA NO. 9/2023:

BETWEEN:

1. CLASSIC LEGENDS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
MAHINDRA TOWERS,
P.K. KURNE CHOWK, WORLI,
MUMBAI, MAHARASHTRA-400 018,
REPRESENTED BY ITS
AUTHORIZED SIGNATORY,
MR. ASHISH JOSHI.

...APPELLANT

(BY SRI S.S. NAGANAND, SENIOR COUNSEL FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)

AND:

1. TIDE WATER OIL. CO. (INDIA) LTD.,
YESHWANTHPUR INDUSTRIAL AREA,

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

PHASE-1, YESHWANTPUR,
BENGALURU, KARNATAKA-560 022
REPRESENTED BY ITS DIRECTOR.

2. THE OFFICIAL LIQUIDATOR OF
M/S. IDEAL JAWA PRIVATE LIMITED
ATTACHED TO THE HIGH COURT OF KARNATAKA,
CORPORATE BHAVAN,
NO. 26-27, 12TH FLOOR,
RAHEJA TOWERS, M.G. ROAD,
BENGALURU-560 001.
3. IDEAL JAWA (INDIA) EMPLOYEE'S
ASSOCIATION
NO.1867/SAYYAJI RAO ROAD, MYSURU,
REPRESENTED BY ITS PRESIDENT,
P. KUNHI KANNAN.

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-2;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-3)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE
THE ORDER DATED 16.12.2022 IA CA NO.127 OF 2020
AND CONNECTED MATTERS (ANNEXURE-A) AND
CONSEQUENTLY DISMISS C.A.NO.127/2020.

IN OSA NO. 10/2023:

BETWEEN:

1. MR. BOMAN R. IRANI
S/O RUSTOM S IRANI
AGED ABOUT 53 YEARS
702 NATRAJAN, M V ROAD,
JUNCTION ANDHERI EAST, MUMBAI

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

MAHARASHTRA - 400 069,
INDIA.

...APPELLANT

(BY SRI UDAYA HOLLA, SENIOR COUNSEL FOR
SRI P. CHINNAPPA, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA (INDIA) LIMITED
(IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA
CORPORATE BHAVAN, NO. 26-27, 12TH FLOOR
RAHEJA TOWERS, M G ROAD
BENGALURU, KARNATAKA-560 001, INDIA.
2. IDEAL JAWA (INDIA)
EMPLOYEE'S ASSOCIATION
NO.1867, SAYYAJI RAO ROAD
MYSURU, KARNATAKA-570 001, INDIA
REPRESENTED BY ITS PRESIDENT
3. CLASSIC LEGENDS PVT LTD
MAHINDRA TOWERS
P K KURNE CHOWK, WORLI
MUMBAI, MAHARASHTRA-400 018, INDIA
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE.

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B PATTAR, ADVOCATES FOR R-2)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, 1961 AND RULES 1 AND 2
OF THE HIGH COURT OF KARNATAKA RULES, 1959,
PRAYING TO CALL FOR THE RECORDS IN CA NO.125/2020

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

(AND CONNECTED MATTERS) IN CO.P.NO.76/1991 C/W
CO.P.NO.5/1992 AND CO.P.NO.126/1992 FILED BEFORE
THE LEARNED SINGLE JUDGE OF THIS COURT.

IN OSA NO. 11/2023:

BETWEEN:

1. MR. BOMAN R. IRANI
S/O RUSTOM S IRANI
AGED ABOUT 53 YEARS
702 NATRAJAN M V ROAD
JUNCTION ANDHERI EAST
MUMBAI, MAHARASHTRA-400 069
INDIA.

...APPELLANT

(BY SRI UDAYA HOLLA, SENIOR COUNSEL FOR
SRI P. CHINNAPPA, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA (INDIA) LIMITED
(IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN", NO. 26-27,
12TH FLOOR, RAHEJA TOWERS
M G ROAD, BENGALURU-560 001
2. IDEAL JAWA (INDIA)
EMPLOYEE'S ASSOCIATION
NO.1867, SAYYAJI RAO ROAD
MYSURU, KARNATAKA-570001, INDIA,
REPRESENTED BY ITS PRESIDENT.
3. CLASSIC LEGENDS PVT LTD
MAHINDRA TOWERS,
P K KURNE CHOWK, WORLI,
MUMBAI, MAHARASHTRA-400 018

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

INDIA, REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-2)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT 1961 AND RULES 1 AND 2
OF THE HIGH COURT OF KARNATAKA RULES, 1959,
PRAYING TO CALL FOR THE RECORDS IN CA No.126/2020
(AND CONNECTED MATTERS) IN CO.P.NO.76/1991 C/W
CO.P.NO.5/1992 AND CO.P.NO.126/1992 FILED BEFORE
THE LEARNED SINGLE JUDGE OF THIS COURT.

IN OSA NO. 12/2023:

BETWEEN:

1. MR. BOMAN R. IRANI
AGED ABOUT 53 YEARS,
S/O RUSTOM S IRANI
702, NATRAJAN, M.V. ROAD,
JUNCTION ANDHERI EAST
MUMBAI,
MAHARASHTRA-400 069, INDIA.

...APPELLANT

(BY SRI UDAYA HOLLA, SENIOR COUNSEL FOR
SRI P. CHINNAPPA, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S. IDEAL JAWA (INDIA) LIMITED
(IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

"CORPORATE BHAVAN", NO. 26-27
12TH FLOOR, RAHEJA TOWERS,
M.G. ROAD, BENGALURU,
KARNATAKA-560 001, INDIA.

2. IDEAL JAWA (INDIA)
EMPLOYEE'S ASSOCIATION
NO. 1867, SAYYAJI RAO ROAD
MYSURU, KARNATAKA-570001, INDIA.
REPRESENTED BY ITS PRESIDENT.
3. CLASSIC LEGENDS PVT LTD
MAHINDRA TOWERS,
P.K KURNE CHOWK, WORLI,
MUMBAI, MAHARASHTRA-400 018, INDIA.
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE.

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI. POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-2)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, R/W SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, 1961 AND RULES 1 AND 2
OF THE HIGH COURT OF KARNATAKA RULES, 1959,
PRAYING TO CALL FOR THE RECORDS IN CA NO.127/2020
(AND CONNECTED MATTERS) IN CO.P.NO.76/1991 C/W
CO.P.NO.5/1992 AND CO.P.NO.126/1992 FILED BEFORE
THE LEARNED SINGLE JUDGE OF THIS COURT.

IN OSA NO. 13/2023:

BETWEEN:

1. MR. BOMAN R. IRANI
AGED ABOUT 53 YEARS
S/O RUSTOM S IRANI
702, NATRAJAN M V ROAD

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

JUNCTION ANDHERI EAST
MUMBAI,
MAHARASHTRA-400069, INDIA.

...APPELLANT

(BY SRI UDAYA HOLLA, SENIOR COUNSEL FOR
SRI P. CHINNAPPA, ADVOCATE)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA (INDIA) LIMITED
(IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN", NO. 26-27,
12TH FLOOR, RAHEJA TOWERS
M G ROAD, BANGALORE
KARNATAKA-560 001, INDIA
2. IDEAL JAWA (INDIA)
EMPLOYEE'S ASSOCIATION
NO.1867, SAYYAJI RAO ROAD, MYSURU,
KARNATAKA - 570001, INDIA
REPRESENTED BY ITS PRESIDENT.
3. CLASSIC LEGENDS PVT LTD
MAHINDRA TOWERS,
P K KURNE CHOWK, WORLI, MUMBAI,
MAHARASHTRA-400018, INDIA.
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE

...RESPONDENTS

(BY DR. ADITYA SONDHI, SENIOR COUNSEL
A/W SRI K.S. MAHADEVAN, ADVOCATES FOR OL/R-1;
SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
MS. BHAVNA ARUL, ADVOCATE FOR
SRI POORNA CHANDRA B. PATTAR, ADVOCATES FOR R-2)

THIS OSA IS FILED UNDER SECTION 483 OF THE
COMPANIES ACT, 1956, READ WITH SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, 1961 AND RULES 1 AND 2 OF
THE HIGH COURT OF KARNATAKA RULES, 1959, PRAYING TO

**OSA No. 8 of 2023
C/W OSA No. 2 of 2023
OSA No. 3 of 2023
AND 9 OTHERS**

CALL FOR THE RECORDS IN CA NO.128/2020 (AND CONNECTED MATTERS) IN CO.P.NO.76/1991 C/W CO.P NO.5/1992 AND CO.P.NO.126/1992 FILED BEFORE THE LEARNED SINGLE JUDGE OF THIS COURT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.09.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE D.K. SINGH** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

1. These 12 appeals have been filed against the common judgment and order dated 16.12.2022 passed by the learned Single Judge in OLR No.343/2015, C.A.No.71/2018, C.A.No.125/2020, C.A.No.126/2020, C.A.No.127/2020, C.A.No.128/2020, C.A.No.304/2021 and C.A.Nos.308-312/2021 respectively.

I. DESCRIPTION OF PROCEEDINGS:-

2. A brief description of the different proceedings filed by the parties is given hereunder:-

(i) OLR No.343/2015 was filed by the Official Liquidator (OL) seeking sanction of the Court for sale of brands, trade marks, logos, product designs know-how and associated rights of the company with all past and future goodwill attached to it with the exclusive right to the prospective buyer to exploit, restore and/or renew the registered/removed and expired trade marks, to apply for registration afresh of all these marks and to use these marks as domain names, to use in various internet and social media sites and for approval to the draft sale notices etc.

(ii) CA No.71/2018, an application was filed by the OL to declare the Trade Mark Registration Certificate issued by the Registrar of Trade Marks, Mumbai, Delhi and Ahmedabad, in favour of Mr. Boman R. Irani as null and void.

(iii) CA No.125/2020, an application was filed by the Ideal Jawa Employees' Association (for short 'Employees' Association') seeking impleadment in the proceedings.

(iv) CA No.126/2020, an application was filed by the Employees' Association to restrain Mr. Boman R. Irani or anyone acting through him from using such marks that

originally belong to M/s. Ideal Jawa (India) Ltd. (for short 'Ideal Jawa/company) or to use the website 'www.yezdi.com'.

(v) CA No.127/2020, an application was filed by the Employees' Association to direct the OL to take appropriate legal steps including filing of revocation application before the Trade Mark Registry against third party whoever claiming ownership of the mark 'YEZDI' and associated marks and to file fresh trade mark applications for registration of mark 'YEZDI' and associated marks and safeguard other intangible assets of Ideal Jawa (in liquidation) and get its ownership recorded.

(vi) CA No.128/2020, an application was filed by the Employees' Association to direct the Registrar of Trade Marks to revoke the registration granted to the trade mark 'YEZDI' in favour of Mr. Boman R. Irani or any other third party and restrain from granting any further registration for any mark containing the word 'YEZDI' in favour of any third party.

(vii) CA No.304/2021 and CA Nos.308-312/2021 were filed by the Classic Legends Private Limited (for short 'Classic Legends'), a company registered under the Companies Act, 1956, seeking impleadment in the proceedings.

(viii) CA No.586/2016 was filed by Mr. Boman R. Irani to implead himself as a party, which was allowed by the learned Single Judge on 22.11.2017.

3. These applications came to be filed in Company Petition No.76/1991 c/w Company Petition Nos.5/1992 and 126/1992. The applications filed by the Employees' Association, Mr. Boman R. Irani and Classic Legends for impleadment were allowed as the learned Single Judge was of the view that both the Employees' Association, Classic Legends and Mr. Boman R. Irani were proper and necessary parties to the proceedings.

II. RELEVANT FACTS:-

4. Mr. Rustom S. Irani, the father of Mr. Boman R. Irani-appellant in OSA No.2/2023, incorporated Ideal Jawa. The father of the appellant-Mr. Boman R. Irani was a founder member, principal shareholder and Managing Director of the Ideal Jawa. According to Mr. Boman R. Irani, the Ideal Jawa commenced manufacturing and launched motorcycles under the brand name 'YEZDI' and this brand 'YEZDI' was licensed to the Ideal Jawa by Mr. Rustom S. Irani. Under the licence, Mr. Rustom S. Irani permitted Ideal Jawa to use and register in

its name, the brand 'YEZDI'. It is also the case of the appellant that the family of Mr. Boman R. Irani migrated from the place 'YEZDI' in Persia (now Iran) to India, to remember the roots from where they came from, 'YEZDI' was given as brand name to the motorcycles produced by the Ideal Jawa company.

5. On 05.10.1972, the registration of mark in Class 12 bearing No.283322 was granted in favour of the Ideal Jawa.

6. In the year 1970-1971, the family members of Mr. Boman R. Irani set up 'YEZDI Distilleries' in Mysuru. 'YEZDI Distilleries' has registered various trade marks with the name 'YEZDI' (being the business name adopted by the family of Mr. Boman R. Irani). The trade mark applications in relation to the 'YEZDI Distilleries' would indicate the name of Mrs. Porochee Irani (the mother of Mr. Boman R. Irani, who was a partner in 'YEZDI Distilleries') as one of the first proprietors of the trade mark 'YEZDI'. In June 1989, Mr. Rustom S. Irani died leaving behind Mr. Boman R. Irani as his sole heir. It is the case of the appellant-Mr. Boman R. Irani that upon the demise of Mr. Rustom S. Irani, the title of 'YEZDI' brand devolved upon him as the legal heir.

7. Three winding up petitions bearing Company Petition Nos.76/1991, 5/1992 and 126/1992 came to be filed by three creditors of the Ideal Jawa viz., M/s. Tide Water Oil Co. (India) Ltd., M/s. IOL Ltd. and M/s. Addisons Paints and Chemicals Ltd. respectively, seeking winding up of the Ideal Jawa. In the year 1996, the Ideal Jawa ceased production and manufacturing of motorcycles and also stopped using the trade mark 'YEZDI' in any manner. Since then, Mr. Boman R. Irani started operating a website under the domain name 'www.yezdi.com'. It is the case of the appellant-Mr. Boman R. Irani that he created and operated the said website in an attempt to revive the brand. The Board for Industrial and Financial Reconstruction in Case No.131/1990 came to the conclusion that there was no possibility of rehabilitation of the Ideal Jawa and it would be just and equitable that the said company gets wound up.

8. The Company Court passed an order dated 17.08.2001 in Company Petition Nos.76/1991, 5/1992 and 126/1992 for winding up of the Ideal Jawa and for appointment of an OL. The OL was to take stock of the assets of the company.

9. The secured creditor of the company viz., 'Indian Overseas Bank' (IOB) was permitted to sell all the assets of the Ideal Jawa in association with the OL. A Registered Valuer was appointed on 10.06.2003 to value the entire assets of the company in liquidation as per the list of assets determined by the OL. The Registered Valuer appointed by the Court submitted a Valuation Certificate, which was prepared in collaboration with the OL. The Valuation Report did not mention 'YEZDI' mark as an asset of the Ideal Jawa. The same was not considered as an asset having value, by the OL. Subsequently, the secured creditors of the Ideal Jawa and IOB through the Registered Valuer and the OL, valued the entire assets of the Ideal Jawa at Rs.23 crores. A public notice in the newspaper 'The Economic Times' was issued by the secured creditor of the Ideal Jawa inviting tenders for sale of "all moveable and immovable assets belonging to the Ideal Jawa". This public notice did not mention 'YEZDI' mark as one of the assets of the Ideal Jawa. The bid submitted by Mr. Aquil Qureshi of M/s. Premier Iron and Metal Industries in response to the public notice for sale of all the assets of the Ideal Jawa was sought to be accepted by the OL by filing OLR No.485/2003 on

04.09.2003 before this Court. The Company Court passed an order on 10.10.2003 in OLR No.485/2003 accepting the offer of Mr. Aquil Qureshi to purchase the entire assets of the company for Rs.26.70 crores.

10. Mr. Boman R. Irani has signed the Statement of Affairs on 19.01.2004 stating that the list of assets was based on the balance sheet of the company as filed before the Registrar of Companies (for short 'ROC').

11. Having considered the Statement of Affairs, the Company Court passed an order on 19.03.2004 in Company Petition No.76/1991 recording that all the assets mentioned in the public notice as belonging to the company were duly sold in favour of Mr. Aquil Qureshi for a total consideration of Rs.26.70 crores. A Sale Certificate came to be issued on 07.03.2006 in favour of Mr. Aquil Qureshi recording that all the assets of the company were purchased by him.

12. The registration of the trade mark 'YEZDI (DEVICE)' and 'YEZDI D250' expired on 05.10.2007 and 07.04.2008 respectively. The Trade Mark Registry issued an O-3 notices to the Ideal Jawa represented by the OL under Section 25(3) of

the Trade Marks Act, 1999 read with Rule 64 of the Trade Marks Rules, 2002 for the trade mark 'YEZDI (DEVICE)' (TM No.283322).

13. The registration of TM No.283322 expired on 05.10.2007 and consequently, it was removed from the Register of Trade Marks.

14. The Trade Mark Registry issued another 0-3 notice dated 28.02.2008 to the Ideal Jawa for the trade mark "YEZDI D250 CLASSIC' (TM No.360450).

15. The trade mark registrations in favour of the company had lapsed in the year 2013-2014 and the company had not used the trade marks for over a period of 15 years. It is the case of the appellant-Mr. Boman R. Irani that the trade marks came in the public domain and in July 2014, the appellant-Mr. Boman R. Irani came to know that one Mr. Amit Soni had applied for registration of 'YEZDI' trade marks and was using the trade marks. Consequently, Mr. Boman R. Irani filed a suit in CS(OS) No.3476/2014 before the Delhi High Court seeking injunction against Mr. Amit Soni from using or asserting any rights over the 'YEZDI' trade marks. On 18.11.2014, the Delhi

High Court passed an injunction order restraining Mr. Amit Soni from asserting any right to use the trade mark 'YEZDI' or any other deceptively similar trade mark.

16. On 17.06.2013, 14.09.2013, 01.01.2014 and 02.07.2014, Mr. Boman R. Irani filed applications for registration of certain marks both word and device of 'YEZDI' before the trade mark offices at Delhi, Mumbai and Ahmedabad. On account of the settlement arrived at between Mr. Amit Soni and Mr. Boman R. Irani, on 08.01.2015, Mr. Amit Soni, by the Assignment Deed, assigned the trade mark bearing Application No.2549874 (Class 12) to Mr. Boman R. Irani. The Suit CS(OS) No.3476/2014 filed by Mr. Boman R. Irani was decreed by the Delhi High Court on 03.02.2015 in terms of the settlement and the Assignment Deed dated 08.01.2015 entered into between the parties.

17. Classic Legends was incorporated on 17.06.2015 by Mr. Boman R. Irani and Mahindra and Mahindra.

18. Almost 12 years after the date of sale of all the assets of the Ideal Jawa and much after the expiry of the trade mark 'YEZDI' in the name of the Ideal Jawa, on 28.08.2015, the OL addressed a letter to the Registrar of Trade Marks (at the

offices in Mumbai, Delhi, Kolkata, Ahmedabad and Chennai) for the first time stating that Trade Mark Nos.283322 ('YEZDI' DEVICE), 360450 ('YEZDI' D 250 Classic) and 259903 ('YEZDI') were purportedly owned by the Ideal Jawa and the directors/promoters were trying to register the trade marks afresh and thus, these trade marks should not be registered in the name of any other person.

19. The Trade Mark Registry, vide letters dated 08.09.2015 and 13.10.2015, replied to the OL stating that the letter dated 28.08.2015 contained incomplete details of the trade mark applications. The Trade Mark Registry also informed the OL to avail appropriate remedies under the Trade Marks Act i.e., to file opposition proceedings under Section 21(1) of the Trade Marks Act. The OL filed OLR No.343/2015 on 18.09.2015 seeking sanction from this High Court for sale of trade marks and associated rights of the brand 'YEZDI'.

20. Mr. Boman R. Irani, who got the trade mark 'YEZDI' registered in his name, granted Classic Legends, exclusive licence to use the 'YEZDI' trade mark in connection with the motorcycles on 01.02.2018. The OL filed Company Application

No.71/2018 in Company Petition No.76/1991 seeking a declaration that the Trade Mark Certificates issued by the Registrar of Trade Marks (Mumbai, Delhi and Ahmedabad) in favour of Mr. Boman R. Irani are null and void and be set aside.

21. Rectification Applications were filed by the Employees' Association against the registration of the trade mark 'YEZDI (DEVICE)' being Application Nos.2549874, 2767024, 2767026, 2767027 and 2596403 in Class 12 in October/November, 2019. While those applications were pending for rectification, the Employees' Association filed Company Application Nos.125 to 128/2020 in OLR No.343/2015 for impleading the Employees' Association to join the proceedings and seeking a direction to the OL to take appropriate steps to record the ownership of the Ideal Jawa over the trade marks. Further direction was sought to the Registrar of Trade Marks to revoke the registrations granted to the 'YEZDI' trade mark in the name of Mr. Boman R. Irani and to restrain Mr. Boman R. Irani and others from using the 'YEZDI' trade mark.

22. Classic Legends is said to have incurred huge expenses in research, development, marketing and promotional activities of its motorcycles.

23. The learned Single Judge, vide order dated 05.10.2021 in Company Petition No.76/1991, has directed Mr. Boman R. Irani and Classic Legends not to assign or transfer the 'YEZDI' trade mark and to maintain accounts in relation to its usage. However, no injunction was granted against Mr. Boman R. Irani or Classic Legends regarding the usage of the 'YEZDI' trade mark during the pendency of the proceedings and finally, the learned Single Judge has passed the impugned judgment and order dated 16.12.2022 declaring the Ideal Jawa as the owner of the trade mark 'YEZDI' (word and device) and the Registration Certificates issued by the Registrar of Trade Marks, Mumbai, Delhi and Ahmedabad in favour of Mr. Boman R. Irani in relation to the mark 'YEZDI' were also declared null and void. The learned Single Judge further injuncted Mr. Boman R. Irani and Classic Legends from using the mark 'YEZDI' or any other mark containing the word 'YEZDI' as a word or device and directed the Registrar of Trade Marks to cancel all the registrations standing in the name of Mr. Boman R. Irani and to

forthwith effect transfer of all such registrations to the Ideal Jawa (company in liquidation) through the OL. The learned Single Judge has also directed the Registrar of Trade Marks not to grant any such further registration of the trade mark 'YEZDI' to Mr. Boman R. Irani or Classic Legends and further declared that Mr. Boman R. Irani and Classic Legends are liable to account and pay the company all the gains made from the use of the trade marks. The OL has been allowed to sell all the trade marks and such other associated rights in and over the trade marks with all goodwill associated with the marks by public auction and directed Mr. Boman R. Irani and Classic Legends to pay costs of Rs.10,00,000/- each.

24. Mr. S.S. Naganand and Mr. Udaya Holla, the learned Senior Counsels appearing for the appellants have advanced extensive arguments on behalf of the appellants whereas, Dr. Aditya Sondhi and Mr. Dhyan Chinnappa, learned Senior Counsels have made submissions on behalf of the OL and the Employees' Association respectively.

III. SUBMISSIONS ON BEHALF OF THE APPELLANTS:-

25. It is submitted on behalf of the appellants that the Ideal Jawa (company in liquidation) cannot claim rights to the 'YEZDI' trade mark. The Ideal Jawa stopped production and manufacturing of motorcycles and use of 'YEZDI' trade mark way back in 1996. The OL did not take any action in respect of the trade mark for over a period of more than 15 years. The trade mark cannot remain in limbo for indefinite time.

26. 'YEZDI' is the trade mark under which the motorcycles manufactured and produced by the Ideal Jawa were sold with the trade mark 'YEZDI'. Therefore, the submission of the OL that he would not know the existence of the trade mark being used by the Ideal Jawa, could not have been accepted. The OL did not take any steps to protect and revive the 'YEZDI' trade mark for a period of more than 15 years after the date of the winding up order passed by the Company Court. The books of account and all the records of the company were with the OL.

27. The OL did not think and consider the trade mark 'YEZDI' as the asset of the Ideal Jawa and it was not included for valuation of the assets of the company in liquidation by the

Registered Valuer. An advertisement dated 28.07.2003 was published in 'The Economic Times' for sale of all the moveable and immovable assets of the company and even as per the order dated 10.10.2003, the Company Court held that the secured creditor had got the entire assets of the company in liquidation valued and the offer made by Mr. Aquil Qureshi to purchase the entire assets of the company in liquidation for Rs.26.70 crores were accepted and the Sale Certificate dated 07.03.2006 was issued in respect of all the assets of the company in liquidation.

28. The Statement of Affairs of the company in liquidation was signed by Mr. Boman R. Irani on 19.01.2004 after the valuation of the assets by the Registered Valuer for which, the advertisement dated 28.07.2003 was issued for sale of all the assets. The Company Court passed the order dated 10.10.2003 accepting the offer of Mr. Aquil Qureshi to purchase the entire assets of the company in liquidation.

29. The trade marks previously registered in the name of the company viz., 255903 'YEZDI (DEVICE)', 283322 'YEZDI (DEVICE)' and 360450 'YEZDI D 250 Classic' have not been

renewed since 1997, 2007 and 2008 respectively and have lapsed. No action was taken to challenge the removal of the Trade Marks 283322 and 360450 by the OL on behalf of the Ideal Jawa. The OL did not take any action against third parties who have adopted 'YEZDI' trade mark whereas, Mr. Boman R. Irani had been protecting the trade mark. Neither the company in liquidation nor the OL considered the trade mark to be an asset of the company, which is evident from the aforesaid facts stated hereinabove. Once the trade mark is abandoned, the same would be available in the public domain, where it may be ceased immediately, providing such persons with superior rights to the mark as against the previous registered owner who has abandoned the mark due to action/inaction.

30. On behalf of the appellants, the following case laws have been pressed into service:

(i) UNCAS MANUFACTURING COMPANY vs. CLARK & COOMBS COMPANY, 200 F. SUPP 831;

(ii) SUTTON COSMETICS (P.R) INC. ET. AL. vs. LANDER CO, INC, ET. AL 1971 WL 17176;

**(iii) PRADEEP GUPTA vs. K. BRAHMANANDAM,
2024 (4) ALT 645;**

**(iv) OM PRAKASH GUPTA vs PRAVEEN KUMAR
& ANR, ILR (2000) II DELHI 124;**

**(v) NEON LABORATORIES LTD. vs MEDICAL
TECHNOLOGIES LTD. & ORS, (2016) 2 SCC 672.**

31. It is further submitted that vide order dated 08.09.2005 passed in OLR No.485/2003, Krishna Kumar & Co., a Chartered Accountant, was appointed with a direction to investigate the affairs of the company to find out as to whether any act of misfeasance has been committed by the erstwhile management. Thereafter, the misfeasance proceedings were initiated against the ex-Directors in the year 2006, which were dismissed as the claims made against the ex-Directors were not sustainable. Even during the investigation by the Chartered Accountant, the trade marks were not mentioned/discovered. No adverse inference was drawn against Mr. Boman R. Irani during these proceedings, although he was operating the website 'www.yezdi.com' since 1998.

32. No evidence has been put on record to prove that the goodwill in respect of the 'YEZDI' trade mark subsists with the Ideal Jawa (the company in liquidation). However, reliance has been placed on Mr. Boman R. Irani's statements in his application seeking impleadment in the proceedings. Only on the basis of the claim made by Mr. Boman R. Irani, the goodwill of trade mark 'YEZDI' would not subsist with the Ideal Jawa.

33. All the goodwill attached to the 'YEZDI' trade mark is because of the efforts and resources expended by Mr. Boman R. Irani towards the promotion and protection of the 'YEZDI' trade mark. Mr. Boman R. Irani himself has been operating the website 'www.yezdi.com' since 1998 in his own name and whatsoever goodwill is generated, it would be due to the efforts and expenses incurred by him. The goodwill in the trade mark is directly proportional to the strength of the business of an entity and that goodwill cannot exist in vacuum for several years especially after all the assets are sold. The goodwill cannot survive independent of the trade/business and extinguishes when the business attached to it ceases to function.

34. It is next submitted that the 'YEZDI' mark was always associated with Mr. Boman R. Irani's family and there are trade mark registrations subsisting in the name of other family members of the appellant-Mr. Boman R. Irani including Mr. Boman R. Irani's mother-Mrs. Porochee Irani. The family members of the appellant-Mr. Boman R. Irani had set up 'YEZDI Distilleries' in Mysuru in 1970-1971 and the name 'YEZDI' is registered in the name of the partnership firm comprising of the family members of Mr. Boman R. Irani-appellant. Mrs. Porochee Irani, the mother of Mr. Boman R. Irani, is one of the first proprietors of the trade mark 'YEZDI'. The appellant-Mr. Boman R. Irani was a non-executive Director. The Statement of Affairs was filed based on the records of the ROC. Mr. Boman R. Irani was not in custody of the records of the company and in fact, it was the OL who had the custody of the records of the company.

35. It is also the submission of the learned Senior Counsel appearing for the appellants that under Sections 446 and 456 of the Companies Act, 1956, the Company Court exercises limited jurisdiction in relation to the affairs of the company in the winding up process. The Trade Marks Act, 1999, being a

special statute, would override the Companies Act, 1956. The Trade Marks Act is a complete code in itself which provides for special statutory authorities which deal with the validity of registration of the trade mark and revocation/rectification of the same. The relief granted by the learned Single Judge in the impugned order is beyond the jurisdiction of the Court. In the impugned order, it was directed that all the trade marks applied for and registered in the name of Mr. Boman R. Irani are to be cancelled, whilst allowing the trade marks applied for by other third parties to continue on the Register.

36. The direction issued by the Company Court directing the transfer of the trade mark applications registered in the name of the appellants is unsustainable since the provisions of the Trade Marks Act, 1999 do not provide for such transfer of registration from one person to another. In fact, transfer of registration was not even prayed for by any of the parties in the OLRs. Mr. Boman R. Irani applied for registration independently by following the procedure contemplated under the Trade Marks Act. The subsequent grant of registration of the 'YEZDI' trade mark in favour of Mr. Boman R. Irani cannot be termed as "disposition of the property".

37. At last, it is submitted that in terms of Section 458A of the Companies Act, 1956 read with Article 137 of the Limitation Act, the period of limitation for the OL to apply for the sale of the 'YEZDI' mark was 4 years from the date of the winding up order. It was only after a lapse of 14 years after the winding up order, 12 years after sale of all the assets of the company by the OL and 10 years after the expiry of the limitation period prescribed under Section 458A of the Companies Act, 1956 that the OL had filed OLR No.343/2015 for sanction of sale of 'YEZDI' trade mark. Therefore, the application in OLR No.343/2015 was barred by limitation and ought to have been rejected.

IV SUBMISSIONS ON BEHALF OF OFFICIAL LIQUIDATOR:-

38. Dr. Aditya Sondhi, the learned Senior Counsel appearing for the OL has supported the impugned order passed by the learned Single Judge and submitted that under Section 446(2) of the Companies Act, 1956, the Company Court has wide powers conferred by the statute to entertain all suits and legal proceedings by or against a company in liquidation. Section 446(2) begins with a *non obstante* clause and the Company

Court has jurisdiction to entertain any question "whatsoever, whether of law or fact, which may relate to or arise in the course of winding up of the company". The purpose of Section 446(2) is to save the company in liquidation from extensive and prolix litigation in different jurisdictions while prosecuting the claims and for quick disposal of the same by the Company Court. It is the Company Court which has the absolute jurisdiction to deal with the assets of a company in liquidation. The claims regarding misappropriation of a trade mark of the company by its Director during the winding up proceedings have to be dealt with under Section 446(2) and not under the provisions of the Trade Marks Act, 1999.

39. In the present case, the former Director of the company in liquidation has himself subjected the issue of registration of the disputed trade marks to the jurisdiction of this Court vide his impleadment application bearing CA No.586/2016 in OLR No.343/2015.

40. Section 446(2) is the special provision in respect of winding up and dealing with the assets of the company in liquidation whereas, the Trade Marks Act, 1999 is a general

statute which deals with registration etc., of a trade mark. If there is an apparent conflict between two independent provisions of law, the special provision must prevail. The Trade Marks Act, 1999 does not oust the jurisdiction of the Civil Courts. In fact, the Trade Marks Act confers jurisdiction both on the Civil Court and the High Court under different circumstances.

41. The OL acts as an Officer of the Court subject to the control of the Company Court under Rule 232 of the Companies (Court) Rules, 1959 as regards collection of the assets of the company and the application of the assets in discharge of the company's liabilities are concerned. Under Rule 233, the OL's position is like a receiver of the property appointed by the Court and the Company Court may, on an application of the OL, enforce the acquisition or retention of any properties that are *custodia legis*. Rule 9 confers inherent powers on the Company Court to grant and mould relief in the manner it deems fit in the interest of justice.

42. Vide order dated 17.08.2001, the Company Court ordered winding up of the Ideal Jawa. The 'YEZDI' trade mark was on

the Trade Mark Register and in the name of the company on the date of the winding up. Therefore, all assets of the company, both tangible and intangible, were deemed to be *custodia legis* in terms of Section 456 of the Companies Act, 1956. *De hors* the registration, a trade mark can be protected under the common law action for passing off as set forth under Section 27(2) of the Trade Marks Act, 1999.

43. Goodwill is a property protected by the common law action of passing off and stands on a different footing from the rights of a registered owner under the Trade Marks Act, 1999. Mere cessation of business or stoppage of operation does not destroy the goodwill of a trade mark and such goodwill has an important value in the sale of assets of the company. The inherent goodwill of the 'YEZDI' brand subsists till date as is evident from the promotion campaign of Mr. Boman R. Irani and his Assignee, Classic Legends.

44. The existence of the registered trade marks in the name of the Ideal Jawa was not disclosed to the OL or this Court until 2015 by the ex-management. In OLR No.365/2012, the annual statement dated 16.08.2012 in respect of the company also did

not refer to the registered trade marks neither in the statement of affairs filed by Mr. Boman R. Irani nor in any of the returns with the ROC nor in the documents filed with the OL.

45. The valuation of certain immovable properties of the company was done at the behest of the secured creditor viz., IOB vide Valuation Report dated 10.06.2003. The immovable assets were brought to sale, but these did not include the trade mark 'YEZDI' under the dispute inasmuch as it was not within the knowledge of the OL.

46. After the OL came to know about the existence of the registered trade mark 'YEZDI' in the name of the Ideal Jawa (the company in liquidation), the OL noted the attempt of Mr. Boman R. Irani to remove the said asset of the company from the custody of this Court. The OL preferred OLR No.343/2015 on 18.09.2015 to accord sanction for the sale of trade marks, goodwill, brands, logos and all associated rights.

47. Without notice in Form O-3 to the OL, two of the trade marks in the name of the company were removed from the Trade Mark Register for failure to renew registration in the years 2007 and 2008 respectively. The mark 'YEZDI', however,

was and continues till date to be on the Register. The trade mark 'YEZDI' was renewed by the company in liquidation on 05.10.2000 of which Mr. Boman R. Irani was an integral part till the date of winding up order. Therefore, the argument made on the premise that the company in liquidation had abandoned the trade mark 'YEZDI' in 1996 itself is incorrect and false.

48. Failure to issue O-3 notices to the OL in terms of the mandatory requirements prescribed under Section 25(3) of the Trade Marks Act, 1999 renders illegal, the removal of the marks from the Register for non-renewal. The O-3 notices were given to Shah and Shah on the following addresses:

- * 1. 654, Jagannath Shankar Shet Marg,
Mumbai-400002, Maharashtra, India*

- * 'A' Aidun Bldg., 5th Floor, 1st Dhobi
Talao Lane, Mumbai-400002,
Maharashtra India*

49. Shah and Shah were the registered agents of the company and the ex-management never informed the OL about the existence of such a principal agent relationship. As per Rule 101 of the Trade Marks Rules, 2017, the registered proprietor

or registered user of a trade mark should have informed the Registrar of Trade Marks by way of a letter about the change in the ownership of the company in liquidation. The address of the OL should have been given to the Registrar of Trade Marks for any communication. In fact, Mr. Boman R. Irani, being the Director of the company in liquidation, failed to inform the OL and also the Registrar of Trade Marks about the winding up order. The order of the Registrar of Trade Marks for removal of the trade marks from the Register without following the provisions of Section 25(3) of the Trade Marks Act is void. There is no limitation prescribed under the Trade Marks Act for reinstatement of the marks wrongfully removed without issue of Form O-3 notice.

50. The Registrar of Trade Marks was impleaded in the proceedings of the applications before the learned Single Judge upon submission of the Special Counsel for the OL pursuant to which, the Registrar filed an affidavit dated 07.04.2016. The Registrar expressly averred therein that all orders of this Court regarding the disputed marks would be binding upon the Trade Mark Registry and that there was no proof of issue of Form O-3 notice in respect of the mark 'YEZDI' (word) as all the records

had been lost in the flood and the marks continued to remain on the Register in the name of the Ideal Jawa.

51. As regards the other two registered trade marks which were illegally removed are concerned, a mere computer generated slips of O-3 notices without proof of their dispatch/delivery to the OL would not satisfy the requirements of Section 25 of the Trade Marks Act.

52. It is further submitted that the registration of 'the YEZDI' trade mark in the name of Mr. Boman R. Irani is *void ab initio*. Mr. Boman R. Irani has obtained registration of the marks in his name with *mala fide* intention through deceptive means, pending his impleading application in OLR No.343/2015 and without the leave of this Court. The said registration was granted subsequent to the filing of the affidavit dated 07.04.2016 by the Registrar of Trade Marks and therefore, is *non est* and *void ab initio*.

53. Section 11(10) and Section 33(1)(b) of the Trade Marks Act, 1999 recognize the principle of bad faith registration of a trade mark. There is bad faith where the applicant intentionally submits wrong or misleading information or where he tries to

lay hands on the mark of a third party with whom he had contractual or other relations. When a property is *custodia legis* in terms of Section 456, any disposition of the same without notice to the OL would render the disposition a nullity. No vested rights can flow from suppression of material facts from the Company Court. Section 536(2) of the Companies Act, 1956 statutorily recognizes that any transfer/disposition of the assets of the company in liquidation post winding up without the permission of the Company Court to be void.

54. Mr. Boman R. Irani was appointed as the Director of the company on 16.04.1990 and continued to be so on the date of the winding up order dated 07.12.2021. The renewal of the trade mark 'YEZDI' was done on 05.10.2000 under the name of the company in liquidation by the ex-management. When the company was in the process of winding up with effect from 25.07.1991, Mr. Boman R. Irani registered the website 'www.yezdi.com' in 1998 and continues to be its domain holder considering the iconic brand value of the trade mark 'YEZDI'. The website is active and promoting the re-launch of 'YEZDI' bikes in 2022. In his capacity as Director, Mr. Boman R. Irani filed the Statement of Affairs of the company as mandated

under Section 454 of the Companies Act, 1956. However, he did not disclose the registered trade marks as assets of the company in liquidation.

55. Mr. Boman R. Irani has entered into a Trade Mark Licence Agreement on 01.02.2018 with the Classic Legends, the Assignee, for the purpose of re-launching the 'YEZDI' motorcycles in the Indian market and exploiting the 'YEZDI' brand name. In spite of the OL's objections dated 28.07.2015 addressed to all the Trade Mark Registries and the affidavit of the Registrar of Trade Marks dated 07.04.2016, Mr. Boman R. Irani was able to get registration of the 'YEZDI' marks in the years 2016 and 2017.

56. In view of the aforesaid, the OL, vide CA No.71/2018, was constrained to seek a declaration that the registration in respect of 'YEZDI' trade mark in favour of Mr. Boman R. Irani was null and void and the said prayer has been allowed in the impugned order passed by the learned Single Judge. It is further submitted that the relief sought in CA No.71/2018 was well within the period of limitation *vis-a-vis* the date of grant of registration in favour of Mr. Boman R. Irani. The appellant-

Mr. Boman R. Irani and his Assignee are not *bona fide* third party strangers who can claim any relief or equity.

57. The pleadings made by Mr. Boman R. Irani would also suggest that the 'YEZDI' marks were used by the company in liquidation from 1969. Though the company has stopped production of goods since 1996, the brand enjoyed extensive reputation and goodwill till date. It is further submitted that Mr. Boman R. Irani was in breach of his fiduciary duty to the creditors of the company. When a company is insolvent, the Directors have a fiduciary duty to take into account the interests of the creditors and other stakeholders of the company. So the Directors are accountable to the creditors for the decisions they make. The conscience of a company is confided to its Directors, whose duty is to ensure that the properties of the company are not exploited for their personal benefits to the detriment of the creditors. Unlike cases of simpliciter termination of employment and demitting of office where arguably the fiduciary duty of the Director towards the company is co-terminus with the employment, in winding up, the Director continues to have statutory responsibilities as envisaged under Sections 456 and 468 of the Companies Act,

1956 for the benefit of the creditors. Once the company goes under liquidation, the Directors detach themselves from the affairs of the company and its assets. The assets and the trade mark cannot be appropriated by the ex-Directors for their own enrichment or business interest.

58. The removal of a registered trade mark on the ground of non-use is triggered only on an application by a 'person aggrieved' in terms of Section 47 of the Trade Marks Act, 1999. Mr. Boman R. Irani has not preferred any such application.

59. Section 47(3) of the Trade Marks Act provides that there can be no abandonment, if special circumstances exist or if there is no intention to abandon. The intention to abandon the trade mark is a necessary component of its non-use. Abandonment, being in the nature of a forfeiture, must be strictly proved. Any economic impracticability which includes winding up proceedings would amount to special circumstances and be a complete defence in respect of such non-use.

60. The prolonged use of the trade marks by the company from 1969 was only interrupted by the special circumstance *vis-à-vis* the order of winding up passed by this Court. In terms

of Section 457 of the Companies Act, 1956, the OL can only continue to administer the affairs of the company in liquidation only for the purposes of beneficial winding up of the company in liquidation and this would constitute a special circumstance for non-use of the trade mark by the company in liquidation inasmuch as the business of the company was closed way back in 1996 and the OL could carry out the liquidation of the company by realizing all the assets and settlement of the dues of various class of creditors.

61. The trade mark is not merely a symbol of an existing goodwill. The fact that the mark has been left dormant for some time does not destroy the right in it as a matter of law. The question of a company in winding up carrying on business is legally and commercially untenable with the exception of Section 457(1)(b) which contemplates carrying on the business "so far as may be necessary for the beneficial winding up of the company" and no other. Mr. Boman R. Irani cannot be allowed to take advantage of his own wrong in suppressing the factum of the existence and registration of the trade marks.

V. SUBMISSIONS ON BEHALF OF EMPLOYEES' ASSOCIATION:-

62. Mr. Dhyan Chinnappa, the learned Senior Counsel appearing for the Employees' Association has submitted that cessation of business would not automatically result in destroying the goodwill or the property in a trade mark. In trade mark law, one must proceed to determine reputation and goodwill from the point of view of a common man. In the present case, the common man associates the source and origin of the mark 'YEZDI' to the Ideal Jawa alone. The said aspect has been admitted by Mr. Boman R. Irani and the Classic Legends who claim to have been attempting to revive this brand. Even to this date, there are numerous fan pages on social media and groups of bike riders who want to cherish the reputation and goodwill of 'YEZDI' brand.

63. Mr. Boman R. Irani, in C.A.No.586/2016, has stated that although manufacturing of the bikes has stopped way back in 1996, the goodwill and reputation which the brand created for itself has continued to vest in him. Mr. Boman R. Irani admits that the goodwill and reputation of the brand have survived despite cessation of the business by the Ideal Jawa. It is only

such goodwill which has driven Mr. Boman R. Irani to establish Classic Legends with Mahindra and Mahindra. They intend to take business advantage of this great legacy which is nothing but the goodwill which always rests with the company and continues even after registration of the trade mark ceases to exist. It has been further submitted that prior to the removal of the marks from the Register of Trade Mark, notices as mandated under Section 25(3) of the Trade Marks Act were not issued to the OL. No application was made for removal of the marks on the ground of non-use, but on the ground of paying necessary fee for renewal. Notwithstanding the same, no action could have been taken in this regard without issuing a notice in the prescribed form and manner.

64. The petition for winding up was presented in the year 1991, which is the relevant date to determine the assets and properties of the company and to notice if any disposition has in fact occurred of the properties of the company. The stoppage of the business would not have any bearing on the rights of the company over the trade marks. As such, there is no abandonment of the marks either as on that date or prior to the winding up of the company. It is, therefore, submitted that

the appeals filed by the appellant-Mr. Boman R. Irani be dismissed.

65. We have considered the submissions.

VI QUESTIONS FOR DETERMINATION:-

66. The following questions arise for our consideration in these appeals:

1. Whether the trade marks which were registered in the name of the company and used since 1969 could be *custodia legis* since the date of presentation of the winding up petition?

2. Whether the trade marks registered in the name of the company were illegally removed without notice to the OL as the O-3 notices were served only on the previous trade mark agent of the company viz., Shah and Shah and not to the OL?

3. Whether the registration of the trade marks by Mr. Boman R. Irani by filing the applications in the year 2013 and registration of the website 'www.yezdi.com' in 1998 were against the provisions of the Companies Act, 1956?

4. Whether when the trade marks were not discovered and identified by the OL as an asset of the company and the trade marks were omitted from the Statement of Affairs filed by the ex-Director Mr. Boman R. Irani and therefore, it was a *mala fide* action on the part of Mr. Boman R. Irani in violation of Sections 454 and 468 of the Companies Act, 1956?

5. Whether the trade marks and goodwill of the trade mark 'YEZDI' would continue even after the production and business of

the 'YEZDI' motorcycle by the company was discontinued since 1996?

6. Whether the Company Court, in exercise of its powers under Section 446 of the Companies Act, 1956, is empowered to declare the trade mark registered as illegal and direct the Trade Mark Registry to remove the registered trade mark in favour of a person?

VII ANALYSIS AND CONCLUSIONS:-

RE. QUESTION NO.1:

67. It would be difficult to say in a wider proposition that the company in liquidation can assert rights in the trade marks when no action was taken for over 15 years for renewal of the trade marks registered in the name of the company and the trade marks were not used by the company since 1996 and the registration of the trade marks got lapsed. The right over the trade marks would not continue indefinitely in limbo. The trade marks which were reflected in the Register were not in force and expired in 1997 and 1998 and therefore, no right of the

registered proprietor subsists in the trade marks once registered in the name of the company and used until 1996.

68. In ***M/S. THAPSONS PVT. LTD. vs M/S. ASHOKA FOOD INDUSTRIES AND ANOTHER (AIR 1992 DEL 11)***, it has been held that the person in whose name trade mark is registered could lose propriety rights in the registered trade mark on account of not renewing the trade mark. The Delhi High Court has placed reliance on the judgment in the case of ***NATIONAL BELL CO. AND GUPTA INDUSTRIAL CORPORATION vs METAL GOODS MFG. CO. (P) LTD., (AIR 1971 SC 898)***, wherein it was held that the distinctiveness of the trade mark in relation to the goods of a registered proprietor of such a trade mark may be lost in a variety of ways i.e., by the extensive piracy so that the mark become *publici juris*. The trade mark can also be lost by abandonment. Thus, if a registered proprietor has abandoned the trade mark and has not taken steps for renewal of its registration in the present case for over a period of 15 years, it would amount to abandonment of the trade mark. Paragraph 10 of the judgment in ***THAPSONS's*** case (*supra*) is extracted hereunder:-

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"10. Counsel for the defendants has drawn my attention to Trade Marks Journals dated January 1, 1991 and January 16, 1991, showing that this trade mark is shown registered in the name of the said company of Calcutta and as yet registered trade mark has not been removed from the Register from the name of the said company for non-payment of renewal fees. It may be that the trade mark has not yet been removed from the Register of the Registry of Trade Marks for non-payment of the fees but the legal effect is quite clear that if the trade mark is not got renewed when it becomes due in accordance with the provisions of the Trade Marks Act, the person in whose name the trade mark stood registered cannot claim that he is the registered trade mark owner. Be that as it may, if the said owner deposits the fee and the matter remains pending with the Registry of Trade Marks for renewal of trade mark, in that situation it could be said that the person in whose name trade mark stands registered has not lost its proprietary rights in the said registered trade mark on account of any delay taking place in the office of the Registry of Trade Marks in renewing the said trade mark. Defendants have not furnished any material to show that the trade mark is not being renewed in the present case on account of any such delay taking place in the office of the Registry of Trade Marks. Moreover, there is nothing to show that the said company is still marketing its goods under the said trade mark. In *National Bell Co. and Gupta Industrial Corporation v. Metal Goods Mfg. Co. (P)*

Ltd., AIR 1971 SC 898, it was held that the distinctiveness of the trade mark in relation to the goods of a registered proprietor of such a trade mark may be lost in a variety of ways i.e. by the goods not being capable of being distinguished as the goods of such a proprietor or by extensive piracy so that the marks become public juris. The trade mark can also be lost by abandonment. What is essential for the plaintiff to establish in an action for passing off is the distinctive features of a trade mark, substantial user and wide reputation. The law casts an obligation on the defendant not to pass off his own goods as if they had been produced by the plaintiff. In the present case, all these ingredients are prima facie satisfied by the plaintiff. In the present case, the defendants are also committing breach of the registered copyright of the plaintiff. They have adopted totally similar device of Lotus as is being used by the plaintiff for which plaintiff has got it registered under the Copyright Act. Defendants have not come up with any explanation as to how defendants have chosen the similar get up and device as is being used by the plaintiff on its goods. In similar circumstances temporary injunction was granted in M/s. Anglo Dutch Paint, Colour and Varnish Works Pvt. Ltd. v. India Trading House, AIR 1977 Delhi 41. It is well settled by a Division Bench of this Court in Century Traders v. Roshan Lal Duggar and Co., AIR 1978 Delhi 250, that in an action for passing off in order to succeed in getting an interim injunction the plaintiff has to establish user of the mark prior in point of time

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than the impugned user by the defendants and the registration of the mark or similar mark prior in point of time to user by the plaintiff is irrelevant in an action for passing off and the mere presence of the mark in the register maintained by the Trade Marks Registry does not prove its user by the persons in whose name the mark is registered and is irrelevant for purposes of deciding the application for interim injunction unless evidence has been led or is available of user of their registered trade mark. There is no evidence brought on the record by the defendants to show that the owner of the registered trade mark is using the said trade mark in the market. So, the law laid down by the Division Bench on this aspect of the case is clearly applicable to the facts of the present case. Counsel for the defendants has, on the other hand, placed reliance on Gora Mal Hari Ram v. Bharat Soap and Oil Industries, 23 (1983) DLT 401. In the said case, instead of granting interim injunction the Court has directed the defendants only to maintain the proper accounts and file copies of the same in Court six monthly. It depends on the facts of each case to decide whether the plaintiff is entitled to have the interim injunction or not. The Court gave a finding on the peculiar facts of this case that interim injunction could not be granted there being no material on the record as would establish that the plaintiff enjoys such a reputation in relation to 'Savera' soap as would impel the Court to grant such injunction and it was found that the registration has been also granted of the said trade mark to

some other manufacturers. The case is distinguishable on facts."

69. We are of the view that it is a case of abandonment of the trade mark by the company in not taking any action for over a period of 15 years to get the trade mark registered/renewed and protect it when the company was not using the same since 1996. If the company had abandoned the trade mark, it would not remain *custodia legis* since the date of presentation of the winding up petition.

RE. QUESTION NO.2:

70. Section 25 of the Trade Marks Act, 1999 deals with duration, renewal, removal and restoration of registration of the trade mark. Sub-section (3) thereof provides that before the expiration of the last registration of the trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which, a renewal of registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions

have not been duly complied with, the Registrar may remove the trade mark from the Register.

71. It cannot be said that the obligation to send notice under sub-section (3) of Section 25 of the Trade Marks Act is not a mandatory one. Therefore, without sending a notice as contemplated under sub-section (3) of Section 25, a trade mark cannot be legally removed and if it is removed, it would be a wrongful removal and if the restoration of the trade mark to Register is sought within the period of limitation, that would be allowed as a matter of course.

72. Sub-section (4) of Section 25 of the Trade Marks Act, 1999 provides as under:-

"(4) Where a trade mark has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the trade mark, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the trade mark to the register and renew the registration of the trade mark either generally or subject to such conditions or limitations as he thinks fit to impose, for a period of ten years from the expiration of the last registration."

73. Thus, under sub-section (4) of Section 25, an application for restoration of the trade mark which was removed from the Register for non-payment of the prescribed fee is to be made within one year from the expiration of the last registration of the trade mark.

74. In the present case, the notice was served on the trade mark agent of the company viz., Shah and Shah. It would also be relevant to take note of the fact that the OL did not make any application under sub-section (4) of Section 25 for restoration of the trade mark which was removed from the Register. If no applications were filed within the period of limitation under sub-section (4) of Section 25, the question whether the trade marks had been removed in violation of the mandatory provisions of sub-section (3) of Section 25 would not be relevant.

75. In the case of **UNITED SPIRITS LIMITED vs. INTELLECTUAL PROPERTY APPELLATE BOARD (2011 SCC OnLine Cal 4307)**, it has been held in paragraphs 17 to 21 as under:-

"17. The question is whether in exercise of its power under art. 226 this Court should examine the correctness of the prima facie opinions recorded by the Board while deciding the interlocutory applications. If it is found that the order is vitiated by error of jurisdiction or violation of the principles of natural justice, in my opinion, this Court must interfere with the order. The real questions, therefore, are whether the order is vitiated by any jurisdictional error or by violation of the principles of natural justice.

18. It has been contended that since the removal was effected in contravention of section 25(3), the Board staying the operation of the orders directing restoration of the trade marks has acted without jurisdiction; and that, in any case, the Board has acted without jurisdiction by staying the operation of the orders in terms whereof the trade marks had already been restored to register.

19. I am unable to accept the contentions. I have already said that restoration of the trade marks followed by requisite advertisement in terms of the orders under appeal could not limit the power of the Board to consider the question of staying the operation of the orders and, if necessary, to stay the operation thereof.

20. Removal of the trade marks in contravention of sub-section (3) of section 25 could have been virtually a cast iron case for restoration of the

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trade marks to register, if the requisite applications were filed within the period of limitation mentioned in sub-section (4) of section 25. When the question was whether the applications were within time, in my opinion, the question whether the trade marks had been removed in violation of the mandatory provisions of sub-section (3) of section 25 could not be relevant, for even if the trade marks had been illegally removed, they could not be restored to register allowing time-barred applications.

21. Whether the applications filed were time-barred was to be decided by the Assistant Registrar, who decided it against Pernod, and there can be no dispute that the question specifically raised by Pernod in its appeals is to be decided by the Board. The Board was under an obligation to decide the questions whether the two applications filed for restoration were time-barred; and whether by public notice the period mentioned in sub-section (4) of section 25 could be extended."

76. It may be further noted that under Rule 21 of the Trade Marks Rules, 2002, service on the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so authorising him. The Registrar of Trade Marks has followed the due process of law and served the O-3 notices on the address in the record of the Trade Mark Registry. The said stand has been taken by the Registrar in his

affidavit submitted before the Company Court. It was the duty of the OL to ascertain the assets of the company and issue notice to the Registrar. The Company Court, vide winding up order dated 17.08.2001, had directed the OL to take stock of the assets of the company. The books of accounts and the records of the company were all in the custody of the OL and therefore, the OL would have come to know of the name and address of the trade mark agent of the company. If the OL had failed to protect the trade mark for a long period of 15 years by not taking any steps for renewal/restoration of registration, the removal of the trade mark from the Register of Trade Marks cannot be faulted with.

77. Section 456 of the Companies Act, 1956 mandates that where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled to. Section 457 empowers the liquidator in a winding up proceedings to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on

behalf of the company etc., with the sanction of the Court. Section 456 and Section 457 of the Companies Act, 1956 are extracted hereunder:-

"456. Custody of company's property.- (1) *Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.*

(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

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(1B) For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.

(2) All the property and effects of the company shall be deemed to be in the custody of the Tribunal as from the date of the order for the winding up of the company."

"457. Powers of liquidator.- *(1) The liquidator in a winding up by the Tribunal shall have power, with the sanction of the Tribunal, -*

(a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels;

(ca) to sell whole to the undertaking of the company as a going concern;

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(d) to rise on the security of the assets of the company any money requisite;

(e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the Court shall have power -

(i) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use when necessary, the company's seal;

(ia) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;

(ii) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(iii) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

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(iv) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(v) to appoint an agent to do any business which the liquidator is unable to do himself.

(2A) The liquidator shall -

(a) appoint security guards to protect the property of the company taken into his custody and to make out an inventory of the assets in consultation with secured creditors after giving them notice;

(b) appoint, as the case may be, valuer, chartered surveyors or chartered accountant to assess the value of company's assets within fifteen days after taking into custody of property, assets referred to in sub-clause (a) and effects or actionable claims subject to

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such terms and conditions as may be specified by the Tribunal;

(c) give an advertisement, inviting bids for sale of the assets of the company, within fifteen days from the date of receiving valuation report from the valuer, chartered surveyors or chartered accountants referred to in clause (b), as the case may be.

(2B) The liquidator shall, immediately after the order for winding up or appointing the liquidator as provisional Liquidator is made, issue a notice requiring any of the persons mentioned in sub-section (2) of section 454, to submit and verify a statement of the affairs of the company and such notice shall be served by the liquidator.

(2C) The liquidator may apply to the Tribunal for an order directing any person who, in his opinion, is competent to furnish a statement of the affairs under sections 439A and 454 and such person shall for the said purpose be served a notice by the liquidator in the manner as may be prescribed.

(2D) The liquidator may, from time to time, call any person for recording any statement for the purpose of investigating the affairs of the company which is being wound up and it shall be the duty of every such person to attend to the liquidator at such time and place as the liquidator may appoint and give the liquidator all information which he may require and answer all such questions relating to winding up of

company as may be put to him by the liquidator.

(2E) Every bidder shall, in response to advertisement referred to in clause (c) of sub-section (2A), deposit, his offer in the manner as may be prescribed, with liquidator or provisional liquidator, as the case may be, within forty-five days from the date of the advertisement and the liquidator or provisional liquidator shall permit inspection of property and assets in respect of which bids were invited:

Provided that such bid may be withdrawn within three days before the last day of closing of the bid:

Provided further that the inspection of property shall be open for not more than five days before closing of the bid.

(2F) The advertisement inviting bids shall contain the following details, namely:-

(a) name, address of registered office of the company and its branch offices, factories and plants and the place where assets of the company are kept and available for sale;

(b) last date for submitting bids which shall not exceed ninety days from the date of advertisement;

(c) time during which the premises of the company shall remain open for inspection;

(d) the last date for withdrawing the bid;

(e) financial guarantee which shall not be less than one-half of the value of the bid ;

(f) validity period of the bids;

(g) place and date of opening of the bids in public;

(h) reserve price and earnest money to be deposited along with the bid;

(i) any other terms and conditions of sale which may be prescribed.

(2G) The liquidator appointed shall -

(a) maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company;

(b) maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half yearly return of receipts and payments to the Tribunal.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to the exercise or

proposed exercise of any of the powers conferred by this section."

78. Thus, the OL ought to have taken into custody or under his control all the property, effects and actionable claims to which the company would have been entitled to. The OL had failed to take any action to protect the registered trade mark of the company for over a period of 15 years and abandoned the trade mark inasmuch as, the company did not use the trade mark since 1996. The failure on the part of the OL to take control of the properties of the company and exercise his powers for renewal of the trade mark would amount to abandonment of the trade mark. We are, therefore, of the considered view that the trade mark could not be restored in the name of the company on the ground that the O-3 notices were not issued on the OL, but were issued to the trademark agent viz., Shah and Shah. The OL must have come to know the existence of the trade mark agent viz., Shah and Shan as all the records of the company came to the possession of the OL way back in the year 2001 itself.

79. The learned Senior Counsel representing the OL has placed reliance on the judgment in the case of **D. BASKARAN**

vs DEPUTY REGISTRAR OF TRADE MARKS AND ANOTHER ([2019] 78 PTC 274) to state that mere computer-generated slips of the O-3 notices, without proof of their dispatch/delivery to the OL, would not satisfy the requirements of Section 25 of the Trade Marks Act. Reliance has also been placed on the judgment in the case of **UNION OF INDIA AND OTHERS vs MALHOTRA BOOK DEPOT ([2012]49 PTC 354)** (paragraphs 13 and 16) to state that failure to comply with the mandatory requirements prescribed under Section 25(3) of the Trade Marks Act, 1999 would render illegal, the removal of the marks from the Register for non-renewal. The Registrar of Trade Mark himself, in his affidavit dated 07.04.2016, had categorically stated that those O-3 notices were served on the trade mark agent viz., Shah and Shah. Service of notice on the trade mark agent of the company would amount to service of notice on the company.

RE. QUESTION NO.3:

80. It is not in dispute that the trade mark registration had already lapsed and the trade marks had not been used since 1996. The OL did not assert any rights over the trade marks

nor protected them. When the trade marks had lapsed and abandoned for more than 15 years, it would be open to the third party including Mr. Boman R. Irani to use and register the trade marks. Mr. Boman R. Irani, being the former Director and shareholder of the company, would not be in a disadvantageous position than any third party who may get the trade mark registered in such a case. The trade mark got lapsed and not renewed. It is not the case of the respondents that Mr. Boman R. Irani did not get the trade marks registered by following the due process of law. The applications filed by Mr. Boman R. Irani to register the trade mark is published in the Trade Mark journals for objection by any member of the public prior to the trade marks being registered.

81. We do not find much substance in the submission of the respondents that by registering the trade marks, Mr. Boman R. Irani had acted in any manner against the provisions of the Companies Act or the Trade Marks Act and the Rules made thereunder. Mr. Boman R. Irani had been maintaining the website 'www.yezdi.com' and the said website was in public domain since 1998. Therefore, it would not be proper to say

that Mr. Boman R. Irani was self-inducedly registered the website and was using the same.

RE. QUESTION NO.4:

82. It has been submitted on behalf of the OL and the Employees' Association that the ex-management of the company renewed one of the trade marks by filing application in the year 2000. Mr. Boman R. Irani has suppressed the existence of the trade mark as an asset of the company in the statement of affairs filed by him and has mentioned 'NIL' in the column reserved for 'other property'. The suppression of existence of the trade mark as an asset of the company in the statement of affairs filed by the ex-Director Mr. Boman R. Irani was a *mala fide* conduct/action on the part of Mr. Boman R. Irani which is in violation of Sections 454 and 468 of the Companies Act, 1956 and therefore, he cannot claim any right over the trade marks registered by him clandestinely. He has acted prejudicial to the interests of the company in liquidation, its creditors and the employees.

83. The statement of affairs was signed by Mr. Boman R. Irani only on 19.01.2004. It would be relevant to take note of

the following events which had taken place prior to the signing of the statement of affairs by Mr. Boman R. Irani on 19.01.2004;

(i) The Company Court had passed the order dated 31.05.2002 whereby the IOB, being the secured creditor having charge over the assets of the company, was permitted to remain outside the winding up proceedings and conduct the sale of assets of the company only in association with the OL.

(ii) The Valuation Report dated 10.06.2003 was prepared by the Valuer appointed by the secured creditor-IOB and the OL to value all the assets of the company. All the books of accounts and the records of the company were with the OL, which were made available to the Valuer for the purpose of valuation.

(iii) The advertisement dated 28.07.2003 was published in 'The Economic Times' for sale of the assets of the company.

(iv) Vide order dated 10.10.2003, the Company Court had accepted the offer made by Mr. Aquil Qureshi to purchase the entire assets of the company in liquidation for a sum of 26.70 crores.

84. When neither the OL nor the Valuer or the secured creditor considered any value of the trade marks of the company which were not in use since 1996 and were not renewed, putting the blame on Mr. Boman R. Irani that he did not disclose the existence of the trade mark in the statement of the affairs signed by him, does not appear to be correct. All the books of account and the records of the company were with the OL, which were also made available to the Valuer for the purpose of valuation. When all the assets (both tangible and intangible) were sold which would obviously include the trade mark of the company, by not mentioning the trade mark as a valuable asset in the statement of affairs signed by Mr. Boman R. Irani, cannot be said to be *mala fide* or in violation of Sections 454 and 468 of the Companies Act. Section 454 of the Companies Act, 1956 reads as under:-

"454. Statement of affairs to be made to Official Liquidator.-

(1) Where the Court has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the Court in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed

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form, verified by an affidavit, and containing the following particulars, namely :-

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company ;

;

(b) its debts and liabilities ;

(c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts ; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given ;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realized on account thereof;

(e) such further or other information as may be prescribed, or as the Official Liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons--

(a) who are or have been officers of the company ;

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(b) who have taken part in the formation of the company at any time within one year before the relevant date ;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator, capable of giving the information required ;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or the Court may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with

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imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees for every day during which the default continues, or with both.

(5A) The Court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure 1898 (5 of 1898), for the trial of summons cases by magistrates.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract there from.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code, 1860 (45 of 1860) ; and shall, on the application of the Official Liquidator, be punishable accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case

*where no such appointment is made,
the date of the winding up order."*

85. Under sub-section (1) of Section 454, where an order of winding up of a company has been passed and the OL, as a provisional liquidator, has been appointed, a statement as to the affairs of the company in the prescribed form verified by an affidavit and containing the following particulars viz., the assets of the company, its debts and liabilities, the particulars of creditors, the debts due to the company and such further or other information as may be prescribed, or as the OL may require, are to be given to the OL. The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at the date the manager, secretary or other chief officer of the company. Such statement is required to be furnished within 21 days from the relevant date or within such extended time not exceeding 3 months from the date as the OL or the Court may for special reasons appoint.

86. Section 468 of the Companies Act, 1956 empowers the Tribunal to direct, after the winding up order, any trustee, receiver, banker, agent, officer or other employee of the

company to pay, deliver, surrender or transfer forthwith or within such time as the Tribunal directs to the liquidator, any money, property or books and papers in his custody or under his control to which the company is *prima facie* entitled to. No such order was earlier passed for the trade marks of the company which were not used since 1996 and were not renewed. The first order which has been passed is the impugned order that too, after the trade mark got lapsed and got registered by third parties including Mr. Boman R. Irani. We are, therefore, of the view that there is no violation of Section 454 or Section 468 of the Companies Act by Mr. Boman R. Irani or Classic Legends, as the case may be.

RE. QUESTION NO.5:

87. The learned counsel for the respondents have brought to the notice of this Court the averments made by Mr. Boman R. Irani in application seeking impleadment in OLR No.343/2015 filed by the OL. The submission is that Mr. Boman R. Irani has time and again acknowledged the goodwill subsisting in the trade marks by claiming the use of trade marks in his trade mark applications since 1969 as well as in the proceedings filed by him before the Delhi High Court against Mr. Amit Soni. The

subsistence of goodwill in the trade marks is also admitted by him in his impleading application. Therefore, mere cessation of production of 'YEZDI' motorcycle by the company or cessation of the business would not destroy the goodwill or the property in trade mark. Such goodwill has an important value in the sale of the assets of the company.

88. In support of the aforesaid submission, the reliance has been placed on the decision in the case of **R.R. OOMERBHOY PVT. LTD., MUMBAI vs COURT RECEIVER, HIGH COURT, BOMBAY (2003(5) Mh.L.J. 372)**, wherein it has been held that mere cessation of business or stoppage of operation would not destroy the goodwill or the property in a trade mark. Paragraphs 31 and 32 of the said judgment have been pressed into service to support this submission, which would read as under:-

"31. *There is no merit in this contention. Section 94 of the Code of Civil Procedure, 1908 empowers the Court to appoint a Receiver of any property in order to prevent the ends of justice from being defeated. Then under the provisions of clause (a) of Rule 1 of Order 40, the Court may, by order appoint a Receiver of any property where it appears to the Court to be just and convenient. The Court is*

empowered by clause (d) of Rule 1 to confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property. The Court Receiver who is appointed as receiver of the assets of the partnership in a suit for dissolution is vested with the power of protecting and preserving the property of the partnership. The trade marks constitute assets of the partnership. By the order of this Court dated 30th July 2001 the Court Receiver was appointed as Receiver of the assets of the firm. The Receiver is in that capacity perfectly justified and in fact duty bound to take all necessary steps as would the registered proprietor of the trade marks for the protection and preservation of the trade marks. There is no infirmity in the conclusion of the learned single Judge that the Receiver is competent to exercise the rights conferred by section 28 including the right to obtain relief in respect of the infringement, of the mark in the same manner as could be exercised by the registered proprietor. The Receiver stands in the shoes of the owner and would be entitled to bring an action for infringement of the trade mark which is in a sense an action in aid of preserving and protecting the property of the partnership.

32. *The judgment of a learned single Judge of this Court, M.F. Saldanha, J. in Ratansi Mulji v. Vinod Ratilal Gandhi, AIR 1991 Bombay 407 relied upon by the appellant does not carry the case of*

the appellant any further. That was in fact, a case where the learned single Judge held that the owner of the trade mark was not divested of his property under the Textile Undertakings (Taking Over of Management) Act, 1983 and hence could not be prosecuted by the Custodian of the property."

89. The OL, in his OLR No.343/2015, had conceded that the trade marks had not been used after the operation of the company was stopped in 1996 and it would be difficult to value the trade marks. When the trade marks of the company were not used for 15 years, it would be difficult to say that the value or the goodwill subsisted in favour of the company when Mr. Boman R. Irani applied for registration of the trade marks.

90. Mere statement of Mr. Boman R. Irani regarding the goodwill of the trade mark 'YEZDI' itself would not be sufficient to say that the goodwill of the trade mark existed even after 15 years from the date when the company stopped its operation and business of manufacturing and selling of the motorcycle. Mr. Boman R. Irani has acquired a right over the trade mark after he has got the registration done in his name in accordance with law. Mr. Boman R. Irani can be divested therefrom only in accordance with the statute and not

otherwise as held in **CANBANK FINANCIAL SERVICES LTD. vs CUSTODIAN AND OTHERS ([2004] 8 SCC 355).**

Paragraph 85 of the said judgment which is relevant is extracted hereunder:-

"85. The constitutional validity of the Act came up for consideration before this Court in Harshad Shantilal Mehta v. Custodian [(1998) 5 SCC 1] . The vires of the said statute was upheld, inter alia, on the ground that by reason thereof the right, title and interest in a property belonging to Respondent 3 is not affected. The interest of the appellant, thus, was not affected by the said Act or by the Benami Transactions Act. Extinction in right, title and interest in a property must be caused as a result of operation of law and not otherwise. Creation of title by an act of parties is subject to law. Once a title vests in a person he cannot be divested therefrom except by reason of or in accordance with a statute and not otherwise. An admission does not create a title; the logical corollary whereof would be that an admission of a party would not lead to relinquishment of his right therein, if he has otherwise acquired a title in the property."

91. Section 34 of the Trade Marks Act, 1999 provides that mere registration of a trade mark would not entitle the person or the user of the registered trade mark to interfere with or

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restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services to which the person has continuously used the trade mark from the date prior to the date of registration of the trade mark. Section 34 reads as under:-

"34. Saving for vested rights.—Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

(a) to the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his; or

(b) to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a predecessor in title of his;

whichever is the earlier, and the Registrar shall not refuse (on such use being proved), to register the second mentioned trade mark by reason only of the registration of the first mentioned trade mark."

92. Thus, a proprietor of a trade mark does not have the right to prevent the use of identical or similar trade mark which that person has continuously used prior to the use or date of registration by the proprietor.

93. Section 47 of the Trade Marks Act provides that when a trade mark has been taken off the register and it was not used for a continuous period of 5 years or more, it would be presumed that the mark was not used. The Trade Marks Act does not permit the hoarding or appropriation of the trade mark without utilisation. The Supreme Court, in the case of **NEON LABORATORIES LIMITED vs MEDICAL TECHNOLOGIES LIMITED AND OTHERS ([2016] 2 SCC 672)**, has held in paragraphs 10 and 11 as under:-

"10. Section 47 of the Act is in the same vein and statutory strain inasmuch as it postulates the possibility of a registered mark being taken off the register on an application being made by any aggrieved person, inter alia, on the ground that for a continuous period of five years and three months from the date on which the trade mark was registered, there was no bona fide use thereof. In the case in hand, prima facie, it appears that for over five years after a registration application was made by the appellant-defendant, the

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mark was not used. Facially, the Act does not permit the hoarding of or appropriation without utilisation of a trade mark; nay the appellant-defendant has allowed or acquiesced in the user of the respondent-plaintiffs for several years. The legislative intent behind this section was to ordain that an applicant of a trade mark does not have a permanent right by virtue of its application alone. Such a right is lost if it is not exercised within a reasonable time.

11. We must hasten to clarify that had the appellant-defendant commenced user of its trade mark Rofol prior to or even simultaneous with or even shortly after the respondent-plaintiffs' marketing of their products under the trade mark Profol, on the appellant-defendant being accorded registration in respect of Rofol which registration would retrospectively have efficacy from 19-10-1992, the situation would have been unassailably favourable to it. What has actually transpired is that after applying for registration of its trade mark Rofol in 1992, the appellant-defendant took no steps whatsoever in placing its product in the market till 2004. It also was legally lethargic in not seeking a curial restraint against the respondent-plaintiffs. This reluctance to protect its mark could well be interpreted as an indication that the appellant-defendant had abandoned its mark at some point during the twelve-year interregnum between its application and the commencement of its user, and that in 2004 it sought to exercise its rights

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afresh. It would not be unfair or fanciful to favour the view that the appellant-defendant's delayed user was to exploit the niche already created and built-up by the respondent-plaintiffs for themselves in the market. The "first in the market" test has always enjoyed pre-eminence. We shall not burden this judgment by referring to the several precedents that can be found apposite to the subject. In the interest of prolixity we may mention only N.R. Dongre v. Whirlpool Corpn. [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714] and Milmet Oftho Industries v. Allergan Inc. [Milmet Oftho Industries v. Allergan Inc., (2004) 12 SCC 624] In Whirlpool [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714] , the worldwide prior user was given preference nay predominance over the registered trade mark in India of the defendant. In Milmet [Milmet Oftho Industries v. Allergan Inc., (2004) 12 SCC 624] , the marks of pharmaceutical preparation were similar but the prior user worldwide had not registered its mark in India whereas its adversary had done so. This Court approved the grant of an injunction in favour of the prior user. Additionally, in the recent decision in S. Syed Mohiden v. P. Sulochana Bai [S. Syed Mohiden v. P. Sulochana Bai, (2016) 2 SCC 683 : (2015) 7 Scale 136] this Court has pithily underscored that the rights in a passing-off action emanate from common law and not from statutory provisions, nevertheless the prior user's rights will override those of a subsequent user even though it had been accorded registration of its trade

mark. The learned counsel for the appellant-defendant has endeavoured to minimise the relevance of Whirlpool [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714] as well as Milmet [Milmet Oftho Industries v. Allergan Inc., (2004) 12 SCC 624] by drawing the distinction that those trade marks had attained worldwide reputation. However, we think that as world shrinks almost to a global village, the relevance of the transnational nature of a trade mark will progressively diminish into insignificance. In other words, the attainment of valuable goodwill will have ever increasing importance. At the present stage, the argument in favour of the appellant-defendant that we find holds more water is that in both Milmet [Milmet Oftho Industries v. Allergan Inc., (2004) 12 SCC 624] and Whirlpool [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714] , as distinct from the case before us, the prior user of the successful party predated the date of application for registration of the competing party. The question to examine, then, would be whether prior user would have to be anterior to the date of application or prior to the user by the appellant-defendant. In other words, the question before the Court would remain whether the situation on the date of application for registration alone would be relevant, or whether the developments in the period between this date and the date of grant of registration would have any bearing on the rights of the parties. All these considerations will be cast into a curial cauldron to be appreciated by the Court before which the suit is being

contested. In these premises, we cannot conclude that a prima facie case has not been disclosed by the respondent-plaintiffs."

94. It would be apt to take note of a few other judgments on this point which are as under:-

(i) UNCAS MANUFACTURING COMPANY vs. CLARK AND COOMBS COMPANY (*supra*)

The district court's dismissal of the plaintiff's complaint is affirmed, and the order cancelling Irons and Russell's assignment of the BARODA mark to the plaintiff (and directing rectification of the register under §37) stands. The appellate court based its affirmance on the district court's supported finding that Griffith abandoned the mark under §45 of the Lanham Act. Because the abandonment finding disposed of the case. The appellate court expressly did not decide the district court's alternative conclusions regarding Irons and Russell's abandonment or the validity of the assignments under §10."

"The facts of the said case were that during 1955 the defendant Clark & Coombs Company, another jewelry manufacturer in Providence, began to manufacture and sell finger rings set with the same 32 facet, metal tipped white imitation stones which it labeled "IMPORTED BARODA. In Januar 1957 counsel for Griffith wrote to the defendant complaining of its use of the

word BARODA in connection with the sale of its rings and threatening legal proceedings unless it desisted. Nevertheless the defendant, insisting upon its right to use the name, continued to do so. It heard no more from Griffith or its counsel and later in 1957 at least two other local jewelry manufacturers began to sell like finger rings similarly marked without objection by Griffith."

(ii) SUTTON COSMETICS PR INC vs. LANDER CO INC (*supra*)

The court concluded Sutton Cosmetics (P.R.) had established priority of use in Puerto Rico, Dade County, Florida, and metropolitan New York City and that Lander's deliberate adoption of similar packaging/advertising made confusion and diversion of business likely. These facts supported a preliminary injunction. However, the court also reasoned that Sutton could not show irreparable injury in markets where it had not been selling; therefore the injunction's geographic scope must be limited to markets in which Sutton (P.R.) had actually made sales. The court further explained that permanent relief and finer legal questions (strength of the surname mark, secondary meaning, good-faith prior adoption doctrine, limits to first-user rights where public deception exists) required fuller factual development at a plenary hearing.

The essential facts are: Schering sold the bulk of its remaining inventory to

Sutton (P.R.), released the manufacturer which supplied it with deodorant from an exclusive production contract, and formally abandoned the trademark "Sutton." After the abandonment, Sutton (P.R.) and Lander both sold deodorant under the name "Sutton." Sutton (P.R.) now claims that, because it was the first to sell deodorant under the "Sutton" name after Schering abandoned the trademark, it acquired a protectable interest in the designation "Sutton."

The majority agrees with this argument stating: "As the first bona fide user of the abandoned Sutton mark, Sutton Cosmetics (P.R.) had acquired trademark rights in that mark...." In view of the fact that "Sutton" is a weak mark and is protectable only if a secondary meaning has been established, the proposition underlying the majority decision is that the first user of an abandoned mark acquires, merely by virtue of that first use, the secondary meaning associated with that mark which the abandoning party created. Neither authority nor policy justifies this result.

(iii) STAR INDUSTRIAL COMPANY LIMITED V YAP KWEE KOR TRADING AS NEW STAR INDUSTRIAL COMPANY (*supra*)

The Privy Council delivered a decisive judgment affirming the dismissal of Star Industrial Company's appeal. The core determination hinged on the absence of proprietary goodwill in Singapore at the

time the passing-off claim was brought. The Privy Council underscored that goodwill is inherently tied to active business operations within a specific jurisdiction. Since Star Industrial had ceased its toothbrush manufacturing and export activities to Singapore following the imposition of an import duty in 1965, it effectively abandoned its business there. Consequently, without ongoing business operations, the requisite goodwill necessary for a passing-off claim had perished.

Furthermore, the Privy Council scrutinized the appellant's attempt to extend common law protections to unregistered marks through business arrangements with the Singapore Company. The court refuted these arguments, emphasizing that statutory protections under the Trade Marks Act were confined to registered trademarks, thereby precluding the extension of such protections to unregistered marks via common law doctrines like passing-off.

The facts of the case as noted in the judgment are that it was not until 9th February 1971 that the Hong Kong Company started the proceedings that are the subject of the instant appeal. By writ of summons issued on that date it claimed an injunction restraining the respondent from passing-off his toothbrushes as being toothbrushes of the Hong Kong Company's own manufacture and an inquiry as to damages. There are, however, concurrent findings of fact by the trial

judge and the Court of Appeal: that, at the time the writ was issued. the Hong Kong Company who is the sole plaintiff was not itself carrying on any business in Singapore; that it had not, since the imposition of the import duty more than five years before, manufactured any tooth-brushes for export to Singapore; and that it had no intention of itself resuming this part of its former trade."

95. In the present case, it is not in dispute that the trade mark was not used for more than 15 years and not even renewed. They were taken off the Register. Considering the provisions of Section 47 of the Trade Marks Act, as the trade marks have not been in the name of the company, we are of the view that the company would not be entitled to claim right over the trade marks and therefore, no value can be said to be attached to the said trade mark.

96. The facts in ***R.R. OOMERBHOY*** (*supra*), the case relied on by the learned counsel for the respondents, are that the said judgment was passed in the context of the Partnership Act, 1932 and dissolution of partnership firm. Upon dissolution, the goodwill was to be sold. It was recorded that the business of the partnership firm was extensive and thriving where the annual sales were around Rs.91.84 crores in 1999-2000 and

the order was passed in 2003. The partners had agreed that the trade marks were the assets of the partnership firm and each of the partners agreed that they would not use the trade marks. However, within a week of dissolution of the partnership firm, one of the partners filed an application seeking registration of a similar/identical trade mark, hence, the Court Receiver initiated a suit against such partner for infringement of trade mark and passing off.

97. In this case, it is not disputed that the trade marks were not used since 1996 and no business was carried out by the company even before the winding up order came to be passed. We are, therefore, of the view that under these circumstances, it cannot be said that the mark would have the goodwill or value as contented by the respondents and such goodwill can be valued in terms of money.

98. The goodwill in the trade mark is directly proportional to the strength of the business of an entity and the goodwill cannot exist in vacuum for several years in absence of any intention to resume the business by the proprietor of the trade mark. In the present case, all assets of the company were sold

long back. The goodwill of the trade mark will not survive independent of the trade/business and gets extinguished when the business attached to it ceases to function and there is no intention to resume the business. The following judgments on the point are taken note of:-

(i) **COMMISSIONER OF INCOME TAX, W.B. III vs M/S. CHUNILAL PRABHUDAS & CO., (1969 SCC OnLine CAL. 85)**

(ii) **STAR INDUSTRIAL COMPANY LIMITED vs YAP KWEE KOR TRADING AS NEW STAR INDUSTRIAL COMPANY (1976 FSPLR 256)**

(iii) **LIFE INSURANCE CORPORATION OF INDIA vs M/S. ASIA UDYOG (P) LTD AND OTHERS (ILR 1982 DELHI 582)**

RE. QUESTION NO. 6:-

99. The learned counsel for the respondents have submitted that Section 446 of the Companies Act confers wide powers on the Company Court in respect of matters relating to the company in liquidation and under Sections 47 and 57 of the Trade Marks Act, the Company Court has concurrent

jurisdiction to deal with the rectification application. The Company Court was well within the power to cancel the registration of the trade marks in favour of Mr. Boman R. Irani in the impugned judgment and order passed by the learned Single Judge. The learned counsel have relied on the following judgments in support of their submissions;

1. SUDARSHAN CHITS (I) LTD. V. O. SUKUMARAN PILLAI, (1984) 4 SCC 657

The Supreme Court gave purposive analysis of Section 446(2). It traced the absence of an equivalent provision in the 1913 Act and noted that Parliament introduced Section 446(2) (and expanded it in 1960) to avoid multiplicity of suits, accelerate realisation of assets and facilitate inexpensive, summary disposal within the winding-up jurisdiction.

The decision affirms that a court's jurisdiction under Section 446(2) endures even when a winding-up order is temporarily held in abeyance or when only a Provisional Liquidator is appointed. This facilitates efficient recovery of company's assets and underscores a purposive, creditor-friendly interpretation of the Companies Act without establishing a new ratio beyond clarifying the scope of Section 446(2).

Paragraphs 8 and 9 of the said judgment are extracted hereinbelow:-

"8. Before we advert to the question of construction of Section 446(2)(b), it would be advantageous to notice the historical evolution of the provision as well as its present setting. Section 171 of the Indian Companies Act, 1913, the predecessor of Section 446(1) did not contain any provision similar or identical to that of Section 446(2). Section 171 only provided for stay of suits and proceedings pending at the commencement of winding-up proceeding, and embargo against the commencement of any suit or other legal proceedings against the company except by the leave of the court. This provision with little modification is re-enacted in Section 446(1). There was no specific provision conferring jurisdiction on the court winding up the company analogous to the one conferred by Section 446(2). Sub-section (2) was introduced to enlarge the jurisdiction of the court winding up the company so as to facilitate the disposal of winding-up proceedings. The provision so enacted probably did not meet with the requirement with the result that the Committee appointed for examining comprehensive amendment to the Companies Act in its report recommended that "a suit by or against a company in winding up should notwithstanding any provision in law for the time being be instituted in the court in which the winding-up proceedings are pending [See para 207 of the Company Law Committee Report]". To

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give effect to these recommendations, sub-section (2) was suitably amended to bring it to its present form by Companies (Amendment) Act, 1960. The Committee noticed that on winding-up order being made and the Official Liquidator being appointed a Liquidator of the company, he has to take into his custody company property as required by Section 456. Section 457 confers power on him to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company. Power is conferred upon him to sell the properties both movable and immovable of the company and to realise the assets of the company and this was to be done for the purpose of distributing the assets of the company amongst the claimants. Now at a stage when a winding-up order is made the company may as well have subsisting claims and to realise these claims the Liquidator will have to file suits. To avoid this eventuality and to keep all incidental proceedings in winding-up before the court which is winding up the company, its jurisdiction was enlarged to entertain petition amongst others for recovering the claims of the company. In the absence of a provision like Section 446(2) under the repealed Indian Companies Act, 1913, the Official Liquidator in order to realise and recover the claims and subsisting debts owed to the company had the unenviable fate of filing suits. These suits as is not unknown, dragged on through the trial court and courts of appeal resulting not only in multiplicity of proceedings but would hold up the

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progress of the winding up proceedings. To save the Company which is ordered to be wound up from this prolix and expensive litigation and to accelerate the disposal of winding up proceedings, the Parliament devised a cheap and summary remedy by conferring jurisdiction on the court winding up the company to entertain petitions in respect of claims for and against the company. This was the object behind enacting Section 446(2) and therefore, it must receive such construction at the hands of the court as would advance the object and at any rate not thwart it.

9. The fasciculus of sections included in Part VII of the Companies Act bears the heading "Winding up". Section 443 sets out the circumstances in which a company may be wound up by the court. Section 444 provides that where the court makes an order for the winding up of a company, the court shall forthwith cause intimation thereof to be sent to the Official Liquidator and the Registrar. Section 446(1) provides that when a winding-up, order has been made or the Official Liquidator has been appointed as Provisional Liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding-up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose. Then comes sub-section (2) of Section 446. It specifies the contours of the jurisdiction of the court which is winding up the company. It confers special jurisdiction on the court which is winding up the company to do things

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that are set out in the various sub-clauses notwithstanding anything contained in any other law for the time being in force. Section 446(2) thus conferred special jurisdiction on the court winding up the company which otherwise it may not have enjoyed. The court in the Companies Act is defined in Section 2(11) to mean with respect to any matter relating to a company (other than any offence against this Act), the court having jurisdiction under the Act with respect to that matter relating to that company, as provided in Section 10. Section 10 provides that the court having jurisdiction under the Act shall be the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2). The winding-up petition has thus to be presented in the High Court before the Judge who is assigned the work under the Companies Act. Therefore, the court which is winding up the company will be the court to whom the petition for winding up was presented and which passed the order for winding up the company. In this case, the order was made by the learned Company Judge in the Kerala High Court directing winding-up of the Company. An appeal lies against the order for winding up the Company under Section 483 to the same Court to which and in the same manner in which and subject to the same conditions under which, appeals lie from any order or decision of the

Court in cases within its ordinary jurisdiction. In exercise of this appellate jurisdiction, the Appellate Bench entertained the appeals and directed that the winding-up order shall be held in abeyance till the scheme is implemented and if any default is committed the winding-up order made by the learned Company Judge would be revived."

100. The learned counsel for the respondents has further submitted that the OL acts as an officer of the Court and the action or inaction of the OL cannot result in abandonment of the trade marks of the company. Arguendo, admitting that the trade marks were abandoned due to non-use, the fact that the company was in liquidation is a defence and exception as per Section 47(3) of the Trade Marks Act, 1999. In support of his submission, the following judgments have been relied on and the relevant paragraphs of the judgment are extracted hereunder:-

**HARDIE TRADING LTD. V. ADDISONS
PAINT & CHEMICALS LTD (2003) 11
SCC 92**

"47. That the proprietor's intention to abandon the trade marks is a necessary component of their non-user justifying their removal, was recognized as early as 1884 by Chitty, J. in the case of Mouson & Co. v. Boehm [26 Ch D 398] . In that

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case, the owner of the trade mark, Boehm had adopted a trade mark for a particular kind of soap. The soap was manufactured and sent to the United Kingdom in large quantities for about two years. In the next six years, the "manufacture and sale of soap thus marked fell off until it practically ceased and the existence of the particular mark was forgotten" by Boehm. The same mark was registered in the UK in respect of soaps by Mouson & Co. Boehm sued Mouson & Co. inter alia to restrain the infringement of his trade mark and for removal of the trade mark from the Register. Mouson's defence was that Boehm had abandoned the trade marks. In negating this, Chitty, J. held:

"Mr Boehm retained that mark, he did not break up the moulds according to the practice which he stated he adopted when he intended to give up any particular mark. He did not even erase the trade mark from his books, and there were persons in the market who got the goods from him who were endeavouring to effect sales, and he by sending over those price lists to the number of 1200 during the years spoken to was himself endeavouring to effect sales....

Here it appears to me there was no absolute non-user for any sufficient time, taken in connection with all the circumstances, to show an intention to abandon....

The trade mark was not of a very great value to him (and on that I will make an observation presently), still I think it was his trade mark before, and he has not lost it by abandonment."

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49. *The law has since been changed so that at present an "intent not to resume" use of the marks is to be proved. [See McCarthy on Trade Marks and Unfair Competition (3rd Edn.), Vol. 2, para 17.03.] Nevertheless, "since abandonment results in a forfeiture of rights, the courts are reluctant to find an abandonment". Under the majority rule, evidence of abandonment must be clear and convincing. The New York Court of Appeals stated that "Abandonment being in the nature of a forfeiture, must be strictly proved."*

60. *In Mouson & Co. v. Boehm [26 Ch D 398] it was said that:*

"A man who has a trade mark may properly have regard to the state of the market and the demand for the goods; it would be absurd to suppose he lost his trade mark by not putting more goods in the market when it was glutted."

61. *More recently, Justice Ungood Thomas in Bali Trade Mark (Rectification Ch D) [1966 RPC 387] said:*

"It is quite clear, however, that the proprietors, the Bali Company, could not have used the Token Import Scheme, unless an interested firm in this country made the appropriate application and no such application was made. It was thus not possible for the company to import under the Token Scheme, and that was not their fault. Further, what has to be considered is not merely the existence of an absolute prohibition to import, as might be thought from one passage in the Assistant Comptroller's decision, or a complete impossibility of importing, but,

in the words of Evershed, L.J. (supra), the existence of conditions 'making impracticable the ordinary usages of international trade'. A trade mark is a commercial asset intended to be used commercially by businessmen, and it seems to me that 'special circumstances' have to be understood and applied in a business sense. In my view, this Token Import Scheme modification to the earlier general prohibition did not convert what was before impossible into what was, in a business sense, practicable, even if a firm in this country had made the necessary application under that Scheme. The non-use of the trade mark by the Bali Company, even during the Token Import Scheme, is thus in my view, shown to have been due to special circumstances in the trade."

62. *The Court of Appeal reversed this decision on another issue. The House of Lords in turn reversed the decision of the Court of Appeal and reaffirmed the decision of Justice Ungood Thomas in Berlei (U.K.) Ltd. v. Bali Brassiere Co. Inc. [(1969) 2 All ER 812 : (1969) 1 WLR 1306 : 1969 RPC 472 (HL)]*

63. *This view has been accepted as good law in this country. [See A.J. Vulcan v. V.S.V. Palanichamy Nadar [AIR 1969 Cal 43 : 73 CWN 347] and Express Bottlers Services (P) Ltd.v. Pepsi Inc. [1989 PTC 14]] The law, therefore, is that even an economical impracticability would amount to special circumstances."*



101. The scope and ambit of Section 446 of the Companies Act, 1956 have been explained in the case of **LIFE INSURANCE CORPORATION OF INDIA VS M/S. ASIA UDYOG (P) LTD., AND OTHERS (ILR 1982 DELHI 582)**. The relevant paragraphs of the said judgment are extracted hereunder:-

"(6) This being the object of Section 446 it is apparent that all those matters where the claim is of such a nature which can be investigated by the winding up Court would be within the purview of Section 446. It is a different matter whether in any particular case even if the case is one which is of a nature which is within the purview of a Company Judge leave may or may not be granted. We are not concerned with the question whether leave is to be granted or not because that is a matter for the Company Judge to consider. We are concerned only with the question whether proceedings under 1971 Act are such legal proceedings as are covered within the meaning of Section 446(1) of the Companies Act, In the present case what is being claimed is an order of eviction contemplates must be taken to be a summary proceeding by way of application. It further observed that, "it appears to us that, consistently with this policy and with the scheme of the Amending Act, where the liquidator has to approach the Court under Section 446 for relief in respect of matters legitimately falling within the scope thereof elaborate proceedings by way of a suit involving time and expense, to the

detriment of the ultimate interests of the company under liquidation, were not contemplated."

(7) In the matter of Subhodbaya Publications Ltd. the tenants who had taken on lease the premises belonging to the company applied for fixation of standard rent before the House Rent Controller, Madras. In order to continue the proceedings before the Rent Controller he applied under Section 171 of the Companies Act 1913 (corresponding to Section 446) seeking leave of the Company Judge to continue the proceedings. Ramaswamy, J. held that this section prevents the commencement of new proceedings or the continuation of pending proceedings against the company after the appointment of a provisional liquidator or after the making of a winding up order, without the leave of the winding up Court. The learned Judge further held that this was a case where leave should be applied for and secondly a fit case where leave to proceed with the legal proceedings should be granted. No doubt the learned Judge observed that against the company which was a lessee and for recovery of damages for alleged unauthorised occupation. De hors the provisions of 1971 Act and Rent Control Act these proceedings will have to be initiated by a suit. Now it cannot be disputed that if the landlord was to proceed for recovery of possession of premises or for recovery of damages against the company it would be proceeding against the company within the meaning of Section 446(2)(a) and would also amount to a claim against the company within Section 446(2)(b) of the

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Companies Act. Such a proceeding would normally, therefore, be a matter which would be appropriate for the winding-up court to deal with and ipso facto such proceedings could not be commenced or continued except by leave of the court as required by Section 446 of the Act. That leave has to be obtained before filing a suit to recover arrears of rent on account of the premises which were on lease with the company, was recognised in (supra).

(8) In (20 Chancery Division page 260) (8) General Share and Trust Company V. Wetley Brick and Pottery Company, the owner of a mine which had leased the same to the Company and against which an order of winding-up had been moved, applied for leave to diestrum or to re-enter. The Vice-Chancellor refused leave and held that he could not be allowed to re-enter without establishing his right by an action. The Court of Appeal disapproved of such an approach and while allowing the appeal Jessel M. R. observed as follows: "I have often said both here and at the Rolls, that when in a winding-up a landlord comes to the Court asking for the possession of property which is under the control of the Court, and the claim is one against which the liquidator would have no defense, the right course is to order the liquidator to give up possession. It would be a cruel hardship to put the applicant to the expense of bringing an action when the Court can see that there is nothing to be tried."

102. In the case of **SREE YELLAMA COTTON, WOOLEN
AND SILK MILLS CO. LTD.; (BANK OF**

MAHARASHTRA LTD., POONA vs OFFICIAL LIQUIDATOR, HIGH COURT BUILDINGS) (1968 SCC OnLine Kar 133). The scope and interplay between Section 446 and Section 456 have been explained in the following paragraphs:

"15. Another objection was that the subject matter of Company Application 20 of 1968 could not have been properly brought before Court by means of an application but could only be made the subject of a regular suit, and that if the application has to be treated as a suit, the proper Court fee as for a suit should have been paid.

24. The position in the present case, however, is quite different. The Liquidator is not suing to recover any debt or to recover any property belonging to the Company. One of the consequences of making an order for the winding up of any company expressly stated in sub-section (2) of Section 456 is:-

"All the property and effects of the Company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the Company." 25. 'Court' of course by definition means the Company Court which made the winding up order. Under sub-section (1) of the same section, it is provided:-

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"Where a winding up order has been made the liquidator..... into his custody or under his control, all the property, effects and actionable claims to which the Company Is or appears to be entitled." shall take

26. Section 467 of the Act states, among other things,-

"the Court shall cause the assets of the Company to be collected and applied in discharge of its liabilities."

27. According to Rule 232 of the Companies (Court) Rules, 1959, the duties imposed on the Court by sub-section (1) of Section 467 of the Act with regard to the collection of the assets of the Company and the application thereof in discharge of the Company's liabilities shall be discharged by the Official Liquidator as an officer of the Court subject to control of the Court. Rule 233 states that the Official Liquidator shall for the purpose of acquiring and retaining possession of the property of the company, be in the same position as if he were a Receiver of the property appointed by the Court and that the Court may on his application enforce such acquisition or retention accordingly. Under sub-section (4) of Section 460, the liquidator is authorised to apply to the Court for a direction in relation to any particular matter arising in the winding up.

28. The powers of the winding up Court under sub-section (2) of Section 446 include the jurisdiction to entertain and dispose of any question of priorities or

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any other question whatsoever, whether of law or of fact, which may relate to or arise in the course of winding up of a company, notwithstanding anything contained in any other law for the time being in force.

29. The total effect of all these provisions is that all property and assets of the company which has been ordered to be wound up, immediately come under the custody of the winding up Court and are, in the eye of law, property in custodia legis. The Official Liquidator is in the position of a Receiver appointed by the Court for the purpose of acquiring and retaining the possession of all property and assets of the Company, acting subject to and in accordance with the directions from time to time given by the winding up Court.

30. Even in the case of properties of a company which are mortgaged or charged in favour of any of its creditors, the creditor does not acquire rights which are exhaustive of the entire title of the Company in respect of the properties. The properties continue to be the properties of the company, although by reason of a transfer of some interest therein by way of security, the creditor is enabled by law to enforce his security in the manner provided by law for the purpose of recovering moneys due to him even when a secured creditor wants to exercise the option given to him by law to him. Hence, stand outside the insolvency and work out his rights, it cannot be said that the winding up Court is totally powerless or has no jurisdiction whatever in respect of him or in respect

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of the property over which he claims a certain right by way of security. In regard to such properties, questions may and do often arise either in respect of priorities or in respect of any other matter whatsoever, which may relate to the winding up of the company's affairs.

31. In trying, therefore, to reduce to his possession properties of the company, whether mortgaged to third parties or not, the Liquidator is not trying to recover any property from anybody; he is acting on behalf of the Court into whose custody the properties have already come by virtue of the winding up order. In the event of any third party resisting or opposing or questioning his attempts to reduce the property to his possession in the name of the Court, if the Liquidator considers it necessary to approach the Court for directions, he is merely acting under sub-section (4) of Section 460 of the Act and invoking the powers of the Court under Section 446(2)(d) of the Act and Rule 233 of the Companies (Code) Rules, 1959."

103. It is further submitted that in the financial statement put on record by the appellants to show that the investment of Rs.177 crores has been made for research and development in respect of the products to be sold under the trade mark 'YEZDI'. However, the commercial terms of arrangement between Mr. Boman R. Irani and the Classic Legends are not known and that information should be called upon to be

produced. If the former Director wants to exploit the goodwill of the trade mark, he must clear the dues of the company. At present, the dues of the company aggregate to around Rs.91 crores in principal and around Rs.200 crores with interest from the creditor. The OL acts as an officer of the Court and the action or inaction of the OL cannot result in abandonment of the trade marks of the company. The fact that the company was in liquidation is a defence and exception as per Section 47(3) of the Trade Marks Act.

104. It has been submitted on behalf of the appellants that the Classic Legends is spending money to develop the products and the trade marks and is running into losses as of today. No consideration has been paid for licensing of the trade mark since the goodwill had to be developed afresh by the Classic Legends, which has incurred large amounts for setting up manufacturing facilities for manufacturing the motorcycles, which are completely different from the motorcycles previously manufactured by the company in liquidation.

105. In the case of ***EMBASSY PROPERTY DEVELOPMENTS PVT. LTD. vs STATE OF KARNATAKA AND OTHERS (2019***

SCC OnLine SC 1542), the Court meticulously examined the jurisdictional contours of the High Court under Article 226 and the NCLT under the IBC, 2016. It underscored that the IBC is a comprehensive and exclusive framework governing insolvency proceedings, establishing the NCLT as the adjudicating authority with specific powers and jurisdictions. Central to the Court's reasoning was the principle that High Courts should not bypass statutory remedies provided under specialized tribunals like the NCLT. The High Court's intervention was deemed appropriate only when the NCLT exceeds its statutory jurisdiction, especially in public law matters such as disputes arising under the MMDR Act. Additionally, the Court clarified that while the NCLT can inquire into fraud within insolvency proceedings, it does not possess authority over administrative decisions that fall outside the IBC's ambit. Thus, the High Court's role in reviewing administrative actions by the State was upheld. The relevant paragraphs of the judgment are extracted as under:-

"30. The NCLT is not even a civil court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting

suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.

37. *From a combined reading of sub-section (4) and sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the Government under the provisions of the MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to*

include all questions of law or facts under the sky, an Interim Resolution Professional/ Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. [It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" under Section 5(21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.

40. *If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1) (1) (vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party,*

but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the Interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25(2)(b) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor. This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-Judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

53. *The upshot of the above discussion is that though NCLT and NCLAT would have Jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under the MMDR Act, 1957 and the Rules issued thereunder, especially when the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action.*

Hence, the High Court was justified in entertaining the writ petition and we see no reason to interfere with the decision of the High Court. Therefore, the appeals are dismissed. There will be no order as to costs."

106. In the case of **PATEL FIELD MARSHAL AGENCIES AND OTHERS VS PM DIESELS (2017 SCC OnLine SC 1388)**, in paragraphs 31 and 34, it has been held as under:-

"31. Rather, from the résumé of the provisions of the 1958 Act made above, it becomes clear that all questions with regard to the validity of a trade mark is required to be decided by the Registrar or the High Court under the 1958 Act or by the Registrar or the IPAB under the 1999 Act and not by the civil court. The civil court, in fact, is not empowered by the Act to decide the said question. Furthermore, the Act mandates that the decisions rendered by the prescribed statutory authority [Registrar/High Court (now IPAB)] will bind the civil court. At the same time, the Act (both old and new) goes on to provide a different procedure to govern the exercise of the same jurisdiction in two different situations. In a case where the issue of invalidity is raised or arises independent of a suit, the prescribed statutory authority will be the sole authority to deal with the matter. However, in a situation where a suit is pending (whether instituted before or after the filing of a rectification application) the exercise of jurisdiction by the prescribed statutory authority is

contingent on a finding of the civil court as regards the prima facie tenability of the plea of invalidity.

34. The intention of the legislature is clear. All issues relating to and connected with the validity of registration has to be dealt with by the Tribunal and not by the civil court. In cases where the parties have not approached the civil court, Sections 46 and 56 provide an independent statutory right to an aggrieved party to seek rectification of a trade mark. However, in the event the civil court is approached, inter alia, raising the issue of invalidity of the trade mark such plea will be decided not by the civil court but by the Tribunal under the 1958 Act. The Tribunal will however come into seisin of the matter only if the civil court is satisfied that an issue with regard to invalidity ought to be framed in the suit. Once an issue to the said effect is framed, the matter will have to go to the Tribunal and the decision of the Tribunal will thereafter bind the civil court. If despite the order of the civil court the parties do not approach the Tribunal for rectification, the plea with regard to rectification will no longer survive."

107. It is submitted that the OL himself has admitted that the trade marks of the company could not be valued as they were not used for many years. The value of an asset cannot be linked to the dues of the company in liquidation. The alleged

claim of dues of Rs.90 crores by the debtors of the company in liquidation cannot be equated with the alleged value of the trade mark as the two are completely unrelated.

108. If there is no registration of a trade mark, there can be a common law right, acquired and retained only through continued use of the trade mark. This right dissipates through non-renewal (in case of registration) and non-use (in case of common law rights). Trade marks are not tangible moveable or immovable properties. Action or inaction of the company in liquidation or the OL dissipates the right, which by its very nature, would not subsist in the absence of continuous use and renewal of the registration. The company has not used the trade marks since 1996. There was no renewal of the registered trade marks. No efforts were taken by the company for protection of its trade marks. The sale of all the assets were without mentioning the trade marks and there has been no business or production for last 30 years. Therefore, we are of the view that no goodwill would subsist and survive.

109. Exception under Section 47(3) of the Trade Marks Act is in respect of the special circumstances not applicable only to a

particular individual, but for all trades in those particular goods. We cannot accept the contention of the OL that the OL was oblivious to the fact of existence of the trade mark of the company 'YEZDI' inasmuch as the only business of the company was production and sale of 'YEZDI' motorcycles.

110. In view of the aforesaid discussions, we allow the appeals and set aside the impugned judgment and order passed by the learned Single Judge.

In view of disposal of the appeals, pending interlocutory applications, if any, do not survive for consideration and are accordingly disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

BKV