

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

COMPANY APPLICATION No.71 OF 2018
IN COMPANY PETITION Nos. 76/1991 C/W 5/92 & 126/92
C/W

COMPANY APPLICATION No. 125 OF 2020
IN O.L.R.NO. 343/2015 IN COMPANY PETITION Nos.
76/1991 C/W 5/92 & 126/92
C/W

COMPANY APPLICATION No. 126 OF 2020
IN O.L.R.NO. 343/2015 IN COMPANY PETITION Nos.
76/1991 C/W 5/92 & 126/92
C/W

COMPANY APPLICATION No. 127 OF 2020
IN O.L.R.NO. 343/2015 IN COMPANY PETITION Nos.
76/1991 C/W 5/92 & 126/92
C/W

COMPANY APPLICATION No. 128 OF 2020
IN O.L.R.NO. 343/2015 IN COMPANY PETITION Nos.
76/1991 C/W 5/92 & 126/92
C/W

COMPANY APPLICATION No. 304 OF 2021
IN O.L.R. 343/2015
IN COMPANY PETITION No. 76/1991
C/W

COMPANY APPLICATION No. 308 OF 2021
IN C.A.NO.71/2018
IN COMPANY PETITION No. 76/1991
C/W

COMPANY APPLICATION No. 309 OF 2021
IN C.A.NO.125/2020
IN COMPANY PETITION No. 76/1991
C/W

COMPANY APPLICATION No. 310 OF 2021
IN C.A.NO.126/2020
IN COMPANY PETITION No. 76/1991

C/W
COMPANY APPLICATION No. 311 OF 2021
IN C.A.NO.127/2020
IN COMPANY PETITION No. 76/1991

C/W
COMPANY APPLICATION No. 312 OF 2021
IN C.A.NO.128/2020
IN COMPANY PETITION No. 76/1991

IN C.A. No. 71/2018

BETWEEN:

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

...APPLICANT

(BY SRI. K.S. MAHADEVAN., ADVOCATE FOR O.L AND
SRI. ADITYA SONDHI, SENIOR COUNSEL FOR O.L)

AND:

- 1 . REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA TRADE MARKS REGISTRY
INTELLECTUAL PROPERTY BHAVAN PLOT NO.32,
SECTOR 14, DWARKA NEW DELHI-110 075
- 2 . 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
- 3 . REGISTRAR OF TRADE MARKS
GOVERNMENT OF INDIA TRADE MARKS REGISTRY
15/27, NATIONAL CHAMBERS 1ST FLOOR,
ASHRAM ROAD, AHMEDABAD-380 009
GUJARATH
- 4 . MR BOMAN R IRANI S/O RUSTOM S IRANI
702, NATARAJ M V ROAD, JUNCTION
ANDHERI EAST MUMBAI-400 069

...RESPONDENTS

(BY SRI. M.B. NARGUND, SENIOR COUNSEL (ASG) FOR
SRI. HEMANTH.R. RAO., ADVOCATE FOR R-1 TO R-3
SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. SANJAY NAIR., ADVOCATE FOR R-4

THIS COMPANY APPLICATION IS FILED UNDER RULE 6 &
9 OF THE COMPANIES(COURT) RULES, 1959 PRAYING TO
DECALRE THE TRADE MARKS REGISTRATION CERTIFICATES
ISSUED BY RESPONDENTS NOS.1, 2 & 3 IN FAVOUR OF MR.
BOMAN.R. IRANI. AS NULL AND VIOD AND SET ASIDE THE SAME
AND ETC.

IN C.A. No. 125/2020

BETWEEN:

TIDE WATER OIL CO., (INDIA) LTD.,
8 DR.RAJENDRA PRASAD SARANI
KOLKATA - 700 001.

ALSO AT:

YESHWANTHPUR INDUSTRIAL AREAD, PAHSE -I
YESHWANTHPUR, BENGALURU
KARNATAKA -- 560 022.

...APPLICANT

(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL)

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. BOMANIRANI
702 NATRAJ, MV ROAD JUNCTION
ANDHERI EAST, MUMBAI - 400 069.

...RESPONDENTS

AND

IDEAL JAWA EMPLOYEE'S ASSOCIATION
IMPEADING ASSOCIATION REGISTRATION NO
TUA/MYS/801/66 NO. 1867/, SAYYAJI RAO ROAD, MYSURU
REPRESENTED BY ITS PRESIDENT
P. KUNHI KANNAN

...IMPLEADING APPLICANT

(BY SRI. K.S. MAHADEVAN., ADVOCATE FOR O.L (R-1)
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L (R-1)

SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. SANJAY NAIR, ADVOCATE FOR R-2)

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1
RULE 10(2) R/W SECTION 151 OF THE CPC., 1906 R/W RULES 6
AND 9 OF THE COMPANY COURT RULES PRAYING TO ALLOW
THE PRESENT APPLICATION TO IMPEAD THE APPLICANT AND
PERMITTING THE APPLICANT TO JOIN THE PRESENT
PROCEEDINGS AND ETC.

IN C.A. No. 126/2020

BETWEEN:

TIDE WATER OIL CO., (INDIA) LTD.,
8 DR. RAJENDRA PRASAD SARANI
KOLKATA - 700 001.

ALSO AT:

YESHWANTHPUR INDUSTRIAL AREA, PAHSE - I
YESHWANTHPUR, BENGALURU
KARNATAKA - 560 022.

...APPLICANT

(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL)

AND:

THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN" NO.26-27
12TH FLOOR, RAHEJA TOWERS M.G. ROAD,
BENGALURU-560 001

...RESPONDENT

AND

IDEAL JAWA EMPLOYEE'S ASSOCIATION
IMPEADING ASSOCIATION REGISTRATION NO
TUA/MYS/801/66
NO. 1867/, SAYYAJI RAO ROAD, MYSURU
REPRESENTED BY ITS PRESIDENT
P. KUNHI KANNAN

...IMPLEADING APPLICANT

BY SRI. K.S. MAHADEVAN., ADVOCATE FOR O.L (R-1)
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L (R-1)
SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. SANJAY NAIR, ADVOCATE FOR R-2)

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1 RULE 10(2) R/W SECTION 151 OF THE CPC., 1906 R/W RULES 6 AND 9 OF THE COMPANY COURT RULES GRANT AN ORDER RESTRAINING MR BOMAN IRANI OR ANYONE ACTING THROUGH HIM FROM USING YEZDL, YEACI LOGO, YEZDI CLASSIC, YEZDI ROADKING, YEZDI DELUXE, YEZDI CL II, YEZDI 175, YEZDI COLT, YEZDI MONARCH, THE FOREVER BIKE THE FOREVER VALUE, OR ANY OTHER MARKS THAT ORIGINALLY BELONG TO IDEAL JAWA INDIA LIMITED OR ANY DECEPTIVELY SIMILAR MARKS IN RELATION TO ANY GOODS OR SERVICES, OR ENTERING INTO ANY AGREEMENTS TRANSFERRING OWNERSHIP OR CREATING ANY THIRD PARTY RIGHTS OF ANY SORT IN THE ABOVE TRADEMARKS BASED ON THE REGISTRATION THAT HE HAS OBTAINED, OR USE THE WEBSITE WWW.YEZDI.COM THAT HE HAS CLANDESTINELY REGISTERED AND SUCH OTHER DOMAIN NAMES CONTAINING THE WORD YEZDI AND ETC.

IN C.A. No. 127/2020

BETWEEN:

TIDE WATER OIL CO., (INDIA) LTD.,
8 DR. RAJENDRA PRASAD SARANI
KOLKATA - 700 001.

ALSO AT:

YESHWANTHPUR INDUSTRIAL AREA, PAHSE - I
YESHWANTHPUR, BENGALURU
KARNATAKA - 560 022.

...APPLICANT

(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL)

AND:

THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN" NO.26-27
12TH FLOOR, RAHEJA TOWERS M.G. ROAD,
BENGALURU-560 001

...RESPONDENT

AND

IDEAL JAWA EMPLOYEE'S ASSOCIATION
IMPEADING ASSOCIATION REGISTRATION NO
TUA/MYS/801/66 NO. 1867/, SAYYAJI RAO ROAD, MYSURU
REPRESENTED BY ITS PRESIDENT
P. KUNHI KANNAN

...IMPLEADING APPLICANT

BY SRI. K.S. MAHADEVAN., ADVOCATE FOR O.L
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L)

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1 RULE 10(2) R/W SECTION 151 OF THE CPC., 1906 R/W RULES 6 AND 9 OF THE COMPANY COURT RULES DIRECT THE OFFICIAL LIQUIDATOR TO TAKE APPROPRIATE LEGAL STEPS INCLUDING FILING REVOCATION APPLICATION BEFORE THE TRADEMARK REGISTRY AGAINST THIRD PARTY WHOSOEVER CLAIMING OWNERSHIP OF THE MARKS YEZDI AND ASSOCIATED MARKS; AND TO FILE FRESH TRADEMARK APPLICATIONS FOR REGISTRATION/ RENEWAL OF MARKS YEZDI AND ASSOCIATED MARKS AND SAFEGUARD OTHER INTANGIBLE ASSETS OF IDEAL JAWA INDIA LIMITED (IN LIQUIDATION) AND GET ITS OWNERSHIP RECORDED; AND TO SANCTION SALE OF INTANGIBLE ASSETS OF IDEAL JAWA INDIA LIMITED (IN LIQUIDATION) AND ETC.

IN C.A. No. 128/2020

BETWEEN:

TIDE WATER OIL CO., (INDIA) LTD.,
8 DR. RAJENDRA PRASAD SARANI
KOLKATA - 700 001.

ALSO AT:

YESHWANTHPUR INDUSTRIAL AREA, PAHSE - I
YESHWANTHPUR, BENGALURU
KARNATAKA - 560 022.

...APPLICANT

(BY SRI. DHYAN CHINNAPPA., SENIOR COUNSEL)

AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN" NO.26-27
12TH FLOOR, RAHEJA TOWERS M.G. ROAD,
BENGALURU-560 001
2. BOMAN IRANI
702 NATRAJ, M.V. ROAD JUNCTION
ANDHERI EAST, MUMBAI - 400 069.

...RESPONDENTS

AND

IDEAL JAWA EMPLOYEE'S ASSOCIATION
IMPEADING ASSOCIATION REGISTRATION NO
TUA/MYS/801/66

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

...IMPLEADING APPLICANT

(BY SRI. K.S. MAHADEVAN., ADVOCATE FOR O.L (R-1)
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L (R-1)
SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
SRI. SANJAY NAIR, ADVOCATE FOR R-2)

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1
RULE 10(2) R/W SECTION 151 OF THE CPC., 1906 R/W RULES 6
AND 9 OF THE COMPANY COURT RULES PRAYING TO ISSUE AN
ORDER DIRECTING THE REGISTRAR OF TRADEMARKS TO
REVOKE THE REGISTRATION GRANTED TO THE TRADEMARKS
CONTAINING YEZDI IN FAVOUR MR. BOMAN 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 AND ETC.

IN C.A. No. 304/2021

BETWEEN:

THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN" NO.26-27
12TH FLOOR, RAHEJA TOWERS M.G. ROAD,
BENGALURU-560 001

...APPLICANT

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

AND:

CLASSIC LEGENDS PRIVATE LIMITED
MAHINDRA TOWERS, P.K. KURNE CHOWK
WORLI, MUMBAI
MAHARASHTRA – 400 018.

...RESPONDENT

(BY SRI. K.S. MAHADEVAN., ADVOCATE FOR O.L
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L)

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1
RULE 10 R/W SECTION 151 OF THE CPC., 1908 R/W RULES 6

AND 9 OF THE COMPANY COURT RULES; 1959 PRAYING TO ALLOW THE PRESENT APPLICATION PERMITTING THE APPLICANT TO JOIN THE PROCEEDINGS AND IMPLEAD THE APPLICANT CLASSIC LEGENDS PVT.LTD., IN THE O.L.R. NO. 343 OF 2015 IN COP 76 OF 1991 AND ETC.

IN C.A. No. 308/2021

BETWEEN:

CLASSIC LEGENDS PRIVATE LIMITED
MAHINDRA TOWERS, P.K. KURNE CHOWK
WORLI, MUMBAI
MAHARASHTRA – 400 018.
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. ASHISH JOSHI.

...APPLICANT

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

AND:

THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN" NO.26-27
12TH FLOOR, RAHEJA TOWERS M.G. ROAD,
BENGALURU-560 001

...RESPONDENT

(BY SRI. K.S. MAHADEVAN., ADVOCATE FOR O.L
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L)

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1
RULE 10 R/W SECTION 151 OF THE CPC., 1908 R/W RULES 6
AND 9 OF THE COMPANY COURT RULES; 1959 PRAYING TO
ALLOW THE PRESENT APPLICATION PERMITTING THE
APPLICANT TO JOIN THE PROCEEDINGS AND IMPLEAD THE
APPLICANT CLASSIC LEGENDS PVT.LTD., IN THE C.A. NO.
71/2018 IN COP 76 OF 1991 AND ETC.

IN C.A. No. 309/2021

BETWEEN:

CLASSIC LEGENDS PRIVATE LIMITED
MAHINDRA TOWERS, P.K. KURNE CHOWK

WORLI, MUMBAI
MAHARASHTRA – 400 018.
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. ASHISH JOSHI.

...APPLICANT

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

AND:

1. IDEAL JAWA EMPLOYEES ASSOCIATION
EMPLOYEE ASSOCIATION REGISTRATION
NO. TUA/MYS-801/66
NO. 1867, SAYYAJI RAO ROAD
MYSURU
REPRESENTED BY ITS PRESIDENT
MR. P. KUNHI KANNAN
2. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN" NO.26-27
12TH FLOOR, RAHEJA TOWERS M.G. ROAD,
BENGALURU-560 001

...RESPONDENTS

(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR R-1
SRI.K.S. MAHADEVAN., ADVOCATE FOR O.L(R-2)
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L(R-2))

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1
RULE 10 R/W SECTION 151 OF THE CPC., 1908 R/W RULES 6
AND 9 OF THE COMPANY COURT RULES; 1959 PRAYING TO
ALLOW THE PRESENT APPLICATION PERMITTING THE
APPLICANT TO JOIN THE PROCEEDINGS AND IMPLEAD THE
APPLICANT CLASSIC LEGENDS PVT.LTD., IN THE C.A. NO.
125/2020 IN COP 76 OF 1991 AND ETC.

IN C.A. No. 310/2021

BETWEEN:

CLASSIC LEGENDS PRIVATE LIMITED
MAHINDRA TOWERS, P.K. KURNE CHOWK
WORLI, MUMBAI, MAHARASHTRA – 400 018.
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. ASHISH JOSHI.

...APPLICANT

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

AND:

1. IDEAL JAWA EMPLOYEES ASSOCIATION
EMPLOYEE ASSOCIATION REGISTRATION
NO. TUA/MYS-801/66
NO. 1867, SAYYAJI RAO ROAD
MYSURU
REPRESENTED BY ITS PRESIDENT
MR. P. KUNHI KANNAN

2. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
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SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L(R-2))

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1
RULE 10 R/W SECTION 151 OF THE CPC., 1908 R/W RULES 6
AND 9 OF THE COMPANY COURT RULES; 1959 PRAYING TO
ALLOW THE PRESENT APPLICATION PERMITTING THE
APPLICANT TO JOIN THE PROCEEDINGS AND IMPLEAD THE
APPLICANT CLASSIC LEGENDS PVT.LTD., IN THE C.A. NO.
126/2020 IN COP 76 OF 1991 AND ETC.

IN C.A. No. 311/2021

BETWEEN:

CLASSIC LEGENDS PRIVATE LIMITED
MAHINDRA TOWERS, P.K. KURNE CHOWK
WORLI, MUMBAI
MAHARASHTRA – 400 018.
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. ASHISH JOSHI.

...APPLICANT

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

AND:

1. IDEAL JAWA EMPLOYEES ASSOCIATION
EMPLOYEE ASSOCIATION REGISTRATION
NO. TUA/MYS-801/66 NO. 1867, SAYYAJI RAO ROAD
MYSURU
REPRESENTED BY ITS PRESIDENT
MR. P. KUNHI KANNAN

2. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN" NO.26-27
12TH FLOOR, RAHEJA TOWERS M.G. ROAD,
BENGALURU-560 001

...RESPONDENTS

(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR R-1
SRI.K.S. MAHADEVAN., ADVOCATE FOR O.L.(R-2)
SRI. ADITYA SONDHI, SENIOR COUNSEL
(SPECIAL COUNSEL FOR O.L.(R-2))

THIS COMPANY APPLICATION IS FILED UNDER ORDER 1
RULE 10 R/W SECTION 151 OF THE CPC., 1908 R/W RULES 6
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ALLOW THE PRESENT APPLICATION PERMITTING THE
APPLICANT TO JOIN THE PROCEEDINGS AND IMPLEAD THE
APPLICANT CLASSIC LEGENDS PVT.LTD., IN THE C.A. NO.
127/2020 IN COP 76 OF 1991 AND ETC.

IN C.A. No. 312/2021

BETWEEN:

CLASSIC LEGENDS PRIVATE LIMITED
MAHINDRA TOWERS, P.K. KURNE CHOWK
WORLI, MUMBAI
MAHARASHTRA – 400 018.
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. ASHISH JOSHI.

...APPLICANT

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

AND:

1. IDEAL JAWA EMPLOYEES ASSOCIATION
EMPLOYEE ASSOCIATION REGISTRATION
NO. TUA/MYS-801/66
NO. 1867, SAYYAJI RAO ROAD
MYSURU
REPRESENTED BY ITS PRESIDENT
MR. P. KUNHI KANNAN

2. THE OFFICIAL LIQUIDATOR OF
M/S IDEAL JAWA INDIA LIMITED (IN LIQUIDATION)
ATTACHED TO THE HON'BLE
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...RESPONDENTS
(BY SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR R-1
SRI.K.S. MAHADEVAN., ADVOCATE FOR O.L(R-2)
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APPLICANT TO JOIN THE PROCEEDINGS AND IMPLEAD THE
APPLICANT CLASSIC LEGENDS PVT.LTD., IN THE C.A. NO.
128/2020 IN COP 76 OF 1991 AND ETC.

THESE APPLICATIONS ARE BEING HEARD AND
RESERVED ON 13.12.2022 COMING ON FOR PRONOUNCEMENT
OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Since common questions of law and fact arise for consideration in the following OLRs and Company Applications between the same parties, they are disposed of by this common order:-

1. OLR No.343/2015
2. C.A. No.71/2018
3. C.A.No.125/2020
4. C.A.No. 126/2020
5. C.A.No. 127/2020
6. C.A.No.128/2020
7. C.A.No. 304/2021
8. C.A.Nos 308-312/2021

2. OLR 343/2015 is filed by the Official Liquidator seeking sanction of the Court for sale of the brands, trademarks, logos, product designs knowhow 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 trademark, apply for registration afresh of all these marks and to use these marks as domain names and use in various internet and

social media sites and for approval to the draft sale notices etc..

3. C.A.No.71/2018 is an application filed by the Official Liquidator to declare trademark registration certificate issued by the Registrar of trademarks, Mumbai, Delhi and Ahmedabad in favour of Mr. Boman Irani as null and void and set aside the same.

4. C.A.No.125/2020 is filed by the Ideal Jawa Employees Association ("Association") seeking impleadment in the proceedings.

5. C.A.No.126/2020 is an application filed by the Association to restrain Mr.Boman Irani or anyone acting through him from using such marks that originally belong to Ideal Jawa India Ltd., or to use the website www.yezdi.com that he has clandestinely registered and such other domain names containing the name 'Yezdi'.

6. C.A.No.127/2020 is an application filed by the Association to direct the Official Liquidator to take appropriate legal steps including filing revocation application before the TM Registry against third party

whosever claiming ownership of the mark 'Yezerdi' and associated marks and to file fresh TM applications for registration of marks 'Yezerdi' and associated marks and safeguard other intangible assets of Ideal Jawa India Ltd., (in liquidation) and gets its ownership recorded.

7. C.A.No. 128/2020 is an application filed by the Association to direct the Registrar of Trademarks to revoke the registration granted to the Trademark containing 'Yezerdi' in favour of Mr.Boman Irani or any other third party and restrain from granting any further registration for any mark containing the word 'Yezerdi' in favour of any third party.

8. C.A.Nos. 304/2021 and C.A.Nos.308-312/2021 is filed by Classic Legends seeking impleadment in the proceedings.

9. Mr. Boman Irani filed an application being C.A.No. 586/2016 to implead himself as a party, which was allowed by this Court on 22.11.2017.

10. In fact, OLR No. 343/2015, C.A.No.71/2018 and the applications filed by the Association, Mr.Boman Irani

and M/s Classic Legends were taken up and heard together. Under these circumstances, I am of the view that both the Association as well as Classic Legends are proper and necessary parties to the proceedings and accordingly, C.A.No.125/2020 as well as C.A.No.304/2021 and C.A.Nos.308-312/2021 are hereby allowed and disposed of permitting them to be impleaded as additional parties to the proceedings. The cause titles to the respective applications and OLRs are directed to be amended accordingly.

11. For the purpose of convenience, the company Ideal Jawa (India) Ltd., is referred to as "Company"; Mr. Boman Irani as "Mr.Irani", M/s. Classic Legends Pvt Ltd., as "Classic Legends" and the Ideal Jawa Employees Association as "Association" and the Official Liquidator is referred to as "Official Liquidator" or "OL".

12. The admitted facts relevant to the present applications are thus:-

- (i) The Company was incorporated on 22.09.1960.

(ii) On 09.10.1969, registration of the mark 'Yezdi' in Class 12 bearing No. 283322 was granted in favour of the Company. Use was claimed since 01.01.1969.

(iii) On 25.07.1991, a company petition bearing No. 76/1991 was filed for winding up of the Company.

(iv) On 01.08.1998 a website called www.yezdi.com was registered by Mr. Irani.

(v) The Company was wound up on 17.08.2001 and the Official Liquidator was appointed to take over the Company and oversee the winding up process.

(vi) The Trademark Registry removed the Yezdi mark in Class 12 bearing No. 283322 on 05.10.2007.

(vii) On 17.06.2013, 14.09.2013, 01.01.2014 and 02.07.2014 Mr. Irani filed applications for registration of certain marks both word and device of "Yezdi" before the TM Offices at Delhi, Mumbai and Ahmedabad.

(viii) Classic Legends was incorporated on 17.06.2015. It also appears that it was incorporated by Mr. Boman Irani and Mahindra and Mahindra.

(ix) In the meanwhile, the OL addressed a letter dated 28.08.2015 to the Registrar of Trademarks not to

register any mark containing "Yezdi". The Registrar of TM, Chennai responded to the same on 08.09.2015 requesting that a list of applications be provided which was provided by the OL vide letter dated 29.09.2015.

(x) The OL filed OLR 343/2015 on 18.09.2015 for reliefs as referred to *supra*.

(xi) Mr. Boman Irani filed an application being CA No. 586/2016 to implead himself as a party which was allowed by this court on 22.11.2017.

(xii) C.A.No.71/2018 was filed on 16.03.2018 for reliefs as noted above.

(xiii) C.A.No. 125 and C.A.No.126/2020 were filed by the Association for impleadment and various other reliefs.

(xiv) C.A.No.304/2021 and C.A.Nos.308-12/2021 were filed by Classic Legends for impleadment in various pending applications referred to *supra*.

13. It is not in dispute that the Company was in the business of manufacture and sale of motorcycles in the brand name 'Yezdi'. Yezdi was the prominent part of the mark. Yezdi both as a word and device was utilised by the

Company and several variants of the mark were Yezdi Classic, Yezdi Roadking, Yezdi Deluxe, Yezdi CL II, Yezdi 175, Yezdi Colt, Yezdi Monarch etc. The important feature of the marks was the prominent use of 'Yezdi'. It is stated that for some years before the order of winding up was made, the manufacture and sale of motorcycles had come to a stand-still. However, as on the date of winding up, the trademark 'Yezdi' continued only in the name of the Company.

14. The central / core issue in the various applications which are disposed of by this common order is the issue of ownership of the mark and if the Company continues to exercise ownership rights over the mark and if so, can any other person appropriate the said marks to himself by the process of registration of the mark with the trademark registry.

15. Heard Dr.Aditya Sondhi, learned Senior counsel as the Special Counsel appearing for the Official Liquidator and Sri.Dhyan Chinnappa, learned Senior counsel for the Ideal Jawa Employees' Association; Sri.Udaya Holla,

learned Senior counsel for Mr.Boman Irani and Sri.S.S.Naganand and Sri.Srinivas Raghavan, learned Senior counsel for Classic Legends Pvt. Ltd., and Sri. M.B.Naragund, learned ASG for Registrar of Trade Marks.

16. Dr. Aditya Sondhi, learned Senior Advocate appearing for the Official Liquidator made the following submissions:-

- The brand “Yezdi” is *custodia legis* and cannot be appropriated by any third party. He contends that though three marks were registered namely Yezdi (Device), Yezdi D250 and Yezdi with the user of Yezdi (Device) dating to 1.09.1969, the Company also used a number of unregistered marks in the course of its business such as THE FOREVER BIKE, Yezdi Monarch and Yezdi Roadking that enjoy immense good will and brand recognition.
- When this Court *vide* order dated 17.08.2001 ordered winding up, the said marks were on the trademarks register and in the name of Company and therefore on that day, the Court exercised *custodia*

legis in terms of Section 456 of the Companies Act, 1956 and that this Court continues to exercise rights over the said property even as of date.

- It is also contended that goodwill of the business is an asset of the Company and coupled with trademark rights, the same is an important asset of the Company which although intangible is transferable for value.
- That the Company has significant goodwill is apparent from the fact that Mr.Irani and Classic Legends have been advertising the brand invoking the magic and nostalgia of the original Yezdi life style in their re-launch propaganda.
- On the issue of removal of the trademark from the register, it is contended that the removal is without adequate notice and the O3 notice that ought to be issued has in fact not been issued by the Registrar of Trademarks and therefore the removal is illegal and failure to duly notify the OL is a violation of Section 25(3) of the Trade Marks Act. Further it is pointed out that the OL had informed the Registrar of

Trademarks not to proceed further with the removal of marks. The Registrar of Trademarks has filed an affidavit confirming that it would act in terms of the directions of this Court.

- It is submitted that the Statement of Affairs filed by Mr. Irani before this Court or the valuation carried out subsequently by Indian Overseas Bank of the assets of the Company does not refer to this asset at all. If there is any attempt to prevent disclosure of an asset of the Company by the Director in charge at the time of winding up of the Company, then the OL would be justified in taking a stand of not being aware of this asset or the facts in relation to its registration or otherwise, given the intangible nature of the asset apart from the fact that the conduct of Mr. Irani may be blameworthy.
- Learned Senior counsel also made submissions on the issues involving the requirement of notice prior to removal of the marks, the fact that the mere removal of the mark will not result in the right to the mark or the goodwill being obliterated etc.

- It was submitted that the entire conduct of Mr.Irani is blameworthy. Mr.Irani pursued and obtained the registration of the marks pending his impleading application in OLR 343/2015 and without the leave of this Hon'ble Court. Moreover, the said registrations were granted subsequent and inspite of the filing of the affidavit by the Registrar of Trade Marks dated 7.04.2016.
- My attention was also invited to Sections 11(10) and 33(l)(b) of the Trade Marks Act, 1999, which recognizes the principle of bad faith registration. It was submitted that there is bad faith where the applicant intentionally submits wrong or misleading information or where he tries to lay hands on a mark of a third party with whom he had contractual or other relations.
- Mr. Boman Irani, according to the returns available with the Registrar of Companies, was appointed as Director of the Company on 16.04.1990 and continued to be its director on the date of winding up as well. Mr. Boman Irani has claimed user of the

mark in one of the applications since 1.1.1969, the date on which the Company claimed user which determines the fact that the benefit of the mark is being claimed by Mr. Irani to take advantage of the goodwill of the mark.

- It is further contended that the further act of obtaining registrations of the trademark reflects the main intention to take over the trademarks of the company and that the principles of abandonment of a trademark does not apply in a case of winding up especially where the properties of the company are *custodia legis*.
- Learned Senior Counsel also referred to the special circumstances which exists in cases where a company is undergoing winding up and contended that Mr. Irani being a director and aware of all facts and circumstances could never have asserted rights independent of the rights of the company. It was also submitted that as a director of the company on the date of winding up, the fiduciary duty of Mr. Irani continues and cannot cease to exist simply because

the company has now come into the hands of the official liquidator.

- That this Court has ample jurisdiction to protect the assets of the company and to pass such orders as are necessary in order to protect the assets of the company and that this court must declare the rights of the company in liquidation and prevent any other party from asserting any claim with respect to the assets of the company as well as ensuring that the assets of the company receive due value and ensure that the Workman and all the creditors receive their entitlement in winding up.

In support of his contentions, learned Senior counsel for the CL placed reliance upon the following judgments:-

1. ***Sudarshan Chits (I) Ltd. Vs. O. Sukumaran Pillai &Ors.; (1984) 4 SCC 657***
2. ***Syndicate Bank Vs Andhra Pradesh Steels Ltd. (In Liquidation) &Ors.; [2003] 113 CompCas 129 (AP)***
3. ***Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai &Ors.; (1998) 8 SCC 1***
4. ***Harrison Vs Teton Valley Trading Co.; No A3/2003/0009 In England & Wales Court of Appeal (Civil Division)***
5. ***Chee Yoh Chuang &Anr. (As liquidators of Progen Engineering Pvt Ltd (In Liquidation)) Vs Progen***

Holdings Ltd.; Civil Appeal No. 165 of 2009 in Court of Appeal of Singapore

6. **Winkworth Vs Edward Baron Development Co. Ltd. &Ors.; [1987] 1 All ER 114**
7. **Union of India &Ors Vs. Malhotra Book Depot 2013 (54) PTC 165 (del)**
8. **Hardie Trading Ltd & Another Vs Addison Paints & Chemicals Ltd.; (2003) 11 SCC 92**
9. **Beech- Nut Packing Co. Vs P Lorillard Co.; 273 U.S 629**
10. **R.R Oomerbhoy Pvt Ltd., Mumbai Vs Court Receiver, High Court, Bombay &Ors.; 2003(5) Mh. L.J 372**
11. **D. Bhaskaran Vs. Deputy Registrar Of Trade Marks &Anr (2009) 78 PTC 274**
12. **In Re SreeYellama Cotton, woolien & Silk Mills Co. Ltd ; Bank of Maharashtra Ltd.; Poona Vs Official Liquidator; AIR 1969 Mys 280**
13. **International Shipping Ltd Vs. ChanPur Jute Co. Ltd; (1982) 52 Com Cas 121**
14. **Union of India &Anr Vs. India Fisheries Pvt. Ltd.; AIR 1966 SC 35**
15. **Life Insurance Corporation Of India Vs. M/s Asia Udyog (P) ltd. &Ors.; ILR (1982) 1 Del 582**

17. Sri.Dhyan Chinnappa, learned Senior counsel appearing for the Association made the following submissions:-

- That the assets of the company once are found to be *custodia legis*, remains *custodia legis* until the same is disposed of in the process of winding up of the

company and that once an asset is in the custody of the court no person can deal with the asset except with the permission of the Court.

- It is contended that the fact that the company was in possession of all rights over the trademark/s can hardly be disputed by any party nor can it be contended by any person that the assets of the company have been lost prior to winding up having regard to the well settled principles of law relating to the nature of *custodia legis*.
- That the nature of the asset that is in issue is a right in a trademark. The right in a trademark is acquired not by registration but by use. Registration grants certain rights statutorily but the right to use a mark to the exclusion of others is always obtained by the first user of the mark. The conduct of Mr.Irani in obtaining registrations of the trademarks contrary to the rights of the company (in liquidation) is in bad faith.
- That the averments contained in C.A.No. 586/2016 which is the application for impleading filed by Mr.Irani indicates that the stand taken by him is that

the trademarks belongs to his father, who started the Company and that he had granted permissive use of the mark to the Company and that upon the Company being subject to winding up, he became the full owner of the mark and was therefore entitled to file applications seeking registration.

- According to the learned Senior counsel, such a contention is in bad faith apart from being specious and the fact remains that all registrations of the trademarks were in the name of the Company and that the Company used the marks extensively since the year 1969 and earned tremendous reputation and goodwill.
- My attention was invited to the affidavit of Mr. Irani who has specifically admitted that the reputation and goodwill attached, continues till date even though the production of motorcycles cease in order to contend that when there is such clear admission of this goodwill of the mark, to claim that it can cease to be a property in *custodia legis* is incorrect.

- Learned Senior Counsel also submitted that Section 536(2) uses the word “transfer” when it comes to shares and the word “alteration” when it comes to “status of members” making it clear that the objective is to use a widest term – “disposition” when it comes to property of the company as that is the only asset capable of sale to satisfy the claims of workmen and creditors. Disposition is dealing with property in any manner and when it is real property, the disposition has to be some form of actual hand over. However, when property is intangible, there is no real hand over which is possible and the only way in which property of the company can be utilized is by conversion or appropriation. It is therefore contended that this is the method which Mr.Irani has used namely to convert to his own use and benefit the mark which the Company has held since 1969.
- It was further contended that in trademark law, a right in a mark can be obtained by use and not simply by registration and that there is no use by Mr.Irani who also in one of his applications claims use from 1969,

the date on which the Company claimed use. According to the learned Senior Counsel, this is evidence of appropriation of the goodwill associated with the mark and complete admission that the Company's goodwill is now being utilised by Mr. Irani. The various documents filed by the Association which shows that all references in the website of Mr. Irani – www.yezdi.com is to the motorcycles manufactured by the Company. Therefore, Mr. Irani is not doing anything other than actually utilizing the goodwill of the Company for his own personal benefit.

- Learned Senior counsel then referred to the Memo filed by the Official Liquidator on 19.08.2021 that Mr. Irani “*has not informed the Registrar of Trade Marks, Mumbai, New Delhi and Ahmedabad about the liquidation and obtained registration of Trade Mark 'YEZDI' in his name without informing the Registrar about the liquidation case in the Hon'ble High Court of Karnataka*” and submitted that the bad faith on the part of Mr. Irani is apparent from this fact as well.

- Learned Senior Counsel also argued that the transaction with Classic Legends was entered into only after OLR 343/2015 was filed and was done in the year 2019 as admitted in the application filed by Classic Legends and Mr. Irani was aware that the Court was considering the rights of the Company. Mr. Irani impleaded himself and thereafter entered into some form of a license agreement with Classic Legends, which document has not been disclosed to this Court to date and that the refusal to bring on record the exact nature of the transaction with Classic Legends was also in bad faith.
- Learned Senior Counsel points out is that although the impleading application of Classic Legends proceeds as if it is an independent third party, the fact remains that it has been formed by Mr. Irani and Mahindra and Mahindra – a fact which has not been disclosed in the application for impleadment. Mr. Irani admittedly is a shareholder and Director of Classic Legends, which is further evidence of bad

faith on the part of the parties namely Mr.Irani and M/s.Classic Legends.

- Learned Senior Counsel also pointed out that Mr. Irani has a fiduciary duty to the Company and to ensure that the assets of the Company are utilised towards the payment of all liabilities and that the act of converting the property of the Company to his own use is nothing but misappropriation and that a huge amount of money is outstanding to the workmen and no steps are taken to alleviate their grievances.
- Learned Senior Counsel also submitted that there cannot be any abandonment of the mark as is claimed by Mr. Irani. Mere non-use is insufficient for abandonment and all factors should be taken into account. Upon winding up, the Court took seisin over all properties tangible and intangible and the Trademark and reputation and goodwill associated with it being one of them. The Court having control over the said property, the question of someone converting the same to himself can never arise.

- It was submitted that when the Court has the custody of the property, the rights that the Court through the OL exercises is sacrosanct and the reason the Court takes over the properties of the Company is to ensure its proper utilization to pay off workmen's dues, creditors and crown debts. The whole process of winding up is to ensure that just dues are duly paid from out of the assets. This is the reason Section 536(2) makes void any disposition of property and all properties are taken into custody of the Court which is to prevent any other person from interfering with the property which is *custodia legis*.

In support of his contentions, learned Senior placed reliance upon the following judgments:-

1. ***VGP Finances Limited Vs. The Official Liquidator reported in MANU/TN/4316/2017***
2. ***Sunita Vs. Official Liquidator &Ors - 2013 (2) Mh. L.J 777***
3. ***The Official Liquidator Vs. Modistone Ltd. Reported in 2017 SCC Online Bom 665***
4. ***JK Bombay Vs. New Kaiser reported in AIR 1970 SC 1041***
5. ***Board of Industrial and Financial Reconstruction Vs. Hindustan Transmission reported in MANU/MH/1453/2012***
6. ***RE; Gol Off shore Ltd &Ors reported in MANU/MH/0247/2020***

7. ***Arun Kumar Jagatramka Vs. Jindal Steel And Power Ltd. &Anr. reported in (2021) 7 SCC 474***
8. ***Meghal Homes Pvt. Ltd Vs Shree Niwas Girni K.K. Samiti &Ors. reported in Appeal (Civil) 3179-3181 of 2005***
9. ***Molina Ghosh Vs. State of West Bengal &Ors reported in MANU/WB/0666/1988***
10. ***Bank of India Vs. Vijay Transport &Ors. reported in MANU/SC/0636/2000***
11. ***Dale & Carrington Invt (P) Ltd &Anr Vs. P.K. Prathapan&Ors (2005) 1 SCC 212***

18. Sri. Udaya Holla, learned Senior Counsel representing Mr.Irani made the following submissions:-

- That Mr. Irani is the owner of the mark today and that by registration, Mr.Irani has unimpeachable rights over the mark and it was only because of Mr. Irani that the mark has been duly protected. Mr. Irani had initiated proceedings in CS (OS) No. 3476/2014 against one Mr. Amit Ranjan Soni before the Delhi High Court and protected the rights in the mark "Yezdi" and that subsequently the entire suit was settled whereby Mr. Soni assigned his rights in the mark "Yezdi" to Mr. Irani. He contended that the trademark is not the property of the Company and that the mark cannot therefore be sold by the

Company. It was claimed as has been stated in the application filed by Mr. Irani for impleadment that the mark "Yezdi" belongs to the family and accordingly, only Mr. Irani can have a right over the mark.

- It was also contended that no person after the date of winding up made a claim over this asset which shows that it was never considered an asset of the Company. Even the valuation report provided by the registered valuer did not deal with this as an asset of the Company. In addition, all other assets of the Company have been sold in auction and therefore, there are no other assets.
- That it was because of Mr. Irani that the rights in the mark "Yezdi" have been duly protected and preserved and without such proactive steps, the rights would have been long lost.
- That upon non-renewal of registration, the registered owner loses his ownership rights over the mark and it is open to any person to make a claim over the said mark. It was contended that if there are two registered proprietors of a mark, then there cannot be

a claim of infringement of one against the other and there can only be a claim for passing off.

- It was contended that this Court cannot grant the reliefs that are sought for as that would mean that the Court is rectifying the register of marks and that the process that should be adopted is completely different. He submitted that applying the principle of *Generalia Specialibus Non Derogant*, the Special Law will prevail over the general law and in this case the Trademarks Act being the special law will prevail over the general law namely the Companies Act and therefore the Company Court cannot adjudicate this issue.
- It was also submitted that the prior registrant of a mark, if he does acquiesce in the use of the mark by any third party cannot later complain on the use of the mark subsequently and that the OL being aware of the registration proceedings allowed the registration to proceed and is not complaining about the same before the Company Court. Further the OL did not take any steps to obtain renewal of

registration, there is an inordinate delay in taking steps by the OL; that Section 45 of the Trademarks Act, 1999, specifies that if there is no use of a trademark for period of 5 years, the mark can be taken off the register and in this case the delay is over 20 years. A right in a trademark cannot exist in vacuum and the non- use has made the mark a dead mark so far as the Company in concerned. Elaborating his submissions on the issue of abandonment of the mark, it was submitted that no goods of the company have been sold for over two decades which is nothing but abandonment.

- Learned Senior Counsel invited my attention to the special circumstances in Section 47(3) of the Trademarks Act and submitted that the same must relate to the trade and restrictions imposed on the mark and that winding up does not and cannot be considered as special circumstances. Upon abandonment, the mark reverts to public domain and any person interested can seize the mark and built its rights. It is therefore contended that Mr. Irani has

superior rights over the Company and that the registration obtained by Mr. Irani is superior and no injunction can be granted against the registered proprietor of the mark.

- Learned Senior Counsel further submitted that the fiduciary duty of a director stands extinguished immediately after winding up order is made and that he is discharged of any obligation to the Company. Being an ex-director, Mr. Irani has filed a statement of affairs and that the statement does not contain any mention of trademarks as all the assets of the Company has already been sold.
- That the Association has no locus standi to raise the various issues and that the rights of the OL stands extinguished by limitation.

In support of his contentions, learned Senior counsel has placed reliance upon the following judgments:-

1. ***P.K.Ramachandran Vs. State of Kerala, (1997) 7 SCC 556***
2. ***Union of India Vs. Karnataka Electricity Board, 1984 SCC Online Kar 5***
3. ***Bhag Mal Vs. Munshi, (2007) 11 SCC 28***
4. ***Lala Hem Chand Vs. Lala Pearey Lal &Ors***

19. Sri.S.S.Naganand and Sri.Srinivasa Raghavan, learned Senior counsel appearing for Classic Legends have made the following submissions:-

- That the trademarks are not the assets of the Company at all, since the Company was permitted to use the marks by Mr. Irani's father namely Mr. Rustom Irani and therefore by succession the rights in the mark devolved on Mr. Irani. That the Company ceased operations in the year 1996 and was ordered to be wound up in 2001 and therefore the brand "Yezdi" is not the mark of the Company at all.
- Alternatively, the marks have been abandoned by the Company owing to the failure on the part of the OL and the Company itself. Since registrations have lapsed there is no subsisting asset in the company. Non-use by the Company results in the company losing both statutory and common law rights.
- The abandoned marks revert to the general public and any person can utilize the said marks. Since Mr. Irani has registered the marks, the rights vest in Mr. Irani and no other person can make any claim with

respect to the said marks. There is acquiescence by the OL and the Company to the use of the marks by Mr. Irani and therefore, principles of estoppel would apply and also Mr. Irani being a registered proprietor, he cannot be restrained from using the mark.

- Validity of registration and matters related thereto cannot be decided under the Companies Act and therefore the Court lacks jurisdiction to go into such questions. It is only the authorities under the Trademarks Act which have exclusive jurisdiction to determine these questions and it is for the OL to make appropriate applications before the relevant authorities in this regard. The argument of Trademarks Act being a special statute was reiterated at great length by both the learned Senior Counsel.

- That the Association has no *locus standi* to make applications and also that any order against Classic Legends will result in grave harm to the brand itself.

In support of their contentions, learned Senior counsel have placed reliance upon the following judgments:

1. **Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others (2014) 2 SCC 269**
2. **Shahdara (Delhi) Saharanpur Light Railway Co. I.td. Vs. Income Tax Officer 1988 63 Comp Cas 627**
3. **State of Kerala Vs. Official Liquidator (1897) 1 KLT 801**
4. **DR. S.P. Bhargava Vs. Haryana Electric Steel Co. Ltd., 1994 SCC Online P&H 395**
5. **Bacchaj Nahar vs. Nilima Mandal &Anr (2008) 17 SCC 491**
6. **West Bengal Electricity Vs. CESC Ltd (2002) 8 SCC 715**
7. **S.V. Kandeakar Vs. V.M. Deshpande, (1972) 1 SCC 438**
8. **Allahabad Bank Vs. Canara Bank, (2000) 4 SCC 406**
9. **Ultra (UK) Ltd Vs. Gary Fielding ,Northstar Systems Limited And Seaquest Systems Limited And Ors.**

AND

Northstar Systems Limited (In liquidation) And Seaquest Systems limited (In Liquidation) Vs. Gary John Fielding ,Bcp Plastics Limited And Burnden Group Plc And Ors;

AND

Northstar Systems Limited (In Liquidation) And Seaquest Systems Limited (In Liquidation) And Ors. Vs. Gary Fielding , Sally Anne Fielding And the Burnden Group Plc (The New Ip Action) And Ors.; [2005] EWHC 1638 (Ch)

10. **Commissioner Of Income Tax, W.B. III Vs. M/s ChunilalPrabhudas & Co, 1969 SCC Online Cal 85**
11. **Siar Industrial Company Limited Vs. Yap KweeKor (Trading As New Star Industrial Company), 1976 FSPLR 256**
12. **Norman Kark Publications Ltd. Vs. Odhams Press Ltd.; [1962] 1 W.L.R. 380**
13. **Uncas Manufacturing Company Vs. Clark & Coombs Company, 200 F.Supp 831**
14. **Sutton Cosmetics (P.R) Inc. et.al. Vs. Lander Co., Inc.; et. al. 1971 WL 17176**
15. **State Of Punjab Vs. Gurdev Singh (1991) 4 SCC 1**

16. ***Pune Municipal Corporation Vs State Of Maharashtra &Ors, (2007) 5 SCC 211***
17. ***Scooters India Ltd. Vs. Java Hind Industries Ltd., 33 (1987) DLT 298***
18. ***National Food Products Nagpur Vs. Madras Food Products, 1991 SCC Online Bom 411***
19. ***Corn Products Refining Co Vs. Shangrila Food Products Ltd (1960) 1 SCR 968***
20. ***Imperial Group Ltd. Vs. Philip Morris & Co. Ltd, [(1982) FSR 72]***
21. ***EV Motors India Private. Limited Vs. Anurag Agarwal, 2017 SCC Online Del 12373.***
22. ***Indian Oil People's Cooperative Group Housing Ltd. Vs. Official Liquidator in Charge of Ahmedabad Manufacturing (19.07.20212 – GUJHC); MANU/G/J/0626/2012***
23. ***Telefonaktiebolaget LM Ericsson (PUBL) Vs. Competition Commission Of India And Ors., 2016 SCC Online Del 1951***
24. ***India Oil People's Cooperative Group Housing Ltd. Vs. Official Liquidator in Charge of Ahmedabad Manufacturing (Gujarat High court)***
25. ***Shiv Kumar Sharma Vs. Santosh Kumari (2007) 8 SCC 600***
26. ***Bachhaj Nahar Vs. Nilima Mandal &Anr (2008) 17 SCC 491***

20. I have given my careful consideration to the rival contentions of the parties and perused the material on record.

21. The various issues that arise for consideration in the present proceedings are dealt with as under:-

Ownership of the Mark:

(i) The undisputed facts indicate without any doubt that the first time that Mr. Irani made an attempt to obtain registration of the mark "Yezdi" was on 17.06.2013. This attempt was made after the order of winding up was passed on 17.08.2001. However, Mr. Irani started a website shortly before the winding up of the Company on 01.08.1998; however all that the website did was to refer to the various bikes which were part of the Company and in some ways appear to be to preserve the goodwill of the Company.

(ii) As on the date of winding up order, there was no other person who had made a claim to the trademark. All registrations for the marks "Yezdi" also stood in the name of the Company. Mr. Irani did not have any claim in and over the said mark as of that date. The argument advanced by Mr. Irani that his family had moved from Iran and that his father had named the company "Yezdi" for that reason, even if accepted to be correct, does not by itself result in the rights of the Company being defeated. The Company used the mark "Yezdi" undisputedly since

01.09.1969 and also obtained registration in Class 12 as of 05.10.1969 and two other registrations thereafter. This registration continued until the Trade Mark Registry removed the mark "Yezdi" on 05.10.2007 and 07.04.2008. One registration continues on the Register even as on that date.

(iii) The claim of Mr. Irani is based on the statements made by him in the impleading application. He claims that his father adopted the trademark and after his demise, the same devolved on his legal heir namely Mr. Irani. It is also claimed that Mr. Rustom Irani allowed the Company to use the mark as it was family controlled. It is also stated at paragraph -10 of his affidavit that though the manufacturing stopped, the goodwill and reputation which the brand created for itself has continued to vest in him. In other words, the entire case of Mr. Irani rests on the basis that the use of the word "Yezdi" was permitted by his father Mr. Rustom Irani and that the reputation and goodwill of the mark continues even as of date.

(iv) It is significant to note that other than this statement which he has made in an affidavit, there is no

material on the basis of which, it can be established that the use by the Company of the mark "Yezdi" was simply permissive and was revokable at any point in time by Mr. Rustom Irani or Mr. Irani. The fact that it has never been revoked is also evident by the absence of any such statement made by him. The entire stand of Mr. Irani stands also falsified by the fact that the application for registration of the mark was made by the Company and registration was granted from 05.10.1969 with user from 01.09.1969. This is further evident from the fact that the Register of Trademarks continues registration (at least with respect to one mark) in the name of the Company even as of date. This is not a case where registration was granted in favour of Mr. Rustom Irani and he in turn granted registered user rights or granted a license to the Company to use the mark. When Mr. Rustom Irani never did claim any individual rights in and over the trademark for Mr. Irani to make a claim that upon winding up, he has acquired rights over the same cannot be countenanced. A similar stand taken by Classic Legends seeking to justify the claim of Mr. Irani on the basis of succession has to also be rejected.

(v) It is relevant to notice that Mr. Irani had started a website called www.yezdi.com in the year 1998. Mr. Irani seems to claim that because he started this website, it recognises his right in the mark. However, a mere examination of the website clearly depicts the contrary. The entire website as printed has been made available in the Memo dated 21.12.2021 filed by the Association. The website contains all the details of the various bikes of the Company since its inception. There is no mention that any of the bikes are in fact manufactured or offered for sale by Mr. Irani. The entire history of the bike is sketched in the website. The contention of Mr. Irani if accepted will result in a scenario, where every person who has set up WebPages or pages on social media sites would make a claim that Yezdi belongs to such person. The Association has also produced in the same Memo the several fan pages on social networking sites to show the popularity of the mark "Yezdi" and the interest of various persons in the said mark. The popularity of the brand can hardly be rejected. That the goodwill established by the mark continues to date is very clear from the various fan pages

available online. That people have continued to maintain the bikes and ride it even now shows that the goodwill continues even as of date. While, I, unhesitatingly reject the contention that the mark "Yezdi" has been acquired by Mr. Irani by succeeding to such rights from his father, I entirely agree with Mr. Irani's stand in his affidavit that the brand name, reputation and goodwill continues even as of date. To extract the words of Mr. Irani:

"18. Despite the fact that the Company ... went under liquidation, the Yezdi brand continues to enjoy extensive reputation and goodwill which subsists till today. This reputation is the result of the long period of business that the applicant, the predecessor and the family controlled companies and other partnership firms of Mr. Rustom S. Irani have been engaged in over a long period of time whereby they have sold motorcycles and spare parts thereof manufactured and marketed between the period 1969 to 1996 by Ideal Jawa (I) Ltd; being one among the many and even after 1996 in respect of other products. The reputation and goodwill attached continues till date even though the production of motorcycles ceased due to extraneous circumstances enumerated above but the legacy continues even today and such goodwill vests with the Applicant and the Applicant alone as the legal

heir of Mr. Rustom S. Irani, who was the creator of the brand YEZDI.” (Emphasis supplied)

(vi) There is no evidence of exercise of any right by Mr. Rustom Irani till the date of his demise. It is apparent that a company has no legs or hands of its own. It can only act through a human agency. The human agency acts for and on behalf of a company. It is only a human being which can think of a name and then allow the Company to use it for a Company being an artificial person cannot do it itself. If Mr. Rustom Irani decided to name the Company as “Ideal Jawa” and determined that the bikes manufactured by the Company would be called “Yezdi” and as a shareholder, promoter and director ensured that the Company registered the trademarks in its name and the Company exercised all rights in and over the mark; when the company is wound up, the same Mr. Rustom Irani cannot make a claim in and over the said mark. The mark indubitably belongs to the Company and continues with the company even after winding up. If Mr. Rustom Irani cannot (rather could not) make a claim over the mark, for Mr. Irani

to make a claim on the basis that he is a heir of Mr. Rustom Irani is impossible to accept.

(vii) A related contention that has been raised is that the mark was not found in the valuation report though all other assets are found in the report deserves to be rejected at the outset. The valuer does not determine the assets of the Company. The valuer simply provides a valuation report. If the valuers report is to be the basis of determining the assets of the company, there would be little that the Company Court would have to do. The responsibility to determine the assets of the Company is that of the OL and of the Court. If a property is left out, then it is the duty of the OL and the Court to immediately take steps to identify the same and ensure that the same is recovered for the benefit of the creditors, workmen and shareholders. There had been no supervening circumstance of Mr. Irani seeking to register the marks in his own name, the Company Court would have possibly at the instance of the OL, taken steps to identify this asset and put it up for sale. The supervening circumstance has in fact delayed the entire process. In any event, the failure

on the part of the OL or the valuer to identify the asset cannot lead to a conclusion that the asset is not available at all.

(viii) The aforesaid facts and circumstances lead to the only inevitable conclusion/inference that the mark "Yezdi" whether as a word or a device or as a composite mark or read together with other words belonged absolutely to the Company. Mr. Irani's claim of ownership over the marks on the basis of succession or otherwise stands rejected.

Abandonment of the Marks:

(i) Whilst I have dealt with the issue of ownership of the marks and have concluded that the marks were owned by the Company, a related issue which requires consideration is, whether the marks were abandoned by the Company and therefore were available for registration by any member of the public including Mr. Irani. The issue of abandonment has to be considered from two periods of time , (i) prior to winding up; and (ii) after winding up.

(ii) A large number of judgments have been placed for my consideration to argue abandonment. Reliance is

placed upon the judgment of the Delhi High Court in the case of ***Thapsons Pvt Ltd v. Ashoka Food Industries (1991) SCC Online Del 2015***, where owing to non-payment of fees for renewal it was held that the registrant could not claim to be the registered trademark owner of the trademark. The issue arose in the context of a suit for infringement and passing off and is clearly not applicable to the facts of the instant case.

(iii) Reliance is also placed upon the decision of the Calcutta High Court in the case of ***United Sprints v. The Intellectual Property Appellate Board (MANU/WB/1295/2011)*** where the Court dealt with the issue of removal of a trademark in terms of Section 25 of the Act. The High Court only dealt with the issue, as to whether the revival application was made in time and held that if it is not so made, no complaint can be raised of the Registry not following the mandatory requirement of notice. However, the issue itself was to be considered by the IPAB and no final opinion was expressed by the Calcutta High Court and consequently, even this judgment is distinguishable on facts.

(iv) My attention was also invited to this Court's judgment in the case of ***R.Vivekananda v. Raghu H - RFA No. 468/2015 dated 08.10.2021*** to contend that a registered trademark is one which is on the register and where the same is not renewed on account of non-payment of renewal fees, the mark may be on the register but it is only for removal and it ceases to be in force. Even this judgment was rendered in a completely different factual scenario and is not applicable to the facts of the instant case.

(v) An alternate argument was advanced that even if the registrations are in force, on account of non-use, there is no right vested in the Company. No action for infringement can be maintained by the Company is the contention and in this regard, reference is made to a large number of judgments including ***Veerumal Praveen Kumar v. Needle Industries- (2001) 21 PTC 889; R. Vivekananda v. Raghu – RFA No. 468/2021*** and ***Corn Products v. Shangrila Food Products (1960) 1 SCR 968 etc.,***

(vi) In addition, it is contended that if the goodwill of a mark ceases, then there exists no trademark as there cannot be a mark without any business and the marks in such case should be declared as "abandoned". Reference is made to **McCarthy on Trademark and Unfair Competition, 4th Edition, Chapter 17 and United Drug Co. v. Theodore Rectanus**. The substance of what is contended is that if there is no use of the mark, there is no goodwill. Use is different from mere adoption. Purpose is to designate a mark to determine the trader and to protect his goodwill. Consequent to this submission, it is argued by referring to **Ultraframe (UK) Ltd v. Gary Fielding (MANU/UKCH/0213/2005)** that when the company went into liquidation and business was discontinued with no prospect of restarting, it was reasonable to infer that the goodwill was abandoned. It requires to be noticed that at paragraph -1881, the Chancery Division noticed that it is unrealistic to assert that there was any subsisting goodwill attaching to a business run by a small company that went into insolvent liquidation since nine and half years earlier.

(vii) On this principle of abandonment, the learned Senior Counsels also referred to the judgment of the Privy Council in ***Star Industrial Company v. Yap Kwee Kor [1976] FSR 256*** that if business is discontinued in one country, the goodwill in that country perishes and that it is incapable of existing by itself and has no independent existence other than the business. This issue arose in the case claiming passing off of toothbrushes of a brand known as “ACE Brand”. Goodwill was held to be local in nature and that if business was discontinued in that country, it would not be possible to sue in that country for passing off. However, this principle may be difficult to accept in today’s day and age and especially where the Supreme Court has recognised transborder reputation (***N.R. Dongre v. Whirlpool Corporation - 1996 (5) SCC 714***), where the Supreme Court recognised that Whirlpool “**had acquired transborder reputation in respect of the trade mark 'WHIRLPOOL' and has a right to protect the invasion thereof**”).

(viii) In my considered opinion, the material on record obtaining in the instant case clearly establishes that

cessation of business does not automatically result in destroying the goodwill or the property in a trademark. In the case of ***R.R. Oomerbhoy Pvt Ltd v. Court Receiver - 2003 (5) Mh LJ 372***, the Bombay High Court held as under:-

“31. On the other hand, it would be instructive to advert to the decision of the Supreme Court in K. Venkata Mallayya v. Thondepu Ramaswami, where the Supreme Court considered the scope of the power of the Receiver appointed under Order 40 of the Code of Civil Procedure, Justice S.R. Mudholkar speaking for a Bench of four learned Judges of the Supreme Court relied upon the judgment of a Division Bench of the Calcutta High Court in Jagat Tarini Dasi v. Naba Gopal Chaki, ILR 34 Cal 305, where it was held that though in one sense the Receiver is the Custodian of the property of the person whom in certain respects he is made to supplant, there seems to be no reason why his power should not be held to be eligible with his functions. The Division Bench of the Calcutta High Court held that the Receiver cannot conveniently perform those functions, unless upon the theory that he has sufficient interest in the subject matter committed to him, to enable him to sue in respect thereof by virtue of his office, in his own name. The Calcutta High Court had further held that the Receiver is appointed for the benefit of all

concerned; he is a representative of the Court and of all parties interested in the litigation. The Supreme Court held that "if any property is in custodia legis the contesting parties cannot deal with it in any manner and, therefore, there must be some authority competent to deal with it, in the interest of the parties themselves. A receiver who is placed in charge of the property on behalf of a Court can be the only appropriate person who could do so." A Division Bench of this Court in *Chaturbhuj v. Damodar*, AIR 1960 Bombay 424 has also held that a Receiver appointed by the Court in a suit for dissolution of partnership will have all the powers of the partnership itself subject to the superintendence of the Court. Having regard to this position in law, we do not find any merit in the preliminary objection. We are of the view that the learned Single Judge was correct in rejecting the submission.

32. Before the learned Single Judge, it has also been urged that since the partnership firm last manufactured and sold edible oil under the trade mark POSTMAN in December 2000 after which no manufacture or sale has taken place, no injunction should be granted. We would briefly indicate our reasons for agreeing with the learned Single Judge in rejecting the submission. Section 14 of the Partnership Act, 1932 provides that the property of the firm will include the goodwill of the business. Section 53 expressly provides that after a firm is dissolved every partner may in the absence

of a contract to the contrary, restrain any other partner from carrying on a similar business in the name of the firm or from using any of the property of the firm for his own benefit. Sub-section (1) of Section 55 provides that in settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets and it may be sold either separately or alongwith other property of the firm. The proprietary right, title and interest of the partnership firm in its trade marks is an intrinsic part of the goodwill. The essential foundation of an action for passing off is the protection of goodwill, the goodwill of the business that may be destroyed or prejudiced by a misrepresentation on the part of a competitor that the goods which he sells are those of the other. The object of an action for passing off is, therefore, to protect the goodwill of the business of the owner who complains that the goodwill would be seriously affected by a misrepresentation by another who sells goods of a deceptively similar nature. The goodwill of the business is something which has an important value in the sale of the assets of the firm upon dissolution. We are informed that this Court has in fact directed the Receiver to explore the possibility of the sale of the business of the firm as a going concern. That being the position, there can be no doubt about the principle that in such a situation, an action would lie. The mere cessation of the business does not destroy the goodwill of the firm or

for that matter, the property in the trade mark which is an integral component of the goodwill of the business. (Emphasis supplied by me)

(ix) Further the peculiar/special facts and circumstances obtaining in the instant case also requires the Court to adopt a commonsensical approach; in trademark law, one must proceed to determine reputation and goodwill from the point of view of a common man – a man on the *clapham omnibus*; if a common man is asked as to the source and origin of the mark “Yezdi” even today, the answer will only be the Company; this is acknowledged not merely by Mr. Irani when he admits that the reputation and legacy continues even this day but also by Classic Legends when it also claims to have revived a brand.

(x) The material on record also discloses that it goes without saying that any reference to Yezdi relates to the yesteryears when Yezdi was a famous motorbike and was regarded iconic even at that time. The number of fan pages which exist on social media sites even as of date and the number of people willing to ride the motorbikes and restore them shows that people have not allowed the

trademark and goodwill of the brand to die but the universal effort is to resurrect the brand.

(xi) It is apparent that it is only such goodwill which has resulted in Mr. Irani to establish Classic Legends with Mahindra & Mahindra. The entire approach has been to take advantage of this great legacy to do business. Such legacy makes it easy to start and create a new bike with an old name. That is goodwill. That goodwill certainly rests with the Company. Such goodwill lasts even where the trademark registration ceases to exist. In the case of **S. Syed Mohideen v. Sulochana Bai - (2016) 2 SCC 683**, the Apex Court held as under:-

“Fourthly, it is also well settled principle of law in the field of the trade marks that the registration merely recognizes the rights which are already pre-existing in common law and does not create any rights”.

(xii) Classic Legends claims that one must not look at the purported admissions on reputation, goodwill and legacy as made by Mr. Irani but must look at it only from the point of view of the law. The said contention cannot be accepted, in view of the well settled legal principle that law

cannot exist or be applied in a vacuum as there have to be foundational facts for which law will have to be applied.

(xiii) The judgments referred to by Mr. Irani and Classic Legends do not apply in a winding up situation and they apply in a scenario where the Company continues to exist. The Court of Chancery Judgment does not apply, as the Court found as a matter of fact that the company being a small company could not be said to have retained any goodwill after several years. Consequently, I find that the judgment of the Bombay High Court in ***R.R. Omerbhoy Pvt. Ltd. Mumbai v. Court Receiver, High Court, Bombay & Ors.- 2003 (5) Mh. L.J. 372*** reflects the correct legal position on goodwill. I respectfully agree with the conclusions reached by the Bombay High Court, which is extracted again:-

“The mere cessation of the business does not destroy the goodwill of the firm or for that matter, the property in the trade mark which is an integral component of the goodwill of the business”

(xiv) To add further, if the arguments of Mr. Irani and Classic Legends is accepted, then the day the Company

goes into winding up and stops business and consequently use of the mark, the mark becomes available for all and the Company loses its right over the mark. If that were to happen, then every Company in winding up would never be able to monetize its marks. Such an interpretation not only runs contrary to law but also logic. A simple commonsensical approach in this case will lead to the only conclusion possible, that is that the mark retains a goodwill and reputation in the minds of the general public, which is capable of being monetized by the Official Liquidator for the benefit of the creditors, workmen and shareholders. It is also this very commonsensical approach that led Mr. Irani to seek to appropriate the mark to himself so that the same can be utilised to further his own business interests by establishing Classic Legends and resorting to manufacture of motorcycles using the name "Yezdi". A reference to an article published in www.cartoq.com in relation to Yezdi states: "*We are taking about Yezdi, a glorious name from the yesteryears which has been officially teased on social media handles.*"

(xv) I am satisfied that even if one can argue that the trademarks may have ceased to exist on the trademark register insofar as the Company is concerned, the goodwill and the rights over the marks continue. After all, trademark and the rights in the mark is a matter of common law and registration simply recognises pre-existing rights.

(xvi) On abandonment, I find that prior to removal of a mark from the register of marks, it was incumbent on the Registrar to issue the necessary notices. That no notice has been issued to the OL is accepted. That the removal from the register occurred only after the winding up order was published is also an admitted fact. It is also clear that no person made an application for removal of the mark on account of non-use. The removal occurred only owing to failure to pay the necessary fee for renewal. However, any action for removal can be taken only after notice is issued in the prescribed form. As held in ***Union of India & Ors. Vs. Malhotra Book Depot - (2013 (54) PTC 165 (Del))***, the failure to issue O-3 notices in terms of the mandatory requirements prescribed under Section 25(3) of the Trade Marks Act, 1999, renders illegal removal of the marks from

the register for non-renewal. It is also held that there is no limitation prescribed in the Act for reinstatement of the mark. As held in ***Cipla Ltd. Vs. Registrar of Trade Marks & Anr. - (DB) 2014 2 Mh. L.J 315***, the order of the Registrar for removal of the marks from the register without following the provisions of Section 25(3) is void. Where the proceedings become *in rem* upon a winding up order being made and the same being published, it is necessary that the notice be served on the OL and the failure to serve the necessary notice renders the entire removal from the register illegal.

(xvii) In addition, as held in ***Hardie Trading Ltd. v. Addison Paints and Chemicals - (2003) 11 SCC 92***, an intention to abandon must mean intent not to resume (Para 49). It was also held that even economic impracticability would amount to special circumstances and set aside the finding of the High Court that economic viability or existing market conditions was outside the concept of special circumstances. Viewed from this angle also, it is quite clear that there are special circumstances in the facts of the present case that prevented the Company from making an

application to renew the mark in time. Non-service of notice, economic distress which resulted in winding up, non-disclosure of the relevant existence of the mark in the Statement of Affairs filed by Mr. Irani are facts, which cannot be lost sight of. Further as held in ***Fedders Lloyd v. Fedders Corporation - (2005) SCC Online Delhi 443***, a mark “*can lose its distinctiveness by non-use*” where non-use is on the part of the registered trademark holder “*but not on account of external factors beyond the control of such registered trademark holder*”.

(xviii) The petition for winding up was filed in the year 1991. According to Mr. Irani, the Company ceased business in the year 1996 during the process of winding up. The winding up process actually started in the year 2001. However, in terms of the Companies Act, the date of presentation of the petition for winding up 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 business in the year 1996 (even if true) does not affect the rights of the Company in and over the trademarks.

There is no abandonment as of that date. There is no abandonment prior to winding up which starts from 1991. There is no abandonment for reasons already stated after the date of passing of the order of winding up. Statutory abandonment as an argument cannot be countenanced. Under these circumstances, the contention of Mr.Boman Irani and Classic Legends that the trademark has been abandoned cannot be accepted and even this aspect of the matter is accordingly answered in favour of the Official Liquidator and Ideal Jawa Employees' Association and against Mr.Boman Irani and Classic Legends.

Jurisdiction of the Company Court:

(i) As stated supra, the trademarks being the asset of the Company and there being no abandonment, the marks continued as the property of the company at the time of winding up and therefore, remain *custodia legis*. As rightly contended by the learned Senior Counsel representing the Association, once the property becomes *custodia legis*, no person can deal with the properties of the Company in liquidation.

(ii) The reference to the judgment of the Supreme Court in ***M/s Meghal Homes Pvt. Ltd., v. Shree Niwas Girni KK Samithi & Ors. – Appeal (Civil) 3179-3181 of 2005*** is appropriate in the present case, where it is held that “*when a company is ordered to be wound up, the assets of it are put in possession of the Official Liquidator and the assets become custodia legis. The follow up in the absence of the revival of the company is the realization of the assets of the company by the Official Liquidator*”.

(iii) Further in ***Bank of India vs. Vijay Transport (MANU/SC/0636/2000)***, the Apex Court whilst dealing with a contempt of court proceeding noticed the effect of dealing with properties, which are *custodia legis* held as follows:-

“37. ... *Property in custodia legis means that the property is kept in the possession and under the protection of Court. ...*”

(iv) Having arrived at the conclusion that the assets of the Company including the trademarks are *custodia legis*, any disposition of the property of the company would be void. In terms of Section 536(2), any disposition of the property of the company from the date of filing of the

petition of winding up would be void unless the Court orders otherwise.

(v) In ***VGP Finances Ltd. vs. The Official Liquidator*** – (***MANU/TN/4316/2017***), the High Court of Madras has examined the measures that a Court generally applies while examining transactions involving disposition of property. The underlying principle is, whether the transaction is *bonafide*, in the interest of the company or is necessary in the running of the business of the Company. If it is found that it does not satisfy these fundamental requirements, the disposition would be void.

(vi) In ***Sunita vs. Official Liquidator & Ors., - 2013 (2) Mh. L.J. 777***, it was held that the effect of Section 536(2) is that where a winding up proceeding is by or subject to the supervision of the Court, any disposition of the property of the Company which is made after the commencement of the winding up is void, unless the Court otherwise orders. Under Section 441(2), a winding up of a Company by the Court is deemed to have commenced at the time of the presentation of a petition for winding up. Further, a transfer must be in the best interests of the

Company or its creditors to be validated under Section 536(2) as held in ***Board of Industrial and Financial Reconstruction, Jaipur Golden Transport Company Ltd and Ors. vs. Hindustan Transmission Products Ltd. (MANU/MH/1453/2012).***

(vii) As rightly contended by Sri. Dhyan Chinnappa, learned Senior counsel that the expression, 'disposition' contained in Section 536(2) has a very wide meaning. Section 536 reads as follows:-

536. Avoidance of transfers, etc., after commencement of winding up.

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

(viii) Section 536(1) uses the expressions, “transfer” and “alteration in the status” and Section 536(2) uses the word “disposition”. Transfer of shares and alteration in status of members are prohibited when it comes to rights of members of the Company. However, Section 536(2) uses the expression “disposition” when it deals with assets which are most important in the case of winding up. Disposition has been defined in ***P. Ramanatha Aiyar, the Major Law Lexicon, 4th Edition, 2010 Page 2065*** as having no precise meaning. Its meaning must be gathered from context. It is a word of wide import. It includes extinguishment of debts and all other rights. The meaning of disposition is wider than transfer.

(ix) There is no doubt of good reason behind using the expression “disposition” and that is to extend the meaning to all forms of dealing with the assets of the Company. The legislature has consciously not used “transfer” when it came to dealing with assets of the Company. The purpose for using such a wide expression is to protect all properties and assets of the Company and ensuring that the same are applied during liquidation of the

company. It is necessary that every form of transfer, dealing with, appropriation, conversion etc., of the assets of the Company are dealt with by the Company in order to protect the interests of the stakeholders in a winding up.

(x) In trademarks, after winding up, it would be impossible to transfer/ assign the same as that would require the involvement of the OL. The only way in which a trademark right can be obtained is by simply applying for registration of the mark without reference to the Company. This has been done by Mr. Irani. His conduct in obtaining registration of the mark is certainly blameworthy. Being a Director and shareholder of the Company, he could not have made an independent application to appropriate to himself the trademarks of the Company without obtaining the consent of the Court. This is nothing but an act of misappropriation and dealing with the assets of the Company which is *custodia legis*. The fact that Mr. Irani claims user since 01.09.1969 shows that he is seeking to appropriate the goodwill of the Company to himself. I have already held that Mr. Irani is not the owner of the mark and that his father Mr. Rustom Irani also had no rights over the

mark. In view of this fact, dealing with the assets of the Company amounts to disposition of the property of the Company which is void.

(xi) In dealing with the assets of the Company, this Court has not merely the power but also the duty to take all steps to protect and preserve the assets of the Company. In doing so, all that the Court has to do is to notice the disposition of the assets of the Company. As the disposition is statutorily void, unless permitted by the Court under Section 536(2), there is no question of limitation, a point that was argued by Mr. Udaya Holla, learned Senior counsel. The disposition is void from the date of presentation of a petition for winding up. In the present case, the disposition is void given that the same occurred after the date of order of winding up and after the properties of the Company are *custodia legis* in the possession and control of the OL. As held in **J.K. (Bombay) Pvt Ltd v. New Kaiser I Hind - AIR 1970 SC 1041**, once a winding up order is passed, the undertaking and the assets of the company pass under the control of the liquidator, whose statutory duty is to realise them and to pay from out of the

sale proceeds its creditors. In the case of the ***The Official Liquidator vs. Modistone Ltd., 2017 SCC Online Bom 665***, the Bombay High Court held that upon winding up “no new rights can thereafter be created and no uncompleted rights can be completed and doing so would be contrary to the creditors rights to have the proceeds of the assets distributed among them *pari passu*”.

(xii) This Court is exercising its duty to protect the assets of the Company. Having concluded that the trademarks of the Company belong to the Company and since the said marks are sought to be appropriated by Mr. Irani contrary to the interests of the Company, it is but necessary that the Court intervenes. The determination of the assets of the Company is within the province of the Company Court. Once the Company Court has found that the trademarks are the asset of the Company, any person who is seeking to deal with the said assets are subject to the jurisdiction of the Company Court. In terms of Section 536(2), since the disposition is void, no application by the OL is even necessary. In ***BIFR v. Hindustan Transmission Products Ltd (MANU/MH/1453/2012)*** it

was held by the Bombay High Court that the official liquidator is not required to file any application seeking a declaration that the transfer is void. Voidness arises by operation of law and unless the Court upholds the transaction on the basis of an application filed by the affected party, the OL is entitled to ignore the transaction. In this case, an application has in fact been filed and is being adjudicated.

(xiii) An argument was also advanced on behalf of Mr. Boman Irani and Classic Legends that there is acquiescence and therefore, principles of estoppel applies. If Section 536(2) applies and the entire disposition is void, the questions of acquiescence and estoppel cannot arise. When the property is of the Company and the disposition so made is void, the argument that the OL acquiesced in Mr. Irani obtaining the mark and that it is therefore estopped from contending to the contrary is incorrect and I therefore cannot accede to that submission also.

(xiv) The argument on jurisdiction by Mr. Irani and Classic Legends is based on an incorrect appreciation of the scenario with respect to trademark registrations. In

fact, they have not been to establish that even if the trademark is the property of the company in liquidation, any person can make an application and appropriate to himself the intellectual property of the Company. The principles and judgments urged are in scenarios where the property is not in custody and protection of the Court. If a Director and erstwhile shareholder seeks to convert to himself the property of the Company, the Court has no option but to declare the rights of the Company *qua* the erring shareholder and Director. There is no question of overriding the authorities contemplated under the Trademarks Act. The registration granted is not sacrosanct, in the sense that they do not create the right for the first time, in contra-distinction to a patent which is a right granted only upon registration. Trademark rights are created upon a mark being used for a sufficiently long period of time and goodwill being generated in the minds of the public to the use of the said mark. Having held that the trademark is that of the company, the necessary consequence that follows is that Mr. Irani cannot claim any right nor can he seek to appropriate the goodwill of the

Company by simply seeking to register the marks of the Company.

(xv) This Court has determined the rights of the parties to the *lis*. The Court has determined the ownership of the assets of the Company in liquidation. Once the rights are so determined, it is for the authorities concerned to take note of this determination and make the appropriate changes to the Register to reflect the findings so made on ownership. The OL will have to take necessary steps as may be formally necessary to give effect to this order. It also follows that the registrations granted in favour of Mr. Irani are without due notice to the OL as well as by misrepresentation played on the Registrar of Trademarks as stated in the affidavit filed by the Registrar of Trademarks. Mr. Irani did not bring the fact of pendency of winding up to the Registrar's notice. Added to this, the O3 notice was not sent to the OL. The findings made here determine the rights of the Company in liquidation. The question of conflict with the authorities under the Trademarks Act does not arise. After all, the Registrar of Trademarks has also sworn to on oath that they will abide

by the orders of this Court. I, therefore reject the contention of Mr. Irani and Classic Legends that this Court does not have jurisdiction to deal with the various issues as raised.

(xvi) The argument advanced that the provisions of the Trademarks Act overrides the Companies Act and therefore the Company Court cannot exercise jurisdiction is not correct. To determine the assets and properties of the Company is the province of the Company Court. None of the authorities under the Trademarks Act has the jurisdiction to make such a determination. The disposition of property of the Company can be adjudged only by the Company Court under Section 536. This power cannot be exercised by the Trademark Registry. When I have found that this is the primary issue and I have answered the question and found that the trademarks are the asset of the company and registration sought to be obtained by Mr. Irani is an act of disposition of the property of the Company which is statutorily void, the question of allowing any other authority to make such a determination would run counter to the purpose and intendment of Section 536(2) of the Act. There is no question of conflict with the provisions of the

Companies Act and the Trademarks Act. I reject the contention that the provisions of the Trademarks Act override the provisions of the Companies Act, in this scenario. I have not referred to the various judgments cited by the parties as they have little relevance given the conclusion of ownership that I have arrived at.

(xvii) This case is of determination of rights of the Company and to recognise the obligation of the OL and of this Court to protect the assets of the Company. The jurisdiction of this Court cannot be obliterated by the fact that Mr. Irani has obtained registrations of the mark. Once the court concludes that the marks belonged to the Company at the date of winding up, it follows that the Court is empowered to take all steps to protect the assets of the Company. The registration of the marks by Mr. Irani is invalid and in bad faith. They are liable to be cancelled and steps would have to be taken in terms of this order.

(xviii) I am therefore of the firm view that no question of jurisdiction arises. There is no question of conflict. This Court has acted within the scope of its jurisdiction to declare a particular act of disposition as being void in law.

The consequences of such determination of ownership and invalidity of the disposition will follow.

Locus - Standi of the Association:

An argument has also been advanced on behalf of Mr. Boman Irani and Classic Legends that the Association has no *locus standi* to initiate proceedings for protection of the properties of the Company. It is an undisputed fact that the Association represents the interests of the workmen who have a vested interest in winding up which is the recovery of the sums due to them. Their *pari passu* right with the secured creditors is statutorily recognised. If there is disposition of the properties of the Company every member of the Company including its workmen are entitled to present petitions bringing such facts to the notice of the Company. They are "aggrieved persons" if any person deals with the property of the company in liquidation. Given the efforts of the Association and the OL, the property of the Company has been duly protected and accordingly, this contention also cannot be accepted.

Conduct of Mr. Irani and Classic Legends:

(i) It goes without saying that the conduct of Mr. Irani cannot be accepted. Mr. Irani being the director of the Company filed an invalid statement of affairs. The statement of affairs did not disclose the existing registrations of the trademarks. It goes without saying that the books of account of the Company will not carry with it any entry showing the goodwill of the Company as well as the fact that it has valuable trademark registrations. It was the duty of Mr. Irani to make an honest disclosure of the assets of the Company. It would be difficult to believe that he was not aware of this fact since soon thereafter he made an application seeking registration in his own name and also claimed in one of the applications, user since 1969.

(ii) Mr. Irani then established Classic Legends with Mahindra & Mahindra to manufacture and sell various brands including Yezdi. Mr. Irani entered into a license agreement (a document not produced before the Court) with Classic Legends when proceedings were pending in

Court and when the questions raised were being considered by this Court. Classic Legends also filed an application for impleading. On 11.01.2022. this Court passed the following order:-

The matter was posted today at the instance of a memo for posting moved by the learned counsel for the applicant in CA Nos.126/2020 to 128/2020 on the ground that the Classic Legends have specified 13.01.2022 as the date on which the vehicle is to be launched which is said to be the subject matter of the present proceedings.

2. The said memo for posting is accompanied an article published in English daily newspaper "Times of India" dated 03.01.2022. It is therefore submitted by the learned senior counsel for the applicant that there is an urgency in the matter and that the status quo has to be maintained in respect of the subject matter of the proceedings till the orders are pronounced by this court.

3. The urgency pleaded in the said memo is as under:

" An impleading application has been filed by the Employees Association of Ideal Jawa Ltd. along with three other applications bearing Company Applications Nos 1) CA 126/2020-An Application filed seeking to restrain Mr. Bomman Irani or anyone acting through him using such marks originally belong to Ideal Jawa India Limited or the use of Website www.yezdi.com that he

clandestinely registered and such other domain names containing the word "Yezdi". 2) CA 127/2020-An application seeking to direct the OL to take appropriate legal steps including filing revocation application before the TM registry against third party whosoever claiming ownership of the mark "Yezdi" and associated marks and to file fresh TM applications for registration of marks "Yezdi" and associated marks and safeguard other intangible assets of Ideal Jawa India Limited and get its ownership recorded. 3) CA 128/2020-An application seeking to issue an order directing the Register of TM to revoke the registration granted to the TM containing "Yezdi" in favour of Mr. Boman 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.

It is submitted that Classic Legends Private Limited, another impleading applicant is planning on launching Yezdi motorcycles on 13.01.2022 as per the news reports-an article in Times of India dated 03.01.2022 is annexed. When the matter has been reserved for orders, launch of the Yezdi motorcycle will create third party rights. Hence, there is extreme urgency in the instant matter. Therefore, the instant petition needs to be heard. Hence, this memo."

4. Per contra, all the learned senior counsel for the contesting respondents submit that neither memo for posting nor the document accompanying the same have been served on them. It is further submitted that the vehicles in question have already been sold in favour of the respective dealers under invoices and consequently the question of passing any orders at this stage when the matter is reserved for orders would not arise, particularly when the customers have already paid huge advances to the dealers and have made pre-bookings in respect of the vehicle in question.

5. It is relevant to state that before the pending OLR and the applications were heard by this court

and ultimately reserved on 23.12.2021, this court passed an order on 05.10.2021 which reads as hereunder:

"After hearing the matter for sometime, a common order is passed relating to O.L.R.No.343/2015 as well as all the other impleading applications. It is made clear that the matter requires to be taken up on merits and disposed off as expeditiously as possible. However, due to paucity of time and considering that no orders are passed on the impleading applications, it would not be appropriate to take up the matter on merits. Submissions are made on behalf of the Official Liquidator that the Director of the Company Sri. Boman R. Irani has entered into certain business arrangements by virtue of which M/s. Classic Legends Private Limited is seeking to make use of the trade mark, which is the subject matter of the present proceedings. Subject to further consideration, it is made clear that M/s. Classic Legends Private Limited would not assign or transfer the trade mark that is currently being used and which is the subject matter of the present proceedings. Sri. Boman R. Irani, the Director as well as M/s. Classic Legends Private Limited, are to maintain accounts and would be called upon at an appropriate stage to render accounts, if circumstances so warrant. It is also made clear that the parties making use of the trade mark are subject to orders to be passed on the pending O.L.R.No.343/2015 and C.A.No.71/2018. Needless to state that in the event the final order is passed, restoring rights in the trade mark to the Company, the Court would mould relief appropriately to ensure that the claimants whose claims are pending before the Official Liquidator are addressed appropriately. The embargo placed on M/s. Classic Legends Private Limited to be extended to the Director Sri Boman R. Irani as well. This interim arrangement would continue till the next date of hearing. The impleading applicants are permitted to file their objections to OLRs that are pending and are also permitted to file other pleadings which would be taken on record as regards pending company applications.

List these matters in the week commencing from 25.10.2021."

6. The aforesaid order which was extended from time to time continues to remain in force and operate between the parties till disposal of the matter. Under these circumstances, I deem it just and appropriate to dispose of the memo for posting submitted on behalf of the Applications in CA Nos. 126/2020 to 128/2020 by reiterating the order dated 05.10.2021 and by further making it clear that any act, deed or thing done by any of the respondents and the impleading applicants till disposal of the matter on merits would be subject to all the final outcome of the pending Applications, OLR, etc. and same would not be binding upon either the official liquidator or the applicants in CA No.126/2020 to 128/2020 and that the respondents and impleading applicants shall not claim any equity in this regard.

*Subject to the aforesaid observations, the memo for posting stands disposed of.
Reserved for orders.*

(iii) Classic Legends is only a licensee. The stand of Classic Legends cannot be beyond what its principal and licensor - Mr. Irani claims. Classic Legends in fact need not be heard being only a licensee and when Mr. Irani is

already on record as a party. However, in the interest of justice, Classic Legends was heard extensively. Classic Legends has also argued that it has made a lot of investments. If it has, it was entirely at its own risk. When it entered into the license arrangement with its shareholder and director, Mr. Irani, it was aware of the proceedings before this Court. It was aware of the risks involved. Despite orders pointing out that it cannot claim equities, Classic Legends launched the motorcycle – possibly with a view to create a *fait accompli*. In that view of the matter, the Court has no option but to pass orders which ensure the protection of the rights of the Company. In view of the findings as made above, it is necessary to injunct both Mr. Irani and Classic Legends from using the mark “Yezdi” in all its forms.

22. My aforesaid findings can be summarized as under:-

(i) The trademarks Yezdi (Yezdi is referred to collectively as device mark, word and marks “Yezdi” in conjunction with other words) belong to the Company in

liquidation. The trademarks are in *custodia legis* as they were owned by the Company prior to the time of winding up of the Company.

(ii) The Company Court is the forum to determine the question of ownership of the marks. The Company Court has to take steps to protect all assets of the Company and any claim made by any third party with respect to the assets of the Company has to be answered by the Company Court. In addition, any disposition of the property of the Company after commencement of winding up is void. If a declaration is so required, it has to be made by the Company Court.

(iii) The jurisdiction of the Company Court is not barred when the Company is in the process of winding up, particularly when the Trademark Registry could not have granted registration. Consequent to determination of ownership of the marks, the Registry will have to simply give effect to this order and steps would have to be taken by the OL to ensure that the same is complied with and in this factual scenario, the Trademarks Act does not override the Companies Act.

(iv) Mr. Irani could not have obtained registration of the marks "Yezdi" during the process of winding up. The conduct of Mr. Irani in obtaining registration of the marks is in bad faith and amounts to misappropriation of the assets of the Company.

(v) The Company has not lost rights in and over the mark "Yezdi" since there is no abandonment of the marks.

23. In the result, I pass the following:-

ORDER

(1) It is hereby declared that the Company is the owner of the mark "Yezdi" (word and device) taken independently or in conjunction with other words and that the trademarks of the Company remain in *custodia legis* of this Court.

(2) C.A.No.71/2018 is hereby allowed and all trademark, registration certificates issued by Registrar of Trademarks, Mumbai, Delhi and Ahmedabad in favour of Mr.Boman Irani are null and void and steps have to be taken as specified below to give effect to this finding.

(3) C.A.No.126/2020 is hereby allowed and Mr. Boman Irani and Classic Legends Pvt. Ltd., or any person claiming through or under them are hereby restrained by an order of injunction from using the mark "Yezdi" or any other mark containing the word "Yezdi" as a word or a device whether independently or in conjunction with other words including all domain names which use the word / mark "Yezdi".

(4) Consequent to the declaration of ownership of the trade marks of the Company as stated above, C.A.No. 128/2020 is also hereby allowed and the following directions are issued to protect the property of the Company which is presently *custodia legis* of this Court:

(a) Registrar of Trademarks is directed to cancel all registrations standing in the name of "Boman Irani" including but not limited to those referred to in CA No. 71/2018 and to forthwith effect transfer of all such registrations to the Company in Liquidation through the Official Liquidator;

(b) If any applications are pending for registration by Mr. Boman Irani or Classic Legends Pvt Ltd., or any person

claiming through or under them, the same shall be closed by the Registrar of Trademarks of Ahmedabad, Mumbai and New Delhi and no further grant or registrations shall be made against such applications;

(c) No further applications for registration of the trademark "Yezdi" in any form and by any third party (except the Official Liquidator) shall be permitted by the Registrar of Trademarks in any of its offices without the consent of this Court;

(d) The Official Liquidator is directed to take steps necessary to ensure compliance of this order.

(5) It is hereby declared that Mr. Boman Irani and Classic Legends Pvt Ltd are liable to account and pay to the Company for all gains made from the use of the trademarks of the Company; In this regard the following directions are issued:-

(a) Both Mr. Boman Irani and Classic Legends Pvt Ltd shall provide the Official Liquidator with all details of the sales and earnings from the use of the mark "Yezdi" in any form whatsoever;

(b) The Official Liquidator shall appoint a reputed firm of Chartered Accountant to determine the benefit that has accrued to Mr. Boman Irani and Classic Legends Pvt Ltd from the use of the trademarks of the Company;

(c) The determination so made shall be subject to confirmation by this Court after hearing all relevant parties;

(d) The Official Liquidator is permitted to make appropriate applications or OLRs in this regard.

(6) OLR No. 343/2015 is hereby partly allowed and the Official Liquidator is permitted to sell all trademarks and such other associated rights in and over the trademarks with all goodwill associated with the mark by public auction. For the said purpose the following directions are issued:

(a) The Official Liquidator shall determine the valuation of the trademarks of the Company in terms of the rights declared in terms of this Order;

(b) Upon the valuation exercise being completed, the Official Liquidator shall take steps to auction the trademarks of the Company and is permitted to file a fresh OLR in this regard.

(7) In view of the aforesaid facts and circumstances, and the findings recorded and directions issued in this order, and in the light of order dated 05.10.2021 and 11.01.2022 passed by this Court in the present proceedings, Mr. Boman Irani and Classic Legends Pvt. Ltd., are liable to account and pay to the company for all claims made from the use of the trade marks of the company and in this regard, both Mr. Boman Irani and Classic Legends Pvt. Ltd., shall render accounts and provide the OL with all the details of the sales and earnings from the use of the trademark YEZDI in any form whatsoever.

(8) So also, having regard to the findings recorded in the course of this order, it is but essential that Mr. Boman Irani and Classic Legends are directed to pay costs to the Official Liquidator in a sum of Rs.10 Lakhs each (total of Rs. 20 Lakhs) which shall be utilized towards the costs and distribution to be made in the process of winding up of the Company.

**Sd/-
JUDGE**

Srl.