

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.15087 OF 2022 (GM-RES)

BETWEEN:

COOLULU SPORTS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 2013
HAVING REGISTERED OFFICE AT
HOUSE NO.41, CLASSIC CREST,
GROUND FLOOR 5TH 'A' MAIN,
1ST BLOCK, KORAMANGALA
BENGALURU - 560 034.

REPRESENTED BY ITS DIRECTOR
AND AUTHORIZED SIGNATORY,
MR. NIKUNJ KHANDELWAL.
AGED 34 YEARS,
S/O MR. MUKESH KHANDELWAL

... PETITIONER

(BY SRI. MANU P. KULKARNI, ADVOCATE A/W
SMT.SHRISTI WIDGE, SRI SHARAN BALAKRISHNA AND
SRI MANOJ RAIKAR, ADVOCATES)

AND:

1 . UNION OF INDIA
MINISTRY OF CORPORATE AFFAIRS,

SHASTRI BHAWAN ,
NEW DELHI - 110 001
REPRESENTED BY ITS
PRINCIPAL SECRETARY.

- 2 . REGIONAL DIRECTOR
SOUTH-EAST REGION,
MINISTRY OF CORPORATE AFFAIRS,
HAVING OFFICES AT III FLOOR,
CORPORATE BHAVAN,
BANDLAGUDA, NAGOLE
TATTIANNARAM VILLAGE,
HAYAT NAGAR MANDAL,
RANGA REDDY DISTRICT
HYDERABAD - 500 068.
- 3 . LULU INTERNATIONAL SHOPPING
MALLS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
NO. 34/1000 N.H.47,
EDAPPALLY, KOCHI,
KERALA - 682 024.
REPRESENTED BY ITS
MANAGING DIRECTOR.
- 4 . REGISTRAR OF COMPANIES
MINISTRY OF CORPORATE AFFAIRS,
E-WING, II FLOOR,
KENDRIYA SADAN
KORAMANGALA
BENGALURU - 560 034

REPRESENTED BY

REGISTRAR.

... RESPONDENTS

(BY SMT. ANUPAMA HEGDE, CGC FOR R1, R2 AND R4;
SRI ADITYA SONDHI, SENIOR ADVOCATE A/W
SMT. RASHMI DESHPANDE, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 30.03.2022 PASSED BY RESPONDENT NO.2 IN F.NO.11/RD (SER/SEC.16(1) (b)T13462197/2021/6466 (ANNEXURE-A) AND CONSEQUENTLY REJECT THE APPLICATION FILED BY THE RESPONDENT NO.3 BEFORE THE RESPONDENT NO.2 UNDER SECTION 16(1) (b) OF THE COMPANIES ACT, 2013.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 02.02.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 30-03-2022 passed by the 2nd respondent/Regional Director, Corporate Affairs allowing the application filed by the 3rd respondent/Lulu International Shopping Malls Private Limited and restraining the petitioner from using the word "lulu" from the title of its name within three months from the date of the order.

2. *Shorn* of unnecessary details, facts in brief that lead the petitioner to this Court in the subject petition, as borne out from the pleadings are as follows:-

The petitioner/Coolulu Sports and Entertainment Private Limited claims to have been incorporated under the Companies Act, 2013 ('the Act' for short) and is engaged in sports coaching, sporting events, adult fitness events etc. The petitioner claims to allow third-party merchants to sell sporting apparel, equipment and merchandise at the events organized by the petitioner. It is claimed that the petitioner is established with the aim of fostering athletic inclinations in both children and adults alike, to give sport enthusiasts an opportunity to compete and get recognized. The petitioner claims to have been incorporated on 13-04-2018 in the name and style of 'Cooiulu'. It is claimed that prior to the petitioner getting incorporated the brand and logo with the stamp and all other things were checked and then the name was incorporated. The 3rd respondent/Lulu International Shopping Malls Private Limited is engaged in the establishment and operation of several commercial establishments such as malls and super-markets.

3. The 3rd respondent complained to the Competent Authority that the petitioner is using the name that is too near to the name of the 3rd respondent and on such complaint, a show cause notice comes to be issued to the petitioner under Section 16 of the Act by the 2nd respondent. The show cause notice emanates on account of an application filed before the 2nd respondent by the 3rd respondent. The petitioner claims to have filed its objections and later, on consideration of the material before it the 2nd respondent/Regional Director, passes an order under Section 16(1)(b) of the Act directing the petitioner that it should not use the word 'Lulu' in its name and further directs that the name of the Company should be changed within 3 months from the date of the order i.e., 30th March, 2022. In the event the petitioner would not change, it was directed that necessary action under Rule 33A of the Companies (Incorporation) Fifth Amendment Rules, 2021 be immediately put into effect for changing the name. It is this order that drives the petitioner to this Court in the subject petition.

4. Heard Sri Manu P. Kulkarni, learned counsel appearing for the petitioner, Smt. Anupama Hedge, learned Central Government

Counsel appearing for respondents 1, 2 and 4 and Sri Aditya Sondhi, learned senior counsel appearing for respondent No.3.

5. The learned counsel for the petitioner would seek to contend that the action that is being taken under the Act is not akin to what is to be taken under the Trade Marks Act, 1999. There is a world of difference between 'Lulu' and 'Coolulu'. Therefore, the order which directs removal of the name 'Lulu' from the title name of the petitioner does not bear any application of mind to any of the provisions of law. It is bereft of reasons. The learned counsel would submit that plethora of material was placed before the 2nd respondent to demonstrate that the name of the petitioner and the name of the 3rd respondent are not similar. Those objections have not been considered by the 2nd respondent and he has only gone by the averments in the application seeking removal of the name under Section 16 of the Act.

6. On the other hand, the learned senior counsel representing the 3rd respondent would take this Court through the documents appended to the statement of objections to demonstrate that the 3rd respondent is a well known brand all over the World and for a

well known brand a name that is too identical cannot exist in terms of Section 16 of the Act. Therefore, he would contend that the order cannot be rendered to be untenable on the plea of the petitioner that none of its submissions have been considered, as even consideration of those submissions would only lead to the order that is now passed. He would submit that the petition be dismissed as it does not warrant any interference.

7. The learned Central Government Counsel would only seek to support the order passed by the 2nd respondent and contends that the order has already been implemented by removal of the name 'Lulu' in the name of the petitioner and, therefore, the petition be dismissed on that ground as well.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. The name of the company of the petitioner so incorporated is 'COOLULU Sports Private Limited' and the name of the 3rd respondent is 'LULU'. The

petitioner though was incorporated in the year 2018, the factum was not known to the 3rd respondent. The petitioner communicates a mail on 02.03.2021 to the 3rd respondent soliciting its cooperation for a synergy towards some strategic partnership. It was indicated that 'Lulu' group has expanded its footprints into the sports retail in India and, therefore, the petitioner wanted to have strategic partnership with 'Lulu' as it was a sporting Company. It is then an application comes to be filed before the 2nd respondent by the 3rd respondent seeking change of name of the petitioner. In the light of the application being filed under Section 16 and the order passed thereon, I deem it appropriate to notice the said provision of law.

10. Section 16 of the Act reads as follows:-

"16. Rectification of name of company.—(1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—

- (a) *in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;*

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999 (47 of 1999), made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13."

(Emphasis supplied)

Section 16 deals with rectification of name of the Company. The statute mandates that if through inadvertence or otherwise, a Company on its first registration or on its registration by a new

name is registered by a name which is too nearly resembles the trade mark of such proprietor under the Trade Marks Act, 1999, on an application being made within 3 years of such incorporation or registration or change of name of the Company, in the opinion of the Central Government is identical with or too nearly resembles to an existing trade mark, it may direct the Company to change its name and the Company shall change its name or incorporate a new name as the case may be, within three months from the date of such direction.

11. The entire fulcrum of the *lis* lies in Section 16. Clause (b) of sub-section (1) of Section 16 permits an application being filed by a registered proprietor of a trademark who is a proprietor under the Trade Marks Act, 1999. The 3rd respondent has been granted a well known trade mark in terms of the provisions of the Trade Marks Act. Therefore, the 3rd respondent has a trade mark under the provisions of the Trade Marks Act. Clause (b) of sub-section (1) of Section 16 directs that if a Company that has a name identical with or too nearly resembles a registered trade mark of such proprietor under the Trade Marks Act, he can file an application

under Section 16. Invoking this provision, the 3rd respondent files the application seeking a direction at the hands of the 2nd respondent to change the name of the petitioner from Coolulu to any other name. The application was filed on 13.05.2021. The petitioner claims to have filed its objections on 05-07-2021 contending that Coolulu Sports Private Limited is not identical with Lulu International Shopping Malls Private Limited, as the words (i) 'International'; (ii) 'Shopping' and (iii) 'Malls' are not a part of Coolulu. Coolulu has the words 'Sports' and 'Entertainment'. The parts of the names of the Companies of both the petitioner and the 3rd respondent are entirely different. It was thus defended before the 2nd respondent that the names are not similar or identical.

12. The 2nd respondent on consideration of the objections so filed passes an order on 30.03.2022. It now becomes germane to notice the said order. The order runs into five paragraphs. Paragraphs 1 to 3 are contents of the application and the objections. The consideration by the 2nd respondent is found in paragraphs 4 and 5. The said paragraphs read as follows:

"4. That upon examining the oral/written submissions of both the parties, it is opined that the applicant Company was registered way back in the year 2004 and have several names and Trademarks across India having well known to the general public, there is a chance of creating confusion or misconception of similarity between both the company's names, though the respondent Company has altogether distinct/different kind of business. Moreover, the applicant Company is a company belonging to "Lulu International Group" having several Trademarks and "Lulu" is a well known mark with wide range of products with the Brand name which are in the market across the Globe.

5. In view of the above, the present application is allowed and the respondent Company is hereby restrained from using the word "Lulu" and to change the name of the company to some other name within 03 months from the date of this order. Further ROC, Bangalore is advised to take necessary action under Rule 33A of the Companies (Incorporation) Fifth Amendment Rules, 2021 immediately after the lapse of 3 months time without any further instructions."

All that the 2nd respondent observes is that upon examining the oral and written submissions of both the parties, the 2nd respondent opines that the applicant Company was registered way back in 2004 and is a well known trademark and there is a chance of creating confusion and misconception in the names. Since it is said to be a well known trademark with wide range of products and brand name across the globe, the name "Lulu" from the petitioner Company has to be removed.

13. There is no consideration worth the name by the 2nd respondent. The purport of Section 16 is not even considered or the purport of Trademarks Act becoming applicable to Section 16 is again ignored. The order does not demonstrate even a semblance of application of mind for there are no reasons recorded by way of consideration of the contentions of both the petitioner and the 3rd respondent. In a paragraph it is opined that the name is likely to create confusion between the two and, therefore, it should be removed. This is not the purport of Section 16. An order which determines rights of parties, in the case at hand is the rights of parties *qua* their names, it is trite, should bear application of mind. An order which does not contain any reason is an unreasonable order. The phrase would become applicable to the impugned order, as there are no reasons indicated *qua* the contentions of the respective parties as well as the mandate of the statute. Therefore, the 2nd respondent is required to pass order afresh by recording reasons for the contentions so advanced both by the petitioner and the 3rd respondent, which would bear the stamp of application of mind.

14. Though the learned counsel for the petitioner and the learned senior counsel representing the 3rd respondent have advanced several submissions, all those would have merited consideration if the impugned order did bear some reasons. The 2nd respondent endowed with the statutory duty of such determination under Section 16 cannot pass an order which would depict an inscrutable face of the sphinx. Therefore, the contention of both the learned counsel for the petitioner and the learned senior counsel for the 3rd respondent shall remain open.

15. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed in part.
- (ii) The order dated 30.03.2022 passed by the 2nd respondent stands quashed. The matter is remitted back to the hands of the 2nd respondent/ Regional Director, Corporate Affairs to pass orders afresh bearing in mind the observations made in the course of the order.

- (iii) All consequential action shall depend upon the outcome of the orders that are directed to be passed afresh. Till such time, the parties shall maintain *status quo* as on today.
- (iv) The Regional Director shall pass orders within an outer limit of three months from the date of receipt of a copy of this order.

**Sd/-
JUDGE**

bkp
CT: MJ