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

+ **CS(COMM) 647/2019, I.As. 16693-16694/2019**

ITC LIMITED

..... Plaintiff

Through: Mr. Sudeep Chatterjee and Ms. Tanya Arora, Advocates.

versus

RAJ KUMAR MITTAL & ORS.

..... Defendants

Through: Mr. D.K. Rustagi and Mr. Mayank Rustagi, Advocates for D-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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20.01.2023

I.A. 10540/2020 (for allowing the D-1 to use the new design/ label for the purpose of selling the products in compliance of the order dated 28.11.2019)

1. Defendants seek permission to adopt their new label/ packaging and have put Plaintiff to notice of their intention. Comparative table of Plaintiff's mark, impugned mark and new label/packaging is as under:



2. Counsel for Plaintiff has been heard to understand his objections to the proposed new label/ packaging. He submits that he is unable to consent



to the same as he is unaware as to whether it will infringe the rights of any third-party. Court has repeatedly queried as to whether the Plaintiff itself has any objection to the new label/ packaging *qua* their trademark, however, none is forthcoming. *Vide* order dated 28th November 2019, Defendants had been restrained, from manufacturing, marketing or otherwise dealing in flour or any other product in the impugned packaging or any other trade dress or packaging, which is deceptively similar to Plaintiffs registered trademarks



or otherwise deceptively similar to Plaintiff s trade dress and packaging. In the above circumstances, Defendant No. 1 seeks to revive its business under the proposed label/packaging.

3. In the *prima facie* opinion of the Court, the proposed label/ packaging does not appear to be deceptively similar to Plaintiff's mark and neither has such an objection been raised.

4. In view of the above, it is clarified that *ad-interim* injunction granted *vide* dated 28th November, 2019, will not apply to the proposed packaging depicted hereinabove.

5. With the above directions, the present application is disposed of.

CCP(O) 9/2020 (for taking action against Mr. Prem Chand Mittal, for assault on the local commissioner and team, and against Mr. Raj Kumar Mittal for deliberate disobedience of the injunction order dated 28.11.2019)

6. Issue notice. Mr. D.K. Rustagi, counsel for Respondent/Contemnor No. 1 accepts notice. It is pointed out that Respondent/Contemnor No. 1 viz. Mr. Prem Chand Mittal misbehaved with Local Commissioner appointed by



this Court – Ms. Latika Malhotra, who visited the Defendant No. 1's premises on 07th December, 2019. The Court has perused the Local Commissioner's report dated 19th December, 2019, which indeed makes strong remarks against Mr. Mittal's conduct.

7. Accordingly, Prem Chand Mittal is directed to remain present before the Court on the next date of hearing.

8. List on 3rd March, 2023.

SANJEEV NARULA, J

JANUARY 20, 2023

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