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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 507/2018**
NAZEER'S DELICACIES AND ANR Plaintiffs
Through: Mr. Anshuman Sood, Adv.
Versus
NAZEER FOODS Defendant
Through: Mr. Pravin Anand & Ms. Imon Roy,
Adv.
AND
+ **CS(COMM) 1493/2016**
AFTAB AHMED & ANR. Plaintiffs
Through: Mr. Pravin Anand & Ms. Imon Roy,
Adv.
Versus
NAZEER DELICACIES & ORS. Defendants
Through: Mr. Anshuman Sood, Adv.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **18.02.2019**

IA No.15581/2018 (of the defendant for amendment of written statement) & IA No.15983/2018 (of the plaintiffs for amendment of replication) in CS(COMM) No.507/2018

1. The counsels state that issues have not been framed in the suit and they have no objection to the respective amendments being allowed.

2. The applications are allowed and disposed of.

IA No.13846/2016 (of the plaintiffs under Order XXXIX Rules 1&2 CPC) in CS(COMM) No.1493/2016

3. Dismissed as withdrawn.

IA No.15296/2016 (of the defendants under Section 10 of the CPC) in CS (Comm.) 1493/2016

4. Dismissed as withdrawn.



IA No.15297/2016 (of the defendants for consolidation of suits) in CS (Comm.)1493/2016

5. Allowed with consent and disposed of.

IA No.15295/2016 (of the defendants) in CS(COMM) No.1493/2016, IA No.12920/2018 (of the plaintiffs) in CS(COMM) No.507/2018, IA No.15580/2018 (of the defendants) in CS(COMM) No.507/2018 (all under Section 124 of the Trade Marks Act, 1999)

6. Both counsels state that proceedings before Intellectual Property Appellate Board (IPAB) filed by each of the parties, after institution of these suits, for cancellation of the registration of the other are pending consideration and the proceedings in these suits were being adjourned for the said reason but owing to the dicta of the Supreme Court in *Patel Field Marshal Agencies Vs. P.M. Diesels Ltd. (2018) 2 SCC 112* the issue as to the invalidity of marks is to be framed. Else, the counsels do not have any objection to proceedings in these suits being adjourned *sine die* awaiting the outcome of the proceedings before the IPAB.

7. Both counsels state that there are pleas in pleadings each of invalidity of the registration of the other.

8. The applications are allowed and disposed of.

CS(COMM) No.507/2018 & CS(COMM) No.1493/2016

9. The following consolidated issues are framed in the suits:

- (i) Whether the registration of the trade mark, “NAZEERS DELICACIES” under application no.1408281, is invalid? OPD [CS (Comm.) No. 507/2018].
- (ii) Whether the registration of the trade mark NAZEER FOODS under application no.1323808, is invalid? OPP [CS(COMM)



No.507/2016]

- (iii) Whether the registration vide application no.1408281 of “NAZEER’S DELICACIES” is to relate back to the registration of the mark “NAZIR HOTEL”? OPP [CS(COMM) No.507/2018]
- (iv) Which of the two have infringed the mark of the other? OPPr [CS(COMM) No.507/2018 and 1493/2016]
- (v) Is either of the parties passing off its goods and services as those of the other and if so, to what reliefs by way of damages or rendition of accounts is such party entitled to from other? OPPr
- (vi) Relief.

10. No other issue arises or is pressed.

11. CS(COMM) No.507/2018 to be treated as the lead suit with the plaintiff therein leading evidence first and having the right of rebuttal evidence.

12. I have proposed to the counsels, that rather than keeping these suits adjourned *sine die*, the same can be disposed of providing that whichever party’s mark is ordered to be struck off by the IPAB, shall, subject to challenge if any, to the order of the IPAB, shall not be entitled to use that mark as an unregistered mark also and stand restrained.

13. It has further been proposed that if at all the party finally succeeding in the IPAB proceedings considers the need to recover damages or claim rendition of accounts from the other, shall be entitled to do so after the



disposal of the said proceedings, with effect from the day from which that party would be entitled to the said reliefs in these suits and parties waive the plea of limitation in consideration of mutuality.

14. The counsels seek time to consider.

15. List on 12th March, 2019.

RAJIV SAHAI ENDLAW, J

FEBRUARY 18, 2019

‘gsr’

CS(COMM) 507/2018 & CS(COMM) 1493/2016

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