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

\+ CS(COMM) 698/2023

ITC LIMITED

.....Plaintiff

Through: Ms. Shrutima Ehersa, Ms. Aishwarya Debadarshini and Ms. Sanya Srivastava, Advs.

versus

ARPITA AGRO PRODUCTS PVT LTD & ORS.

.....Defendants

Through: Mr. Kartikay Sharma, Adv (VC).

CORAM:
JOINT REGISTRAR (JUDICIAL) MS. SWATI KATIYAR

O R D E R

% 28.07.2026

I.A. No. 25821/2023 by Defendant no. 4 to 6 for their deletion.

1. IA is listed for orders.

2. Written submissions filed by defendants are on record.

3. By way of the present application under Order I Rule 10(2) of the Code of Civil Procedure, 1908, defendant nos. 4 to 6 seek deletion of their names from the array of parties on the ground that they are neither necessary nor proper parties to the present suit. It is submitted that defendant no. 4 and 5 are partners of defendant no. 6, a partnership firm established in 2009 and engaged in manufacturing PET and other plastic products ranging from preforms to fully blown bottles of various weights and sizes.

4. It is submitted on behalf of the applicants that defendant no.6 was initially involved in marketing FMCG products under the brand name ‘JOR-POWR’ in 2018 and thereafter, defendant no.6 ceased its FMCG operations after selling the brand to the plaintiff

and focussed only on PET and other plastic range of products. It is submitted that up until 2018, defendant no. 4-6 served as vendors supplying bottles for 'NIMYLE' herbal floor cleaners which were manufactured and marketed by defendant no. 1 to 3. It is submitted that following the asset purchase agreement dated 05.04.2018 and the agreement for supply of products dated 19.04.2018, covering a span of three years, defendant no. 4-6 continued providing PET plastic bottles as vendors to defendant no. 1 to 3, the manufacturers of NIMYLE and subsequently, defendant no. 1 to 3 supplied the finished product NIMYLE to the plaintiff for marketing.

5. It is submitted by the applicant that agreement for supply of products was renewed till 18.04.2024 through another agreement dated 09.09.2021 and the involvement of defendant no. 4 to 6 was confined to manufacture and supply of bottles to Defendant Nos. 1 to 3 pursuant to contractual arrangements, and the applicants had no role whatsoever in the adoption of the impugned trademark POWRNYM, marketing strategy, branding, sale or commercial exploitation of the impugned products. It is submitted that there is no cause of action against the applicants. Hence, it is prayed that defendant no. 4 to 6 be deleted as parties to the present suit.

6. The plaintiff has opposed the application contending that defendant Nos. 4 to 6 are integral participants in the chain of infringement. It is submitted that all the defendants are inter-related and run a family business from a common place of business. It is submitted that defendant no. 4 and 5 who are partners of defendant no. 6 are wives of defendant no. 2 and 3 who are directors of defendant no.1 and all the defendants operate out of a common premises since the registered office of defendant no. 6 situated at Rasapunja, Bakrahat Road, Kolkatta is also the registered office of defendant no.1. It is submitted that Defendant

No. 6 is the manufacturer of the bottles bearing the impugned trade dress and bottle shape, identical or deceptively similar to the plaintiff's NIMYLE bottle. Defendant Nos. 4 and 5, being partners of Defendant No. 6 and closely connected with Defendant Nos. 1 to 3, have actively participated in the manufacture and supply of the impugned bottles. The plaintiff submits that the reliefs claimed include injunction against infringement of trademark, copyright, passing off, trade dress, bottle shape, rendition of accounts and damages, and effective adjudication of these issues requires the presence of Defendant Nos. 4 to 6, who are thus necessary parties.

7. Ld. Counsel for plaintiff also drew the attention of the Court towards the financial statements of defendants in the documents filed by plaintiff at pages no. 1098, 1099, 1101 and 1102 to show that the defendants are related parties. Further, in support of their arguments, Ld. Counsel for plaintiff relied upon decision of Hon'ble Supreme Court in Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and ors. (1992) 2 SCC 524; Kasturi v. Iyyamperumal (2005) 6 SCC 733; Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and ors (2010) 7 SCC 417; Hon'ble High Court of Delhi in Blueberry books and ors. V. Google India Pvt. Ltd. 2016 (67) PTC 1 (Del)(DB)and Smt. Neetu Suri v. Sh. Rajesh Malik, 2025:DHC:9088. On the aforesaid grounds, it is prayed that the application be dismissed with costs.

8. Defendants no. 4 to 6 filed rejoinder to their application and reiterated that the manufacture of bottles by itself does not render them liable for alleged infringement. Applicants asserted that they had no participation in the adoption of the mark "POWRNYM" or in the marketing or sale of the finished products. It is submitted that after termination of the contractual arrangements on

16.10.2023, defendant no.4 to 6 ceased all association with the plaintiff and that the allegations of collusion are not supported by any material on record. It is thus prayed that the application be allowed and defendant no.4 to 6 be deleted from the array of parties.

9. I have considered the submissions advanced on behalf of both the parties and perused the record carefully.

10. The law with respect to Order 1 Rule 10 of Code of Civil Procedure, 1908 is well settled. The Court is empowered to strike out or add parties where their presence is or is not necessary for effective and complete adjudication of the issues involved in the suit. The court must be satisfied that the presence of a party is necessary to completely adjudicate upon and settle all questions involved in the suit. The object of Order 1 Rule 10 CPC is to bring on record all the parties to the dispute so that the dispute may be determined in their presence without any protraction and without any multiplicity of litigation. At this stage, the Court is not required to undertake a detailed examination of the merits of the rival claims or to record findings on the correctness of the pleadings.

11. Reverting to the facts of the present case, plaintiff is a manufacturer and seller engaged in the business of home care and personal care products. Defendant no.1 assigned trademarks NIMYLE and JOR-POWR to the plaintiff vide agreements dated 05.04.2018 and 19.04.2018. Defendant no.4 to 6 vide brand assignment agreement dated 05.04.2018 assigned the trademark JOR-POWR to the plaintiff. Thus, all exclusive ownership rights, title and interest in the aforesaid trademarks were transferred to the plaintiff. However, in August 2023, plaintiff came across an advertisement of the defendants' product POWRNYM which is a combination of words taken from the trademark assigned in favour

of the plaintiff. The defendants allegedly also copied the sub brands of plaintiff namely ALPINE and CITRUS by converting the same to PINE and CITROSA. It is also alleged that the defendants continued selling the products under the brand name NIMYLE on online platforms in an attempt to encash the goodwill and reputation of the mark assigned to the plaintiff. It is alleged that defendant no.1 to 6 are a family run business and the bottles for selling the impugned products are being supplied by defendant no.4 to 6.

12. The plaint contains specific allegations that defendant no. 6 manufactured the bottles constituting the alleged infringing trade dress and bottle shape and supplied the same for the products marketed by Defendant Nos. 1 to 3. The plaintiff has further pleaded that Defendant Nos. 4 and 5, being partners of Defendant No. 6, were actively associated with such activities. The documents filed by the plaintiff at page no.1098 to 1102 i.e. the financial statement of Arpita Agro Products Pvt Ltd mentions the defendants no.2 to 5 as related parties. Thus, the contention that defendant no.4 to 6 have no role in the alleged infringement of the intellectual property rights of the plaintiff would be a matter of trial and cannot be adjudicated at this stage.

13. Moreover the suit is not merely confined to infringement of a trademark. The plaintiff seeks injunction in respect of the bottle shape, packaging, trade dress and allied intellectual property rights. The manufacturer of the allegedly infringing container i.e. defendants no.4 to 6 cannot, at this preliminary stage, be said to be wholly unconcerned with the subject matter of the suit. If the plaintiff succeeds in proving that the impugned bottle itself forms part of the infringing trade dress, the role attributed to Defendant No. 4 to 6 would require adjudication during trial.

14. At this stage, the Court is only required to see whether there exists a prima facie case for retaining the applicants as parties to the present suit. The pleadings disclose a sufficient cause of action against defendant no.4 to 6 concerning their alleged role in the manufacture and supply of the impugned bottles.

15. Hence, the Court is of the considered opinion that defendant Nos. 4 to 6 are necessary parties for complete and effective adjudication of all issues involved in the suit. Consequently, the application under Order I Rule 10 (2) of the Code of Civil Procedure 1908 filed by Defendant Nos. 4 to 6 seeking deletion from the array of parties is **dismissed**.

16. **IA stands disposed off accordingly**.

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17. Matter is at the stage of admission/ denial of documents.

18. Both the parties are directed to file their documents in physical form within four weeks and Joint Document Schedule be filed within further three weeks.

19. Put up for admission/ denial of documents on 13.10.2026.

SWATI KATIYAR,
JOINT REGISTRAR (JUDICIAL)

JULY 28, 2026/*bk*