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

+ **CS(COMM) 353/2024**

TESLA INC.

..... Plaintiff

Through: Mr. Chander M. Lall, Sr. Adv. with
Ms. Nancy Roy, Mr. Raghav Malik,
Ms. Prakriti Varshney, Mr. Lalit
Alley & Mr. Prashant, Advs.

versus

TESLA POWER INDIA PRIVATE LIMITED & ORS.

..... Defendants

Through: Ms. Anita Sahani & Mr. Mukesh
Vatsa, Advs.

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

ORDER
02.05.2024

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I.A. 9758/2024 (*Exemption from filing certified, clear copies of documents*)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next date of hearing.
3. Accordingly, the present application is disposed of.

I.A. No.9757/2024 (*seeking leave to file additional documents*)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place



on record additional documents.

2. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.

I.A. No.9756/2024 (exemption from instituting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.***, FAO (COMM) 128/2021, exemption from attempting **pre institution** mediation is allowed.
2. Accordingly, the application stands disposed of.

I.A. 9759/2024 (permission to file redacted copy of documents)

1. By this application, plaintiff seeks permission to file redacted version of the copy of the email dated August 23, 2023.
2. For the reasons stated in the application, the same is allowed.
3. Accordingly, the present application is disposed of.

I.A. 9760/2024 (permission to file document in a CD/DVD)

1. For the reasons stated in the application, the same is allowed.
2. CD/DVD filed along with the accompanying application be taken on record.
3. Accordingly, the present application is disposed of.



CS(COMM) 353/2024

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statements be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavit of admission/denial of plaintiff's documents, without which the written statements shall not be taken on record. Liberty is given to plaintiff to file a replication within 30 days of the receipt of the written statements. Along with the replication, if any, filed by the plaintiffs, affidavits of admission/denial of documents filed by the defendants, be filed by plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
3. List before the Joint Registrar for marking of exhibits on 5th August 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 9755/2024 (under Order XXXIX Rule 1 & 2 CPC)

1. This application under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 ('CPC') has been filed by plaintiff as part of the accompanying suit seeking permanent injunction and damages for infringement of trademark, passing off, and unfair trade competition. Grievance is against defendants who are using the impugned trademark /



trade name TESLA POWER / TESLA POWER USA,

and



2. Plaintiff is a multinational company which has been operating and recognised by the name 'TESLA', registered under the laws of Delaware, United States of America.

3. Plaintiff's registrations in India are tabulated as under:

Indian Trade Mark	Registration no.	Date/ Use claim	Class
TESLA	IRDI-3318405	January 7, 2016 Proposed to be used	39
<i>Services: Leasing of motor vehicles.</i>			
TESLA	2689306	February 28, 2014 Proposed to be used	12, 36, 37
<i>Goods/ Services:</i> Class 12 – Automobiles and structural parts therefore. Class: 36- Financing relating to automobiles. Class: 37 -Providing maintenance and repair services for automobiles.			
TESLA	IRDI-3615907	December 21, 2016 Proposed to be used	42
<i>Services: Monitoring of solar panels and other equipment for use in converting solar energy into electricity to ensure proper functioning and programming for meeting electricity demands and usage goals; monitoring of efficiency, production levels and other performance data of solar panels and other equipment for use in converting solar energy into electricity.</i>			




TESLA	IRDI-2881361	December 9, 2013 Proposed to be used	12, 25, 36, 37
<i>Goods/Services :</i>			
<p>Class 12-Anti-skid chains, roof-racks, shock absorbers, springs, stabilizer bars, suspensions, all for vehicles; trim panels for vehicle bodies; brake calipers for land vehicles; apparatus for locomotion by land, air or water, namely, cars, boats, airplanes; electric automobiles; electric automobile parts; fully battery electric, high performance sports automobile; seats, automobile wheel hubs; vehicle wheels; upholstery, fitted covers for vehicles; semi-fitted covers for vehicles; steering wheels, motors; motor vehicle bodies; vehicles, namely, automobiles; motor land vehicles; parts and fittings for motor land vehicles, namely, structural automobile parts and powertrain components.</p> <p>Class 25-Articles of clothing, namely, t-shirts, shirts, jackets, hats; headgear, namely, sports hats, caps, sun visors.</p> <p>Class 36-Providing financial services relating to automobiles, namely, automobile financing and lease-purchase financing; financing services for the purchase and leasing of motor vehicles; lease purchase financing; credit services, namely, providing financing for motor vehicles; providing financial advice in the field of motor vehicles.</p> <p>Class 37-Providing maintenance and repair services for automobiles</p>			
TESLA	3702931	December 14, 2017 Proposed to be used	42
<i>Services: consultation in the field of energy efficiency pertaining to solar and renewable energy</i>			
TESLA	3029514	August 11, 2015 Proposed to be used	36, 37, 42
<i>Services:</i>			




Class 36- Leasing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilization of electricity; financing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilization of electricity.

Class 37- Installation, integration, maintenance and repair and upgrading of electric battery systems, and consulting related thereto, for the storage, discharge, supply, transmission and stabilization of electricity.

Class 42- Monitoring of electric battery systems for storing and supplying electricity; operating, maintaining, optimizing and regulating electric battery systems for storage, discharge, supply, transmission and stabilization of electricity, and consulting services related thereto.

	3702936	December 14, 2017 Proposed to be used	37
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Services: installation, maintenance and repair of solar panels and other equipment for use in converting solar energy into electricity; installation of solar energy systems and consulting related thereto

	IRDI-3332559	August 11, 2015 Proposed to be used	9, 37, 42
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Goods/ Services:


Class 9- Electric battery system and equipment for storage and supply of electricity to entire dwellings, buildings, and man-made fixtures; electric battery system and equipment for use in the storage, supply, transmission and stabilization of electricity supplied by or to an electric power grid or other source of electric power generation; computer software for monitoring, optimizing and regulating the storage, transmission and discharge of energy to and from such electric battery systems.

Class 37- Installation, integration, maintenance and repair and upgrading of electric battery systems, and consulting related thereto, for the storage, discharge, supply, transmission and stabilization of electricity.

Class 42- Monitoring of wirelessly connected electric battery apparatus with embedded firmware and software for storing and supplying electricity to ensure proper functioning and programming for meeting electricity demands



and usage goals; design of electric battery systems comprised of wirelessly connected electric battery apparatus and supporting software, all for storage and discharge of stored electricity, in order to optimize the design efficiency, programming and configuration of said systems, and consulting services related thereto; Software as a service (SAAS) featuring software for monitoring, optimizing and regulating the storage and discharge of stored energy to and from wirelessly connected electric battery apparatus; providing online non-downloadable software for monitoring, optimizing and regulating the storage and discharge of stored energy to and from wirelessly connected electric battery apparatus; management of wirelessly connected electric battery apparatus with embedded software and firmware for the storage and discharge of stored electricity by programming and configuring software for electric battery apparatus; installation, maintenance and repair and upgrading of remotely updateable computer software and firmware embedded in wirelessly connected electric battery apparatus, and consulting related thereto, for the storage and discharge of stored electricity for stabilizing and meeting electricity demands and usage goals.

	IRDI-2760695	June 5, 2014 Proposed to be used	12, 25, 36, 37
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Goods/ Services:

Class 25-Articles of clothing, namely, t-shirts, shirts, jackets, hats; headgear, namely, sports hats, caps, sun visors.

Class 36- Providing financial services relating to automobiles, namely, automobile financing and lease-purchase financing; financing services for the purchase and leasing of motor vehicles; lease purchase financing; credit services, namely, providing financing for motor vehicles; providing financial advice in the field of motor vehicles.

Class 37-Providing maintenance and repair services for automobiles.

Class 12-Apparatus for locomotion by land, air or water, namely, cars, boats, airplanes; electric automobiles; electric automobile parts, fully battery electric, high performance sports automobile; seats, upholstery, steering wheels, automobile wheel hubs; vehicle wheels; motor vehicle bodies; vehicles, namely, automobiles; motors; motor land vehicles; parts and fittings for motor land vehicles, namely, structural automobile parts and powertrain components.




4. Plaintiff's pending trademark applications in India are tabulated as under:

Indian Trade Mark	Application no.	Date	Class	Status
TESLA	3608800	August 11, 2015 Proposed to be used	9, 37, 42	Objected
<i>Goods/Services:</i>				
<i>Class 9: Electric battery system and equipment for storage and supply of electricity to entire dwellings, buildings, and man-made fixtures; electric battery system and equipment for use in the storage, supply, transmission and stabilization of electricity supplied by or to an electric power grid or other source of electric power generation; computer software for monitoring, optimizing and regulating the storage, transmission and discharge of energy to and from such electric battery systems.</i>				
<i>Class 37: Installation, integration, maintenance and repair and upgrading of electric battery systems, and consulting related thereto, for the storage, discharge, supply, transmission and stabilization of electricity.</i>				
<i>Class 42: Monitoring of electric battery systems for storing and supplying electricity; operating, maintaining, optimizing and regulating electric battery systems for storage, discharge, supply, transmission and stabilization of electricity, and consulting services related thereto.</i>				
TESLA	3608801	August 11, 2015 Proposed to be used	9	Objected
<i>Goods: Electric battery system and equipment for storage and supply of electricity to entire dwellings, buildings, and man-made fixtures; electric battery system and equipment for use in the storage, supply, transmission and stabilization of electricity supplied by or to an electric power grid or other source of electric power generation; computer software for monitoring, optimizing and regulating the storage, transmission and discharge of energy to and from such electric battery systems.</i>				
TESLA	3029505	August 11, 2015 Proposed to be used	36	Opposed
<i>Services: Leasing services relating to electric battery systems for the storage, discharge, supply, transmission and stabilization of electricity; financing</i>				



<i>services relating to electric battery systems for the storage, discharge, supply, transmission and stabilization of electricity.</i>				
TESLA	3702930	December 14, 2017 Proposed to be used	9	Opposed
<i>Services: Goods: Solar energy equipment, namely, photo-voltaic solar modules in the shape of panels or roofing tiles for converting electromagnetic radiation into electrical energy; equipment for use in connection with collecting and converting solar energy into electricity, namely, inverters.</i>				
TESLA	3702933	December 14, 2017 Proposed to be used	37	Opposed
<i>Services: Installation, maintenance and repair of solar panels and other equipment for use in converting solar energy into electricity; installation of solar energy systems and consulting related thereto.</i>				
TESLA	3702934	December 14, 2017 Proposed to be used	42	Opposed
<i>Services: Monitoring of solar panels and other equipment for use in converting solar energy into electricity to ensure proper functioning and programming for meeting electricity demands and usage goals; monitoring of efficiency, production levels and other performance data of solar panels and other equipment for use in converting solar energy into electricity.</i>				
TESLA	3702932	December 14, 2017 Proposed to be used	36	Opposed
<i>Services: Solar panel financing services.</i>				



	3702935	December 14, 9 2017	Proposed to be used	Opposed
<i>Goods: Solar energy equipment, namely, photo-voltaic solar modules in the shape of panels or roofing tiles for converting electromagnetic radiation into electrical energy; equipment for use in connection with collecting and converting solar energy into electricity, namely, inverters.</i>				

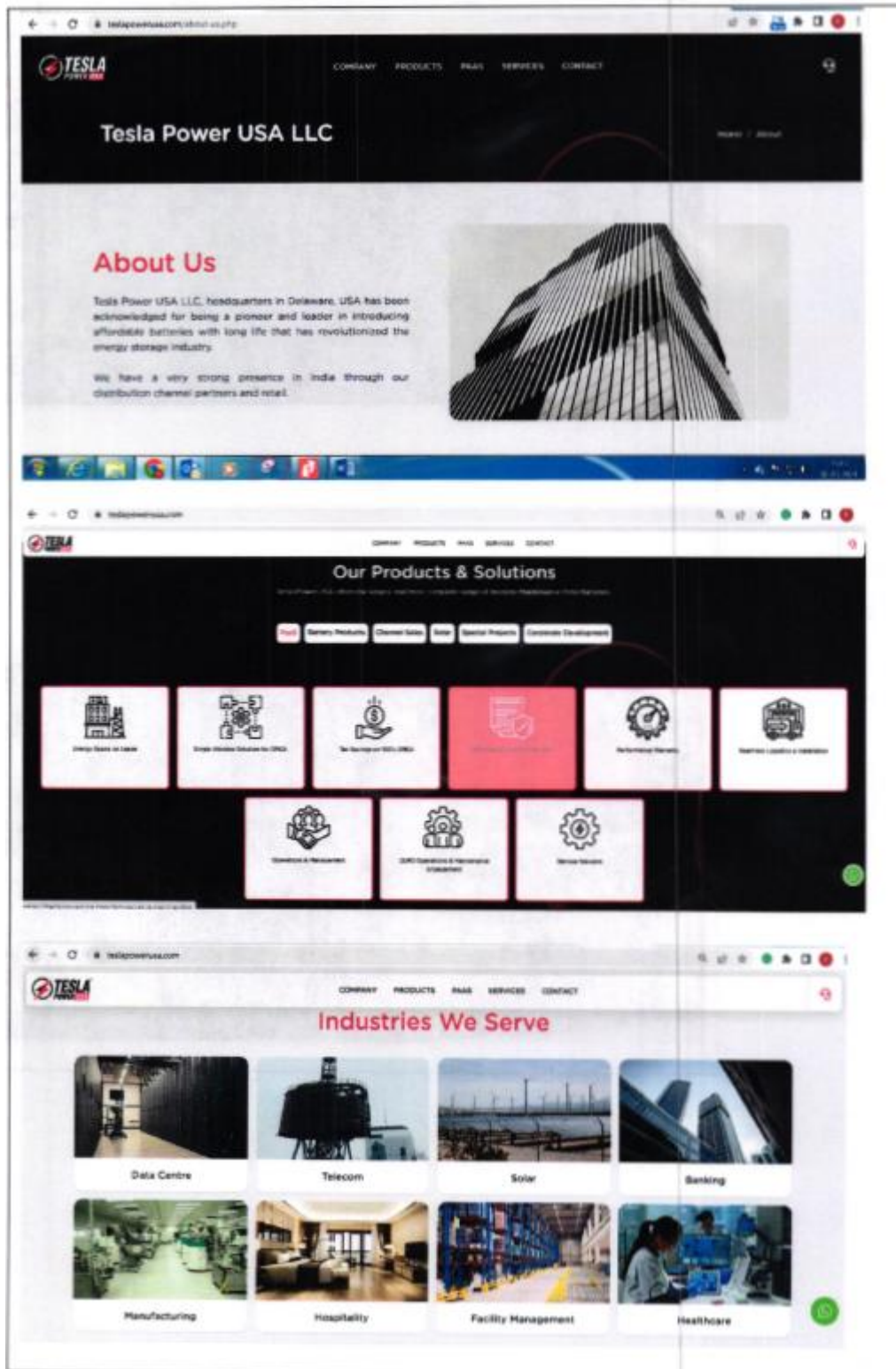
5. Plaintiff claims to have obtained registrations for its trademarks in various jurisdictions around the world. Plaintiff also claims to be in the business of innovative advanced battery technologies.

6. The total revenue for the year 2023 by the company is claimed to USD 98.6 billion. Presence of plaintiff on internet is through its website 'www.tesla.com' and various social media handles.

7. Around April 2022, plaintiff came across defendant no.1 and its counterpart, defendant no.2 (*a company registered in USA*) using the impugned marks which encompassed plaintiff's trademark 'TESLA' in its entirety, in addition to the descriptive phrase 'POWER USA'.

8. Screenshots of defendant's official website 'www.teslapowerusa.com' are shown as under:





9. In addition to the same, Mr. Chander Lall, Senior Counsel for plaintiff has drawn attention to the online promotional articles reporting the

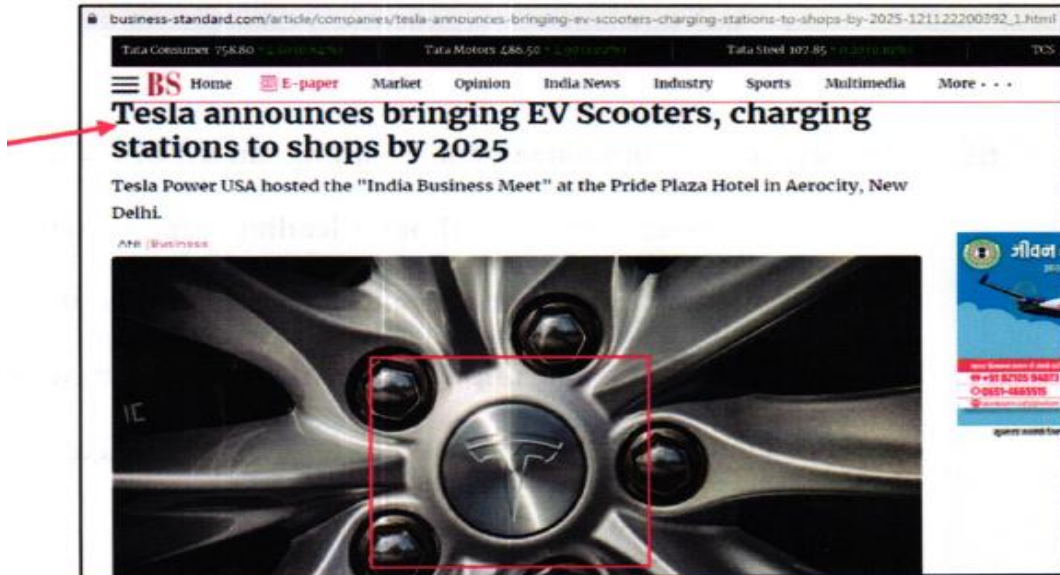
This is a digitally signed order.

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defendants' announcement to enter into plaintiff's core market i.e. Electronic Vehicles, business category. In this regard, screenshots of an article dated 22nd December 2021, are reproduced as under:



10. Further, advertisements issued by defendants were adverted to, screenshots of which are reproduced hereunder:



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11. Consequently, a cease-and-desist notice was sent on 18th April 2022 to defendant nos. 1, 2 and 3, to which a holding response was issued by counsel for defendant no.1 on 2nd May 2022, and a detailed response was received through counsel of defendant nos. 1 and 3 on 9th May 2022. Communications



were thereafter exchanged in the months of August, September, November, December 2022, and from January till March in the year of 2023.

12. Since defendants continued to advertise and market their goods, the present suit was filed.

13. Issue notice.

14. Notice is accepted by counsel on behalf of defendants, who appears on advance notice.

15. Defendant no.3, Mr. Kavinder Khurana is also present in person. It is stated by Mr. Khurana, as also through his counsel, that that he is the CEO of defendant no.1 which is the Indian company (*Tesla Power India Private Limited*); a director in defendant no. 2 which is a company incorporated in U.S.A. (*Tesla Power USA, LLC*), and a director in defendant no. 5 company (*Energy and Fire Tech India Pvt. Ltd.*). He further states that the entity of defendant no. 4 (*Tesla Power USA Inc.*) does not exist anymore since their original business started in 2020 under defendant no. 4, but was later shifted to the Indian entity floated by him.

16. It is further stated that business is predominantly into '*Lead Acid Batteries*' which are supplied for automobiles, inverters, UPS and they do not manufacture any electric vehicles (EVs) of any nature whatsoever. It is stated that advertisements that were issued were in respect of a marketing alliance that they had with another manufacturer of EVs being '*E-Ashwa*'.

17. Counsel for defendant states on instructions from defendant who is present in court that defendants have no intention to manufacture EVs at all and will not market other entities' EVs as well under their trademark and tradename '*TESLA POWER USA*' and or any other brand deceptively similar or use the word '*TESLA*'. He further states that they will not issue any promotional advertisements or material in relation to EV vehicles under



their brand name/ tradename. He further undertakes that defendants shall not use the registered device/logos of 'TESLA'. The said undertaking is taken on record and the defendants will be bound by it.

18. Counsel for defendants wishes to file a response and has handed up a set of documents in support of their defence. The same may be filed before the Court, as part of their reply to this application, with copy to the opposing counsel, within a period of 3 weeks from today. Rejoinder, if any, be filed thereafter before the next date.

19. List on 22nd May, 2024.

20. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MAY 2, 2024/sm/na

Click here to check corrigendum, if any