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

% *Date of Decision: 27.10.2026*

\# **CNR No. DLHC010292162026**

\+ C.A.(COMM.IPD-TM) 41/2026, I.A. 17522/2026 & I.A. 17523/2026

M/S KUMAR EQUIPMENTS (INDIA) PVT. LTD. .....Appellant

Through: Mr. Neeraj Grover, Senior Advocate with Mr. Utkarsh Gupta, Mr. Sanidhya Sharma and Ms. Sanandika, Advocates.

versus

THE REGISTRAR OF TRADEMARK & ANR. .....Respondents

Through: Mr. Gaurav Barathi, SPC, Ms. Khushi Nagrath, Ms. Manvi Goyal and Mr. Debashish Mishra, Advocates for R-1. Mr. Ajay Sahni and Mr. Mohit Maru, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

TEJAS KARIA, J. (*ORAL*)

INTRODUCTION

1. The present Appeal under Section 91 of the Trade Marks Act, 1999 ("**Act**") read with Rule 125 of the Trade Marks Rules, 2017 ("**Rules**") has been preferred against the order dated 18.05.2026 ("**Impugned Order**") passed by Respondent No. 1 - the learned Registrar of Trade Marks, whereby the review petition dated 25.12.2025 ("**Review Petition**") filed by Respondent No. 2 - KEI Industries Limited, under Section 127(c) of the Act was allowed and the order dated 16.10.2025 ("**Abandonment Order**") was set aside. By the Abandonment Order, Opposition No. 1294426 ("**Opposition**") filed by Respondent No. 2 against the Appellant's Trade Mark Application No. 5038776 ("**Subject Application**") for the mark 'KEI-

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KUMAR EQUIPMENT INDIA' ("**Appellant's Mark**") in Class 11 had been treated as abandoned under Section 21 of the Act read with Rule 45(2) of the Rules.

FACTUAL MATRIX

2. On 10.07.2021, the Appellant filed the Subject Application for the registration of the Appellant's Mark for the goods pertaining to 'electric cooking utensils' in Class 11. Respondent No. 1 issued an Examination Report dated 19.07.2021, and the Subject Application was thereafter advertised.

3. On 29.03.2024, Respondent No. 2 filed the Opposition, alleging that the Appellant's Mark is deceptively similar to its registered mark 'KEI' ("**Respondent No. 2's Mark**"). The Appellant received the notice of opposition on 08.04.2024 and filed its counter statement on 16.04.2024 ("**Counter Statement**").

4. As per the record of Respondent No. 1, a copy of the Counter Statement was dispatched on 26.04.2024 to Mr. Pallav Palit of Palit & Co., the attorney on record for Respondent No. 2, as well as to Respondent No. 2 at its address at Okhla Industrial Area, Phase I, New Delhi. The period of two months under Rule 45(1) of the Rules for Respondent No. 2 to file evidence in support of the Opposition expired on 26.06.2024. Respondent No. 2 did not file any evidence or any intimation of reliance on the facts stated in the notice of opposition within that period.

5. Respondent No. 1 thereafter issued a hearing notice dated 25.08.2025, addressed to the attorney on record for Respondent No. 2 as well as to Respondent No. 2, fixing the matter for hearing. When the matter was taken up for hearing on 16.10.2025, Respondent No. 2 did not appear. By the

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Abandonment Order, Respondent No. 1 held that, as neither any evidence in support of the Opposition nor any statement of reliance on the facts stated in the notice of opposition had been filed within the prescribed time, the Opposition was deemed to have been abandoned under Rule 45(2) of the Rules, and directed that the Subject Application shall proceed further as per the Rules. The Certificate of Registration was issued to the Appellant on the same date. Copies of the Abandonment Order were dispatched on 25.11.2025, including to the attorney on record for Respondent No. 2 and to Respondent No. 2.

6. Respondent No. 2, through its new attorney, filed the Review Petition seeking recall of the Abandonment Order. In the Review Petition, Respondent No. 2 contended that neither the Counter Statement nor any hearing notice had been received by Respondent No. 2 or its previous attorney, Mr. Pallav Palit, and stated that an affidavit sworn by Mr. Pallav Palit affirming such non-receipt was being filed along with the Review Petition. The Affidavit dated 19.01.2026 of Mr. Sagar Gupta, Manager (Legal & Secretarial) of Respondent No. 2 stated that the Counter Statement was not received by Respondent No. 2 from the Trade Marks Registry and that Respondent No. 2 was never informed of its service by the erstwhile attorney.

7. The Appellant opposed the Review Petition. After hearing the Parties on 05.05.2026, Respondent No. 1 permitted the Parties to file written submissions, which were filed on 09.05.2026 and 11.05.2026, respectively.

8. By the Impugned Order, Respondent No. 1 observed that, upon perusal of the record, it was verified that the Counter Statement was dispatched and served on the attorney on record, however, came to conclusion that it was not possible to determine whether service was complete as service is deemed

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complete only when the recipient receives the communication. Relying on the affidavit filed by Respondent No. 2 regarding the breakdown of communication with its previous attorney and on ***Rafiq v. Munshilal***, (1981) 2 SCC 788, Respondent No. 1 allowed the Review Petition, set aside the Abandonment Order and granted Respondent No. 2 an opportunity to file its evidence under Rule 45 of the Rules within two months from the receipt of the Impugned Order. Aggrieved thereby, the Appellant has preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

9. Learned Senior Counsel for the Appellant made the following submissions:

9.1. Rule 45(1) of the Rules requires the opponent, within two months of service of the counter statement, to file affidavit evidence supporting the opposition or intimate its reliance on the facts pleaded in the notice of opposition. Under Rule 45(2) of the Rules, failure to act within that period results in deemed abandonment. The provision is mandatory and admits of no exception or discretion.

9.2. Unlike Rule 50 of the erstwhile Trade Marks Rules, 2002, which permitted a one-month extension on an application in Form TM-56, Rule 45 of the Rules provides no extension, which is a deliberate omission reflecting the legislative intent to enforce the two-month limit and prevent delay in opposition proceedings. Respondent No. 1 has no discretion to condone delay in filing evidence.

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9.3. Respondent No. 1's electronic records establish that the Counter Statement was dispatched and served on Respondent No. 2 and its attorney, Mr. Pallav Palit, on 26.04.2024. Respondent No. 2 neither filed evidence by 26.06.2024 nor sought an extension. Despite service of the hearing notice on both, Respondent No. 2 failed to appear. The Opposition thus stood abandoned by operation of law and the Abandonment Order merely recorded that consequence.

9.4. The limited review power under Section 127(c) of the Act cannot reopen concluded proceedings or condone a statutory default resulting in deemed abandonment under Rule 45(2) of the Rules. As the Abandonment Order involved no clerical or procedural error, Respondent No. 1 lacked jurisdiction to review it. Permitting review would enable opponents to circumvent Rule 45 by changing counsel and advancing fresh averments.

9.5. In the Review Petition, Respondent No. 2 categorically denied receipt of the Counter Statement by itself or its attorney through e-mail, post or any other mode. However, subsequently, Respondent No. 2 attributed the default to its erstwhile attorney's failure to inform it of service. These contradictory pleas amount to approbation and reprobation. The Impugned Order accepts both without resolving the inconsistency.

9.6. Although the Review Petition stated that Mr. Pallav Palit's affidavit affirming non-receipt of the Counter Statement and hearing notice was being filed, the affidavit on record was sworn by Mr. Sagar Gupta, a manager of Respondent No. 2. The

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Impugned Order overlooks this discrepancy. Mr. Pallav Palit's continued representation of Respondent No. 2 before this Court in other matters of Respondent No. 2 also belies the plea that his incompetence or negligence caused the default.

9.7. Respondent No. 2 relied before Respondent No. 1 on ***Rafiq*** (*supra*) to contend that a litigant should not suffer for its advocate's mistakes. That principle concerns procedural lapses by counsel, not a party's failure to monitor proceedings or cases where the advocate remains engaged. It cannot override the mandatory timeline under Rule 45 of the Rules.

9.8. The Review Petition was filed on 25.12.2025, after the Abandonment Order attained finality and the Appellant's Mark was registered. The Impugned Order is non-speaking, fails to address the Appellant's detailed submissions and divests the Appellant of the right accrued under the Abandonment Order.

9.9. The Appellant's Mark is composite, with 'KEI' denoting 'Kumar Equipment India', the Appellant's name. Respondent No. 2 primarily deals in wires and cables, and the Parties' goods and trade channels are distinct. Respondent No. 2's Class 11 Application No. 3693722 is itself opposed by a third party.

9.10. Accordingly, the Impugned Order ought to be set aside, and the Abandonment Order and the Appellant's registration restored.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1

10. Learned Counsel for Respondent No. 1 submitted that Respondent No. 1 has filed its Reply to the Appeal supporting the case of the Appellant. The relevant portions of the Reply filed by Respondent No. 1 read as under:

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"That the impugned order dated 18.05.2026 was passed upon consideration of the review petition filed under Section 127(c) of the Trade Marks Act, 1999, the material available on record and the submissions of the parties. The present Appeal raises the question whether the order could properly reopen the opposition after the prescribed period for filing evidence had expired and the opposition had been treated as abandoned under Rule 45(2) of the Trade Marks Rules, 2017.

That the Appellant had filed Trademark Application No. 5038776 for the mark "KEI-KUMAR EQUIPMENT INDIA" under Class 11, against which Respondent No. 2 filed Opposition No. 1294426. The Counter Statement was dispatched to the attorney on record for Respondent No. 2 on 26.04.2024, at the address for service reflected in the Registry record.

That the period prescribed for filing evidence in support of the opposition under Rule 45 of the Trade Marks Rules, 2017 expired on 26.06.2024. No evidence was filed within that period and the opposition proceedings were accordingly treated as abandoned under Rule 45(2), by order dated 16.10.2025.

That Respondent No. 2 filed a review petition under Section 127(c) of the Trade Marks Act, 1999, seeking recall of the order dated 16.10.2025, whereby the opposition proceedings had been treated as abandoned under Section 21 of the Trade Marks Act, 1999 read with Rule 45(2) of the Trade Marks Rules, 2017, for failure to file evidence within the prescribed period.

That in the review petition Respondent No. 2 contended that it had not received the Counter Statement by email or post and had not been made aware of the consequential time period for filing evidence. It attributed the alleged failure to its erstwhile attorney, who, according to Respondent No. 2, had not communicated the Counter Statement or the status of the proceedings.

That Respondent No. 2 further stated that it learnt of the matter only upon an internal review or audit and the subsequent engagement of new counsel, and placed an affidavit explaining the alleged communication gap with its erstwhile representative.

That the Registry record reflected that the Counter Statement had been dispatched to the attorney on record for Respondent No. 2 on 26.04.2024 at the address for service available in the proceedings.

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Once a communication is duly addressed and dispatched to the address for service furnished and maintained on the Registry record, the service requirement is satisfied; the Rules do not make service contingent upon proof of actual receipt or an acknowledgment by the party. The absence of material conclusively establishing personal receipt by Respondent No. 2 therefore did not, by itself, negate service recorded by the Registry.

That the change of counsel and the alleged failure of the erstwhile attorney to communicate the proceedings were matters between Respondent No. 2 and its representative. Respondent No. 2 had chosen and appointed that representative for the opposition proceedings. In the absence of a demonstrated failure of service by the Registry or other sufficient cause attributable to the Registry, an alleged communication lapse within the party's own representation could not displace the consequence that followed from non-filing of evidence within the prescribed period. The order dated 18.05.2026 therefore erred in treating that explanation as sufficient to reopen the opposition.

That the order dated 18.05.2026 did not adjudicate upon the substantive merits of the opposition. The present challenge concerns the procedural decision to recall the abandonment order and restore the opposition; the merits of the competing trademarks need not be determined for deciding this Appeal.

That the review petition was considered on the basis of the Registry record, the submissions of both parties and the explanation furnished by Respondent No. 2. However, the record showed dispatch of the Counter Statement to the attorney on record. The question of actual knowledge by Respondent No. 2 itself was not the test for service at the address maintained for that purpose. In those circumstances, the absence of conclusive proof of personal receipt did not justify setting aside the consequence of non-filing of evidence within the prescribed period.

That by the order dated 18.05.2026, the review petition was allowed, the order dated 16.10.2025 was set aside and Respondent No. 2 was granted a further opportunity to file evidence under Rule 45 within two months. Since the Counter Statement had been dispatched to the attorney on record and the period for filing evidence had expired without evidence being filed, the restoration of the opposition was not warranted on the grounds recorded in the review order.

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That, for the reasons stated above, the impugned review order dated 18.05.2026 warrants interference. The record reflected dispatch of the Counter Statement to the address for service of the attorney on record; the prescribed period for evidence expired without any evidence being filed; and the explanation offered concerned communication between Respondent No. 2 and its former attorney. The order dated 16.10.2025 treating the opposition as abandoned under Rule 45(2) ought therefore to be restored. The submissions herein concern the procedural history and do not invite adjudication of the substantive merits of the competing marks."

11. Respondent No. 1 has accordingly prayed as under:

"PRAYER

In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Allow the present Appeal;

b. set aside the order dated 18.05.2026 and restore the order dated 16.10.2025, whereby Opposition No. 1294426 was treated as abandoned under Rule 45(2) of the Trade Marks Rules, 2017; and

c. pass such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

12. In view of the above, learned SPC for Respondent No. 1 submitted that the present Appeal be allowed and Impugned Order be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

13. Learned Counsel for Respondent No. 2 made the following submissions:

13.1. Abandonment under Rule 45(2) of the Rules does not automatically entitle an application to registration. Reliance was placed on ***Khoday Distilleries Limited v. Scotch Whisky Association and Others*** to emphasise the purity of the register and public interest. The notice of opposition recorded Respondent No. 2's registrations in Classes 6, 9, 16, 35, 37, 42, etc., including its

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earliest Class 9 registration bearing No. 498435 dated 27.09.1988, and Respondent No. 1 the declaration of the Respondent No. 2's Mark as well-known vide order dated 19.02.2024.

13.2. Respondent No. 2's Class 11 Application Nos. 3693719 and 3693722 dated 04.12.2017 were pending when the Subject Application was filed but were not cited as conflicting marks in the Examination Report dated 19.07.2021. This violated Rule 33 of the Rules read with Section 11 of the Act. Therefore, the Subject Application could not proceed to advertisement or registration.

13.3. An opposed application may proceed to registration only upon a decision in the applicant's favour. The non-speaking Abandonment Order resolved none of the issues raised in the Opposition and could not warrant registration. Although Section 91 of the Act prescribes three months for an appeal, the Certificate of Registration was issued on the date of the Abandonment Order, which was dispatched only on 25.11.2025.

13.4. Although the dispatch notice dated 26.04.2024 names Respondent No. 2 and its then attorney with their postal addresses, Respondent No. 2 neither received the Counter Statement nor was informed of it by its attorney. Without service, the period under Rule 45(1) of the Rules did not commence, no obligation to file evidence arose, and Rule 45(2) could not apply. Respondent No. 2 likewise did not receive the hearing notice dated 25.08.2025 and consequently could not attend the hearing on 16.10.2025.

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13.5. The erstwhile attorney is no longer authorised to represent Respondent No. 2 in the Opposition; his engagement in other proceedings is irrelevant. As he was reluctant to furnish an affidavit of non-receipt, the Review Petition was accompanied by the manager's affidavit affirming non-receipt of Respondent No. 1's communications. Respondent No. 2 has advanced no inconsistent pleas.

13.6. The Impugned Order rightly holds that a party should not suffer for counsel's mistake, particularly where deceptively similar trade marks are involved. It causes no prejudice to the Appellant, merely permitting Respondent No. 2 to file evidence and contest the Opposition on merits. Respondent No. 2 has since filed its evidence and consents to time-bound adjudication by Respondent No. 1.

13.7. The mandatory character of Rule 45 of the Rules is pending adjudication before the Supreme Court in ***Black Diamond Motors Pvt. Ltd. v. Registrar of Trade Marks, Mumbai & Anr.***, SLP(C) No. 26470/2026. By order dated 24.08.2026, the Supreme Court issued notice in view of conflicting High Court decisions and stayed the rectification proceedings before the Bombay High Court. Although this Court has held Rule 45 mandatory in several decisions, it does not apply where the opponent never received the counter statement.

13.8. The Appellant's documents evidencing use of the Appellant's Mark, including client appreciation letters, awards, certificates of gratitude and its Chartered Accountant's certificates, etc. were

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not filed before Respondent No. 1 and have been introduced in this Appeal without leave. Being outside the record before Respondent No. 1, they cannot support the challenge to the Impugned Order and ought to be disregarded.

13.9. Accordingly, the Appeal ought to be dismissed with costs.

ANALYSIS AND FINDINGS

14. The question arising for consideration in this Appeal is whether Respondent No. 1, in exercise of its power of review under Section 127(c) of the Act, could recall the Abandonment Order and afford Respondent No. 2 a further opportunity to file evidence after the Opposition stood abandoned under Rule 45(2) of the Rules.

15. Section 21 of the Act prescribes the procedure governing opposition to registration. Under Section 21(3) of the Act, upon the filing of a counter statement by the applicant, the Registrar is required to serve a copy thereof on the opponent. Section 21(4) of the Act requires the evidence relied upon by the opponent and the applicant to be submitted to the Registrar in the prescribed manner and within the prescribed period. In respect of the opponent, these requirements are prescribed by Rule 45 of the Rules. Rule 45(1) of the Rules requires the opponent, within two months of service of a copy of the counter statement, either to file affidavit evidence in support of the opposition or to intimate the Registrar and the applicant in writing of its intention to rely on the facts stated in the notice of opposition. Under Rule 45(2) of the Rules, an opponent who takes neither step within the prescribed period is deemed to have abandoned its opposition.

16. Section 21(3) of the Act imposes a duty upon the Registrar to serve a copy of the counter statement on the opponent, and the two-month period

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prescribed by Rule 45(1) of the Rules commences upon such service. Section 21 of the Act, read with Rule 45(2) of the Rules, thus provides for deemed abandonment where the opponent fails to take the prescribed action within two months of service. The Rules contain no provision for extension of this period, and Respondent No. 2 acknowledges that this Court has construed Rule 45 of the Rules as mandatory. The issue, therefore, is whether Respondent No. 1 duly discharged its obligation to serve the Counter Statement on Respondent No. 2.

17. The dispatch notice dated 26.04.2024, as per the records of Respondent No. 1 records that the Counter Statement was dispatched to Mr. Pallav Palit of Palit & Co., the attorney on record of Respondent No. 2, which is not disputed by Respondent No. 2.

18. The Impugned Order expressly records that, upon examination of the record, the Counter Statement was found to have been dispatched and served on the attorney on record. Notwithstanding that finding, Respondent No. 1 proceeded on the premise that service is complete only upon actual receipt by Respondent No. 2. This premise is inconsistent with Respondent No. 1's stand before this Court that the Rules do not condition service upon proof of actual receipt or acknowledgment by the party.

19. The explanation advanced by Respondent No. 2 does not rebut the service recorded by Respondent No. 1. In the Review Petition, Respondent No. 2 asserted that neither it nor its previous attorney had received the Counter Statement, while attributing the default to the attorney's failure to inform it of such service. Both assertions appear in Mr. Sagar Gupta's affidavit dated 19.01.2026. Although the Review Petition stated that an affidavit of the previous attorney affirming non-receipt was being filed, no such affidavit was placed on record.

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20. Respondent No. 2 has acknowledged that the previous attorney was reluctant to furnish the Affidavit, which compels this Court to draw an adverse inference that there is no material available with the said attorney on record disputing receipt. A failure of communication between a party and the attorney appointed to conduct its opposition proceedings cannot amount to non-service. The same reasoning applies to the hearing notice dated 25.08.2025.

21. The principle that a litigant ought not to suffer for its counsel's default, invoked by Respondent No. 2 in reliance on ***Rafiq*** (*supra*), cannot be applied to override a statutory deeming provision. Upon expiry of the two-month period under Rule 45(1) of the Rules on 26.06.2024 without the prescribed action by Respondent No. 2, the Opposition stood abandoned by operation of Rule 45(2) of the Rules. The Abandonment Order merely recorded that statutory consequence.

22. The power of review under Section 127(c) of the Act cannot be exercised to grant an opponent additional time that the Rules do not permit. The Impugned Order effectively extended the period for filing evidence by nearly two years beyond the prescribed deadline, which is impermissible.

23. The pendency of the question before the Supreme Court in ***Black Diamond Motors*** (*supra*) does not advance Respondent No. 2's case. As Respondent No. 2 has itself stated, the Supreme Court has issued notice and stayed the rectification proceedings pending before the Bombay High Court in that matter.

24. Respondent No. 2's contention that abandonment of the Opposition could not result in registration of the Appellant's Mark is without merit. Section 23(1) of the Act provides that, where an application has been accepted and either remains unopposed upon expiry of the opposition period or the opposition has

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been decided in the applicant's favour, the Registrar shall, unless otherwise directed by the Central Government, register the trade mark within eighteen months of the filing of the application.

25. Section 23 of the Act, read with Rule 45(2) of the Rules, establishes that, upon deemed abandonment, no opposition remains for adjudication. The application, having already been examined, accepted and advertised, must accordingly proceed to registration, and the Registrar is obliged to register the trade mark. Respondent No. 2's objection concerning the non-citation of its prior applications in the Examination Report pertains to the examination of the Subject Application, which concluded before advertisement. That objection cannot be re-agitated through review of the Abandonment Order.

26. Respondent No. 1 has also supported the Appellant's case in its Reply to the Appeal, submitting that the Impugned Order warrants interference on the ground that the Counter Statement was dispatched to the address for service of the attorney on record. Accordingly, Respondent No. 1 has sought allowance of the present Appeal and restoration of the Abandonment Order under Rule 45(2) of the Rules. In view of Respondent No. 1's own prayer for setting aside the Impugned Order, the same cannot be sustained.

27. In any event, Respondent No. 2 is not without recourse. It remains open to Respondent No. 2 to institute a rectification petition under Section 57 of the Act on grounds concerning the similarity of the marks, the well-known status of its Mark, its prior registrations and pending applications. Accordingly, its concerns regarding the purity of the Register may be addressed through the remedy available under the Act.

28. Accordingly, the present Appeal is allowed. The Impugned Order dated 18.05.2026 is set aside, and the Abandonment Order dated 16.10.2025 is

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restored. Consequently, the registration granted to the Appellant in respect of the Subject Application pursuant to the Abandonment Order stands restored. Respondent No. 1 is directed to make the requisite entries in the Register of Trade Marks. The evidence filed by Respondent No. 2 pursuant to the Impugned Order shall not be taken on record.

29. It is clarified that nothing in this Order shall be construed as an expression of opinion on the merits of the Parties' rival claims, including the similarity of the marks, the prior adoption and use of their respective marks, or the well-known status of Respondent No. 2's Mark. All rights and contentions of the Parties are expressly kept open. Respondent No. 2 shall be at liberty to avail itself of such legal remedies as may be available in accordance with law.

30. The Registry is directed to forward a copy of this Order to the Office of the Controller General of Patents, Designs and Trade Marks at the e-mail address – llc-ipo@gov.in for requisite compliance.

31. The present Appeal stands allowed in the aforesaid terms. All pending applications also stand disposed of.

TEJAS KARIA, J

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