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

+ **CS(COMM) 273/2024 with I.A. 7414/2024, I.A. 11275/2024, I.A. 47753/2024, I.A. 48242/2024**

**KUBOTA CORPORATION**

.....Plaintiff

Through: Mr. Gaurav Gogia, Mr. Rishabh Gupta, Mr. Deepak Shrivastava, Advocates.

versus

**KAIRA AGROS & ORS.**

.....Defendants

Through: Mr. Manish Dhir, Mr. Sudhir Kumar, Mr. Saurabh Panwar, Advocates for defendants with D-2 in person.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**ORDER**

% **13.12.2024**

**I.A. 47753/2024 (u/S 22 (4) of the Designs Act, 2000)**

1. This application has been filed on behalf of the defendant no.1 under Section 22(4) of the Designs Act, 2000 seeking transfer of two design cancellation petitions being D-9/129/2024-KOL and D-9/130/2024-KOL filed by the defendant no.1 before the Controller of Patents and Designs, Kolkata against the plaintiff's registered Designs no.265708 and 265709.
2. Notice in this application was issued on 10<sup>th</sup> December, 2024.
3. Mr. Manish Dhir, counsel appearing for the defendants has placed reliance upon the judgment of the Supreme Court in *S.D. Containers Indore v. M/s Mold Tek Packaging Ltd*, Civil Appeal No. 3695/2020 and the judgment of a coordinate bench of this Court in *Novateur Electrical &*



***Digital Systems Pvt. Ltd. v. V-Guard Industries Ltd.***, 2023/DHC/000960 in support of his contention that this Court is empowered to transfer the aforementioned rectification petitions filed by the parties before the Controller of Designs.

4. I have perused the aforesaid judgments. In ***S.D. Containers (supra)*** relying upon Section 22(4) of the Designs Act, 2000 read with Section 7 of the Commercial Courts Act, 2015, the Supreme Court made the following observations:

*“13. It was held that any application for cancellation of registration under Section 19 could be filed only before the Controller and not to the High Court. Therefore, in these circumstances, it was held that the High Court would be entitled to assume jurisdiction only in appeal. It was not a case of suit for infringement in which the defendant has raised a plea of revocation of registration which is required to be transferred to the High Court in terms of Section 22(4) of the 2000 Act. Therefore, such judgment has been wrongly relied upon by the High Court assuming that the proceedings are before the Controller and that the plaintiff/respondent had filed a suit for infringement wherein a plea of revocation of registration was raised which was required to be transferred to the High Court in terms of Section 22(4) of the 2000 Act.*

*14. Furthermore, in the 2000 Act, there are two options available to seek revocation of registration. One of them is before the Controller, appeal against which would lie before the High Court. Second, in a suit for infringement in a proceeding before the civil court on the basis of registration certificate, the defendant has been given the right to seek revocation of registration. In that eventuality, the suit is to be transferred to the High Court in terms of sub-section (4) of Section 22 of the 2000 Act. Both are independent provisions giving rise to different and distinct causes of action.”*

[Emphasis supplied]

5. The aforesaid judgment of the Supreme Court was followed by the coordinate bench in ***Novateur Electrical (supra)*** and the following observations were made:

*“21. In para 11 of the report, the Supreme Court has clearly noted the*



*provision of Section 22(4), which empowers the defendant in a suit to seek cancellation of a design, —necessarily mandates the court to transfer the suit. The reference to —suit in this passage, clearly refers to the cancellation proceedings instituted by the defendants against the plaintiff.”*

[Emphasis supplied]

6. In the present case, it is not a disputed position that the applicant/defendant no.1 has taken the defence of invalidity of the plaintiff's design registrations in his written statement. On the same basis, the aforesaid rectification petitions have been filed before the Controller of Designs, Kolkata seeking cancellation of the two registrations granted in respect of the plaintiff's designs.
7. In view of the above, both the cancellation petitions are liable to be transferred to this Court.
8. In light of the aforesaid decisions, the application is allowed.
9. The Controller of Patents and Designs, Kolkata, is directed to transmit to the Registry of this Court, the complete physical records of the design cancellation petitions no.D-9/129/2024-KOL and D-9/130/2024-KOL filed by the defendant no.1 against the plaintiff within a period of six weeks from today.
10. On the physical files being received, the Registry would scan the files, convert them into electronic files, register the cases and number the same.
11. Registry to provide copies of the said petitions to the counsel for the parties.
12. List the transferred design cancellation petitions along with the present suit on 12<sup>th</sup> March, 2025.
13. The application is disposed of.



**I.A. 48242/2024 [O-XI R-1(5) of the Commercial Courts Act]**

14. The present application has been filed on behalf of the plaintiffs seeking leave to file additional documents.
15. Issue notice.
16. Notice is accepted by the counsel for the defendants.
17. *Via* the present application, the plaintiff seeks to bring on record a complaint filed by the plaintiff against the defendants before the Ministry of Agriculture, Government of India on 31<sup>st</sup> August, 2024.
18. I am of the view that the aforesaid documents should be taken on record since the suit is at an initial stage and the trial is yet to commence.
19. Accordingly, the application is allowed and the aforesaid documents are taken on record.

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20. In view of the aforesaid additional documents having been taken on record, liberty is given to the defendants to file additional documents in relation to the said documents within two weeks.
21. List the suit along with pending applications on 12<sup>th</sup> March, 2025.

**AMIT BANSAL, J**

**DECEMBER 13, 2024**

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