

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 50(ND)/2017
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. R.VARADHARAJAN
Hon'ble Member (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 22.03.2017

NAME OF THE COMPANY: World Book Company Pvt Ltd.
Vs
World Book India Pvt Ltd.

SECTION OF THE COMPANIES ACT: 7(7)r/w s 446,447,448,449,&450

| S.NO. | NAME | DESIGNATION | REPRESENTATION | SIGNATURE |
|-------|------|-------------|----------------|-----------|
|-------|------|-------------|----------------|-----------|

Tapan Choudhury, Advocate for the petitioner.

ORDER

The petitioner has invoked the jurisdiction of this Tribunal by filing this petition u/s 7(7) read with sections 446, 447, 448, 449 and 450 of the Companies Act, 2013. The petitioner has prayed for the following reliefs: -

- a. Direct removal of the name of the Respondent No.1-company i.e. World Book India Pvt. Ltd from the register of companies;
- b. Direct imposition of fine and prosecution of Respondent No.1-company and its first directors for giving false station and false evidence;
- c. Direct imposition of fine and imprisonment for concealment of facts amounting of fraud on the first directors of the Respondent No.1-company;
- d. Order for a reward in favour of petitioner;
- e. Direct imposition of costs of proceedings;
- f. Pass such other orders as it may deem fit.

The Petitioner company styled as World Book Company Pvt. Ltd. was incorporated on 23.5.2012. In September 2012 petitioner received a legal notice on behalf of the World Book Inc, a foreign company asking the petitioner to do the following things immediately:-

1. Change the name of your business to a name which does not include 'World Book' or anything which is confusingly similar or associated with that work and file the requisite documents with the Registrar of Companies evidencing the change of name and provide a stamped acknowledgment copy of such documents.
2. Cease all use of the impugned trade name 'World Book' in any way, including but not limited to selling and marketing of products under the said trade name and/or use of the said name on letter heads, websites, invoices, brochures, pamphlets or any other advertising/sales promotional material and in any other manner whatsoever.
3. Unconditionally assign and transfer all rights, interest and title in the domain name 'worldbookcompany.in' in favour of our client without the need for any consideration/payment.
4. Deliver to us any and all material in your possession or control bearing our client's trade mark/trade name and anything substantially or confusingly

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similar thereto, including, but not limited to, all inventory of cartons, packing containers, labels, packaging, invoices, advertising and promotional materials and/or articles used in connection with the sale and /or marketing of such goods.

5. Execute the attached undertaking on Rs.100/- non judicial stamp paper.

Thereafter the World Book Inc, a foreign company has filed a Trade Mark infringement suit in May 2013 before the Hon'ble High Court of Delhi which has been now registered as CS(COMM)1372/2016. An ex parte ad interim injunction order was passed against the petitioner and restrained the petitioner from using the Trade Mark 'World Book' or any other mark that is deceptive similar to the plaintiffs, similar to the 'World Book Inc registered trade mark 'World Book' in respect of printing, publishing of books and other reference materials and educational products. The order passed by Hon'ble High Court of Delhi on 27.5.2017 which is as under:-

"5. As regards the defendants, it is averred that the defendant is a company by the name 'World Book Company Private Limited', registered under the Indian Companies Act, 1956 and is stated to be engaged in the overlapping business of publication and publishing books, etc. The plaintiffs claim that in the first week of September, 2012, they discovered that the defendant had registered a company in the name of "World Book Company Private Limited" that contains the dominant and distinctive element of the plaintiffs' trademark/trade name "WORLD BOOK".

6. The plaintiffs further discovered that the defendant had also registered the domain name "<worldbookcompany.in>" by hosting the website, which is stated to be deceptively and/or confusingly similar to the plaintiffs' domain name "<worldbook.com>". Immediately thereafter, on 12.9.2012, the plaintiffs claim to have sent a cease and desist notice to the defendant calling upon it not to use its registered trademark/trade name "WORLD BOOK" as part of their corporate name. However, the said notice was not replied to by the defendant.

7. It is averred by the plaintiffs that by using the plaintiffs' proprietary trademark/trade name "WORLD BOOK" and by adopting the trademark "WORLD BOOK" as part of its corporate name, the defendant has committed

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an infringement of the registered trademark of the plaintiffs. The aforesaid act of the defendant is stated to have resulted in deceiving the members of the trade and public at large into believing that the offending products/services sold and offered for sale by the defendant have some connection with the plaintiffs, whereas in fact, no such connection exists. Further, the defendant being in the same trade of publication of books, etc., as the plaintiffs, it is averred that the public is likely to be attracted towards the defendant's products sold under the impugned trade name and they would be inclined to purchase the same under a mistaken belief and impression that they are buying the merchandise of the plaintiffs and/or their licensees. The manner in which the plaintiffs are likely to suffer irreparable loss and injury on account of the aforesaid acts of the defendant, has been detailed in para 26 of the plaint.

8. Having regard to the averments made in the plaint and upon perusing the documents placed on record, this Court is satisfied that the plaintiffs are entitled to grant of an ex parte ad interim injunction in their favour. Accordingly, till further orders, the defendant, its directors, officers, agents, servants, representatives, assigns, etc., are restrained from using the trademark "WORLD BOOK" or any other mark that is deceptively similar to the plaintiffs' registered trademark "WORLD BOOK" in respect of printing/publishing of books and other reference materials and educational products, either in print or in software versions as also on their website.

9. To enable the defendant to make adequate alternate arrangements with regard to the books, reference material being published by it under the impugned mark, it is deemed appropriate to direct that this order shall come into operation upon expiry of four weeks reckoned from the date of intimation of this order.

10. Provisions of Order XXXIX Rule 3 of the Code of Civil Procedure be complied with within three days."

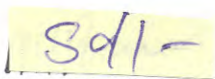
The case of the petitioner is that Respondent No.1 Company World Book Company Pvt. Ltd was incorporated on 24.8.2012 after incorporation of the petitioner's company on 23.5.2012. In a RTI as to how identical name was approved


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by Registrar of Companies without obtaining 'No Objection Certificate' from the petitioner it was disclosed that one of the First Directors Mr. Manishi Pathak submitted a false statement claiming that no identical company with the same name has been incorporated.

The Petitioner also agitated the issue u/s 16 of the Companies Act, 2013 before the Regional Director who in his order dated 25.5.2016 has noticed the interim order passed by High Court of Delhi on 15.10.2014 in IA No.8971/2013, I.A. No.11342/2013 and I.A. No.12459/2013 in the Civil suit had confirmed the ex parte interim order dated 27.5.2012 granting the interim injunction in favour of the Respondent; and till further orders the petitioner, its directors, its officers, agents, servants etc. were refrained from using the trademark 'World Book' or any other mark that is deceptively similar to the plaintiffs' registered trademark 'World Book' in respect of printing/publishing of books and other reference materials and educational products either in print or in software versions as also in their website. It was in view of the aforesaid factual position and interim order that the Regional Director concluded that the initiation of litigation before him u/s 16 was abusing the process of law as the interim order passed by Hon'ble High Court of Delhi is continued against the petitioner.

Having heard the learned counsel we are of the view that once Hon'ble High Court of Delhi has passed an interim order on 27.5.2013 which has been confirmed on 15.10.2015 and 12.6.2016, then no room is left for this Tribunal to exercise jurisdiction at this stage under 7(7) of the Companies Act, 2013 by concluding that the respondent has acquired incorporation certificate of its company by playing fraud or by practice deception. We are further of the view that it is sheer misuse of the process of the Court and the instant petition is ill advised. Accordingly the petition fails and the same is dismissed with cost of Rs.25,000/-. The cost be deposited in the Library fund of the NCLT.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT


(R. VARADHARAJAN)
MEMBER (J)

Dated: 22.3.2017
(VS)