



2026:DHC:3097



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

% Order reserved on : 01.04.2026  
Order delivered on: 15.04.2026

+ CS(COMM) 125/2026, I.A. 4734/2026, I.A. 6512/2026 & I.A. 7236/2026

MORE THAN WATER PRIVATE LIMITED .....Plaintiff

versus

NESCO LIMITED .....Defendant

**Advocates who appeared in this case:**

For the Plaintiff : Mr. Chander M. Lall, Senior Advocate with Mr. Anirudh Bhatia, Advocate.

For the Defendant : Mr. J. Sai Deepak, Senior Advocate with Mr. Naqeeb Nawab, Ms. Sanandika Pratap Singh, Mr. Sidhi Pramodh Rayadu and Ms. Purnima Vashistha, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**ORDER**

**TUSHAR RAO GEDELA, J.**

**I.A. 3663/2026 (Under Order XXXIX Rules 1 & 2, CPC)**

1. This is an application filed by the plaintiff under Order XXXIX Rules 1 & 2, Code of Civil Procedure, 1908 ('CPC') seeking interim injunction against the defendant.

2. The plaintiff claims to be incorporated on 02.09.2022 and engaged in the business of manufacturing, marketing, distribution and sale of packaged drinking water supplied through eco-friendly paper-based boxes/packaging bearing the trademarks 'WATERBOX', 'WATER BOX', 'MORE THAN

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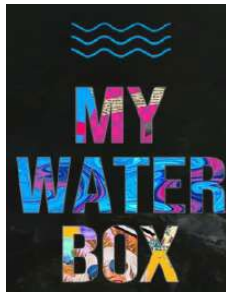
WATERBOX’/ , ‘WATER BOX IS THE RIGHT



CHOICE’/ IS THE RIGHT CHOICE.



3. Plaintiff claims to be the prior adopter and user of the aforesaid earlier, well-known trademarks and has filed the present suit for passing off and infringement of copyright, claiming that the defendant is advertising, marketing, promoting, offering for sale and selling packaged drinking water bearing the impugned mark ‘MY WATER BOX’(Device)/



/ , by slavishly copying, with dishonest intention, the prominent and essential feature of the plaintiff’s mark ‘WATER BOX’ *ad verbatim*, in its entirety, in respect of identical goods.

4. It is claimed that the defendant *mala fide* obtained the registration of



the impugned mark ‘MY WATER BOX’ (Device)/

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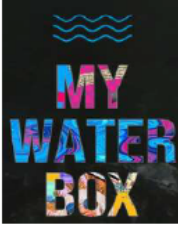
bearing Application no.6879596 in Class-32 dated 26.02.2025, with user claim of 15.10.2020.

5. Plaintiff further asserts that being a prior adopter and prior user of the said trademarks, it has perfected its common law rights as opposed to the defendant. It is in this backdrop that the plaintiff has instituted the accompanying suit for passing off against the defendant and the present application is filed for *ad-interim* injunction against the defendant.

**CONTENTIONS OF THE PLAINTIFF:-**

6. Mr. Chander M. Lall, learned senior counsel appearing for the plaintiff submitted as under:-

6.1. Learned senior counsel opened his arguments by inviting attention of this Court to the comparison between various marks of the plaintiff and that of the defendant which is extracted hereunder:-

| PLAINTIFF'S EARLIER, WELL-KNOWN TRADEMARKS                                                                                                                                                                                                                                                                                                                                                                                                           | DEFENDANT'S IMPUGNED MARK                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p data-bbox="491 1193 820 1218">"WATERBOX/ WATER BOX"</p> <p data-bbox="491 1234 820 1258">"MORE THAN WATERBOX"</p> <p data-bbox="491 1274 820 1346">"WATERBOX IS THE RIGHT CHOICE"</p>    | <p data-bbox="935 1193 1142 1218">'MY WATER BOX'</p>   |



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Learned senior counsel submitted that though the plaintiff's marks are not registered, however, it is the prior adopter and user of the said marks since the year 2018. An application for registration of the device



mark, 'More Than Water Box' / **morethan water box.** was submitted in the year 2023 and an application for the word mark 'Water Box' was submitted in the year 2026 by the plaintiff.

6.2. Mr. Lall, learned senior counsel contended that since the present suit is instituted on the claim that the defendant is passing off its goods as that of the plaintiff, it would be necessary for the plaintiff to establish prior adoption, prior user and goodwill from the year 2018. In order to support the said contention, he referred to various invoices commencing from 23.06.2018 which is a purchase order placed by the Predecessor-in-interest - M/s. Meera Enterprises. He also invited attention to Invoice bearing no.MEE-007 dated 09.02.2020 for the goods sold under the mark 'More Than Water Box'. Thereafter, other invoices pertaining to purchases by M/s. Meera Enterprises were also drawn attention to. Lastly, attention was invited to Invoice no.MEE-007 dated 12.01.2020 for the goods sold under the mark 'More Than Water Box'.

6.3. Learned senior counsel further contended that on 11.11.2018, the mark of the plaintiff 'Water Box is the Right Choice' was created and furnished to the plaintiff through e-mail. In order to support the contention that as early as 2018, the plaintiff was selling its products i.e., Alkaline Water in tetra packs, learned senior counsel drew attention to the sample picture of the product which is as under:-

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To further strengthen the aforesaid fact of creation and adoption of the mark 'Water Box is the Right Choice', learned senior counsel placed reliance on the No Objection Certificate issued by the creator (Mr. Jay Nathwani) dated 09.03.2018. Further, learned senior counsel asserted that the present mark 'More Than Water Box' used by the plaintiff was created on 10.10.2022 by an artist under the contract of service. He stated that since the mark of the plaintiff 'More Than Water Box' was created by an artist under engagement by the plaintiff, the plaintiff would be the first owner of the original artistic work embodied therein by virtue of the provisions of the Copyright Act, 1957.

6.4. It is submitted that *vide* Assignment Deed dated 07.10.2022, M/s. Meera Enterprises assigned and transferred its rights over the word mark 'Water Box' alongwith its device/logo and tagline 'Water Box is the Right

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Choice’ to the plaintiff. In order to establish extensive publicity and promotion, learned senior counsel referred to various photographs of the plaintiff’s products as also the photographs available on the website – [www.morethanwater.in](http://www.morethanwater.in). He claimed that the domain name of the plaintiff was registered on 26.02.2023 by M/s. Meera Enterprises, the Instagram account was created in March, 2018 and the first post was published in the year 2019. He submitted that the said Instagram account has been actively used since 2023 for advertisement and promotion of its products and has garnered 11,100 followers. Similarly, the plaintiff also created a Facebook account on 25.03.2018 under the mark ‘Water Box’, which currently has 9,800 followers. The plaintiff also relied upon the Facebook post of 25.03.2023 promoting its product bearing the mark ‘More Than Water Box’.

6.5. Mr. Lall, learned senior counsel also emphasized that apart from the above, the plaintiff’s products under the mark ‘More Than Water Box’ are being offered for sale on e-commerce platforms like IndiaMart, TradeIndia and Amazon.in etc. He stated that even in exhibitions, the plaintiff had used the trademark ‘More Than Water Box’ under which its goods were being offered for sale.

6.6. In order to emphasize and establish substantial goodwill and reputation in the past seven years, learned senior counsel relied upon the CA certificate certifying the annual turnover from FY 2022-23 to 2025-26 (till December, 2025). He also brought attention of this Court to the promotional expenses incurred by the plaintiff for its products bearing the subject marks.

6.7. He submitted that the plaintiff *vide* the Trade Mark Application dated 09.03.2023 applied for the device mark ‘More Than Water Box’/

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on a 'proposed to be used' basis in Class-32. He fairly submitted that the said application is objected to. He also stated that the plaintiff had applied for the registration of the word mark 'Water Box' on 15.01.2026 in Class-32 claiming use since 23.06.2018. He further stated that the design registration from the Patent Office for Design No.408610-001 in Class-09-03 was granted on 24.02.2024 in favor of the plaintiff with respect to the product bearing the trademark 'More Than Water Box', as depicted below:-



6.8. In contrast, learned senior counsel contended that the defendant's trademark 'My Water Box' was registered on 26.02.2025 with a user claim since 15.10.2020. He would contend that the affidavit of user filed by the defendant before the Trade Marks Registry was based on falsehood. He would contend that the defendant claimed creation and adoption of the mark 'My Water Box' since the year 2018, and claimed user of the mark since 15.10.2020, however, the said claim is bereft of any supporting

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documents as none of the invoices showed the defendant having received any consideration for the purported sale of its product bearing the infringing mark. In fact, he would contend that these were mere transfers where either the consignee is the defendant itself, or the products were sold as part of the banquet packages. According to him, there are only two invoices dated 09.06.2022 and 01.07.2022 where some charges are reflected against the product bearing the mark 'My Water Box'. Thus, according to learned senior counsel, the defendant was nowhere in the commercial segment in comparison to the plaintiff who was by that time well established and had gathered immense reputation.

6.9. Yet another relevant contention of the plaintiff argued by Mr. Lall, learned senior counsel, is in respect of the Search Report dated 27.02.2025 generated on the Trade Mark Application filed by the defendant. He would vehemently contend that at the time when the Search Report was generated, it was the mark of the plaintiff 'More Than Water Box' that was cited. In other words, he emphasized that the mere fact that at the time of scrutiny of the defendant's application for registration of the mark 'My Water Box', the plaintiff's mark 'More Than Water Box' was cited in objection, leads to the presumption that the mark of the plaintiff was already a well-known and established mark, and was in the knowledge of the defendant. According to him, this is a clear indicator of not only the prior adoption and user by the plaintiff but also establishes its goodwill and reputation as well as dishonest adoption of the infringing mark by the defendant.

6.10. He also invited attention to the response of the defendant to the objection raised by the Trade Marks Registry whereby the defendant submitted an evasive reply that the application for the cited mark was filed on 09.03.2023 on a 'proposed to be used' basis, while the defendant has

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filed its application with a user claim of 15.10.2020. Mr. Lall would contend that the said statement is false on the face of it in view of the overwhelming documentary evidence placed on record by the plaintiff in support of its user claim since the year 2018 as well as lack of evidence for the defendant to claim use since 2020.

6.11. He would stoutly emphasize on the apparent contradistinction in the submissions of the defendant before the Trade Marks Registry in comparison to the stand taken by it before this Court. In other words, learned senior counsel would submit that on one hand, the defendant has taken a stand that 'My Water Box' is not descriptive and does not have a dictionary or a commonly known meaning before the Trade Marks Registry however, on the other, has claimed here that the mark of the plaintiff is descriptive of the product. According to him, this contradiction itself is glaring enough to warrant injunction against the defendant.

6.12. Dilating on the falsities and fabrication employed by the defendant before the Trade Marks Registry, learned senior counsel relied upon the photographs enclosed by the defendant alongwith its Trade Mark Application to establish user. While referring to the photographs, he would indicate that the same seem to be fabricated and photoshopped pictures of some exhibition which establishes misrepresentation, fraud, dishonesty and deception played by the defendant in order to obtain registration of its mark, with user claim since 15.10.2020.

6.13. Apart from the aforesaid contention, learned senior counsel would vehemently contend that irrespective of the aforesaid glaring lacunae, the screenshot from the defendant's Instagram post is a clear giveaway for the reason that the Instagram post of the year 2025 of the defendant establishes that the said product under the infringing mark of the defendant was slated

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to be launched only in the month of December, 2025. Thus, he would contend that if a product under the mark 'My Water Box' was not even launched till the month of December, 2025, the plaintiff, in view of the aforesaid voluminous evidence in its favour, is clearly entitled to an *ad-interim* injunction, restraining the defendant from any further use of the infringing mark 'My Water Box'.

6.14. Additionally, learned senior counsel stated that the plaintiff has also filed a petition under Section 57 of the Trade Marks Act, 1999 seeking rectification/removal of the impugned mark 'My Water Box' (Device)/



before this Court. Notice is stated to have been issued on 04.02.2026.

6.15. Last but not the least, learned senior counsel while comparing both the products under their own respective marks contended that both the parties are manufacturing and offering for sale packaged drinking water through common trade circles, distribution channels and retail outlets, which would enhance the possibility of actual confusion. He also submitted that there is no doubt that the consumers would be identical. Thus, the common man will surely get confused or deceived while purchasing the goods of the defendant, believing them to be those of the plaintiff or somehow associated with it. To demonstrate confusion, Mr. Lall brought attention to one such instance that occurred on 04.11.2025 when a consumer reached out to the plaintiff while attempting to reach out to the defendant.

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6.16. Learned senior counsel further contended that drinking water is a product of mass consumption, purchased by all strata of society, for everyday consumption and hence, the consumers cannot be expected to exercise high degree of care/caution and are bound to be easily misled. In order to establish deception by the defendant with an intention to create confusion amongst the consumers, learned senior counsel relied upon the comparison table between the two products, which is extracted hereunder:-

| PLAINTIFF'S PRODUCTS BEARING THE EARLIER, WELL-KNOWN TRADEMARKS                     | DEFENDANT'S PRODUCTS BEARING THE IMPUGNED MARK                                       |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|   |   |
|  |  |

Learned senior counsel claimed that the packaging of the defendant's product is identical to that of the plaintiff's, i.e., white rectangular eco-



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friendly paper-based boxes with minimalist layout, with a common



wave design, reinforcing the same visual impression.

6.17. Moreover, he also contended that in a suit for passing off, the plaintiff has to pass the triple test. The plaintiff has, by virtue of the voluminous documents, been able to *prima facie* establish (i) prior adoption, (ii) prior use, (iii) immense reputation and; (iv) substantial goodwill. The plaintiff has further established dishonesty and misrepresentation by the defendant which would, in all likelihood, cause damage to the goodwill and reputation of the plaintiff.

6.18. Learned senior counsel also relied on the judgements of this Court in *Rajasthan Aushdhalaya Private Limited vs. Himalaya Global Holdings Ltd. & Anr.: 2025 SCC OnLine Del 4721*, *South India Beverages Pvt. Ltd. vs. General Mills Marketing Inc.: 2014 SCC OnLine Del 1953* and order dated 09.01.2026 in *Anurag Saxena vs. Nishant Singh, CS(COMM) 14/2026*.

7. Relying on the aforesaid, learned senior counsel prayed that an *ad-interim* injunction order be passed in its favour, as per the prayers sought in the present application.

### **CONTENTIONS OF THE DEFENDANT:-**

8. Appearing for the defendant, Mr. J. Sai Deepak, learned senior counsel stoutly refuted the contentions and submissions of the plaintiff.

8.1. He would contend that the defendant is a registered proprietor of the



mark 'My Water Box'(Device)/  
with a user claim since 15.10.2020.

applied for on 26.02.2025

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8.2. In contrast, he would contend that the plaintiff admittedly has no statutory rights over its claimed marks as well as no sales for the FY 2020-21 to FY 2022-23. Equally, there is no document placed on record by the plaintiff to indicate any expenditure on advertisement and promotion for the years 2022-24. He contended that mere proof of some user by placing on record intermittent sales is not a proof of substantial goodwill. He would contend that an approximate sales of Rs.40 lakhs, that too, not relatable to the marks of the plaintiff, cannot be stated to be accumulation of substantial goodwill for being granted protection by this Court in an action of passing off.

8.3. Learned senior counsel stated that it is admitted by the plaintiff that it was incorporated in the year 2022 and it is on account of the Assignment Deed executed by M/s. Meera Enterprises that the plaintiff claims right over the marks 'Water Box' and 'Water Box is the Right Choice'. Other than that, the plaintiff, it is argued, has not placed any evidence worth its name to substantiate its user claim since 2018 or to establish substantial goodwill or reputation.

8.4. In order to support the aforesaid contention, Mr. J. Sai Deepak referred to two invoices placed on record by the plaintiff to predicate its prior user. He referred to Invoice No.MEE-007 dated 09.02.2020 and another invoice bearing the same number i.e., Invoice No.MEE-007 dated 12.01.2020. He submitted that the fabrication and forgery on the part of the plaintiff is writ large. He states that the forgery is established from the fact that the two invoices possibly could not carry the same invoice number; the rounding off of Rs.0.80/- in both the invoices, while not being applicable to one of the two invoices, also indicate that the plaintiff in its enthusiasm to establish prior user has fabricated and forged invoices. He would contend

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that though in the rejoinder, the plaintiff has attributed these fatal mistakes as a mere clerical or accounting error, the said error itself is fatal to the case of the plaintiff.

8.5. In addition, learned senior counsel referred to each one of the invoices placed on record by the plaintiff alongwith the suit to drill holes in the contentions raised on behalf of the plaintiff. He would contend that except for the aforesaid two forged and fabricated invoices indicating sales for a paltry amount, the other invoices are of purchases made by the plaintiff which is neither here nor there, muchless, a proof for establishing substantial goodwill and immense reputation.

8.6. So far as the marks themselves are concerned, learned senior counsel would stoutly contend that there is no continuity in the use of a particular mark, as erroneously claimed by the plaintiff from the year 2018 through till date. In that, admittedly, the plaintiff claims to have adopted the mark 'Water Box is the Right Choice' as purported to be evidenced by the NOC of the creator - Mr. J. Nathwani on 09.03.2018, while the next mark 'More Than Water Box' is purportedly claimed to have been in use since 2022. Thus, none of these marks have been in continuous use since 2018 to claim substantial goodwill. He would contend that this is established by the pictographical images of the device mark on the alleged product of the plaintiff in the documents annexed by the plaintiff alongwith the plaint.

8.7. Apart from the above, learned senior counsel would also refer to the Examination Report dated 16.09.2023, issued by the Trade Marks Registry raising an objection under Section 9(1)(b) of the Trade Marks Act, 1999 to the trademark application of the plaintiff filed on 09.03.2023, which is stated to be still pending. While referring to the provisions of Section 9(1)(b) of the Act, learned senior counsel contended that the said

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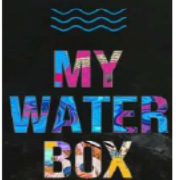
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provisions provide absolute grounds for refusal of registration. Learned senior counsel invited attention to the reply of the plaintiff to the Examination Report raising the aforesaid objection wherein the plaintiff clearly stated that the mark ‘More Than Water Box’ is not descriptive; that it is applied as a device mark, and not a word mark; that it has a unique design; and, that *“the combination of “more than” and “water box” implies that the product is something different from just a water box, which is the category of goods for which the mark is sought”*. Having taken such a stand, in contrast, the plaintiff has filed a subsequent application dated 15.01.2026 seeking registration of the word mark ‘Water Box’ with user claim since 23.06.2018, which is descriptive of the product being sold.

8.8. In any case, learned senior counsel also contended that the marks of the plaintiff and the defendant are not visually similar and that the colour theme, font and placement of the words are also different. The comparison table relied upon by the defendant is extracted hereunder:-

| PLAINTIFF'S EARLIER, WELL-KNOWN TRADEMARKS                                                                                                                                                                                                                                                                                                                                                                                                     | DEFENDANT'S IMPUGNED MARK                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>“WATERBOX/ WATER BOX”</p> <p>“MORE THAN WATERBOX”</p> <p>“WATERBOX IS THE RIGHT CHOICE”</p>     | <p>‘MY WATER BOX’</p>   |



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8.9. Mr. J. Sai Deepak, learned senior counsel while referring to the Instagram page of the plaintiff, purported to have been created in the year 2018, contended that the username has been changed six times in the past and, thus there is no way to ascertain as to what was the original name under which the alleged Instagram page was created. According to him, the change of username so many times, without any clarification as to the past names, cannot enure to the benefit of the plaintiff.

8.10. Next contention of the learned senior counsel was in respect of another false assertion by the plaintiff. He would contend that while all this time, the plaintiff has asserted manufacture and sale of its product by using tetra pack from the year 2018 onwards, it was only in the month of July, 2022 that for the first time, by virtue of an amendment, the Bureau of Indian Standards (hereinafter referred to as 'BIS') had permitted use of tetra pack/Paper-based Multilayer Laminated/Extruded Composite Cartons for packaging and sale of water. He would contend that there is no way that the plaintiff could have sold its products in tetra packs prior to July, 2022 and if it did, it was contrary to and violative of the BIS Regulations which were binding on all manufacturers of such products in the country. His contention is that if the plaintiff has been selling its products under the subject marks in violation of a statutory prohibition, such sales under the subject suit marks cannot enure to the benefit of the plaintiff in a suit for passing off. In other words, the said sales are illegal and *non-est* for consideration in a Court of law.

8.11. Learned senior counsel would next contend that the FSSAI application of the plaintiff was rejected in the year 2019 and granted subsequently only on 31.01.2020. Thus, according to him, M/s. Meera Enterprises had no regulatory approval between the years 2018 to 2020 and

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thus prior to 31.01.2020, the plaintiff could not have possibly sold any goods at all. Learned senior counsel would also contend that the plaintiff has not disclosed, rather, has concealed the fact that its FSSAI application was rejected in the year 2019 and as such, the plaintiff is not entitled to discretionary relief under the provisions of Order XXXIX Rules 1 and 2 of the CPC.

8.12. While referring to the FSSAI license granted to the plaintiff on 11.04.2025, learned senior counsel would contend that the note appended thereto limited the annual sales turnover to only up till Rs.12 lakhs. He stated that in such circumstances, the annual sales turnover of Rs.39,60,131.41 claimed by the plaintiff for FY 2025-25 (till December, 2025) is beyond comprehension. Moreover, he would contend that the plaintiff did not obtain the appropriate category permission from the FSSAI authority for manufacture and sale of packaged drinking water which falls under the Category 14.1.1. He stated that the said FSSAI registration indicates permission under Category 14.1.4.2 and 14.1.4.3, which is for '*non carbonated water based beverages (non-alcoholic)*' and '*barley water*', respectively. Learned senior counsel would contend that the plaintiff does not have the permission to manufacture and offer for sale packaged drinking water.

8.13. Likewise, learned senior counsel also attempted to establish concealment and non-disclosure of material facts by the plaintiff in respect of the GST registration. Though the plaintiff has filed its GST registration of the year 2018 in the name of M/s. Meera Enterprises alongwith the suit, however, did not disclose that the same was cancelled *suo moto* w.e.f. 30.12.2020. He stated that the GST registration was obtained subsequently only in the month of December, 2022 in the name of the plaintiff, i.e., More

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Than Water Pvt. Ltd. He would contend that this too clearly indicates that there has been no continuity either in the marks of the plaintiff or sales of its products under the claimed marks. Other than that, he would also contend that admittedly, there have been no sales from the year 2020 through till the year 2023. Ostensibly, the lack of sale is not on account of COVID-19 pandemic, as falsely claimed by the plaintiff, but on account of not having statutory registrations from the FSSAI or the GST Department. Thus, according to the learned senior counsel, the plaintiff has miserably failed in establishing goodwill, muchless substantial goodwill.

8.14. Mr. J. Sai Deepak, learned senior counsel contended that this Court has no territorial jurisdiction to try and adjudicate the present suit inasmuch as though the defendant's website is interactive, yet none of its products are open for delivery beyond the territory of the State of Maharashtra. There are no sales in Delhi, no presence otherwise of the defendant in Delhi and since the deliveries are restricted only to Maharashtra, this Court lacks the requisite territorial jurisdiction to adjudicate the present suit. Moreover, learned senior counsel submitted that in case the plaintiff asserts that the defendants' website was interactive and that its products were available for purchase, within the territory of Delhi, there is no reason, muchless a cogent reason, as to why the plaintiff did not make any such purchase and produce the product of the defendant before this Court alongwith the invoice. In the absence thereof, learned senior counsel emphatically contended that the plaintiff has also failed even in, *prima facie*, establishing any jurisdiction conferred upon this Court, to adjudicate the present suit.

8.15. Learned senior counsel also relied upon the judgements in *S. Syed Mohideen vs. P. Sulochana Bai:2015 SCC OnLine SC 1084*, *Toyota Jidosha Kabushiki Kaisha vs. Prius Auto Industry Limited & Ors.:(2018)*

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***2 SCC 1 and Brihan Karan Sugar Syndicate Pvt. Ltd. vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana:(2024) 2 SCC 577.***

9. Thus, predicated on the aforesaid contentions, learned senior counsel would contend that the application seeking *ad-interim* injunction ought to be dismissed with costs.

**REJOINDER OF THE PLAINTIFF:-**

10. In rejoinder, Mr. Lall makes the following submissions:-

10.1 So far as the contention of the defendant that though its website is interactive, however products were never available for sale in the territory of Delhi is concerned, Mr. Lall, learned senior counsel refuted the same. He would contend that the plaintiff is in possession of a fresh Expert Report which can categorically prove and establish that the defendant has altered its website subsequent to the filing of the present suit. He would contend that prior to the filing of the suit, the defendant's website was accepting orders for delivery of its products even in Delhi.

10.2 Further, the objection regarding BIS Regulations prohibiting use of tetra packs or Paper-based Multilayer Laminated/Extruded Composite Cartons raised by the defendant is concerned, learned senior counsel while referring to BIS Regulations for the year 2018 stated that the restrictions, if at all, may have only been for packaged drinking or mineral water and not for alkaline water. He asserted that the plaintiff at the relevant period was manufacturing and offering for sale alkaline water under its trademarks. He stoutly asserted that alkaline water was not specifically either mentioned or restricted in the BIS Regulations, 2018. His contention was that if there are no express prohibitions, then restrictions to a particular product cannot be read into or readily inferred by any legal standards. Thus, according to him, alkaline water was implicitly permitted to be packaged and sold in tetra

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packs or Paper-based Multilayer Laminated/Extruded Composite Cartons as there was no express proscription.

10.3 So far as the contention in respect of cancellation of the GST registration of the plaintiff is concerned, it is asserted by Mr. Lall, learned senior counsel that the same was on account of no sale of the product of the plaintiff due to the COVID-19 pandemic which impacted millions of lives all over the world from the year 2020 till the year 2022. So far as the objection regarding plaintiff's Instagram account raised by the defendant is concerned, learned senior counsel would submit that the posts on the Instagram account clearly points to the presence of the plaintiff's brand and use of the subject trademarks since the year 2018. It is his contention that the plaintiff is only to prove or *prima facie* establish its presence, both in online and offline modes, prior to that of the defendant.

10.4 Learned senior counsel asserted that the plaintiff has claimed actual sales as per the CA's certificate and has not made any exaggerated claims. According to the learned senior counsel, the amount of turnover in the last so many years is only one of the parameters for consideration of goodwill. He would contend that since the defendant has been unable to show any sale except for transfer to itself, the sales actually shown by the plaintiff under its marks clearly establish substantial goodwill and immense reputation garnered over the years.

10.5 Mr. Lall stoutly contended that there is nothing to dispute the fact that the plaintiff was first in the market to put its goods for sale under its marks much before the defendant even entered into the market. He would also contend that having regard to the fact that the defendant's registration under the FSSAI Act itself is of the year 2025, the question of user claim



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since 2020 does not arise and such assertion would be contrary and violative of the Food Safety and Standards Act, 2006 itself.

10.6 Learned senior counsel would contend that the defendant is a dishonest adopter for the reason that the trademark application of the defendant as also the documents annexed in support of such applications are clearly forged and fabricated and the registration which has been granted by the Trade Marks Registry based on such forgery is liable to be revoked, clearly leaving the plaintiff as the only and sole *bona fide* user and proprietor of its marks from the year 2018. Thus, the plaintiff is entitled to an *ad-interim* injunction order against the defendant.

#### **ANALYSIS & CONCLUSION:-**

11. Before this Court commences examination of the application seeking stay on merits, it has to be borne in mind that the suit of the plaintiff is based on relief of passing off. What ingredients or principles are required to be borne in mind while considering applications of this nature where the suit is predicated on the allegation of passing off, is no more *res integra*. The Supreme Court in a series of seminal judgments commencing from the judgment in *S. Syed Mohideen vs. P. Sulochana Bai:2015 SCC OnLine SC 1084*, *Toyota Jidosha Kabushiki Kaisha vs. Prius Auto Industry Limited & Ors.:(2018) 2 SCC 1* and *Brihan Karan Sugar Syndicate Pvt. Ltd. vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana:(2024) 2 SCC 577* have laid down the parameters or the considerations that a Court must bear in mind while considering an application seeking stay in a suit for passing off. The relevant paragraphs of the aforementioned judgments, *ad seritim*, are as under:-

(i) ***S. Syed Mohideen vs. P. Sulochana Bai:2015 SCC OnLine SC 1084:***

*“30.4. ...Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the*

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*registered proprietor cannot disturb/interfere with the rights of prior user. The overall effect of collective reading of the provisions of the Act is that the action for passing off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act. This proposition has been discussed in extenso in N.R. Dongre v. Whirlpool Corpn. [1995 SCC OnLine Del 310] wherein the Division Bench of the Delhi High Court recognised that the registration is not an indefeasible right and the same is subject to rights of prior user. The said decision of Whirlpool was further affirmed by the Supreme Court of India in N.R. Dongre v. Whirlpool Corpn. [(1996) 5 SCC 714].*

**30.5.** *The above were the reasonings from the provisions arising from the plain reading of the Act which gives clear indication that the rights of prior user are superior than that of registration and are unaffected by the registration rights under the Act.*

**31.Secondly,** *there are other additional reasonings as to why the passing off rights are considered to be superior than that of registration rights.*

**31.1.** *Traditionally, passing off in common law is considered to be a right for protection of goodwill in the business against misrepresentation caused in the course of trade and for prevention of resultant damage on account of the said misrepresentation. The three ingredients of passing off are goodwill, misrepresentation and damage. These ingredients are considered to be classical trinity under the law of passing off as per the speech of Lord Oliver laid down in Reckitt & Colman Products Ltd. v. Borden Inc. [(1990) 1 WLR 491 : (1990) 1 All ER 873 (HL)] which is more popularly known as “Jif Lemon” case wherein Lord Oliver reduced the five guidelines laid out by Lord Diplock in Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd. [(1979) 3 WLR 68 : (1979) 2 All ER 927 (HL)] (“the Advocaat case”) to three elements : (1) goodwill owned by a trader, (2) misrepresentation, and (3) damage to goodwill. Thus, the passing off action is essentially an action in deceit where the common law rule is that no person is entitled to carry on his or her business on pretext that the said business is of that of another. This Court has given its imprimatur to the above principle in Laxmikant V. Patel v. Chetanbhai Shah [(2002) 3 SCC 65].*

**31.2.** *The applicability of the said principle can be seen as to which proprietor has generated the goodwill by way of use of the mark/name in the business. The use of the mark/carrying on business under the name confers the rights in favour of the person and generates goodwill in the market. Accordingly, the latter user of the mark/name or in the business cannot misrepresent his business as that of business of the prior right holder. That is the reason why essentially the prior user is considered to be superior than that of any other rights. Consequently, the examination*



*of rights in common law which are based on goodwill, misrepresentation and damage are independent to that of registered rights. The mere fact that both prior user and subsequent user are registered proprietors are irrelevant for the purposes of examining who generated the goodwill first in the market and whether the latter user is causing misrepresentation in the course of trade and damaging the goodwill and reputation of the prior right holder/former user. That is the additional reasoning that the statutory rights must pave the way for common law rights of passing off.”*

[Emphasis supplied]

**(ii) Toyota Jidosha Kabushiki Kaisha vs. Prius Auto Industry Limited & Ors.:(2018) 2 SCC 1:-**

*“26. At the very outset, certain principles that govern the law of passing-off may be usefully noticed. Such principles, in fact, have been considered by this Court in its decision in S. Syed Mohideen [(2016) 2 SCC 683] , though in a somewhat different context i.e. the right of a registered owner of a particular mark to bring an action for passing-off against another registered owner of an identical or largely similar trade mark. In S. Syed Mohideen, this Court on a collective reading of the provisions of the Act held:*

*“30.4. that the action for passing-off which is premised on the rights of prior user generating a goodwill shall be unaffected by any registration provided under the Act.”*

*which proposition actually stood approved in an earlier decision of this Court in N.R. Dongre [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714]. The trinity test laid down in Reckitt & Colman Ltd. was reiterated by this Court in S. Syed Mohideen by holding that to prove and establish an action of passing-off, three ingredients are required to be proved by the plaintiff i.e. his goodwill, misrepresentation and damages.*

xxx

xxx

xxx

*34. To give effect to the territoriality principle, the courts must necessarily have to determine if there has been a spillover of the reputation and goodwill of the mark used by the claimant who has brought the passing-off action. In the course of such determination it may be necessary to seek and ascertain the existence of not necessarily a real market but the presence of the claimant through its mark within a particular territorial jurisdiction in a more subtle form which can best be manifested by the following illustrations, though they arise from decisions of courts which may not be final in that particular jurisdiction.”*

[Emphasis supplied]

**(iii) Brihan Karan Sugar Syndicate Pvt. Ltd. vs. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana:(2024) 2 SCC 577**



“12. There is a finding recorded by the High Court in the impugned judgment that the labels used on the bottle of country liquor sold by the appellant and the labels on the bottle of country liquor sold by the respondent are similar. At this stage, we may note the legal position regarding the factual details which are required to be proved in a passing off action. Firstly, we may refer to a decision of this Court in *Satyam Infoway Ltd. v. Siffynet Solutions (P) Ltd.* [(2004) 6 SCC 145] Paras 13 to 15 of the said decision read thus:

“13. The next question is, would the principles of trade mark law and in particular those relating to passing off apply? An action for passing off, as the phrase “passing off” itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff’s. It is an action not only to preserve the reputation of the plaintiff but also to safeguard the public. The defendant must have sold its goods or offered its services in a manner which has deceived or would be likely to deceive the public into thinking that the defendant’s goods or services are the plaintiff’s. The action is normally available to the owner of a distinctive trade mark and the person who, if the word or name is an invented one, invents and uses it. If two trade rivals claim to have individually invented the same mark, then the trader who is able to establish prior user will succeed. The question is, as has been aptly put, who gets these first? It is not essential for the plaintiff to prove long user to establish reputation in a passing off action. It would depend upon the volume of sales and extent of advertisement.

14. The second element that must be established by a plaintiff in a passing off action is misrepresentation by the defendant to the public. The word “misrepresentation” does not mean that the plaintiff has to prove any mala fide intention on the part of the defendant. Of course, if the misrepresentation is intentional, it might lead to an inference that the reputation of the plaintiff is such that it is worth the defendant’s while to cash in on it. An innocent misrepresentation would be relevant only on the question of the ultimate relief which would be granted to the plaintiff [*Cadbury-Schweppes (Pty) Ltd. v. PUB Squash Co. (Pty) Ltd.*, 1981 RPC 429 : (1981) 1 WLR 193; *Erven Warnink Besloten Vennootschap v. J. Townend & Sons (Hull) Ltd.*, 1979 AC 731 : (1979) 3 WLR 68 : 1980 RPC 31 (HL)]. What has to be established is the likelihood of confusion in the minds of the public (the word “public” being understood to mean actual or potential customers or users) that the goods or services offered by the defendant are the goods or the services of the plaintiff. In assessing the likelihood of such confusion the courts must allow for the “imperfect recollection of a person of ordinary memory”



15. *The third element of a passing off action is loss or the likelihood of it.*”

*(emphasis supplied)*

13. Thus, the volume of sale and the extent of advertisement made by the appellant of the product in question will be a relevant consideration for deciding whether the appellant had acquired a reputation or goodwill.

14. At this stage, we may also refer to the decision of this Court in Toyota Jidosha Kabushiki Kaisha. In this decision, this Court approved its earlier view in S. Syed Mohideen v. P. Sulochana Bai that the passing off action which is premised on the rights of the prime user generating goodwill, shall remain unaffected by any registration provided in the Act. In fact, this Court quoted with approval, the view taken by the House of Lords in Reckitt & Colman Products. The said decision lays down triple tests. One of the tests laid down by the House of Lords was that the plaintiff in a passing off action has to prove that he had acquired a reputation or goodwill connected with the goods. Thereafter, in para 40 of Toyota case, this Court held that if goodwill or reputation in a particular jurisdiction is not established by the plaintiff, no other issue really would need any further examination to determine the extent of the plaintiff's right in the action of passing off.”

[Emphasis supplied]

12. Essentially, the Supreme Court in the aforesaid authoritative pronouncements has clearly delineated that in a suit based on action of passing off, three ingredients need to be considered, which are as under:-

- (i) goodwill owned by a trader;
- (ii) misrepresentation, and;
- (iii) damage to goodwill;

13. Apart from the above, it is also to be noted that the Supreme Court in *Toyota (supra)* had also applied the ‘territoriality principle’ and held that the plaintiff must place adequate evidence to show that it had acquired substantial goodwill for its goods, in the case of *Toyota*, the car under the brand name ‘Prius’ within the particular jurisdiction claimed. Though the said principle may strictly not apply in the facts of the present case, there is no denying the fact that while the plaintiff is operating within the territory



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of the State of Gujarat, the defendant is operating within the territory of the State of Maharashtra. It is in this context that the principle of territoriality may have some bearing or impact on the facts of this case.

14. It is also clear from the aforesaid judgments that at the time when the Court is to consider an application under Order XXXIX Rules 1 and 2 of CPC seeking injunction, the paramount consideration would revolve around which of the party, in comparison to the other, has been able to, *prima facie*, establish or demonstrate substantial goodwill in the market first. Thus, registration of a trademark or the lack of it for this purpose would be irrelevant. Apparently, this consideration is solely based on rights arising out of common law and not the statute. Thus, registration of trademark or lack of it, for the time being, is rendered an irrelevant consideration for appreciating whether any order restraining the other party from using the trademark can at all be passed.

15. From the arguments addressed by learned senior counsel for the parties and having closely perused the pleadings and minutely examining the documents, the following order is passed.

16. The plaintiff at the first instance was to, *prima facie*, establish substantial goodwill on the basis of (i) sales figures; and (ii) the expenses incurred on promotion and advertisement.

17. Though the plaintiff has applied for registration of the device mark 'More Than Water Box' in the year 2023, the user detail is specified as "proposed to be used basis". In other words, the plaintiff is unsure about the intended date of launch of the product under the device mark 'More



Than Water Box'/. It is also relevant to note that prior to the year 2022-23, the plaintiff has propounded that its predecessor-in-

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interest i.e., M/s. Meera Enterprises was using the mark ‘Water Box is The Right Choice’, that too in a tetra pack.

18. In support of its contentions, the plaintiff has placed on record and invited attention to some invoices/purchase orders commencing from 23.06.2018. However, from page nos.380 to 385 and 387 to 390 of the plaintiff’s documents are purchase orders of the Meera Enterprises for various raw materials like, ‘15 gsm poly coating on aluminium coated craft paper’, ‘water bottle sheet printing’. On page nos.386 and 397 are the invoices for a product ‘Water Box’, both of which bear the common Invoice No.MEE-007, and are dated 09.02.2020 and 12.01.2020 respectively. The earliest invoice dated 23.06.2018, on which reliance was placed, describes the invoice having been raised for purchase of ‘15 GSM Poly Coating on Aluminum Coated Craft Paper’ for a sum of Rs.4099.32. This particular invoice surely cannot be construed to be a proof or evidence for sale of water in tetra pack under the plaintiff’s marks, whether it is ‘Water Box is The Right Choice’ or ‘More Than Water Box’. The next invoice dated 06.12.2019 is also similar to the invoice dated 23.06.2018, which too does not refer to either of the aforementioned marks of the plaintiff. The invoice dated 06.12.2019 also is a purchase by Meera Enterprises having no relation to the subject marks. Similarly, invoices dated 16.11.2019, 21.11.2019, 11.06.2019 have no remote reference to any of the marks claimed by the plaintiff and seem to be in the nature of purchase orders, and not proof of sales.

19. So far as the invoice dated 09.02.2020 on which significant reliance was placed by the plaintiff is concerned, it refers to sale of a product described as 10 pieces of ‘Water Box 1 Ltr. Pack’ and 10 pieces of ‘Water Box 500 ml. Pack’. However, learned senior counsel for the defendant had

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raised a doubt as to the authenticity of this invoice on the basis that another invoice for similar products uncannily bear the same number, i.e., Invoice No.MEE-007, dated 12.01.2020, which is prior to the invoice dated 09.02.2020. His contention was that the fabrication of the said invoice is apparent on the basis that on the one hand, the invoice dated 12.01.2020 bearing Invoice No.MEE-007 had added IGST @ 18% and as against that, the value was calculated at Rs.280.80 to the total value of supply of Rs.1560/-, and the total bill was raised for Rs.1840.80 while rounding off Rs.0.80. And on the other hand, in the invoice 09.02.2020 bearing Invoice No.MEE-007, though the rounding off of Rs.0.80 is indicated, the said figure has no reference or relevance to the amounts calculated therein. Predicated on the said submission, learned senior counsel for the defendant had hotly contested the genuineness of the said documents.

20. This Court had closely scrutinized the two controversial invoices and it appears, at least at this stage, that there is some doubt which has arisen on account of the rounding off of “Rs.0.80” since in the Invoice dated 09.02.2020 the said rounding off is out of context. That apart, it is also intriguing to note that both invoices bear the same number i.e., “MEE-007”, though they are apart by almost a month. Though, the plaintiff in its rejoinder has sought to clarify it by stating that it was an inadvertent accounting/clerical error, however, at this stage and at this far point in time, this Court is unable to accede to the submissions of the plaintiff on this account. Thus, in view of the doubt upon the veracity of these invoices, this Court is unable to place reliance upon them at this stage. However, the said documents can be tested at the appropriate stage of trial.

21. Along with the rejoinder, the plaintiff has filed four invoices dated 28.09.2025, 19.12.2025 (2 invoices) and 02.01.2026 in support of its claim

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of substantial sales under the marks ‘Water Box’ and/or ‘More Than Water Box’. This Court has carefully examined even these invoices which indicate certain sales having been made by the plaintiff of its product under the mark ‘Water Box’. There is no reference to the mark ‘More Than Water Box’ in any of the four latest invoices. That apart, these four invoices indicate a total sales of Rs.57,662/-. It is to be noted that the plaintiff relied on the CA certificate placed on record to substantiate the sale figures, which indicates a sale turnover of Rs.39,60,131.41 for the year 2025-26 (up to December, 2025), however, has filed only these four invoices. Thus, at least as of now, there is no documentary evidence placed on record by the plaintiff to show substantial sales of its product ‘water’ under the mark ‘Water Box’ or ‘More Than Water Box’, which would match the annual sale turnover of Rs.39,60,131.41 exclusively for the products sold under the said marks. In the absence of such crucial corroborative documentary evidence, at this stage of consideration of the stay application, this Court is unable to connect the purported sales figures contained in the CA certificate with that of any actual sales premised on invoices. Moreover, for an action for passing off, especially when the plaintiff is vehemently asserting its rights purportedly from the year 2018, it is incumbent upon the plaintiff to, even at this stage of consideration of the interim injunction, *prima facie*, establish substantial sales of its products under the mark “More Than Water Box”, which would have established goodwill and reputation in favor of the plaintiff. There being none, the Court is unable to appreciate the arguments of the plaintiff.

22. The plaintiff, in the meanwhile, has filed an application bearing I.A. No.7236/2026 seeking permission to file additional documents, including invoices raised by the plaintiff against purchase of its product under the

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mark 'Water Box'. The notice on the said application was issued on 19.03.2026. Thereafter, the plaintiff moved another application bearing I.A. No.8792/2026 seeking to place on record additional documents. However, the said applications have not been pressed as of now. Thus, the additional documents so filed cannot be considered at this stage.

23. The other limb of the ratio laid down by the Supreme Court in order to consider, whether it be at the stage of passing of interim injunction orders or final decree, is the aspect that the plaintiff needs to establish or *prima facie* establish, as the stage may be, goodwill in the mark claimed by the plaintiff, by showing expenditure incurred on promotion of the mark.

24. The plaintiff has placed on record, alongwith the plaint, invoices to indicate the expenditure incurred by it on account of promotion of its business which are commencing from page nos.391 to 396 of its documents. The invoices referred to are dated 16.09.2024, 06.01.2025, 08.01.2025, 08.03.2025, 10.12.2024 and 28.02.2025. Though the invoices do not describe as to what is the subject matter of business promotion however, at this stage, the Court may construe that these invoices are generated in respect of expenses incurred by the plaintiff on account of promotion of its mark 'More Than Water Box'. Though the plaintiff has claimed and asserted that the mark 'Water Box' has been in extensive use since the year 2018 through its predecessor, M/s. Meera Enterprises, to show goodwill and reputation garnered over the last many years, however, barring the aforesaid invoices raised from the month of September, 2024 onward till 08.03.2025, no such documentary proof or evidence has been placed on record for the period prior to September, 2024. Thus, except for a bald averment that the plaintiff has incurred substantial expenditure on account of promotion and advertisement of its mark 'Water Box' and

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‘More Than Water Box’, there is no evidence to substantiate the same at this stage. The plaintiff has also placed on record screenshots of what it claims to be its pages on Instagram and Facebook to show extensive promotion of its brand on e-platforms. The Instagram page which claims to have been created in March, 2018 by the predecessor-in-interest demonstrates (i) that the username has been changed six times in the past and; (ii) the record does not disclose any extensive promotion prior to 2023 or followers in such substantial numbers so as to gather or infer that the plaintiff’s marks have earned a reputation or goodwill in the market amongst the consumers. Thus, even on this count, this Court is unable to appreciate the arguments of the plaintiff.

25. The aforesaid analysis of the invoices raised on account of promotion and advertisement of the plaintiff’s brand, that too commencing from September, 2024 onwards does not relate back to the claimed user of the year 2018 or any time soon thereafter. The plaintiff has been unable to, *prima facie*, demonstrate any causal connection between the invoices on record with any purported advertisements or promotions claimed to have been carried out prior to September, 2024. In the absence of this causal connection too, this Court is unable to appreciate any merit in the arguments of the plaintiff.

26. A lot was argued and vehemently too, that the defendant who is registered only in the year 2025 has failed to show any substantial sales or even launch of its product under the mark ‘My Water Box’ though the defendant claimed its user from the year 2020. It was also vehemently projected that the defendant has launched, if at all, its product only on or about 03.12.2025 based on the Instagram post of the defendant itself.

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27. It is trite that the plaintiff has to succeed on its own merits and not on the lack of merits of the defendant. This Court has also perused the purported invoices placed on record by the defendant. Barring a few invoices pertaining to purported sale of the goods manufactured by the defendant under the mark 'My Water Box', the other invoices pertain to its other food services etc., which have no remote connection with the subject matter of the present suit. The invoices in respect of the mark 'My Water Box' does not seem to be a sale for consideration as no such consideration value has been indicated against the said product in those invoices. It appears to be a mere transfer or a stock transfer not involving any sale at all. Thus, at this *prima facie* stage, it appears that the said invoices cannot be said to be sales in the ordinary sense to construe '*goodwill*'.

28. If that is the case, the question now would be as to whether the plaintiff would still succeed in obtaining an *ad-interim* injunction in its favour.

29. The question seems to be vexed for the reason that though the plaintiff claims user since 2018 of the marks 'More Than Water Box', except for certain invoices of the year 2020, which too appear to be doubtful, no document worth consideration has been placed on record by the plaintiff. The only other four invoices showing sale of the product – Water were filed alongwith the rejoinder which are for the period from 28.09.2025 to 02.01.2026. These too only reflect in the description the mark 'Water Box' and not 'More Than Water Box'.

30. Resultantly, none of the parties have been able to clearly establish, atleast at this stage, from a *prima facie* point of view, substantial goodwill or reputation in their own respective marks. Though the plaintiff has placed on record the invoices on account of expenditure incurred by it on




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promotion and advertisement of its business, however that too commenced only from 16.09.2024 to 08.03.2025. Thus, there is no document or any other proof for establishing substantial expenditure on account of advertisement and promotion of the plaintiff's mark for the period commencing from 2018 till 2024.

31. For the purpose of appreciating the aforesaid analysis, it would be apposite to extract hereunder the sale figures claimed by the plaintiff to evidence substantial sales predicated whereon, the plaintiff asserts goodwill in the marks 'Water Box' and 'More Than Water Box'. The same reads thus:-



**Piyush J. Shah & Co.**  
Chartered Accountants

**Piyush J. Shah**  
B.Com. FCA, D.I.S.A. (ICAI)

**Turnover Certificate**

This is to certify that **M/s Morethan Waters Private Limited** is a private limited company registered under companies Act, 2013 having its Registered Office at Eighth Floor, Office No.810, Iconic Shyamal, Shyamal Cross Road, Kalawad Road, Vrundavan Society, Ahmedabad, Gujarat-380015. And registered under GST vide GSTIN 24AAQCM1546C1ZN. Turnover of the Company for the last Four years are as follows:

| S.no | Financial year                              | Sales Turnover | Marketing & Advertisement Exp |
|------|---------------------------------------------|----------------|-------------------------------|
| 1    | 2022-23                                     | 0.00           | 0.00                          |
| 2    | 2023-24                                     | 1,14,453.00    | 0.00                          |
| 3    | 2024-25                                     | 9,06,410.00    | 13,87,189.00                  |
| 4    | 2025-26 (Till December 2025)<br>(Unaudited) | 39,60,131.41   | 8,08,611.30                   |

The above certificate has been issued on the basis of books of accounts, papers and other relevant documents produced before us and on the basis of explanation and information given to us.

| FINANCIAL YEAR                    | SALES TURNOVER |
|-----------------------------------|----------------|
| 2018-2019                         | 38,500         |
| 2019-2020                         | 1,50,000       |
| 2020-2021                         | -              |
| 2021-2022                         | -              |
| 2022-2023                         | -              |
| 2023-2024                         | 1,14,453.00    |
| 2024-2025                         | 9,06,410.00    |
| 2025-2026<br>(till December 2025) | 39,60,131.41   |

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Clearly and as certified by the CA, there were no sales of any nature whatsoever for the period 2020 to 2023. The sales turnover for the FY 2024-25 is Rs.9,06,410/- and for FY 2025-26 (till December, 2025) is stated to be Rs.39,60,131.41. For FY 2018-19, the turnover is stated to be Rs.38,500/- only and for FY 2019-20, the turnover is Rs.1,50,000/-. The invoices placed on record, subject to proof during trial, *arguendo*, at best indicate sales only within the territory of the State of Gujarat and not even a single invoice has been placed on record to show sales beyond the State of Gujarat by the plaintiff.

32. Similarly, even the defendant's documents do not indicate that it has effected any sale, if at all, subject to proof during trial, anywhere beyond the territory of the State of Maharashtra.

33. So far as the other two ingredients to be satisfied in an action of passing off, i.e., misrepresentation and damage to goodwill are concerned, this Court need not consider the same at this stage since the plaintiff has failed to, *prima facie*, establish goodwill and reputation in its favor. Additionally, the same is not ascertainable at this stage keeping in view the documents placed on record. Hence, the said issues could be appropriately considered during trial.

34. Additionally, the defendant had vehemently argued as its opening objection, the question of lack of territorial jurisdiction with this Court. There have been vehement and hotly contested arguments addressed by both the parties. The issue with respect to whether the defendant has an interactive website and whether the said website is accessible or amenable to the local limits of the territorial jurisdiction exercised by this Court, would comprise issues of facts as well as law. Thus, at this stage, it would not be appropriate for this Court to dwell or delve over the said aspect and

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it can be kept reserved to be raised and taken up for consideration at an appropriate stage.

35. Another relevant aspect which may also require consideration is one with respect to whether ‘water’ which is defined as liquid food as appearing in the BIS Regulations of the year 2022, could be packaged in a tetra pack. Both sides had taken opposite stands relying upon two different regulations/circulars. In that, the plaintiff had relied upon the notification dated 24.12.2018 issued by the FSSAI, while the defendant relied upon the notification of July, 2022 issued by the Bureau of Indian Standards (BIS) which is in the nature of amendment. For the purpose of appreciating and clarification, relevant portions of both the circulars/notification are extracted hereunder:-

FSSAI Packaging Regulations, 2018:

MINISTRY OF HEALTH AND FAMILY WELFARE

(FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA)

NOTIFICATION

New Delhi, the 24th December , 2018

**F.No. 1-95/Std/Packaging/SP(L&C/A)/FSSAI-2017.**—Whereas the draft of certain regulations, namely, the Food Safety and Standards (Packaging) Regulations, 2018 vide notification number F.No. 1-95/Std/Packaging/SP(L&C/A)/FSSAI-2017, dated the 19th March, 2018 was published as required under Sub-section (1) of section 92 of Food Safety and Standards Act, 2006 (34 of 2006) in Gazette of India, Extraordinary, Part III, section 4, inviting objections and suggestions from the person likely to be affected thereby, before the expiry of a period of thirty days from date on which the copies of Gazette containing the said notification was made available to the public;

And whereas, the Food Safety and Standards Authority of India made the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, but now the Food Authority has decided to divide these regulations into two regulations,-

- (i) the Food Safety and Standards (Packaging) Regulations, 2018; and
- (ii) the Food Safety and Standards (Labelling and Display) Regulations, 2018,

And accordingly published the aforesaid draft regulations;

And whereas copies of the said Gazette were made available to the public on the 2nd April, 2018;

And whereas objections and suggestions received on the said draft regulations have been considered by the Food Safety and Standards Authority of India;

Clause 4(4) of FSSAI Packaging Regulations, 2018:

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**(4) Plastic materials intended to come in contact with food products-**

(a) Plastic materials used for the manufacturing of containers for packing or storing the food products shall conform to either of the Indian Standards specifications as provided in Schedule – III:

Provided that Drinking Water (both Packaged and Mineral Water) shall be packed in colourless, transparent and tamper-proof bottles or containers made of polyethylene (PE) conforming to IS: 10146 or polyvinyl chloride (PVC) conforming to IS: 10151 or polyalkylene terephthalate (PET and PBT) conforming to IS: 12252 or polypropylene (PP) conforming to IS: 10910 or food grade polycarbonate conforming to IS: 14971 or polystyrene conforming to IS: 10142 or sterile glass bottles only. The transparency of a container shall not be less than 85 percent in light transmittance:

Provided also that all pigments or colorants as specified in Indian Standard IS: 9833 may be allowed in plastic containers of five litre and above made of Polycarbonate and Polyethylene Terephthalate (PET) used for packaging of mineral water and packaged drinking water. The transparency of such containers shall not be less than 85 percent in light transmittance.

(b) All packaging materials of plastic origin shall pass the prescribed overall migration limit of 60mg/kg or 10mg/dm<sup>2</sup> when tested as per IS 9845 with no visible colour migration.

(c) Plastic materials and articles shall not release the substances in quantities exceeding the specific migration limits listed under Table 1.

(d) Pigments or Colorants for use in plastics in contact with food products and drinking water shall conform to IS: 9833.

(e) Products made of recycled plastics including carry bags shall not be used for packaging, storing, carrying or dispensing articles of food.

## BIS Regulations, 2022:

### AMENDMENT NO. 1 JULY 2022

TO

#### IS 17753 : 2021 PAPERBASED MULTILAYER LAMINATED/EXTRUDED COMPOSITE CARTONS (ASEPTIC AND NON-ASEPTIC) FOR PROCESSED LIQUID FOOD PRODUCTS AND BEVERAGES — SPECIFICATION

(Page 1, clause 3.2) — Substitute the existing with the following:

**'Paper Based Multilayer Laminated/Extruded Composite Cartons** — The carton made up of combination of paper board, polyethylene and aluminum foil to form a laminated/extruded composite structure for packaging of processed liquid food and beverages (such as dairy products, edible oil, ghee, juice, water, alcoholic beverages, non-dairy beverages, non-dairy cream, puree etc) which are processed either aseptically or non-aseptically.'

36. The plaintiff asserted that the notification dated 24.12.2018 notifying the FSSAI Packaging Regulations, 2018, in Clause 4(4)(a), required that the plastic materials used for manufacturing of containers for packing and

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storing the food products should confirm to either of the Indian Standards specifications as provided in Schedule –III, while its proviso stipulated that drinking water (both Packaged and Mineral Water) shall be packed in colourless, transparent and tamper-proof bottles or containers made of polyethylene (PE) conforming to IS:10146 etc., or sterile glass bottles only. It was the assertion of the plaintiff that the proviso did not refer to ‘Alkaline Water’ which it claimed was the product it was manufacturing and selling from the year 2018 in tetra packs. Thus, according to the plaintiff, there was no bar on any entity manufacturing or selling ‘Alkaline Water’, in tetra packs, therefore, the objection raised by the defendant is unfounded.

37. On the other hand, the defendant relied upon the Amendment No.1 of the month of July, 2022 in the BIS Regulations to contend that it was only by way of an amendment to the said regulations that for the first time, Paper based Multilayer Laminated/Extruded Composite Cartons (Aseptic and Non-Aseptic) for processed liquid food products and beverages was permitted. It was contended that ‘water’ is ‘*liquid food*’ and was allowed to be, for the first time, packaged and sold in Paper based Multilayer Laminated/Extruded Composite Cartons. Therefore, clearly and by necessary implication, the manufacture and sale of water in any form could not have been carried out in tetra packs or Paperbased Multilayer Laminated/Extruded Composite Cartons prior to the month of July, 2022.

38. Having heard learned counsel for the parties on the aforesaid aspect and after having had the benefit of both the notifications reproduced above, this Court is unable to align with the arguments of the plaintiff. This is for the reason that Alkaline Water in any form is still water which needs to be packaged and sold. Undoubtedly, the Amendment No.1 to the BIS

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Regulations as amended in the month of July, 2022 clearly provides that water would fall within the ambit of 'Processed Liquid Food'. The same also appears to be in conformity with clause 4(4)(a) and its proviso in the FSSAI Packaging Regulations, 2018 where drinking water alone has been specified, whether packaged or mineral. No doubt, there is no specific mention of 'Alkaline Water', however, that by itself could not mean that Alkaline Water is anything other than water or processed liquid food. Moreover, Alkaline Water is either a natural product or manufactured by adding chemicals and/or minerals to make the normal water alkaline. That by itself would not pull it out from the ambit of 'Processed Liquid Food'. Thus, the arguments of the plaintiff are based on misreading of the aforementioned regulations and are completely unfounded. Consequently, unless a clear picture is arrived at after leading cogent evidence, it would not be possible to observe with conviction that alkaline water was permitted to be packaged and sold in tetra packs or Paperbased Multilayer Laminated/Extruded Composite Cartons before July, 2022 i.e., prior to the amendment in BIS Regulations.

39. Another relevant aspect which may be significant, at this stage, is the fact that when the plaintiff filed its trade mark application on 09.03.2023 for registration of the mark 'More Than Water Box', the user detail was specified as '*proposed to be used*'. This by itself may be inferred as an admission that the mark 'More Than Water Box' was not commercially launched or otherwise used by the plaintiff at that time. Thus, to that extent at least, the plaintiff would be proscribed from asserting any prior use or adoption of the mark "More Than Water Box" before 2023. The only other mark remaining is "Water Box is the Right Choice". In respect of this particular mark, neither has the plaintiff sought any registration nor has it

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placed on record even a single sales invoice or proof of expenditure on account of advertisement or promotion brought out in the said mark. Thus, from the above narration it is clear that the plaintiff claimed commencement of its mark “Water Box is the Right Choice” in the year 2018 and then transformed from the said mark to “More Than Water Box” in the year 2022. However, there is no regular or continuous use of a single mark, whether under “Water Box is the Right Choice” or “More Than Water Box”, since the year 2018, till date. Thus, the plaintiff’s stand does not appear to be consistent at this stage.

40. In view of the analysis and observations on the relevant considerations postulated by the ratio laid down by the Supreme Court in *S. Syed Mohiddin (supra)* and other judgments, the other arguments raised on different issues are not required to be considered by this Court at this stage and are left open to be considered at an appropriate stage.

41. After the aforesaid thorough examination of the material on record and in view of the aforesaid analysis, this Court is of the considered opinion that the plaintiff has been unable to at least *prima facie*, establish a case for grant of *ad-interim* injunction against the defendant. However, having regard to the overall facts and circumstances of the aforesaid case and on the principles of equity, it is deemed appropriate in the peculiar facts arising in the present case, to direct both parties to continue to manufacture and offer for sale, their respective products under their respective trademarks i.e. “More Than Water Box” and “My Water Box” only within the territories of their respective States i.e. the State of Gujarat so far as plaintiff is concerned and the State of Maharashtra so far as the defendant is concerned, during the pendency of the present suit.

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42. The aforesaid analysis and observations shall not tantamount to any expression of the merits of the suit and are confined only to the consideration for the adjudication of this application.

43. Having regard to the aforesaid analysis, the application is disposed of in view of the above directions.

44. List on the date already fixed.

**TUSHAR RAO GEDELA, J.**

**APRIL 15, 2026**

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