

**IN THE COURT OF VINOD YADAV: DISTRICT JUDGE:**  
**(COMMERCIAL COURT)-02: NORTH-WEST DISTRICT: ROHINI**  
**DISTRICT COURTS: DELHI**

CNR No.DLNW01-001431-2026

CS (Comm.) No.84/2026

**IN THE MATTER OF:-**

**SHIVANG EDIBLES OILS LIMITED,**

Registered Office At:

Plot No. 34-37, Industrial Area,

A.B. Road, Morena, Madhya Pradesh- 476001.

.....Plaintiff

**Versus**

1. **K.S. OILS LIMITED,**

Registered office At:

Khasra No. 61, 22/1, 28/1/2,

A.B. Road, Silavati, Guna,

Madhya Pradesh- 473001.

.....Defendant No.1

2. **M/s NAGARIA OVERSEAS,**

1<sup>st</sup>floor, 218A, Rama Market,

Village Pitampura,

Deepali, North Delhi, Delhi-110034.

.....Defendant No.2

**ORDER**

**09.06.2026**

Present: Shri Neeraj Grover, Shri Arjun Mahajan, Shri Sumit R. Sharma, Shri Sagar Aggarwal, Shri Siddhant Bajaj and Shri Manav Singh, Advocates, Ld. Counsels for the plaintiff (**All through VC**).

Shri Peeyoosh Kalra, Shri Dushyant K. Mahant, Shri Yatin Chadha, Shri Mayank Chadha, Shri Gurvinder Singh and Ms.Gaurika Chawla, Advocates, Ld. Counsels for defendant No.1. (**All through VC**).

Shri Paras Chaudhary, Ld. Counsel for defendant No.2. (**Through VC**).

**ORDER**

1. This Order shall dispose off application filed under Order XXXIX Rule 1 & 2 CPC by the plaintiff. Both the sides have advanced detailed arguments on this application from 16.05.2026 till 04.06.2026.

2. (i) The things have moved at a lightning speed in the matter in as much as the present suit for permanent injunction was filed by the plaintiff on 23.01.2026. The same was listed before the Court for the first time on 04.02.2026, on which date ad-interim ex-parte injunction was passed in favour of plaintiff. The said order was challenged by defendant No.1 before the Hon'ble High Court of Delhi by way of "FAO (Comm.) No.69/2026", titled as, "**K.S Oils Limited V/s Shivang Edible Oils Limited & Anr.**", which was allowed by the Hon'ble High Court vide order/judgment dated 30.03.2026, *inter alia* observing as under:

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24. In the present case, the Appellant and the Respondent are not strangers, inasmuch as both entities claim derivative proprietary rights in the impugned marks on the basis of documents executed by Sh. Gopal Das Garg. The competing claims arise from rival documents executed by Sh.Gopal Das Garg himself; however, the documents executed in favour of the Appellant are prior in point of time, and the execution of the documents is admitted fact by both the parties.

25. The undisputed facts establish that the Appellant holds proprietary rights in the FIRST



KALASH LABEL by virtue of assignment deed(s) dated 13.08.1986 and 26.07.1996. The assignment deed dated 26.07.1996, executed in favour of the Appellant, has been duly recorded with the Trademarks Registry in respect of Trademark Application No.305567. It is admitted that Sh. Gopal Das Garg executed the said assignment deed, and the affidavit dated 26.07.1996 filed before the Trademarks Registry affirms the said assignment.

In these circumstances, even assuming, arguendo, that there existed any defect in the earlier assignment deed dated 13.08.1986 (as alleged by the Respondent), the same stood rectified upon execution of the subsequent assignment deed and affidavit, which are binding upon Sh. Gopal Das Garg in view of his admitted execution thereof. However, the impugned order, in its operative portion, fails to advert to the said assignment deed(s) and affidavit dated 26.07.1996 or consider the legal effect of their recordal with the Trademarks Registry in favour of the Appellant.

26. The Respondent has relied on the fact that registration of Trademark Application No. 305567 lapsed on 19.05.2023. It is submitted that, although the Appellant has filed a writ petition before the High Court of Judicature at Bombay in December 2025 for seeking renewal/revival of the said registration, the same has not been listed till date. On this basis, it is contended that the Appellant has abandoned the mark and, therefore, permitted

the registration to lapse. Conversely, the Appellant submits that the Appellant was admittedly undergoing CIRP during the period 2017-2025, which constitutes judicially recognised 'special circumstances' within the meaning of Section 47(3) of the Act of 1999 and would similarly form the basis for seeking revival/renewal of the registration. It is thus contended that the non-renewal of the registration occurred due to inadvertence during the CIRP and was not on account of any intention to abandon the mark. The Appellant has relied upon the proceedings before the IRP, CoC and NCLT to contend that the impugned marks were consistently considered as the asset of the Appellant company.

Pertinently, the impugned order notes that the registration of Trademark Application No. 305567 lapsed during the CIRP period. However, the impugned order does not reflect if the Trial Court made any inquiry from the Respondent with respect to legal steps taken by the Appellant for revival of the said registration, as such an inquiry would have made the Trial Court aware of the filing of the writ petition for renewal.

The impugned order also does not reflect if the Trial Court made any inquiry from the Respondent, with respect to the status of the ownership of the impugned marks KALASH in the CIRP, which led to the e-auction of the Appellant company. If such an inquiry would have been made, Respondent would have informed the Trial Court that the impugned marks are reflected in the valuation report and the order passed by the NCLT.

The above facts show that this was a fit case where the Trial Court would have been

benefitted with the appearance of the Appellant/defendant, prior to deciding the interim injunction application.

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**34. In view of the aforesaid findings, the impugned order is set aside, and the Trial Court is directed to consider and decide the injunction application afresh, after taking into account the stand of the Appellant/defendant.**

35. Learned senior counsel for the Appellant has submitted that the Appellant shall complete the pleadings within a time-bound schedule as directed by the Court, which is also acceptable to the Respondent. Accordingly, the Appellant is directed to file its written statement as well as its reply to the application within a period of one (1) week, along with an affidavit of admission and denial of documents. Similarly, the Respondent shall file its replication and rejoinder to the application within a period of one (1) week thereafter, also accompanied by an affidavit of admission and denial of documents. The Respondent/plaintiff will be at liberty to file additional documents with its replication. The time for completion of pleadings has been granted as per the request of the parties and they shall ensure that the pleadings are completed.

36. In view of the findings recorded hereinabove, the directions issued by the Trial Court for seizure of the Appellant/defendant's goods and their release on superdari are hereby recalled. The Appellant/defendant is at liberty to de-seal and sell the said goods in the market. However, the Appellant/defendant shall maintain proper accounts of all sales effected by them and shall file, on a monthly basis, duly

audited statements of sales of the products bearing the impugned marks before the Trial Court, until final disposal of the injunction application.

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2. (ii) Vide the aforesaid order/judgment dated 30.03.2026, the Hon'ble High Court was pleased to pass the following direction:

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39. The Trial Court shall decide the injunction application on its own merits, uninfluenced by any observations made in the present order. All the rights and contentions of the parties are left open. **The Trial Court is requested to take up the injunction application, upon completion of pleadings for expeditious hearing, in accordance with its calendar and preferably decide the application within one (1) month from completion of the pleadings.**

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3. Thereafter, defendant No.1 challenged the aforesaid order/judgment, passed by the Hon'ble High Court of Delhi before the Hon'ble Supreme Court by way of **Special Leave Petition (Civil) No(s).13962/2026**, titled as, "K.S Oil Limited V/s Shivang Edible Oils Limited", which was disposed off vide **order dated 27.04.2026** with the following directions:

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4. We are of the opinion that since the pleadings are complete and both the parties are before the Court, the date of hearing be advanced from 04.06.2026. We request the Commercial Court to set down the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure of the petitioner/plaintiff for hearing in the week beginning from 04.05.2026 and dispose of the

application at the earliest.

5. We have refrained from commenting on the merits of the matter principally because we do not want any observations made by us to come in the way of Commercial Court deciding the matter. Equally for the said reasons we direct that the Commercial Court will decide the matter uninfluenced by the observations in the impugned order also.

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4. In the meantime, the parties have completed pleadings and filed three miscellaneous applications, the details whereof is as under:

(i) Application under Order VII Rule 11 CPC, filed by defendant No.1, which was dismissed as not pressed by this Court vide order dated 04.06.2026;

(ii) Application under Order XI Rule 1 (10) CPC filed by defendant No.1, *inter alia* seeking to place on record some documents, which are in the nature of statutory documents most of which surfaced after filing of suit and written statement in the matter.

(iii) Application under Order XI Rule 1 (5) CPC filed by plaintiff, *inter alia* seeking to place on record some documents,

5. At the time of conclusion of arguments on the application under disposal, it was jointly agreed by learned counsels for the parties that the documents sought to be placed on record by way of the aforesaid applications would be considered at the appropriate stage,

however, only the statutory documents would be considered for the disposal of this application.

**CASE OF THE PLAINTIFF:**

6. The facts of the case, as borne out from the plaint are that plaintiff is a company, incorporated under the Companies Act, 2013 and engaged in the business of manufacturing, marketing and sale of mustard oil under the mark and brand name 'KALASH' by claiming itself to be the lawful owner and proprietor of the said brand/mark by virtue of a **Deed of Assignment dated 01.01.2026, executed in its favour by Shri Gopal Das Garg, the original founder/owner and adopter of the "KALASH" brand/mark.** The plaintiff is having a mustard oil manufacturing unit at District Morena, Madhya Pradesh.

7. (i) Defendant No.1 is also stated to be a company, incorporated under the Companies Act, 1956 and engaged in the business of edible oils, by using the brand/mark "KALASH" on its edible oils.

(ii) Defendant No.2 is stated to be a buyer of edible oils products of defendant No.1, bearing the trademark "KALASH".

8. (i) It has been stated that Shri Gopal Das Garg, who was the fifth son of Late Shri Tota Ram Garg hailed from a joint family which was originally engaged in the manufacturing and trading of pulses under the names Nathimal Totaram at Bhind, Madhya Pradesh and Kallumal Sawaldas at Morena, Madhya Pradesh. Late Shri Tota Ram Garg had eight sons and five daughters.

(ii) In the year 1973, Shri Gopal Das Garg established a

mustard oil manufacturing unit at Morena, Madhya Pradesh, under the name M/s Gopal Industries, with some family members as sleeping partners. Thereafter, in or about the year 1974, he started using the




word 'KALASH' label / (hereinafter referred to as the 'FIRST KALASH LABEL') as a trade mark in relation to the mustard oil manufactured and sold from the Morena unit.

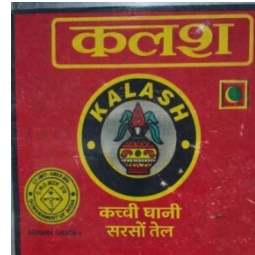
(iii) On 19.05.1975, a trade mark application was filed for registration of the said mark under **Application No.305567 under Class 29** in the name of Mohanlal, Gopaldas trading as M/s. Gopal Industries, a partnership firm, which mark was registered on 18.02.1978.

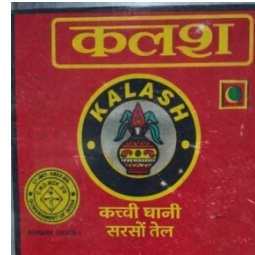
(iv) Thereafter, a partnership firm under the name M/s K.S. Enterprises was formed by Shri Gopal Das Garg to set up a larger mustard oil manufacturing unit. In the course of such expansion, the first "KALASH" label was also used by M/s K.S. Enterprises simultaneously, as part of the family business arrangement; however, the origin, goodwill and ownership of the "KALASH" word mark per se continued at all times to remain exclusively with Shri Gopal Das Garg.

(v) Thereafter, on 13.08.1986, a limited assignment was executed in favour of M/s K.S. Enterprises, **in respect of the FIRST**



**KALASH LABEL** i.e.,  , registered under Trade Mark Application No.305567 in Class 29. The said assignment was confined only to the **FIRST KALASH LABEL** and was merely as part of internal family restructuring. The said assignment did not transfer the “**KALASH**” word mark per se, nor the overall goodwill and proprietary rights in the brand. The rights in the word mark “**KALASH**”, as coined and adopted in the year 1973-74, continued to vest exclusively in Shri Gopal Das Garg. Even after assignment of the **FIRST KALASH LABEL**, Shri Gopal Das Garg, through M/s Gopal Industries, continued to use the brand/mark “**KALASH**” both as a



word mark as well as under the label  (hereinafter referred to as the ‘**SECOND KALASH LABEL**’) for mustard oil, and carried on the business of mustard oil from M/s. Gopal Industries to cater to his old and loyal customers. The rights in the word “**KALASH**”, as coined and adopted in the year 1973-74, thus continued to vest exclusively in Shri Gopal Das Garg, and no exclusive right in the word “**KALASH**” per se ever passed to M/s K.S. Enterprises.

(vi) It is claimed that Assignment Deed dated 13.08.1986 executed by M/s Gopal Industries in favour of M/s. K.S. Enterprises is even otherwise null and void ab initio in as much as one of the

partners of M/s. Gopal Industries who had signed the said Assignment Deed i.e., Smt. Katori Devi was not even alive at the time when the said Assignment Deed was executed. Smt. Katori Devi had died sometime in the month of March 1977, much prior to the date of the execution of the Assignment Deed dated 13.08.1986. As such the assignment made through the said document is inconsequential and the Defendant No.1 cannot claim any right over the **FIRST KALASH LABEL** assigned through the Assignment Deed dated 13.08.1986.

(vii) Thereafter, in the year 1985 Shri Gopal Das Garg incorporated K.S. Oils Private Limited, wherein he was one of the promoter/director. The company was formed to set up an integrated edible oil business comprising of refinery and solvent plant. Thereafter, in the year 1993, K.S. Oils Private Limited was converted into a public limited company and came to be known as K.S. Oils Limited (defendant No.1 in the present matter) and subsequently started the business of edible oils under the **FIRST KALASH LABEL**.

9. (i) It has been averred that when defendant No.1 came to handle a significant portion of the manufacturing and marketing of edible oils, the **FIRST KALASH LABEL** earlier assigned to M/s K.S. Enterprises was, as part of internal family restructuring, further assigned and recorded in the name of K.S. Oils Limited *vide Assignment Deed dated 26.07.1996*. It has been claimed that this internal arrangement again was limited only to the **FIRST KALASH LABEL under Trade Mark Application No.305567**, and did not, and could not, operate as a transfer of the “**KALASH**” word mark per se, the **SECOND KALASH LABEL** or the underlying goodwill which

had accrued from its first adoption by Shri Gopal Das Garg in the year 1973-74. It is further claimed that defendant No. 's rights, if any, were at best limited to permissive use of the FIRST KALASH LABEL within the family framework.

(ii) It has been averred that in the same year sons of Shri Gopal Das Garg i.e, Shri Sachin Garg and Shri Lalit Garg, incorporated a company under the name **K.S. Consupro India Private Limited** (now known as **S.L. Consumer Products Ltd.**) at Delhi for manufacturing, packaging and marketing of all kind of edible oils, pulses and agri products including mustard oil under the “**KALASH**” brand/mark, in North Indian markets.

(iii) Thereafter, in the year 2002, Shri Gopal Das Garg Shri Gopal Das Garg resigned as a Director of the Defendant No.1 company, however, he allowed the use of the FIRST KALASH LABEL by family-run entities including defendant No.1 as a matter of family understanding and accommodation.

(iv) It has been claimed that in the year 2005, Shri Gopal Das Garg personally conceptualised and designed a new label for



“**KALASH**” i.e., (hereinafter referred to as the ‘**THIRD KALASH LABEL**’) label/artistic work, including its overall get-up, colour scheme, design elements and typography, through a printer/design establishment at Gwalior, and paid for the same himself. The artistic work and trade dress of the **THIRD KALASH LABEL** originated from and belonged to Shri Gopal Das Garg. It is

averred that the **THIRD KALASH LABEL** was thereafter used in the course of business carried on by K.S. Consupro India Private Limited (now known as S.L. Consumer Products Ltd.) and subsequently by Shivang Edibles Oils Ltd., i.e., the plaintiff herein.

(v) It has been contended that use of the **THIRD KALASH LABEL** by other family entities, including the defendant No.1, K.S. Oils Limited, was only with the permission of Shri Gopal Das Garg, as a matter of family understanding and convenience and such permissive use did not amount to any assignment, transfer or surrender of ownership in the **THIRD KALASH LABEL**, its artistic work or trade dress, and the authorship and proprietary rights in the **THIRD KALASH LABEL** continued to vest solely in Shri Gopal Das Garg.

(vi) It has been further contended that at or about the year 2012, defendant No.1, K.S. Oils Limited stopped its edible oil business under the “**KALASH**” brand/mark and in the year 2017 it was admitted into corporate insolvency under the Insolvency and Bankruptcy Code’ 2016. It has been emphasized that defendant No.1 never had original proprietorship in the “**KALASH**” word mark or the **FIRST KALASH LABEL** or the **THIRD KALASH LABEL** which were being used by it only under the permission of Gopal Das Garg as part of the family arrangement. **It has been contended that registration of the FIRST KALASH LABEL under Application No. 305567 also stood lapsed on account of deliberate non-renewal** and as such the same cannot form part of the intangible assets of the defendant No.1 at the time of liquidation.

10. (i) It has been stated that following trade mark applications for registration of the brand/mark KALASH have been filed by Shri Gopal Das Garg:

<u>Sl. No.</u>	<u>TM Application No.</u>	<u>Trade Mark</u>	<u>Class</u>	<u>Present Status</u>
1.	6212110	KALASH	29	Refused
2.	6212111	KALASH	30	Pending
3.	6212112	KALASH	31	Pending

(ii) It has been contended that only after filing of the aforesaid application(s) that Shri Gopal Das Garg came to know that the defendant No.1 had filed the following trade mark applications in respect of **THIRD KALASH LABEL**:

<b>Sr. No.</b>	<b>TM Application No.</b>	<b>Class</b>	<b>Trade Mark</b>	<b>Status</b>
1.	1684997	29	“KALASH” / 	Pending
2.	1685604	29	“KLASH” / 	Pending

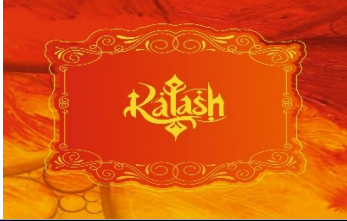
11. (i) It has been stated that owing to his advanced age, health considerations, Shri Gopal Das Garg executed a **Deed of Assignment dated 01.01.2026** in favour of the plaintiff, thereby assigning all his rights, title and interest in the “**KALASH**” word mark per se, together with the first, second and third “**KALASH**” labels, trade dress, artistic works and goodwill, for a consideration of Rs. 50,00,000/-. As such, it has been claimed that by virtue of the aforesaid Deed of Assignment dated 01.01.2026, plaintiff is now the sole and exclusive proprietor of the “**KALASH**” word mark, the **FIRST KALASH LABEL**, the **SECOND KALASH LABEL** and the **THIRD KALASH LABEL**, their trade dress and get-up in respect of edible oils and allied goods, along with the goodwill attached thereto.

(ii) It has been emphasized that plaintiff has been using the brand/mark **KALASH** in course of its business under the express authority and permission of Shri Gopal Das Garg since 11.08.2017 upto the date of assignment i.e., 01.01.2026 and thereafter as the original owner and proprietor of the mark and by reason of long, extensive and continuous use of the **KALASH** brand/mark and the assignment *vide* Assignment Deed dated 01.01.2026, the “**KALASH**” trademarks, including the word mark, the **FIRST KALASH LABEL**, the **SECOND KALASH LABEL** and the **THIRD KALASH LABEL**, their trade dress and get-up, have acquired a distinctive character and are recognised by the trade and the public as exclusively denoting the plaintiff’s mustard oil business.

(iii) It has been contended that said use by the plaintiff is open, continuous and exclusive without any hindrance from any person or entity, including but not limited to the defendant No.1. It is

emphasized that plaintiff has been actively advertising and marketing its products through its own website www.kalashoil.com as well as through various other third-party intermediaries and websites i.e., amazon, Instagram, facebook, blinkit, indiamart, etc.

12. (i) It has been averred that plaintiff has also applied for registration of its 'KALASH' trademarks, including 'KALASH', the details whereof is provided hereunder:

Sr. No.	TM Application No.	Trade Mark	Class	Status
1.	6825760	KALASH	35	Pending
2.	6925864	KALASH 	35	Pending
3.	6934424	KALASH	29	Pending

(ii) It has been claimed that Director of the plaintiff namely Shri Shivang Garg has also applied for registration of the following KALASH-formative marks:


Sr. No.	TM Application No.	Trade Mark	Class	Status
1.	6689763	JAI KALASH	29	Pending
2.	6689762	DIVYA KALASH	29	Pending
3.	6689679	KALASH PLUS	29	Pending
4.	6689673	RAJAT KALASH	29	Pending

13. (i) It has been averred that suddenly defendant No.1 issued a Cease-and-Desist Notice dated 26.08.2025 to plaintiff, Shri Gopal Das

Garg and Shri Shivang Garg, wherein defendant No.1 claimed itself to be the prior adopter and registered proprietor of the “KALASH” brand/mark and calling upon the plaintiff to stop use of “KALASH”, withdraw its trade mark applications, transfer the domain name www.kalashoil.com, and render accounts of profits.

(ii) It has been stated that pursuant to receipt of said Cease-and-Desist Notice, plaintiff for the first time came to know that the defendant No.1 in the year 2009 had applied and obtained copyright registration for the THIRD KALASH LABEL, despite the fact that its use of the THIRD KALASH LABEL was merely permissive under the authority of Shri Gopal Das Garg i.e., the original owner and proprietor of the word mark KALASH, the FIRST KALASH LABEL, the SECOND KALASH LABEL and the THIRD KALASH LABEL, their trade dress and get-up.

(iii) It has been stated that defendant No.1 had filed the following trade mark applications in respect of marks consisting of or containing the expression ‘KALASH’ in Class 29.

Sr. No.	TM Application No.	Class	Trade Mark	Status
1.	6796020	29		Pending

2.	6813810	29		Pending
3.	6813811	29	KALASH	Pending

14. (i) It has been claimed that in the month(s) of November/December' 2025, plaintiff came to know that defendant No.1 has been selling and/or offering for sale edible oils under the brand/mark “**KALASH**” to customers, despite having abandoned the said brand/mark in the year 2012 and having no surviving or original proprietorship therein. In this regard, plaintiff has placed reliance upon an Invoice bearing No. KCP/25-26/24 dated 02.12.2025, issued by defendant No. 1 in favour of defendant No. 2/M/s Nagaria Overseas, Pitampura, Delhi, showing sale of edible oil under the “**KALASH**” brand name (at page No.3919 of the documents filed by plaintiff).

(ii) It has been further claimed that on 10.01.2026 and 12.01.2026 plaintiff came to know from its distributors and trade associates from various States that defendant No.1 had been approaching the market and offering products under the “**KALASH**” brand at abnormally low and commercially unsustainable prices, including at loss-making margins, with the intent to re-enter the market and disrupt the plaintiff’s established trade, and create confusion amongst dealers and consumers.

(iii) It has been emphasized that by using and representing the brand/mark “**KALASH**” after prolonged non-use and without any

original or surviving title, defendant No.1 is misrepresenting to the trade and public it being the source and owner of mustard oils sold under the “**KALASH**” brand/mark and is thereby attempting to ride upon the goodwill established by and lawfully vested in the plaintiff, which conduct is likely to cause and is causing, confusion and deception among customers and traders, who may be led to believe that the goods of the defendant No.1 are associated with, sponsored by, or in some manner connected with the plaintiff’s “**KALASH**” business, despite that being not so.

(iv) It has been further claimed that aforesaid acts of defendant No.1 amounts to deliberate misrepresentation to the trade and public and constitute a classic case of passing off, calculated to ride upon and erode the goodwill lawfully built by plaintiff under the “**KALASH**” brand pursuant to a valid Deed of Assignment.

15. Alongwith the plaint, application under disposal alongwith an application under Order XXVI Rule 9 CPC for appointment of Local Commissioner(s) were filed. The application under Order XXVI Rule 9 CPC was disposed off by appointing five Local Commissioners, who executed the commission and filed their separate reports, which are on record.

#### **CASE OF THE DEFENDANTS:**

16. (i) After getting served with the summons in the matter, the main contesting defendant, i.e defendant No.1 filed written statement, *inter alia* pleading as under:

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1. That present suit has been filed by the plaintiff on the basis of alleged rights derived from Shri Gopal Das Garg in the trademark/brand "**KALASH**" without placing on record even a single document evidencing that Shri Gopal Das Garg ever possessed any independent ownership/proprietary rights in the trademark/ brand "**KALASH**". The said trademark had never been used by him in his personal capacity even from inception, i.e the year 1974.

2. That defendant No.1 is the prior user, registered proprietor and real/actual/lawful owner of trademark/brand "**KALASH**". In fact, immediately after Corporate Insolvency Resolution Process (CIRP) started against the Defendant No. 1 company vide Hon'ble NCLT order dated 21.07.2017 and powers of its board of members were suspended and there was no one to raise any objection against such unauthorised use of the trademark/brand "**KALASH**", the Plaintiff had opportunistically, unauthorisedly and illegally started using the trademark/brand "**KALASH**" allegedly from 11.08.2017 (as claimed in the Plaint and trademark application filed by the Plaintiff bearing no. 6825760). It was only in August 2025, that the new management/board of the Defendant No. 1 company got to know about the Plaintiff's dishonest act of filing the trademark applications for the trademark/brand "**KALASH**". Immediately thereafter, the Defendant No. 1 company filed Notice of Opposition vide Form TM-O dated 07.08.2025 bearing Opposition no. 1396772 in the Plaintiff's trademark application bearing No. 6825760 for the word mark "**KALASH**" in Class 35 with a false user claim from

11.08.2017, and served a Cease-and-Desist notice dated 26.08.2025 to the Plaintiff, Gopal Das Garg and Shivang Garg against the unlawful and unauthorized use of the trademark/brand “KALASH”.

3. That as a counter blast, the plaintiff instituted the present suit in February, 2026. Since, the Defendant No. 1 is the actual, lawful and real proprietor/owner as well as the prior user of the trademark/brand “KALASH” since 1974, the Plaintiff has no right to sue or cause of action to institute the present suit for injunction against the Defendant No. 1. As such, the present suit is liable to be dismissed. The Defendant No. 1 reserves the right to file a separate suit against the Plaintiff for unauthorised/illegal use of the Defendant No. 1’s trademark/brand inter alia, “KALASH”, “DOUBLE SHER” among others.

4. That defendant No. 1 has also filed several trademark applications for the word mark “KALASH” and “KALASH” formative

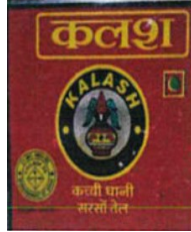
trademark(s) including



and . The trademark “KALASH”, several “KALASH” formative trademark(s), FIRST KALASH LABEL/



, SECOND KALASH LABEL/



, and THIRD KALASH LABEL/



are hereinafter collectively referred to as “the Defendant No. 1’s trademark/brand ‘KALASH’”.

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16. (ii) By way of preliminary objections/submissions, it has been stated as under.

16. (iii) **Prior and Superior Statutory and Proprietary Rights of Defendant No.1 in the Trademark/brand “KALASH”:**

**Defendant No.1 is the Actual and Lawful Proprietor of the trademark/brand “KALASH” by Virtue of Valid and Recorded Assignment Deeds:**

1. In and around the year 1974, the trademark/brand “KALASH” was originally adopted and owned by the partnership firm namely M/s. Gopal Industries, comprising Mohanlal, Gopaldass, Katori Devi, Rama Rani and Sarla Devi as partners. The Partnership firm M/s. Gopal Industries filed the earliest and first trademark application bearing No. 305567 for



“/KALASH (Label)” in Class 29 for mustard oil (edible) on 19.05.1975 with date of use claimed as 01.12.1974, and was subsequently granted registration on 18.02.1978 (*hereinafter referred to as the “FIRST KALASH LABEL”*).

2. Thereafter, by Deed of Assignment dated 13.08.1986, the FIRST KALASH LABEL along with the goodwill of the business in which the mark had been used and without any restrictions or limitations was assigned by all the partners of M/S Gopal Industries in favour of M/s. K.S. Enterprises, which was also a partnership firm having Omprakash Asis Kumar (HUF), Mohanlal Garg, Govindprasad Giraj Kumar (HUF), Gopaldas Sachin Kumar (HUF), Rameshchand Sorav Kumar (HUF), Shyamlal and Kishor Kumar, as partners. The assignment was complete, absolute and with a consideration amount.

Extracted clause from the Assignment Deed dated 13.08.1986 are reproduced below for ready reference:

*“1. In token consideration of Rs. 101/-, receipt whereof the Assignor hereby acknowledges, the Assignor assigns registration No.305567 for the trade mark KALASH (Label) to the Assignee, without any restrictions or limitations.*

*2. The assignment herein has taken place in connection with the goodwill of the business in which the mark has been used.”*

3. That a request vide Form TM-23 was filed before the Trade Marks Registry for recordal of the said assignment, based on which M/s. K.S. Enterprises became the subsequent proprietor of the said trademark vide order dated 29.09.1989.

4. Subsequently, vide another Deed of Assignment dated 26.07.1996, M/s K.S. Enterprises further assigned the said trademark along with the entire goodwill of the business in which the said trademark had been used and without any

restrictions or limitations to K.S. Oils Limited i.e., the Defendant No. 1. The said assignment was again complete, absolute, and with a consideration amount.

Extracted clauses from the Assignment Deed dated 26.07.1996 are reproduced below for ready reference:

*“1. In token consideration of Rs. 1,001/- (Rupees one thousand and one only) the Assignor assigns registration No.305567 for the trade mark KALASH (Label) to the Assignee, without any restrictions or limitations.  
2. The assignment herein has taken place in connection with the goodwill of the business in which the mark has been used.”*

It is pertinent to point out that along with the Assignment Deed dated 26.07.1996, Gopal Das Garg executed an affidavit dated 26.07.1996 in his capacity of both the assignor (as the Karta of the Gopal Das Sachin Garg (HUF) which is one of the partners in M/s. K.S. Enterprises) and the assignee (as one of the directors of the Defendant No. 1 company).

5. A request in Form TM-23 was filed before the Trade Marks Registry for recordal of the said assignment, based on which the Defendant No. 1 became the subsequent proprietor of the FIRST KALASH LABEL vide order dated 18.10.1999(in PR details it is showing dated 06.10.1999).

6. The specific inclusion of transfer along with goodwill in both the Assignment Deeds signifies that the Defendant No. 1 holds complete ownership of the trademark/brand “KALASH”, and any claim of the Plaintiff to the contrary is unsubstantiated, untenable and legally unfounded.

7. The Plaintiff or Gopal Das Garg have not denied the execution of the Assignment Deeds dated 13.08.1986 and 26.07.1996, they have only questioned the scope of these Assignments. However, the scope of these assignments is clear from the contents of the assignments as detailed above.

8. It is pertinent to note that till the year 2008, the Defendant No. 1 and/or its predecessors had filed only one

trademark application for the “KALASH” formative trademark i.e., trademark application bearing no. 305567. The assignment of the said trademark application in favour of the Defendant No. 1 with goodwill of the business and without any limitation or restrictions amounts to the complete transfer of the trademark “KALASH” and not just the FIRST KALASH LABEL as wrongly alleged in the Plaint. There existed no separate or independent registration in favour of any individual, including Gopal Das Garg, thereby clearly demonstrating that all statutory and proprietary rights in the trademark/brand “KALASH” vested, and continue to vest solely with Defendant No.1 only, till date.

9. From 26.07.1996 onwards, the complete and absolute proprietary and ownership rights in the trademark/brand “KALASH” have vested exclusively in the Defendant No. 1 company only. Subsequent to assignment in 1996, the Defendant No. 1 started extensively and openly using the trademark/brand “KALASH”. The Defendant No. 1’s proprietary rights in the trademark/brand KALASH dates back to the year 1974 through its predecessor-in-title. At no point in time were the proprietary rights in the trademark/brand “KALASH” divested from the Defendant No. 1 after the 1996 assignment.

10. The Defendant No. 1’s trademark “KALASH” has also been declared a well-known trademark under Section 2 (1) (zg) of the Trade Marks Act, 1999 (“the Act”) by the Hon’ble Delhi High Court’s order in the case title *M/S K.S Oil Limited Vs M/S Ekta Dairy Pvt Ltd* CS. OS NO. 1299/2011 vide judgement dated 26.11.2012. The said recognition by the Hon’ble Delhi High Court is a clear acknowledgment of the extensive use, market presence and public association of the trademark/brand “KALASH” exclusively with Defendant No.1.

11. The Defendant No. 1’s open, extensive and longstanding use, continuous assertion and documentary evidence, including statutory filings, annual reports, advertisements and judicial orders unequivocally establish that the Defendant No. 1 is the *sole* owner of the trademark/brand “KALASH” since 1996 having rights through its predecessor since 1974 and the same

has at all times been treated as a corporate asset of Defendant No.1 company only. In contrast, the Plaintiff's alleged use (since 11.08.2017 as allegedly claimed) is admittedly subsequent, unauthorized and without any lawful basis, and is therefore clearly subordinate to the prior, open, longstanding use and superior statutory and proprietary rights of Defendant No.1 in the trademark/brand "KALASH" since 1974. The Defendant No. 1 is entitled to seek permanent injunction against the Plaintiff from infringing its trademarks and Copyright apart from seeking relief qua passing off of the goods as those of the Defendant No. 1. The Plaintiff, having no valid title or independent rights in the trademark/brand "KALASH", cannot seek to restrain the lawful proprietor from use of its own trademark(s) and for this reason the suit is ought to be dismissed.

**16. (iv) Suit of the Plaintiff's is barred by Limitation, Acquiescence, Waiver and Estoppel from Questioning the Longstanding, Recorded and acted upon Assignments:**

1. The Plaintiff claims its alleged rights through Gopal Das Garg, who is one of the signatories (as an Assignor and Assignee) to the Assignment Deeds dated 13.08.1986 and 26.07.1996. These Assignment deeds were accepted and acted upon by all the concerned persons including Gopal Das Garg. Gopal Das Garg himself or through the Plaintiff has never questioned these assignment deeds until the filing of the present suit, clearly evidencing the mala fide intent of the Plaintiff as well as that of Gopal Das Garg. The trademark/brand "KALASH" was being owned/used and acknowledged as the corporate asset of the Defendant No. 1 at various instances.

2. Gopal Das Garg and his sons namely, Sachin Garg and Lalit Garg and grandson namely, Shivang Garg never challenged or raised any question over the validity or scope of the Assignment Deeds until recently when the intention of Gopal Das Garg, his son and grandson turned dishonest to somehow claim rights in the trademark/brand "KALASH" and make unjust gains. Gopal Das Garg had, over several decades, not only acknowledged and accepted Assignment Deeds dated 13.08.1986 and 26.07.1996 and the ownership/proprietary

rights of Defendant No. 1 over the trademark/brand “KALASH” but has also relied upon the same at various instances for his convenience, which is evident from the following facts:

- (i) In the Assignment Deed dated 13.08.1986, Gopal Das Garg signed not just as one of the Assignors/assigning partners but also signed on behalf of the Assignee Gopal Das Sachin Kumar HUF as Karta;
- (ii) In the Assignment Deed dated 26.07.1996, Gopal Das Garg signed as Karta of Gopal Das Sachin Kumar HUF, which was one of the partners of the Assignor (M/s. K.S. Enterprises), and also as one of the Directors of the Assignee (Defendant No. 1);
- (iii) In the Assignment Deed dated 26.07.1996, Gopal Das Garg executed an affidavit dated 26.07.1996 in the capacity of both the assignor (as the Karta of the Gopal Das Sachin Kumar (HUF) which was one of the partners in M/s. K.S. Enterprises) and the assignee (as one of the Directors of the Defendant No. 1 company);
- (iv) Gopal Das Garg obtained the license and signed the license agreement dated 15.05.2013 on behalf of S L Consumer Products Limited acknowledging the ownership of the Defendant No. 1 over the trademark/brand “KALASH”;
- (v) Gopal Das Garg relied upon and acknowledged the validity of the Assignment Deeds in his trademark applications bearing nos. 6212110, 6212111 and 6212112 dated 08.12.2023 for the word mark “KALASH”;
- (vi) Gopal Das Garg sought an alleged No Objection Certificate dated 05.04.2017 from the Defendant No. 1 for filing trademark applications in his individual capacity (without admitting the veracity of the said NOC);
- (vii) Annual Reports of the Defendant No. 1 company since 1998 – 2002 clearly show “KALASH” as a trademark/brand of the Defendant No. 1 (the relevant time period when Gopal Das Garg was also a Director in the Defendant No. 1 company as alleged in plaint that he resigned in 2002);
- (viii) Gopal Das Garg in the trademark application bearing no. 6212110 dated 08.12.2023 claiming alleged user since 01.12.1974 for the trademark “KALASH” filed in his indi-

vidual capacity relied on the documents pertaining to the Defendant No. 1's use of the trademark/brand "KALASH";  
(ix) Submissions made by Gopal Das Garg in the affidavit dated 01.12.2023 filed with the trademark application no. 62102110, Reply dated 12.01.2024 to the Examination Report dated 12.12.2023 and Show Cause Hearing documents dated 30.06.2024. The relevant paras/parts are extracted below for ready reference:

Affidavit dated 01.12.2023-

*"In the year 1985 the Deponent promoted a private limited company i.e., K.S. Oils Pvt. Ltd. The said company later became a public limited company under the name of K.S. Oils Limited, wherein the Deponent was a Promoter, Shareholder and director. The mark under application No. 305567 was assigned by M/s. K.S. Enterprises in the name of K.S. Oils Ltd., vide Assignment Deed dated 26.07.1996"*

Reply to ER- *"The Applicant, Gopal Das Garg is one of the Promoter of K.S. Oils Ltd. The relevant documents of K.S. Oils Limited are annexed herewith and marked as Annexure C"*;

Docs in support of SCH- *"The Applicant, Gopal Das Garg is one of the Promoter of K.S. Oils Ltd. The relevant documents of K.S. Oils Limited showing the Applicant as Share Holder of the said company are annexed herewith and marked as Annexure C"*;

(x) Gopal Das Garg or the Plaintiff did not question the Assignment Deed dated 13.08.1986 even in their Reply dated 22.09.2025 to the Legal Notice dated 26.08.2025 and Counter statement dated 07.10.2025 in Opposition no. 1396772.

3. It is further submitted that at no point of time prior to the year 2023 was any conflicting claim or objection raised by the Plaintiff, Gopal Das Garg, Shivang Garg, or any other member

of the Garg family in respect of the rights in the trademark/brand "KALASH" which subsisted, and continues to subsist in the name of the Defendant No. 1. Despite full knowledge of the Defendant No. 1's registrations, assignments, and extensive commercial use of the trademark/brand "KALASH", no challenge was ever made before the Trade Marks Registry or any judicial forum disputing/questioning the Defendant No. 1's title/use/claim/ownership. The prolonged silence and inaction on the part of primarily, the Plaintiff, Gopal Das Garg and Shivang Garg or any other member of the Garg family, for several decades, clearly evidences acknowledgment/acquiescence of the Defendant No. 1's rights and ownership and disentitles them from raising a belated, dishonest and opportunistic claim of ownership in trademark/brand "KALASH" at this belated stage.

4. It is a settled position in law that any question/objection to such assignments must be raised within the prescribed period of three years under the Limitation Act, 1963, a period that has long since expired/elapsed. Moreover, the Plaintiff claims its alleged rights through Gopal Das Garg, who was himself one of the signatories to the Assignment Deeds dated 13.08.1986 and 26.07.1996 and had, at the relevant time, also executed affidavits and documents acknowledging and affirming the transfer of the said trademark along with the goodwill and without any restrictions or limitations. Since, Gopal Das Garg is alleged to be the predecessor of the Plaintiff, the knowledge of Gopal Das Garg is, in law, deemed to be the knowledge of the Plaintiff, and the Plaintiff cannot now allege ignorance or seek to question the said assignments, which have been duly recorded and acted upon at various points in time, as a proxy of Gopal Das Garg to somehow claim rights in the Defendant No. 1's trademark/brand "KALASH". The long and uninterrupted acquiescence and acceptance of the said Assignment Deeds by all concerned parties, including Gopal Das Garg, creates a complete bar against any belated challenge. Moreover, the Plaintiff in the present suit has not sought for the relief of declaration of the Assignment Deeds dated 13.08.1986 and 26.07.1996 as null and void. Further, Mr. Gopal Das Garg has accepted the execution of said assignment deeds and also relied upon on such Assignment Deed before the Trademark Registry.

Therefore, the said Assignment Deeds are to be treated as valid documents for the purpose of the present suit.

XXXXX

**16. (v) Rights of the Defendant No. 1 in the trademark/brand “KALASH” are active, were never abandoned, and there was no intention to abandon or not to use:**

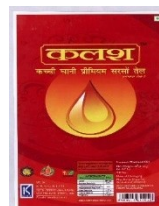
1. It is already mentioned in the above paragraphs in detail that the trademark/brand “KALASH” was assigned to the Defendant No. 1 vide Assignment Deed dated 26.07.1996 and since then it was using the trademark/brand “KALASH” openly, exclusively, uninterrupted, extensively under its own trade name. Even upon financial distress on the Defendant No. 1 company, its trademark/brand “KALASH” continued to remain in commercial circulation also through a valid License Agreement dated 15.05.2013 executed in favour of S L Consumer Products Limited. The said license arrangement constitutes valid use in law by the Defendant No. 1 in terms of Section 48(2) of the Trade Marks Act, 1999.


2. In 2017, the Defendant No. 1’s Corporate Insolvency Resolution Process (CIRP) commenced and subsequently an official liquidator was appointed by the NCLAT, Principal Bench, New Delhi. The Defendant No. 1 company remained in liquidation until the board of directors of the new management was constituted on 07.02.2025. During the period of the Liquidation, the registered trademark application bearing no. 305567 was reflected as lapsed/expired on the Register on 19.05.2023. The mere fact that the validity of the trademark application bearing no. 305567 was reflected as expired/lapsed on the Register on 19.05.2023 does not and cannot amount to abandonment of Defendant No. 1’s rights in the trademark/brand “KALASH” in law since the ownership and proprietary rights of the Defendant No. 1 in the trademark/brand “KALASH” have at all times remained active, subsisting and continuously asserted. Even otherwise, lapse/non-renewal of a trademark application does not disentitle the proprietor from claiming its common law rights in its trademark. Abandonment requires clear, deliberate and conscious intention to relinquish rights coupled with intentional

non-use. No such intention can possibly be inferred in the present case. It is pertinent to mention that the Application No. 305567 is not the sole registered and secured Intellectual Property of the Defendant No. 1. The Defendant No. 1 is also the registered proprietor of the word mark “KALASH” in class 31 bearing no. 1773375 and one separate copyright registration obtained in 2009 for the artwork of the THIRD KALASH LABEL bearing registration no. A-88389/2010.

3. It is pertinent to mention that the lapse in renewal of the trademark application bearing no. 305567, in the year 2023, is attributable entirely to the procedural error of the Trade Marks Registry in failing to issue the mandatory O-3 notice to the Defendant No. 1 or its attorney on record, wherein, the O-3 notice dated 17.04.2023 was issued to the earlier trademark attorney, and not due to any inaction on the part of the Defendant No. 1. Upon getting knowledge of the same, the new management of the Defendant No. 1 promptly instituted restoration proceedings by way of an Interlocutory Petition on 08.01.2025 and has also filed Writ Petition before the Hon’ble Bombay High Court vide diary No. WP/42318/2025 to rectify the irregularity, and to restore the trademark in due course.

4. Without prejudice, even assuming that the trademark application no. 305567 is shown as “likely to be removed” due to procedural irregularity, the Defendant No. 1 continues to hold ownership and common law rights in the FIRST KALASH LABEL. The Defendant No. 1 also holds statutory rights in valid and subsisting trademark application bearing No. 1773375 in Class 31 for the word mark “KALASH” and registered copyright in the “KALASH” artistic work bearing registration No. A-88389/2010, and proprietary and common law rights in other pending applications, including the associated label marks bearing application nos. 1684997 in Class 29 for the mark



and 1685604 for the mark . The filing of Interlocutory Petition and Writ Petition itself evidences continued assertion of proprietary rights and active pursuit of

statutory remedies. Copy of the O-3 notice dated 17.04.2023 issued under application no. 305567 is being filed with the list of documents and marked as **Document – 32**. Copy of the Interlocutory Petition dated 08.01.2025 and the follow up representation by way of a letter filed on 09.12.2025 by the Defendant No. 1 under application no. 305567 and Interlocutory Petition filed by the Plaintiff dated 26.12.2025 are being filed with the list of documents and marked as **Document – 33**. Copy of the Writ Petition filed vide dairy no. WP/42318/2025 before the Hon'ble Bombay High Court for restoration of the Defendant No. 1's trademark application no. 305567 is being filed with the list of documents and marked as **Document – 34**.

5. The Defendant No.1 had filed an application bearing no. MA/1(MP)2026 in TP 60 of 2019 [CP(IB) 32 of 2017] before the Hon'ble National Company Law Tribunal, Indore Bench, inter alia seeking directions for restoration and revival of the said trademark application no. 305567 on account of lapse occasioned during liquidation due to procedural irregularities by the Trade Marks Registry. The Hon'ble Tribunal, vide order dated 13.03.2026, was pleased to issue notice to the Registrar of Trade Marks in the said application, thereby recognizing the maintainability of the Defendant No.1's claim for revival of its trademark rights. The aforesaid steps clearly demonstrate that the Defendant No.1 has continuously asserted its proprietary rights and took necessary steps to revive its aforementioned trademark application and has never abandoned the trademark "KALASH" and its use. Copy of the order dated 13.03.2026 of the Hon'ble National Company Law Tribunal, Indore Bench is being filed with the list of documents and marked as **Document – 35**.

6. It is submitted that a trademark application or registration is merely a statutory recognition of pre-existing common law rights, which arise from use, reputation and goodwill in the trademark. The expiry/lapse or non-renewal of a trademark registration does not, in any manner, extinguish such underlying vested and enforceable proprietary and common law rights and by any stretch of imagination does not amount to abandonment of a trademark. It is a settled position of law that proprietary

rights in a trademark are fundamentally based on prior adoption and use, and not merely on registration. Courts have consistently recognised that even in cases where registration has lapsed, the proprietor continues to retain enforceable common law rights in the trademark. And even otherwise, lapse/non-renewal in trademark application cannot be a question on the ownership of the trademark.

7. It is further submitted that any non-use of a trademark occasioned due to circumstances beyond the control of the proprietor without any intention to abandon or not to use, including insolvency, corporate restructuring or liquidation proceedings, constitutes a “special circumstance” within the meaning of Section 47(3) of the Act. The pendency of insolvency proceedings, liquidation, moratorium, and management transition constitute special circumstances beyond the control of the proprietor. It is well-settled that abandonment is not to be lightly inferred and requires clear and unequivocal evidence of an intention to permanently relinquish rights, which is completely absent in the present case. The law expressly protects proprietors against loss of rights in such situations, recognising that such involuntary non-use does not result in abandonment of the trademark.

XXXXX

**16. (vi) The present suit against the Defendant No.1 is Not Maintainable as the Plaintiff, as well as its alleged predecessor in title Gopal Das Garg have no right in the Trademark/brand “KALASH”**

1. Origin of Trademark “KALASH” – Not Owned by Gopal Das Garg in Personal Capacity: The Plaintiff’s entire alleged claim of proprietary rights in the trademark/brand “KALASH” flows from its alleged predecessor Gopal Das Garg. As detailed above, Gopal Das Garg never possessed any ownership/independent proprietary rights in the trademark/brand “KALASH”, as per the principle of *nemo dat quod non habet* which states that, one cannot transfer a better title than one possesses, and the same is squarely applicable in the present case. Therefore, the Plaintiff cannot claim to have acquired any alleged rights/title in the trademark/brand “KALASH” from Gopal Das Garg since no rights ever vested

with Gopal Das Garg. Hence, the Plaintiff neither has nor can have any traceable rights or *locus standi* to even initiate a suit of this nature against the Defendant No. 1 who is the true and actual owner, and registered proprietor of the trademark/brand “KALASH”. Any assertion/claim of independent ownership by Gopal Das Garg at any point in time is wholly unsubstantiated and misleading. There is not a single document on record other than the bald assertions to show that Gopal Das Garg ever had any individual rights in the trademark/brand “KALASH” or had any independent use. Even the Assignment Deed dated 01.01.2026 (though inherently defective, void ab initio and invalid document), relied upon by the Plaintiff, expressly records that M/s Gopal Industries (original and first proprietor of the trademark “KALASH”) was a partnership firm and not a proprietorship concern. Thus, from inception, Gopal Das Garg neither held nor could have held any independent, exclusive or personal ownership rights in the trademark/brand “KALASH”.

2. Complete Transfer to M/s. K.S. Enterprises in 1986 along with Goodwill: By Deed of Assignment dated 13.08.1986, all partners of M/s Gopal Industries assigned the first trademark registration for FIRST KALASH LABEL along with the goodwill of the business to M/s. K.S. Enterprises. The language of the said Assignment Deed clearly mentions the transfer of the trademark with goodwill, without limitations or any restrictions. It is a settled law that once goodwill is transferred along with the mark, the assignor(s) retains no residual independent or competing proprietary interest/right. The transfer in the year 1986 was complete and absolute. Thereafter, no rights remained vested in M/s Gopal Industries or any individual partner thereof.

3. Complete transfer to the Defendant No. 1 in 1996 as recorded in the records of Trademarks Registry: Subsequently, vide Assignment Deed dated 26.07.1996, M/s. K.S. Enterprises assigned the FIRST KALASH LABEL along with the goodwill of the business to Defendant No. 1. This assignment was again absolute and without any restrictions or limitations. The said assignment was formally recorded by the Trade Marks Registry. The assignment was made to the Defendant No. 1 as a company and not to any director or individual. By virtue of the doctrine

of corporate personality, the trademark vested exclusively in the corporate entity (Defendant No. 1) and not in any individual director including Gopal Das Garg. It is submitted that the assignment of the FIRST KALASH LABEL along with the goodwill of the business necessarily included the proprietary rights in the mark as used in trade, including the word “KALASH”, and no bifurcation between label and word mark can be artificially created in law, especially when the trademark has been assigned without any restrictions or limitations and also when no other trademark application/registration for the KALASH trademark(s) existed at that point in time.

4. Unchallenged Recordal of Assignment Confers Statutory Presumption of Validity under Section 31 of the Trade Marks Act: That the Assignment Deeds dated 13.08.1986 and 26.07.1996, whereby rights in the trademark “KALASH” along with goodwill were assigned to Defendant No. 1, have been duly recorded by the Trade Marks Registry in accordance with law vide order dated 29.09.1989 and 06.10.1999 respectively. The said recordals were effected pursuant to statutory filings and have remained unchallenged till date. It is an admitted position that neither the Plaintiff nor its predecessor-in-interest has taken any steps to question, oppose or seek rectification of the said assignments before the competent forum. Moreover, the said orders are a part of public record and have attained finality in the absence of any challenge to the same. In these circumstances, the entries in the Register of Trade Marks carry a statutory presumption of validity under Section 31 of the Trade Marks Act, 1999. The present suit, in effect, seeks to indirectly ignore and bypass the Defendant No.1’s recorded rights over the trademark/brand “KALASH” and its legal presumption of its validity, without any formal challenge to the assignments, and is therefore barred in law and liable to be rejected.

5. Gopal Das Garg Never Claimed Ownership Until 2023: It is significant that nearly five decades have passed since the adoption, use and first trademark application of the FIRST KALASH LABEL which was filed in the year 1975 by the Partnership firm M/s. Gopal Industries with the claim of use since 01.12.1974. The assignment deeds of 1986 and 1996 do

not, in any form, or essence ascertain any rights in favour of Gopal Das Garg. During the subsistence of these assignment deeds, no objection, claim or declaration was sought by Gopal Das Garg. Additionally, Gopal Das Garg neither asserted any independent proprietary rights over the trademark/brand "KALASH" nor did he file any independent trademark application prior to the year 2023. It was only after the Liquidator issued the public auction notice dated 22.11.2023 for sale of the Defendant No. 1 company as a going concern which included the trademark "KALASH" as well, that Gopal Das Garg suddenly realised that the new management will not allow such unauthorised use of the trademark/brand "KALASH" by the Plaintiff, Shivang Garg or himself. Therefore, Gopal Das Garg for the very first time filed trademark applications in various classes on 08.12.2023 in his individual capacity (as admitted by the Plaintiff in paragraph no. 29 of the Plaint), out of which application bearing no. 6212110 under class 29 for the mark "KALASH" was filed with a claim of use since 1974 relying on the documents belonging to or pertaining to the Defendant No. 1 and his inability to prove any independent rights and/or use in its individual capacity and because of which the said application got refused and the other two applications bearing nos. 6212111 in Class 30 and 6212112 in Class 31 for the marks "KALASH" are still pending. It is pertinent to mention that, the timing is not coincidental. The belated assertion after decades of silence clearly reveals opportunistic conduct of the Plaintiff in connivance with Shivang Garg and Gopal Das Garg. The prolonged silence and inaction of Gopal Das Garg also constitute acquiescence, waiver and estoppel against any belated claim of ownership in the trademark/brand "KALASH".

6. Inconsistency in the Plaintiff's Own Claim of Ownership in the Trademark/Brand "KALASH": The Plaintiff claims ownership through Gopal Das Garg. The following inconsistencies and/or inaction on the part of Gopal Das Garg established that he has no independent right in the trademark/brand "KALASH":

7. No Trademark applications filed in the personal name of Gopal Das Garg prior to 2023 until the issuance of the e-auction

notice dated 22.11.2023.

8. Shivang Garg filed trademark applications for various “KALASH” formative marks on a “Proposed To Be Used” basis in his individual capacity in 2024 without any authorization, license or assignment.

9. The Plaintiff for the first time filed trademark application for the word mark “KALASH” in January 2025 with alleged use claim of 11.08.2017 without any registered assignment or authorization subsisting in its favour at that time.

10. The alleged Assignment Deed dated 01.01.2026 was executed immediately before the filing of the present suit, thereby exposing the afterthought nature of the claimed rights.

11. The Plaintiff has not filed the request before the trademark registry for recordal of the alleged Assignment Deed dated 01.01.2026.

XXXXX

17. Further, in para 74 of the written statement, following timelines have been furnished:

XXXXX

74. It is submitted that the trademark/brand “KALASH” was conceived and adopted in the year 1974 through the Defendant no.1’s predecessor-in-title. The complete historical origin, adoption, registration and subsequent assignments of the trademark/brand “KALASH” have already been set out in detail in the preceding paragraphs of the present Written Statement and are not being repeated herein for the sake of brevity. Without prejudice and for the convenience of this Hon’ble Court, the chain of title of the trademark/brand “KALASH” is succinctly set out in the tabular form hereinbelow:

Sr. No.	Date	Event	Proprietor
1.	19.05.1975	Filing of the first Trademark Application No. 305567 for the FIRST KALASH LABEL	M/s Gopal Industries (Partnership Firm)
2.	18.02.1978	Registration granted for "KALASH (Label)/ FIRST KALASH LABEL"	M/s Gopal Industries (Partnership Firm)
3.	13.08.1986	Execution of the Assignment Deed - I for trademark/brand "KALASH" along with goodwill and without any limitation/restriction	M/s Gopal Industries to M/s K.S. Enterprises (Partnership Firm)
4.	29.09.1989	Assignment recorded with Trade Marks Registry	M/s K.S. Enterprises (Partnership Firm)
5.	26.07.1996	Execution of the Assignment Deed - I for trademark/brand "KALASH" along with goodwill and without any limitation/restriction	K.S. Enterprises to K.S. Oils Limited (Defendant No.1)
6.	06.10.1999	Assignment recorded with Trade Marks Registry	K.S. Oils Limited (Defendant No.1)
7.	08.05.2008	Filing of second trademark application for THIRD KALASH LABEL in Class 29 bearing no. 1684997	K.S. Oils Limited (Defendant No.1)
8.	09.05.2008	Filing of another trademark application for THIRD KALASH LABEL in Class 29 bearing no. 1685604	K.S. Oils Limited (Defendant No.1)
9.	13.01.2009	Filing of trademark application for the word mark "KALASH" in Class 31 bearing no. 1773375	K.S. Oils Limited (Defendant No.1)
10.	09.11.2009	Filing of the THIRD KALASH LABEL bearing Diary No. 10443/2009-CO/A	K.S. Oils Limited (Defendant No.1)
11.	26.04.2010	Registration of the THIRD KALASH LABEL bearing Registration no. A-88389/2010	K.S. Oils Limited (Defendant No.1)

12.	11.06.2015	Registration of word mark "KALASH" in Class 31	K.S. Oils Limited (Defendant No.1)
13.	15.05.2013	License granted to S L Consumer Products Limited for use of the trademark/brand "KALASH"	K.S. Oils Limited (Defendant No.1)
14.	21.07.2017	CIRP initiated; rights continue to vest in the Defendant no.1 company	K.S. Oils Limited (Defendant No.1)
15.	16.03.2021	Hon'ble NCLAT directed liquidation of the Defendant No. 1 company; trademark/brand "KALASH" forms part of liquidation estate	K.S. Oils Limited (Defendant No.1)
16.	19.05.2023	First Trademark application bearing no. 305567 expired since the O3 notice was inadvertently issued to the previous trademark attorney	K.S. Oils Limited (Defendant No.1)
17.	22.11.2023	Public e-auction notice was issued for sale of the Defendant no.1 as going concern including Intellectual Property assets	K.S. Oils Limited (Defendant No.1)
18.	23.12.2023	Successful bidder declared for acquisition of the Defendant no.1 company	K.S. Oils Limited (Defendant No.1)
19.	22.03.2024	Sale Certificate issued transferring the Defendant no.1 company as going concern	K.S. Oils Limited (Defendant No.1)
20.	03.02.2025	Order/judgement pronounced by NCLT appointing new directors	K.S. Oils Limited (Defendant No.1)
21.	07.02.2025	Reconstitution of Board of Directors of the Defendant no.1 company	K.S. Oils Limited (Defendant No.1) (through new management)
22.	08.01.2025	Interlocutory Petition filed in Trademark application bearing no. 305567 for restoration of the FIRST KALASH LABEL	K.S. Oils Limited (Defendant No.1) (through new management)

23.	09.12.2025	The follow up representation by way of a letter filed Trademark application bearing no. 305567	K.S. Oils Limited (Defendant No.1) (through new management)
24.	08.01.2025 and 20.01.2025	Fresh trademark applications filed to strengthen the portfolio	K.S. Oils Limited (Defendant No.1) (through new management)
25.	2025–Present	After the constitution of the new board of directors on 07.02.2025 the Defendant No. 1 company again initiated commercial use of trademark/brand “KALASH” and assertion of its rights and started selling its goods again from 28.10.2025	K.S. Oils Limited (Defendant No.1) (through new management)

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18. The arguments of plaintiff on this application are as under:

1. **SHRI GOPAL DAS GARG AND PLAINTIFF ARE THE ORIGINAL ADOPTERS, PRIOR USERS AND CONTINUOUS USERS OF THE MARK “KALASH”:**

It has been contended that plaintiff’s rights in the mark “KALASH” flow from the Deed of Assignment dated 01.01.2026, whereby Shri Gopal Das Garg assigned the mark “KALASH”, along with the goodwill, reputation and all proprietary/common law rights attached thereto, in favour of the Plaintiff. The benefit of Shri Gopal Das Garg’s prior adoption, prior and continuous use and goodwill therefore ensures to the benefit of the Plaintiff. *Copy of the Assignment Deed dated 01.01.2026 is at page nos. 1-7 (Document No. 1) of the Plaintiff.*

Shri Gopal Das Garg is the original adopter and prior user of the mark “KALASH”. He conceived and adopted the mark in the year 1973 for mustard oil/edible oil products. At the relevant time, the family was engaged in pulses and allied trades, and no family member had ventured into the mustard oil business. Shri Gopal Das Garg was the first person in the family to start the mustard oil business through M/s Gopal Industries at Morena. The adoption of the mark “KALASH” by Shri Gopal Das Garg was not accidental or copied. The mark was conceived by him in the year 1973 around the time of Diwali/Pooja, keeping in mind the auspicious meaning of the word “KALASH” for mustard oil/edible oil products. This further shows that the origin of the mark lies with Shri Gopal Das Garg. It has been pointed out that M/s Gopal Industries was the original concern through which the mark “KALASH” was first used. The inclusion of female family members, namely Smt. Katori Devi, Smt. Rama Rani and Smt. Sarla Devi, as partners reflects the family arrangement prevailing at that time and that the concern was structured as a partnership firm within the family. The same does not dilute Shri Gopal Das Garg’s role as the principal person behind the conception, adoption and commercial introduction of the mark “KALASH” for mustard oil. In fact, the manner in which the firm was constituted itself supports the Plaintiff’s case that the business was being carried on in a family structure, while the actual adoption and use of the mark originated from Shri Gopal Das Garg. Defendant No. 1 cannot dispute Shri Gopal Das Garg’s priority of adoption and use,

since Defendant No. 1's own alleged rights arise only through subsequent Assignment Deeds executed after the original adoption by Shri Gopal Das Garg. At the highest, Defendant No. 1 can only claim such rights as may have been transferred under the Assignment Deeds. The Plaintiff's case is that the said assignment was limited to the FIRST KALASH LABEL under Trade Mark Application No. 305567 and did not transfer the word mark "KALASH" per se, later labels, trade dress, copyright, underlying goodwill or independent common law rights. The use of the mark "KALASH" thereafter continued through family-run entities. After its original adoption and use through M/s Gopal Industries in 1973-74, the specific label/device mark was assigned to M/s K.S. Enterprises in 1986, and thereafter to K.S. Oils Limited in 1996, within the family business arrangement. However, the Assignment Deeds were limited to the FIRST KALASH LABEL under Trade Mark Application No. 305567 and did not amount to an absolute transfer of the word mark "KALASH" per se or the underlying goodwill away from Shri Gopal Das Garg. Therefore, Defendant No. 1's rights, if any, remained confined to the said specific label/device mark and cannot be expanded to claim ownership over the word mark, later labels, trade dress, copyright or independent common law rights. ***Copy of the FIRST KALASH LABEL is at page No.8 (Document No. 2) of the Plaintiff.*** The continuity of use further continued within the family business structure. After the limited assignment of the FIRST KALASH LABEL, the mark "KALASH" continued to

be used through M/s Gopal Industries between 1986 and 1996 under the SECOND KALASH LABEL, which further shows that the assignment was not treated as an absolute divestment of all rights in the word mark “KALASH”. Thereafter, the use continued through K.S. Consupro India Pvt. Ltd., now known as S.L. Consumer Products Ltd., which was incorporated in the year 1996 by the sons of Shri Gopal Das Garg for expanding the edible oil business, including mustard oil under the mark “KALASH”. The invoices and documents placed on record show that the mark “KALASH” continued to be commercially used through the said entities. After resigning from K.S. Oils Limited, Shri Gopal Das Garg continued to remain associated with the mark “KALASH” and, in or around 2005, pursuant to the Jammu & Kashmir market requirement and packaging/label changes required for expanding the business, he himself conceptualised and got prepared the THIRD KALASH LABEL. Even after his resignation from K.S. Oils Limited, Shri Gopal Das Garg continued to permit the use of the mark “KALASH” to other family entities from time to time, which further shows that he retained the underlying rights, control and goodwill in the mark. This also shows that Defendant No. 1’s alleged rights under the Assignment Deeds were limited to the FIRST KALASH LABEL under Trade Mark Application No. 305567 and did not extend to the word mark “KALASH” per se, later labels, trade dress, copyright or independent common law rights. The continuity of use thereafter continued through K.S. Consupro India Pvt. Ltd., now known as S.L. Consumer

Products Ltd., from 1996 till 2017. The said entity continued the edible oil business, including mustard oil under the mark “KALASH”, within the family business structure and under the authority/control of Shri Gopal Das Garg. The invoices and documents placed on record show that the mark “KALASH” was commercially used through S.L. Consumer Products Ltd. during the said period, thereby maintaining continuity of use, market presence and goodwill in the mark “KALASH”. Thereafter, since 11.08.2017, the Plaintiff has been openly and continuously using the mark “KALASH” in relation to edible oil products under the authority of Shri Gopal Das Garg, and after the Deed of Assignment dated 01.01.2026, as the lawful assignee/proprietor of the mark. The Plaintiff’s use is supported by invoices from 2017 onwards, CA certificate, sales records, advertisement material, website records, social media presence and distributor/dealer material. Therefore, the Plaintiff’s use is neither recent nor hidden nor dishonest, but is a continuation of Shri Gopal Das Garg’s prior adoption, prior use and goodwill, as continued through the family entities including S.L. Consumer Products Ltd. Till 2017. It has been contended that in view of the above, plaintiff has established a clear chain of adoption and use starting from Shri Gopal Das Garg in 1973-74, continued through M/s Gopal Industries, including use under the SECOND KALASH LABEL between 1986 and 1996, thereafter through K.S. Consupro India Pvt. Ltd./S.L. Consumer Products Ltd. from 1996 till 2017, and finally through the Plaintiff since 11.08.2017. The Plaintiff’s rights are therefore

based on prior adoption, continuous commercial use, the Assignment Deed dated 01.01.2026 and existing goodwill in the market.

**2. DEFENDANT No.1 CANNOT DISPUTE SHRI GOPAL DAS GARG'S PRIORITY OF ADOPTION AND USE:**

The Plaintiff submits that Defendant No. 1 cannot dispute Shri Gopal Das Garg's priority of adoption and use of the mark "KALASH", since Defendant No. 1's own alleged rights arise only through subsequent Assignment Deeds executed after the original adoption and use of the mark by Shri Gopal Das Garg. Therefore, Defendant No. 1 cannot, on the one hand, rely upon the assignment chain said to originate from Shri Gopal Das Garg, and on the other hand, deny or dilute his prior adoption and use. At the highest, Defendant No. 1 can only claim such rights as may have been transferred under the Assignment Deeds relied upon by it. Defendant No. 1's case is therefore based on giving the Assignment Deeds an inflated scope. The Plaintiff's case is that the assignment was confined to the FIRST KALASH LABEL under Trade Mark Application No. 305567 and did not transfer the word mark "KALASH" per se, later labels, trade dress, copyright, underlying goodwill or independent common law rights. In any event, the scope and legal effect of the Assignment Deeds cannot be treated as finally determined at the interim stage. The Plaintiff has specifically disputed Defendant No. 1's inflated interpretation of the Assignment Deeds and has also challenged the Assignment Deed dated 13.08.1986 in separate proceedings. Therefore,

Defendant No. 1 cannot rely upon the Assignment Deeds as conclusive proof of absolute ownership over the mark “KALASH” in every form.

**3. THE PRESENT SUIT IS A PASSING OFF ACTION BASED ON PRIOR AND CONTINUOUS USE, GOODWILL, REPUTATION AND MISREPRESENTATION:**

The present suit is a passing off action arising from the Plaintiff’s prior and continuous use of the mark “KALASH”, the goodwill and reputation generated therefrom, and Defendant No. 1’s unlawful attempt to interfere with the Plaintiff’s established market presence. The Plaintiff is seeking relief on the basis of common law rights arising from actual, open, bona fide and continuous commercial use of the mark “KALASH” in relation to edible oil products since the year 1973. In a passing off action, the relevant enquiry is whether the Plaintiff has acquired goodwill in the market, whether Defendant No. 1’s conduct is likely to cause confusion or misrepresentation, and whether such conduct is likely to damage the Plaintiff’s goodwill and business. The Plaintiff has placed material on record showing continuous market use, sales, distributors network, advertisements, website presence, social media presence and commercial recognition under the mark “KALASH”. Defendant No. 1 cannot defeat the present passing off action merely by relying upon Assignment Deeds whose scope and legal effect are seriously disputed by the Plaintiff, disputed registrations, a restored label/device registration or a liquidation sale. It is established beyond doubt

that Defendant No. 1 had deliberately abandoned use of the mark “KALASH”, had no real market presence for several years, approximately for 16 years, and is now attempting to disturb the goodwill built by the Plaintiff through actual commercial use. In any event, the said documents cannot be read in isolation or treated as finally determinative at the interim stage, particularly when the present suit is founded on prior use, existing goodwill, market recognition and passing off.

**4. PLAINTIFF HAS ESTABLISHED GOODWILL AND MARKET PRESENCE UNDER THE MARK “KALASH”:**

It has been contended that the plaintiff has placed sufficient material on record to show that it has been openly, continuously and commercially using the mark “KALASH” in relation to edible oil products. The Plaintiff’s use is supported by invoices issued from the year 2017 onwards to various distributors, showing substantial sales under the mark “KALASH”, along with sales records, CA certificate, advertisement invoices, website record, social media presence, promotional material and documents showing its dealer/distributor network and market visibility. The goodwill presently attached to the mark “KALASH” has been generated, preserved and strengthened by the Plaintiff through actual trade, substantial sales and continuous market presence. Goodwill is not created merely by entries on the Trade Marks Register or by relying on legacy records in isolation; it is created by actual use, consumer association, distributor confidence, market

recognition and continuity of business. Defendant No. 1, after remaining absent from the market for several years, cannot now seek to appropriate the goodwill built by the Plaintiff. The Plaintiff's goodwill is an established market presence, supported by the Plaintiff's invoices from 2017 onwards, sales figures, advertisements and dealer/distributor dealings, as well as by the prior continuous use of the mark "KALASH" through predecessor/family entities, including M/s Gopal Industries and K.S. Consupro India Pvt. Ltd., now known as S.L. Consumer Products Ltd. Any attempt by Defendant No. 1 to interfere with the Plaintiff's use of "KALASH" is likely to cause confusion among dealers, traders and consumers and cause serious prejudice to the Plaintiff's business. *Copy of the invoices filed by the Plaintiff from 2017 onwards are at page nos. 3383-3769 (Document 26), Copy of the CA Certificate is at page no. 3770 (Document 27), Copy of the advertisement invoices along with CA Certificate are at 3781- 3890 (Document 29 and 30), Copy of the Website records are at page no. 12-25 (Document No. 6), Copy of the newspaper publication, distributor incentives scheme etc. are at page nos. 3771-3780 of the Plaintiff.*

**5. DEFENDANT No.1 IS WRONGLY TREATING ASSIGNMENT OF A LABEL/DEVICE MARK AS ASSIGNMENT OF THE WORD MARK "KALASH" PER SE:**

It has been contended that defendant No.1 is wrongly treating the limited assignment of the specific label/device mark bearing Trade Mark Application No. 305567, under the

Assignment Deed dated 13.08.1986, as an assignment of the word mark “KALASH” per se, together with all goodwill, later labels, trade dress, copyright and all present and future rights connected with the mark. This stand is contrary to the actual scope of the Assignment Deeds relied upon by Defendant No. 1 itself. ***Copy of the Assignment Deed is at page no. 84-87 (Document 8) of the Plaintiff.*** The Assignment Deed dated 13.08.1986 relates only to Registration No. 305567 for “KALASH (Label)”, i.e. the FIRST KALASH LABEL. It cannot be read in an expanded or artificial manner so as to include the word mark “KALASH” in every form, the SECOND KALASH LABEL, the THIRD KALASH LABEL, trade dress, artistic work, or independent common law rights arising from continued use. Defendant No. 1 is therefore seeking to give the Assignment Deeds a much wider meaning than what they actually bear, in order to claim rights which never vested in it in law. ***Copies of the FIRST, SECOND, THIRD KALASH Labels are at page no. 8-10 of the Plaintiff.*** The plaintiff has not denied the existence of the Assignment Deeds as documents. The Plaintiff is disputing the false and inflated interpretation now sought to be placed upon them by Defendant No. 1. The assignment of a specific label/device mark cannot be converted into an absolute transfer of the entire brand identity, the word mark “KALASH” per se, later labels, trade dress, copyright and independent common law rights of the Plaintiff.

**6. ABSENCE OF NEGATIVE COVENANT SHOWS THAT THERE WAS NO ABSOLUTE DIVESTMENT OF RIGHTS IN “KALASH”:**

It has been contended that the Assignment Deed dated 13.08.1986 does not contain any restrictive or negative covenant restraining the assignors, Shri Gopal Das Garg, M/s Gopal Industries or other family members from using the mark “KALASH”. This is a material circumstance because, if the intention was to completely and absolutely divest Shri Gopal Das Garg of all rights in the word mark “KALASH” per se, the deed would have contained a clear restriction against any further use of the said mark. The absence of any such restriction supports the Plaintiff’s case that the arrangement was limited to the specific label/device mark under Application No. 305567, namely the FIRST KALASH LABEL, and was part of an internal family arrangement/restructuring. The said deed was not intended to operate as an absolute transfer of the word mark “KALASH” in every form, or of all future labels, trade dress, artistic works and underlying goodwill. Defendant No. 1 therefore cannot rely upon the Assignment Deed dated 13.08.1986 to contend that all rights, goodwill, later labels, trade dress, copyright and common law rights in “KALASH” stood completely and permanently transferred in its favour. At the highest, the said document related to the specific label/device mark covered by Application No. 305567, and cannot defeat the Plaintiff’s independent rights arising from continued use, goodwill and the Deed of Assignment dated 01.01.2026.

**7. THE ASSIGNMENT DEED DATED 26.07.1996  
COULD NOT TRANSFER ANY RIGHT BEYOND THE  
ASSIGNMENT DEED DATED 13.08.1986:**

It has been contended that the Assignment Deed dated 26.07.1996 is only a subsequent link in the alleged chain of title relied upon by Defendant No. 1. The said deed could not have transferred anything more than what had lawfully come under the earlier Assignment Deed dated 13.08.1986. *Copy of the Assignment deed dated 26.07.1996 is at page no. 57-61 (Document 8) of the Plaint.* Since the Assignment Deed dated 13.08.1986 was confined to the specific label/device mark bearing Application No. 305567, namely the FIRST KALASH LABEL, the subsequent Assignment Deed dated 26.07.1996 also remained confined to the same subject matter. Defendant No. 1 cannot use the 1996 deed to claim any larger right in the word mark “KALASH” per se, later labels, trade dress, copyright or independent common law rights. Without prejudice, the Plaintiff has also pleaded that the Assignment Deed dated 13.08.1986 is void and inconsequential. Therefore, any subsequent assignment or recordal founded upon the said disputed document, including the Assignment Deed dated 26.07.1996, cannot confer any better or independent title upon Defendant No. 1. Defendant No. 1’s plea that it acquired complete and absolute ownership over “KALASH” in every form by virtue of the Assignment Deed dated 26.07.1996 is therefore misconceived.

**8. THE ASSIGNMENT DEED DATED 13.08.1986 IS UNDER SERIOUS CHALLENGE AS VOID AB INITIO:**

It has been contended that the very foundation of Defendant No. 1's alleged title, namely the Assignment Deed dated 13.08.1986, is itself under serious challenge as being void ab initio and non-est in the eyes of law. The said deed allegedly shows Smt. Katori Devi as an executing party, despite the fact that she had died in or around March 1977, much prior to the execution of the said deed. *Copy of the Soronji receipt showing the record of the death of Katori devi is at page no. 430-431 of the Replication.* The execution of a document in the name of a person who was not alive on the date of execution is a factual and legal impossibility and goes to the root of the alleged assignment chain. Once the Assignment Deed dated 13.08.1986 is seriously disputed on this ground, Defendant No. 1 cannot rely upon the Assignment Deeds dated 13.08.1986 and 26.07.1996 to claim absolute ownership over "KALASH". It has been specifically pleaded that the Assignment Deed dated 13.08.1986 is null and void ab initio and inconsequential. It is further contended that plaintiff has also taken appropriate legal recourse by filing a suit for declaration, permanent injunction and mandatory injunction bearing RCSA No. 70 of 2026, pending before the Ld. Civil Judge, Class-II, Morena District Court, Madhya Pradesh, challenging, inter alia, the Assignment Deed dated 13.08.1986. The said challenge goes to the root of Defendant No. 1's alleged chain of title, since the Assignment Deed dated 13.08.1986 allegedly shows Smt. Katori Devi as an executing party, despite the fact that she had died in the year

1977, much prior to the execution of the said deed. Therefore, Defendant No. 1's alleged title is neither admitted nor final nor undisputed, and the said assignment deed cannot be treated as conclusive at the interim stage for defeating the Plaintiff's passing off rights. ***Copy of the suit for declaration bearing RCSA No. 70 of 2026 is at page no. 422-429 of the Replication. Copy of the Affidavit executed by Smt. Kamla Devi, sister of Late Smt. Katori Devi is at page no. 12-15 of the Additional documents filed by the Plaintiff.*** It is next contended that Ms. Sheetal Jain, daughter of Late Shri Rajesh Garg and great-granddaughter of Late Smt. Katori Devi, has also filed an application under Order I Rule 10 read with Section 151 CPC in RCSA No. 70 of 2026 seeking impleadment as Plaintiff. In the said application, she has specifically supported the challenge to the Deed of Assignment dated 13.08.1986 on the ground that the said deed purports to bear the signature/execution of Late Smt. Katori Devi, although Late Smt. Katori Devi had admittedly expired in the year 1977, much prior to the execution of the said document. She has further pleaded that, being the successor to the estate/share flowing from Late Smt. Katori Devi through Late Shri Rajesh Garg, her rights are directly affected by the said disputed deed. This further demonstrates that the challenge to the Assignment Deed dated 13.08.1986 is live, serious and goes to the root of Defendant No. 1's alleged chain of title. Copy of the application filed by Ms. Sheetal Jain is at page nos. 16-19 of the Additional Documents filed by the Plaintiff.

**9. DEFENDANT No.1'S NON-USE AND DELIBERATE ABANDONMENT FROM 2012 TILL OCTOBER 2025:**

It is contended that defendant No.1 had discontinued and abandoned use of the FIRST KALASH LABEL around 2008-09. Thereafter, from around 2012 onwards, Defendant No. 1 also ceased carrying on any independent edible oil business under the mark "KALASH". Its activities during the relevant period were largely confined to job work for third parties and not to independent commercial sales of its own goods under the mark "KALASH". From 2017 till October 2025, Defendant No. 1 had no real, open and continuous market presence in relation to the mark "KALASH" for edible oil products. Defendant No. 1 has failed to show any commercial use of the mark during this period. It is not Defendant No. 1's case that non-use occurred only during CIRP, liquidation or on account of moratorium. In fact, Defendant No. 1 had already ceased independent commercial use of the mark "KALASH" in relation to edible oils around 2012, i.e., nearly five years before the commencement of CIRP in 2017. Therefore, CIRP/liquidation cannot be used as an explanation for such prolonged non-use, because the abandonment had already commenced much prior thereto. Even during CIRP/liquidation, the affairs of Defendant No. 1 were in the control of the IRP/RP/Liquidator, who was obliged to preserve and protect the valuable assets of the company, including trademarks. The fact that Defendant No. 1's Class 31 registration for "KALASH" was renewed/maintained during the CIRP period, whereas the relevant Class 29 registration bearing Application No. 305567

was allowed to lapse in 2023 without any steps being taken, clearly supports the Plaintiff's case that the Class 29 mark was not being treated as a live commercial asset and had been deliberately abandoned. Defendant No. 1 therefore cannot now project as if it had maintained uninterrupted proprietary use or subsisting goodwill in the mark throughout. It is very emphatically contended that the present case is not one of a temporary interruption in business. It is a case of prolonged non-use, discontinuance of independent business, absence of market presence, failure to preserve the relevant Class 29 registration despite the company being under professional management during CIRP/liquidation, and later revival by a new management after several years. Such conduct supports the Plaintiff's case of deliberate abandonment and disentitles Defendant No. 1 from disturbing the Plaintiff's established use, market presence and goodwill. Defendant No. 1's own annual reports do not support any claim of surviving goodwill or strong market presence under the mark "KALASH". Under the heading "Going Concern", the Annual Report for 2011-2012 records that Defendant No. 1 had incurred loss of Rs. 1,37,203 lakhs and that its net worth had completely eroded. The Annual Report for 2013-2014 further records that Defendant No. 1 had incurred loss of Rs. 151039 lakhs and that its net worth had been completely eroded. These admissions, along with the recorded paucity of working capital, partial running/closure of plants and restructuring of business, support the Plaintiff's case that Defendant No. 1 had no real independent business, market

presence or surviving goodwill under “KALASH” in relation to edible oil products. *Relevant Extract showing erosion of the net worth are at page nos. 1305 and 1376 (Document No. 14) of the Documents filed along with WS by the Defendant No.1.* The Plaintiff, in this regard, relies upon **Classic Legends Pvt. Ltd. & Ors. v. Ideal Jawa & Ors., 2025 SCC OnLine Kar 21390**, concerning the YEZDI mark, wherein the Court dealt with the effect of prolonged non-use/abandonment and subsequent revival of a mark. The said judgment supports the Plaintiff’s submission that Defendant No. 1, having remained absent from the market for several years and having failed to preserve the relevant Class 29 registration, cannot later revive an abandoned claim to defeat the Plaintiff’s intervening and established goodwill. In further support of the submission that prolonged non-use and abandonment disentitle Defendant No. 1 from claiming subsisting rights or goodwill in the mark, the Plaintiff relies upon **Om Prakash Gupta v. Praveen Kumar & Anr., ILR (2000) II Delhi 124 / 2000 SCC OnLine Del 397**.

**10. DEFENDANT NO. 1 HAS FAILED TO PRODUCE ANY EVIDENCE OF ACTUAL USE EITHER IN THE PRESENT SUIT OR BEFORE THE HON’BLE HIGH COURT.**

It is contended that defendant No.1 has failed to place any credible evidence of actual commercial use of the mark “KALASH” in relation to edible oil products in the present suit. Defendant No. 1 has not produced any contemporaneous invoices, sales records, advertisements expense, or other commercial material showing genuine and continuous use of

“KALASH” for edible oils during the relevant period. *Copies of the relevant extracts of the job work from the Annual reports for the year 2013-2014, 2014-15 and 2015-2016 are at page nos. 1336, 1421 and 1525 of the WS documents filed by the Defendant No. 1.* Even before the Hon’ble High Court in FAO (COMM) No. 69 of 2026, filed by Defendant No. 1, no credible material was produced to show actual commercial use of the mark “KALASH” in relation to edible oil products after the year 2010. The absence of any such material is significant because Defendant No. 1 is seeking to project uninterrupted goodwill and continuous market presence. Mere reliance on historic documents, disputed Assignment Deeds, a restored registration of an abandoned mark or general assertions of reputation cannot substitute proof of actual commercial use. The absence of contemporaneous invoices, sales records, advertisements, distributor material or market documents showing use after 2010 supports the Plaintiff’s case that Defendant No. 1 had discontinued use, abandoned the relevant Class 29 mark and had no subsisting goodwill capable of defeating the Plaintiff’s rights.

**11. ANY ALLEGED GOODWILL OF DEFENDANT NO. 1 DID NOT SURVIVE PROLONGED NON-USE:**

It is contended that goodwill in a mark or business does not continue forever merely because it may have existed at some earlier point of time. Goodwill depends on continued use, continued market presence and continued recognition in the trade and amongst consumers. A dormant or discontinued

business cannot claim continuing goodwill merely on the strength of legacy records or past reputation. In the present case, even if Defendant No. 1 is assumed to have had some goodwill in the mark “KALASH” at one stage, the same could not have survived prolonged non-use, discontinuance of independent business and absence of real market presence from around 2012 till October 2025. The annual reports relied upon by Defendant No. 1 itself show that from around 2012 onwards, the company was in a stringent financial condition and its activities were confined to job work, rather than independent commercial sales of its own goods under the mark “KALASH”. The Plaintiff has also pointed out that the specific use of KALASH LABEL under Application No. 305567 had itself been discontinued from around 2008-09. Therefore, Defendant No. 1 cannot claim subsisting goodwill merely on the basis of past use when its own records show absence of independent business under the mark. Whatever goodwill presently exists in the market in relation to “KALASH” has been generated, preserved and strengthened by the Plaintiff and its predecessor through continued commercial use. Defendant No. 1 cannot rely upon a historic claim of goodwill, despite its prolonged absence from the market, its own financial records showing job work, and its failure to preserve the relevant Class 29 registration, to defeat the Plaintiff’s rights arising from actual and continuous trade. In support of the aforesaid submission that goodwill cannot survive in vacuum and that prolonged non-use/abandonment defeats any claim of subsisting goodwill,

the Plaintiff relies upon *Veerumal Praveen Kumar v. Needle Industries (India) Ltd. & Anr.*, 2001 SCC OnLine Del 892 *in Para 11 and 29*; *Abhay Agarwal & Ors. v. Purnamal Goods Pvt. Ltd.*, Notice of Motion No. 752 of 2015 in Suit No. 373 of 2015 *in Para 21*; *Star Industrial Company Ltd. v. Yap Kwee Kor trading as New Star Industrial Company*, Appeal No. 11 of 1974; and *Classic Legends Pvt. Ltd. & Ors. v. Ideal Jawa & Ors.*, 2025 SCC OnLine Kar 21390 *in paras 33,69,98, 108 and 109*.

**12. NON-RENEWAL OF TRADE MARK APPLICATION NO. 305567 WAS DELIBERATE ABANDONMENT AND NOT ON ACCOUNT OF ANY SPECIAL CIRCUMSTANCES:**

It has been emphasized that the non-renewal of Trade Mark Application No. 305567 in Class 29 was not on account of any unavoidable impossibility or special circumstance, but was the result of deliberate inaction and abandonment by Defendant No. 1. The said application concerned the specific FIRST KALASH LABEL in Class 29, and the failure to preserve the same is consistent with Defendant No. 1's prolonged non-use and absence of independent market presence under "KALASH". *Copy status page of Trademark Application No. 305567 is at page no. 27-29 (Document 8) of the Plaint.* Even during the CIRP/liquidation period, the affairs of Defendant No. 1 were not left unattended. A Resolution Professional/Liquidator was in control of the affairs of Defendant No. 1 and was duty bound to preserve and protect its valuable assets, including trademarks, if they were genuinely

being treated as live and valuable assets. Therefore, Defendant No. 1 cannot use CIRP/liquidation as an excuse for not renewing Application No. 305567. It is pointed out that the position is further clear from the fact that Trade Mark Application/Registration No. 1773375 in Class 31 for “KALASH” was renewed/maintained during the CIRP period. Therefore, Defendant No. 1 cannot contend that trademark matters could not be attended to. The selective renewal of Class 31 in Trade Mark Application/Registration No. 1773375 and non-renewal of Application No. 305567 in Class 29 supports the Plaintiff’s case that the Class 29 mark had been deliberately abandoned. ***Copy of the Trademark Application No. 1773375 is at page no. 310-313 (Document No. 10) of the Replication.*** Defendant No. 1 also cannot contend that non-renewal occurred due to any defect in service of the O-3 notice. The renewal notice was served at the recorded address for service, namely through The Acme Company, which was the attorney/address recorded for Application No. 305567. Further, the same mark had earlier been renewed in the year 2013 on the basis of the same recorded address/attorney record. Having acted upon the same record earlier, Defendant No. 1 cannot now rely upon the same address or attorney record to allege non-service or procedural lapse. It is pleaded that the above circumstances show that the non-renewal of Application No. 305567 was not a mere procedural lapse. It was part of a larger pattern of non-use, abandonment of the specific Class 29 label/device mark, absence of market presence, and failure to preserve the mark

despite the company being under professional management during CIRP/liquidation. Defendant No. 1 cannot now revive the said lapsed/abandoned registration and use it to defeat the Plaintiff's passing off rights arising from actual and continuous use.

**13. RESTORATION OF APPLICATION NO. 305567 DOES NOT DEFEAT THE PLAINTIFF'S PASSING OFF RIGHTS AND IS SUBJECT MATTER OF REVIEW FILED BY THE PLAINTIFF:**

It is contended that the restoration/renewal of Trade Mark Application No. 305567 does not decide the issues arising in the present suit. The present suit is a passing off action, and the questions of prior use, continuous use, goodwill, market presence, misrepresentation, likelihood of confusion and damage are to be examined independently by this Court. The restoration order does not adjudicate the validity and scope of the Assignment Deeds dated 13.08.1986 and 26.07.1996, the serious challenge to the Assignment Deed dated 13.08.1986 in RCSA No. 70 of 2026 before the Ld. Civil Judge, Class-II, Morena, Defendant No. 1's prolonged non-use, abandonment, loss of goodwill, or the Plaintiff's intervening rights and goodwill built through actual commercial use. It is further contended that the restoration/renewal proceedings were not a simple administrative matter, because the same mark, same assignment chain and same claim of revival/restoration are already under serious contest in connected proceedings, including CS (COMM.) No. 84 of 2026, RCSA No. 70 of 2026, WPL No. 42318 of 2025, MA/1(MP)/2026 in TP 60 of 2019

[CP(IB) 32 of 2017], and CO (COMM.IPD-CR) No. 10 of 2026. Defendant No. 1 has approached multiple fora in relation to the same subject matter and has sought to rely upon selective facts in each forum without fairly disclosing the complete litigation history, the Plaintiff's objections, the challenge to the Assignment Deed dated 13.08.1986, prolonged non-use, abandonment and the Plaintiff's intervening goodwill. Such conduct is a clear case of forum shopping and suppression of material facts. Defendant No. 1 cannot therefore rely upon the restoration of Application No. 305567 as if it conclusively decides title, goodwill, abandonment or passing off. ***Copy of the RCSA No. 70 of 2026 422- 429 (Document no. 14) of the Replication.*** It is argued that the restoration/renewal order dated 25.05.2026 cannot be treated as final or conclusive against the Plaintiff. The order itself records that none appeared on behalf of the Plaintiff/Objector on the date of hearing, and therefore the restoration was allowed in the absence of the Plaintiff's attorney/authorised representative. The Plaintiff submits that the order was passed without granting an effective opportunity of hearing to the Plaintiff, despite the Plaintiff having filed objections/interlocutory petition opposing the restoration of Application No. 305567. The order also records the Plaintiff's objections, including that Defendant No. 1 had not used the mark beyond 2012, that the mark was valid only up to 19.05.2023, that restoration was being sought beyond the statutory period, and that restoration would unjustly revive abandoned rights and prejudice the Plaintiff's goodwill.

However, despite these objections, the Deputy Registrar allowed the restoration/renewal. The Plaintiff has already filed a review against the said order, which is pending and is to be decided in accordance with law. Therefore, Defendant No. 1 cannot rely upon the restoration/renewal order as a conclusive adjudication of title, goodwill, abandonment, prior use or passing off. Defendant No. 1 therefore cannot use the restoration/renewal of Application No. 305567 to overreach the present civil dispute or to claim that its alleged rights in “KALASH” stand finally determined. The restoration/renewal order does not adjudicate title, prior use, abandonment, goodwill, passing off, the validity or scope of the Assignment Deeds, or the Plaintiff’s intervening rights. The Plaintiff’s passing off rights, arising from actual market use and goodwill, remain independent and are not defeated by such restoration, particularly when the restoration itself is under challenge for suppression of material facts and incomplete disclosure of the connected proceedings. At the highest, restoration concerns the register entry for the specific label/device mark under Application No. 305567; it does not confer ownership of the word mark “KALASH” per se, later labels, trade dress, copyright or goodwill as against the Plaintiff.

**14. DEFENDANT No.1 OBTAINED RESTORATION ON AN INCOMPLETE FACTUAL FOUNDATION:**

It is argued that defendant No.1 obtained the restoration/renewal order without fairly disclosing material facts, including the pending Commercial Suit, the Morena suit

challenging the Assignment Deed dated 13.08.1986, the copyright rectification proceedings, the NCLT proceedings, prolonged non-use, abandonment, the Plaintiff's intervening use and goodwill, the renewal of Class 31 during CIRP, and service of the O-3 notice at the recorded address of The Acme Company. The restoration order therefore cannot be relied upon as a conclusive determination of title, goodwill, abandonment or passing off.

**15. THE LIQUIDATION SALE COULD NOT CONFER ANY BETTER TITLE UPON DEFENDANT No.1:**

It is argued that the sale of Defendant No.1 as a going concern during liquidation could transfer only such rights, if any, as were actually existing and valid in law on the relevant date. The liquidation process could not create any better title, cure defects in the assignment chain, revive abandoned rights, restore a lapsed registration, or recreate goodwill which had already ceased to subsist due to prolonged non-use and absence from the market. The sale was admittedly on an "as is where is", "as is what is", "whatever it is", "whatever there is" and "without recourse" basis. Therefore, the purchaser could not acquire anything more than what Defendant No. 1 lawfully possessed at the time of sale. If Defendant No. 1's alleged rights were limited, disputed, lapsed, abandoned or commercially exhausted, the liquidation sale could not improve, enlarge or perfect such rights. Defendant No. 1 cannot rely upon the liquidation sale to convert a limited label/device registration into ownership of the word mark "KALASH" per se, nor can it

use the sale to defeat the Plaintiff's independent rights arising from prior and continuous commercial use, goodwill and passing off. The liquidation sale also did not decide the validity or scope of the Assignment Deeds dated 13.08.1986 and 26.07.1996, the challenge to the root assignment deed, Defendant No. 1's prolonged non-use, abandonment, or the Plaintiff's intervening goodwill.

**16. NEGLIGIBLE/NON-EXISTENT BRAND VALUATION DURING CIRP SHOWS ABSENCE OF SURVIVING GOODWILL:**

It is submitted that defendant No. 1's own material does not support its plea of subsisting and valuable goodwill in the mark "KALASH". During the CIRP/liquidation process, the total valuation of all brands of Defendant No. 1, including "KALASH", was shown as only Rs. 0.01 crore, i.e. Rs. 1 lakh. *Copy of the brand valuation is at page no. 127 of the Replication.* If Defendant No. 1 actually had substantial surviving goodwill and independent brand value in "KALASH", the same would have been reflected in the valuation and transaction material. The negligible valuation of all brands, read with Defendant No. 1's prolonged non-use, absence of independent market presence and non-renewal of the relevant Class 29 registration, supports the Plaintiff's case that Defendant No. 1 had no real surviving goodwill or commercial brand value left in "KALASH". It is also pointed out that the valuation relied upon by Defendant No. 1 was carried out in the year 2018 and not at the time of the liquidation sale. Therefore,

even the negligible valuation of Rs. 0.01 crore, i.e. Rs. 1 lakh, was not a fresh or current valuation as on the date of sale. By the time the sale was completed, the value of the alleged brand rights had further diminished, particularly because Defendant No. 1 had continued to remain absent from the edible oil market, had no independent commercial use under “KALASH”, and had allowed the relevant Class 29 registration bearing Application No. 305567 to lapse. Thus, the valuation material, far from supporting Defendant No. 1, reinforces the Plaintiff’s case that no surviving goodwill or real commercial brand value existed in favour of Defendant No.1. It has been pointed out that the present dispute concerns mustard oil/edible oil products falling in Class 29. Defendant No. 1 had ceased independent business under “KALASH”, remained absent from the edible oil market for several years, and allowed the relevant Class 29 registration bearing Application No. 305567 to lapse. In these circumstances, the negligible valuation of all brands, including “KALASH”, clearly shows that Defendant No. 1’s present assertion of rights is not based on any continuing goodwill in Class 29, but is an afterthought after change in management and alleged revival of business. It is argued that goodwill cannot be treated as perpetual or self-sustaining. It must continue to exist in the relevant market through actual use, market presence and consumer association. Once Defendant No. 1 had ceased use in relation to edible oils, failed to preserve the relevant Class 29 registration, and its own brands were valued at a nominal figure during liquidation, Defendant No. 1 cannot claim surviving

goodwill capable of defeating the Plaintiff's present and existing goodwill in Class 29 goods.

**17. THE ALLEGED LICENCE AGREEMENT DATED 15.05.2013 IS FORGED, FABRICATED AND UNSUPPORTED:**

It is contended that defendant No.1 cannot derive any benefit from the alleged Licence Agreement dated 15.05.2013, which is ex facie disputed by the Plaintiff as forged and fabricated. The said alleged document was never disclosed in the cease-and-desist notice dated 26.08.2025, in the opposition proceedings, in the annual reports, in the transaction material/VDR, or at any prior stage when Defendant No. 1 asserted rights against the Plaintiff. It has surfaced only after filing of the present suit and has plainly been introduced as an afterthought to improve Defendant No. 1's case and to create an artificial explanation for its alleged ownership and use of the mark "KALASH". *Copy of the License Agreement is at page no. 2686-2687 (Document No. 18) of the WS filed by the Defendant No. 1.* It is further contended that the documents supplied by the IRP/RP/Liquidator to the purchaser/new management during the CIRP/liquidation process would ordinarily form part of the Virtual Data Room/VDR and carry the corresponding VDR identification/markings. However, the alleged Licence Agreement dated 15.05.2013 does not reflect any VDR marking or indication showing that it formed part of the records supplied during due diligence. This is a material circumstance which seriously indicates that the alleged Licence

Agreement was not part of the company's genuine records and was subsequently created/introduced by the new management to cover up Defendant No. 1's prolonged non-use. Defendant No. 1 has not placed any credible material to show that the alleged licence arrangement was ever acted upon in the ordinary course of business. There is no royalty record, licence fee record, payment trail, accounting entry, demand for royalty/licence fee, receipt of royalty/licence fee or any other supporting financial material. Defendant No. 1 has also failed to show any corresponding lease/licence payment, royalty income or related disclosure in its balance sheets, which would have naturally existed if the alleged Licence Agreement dated 15.05.2013 was genuine and acted upon. It is pointed out that the alleged Licence Agreement has therefore been brought forward only to create a false explanation for Defendant No. 1's admitted absence of independent business under "KALASH". Defendant No. 1 is attempting to say that even though it was not itself using the mark, the use by S.L. Consumer Products Ltd. should be treated as Defendant No. 1's licensed use. This plea cannot be accepted when the alleged licence itself is disputed as forged, was never disclosed earlier, does not bear any VDR marking, and is unsupported by any commercial, accounting or balance sheet record. In the absence of any commercial, accounting, balance sheet or VDR record, the alleged Licence Agreement dated 15.05.2013 cannot be treated as a genuine acted-upon document. It also cannot be relied upon to contend that Shri Gopal Das Garg, S.L. Consumer Products Ltd. or the

Plaintiff ever admitted absolute ownership of Defendant No. 1 in the mark “KALASH”.

**18. COPYRIGHT REGISTRATION CANNOT DEFEAT THE PLAINTIFF’S PASSING OFF RIGHTS:**

It is contended that that Defendant No. 1’s reliance upon Copyright Registration No. A-88389/2010 is misconceived and does not defeat the Plaintiff’s case based on prior adoption, continuous use, goodwill and passing off. A copyright registration, even otherwise, cannot decide proprietary rights in the trade mark “KALASH”, nor can it override the Plaintiff’s common law rights arising from actual commercial use and goodwill. Defendant No. 1 did not disclose the details of Copyright Registration No. A-88389/2010 in its cease-and-desist notice dated 26.08.2025. The Plaintiff became aware of the exact copyright registration relied upon by Defendant No. 1 only upon perusal of the affidavit by way of evidence and the documents filed in the opposition proceedings, including the R-45 record relied upon by Defendant No. 1. Even there, the picture/representation of the trade mark/label was not attached with the copyright registration in a manner which could establish that the registration corresponded to the label now asserted against the Plaintiff. It is further contended that the copyright registration is itself seriously questionable, as Defendant No. 1 relies upon Mr. Anuj Prasad as the alleged author of the artistic work, while the registration records the year of first publication as 1974. However, Mr. Anuj Prasad’s publicly available academic/professional profile shows that he

pursued his B.E. during 1981-1985 and his Master's in Industrial Design during 1990-1993, which makes it inherently doubtful that he could have authored or designed the said artistic work in 1974. The falsity is further evident from the nature of the label/artistic work itself, which appears to be a modern/computerised artwork. Such a computerised label/artistic work could not have been created or first published in the same form in 1974. Therefore, the alleged first publication/use claim of 1974 is fabricated, and the copyright registration is based on incorrect, doubtful and misleading particulars. *Copies of public profile, LinkedIn profile, interviews, articles etc. are at page no. 353-418 (Document 12) of the Replication. Copy of the Copyright Registration is at page no. 326-329-331 of the Additional Documents filed along with the Pleint.* It is submitted that in any event, a disputed copyright registration cannot cure defects in title, validate a disputed assignment chain, revive abandoned trademark rights, establish goodwill in the market, or displace the Plaintiff's independent common law rights arising from actual commercial use of the mark "KALASH". Defendant No. 1 cannot use a disputed copyright registration as a substitute for proof of genuine commercial use, market presence and subsisting goodwill.

**19. CLASS 31 REGISTRATION IS IRRELEVANT TO THE PRESENT DISPUTE CONCERNING CLASS 29 GOODS:**

It is contended that defendant No.1 cannot derive any advantage from Trade Mark Application/Registration No.

1773375 for the word mark “KALASH” in Class 31. The said registration pertains to a different class and different description of goods, whereas the present dispute concerns mustard oil/edible oil products falling in Class 29. Therefore, the Class 31 registration does not establish any subsisting proprietary right of Defendant No. 1 in relation to the goods forming the subject matter of the present suit. The present suit concerns the Plaintiff’s passing off rights in relation to edible oil products, arising from actual commercial use, goodwill, reputation and market presence in the relevant trade. Defendant No. 1 cannot rely upon a Class 31 registration, or any alleged recognition/reputation arising therefrom, to defeat the Plaintiff’s rights in relation to Class 29 goods. In fact, Defendant No. 1’s reliance on Class 31 supports the Plaintiff’s case of deliberate abandonment of the relevant Class 29 rights. If the Class 31 “KALASH” registration could be renewed/maintained during the CIRP period, there was no reason why Application No. 305567 in Class 29 could not be renewed. The selective renewal of the Class 31 registration and non-renewal of the relevant Class 29 registration shows that Application No. 305567 was not being treated as a live commercial asset and had been deliberately abandoned.

**20. THE EARLIER “WELL-KNOWN” MARK JUDGMENT DOES NOT CONCLUDE THE PRESENT DISPUTE:**

It is contended that defendant No.1 cannot derive any absolute or conclusive advantage from the earlier judgment

wherein “KALASH” is stated to have been recognised as a well-known mark. The said finding arose in a different factual context and did not adjudicate the present dispute concerning the scope of the Assignment Deeds dated 13.08.1986 and 26.07.1996, the validity of the Assignment Deed dated 13.08.1986, Defendant No. 1’s prolonged non-use, abandonment, loss of goodwill, or the Plaintiff’s continuous commercial use and goodwill. Any alleged reputation or well-known status is not perpetual or self-sustaining in the abstract. It must be supported by actual, continuous and substantial market use in the relevant goods and market. Even assuming Defendant No. 1 had acquired some reputation at an earlier point of time, the same cannot automatically establish surviving goodwill, particularly when Defendant No. 1 remained absent from the edible oil market for several years. Defendant No. 1 cannot rely upon a historic finding of reputation to defeat the Plaintiff’s present rights arising from actual trade, continuous use and existing market goodwill under the mark “KALASH”. The Plaintiff’s goodwill is based on live commercial use in the relevant market, whereas Defendant No. 1’s claim is based on past records, a different class of goods, and a mark which it had not continuously used in the edible oil market. It is further contended that defendant No. 1’s reliance upon the alleged well-known status is itself untenable, as the said claim proceeded without disclosure of material facts concerning the relevant Class 29 business. Defendant No. 1 did not disclose its prolonged non-use in relation to edible oils, deliberate

abandonment of the relevant Class 29 rights, absence of real market sales under “KALASH”, and the fact that its own annual reports showed that the company was in financial distress and was carrying on job work rather than independent commercial sales under the mark. These facts go directly to goodwill, market reputation and consumer association. Therefore, Defendant No. 1 cannot rely upon an alleged well-known status in Class 31 to defeat the Plaintiff’s present and existing goodwill in Class 29 goods.

**21. WELL-KNOWN STATUS WAS OBTAINED ON THE BASIS OF INFLATED SALES AND WITHOUT DISCLOSURE OF MATERIAL FACTS:**

It is contended that defendant No.1 cannot rely upon the alleged well-known status of “KALASH” as conclusive proof of subsisting goodwill. The said status was obtained on the basis of past turnover figures, annual reports and alleged sales material, which are themselves seriously disputed by the Plaintiff. Defendant No. 1 failed to disclose that the very sales figures and financial records relied upon by it were inflated and unreliable. The Plaintiff has placed on record material showing manipulated accounts, inflated sales figures and bogus sales/invoices, including complaint/proceeding bearing RCT No. 922/2025 before the Morena Court by the Sales Tax Department against Defendant No. 1. Once the foundation of the alleged sales and turnover figures is itself under serious doubt, Defendant No. 1 cannot rely upon such material to claim continuing goodwill or reputation. The annual reports relied

upon by Defendant No. 1 also do not support its case of continuous independent business under “KALASH”. On the contrary, the annual reports show financial distress and job work, rather than independent commercial sales of Defendant No. 1’s own edible oil products under the mark “KALASH”. Therefore, any claim of reputation or well-known status obtained on the basis of such incomplete and disputed material cannot defeat the Plaintiff’s passing off rights. It is further contended that in any event, the alleged well-known status cannot be treated as perpetual or self-sustaining. Even assuming that Defendant No. 1 had acquired any such reputation at an earlier point of time, the same stood lost on account of prolonged non-use, discontinuance of independent business, absence of market presence, failure to preserve the relevant Class 29 registration, nominal brand valuation during CIRP/liquidation, and Defendant No. 1’s own annual reports showing job work and financial distress. Goodwill must continue to exist in the relevant market through actual use, market presence and consumer association. Defendant No. 1, having remained absent from the edible oil market, having failed to preserve the relevant Class 29 registration, and having relied upon inflated/disputed sales figures, cannot use such alleged well-known status to defeat the Plaintiff’s present and existing goodwill in Class 29 goods.

**22. DEFENDANT No.1 HAD KNOWLEDGE OF THE PLAINTIFF’S USE OF “KALASH”:**

It is contended that defendant No.1’s plea that it came to

know about the Plaintiff's use of the mark "KALASH" only in the year 2025 is false and contrary to the record. Defendant No. 1, through its IRP/RP/Liquidator, representatives, auditors/consultants and current management, was well aware of the Plaintiff's open and continuous use of the mark "KALASH". The Plaintiff and Defendant No. 1 have operated from common premises at Morena, Madhya Pradesh. The Plaintiff has been carrying on manufacturing, packaging and commercial activities openly from the said premises since 2017. The Plaintiff has also been paying electricity charges, machinery maintenance, security and other expenses in relation to the said premises. The Plaintiff's products under the "KALASH" mark were being packed from the same packaging unit/premises belonging to Defendant No. 1, and the said activity was not hidden or secret. The Leave and License agreement, Electricity bills, debit notes, maintenance charges and documents relating to common premises clearly show that the Plaintiff's use was open, visible and within the knowledge of Defendant No. 1. Defendant No. 1 therefore cannot allege that the Plaintiff's use was hidden, dishonest or discovered only recently. ***Copy of the Leave and License is at page no. 1-10, Electricity Bills are at page 83-102, Debit notes are at 35-82 and photographs of the common premises at page no. 571-591 of the Replication.*** It is further contended that even during the due diligence/inspection process in relation to Defendant No. 1, representatives of Ernst & Young, a reputed Big Four professional firm, physically inspected the premises. Defendant

No. 1 cannot credibly contend that despite such physical inspection and due diligence, the Plaintiff's open manufacturing/packaging activities and the presence of "KALASH" products being packed from the Defendant No. 1's premises went unnoticed. Significantly, despite relying upon alleged due diligence and inspection, Defendant No. 1 has not produced the Ernst & Young report in the present proceedings or in any connected proceedings. The non-production of the Ernst & Young report is material, because the said report would have shown whether the alleged brands, including "KALASH", formed part of the due diligence/VDR and sale process at all. If "KALASH" was genuinely being treated as a live and valuable asset of Defendant No. 1, the same would have been specifically reflected in the due diligence material. The withholding of the Ernst & Young report therefore supports the Plaintiff's case that the "KALASH" brand, particularly the relevant Class 29 rights, was not treated as a subsisting commercial asset forming part of the sale/due diligence in the manner now alleged by Defendant No. 1. ***Copy of the relevant page showing the due diligence done by Ernst and Young is at page no. 251 of the Replication.*** It is emphatically argued that in these circumstances, Defendant No.1's plea of alleged discovery in 2025 is an afterthought. The record shows that the Plaintiff's use was open, continuous, visible and known. If Defendant No. 1, its management, RP/Liquidator, consultants and due diligence teams had access to and inspected the premises, Defendant No. 1 cannot now portray the Plaintiff's

use as clandestine or dishonest merely to support its belated assertion of rights, particularly when the best evidence in the form of the Ernst & Young report has not been produced.

**23. DEFENDANT No.1 FAILED TO DEAL WITH MATERIAL DOCUMENTS SHOWING COMMON PREMISES AND OPEN USE BY THE PLAINTIFF:**

It is contended that defendant No. 1 has failed to deal with material documents which go to the root of the Plaintiff's case, namely the Leave and Licence Agreement, electricity bills, debit notes, payment of maintenance charges and documents showing use of common premises. These documents show that the Plaintiff was not carrying on any hidden or secret activity, but was openly using the premises, machinery, storage tanks, godowns, electricity connection, packaging unit and related infrastructure for its business activities. The said use was within the knowledge of Defendant No. 1, IRP/RP/Liquidator, new management and those managing, inspecting or taking over its affairs. It has been pointed out that defendant No. 1 has also failed to explain how its new management, representatives and auditors, including Ernst & Young, could have visited and examined the common premises without noticing the Plaintiff's open manufacturing, packaging and commercial activities. The Ernst & Young report has not been produced in the present proceedings or in any connected proceedings, despite the same being material to show the actual condition and use of the premises. Even after the takeover of Defendant No. 1 through the special purpose

vehicle/new management pursuant to the liquidation sale, the Plaintiff's use of the mark "KALASH" from the common premises was known and visible. Despite such knowledge, neither the new management nor the special purpose vehicle immediately objected to the Plaintiff's use after purchasing/taking over Defendant No. 1. This conduct further shows that Defendant No. 1's plea of discovery only in 2025 is false and has been raised as an afterthought. The failure to answer the common premises documents, the non-production of the Ernst & Young report, and the absence of any immediate objection by the new management/SPV show that Defendant No. 1 has no effective answer to the Plaintiff's case of open, continuous, visible and known use since 2017. Defendant No. 1 cannot therefore allege that the Plaintiff's use was hidden, dishonest or discovered only recently.

**24. DEFENDANT NO. 1 FAILED TO DEAL WITH ITS OWN RECORD SHOWING JOB WORK AND ABSENCE OF INDEPENDENT BUSINESS:**

It is contended that defendant No. 1 has failed to effectively deal with its own annual reports and financial records, which show that its activities during the relevant period were largely confined to job work and not to independent commercial sales of its own goods under the mark "KALASH". *Copies of the Annual Reports of 2013-2014, 2014-2015, 2015-2016 showing relevant page for job work are at page nos. 1336, 1421 and 1525 of the WS filed by the Defendant No. 1.* This is a material circumstance because Defendant No. 1 is claiming

continuous use, goodwill and market presence under “KALASH”, whereas its own records show that it was not carrying on independent business in the manner now alleged. Job work for third parties cannot be equated with open, independent and continuous market use of “KALASH” branded goods by Defendant No.1. It is further contended that defendant No.1 is now attempting to cover up this prolonged non-use by relying upon the alleged Licence Agreement dated 15.05.2013 with S.L. Consumer Products Ltd. However, the said alleged licence is itself disputed by the Plaintiff as forged and fabricated. It was not disclosed in the cease-and-desist notice, in the opposition proceedings, in the annual reports, or at any prior stage when Defendant No. 1 asserted rights against the Plaintiff. Further, if the alleged Licence Agreement was a genuine document forming part of Defendant No. 1’s records, the same would have been reflected in the documents/data room/VDR made available during the CIRP/liquidation and due diligence process. The absence of any VDR marking or reference on the alleged Licence Agreement further shows that the document was not part of the genuine records supplied by the IRP/RP/Liquidator and has been introduced later to create an artificial explanation for Defendant No. 1’s non-use. It is also unsupported by any royalty record, licence fee record, payment trail, accounting entry, balance sheet disclosure, demand for royalty/licence fee, receipt of royalty/licence fee or any corresponding financial material. Therefore, Defendant No. 1 cannot use the alleged licence to convert its admitted absence

of independent business into continuous use of “KALASH”. It is thus submitted that defendant No. 1 cannot rely upon general references in annual reports, old records or a disputed licence document to claim subsisting goodwill. The real question is actual commercial use and market presence in relation to “KALASH” goods during the relevant period. No invoice or contemporaneous document showing actual commercial use by Defendant No. 1 has been filed on record in the present suit. Even in FAO (COMM) No. 69 of 2026 before the Hon’ble High Court, Defendant No. 1 did not place any invoice after 2010 showing actual commercial use of the mark “KALASH” in relation to edible oil products. Therefore, Defendant No. 1 has failed to establish continuous use, subsisting goodwill or any live market presence capable of defeating the Plaintiff’s rights.

**25. DEFENDANT No.1 FAILED TO ANSWER THE MATERIAL SHOWING INFLATED SALES FIGURES AND UNRELIABLE CLAIM OF HISTORIC GOODWILL:**

It is contended that defendant No.1 has failed to answer the Plaintiff’s specific case that the alleged historical sales figures relied upon by Defendant No. 1 are inflated, unreliable and cannot be treated as proof of subsisting goodwill or present market association in favour of Defendant No. 1 under the mark “KALASH”. Defendant No. 1 has relied upon past turnover figures, annual reports and historic material to claim huge goodwill, but has failed to deal with the Plaintiff’s case regarding manipulated accounts, inflated sales figures and bogus sales/invoices. In fact, a complaint/proceeding bearing

RCT No. 922/2025 was initiated before the Morena Court by the Sales Tax Department against Defendant No. 1 in relation to inflated sales figures and bogus invoices. Once the very sales figures relied upon by Defendant No. 1 are the subject matter of such proceedings, they cannot be treated as reliable or conclusive proof of goodwill. Defendant No. 1 cannot rely upon disputed financial and sales figures to claim continuing goodwill, particularly when it had remained out of the market for several years and had ceased independent commercial use of “KALASH” in relation to edible oils. ***Copy of the Complaint is at page no. 592- 605 of the Replication. Copy of Newspaper releases showing ED Probe, Income Tax raid, loss of Investor’s confidence due to fudge account and CBI raid at the premises of Defendant No. 1 for loan scam and Inflated accounts are at page no. 749-753 (Documents 31 and 32) of the Replication.*** It is pointed out that defendant No.1’s own subsequent conduct also shows that the alleged historic goodwill had no real surviving commercial value. Its annual reports show financial distress and job work, its Class 29 registration was allowed to lapse, and during liquidation the total value of all brands, including “KALASH”, was assessed at a nominal figure. Defendant No. 1 cannot therefore rely upon disputed and inflated historic figures to claim present goodwill. It is very emphatically submitted that in such circumstances, defendant No.1 cannot resist the Plaintiff’s injunction application on the basis of inflated or disputed historical figures, particularly when the Plaintiff has shown actual, open and continuous market use, sales,

advertisements, dealer/distributor network and goodwill in the present period.

**26. DEFENDANT No.1 FAILED TO ANSWER MATERIAL SHOWING TARGETING OF PLAINTIFF'S DISTRIBUTORS AND TRADE CHANNELS:**

It is contended that defendant No.1 has failed to answer the Plaintiff's specific case that, after its alleged reuse, Defendant No. 1 has been deliberately approaching and targeting the Plaintiff's existing distributors, dealers and strong-selling territories. Defendant No. 1's own documents/invoices show that several of the distributors and trade channels now being approached by Defendant No. 1 were earlier distributors/customers of K.S. Consupro India Pvt. Ltd./S.L. Consumer Products Ltd., and the Plaintiff through which the "KALASH" mark was being used under the authority of Shri Gopal Das Garg. These invoices clearly support the Plaintiff's case that Defendant No. 1 is not entering an independent market of its own, but is attempting to take over and disturb the trade channels developed through Shri Gopal Das Garg, K.S. Consupro/S.L. Consumer Products Ltd. and thereafter the Plaintiff. ***A table of the invoices of Defendant No. 1 targeted to the distributors of the Plaintiff is at page no. 657-659 of the Replication.*** It is very vociferously contended that this conduct shows that Defendant No. 1 is not merely carrying on an independent business activity, but is attempting to disturb the market position created and continued by the Plaintiff and its predecessor/family entities through open and continuous use of

the mark “KALASH”.. The said market position did not begin only in 2017 with the Plaintiff, but flows from the prior use of the mark through M/s Gopal Industries and thereafter through K.S. Consupro India Pvt. Ltd., now known as S.L. Consumer Products Ltd., from 1996 till 2017. Defendant No. 1 cannot, after remaining absent from the market for several years, suddenly enter the Plaintiff’s established trade channels and claim that the entire market network belongs to it. It is pointed out that the targeting of the Plaintiff’s distributors is directly relevant to misrepresentation, likelihood of confusion, balance of convenience and irreparable injury. It shows that Defendant No. 1’s conduct is likely to damage the Plaintiff’s goodwill, dealer relationships, distributor network and consumer association built over several years.

**27. DEFENDANT NO. 1 IS SELLING AT NEGATIVE / ABNORMALLY LOW MARGINS TO UNDERCUT THE PLAINTIFF:**

It is contended that defendant No. 1 has failed to answer the Plaintiff’s specific case that it is supplying products at negative and commercially unsustainable margins in the Plaintiff’s stronghold markets. The Plaintiff has placed on record a comparison chart showing that Defendant No. 1 is selling the impugned “KALASH” products at a negative margin of approximately Rs. 6. This is not bona fide commercial competition, but a deliberate attempt to undercut the Plaintiff, disturb its trade channels and force displacement of the Plaintiff from its established market. *Copy of the Comparative Chart is*

***at 452- 457 of the Replication.*** The WhatsApp chats, dealer communications and comparison chart placed on record show that Defendant No. 1 is deliberately disturbing the Plaintiff's existing market and trade channels. The dealers/distributors have specifically informed the Plaintiff on WhatsApp that K.S. Oils is entering the market, offering goods at lower/unsustainable margins and poaching the Plaintiff's existing distributors. The effect of such pricing is already visible, as distributors who were earlier purchasing from the Plaintiff / its predecessor trade channel are now being induced to purchase from Defendant No. 1 on account of such abnormally low pricing. This conduct is not bona fide competition, but a targeted attempt to unsettle the Plaintiff's established distributor network and goodwill under the mark "KALASH". ***Copies of the Whatsapp Chats by the dealers are at 3923- 3924 of the Plaint.*** It is further contended that this conduct clearly shows that defendant No.1 is attempting to ride upon the goodwill, distributor network and market presence created by the Plaintiff under the mark "KALASH". Defendant No. 1, after remaining absent from the market for several years, cannot be permitted to re-enter the market by targeting the Plaintiff's distributors and selling at loss-making prices so as to create confusion and capture the Plaintiff's established trade channels. Such targeted undercutting is directly relevant for grant of interim injunction, as it causes immediate and irreparable prejudice to the Plaintiff's goodwill, dealer network, market reputation and consumer association. The injury is not

merely loss of sales; it is erosion of goodwill, disruption of distributor relationships and confusion in the market. Damages would therefore not be an adequate remedy.

**28. DEFENDANT NO. 1 FAILED TO ANSWER MATERIAL CONCERNING FINANCIAL MISMANAGEMENT, INFLATED ACCOUNTS AND PE INVESTOR MATERIAL:**

It is contended that the defendant No. 1 has failed to answer the material relied upon by the Plaintiff concerning financial mismanagement, inflated accounts, inflated sales figures, private equity investor disputes/concerns and the circumstances in which Defendant No. 1's affairs deteriorated. These facts are material because Defendant No. 1 is relying upon historic turnover, annual reports and alleged past market reputation to claim continuing goodwill in the mark "KALASH". Once the Plaintiff has specifically shown that the said historic figures and financial records are themselves disputed and unreliable, Defendant No. 1 cannot rely upon them as conclusive proof of subsisting goodwill. Defendant No. 1's attempt to rely upon past financial figures, while avoiding the surrounding material relating to inflated sales, financial distress, investor concerns and disputed accounts, shows that its claim of continuous and surviving goodwill is not borne out from the record. The said material becomes even more significant when read with Defendant No. 1's own annual reports showing job work, its prolonged non-use of "KALASH" for edible oils, non-renewal of the relevant Class 29 registration, and the nominal valuation of all brands during liquidation. Therefore, Defendant

No. 1 cannot rely upon disputed historic turnover or reputation to resist the Plaintiff's injunction application, particularly when the Plaintiff has placed on record live and current evidence of actual use, sales, advertisements, distributor network and goodwill under the mark "KALASH".

**29. DEFENDANT NO. 1'S ALLEGATION THAT THE INVOICES FOR THE PERIOD OF 2005-2008, OF K.S. CONSUPRO / S.L. CONSUMER PRODUCTS LTD. ARE FORGED IS BASELESS AND MISCONCEIVED:**

It is contended that defendant No. 1's allegation that the invoices for the period of 2005-2008 of K.S. Consupro India Pvt. Ltd. / S.L. Consumer Products Ltd. are fake, forged or fabricated is completely baseless and misconceived. The said invoices are genuine business invoices generated in the ordinary course of business through the accounting software / Tally ERP system. *Copy of the invoices for the period of 2005-2008 are at page nos. 265-271 of the Plaint.* Defendant No. 1 is seeking to create an artificial doubt on the said invoices by relying upon a formatting issue relating to the display/conversion of the "₹" symbol. The Plaintiff submits that the said issue is only a software/font/conversion issue arising from the manner in which Tally ERP generated invoices were exported, printed, converted or opened on different systems. Such a technical formatting issue cannot render genuine business invoices as fake, forged or fabricated. *Copy of the Notification from Tally ERP is page no. 745-748 of the Replication.* The invoices of K.S. Consupro India Pvt. Ltd. / S.L. Consumer Products Ltd. are supported by regular business records, books of account,

sales records, tax/GST records, distributor dealings and continuous commercial use of the mark “KALASH” during the relevant period prior to the Plaintiff’s use from 11.08.2017. Defendant No. 1 has not produced any credible material to show that the transactions reflected in the invoices did not take place, that the distributors did not exist, or that the goods were not sold under the mark “KALASH”. The allegation of forgery is serious and cannot be made casually on the basis of a font/display issue in the rupee symbol. Defendant No. 1 has not shown any manipulation in the invoice number, date, party name, quantity, product description, tax details, ledger entry, payment record or corresponding sales record. Therefore, Defendant No. 1’s attempt to discredit the invoices of K.S. Consupro India Pvt. Ltd. / S.L. Consumer Products Ltd. on the basis of a software-generated formatting issue deserves to be rejected. In any event, the said invoices support the Plaintiff’s case of continuity of use through predecessor/family entities before the Plaintiff commenced use from 11.08.2017. The continuous use, sales and goodwill in the mark “KALASH” cannot be doubted merely because Defendant No. 1 has raised a vague and technical objection regarding display of the rupee symbol in certain invoices.

**30. WHATSAPP CHATS AND MATERIAL CONCERNING SHRI RAMESH GARG HAVE NOT BEEN ANSWERED BY DEFENDANT No.1:**

It is contended that defendant No. 1 has failed to answer the WhatsApp chats and material concerning Shri Ramesh Garg

and his continuing association with the affairs of Defendant No. 1. This material is relevant because Defendant No. 1 has repeatedly attempted to portray the present management as an independent and bona fide purchaser/reviver of the company, whereas the material relied upon by the Plaintiff shows continuing coordination and apparent connivance between Shri Ramesh Garg/erstwhile management and the new management. In particular, the WhatsApp chat sent by Shri Ramesh Garg to Shri Sachin Garg refers to Shri Ramesh Garg having 10% in the new management, which directly raises serious doubts regarding the alleged complete separation between the erstwhile management and the new management. The Plaintiff has also placed reliance on the Facebook post/material of Shri Ramesh Garg showing his continued association with K.S. Oils, even after the company was allegedly sold/taken over. These documents have not been answered by Defendant No. 1. ***Copy of the letter sent by Mr. Ramesh Garg to Mr. Sachin Garg is at page no. 154-155A of the Replication. Copies of the Facebook Post are at 156-170 of the Replication.*** The said material raises serious issues regarding the nature of the liquidation sale, the persons behind the alleged revival, and the bona fides of Defendant No. 1's present assertion of rights. Defendant No. 1's present assertion cannot be treated as a simple case of an innocent third-party purchaser reviving a dormant business when the record shows continued involvement/association of Shri Ramesh Garg with the affairs of Defendant No. 1 even after the alleged change in management. Defendant No. 1

cannot selectively rely upon the liquidation sale and change in management to claim equities in its favour, while avoiding material which raises doubts regarding the nature of the revival, the persons behind the assertion of rights, and the manner in which the “KALASH” mark is now being used against the Plaintiff. The WhatsApp chats, Facebook material and related documents clearly required an answer, particularly when Defendant No. 1 is seeking to disturb the Plaintiff’s established goodwill and market position. In these circumstances, Defendant No. 1’s plea of bona fide revival after purchase of the company is seriously disputed. The Plaintiff submits that the record indicates that the present assertion of rights is not a clean or independent commercial revival, but is being pursued in apparent coordination with persons connected with the earlier management, including Shri Ramesh Garg, to revive a mark which had already been abandoned and to target the Plaintiff’s existing goodwill. The material also raises a serious issue requiring explanation as to whether the alleged purchase/revival was hit by the disqualification under Section 29A of the Insolvency and Bankruptcy Code, 2016, in view of the apparent continuing involvement/connivance of Shri Ramesh Garg with the new management. Defendant No. 1 has not answered this material and therefore cannot claim equities on the basis of the liquidation sale.

**31. APPLICATION NO. 305567 WAS NOT TREATED AS A LIVE AND VALUABLE ASSET IN THE TRANSACTION MATERIAL:**

It is contended that defendant No. 1 has failed to answer the Plaintiff's case that Trade Mark Application No. 305567 was not treated as a live and valuable asset in the transaction material/VDR in the manner now alleged. If the said Class 29 mark was genuinely being treated as a valuable, subsisting and commercially active asset of Defendant No. 1, the transaction material would have clearly reflected its live status, value and commercial relevance. The fact that Application No. 305567 had not been renewed and had lapsed/expired before completion of the sale process shows that the said mark was not being preserved or treated as a live commercial asset. This becomes even more significant because Defendant No. 1's Class 31 registration was renewed/maintained during CIRP, whereas the relevant Class 29 registration was allowed to lapse. Further, the valuation relied upon by Defendant No. 1 was carried out in 2018 and not thereafter. Therefore, even the nominal valuation of all brands, including "KALASH", at only Rs. 0.01 crore, i.e. Rs. 1 lakh, was not a current valuation as on the date of sale. By the time the sale process was completed, the alleged brand value had further diminished, particularly because Defendant No. 1 had remained absent from the edible oil market and had allowed Application No. 305567 to lapse. The Plaintiff further submits that Application No. 305567 was not reflected in the VDR/transaction material as a live and valuable asset in the manner now alleged by Defendant No. 1.

Application No.305567 was not included in the list of trademark applications in the VDR. If the said Class 29 mark was genuinely being treated as a subsisting and valuable asset of Defendant No. 1, the same would have been clearly reflected in the VDR/transaction material, along with its live status, renewal position and commercial relevance. The absence of such material supports the Plaintiff's case that Application No. 305567 was not treated as a live commercial asset and that Defendant No. 1 is now attempting to revive and overstate a lapsed/abandoned claim after change in management. The liquidation sale was also on an "as is where is", "as is what is", "whatever it is", "whatever there is" and "without recourse" basis. Therefore, even if Application No. 305567 was mentioned in any transaction material, the purchaser/new management could acquire only such rights as lawfully existed with Defendant No. 1 on the relevant date. The sale could not revive a lapsed/abandoned mark, cure defects in title, restore lost goodwill, or defeat the Plaintiff's intervening rights created by open and continuous use. Defendant No. 1 cannot now, after change in management, revive the said lapsed/abandoned mark and project it as if it had always been a valuable and subsisting asset capable of defeating the Plaintiff's continuous use, goodwill and passing off rights. Such a plea is inconsistent with Defendant No. 1's own non-renewal, prolonged non-use, nominal brand valuation and absence of independent commercial use under "KALASH" for edible oils.

**32. DEFENDANT NO. 1'S PRESENT ASSERTION IS ONLY AFTER CHANGE IN MANAGEMENT AND RECENT REVIVAL:**

It is contended that defendant No. 1's present aggressive assertion of rights in the mark "KALASH" has arisen only after the change in management and alleged revival of commercial activities. Prior thereto, Defendant No. 1 had remained out of real and substantial market use for several years and had not maintained any open, continuous and independent market presence under the mark "KALASH" in relation to edible oil products. Defendant No. 1 cannot now, after a prolonged period of non-use, financial distress, job work, lapse of the relevant Class 29 registration and absence from the market, seek to revive and overstate alleged rights in a manner which directly prejudices the Plaintiff, who has been openly and continuously using the mark "KALASH" and has built goodwill in the market. The present conduct of Defendant No. 1 is not a continuation of an existing business under "KALASH", but an attempt to revive a lapsed/abandoned claim after change in management and to disturb the existing market position created by the Plaintiff. Defendant No. 1's conduct of approaching the Plaintiff's distributors, selling at abnormally low/negative margins and relying upon disputed documents shows that the present assertion is intended to ride upon the goodwill generated by the Plaintiff through actual commercial use. Defendant No. 1 cannot claim equity merely on the basis of the liquidation sale or change in management. The sale could transfer only such rights as lawfully existed on the date of sale,

and could not revive abandoned rights, cure defects in title, restore lost goodwill or defeat the Plaintiff's intervening rights. The alleged revival by new management is therefore not a defence to passing off, particularly when the Plaintiff's goodwill and market presence already existed and were known.

**33. DEFENDANT NO. 1'S CONDUCT IS LIKELY TO CREATE CONFUSION IN THE MARKET:**

It is contended that defendant No. 1's present attempt to assert exclusive rights in the mark "KALASH", after remaining absent from the market for several years, is likely to create confusion amongst dealers, traders and consumers. The Plaintiff has been openly and continuously using the mark "KALASH" since 2017 and its predecessor since 1973-74 and has built market association, distributor recognition and goodwill under the said mark. If Defendant No. 1 is permitted to enter the same market, approach the Plaintiff's existing distributors and sell edible oil products under the identical mark "KALASH", the same would disturb the existing market position and create confusion as to source, origin and association of the goods. Dealers and consumers are likely to believe that the goods of Defendant No. 1 are connected with, authorised by, or emanate from the Plaintiff's existing "KALASH" business. The likelihood of confusion is further aggravated by Defendant No. 1's conduct of targeting the Plaintiff's distributors, strong-selling territories and established trade channels. Defendant No. 1 is also offering goods at negative/abnormally low margins, thereby inducing the Plaintiff's existing distributors to shift

purchases. Such conduct is not merely competitive activity, but a calculated attempt to interfere with the Plaintiff's goodwill, dealer relationships and business reputation under the mark "KALASH". The confusion is also aggravated because Defendant No. 1 is asserting rights on the basis of disputed assignment deeds, a disputed restoration of a specific label/device registration, a disputed licence agreement and a liquidation sale which could not confer any better title than what Defendant No. 1 lawfully possessed. Therefore, Defendant No. 1's present use is likely to mislead the market into believing that it has a superior or exclusive right over "KALASH", whereas the Plaintiff has built and maintained the present market goodwill through actual commercial use. In support of the aforesaid submission that the test in passing off is consumer-centric and that the Court must consider the likelihood of confusion from the perspective of dealers, traders and ordinary consumers in the market, the Plaintiff relies upon *M/s Hindustan Pencils Pvt. Ltd. v. M/s India Stationery Products Co. & Anr., 1989 SCC OnLine Del 34.*

19. Broadly speaking, the arguments of learned counsel for the plaintiff are summarized as under:

19.1 That the defendant No.1 had not used the trademark from the year 2012 till the year 2025 and as such, there was no subsisting goodwill of defendant No.1 and the same stood evaporated and the existing goodwill in the market is of plaintiff.

19.2 That the registration of trademark under **Class 29** in favour of defendant No.1 had lapsed in the year 2023 and no application within the statutory period to get the same revived was filed by defendant No.1 and as such, the trademark registration had lapsed/deemed to have been abandoned by defendant No.1.

19.3 That the Assignment Deed of 1986 is void ab-initio as one of the partners of M/s Gopal Industries namely Smt.Katori Devi had expired in March' 1977, but her signatures appearing thereupon is an act of forgery.

19.4 That the Assignment Deed of 1996 is questionable on account of the fact that partners of M/s K.S Enterprises, other than Shri Gopal Das Garg had not executed Form TM-23.

19.5 From 2010 onwards the net worth of defendant No.1 had eroded, as a consequence whereof defendant No.1 had permitted M/s S.L. Consumer Products Limited to use its trademark and machinery for production purpose and as such the goodwill generated after 2012 was of plaintiff and not that of defendant No.1.

19.6 That the plaintiff has spent huge amount of money on advertisement of brand after the year 2012 which is a step towards goodwill of plaintiff.

19.7 The defendant No.1 after getting the new management pursuant to the auction purchase/LOI from NCLT has started poaching

the distributors of plaintiff, offering huge discounts to them, which is a negative strategy of the market with a view to cause damage to the sales of plaintiff.

20. Per contra, the arguments advanced by learned counsel for defendant No.1 are summarized as under.

20.1 That the entire case of the plaintiff is based on a false narrative of personal adoption/ownership/prior independent right in the trademark **KALASH** of the plaintiff's predecessor in interest Shri Gopal Das Garg. The plaintiff has not filed even a single document to show any prior independent adoption or rights or use of the Trademark **KALASH** by Shri Gopal Das Garg.

20.2 It has been contended that without prejudice to the aforesaid, and assuming without admitting that Shri Gopal Das Garg was the original adopter of the trademark **KALASH** in his individual capacity, then as per Section 14 of the Partnership Act 1932 any such rights stood vested in and became the property of the partnership firm M/s Gopal Industries upon adoption and use of the mark by the firm in the course of its business as M/s Gopal Industries had filed the first trademark application no. 305567 for **KALASH** trademark in its name thereby unequivocally treating the mark **as an asset and property of the partnership firm and not of any individual partner**. Thereafter, the trademark **KALASH** and the attached goodwill formed part of the assets of the partnership and ceased to remain the exclusive property of any individual partner much less specifically of Shri Gopal Das

Garg as alleged. Significantly, Shri Gopal Das Garg never asserted any personal ownership rights over the KALASH trademark, nor filed any trademark application in his individual capacity, for nearly five decades until December 2023 even which was immediately after the E-Auction Notice was issued by NCLT on 22.11.2023. This prolonged silence and complete absence of any assertion of personal ownership is wholly inconsistent with the legal position. More significantly, Shri Gopal Das Garg never used the trademark KALASH in his personal capacity at any point in time and there is no document or other evidence to establish or even indicate that the firms were using the mark KALASH under authorization/permission from him as alleged. Since, Shri Gopal Das Garg admittedly never used the mark in his individual capacity he never had/has any right in the brand. The narrative now sought to be advanced that he remained the personal proprietor of the mark throughout is unsupported by any contemporaneous record and is contrary to the manner in which the mark was held, used, registered, and dealt with for several decades. Mere alleged adoption, unaccompanied by ownership, control, or proprietary use of the mark, cannot confer any enforceable trademark rights in favour of Shri Gopal Das Garg. Only a false story/narrative has been given that the mark has been adopted by Gopal Das Garg which is of no significance as per the Trademark Act, 1999 and there is no reference of the term “adoption” in the Act.

20.3 That the Official Liquidator/Resolution Professional was appointed in the Insolvency proceedings against the Defendant No. 1 vide order dated 21.07.2017. Immediately thereafter, the Plaintiff

opportunistically started using the trademark “KALASH” on 11.08.2017 (user date claimed by the Plaintiff in the trademark applications no. 6825760, 6725864 and 6934424).

20.4 That E-auction Notice of the defendant No.1 was issued on 22.11.2023 immediately thereafter when the sale of the defendant No.1 had become inevitable, Shri Gopal Das Garg filed Trademark Applications on 08.12.2023.

20.5 That Shri Gopal Das Garg never claimed/asserted rights in the KALASH trademarks in his personal name till December 2023.

20.6 That Shri Gopal Das Garg acknowledged the assignment deeds dated 26.07.1986 and 13.08.1996 continuously and relied on the same in his trademark application bearing no. 6212110 and now as an afterthought challenged the same through Plaintiff after resigning from the Plaintiff company recently on 20<sup>th</sup> November 2025. Shri Gopal Das Garg did not ever plead in his User Affidavit filed along with his trademark application that he was the adopter of the **KALASH** trademark or that there was a limited assignment in 1986 or that Smt.Katori Devi had died in 1977, however on the other hand had relied on the said registration bearing No.305567 and the assignment deeds of 1986 and 1996. Shri Gopal Das Garg and the plaintiff claiming right through him and also plaintiff having assigned and relied upon the said trademark applications are bound by the statements before the Trade Marks Registry and cannot now approbate and reprobate.

20.7 That the plaintiff is trying to take benefit of the wrongs committed by Shri Gopal Das Garg and his family entities by now challenging the Copyright registration of the THIRD KALASH LABEL in the name of the Defendant no. 1. The settled legal principle of *Commodum Ex Injuria Sua Nemo Habere Debet* which means No One Should Profit From Their Own Wrong squarely applies in the present case.

20.8 That Shri Gopal Das Garg left the Plaintiff Company in November 2025 after the cease-and-desist notice dated 26.08.2025 of the Defendant No. 1. Thereafter, executed an invalid and purported assignment deed dated 01.01.2026 and filed a case through the Plaintiff in January 2026.

20.9 That M/s SL Consumer Products Limited was declared NPA vide order dated 10.07.2019 by NCLT New Delhi and has now been proceeded for liquidation vide order dated 27.04.2026. The Modus of Gopal Das Garg and his family has always remained the same i.e., to incorporate a company, take loans from banks and public, then push the company into liquidation and shift business to another company.

21. The learned counsel for the plaintiff has made reference to the case law/judgments under three broad categories.

(A) **Goodwill cannot survive in vacuum and stands lost by prolonged non-use, abandonment or cessation of business:**

- (i) Case reported as, “FAO (OS) No.115/2020”, titled as, “Veerumal Praveen Kumar V/s Needle Industries (India) Ltd. &

Anr.” (DOD: 24.08.2001), decided by Hon’ble High Court of Delhi;

(ii) Case reported as, “Notice of Motion No.752/2015 in Suit No.373/2015”, titled as, “Abhay Agarwal & Ors. V/s Purnamal Goods Private Limited” (DOD: 27.07.2016), decided by Hon’ble High Court of Bombay;

(iii) Privy Council Appeal No.11/1974, titled as, “Star Industrial Company Limited V/s Yap Kwee Kor Trading as New Star Industrial Company” (DOD: 26.01.1976), from the Court of Appeal in Singapore;

(iv) Case reported as, “OSA No.8/2023”, titled as, “Classic Legends Private Limited V/s Tide Water Oil Co. (India) Ltd.” (DOD: 27.11.2025), decided by Hon’ble High Court of Karnataka.

**(B) Court must adopt a consumer-centric approach to prevent confusion in cases of similar marks/products:**

(i) Case reported as, “FAO (Comm.) No.82/2025”, titled as, “Mohammad Talha V/s Karim Hotels Pvt. Ltd.” (DOD: 06.11.2025), decided by Hon’ble High Court of Delhi;

(ii) Case reported as, “CS (OS) No.394/2012”, titled as, “The Indian Hotels Company Ltd. V/s Ashwajeet Garg & Ors.” (DOD: 01.05.2014), decided by Hon’ble High Court of Delhi;

(iii) Case reported as, “FAO (OS) No.389/2014”, titled as, “M/s South India Beverages Pvt. Ltd. V/s General Mills Marketing Inc. & Anr.’ (DOD: 13.10.2014), decided by Hon’ble High Court of Delhi;

(iv) Case reported as, “IA No.2275 of 1988 in Suit No.941/1988”, titled as, “M/s Hindustan Pencils Pvt. Limited V/s M/s India Stationary Products Co. & Anr.” (DOD: 23.01.1989), decided by Hon’ble High Court of Delhi; and

(v) Case reported as, “Civil Appeal No.16038 of 2025”, titled as, “Pernod Ricard India Private Limited & Anr. V/s Karanveer Singh Chhabra” (DOD: 14.08.2025), decided by Hon’ble Supreme Court of India.

**(C) Passing off, prior use must be supported by continuous commercial use and substantial goodwill:**

(i) Case reported as, “CS (Comm.) No.125/2026”, titled as, “More Than Water Private Limited V/s Nesco Limited” (DOD: 15.04.2026), decided by Hon’ble High Court of Delhi;

(ii) Case reported as, “OP (TM) No.139/2023”, titled as, “Mankind Pharma Limited V/s Micor Labs Limited And Anr.” (DOD: 28.11.2024), decided by Hon’ble High Court of Madras;

(iii) Case reported as, “CS (Comm.) No.292/2022”, titled as, “Vintage Distilleries Limited V/s Ramesh Chand Parekh” (DOD: 16.11.2022), decided by Hon’ble High Court of Delhi;

(vi) Case reported as, “Civil Appeal Nos.1892-1893 of 1990”, titled as, “Wander Limited & Anr. V/s Antox India Pvt. Ltd.” (DOD: 26.04.1990), decided by Hon’ble Supreme Court of India.

(D) **Rights in a trademark stands lost by long non-use and abandonment:**

- (i) Case reported as, “Civil Suit No.1744/1999”, titled as, “Om Prakash Gupta V/s Praveen Kumar & Anr.” (DOD: 19.05.2000), decided by Hon’ble High Court of Delhi.

22. Per contra, the reliance on case law/judgments by learned counsel for defendant No.1 has been as under.

(A) **Defendant No.1 is a prior user and there was no intention to abandon the trademark.**

- (i) Case reported as, “FAO (Comm.) No.77/2025”, titled as, “Sana Herbals Private Limited V/s Mohsin Dehlvi & Anr.” (DOD: 05.01.2026), decided by Hon’ble High Court of Delhi;
- (ii) Case reported as, “IA Nos.10816/93 and 875/94 in Suit No.2815/93”, titled as, “Polson Ltd. V/s Polson Dairy Ltd. & Ors.” (DOD: September’ 1994), decided by Hon’ble High Court of Delhi;

(B) **That the plaintiff has approbated and reprobated in the proceedings before the Trademark Registry and this Court:**

- (i) Case reported as, “Interim Application (L) No.25032 of 2021” and Commercial IP Suit No.160/2022”, titled as, “PhonePe Private Limited V/s Resilient Innovations Private Limited”; (DOD: 06.04.2023), decided by Hon’ble High Court of Bombay;
- (ii) Case reported as, “FAO (OS) (Comm.) No.172/2022”, titled as, “Raman Kwatra & Anr. V/s M/s KEI Industries

Limited”, (DOD: 06.01.2023), decided by Hon’ble High Court of Delhi.

**(C) The plaintiff having suppressed/concealed material facts which disentitle it to have equitable consideration from this Court:**

(i) Case reported as, “IA Nos.11702/2007 and 12433/2007 in CS (OS) No.2015/2007”, titled as, “Micolube India Ltd. V/s Maggon Auto Centre & Anr.” (DOO: 07.02.2008), decided by Hon’ble High Court of Delhi;

(ii) Case reported as, “IA No.8096/91 in Suit No.1984/1991”, titled as, “M/s Seemax Construction (P) Ltd. V/s State of Bank of India & Anr.” (DOD: 12.12.1991), decided by Hon’ble High Court of Delhi;

(iii) Case reported as, “FAO (Comm.) No.22/2022”, titled as, “Quantum Hi-Tech Merchandising Pvt. Ltd. V/s LG Electronics India Pvt. Ltd. & Ors.” (DOD: 04.11.2025), decided by Hon’ble High Court of Delhi;

**(D) That the predecessor-in-interest of plaintiff M/s S.L Consumer Products Limited was merely a licensee from defendant No.1 pursuant to Licence Deed dated 15.05.2013 and the mark was used till the year 2017 before M/s S.L Consumer Products Limited went into liquidation and as “Once a licensee always a licensee”:**

(i) Case reported as, “FAO (OS) No.409/2013”, titled as, “BCH Electric Limited V/s Eaton Corporation And Ors..” (DOD: 03.06.2016), decided by Hon’ble High Court of Delhi.

(E) **That defendant No.1 is a bonafide purchaser under the statutory process, therefore, any misdeeds of the previous management before liquidation cannot be held against it.**

- (i) Case reported as, “Criminal Appeal Nos. of 2026 Arising Out of SLP (Crl.) No.12177 of 2022” titled as, “S.Anand V/s State of Tamil Nadu” (DOD: 21.04.2026), decided by Hon’ble Supreme Court of India;
- (ii) Case reported as, “1967 AIR SC 608”, titled as, “Janak Raj V/s Gurdial Singh And Anr.” (DOD: 08.11.1966), decided by Hon’ble Supreme Court of India.

(F) **That there can only be one source of acquiring proprietorship of mark:**

- (i) Case reported as, “Civil Appeals Nos.2551-2552 of 1993”, titled as, “Power Control Appliances & Ors. V/s Sumeet Machines Pvt. Ltd.”, (DOD: 08.02.1994), decided by Hon’ble Supreme Court of India.

23. I will advert to the case law/judgments a little later. In the light of the material available on record, let us examine whether the plaintiff has been able to make out a good case under the trinity principles of **prima facie case, balance of convenience and irreparable loss and injury.**

#### **PRIMA FACIE CASE:**

24. The learned counsel for the plaintiff has very vehemently argued that Shri Gopal Das Garg was the originator of the mark

“**KALASH**” in the year 1974 and only the registration **Application bearing No.305567 in Class 29** was assigned to M/s K.S Enterprises and the word mark was always retained by Shri Gopal Das Garg. The Assignment Deed of 1986 and 1996 are bad in law, which has the effect of Shri Gopal Das Garg retaining the rights in the trademark.

24.1 That defendant No.1 has not been using the mark since the year 2012 and as such, the mark even lapsed in May’ 2023.

24.2 There was no due diligence of the actual user of mark by Resolution Professional (R.P).

24.3 That during IBC proceedings a meagre brand value of Rs.1,00,000/- was kept, which shows that the goodwill was never passed on by the predecessor of defendant No.1 to it.

25. Per contra, learned counsel for defendant No.1 has very vehemently argued that conduct of Shri Gopal Das Garg, M/s S.L Consumer Products Limited and M/s K.S. Consupro India Private Limited was highly doubtful. There was no independent rights in respect of mark with Shri Gopal Das Garg.

25.1 That plaintiff is guilty of concealment/suppression of material facts.

25.2 That defendant No.1 had never abandoned the mark at any stage. Till the year 2017, the mark was being used by M/s S.L

Consumer Products Limited under licence from defendant No.1, which was adding on to the goodwill of defendant No.1 only and no separate goodwill in M/s S.L Consumer Products Limited had ever been created.

25.3 The plaintiff and its predecessor-in-interest have been approbating and reprobating.

26. The arguments advanced by learned counsel for defendant No.1 are thus crystallized as under.

26.1 The plaintiff's entire claim is derived from Shri Gopal Das Garg, however, Shri Gopal Das Garg himself had no subsisting proprietary rights in the trademark "**KALASH**" capable of being assigned. Consequently, the alleged purported Assignment Deed dated 01.01.2026 is void and incapable of conferring any rights upon the plaintiff.

26.2 The trademark "**KALASH**" along with the goodwill of the business stood absolutely assigned in favour of M/s K.S. Enterprises in 1986 and thereafter in favour of defendant No. 1 in 1996, without any restrictions or reservations. Both assignments were duly recorded by the Trade Marks Registry and have remained unchallenged for decades.

26.3 The Plaintiff does not hold any registration for the trademark "**KALASH**", whereas defendant No.1 is the recorded

proprietor and owner of the prior “**KALASH**” trademarks.

26.4 Shri Gopal Das Garg never asserted any independent ownership rights over the trademark “**KALASH**”, nor filed any trademark application in his individual capacity, for nearly five decades until December 2023.

26.5 The plaintiff's claim is contrary to its own conduct, as Gopal Das Garg had repeatedly acknowledged defendant No.1's ownership of the “**KALASH**” trademark, including through assignments, licensing arrangements and other contemporaneous records.

26.6 The plaintiff's case is founded on a recent, self-serving and legally untenable claim of ownership raised only after the liquidation sale and acquisition of defendant No. 1, and therefore does not disclose any enforceable right warranting interim protection.

27. I have given my thoughtful consideration to the arguments advanced at Bar on this aspect.

28. The learned counsel for the plaintiff has referred to the judgment of “**Veerumal Praveen Kumar**” (supra) to contend that from the year 2012 till the year 2023 the defendant No.1 had not been actually engaged in the manufacturing process under the trademark and as such, there was nothing left to be protected with regard to the mark as the mark cannot subsist in vacuum, as no goods were being

offered by defendant No.1 for sale and as such, there was no use of trademark.

29. The case of “**Abhay Agarwal**” (supra) was referred to contend that when a business is abandoned in a country in which it had been previously carried on, the goodwill associated with the use of that mark in that country perishes, even if the same is continued to be used in other countries.

30. The judgment of the **Court of Appeal in Singapore** in case of “**Star Industrial Company Limited**” (supra) was referred to contend that a passing off action is a remedy for the invasion of a right of property not in the mark, name or get-up improperly used, but in the business or goodwill likely to be injured by misrepresentation made by passing off one person’s goods as the goods of another. It has been contended that goodwill as the subject of proprietary right is incapable of subsisting by itself.

31. The judgment of “**Classic Legends Private Limited**” (supra) (hereinafter referred to as “**Boman Irani case**”) has been referred to contend that the goodwill in the mark would not continue after the production and business of a trademark holder was discontinued and a direction can be issued to the Trademark Registry to remove the said mark. Since heavy reliance was placed upon this judgment by both the sides, I will deal with this judgment in detail.

32. Judgment referred to by learned counsel for the plaintiff on the point “**Court must adopt a consumer-centric approach to prevent confusion of similar marks/products**” are not applicable in the facts and circumstances of the present case.

33. Now, I propose to consider whether the plaintiff has been able to make out a prima facie case for grant of injunction in the matter. In this regard, the table of “**All KALASH Trademark Applications**”, filed by defendant No.1, Shri Gopal Das Garg and individual Shri Shivang Garg is as under:

srl no	Appl No.	TM filed	Class	Proprietor	Date of filing	User	Status on 04.02.	Status as on today
1	305567	1st KALASH label	29	Gopal Industries	19-May-75	01-Dec-74	Regd	Regd
2	1684997	3rd KALASH LABEL	29	KSOL	08-May-08	01-Apr-74	Opposed	Opposed
3	1685604	3rd KALASH LABEL	29	KSOL	09-May-08	01-Apr-74	Opposed	Opposed
4	1773375	KALASH word	31	KSOL	13-Jan-09	01-Apr-05	Regd	Regd
5	6796020	KALASH LABEL	29	KSOL	08-Jan-25	01-Dec-74	Formalities	
6	6813810	KALASH LABEL	29	KSOL	20-Jan-25	01-Dec-74	Formalities	
7	6813811	KALASH word	29	KSOL	20-Jan-25	01-Dec-74	Formalities	
8	6212110	KALASH word	29	GDG	08-Dec-23	01-Dec-74	Refused	Refused
9	6212111	KALASH word	30	GDG	08-Dec-23	Proposed	Objected	Objected
10	6212112	KALASH word	31	GDG	08-Dec-23	Proposed	Objected	Objected
11	6825760	KALASH word	35	SEOL	27-Jan-25	11-Aug-17	Opposed	Opposed
12	6925864	KALASH LABEL	35	SEOL	27-Mar-25	11-Aug-17	Formalities	
13	6934424	KALASH word	29	SEOL	01-Apr-25	11-Aug-17	Objected	
14	6689762	DIVYA KALASH word	29	SHIVANG GARG	28-Oct-24	proposed	formalities	FER reply awaited
15	6689763	JAI KALASH word	29	SHIVANG GARG	28-Oct-24	proposed	formalities	FER reply awaited
16	6689679	KALASH PLUS word	29	SHIVANG GARG	28-Oct-24	proposed	formalities	FER reply awaited
17	6689673	RAJAT KALASH word	29	SHIVANG GARG	28-Oct-24	proposed	formalities	FER reply awaited
18								

\*1. Marks at srl nos. 5-7 were filed by the IRP to protect defendant No.1’s IP in KALASH.

\*2. Srl no. 8 is the first ever word mark KALASH filed by Shri Gopal Das Garg with 74 user which got refused.

\*3. 11-13 are marks filed by plaintiff claiming user ONLY from 2017.

\*4. 14-17 filed by the grandson in Oct 2025 despite having no right in word KALASH.

34. **Whether the plaintiff and its predecessors Shri Gopal Das Garg acted with bonafide in the matter.**

34.1 It is evident from the material on record that the entire case of plaintiff is based on the narrative of personal adoption/ownership/prior independent rights in the trademark KALASH of the plaintiff's predecessor in title Shri Gopal Das Garg. It is noteworthy that the Plaintiff has not filed even a single document to show any prior independent adoption or rights or use of the Trademark **KALASH** by Shri Gopal Das Garg.

34.2 Even if for the sake of arguments it is presumed that Shri Gopal Das Garg was the original adopter of the trademark **KALASH** in his individual capacity, as per Section 14 of the Partnership Act 1932 any such rights stood vested in and became the property of the partnership firm M/s Gopal Industries upon adoption and use of the mark by the firm in the course of its business and M/s Gopal Industries has also filed the first trademark application no. 305567 for KALASH trademark in its name thereby unequivocally treating the mark as an asset and property of the partnership firm and not of any individual partner. Thereafter, the trademark KALASH and the attached goodwill formed part of the assets of the partnership and ceased to remain the exclusive property of any individual partner mere specifically Gopal Das Garg as alleged. Significantly, Mr. Gopal Das Garg never asserted any personal ownership rights over the KALASH trademark, nor filed any trademark application in his individual capacity, for nearly five decades until December 2023 which is

immediately after the E-Auction Notice was issued by NCLT on 22.11.2023. This prolonged silence and complete absence of any assertion of personal ownership is wholly inconsistent with the case now sought to be pleaded. More significantly, Gopal Das Garg never used the trademark KALASH in his personal capacity at any point in time and there is no document or other evidence to establish or even indicate that the firms were using the mark KALASH under authorization/permission from him as alleged. Since, Shri Gopal Das Garg admittedly never used the mark in his individual capacity he never had/has any right in the brand. The narrative now sought to be advanced that he remained the personal proprietor of the mark throughout is unsupported by any contemporaneous record and is contrary to the manner in which the mark was held, used, registered, and dealt with for several decades. Mere alleged adoption, unaccompanied by ownership, control, or proprietary use of the mark, cannot confer any enforceable trademark rights in favour of Mr Gopal Das Garg. Only a false story/narrative has been given that the mark has been adopted by Gopal Das Garg which is of no significance as per the Trademark Act, 1999 and there is no reference of the term “adoption” in the Act.

34.3 It is noteworthy that the Official Liquidator/Resolution Professional was appointed in the Insolvency proceedings against the defendant No. 1 vide order dated 21.07.2017. Immediately thereafter, the Plaintiff opportunistically started using the trademark “KALASH” on 11.08.2017 (user date claimed by the Plaintiff in the trademark applications no. 6825760, 6725864 and 6934424).

34.4 The E-auction Notice of the Defendant No. 1 was issued on 22.11.2023 immediately thereafter when the sale of the Defendant No. 1 became inevitable, the Gopal Das Garg filed Trademark Applications on 08.12.2023. This fact has also been admitted by the plaintiff in paragraph No. 29 of the plaint.

34.5 Shri Gopal Das Garg never claimed/assert rights in the **KALASH** trademarks in his personal name till December' 2023.

34.6 Shri Gopal Das Garg acknowledged the Assignment Deeds dated 26.07.1986 and 13.08.1996 continuously and relied on the same in its trademark application bearing No.6212110 and now as an afterthought challenged the same through plaintiff after resigning from the plaintiff company recently on 20<sup>th</sup> November 2025. Shri Gopal Das Garg did not ever plead in his User Affidavit filed along with his trademark application that he is the adopter of the KALASH trademark or that there was a limited assignment in 1986 or that Smt.Katori Devi had died in 1977, however on the other hand relied on the said registration bearing no. 305567 and the assignment deeds of 1986 and 1996. Shri Gopal Das Garg and the plaintiff claiming right through him and also plaintiff having assigned and relied upon the said trademark applications are bound by the statements before the Trade Marks Office and cannot now approbate and reprobate.

34.7 It appears that the plaintiff is trying to take benefit of the wrongs committed by Shri Gopal Das Garg and his family entities by now challenging the Copyright registration of the THIRD KALASH

LABEL in the name of the defendant no. 1. The settled legal principle of ***Commodum Ex Injuria Sua Nemo Habere Debet*** which means No One Should Profit From Their Own Wrong squarely applies in the present case.

34.8 It is an admitted fact that Shri Gopal Das Garg left the plaintiff Company in November 2025 after the cease-and-desist notice dated 26.08.2025 of defendant No.1. Thereafter, he executed an invalid and purported Assignment Deed dated 01.01.2026 and filed the present case through plaintiff in January 2026.

34.9 It is further noteworthy that M/s S.L Consumer Products Limited was declared NPA vide order dated 10.07.2019 by NCLT, New Delhi and has now been proceeded for liquidation vide order dated 27.04.2026. It appears that the modus operandi of Shri Gopal Das Garg and his family has always remained the same i.e., to incorporate a company, take loans from banks and public, then push the company into liquidation and shift business to another company.

35. **Whether defendant No.1 is the actual and real owner of the “KALASH” trademark(s), label and goodwill.**

35.1 It is apparent from the record that on 19.05.1975, first Trademark Application No.305567 was filed by the partnership firm namely, M/s. Gopal Industries (**Ref. Vol. 1- Document 2 at Pg. 11 of the Documents filed with WS**).

35.2 On 13.08.1986, M/s Gopal Industries executed a Deed of Assignment dated 13.08.1986 in favour of M/s K.S. Enterprises, a partnership firm whereby the registered trademark Application No.305567 along with goodwill, was validly transferred, without any restrictions or limitations and the same was recorded by the Trademark Registry by Order dated 29.09.1989 **(Ref. Vol. 1- Document 3 at Pg. 29 and 38 of the Documents filed with WS).**

35.3 On 26.07.1996, M/s K.S. Enterprises further executed a Deed of Assignment dated 26.07.1996 in favour of Defendant No. 1 namely K.S. Oils Limited, whereby the registered trademark application no. 305567, along with goodwill, were validly transferred without any restrictions or limitations and the same was recorded by the Trademark Registry by Order dated 18.10.1999 **(Ref. Vol. 1- Document 4 at Pg. 40 and 47 of the Documents filed with WS).**

35.4 Even Otherwise, there is a statutory presumption that the Assignment has to be with goodwill as per S. 38(1) of the Trade Marks Act 1958, (old Act).

35.5 After 2008 the Defendant No. 1 filed several trademark and copyright applications out of which the word mark “**KALASH**” is validly registered in the name of the Defendant No. 1 till date and the Copyright registration of the KALASH label is also registered in the name of the Defendant No. 1, however the Plaintiff has filed for rectification of the same in the year 2026. **(Ref. Vol. 1- Document 5 at Pg. 55 of the Documents filed with WS).**

35.6 The single bench of Hon'ble High Court of Delhi in **para 18** of the Judgment dated 26.11.2012 declared the trademark "**KALASH**" a well-known trademark under section 2 (1)(z)(g) of the Act in the case titled as "**M/S K.S. OIL LTD. V. M/S EKTA DAIRY PVT. LTD. CS(OS) No. 1299/2011**". (Ref. Vol. 4- Document 15 at Pg. 2639 of the Documents filed with WS).

35.7 On 15.05.2013, defendant No.1 vide licence deed dated 15.05.2013 granted M/s S.L. Consumer Products Limited a licence to use the registered "**KALASH**" and "**DOUBLE SHER**" trademark(s). Shri Gopal Das Garg has signed the document on behalf of Licensee. (Ref. Vol. 4- Document 18 at Pg. 2686 of the Documents filed with WS). Once a license, always a licensee.

35.8 The Defendant No.1's KALASH trademark(s), Labels and Copyrights were mortgaged before SBICAP and the same were specifically included in Schedule C of the Demand Notice dated 04.03.2014. (Ref. Vol. 4- Document 17 at Pg. 2668, 2679-2681 of the Documents filed with WS).

35.9 On 22.11.2023, an E-Auction notice along with the process documents dated 22.11.2023 were issued for sale of the Defendant No.1 company. The Auction Process Information Documents specifically recorded that the Defendant No. 1 was the entity behind brands including KALASH, K.S. Gold and DOUBLE SHER among others. The sale of company as a Going Concern included sale of tangible and intangible assets and the trademarks

were not made a part of the list of excluded assets in sale. Had there been a case that the trademarks were not to be made a part of sale, the trademarks would have been included in the list of excluded assets. **(Ref. Rule 32 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016) (Ref. Vol. 4- Document 22 at Pg. 2725, 2738, 2741 and 2749 of the Documents filed with WS).**

35.10 The records of the various trademarks, including the trademark Application No.305567, registration certificates of various trademarks and LPCs are made a part of the VDR (Virtual Digital records) of the assets of the Defendant no. 1 company disclosed to the Successful Bidder by the Liquidator. Had there been a case that the trademarks were not to be made a part of the sale, the trademarks would not have been included in the VDR. **(Ref. Vol. 1- Document 6 at Pg. 62 of the Documents filed with WS).**

35.11 On 03.02.2025, the National Company Law Tribunal allowed the sale of K.S. Oils Limited as a going concern. The order mentions that the Defendant No. 1 was the entity behind brands including KALASH, K.S. Gold and DOUBLE SHER among others. **(Ref. Vol. 4-Document 26 at Pg. 2828, 2830 and 2852 of the Documents filed with WS).** Clause In this regard, it is relevant to produce hereunder the Clause (c) and (d) at Pages 24–25 of the Order dated 03.02.2025, which, inter alia, reads as under:

*“c) benefit of all ..... **TRADEMARKS**.....granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall..... **deemed to continue without disruption**.*

*d) the Corporate Debtor/ Applicant No. 1/ SPV shall be permitted to apply for renewal of necessary existing/ expired/ abandoned/ pending for renewal ..... TRADEMARKS of the Corporate Debtor...”*

35.12 Annual Reports of the Defendant No. 1 from the year 1999 till 2025 specifically mentions about the trademark KALASH and large-scale business being done by it under the same. (Ref. Vol. 2- Document 14 at Pg. 248, 294, 436, 472, 514, 515, 528, 531, 579, 594, 662, 727, 735, 738, 741, 742-744, 747, 749, 750, 756, 775, 776, 841, 848-853, 857-864, 877, 879, 887, 911, 913, 990, 1009, 1037, 1168, 1195-1196, 1339-1341, 1419-1420, 1524, 1676, 1870, 1980, 2089, 2194, 2300, 2406, 2513, 2549, 2604, 2629, etc of the Documents filed with WS Ref). These documents show that the trademark KALASH is a corporate asset of the Defendant No. 1.

35.13 The Defendant No.1 was a strong player with huge market share and turnover (Ref. Vol. 1- Document 12 at Pg. 192 of the Documents filed with WS). Page no. 879 of the Documents mentions that the marketing and branding expenditure of the company is Rs. 10 crores.

35.14 There is enough evidence that the customers and general public associate and continued to associate the trademark KALASH with the Defendant No. 1. (Ref. Vol 1- Document 10 at Pg. 140 and 163 of the Documents filed with WS).

36. **Whether Shri Gopal Das Garg, Shri Shivang Garg or plaintiff were never the owner of “KALASH” trademarks:**

36.1 It is fundamental to emphasize that at the outset the first application for the aforementioned trademark was filed by M/s Gopal Industries, a partnership firm consisting of several partners, including, Shri Gopal Das Garg. However, in the suit it is falsely and without any basis stated that Shri Gopal Das Garg was the sole adopter and originator of the “**KALASH**” trademark.

36.2 By signing the License Agreement dated 15.05.2013, Shri Gopal Das Garg admitted that the Defendant No. 1 was the owner of the brand **KALASH**. (Ref. Vol. 4- Document 18 at Pg. 2686 of the Documents filed with WS) (Ref: SBI Brand Mortgage is attached herewith as Vol. 4- Document 17 at Pg. 2668 of the Documents filed with the WS).

36.3 Use of the Trademark **KALASH** from the year 2013-2017 by S.L. Consumer Products Limited was through a license of the Defendant No. 1. Shri Gopal Das Garg has signed the document on behalf of Licensee which is an admission that Defendant No. 1 is the owner of the trademark. Once a license, always a licensee. (Ref. para no. 16 and 17 Lalit Kumar Arya V. Prabhat Zarda 2015 SCC Online Del 13246).

36.4 Shri Gopal Das Garg sought an NOC from the Defendant No. 1 while it was under liquidation. Had he been the owner of the trademark “**KALASH**”, he would not require the NOC from the

Defendant No. 1 to use the same. **(Ref. Vol. 4- Document 36 at Pg. 3246 of the Documents filed with WS).**

36.5 In the documents filed with the Trademark Application No.6212110, Shri Gopal Das Garg has relied upon and admitted the validity of the two assignment deeds. **(Ref. Vol. 4- Document 36 at Pg. 3109, 3121 and 3135 of the Documents filed with WS).**

36.6 Shri Gopal Das Garg in his Application No.6212110 has relied upon defendant No.1's documents to show use since the year 1974. This shows that he has no independent documents to show his use or ownership rights. **(Ref. Vol. 4- Document 36 at Pg. 3125 of the Documents filed with WS).**

36.7 Shri Gopal Das Garg or any member of the Garg family never objected to inclusion of the **KALASH** trademark(s)/brand in liquidation. **(Ref. Section 60(5) of the Insolvency and Bankruptcy Code, 2016).**

37. **Who is the prior user of "KALASH" trademark.**

37.1 It is noted that prior use is the backbone of the Trade Mark Law and a prior user cannot be enjoined in a Passing Off suit. Absence of Cause of Action and right to sue does not arise. **(Para 68 – 71 of WS).** I find substance in the submissions of learned counsel for defendant No.1 that present suit appears to be an abuse of legal process and dilution of the defendant No.1's Trademark "**KALASH**" **(Para 60-62 of WS).**

37.2 The trademark “**KALASH**” was assigned to the Defendant No. 1 vide a valid, recorded and decades old Assignment Deed dated 26.07.1996. The defendant No.1 appears to be the rightful owner of the Trademark/brand **KALASH** at least since 26.07.1996.

37.3 Defendant No. 1 has filed annual reports from the year 1996-97 to 2025 which are public documents which shows the continuous use and assertion of right in the trademark “**KALASH**” at all times. Apart from these annual reports, Agmark permission of the year 1990 (**Ref. Vol. 1- Document 9 at Page 80 of the Documents filed with WS**), return Invoices from K.S. Consupro/SL consumer products of the year (**Ref. Suit Index 4 Vol. 1 Page 272**), TV commercial advertisements of the year 2013-16, and 2021 (**Ref. Vol. 1- Document 11 at Page 169 of the Documents filed with WS**).

37.4 Defendant No. 1 launched its website in 01.09.2008 (**Ref. Vol. I- Document 10 at Pg. 105 and 108 of the Documents filed with WS**), however, the plaintiff purchased its domain name kalashoil.com in October 2023. It is further noteworthy that the plaintiff’s Instagram account was created in October 2023.

37.5 It is further noteworthy that the plaintiff has not filed a single document to show its use before 2017 in its name or in the name of Shri Gopal Das Garg.

37.6 It is further evident that the documents on record prima



facie establish prior adoption and use of the and labels by the Defendant No.1 as:

37.6.1 Defendant No. 1 filed TM Applications for this label in 2008;

37.6.2 Defendant No. 1 filed Copyright Application for this label in 2009.

37.6.3 Annual Report of the year 2008-2009, 2009-2010 (**Ref. Vol. 2- Document 14 at Pg. 727, 735, 838, 839, 843, 845 of the Documents filed with WS**).

37.6.4 TV commercial advertisements uploaded on YouTube dated 14.05.2013, 15.10.2014, 18.11.2015, 11.03.2016, 23.02.2021. (**Ref. Vol. 1- Document 11 at Pg. 169 of the Documents filed with WS**).

37.6.5 Press release (word mark Kalash). (**Ref. Vol. 1- document 10 at Pg. 101, 105, 106, 119 of the documents filed with WS**).

37.6.6 News articles 2008-09 and 2023 (**Ref. Vol. 1- Document 10 at Pg. 134, 137, 163 of the documents filed with WS**).

37.6.7 The defendant No.1 is also the prior user of the bottle design as depicted in the annual report of the year 2009-2010. (**Ref. Vol. 2- Document 14 at Pg. 845 of the documents filed with WS**).

38. **Whether defendant No.1 ever had the intention to abandon the trademark “KALASH” and goodwill has got evaporated/ extinguished or get transposed to the plaintiff:**

38.1 Abandonment of a trademark can be decided in an appropriate proceeding of cancellation U/s 47 of the Trade Marks Act, 1999 and not in the present suit proceedings. The Plaintiff is not allowed and barred by law to argue abandonment without filing a Non-use rectification U/s 47 of the Act. As on date the defendant No.1's trademark application for **KALASH** trademarks stands registered and presumed to be valid under section 31 of the Act.

38.2 The mere fact that the validity of the trademark certificate bearing no. 305567 expired on 19.05.2023 does not and cannot amount to abandonment of Defendant No. 1's rights in the trademark **KALASH** in law. However, vide Order dated 25.05.2026 the Dy. Registrar of the Trade Marks Registry has ordered for the restoration of the trademark application no. 305567. Abandonment requires clear, deliberate and conscious intention to relinquish rights. No such intention can be inferred in the present case. **(Ref. Document 1 at Pg. 4 of the Additional Documents filed by the Defendant No. 1).**

38.3 The lapse in filing the form for renewal, if any, is attributable entirely to the procedural error of the Trade Marks Registry in failing to issue the mandatory O-3 notice to the Defendant No. 1 or its attorney on record, wherein, the notice was issued to the erstwhile trademark attorney, and not due to any inaction on the part of the Defendant No. 1. However, the said trademark has been ordered to be re-

stored by the order dated 25.05.2026 (**Ref. Vol. 4- Document 32 at Pg. 3009 of the Documents filed with WS**).

38.4 The Defendant No.1 (acting through IRP) filed Interlocutory petition before the Trade Mark Registry for the renewal of the same on 08.01.2025 i.e. immediately after the defendant No.1 company was taken over by the new management. (**Ref. Vol. 4- Document 33 at Pg. 3010 of the Documents filed with WS**).

38.5 The defendant No.1 had also filed a Writ Petition before the Hon'ble Bombay High Court for the renewal of the said trademark. (**Ref. Vol. 4- Document 34 at Pg. 3079 of the Documents filed with WS**).

38.6 It is apparent that defendant No.1 also approached NCLT, Indore Bench seeking renewal of the said trademark. Notice to the Registrar of trademarks was issued by the NCLT on 13.03.2026. (**Ref. Vol. 4- Document 35 at Pg. 3107 of the Documents filed with WS**).

38.7 During the financial distress and pendency of CIRP and liquidation proceedings, the “**KALASH**” trademark(s) continue to remain in commercial circulation through a valid License Agreement dated 15.05.2013 in favour of M/s S.L. Consumer Products Limited under Section 48 of the Trade Marks Act 1999 from 2013 till 2017. (**Ref. Vol. 4- Document 18 at Pg. 2686 of the Documents filed with WS**).

38.8 The Defendant No. 1 re-started using the **KALASH** trademark immediately after acquisition by the new management. **(Ref. Vol. 1- Document 13 at Pg. 197 of the Documents filed with WS).**

38.9 The Defendant No.1's Rights in the **KALASH** Trademarks were continuously asserted even during the CIRP period through the IRP. The IRP filed trademark applications bearing no. 6796020, 6813810, 6813811 in January 2025. The Defendant no. 1 also continued to enforce the **KALASH** trademark by filing oppositions in Application No.6361063 dated 06.09.2024, 2165209 dated 05.04.2018, 4126590 dated 21.02.2020 and contesting the suit titled as, "**K.S. Oils Ltd V/s Ekta Dairy Pvt. Ltd.**" before the Hon'ble Delhi High Court. **(Ref. Vol 1- Document- 5 at Pg. 57 - 61 of the Documents filed with WS). (Ref. Vol 4- Document- 15 at Pg. 2639 and Document 30 at Pg. 2964, 2969, 2976 of the Documents filed with WS).** The act of continuous enforcement the **KALASH** trademark by filing oppositions and contesting the case also amount to use of the trademark.

38.10 Defendant No.1 has filed annual reports from the year 1996-97 to 2025 which are public documents which shows the continuous use and assertion of right in the trademark "**KALASH**" at all times. Apart from these annual reports, Agmark permission of the year 1990 **(Ref. Vol. 1- Document 9 at Page 80 of the Documents filed with WS)**, return Invoices from K.S. Consupro/SL consumer products of the year **(Ref. Suit Index 4 Vol. 1 Page 272)**, TV commercial adver-

tisements of the year 2013-16, and 2021 (***Ref. Vol. 1- Document 11 at Page 169 of the Documents filed with WS***).

38.11 Shri Gopal Das Garg never challenged the validity of the Defendant No. 1's registration. Shri Gopal Das Garg did not file rectification even when the plaintiff started using the KALASH trademarks in 2017. Now he cannot challenge ownership rights of the Defendant No. 1 or the assignment deeds.

38.12 The plaintiff's plea that the Defendant No. 1 has abandoned the KALASH Trademark since 2012 is completely wrong and such plea has no merits in law. Had this been true, the Plaintiff/Gopal Das Garg ought to have applied for rectification in 2017 for non use when they dishonestly started using the Defendant No. 1's trademarks at the time when there was no one to object to their dishonest conduct.

38.13 On 21.07.2017: CIRP was initiated against the Defendant No. 1 company by order of the NCLT. (***Ref. Vol 4- Document 20 at Pg. 2701 of the Documents filed with WS***).

38.14 No intention to abandon. Non-use of the trademark KALASH from 2017-2025 is only due to CIRP/Moratorium. Such non-use was involuntary and occasioned by factors beyond the control of Defendant. In terms of Section 47(3) of the Trade Marks Act, 1999, non-use attributable to "special circumstances" in the trade and not to any intention to abandon the trademark cannot constitute abandonment or furnish a ground for extinguishment of trademark rights.

38.15 Temporary break in use (which in the present case is due to special circumstances) does not destroy/dissolve/evaporates/ expunges the goodwill and reputation.

38.16 Goods bearing the **KALASH** mark remained continuously available in the market, either through defendant No.1 and its authorized licensee till 2017, or thereafter through the plaintiff's unauthorized use of the identical mark, packaging and trade dress. To an average consumer, the source-identifying feature was the **KALASH**



trademark, label and not the name of the manufacturer printed on the label. Consequently, the consuming public continued to associate the goods with the same prior commercial source i.e., the defendant No.1, and the goodwill attached to the **KALASH** Trademarks remained intact. Mere unauthorized use by the plaintiff could not result in extinguishment, abandonment or transfer of defendant No.1's goodwill in the **KALASH** Trademarks.

### CASE LAW ANALYSIS:

#### On Trademark Abandonment/Non-Use of Trademark:

39. In case of “**Sana Herbals Private Limited**” (supra), the Hon’ble High Court of Delhi considered the aspect of abandonment of a trademark, wherein defendant No.2 company, who was the registered proprietor of trademark “**NOKUF**” and a licence to use thereof had been given by it to plaintiff and the defendant No.1 was the Managing Director thereof. On account of some incident of fire

at defendant No.2, it stopped production of material and it purchased the same from the plaintiff to sell them in the market to their consumers. Even the name of defendant No.2 was struck off from the list of registered companies by the ROC in the year 2007 and the same remained struck off till the year 2019 and during these years the defendants did not use the mark “NOKUF”. Later, however, the defendant No.2 company was revived by ROC, however, in the meantime, the plaintiff had surreptitiously obtained trademark registration in mark “NOKUFSYRUP”. In the Court, the plaintiff made similar arguments, which are being made by plaintiff in this case that on the principle of acquiescence abandonment, the defendants were no longer entitled to claim exclusivity over the “NOKUF” mark; whereas, the defendants contended prior user of “NOKUF” mark. The judgment of “**Veerumal Praveen Kumar**” (supra) was referred to by the plaintiff in that case. The Hon’ble High Court considered the matter in detail and findings with regard to abandonment of trade mark and evaporation of goodwill was dealt with as under:

XXXXX

16.4 A comparison of Section 38(1) of the 1958 Act with Section 39 of the 1999 Trade Marks Act makes the distinction between the provisions stark. Clearly, the transfer of goodwill along with the right to use the trade mark was mandatory under the 1958 Act, for the Assignment Deed to be valid.

16.5 Inasmuch as the Assignment Deed dated 19 September 1999 does not expressly transfer goodwill in the trade mark, and only transfers the right to use the mark, it is prima facie not a valid Assignment Deed. As to whether the transfer of goodwill can be read into the Deed, read with

surrounding circumstances, would, at best, be a triable issue. At the Order XXXIX stage, therefore, the Assignment Deed dated 19 September 1999 would be unenforceable at law. We are in agreement with this contention of Ms. Sukumar.

17. De hors the Assignment Deed, does the appellant have a right to an injunction?

17.1 The aspect of goodwill

17.1.1 Passing off, as a common law tort, has three ingredients, viz. (i) goodwill of the plaintiff in the mark, (ii) misrepresentation, by the defendant, of his goods as those of the plaintiff, by using an identical or deceptively similar mark and (iii) damage to the plaintiff as a consequence.

17.1.2 In **Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industris Ltd**, the Supreme Court has clarified that this accumulation of goodwill, by the plaintiff, had to be prior to commencement of user of the mark by the defendant. This position stands reiterated in, inter alia, **Pernod Ricard India (P) Ltd v. Karanveer Singh Chhabra**.

17.1.3 Where the user of the mark by the defendant is prior to commencement of user of the mark by the plaintiff, therefore, the possibility of passing off stands ipso facto ruled out.

17.1.4 In the present case, the respondents were admittedly using the NOKUF trade mark from 1994 to 1997, by which time the appellant had not even been incorporated. There can, therefore, be no question of any accumulation of goodwill by the appellant prior to commencement of user by the respondents. Ex facie, therefore, the appellants cannot, even on this ground, seek an injunction against the respondents on the ground of passing

off.

## 17.2 Abandonment

17.2.1 Mr Sai Deepak, however, submits that, by long disuse from 1999 till 2024 - in fact, till date - the respondents must be taken to have abandoned the NOKUF trade mark. The respondents, on the other hand, submitted, in their pleadings, that, consequent to the fire which engulfed the factory of Respondent 2 in 2003, they were getting goods using their trade marks manufactured from DAHPL and that, therefore, there was no discontinuance of user. Mr. Sai Deepak submits that DAHPL is a third party, and that user by a third party is not user by the respondents.

17.2.2 To support his case of abandonment, Mr. Sai Deepak places reliance on *Hardie Trading*. In fact, learned Senior Counsel for both sides have relied on *Hardie Trading*, quoting passages from the decision which, in their submission, support their respective stands.

17.2.3 To our mind, *Hardie Trading* is being relied upon, entirely out of context. It is axiomatic that judgements of the Supreme Court are not to be likened to Euclid's theorems, and are to be understood and applied keeping in mind the issue before the Court and the facts with which the Court was seized.

17.2.4 The facts in ***Hardie Trading***, and the litigative back-and-forth among the parties in that case, were extremely involved, and we do not propose to advert thereto. Suffice it, however, to state that *Hardie Trading* was concerned with an application under Section 4629 of the 1958 Act, which permitted a party to apply to the Registrar for removal, from the Register of Trade Marks, of the registered trade mark of another, on the

ground of continuous non-use. The provision, which parallels, in a sense, Section 47 of the present Trade Marks Act, required an intention to abandon the mark as a pre-requisite to make out a case of non-use within the meaning of Section 46(1), as per para 46 of Hardie Trading.

17.2.5 Non-use, with an intention to abandon the mark, can be a ground to seek removal of a registered trade mark from the Register, even under Section 47 of the 1999 Trade Marks Act. Till that is done, however, the mark continues to remain on the Register, and remains valid. As in the case of Section 46 of the 1958 Act, Section 47(3) of the 1999 Trade Marks Act also entitles the registrant of the mark, of which removal is sought, to plead special circumstances, or lack of any intention to abandon, as a defence against the rectification action. That would involve an examination of facts, which would have to be undertaken by the Court, or authority, seized with the Section 47 proceedings, and not by the Commercial Court hearing the Order XXXIX application. Ms. Sukumar specifically so submits, and we agree with her.

17.2.6 The plea of abandonment, as advanced by Mr. Sai Deepak, therefore, to our mind, is prima facie devoid of substance, at least as a basis to seek injunction against the respondents.

17.3 The plea of non-use as a defence to passing off

17.3.1 Mr. Sai Deepak has also cited **Veerumal Praveen Kumar v. Needle Industries (India) Ltd.** Veerumal dealt with the issue of whether a plea of non-use, by the plaintiff, of the asserted mark, could be used as a defence by the defendant in an infringement proceeding. This Court has, in its judgement in **Oxygun Health Pvt Ltd v. Pneumo**

**Health Care Pvt Ltd**, dealt with Veerumal in detail. The present case does not call for any such exercise, as we are concerned with a passing off action by the appellant against the respondents. Veerumal has no application in such circumstances.

17.3.2 We may express it otherwise as well. The respondents had been using the NOKUF trade mark between 1994 and 1999. Once this fact was prima facie established, the appellant cannot seek to injunct the respondents from later reviving the said user on the ground that, in 25 years in the interregnum, the respondents had not used the mark and the appellant had garnered considerable goodwill therein. **The law of passing off does not recognize any such ground for injunction.**

17.3.3 At the cost of repetition, we emphasize that, to succeed in an action for passing off, the plaintiff has to establish that, *prior to adoption of the mark by the defendant, it had accumulated goodwill and reputation*, on which the defendant was seeking to ride.

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39.1 The **principle of law with regard to goodwill** was further elaborated by the Hon'ble High Court as under:

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17.3.6 Goodwill in the plaintiff's mark has, therefore, to be shown to exist prior to commencement of user of the mark by the defendant. In its recent decision in **Pernod Ricard**, the Supreme Court has reiterated that, to succeed in a passing off action, **"the plaintiff must demonstrate prior and continuous use, and that the mark has acquired distinctiveness in the minds of the public"**.

17.3.7 There is no question, in the present case, of this requirement being fulfilled, as the respondents used the **NOKUF** trade mark from 1994 to 1997, and the appellant had not even been incorporated till then.

17.3.8 Law does not envisage subsequent disuse of the mark, by the respondents, for any length of time, as entitling the appellant to injunction on the ground of passing off. The submission of the appellant is that, though the respondents had used the NOKUF trade mark from 1994 to 1997, they discontinued use for the next 25 years and that, as the appellant had used the mark during that period and amassed goodwill and reputation, the respondent should now be enjoined from again using the mark. The plea is sound on equity, but unsound in law.

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40. The Hon'ble High Court of Delhi in case of "**Polson Limited**" (supra) was pleased to consider the aspect of abandonment of trademark and evaporation of goodwill, if any, as under:

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(29) The learned counsel for the defendant has then contended that since 1978, the plaintiff has not used the trade mark 'Polson' in respect of dairy products and plaintiff should be deemed to have abandoned the said trade mark. He has cited **Star Industrial Company Limited Vs. Yap Kwee Kor, 1976 F.S.R, 256, a decision of the Judicial Committee of the Privy Council**, where the facts, in brief, were that a Hong Kong company which manufactured tooth brushes in Hong Kong with characteristic get up, of which a prominent feature were the words 'ACE BRAND'. For several years, prior to 1965, they had marketed substantial quantity of such tooth brushes in Singapore mainly for the purpose of re-export to Malaysia

and Indonesia. It was held that once the Hung Kong company had abandoned that part of its former business that consisted in manufacturing tooth brushes for exports to and sale in Singapore, it ceases to have any proprietary right in Singapore which was entitled for protection in any action turn passing off brought in the Courts of that country. it was .held that the goods will as the subject of proprietary rights was incapable of subsisting by itself and had no independent existence apart from the business to which it was attached.

(30) Reference is also made to **Normal Kark Publications Ltd. Vs. Odhams Press Ltd., 1962 Rpc 163** where it was also laid down that the plaintiff, in a passing off action, must show that at the date of the user by the defendant of which he complains, he has a proprietary right in the goodwill of the name, or in other wolds, that the name remains distinctive of some product to his, so that the use by the defendant of the name is calculated to deceive.

(31) So, it is argued that as plaintiff had not marketed any dairy products since 1978, the plaintiff was left with no goodwill in any such business which needs protection of the Court. However, it is established from the documents produced by the plaintiff, prima facie, that no doubt plaintiff had not been carrying out business of dairy since 1978 but it had been carrying on manufacture and sale of Chemicals under the trade name 'polson' from then contents of the journals published by the plaintiff of the time when dairy business was stopped, it becomes evident, prima facie, that dairy business had become uneconomical because of certain restrictions being placed on the export of the dairy products of the plaintiff from particular district and thus the plaintiff had stored the dairy business

for some time. But mere non-user of the trade mark for a short period does not amount to abandonment. (See **M/s.Garden Perfume (P) Ltd. Vs. M/s.Anand Soaps & Detergents, 1994 (28) Delhi Reported judgments 113**).

(32) In **Kamal Trading Company Vs. Gillette U.K. Limited, 1988 Ptc page 1**, it was held that a break in user of trade mark does not destroy its reputation if the mark is distinctive and continues to survive.

(33) Even otherwise, in the present case, once it is held that trade mark stands registered in the name of the plaintiff validly, prima facie, the defendant had no right to use said trade mark of the plaintiff and that is the effect of the provisions of Sections 28 & 29 of the Act. (See **M/s. Avis International Limited Vs. M/s.Avi Footwear Industries, A.I.R. 1991 Delhi 22; Plaza Chemical Industries Vs. Kohinoor Chemical Co., ; M/s.Hinaustan Pencils Pvt Ltd vs. M/s.India stationary Products Co, ; and M/s. Power Control Appliances Vs. M/s. Sumeet Machines .Pvt. Ltd., )**

(34) In **Hindustan Embroidery Case, Vol.76 Bombay Law Reporter 142**, the Bombay High Court has gone to the extent of laying that even if the registration of trade mark exists rightly or wrongly on the register of the trade mark, the Court has no right to ignore the same.

(35) In **Kedar Nath Vs. Monga Perfumery & Flour Mills**, it is laid down that validity of registration cannot be challenged except taking resort to the provisions of the Act itself.

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41. Therefore, the principle of law in the matter is that a break in use of a trademark does not destroy its reputation, if the mark is distinctive and continues to survive, unless the proprietor of the trademark had the intention to abandon the mark.

42. A very heavy reliance was placed by learned counsel for the plaintiff upon “**Boman Irani**” judgment (supra) to contend that the trademark cannot remain in limbo for indefinite time. The relevant portion of the judgment on which specific reliance was placed by learned counsel for the plaintiff is as under:

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33. All the goodwill attached to the 'YEZDI' trade mark is because of the efforts and resources expended by Mr. Boman R. Irani towards the promotion and protection of the 'YEZDI' trade mark. Mr. Boman R. Irani himself has been operating the website 'www.yezdi.com' since 1998 in his own name and whatsoever goodwill is generated, it would be due to the efforts and expenses incurred by him. The goodwill in the trade mark is directly proportional to the strength of the business of an entity and that goodwill cannot exist in vacuum for several years especially after all the assets are sold. The goodwill cannot survive independent of the trade/business and extinguishes when the business attached to it ceases to function.

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42. Vide order dated 17.08.2001, the Company Court ordered winding up of the Ideal Jawa. The 'YEZDI' trade mark was on the Trade Mark Register and in the name of the company on the date of the winding up. Therefore, all assets of the company, both tangible and intangible, were

deemed to be custodia legis in terms of Section 456 of the Companies Act, 1956. De hors the registration, a trade mark can be protected under the common law action for passing off as set forth under Section 27(2) of the Trade Marks Act, 1999.

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43. I have carefully gone through the aforesaid judgment. Before advertng to analyse the aforesaid judgment, reference is made to Regulation 32 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2016, which is reproduced as under:

**CHAPTER VI**  
**REALISATION OF ASSETS**

**32. <sup>15</sup>[Sale of Assets, etc.**

The liquidator may sell-

- (a) an asset on a standalone basis;
- (b) the assets in a slump sale;
- (c) a set of assets collectively;

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<sup>15</sup> Substituted by Notification No. IBBI/2018-19/GN/REG037, dated 22<sup>nd</sup> October, 2018 (w.e.f. 22-10-2018). Regulation 32, prior to substitution it stood as under:

“[32. Manner of sale.

The liquidator may

- (a) sell an asset on a standalone basis; or
- (b) sell
  - (i) the assets in a slump sale,
  - (ii) a set of assets collectively, or
  - <sup>15</sup>[(iii) the assets in parcels; or;]
- <sup>15</sup>[(c) sell the corporate debtor as a going concern.]”

- (e) the corporate debtor as a **going** concern; or
- (f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]

**<sup>16</sup>[32A. Sale as a going concern.**

(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.

(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

(3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.]

**COMPARISON BETWEEN THE CASE OF BOMAN IRANI AND THE PRESENT CASE:**

44. It is evident in this case that defendant No.1 was sold as an ongoing concern rather on Asset Sale without IP. Following are my observations on “**Boman Irani**” judgment (supra) and as to why the same is not applicable in the facts and circumstances of the present case:

44.1.1 **Sale as "Going Concern" vs. Asset Sale Without IP (Para 45, 84):** In **Boman Irani’s** case, all assets of Ideal Jawa were sold to

Mr. Aquil Qureshi in 2003 as a pure asset sale — tangible and physical assets only, excluding the trademark which the valuer had not assigned any value. The business was dead; there was no going concern.

44.1.2 In KS Oils, the NCLT ordered the sale of the Defendant No. 1 company as a going concern under Section 32A read with Section 33 of IBC, and the entire intangible assets including intellectual property rights explicitly formed part of the transaction. This is a fundamentally different legal framework where the statutory authority itself preserved the IP.

44.2.1 **OL/RP's Active Recognition of Trademark as Intangible Asset (Para 27):** In **Boman Irani'** case, the Official Liquidator himself did not include the YEZDI mark as an asset of the company, the Registered Valuer excluded it, and the sale notice did not mention it. The Division Bench noted this as decisive — if the company's own OL and valuer treated the mark as having no value, it could not later be claimed as a subsisting asset.

44.2.2 In KS Oils, the Liquidator/Resolution Professional expressly included the KALASH and DOUBLE SHER brands as part of the liquidation estate, in the Virtual Data Room (VDR), in the Auction Process Information Document dated 22.11.2023, and the NCLT order dated 03.02.2025 approving the sale as a going concern specifically records these brands as assets of the Defendant No. 1 company. The new management acquired them as part of a going-concern sale inclusive of all intellectual property.

44.3.1 **Timing and Intent of Plaintiff's Adoption — Opportunistic Misappropriation (Para 15):** In **Boman Irani's** case, the trade marks had lapsed well before Mr. Boman R. Irani filed applications (between 2013 and 2014), and the court found there was no mala fide conduct in his filing since marks had been in the public domain for many years.

44.3.2 In KS Oils, plaintiff began use on 11.08.2017 — within weeks of the NCLT admitting the CIRP against KS Oils on 21.07.2017. Gopal Das Garg filed his trademark application only on 08.12.2023, days after the e-auction notice of 22.11.2023 was

published, making his intent entirely reactive and opportunistic. The trademark registry itself refused Gopal Das Garg's application citing Defendant No. 1's prior KALASH marks. This opportunistic, bad-faith adoption is the antithesis of the facts in Boman Irani.

**44.4.1 Nature of Non-Use — Abandonment vs. CIRP/Insolvency (Para 15, 29, 67, 80):** In **Boman Irani's case**, the YEZDI trademark was not used since 1996 and the trade mark registrations lapsed in 2007–2008, with the OL taking absolutely no steps to protect or renew them for over 15 years. The Division Bench specifically held this constituted voluntary abandonment and that goodwill cannot survive in a vacuum.

**44.4.2** In KS Oils, the non-use during 2017–2025 was caused exclusively by a statutory process — the Corporate Insolvency Resolution Process (CIRP) initiated by NCLT order dated 21.07.2017. Use was interrupted not by indifference but because the board's powers were suspended by operation of law under the IBC, 2016. This is precisely the "special circumstance" recognised under Section 47(3) of the Trade Marks Act, which provides that non-use due to circumstances beyond the proprietor's control does not amount to abandonment.

**44.5.1 Goodwill Was Actively Preserved and Acknowledged:** In **Boman Irani's case**, no business was carried on since 1996, assets were sold in 2006, and the court held goodwill cannot survive independent of trade for 15+ years when there is no intention to resume business.

**44.5.2** In KS Oils, the KALASH trademark was declared a well-known trademark by the Delhi High Court vide judgment dated 26.11.2012 — a statutory recognition that persists. The trademark was also mortgaged with State Bank of India as an intangible asset, confirming its continuous economic existence. Moreover, the brand appeared in annual reports, social media, IndiaMart listings, and the new management actively revived it from 2025. The gap in active use was roughly 8 years (2017–2025), less than the 15+ years the Boman Irani court considered decisive, and was entirely attributable to CIRP.

**44.6.1 Active Licensing During the Difficult Period:** KS Oils had licensed the KALASH and DOUBLE SHER marks to S.L.

Consumer Products Limited vide licence deed dated 15.05.2013, and the licensee was commercially using the marks from 2013 to 2017. Use by a licensed permitted user counts as use by the proprietor under Section 48 of the Trade Marks Act, 1999.

44.6.2 In **Boman Irani's case**, there was no such licensee, no active business, and no commercial use whatsoever after 1996.

44.7.1 **Trademark Registrations Were Never Removed From the Register:** In **Boman Irani's case**, the registered marks (TM Nos. 283322 and 360450) were physically removed from the Trade Marks Register for non-renewal in 2007 and 2008. The Division Bench held that once removed, and no restoration application filed within one year under Section 25(4), the marks cannot be claimed back.

44.7.2 In KS Oils, TM Application No. 305567 though flagged for "likely removal" due to non-filing of renewal, remains on the Register and has not been removed. Multiple other marks (Class 29, 31, etc.) are registered and valid. The NCLT order dated 03.02.2025 and the e-auction notice dated 22.11.2023 expressly record KALASH as the Defendant No. 1's brand, giving statutory and judicial recognition to continued ownership.

#### 45. **How Boman Irani Actually Benefits KS Oils:**

45.1 Even where the plaintiff may try to use Boman Irani, several of the Division Bench's own holdings work strongly in KS Oils' favour:

45.2 **The "special circumstances" defence is wide.** The Hon'ble Court which decided **Boman Irani's case** recognised, relying on **Hardie Trading Ltd. v. Addisons Paint** and the Bali Trade Mark line of cases, that "even economic impracticability would amount to special circumstances" under Section 47(3). A statutory insolvency proceeding under IBC where the board's powers are suspended is a far stronger "special circumstance" than economic downturn.

45.3 **Bad faith registration by a former insider is void.** The Hon'ble Division Bench held, in the context of Mr. Boman R. Irani being a former director, that a director cannot exploit the company's

trade mark for personal benefit by registering it in his own name — this amount to breach of fiduciary duty.

45.3.1 Shri Gopal Das Garg was himself a partner in M/s. Gopal Industries (the original owner), signed the 1986 Assignment Deed assigning all rights away, and was a Director of KS Oils until 2002. His attempt to now register KALASH in his own name is far more clearly a breach of fiduciary duty and bad faith than even what Boman Irani disapproved of.

45.4.1 **Section 536/disposition during insolvency is void:** The Hon'ble Court in Boman Irani's case affirmed that any transfer or disposition of company assets without leave of the insolvency court is void.

45.4.2 The purported Assignment Deed dated 01.01.2026 from Gopal Das Garg to Plaintiff, executed while the NCLT proceedings were ongoing and after the e-auction notice, is void on this very principle.

45.5.1 **Goodwill of a well-known mark:** The Hon'ble Division Bench expressly acknowledged, even while ruling against the OL, that the goodwill of the YEZDI brand was valuable and survived in some form — it was Boman Irani's own promotions that kept the brand alive.

45.5.2 In KS Oils, the KALASH trademark was already declared a well-known trademark by a court of law, which is a category of marks that enjoys the highest level of statutory protection under Section 11(6)(9) of the Trade Marks Act.

45.6.1 **The first-in-market test:** The Division Bench endorsed the principle that the "first in the market" test enjoys pre-eminence, relying on Neon Laboratories and the Whirlpool/Milmet line of cases.

45.6.2 KS Oils traces use back to 1974 — over 50 years of prior user history — compared to the Plaintiff's claimed use from 2017 at the earliest. The gap in favour of the plaintiff is overwhelming.

45.7 In summary, Boman Irani's case is factually and legally distinguishable on every significant dimension — the nature, cause

and duration of non-use; the treatment of the mark by insolvency authorities; the survival and recognition of goodwill; the going-concern nature of the acquisition; and the bad faith of the Plaintiff. Where Boman Irani does speak to principles, those principles actively reinforce KS Oils' case rather than undermining it.

46. In case reported as, “CS (Comm.) No.361/2018”, titled as, “Nadeem Majid Oomerbhoy V/s Gautam Tank & Ors.” (DOD: 09.01.2026), Hon’ble High Court of Delhi has been pleased to lay down as under:

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85. While the Plaintiffs pleaded "special circumstances" for non-use, the Defendants contended that such circumstances cannot be indefinite and must be weighed against the rights acquired by a subsequent bona fide user.

86. In the decision of Hardie Trading Ltd. & Anr. v. Eddisons Paint & Chemicals Ltd. (2003) 11 SCC 92, the Supreme Court discussed the concept of "use" of a Trade Mark. While "use" can include actions other than actual physical sale, the intention to abandon can be inferred from a long period of unexplained non-use. Plaintiff No.1's prolonged absence from the market despite the passage of years since internal disputes arose between the Partners of Plaintiff No.1 points towards a de facto abandonment in the eyes of the trade and public creating an opportunity for others to adopt similar marks bona fide.

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**Issue No. (5) WHETHER PLAINTIFF NO.1  
ABANDONED AND ACQUIRED THE TRADE  
MARK POSTMAN DUE TO NON-USE**

100. This issue deals with whether the Plaintiffs'

claim / Suit is barred by acquiescence and delay and effect thereof. The Plaintiffs have submitted that the Plaintiff No.1 was prevented from using the Mark 'POSTMAN' since the year 2000 due to internal dispute between partners of Plaintiff No.1. However, Plaintiff No.1 consistently took action to protect its exclusive rights over the Trade Mark 'POSTMAN' and its conduct was never inconsistent with enforcing its rights.

101. Plaintiff No.1 also remained vigilant and filed several cases against its own Partners through the Court Receiver appointed by the High Court of Judicature at Bombay, by which the Partners of Plaintiff No.1 were restrained from using the name 'POSTIANO'. The decisions of the High Court of Judicature at Bombay in the Suit filed by the Court Receiver of Plaintiff No.1 as well as Appeal filed by one of the Partners of Plaintiff No.1 against the order of injunction, clearly show that Plaintiff No.1 was vigilant and perused action to protect its rights over the Mark 'POSTMAN'.

102. The Defendants have admitted that Defendants were aware about the prior existence of the Mark 'POSTMAN' and have only pleaded abandonment and non-use of the Mark 'POSTMAN' by Plaintiff No.1 to defend the Suit. However, the non-use was on account of dispute having arisen between the Partners of Plaintiff No.1 and despite the dispute, the Partners were vigilant about protecting the rights over the intellectual property of Plaintiff No.1 by filing the suit against one of its own Partners of Plaintiff No.1 and filing the present Suit against the Defendants. Once the Trade Mark is registered validly, the Defendants had no right to use the said Trade Mark of Plaintiff No.1 in terms of Sections 28 and 29 of the Act. In the facts of the present case, despite there being dispute

pending between the Partners of Plaintiff No.1, it cannot be said that the Mark 'POSTMAN' was not used, especially when there was extensive use for more than 50 years prior to the hiatus in using the Mark. Hence, there was no destruction of the reputation of the Mark, as the same was distinctive in nature and the goodwill in the Mark continued to survive.

103. It is well-settled that the use of the Trade Mark is not required to be a physical use on the goods as held in **Hardie Trading** (supra), **Burger King** (supra) and Official Liquidator of Ideal Jawa (supra). The non-use is such that the same has not led to the death of the Mark as Plaintiff No.1 had extensive reputation and goodwill in the Mark 'POSTMAN' when it discontinued the use of the Mark in 2000 and even thereafter continued to pursue remedies against the infringers, which is evident from the decision of High Court of Judicature at Bombay in the case of **R.R.Omerbhoy** (supra) involving a Partner of Plaintiff No. 1 itself.

104. The proprietors' intention to abandon the Trade Mark is a necessary component of their non-user justifying their removal under Section 47 of the Act. The intent not to resume the use of the Mark has to be proved and the evidence of abandonment must be clear and convincing. The intention to use the Trade Mark by the proprietor would also include the intention to permit the user of Trade Mark by registered user. However, the evidence on record does not support any such intention. The action of Plaintiff No.1 to protect its Trade Mark being infringed by one of its own partners and filing the present Suit within the period of 5 years and 3 months from not using the Mark clearly shows that Plaintiff No.1 had no intention to abandon the Mark and non-use was due to special circumstances of the dispute having

arisen between the Partners of Plaintiff No.1. The non-user of the Mark 'POSTMAN' was due to disputes between the Partners of Plaintiff No. 1 and not deliberate. Such non-use does not destroy the goodwill through extensive use and registration.

105. Accordingly, the Defendants have not been able to establish that Plaintiff No.1 had abandoned the Trade Mark 'POSTMAN' entitling the Defendants to use the deceptively similar Mark 'SUPER POSTMAN'. Therefore, the present Suit is maintainable.

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**Aprobate and Reprobate:**

47. It is clearly evident that in the application seeking registration of trademark filed by Shri Gopal Das Garg, he claimed user since the year 1974 and relied upon the Assignment Deeds dated 1986 and 1996, but the same was rejected by the Trade Mark Registry on 05.07.2024 and even the review against the same stood dismissed on 07.11.2025. Thereafter, Shri Gopal Das Garg, plaintiff and Shri Shivang Garg duly received Cease and Desist Notice from defendant No.1 and thereafter Shri Gopal Das Garg resigned from the Directorship of plaintiff company.

47.1 Now, Shri Gopal Das Garg took a clever U-turn by abandoning his stand taken before the Trade Mark Registry and executed Assignment Deed dated 01.01.2026 in favour of plaintiff. Thereafter, the plaintiff also applied for registration of trademark **KALASH** in its name. Even one of the Directors of plaintiff namely Shri Shivang Garg also applied for registration of trademark in his

individual name with different iterations. Whereas, in the present suit, the Assignment Deeds of 1986 and 1996 have been stated to be illegal. I have analyzed both the aforesaid Assignment Deeds and I prima facie find them to be valid, however, their actual validity would be tested during the course of trial in the matter.

47.2 In case of “**PhonePe Private Limited**” (*supra*), the Hon’ble High Court of Bombay has been pleased to lay down as under:

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27. This Court is of the opinion that by taking such completely contrary stands in respect of its own registered trademark 'PhonePe' and its analysis, the plaintiff has dis-entitled itself for grant of interim reliefs. This is particularly for the reason that the defendant, in its defence pertaining to its trademark 'postpe', has specifically indicated that 'postpe' is a short form of 'postponed payment'. It appears that the endeavour of the plaintiff is to claim that, 'pe' may connote 'payment' but, in its registered trademark, it refers to the colloquial Hindi term 'on', thereby further alleging that the defendant by using 'pe' has sought to come as close as possible to the registered trademark of the plaintiff. The clear contradiction in the stands taken by the plaintiff in respect of its own registered trademark in different legal proceedings, shows that it has tried to obtain interim reliefs by shifting its stands, which appear to be mutually inconsistent.

28. In this regard, the aspect of prosecution history estoppel assumes significance. The plaintiff is not justified in contending that once it has obtained registration for its trademark, the stand taken on its behalf in proceedings leading

upto grant of such registration cannot haunt the plaintiff in subsequent legal proceedings. This Court in the case of **Unichem Laboratories Limited Vs. IPCA Laboratories and others** (supra) held as follows: -

“28. On the other hand, Mr. Dwarkadas, learned Senior Counsel appearing on behalf of the Defendant No. 2, submits that the Plaintiffs have not approached this Court with clean hands. They have suppressed from this Court the fact that the Application No. 1077469 made by the Plaintiffs for registration of the word mark "LORAM" and the Application No. 1192320 filed by the Plaintiffs for registration of the label mark "LORAM" have been opposed by four companies. They are opposing the registration of the word and label marks. Further Mr. Dwarkadas has relied upon the compilation and more particularly page Nos. 37 to 47 thereof to urge that in the opposition that is filed by the Plaintiffs to the application made by M/s Haryana Formulations Pvt. Ltd., they took a stand that the word mark "LORAM" is common to the trade and there are several entities and manufacturers using and adopting identical mark. Once the Plaintiffs have taken such stand in the opposition proceedings and they have suppressed it from this Court in the present case, then, all the more their conduct can be safely termed as dishonest and blameworthy. This itself disentitles them from claiming any discretionary and equitable reliefs. In any event, suppression of stand taken by the Plaintiffs in the opposition proceedings is deliberate. What they are urging in the present suit is directly contradictory to the stand taken by them before the Trade Marks

Registry. Mr. Dwarkadas has invited my attention to paragraph No. 11 (page 5 of the plaint) and paragraph Nos. 2.3 (page 36 of the first affidavit in rejoinder). He has also highlighted the fact that on this ground alone, the injunction should be denied.”

29. In a similar situation, in the case of **S. K. Sachdeva and another Vs. Shri Educare Limited** (supra), the Division Bench of Delhi High Court found that discretion ought not to be exercised in favour of a person, who approaches the Court with unclean hands. That was in the backdrop of the plaintiff therein having suppressed its own stand taken before the Registrar of Trademarks during consideration of its application for registration of the trademark. The interim injunction granted by the learned Single Judge was set aside on this ground, indicating that the principle of prosecution history estoppel can certainly be invoked by the Court. The relevant portion of the Delhi High Court judgement reads as follows: -

“18. We are of the view that the interim injunction is liable to be vacated in view of various factors. First of all, the respondents themselves have taken a categorical stand that the word 'SHRI RAM' is the name of a popular figure and deity in Hinduism and no one proprietor can claim exclusive rights on the mark 'SHRI RAM'. Secondly, their stand that the mark 'SHRI RAM' is common to trade and several 'SHRI RAM' formulative marks are peacefully co-existing on the register of trademark. Thirdly, the appellants have prima facie shown that there were several schools in existence using the name 'SHRI RAM' in existence even prior to the adoption of the mark by

the respondents. Fourthly, the respondents are guilty of concealment and misrepresentation and, lastly, discretion should not be exercised in favour of a person who approaches the court with unclean hands.”

30. In the present case, it is an admitted position that the plaintiff did not place before this Court its own stand when the Registrar of Trademarks in the examination report had observed that there were earlier similar trademarks such as, 'Phone Pe Deal', 'Phone Pe Store', 'Phone Pe Crore', 'pe', 'pay' etc. The plaintiff had taken a stand that such cited marks were not similar to its mark 'PhonePe' for the reason that the mark 'PhonePe', taken as a whole, was distinct from such marks viz. 'Phone Pe Deal', 'Phone Pe Store', 'Phone Pe Crore' etc.

31. Having taken such a stand, it was a factor relevant to the controversy in the present case, for the reason that the trademark of the defendant is 'postpe'. This Court is of the opinion that by not placing its own stand taken before the Registrar of Trademarks in respect of cited marks like 'Phone Pe Deal', 'Phone Pe Store', 'Phone Pe Crore', etc., the plaintiff dis-entitled itself to grant of discretionary reliefs under Order XXXIX, Rules 1 and 2 of the CPC. The test in such cases is that if the defendant is likely to suffer prejudice due to such suppression on the part of the plaintiff, discretionary relief ought not to be granted. In the present case, this Court is of the opinion that prejudice was certainly caused to the defendant, but for the defendant itself making enquiries and bringing the material before this Court as regards the stand taken by the plaintiff in the proceedings before the Registrar of Trademarks. When the plaintiff had claimed before the Registrar of Trademarks that its mark 'PhonePe', taken as a whole, cannot be said to be the similar to marks

like 'Phone Pe Deal', 'Phone Pe Store', 'Phone Pe Crore' etc., it was clearly relevant for the stand taken in the present case that the mark of the defendant 'postpe', taken as a whole, can be said to be deceptively similar to the registered trademark of the plaintiff 'PhonePe', taken as a whole.

32. Hence, this Court is of the opinion that the principle of prosecution history estoppel is correctly invoked by the defendant in the present case. The plaintiff cannot successfully claim discretionary reliefs in the backdrop of such conduct.

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47.3 In case of **Raman Kwatra** (supra), the Hon'ble High Court of Delhi has been pleased to lay down as under:

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46. Mr. Lall also submitted that the respondent had reserved its right to take the appropriate legal remedies and its response to the Trade Mark Registry was without prejudice to its rights and contentions. Undoubtedly, the respondent had reserved its right to avail of appropriate remedies in respect of the impugned trademark, however, reserving a right to avail of other remedies would not include the right to make a contrary assertion. A party approaching the Trade Marks Registry must be held to its statements made before the Trade Marks Registry and cannot be permitted to make a factual assertion contrary to what it claims before the Trade Marks Registry. For this reason, as well, it was not permissible for the respondent to claim that the goods covered under its trademarks were similar to those of the appellant.

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47.4 In case reported as, “SLP (Civil) No.4325/1992”, titled as, “R.N Gosain V/s Yashpal Dhir” (DOD: 23.10.1992), Hon’ble Supreme Court of India has been pleased to observe as under:

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10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See: **Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd., (1921) 2 R.B. 608, at p.612, Scrutton, L.J.** According to Halsbury's Laws of England, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).

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**Suppression of material facts/concealment:**

48. It is evident that plaintiff has suppressed publicly available record of Registered Word Mark “KALASH” bearing No.1773375 in Class 31. **(Ref. Vol. 1- Document 5 at Pg. 55 of the Documents filed with WS)**

48.1 Copyright Application of the Defendant No.1.

48.2 License Agreement dated 15.05.2013, the turnover of which, GDG relies upon for 6212110. **(Ref. Vol. 4- Document 18 at Pg. 2686 of the Documents filed with WS).**

48.3 Misleading Reliance on Outdated MCA Status to show that the company is under CIRP. However, when the case filed the

MCA status showed active. **(Ref. Pg. 257 of the Documents filed with Plaintiff)**

48.4 Forged Back-Dated Invoices: Certain invoices relied upon by the Plaintiff or the period 2005–2008 contain the Indian Rupee symbol (₹), which was officially introduced only in 2010. **(Ref. Pg. 265 onwards of the Documents filed with Plaintiff)**

48.5 Plaintiff did not file the Examination report dated 12.12.2023 issued in the trademark application bearing no. 6212110. **(Ref. Vol. 4- Document 36 at Pg. 3195 of the Documents filed with WS).**

48.6 The plaintiff concealed that it adopted the domain kalashoil.com recently October 2023 and made Instagram account in October 2023.

49. In case of “**Micolube India Ltd.**” (supra), the Hon’ble High Court of Delhi has been pleased to lay down as under:

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24. The next point that arises is whether the plaintiff intentionally withheld the information and made false averments or it did so unintentionally and inadvertantly. In considering this aspect of the matter, it is important to note the submissions made by the learned Counsel for the defendants that when a party comes to court for an infringement action, then it is duty bound to conduct a search to ascertain as to whether the defendants have any registration in respect of the trade mark in question. I agree with this submission made by the learned Counsel for the defendants. It is relevant to note that based on the averments made in the plaint with regard to registration of the trademark in question, the court takes a prima facie view at the ex parte stage and

decides to grant or not to grant an injunction. It is, therefore, the duty of the plaintiff to state clearly as to whether the defendants have or do not have a trade mark registration in respect of the mark in question and in respect of the impugned goods and services. In the present case, the plaintiff cannot be let off by accepting its plea of feigned ignorance. If it was ignorant of the registration of the trade mark in favor of the defendant No. 2 in respect of the lubricants, it was its duty to have informed itself by conducting a search and thereafter placing the full facts before the court.

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50. In case of “**Quantum Hi-Tech Merchandising**” (supra), the Hon’ble High Court of Delhi has been pleased to lay down as under:

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15.2 On the aspect of concealment of facts, the learned Commercial Court finds fault with the appellant in concealing the affidavit filed by the appellant in its response to the opposition by Quantum USA to the appellant's application No. 1291193, which ultimately culminated in the grant of registration, to the appellant, of the word mark QUANTUM. The learned Commercial Court has held that, in view of the stand adopted by the appellant in para 16(l) of the said affidavit [reproduced in para 11.1 (viii) supra], the appellant could not claim exclusivity over the mark QUANTUM. In the same affidavit, the appellant had also contested Quantum USA's opposition on the ground that it was seeking registration of the composite mark "Quantum Hi-Tech QHMPL Group" which was distinct and different from the marks of the Quantum USA. The learned Commercial Court has regarded these two assertions of the appellant, in its affidavit in the proceedings relating to Application No.

1291193, as defeating the appellant's case. Ergo, holds the learned Commercial Court, concealment of the said affidavit was a material concealment, which disentitled the appellant to equitable relief under Order XXXIX Rules 1 and 2 of the CPC.

15.3 On merits, the learned Commercial holds, primarily, as under:

(i) No proceeding for infringement could lie against the respondents, as the appellant had no registration of the mark QUANTUM in respect of TV receiver sets or any goods which were allied or cognate thereto, in respect of which goods the respondents was using its marks.

(ii) No case of passing off could lie, either, as there was no evidence of user, by the respondents of the mark QUANTUM and QUANTUM DISPLAY.

(iii) The appellant was using the logo . As against this, the appellant could not produce any evidence of user, by the respondents, of the allegedly infringing marks.

(iv) The reliance, by the appellant, on the statement of the Vice President of LG Korea, in the affidavit filed by him in evidence in support of the application under Section 21(4) of the Act, on which the appellant sought to rely, itself belied the appellant's contention that the respondents were using the marks QUANTUM and QUANTUM DISPLAY. Thus, in fact, the appellant had no sustainable cause of action against the respondents even for a claim of passing off.

16. Issues arising for consideration.

The following issues arise for consideration:

(i) Was the appellant guilty of concealment of facts?

(ii) Does the case of infringement, levelled against

the respondents, have merit?

(iii) Can a case of passing off sustain against the respondents, in the facts of the case?

(iv) Does the impugned judgment of the learned Commercial Court, in the light of the above, call for interference?

#### 17. Our view

17.1 On these aspects, our view is as under:

(i) The appellant is guilty of concealment of material facts.

As the concealment is serious and material, the appellant would, even on this sole ground, stand disentitled to interim relief.

(ii) On merits, the appellant has a sustainable case of infringement against the respondents. The finding of the learned Commercial Court, to the effect that the case is only one of passing off, and that no case of infringement could lie, is not correct in law.

(iii) The learned Commercial Court is correct in its finding that no case of passing off could be made out, in the facts of the case, against the respondents.

(iv) Inasmuch as we are in agreement with the respondents finding that the appellant is guilty of contumacious and wilful concealment of facts, given the fact that we are dealing with an appeal against a decision under Order XXXIX Rules 1 and 2 of the CPC, we are not inclined to interfere with the impugned order.

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51. In case of “**M/s Seemax Construction**” (supra), the Hon’ble High Court of Delhi has been pleased to lay down as under:

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10. The suppression of material fact by itself is a sufficient ground to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the court with clean hands and is required to disclose all material facts which may, one way or the other, affect the decision. A person deliberately concealing material facts from court is not entitled to any discretionary relief. The court can refuse to hear such person on merits. A person seeking relief of injunction is required to make honest disclosure of all relevant statements of facts otherwise it would amount to an abuse of the process of the court. Reference may be made to decision in **The King v. The General Commissioners** for the purposes of the Income-tax Acts for the District of Kensington, 1917 (1) King's Bench Division 486 where the court refused a writ of prohibition without going into the merits because of suppression of material facts by the applicant. The legal position in our country is also no different. (See : **Charanji Lal v. Financial Commissioner, Haryana, Chandigarh, AIR 1978 Punjab and Haryana 326 (1711)**). Reference may also be made to a decision of the Supreme Court in **Udai Chand v. Shankar Lal**, In the said decision the Supreme Court revoked the order granting special leave and held that there was a misstatement of material fact and that amounted to serious misrepresentation. The principles applicable are same whether it is a case of misstatement of a material fact or suppression of material fact.

11. I have already noticed herein before the prayers made in the two earlier suits filed by the plaintiff as also the pleas taken in the plaint filed in court at Bikaner and the pleas taken in the

present suit. Mr. Bhasin, learned counsel for plaintiff, submits that the two suits filed earlier were based on different cause of action whereas the present suit is based on a different cause of action and as such the filing of the said suits was not a material fact requiring disclosure and that being so there is -no suppression of material fact from this Hon'ble Court. Counsel contends that it is one thing to say that it would have been desirable to disclose the filing of the earlier suits and it is altogether different to say that there was obligation on the part of the plaintiff to make a disclosure of the filing of the said suits. In so far as the present suit is concerned, Mr. Bhasin contends that, if at all, the present case falls in the former category. I do not agree. The contention that the filing of the said two earlier suits was not a material fact is misconceived. Briefly, the case set up in the plaint of the present suit as also in the plaint filed in Bikaner court is same, namely, defendant No. 2 was pressurising the plaintiff to sign the altered agreement and was taking advantage of the fact that plaintiff had handed over the bank guarantee of Rs. 5 lakhs to defendant No. 2 before signing of agreement by defendant No. 2. The other point of distinction pointed out by learned counsel for the plaintiff that the earlier suit was based on threat of invocation of the bank guarantee, whereas the present suit was based' on the issue of letter of invocation is not material when the plea in both suits is almost similar and relief claimed is same. The plaintiff has not made full, complete and honest disclosure of the material facts. Further point of distinction that in the earlier suit bank was not a party whereas in the present suit the bank is a party is also of no consequence.

12. The tendency of the litigants to approach different courts to somehow or the other obtain interim orders without full disclosure of the earlier

judicial proceedings and without full disclosure of all material facts is on constant increase and it is necessary for due administration of justice to reiterate the legal proposition that such a person may be refused a hearing- on merits. As the plaintiff, as noticed above, has suppressed material facts from this court, I would dismiss this application without going into the merits.

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52. It is apparent that M/s S.L Consumer Products Limited was a licensee of defendant No.1 under Licence dated 15.05.2013. M/s S.L Consumer Products Limited used the trademark of defendant No.1 from 2013 till 2017 and thereafter the successor-in-interest of M/s S.L Consumer Products Limited, i.e plaintiff cannot claim ownership in the said mark on the principle “**once a licensee always a licensee**”.

52.1 In this regard, reference can also be had to the judgment of “**BCH Electric Limited**” (supra), whereby the Hon’ble High Court of Delhi has been pleased to lay down as under:

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62. Although, BEL in its written statement has denied the assertions made by Eaton with regard to the past association of Cutler-Hammer, Inc. in India, no arguments were advanced to dispute the facts as noted above. The agreements referred to above are also not disputed. In view of the above, it is not open for BEL to claim that it had any proprietary interest in the trademarks in question. In our prima facie view the fact that the origin of the trademarks CH Control, CH Label and Cutler/Hammer can be traced to Cutler-Hammer, Inc. and/or its predecessors leads to an inescapable conclusion that

trademark Cutler/Hammer as well as other marks such as CH Label and CH Control were owned by Cutler-Hammer, Inc.

63. Notwithstanding the above, BEL has projected that it has, by virtue of honest, extensive and bonafide use, acquired proprietary rights in the trademarks in question. BEL further states that it filed applications for registration of the trademark CH Control Black to protect its business and to prevent third parties from securing any rights in the trademarks which it claims were abandoned by Eaton.

64. The trade name and trade mark Cutler/Hammer was used by BEL as a licensee and not as a proprietor. BEL in its written statement claims that "tremendous goodwill and reputation vests with the defendant and its aforesaid marks" by virtue of the products sold by it from 1976-2011 under the trademarks Bhartia CH Control, Cutler/Hammer, Bhartia Cutler-Hammer and CH Control. We find considerable difficulty in accepting this assertion. It is apparent from the agreements referred to above that BEL was never the proprietor of the trade name Cutler- Hammer, the trademark Cutler/Hammer; and /or other related trademarks. The letters CH in the trademarks CH Control, CH Label etc., represent the initials of the words Cutler-Hammer. BEL was licensed to use the said marks and in terms of the arrangement, had unequivocally accepted the ownership of the marks to be that of Eaton (Cutler-Hammer, Inc.). BEL had further undertaken not to assert any proprietary rights in respect of the said trademarks and, therefore, it would not be open for BEL to contend that it had any proprietary interests in those trademarks or that the goodwill associated with those marks belonged to it by virtue of their use for half a

century. It is obvious that BEL had used the trademarks belonging to Cutler-Hammer, Inc. to take advantage of the associated goodwill and to reflect an association with Cutler-Hammer, Inc. The use of the trademark name Cutler-Hammer was perceived by BEL to be of significant commercial advantage; we see no other reason as to why BEL would seek the trademarks in the first place. In the Trading Name Agreement of 1979, BEL also acknowledged that the use of the name Cutler-Hammer in its corporate name would result in "various commercial advantages" to BEL.

65. In the aforesaid circumstances, the applications made by BEL for registration of the trademark Cutler-Hammer (application no.1189782) showing its user since 31.2.1963 is prima facie, misleading; it is, plainly, intended to mislead the Trademark Registry to believe that BEL has been using the trademark as a proprietor since 31.12.1963. BEL applied for registration of brand Bhartia CH Control Black on 14.10.1992. The print out from the Office of Registrar of Trademark indicates user of the trademark as "proposed". This would imply that at the time of applying for registration, BEL did not claim any past user but only indicated that it was proposing to use that trademark. However, it was submitted on behalf of Eaton that BEL had represented in its application that it was using the trademark since 04.03.1968. BEL did not contest this assertion before us. Eaton had also produced a letter dated 28.09.1992 addressed by BEL to its agent Remfry & Sagar, in the context of registration of trademarks, which indicates that BEL was claiming the user of the trademark since 04.03.1968. The learned Single Judge has also prima facie returned the finding that BEL had misrepresented its user since 04.03.1968 for obtaining the registration of the trademark

Bhartia CH Control Black. In this backdrop, we find no reason to differ from that view. Similarly, the applications for other trademarks in question are also misleading inasmuch as they indicated BEL to be a proprietor of those trademarks even during the period when the same were, admittedly, used under a licence from Cutler-Hammer, Inc.

66. The learned Single Judge, in the impugned order, held that BEL had failed to provide any bonafide reason for adopting or claiming ownership of the trademarks in question. The only explanation provided by BEL was that Eaton had abandoned the marks; the same were important to its business; and it had applied for registration to prevent third parties from securing the said trademarks. This explanation can most charitably be described as inconsiderable. BEL had an on-going business relationship with Eaton and if what BEL states is correct, it would have no difficulty in negotiating the purchase of those trademarks. But, the undisputed fact is that whilst BEL negotiated at least two Licence and Technical Service Agreements, it did not include any mention of trademarks therein.

67. According to BEL, the trademarks in question were important for its business. Therefore, even after the term of the „Licence & Technical Service Agreement“ dated 03.06.1977 and the „Registered User Agreement“ dated 19.02.1979 expired, BEL did not refrain from using the trademarks - as it was obliged to do under the abovementioned agreements - but continued to trade on the goodwill so associated with those trademarks. Eaton did not object to such use; but, that would not constitute BEL as the owner of trademarks and any endeavour to claim their ownership at the material time would prima facie amount to usurping Eaton’s

property. Thus, it is not possible to accept BEL's claim of ownership by way of its user even for the period when it was a licensee.

68. We are also not persuaded to accept the contention that Eaton had abandoned its trademarks in question. BEL has produced certain contemporaneous correspondence during the years 1992 to 1995 in support of its contention that Eaton had full knowledge of BEL's use of the trademark Bhartia CH Control as it was used as BEL's logo on the letterheads. It is worthwhile to note that most of the letters/facsimiles emanating from Eaton, which are relied upon by BEL, also clearly mention the words Cutler-Hammer. To mention a few: the letter dated 01.11.1993 addressed by Mr M. M. Chantler, Manager, Multinational Sales, Eaton Corporation to the General Manager, BEL is on the letterhead which mentions "Cutler-Hammer Products"; the facsimile dated 06.01.1994 addressed to Mr R. Sarkar of BEL also bears the caption "EATON Cutler-Hammer and Dynamatic"; the facsimile message dated 03.10.1994 is addressed by BEL to Cutler-Hammer, Pittsburgh; the letter dated 19.12.1994 and facsimile message dated 30.10.1995 sent by one David of Eaton is on the letterhead "Cutler-Hammer Westinghouse & Cutler-Hammer Products".

69. Eaton has also filed a list of countries where its trademarks, Cutler/Hammer and CH logo, are registered. In addition, it has also produced catalogues of its products which indicate the use of the trademarks as well as the trade name Cutler-Hammer. In view of the material produced by Eaton, we find no reason to fault the learned Single Judge's conclusion that Eaton had not abandoned its trademarks.

70. It was earnestly contended on behalf of BEL that whilst the products under the brand name/trademark Cutler-Hammer may be sold in other parts of the world, Eaton had not sold its products under the said brand name/trademark in India where it was using the trademarks Moeller and Eaton. And, this according to BEL, constituted abandonment of the trademarks by Eaton.

71. We are not persuaded to accept this view for several reasons. First of all, for the reason that even if it is assumed that Eaton has not sold products under the trademark Cutler-Hammer in India, the same would not constitute abandonment of the trademarks if they were used extensively overseas. The learned Single Judge has noted in the impugned order - and in our view rightly so - that the tradename/trademark Cutler-Hammer had acquired trans-border reputation.

72. Secondly, there is evidence on record which indicates that Eaton was selling its products in India under the brand name Cutler-Hammer. Even the correspondence relied upon by BEL indicates that it had made inquiries regarding Eaton's products.

73. Thirdly, BEL had entered into a licence agreement for use of knowhow and patents for manufacture of certain products. Further BIPL - a group company of BEL, which later merged with BEL - had entered into Sales Agreements on 13.07.1988 and 04.09.1990 for acting as Eaton's agent to solicit sales of products manufactured by Eaton.

74. Last and most importantly, BEL had expressly agreed that the use of the trademarks by BEL would for all times inure to the benefit

of Eaton. The fact that the term of the said Registered User Agreement came to an end does not mean that BEL stood released from this understanding.

75. As noticed hereinbefore, the agreements entered into between BEL and Eaton after 1979 did not specifically mention licensing of trademarks. However, BEL had already committed that its use of the trademarks would inure for the benefit of Eaton and - as BEL's letter dated 10.06.1982 indicates - Eaton and BEL understood that the use of the trademarks would continue to be governed by the terms of the earlier agreements. In the aforesaid circumstances, we are unable to appreciate as to how BEL can now claim that Eaton had abandoned and it had acquired ownership of the trademarks in question.

76. The fact that Eaton did not renew the trademarks CH Control and CH Label does not, in the facts of the present case, indicate that Eaton had abandoned its trademarks. Eaton had applied for the trademarks CH Logo on 11.10.1994. The documents produced on record indicate that the said Mark has been registered in various countries. Eaton explained that it has inadvertently not renewed the trademarks CH Label and CH Control as it had adopted another version of the trademark, namely, CH Logo and it did not find it economical to maintain multiple similar marks. It is not disputed that registration of the trademark Cutler/Hammer did not lapse. It also cannot be disputed that Eaton continued to use the tradename 'Cutler-Hammer'. The trademarks containing the initials 'CH' merely represent the initials of the word Cutler-Hammer and even if some of the trademarks bearing the initials CH were not renewed, the same would not entitle a third party to use those marks as that

would indicate a relationship with Cutler-Hammer and enable the user to trade on the goodwill associated with that trade name.

77. BEL further claims that Eaton had not protested or taken any action against the use of its trademarks but had encouraged BEL to use the same as its own and, resultantly, BEL acquired title to the trademarks in question by its ubiquitous use. It claims that since Eaton had acquiesced to the use of trademarks in question, it is now not entitled to seek an injunction.

78. In *Power Control Appliances* (supra), the Supreme Court noted that acquiescence was one of the defences available in a suit for infringement of trademark. It, inter alia, explained the scope of acquiescence as under:-

"Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name etc. It implies positive acts; not merely silence or inaction such as is involved in laches."

79. The Supreme Court also referred to a following passage from the decision in the case of **Electrolux Ld. v. Electrix Ld.: (1954) 71 RPC 23:-**

"Upon this matter, a great deal of learning has been referred to, and we have also had our attention drawn to a number of cases. The latter include the well-known statement in *Willmott v. Barber* by Fry, J. (as he then was) at p. 105. He said this: "It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights

unless he has acted in such a way as would 'make it fraudulent for him to set up those rights'. Let me pause here to say that I do not understand that, by the word 'fraudulent', the learned Judge was thereby indicating conduct which would amount to a common law tort of deceit. 'What, then, are the elements or requisites necessary to constitute fraud of that description?' In the first place 'the plaintiff must have made a mistake as to his legal rights'. Secondly, the plaintiff must 'have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief'. Thirdly, the defendant, the possessor of 'the legal right, must know of the existence of his own right which is inconsistent with 'the legal right, must know of the existence of his own right which is inconsistent with' the right claimed by the plaintiff. If he does not know of it he is in the same position 'as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge' of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know 'of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which' calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal 'right, must have encouraged the plaintiff in his expenditure of money or in the "other acts which he has done, either directly or by abstaining from asserting his legal right'. In reading that passage, it is perhaps necessary to note (because it makes it at first sight a little more difficult to follow) that the positions of plaintiff and defendant as they are usually met with are there transposed, and that one of the parties who is there spoken of as the plaintiff corresponds with the present case with the Defendants, and vice versa."

80. It is apparent from the above that in order to make good the defence of acquiescence, the

defendant must have acted bonafide and in an honest belief that it was not treading on anyone else's rights. Clearly, a person who knowingly usurps a trademark of another and carries on his trade with the intention of benefiting from the goodwill of another cannot be heard to take the defence of acquiescence.

81. In the case of **Hindustan Pencils Pvt. Ltd. v. M/s. India Stationery Products Co. and Ors.:** AIR 1990 Delhi 19, this Court held as under:-

"Even though there may be some doubt as to whether laches or acquiescence can deny the relief of a permanent injunction, judicial opinion has been consistent in holding that if the defendant acts fraudulently with the knowledge that he is violating the plaintiff's rights then in that case, even if there is an inordinate delay on the part of the plaintiff in taking action against the defendant, the relief of injunction is not denied. The defence of laches or inordinate delay is a defence in equity. In equity both the parties must come to the Court with clean hands. An equitable defence can be put up by a party who has acted fairly and honestly. A person who is guilty of violating the law or infringing or usurping somebody else's right cannot claim the continued misuse of the usurped right."

82. In **Kerly's Law of Trademarks and Trade Names Fifteenth Edition**, the authors state that the test of acquiescence is :

"..... whether in all the circumstances it would be unconscionable to allow the claimant to maintain his claim. It is, however, clear that the matters which fall to be considered include the factors identified in the old cases: whether the proprietor induced or encouraged the defendant's behaviour, or represented to him that he was

entitled so to act, the passage of time, reliance by and detriment to the defendant and so on.

Mere failure to sue, however, without some positive act of encouragement, is not in general enough to give a defence. A defendant who infringes knowing of the claimants mark can hardly claim if he is later sued upon it."

83. The plea of acquiescence must be considered in the context of the facts of each case. The relevant facts that, prima facie, emerge in this case are that BEL had been using the trademark Bhartia Cutler-Hammer and Bhartia CH Control. BEL has produced copies of its product catalogues and price lists for several years from 1995 to 2006. These indicate that BEL was using the trademarks Bhartia CH Control and Bhartia Cutler- Hammer. In the price lists of 1995 the words Cutler Hammer are reflected as a part of the then Corporate name of BEL. In the price lists for later years, the trademark Bhartia Cutler-Hammer is used independently as well as reflected as a name of a division of BEL. BEL has shown letters from various customers to indicate that its customers recognize the brand Bhartia Cutler Hammer as BEL"s brand. A bare perusal of these letters indicate that there is some variance as to how the name „Bhartia Cutler-Hammer“ has been used and understood by various customers. As an illustration, the letter dated 29.06.2005 sent by Steel Authority of India is addressed to M/s Bhartia Cutler Hammer. Another letter dated 20.07.2005 issued by Bharat Sanchar Nigam Limited is addressed to Bhartia Industries Limited but refers to the brand of the products as Bhartia Cutler Hammer. Yet, another letter dated 26.09.2005 sent by Power Grid Corporation of India Limited approves certain products (MCCB) under the brand name "BCH". A tender query dated

01.02.2006 by Ministry of Power - Under Management of NTPC Limited is addressed to Bhartia Cutler Hammer Limited. It appears from the material produced on record that BEL was using the name Cutler Hammer as a part of its corporate name till 1995 and, thereafter, had named one of its divisions as Bhartia Cutler-Hammer. It is for this reason that some of the letters are also addressed by BEL's Customers to M/s Bhartia Cutler-Hammer even after BEL had changed its name to Bhartia Industries Limited. Undisputedly, BEL was permitted to use the name of Cutler Hammer as a part of its corporate title under the Trading Name Agreement dated 19.02. 1979 whereunder BEL had acknowledged that it would acquire no right or title in the words "Cutler Hammer". In view of this express agreement, BEL cannot now claim acquiescence on the part of Eaton as a defence for use of the said name. The said Trading Name Agreement did not have a fixed term and therefore BEL could continue to use the name till such time as not objected to by Eaton; a permissive use cannot give rise to a defence of acquiescence. Insofar as the use of Bhartia Cutler-Hammer as a trademark is concerned, its use is minimal and in most places in the context of the corporate name or as a part of its trading name/trading style. It is important to note that BEL applied for registration of the trademark Bhartia Cutler-Hammer by application no. 1562940 dated 29.05.2007. This is much after Eaton had filed an opposition to the BEL's application for registration of the trademark Cutler/Hammer, which is stated to have been filed on 23.06.2004. In the circumstances, we find it difficult to accept that the plea of acquiescence is available to BEL.

84. Insofar as the trademark Bhartia CH Control is concerned, it is apparent that the said

trademark has been formed by using the trademark CH Control in conjunction with the BEL's House trademark. In this regard, it is relevant to mention that in the Licence and Technical Service Agreement dated 03.06.1977 as referred to hereinbefore expressly required BEL to use the trademark CH Control (Registration No. 205632) in conjunction with the house mark of BEL. Thus, the use of the mark Bhartia CH Control was in conformity with clause (c) of Article 7.3 of the Licence and Technical Service Agreement dated 03.06.1977.

85. It is also noteworthy that in terms of the "Licence & Technical Service Agreement" dated 03.06.1977, no royalty or charges was payable by BEL for such use. Although, BEL was obliged to discontinue such trademark on termination of the licence term, it did not do so. Prior to the expiry of the term of the „Licence & Technical Service Agreement“ dated 03.07.1977, the parties had negotiated other agreements but did not include any clause relating to the trademarks in those agreements as they, apparently, understood that the matter relating to trademarks would be governed by the earlier agreements. And, in this context, it is relevant to recount that the parties had agreed that the use of the trademarks at all times by BEL would inure to the benefit of Eaton. At the material time, BEL was also using the tradename Cutler-Hammer as a part of its title under the Trading Name Agreement of 1979. It continued to use the said name till 1995. It is also material to note that, admittedly, till 2000, BEL was licensed to manufacture and sell certain products. It is noteworthy that the Royalty reports in respect of the licence granted by Eaton to BEL were also addressed to Eaton and the addressee's name included the words Cutler-Hammer. The fact that the said products may be different from those

sold under the trademarks Bhartia CH Control or CH Control Black, may not be material in the context of the facts as noted hereinbefore; the parties were enjoying certain business relationship and BEL had confirmed that insofar as trademarks are concerned earlier agreements would govern their use. The correspondence produced by BEL indicates that at one time Eaton had also evinced interest in acquiring certain equity interest in BEL. In its pleadings, Eaton has affirmed that it believed that BEL would stop using their trademarks. Eaton was aware that BEL had applied for registration of the trademark CH Control Black in 1999 and yet had not filed any opposition. Eaton has explained this by stating that it missed the deadline for filing the opposition. Given the past history and association of BEL and Eaton, it is not difficult to understand why a precipitate action was not taken by Eaton.

86. Whilst it is apparent that there is delay on the part of Eaton to institute the present action, in the attendant circumstances as indicated above, it does not follow that Eaton had encouraged infringement of its trademarks. As explained in *Power Control Appliances (supra)* acquiescence implies positive acts; not merely silence or inaction such as is involved in laches.

87. It is now well settled that mere delay in an action in instituting a suit would not be fatal to it. In **Midas Hygiene Industries P. Ltd. v. Sudhir Bhatia & Ors.: 2004 (28) PTC 121 (SC)**, the Supreme Court held as under:-

"The law on the subject is well settled. In cases of infringement either of Trade Mark or of Copyright normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The

grant of injunction also becomes necessary if it prima facie appears that the adoption of the Mark was itself dishonest."

88. Further the Learned Single Judge found the conduct of BEL deceitful. BEL had applied for registration of various trademarks - and had also obtained the registration of CH Control Black - on a misrepresentation as to its user. As indicated hereinbefore, we find no reason to differ from that view.

89. In **Wander Limited & Anr. v. Antox** (supra), Wander Ltd. claimed to be the registered proprietor of the trademark 'Cal-De-Ce'. Wander had entered into an agreement dated 28.03.1986 with Antox India (P.) Ltd. (hereafter 'Antox'), wherein Antox had agreed to manufacture vitaminsed Calcium Gluconate Tablets under the said registered trademark Cal-De- Ce and sell the entire production to Wander. The said agreement was terminated by Wander by a notice dated 30.11.1988 and Wander entered into a separate manufacturing arrangement with another company (Alfred Berg & Co. (I) Pvt. Ltd.). Antox filed a suit and sought temporary injunction to restrain the manufacture of the products under the brand name Cal-De-Ce. Antox claimed that its agreement with Wander was in itself void as its object was forbidden by law. The Single Judge of the Madras High Court declined to pass an interlocutory injunction. Antox preferred an appeal before the Division Bench of the High Court, which was allowed. It is, in this context that the Supreme Court considered the question whether there was a prima facie case on which Antox could be held entitled to restrain Wander and Alfred Berg from manufacturing and marketing goods under the trade name Cal-De-Ce and whether on consideration of balance of

convenience and comparative hardship, a temporary injunction should have been issued. The Supreme Court reversed the decision of the Division Bench.

90. The Supreme Court noted that the Single Judge had returned the prima facie finding that Wander was manufacturing the drug in question under the trademark Cal-De-Ce at its factory in Bombay from August 1983 to June 1986, that is, prior to the agreement with Antox. In the circumstances, the Supreme Court held that Antox could not explain as to how a passing-off action could prevail over the aforesaid prima facie finding. It also noted that the drug controller's licence which was claimed by Antox to be the source of its rights to be the user of the trademark itself expressly stipulated that the goods to be manufactured would be goods under the registered Trademark of Wander Ltd.

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52.2 In case reported as, “**IA No.16580/2014 in CS (OS) No.2622/2014**”, titled as, “**Lalit Kumar Arya & Anr. V/s M/s Prabhat Zarda Factory International (Noida)**”, (DOD: 02.11.2015), the Hon’ble High Court of Delhi has been pleased to lay down as under:

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17. Reference may be had to the judgment of the Division Bench of this Court in **J.K.Jain vs. Ziff-Davies Inc** (supra) where the Division Bench noted the observations of the learned Single Judge which reads as follows:-

"We heard learned counsel for the parties at length and were also taken through the entire record. As noticed above by us, learned Single Judge, after considering the fact that the plaintiff/Respondent had granted a license in favour of the appellants

on 9.4.1994 and the term thereof expired on 31.3.1997, observed that the defendants/appellants had under the terms of the agreement recognised the respondent's proprietary right in the copy rights under the agreement. Therefore, as an ex-licensee, the appellants were estopped from challenging the ownership of the Respondent in the marks referred to in the agreement.' Whether the words "PC", "WEEK", "MAGAZINE", "COMPUTER", "SHOPPER", "USER", "INTERNET", are descriptive or general words, as an ex- licensee, appellants were estopped from claiming that the mark was descriptive since the appellants under the terms of the agreement were unable to challenge the proprietary rights of the respondents trade mark or trade name on any ground."

18. The views of the learned Single Judge were affirmed by the Division Bench. What the defendant now seeks to do it is to turn around and claim title to the trademarks which prima facie in the light of the licence agreement he cannot do.

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53. It is settled principle of law relating to trademark that there can only be one mark, one source and one proprietor. It cannot have two origins. Where, therefore, the plaintiff has proclaimed itself as a rival of defendant No.1 and as joint owner, it is impermissible in law. Even then, the joint proprietors must use the trademark jointly for the benefit of all. It cannot be used in rivalry and in competition with each other [(reference case reported as, **“(1994) 2 SCC 448”**, titled as, **“Power Control Appliances V/s Sumeet Machines Pvt. Ltd.”**, (DOD: 08.02.1994), decided by Hon’ble Supreme Court of India)].

54. In the end, it is noted that even if at this stage, the arguments of learned counsel for the plaintiff are taken on its face value that the Assignment Deeds of 1986 and 1996 have some defect, but can that be read against defendant No.1. The answer is **NO**, because defendant No.1 is a bonafide purchaser through e-auction in a statutory procedure.

54.1 In case of “**Janak Raj**” (supra), the Hon’ble Supreme Court has been pleased to lay down as under:

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14. In **Chitambar Shrinivasbhat v. Krishnappa** there was an ex parte decree which was found to have been fraudulently obtained by the first defendant against the plaintiff and in execution thereof certain lands belonging to the plaintiff had been sold by auction and purchased by the second defendant. The plaintiff sued to set aside the sale and to recover possession of the land. It was found that although the decree was obtained by fraud, the property was sold at a considerable undervalue and the purchaser had no knowledge of the fraud. It was held by the Bombay High Court that a purchaser for valuable consideration without notice of the fraud was not liable to have the sale in his favour set aside. It will thus be seen that even before 1908 the different High Courts were always disposed to uphold the auction purchase in favour of a stranger to the suit when he was no party to a fraud against the judgment-debtor and where the case did not clearly fall within the proviso to s. 316 of the Code of 1882.

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54.2 In case of “**S. Anand**” (supra), the Hon’ble Supreme Court has been pleased to lay down as under:

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20. There is no dispute that A-2 to A-6 (A-6 being the appellant herein), purchased the property in question by way of registered sale deed/s dated 18th December, 1998. The sale deeds clearly demonstrate that the sale was made for valuable consideration. There is not even an iota of evidence on record to show that the appellant had any role to play in the alleged fabrication of the Will dated 12th September, 1988. The earlier agreement dated 13th July, 1995 was with A-2 to A-5.

21. The FSL report, on which heavy reliance was placed by learned counsel appearing for respondent No.2-complainant as well as learned counsel appearing for the State, indicates that the comparison of the disputed signatures was made on the basis of a xerox copy of the allegedly forged Will. Thus, there exists a serious issue regarding the evidentiary value and persuasive worth of the said FSL report.

22. Be that as it may, the appellant, being a purchaser of the subject property for valuable consideration, cannot, in the facts of the present case, be considered to be the person who offered fraudulent inducement to respondent No.2-complainant or made him to deliver some property or part with valuable security so as to bring his acts within the purview of fraudulent inducement and cheating to gain property punishable under Section 420 IPC [corresponding Section 318(4) of the Bharatiya Nyaya Sanhita, 2023].

23. Admittedly, there is no privity of contract between the appellant and respondent No.2-complainant. Neither the FIR nor the impugned order discloses availability of any tangible material to substantiate the allegation that the

appellant had conspired in the preparation of the alleged forged Will, or that the registered sale deed dated 18th December, 1998 was executed by him with knowledge that the signatures on the Will were forged.

24. As a matter of fact, even if the allegation of the respondent No.2-complainant, that the Will was forged, is found to be substantiated, the purchasers of the property would be the persons aggrieved because in such circumstances, their title over the property in question would land in dispute, having being acquired from the vendor who used the so-called fabricated will to execute the registered sale deeds. The situation at hand is squarely covered by the judgment in the case of **Mohammed Ibrahim and Others v. State of Bihar and Another**, wherein this Court held as below: -

“20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

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55. From the above discussion, it is clearly evident that plaintiff has miserably failed in establishing a *prima facie* case in its favour.

**BALANCE OF CONVENIENCE:**

56. The learned counsel for the plaintiff has very vehemently argued that after defendant No.1 came into operation in the year 2025, it has started poaching the distributors of plaintiff, as the goods are being sold even on negative margins.

57. Per contra, learned counsel for defendant No.1 has argued as under.

57.1 That recorded assignment deeds in favour of the Defendant No. 1 in respect of Application No. 305567 were filed in the year 1975;

57.2 That defendant No. 1 is a public listed company having KALASH as its flagship brand;

57.3 Prior rights as several TM applications had been filed.

57.4 Prior Extensive use since at least 1974 by the Defendant No. 1 initiated much before the Plaintiff company came into existence in 2012 and started use in 2017; and,

57.5 Goodwill is evident from the annual reports filed from the year 1998-2025.

57.6 KALASH declared as well-known trademark of the Defendant No. 1 by judgment passed by Hon'ble High Court of Delhi.

58. I find substance in the submissions of learned counsel for the defendant No.1. In view of the above, I fail to observe any balance of convenience in favour of plaintiff.

**IRREPARABLE LOSS AND INJURY:**

59. The plaintiff has failed to establish any irreparable injury warranting the grant of an injunction. The plaintiff does not possess any registered or legally enforceable rights in the trademark **KALASH** and claims title solely through a purported Assignment Deed dated 01.01.2026, which is ex-facie appears to be void and incapable of conferring any rights. Any alleged injury is therefore self-created and cannot constitute a ground for equitable relief.

59.1 The learned counsel for defendant No.1 made a strong pitch that on the contrary, the balance of irreparable harm overwhelmingly lies in favour of Defendant No. 1. Restraining Defendant No. 1 from using the **KALASH** trademark would effectively prevent the lawful proprietor from carrying on business under a brand owned and used by it for decades, resulting in loss of goodwill, market recognition, customer association and proprietary rights built over several decades. Such injury is incapable of precise quantification and cannot be adequately compensated by damages.

60. In view of the above discussion, I do not find any merit in the application filed by plaintiff under Order XXXIX Rule 1 & 2 CPC; same accordingly stands dismissed.

61. It is hereby clarified that anything stated hereinabove shall not be construed as expression of opinion on the merits of the case.

62. Now, renotify the matter for arguments on pending applications/framing of issues/case management hearing on **09.10.2026**. Both the sides are at liberty to submit their proposed issues after exchanging the copies thereof.

63. This order be uploaded on the website of the Court forthwith.

63.1 At this stage, it has been pointed out that even if the copy of this order is uploaded on the website of Court just now, it will take atleast ten hours to reflect the same on the website. Accordingly, the learned counsels for the parties have made an oral request to provide them a digitally signed copy of this order on their E.Mail Ids/WhatsApp.

63.2 Heard. The aforesaid request is allowed. Let a digitally signed copy of this order be sent on the E.Mail Ids/WhatsApp of learned counsels for the parties.

**(Vinod Yadav)**  
**District Judge (Commercial Court)-02**  
**North-West/Rohini Courts/09.06.2026**