



IPAB Intellectual Property Appellate Board

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MP. NOS. 149, 151, 153, 155, 157, 159, 161, 163 & 196/2020

IN

ORA/89-96/2020/TM/CHN

TUESDAY, THIS THE 19TH DAY OF JANUARY, 2021

**HON'BLE SHRI JUSTICE MANMOHAN SINGH
HON'BLE MS.LAKSHMIDEVI SOMANATH
HON'BLE SHRI. MAKYAM VIJAY KUMAR**

**CHAIRMAN
TECHNICAL MEMBER (TRADEMARKS)
TECHNICAL MEMBER (TRADEMARKS)**

C. KRISHNIAH CHETTY & SONS PVT. LTD.

The Touchstone,
3-3/1, Main Guard Cross Road,
Bengaluru-560001

...APPLICANT/PETITIONER

(Represented by: **Mr. M.S. Kalra and Mr. Sivaraman Vaidyanathan**)

Versus

1. Deepali Co. Private Limited

35 Commercial Street,
Bengaluru-560001

..... RESPONDENT NO.1

2. THE REGISTRAR OF TRADE MARKS

TRADE MARKS REGISTRY,
Intellectual Property Rights Office Building
G.S.T. Road, Gunidy,
Chennai-600032

...RESPONDENT No.2

(Represented by: **Mr. Arun C. Mohan**)

ORDER

**HON'BLE SHRI JUSTICE MANMOHAN SINGH, CHAIRMAN
HON'BLE MS.LAKSHMIDEVI SOMANATH, TECHNICAL MEMBER (TRADEMARKS)
HON'BLE SHRI. MAKYAM VIJAY KUMAR, TECHNICAL MEMBER (TRADEMARKS)**

1. These batch of Rectification Application is filed under Section 47/57 of Trademark Act, 1999 seeking removal of the marks "C. Krishniah Chetty & Co" under Application No.3743497 in class 14, Application No.3743498 in class 35, For the mark "Chetty" under Application No.3743506 in class 35, Application No. 2936330 in class 42, Application No.3743507 in class 36, For the mark "Chetty & Co" under Application No.3743504 in class 42, "C. Krishniah Chetty & Co" under Application No.3743500 in class 42 and for the mark "Chetty" under Application No.3743505 in class 14 ("impugned Registrations") in favour of the Respondent No. 1.

2. Details of the impugned registrations are as follows:-

Sl.No	TM Application No.	Trademark	Class	Rectification Application No and M.P. NO.
1	2936330	 C H E T T Y	42	M.P.No.155 of 2020 in ORA No.92 of 2020/TM/CHN
2	3743497	 C. KRISHNIAH CHETTY & CO. 1869	14	M.P.No.149 of 2020 in ORA No.89 of 2020/TM/CHN
3	3743498		35	M.P.No.151 of 2020 in ORA No.90 of 2020/TM/CHN
4	3743500		42	M.P.No.161 of 2020 in ORA No.95 of 2020/TM/CHN
5	3743504		 CHETTY & CO. 1869	42
6	3743505	 CHETTY 1869	14	M.P.No.163 of 2020 in ORA No.96 of 2020/TM/CHN
7	3743506		35	M.P.No.153 of 2020 in ORA No.91 of 2020/TM/CHN
8	3743507		36	M.P.No.157 of 2020 in ORA No.93 of 2020/TM/CHN

3. Along with main Rectification Applications the Miscellaneous Petitions for Stay of operation of impugned Registrations of Respondent No.1 pending disposal for the main Rectification Applications have been filed. The Respondent No.1 also filed M.P.No.196/2020 for dismissal of Rectification Application on the ground that there is no proper authorization for petitioner company to file present Rectification Application.

4. In the main petition, two months' time is granted to the Respondent No. 1 to file the counter statement and on filing such Counter Statement the Rectification Applicant is given one month time to file its Response and both the parties are allowed to file the written synopsis by the next date of hearing i.e., on 1st June 2021.

5. The present Miscellaneous Petitions filed seeking stay of operation of Registration until the Rectification Application finally decided and Rejection of Rectification Applications by the Respondent No.1 are taken up. The prayer of stay is opposed by the Respondent No.1 and sought rejection of the Rectification Applications. Both parties made their submissions. The order was reserved on 05/01/2021.

6. By this order, we propose to decide the said prayers.

7. The 1st Respondent is also a private limited company which is wholly owned, managed and controlled by Sri. C. Ganesh Narayan and Smt. C. Valli Narayan. The aforesaid Sri. C. Ganesh Narayan and Smt. C. Valli Narayan are also shareholders and Director of the Applicant Company.

8. The Applicant submitted that the Applicant's trademark **C. KRISHNIAH CHETTY & SONS** is a well-known trademark within the meaning of the Trade Marks Act, 1999 as a result of its continuous and uninterrupted use in respect of business **in jewellery and allied and cognate goods and services** since the year **1869** i.e., for a period of 150+ (one hundred and fifty plus) years.

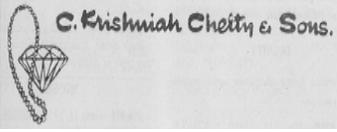
8.1 It has the unique distinction of still operating from the first store of **C. KRISHNIAH CHETTY & SONS**, opened in the year 1869, in Commercial Street, Bengaluru which is now a heritage building. Hence, the trademark **C. KRISHNIAH CHETTY & SONS** is a heritage brand having unmatched and unparalleled goodwill and reputation in relation to various goods and services connected with the jewellery business as a result of its continuous existence for 150+ (one hundred and fifty plus) years.

8.2 It has been able to create and establish the mark **C. KRISHNIAH CHETTY & SONS** as a well-known trademark by virtue of their continuous and sustained investment in creative designs, unmatched craftsmanship, unwavering quality, and the highest quality of customer service. The foregoing attributes combined with the Applicant's adherence to the highest standards of business ethics, engagement in corporate social responsibility campaigns such as, inter alia, sponsorship of government schools and sponsorship of various socio-cultural events and activities, media coverage, and various marketing initiatives has resulted in enormous and enviable goodwill and reputation in and to the trademark **C. KRISHNIAH CHETTY & SONS** and various trademarks comprising the year/number 1869.

As a result of the aforesaid, the trademark **C. KRISHNIAH CHETTY & SONS** has become an iconic brand whose heritage and goodwill have made the Applicant's products and services much sought after by consumers. Furthermore, the trademark **C. KRISHNIAH CHETTY & SONS** is also an aspirational brand amongst the younger generation of customers who value the heritage and long pedigree of the Applicant's business.

9. The Applicant's trademark registrations for the trademark **C. KRISHNIAH CHETTY & SONS** and other trademarks comprising the year/number 1869 are all in classes 14, 16, 21, 35, 36, 37, and 42 in respect of various goods and services all connected with the jewellery business. The Applicant relies on their following registrations for the purposes of these proceedings:

Sl No	TM No.	Mark	Class	Date of Registration
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Sl No	TM No.	Mark	Class	Date of Registration
1.	349872		14	31/05/1979
2.	482114		14	03/12/1987
3.	628338		21	18/05/1994
4.	628349	-ditto-	14	18/05/1994
5.	1973049		14	31/05/2010
6.	1973050	-ditto-	16	31/05/2010
7.	1973051	-ditto-	35	31/05/2010
8.	1973052	-ditto-	36	31/05/2010
9.	1973053	-ditto-	42	31/05/2010
10.	1973040		14	13/07/2010
11.	1973041	-ditto-	16	13/07/2010
12.	1973042	-ditto-	35	13/07/2010
13.	1973043	-ditto-	36	13/07/2010

Sl No	TM No.	Mark	Class	Date of Registration
14.	1973044	-ditto-	42	07/09/2017
15.	1992858	C. KRISHNIAH CHETTY & SONS	14	13/07/2010
16.	1992859	-ditto-	16	31/05/2010
17.	3629172	-ditto-	21	07/09/2017
18.	1992860	-ditto-	35	31/05/2010
19.	1992861	-ditto-	36	31/05/2010
20.	3629173	-ditto-	37	07/09/2017
21.	1992862	-ditto-	42	31/05/2010
22.	1973045		16	31/05/2010
23.	1973046	-ditto-	35	31/05/2010
24.	1973047	-ditto-	36	31/05/2010
25.	1973048	-ditto-	42	31/05/2010
26.	1973039		36	31/05/2010
27.	2145783		35	18/05/2011
28.	2188930	CKC GOLD STANDARD 1869 RATE PROTECTION PLAN	36	10/08/2011

9.1 The 1st Respondent has repeatedly admitted in their trademark applications and various replies, affidavits, and arguments filed before the Registrar of Trademarks that (i) all the aforesaid infringing marks are variations/adaptations/derivatives of the Applicant's well known trademark C. KRISHNIAH CHETTY & SONS and (ii) the 1st Respondent's alleged entitlement to register and/or use the impugned mark is wholly dependent on the validity of the alleged Family Settlement Agreement (FSA).

9.2 Applicant had filed oppositions to several of the aforesaid applications including the marks C. KRISHNIAH CHETTY CORP, CHETTY & CO, and CHETTY. However, due to oversight, the Applicant has missed filing oppositions to some of the aforesaid infringing trademarks including the impugned trademark and the same have come to be registered. The

Applicant submitted that the non-filing of the opposition was completely unintentional and purely due to oversight. Hence, the present petitions.

9.3. As a strategic and defensive measure against any use or abuse of the Applicant's trademarks, the Applicant has also applied for registrations of the aforesaid variations/adaptations/derivatives several of which have been registered and some of which have been opposed by the 1st Respondent herein. The impugned registration obtained by the 1st Respondent is ex facie illegal and fraudulent and the same is amply demonstrated by the active suppression and misrepresentation undertaken by the 1st Respondent in securing the registrations.

9.4. The 1st Respondent has claimed to be a part of the Applicant's group of companies even though the 1st Respondent is wholly owned and managed by Sri. C. Ganesh Narayan and Smt. C. Valli Narayan and neither the Applicant nor any of the Applicant's other shareholders or Directors have any involvement whatsoever in the 1st Respondent. The Hon'ble NCLT has also held that the 1st Respondent is not a group company of the Applicant.

9.5. The Applicant submitted that the 1st Respondent has relied on an alleged Family Settlement Agreement (FSA) without revealing the fact that the validity and enforceability of the FSA was sub-judice before various fora i.e., the Hon'ble City Civil Court, Bengaluru in A.A. No. 25006/2014 and the CLB/NCLT in C.P. No. 54/2014 re-numbered as TP 65/2016.

9.6. The Applicant submitted that 1st Respondent has suppressed the material fact that their shareholder and Director Smt. C. Valli Narayan had sought implementation of the FSA under the garb of a petition alleging oppression and mismanagement in the affairs of the Applicant company and that the same was sub-judice. The 1st Respondent has misrepresented the nature of the proceedings filed by Smt. C. Valli Narayan by claiming the same as being concerned with oppression and mismanagement of the Applicant's affairs whereas in reality the same was a petition seeking implementation of the alleged FSA.

9.7. The Applicant further submitted that 1st Respondent has suppressed the material fact that their shareholder and Director Sri. C. Ganesh Narayan had filed a petition under section 9 of the Arbitration and Conciliation Act, 1996 seeking interim reliefs in respect of the alleged FSA and that the same was sub-judice. The 1st Respondent has suppressed the material fact that the Applicant has opposed the registration of the Respondent's earlier trademark applications for the infringing marks. Instead the 1st Respondent has given details of only the trademarks which were missed by the Applicant through oversight without any mention of the oppositions filed by the Applicant.

9.8. The Applicant submitted that the 1st Respondent has actively suppressed the material fact that the impugned trademark was opposed by the Applicant in every class except the impugned class 42. The 1st Respondent has created a false impression that the Applicant has not objected to the Respondent's trademark applications or that the Applicant has consented to the Respondent's trademark application. The 1st Respondent has suppressed the material fact that the Applicant has objected to the infringing marks in each and every instance that the same was known to the Applicant.

9.9. The Applicant submitted that as a matter of fact, both the aforesaid proceedings i.e., A.A. 25006/2014 filed by Sri. C. Ganesh Narayan under section 9 of the Arbitration and Conciliation Act, 1996 seeking interim reliefs in respect of the alleged FSA and CP.54/2014 (T.P. 65/2016) filed by Smt. C. Valli Narayan seeking implementation of the alleged FSA have both been dismissed. Whilst the order in A.A. 25006/2014 has attained finality the Smt. C. Valli Narayan has appealed against the order of the Hon'ble NCLT before the Hon'ble NCLAT and the said appeal is presently pending.

9.10. The Applicant submitted that the Hon'ble National Company Law Tribunal (NCLT) had even passed an interim order in I.A. 54/2018 with a specific finding it was the 1st Respondent's shareholders and Directors i.e., Sri. C. Ganesh Narayan and Smt. C. Valli Narayan who were indulging in acts of oppression and mismanagement and restraining them from starting any competing business as that of the Applicant.

9.11. The Applicant submitted that the 1st Respondent's claims and contentions regarding the Family Settlement Agreement have been rejected by the Hon'ble City Civil Court, Bengaluru as well as the Hon'ble NCLT and the Applicant' asserts that the same is non-binding and invalid in the eyes of law.

9.12. The Applicant submitted that the 1st Respondent's deliberate suppression of the aforesaid orders and other misrepresentations before the 2nd Respondent conclusively demonstrates that the impugned trademark registration is the result of the 1st Respondent's so very fraudulent and deceptive tactics of suppression and misrepresentation before the 2nd Respondent. The impugned trademark registration would have never been granted if the 1st Respondent had placed the true facts before the 2nd Respondent.

9.13. The Applicant submitted that the use and registration of the earlier well-known trademark C. KRISHNIAH CHETTY & SONS and other trademarks comprising the year/number 1869 by the Applicant is such that the use of any identical and/or deceptively similar mark in relation to any identical and/or allied and cognate products or services, whether used as a trading name or trademark/service mark/house mark or a domain name or e-mail address or any part of the foregoing, will inevitably cause confusion and deception in the minds of the trade and public as to the source of origin of the goods and services.

10. The Respondent No.1 appeared and filed a common counter for all the above Stay Petitions. The Respondent No.1 submitted that the Petitioner has surreptitiously suppressed that the signatory of Respondent No.1 is a director of the Petitioner Company who is also holding 50% of shareholding along with his mother, Mrs C. Valli Narayan in the Petitioner Company. It is submitted that the signatory of the Petitioner Company is not authorised by the signatory of Respondent No.1 to institute the present proceedings nor has these proceedings been done with the knowledge of the Board of Directors or Shareholders of the Petitioner. It is submitted that the Petitions are false, frivolous, vexatious, wholly unfounded and constitute a gross abuse of the process of law. The Petitioner has not made out any just, valid or tenable grounds warranting the present Petitions. The documents relied

upon in support of the Petitions do not in any manner substantiate the allegations contained in the Petitions and in any event the same are also denied. Except for the averments specifically admitted herein, the averments contained in the Petitions are denied as false and the Petitioner is put to strict proof of the same. No part of the Petitions should be deemed to have been admitted merely for the want of a specific traversal. Further, due to paucity of time these Respondents are only filing preliminary objections to the Petitions and reserve the liberty to file additional objections and furnish additional documents.

10.1. The signatories of the Petitioner Company as well as the signatories of the Respondent No.1 Company are family members who are part of the C. Krishniah Chetty Group and family. The Petitioner is a company engaged in the business of gems and jewellery. It was incorporated in 1979 by C. V. Hayagriv and late C. V. Narayan, father of Ganesh Narayan, signatory of the Respondent No.1 herein. Presently, 50% shareholding of the Petitioner company is held by C. Vinod Hayagriv and his family (comprising of his parents, C.V Hayagriv Major HUF, C.V Hayagriv Minor HUF, C. Vinod Hayagriv HUF, his wife and their two sons), and the remaining 50% is held by the signatories of the Respondent No.1 Company Ganesh Narayan and his mother C. Valli Narayan.

10.2. Respondent No.1 is a company engaged in the business of gems and jewellery, and was incorporated in 1982 by C. Vinod Hayagriv, C. Visala Hayagriv and C. Valli Narayan. Initially both branches of the family (C. Vinod Hayagriv's family and Ganesh Narayan's family held shareholding in Respondent No.1. Subsequently the entire shareholding held by C. Vinod Hayagriv and his mother, C. Visala Hayagriv in Respondent No.1 was transferred to C. Ganesh Narayan at fair market value. C. Ganesh Narayan and his mother C. Valli Narayan are the directors and shareholders of Respondent No.1. Respondent No.1 recently underwent a name change; it is presently known as "C Krishniah Chetty & Co Pvt. Ltd."

10.3. The Respondent No.1 and the Petitioner carried on their respective businesses from the same premises at No. 35, Commercial Street Bangalore- 560 001 since their inception. The Petitioner carries on its business from The Touchstone A Block at No. 3, Main Guard Cross Road, Bangalore -560001 owned by C. V. Hayagriv Major (HUF) since 2008, and Respondent No.1 carries on its business from The Touchstone B Block at No. 2, Main Guard Cross Road, Bangalore - 560001 owned by C. Ganesh Narayan (HUF) since 2004-05 which is about 4 to 5 years before the Petitioner. The registered office of both companies is No.35, Commercial Street, Bangalore – 560001.

10.4. The Respondent No.1 submits that the in the year 1869, C. Krishniah Chetty, (the great-great-grandfather of C Vinod Hayagriv, signatory of the Petitioner Company and C Ganesh Narayan, signatory of the Respondent No.1), commenced the jewellery business. The business was carried on by his son C. Audinarayan Chetty and grandson C. Venkatachalapathy Chetty until their demise in 1955 and 1956 respectively. After the demise of their father, in and around 1955-1956, C. Venkatachalapathy Chetty, the late C. V. Narayan (father of C Ganesh Narayan) and C.

V. Hayagriv joined the family business and carried on the same as a partnership firm with equal share in profits. In 1979, C. V. Narayan and C. V. Hayagriv incorporated C. Krishniah Chetty & Sons Private Limited with its registered office at 35, Commercial Street, Bangalore. Until the demise of C. V. Narayan in 1998, his family comprising of his wife C. Valli Narayan and son C. Ganesh Narayan and C. V. Hayagriv's family (comprising of his son C Vinod Hayagriv, wife Visala Hayagriv and daughter in law Triveni Vinod) held 50% equity each in all C K C entities such as C. Krishniah Chetty & Sons Private Limited, C. Krishniah Chetty Jewellers Private Limited, C. Krishniah Chetty & Sons Partnership Firm. C. V. Hayagriv's branch of the family incorporated C. Krishniah Chetty & Sons Manufacturers Private Limited in and around 2010 which C. V. Hayagriv's branch held 80% shares and C. V. Narayan's family (represented by his wife and son, C.Ganesh Narayan and C.Valli Narayan) held the remaining 20% shares. C. Valli Narayan's shareholding in C. Krishniah Chetty Jewellers Pvt. Ltd., was also reduced to 20% when she and her family were coerced to gift shares to C.V. Hayagriv under duress when she had third stage cancer in 2009-2010. C. V Hayagriv's family indulged in various acts of oppression and mismanagement including diversion of business from C. Krishniah Chetty & Sons Private Limited to C. Krishniah Chetty Jewellers Private Limited on account of which there was discord in the family. A Family Settlement Agreement ('FSA') was entered into between both branches of the family on 09.01.2014 for amicable division of the business of the Petitioner and the Petitioner, all CKC entities and all shareholders of both the branches of the family, Petitioner, Respondent No.1, and C. Krishniah Chetty Jewellers Pvt Ltd were signatories to the same. As per the terms of this FSA, the Respondent, C. Ganesh Narayan and C. Valli Narayan were entitled to continue, commence further grow their own jewellery business and it was also agreed therein that the Respondent No.1 would be entitled to adopt and use the Respondent No.1's Marks.

10.5. The Respondent No.1 submits that as C. V. Hayagriv and his family failed to honour the FSA and acted upon it selectively to further their own interests and aggrieved by the various acts of oppression and mismanagement by C. V. Hayagriv and his family, C Valli Narayan filed a company petition on 16.09.2014 before the erstwhile CLB, Chennai inter alia seeking proportional representation on the board, maintenance of status quo until the FSA is honoured and to restrain Hayagriv and his family members from diverting the business of the C. Krishniah Chetty and Sons Pvt. Ltd., in CP 54/2014. The matter was subsequently transferred to NCLT Bangalore as TP 65/2016 after it was constituted. The deliberate breach of the FSA has led to various disputes, including the present proceedings, in an attempt by C. V. Hayagriv and his family to escape from the obligations contained therein.

10.6. The Respondent No.1 submits that on 05.03.2018 C. V. Hayagriv and family filed I.A.No.54/2018 in C.P.54/2014 (TP65/2016) inter alia seeking to restrain C Ganesh Narayan and C Valli Narayan herein, from carrying on competing businesses, using B Block of The Touchstone property for setting up of any further business. On 27.04.2018 I.A.No.54/2018 was allowed and merged with the main C.P.No.54/2018. On 20.11.2018 C. V. Hayagriv and family also filed C.P.610/2018 reiterating the same prayers as in I.A.No.54/2018 in CP54/2014 (TP65/2016). On 24.01.2019 C.P.No.54/2014 was dismissed without any observations on the interim relief granted to C. V. Hayagriv and others in I.A.No.54/2018. Thus, with the dismissal of C.P.No.54/2014(TP65/2016), the injunction against, C. Valli Narayan, and C. Ganesh Narayan,

to commence any competing business/use the B Block of the Touchstone property for any businesses lapsed and was inoperative from that date. In and around January 2019, AA 25006/14 filed by C Ganesh Narayan, seeking certain interim reliefs pending institution of arbitration to resolve the disputes governed by the arbitration clause in the FSA, was dismissed due to non-filing of the certified copy of the Family Settlement Agreement. On 05.02.2019 Appeal No. 33/2019 was filed by C. V. Hayagriv and his family in the NCLAT challenging the order of the NCLT Bengaluru dated 24.01.2019 on the limited aspect that the relief granted to them under I.A.54/2018 was no longer operative. Appeal No. 65/2019 was filed by C. Valli Narayan challenging the order of the NCLT Bengaluru dated 24.01.2019. In the objections filed by C. V. Hayagriv and family and the sur-rejoinder to the Appeal filed by them, the contents of CP 610/2018 and I.A.54/2018, are reiterated. On 08.02.2019 C.P. 610/2018 was withdrawn by C.V Hayagriv and others in NCLT, Bengaluru with liberty to file the petition afresh. On 24.02.2019 Appeal No.33/2019 was permitted to be withdrawn by the NCLAT without liberty to approach the NCLAT again to challenge the order dated 24.01.2019. The NCLAT also made an observation that the said appeal was frivolous. Thereafter, Appeal 65/2019 filed by C Valli Narayan, was reserved for final hearing which has commenced on 04.11.2020 before the NCLAT.

10.7. The Respondent No.1 submits that the on 30.12.2019, C. Vinod Hayagriv and his family filed C.P. No. 4/2020 before NCLT Bengaluru reiterating the same prayers in C.P. 610/2018 and interim prayers in I.A.No.54/2018 in C.P.54/2014(TP65/2016). I.A.Nos 5-7 were filed therein seeking the same interim reliefs as the final prayer, i.e. to restrain Respondent No.1, C. Ganesh Narayan and C. Valli Narayan herein, from carrying on competing businesses and using B Block of The Touchstone property for setting up of any further businesses. The IA's were heard and reserved for orders on 07.01.2020. On 21.09.2020, IA 368/20 in CP 4/2020 was filed seeking similar injunctive reliefs as in IA 5-7 was taken up for hearing. No orders were passed and the same was adjourned to 06.10.2020. On 06.10.2020, the case was not listed and has not been listed since, before the NCLT, Bengaluru.

10.8. The Respondent No.1 submits that it is only because the persons in control and management of the Petitioner, that is C. Vinod Hayagriv and his family failed to obtain any interim orders before the NCLT to restrain Respondent No.1 and its directors/shareholders C. Ganesh Narayan and C. Valli Narayan, from setting up the same/similar business as the Petitioner, the said persons have resorted to institute the present proceedings through the Petitioner on 14.09.2020 seeking rectification.

10.9. The Respondent No.1 submits that it should be noted that under the Family Settlement Agreement, Respondent No.1 could continue and grow its own business of gems and jewellery and Respondent No.1's Marks were applied for and registered pursuant to the Family Settlement Agreement. The continual existence and validity of the FSA is not in dispute.

10.10. The Respondent No.1 submits that it should also be noted that the Petitioner has filed a suit before the Commercial Court, Bangalore in COS 306/2020 on identical grounds, seeking to restrain Respondent No.1 from using its marks including the Impugned Mark in any manner, on 23.10.2020. No interim orders have been granted by the Commercial Court till date to the Petitioner. The suit in COS 306/2020 (without Annexures) along with the IAS filed therein, filed

by the Petitioner before the Commercial Court, Bangalore on 23.10.2020.

10.11. The Respondent No.1 submits that the it is submitted that the malafide intention of the Applicant/Petitioner is evident from the fact that the Petitioner has resorted to use an alleged Board resolution dated 05.09.2014 that is a subject matter of dispute that was pending before the City Civil Court in AA 25006/2014. Nevertheless, the said Board Resolution explicitly states that it issued in 2014 only for the purpose of defending the “litigations filed in various courts by Sri, C. Ganesh Narayan”. It is evident that the said Board resolution does not anywhere authorise C. Vinod Hayagriv to initiate any further proceedings on behalf of the company. It is also pertinent to note that the Hon’ble National Company Law Appellate Tribunal has vide order dated 19.12.2019 barred the Petitioner from conducting any Board Meeting or pass any Board resolutions which is effective till date. The Petitioner, knowing fully well about the said order, in order to circumvent the same has used the alleged Board Resolution dated 05.09.2014 to initiate the present proceedings. The Respondent’s signatory being a director and 50% shareholder in the Petitioner, explicitly affirms on affidavit that the present proceedings has not been ratified by the Petitioner’s Board and done without the consent of all directors. The locus of the Petitioner to even maintain these proceedings is severely in doubt.

10.12. The Respondent No.1 submits that the it is submitted that the Petitioner has alleged that the Respondent No.1 Company cannot be permitted to use the mark C. KRISHNIAH CHETTY & SONS and its variations despite admittedly being a part of CKC group. Whereas, the Petitioner’s other group entities entity viz. C. Krishniah Chetty Jewellers Pvt. Ltd. & C. Krishniah Chetty & Sons Manufacturers Private Limited' have applied for and obtained registration of variations of the mark C. KRISHNIAH CHETTY & SONS. Therefore, the Petitioner is estopped from claiming acts of infringement by the Respondent No.1 from using the impugned trademarks, which they are entitled to use as per the terms of the FSA. The list of such registrations is annexed herewith as Document No.R8. The Petitioner is only a group entity, and it cannot challenge the rights of another group entity. It is rather apparent from these proceedings, that the family feud has found a perverse expression in these present proceedings, and the Petitioner’s signatory despite being in a fiduciary role, has abused the Petitioner company for his self-serving ends.

10.13. The Respondent No.1 submits that the Respondent No.1 is entitled to use their own name or the family name in business. Section 35 of the Trade Marks Act, 1999, permits anyone to do his business in his own name or that of his predecessors in business. C. Ganesh Narayan who owns Respondent No.1 with his mother, has been carrying on the family business of gems and jewellery for the last 22 years with his cousin C. Vinod Hayagriv, and other members of their family. C. Krishniah Chetty is the great great grandfather of C. Ganesh Narayan and the founder of the business of the Petitioner. Thus, Respondent No.1, owned by C. Ganesh Narayan and his mother, is entitled to do business in the name C Krishniah Chetty. Krishna is also the name of the son of C. Ganesh Narayan, named after his great great great grandfather C. Krishniah Chetty. Moreover, the name ‘Chetty’ is the name of a community and a common suffix that is used by several members of the family and anyone from the same community, over which no one can claim exclusivity.

10.14. The Respondent No.1 submits that the Validity of Family Settlement Agreement cannot be challenged herein and admittedly, the Respondent No.1 has been permitted to use variants of the mark C.Krishniah Chetty & Sons vide the Family Settlement Agreement dated 09.01.2014. The Petitioner, despite being a signatory to the said FSA and having acquiesced to the use of the impugned marks by the Respondent No.1 cannot now challenge the validity of FSA. The Petitioner has deliberately failed to produce the FSA with the intention of suppressing this material document, to mislead this Hon'ble Court and portray to this court that the FSA was a mere proposal and not a legally binding document. It is also pertinent to note that existence of the FSA has been unequivocally admitted by the Petitioner herein in the proceedings COS 306/2020 pending before the City Civil Court, Bangalore.

10.15. The Respondent No.1 submits that the FSA has been given effect to; it is valid, binding and sacrosanct and the FSA has been given effect to by all parties. The Petitioner having acted upon it to further its own interests, cannot now prohibit the Respondent from exercising their rights under the same. The whereabouts of the FSA came to be recently known to these Respondents and they applied for a certified copy was obtained on following due process of law, from the NCLT, Chennai. This document was always relied upon by the Respondent in support of its case since the inception of the dispute between the parties. The provisions of the FSA, the rights thereunder, are also the subject matter of C.A.(AT) 65/2019 as stated supra. A table containing the terms of the FSA which have been acted upon by the Petitioner and documents evidencing the same are produced herewith as Document No.R10 (colly).

10.16. The Respondent No.1 submits that the FSA does not contain any non-compete clause and the FSA does not contain any non-compete clause restraining the Respondent from engaging in same/similar businesses. As per Clause 3(d) the parties to the FSA shall be shall be free to carry on any business and in any form whatsoever.

10.17. The Respondent No.1 submits that the Proceedings barred for lack of authorization and the shocking conduct of the directors namely C. Vinod Hayagriv, C. V. Hayagriv, C. Visala Hayagriv, C. Triveni Vinod, Chaitanya V. Cotha and Shreyas V. Cotha, presently controlling the board and management of the Petitioner entity in a grossly self-serving manner is brought to the attention of this Hon'ble Court. Admittedly, C. Ganesh Narayan and C Valli Narayan, the shareholders of Respondent No.1, are also directors and 50% shareholders in the Petitioner Company. In spite of the same, the present proceedings have been instituted without their knowledge, involvement and consent. Institution of such proceedings without any resolution and proceedings, would demonstrate the shockingly malicious nature of the present proceedings. It is also placed on record that the National Company Law Appellate Tribunal has vide order dated 19.12.2019 - barred the Petitioner from conducting any Board Meetings or pass any Board resolutions which is effective till date. In such scenario, no proceedings could have been instituted without the knowledge, leave alone consent of the remaining directors and 50% shareholders, C. Ganesh Narayan and C. Valli Narayan. Even a director cannot sue on behalf of a company, without the authorization of the board. This shocking usurpation of powers, not only reveals the sordid nature of management of the Petitioner, but is also perjurious. The abusive nature of the

present proceedings is confirmed on this ground itself. It is also an established principle of law that injunctions cannot be granted to one co-sharer against the other co-sharer. The Order of the NCLAT dated 19.12.2019 is produced herewith as Document No.R11.

11. THE APPLICANT/PETITIONER FILED ITS REJOINDER WHICH IS AS FOLLOWS:

11.1. Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan are shareholders and Directors of the Applicant is categorically stated in paragraphs 11 and 12 of the Statement of Case and Paragraph 11 of the Affidavit in support of the Miscellaneous Petition. The institution of the present proceedings is within the knowledge of all the shareholders and Directors of the Applicant since the Respondent No. 1's Directors are also shareholders and Directors of the Applicant. The Applicant submits that the present proceedings are aimed at defending and preserving the Applicant's established proprietary rights in the earlier well-known trademark C. KRISHNIAH CHETTY & SONS. Furthermore, the registration of the impugned trademark amounts to an assault on the exclusivity and integrity of the Applicant's earlier well-known trademark C. KRISHNIAH CHETTY & SONS and the Applicant is fully entitled to defend the same. I reiterate that I am duly authorised to initiate the present proceedings on the basis of the Board Resolution produced with the rectification application. It is significant to note that I have executed the authorisation, user affidavits, and other documents filed in support of defending the Applicant's earlier well-known trademark C. KRISHNIAH CHETTY & SONS through trademark registrations under the Act and the same has never been questioned by anyone including the Respondent herein till date. It is also significant to note that I have also represented the Applicant who was a party in the proceedings before the NCLT filed by Mrs. C. Valli Narayan. The Applicant vehemently denies that the Petitions are false, frivolous, vexatious, or wholly unfounded or constitute any gross abuse of the process of law as alleged or at all. It is denied that the Applicant has not made out any just, valid, or tenable grounds warranting the present applications as alleged or at all. It is denied that the documents relied upon in support of the Petitions do not in any manner substantiate the allegations in the Petitions as alleged or at all. I repudiate the Respondent's denial of the documents produced in support of the Main Application and Miscellaneous Petition. I state that the Respondent's fraud is apparent in the fact that they are denying documents filed by the Applicant even though all the documents are well within the knowledge and possession of the Respondent. Indeed, the Respondent has denied documents pertaining to their own impugned registrations which have been produced with the Petitions. The denial of the Applicant's documents is fraudulent on the very face of the record and demonstrates the utter bad faith and dishonesty of the Respondent. The bald and general denials put forth by the Respondent are of no value or assistance to the Respondent and only demonstrates their intention to suppress and misrepresent material facts. The Applicant vehemently objects to any liberty being granted to the Respondent to file additional objections or furnish additional documents since the Respondent has had more than sufficient opportunity to file their objections. The Applicant strongly objects to such dilatory tactics which are solely intended to cause irreparable loss and damage to the Applicant.

11.2. The Applicant submitted that, the 1st, 2nd and 4th sentences of paragraph 4 in reply of

the Respondent No.1 are admitted by the Applicant to the extent that the Respondent's signatories are shareholders and Directors of the C. Krishniah Chetty Group of Jewellers (CKC Group). However, it is categorically denied that the Respondent No. 1 is a part of the CKC Group as on date since the Respondent No.1 is wholly owned by only one branch of the CKC family whereas all entities in the CKC GROUP have equal or differential shareholdings to the tune of at least 20% (twenty percent) by both branches of the CKC Family. The statement in the 3rd sentence is deliberately incomplete and amounts to brazen misrepresentation of fact and judicial findings. The Applicant was incorporated by 3 (three) promoters namely C.V. Hayagriv, Late C.V. Narayan and C. Vinod Hayagriv and the same is evident from the Applicant's Memorandum and Articles of Association produced with the typed set of documents and has been judicially noticed in the final judgment dated 24/01/2019 of the Hon'ble NCLT produced as Document A-11 with the Main Application. The Applicant admits the contents of Document No. R-1 produced by the Respondent. It is significant to note that the very same Document No. R-1 clearly states the names of the 6 entities bearing the name and forming part of the C. Krishniah Chetty Group of Jewellers to the exclusion of the Respondent. The Board of the Applicant comprises of 6 members of the Hayagriv Group and 2 members of the Narayan Group.

11.3. The Applicant submitted that the averments regarding the alleged business being carried out by the Respondent are wholly irrelevant to the present proceedings since admittedly the Respondent was not trading as C. Krishniah Chetty & Co or using any of the other infringing marks prior to uploading photographs on the website of the lighting designers in the year 2020 and changing their trading name to C. Krishniah Chetty & Co Private Limited on 16/10/2020. It is vehemently denied that the Respondent was ever engaged in any business of gems and jewellery in competition or in conflict as alleged or at all. The Respondent has never carried on any business of gems or jewellery and any claim to the contrary is false to the knowledge of the Respondent. The Respondent has never undertaken any same or competing business as that of the Applicant herein. The details regarding the incorporation, promoters, past and present shareholding, directors and management of the Respondent are all admitted. The Applicant submits that since the Respondent is admittedly wholly owned by the Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan since 1998-1999, the Respondent as of today does not form a part of the C. Krishniah Chetty Group of Jewellers since all the entities in the CKC Group have the ownership, involvement and participation of all the Directors and shareholders of the Applicant and not only Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan. The change of name purportedly carried out by the Respondent, after the institution of the present proceedings, is illegal, fraudulent and liable to be rectified in accordance with the provisions of the Companies Act, 2013. The Applicant is taking steps to initiate the appropriate proceedings for rectification of this purported change of name. It is significant to note that the Respondent has not filed any documents to show their entitlement to change their name and yet the same appears to have been allowed and affected for reasons best known to the Respondent and the Registrar of Companies. A print out of the Form No. MGT-14 filed by the Respondent and supported only by the Respondent's own notice of Extraordinary General Meeting (EGM) and Memorandum and Articles of Association is produced herewith as Annexure AR-1. The Applicant does not admit the validity or lawfulness of Document Nos. R-2, R-3, and R-4 insofar as they contain the infringing trading/corporate name

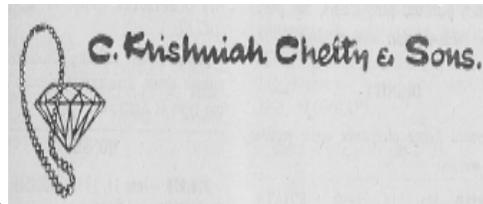
C. Krishniah Chetty & Co.

11.4. The Applicant submitted that any alleged business having allegedly been carried on by the Respondent from any premises was admittedly not under the name C. Krishniah Chetty & Co or any other infringing marks and as such the reference to the business being carried on by the Respondent trading as Deepali Co Private Limited are wholly irrelevant to the present proceedings. I once again vehemently deny that the Respondent carries on any business whatsoever. It is only the Applicant and other group companies authorised by the Directors of the Applicant including Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan who are engaged in the jewellery business and the Respondent has only ever carried out activities which never conflicted with the Applicant's trademarks or the Applicant's business under their trademarks until the Respondent's shareholders and Directors and other acting in concert with them decided to use the Respondent as their vehicle of fraud since they have 100% ownership of the Respondent. The Respondent's claim that the Respondent has been carrying on competing and conflicting business is not supported by a single document or other piece of evidence. The very fact that the Respondent has not produced a single invoice or shown any sales figures or marketing expenses in support of their claims of doing business by and of itself, conclusively establishes the falsity of the Respondent's claims of doing competing and conflicting business which in any case they are barred from doing under Section 166 of The Companies Act of 2013.

11.5. The Applicant submitted that it had already applied for the rectification of the unauthorized, illegal, invalid, and fraudulent registrations at serial nos. 1 to 8 in the table provided by the Respondent No1. and the Applicant seeks leave and liberty and reserves the right to seek rectification of the illegal, invalid, and fraudulent registrations at serial nos. 9 to 11. The Applicant submits that each and every trademark registration obtained by the Respondent is illegal, invalid, and tainted with dishonesty, fraud, suppression and misrepresentation as is evident from the Respondent replies to the examination report of these applications, the copies of which have been produced with the typed set of document. The dates of the Respondent's illegal trademark registrations are matters of record. The Respondent has secured these illegal registrations only in the years 2018 and 2019, and put to use only in 2020 and not 2015 as falsely claimed and without any direct notice to the Applicant.

11.6. It is reiterated that the Applicant was incorporated by 3 (three) promoters namely C.V. Hayagriv, Late C.V. Narayan (father of C. Ganesh Narayan) and C. Vinod Hayagriv and the same is a matter of record and admitted fact. The Respondent's deliberate exclusion of the names of the promoters of the Applicant is misleading. The aforesaid partnership was first constituted on 01/04/1958 by C.V. Hayagriv and Late C.V. Aswathamma acting for herself and as the guardian of her minor son C.V. Narayan and the aforesaid first partners had admitted the minor C.V. Narayan to the benefits of the partnership. It was also recognised and agreed by the parties that the jewellery business was taken out of the family assets and divided into equal shares between C.V. Hayagriv and minor C.V. Narayan represented by his mother and guardian C.V. Aswathamma. A true copy of the Deed of Partnership dated 01/04/1958 is produced herewith as Annexure AR-2. The aforesaid Deed of Partnership was amended and re-constituted from time to time to include Mr. C. Vinod Hayagriv s/o C.V. Hayagriv and Trusts set up by C.V. Hayagriv and

C.V. Narayan for the benefit of their minor children namely Saritha Hayagriv, Rathi Hayagriv, Sharmila Narayan, Sanmathi Narayan and Ganesh Narayan (signatory of the Respondent herein). It is further significant to note that the very first trademark application for registration of the



trademark under trademark no. 349872 dated 31/05/1979 was filed in the name of the aforesaid partners namely C.V. Hayagriv, Late C.V. Narayan, C. Vinod Hayagriv, Sharmila Trust, Saritha Trust, Rathi Trust, Sanmathi Trust and Ganesh Trust in line with the Deed of Partnership of C. Krishniah Chetty & Sons dated 02/10/1978. A true copy of the Form TM-1 of trademark application no. 349872 is produced herewith as Annexure AR-3. A true copy of the Deed of Partnership dated 02/10/1978 is produced herewith as Annexure AR-4. Subsequently, by a Deed of Partnership dated 03/01/1980, signed and accepted by the father of Mr. C. Ganesh Naraya, signatory of the Respondent herein, the Applicant herein was included as a Partner of the firm C. Krishniah Chetty & Sons. A true copy of the Deed of Partnership dated 03/01/1980 is produced herewith as Annexure AR-5. Furthermore, the 2nd Board Meeting of the Applicant's Board of Directors held on 19/03/1980 recorded the proposal to dissolve the firm C. Krishniah Chetty & Sons wherein, inter alia, the Applicant and Late C.V. Narayan, father and husband of the Respondent's directors and shareholders respectively, were partners and it was further unanimously resolved that the business and assets of the firm would be taken over by the Applicant company only. A true copy of the minutes of the Applicant's 2nd Board Meeting dated 19/03/1980 is produced herewith as Annexure AR-6. Subsequently and by virtue of Deed of Dissolution dated 28/04/1980, the aforesaid partnership firm of C. Krishniah Chetty & Sons was dissolved and taken over by the Applicant herein along with all its assets and liabilities which included the trademark C. Krishniah Chetty & Sons. A true copy of the Deed of Dissolution dated 28/04/1980 is produced herewith as Annexure AR-7. The Applicant highlights the following clauses in the Deed of Dissolution dated 28/04/1980:

- i.3. The assets and liabilities of the business including trademarks and patents etc., for the purpose of dissolution have been valued as per details to be found in Annexure "A" to this document.
- ii.4. It is agreed that the party of the Tenth Part namely C. Krishniah Chetty & Sons Pvt. Ltd., on dissolution will take over the entire business of the Partnership as a going concern with all its assets and liabilities as indicated in Annexure "A" and is authorised to run the said business.
- iii.6. The party of the Tenth Part is authorised to use the firm name M/s C. Krishniah Chetty & Sons or at its choice to carry on the said business in any other name.
- iv.8. The parties of the First to the Ninth Parts and the Party of the Eleventh part hereby agree that in respect of the dissolved partnership, they do not have any claim, right of any nature whatsoever except to the extent of being entitled to receive the amounts standing to the credit of their accounts as heretofore mentioned.

11.7. The Applicant submitted that, by virtue of the aforesaid dissolution and takeover of the erstwhile partnership firm, none of the former partners nor their descendants retained any right or title or permission to use any asset of the firm including the trademark C. Krishniah Chetty & Sons as their and the same was exclusively taken over by the Applicant herein by virtue of unanimous decision between the promoters of Applicant including father of Mr. C. Ganesh

Narayan, signatory of the Respondent herein. The Applicant is the sole and lawful successor in business to the erstwhile firm and such succession was made and done in the presence of and with the participation, consent, and signature of Late C.V. Narayan, the father and husband of the Respondent's shareholders and Directors respectively. In due course, with the consent and approval of Late C.V. Narayan, necessary changes were also effected to the trademark no. 349872 and the same came to be amended vide a request on Form TM-16 dated 30/09/1980 and the Applicant's name was entered as the sole proprietor thereof. The foregoing is evident from the copy of the Form TM- 1 of trademark no. 349872 produced herewith. Hence, the Applicant became the sole and absolute successor to the firm of C. Krishniah Chetty & Sons, and sole and absolute owner of all the assets including the trademark C. KRISHNIAH CHETY & SONS.

11.8. The Applicant submitted that, the incorporation of C. Krishniah Chetty Jewellers Private Limited was specifically authorised by the Applicant's Board of Directors including Late Sri. C.V. Narayan i.e., the father and husband of the Respondent's shareholders and Directors respectively. The incorporation of C. Krishniah Chetty & Sons Manufacturers Private Limited on 11/03/2010 was carried out in accordance with the resolutions unanimously passed at the 351st, 352nd and 353rd Board Meetings of the Applicant, copies of which have been produced with the typed set of documents, with the unanimous consent of all members of the Applicant's Board which included Mr. C. Ganesh Narayan herein. Furthermore, the allocation of shareholding was done in accordance with the resolutions unanimously passed at the 351st, 352nd and 353rd Board Meetings of the Applicant. The incorporation of the Applicant's group companies C. Krishniah Chetty Jewellers Private Limited in the year 1991 and C. Krishniah Chetty & Sons Manufacturers Private Limited in the year 2010 were carried out openly and with direct and effective notice to and participation and unanimous consent of Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan who are also Directors and shareholders in those entities whereas the Respondent, who is wholly owned by Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan, has secured trademark registration and changed their company name through fraud, misrepresentation, suppression, and concealment and without any notice or consent whatsoever to or from the Applicant. The Applicant claims that Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan coerced into transferring their shares in C. Krishniah Chetty Jewellers Private Limited already stands rejected by the NCLT and the same is evident from Annexure A-11 produced with the rectification application. The Respondent's allegations of oppression and mismanagement stand comprehensively rejected by the Hon'ble NCLT in C.P. 54 of 2014 vide final order dated 24/01/2019 which has categorically held that the petition filed by the Mrs. C. Valli Narayan was not related to any oppression or mismanagement but only to directly or indirectly to seek implementation of the alleged Family Settlement Agreement. The alleged Family Settlement Agreement referred to by the Respondent was never a concluded or binding agreement or arrangement and in fact the same was an instrument undisputedly placed in escrow subject to the fulfillment of certain terms and conditions which were never fulfilled by the Applicant's shareholders and Directors and as such the same never came into force or existence and nor is the same binding on the Applicant herein. The reference to the alleged Family Settlement Agreement at this stage is baseless, as it nothing but a dead non-binding document as held by the Hon'ble NCLT. The findings of the Hon'ble NCLT have neither been set aside nor stayed by any appellate forum till date, hence they stand as pronounced. Therefore, no rights in any manner can be traced back to the dead FSA as of today.

Furthermore, any alleged benefit to the Respondent under the alleged Family Settlement Agreement were to arise, accrue, and vest in the Respondent after the 'effective date' which event never occurred due to the invalidity of the alleged Family Settlement Agreement itself and due to the inaction of the parties thereto. Hence, even if the Respondent's averments regarding the alleged Family Settlement Agreement are to be taken at face value for the purpose of argument and without any admission, it is obvious that the Respondent is not acting in accordance with the terms of the document which they allege to be the very source of their alleged rights. The Respondent has never been entitled to commence any competing business much less right next door to the Applicant and that too using an identical and deceptively similar trademark as that of the Applicant. The Respondent's claims to the contrary are false to their own knowledge.

11.9. The Applicant submitted that the challenge to the findings of the Hon'ble NCLT, is pending before the NCLAT and hence this court to consider any arguments on validity of FSA would be barred by Res-Judicata. However, as a matter of abundant precaution it has been argued inter-se the shareholders before the Hon'ble NCLT and the Hon'ble NCLAT that the alleged FSA has never been acted upon since the very first step towards its implementation was for Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan to transfer their 20% shareholding in C. Krishniah Chetty Jewellers Private Limited and C. Krishniah Chetty & Sons Manufacturers Private Limited within a period of 15 (fifteen) days which was never done and as such the FSA remained and continues to remain a dead document which was never brought into existence and always remained in escrow. As contended by one set of shareholders that the alleged FSA has never been acted upon has also been categorically and repeatedly stated in paragraphs 19 and 23 of the final order and judgment of the Hon'ble NCLT dated 24/01/2019 produced as Annexure A-12 with the rectification application. The Applicant reiterates that in terms of the aforesaid order the Respondent's allegations of oppression and mismanagement are all false to their own knowledge and stand categorically rejected by the Hon'ble NCLT in paragraphs 9 and 25 of the aforesaid final order and judgment dated 24/01/2019. The Respondent has deliberately failed to state the material fact that the petition before the Hon'ble NCLT was filed under the garb of allegations of oppression and mismanagement whereas in reality it was a petition filed by Mrs. C. Valli Narayan for herself and as a proxy for Mr. C. Ganesh Narayan seeking implementation of the alleged Family Settlement Agreement and the same has been judicially noticed by the Hon'ble NCLT. It is submitted that there cannot be any breach of an invalid, non-binding, ineffective and dead alleged Agreement. The Applicant has neither committed any breach nor attempted to escape any obligations. On the contrary, the Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan have been held guilty of oppression and mismanagement and breach of fiduciary duty and seeking reliefs with unclean hands by the Hon'ble NCLT and the said finding have never been stayed or reversed in any manner.

11.10. The Applicant submitted that, regarding paragraphs 11 and 12 of the reply of the Respondent no.1, it is significant to note that the Respondent has admitted the findings of oppression and mismanagement against Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan by the Hon'ble NCLT in their order dated 27/04/2018 in I.A. 54/2018 in C.P. 54/2015. Furthermore, in paragraph 25 of its final order and judgment dated 24/01/2019 in CP 54/2018, the Hon'ble NCLT has also categorically held that Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan hold

fiduciary positions in the Applicant Company. The relevant paragraph of the final order of the Hon'ble NCLT is extracted below:

i.25. It is not in dispute that Petitioner (Mrs. C. Valli Narayan, Director and shareholder of the Respondent herein) is holding 20% shareholding of R10 (C. Krishniah Chetty Jewellers Private Limited) Company and she is also a Director of the Company. And her Son Respondent 9 (Mr. C. Ganesh Narayan, signatory of the Respondent herein) is also a Director/Joint Managing Director at the relevant point in time. They are holding fiduciary position as Director. The various allegations act of Oppression and Mismanagement made by the Petition are prima facie not substantiated except mere allegations. Since the beginning, only the Husband (Late C.V. Narayan) of the Petitioner is Director whereas 2nd (C.V. Hayagriv) and 3rd Respondents (C. Vinod Hayagriv) are Directors of the Company maintaining 2:1 ratios between the Petitioner and Respondent Groups. The shareholding of the Petitioner and that of Respondent was reduced 20% during 2009-10 in the R 10 (C. Krishniah Chetty Jewellers Private Limited) company and is well before filing of the instant company petition and the circumstances under which shares have been transferred to the Respondent group cannot be examined in the instant Company Petition.'

11.11. The Applicant submitted that, as such, there is a statutory bar u/s 166 of the Companies Act, 2013 on Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan starting any competing business or directly or indirectly undertake any act to the detriment of the Applicant including applying for trademark registration and changing their company name and as such there is no need for any specific order of injunction to render their actions unlawful and illegal. It is further significant to note that the Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan have given an oral undertaking dated 07/01/2020 before the Hon'ble NCLT whereby the Respondent specifically undertook that they would not start any competing or conflicting business in any name whatsoever or breach their fiduciary duties until disposal of I.A Nos. 5 to 7 In CP 04/BB/2020. Furthermore, the orders on the I.As and petitions filed before the Hon'ble NCLT by one set of shareholders have not been pronounced only because the Ld' Judicial Member had tested positive for Covid19 and has commenced sittings only on 01/12/2020.

11.12. The Applicant submitted that, regarding paragraph 13 of reply of the Respondent no.1, it is the admitted position is that Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan own 50% of the shareholding of the Applicant and are also members of the Applicant's Board of Directors. The Respondent's reference to 'persons in control of the management of the Petitioner' when they own 50% shareholding in the Applicant company and when Mr. C. Ganesh Narayan continues to proclaim himself as the Joint Managing Director of the Applicant is clearly and mutually exclusive. A print out of Mr. C. Ganesh Narayan's LinkedIN profile showing him to be the Joint Managing Director of the Applicant is produced herewith as Annexure AR-8. Furthermore, even the Hon'ble NCLT, Bengaluru has categorically held that the Hayagrivs always outnumbered the Narayans in the Board of directors and as such allegations of shareholding or management control are false to the knowledge of the Respondent. The Applicant has approached this Hon'ble Court in its corporate capacity to protect its own interests and the interests of all its shareholders including all individuals and groups including Mr. C. Gnaesh Narayan and Mrs. C. Valli Narayan. The present rectification application and petitions have nothing whatsoever to do with the proceedings before the Hon'ble NCLT or Hon'ble NCLAT. On the contrary, the present rectification applications and petitions has been necessitated by the Respondent's illegal use of the trademark and trading name C. Krishniah Chetty & Co on the front façade of their illegal and upcoming store as depicted in the photographs uploaded on the website of the lighting designers and also as their trade/company name with effect from

16/10/2020. Significantly, the deliberate illegality on the part of the Respondent is also made evident by the fact that they have also conspired with the owners of the domain name www.illumania.com and tampered with and doctored the said website so as to remove the photographs of the front façade of the Respondent's illegal store bearing the infringing trademark C. KRISHNIAH CHETTY & CO which were displayed therein. The Respondent and their signatory are clearly committing perjury by tampering with and doctoring websites and suppressing evidence of their infringement and falsely claiming that no such photographs existed. The Respondent have purposely conceded that one group of the shareholders had recently moved I.A. 368 of 2020 which came up for hearing before the Hon'ble NCLT on 21/09/2020, raising concerns about willful breach of undertaking submitted before the Tribunal where the photograph of light designer was produced and extensively relied upon. The Respondent immediately pursuant to hearing dated 21/09/2020, spoke to the website owner and got the photograph removed and hence in the present matter are relying upon a screenshot of 23/09/2020, which is two days after the hearing before the Hon'ble NCLT. It is pertinent to mention that the Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan were extensively questioned by the Hon'ble NCLT on how and why could they have violated the oral undertaking submitted before the Tribunal on 07/01/2020. Indeed, the fact of the Respondent has changed their company name was never disclosed to the Hon'ble NCLT nor the Hon'ble NCLAT for reasons best known to the Respondent and Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan. Mrs. C. Valli Narayan was heard for more than one and a half hours on 04/11/2020 by the Hon'ble NCLAT and there was not a whisper of the change of name being carried out by the Respondent with the active participation and consent of Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan. Hence, it is evident that the claims of the Respondent with reference to the interim applications and prayers before the Hon'ble NCLT are deliberately calculated to mislead, confuse and deceive this Hon'ble Court and it is the Respondent and Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan who are making a selective and different presentation of facts before different forums so as to conceal the illegal nature of their activities.

11.13. The alleged FSA was never brought into existence and the same was an escrow document which was stillborn and remained a dead document that was never brought into force or rendered binding on the parties. None of the parties acted on the alleged FSA nor sought for its implementation in accordance with law. The foregoing is a finding of fact that has been recorded in the final order and judgment of the Hon'ble NCLT dated 24/10/2019 at paragraphs 19 and 23.

11.14. The Applicant submitted that, it denies that there is any mala fide intention on the part of the Applicant. The Applicant submits that the present proceedings are aimed at defending and preserving the Applicant's established proprietary rights in the earlier well-known trademark C. KRISHNIAH CHETTY & SONS. Furthermore, the registration of the impugned trademark amounts to an assault on the exclusivity and integrity of the Applicant's earlier well-known trademark C. KRISHNIAH CHETTY & SONS and the Applicant is fully entitled to defend the same. I reiterate that I am duly authorised to initiate the present proceedings on the basis of the Board Resolution produced with the rectification application. It is significant to note that I have executed the authorisation, user affidavits, and other documents filed in support of defending the

Applicant's earlier well-known trademark C. KRISHNIAH CHETTY & SONS through trademark registrations under the Act and the same has never been questioned by anyone including the Respondent herein till date. It is also note that I have also represented the Applicant who was a party in the proceedings before the NCLT filed by Mrs. C. Valli Narayan. Furthermore, the Applicant's rights cannot be left to be diluted, eroded, infringed and passed off by the Applicant's own insiders and have to be defended by way of these and any other proceedings that are required. There is no need or intention to circumvent any order of the Hon'ble NCLAT as alleged or at all. The Applicant submits that the Respondent's contentions are proof of the Respondent's fraud and mala fide since the Respondent's signatory, being the very person who is behind the impugned fraudulent registrations and the infringing activities of the Respondent, is now contending that the Applicant needs his consent to initiate the present proceedings. There is absolutely no doubt whatsoever about the Applicant's locus to maintain these proceedings as alleged or at all.

11.15. The Applicant submitted that, regarding paragraph 17 of the reply of the Respondent No.1, the Applicant submits that the alleged Family Settlement Agreement (FSA) so vehemently relied upon by the Respondent has been set aside by the Hon'ble NCLT, Bengaluru to be a non-binding, non-enforceable document having no sanctity in law. Without prejudice to the above, the instrument allegedly called FSA and even the documents produced by the Respondent conspicuously exclude the Respondent from the list of entities of the CKC Group. Recital 7 of the alleged FSA specifically states: "7. The Parties note and acknowledge that the CKC Group consists of CKC, CKC Jewellers, CKC Manufacturers, CKC Firm, CKC Charitable Trust, and CKC Foundation."

11.16. The Applicant submitted that, the Respondent cannot both rely on and contradict the alleged Family Settlement Agreement. It is reiterated that the Respondent is not a CKC Group company. The Applicant has already set out the circumstances and authorisations under which the Applicant's Group Companies have secured registration with the consent and participation of the Applicant who is the exclusive proprietor of the well-known earlier trademark C. KRISHNIAH CHETTY & SONS. The Applicant is fully entitled to challenge the impugned registrations and the Respondent is not a group entity as alleged or at all. It does not lie in the mouth of the Respondent to speak of perversity or breach of fiduciary duties when the Respondent's Directors and Shareholders have been explicitly found to be engaging in oppressive conduct and restrained from starting any competing business by multiple speaking orders passed by NCLT in C.P. 54 of 2014, and whose breach of fiduciary duty and habit of approaching the Hon'ble Courts with unclean hands and untenable/unsubstantiated has been repeatedly reiterated by various forums including the Hon'ble City Civil Court(in Arbitration Application AA 25006/2014), Hon'ble NCLT (in Company Petition T.P. 65/2016), and the Registrar of Trade Marks (in trademark application no. 3743499 produced with the typed set of documents).

11.17. It is denied that Mr. Ganesh Narayan has been carrying on any family business with his cousin and other members of the family as alleged or at all. The Applicant reiterates that the family jewellery business was taken out of the family assets and divided into equal shares between C.V. Hayagriv and minor C.V. Narayan represented by his mother and guarding C.V.

Aswathamma as recorded in the Deed of Partnership dated 01/04/1958. Furthermore, the Applicant reiterates that the trademark C. Krishniah Chetty & Sons has vested in the Applicant by virtue of the Applicant's takeover of the assets and liabilities of the erstwhile firm of which the Applicant was a partner. The foregoing takeover and vesting of the trademark in the Applicant has been clearly recorded in the Deed of Dissolution dated 28/04/1980 also been brought on record in respect of the registered trademark no. 349872 by virtue of a request dated 30/09/1980 as explained in detail hereinabove. The Respondent and Mr. Ganesh Narayan and Mrs. Valli Narayan have all along accepted and enjoyed the benefits of the aforesaid take over and vesting of the jewellery business and trademark in the Applicant and cannot now deny or dispute the same after so many decades. The Respondent and/or Mr. Ganesh Narayan and/or Mrs. Valli Narayan have no entitlement whatsoever to do any business in the name of C. Krishniah Chetty as alleged or at all. The Respondent and Mr. Ganesh Narayan and Mrs. Valli Narayan are not a successor in business to Late C. Krishniah Chetty or the erstwhile firm C. Krishniah Chetty & Sons. On the contrary, it is the Applicant who is the direct and only successor in business to the business of and trademark rights in C. Krishniah Chetty & Sons. The Respondent's reference to the son of Mr. C. Ganesh Narayan being named Krishna is a tragic testament to Respondent's dishonest intentions in these proceedings which has gone to the extent of a child's name being chosen so as to enable the parents to use such choice of name as a pawn in a family dispute. More importantly, the choice of name can be used to start a business under the name KRISHNA at some point in the future on the justification that either the child is using their own name or that the parents have chosen the child's name for their business which is common. Furthermore, the Respondent's reference to the name of Mr. C. Ganesh Narayan's son being named Krishna would open the floodgates to any and all descendants of Late Sri. C. Krishniah Chetty to name their children or use the name KRISHNA and the same can obviously never be permitted in light of the Applicant's established rights and the larger public interest. The Respondent's reference to the name CHETTY being that of a community over which no one can claim exclusivity is contradicted by the Respondent's trademark applications for registration of the mark CHETTY claiming exclusive rights in the same. Furthermore, the Respondent and Mr. Ganesh Narayan and Mrs. Valli Narayan claims before this Hon'ble Court are in stark contrast to their claims made before the Registrar of Trade Marks wherein they admitted that the mark CHETTY is an adaptation/variation of the well-known mark C. KRISHNIAH CHETTY & SONS as shown in Documents produced with the rectification application. Hence, it is evident that the Respondent and Mr. Ganesh Narayan and Mrs. Valli Narayan are blowing hot and cold to suit their convenience. The Respondent's claims and contentions relating to section 35 of the Act is false to their own knowledge and contradicted by their own conduct and the documents produced with the rectification application, the Respondent's own objections and this rejoinder which conclusively establish that the Applicant has all along held the sole and exclusive rights and ownership over the trademark C. KRISHNIAH CHETTY & SONS as the successor in interest and title to the erstwhile partnership firm. The Respondent cannot claim to be a successor in business merely because it is fully owned by the Mr. C. Ganesh Narayan and Mrs. C. Valli Narayan who themselves are not any successors in business as alleged or at all. The Respondent has deliberately culled out a portion of the clause dealing with the intellectual property rights in the alleged FSA, which cannot be even looked into or relied upon, only in order to mislead and

deceive this Hon'ble Court. It is significant to note that even the alleged FSA did not vest any rights in the Respondent and specifically states: "g. Except as explicitly provided herein, all Liabilities (as of the Effective Date) shall be split equally between CKC Deepali and CKC Jewellers. To enable this, Liabilities shall be individually allocated to the two undertakings to be transferred to CKC Jewellers and CKC Deepali respectively prior to the Demerger and shall stand vested in CKC Jewellers and CKC Deepali as part of the demerger process."

11.18. The Applicant Submitted that, without prejudice to the fact that the alleged FSA has been set aside by the Hon'ble NCLT, Bengaluru to be a non-binding, non-enforceable document having no sanctity in law, the Respondent's repeated habit of blowing hot and cold is also evident from their act of applying for the mark CHETTY & CO, CHETTY & CO 1869, CHETTY and CHETTY 1869 which are all specifically barred by the very same aforesaid clause 3 (g) of the alleged FSA which states that 'Any further variant must have the above CVH Variants (C. Krishniah Chetty Jewellers and Cotha Krishniah Chetty) and CGN Variants (C. Krishniah Chetty & Co and C. Krishniah Chetty Corp) in full and any prefix or suffix to the same'.

11.19. The Applicant submitted that, the Respondent's reference to the FSA the existence, validity, and enforceability of which stands conclusively rejected by the Hon'ble City Civil court, Bengaluru, as well as the Hon'ble NCLT is deliberately calculated to mislead, deceive and confuse this Hon'ble Court. The Applicant reiterates that the Respondent does not derive any right under any alleged FSA which is dead as on date as alleged or at all and the Respondent's applications for registration and use of the infringing marks are all illegal and unlawful. The Applicant has initiated rectification proceedings since the Respondent has secured fraudulent registrations by filing multiple applications for the same marks in the same classes some of which the Applicant failed to oppose due to sheer oversight and volume of applications. Furthermore, the Applicant reiterates that the Applicant has filed over 22 (twenty two) oppositions to the Respondent's trademark applications and there can be no question whatsoever of any proceeding being an afterthought or in violation of any alleged FSA as alleged or at all.

11.20. It is denied that the Respondent has been permitted to use any variant vide any alleged Family Settlement Agreement as alleged or at all. The Applicant reiterates that the validity of the alleged FSA is disputed and cannot be determined by this Hon'ble Court. It is vehemently denied that the Applicant has acquiesced to the sue of the impugned mark by the Respondent as alleged or at all. The Applicant has never accepted or admitted the validity of the alleged FSA and the same has never been acted upon by any of the parties. On the contrary, the Applicant herein has opposed each and every trademark application of the Respondent that the applicant has become aware of and the impugned marks were left unopposed due to sheer oversight. The Applicant has produced the judgment of the Hon'ble NCLT categorically rejecting the alleged FSA and in any event none of the parties were in possession of any signed copies and the original signed copies were placed before the CLB in a sealed cover and never un-sealed. However, the Respondent has illegally obtained the same nearly 13 (thirteen) months after the dismissal of their petition without following the due process of law and it is obvious that the copy produced by the Respondent has been illegally obtained. Furthermore, the illegal certified copy produced by the Respondent appears to have been obtained on 13/02/2020 whereas the Respondent's trademark application

no. 3743499 was refused registration on 05/03/2020 on the ground of, inter alia, non-production of the FSA. It is therefore evident that the alleged certified copy produced by the Respondent before this Hon'ble Court is an illegal copy and the Respondent has been forced to admit and reveal their illegal acts because they have no justification or basis for adopting, registering or using the impugned infringing marks. The Applicant have nowhere claimed that the FSA was a mere proposal but as held by the Hon'ble NCLT, it is reiterated that the same was not a legally binding document since the same was placed in escrow and was never brought to life or existence since the Applicant's shareholders never acted upon the same. The existence of the document purporting to be a Family Settlement Agreement has never been disputed by the Applicant. However, the Applicant has all along maintained that the same was an escrow document which never came into existence because none of the shareholders including the Respondent's signatory herein acted upon the alleged FSA.

11.21. The Applicant submits that none of the parties to the alleged FSA have ever acted upon or given effect to the same and the same is recorded as a finding of fact and admission of the Applicant and the Respondent in the final order and judgment of the Hon'ble NCLT dated 24/01/2019 at paragraphs 19 and 23. The Respondent's claims that any party has acted upon the terms of the FSA is false to their own knowledge and contradicted by their admission and finding of the Hon'ble NCLT. The Respondent's claim that they have obtained a certified copy following the due process of law is false to their knowledge since the alleged certified copy has been illegally obtained from a sealed cover without any orders of the Tribunal before which it was placed in a sealed cover. The document relied upon by the Respondent has been categorically rejected by the Hon'ble City Civil Court as well as the Hon'ble NCLT as being an escrow document which was never brought into force. The table produced by the Respondent as Document No. R-10 is deliberately false and misleading since they relate to matters which have been carried out in the normal course of business and with the due authorisation of the Applicant's shareholders including Mr. C. Ganesh Narayan and Mrs. C. valli Narayan. As a matter of fact, the Malleshwaram store had been planned since the year 2011 and was opened in the year 2014 after extensive interior works and other preparations and the same had nothing to do with any provision in the alleged FSA as alleged or at all. Furthermore, Mr. C. Ganesh Narayan being a Director of C. Krishniah Chetty Jewellers Private Limited has participated in several board meetings and other discussions prior to the setting up of the Malleshwaram store right from the year 2011 and the Respondent is accordingly well aware that the same has no connection whatsoever with the alleged FSA. Indeed the falsity of the Respondent's claim is evident from the fact that the alleged FSA is dated 09/01/2014 whereas the lease for the Malleshwaram store was entered into in the year 2011 and it is virtually impossible to predict three years in advance that an FSA will be signed therefore the lease should be entered to and kept ready. Furthermore, the Applicant has never issued any NoC or authorisation to any shareholders/directors to use the names C. KRISHNIAH CHETTY & CO or C. KRISHNIAH CHETTY CORP or any other variations or adaptations or derivatives.

11.22. The Applicant submitted that, the Respondent's reliance and misrepresentation of the alleged FSA in paragraph 21 is not tenable in light of its rejection by the Hon'ble NCLT which order stands as on date. The present rectification application and miscellaneous petitions not seek

to stop any competition but is only concerned with protecting the Applicant's goodwill, reputation, and exclusive statutory and common law right in and to the well-known earlier marks C. KRISHNIAH CHETTY & SONS. There is no reference to any new store in the Touchstone building in clause 3 (e) of the FSA as alleged or at all. The Respondent's blatant and brazen misrepresentation and fraud is evident in their false pleadings. The alleged permission, if any, under clause 3 (g) of the alleged FSA is subject to issuance of the NoC and more importantly subject to the 'effective date' both of which events have admittedly never happened. The Respondent's reference to remodeling the 3rd floor to enable the Respondent to 'start' their business in B Block is in stark contrast to the Respondent's claims in the earlier paragraphs that they have been doing business since 1982. Furthermore the utter nonsensical nature of the Respondent's statement is evident from the fact that the remodeling of an office space cannot be construed as any permission to open a competing store under an identical and deceptively similar trademark right next to the Applicant's flagship store. The Respondent is resorting to irrelevant and inchoate submissions with a view to distract and confuse this Hon'ble Court since it is evident that none of the alleged preparations amounts to any permission to indulge in the infringement and passing off of the Applicant's trademarks.

12. It is admitted position that parties to the present dispute are relatives.

13. The enforcement of the Family Settlement Agreement (FSA) is under dispute in City Civil Court, Bangalore and before NCLAT.

14. The Directors of the Respondent No.1 are still shareholders and Directors of the Applicant Company.

15. All clause of the Family Settlement Agreement (FSA) are not acted upon between the parties.

16. In fact all the terms of settlement not finalized between the parties and we are of the view that no doubt as per law Family Settlement Agreement (FSA) if validly executed and acted upon between the parties has to be given prominence. Even it has come on record that after filing the present petitions, the name of the Respondent No.1 got changed to "C.Kishnaiah Chetty Private Limited" without finalizing the Family Settlement Agreement (FSA). The new name is similar to the Registered Trademarks of the Applicants. Thus the conduct of the directors of the Respondent No.1 company was not proper.

17. In the present case the Family Settlement Agreement (FSA) is under dispute in appeal filed by the Respondent No.1 as well as civil suit filed by the Applicant.

18. Once the Family Settlement Agreement (FSA) is under dispute and its validity is sub-judice in the civil court, it is always appropriate to decide the same in civil court. It would not be appropriate for us

to decide the issue raised by both the parties and interpret the clauses which are subject matter of already pending litigation between the parties.

19. Our main concern is due to such situation, when the Family Settlement Agreement (FSA) is not finalized between the parties and all terms and conditions are not acted upon between the parties, the applications for similar marks should not have been proceeded further as valuable rights involved. One of the party to the Settlement should have waited till the same is fully acted upon. Therefore we have passed the orders on the last date for staying the operation of Registrations.

20. As far as the contention of Respondent No.1 that the Applicant had used a Board Resolution that is passed in the year 2014 for any court proceedings and no specific Board Resolution has been passed for filing present proceedings. Admittedly both the Directors/Share holders of the Respondent No.1 Company are also still the Directors of the aggrieved party within the meaning of Section 57 of the Trademark Act, 1999. Further this issue should be can be decided in the final hearing of the main Rectification application, if it is pressed.

21. Even otherwise there is a residual power that is conferred on the Directors of the Company to protect the interest of the Company against any third party including its own directors if they act against the interest of the Company. Since the actions of the Directors instituting the present proceedings is in the interest of the Company even without the Board Resolution any Director of the Company is empowered to act upon. The Memorandum of Association and Article of Association of the Company confers such residual powers to the Directors of the Company for taking immediate actions and reporting the same to the Board at later stage. The Decision relied by the Petitioner/Respondent No.1 i.e., *Nibro Ltd. Vs National Insurance Co. Ltd. (AIR 1991 DEL 25)* and *State Bank of Travancore vs Kingston Computers P Ltd. 2011 (11) SCC 524* both Hon'ble Delhi High Court and Apex Court have stated that proceedings that are against the interest of the Company without authority of the Board of Directors cannot be instituted. However in the present case it is not CEO/CFO filed the proceedings but the Director of the Company acting in his capacity as director and upon a Board Resolution that authorized him to act upon.

22. In the case of *Bharat Petroleum Corporation Limited vs. M/s. Amar Autos and others, First Appeal No. 223 of 2008 dated 07th May, 2008. Hon'ble Allahabad High Court* has observed that “Moreover justification of filing the plaint by the authorised representative of the corporation or company will be considered from the practical point of view. If the Court below is not happy, it could have called upon the company to file an affidavit of competency, which is desirable under such circumstances, but not outright rejection of the plaint.” Thus the

outright rejection of the Rectification Applications is not desirable in the circumstance of the case.

23. At this stage we are of the Opinion that the Petitioner/Respondent No.1 had failed to make out any case for Rejection of the Rectification Applications and even though the Power to file Rectification Application on behalf of the Company is a technical issue, we see no infirmities in such technical issue as Board Resolution filed before us still continuing and existing and thus the authority conferred is apparently satisfactory to us and considering the above discussion the Rectification Applications filed by the Applicant/1st Respondent are maintainable. The Petition of Petitioner/Respondent No.1 i.e., M.P.No.196 of 2020 is hereby disposed off. The said objection can be considered at the final stage of hearing.

24. The Miscellaneous Petition bearing No.196/2020 is disposed off accordingly.

25. This order is passed on the basis of facts available and the same is tentative and shall not have any bearing when the main rectification petition is decided on merit and without any influence of this order all the pleas raised by the petitioner shall be considered as far as the subject of the petitions are concerned.

26. No doubt that Family Settlement Agreement (FSA) between the parties must be given prominence and enforced by the Courts/Tribunal or any other forum if the same is finalized and acted upon by resolving all the issues between the parties. In the present case FSA and all the obligations and terms and conditions are yet to be acted upon by the parties. Each and every clause of the FSA needs to be acted upon by the parties to attain finality, however it is admitted position that the Directors of the Respondent No.1 Company are still the Directors/Share holders of the Applicant Company and thus enjoying the goodwill/reputation of the Applicant Company Trademarks. The Family Settlement Agreement seems to have not been fully acted upon and is under dispute between the parties. In the meantime where Family Settlement Agreement is not implemented/fully acted upon between the parties the filing of almost same/similar Trademark Applications and obtaining Registrations by the Respondent No.1 Company prima facie raises a doubt of bondafides of the Respondent No.1 Company and its Directors.

27. At present, we are of the opinion that the Applicant has made out a strong prima facie case of granting the relief prayed for. And since such dishonesty/bad faith factor holds the cardinal principle and thus until the Rectification Applications are finally decided the operation of the registration under **Application Nos.2936330 in class 42, 3743497 in class 14, 3743498 in class 35, 3743500 in class 42, 3743504 in class 42, 3743505 in class 14, 3743506 in class 35 and 3743507 in class 36** Registered in

the name of Respondent No.1 shall remain stayed.

28. Before parting with these petitions, it would be necessary for us to mention that all observations made in this order are only of prima facie observations and the Respondents are given two months' time to file Counter Statements in each of the Rectification Applications and on filing of such Counter Statements and pleadings of the Respondents, this Board will deal the matter accordingly on merits on such completion of pleading of the parties and shall not take any of present observations into account while dealing with the main Rectification Applications as at this stage, we have arrived to this conclusion only as prima facie view. Once the pleadings are filed petitions may be moved by the parties to decide the matter on merits of such pleadings. There shall be no orders as to the costs.

29. List the main **Rectification Applications on 01/06/2021.**

- Sd/-

-Sd/-

-Sd/-

(Ms. Lakshmidēvi Somanath)
Technical Member (Trademarks)

(Shri. Makyam Vijay Kumar)
Technical Member (Trademarks)

(Shri Justice Manmohan Singh)
Chairman

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