IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.M.MANOJ

FRIDAY, THE 26TH DAY OF JULY 2024 / 4TH SRAVANA, 1946

WP(C) NO. 26774 OF 2024

PETITIONER/S:

FINORCHEM LTD.,
(FORMERLY KNOWN AS MERCHEM LIMITED) V/774,141,
DEVELOPMENT AREA, EDAYAR, MUPPATHADAM P.O, ALUVA,
ERNAKULAM - REPRESENTED BY ITS AUTHORIZED SIGNATORY MR.
P.S SUNIL., PIN - 683110

BY ADVS.
BHARATH MURALI
MANU NAIR G.
AJAY SANKAR
SIDHARTH MURALI

RESPONDENT/S:

REGISTER OF COMPANIES
MINISTRY OF CORPORATE AFFAIRS, CORPORATE BHAWAN, BMC
BHAWAN, THRIKKAKARA, KOCHI - , KERALA, PIN - 682030

SMT.T.C.KRISHNA,CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner company was incorporated on 31.01.1994, under the Companies Act, 1956, having name and style 'Merchem Limited' bearing Corporate Identification Number U24299KL1994PLC007681 in the State of Kerala. The company is engaged in the business of manufacturing of Rubber Process Chemicals in the Asia – Pacific region. While pursuing the business, in the year 2018, an employee of the company had filed an application under Section 9 of the Insolvency & Bankruptcy Code, 2016, for initiation of Corporate Insolvency Proceedings against the company for non-payment of his dues. Resultantly, two prospective resolution plans were received by the Creditor of the Committee which was led by the State Bank of India and out of which, one was submitted by the Acme Chem Ltd. The Committee of Creditors then judged the two resolution plans on the basis of an evaluation matrix prepared in terms of the Code, as well as for their conformity with applicable laws.

2. Subsequently, upon compliance of all necessary procedures

and formalities, the Committee of Creditors unanimously approved the resolution plan of Acme Chem Ltd and was declared as a Successful Resolution Applicant or the H-1 bidder by the Committee of Creditors at their 7th meeting held on 12.09.2018. Thereafter, the National Company Law Tribunal, Chennai, in terms of its order dated 23.01.2019, approved the resolution plan submitted by the Acme Chem Ltd. In terms of the above order dated 23.01.2019, the present promoter of the petitioner company is Acme Chem Ltd.

3. Thereafter, the registered office of the petitioner company was shifted from the State of Kerala to the State of West Bengal, in the light of the order of the Regional Director, Chennai, dated 26.08.2020, with effect from that date. Thereafter, the petitioner company has changed its name from Merchem Limited to Finorchem Limited by passing a special resolution in the duly held Extra Ordinary General Meeting on 11.12.2021. The said change got approval from the Registrar of Companies as per Ext.P2. Prior to initiation of the Corporate Insolvency Proceedings, the petitioner company had entered into a trade mark assignment deed dated 25.03.2012. Thereby, M/s Merchem India Private Limited having

Corporate Identification Number U24299KL1994PLC007681 assigned two registered trademarks being word Mark “MERCHEM” and label mark “MERCHEM” bearing registered number 2140305 and 2140306 , as per Ext.P3. In terms of Ext.P3, the company became the registered owner of the word Mark “MERCHEM” and label mark “MERCHEM” bearing registered numbers 2140305 and 2140306. Thereby, the company acquired exclusive right in and over the trademark “MERCHEM”.

4. Despite the assignment of trademark in the Trademark Assignment Agreement dated 23.05.2023, M/s. Merchem India Private Limited wrongfully and illegally used the trademark in violation of the terms and conditions of Ext.P3 agreement dated 23.05.2023. On getting knowledge of this violation, the petitioner company has preferred an Original Suit bearing O.S.No.46 of 2019 before the 1st Additional District Judge, Ernakulam, under Sections 134 and 135 of the Trademarks Act, 1999, on 11.11.2019. By judgment dated 30.06.2023, the Additional District Judge passed a decree in favour of the petitioner company. The use of trademark “MERCHEM” by any other person other than the petitioner

company in respect of any service and or product is bound to cause confusion and deception among the purchasing public and members of the trade. Such act on the part of any entity or person is unlawful and prohibited and will clearly amount to infringement of trademark "MERCHEM".

5. In such circumstances, the petitioner company preferred Ext.P6 application. In addition to that, the petitioner company has preferred Ext.P7 application dated 01.11.2023 before the respondent for changing the name of "Merchem India Private Limited" as it is identical and has true resemblance with their original trademark "MERCHEM". The grievance voiced in the writ petition is with respect to non consideration of the said application, despite Ext.P5 judgment. When the matter is taken up for consideration, the learned Counsel for the petitioner submitted that the petitioner will be satisfied with a direction for expeditious disposal of Ext.P7 application in the light of Ex.P5 judgment.

6. I have heard the learned Counsel for the petitioner as well as the learned CGC for the respondent.

7. Considering the limited nature of prayer sought for in the

writ petition, I am of the considered opinion that the respondent shall consider Ext.P7 application submitted by the petitioner, in the light of Ext.P5 judgment and pass appropriate orders, within a period of six weeks from the date of receipt of a copy of this judgment, after affording an opportunity of hearing to the petitioner as well as after issuing sufficient notice to the rival claimant.

The writ petition is disposed of accordingly.

Sd/-
P.M.MANOJ
JUDGE

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27.07.2024

APPENDIX OF WP(C) 26774/2024

PETITIONER EXHIBITS

Exhibit P1	**THE TRUE COPY OF THE ORDER OF THE REGIONAL DIRECTOR, CHENNAI DATED 26/8/2020**
Exhibit P2	**THE TRUE COPY THE CERTIFICATE OF INCORPORATION ISSUED BY THE REGISTRAR OF COMPANIES IN PURSUANT TO THE CHANGE OF NAME**
Exhibit P3	**THE TRUE COPY OF THE TRADEMARK ASSIGNMENT AGREEMENT DATED 23/5/2012**
Exhibit P4	**THE TRUE COPY OF TRADEMARK CERTIFICATES IN THE NAME OF THE COMPANY DATED 20/6/2022**
Exhibit P5	**THE TRUE COPY OF THE JUDGEMENT DATED 30.06.2023 PASSED BY THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM IN O.S 46 OF 2019**
Exhibit P6	**THE TRUE COPY OF THE ORDER DATED 23.04.2024**
Exhibit P7	**THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER COMPANY BEFORE THE RESPONDENT DATED 1/11/2023**
Exhibit P8	**THE TRUE COPY OF THE REQUEST DATED 27.06.2024 SUBMITTED BEFORE THE 1ST RESPONDENT**