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

Date of Decision: 10th November, 2023

+ **CS(COMM) 244/2023, CC(COMM) 15/2023, 7878/2023 & 12095/2023**

SHAKTI BHOG FOODS LTD & ANR. Plaintiffs

Through: Mr. Sandeep Sethi, Sr. Adv. with Ms. Shefali Sewak, Ms. Mrinalini Sen, Ms. Poonam Meena, Mr. Sumer Dev Seth, Ms. Riya Kumar, Ms Shreya Sethi, Advs. (M. 981015905)

versus

KUMAR FOOD INDUSTRIES LTD & ORS. Defendants

Through: Mr. C.M. Lall, Sr. Advocate with Mr. Neeraj Grover, Mr. Kashish Sethi, Ms. Sunidhi Gupta, Ms. Ayushi Singh, Advs. (D-1-7 & 9) (M. 9810376869)
Mr. Ankur Mittal & Ms. Yashika Sharma, Advs. (M. 9654897433)
Mr. Amit Bhatia, Adv. D-10, (M. 9811191766)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. In the present suit, Plaintiff No.1 - Shakti Bhog Foods Ltd. (*hereinafter*, 'SBFL') is currently undergoing a Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 (*hereinafter*, 'IBC, 2016'). The Plaintiff is represented through Plaintiff No. 2 - Mr. Ram Ratan Kanoongo who is the Resolution Professional.



3. In the insolvency proceedings against SBFL, the NCLT vide order dated 22nd September, 2022 in **CP(IB)-24(PB)/2018** titled **State Bank of India v. Shakti Bhog Foods Ltd.** declared a moratorium under section 14 of the IBC, 2016. The operative portion of the said order reads as under:

“38. Moratorium is declared under Section 14 of IBC,2016, which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 (a) to (d) of the IBC, 2016.”

4. Currently, a committee of creditors is considering various proposals for restoration of the business of the SBFL.

5. The present suit has been filed by the Plaintiffs seeking permanent injunction restraining infringement, passing off, damages, etc *qua* the trade mark ‘SHAKTI BHOG’ of SBFL. Defendant No.1 has also filed a counterclaim claiming ownership in the mark ‘SHAKTI BHOG’.

6. The following parties have been arrayed as Defendants in the present suit:

Defendants	Name and Address
Defendant No.1	Kumar Food Industries Limited (71/1, Siraspur, Delhi – 110042)
Defendant No.2	Prince Food Tech Pvt. Ltd. (Plot No. 3, Industrial Area, Phase-2, Panchkula, Haryana – 134113)
Defendant No.3	Farmersfield Agro & Flour Mill Pvt. Ltd. (Near Apex College, Gorgarh, Indri, Distt. Karnal, Haryana -132041)
Defendant No.4	ABH Foods (E-9 Cite C, UPSIDC, Surajpur Industrial Area, Greater Noida, Uttar Pradesh- 201306)



Defendant No.5	Deepak Agro Industries (Village Kalaghat, P.O. Kotla- Panjole, Tehsil Pachhad, District Sirmour, Himachal Pradesh – 173223)
Defendant No.6	Shree Vaishno Flour Mills (Phase - 2, Lane No. 04, SIDCO Complex, Bari Brahmana, District – Samba, Jammu – 181133)
Defendant No.7	Dangayach Products (G-54, RICCO Industries Area, Bassi, Jaipur, Rajasthan – 303301)
Defendant No.8	Shree Bhagwati Agrotech Pvt. Ltd. (Venchijote, PO New Champta, PS Matigara, Dist. Darjeeling, West Bengal – 734009)
Defendant No.9	Shakti Flour Mill (249, Manvendra Nagar, Behind Nayati Hospital, NH2, Mathura, Uttar Pradesh -281004)
Defendant No.10	Mr. Kewal Krishan Kumar (24, Laghu IJdyog Nagar, [S.S.I.), G.T.Karnal Road, Delhi - 33, India.)

7. The background is that Defendant No.10 - Mr. Kewal Krishan Kumar had established business under the mark ‘SHAKTI BHOG’ for his proprietary concern in 1975. Sometime in early 1990s, SBFL and Defendant No.1 - Kumar Food Industries Limited were incorporated by Defendant No.10. However, in 2017, Defendant No.10 resigned from the Defendant No.1 company. As per ld. Counsel for the Defendants, currently the Defendant No.1 is run by his son as also other directors.

8. The Plaintiffs are aggrieved by the continued use of the mark ‘SHAKTI BHOG’, label and packaging by Defendant No.1 and its contract manufacturers i.e. Defendant Nos. 2 to 9 despite SBFL being in insolvency



proceedings.

9. Mr. Sethi, Id. Senior Counsel for the Plaintiffs submits that a winding up petition being *Co.Pet.No. 987/2015* titled *CFSIT. INC v. Shakti Bhog Foods Limited* was initially filed against SBFL in December, 2015. The winding up petition was admitted by this Court on 18th January, 2018. Thereafter, *CP(IB)-24(PB)/2018* came to be filed before the NCLT by another creditor leading to the order dated 22nd September, 2023. According to Id. Senior Counsel, the committee of creditors is currently considering various options of how to restore SBFL's business and since the mark 'SHAKTI BHOG' belongs to SBFL but is illegally being claimed to be under the ownership of Defendant No.1, the present suit has been instituted.

10. Mr. Sethi, Id. Senior Counsel for the Plaintiffs submits that the genesis of the claim of ownership of the Defendant No.1 is an assignment deed dated 30th December, 2017 which has been placed on record. As per the said assignment deed, SBPL assigned the trademark 'SHAKTI BHOG' to Defendant No.1 for a total consideration of Rs.14.10 crores. Out of the said amount, Rs.13.50 crores is claimed to have been paid to SBFL and the remaining Rs.60 lakhs is to be paid at the time of foreign registration certificates being handed over to the Defendant No.1.

11. Id. Senior Counsel for the Plaintiffs submits that this assignment deed is a forged document and also would not inspire confidence as the same is contrary to the publicly available records of the Defendant No.1. The submissions in this regard are as under:

- that the stamp duty of Rs. 42 lakhs *qua* the assignment deed dated 30th December, 2017 has not been paid;



- that the Defendant No.10 was suspended as a Director of SBFL on 3rd October, 2017 but has been reflected as having signed the assignment deed on 30th December, 2017;
- that the records of the Defendant No.1 reflect that the sum of Rs.13.50 crores has been given as a loan/advance within its own balance sheet which is clearly supported for the financial years ending 31st March, 2017 and 31st March, 2018;
- that there are no intangible assets which are reflected in the balance sheets of Defendant No.1 for the financial years 2016-17, 2017-18, and 2018-19;
- that the Defendant No.1 had filed a writ petition being *W.P.(C) 12033/2021* titled *M/s Kumar Food Industries Ltd. v. UOI & Ors.* before this Court. In the said case vide order dated 10th March, 2022 it is mentioned that the Defendant No.1 uses Plaintiff's licenses and trade names for manufacturing and selling products under the mark 'SHAKTI BHOG';
- that the Defendant No.1 has not applied for recordal of the alleged assignment of the registered trademarks and, all the registered trademarks continue to be in the name of the Plaintiff;
- that renewals for the 'SHAKTI BHOG' marks have also been filed by the Plaintiff and not the Defendant No.1;
- that the physical packaging of Defendant No.1 shows that the mark is being used under license from SBFL;
- that the assignment deed was not mentioned in reply to the cease and desist notice issued by the Plaintiff in January, 2023.



12. On the strength of all these averments and the documents, it is submitted that the mark does not belong to Defendant No.1 and an illegal claim is being made in respect of the mark 'SHAKTI BHOG' which belongs to the Plaintiffs.

13. Mr. C.M. Lall, Id. Senior Counsel appearing for the Defendants submits he would be responding to all the allegations raised by the Plaintiff.

14. The Court has heard the submissions in part today.

15. A perusal of the record would show that there are a large number of trademarks which are registered in favour of the Plaintiff No.1, the details of the same are provided in the plaint. There is no recordal of assignment deed as on date in favour of Defendant No.1. Moreover, the assignment deed as filed by the Defendant No.1 has not even been stamped.

16. Today being the last day before the ensuing five-day holiday and the insolvency proceedings being underway, in order to ensure that no prejudice is caused to either party, the Court directs as under;

- (i) that there would be no impediment in the committee of creditors considering the mark 'SHAKTI BHOG' as an asset of the Plaintiff and valuing the same.
- (ii) However, it is made clear that there shall be no final order in respect of the mark 'SHAKTI BHOG'. The valuation so made by the CoC shall be subject to further hearing and orders in this interim injunction application.
- (iii) that the Defendant No.1 who claims to be the assignee of the mark 'SHAKTI BHOG' shall not transfer any right, title or interest in the mark until the hearing in the application is concluded and orders are passed by this Court.



- (iv) that all the Defendants shall also ensure that no further licenses or permissions are granted for manufacture of 'SHAKTI BHOG' branded food products by any third party except the Defendants arrayed in the present suit.
- (v) that the CGPDTM shall not entertain any request for recordal of assignment deed or license of the 'SHAKTI BHOG' mark by anyone without orders of this Court.

17. At this stage, Mr. Grover, Id. Counsel for the Defendants submits that there are other contract manufacturers apart from those who are impleaded herein, who have been issued licenses to the manufacturers of food products under the mark 'SHAKTI BHOG'. If so, he is permitted to move an application in this regard.

18. Mr. Sethi, Id. Senior Counsel has pointed out that the Department of Food Safety, GNCTD had conducted an inspection at the premises of the Defendant No.1. The report by the Department of Food Safety, GNCTD shows that the conditions at the premises of the Defendant No.1 are deplorable. Let the said document be filed on record.

19. Defendant No.10 - Mr. Kewal Krishan Kumar shall remain present in Court on the next date of hearing.

20. List on 16th January, 2024.

21. This shall be treated as part-heard matter.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 10, 2023/Rahul/kt