
(2016) 02 DEL CK 0294
In the Delhi High Court
Case No : CS (OS) 3295/2015

Aura Synergy India Ltd. and Others

APPELLANT

Vs

New Age False Ceiling Co. Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 6 Rule 16

Citation : (2016) 3 ADDelhi 211 : (2016) 229 DLT 562 : (2016) 1 MIPR 306 : (2016) 65 PTC 483 : (2016) 4 RAJ 582

Hon'ble Judges : Vipin Sanghi, J.

Bench : Single Bench

Advocate : D.K. Rustagi and B.S. Bagga, Advocates, for the Appellant; Shobhit Aggarwal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—I.A. No. 23095/2015 (u/o 39 r 1& 2 - filed by the plaintiffs) & I.A. No. 26213/2015 (u/o 39 r 4 - filed by the defendants)

1. By this common order, I proceed to dispose of the aforesaid two applications. The plaintiffs have filed the present suit on the premise that defendant nos. 2 and 3 - the husband and wife, are the promoters and directors of plaintiff no. 1 company Aura Synergy India Ltd. It is claimed that the plaintiffs are dealing in a variety of interior decoration materials. Primarily, the plaintiffs are dealing in wooden flooring materials being sold under the trade name AURA.

2. The plaintiffs claim that over the years, the plaintiffs have earned tremendous reputation amongst its customers-mainly major contractors engaged in interior work for government and corporate offices. The major marketing exercise involves seeking pre-approvals of brands for materials before finalization of tender conditions. Based on the approvals, the related contractors are required to deploy approved materials. One such material of which pre-approval is obtained is False/Metallic Ceiling. The procurement policy in such tenders does

not require labels on packaging materials. It is the trade name which alone signifies/represents the quality specification of material.

3. The plaintiffs claim that they undertake, "massive marketing exercise and invest heavily due to which in a short period of time the plaintiffs earned tremendous goodwill and unique identification with the trade name "AURA" or "AURA AISPL" ".

4. The plaintiffs claim that in the year 2008, plaintiff nos. 2 and 3 "undertook extensive research work for development of another product "Metallic Ceiling" which is far superior in quality than the market competitors including one marketed by the defendants under the brand name New Age". The plaintiffs state that plaintiff nos. 2 and 3, in the year 2013, decided to float another company by the name of Aura Synergy India (P) Ltd., and plaintiff nos. 2 and 3 are its promoter/director and shareholders. Plaintiff nos. 2 and 3 have proprietary rights over the trade name AURA for products relating to interior decoration, as detailed in classes 6 and 19 of Schedule to the Trademarks Act, 1999.

5. The plaintiffs applied for registration of trade name AURA and AURA ASIPL in classes 6 and 19 with the registrar of trademarks, claiming user with effect from 01.04.2008. The plaintiffs claim that their Metallic Ceiling in 600mm x 600mm category has acquired instant success, as it was meeting all government laid down specifications "but hold much superior quality thereto despite having competitive pricing". The plaintiffs state that they "have designed the above products after carrying out an extensive survey of the markets which includes the requirement of major corporate and private sector as well as the government department". The plaintiffs allege that the defendants are resorting to unfair practice of passing off of their "inferior products like metallic ceiling which are being sold under the trade name "New Age" as that of the plaintiffs to such contractors whose awarded contracts provide installation of Metallic Ceiling pre-approved by the trade name "AURA" or "AISPL" by lower pricing and by merely putting "AURA" on their packets or using this name in invoices to circumvent the approval procured by the plaintiffs for their metaling ceiling products by this trade name".

6. The plaintiffs claim that the defendants have been managing to pass off their metallic ceiling product as that of the plaintiff despite not getting approvals. The plaintiffs claim to be suffering on two accounts at the instance of the defendant, firstly, by the defendants claiming proprietary over AURA - apparently for the first time in August, 2015 for their metallic/false ceiling products, and secondly, by passing off their products as the same as those with the brand names "New Age Aura" or "AURA" in respect of contracts, where pre-approval for metallic ceiling was for the trade name "AURA" or "AURA AISPL".

7. The plaintiffs enlist several projects in respect whereof pre-approved mark for metallic false ceiling is, inter alia, AURA/AURA ASIPL and in the tabulation, the plaintiffs show that the defendants product with the trade name "New Age" is

approved in only one such project. The plaintiffs claim that they have healthy sales figure of their products under the trade name AURA/AURA ASIPL for metallic false ceiling.

8. The plaintiffs have disclosed-in relation to the defendants, that defendant nos. 2 to 4 are directors of defendant no. 1 company, which is engaged in the business of metallic false ceiling under the brand name "New Age". The plaintiff claims that the defendants made presentation to various government departments and corporate offices who were undertaking construction of commercial office complexes. However, the defendants succeeded in getting approval of their product/brand only in a few of them, whereas the plaintiffs product under the trade name AURA/AURA ASIPL got approvals in most such projects.

9. The plaintiffs claim that there is huge difference between the product of the plaintiffs and the defendants in terms of quality and durability. The products of the defendant marketed under the brand name "New Age" are of inferior quality when compared to that of the plaintiff. The plaintiffs state that the defendants became envious of the plaintiff, as the plaintiff successfully launched its metallic ceiling in the last about 7-8 years, and time and again got approval of their product under the trade name "AURA".

10. The plaintiffs claim that the defendants are mischievously adopting a new trade name to create link between "New Age" and "AURA", by using "New Age Aura" and by further claiming the mark "AURA" itself.

11. In para 17, the plaintiffs state that the defendants played mischief "by successfully planting their loyal employee namely Kulvinder Singh @ Kulvinder Goraya in the employment of plaintiff company in July 2014 at a salary of approximately Rs. 1.00 lac per month. This employee has passed off all trade related information to the defendants including the buyer and the technicalities involved in approvals. It is when above design got expose in June 2015, the said employee abandoned the employment of the plaintiffs and rejoined the defendant company".

12. The plaintiffs state that the defendants have applied for registration of the mark "New Age Aura", claiming user with effect from 01.04.2012, even though the defendants had never used the trademark AURA in any form till date. The plaintiffs allege that the defendants recently, in the last week of September 2015, offered metallic ceiling in relation to a contract being executed at Jodhpur under the trade name "AURA", which is the exclusive proprietary of the plaintiffs. The plaintiffs claim to have served a notice to defendant no. 1 on 15.09.2015. However, the defendants continued to use the trademark AURA as a part of their trade name/mark.

13. With these facts, the plaintiffs have sought a permanent injunction to restrain the defendants from dealing in metallic false ceiling with the deceptive trademark/name "AURA"/ "AURA ASIPL". They also seek a permanent injunction

against the defendants from, inter alia, supplying their products in respect of contracts where the pre-approval is in the name of "AURA"/ "AURA ASIPL".

14. Along with the list of documents, the plaintiffs have placed on record, what they claim to be, their catalogue of AURA (ASIPL) metallic system. The plaintiffs, in the said catalogue, described their "registered works" at Khasra No. 304-309, Lokeshwari Industrial Area, Bhagwanpur, Roorkee, Distt. Haridwar, Uttarakhand (India).

15. On the basis of the averments made in the plaint, on 02.11.2015 while issuing summons in the suit and notice in the stay application, i.e. I.A. No. 23095/2015, this Court restrained the defendants from, in any manner, using the trademark/name "AURA"/ "AURA ASIPL" with respect to the products which the defendants are manufacturing and selling.

16. Upon being summoned, the defendants moved the aforesaid application under Order 39 Rule 4 CPC, i.e. I.A. No. 26213/2015. While issuing notice on this application, the plaintiffs were granted two weeks time to file the reply to the said application vide order dated 23.12.2015. Despite the said direction, no reply has been filed by the plaintiffs even till date. I have, therefore, proceeded to hear the arguments on the aforesaid two applications.

17. The submission of counsel for the defendants in I.A. No. 26213/2015 is that the plaintiffs have resorted to gross suppression and misstatement of relevant facts which, if disclosed, the plaintiffs would not have been granted the ex-parte ad-interim orders of injunction by this court. Along with the application, the defendants have placed on record several documents which have been referred to by learned counsel.

18. Learned counsel for the defendant submits that the defendants have been manufacturing and selling building material products, including false metal ceilings, ceiling tiles, metal grid suspensions etc. under the brand/mark "New Age" since 2006. They are extremely well reputed in the industry. In February/ March 2012, the plaintiff no. 2 had approached defendant no. 2, the director of defendant no. 1 company to explore commercial arrangement between the two, for distribution of the defendants products viz. false metal ceiling and components relating to such ceilings. The defendants already had several other distributors, and in view of the friendly relations between plaintiff no. 2 and defendant no. 2, in good faith, the defendants entered into an agreement with the plaintiff company through plaintiff no. 2 to appoint them as the defendants channel partner for addressing supply orders by government institutions/ organizations and undertakings all over India. Learned counsel for the defendant, firstly, draws the attention of the Court to the email communication sent by Kulvinder Goraya to plaintiff no. 2, Ashish Pahuja on 20.04.2012, whereby the plaintiff was appointed as the defendants authorized channel partner. The terms of the relationship between the parties were contained in the appointment letter dated 20.04.2012. The parties started working together in March 2012. Learned

counsel refers to the letter dated 20.04.2012, whereby the plaintiffs were appointed as authorized channel partner. The said letter, inter alia, stated in relation to the defendant company:

"As a company we are already specified in many large and medium sized projects and list of such projects is growing very fast. Our customers prefer to work with agencies authorized by us. We shall on a best-case basis will recommend your name and ask customer to avail the services from you firm. (Majority for Government Orders)

We can also from time to time share any enquiries as received from us.

We can also participate and held you sell by accompanying you to your customer visits".

19. The defendants also stated that they would support the plaintiffs with samples and catalogues from time to time, as per the plaintiffs business requirement. The plaintiffs could use the defendants logo as an authorized channel partner for government institutions/ organizations while undertaking supply of goods all over India. The scope of obligations/ commitment of the plaintiffs were stated as the following:

"Preferred and active promotion of all New Age products.

Participation in business on total installed solution offering to customers. While you will buy only tiles from New Age, we encourage you to sell complete solution to your customers. This is the value that your firm brings to New Age products.

We also encourage you to have a trained installation team on board so that all projects can be executed with New Age Standards.

Other requirements as per business plans agreed with local New Age Sales Manager".

(Emphasis supplied)

20. Reference is also made to the email communication dated 28.05.2012 sent by plaintiff no. 2 to the defendants, informing that the plaintiff had invested Rs. 95,000/- for registration of "New Age" brand in respect of - (i) MES Chief Engineer Delhi Zone, and (ii) Air Force Chief Engineer (Western Air Command). The plaintiffs also sought a Memorandum of Understanding with the defendant company for giving to the plaintiff the distribution rights (All India) for government institution/ organizations and undertakings as per the channel partner letter.

21. On 11.06.2012, the plaintiff sent another communication to the defendants enclosing the Air Force approval letter for certifying "New Age" brand for a period of two years. He also stated in this email:

"please help us getting ISI approval from maharashtra zone as for metal ceiling Neg age has the factory in India otherwise all other companies import from china

which will give us the edge over our competitors for usage of our material in government sector".

(Emphasis supplied)

22. On 29.11.2012, the plaintiff sent an email to the defendants requiring the defendants to provide the following:

"1. catalogue - 50 immediate after that every material dispatched from Nagpur required catalogue every time.

2. sample box on the urgent basis.

3. details for 5050 alloy ceiling for power plant.

4. ceiling with insulation material costing, & sample.

5. we want to send the samples labeled with brand name to Hyderabad 3 set of GI & Aluminium each as he is pursuing with two orders of 12000 sqmtr & 18000 sqmtr Kulvinder knows the detail".

(Emphasis supplied)

23. On 17.12.2012, the plaintiff sent another email requesting the defendants to submit all documents, as committed to a particular client. On 26.12.2012, the plaintiff sent an email communication stating that the defendants have assured the plaintiffs that the plaintiff will receive 50 catalogues. The plaintiff further stated:

"we have to postpone our CPWD presentation which was lined up on Friday. We need the cohesive effort to create awareness for new age brand".

24. On 13.03.2013, the plaintiff sent an email to the defendants with regard to Engineers India Ltd. registration, asking the defendants to incorporate changes in the letter template and to incorporate the following:

"This is hereby certified M/s. Aura Synergy India Pvt. Ltd. our authorized distributor for supply of Genuine "New Age false Ceiling" to Engineers India Ltd. directly or through contractors all over India whichever case may be".

25. The defendants have placed on record one purchase order dated 11.01.2014 placed by the plaintiffs upon the defendants for false ceiling system of the value of Rs. 7,20,000/-. Delivery note in respect of supply made by the plaintiffs to one of the buyers M/s. Rama Construction Company, of the defendants" product, dated 09.05.2014 has also been placed on record to show that the defendants" product was being procured by the plaintiffs for supply to customers.

26. The defendants have also placed on record the account statement/ ledger account of the plaintiffs Aura Synergy India Pvt. Ltd. (Gurgaon) for the period 01.04.2011 to 09.11.2015 as maintained by the defendants, which shows several transactions of sales made by the defendants" company to the plaintiffs, as well

as the payments received from time to time from the plaintiffs. Similar statements have been filed in respect of the supplies made to M/s. Aura Interiors Contract Pvt. Ltd. and to M/s. Aura Synergy India Pvt. Ltd. (Delhi) for the same period. The defendants have also placed on record several documents to show the transfer of money by the plaintiffs into the account of the defendants through RTGS. Learned counsel for the defendants submitted that the plaintiffs have, conveniently, completely omitted to disclose the business relationship between the parties.

27. The defendants have also disclosed that the plaintiffs sought to register the mark "NEWAGE AURA" by making an application on 27.07.2013 in respect of goods falling in Class-VI in the name of M/s. Aura Synergy India Pvt. Ltd. The plaintiffs also made an application for registration of the trademark "NEWAGE" by making an application on behalf of M/s. Aura Synergy India Pvt. Ltd. on 22.07.2013. Both these applications were made through Mr. Ashish Pahuja, plaintiff No. 2. Learned counsel submits that these applications were made by plaintiff No. 2 while serving as a Channel Partner/ Distributor of the defendants, and these applications clearly bring out the mal-intentions of the plaintiffs to misappropriate the marks of the defendants. It was only on 01.10.2014, that the plaintiffs sought to withdraw the application made for registration of the mark "NEWAGE" - after the plaintiffs had been exposed and the arrangement between the parties terminated on 10.08.2014.

28. Learned counsel for the defendants points out that an absolutely false claim has been made by the plaintiffs that Mr. Kulwinder Goraya, an employee of the defendants, had joined the service of the plaintiffs, and he had passed off all trade related information to the defendants, including particulars of buyers and technicalities involved in approvals. In fact, Mr. Kulwinder Goraya never served under the plaintiffs. Pertinently, it was the said Mr. Kulwinder Goraya, who had sent the first communication to the plaintiffs appointing the plaintiffs as the Authorised Channel Partner. Mr. Kulwinder Goraya always was, and continues to be an employee of the defendant company. The e-mail communications sent by the plaintiffs from time to time, above referred to, also show that the plaintiff No. 2 interacted with Mr. Kulwinder Goraya as the defendants employee/ representative. The defendants state that the plaintiff No. 2 had sought a personal loan from Mr. Kulwinder Goraya, since he was also a personal friend of plaintiff No. 2. A friendly loan of about Rs. 8 Lakhs was advanced to plaintiff No. 2 in July and August 2014, and it was this loan, which was being repaid by the plaintiff No. 2 in installments of about Rs. 60,000/- per month. This repayment has been twisted by the plaintiffs to claim that Mr. Kulwinder Goraya was being paid salary by the plaintiffs. In this regard, the bank statement of Mr. Kulwinder Goraya has been placed on record. The said statement of account shows payment of Rs. 1,35,000/- to M/s. Aura Synergy India Pvt. Ltd. on 28.07.2014, and Rs. 7 Lakhs on 05.08.2014 to Mr. Ashish Pahuja, plaintiff No. 2 by Mr. Kulwinder Goraya.

29. Learned counsel for the defendants also points out that the plaintiffs have been resorting to spreading false information with a view to promote their business amongst the customers. The defendants have placed on record the brochure published and circulated by the plaintiffs, wherein, the photographs showing the manufacturing process of the metallic false ceilings are those lifted from the defendants' brochure. In fact, even the employees shown in the photographs - working in the manufacturing plant, are those of the defendants. Learned counsel submits that the plaintiffs have claimed in their brochure-filed along with the suit, that its "registered works" are situated at Khasra No. 304-309, Lokeshwari Industrial Area, Bhagwanpura, Roorkee, Uttarakhand, India. He submits that a visit to the said premises by the defendants has revealed that the said premises belong to "Alucopanel Industries" and not to the plaintiffs. In fact, the said factory is lying locked and there is no manufacturing activity being undertaken there. The photograph taken by the defendants of the board put up by "Alucopanel Industries" on the said premises has been placed on record.

30. Learned counsel points out that while the plaintiffs claim that the plaintiffs No. 2 & 3 have been in business since 2008, as a matter of fact, plaintiff No. 2 was in employment of another employer, and he tendered his resignation on 06.05.2013. The defendants have placed on record the e-mail communication sent by plaintiff No. 2 on 06.05.2013 to his then employer Forms-Surfaces.

31. Learned counsel for the defendants points out that the plaintiffs have no manufacturing plant of their own of metallic false ceiling. He submits that the plaintiffs have been distributing the products of the defendants. The plaintiffs, fraudulently, used the brand name "AURA" in the tenders, instead of "NEW AGE", so that the defendants are disabled from participating in those tender processes after the termination of relationship between the parties.

32. The projection made by the plaintiffs with regard to their manufacture of the products is completely fraudulent and false. Learned counsel points out that the plaintiffs, though claim to be in business since 2008, have not disclosed even a single Government order/ tender that they may have secured for metallic false ceiling prior to 2012 under the brand name AURA, or any other name - i.e. prior to the plaintiffs being appointed as a Channel Partner of the defendants. Learned counsel for the defendants submits that initially, plaintiff No. 2 participated in all Government purchases under the trade mark "NEW AGE". Due to friendly relations between defendant No. 2 and plaintiff No. 2, the defendants did not object to the plaintiff using "AURA" and "NEWAGE AURA", as the defendants did not doubt the plaintiffs' intentions, and were unaware of his mala fide designs and intentions. As the plaintiffs were sourcing the entire requirement from the defendants (which they were obliged to under the agreement) the use of the marks "AURA", "AURA AISPL" and "NewAge AURA" did not prejudicially affect the defendants, as they all related to, and were used in respect of the products of the defendants. Learned counsel submits that the projection made by the

plaintiffs was that both "NEW AGE" and "AURA" and "NEWAGE AURA" are the brands of the defendants. The trademark "AURA" came to be recognized and associated with the defendants and their products alone.

33. Learned counsel submits that the defendants learnt from one of the customers that the plaintiffs had supplied counterfeit material of inferior quality while claiming the same to be of "NEW AGE". It was then that the fraudulent actions and conduct of the plaintiffs got exposed. Consequently, the defendants terminated the plaintiffs agreement on 10.08.2014 and sent out the communication dated 08.08.2015 to its customers in the industry.

34. Learned counsel for the defendants submits that the plaintiffs have been fraudulently and clandestinely using the mark "AURA", "NEWAGE AURA" and "AURA ASIPL", even though the product in respect whereof the said marks are used are those of the defendants-also marketed with the mark "NEW AGE". The approvals of the material obtained by the plaintiffs from Government Departments/ Public Sector Undertakings is also in respect of the material manufactured by the defendants - as the plaintiffs do not manufacture any material of their own, and they were distributors of the defendants. The approval was obtained, mala fide, under the brand name "AURA", "NEWAGE AURA" and "AURA ASIPL" instead of "New Age", so that, in case of termination of the plaintiffs distributorship, the defendants are disabled from supplying their products under the brand name "NewAge". Learned counsel submits that the purpose of a trademark is to identify the source of the goods and, therefore, the defendants are not wrong, or, in any manner misleading anyone, by claiming that they are also manufacturing all tiles under the brands "NEWAGE" AURA" and "AURA" Merely because the plaintiffs name is M/s. Aura Synergy India Pvt. Ltd., it does not follow that the plaintiffs can appropriate the said trade name/ mark even though the same has been used in respect of the defendants' products, and identify the products with that mark, as those of the defendant.

35. In the face of the aforesaid disclosures made by the defendants in their application for vacation of stay, at the outset, learned counsel for the plaintiffs was asked as to where does the plaintiffs manufacture its products, namely metallic false ceilings. Learned counsel for the plaintiffs has no answer to this question, and he submitted that the Court may proceed on the assumption that the plaintiffs have no manufacturing facility of their own and source their products from other manufacturers. The submission of Mr. Rustagi is that there is no necessity that the plaintiffs should be manufacturing the said products of their own. The plaintiffs are entitled to source their products from other manufacturers and market the same under their own brand name "AURA" and "AURA AISPL". Mr. Rustagi submits that for the plaintiffs, it is but natural to use the mark "AURA" and "AURA AISPL" since "AURA" is a part of the corporate name of plaintiff No. 1.

36. So far as the non-disclosure of the past relationship between the plaintiffs and the defendants is concerned, the submission of Mr. Rustagi is that the same

was not relevant or material to be disclosed in the facts of the present case, since the said relationship had come to an end on 10.08.2014, i.e. much prior to the filing of the present suit.

37. Mr. Rustagi submits that the plaintiffs are not claiming any proprietary rights over the mark "NewAge". He submits that the defendants have already withdrawn their application for registration of the mark "NewAge", as disclosed by the defendants themselves. He submits that the plaintiffs are also proceeding to withdraw their application for registration of the mark "NewAge Aura". Mr. Rustagi submits that just as the plaintiffs have no right in the mark "NEWAGE" - which belongs to the defendants, the defendants have no right to use the mark "AURA" or "AURA AISPL" or "NEWAGE AURA" - which has been used exclusively by the plaintiffs.

38. I may observe that Mr. Rustagi has not defended the allegations of the defendants with regard to the falsity of the claims made by the plaintiffs in respect of:

- (i) The plaintiffs having a manufacturing facility of their own for metallic false ceiling;
- (ii) The brochures of the plaintiffs containing the photographs and other materials lifted from the defendants' brochures;
- (iii) The defendants' employee Mr. Kulvinder Goraya - that he joined the plaintiffs employment at a monthly salary of about Rs. 1 Lakh and took away the business contacts and information and rejoined the defendants.

39. The submission of Mr. Rustagi is that the plaintiffs got pre-approval of the materials under the plaintiffs' mark "AURA" and "AURA AISPL" in respect of metallic false ceilings sourced by the plaintiffs from other sources, and not in respect of the defendants' products. He, therefore, submits that the defendants, in any event, have no right to appropriate the marks "AURA", "AURA AISPL" and "NEWAGE AURA".

40. Having heard the submission of learned counsel and perused the pleadings as well as the documents filed and relied upon by the parties, I am, prima facie, of the view that the plaintiffs have not only resorted to stating blatant falsehood in the present proceedings, but they have also, prima facie, defrauded the defendants. The manner in which the plaintiffs have sought to covertly use the marks "AURA" and "AURA AISPL", and got pre-approvals for metallic false ceilings with those brand names, while remaining under contract with the defendants as their distributor/ Channel Partner, is demonstrative of the plaintiffs' cunning and apparently dishonest ways. The mala fides of the plaintiffs is completely exposed, inter alia, by the fact that the plaintiffs even went to the extent of making applications for registration of the marks "NEWAGE" and "NEWAGE AURA" in respect of items falling under Class-VI, which includes metallic false ceilings while working as a Channel Partner of the defendants.

41. The submission of Mr. Rustagi that the plaintiffs were not obliged to disclose the past relationship between the parties needs only to be stated to be rejected. The plaintiffs have claimed in their plaint in paragraph 5 that in the year 2008, plaintiffs No. 2 and 3 "undertook extensive research work for development of another product "metallic false ceiling"". This averment, apart from not being supported with any document or material, is contradicted by the fact that the plaintiffs were appointed as a Channel Partner of the defendants on 20.04.2012 in respect of the defendants products, namely metallic false ceiling. Pertinently, the plaintiffs commitment to the defendants under the terms & conditions contained in the letter dated 20.04.2012 issued by the defendants, inter alia, was that " you will buy only tiles from NewAge, ". Thus, the plaintiffs were obliged to buy only the metallic false ceilings of the defendants, which were marketed under the brand name "NewAge", and the plaintiffs on being appointed as the Channel Partner could not have procured the said item from any other source. It is not the plaintiffs' case, and it has not been argued by Mr. Rustagi that this term & condition contained in the letter of appointment dated 20.04.2012 was not imposed upon the plaintiffs; was not accepted by the plaintiffs, or; that this condition was ever relaxed by the defendant. It is not even denied by the plaintiffs that they acted as the defendants' Channel Partner on the basis of the terms & conditions contained in the letter dated 20.04.2012. This position is evident from the e-mails exchanged between the parties which have been referred to and taken note of hereinabove. Thus, for the plaintiffs to claim that since 2008, they had developed another product, namely metallic false ceiling after undertaking "extensive research work" appears to be a complete lie, as they have nothing to show in support of this submission. This submission of the plaintiffs is also belied by their own communication sent to the defendants on 11.06.2012 on the subject: "Air-Force approval letter", which has been taken note of hereinabove. In this e-mail communication, plaintiff No. 2 himself stated that "NewAge" has factory in India "otherwise all other companies import from China". Thus, the plaintiffs - who claim to have undertaken "extensive research work for development of" metallic false ceiling, have themselves stated that the defendants were the only manufacturers of the said item in India as on 11.06.2012.

42. While the plaintiffs claim to be in the same line of business since 2008, the e-mail communication dated 26.12.2012 sent by the plaintiffs on the subject "catalogue and samples" shows that the plaintiffs were entirely dependent for marketing the said products on the defendants. The plaintiffs were pleading with the defendants to provide them with catalogues, as they could not proceed with the presentation/ marketing of the products to CPWD. In this communication, the plaintiffs talk about the need of the parties to make cohesive efforts "to create awareness for "NewAge" brand". The e-mail communication on 13.03.2012 also reveals that the plaintiffs requested the defendants to certify that the plaintiffs were the authorized distributors for supply of genuine "NewAge" false ceiling, for presentation to be made to Engineers India Limited. From the correspondence

exchanged between the parties referred to and relied upon by the defendants, it is abundantly clear that the plaintiffs were entirely dependent upon the defendants for supply the metallic false ceiling, and it was only their product which was being sourced by the plaintiffs and supplied to various contractors. Pertinently, the plaintiffs have not stated anywhere in their pleadings that they were procuring the metallic false ceilings from other sources as well, while in relationship with the defendants as their channel partner. The oral submission of Mr. Rustagi to this effect cannot be accepted in the absence of pleadings and supporting documents, particularly because that course of conduct was also not permitted under the terms of appointment of the plaintiffs as the defendants channel partner. The tremendous "goodwill as manufacturers of interior related products" that the plaintiffs claim to have acquired (in paragraph 7 of the plaint), by using the trade name "AURA" in relation to the metallic false ceilings appears to have been actually acquired in relation to the products sourced from the defendants. As noticed above, the plaintiffs have practically conceded that they have no manufacturing facility of their own.

43. The story woven by the plaintiffs "That the plaintiffs have designed the above products after carrying out an extensive survey of markets" and that the "plaintiffs have not only improved the quality of their product but retained pricing flexible to suit approved sites", also appears to be false as, there is nothing to show that the plaintiffs have designed the metallic false ceiling, much less after carrying out the so-called extensive survey of the markets. Since the plaintiffs are not manufacturing the said product and, even according to their own statement, the defendants were the only Indian manufactures of the product in question, the question of the "extensive market survey" and development of the product does not arise. From the terms & conditions of the plaintiffs appointing as a Channel Partner it is evident that the application of the plaintiffs was to actively promote all the products of the defendants under the brand name "NewAge". It is also evident that the plaintiffs were appointed as the Channel Partner of the defendants "for Government institutions/ organization and undertakings" on all-India basis. Thus, as the distributor/ Channel Partner of the defendants, it was the obligation of the plaintiffs to get pre-approval of the defendants product under the brand name "NewAge". The correspondence shows that the plaintiffs initially also acted on the said obligation.

44. There appears to be merit in the submissions of the defendants that though, initially, the plaintiff promoted the defendants products with the marks "NewAge", subsequently, and in a clandestine manner, the plaintiffs appear to have got the same product pre-approved under the brand name "AURA", "AURA AISPL" and "NewAge AURA". This conduct of the plaintiffs, prima-facie, appears to be fraudulent and in breach of the plaintiffs obligations set out in the letter dated 20.04.2012 which contains the terms & conditions for appointment of the plaintiffs as the defendants' Channel Partner.

45. It is also evident from the aforesaid narration that the plaintiffs are guilty of

blatant falsehood in the matter of projecting that: (i) the plaintiffs have a manufacturing facility at Khasra No. 304-309, Lokeshwari Industrial Area, Bhagwanpur, Roorkee, Distt. Haridwar, Uttarakhand (India). It is also evident that the plaintiffs have falsely projected this claim in the industry by coming out with a false and fabricated brochure and including therein pictures showing the process of manufacturing of metallic false ceiling tiles, which appear to be lifted from the brochure of the defendants.

46. The claim of the plaintiffs that since the year 2008 they are engaged in the manufacture and sale of metallic false ceiling based on their so-called extensive research is also belied by the fact that plaintiff No. 2 appears to have in employment with "Forms-Surfesis" as a Sales Manager - North. It is also evident that the plaintiffs have made an absolutely false claim that Mr. Kulvinder Goraya, an employee of the defendants joined the plaintiffs on a monthly salary of about Rs. 1 Lakh and left the employment of the plaintiffs and re-joined the defendants after taking away information about the plaintiffs clientele, etc. The plaintiffs have not explained the advancement of loan by Mr. Kulvinder Goraya to the plaintiffs amounting to Rs. 8,35,000/-, and there is no answer to the explanation given by the defendants that the said friendly loan was being repaid in monthly installments by the plaintiffs to the said Sh. Kulvinder Goraya. This averment of the plaintiffs is also falsified on a plain reading of the e-mail communications exchanged between the parties which clearly show that plaintiff No. 2 sent e-mail communications, inter alia, to Mr. Kulvinder Goraya as the representative of the defendants.

47. Grant of injunction by the Court is matter of discretion, which has to be judiciously exercised. It is well-settled that a party who approaches the Court with unclean hands, i.e. a party which either conceals relevant and material facts from the Court, and/ or makes false claims and assertions before the Court, is not entitled to exercise of discretion by the Court in his favour, even if such a party, on merits, is deserving of exercise of such discretion. In Satish Khosla Vs. M/s. Eli Lilly Ranbaxy Ltd. & Another, , 71 (1998) DLT 1 (DB), a Division Bench of this Court, inter alia, observed as follows:

"15. In S.P. Chengalvaraya Naidu v. Jagannath and Others, , AIR 1994 SC 853 it was held that the Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. "It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party".

16. The following observations of the Supreme Court in the aforesaid case are relevant for purposes of present case:

"The High Court in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property- grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

A party must come to the Court with clean hands and must disclose all the relevant facts which may result in appreciating the rival contentions of the parties. In our view, a litigant, who approaches the Court, must produce all the documents which are relevant to the litigation and he must also disclose to the Court about the pendency of any earlier litigation between the parties and the result thereof.

17. As held by the Supreme Court in *Advocate-General, State of Bihar v. M/s. Madhya Pradesh Khair Industries and Another*, , (1980) 3 SCC 311, every abuse of the process of the Court may not necessarily amount to Contempt of Court. Abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice is Contempt of Court. It may be that certain minor abuses of the process of the Court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But it may be necessary to punish, as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice.

18. x x x x x x x x x

19. As held by the Supreme Court in *T. Arivandandam v. T.V. Satyapal and Another*, , AIR 1977 SC 2421, the pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. "It may be a valuable contribution to the

cause of justice if Counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an Advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy Courts. A Judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process."

20. We are of the opinion that the above noted passage of the aforesaid judgment in *T. Arivandandam v. T.V. Satyapal*'s case is fully applicable to the facts and circumstances of the present case. Having not succeeded in getting stay in Suit No. 3064/96, in our view, the Lawyer should have refused to move an application for stay in the second suit.

21. We are of the view that an attempt has been made by the respondent to over-reach the Court and the respondents have played fraud upon the Court as well as upon the opposite party and is thus clearly guilty of contempt. Respondents cannot be heard in the case unless it purges itself of the contempt so committed and in our view it can only be if we non-suit the respondents in Suit No. 261/97. While, therefore, we do not propose to take action against the respondent for contempt except to issue a warning to respondent No. 2 to be more careful in future, we direct the dismissal of the suit (being Suit No. 261/97) itself. While, therefore, allowing this appeal, we dismiss Suit No. 261/97 and dispose of the contempt petition in the above terms. "

[Emphasis supplied]

48. In the present case, the defendants have grossly suppressed and concealed relevant and material facts and have gone ahead to make blatantly false claims. These claims have not only been made in the present proceedings, but even openly made to the people in the trade. The plaintiffs have falsely claimed to have a manufacturing unit- for manufacturing metallic false ceiling which, concededly, is not the case. The plaintiffs deliberately concealed their earlier business relationship with the defendants since 2012 and made contradictory/ false claims of being engaged in manufacture and sale of the products in question since 2008. The plaintiffs have also, calculatedly, used the marks "AURA", "AURA AISPL" and "NewAge AURA" in relation to the products of the defendants, and it appears that the plaintiffs did not object to the same as the said marks were being used in relation to the defendants' products only, and not in relation to the products of any other manufacturer. As noticed hereinabove, under the terms of the plaintiffs appointment as the Channel Partner, the plaintiffs could not have sourced the material from any other source and even according to the plaintiffs, the defendants were the only manufacturers of the

said items in India.

49. The purpose of a trade mark is only to identify the goods which bear the said trade mark with its source of origin. In the present case, though it is the plaintiffs who may have started using the marks "AURA", "AURA AISPL" and "NewAge AURA", in respect of metallic false ceiling, it appears that the said marks were used in relation to the products of the defendants, and no one else. This being the position, the defendants cannot be faulted in claiming that they are manufacturers of tiles which are sold in two more brands, namely "New Age - AURA" & "AURA".

50. The aforesaid being the position, in any event, there is no justification to restrain the defendants in the manner as sought by the plaintiffs. Consequently, I am of the view that the plaintiffs are not entitled to the interim relief sought in the application and granted by this Court vide ex- parte order dated 02.11.2015, firstly, on account of the plaintiffs disentitling themselves from claiming any such relief as they have resorted to gross suppression and misstatement in their suit, and secondly, because, even on merits, the plaintiffs have not made out a prima-facie case for grant of the said reliefs. Looking to the conduct of the plaintiffs, as noticed hereinabove, the plaintiffs' application, i.e. I.A. No. 23095/2015 is dismissed and I.A. No. 26213/2015 of the defendants is allowed with costs of Rs. 2 Lakhs, to be paid to the defendants within four weeks. The ex-parte ad interim order of injunction dated 02.11.2015 stands vacated.

51. List on 25.07.2015.