$- J1 & J2

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

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

\# **CNR No. DLHC010492622024**

\+ **C.O. (COMM.IPD-TM) 158/2024 and I.A. 36142/2024, I.A. 36143/2024, I.A. 10268/2026, I.A. 18994/2026 & I.A. 21408/2026**

**DUNAR FOODS LIMITED**
NEAR C.W.C., VILLAGE, BAZIDA JATTAN ROAD,
KARNAL, HARYANA -132001 .....PETITIONER

Through: Ms. Swathi Sukumar, Sr. Advocate with Mr. Junaid Alam, Mr. S. Nithin, Ms. Rishika Aggarwal and Mr. Nishant Mattha, Advocates.

versus

**ANKIT VATS TRADING AS AVJK FOODS LLP**
B-2/308, SECTOR-6, ROHINI, DELHI-110085
ALSO AT
5583, SECOND FLOOR, NAYA BAZAR, DELHI-11006
.....RESPONDENT NO.1

**THE REGISTRAR OF TRADEMARKS**
BAUDHIK SAMPADA BHAWAN,
PLOT NO.32, SECTOR 14,
DWARKA, NEW DELHI-110078
.....RESPONDENT NO.2

Through: Mr. Utsav Jain, Mr. Hemant Singh, Ms. Urvashi Jain, Mr. Aman Bidhuri, Mr. Attrey Gupta, Advocates.

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# **CNR No. DLHC010704862024**

\+ **C.O. (COMM.IPD-TM) 203/2024, I.A. 42370/2024 & I.A. 42371/2024**

**ANKIT VATS TRADING AS AVJK FOODS LLP**
B-2/308, SECTOR-6, ROHINI, DELHI-110085

.....PETITIONER

Through: Mr. Utsav Jain, Mr. Hemant Singh, Ms. Urvashi Jain, Mr. Aman Bidhuri, Mr. Attrey Gupta, Advocates.

versus

**DUNAR FOODS LIMITED**
NEAR C. W.C., VILLAGE, BAZIDA JATTAN ROAD,
KARNAL. HARYANA- 132001

.....RESPONDENT NO.1

**UNION OF INDIA**
THE REGISTRAR OF TRADEMARK
DEPARTMENT FOR PROMOTION OF
INDUSTRY AND INTERNAL TRADE
MINISTRY OF COMMERCE AND INDUSTRY
BOUDHIK SAMPADA BHAWAN,
PLOT NO. 32, SECTOR 14, DWARKA,
NEW DELHI - 110078

.....RESPONDENT NO.2

Through: Ms. Swathi Sukumar, Sr. Advocate with Mr. Junaid Alam, Mr. S. Nithin, Ms. Rishika Aggarwal and Mr. Nishant Mattha, Advocates.
Ms. Nidhi Raman, CGSC with Ms. Nikita Singh and Mr. Rishay Raj, Advocates for R-2.

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% Reserved on: 27.10.2026
Pronounced on: 17.11.2026

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**JUDGMENT**

*(The matter was listed for pronouncement on 16.11.2026. However, in view of 16.11.2026 having been declared a holiday on account of Chhath Puja, the matter is being pronounced today, i.e., 17.11.2026.)*

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There are two petitions under Section 57 of the Trade Marks Act, 1999 ("the Act") for cancellation of the registration of each others' trade mark. The petition filed by Dunar Foods Ltd. [**Dunar Foods**] is first in order. The other petition filed by Ankit Vats Trading as AVJK Foods LLP [**Ankit Vats**] is subsequent and hence the primary facts are extracted from

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the petition filed by Dunar Foods.

## I. FACTS

2. Dunar Foods claimed to have coined and adopted the distinctive trademark NAWAJISH/NAWAZISH in the year 2017 for rice and allied products under Class 30. It had obtained registration for NAWAJISH for the stylized and device representation of the mark with user claimed from 13.10.2007. There was some clerical oversight in spelling and instead of the word "J" it was typed as "G" which was later rectified.

3. The petitioner found in the year 2024 that Ankit Vats was marketing identical goods in the form of basmati rice under packaging bearing a deceptively similar mark and artistic trade. On enquiry, it was discovered that Ankit Vats had obtained the registration for the impugned mark NAWAJISH with the device mark "N" in the year 2017 under Class 30. The same was obtained on a proposed to be used basis. The petitioner Dunar Food had issued legal cease and desist notice. Non-compliance thereto had constrained the petitioner to file the instant petition.

4. It appears that as a counter-blast Ankit Vats filed a subsequent petition seeking cancellation of the petitioner's trademark.

5. The pleadings were completed. The parties were allowed to file written submissions and the relevant decisions.

## II. SUBMISSIONS OF THE PARTIES

6. Ms. Swathi Sukumar, learned senior counsel appearing for the Dunar Food Ltd. made various submissions *inter alia* that Dunar Food is the prior

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adopter, continuous user and registered proprietor of the mark since April, 2007, almost one decade before filing of the application by Ankit Vats. Various decisions have been cited to establish that registration of the similar mark for identical goods i.e. rice under Class 30 by the Ankit Vats is impermissible in law and violates Dunar Food's pioneering presence violating Sections 9(1)(a), 9(2)(a), 11(1), 11(3), 11(10) and 18(4) of the Act. It is contended that alleged non-use by Dunar Food is an argument of afterthought and is not substantiated, same had been sufficiently rebutted on the strength of the record.

7. Mr. Utsav Jain, learned counsel appearing for the Ankit Vats raises an objection regarding maintainability in view of the provisions of Sections 4 and 5 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999. It has been contended that owing to notice by the Economic Offence Wing on 01.02.2016 and the action of Directorate of Enforcement under the Prevention of Money Laundering Act, 2002 without the express permission from the designated MPID Special Court under Section 10 of the MPID Act, the petitioner lacks *locus standi* to maintain the rectification proceedings.

8. On merits, it is contended that Ankit Vats enjoys honest concurrent user's right under a specially crafted device mark featuring the letter "N". The reliance is also placed on various decisions.

9. I have heard the learned counsels appearing for the parties and have perused the record.

## III. ANALYSIS

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## A. THE OBJECTION OF NON-MAINTAINABILITY

10. The intellectual property rights are sought to be protected by way of instant petition. Dunar Foods has been discharged from all its liabilities. The company underwent corporate resolution proceedings, alongside which provisional attachment orders were issued by the Enforcement Directorate (ED) and what was directed was not to create any third-party interest regarding the intellectual property without permission of the designated Court. During these proceedings, there is no such allegation of creating any third-party rights etc. and which otherwise is also borne out by the scope of Section 57. As held by this Court in ***Rajiv Chakraborty Resolution Professional of EEIL v. Directorate of Enforcement***,[1] that attachment is not liable to be viewed as an effacement of all rights that may exist or be claimed by an individual. It is essentially a fetter placed upon the possessor of that property to deal with the same till such time as proceedings under the aforesaid enactment come to a definitive conclusion. Therefore, protection of intellectual property rights by invoking legal proceedings neither has been interdicted nor restricted.

## B. THE SCOPE OF APPEAL

11. The scope of Section 57 of the Act empowers this Court to expunge or vary an entry where it was made in the Register without sufficient cause, or where it is wrongly remaining on the Register. This Court in ***Blue Heaven Cosmetics Pvt. Ltd. v. Deepak Arora and Ors.***,[2] held that Section 57 serves as a vital statutory mechanism to maintain the purity of the

[1] 2022 SCC OnLine Del 3703
[2] 2022 SCC OnLine Del 1001

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Register by ensuring that entries obtained contrary to the statutory framework or without lawful justification do not encumber public records. Expanding upon this, this Court held that where a mark is registered in violation of the absolute or relative grounds for refusal, it stands 'wrongly entered and wrongly remaining' on the Register, thereby warranting direct cancellation.

12. This Court in ***Russell Corp Australia Pty. Ltd. v. Ashok Mahajan and Anr.***[3] further elaborated on the threshold for wrong entries, it held that an entry in the Register is wrongly made or remaining if any ground for refusal under Section 9 or Section 11 of the Act is established at the time of registration or subsequently. It was further underscored that the adoption of an identical or deceptively similar mark for identical goods by a subsequent trader without any plausible explanation or *bona fide* justification constitutes a dishonest attempt to usurp the reputation and goodwill of the prior proprietor, rendering the registration legally unsustainable and liable to be expunged under Section 57.

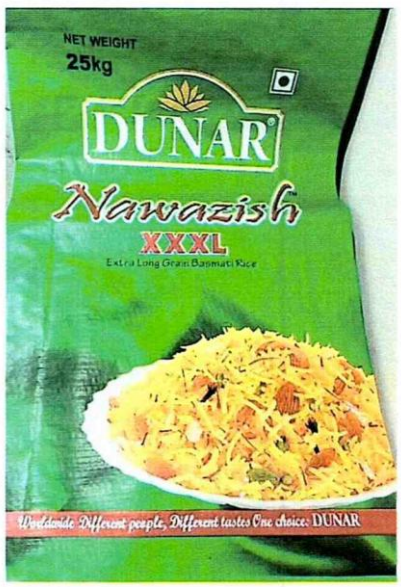
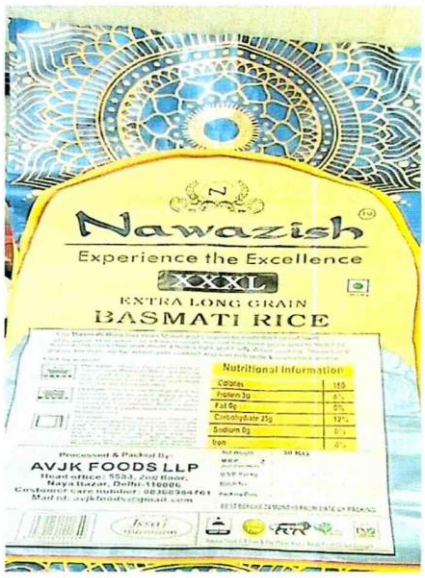
13. It is, thus, well established that this Court is fully empowered to direct for cancellation or barring of the registration on the ground of contravention or failure to observe a condition entered on the Registrar in relation thereto. The parties have already been granted sufficient opportunity to establish their case. The Court, thus, has to undertake an enquiry and if is convinced that there is a contravention of the provisions of the Trade Marks Act and the mark in question is deceptively adopted/registered, the necessary directions for cancellation would follow.

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## C. COMPARISON OF THE RIVAL MARKS AND TRADE DRESS

| Mark of the petitioner, i.e., **DUNAR FOODS LIMITED** | Mark of the respondent no. 1, i.e., **ANKIT VATS TRADING AS AVJK FOODS LLP** |
|---|---|
| Nawazish   |     |

14. A side-by-side comparison of the competing marks and their respective product packaging demonstrates that they are phonetically and visually identical. Both the marks are registered in respect of identical goods, i.e., rice falling under Class 30. The device mark "N" in the Ankit

[3] (2023) 4 HCC (Del) 301

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Vats packaging fails to create any meaningful difference bearing in mind the registration under same class. In the marketplace, consumers rarely have the opportunity for a thorough comparison; consequently, a minor device feature of this nature is entirely insufficient to avert consumer confusion.

15. Furthermore, the difference of the word "Z" instead of "J" will also be of no assistance. Phonetically, both words are pronounced similarly and the same seems to have been done calculatively with a view to pass off the plaintiff's goods. Such minor tweaks and design variations do not appear to be done honestly, rather when compared against the petitioner's long standing prior use, the adoption of an identical sounding term seems to have been done deliberately.

**D. THE EVIDENCE OF PRIOR USE**

16. Dunar Food has placed on record the material to indicate that it is using the same mark since 2007. Tracing its corporate lineage back to an enterprise established in the year 1956 by Late Shri Lala Duli Chand Ji, the business was subsequently formalized under the company name Dulichand Narender Kumar Exports Private Limited in 1997, which later changed its name to Dunar Foods Limited on 29.12.2010. The petitioner claims to be amongst India's largest manufacturers, millers, and exporters of premium Basmati rice, boasting massive paddy processing capacities, global accreditations and phenomenal global sales volumes running into thousands of lakhs.

17. Dunar Food obtained registration for the mark 'NAWAJISH' under Application No. 1550388 on 17.04.2007, which proceeded to registration on

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31.03.2009. Furthermore, its predecessor company filed Application No. 2055689 on 19.11.2010 for the stylized and device representation of the mark with a user claim dating from 13.10.2007, which was registered on 29.05.2015 wherein due to a clerical oversight the spelling was initially put in as 'NAWAGISH' instead of 'NAWAJISH', which was subsequently rectified. This conclusively establishes Dunar Food's long-standing presence and prior commercial adoption in the market well over a decade before the respondent no. 1 filed its application on 26.06.2017 on a "proposed to be used basis".

18. Conversely, Ankit Vats applied for an identical mark for goods in the very field in which the petitioner trades, strictly on a "proposed to be used" basis. It deals in food products and Basmati rice under Class 30. "NAWAJISH" is not a common dictionary word; it is a distinctive and arbitrary term that forms an integral part of the petitioner's established brand identity and corporate goodwill. There is nothing on record to explain how respondent no. 1 came to adopt this exact mark. When a trader in the same field adopts an identical coined word for identical goods without any plausible explanation or bona fide justification, the only reasonable inference is that the adoption was not honest and was designed to ride upon the prior user's established reputation.

19. As held in ***Dorco Co. Ltd. v. Durga Enterprises and Anr.,***[4], a respondent cannot claim to be the proprietor of an impugned trademark where there is an absence of any explanation regarding its adoption, rendering such an application in contravention of Section 18(1) of the Act.

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Similarly, as observed in ***Russell Corp*** (supra) the adoption of an identical mark for identical goods under such circumstances constitutes a dishonest attempt to usurp the reputation of the prior proprietor.

## E. THE RIGHTS OF PRIOR USER

20. The law is well-settled that the rights of a prior user are superior to those of a later registrant. In ***S. Syed Mohideen vs. P. Sulochana Bai,***[5] the Supreme Court held as follows, after reading Sections 27, 28 and 34 of the Act together:

> *"30.4. ... Thus, the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb/interfere with the rights of prior user. ..."*

21. In view of the petitioner's prior use and goodwill, use of the identical mark by the respondent no. 1 for identical goods is likely to deceive the public and cause confusion as to the source of the goods. Such use would be liable to be restrained under the law of passing off. The registration was therefore barred by Sections 9(2)(a) and 11(3)(a) of the Act. As held in ***Amit Sood vs. Union of India and Ors***[6], under Section 11 of the Act, any mark that would result in passing off of a business of the applicant of the mark would not be liable to be registered.

## IV. CONCLUSION

22. In view of the aforesaid, the adoption of the impugned mark by the respondent no. 1 is found to be dishonest and violative of statutory

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[4] 2023 SCC OnLine Del 1484
[5] 2016 2 SCC 683
[6] 2024SCCOnLine Del 3226.

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provisions, and, therefore, the same is set aside. Consequently, the petition [C.O.(COMM.IPD -TM) 158/2024] is allowed, and the registration of the impugned mark 'NAWAZISH' bearing Application No. 3578464 in Class 30 along with the Registration Certificate No. 1741844 in the Register of Trade Marks is hereby cancelled and set aside. All pending applications also stand disposed of.

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23. For the same reasons assigned above, the petitioner herein has failed to make out any case for interference, and accordingly, the petition filed by Ankit Vats stands dismissed. All pending applications also stand disposed of.

24. The date already fixed in both matters before the Joint Registrar i.e., 22.01.2027, stands cancelled.

**(PURUSHAINDRA KUMAR KAURAV)**
**JUDGE**

**NOVEMBER 17, 2026**
***AB/Tr***

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