IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.12616 OF 2024
IN
COMMERCIAL IP (L) NO.12477 OF 2024

Minco India Private Limited ...Applicant

In the matter between

Minco India Private Limited ...Ori. Plaintiff

Versus

Minco India Flow Elements Private Limited ...Respondent/ Defendant

Mr. Pranshul Dube a/w. Ms. Maithri Porwal, Ms. Tarika Jaitley, Ms. Asma Nadaf, for the Applicant/ Plaintiff.
Mr. Hiren Kamod a/w. Mr. Anees Patel, Mr. Amritraj Roychowdhary, for the Respondent/Defendant.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : DECEMBER 05, 2025
PRONOUNCED ON : JANUARY 06, 2026

JUDGMENT :

1) The present suit has been filed for infringement of trademark and passing off. The Plaintiff is engaged in the business of gauges, pressure, temperature, temperature gauges, temperature switches etc in the name of Minco India Private Limited and is using the mark “Minco India” in respect of its goods and services since the year 1982. The Plaintiff applied for registration of its trade mark “MINCO INDIA” on 5th June 2023 with user claim of 6th October 1982 and has secured

registration in Class 9. It is stated that owing to the extensive and continuous use of its trademark, the Plaintiff has garnered reputation and goodwill among the public and trade members. To substantiate the goodwill and reputation, the sales turnover of the Plaintiff from the year 1989-1990 onwards duly certified by the chartered accountant is placed on record.

2) It is pleaded that in the first week of February 2024, the Plaintiff found that the Defendant is manufacturing and offering for sale identical goods and services using identical mark "MINCO". The Plaintiff had earlier received information about the use of the mark "MINCO" but could not specifically find the goods and services offered by Defendant. On 14th February, an email was received by the Plaintiff from third-party complaining about defective flow nozzle at which point of time the Plaintiff realised that the defective product has been supplied by the defendant. The search of trade mark registry revealed the Defendant's application for registration of the device mark "MINCO" to which trade mark registry has raised objection on 18th July 2022 under section 11 of the Trade Marks Act, 1999 (for short "T.M.Act") to which the Defendant has filed counter statement on 10th August 2022. It is stated that the use of an identical or similar trademark will lead to confusion and the

defendant has infringed the plaintiff's registered trademark by use of identical trade mark "MINCO". Hence the present suit.

3) The Defendant initially filed a limited affidavit in reply dated 30 September 2024 raising preliminary objection on the ground of gross suppression of material and relevant facts and documents in the plaint. It is stated that the purported date of knowledge of the Plaintiff as stated is false to the Plaintiff's own knowledge as the Plaintiff is aware of the use by the Defendant of the trademark "MINCO" since the year 2012. The family history of incorporation of various companies including the Plaintiff and Defendant by Manohar Mahadeo Kulkarni, who is the father of Amarendra and Raghvendra, the directors of the plaintiff and defendant company respectively is set out. It is stated that by reason of partition/family arrangement, initially Amarendra and Raghvendra were appointed as director of the plaintiff as well as of the Defendant. A change of the Defendant Company's name from Tivim Instruments, Company Pvt Limited to Minco (India) Flow Elements Pvt Limited was caused with consent of Plaintiff under board resolution dated 2nd July, 2012 and fresh certificate of incorporation was issued on 1st September 2012. As per the family arrangement and post an extraordinary general body meeting of Defendant Company, the name of the Defendant company

was changed to the present Minco (India) Flow Elements Private Limited with consent of Plaintiff.

4) It is contended that Plaintiff and Defendant are part of MMK group promoted General Instruments Consortium/General Group of Companies (GICON) and all all names, marks, assets etc is the property of GICON which was spearheaded by the family patriarch Manohar. Reliance is placed on resolution of GICON to show its complete control over the functioning of the group companies including the plaintiff and the defendant company. From 2012 till mid-2022, the Plaintiff and Defendant both had their respective offices in the same premises. It is contended that the Will executed by Manohar led to dispute between Amarendra and Raghvendra. On 15th December, 2015, Amarendra and Raghvendra in accordance with Will of Manohar resigned from Defendant and Plaintiff Company respectively. Subsequently, in terms of the Will, the shareholdings in the Plaintiff and Defendant Company were duly transferred.

5) Since 1st September, 2012, the Defendant is using the trade mark "MINCO" openly extensively continuously and and uninterruptedly. The Defendant has cumulative sales turnover of INR 1,11,88,73,822/ from the year 2012 till date. The balance sheets from the years 2014 to 2023, certified by chartered accountant showing

overall sales of the goods and services under the trademark /tradename “Minco” is annexed to the plaint. It is stated that the Defendant’s registration application for device mark “MINCO” is erroneously filed on proposed to be used basis as the Defendant is using “MINCO” since the year 2012 and and the specific device mark was not being used until shortly after the date of filing of the application on 29th April 2022. The defence of delay, laches and acquiescence is raised as the Plaintiff was aware of the Defendant and they shared the same office premises. There is bonafide adoption of the mark “MINCO” by the Defendant and being part of MMK Group/GICON the Plaintiff and Defendant are equally entitled to their respective use of “MINCO”.

6) The rejoinder affidavit contends that the Defendant is trying to give the colour of family dispute to the suit for infringement. The change of Defendant’s name has taken place to ride upon the goodwill and reputation of Plaintiff’s mark “MINCO”. The director of Defendant Company – Raghvendra fraudulently and on his own accord signed the NOC for change of name on behalf of the Plaintiff and also signed the special resolution on behalf of the Defendant accepting the change of name. In the year 2015, Amarendra, the director of Plaintiff resigned from the Defendant upon becoming aware of change of Defendant’s name which constitutes a negative act. The

Plaintiff or Amarendra never consented to the use of the mark "MINCO" by the Defendant. The mere change of name by the Defendant would not constitute open or continuous use of the mark "MINCO". Since the consumers very well knew that the director of Plaintiff and Defendant are brothers, they used to reach out to Amarendra to resolve the situation of the Defendant, which Amarendra used to resolve.

7) The Defendant has filed further Affidavit in reply and re-joinder is filed by the Plaintiff which re-iterates their respective stands.

8) Mr. Dube, learned counsel for the Plaintiff submits that the Plaintiff and Defendant are using the same mark and are located at the same address. He submits that there is similarity in the trade mark "MINCO " used by the Plaintiff and Defendant. He points out the registration of the trade mark "MINCO INDIA" in Plaintiff's favour. He points out the chartered accountant certified sales turnover from 1989 to show the goodwill and reputation in 'MINCO INDIA". He submits that the sales turnover is consistently reduced due to the use by the Defendant of the trademark "MINCO".

9) He submits that the Defendant has applied for registration of device mark "MINCO" on proposed to be used basis on 29th April,

2022, which mark has already been used and adopted by the Plaintiff since 1982. He submits that the family history set out in the affidavit in reply is immaterial in present case as there is no concept of succession under the trademark act which recognizes only assignment. He submits that GICON is neither the registered proprietor nor prior user of the trademark. He submits that the Plaintiff was unaware of change of Defendant's name, which change was effected fraudulently in the year 2012 and therefore there is no acquiescence. Pointing out to the resolution of Plaintiff and the Defendant Company, he submits that the resolutions have been signed by Raghvendra on behalf of Plaintiff as well as Defendant and no reliance can be placed on the resolutions by the Defendant.

10) Mr. Dube submits that in February, 2024, the Plaintiff came across the goods/services of Defendant marketed under the mark "MINCO" and points out to the specific averment in the plaint. He submits that considering the Defendant's application for registration is on proposed to use basis, it cannot be contended that Plaintiff had knowledge in the year 2015 about use of the mark and there is no suppression of facts. He submits that for applicability of delay and acquiescence there is requirement of positive act on the part of the Plaintiff which is missing in present case and the resignation by the Plaintiff's Director from the Defendant company cannot be construed

as positive act. He would further point out the confusion which has occurred by reason of use of the mark by Defendant and points out the email dated 14th February, 2024. He would further point out to the email addressed by Defendant to its customer making false statement that the Defendant has secured registration of the trademark 'MINCO". He would submit that considering that the application for registration is filed by the Defendant on proposed to be used basis, the Defendant has not used the mark and there is no question of acquiescence. In support he relies upon the following decisions:

(1) **Pidilite Industries Limited vs. Jubilant Agri and Consumer Products Limited**[1]

(2) **M/s. Power Control Appliances and Ors. vs. Sumeet Machines Pvt. Ltd.**[2]

(3) **M/s. Hindustan Pencils Pvt. Ltd. vs. M/s. India Stationery Products Co. and Anr.**[3]

(4) **Abdul Rasul Nurallah Virjee and Anr. vs. Regal Footwear**[4]

(5) **Midas Hygiene Industries (P) Ltd. vs. Sudhir Bhatia and Ors.**[5]

11) Mr. Kamod learned counsel for the Defendant submits that both companies carry on similar business since inception. He submits

1 2014 SCC OnLine Bom 50.
2 (1994) 2 SCC 448.
3 IA No. 2275/1988 in Suit No. 941/1988 Dt.23/01/1989.
4 2023 SCC OnLine Bom 10.
5 (2004) 3 SCC 90.

that there is gross suppression of material facts which disentitles the Plaintiff from seeking equitable relief. He has taken this Court through the pleadings in the plaint and would point out the vague reference to the Director of Defendant being the brother of Director of Plaintiff. He submits that there is no disclosure as regards the manner in which Amarendra and Raghvendra came to be appointed as Director in the companies incorporated by their father Manohar, the history of partition/family arrangement and the Will of Manohar. He submits that it was necessary to plead about the No Objection granted by Plaintiff to change of Defendant’s name which is a material and relevant fact. He submits that the plaint pleads false date of knowledge of the year 2024, when the Plaintiff was aware of the Defendant’s change of name in the year 2012 itself. He submits that both the Plaintiff and Defendant had their respective offices at the very same location and points out to the income tax notices, the bank mandate of Defendant company etc. He submits that the Plaintiff utilized the human resources of the Defendant company to deal with the notices of the income tax department.

12) He submits that the Plaintiff and Defendant being part of GICON are entitled to their respective use of the mark “MINCO”. He would further submit that the Defendant has acquired reputation and goodwill in the trademark/trading name Minco which is

demonstrated from the sales turn over of about Rs 111 crores from 2012 till date. He submits that the trademark “MINCO” is used by the Defendant since September, 2012 and the specific device mark “MINCO” in saffron colour was used subsequently after the filing of the trademark application in the year 2020. He submits that the Defendant’s adoption and use of mark “MINCO” is bonafide and there is no question of any confusion as the clients are industries such as BHEL Steel Authority, Seimens etc. He submits that the Plaintiff is guilty of acquiescence as the Plaintiff waited for more than 12 years allowing the Defendant’s business to grow with full knowledge of the Defendant’s use and therefore the balance of convenience is in favour of the Defendant.

13) In rejoinder Mr. Dube contends that the primary defense of the Defendant is suppression which finds place in Order 39 Rule 4 of CPC and as the Plaintiff has moved with notice, the issue of suppression cannot be considered. He would further submit that in so far as the NOC for the change of the Defendant’s name is concerned, the same was a fraudulent act as Mr. Raghvendra himself had signed for both the companies. He submits that there is no honesty in adoption as “MINCO” is an arbitrary word and the Defendant was aware of the Plaintiff’s use of the trademark since 1982. He submits that there is no positive act of encouragement on part of Plaintiff shown by the

Defendant. He submits that there is no C.A. certified turn over showing the use of the mark “MINCO” by the Defendant. He submits that as the Defendant seeks to use the word “MINCO” as part of their trade name, the provisions of Section 29(5) of the T.M. Act would apply. He submits that as the trademark is used as part of the trade name, by the Defendant, there is bound to be confusion.

REASONS AND ANALYSIS:

14) The Plaintiff and the Defendant are both private limited companies duly incorporated under the relevant statutory enactment. It is well settled that the statute recognises a Company as an artificial person having its own identity, capable of owning assets, incurring debts, entering into contracts in its own name, suing or being sued in its own name and is distinct from its shareholders and Directors. Given this corporate existence of the Plaintiff and the Defendant Company, in an action for infringement of trade mark and passing off, the relevant issues to be considered is the entitlement of the Plaintiff to restrain the Defendant from using the mark “MINCO” as part of trade name and the defences to the infringement and passing off allegation.

15) The Plaintiff and Defendant were both incorporated in the year 1982 and the name of the Defendant Company was Tivim Instruments

Company Private Limited. In so far as the business of both the entities is concerned, there is specific pleading in the reply Affidavit that both were in same or similar businesses promoted by their father Manohar to which there is no denial. *Prima facie* there is identity/similarity of the goods/services offered by the Plaintiff and the Defendant. As infringement is claimed of the mark "MINCO", a specific query was put by this Court as to the manner of infringement, to which the response was that the trademark is not affixed /imprinted on the products supplied, which are customised as per the customer's specifications, but the mark is used as part of tradename. Perusal of the sales invoices of the Plaintiff on record does not show the product description therein using the trademark "MINCO INDIA". Therefore what is put to use in trade mark sense is the trade name of which "MINCO" forms an essential part. The Plaintiff and the Defendant use the word "MINCO" as part of its trade name in a trade mark sense. It follows that the objection of the Plaintiff is to the use of the word "MINCO" by the Defendant as part of its trade name/domain name which according to the Plaintiff constitutes infringement of its trade mark "MINCO INDIA" and amounts to passing off.

16) The statutory provisions of T. M. Act provides for registration and protection of trade marks and for grant of relief against

infringement of registered trade mark. Under Section 28 of T.M. Act, the registration of a trade mark, if valid, grants exclusive right to the registered proprietor to use the trade mark and to obtain relief in respect of infringement of trade mark in manner provided by this Act. Section 29 of the T.M. Act governs the infringement of trade mark and sub section (5) of Section 29 provides that a registered trade mark is infringed by a person if he uses such registered trade mark as his trade name or part of his trade name, or name of his business concern or part of the name of his business concern dealing in goods and services in respect of which the trade mark is registered. Chapter V of the T.M. Act deals with assignment and transmission and permits the proprietor of registered trade mark to assign the trade mark with or without the goodwill of the business concerned. Section 45 of T.M. Act permits the assignee of registered trade mark to apply to the Registrar to be registered as subsequent proprietor of the trade mark. Chapter VI of the enactment deals with use of trade mark and registered users. Section 48 and Section 49 provides for registration as registered user of a person other than a registered proprietor of a trade mark.

17) The statutory framework thus recognises the registered proprietor of the trade mark and grants exclusive right to the proprietor to use the trade mark, to obtain relief against infringement

of the trade mark and also permits the use of the registered trade mark by a person other than a registered proprietor by assignment or as permitted user.

18) Coming to the proprietary right of the Plaintiff, it is specifically pleaded that the Plaintiff is using the trade mark "MINCO INDIA" in respect of its goods/services since the year 1982 and had applied for registration of the word mark on 5th June, 2023 with user claim of 6th October, 1982. There is no denial to the prior adoption and use of the trademark by the Plaintiff. The question to be considered is whether the Defendant should be restrained from use of the mark "MINCO" as part of its trade name. The defence raised is of concurrent entitlement to use the mark "MINCO" and bonafide adoption of the mark on two grounds i.e. firstly by reason of being part of GICON consortium and secondly by reason of no objection granted by Plaintiff to change of Defendant's name.

19) To support its entitlement to use of the trade mark "MINCO", the Defendant has pleaded the history of the incorporation of the various companies by the family patriarch, the partition, family settlement, the Plaintiff and Defendant being part of consortium "GICON" etc. The dispute between Amarendra and Raghvendra who are part of the same family is also set out. In an action for

infringement and passing off, the manner of succession of the controlling share holdings in both the companies is immaterial. The family dispute between the Directors of the companies has no relevance in teeth of the statutory scheme of the T.M. Act.

20) In so far as the bonafide adoption of the trademark as part of trade name by Defendant is concerned, in the communication dated 7th March, 2020, the Plaintiff has *prima facie* accepted that GICON served as nodal agency for routing the family business and that the Plaintiff and Defendant were part of GICON which are now separated. The resolution dated 18th May, 2012 precisely records the same fact of splitting of the units of GICON which included the Plaintiff and the Defendant. The terming of the said resolution of GICON as sham in absence of any details about the Directors present, approval etc is *prima facie* contradicted by the Plaintiff's own communication dated 7th March, 2020. *Prima facie* perusal of the resolution indicates that the resolution was passed in the year 2012 to provide clarity on overall control of GICON over its group companies. The material on record would *prima facie* demonstrate that the Plaintiff and the Defendant were in similar business and part of GICON group of companies. There is another document of GICON dated 20th April, 2016 certifying the status of the manufacturing units of GICON and states that for more than 25 years, the four manufacturing units have

been manufacturing their respective products and supplying to all their esteemed customers and now GICON has been split up in respect of the respective products as shown in the communication and the units are free to register in their individual names. The communication of 20th April, 2016 has not been specifically dealt with by the Plaintiff in its rejoinder. *Prima facie* the material on record indicates that the Plaintiff and Defendant were part of GICON consortium and the four units including the Plaintiff and Defendant were split up in terms of their products in the year 2016.

21) In this background of existence of the Plaintiff and the Defendant, the change of the tradename of Defendant to Minco (India) Flow Elements Pvt Ltd using the mark "MINCO" is required to be appreciated. The Defendant has placed on record the resolution of Plaintiff Company dated 2nd July, 2012 granting No objection to change of the Defendant's name using the word MINCO as part of its trade name and the Extra Ordinary General Body Meeting held on 16th August,2012. The explanatory statement of the EGM of Defendant Company specifically records that the name "MINCO" is name of Company of same group and is well known in the market for flow measurement apparatus and instruments. *Prima facie* it appears that the intent was to extend the benefit of the mark MINCO to the Defendant Company being part of GICON consortium. The resolution

is termed as fraudulent by the Plaintiff on the ground that the NOC as well as the special resolution has been signed by Raghvendra Kulkarni himself who at the relevant time was Director in both the companies and is presently the Director of Defendant Company. Perusal of the certified true copy of the resolution at Exhibit “F” indicates that the resolution was pursuant to a meeting of Board of Directors held on 2nd July, 2012. Admittedly at the relevant time, Raghvendra was Director of Plaintiff and was thus entitled to accord No Objection on behalf of the Plaintiff. The fallacy in terming the NOC as fraudulent by reason of sole objection of Amarendra after the filing of the suit is that the submission equates the Director of the Plaintiff Company with the Plaintiff Company ignoring the separate and distinct existence of a Company apart from its Director and shareholders.

22) *Prima facie* the resolution indicates a meeting being held by the Board of Directors of Plaintiff Company on 2nd July, 2012 resolving to give its no objection to the change in name of Defendant Company. It is not *prima facie* shown that other Directors of the Board of Directors of Plaintiff had not consented and the resolution was a unilateral act on part of Raghvendra Kulkarni. The resolution of the Defendant Company accepting the change of the name has been passed in the extra ordinary general meeting which was attended by other Directors apart from Raghvendra Kulkarni. For a period of three

years after the NOC issued by the Plaintiff Company, Amarendra Kulkarni continued as Director of the Defendant Company, which *prima facie* shows knowledge and acceptance of the Defendant's change of name. Even after becoming aware of the change in the Defendant's trade name which results in use of the registered trade mark of the Plaintiff Company as part of the trade name, the Plaintiff and Amarendra Kulkarni remained inactive and took no steps to challenge the validity of resolutions passed by the Plaintiff and Defendant Company as regards change of name. Considering the material on record, *prim*a fa*ci*e at the interim stage, I am not inclined to accept that the use of the tradename by Defendant is dishonest adoption and a fraudulent act. The decision of ***Hindustan Pencils Private Limited*** (supra) considering the defence of delay and laches in the background of tainted user does not assist the case of the Plaintiff.

23) Even accepting the bonafide adoption of the trade name by the Defendant using the mark "MINCO" with consent of the Plaintiff, the proprietary right of the Plaintiff in the mark "MINCO INDIA" cannot be denied. It is equally true that GICON is not the proprietor of the mark "MINCO INDIA" and there is no intragroup arrangement demonstrated, which would entitle the Defendant to concurrent use of the mark "MINCO". The Defendant, however, does not rest its case

only on right to concurrent use by reason of Plaintiff's No Objection and being part of GICON, but has mounted a challenge to the Plaintiff's entitlement to interim relief on ground of suppression of facts. One of the key submissions canvassed is the false date of knowledge pleaded in the plaint.

24) The pleading of suppression of fact is pressed by Mr. Kamod in the context of grant of discretionary relief and not for the purpose of Order 39 Rule 4 of CPC. It is trite that a party seeking equitable relief is required to approach the Court with clean hands. Upon holistic reading of the plaint, the impression that the plaint conveys is that apart from the fact of the Director of the Defendant being at one point of time the Director of the Plaintiff, the Plaintiff is totally unaware of the existence of the Defendant Company, the use of the trade mark as part of Defendant's trade name by the Defendant and the business of the Defendant till February, 2024. Though it may not be relevant to set out the family dispute between the brothers Amarendra and Raghvendra, the Will of Manohar etc, considering that the infringement is alleged under Section 29(5) of T.M. Act by reason of use of the mark "MINCO" as part of the Defendant's trade name, the manner of change of Defendant's trade name was a material and relevant fact required to be pleaded. The plaint conveys the impression that the Defendant Company is an unassociated third

party Company with no concern or relevance to the Plaintiff Company. The fact about the common directors, the manner of change of name of Defendant Company, the business of identical goods/services being carried out by the Defendant since inception are all relevant for the purpose of deciding whether the adoption of the trade name by the Defendant is bonafide and honest adoption and from the point of view of concurrent user which has an impact on the balance of convenience.

25) The plaint feigns complete ignorance about any association with the Defendant and claims to be aware of Defendant only in the year 2024. The Plaintiff and Defendant had common directors atleast till the year 2015 and therefore the Plaintiff had complete knowledge about the Defendant. Given the factual scenario, the pleading in paragraph 12 and 13 of the plaint regarding the knowledge of Plaintiff about the Defendant offering identical goods using the mark "MINCO" in the year 2024 and being unable to find the goods/services of Defendant using the mark "MINCO" is *prima facie* false statement on oath. The date of knowledge of the Plaintiff is *prima facie* of the year 2012, when the Defendant changed its trade name by using the mark "MINCO" as part of its trade name and at the very least since the year 2015.

26) Though delay *per se* may not be available as defence to an infringement action, the said legal position cannot give a *carte blanche* to the Plaintiff to make incorrect statement of oath about knowledge about the Defendant's infringing activity. Assuming *arguendo* that the change of name was by reason of fraudulent act on part of the Director of the Defendant, the knowledge about the fraud and change of name was acquired by the Director of Plaintiff and Deponent of the plaint in the year 2015 itself, which should have been pleaded in the plaint. The products which are marketed by both the companies are orifice plate, orifice meter run assembly, flow instruments, level gauges, temperature controlling apparatus etc since inception. It is incomprehensible that the Director of the Plaintiff who was the Director of Defendant till the year 2015 was unaware of either the change in the name in the year 2012 or about the business of the Defendant. There is not a whisper in the entire plaint about the the Directors of both the companies being common till the year 2015 and the change of the name of Defendant company incorporating the word MINCO as part of its trade name in the year 2012.

27) After the facts were set out in the reply Affidavit, in rejoinder it is admitted that the Director of Plaintiff Company was the Director of Defendant Company and vice versa. What is significant is that in

paragraph 6 of the rejoinder affidavit, it is pleaded that the Director of Plaintiff Company resigned from the Defendant Company in the year 2015 upon becoming aware of change of name. The resignation letter dated 15th December, 2015 by the Director of Plaintiff is addressed to the Board of Directors of Minco (India) Flow Elements Pvt Ltd which demonstrates knowledge about the use of the word "MINCO" as part of the changed name by the Defendant. The Plaintiff and the Defendant are located at Tivim Industrial Estate, Mapusa Goa and their Mumbai address earlier was at 194/195 Gopi Tank Road, Off Pandurang Naik Marg, Mahim and the cause title of the plaint show that both are located at Kohinoor Square at Dadar, Mumbai. In the rejoinder Affidavit, there is specific pleading in paragraph 18 that the Defendant has throughout been known to provide sub standard products/services and since consumers knew that Amarendra and Raghvendra were brothers, they used to reach out to Amarendra to resolve the situation , who used to address the situation. The reply dated 7th March, 2020 by the Amarendra Kulkarni on behalf of General Instruments Consortium accepts that the Plaintiff and Defendant Company are intertwined and that their offices are located within the same premises. In light of the material on record p*rima facie* the Plaintiff was well aware of the nature of business of the Defendant and that the Defendant was carrying on business using the word MINCO as part of its trade name and in trade mark sense since atleast the year 2015 and *prima facie* proves the falsity in the pleadings at paragraph 12 and 13 of the plaint.

28) While considering the grant of interim injunction equity and balance of convenience play significant role. The making of false statement and suppression of material facts militates against grant of discretionary relief. In ***Ramjas Foundation and Another*** (supra), the Hon'ble Apex Court has held that the principle that a person who does not come to the Court with clean hands is not entitled to be heard on merits of his grievance and in any case such person is not entitled to any relief is applicable not only to Petitions filed under Article 32, 226 and 136 of Constitution but also to cases instituted in other courts and judicial forums. In ***Pernod Richard India Pvt Ltd*** (supra), the Hon'ble Court culled out the legal principles governing grant of injunction to hold that the grant of injunction whether for infringement or passing off is ultimately governed by equitable principles and is subject to the general framework applicable to proprietary rights. In ***Chemco Plastic Industries Pvt Ltd*** (supra), the restraint was sought against use of the mark CHEMCO, the impugned trading name CHEMCO PLAST and the impugned domain name www.chemcoplast.com. This Court considered the facts of that case to hold that there were multiple opportunities for the Plaintiff to become aware of the presence of Defendant. This Court considered

the aspect of equity and balance of convenience in that case of concurrent user and held that balance of convenience to play a significant role and did not grant injunction against use of the trade name.

29) The present case stands on a better footing as the Plaintiff was very well aware of the Defendant's change of name atleast from the year 2015. *Prima facie* there is honest adoption of the mark by the Defendant as part of its trade name. There was no action initiated by the Plaintiff despite being aware of change of trade name way back in the year 2015. *Prima facie* even the instance of confusion appears to be doubtful as the response email is addressed by Plaintiff from gicflowcs@general-guages.com and mentions the name of General Instruments Consortium. Surprisingly, the response mail of the Plaintiff states that the replacement flow nozzle has been supplied by the Plaintiff. As the defective flow nozzle is claimed to have supplied by the Defendant, in usual course of action, the client would be directed to the Defendant for replacement instead of the Plaintiff replacing the defective product. The pleading in paragraph 18 of the rejoinder affidavit about Amarendra salvaging the situation when need arose, when accepted, rules out that the email was by reason of confusion amongst the consumers.

30) The principles of equity and balance of convenience rules against the grant of interim relief in favour of the Plaintiff who has *prima facie* made false statements on oath and suppressed material facts. The Defendant is using the mark MINCO as part of its trade name since the year 2012 and has produced duly certified balance sheet which *prima facie* shows sales turnover of approximately Rs 1,11,88,73,822/ since the year 2012. The contention is that there is no positive act on part of the Plaintiff to infer acquiescence as Amarendra has resigned from the Defendant Company upon becoming aware of the change of name. The contention once again blurs the separate existence of the Plaintiff from its Director and in any event the resignation of Amarendra shows that the same was for personal reasons. In ***Power Control Appliances and Others*** (supra), it was held in paragraph 26 as under:

> *"12. Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name etc. It implies positive acts: not merely silence or inaction such as in involved in laches. In Harcourt vs White Sr. John Romilly said: It is important to distinguish mere negligence and acquiescence. Therefore acquiescence is one facet of delay. If the plaintiff stood by knowingly and let the defendants build up an important trade until it become necessary to crush it, then the plaintiff would be stopped by their acquiescence. If the acquiescence in the infringement amounts to consent, then it will be a complete defence as was laid down in Mouson (J.G) & Co vs Boehm. The acquiescence must be such as to lead to the inference of a license sufficient to create a new right in the defendant as was laid down in Rodgers vs Nowill."*

31) The principle laid down is that the Plaintiff cannot stand by and allow the Defendant to carry on business by expending money and after long lapse of time seek stoppage of the business. The Defendant has been openly using the mark “MINCO” as part of its trade name since the year 2012 to the complete knowledge of the Plaintiff. Despite being aware of since the year 2012, the Plaintiff Company has remained passive till the year 2025. For the past thirteen years, the Defendant has continued its business using the trade name MINCO INDIA and has build a formidable business which is *prima facie* evident from the sales turnover. Though it is contended that there is no acquiescence as the Defendant’s registration application mentions the use of the mark “MINCO” on proposed to be used basis, the contention is misplaced. The registration application seeks registration of device mark “MINCO” in saffron colour and there is sufficient material on record such as invoices, balance sheets etc to *prima facie* show the use of the mark “MINCO” as part of the trade name by the Defendant since the year 2012.

32) There is no quarrel with the decisions of ***Pidilite Industries Ltd, Abdul Rasul Nurallah Virjee and Midas Hygiene Industries (P) Ltd ,*** however its applicability to facts of present case is doubtful. Considering the nature of products which are orifice plates, orifice assembly, venturi tubes, these products are part of niche market and

are not regular products which are bought off the shelf. These products are stated to be customised products as per the client's specifications and bought by discerning clientele which are major industries. *Prima facie* it is difficult to accept that the clientele for such products would be confused in soliciting the goods/services. Even accepting the email of 14th February, 2024, the same is a solitary incident which has occurred since the year 2012 after change of name and is insufficient to make out a case of confusion and deception.

33) There are no pleadings and no material to *prima facie* support the case of passing off. The Plaintiff and Defendant are dealing in identical goods/services since inception. There is nothing to persuade this Court to come to a *prima facie* finding of misrepresentation by the Defendant or that the Defendant has marketed its product/services as that of Plaintiff intentionally or unintentionally. There has to be cumulative satisfaction of the classical trinity (a) goodwill (b) misrepresentation and (c) damage to goodwill, which is not satisfied in the present case.

34) In light of the above discussion, no case has been made out for grant of interim relief. Interim application stands dismissed.

(SHARMILA U. DESHMUKH, J.)