

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 155 of 2017**

[Arising out of order dated 22<sup>nd</sup> March, 2017 passed by the National Company Law Tribunal, Principal Bench, New Delhi in C.P. No.50(ND)/2017]

**IN THE MATTER OF :**

**World Book Company Pvt. Ltd.**

**... Appellant**

**Versus**

**World Book India Pvt. Ltd. & Ors.**

**... Respondents**

**Present: For Appellants : Shri Tapan Choudhury, Advocate**

**For Respondent No. 1 : Shri Anshuman Sharma,  
Advocate**

**For Respondent No. 2 : Shri R. Mishra and Shri Tavish  
B. Prasad, Advocates**

**J U D G E M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by the appellant/ petitioner against order dated 22<sup>nd</sup> March, 2017 passed by the National Company Law Tribunal (hereinafter referred to as 'Tribunal'), Principal Bench, New Delhi in C.P. No. 50(ND)/2017. By the impugned order, learned Tribunal refused to invoke jurisdiction under Section 7(7) read with Sections 446, 447, 448, 449 and 450 of the Companies Act, 2013 and dismissed the petition with cost.

2. The appellant filed an application before the Tribunal under Section 7(7) read with Sections 446, 447, 448, 449 and 450 of the Companies Act, 2013 for directions to remove the 1<sup>st</sup> Respondent's name i.e. 'World Book India Pvt. Ltd.' from the register of companies and to impose costs and to prosecute the 1<sup>st</sup> Respondent company and his directors for giving false statement and false evidence and also for other reliefs.

3. According to the appellant, the company was incorporated on 23<sup>rd</sup> May, 2012, styled as 'World Book Company Pvt. Ltd.' The appellant received a legal notice in the month of September, 2012 on behalf of 'World Book Inc.', a foreign company, to do certain things immediately, such as :

1. Change the name of your business to a name which does not include 'World Book' or anything which is confusingly similar or associated with that work and me the requisite documents with the Registrar of Companies evidencing the change of name and provide a stamped acknowledgment copy of such documents.
2. Cease all use of the impugned trade name 'World Book' in any way, including but not limited to selling and marketing of products under the said trade name and/or use of the said name on letter heads,

websites, invoices, brochures, pamphlets or any other advertising/sales promotional material and in any other manner whatsoever.

3. Unconditionally assign and transfer all rights, interest and title in the domain name 'worldbookcompany.in' in favour of our client without the need for any consideration/payment.
4. Deliver to us any and all material in your possession or control bearing our client's trade mark/trade name and anything substantially or confusingly similar thereto, including, but not limited to, all inventory of cartons, packing containers, labels, packaging, invoices, advertising and promotional materials and/or articles used in connection with the sale and/or marketing of such goods.
5. Execute the attached undertaking on Rs. 100/- non judicial stamp paper."

4. It appears that the appellant has not complied with the request of one 'World Book Inc.', a foreign Company. Therefore, the said Company filed a Trade Mark Infringement Suit in May, 2013 before the Hon'ble High Court of Delhi and the same has been registered as 'CS(COMM)1372/2016'. An interim order was passed therein by the Hon'ble High Court on 27<sup>th</sup> May, 2013, which reads as under :-

“5. As regards the defendants, it is averred that the defendant is a company by the name ‘World Book Company Private Limited’, registered under the Indian Companies Act, 1956 and is stated to be engaged in the overlapping business of publication and publishing books, etc. The plaintiffs claim that in the first week of September, 2012, they discovered that the defendant had registered a company in the name of ‘World Book Company Private Limited’ that contains the dominant and distinctive element of the plaintiffs’ trademark/trade name “WORLD BOOK”.

6. The plaintiffs further discovered that the defendant had also registered the domain name “<worldbookcompany.in>” by hosting the website, which is stated to be deceptively and/or confusingly similar to the plaintiffs’ domain name “<worldbook.com>”. Immediately thereafter, on 12.9.2012, the plaintiffs claim to have sent a cease and desist notice to the defendant calling upon it not to use its registered trademark/trade name “WORLD BOOK” as part of their corporate name. However, the said notice was not replied to by the defendant.

7. It is averred by the plaintiffs that by using the plaintiffs' proprietary trademark/trade name "WORLD BOOK" and by adopting the trademark "WORLD BOOK" as part of its corporate name, the defendant has committed an infringement of the registered trademark of the plaintiffs. The aforesaid act of the defendant is stated to have resulted in deceiving the members of the trade and public at large into believing that the offending products/services sold and offered for sale by the defendant have some connection with the plaintiffs, whereas in fact, no such connection exists. Further, the defendant being in the same trade of publication of books, etc., as the plaintiffs', it is averred that the public is likely to be attracted towards the defendant's products sold under the impugned trade name and they would be inclined to purchase the same under a mistaken belief and impression that they are buying the merchandise of the plaintiffs and/or their licensees. The manner in which the plaintiffs are likely to suffer irreparable loss and injury on account of the aforesaid acts of the defendant, has been detailed in para 26 of the plaint.

8. *Having regard to the averments made in the plaint and upon perusing the documents placed on record, this Court is satisfied that the plaintiffs are entitled to grant of an ex parte ad interim injunction in their favour. Accordingly, till further orders, the defendant, its directors, officers, agents, servants, representatives, assigns, etc. are restrained from using the trademark "WORLD BOOK" or any other mark that is deceptively similar to the plaintiffs' registered trademark "WORLD BOOK" in respect of printing/publishing of books and other reference materials and educational products, either in print or in software versions as also on their website.*

9. *To enable the defendant to make adequate alternate arrangements with regard to the books, reference material being published by it under the impugned mark, it is deemed appropriate to direct that this order shall come in operation upon expiry of four weeks reckoned from the date of intimation of this order.*

10. *Provisions of Order XXXIX Rule 3 of the Code of Civil Procedure be complied with within three days."*

5. Taking into consideration the fact that the aforesaid matter is pending and the appellant also agitated the issue under Section 16 of the Companies Act, 2013 before the Regional Director, who in his order dated 25<sup>th</sup> May, 2016 has noticed that in the Civil Suit the interim order was passed on 27<sup>th</sup> May, 2013 granting interim injunction in favour of the respondent has been confirmed, and the appellant, its directors, its officers, agents, servants etc. have been refrained from using the trademark 'World Book' or any other mark that is deceptively similar to the plaintiffs' registered trademark 'World Book'. In view thereof, the Tribunal rejected the application by the impugned order dated 22<sup>nd</sup> March, 2017 with the following observations :

*“Having heard the learned counsel we are of the view that once Hon’ble High Court of Delhi has passed an interim order on 27.5.2013 which has been confirmed on 15.10.2015 and 12.6.2016, then no room is left for this Tribunal to exercise jurisdiction at this stage under 7(7) of the Companies Act, 2013 by concluding that the respondent has acquired incorporation of certificate of its company by playing fraud or by practice deception. We are further of the view that it is sheer misuse of the process of the Court and the instant petition is ill advised. Accordingly the petition fails and the same is dismissed with cost of*

*Rs. 25,000/- . The cost be deposited in the Library fund of the NCLT.”*

6. Learned counsel appearing on behalf the appellant submitted that the name 'World Book' is common to the trade and generic name. 'WORLD BOOK' in combination was used since 1905 by 'World Book Company' much prior to the respondents. There are several other proprietors using the descriptive expression as book publishers, a few of such names are 'World Book Company- Chawri Bazar', 'World Book Day Ltd.', 'World Book Fair', 'World Book Night', 'World Book Mart', 'World Book Centre' etc., apart from 'worldbookday.com', 'worldbooknight.com', 'worldbookmart.com', 'worldbook.com' etc. It is informed that against 'World Book Inc.', a judgement has been passed under the Ireland Trade Marks Registry and 'World Book Inc.' has been ordered to pay 'World Book Day Ltd.' a sum of £500.

Therefore, according to the learned counsel for the appellant, the Trade Mark Infringement Suit before the Hon'ble High Court of Delhi cannot come in the way of the appellant for getting relief(s) under the provisions of the Companies Act, 2013 as referred to above.

7. Learned counsel for the respondents, while supported the impugned order, submitted that for initiation of legal proceeding



under Section 7(7) of the Companies Act, 2013, said provision may not prescribe any period of limitation. However, as per Section 433 of the Companies Act, 2013 read with Article 113 of the Limitation Act, 1963, which deals with the subjects of suits the period of limitation would apply. As per the appellant's own admission, the appellant received the reply pursuant to application filed under the Right to Information Act, 2005 on 12<sup>th</sup> September, 2013 and, therefore, the appellant had complete knowledge of incorporation of the 1<sup>st</sup> Respondent more than three years prior to filing of the application. Since the right to sue accrued on 12<sup>th</sup> September, 2013, the Company Petition having been filed beyond three years is barred by limitation and not maintainable.

8. It was further submitted that the provisions of Section 7(7) of the Companies Act, 2013 cannot apply from the date of registration and, therefore, the impugned order falls outside the scope and ambit of Section 7(7) as the 1<sup>st</sup> Respondent was incorporated on 24<sup>th</sup> August, 2012.

9. We have heard the learned counsel for the parties and perused the record.

In the present case, we are not inclined to decide the question as to whether the application under Section 7(7) of the Companies

Act, 2013 was barred by limitation, the Tribunal having not dismissed the petition on such ground.

10. Admittedly, World Book Inc., a foreign company, has filed a Trade Mark Infringement Suit in May, 2013 before the Hon'ble High Court of Delhi against the appellant wherein interim order of injunction has been passed restraining the appellant from using the trade mark 'World Book' or any other mark that is deceptively similar to the plaintiffs' registered trade mark 'World Book' in respect of printing, publishing of books and other reference materials and educational products. The appellant having injuncted for the present to use the trademark 'World Book' as part of their property name, petition under Section 7(7) read with Sections 446, 447, 448, 449 and 450 of the Companies Act, 2013 with prayer to direct the 1<sup>st</sup> Respondent to delete the name 'World Book India Pvt. Ltd.' from the register of the companies or for imposition of fine and prosecution of the 1<sup>st</sup> Respondent company, at the behest of the appellant is not maintainable. If the aforesaid Trade Mark Infringement Suit is ultimately decided in favour of the appellant, one may understand the right of the appellant to ask for relief(s), as has been sought for in the company petition. However, till the appellant is injuncted from using the registered trademark/trade name 'World Book' as part of their corporate name, at the instance of the appellant, no action can be taken against the 1<sup>st</sup> Respondent.

11. In the aforesaid background, if the learned Tribunal rejected the petition and dismissed the same with cost of Rs. 25,000/-, no interference is called for. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances, there shall be no order as to costs.

[Balvinder Singh]  
Member (Technical)

[Justice S.J. Mukhopadhaya]  
Chairperson

NEW DELHI

20<sup>th</sup> September, 2017

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