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

+ FAO(OS) (COMM) 65/2021 & CM APPL. 14813/2021

BRITANNIA INDUSTRIES LTD Appellant

Through Mr. Sudhir Chandra, Senior Advocate
with Ms. Ishani Chandra, Advocate
and Ms. Shubhie Wah, Advocate.

versus

ITC LTD & ORS. Respondents

Through Mr. Sajan Poovayya, Sr. Advocate
with Mr. Sudeep Chatterjee, Ms.
Nupur Lamba and Mr. Kiratraj
Sadana, Advocates.

AND

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+ FAO(OS) (COMM) 66/2021 & CM APPL. 14816/2021

BRITANNIA INDUSTRIES LTD Appellant

Through Ms. Ishani Chandra, Advocate
and Ms. Shubhie Wah, Advocate.

versus

ITC LTD & ORS. Respondents

Through Mr. Sajan Poovayya, Sr. Advocate
with Mr. Sudeep Chatterjee, Ms.
Nupur Lamba and Mr. Kiratraj
Sadana, Advocates.

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Date of Decision: 04th August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeals have been heard by way of video conferencing.
2. The present appeals arise from the impugned order/judgment dated 05th April, 2021 passed in I.A Nos. 12115/2020 in CS(COMM) 553/2020 and I.A No. 12125/2020 in CS(COMM) 554/2020, which were filed impugning the packaging of the Respondent No.1/Defendant No.1 depicted hereinbelow:-

Product Description	Impugned Packaging in CS(COMM) No. 553 of 2020
Sunfeast Farmlite 5-Seed Digestive <i>(Pillow Packaging)</i>	
Sunfeast Farmlite 5-Seed Digestive <i>(Box Packaging)</i>	

Product Description	Impugned Packaging in CS(COMM) No. 554 of 2020
Sunfeast Farmlite Veda Digestive <i>(Pillow Packaging)</i>	
Sunfeast Farmlite Veda Digestive <i>(Box Packaging)</i>	

3. During the pendency of the suits, the Defendant No.1/Respondent No.1 modified the packaging of the products in question, namely, ‘Sunfeast Farmlite 5-Seed Digestive’ and ‘Sunfeast Farmlite Veda Digestive’, and released the same into the market. This modified packaging is depicted hereinbelow:-

Product Description	Modified Packaging in CS(COMM) No. 553 of 2020
<p>Sunfeast Farmlite 5-Seed Digestive <i>(Pillow Packaging)</i></p>	 <p>The image shows a pillow-shaped package of Sunfeast Farmlite 5-Seed Digestive biscuits. The packaging is primarily orange and yellow. It features the Sunfeast logo at the top left, followed by 'Farmlite' and '5-seed Digestive' in large, bold letters. Below this, it says 'HIGH FIBRE'. On the right side, there is a circular graphic showing the biscuits and the text 'SUNFEAST FARMLITE DIGESTIVE'. The package also lists 'Power Seeds' and includes small images of the five seed types: Flax Seeds, Chia Seeds, Watermelon Seeds, Sunflower Seeds, and Pumpkin Seeds.</p>
<p>Sunfeast Farmlite 5-Seed Digestive <i>(Box Packaging)</i></p>	 <p>The image shows a box of Sunfeast Farmlite 5-Seed Digestive biscuits. The box is primarily yellow and orange. It features the Sunfeast logo at the top left, followed by 'Farmlite' and '5-seed Digestive' in large, bold letters. Below this, it says 'HIGH FIBRE'. On the right side, there is a circular graphic showing the biscuits and the text 'SUNFEAST FARMLITE DIGESTIVE'. The box also lists 'Power Seeds' and includes small images of the five seed types: Flax Seeds, Chia Seeds, Watermelon Seeds, Sunflower Seeds, and Pumpkin Seeds.</p>
Product Description	Modified Packaging in CS(COMM) No. 554 of 2020
<p>Sunfeast Farmlite Veda Digestive <i>(Pillow Packaging)</i></p>	 <p>The image shows a pillow-shaped package of Sunfeast Farmlite Veda Digestive biscuits. The packaging is primarily green and yellow. It features the Sunfeast logo at the top left, followed by 'Farmlite' and 'Veda Digestive' in large, bold letters. Below this, it says 'HIGH FIBRE'. On the right side, there is a circular graphic showing the biscuits and the text 'SUNFEAST FARMLITE DIGESTIVE'. The package also lists '5 Natural Spices' and includes small images of the spices: Cardamom, Mulethi, and Ginger.</p>



4. Vide the impugned order/judgment dated 5th April, 2021, the learned Single Judge dismissed I.A Nos. 12115/2020 in CS(COMM) 553/2020 and I.A No. 12125/2020 in CS(COMM) 554/2020, thereby giving rise to the present appeals.

5. The parties have now amicably resolved the matter as per the following agreed terms:-

- i. The Respondents shall not use the product packaging impugned in the Suits bearing CS(COMM) No. 553/2020 and CS(COMM) No. 554/2020 as depicted hereinabove in para 2.
- ii. The Respondents have modified their packaging of the products 'Sunfeast Farmlite 5-Seed Digestive' and 'Sunfeast Farmlite Veda Digestive' which are already in the market. The same have been reproduced hereinabove in para 3.
- iii. The Appellant has no objection to the use of the modified packaging of the Respondents as depicted hereinabove.
- iv. In consideration of the above acknowledgments by the Respondents, the appellant gives up its claim for rendition of accounts, damages, costs etc.

v. The parties further agree that the present appeals be disposed of and the Suits bearing CS(COMM) No. 553/2020 and CS(COMM) No. 554 of 2020 be decreed in terms of the above.

6. Consequently, the impugned order dated 5th April, 2021 passed in I.A Nos. 12115/2020 in CS(COMM) 553/2020 and I.A No. 12125/2020 in CS(COMM) 554/2020 is set aside and the same shall not be treated as a precedent. The questions of law raised in the present appeals are left open. Further both the Civil Suits being CS(COMM) 553/2020 and CS(COMM) 554/2020 are withdrawn to this Court and decreed in terms hereinabove but without any order as to costs. Accordingly, the present appeals along with pending applications and CS(COMM) 553/2020 as well as CS(COMM) 554/2020 stand disposed of.

7. The Advocates on Record for both the parties are directed to sign the today's order sheet as a token of acceptance of the terms mentioned hereinabove. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 4, 2021
AS