

# Falcon Autotech Private Limited vs Kengic Intelligent Technology Co. Ltd on 2 August, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CS(COMM) 643/2024 & I.A. Nos. 35231/2024  
35233/2024 & 35234/2024  
FALCON AUTOTECH PRIVATE LIMITED

KENGIC INTELLIGENT TECHNOLOGY CO. LTD. .  
Through: None.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

% 02.08.2024 I.A. 35234/2024 (Exemption from filing original copies)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), on behalf of the plaintiff, seeking exemption from filing original/true typed copies.
2. Exemption is granted, subject to all just exceptions.
3. Applicant shall file legible, clear, and original copies of the documents, on which the plaintiff may seek to place reliance, before the next date of hearing.
4. Accordingly, the present application is disposed of.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 06:48:58 I.A. 35233/2024 (Exemption from instituting Pre-Litigation Mediation)

5. The present is an application under Section 12A of the Commercial Courts Act, 2015, read with Section 151 of CPC seeking exemption from undergoing Pre-Institution Mediation.

6. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, and Division Bench of this Court in Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529, exemption from attempting Pre-Institution Mediation, is granted.

7. Accordingly, the application stands disposed of. I.A. 35232/2024 (Application seeking leave to file additional documents)

8. This is an application seeking leave to file additional documents under Order XI Rule 1(4) as amended by the Commercial Courts, Commercial Appellate Division of the High Courts Act, 2015, read with 151 CPC.

9. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

10. The application is disposed of, with the aforesaid directions. CS(COMM) 643/2024

11. None appears for the defendant, despite valid advance service.

12. Attention of this Court has been drawn to the document at PDF page 226 of the document folder, which is an excerpt from the website of the defendant, wherein, the contact details of the defendant company, have been given.

13. Let the plaint be registered as suit.

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14. Upon filing of the process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within thirty days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

15. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought and given within the timelines.

16. List before the Joint Registrar (Judicial) for marking of exhibits, on 25th September, 2024.

17. List before the Court, on 11th December, 2024.

I.A. No. 35231/2024 (Application under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking ex-parte ad-interim injunction)

18. The present suit has been filed against infringement of granted patent bearing no. 410846, seeking inter alia relief of permanent and mandatory injunction, rendition of accounts, damages and delivery up.

19. Learned Senior Counsel appearing for the plaintiff submits that the instant proceedings have been initiated, in order to protect the plaintiff's statutory rights in the patent bearing no. 410846 dated 25th January, 2021, titled as „AN INTEGRATED PRE-SORTATION SYSTEM”, granted by the Indian Patent Office. Attention of this Court has been drawn to the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 06:48:59 document, wherein, patent registration has been issued in favour of the plaintiff.

20. Learned Senior Counsel for the plaintiff submits that the plaintiff has invested tremendous amounts of money, time and resources in developing and manufacturing sorter machines. The plaintiff developed and delivered its first sorter system in the year 2015. These Systems are specifically engineered to optimize and automate critical operational processes within warehouse automation, logistics centers, and other material handling facilities.

21. It is submitted that the pre-sorting system, as developed by the plaintiff, is a separate and independent assembly, thereby making an advancement over the existing prior art. It is submitted that pre-sorting systems have multiple use cases in the supply chain, and hence is an extremely important and valuable technology for e-commerce, supply chain and delivery service providers. Thus, it is submitted that plaintiff has been a market leader in innovative sorting technology, having invested considerable resources in developing a pre-sorting system, which is currently integrated in loop sorters.

22. It is further submitted that the plaintiff's integrated sorting system, which has the proprietary pre-sorting mechanism, improves accuracy and efficiency. Thus, it is submitted that the invention, along with its technical knowledge, know-how and expertise, forms an invaluable asset and exclusive property of the plaintiff.

23. It is submitted that the plaintiff's suit patent discloses an integrated pre-sortation system, having two-part integrated sorting i.e., a feeding pre-sort apparatus and a downstream pre-sort apparatus. Further, the invention This is a digitally signed order.

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one or more feed lines, a pre-sorting set up, one or more cross belt sorter segments, a feeding pre-sort apparatus and a downstream pre-sort apparatus, which is configured to connect to a server having a processing unit, using a communication network.

24. Learned Senior Counsel appearing for the plaintiff further submits that there was neither any pre-grant opposition nor any post-grant challenge to the patent granted in favour of the plaintiff.

25. It is submitted that in and around the first week of June 2024, the plaintiff learned from market sources that the defendant has installed a sorter machine at one of the plaintiff's client's premises, which machine was claimed to have virtually identical specifications, configuration and usage to the suit Patent. Upon receiving this preliminary information, the plaintiff approached its said Client, requesting an inspection of the machine, which request was allowed by the Client in good faith and long-standing business relations.

26. It is submitted that the plaintiff's team visited its client's premises located in Gurugram, on 10th July, 2024 for inspection. Upon a thorough inspection of the defendant's machine, the plaintiff was shocked to note that the machine is functionally identical to the plaintiff's highest selling sorter machine, which is the subject matter of the suit patent.

27. It is submitted that based on the inspection of the machine, the plaintiff has done a thorough and careful claim mapping, and it has come to the fore that defendant has slavishly copied, and reverse engineered, each and every aspect of the suit patent.

28. Attention of this Court has been drawn to the claim mapping, through This is a digitally signed order.

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29. Thus, by reference to the aforesaid document, it is submitted that it is apparent that the defendant, being a much later entrant in sorting system industry, is attempting to springboard its business in India by offering and selling the infringing products to the customers, including the plaintiff's clientele.

30. It is submitted that the defendant has adopted an utterly illegal approach to compete with and in fact, displace the plaintiff from its primary market i.e., India.

31. It is submitted that defendant is a Chinese based entity, having no establishment, or physical presence in India.

32. Attention of this Court has been drawn to the information of the defendant, as available on website of the Ministry of Corporate Affairs ("MCA"), which is reproduced as under:-

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33. By referring to the aforesaid document, learned Senior Counsel appearing for the plaintiff submits that at present, the status of the defendant's Indian company is as "Strike Off".

34. Attention of this Court has also been drawn to the Resolution passed in the Board Meeting of the defendant Indian Company on 15th February, 2021, wherein, it has been resolved as under:-

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35. By referring to the aforesaid document, it is submitted that since the Indian company of the defendant could not carry on its business in India, it resolved to approach the Registrar of Companies for striking off the name of the company, which accordingly, has been done.

36. Attention of this Court has also been drawn to the Indemnity Bond filed by one of the Directors of Indian Company of the defendant, wherein, it has been stated as follows:

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37. An affidavit to the same effect, filed by one of the Directors of the Indian Company of the defendant, as filed along with the plaint, is reproduced as below:-

38. Similar affidavit has also been filed by two other Directors. Perusal of the aforesaid affidavit, filed by the Director of the Indian Company of the This is a digitally signed order.

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39. It is submitted that despite the Indemnity Bond and affidavits filed before the Registrar of Companies, and having the name of the Indian Company of the defendant, having been struck off from the website of the Ministry of Corporate Affairs, the LinkedIn profiles of certain persons are active, which show them working as Project Manager and Employees for the defendant-company.

40. Attention of this Court has been drawn to the LinkedIn profile of one persons, who claims to be the Project Manager and Manager of the defendant company, stationed at New Delhi, which is reproduced as under:-

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41. Similarly, the LinkedIn profile of one of the persons, showing himself to be Software Engineer at the defendant-company, stationed at India, is reproduced as under:-

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42. Another person, who portrays himself to be a Project Site Manager, at the defendant-company, and shown to be stationed at Delhi, India, is reproduced as under:-

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43. Thus, it is submitted that the defendant company is clandestinely operating in India, despite having its name Struck Off from the website of the Ministry of Corporate Affairs.

44. Thus, it is apparent from defendant's own conduct and business activities, that it is competing with the plaintiff in a highly unfair and illegal manner, causing detriment to the plaintiff's business.

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45. It is further submitted that the defendant has not obtained any licence or permission, including Foreign Company registration, PAN, TAN, GST etc. and, thus, is operating its business in India by flouting mandatory legal compliances. Thus, it is submitted that the defendant is playing a serious fraud, not only on the Indian customers, but also on tax and other government authorities.

46. Learned Senior Counsel appearing for the plaintiff submits that the defendant has no establishment or presence in India. Thus, selling, supplying and marketing of the infringing products by the defendant, has far reaching consequences, including serious consumer liability arising from sub-standard quality of the defendant's products. It is submitted that in addition to the blatant infringement of the plaintiff's exclusive rights in the suit patent, the defendant is doing its illegal business activities in India, which ought to be restrained in a larger public interest.

47. Considering the submissions made before this Court, the plaintiff has demonstrated a prima facie case for grant of injunction in its favour and that if no ex-parte ad-interim injunction is granted, the plaintiff will suffer an irreparable loss. Further, the balance of convenience also lies in favour of the plaintiff, and against the defendant.

48. Accordingly, it is directed that, till the next date of hearing, the defendant, its directors, proprietor, successors, assignees, owners, servants employees, subordinates, representatives, stockists, dealers, agents, franchisees, distributors, and all other person(s) acting for/on their



behalf, are restrained from directly or indirectly, manufacturing, selling, importing, exporting, offering for sale, advertising, exhibiting, promoting, in any manner, infringing products or any product, which infringes upon the Suit This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 06:49:00 Patent being Patent No. IN410846, i.e., "An Integrated Pre-Sortation System".

49. Issue notice to the defendant by all permissible modes, upon filing of process fees, returnable on the next date of hearing.

50. Reply, if any, be filed within a period of four weeks from the date of service.

51. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

52. Compliance of Order XXXIX Rule 3 CPC, be done, within a period of one week, from today.

53. List before the Court on 11th December, 2024.

MINI PUSHKARNA, J AUGUST 2, 2024 c This is a digitally signed order.

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