

In the High Court of Judicature at Madras

Dated: 10.03.2015

Coram:

The Honourable Mr. Justice R.SUBBIAH

Original Application No.981 of 2014

and

Application No.275 of 2015

in

Civil Suit No.793 of 2014

As per O.A.No.981/2014

1.M/s.Indigo Business Services (India) Pvt Ltd.,
Represented by its Director Mr.Irwin Besant Raj
having its registered office at
No.18/35, Second Cross Street, R.K.Nagar,
Chennai-600 028.

2.Mr.Irwin Besant Raj,
Director, having registered office at
No.18/35, Second Cross Street, R.K.Nagar,
Chennai-600 028,
permanently residing at:
5969, Leaside Crescent, Mississauga,
Ontario L5M 5L9, Canada.

.... Applicants/plaintiffs

Vs.

1.M/s.Focal Merchandising (India) Pvt Ltd.,
represented by its Director,
Mr.Noel Mohan Ravin,
No.3/8, New Dhamu Nagar,
Puliyangulam, Coimbatore-641 037.

2.Mr.Tini Korah, Director,
M/s.Focal Merchandising (India) Pvt Ltd.,
No.3/8, New Dhamu Nagar,
Puliyangulam, Coimbatore-641 037.

3.Mr.Noel Mohan Ravin,
No.203, Regalia Apartments,
No.58, Sardar Patel Road,
Taramani, Chennai-600 113.

4.Mr.Sakthivadivelan,
No.17, 8/2, SPS Second Street,
Royapettah, Chennai-600 014.

5.Mr.V.Shankar,
C/o.Focal Merchandising (India) Pvt. Ltd.,
108, Electronic Industries Estate,
Perungudi, Chennai.

6.Mr.Vairam Prakash,
C/o.Focal Merchandising (India) Pvt. Ltd.,
108, Electronic Industrial Estate,
Perungudi, Chennai.

7.Mr.John Paul,
No.3, Amudha Street,
Seethapathy Nagar, Velachery,
Chennai-42.

.... Respondents/Defendants

Prayer in OA.No.981 of 2014:- The original application has been filed by the applicants/plaintiff under Order XIV Rule 8 of Original Side Rules read with Order 39 Rules 1 & 2 and Section 151 of CPC, praying to grant ad-interim injunction restraining the respondents/defendants from doing any Point of Purchase display or any such advertising business with any of the clients of the 1st applicant/plaintiff company, listed in the Schedule A of this application, pending disposal of this suit.

Prayer in A.No.275/2015:- Application has been filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rule 4 of Civil Procedure Court, praying to vacate the interim injunction dated 07.01.2015 granted in O.A.No.981/2014 in C.S.No.793 of 2014.

For Applicants/plaintiffs : Mr.V.Prakash, Senior Counsel
for Mr.K.Sudalai Kannan

For Respondents/defendants : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.Vijayaganesh (for 2nd defendant)
M/s.Sairaj Associates for defendants 4 to 7.

ORDER

Original Application No.981 of 2014 has been filed by the applicants/plaintiff under Order XIV Rule 8 of Original Side Rules read with Order 39 Rules 1 & 2 and Section 151 of CPC, praying to grant ad-interim injunction restraining the respondents/defendants from doing any Point of Purchase display or any such advertising business with any of the clients of the 1st applicant/plaintiff company, listed in the Schedule A of this application, pending disposal of this suit.

2.The applicants herein are the plaintiffs and the respondents herein are the defendants in the suit. For the sake of convenience, the parties are referred to as per their rankings in the suit.

3.The brief facts of the case of the plaintiffs are as follows_

3(1)The 1st plaintiff viz., M/s.Indigo Business Services (India) Pvt. Ltd., was incorporated in the year 1994 by the 2nd plaintiff, who is one of the Directors of the 1st plaintiff-company. As on date, the other Directors of the 1st plaintiff-company are one Smt.Amirtha Besant Raj (mother of the 2nd plaintiff) and

Ms.NaliniRemeilaRaj (wife of the 2nd plaintiff). The 1st plaintiff-company is a Boutique Advertising Company that makes 'In Store' displays for leading Companies in the country like Hindustan Unilever, Pepsi, ITC, Glaxo-SmithKline, Reckitt Benckiser, Marico Industries, Johnson & Johnson Co., Vodafone, Murugappa Group, MRF, Colgate Palmolive, Britannia Industries, Pedigree etc. The 1st plaintiff-company through the efforts of the 2nd plaintiff, who is also the Promoter, had with great deal of investment and strain built up its goodwill in the business over the years and that such efforts together with dedicated performance led to the 1st plaintiff-company earning its goodwill and a high profile client base.

3(2)The shareholders of the 1st plaintiff-company are the 2nd plaintiff and his mother and wife viz., the said Smt.Amirtha Besant Raj and Ms.NaliniRemeilaRaj respectively and all the shareholders are the Directors of the 1st plaintiff-company. The 3rd defendant viz., Mr.Noel Mohan Ravin is none other than the brother-in-law of the 2nd plaintiff ie., younger brother of the 2nd plaintiff's wife Ms.NaliniRemeilaRaj.

3(3)In the year 1995, the 3rd defendant joined the 1st plaintiff-company as a Marketing Executive and remained in that

capacity till late 1999, when he had to be with his father at Nagercoil, as his father had undergone surgery and was recuperating. Thereafter, about a year later, he (2nd defendant) re-joined the 1st plaintiff-company again as a Client Service Manager in the year 2000 and thereafter, he was elevated to the position of Director of the 1st plaintiff-company during March-2002. The 3rd defendant remained as a Director until his resignation in the year 2014. The 3rd defendant was put in-charge of the business, when the 2nd plaintiff (Promoter of the business) and his wife Mrs.NaliniRemeilaRaj decided to move to Toronto, Canada with family to expand the business and look for new opportunities. Therefore, from the year 2008, the 3rd defendant, being a relative and having been put in a position of trust, was made the Indian Head and Marketing Head of the 1st plaintiff-company and given the complete responsibility to manage and improve the business in India. At the time, when the 3rd defendant assumed this role in the 1st plaintiff-company, the turnover of the 1st plaintiff-company was Rs.7 crores per annum.

3(4)The 3rd defendant was the overall in-charge of the affairs of the 1st plaintiff-company since the year 2008 including its day-to-day operations. The 4th defendant viz., Mr.SakthiVadivelan was

the General Manager (Finance & Operations) of the 1st plaintiff-company. The 5th defendant viz., Mr.V.Shankar was the Manager-Client Service and he was maintaining customer relations.

3(5) During the month of February-2014, the 3rd defendant expressed his desire to resign from service of the 1st plaintiff-company. After the 3rd defendant expressed his desire to resign from service, the 2nd plaintiff asked him whether he would be interested in taking a stake in the Company subject to the price being agreeable to both parties. The 3rd defendant requested that his potential partner Mr.TiniKorah, who is the 2nd defendant herien, be allowed to review the Company's finance to assess the company. A Non-Disclosure Agreement was made and the accounts were reviewed. Prior to the resignation of the 3rd defendant from the 1st plaintiff-company, during March-2014, the 3rd defendant made an offer for the purchase of the shares of the 1st plaintiff-company, for which there was an e-mail correspondence. However, as the offer of the 3rd defendant was not acceptable by the 2nd plaintiff, the matter was dropped. Finally, the 3rd defendant resigned from the 1st plaintiff-company on 15.05.2015. At that point of time, the 2nd plaintiff had no suspicion about the 3rd defendant.

3(6) In fact, the 3rd defendant had sent an e-mail on 20th

February-2014 to the 2nd plaintiff expressing his desire to resign from the 1st plaintiff-company on 15th May-2014. On 4th April 2014, the 3rd defendant sent an official e-mail to the 1st plaintiff-company resigning with effect from 15th May-2014 and also sent the resignation letters to the three Directors of the 1st plaintiff-company by Registered Post with Acknowledgment due. On 14th April-2014, the 3rd defendant again sent an email to the 2nd plaintiff stating that he is commencing a new business with the 2nd defendant and it will be on a production centric model that will supply to other Point of Purchase Companies like Indigo and therefore, there will be no conflict of interest. The last working day of the 3rd defendant as the Director of the 1st plaintiff-company was 15th May-2014.

3(7)Thereafter, the 2nd plaintiff handed over the charge from the 3rd defendant to the 4th defendant Mr.SakthiVadivelan, who was General Manager (Finance & Operations) and from the said day, the 4th defendant was in-charge of the affairs of the 1st plaintiff-company. The 5th defendant Mr.V.Shankar was the Manager Client Service for the 1st plaintiff-company and continued as such. The 6th defendant viz., Mr.T.S.Vaira Prakash was heading the Design Department of the 1st plaintiff-company and was involved in producing

the necessary artistic work and getting all the related material ready for delivery of the final design and the product to the customers. The 6th defendant has been made as a party to the present suit as he connived with the other defendants in diversion of orders of the 1st plaintiff-company to the 1st defendant-company viz., M/s.Focal Merchandising (India) Pvt. Ltd. and was in complete collusion with the other defendants, who were acting against the interest of the 1st plaintiff-company. The 7th defendant Mr.John Paul was the Graphic Designer, who also along with the 6th defendant, connived with the other defendants for the diversion of the orders from the 1st plaintiff-company to the 1st defendant-company. Subsequently, the defendants 4 to 7 also resigned from the 1st plaintiff-company. The defendants connived with each other and diverted the order of the 1st plaintiff-company to the 1st respondent-company; thus, they acted against the interest of the 1st plaintiff-company. During July-2014, when the 2nd plaintiff came to India from Canada, he was shocked to hear from an official of Colgate Palmolive on 15.07.2014 that the 3rd defendant had written to the said Company on 9th June-2014 asking the said Company to transfer the 1st plaintiff-Company's Vendor Registration to the name of the 1st defendant-company and the said

email was sent by the 3rd defendant from the official email of the 1st plaintiff-company that too on 9th June-2014 much after he resigned from the service of the 1st plaintiff-company on 15th May-2014. The 3rd defendant copied the said email to the defendants 2 & 4, to whom he had made the official E-mail ID of the 1st defendant-company, though the 4th defendant was continuing to be in service of the 1st plaintiff-company at that point of time. Subsequently, the 2nd plaintiff started investigation and found that the 3rd defendant had deleted his email record from 22nd May 2014 to 1st July 2014 as seen from the email account which was noel@indigoworldwide.com. On 5th September-2014, when the 2nd plaintiff was on a routine visit to meet their largest client viz., Hindustan Unilever in Mumbai, he was shocked to find out from the Purchase Head that the 3rd defendant has sent him Correspondence. This correspondence was forwarded by the Purchase Head of Hindustan Unilever to the 2nd plaintiff. On 15th May-2014, the 3rd defendant had emailed attaching a letter to Hindustan Unilever marking the copy of the said letter to the defendants 4 & 5 and in the said email, he misrepresented to Hindustan Unilever that the 1st plaintiff-company has restructured its business and transferred the Merchandising Business to the 1st defendant-company and that the full

team and all facilities have been transferred to the 1st defendant-company as there was no synergy between the Merchandising Services run by the 3rd defendant and the 2nd plaintiff's Toronto Based Business Consultancy. The 3rd defendant requested the Hindustan Unilever to register the 1st defendant-company as its Vendor and promised to meet the concerned official of Hindustan Unilever in person. The said email was sent from the official email ID of the 1st plaintiff-company and the attachment was in the letterhead of the 1st plaintiff-company. However, the 3rd defendant signs for M/s.Focal Merchandising India Pvt Ltd (1st defendant) in the said letter with the Company seal and that was even before the 1st defendant-company was incorporated. Therefore, in his letter dated 18th May-2014, addressed to M/s.Hindustan Unilever Ltd., the 3rd defendant had misrepresented as if the 1st plaintiff-company had transferred its full team and all facilities to the 1st defendant-company and as if, his representation was with the consent of the plaintiffs, consequent to restructuring of the 1st plaintiff-company. On 1st July-2014, ie., after the incorporation of the 1st defendant-company on 04.06.2014, the 3rd defendant sent the same mail from the 1st plaintiff company email ID noel@indigoworldwide.com to the new Purchase Head of Hindustan

Unilever making the same misrepresentation and marked the copies of the mail to the 4th defendant, who was heading the 1st plaintiff-company in interim. On 18th June-2014, the 3rd defendant again wrote to Colgate Palmolive making the same misrepresentation and seeking cancellation of the Vendor Registration of the 1st plaintiff-company and much worse, he signed the email as the Director of the 1st plaintiff-company from its official email ID and copies the same to the 4th defendant.

3(8)The acts committed by the defendants 3 to 7 had been thoroughly dishonest and their conduct has resulted directly in the diversion of the orders of the 1st plaintiff-company and resulted loss to the 1st plaintiff-company and its shareholders. The aforesaid conduct of the defendants has been dishonest and has been with a view to provide for themselves the goodwill that belongs to the 1st plaintiff-company. The defendants 3 to 7 are liable to pay punitive damages to the plaintiffs. The defendants 1 & 2 are beneficiaries of the aforesaid misconduct; therefore, they are also liable to pay punitive damages to the plaintiffs. Hence, the plaintiffs have filed the present suit for the damages and for permanent injunction against the defendants.

4. Pending the suit, the plaintiffs have filed the above application for interim injunction as stated supra.

5. When the interim injunction application came upon on 02.12.2014, this Court ordered notice to the defendants. Though notice was served on the defendants, they have not entered appearance. Hence, when the matter came up on 07.01.2015, this Court has granted interim injunction as prayed for, for a period of four weeks.

6. Thereafter, on appearance, the 3rd defendant has filed an application in A.No.275 of 2015 seeking to vacate the interim injunction order. The sum and substance of the contentions made in the affidavit filed in support of the petition to vacate interim order are as follows_

(i) A perusal of the cause of action as set out in the plaint would clearly go to show that the relief of Rs.1.70 crores is being sought as damages and the break-up and the reasons for the same are set out in para 12 of the plaint, which is due to diversion of orders and business goodwill and punitive damages. In the circumstances, since

the damages has been quantified and punitive damages has also been claimed, the present injunction cannot be granted in law. The injunction sought for in O.A.No.981 of 2014 is violative of Articles 14 & 19 of the Constitution of India. The suit and the injunction application are not based on Intellectual Property Rights due to which the 1st defendant being a stranger to the suit cannot be enjoined at the instance of the plaintiffs in respect of the lawful business of the 1st defendant. The 1st defendant being a body corporate having no business transaction with either of the plaintiffs, is not a proper and necessary party to the suit due to which the suit will have to fail as against the 1st defendant. Similarly for the same reasons, the suit will have to fail as against the 2nd defendant. The injunction is sought for in a vague manner in respect of restraining the defendants from doing any point of display products or any such advertising business with the clients of the 1st plaintiff listed in Schedule "A". No documents have been filed before this Court to show that the alleged clients of the plaintiffs as listed in Schedule "A" are really the clients of the 1st plaintiff and the 1st plaintiff has done work for the said clients over the last one year and in the absence of the same, there is no balance of convenience in favour of the plaintiffs.

(ii) It is the further case of the 3rd defendant that the 3rd defendant was an employee of the 1st plaintiff-company since May-1995 and he was directly in-charge of design development and also marketing. The 3rd defendant, along with the 2nd plaintiff, personally ensured that the goodwill and a high profile clientele were developed over the last 19 years. Though the 3rd defendant was in-charge of the affairs of the 1st plaintiff-company from the point of view of hierarchy, the day-to-day operations had never been allowed to be independently managed by the 3rd defendant since the 2nd plaintiff interacted with the 3rd defendant on a day-to-day basis through Skype. The 1st defendant-company was incorporated on 04.06.2014 and subsequently, became a Registered Vendor for Glaxo and at no point of time, during the 3rd defendant's tenure with the 1st plaintiff-company, he ever sabotaged or acted against the interest of the 1st plaintiff-company. The 3rd respondent obtained orders independently from Glaxo, after he left the 1st plaintiff-company. The 3rd defendant have conducted his affairs diligently and scrupulously without any blemish, even according to the 2nd plaintiff, who was giving instructions from Canada from 2008 onwards. The Companies listed in the plaint schedule are large corporates having huge turnover and it is natural

that such entities distribute the order to various vendors and the 3rd defendant took up the job as a vendor, only after he left the service of the 1st plaintiff-company and after being approached by those companies. After the 3rd defendant left the 1st plaintiff-company, the plaintiffs did not have the capability to secure and execute orders and they are blaming the 3rd defendant for their inability. In fact, the 3rd defendant sent emails from his personal email ID informing the Marketing Manager of the 1st plaintiff-company regarding the pending enquiries of MRF Ltd., which they did not pursue and execute even upto end of July-2014, and subsequently, MRF approached the 3rd defendant to become their Vendor and execute their orders.

(iii) It is further stated by the 3rd defendant that the 3rd defendant never sent any email to Colgate Palmolive to cancel the vendor registration of the 1st plaintiff-company and to reissue the same in the name of the 1st defendant. If such email exists, the same has been brought in existence fraudulently at the instance of the 1st plaintiff to malign the good-will and clean reputation, which the 3rd defendant have in the field of business and to ruin the prospects of the 1st defendant. The 3rd defendant denies that emails were deleted by him from his official email account of the 1st plaintiff-company. All big

corporates have several Vendors and this by itself will go to show that no Vendor can have a monopoly especially since the field is being enough for many Vendors to work in. Therefore, the question of diverting the business of the 1st plaintiff by the defendants will not arise at all. The business loss as alleged by the plaintiffs is totally baseless and has to be proved by the plaintiffs. The 3rd defendant has not colluded with any of the other defendants in acting against the interest of the 1st plaintiff in any manner, whatsoever either during the tenure with the 1st plaintiff or subsequently till date. Thus, the 3rd defendant sought for vacating the interim injunction order.

7. The defendants 4 to 7 have also filed a counter contending as follows_

The relief of injunction sought against the defendants 4 to 7, restraining them from doing any point of purchase display or any such advertising business effectively, prevents these defendants from being profitably employed and also curtails their right to engage themselves in profession/trade, that too when no such restraint was ever contemplated at the time of their employment with the 1st plaintiff-company and as such, it is void as the same is hit by Section 27 of the

Contract Act. There cannot be any restraint on an employment taking up employment in such manner as he deems fit after termination of the contract of employment. The relief as against these defendants, that is sought to be enforced, could not be directly enforced, equally could not be indirectly enforced as against these defendants. The relief of injunction sought by the plaintiffs in the application as well as the suit are identical in nature, as such if the prayer sought for in the interim application is granted pending the suit, it will amount to decreeing the suit without trial, as such the application is not maintainable. The defendants 4 to 7 deny any breach of fiduciary standard against the plaintiffs and state that they have carried out the instructions of the 2nd plaintiff truthfully, diligently and to the benefit of the 1st plaintiff-company till such time, they were in the services of the 1st plaintiff-company. The respondents 4 to 7 deny the allegation of collusion and conspiracy with the 3rd defendant and deny any breach of fiduciary duties towards the plaintiffs. Admittedly, the 3rd defendant was a close relative of the 2nd plaintiff. The defendants 4 to 7 were never privy to any arrangement between the 3rd defendant and the 2nd plaintiff regarding the affairs of the 1st plaintiff-company. The defendants 4 & 5 further deny the allegation that by not forwarding

emails of the 3rd defendant-Director of the 1st plaintiff-company to the other Directors, they have breached fiduciary duty. Thus, they sought for the dismissal of the injunction application.

8.It is the submission of the learned senior counsel appearing for the plaintiffs that the 1st plaintiff-company is a Boutique Advertising Company that makes 'In Store' displays for leading Companies in the country like Hindustan Unilever, Pepsi, ITC, Glaxo-SmithKline, Reckitt Benckiser, Marico Industries, Johnson & Johnson Co., Vodafone, Murugappa Group, MRF, Colgate Palmolive, Britannia Industries, Pedigree etc. In the year 1995, the 3rd defendant, who is the brother-in-law of the 2nd plaintiff, joined the 1st plaintiff-company as a Marketing Executive and he left the 1st plaintiff-company in the year 1999. Again in the year 2000, the 3rd defendant re-joined the 1st plaintiff-company as a Client Service Manager and thereafter, he was elevated to the position of Director of the 1st plaintiff-company during March-2002. Thereafter, the 3rd defendant resigned from the services of the 1st plaintiff-company on 15.05.2014. In fact, on 14.04.2014 itself ie., before his resignation, the 3rd defendant sent an email to the 2nd plaintiff stating that he is commencing a new business with the 2nd

defendant and it will be on a production centric model that will supply to other Point of Purchase Companies like Indigo and therefore, there will be no conflict of interest. The resignation of the 3rd defendant was accepted by the plaintiffs and the last working day of the 3rd defendant as the Director of the 1st plaintiff-company is 15th May-2014. But, the defendants connived with each other and diverted the order of the 1st plaintiff-company to the 1st respondent-company; thus, they acted against the interest of the 1st plaintiff-company. In fact, the 3rd defendant had written to the Colgate Palmolive Company on 9th June-2014 asking the said Company to transfer the 1st plaintiff-Company's Vendor Registration to the name of the 1st defendant-company and the said email was sent by the 3rd defendant from the official e-mail of the 1st plaintiff-company that too on 9th June-2014 much after his resignation from the service of the 1st plaintiff-company. The 3rd defendant had misrepresented as if the 1st plaintiff-company had transferred its full team and all facilities to the 1st defendant-company and as if, his representation was with the consent of the plaintiffs consequent to restructuring of the 1st plaintiff-company. Thus, the learned senior counsel for the plaintiffs submitted that even before his resignation from the 1st plaintiff, by making misrepresentation to the

clients of the plaintiffs, the 3rd defendant has diverted the orders to the 1st defendant-company, which was incorporated subsequent to his resignation. The learned senior counsel appearing for the plaintiffs submitted that the conduct of the 3rd defendant would show that by misusing the goodwill of the 1st plaintiff-company, by making false representation to the clients of the plaintiffs, the 3rd defendant has diverted the orders of the 1st plaintiff-company to the 1st defendant-company. All the defendants colluded with each other in diverting the orders of the 1st plaintiff-company to the 1st defendant-company. Therefore, the defendants have to be restrained as stated supra, pending the suit. In this regard, the learned senior counsel invited the attention of this Court to Section 27 of the Contract Act and made a detailed argument. In support of his contentions, the learned senior counsel has also relied upon the decision reported in **2007(8) CTC 1 (Reliance Energy Ltd Vs. Maharashtra State Road Development Corpn. Ltd.)**. Thus, it is submitted by the learned senior counsel appearing for the plaintiffs that since the defendants are unfairly competing with the plaintiffs, the defendants should be restrained from doing any Point of Purchase display or any such advertising business with any of the clients of the 1st plaintiff-company listed in the

Schedule A of the application, pending disposal of this suit.

9. Per contra, the learned senior counsel appearing for the 3rd defendant submitted that the nature of injunction sought for by the plaintiffs is not legally sustainable, since the defendants cannot be restrained from doing business of their own choice. The learned senior counsel appearing for the 3rd defendant has also submitted that the letter dated 13th May-2014 relied upon by the plaintiffs has not been written by the 3rd defendant. Further, the suit has been filed quantifying the damages to the extent of Rs.1.70 crores; hence, the plaintiffs are not entitled for grant of injunction. In this regard, the learned senior counsel appearing for the 3rd defendant submitted that only if the respondents identified themselves with the name of the applicant in doing their business, it can be said they are trying to misuse the goodwill of the applicant in diversion of the orders of the applicant and only in such event, the respondent can be restrained; otherwise, injunction can not be granted. In this regard, the learned senior counsel appearing for the 3rd defendant, by inviting the attention of this Court to Section 41(e) of the Specific Relief Act, has made a detailed argument. So far as the present case is concerned, after the

3rd defendant left the service of the 1st plaintiff-company, the 1st defendant company has been incorporated by the 2nd defendant and they are doing business only in the name of the 1st defendant-company. Therefore, it is incorrect to state that the 3rd defendant by misusing the goodwill of the 1st plaintiff-company has diverted the business orders of the plaintiffs. Further, the learned senior counsel for the 3rd defendant would submit that no prayer has been made by the plaintiffs with regard to passing of the goodwill of the 1st plaintiff-company; the suit is only for damages; therefore, injunction sought for by the plaintiffs cannot be granted. The learned senior counsel appearing for the 3rd defendant would further submit that absolutely there is no agreement between the plaintiffs and the 3rd defendant imposing any restriction on the part of the 3rd defendant with regard to obtaining orders from various clients of the plaintiffs; when that being so, the defendants cannot be curtailed from doing their business. In support of his contentions, the learned senior counsel appearing for the 3rd defendant relied upon the decisions reported in *(i)***2013(1) CTC 886 (FL Smidth Pvt Ltd Vs. Secan Invescast (India) Pvt Ltd. (2)2005(5) CTC 393 (The Vivekananda English Academy Vs. Amoha Education Private Limited)**. Thus, the learned senior

counsel appearing for the 3rd defendant sought for vacating the interim order.

10. The learned counsel appearing for the defendants 4 to 7 submitted that the defendants 4 to 7 are the erstwhile employees of the 1st plaintiff-company and they independently and separately resigned from the 1st plaintiff-company in search of better prospects and they did not collude with each other. Except the 4th defendant, none of the other defendants were issued with appointment order by the plaintiffs. Even in the appointment order issued to the 4th defendant, there is no restriction clause. Hence, now, they joined the 1st defendant-company. Therefore, it is correct to state that the defendants 4 to 7 connived with the other defendants and diverted the orders of the 1st plaintiff-company. In this regard, the learned counsel for the defendants 4 to 7 relied upon the decision reported in **(2006) III LLJ 540 Del (American Express Bank Ltd., Vs. Ms. Priya Puri)** and submitted that in almost similar to the facts of this case, the Delhi High Court has denied the injunction.

11. I have carefully heard the submissions made on either side

and perused the materials available on record.

12. Though a detailed argument was made on either side on the factual aspects of the case, the only question that falls for consideration in this application is_

whether the plaintiffs are entitled to the interim injunction restraining the respondents/defendants from doing business with the clients of the 1st applicant/plaintiff company, listed in the Schedule A of this application, pending disposal of this suit?

13. It is the main contention of the learned counsel appearing for the plaintiffs that the 3rd respondent was in a position of the Director at the time of resignation from the 1st plaintiff-company and his last working day in the 1st plaintiff-company was 15.05.2014; he resigned from the 1st plaintiff-company stating that he is going to commence a new business along with the 2nd defendant and it will be on a production centric model that will supply to other Point of Purchase Companies like Indigo and therefore, there will be no conflict of interest. It is further submission of the learned counsel for the plaintiffs that the defendants 4 to 7 are the erstwhile employees of the

1st plaintiff-company and they connived with the other defendants in diverting the orders of the clients of the plaintiffs to the 1st defendant-company. Thus, the defendants by indulging in unfair competition started to divert the orders of the clients of the plaintiffs to the 1st defendant-company. Further, the 2nd plaintiff came to know that even prior to his resignation, the 3rd defendant had sent an email to the client of the plaintiff misrepresenting as if the 1st plaintiff-company had transferred its full team and all facilities to the 1st defendant-company and as if, his representation was with the consent of the plaintiffs, consequent to restructuring of the 1st plaintiff-company. Thus, according to the plaintiffs, by misusing the goodwill of the plaintiffs, the defendants diverted the orders of the clients of the plaintiffs to the 1st defendant; therefore, they have to be restrained by granting interim injunction.

14. But, it is the reply of the learned senior counsel for the 3rd defendant that only if the respondent-company identified themselves with the name of the applicant-company in doing their business, it can be said that they are misusing the goodwill of the applicant in diversion of the orders of the applicant. So far as the present case is concerned,

after the 3rd defendant left the service of the 1st plaintiff-company, the 1st defendant-company has been incorporated by the 2nd defendant, along with the 3rd defendant, and they are doing business only in the name of the 1st defendant-company. Therefore, it is incorrect to state that the 3rd defendant by misusing the goodwill of the 1st plaintiff-company has diverted the business orders of the plaintiffs.

15. I find some force in the submission made by the learned senior counsel appearing for the 3rd defendant. In the instant case, the 3rd defendant, after resigning from the 1st plaintiff-company, has started new business along with the 2nd defendant in the name of the 1st defendant. It is well settled legal principle that 'Goodwill' will not have any independent existence unless it is attached with the trade name. Therefore, question of misusing the 'Goodwill' of the plaintiffs by the defendants in carrying on their business, does not arise in this case. Further more, absolutely there is no agreement between the plaintiffs and the defendants by imposing any restriction on the 3rd defendant with regard to obtaining orders from the clients of the plaintiffs. When that being so, the defendants cannot be restrained from doing their business.

16. But, it is further case of the plaintiffs that by the conduct of the defendants 3 to 7 in diverting the orders of the clients of the plaintiffs to the 1st defendant, the plaintiffs have suffered huge loss; therefore, the plaintiffs have claimed damages and also quantified the damages in para 12 of the plaint. The relevant portion in the plaint reads as follows_

“12. The plaintiffs value provisionally the damages as follows_

a) Damages to compensate for the diversion of orders and diversion of the goodwill of the 1st plaintiff-company- Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs only);

b) Punitive damages at Rs.60,00,000/- (Rupees Sixty Lakhs only);

c) Total claim is Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs only) less gratuity to be forfeited to the value of Rs.9,07,500/- (Rupees Nine Lakhs Seven Thousand and Five Hundred only).”

17. In my considered opinion, when already the plaintiffs have quantified the damages, they are not entitled for injunction against the

defendants. If the interim injunction is granted and if ultimately the plaintiffs failed to establish their case, it will cause much hardship and prejudice only to the defendants. Further, I am of the opinion that if the interim injunction is granted, it will restrain the parties mentioned in the schedule to the plaint from doing their business of their own choice. In this regard, a reference could be placed in the decision reported in **(2006) IIILLJ 540 Del (American Express Bank Ltd., Vs. Ms.Priya Puri)**, wherein it has been held as follows_

"34. Apparently all these cases relied on by the plaintiff are clearly distinguishable. In the garb of confidentiality, the plaintiff is trying to contend that once the customer of plaintiff, always a customer of plaintiff. Can a competitor bank be restrained from dealing with the customers of the bank on the ground that the bank maintains written record of its customers and their financial portfolios which has been acquired by the competitor bank and so the competitor bank should be restrained even to contact those customers' In case the competitor bank without acquiring any information as to with whom a particular person or company is banking approach him and canvass about themselves, in my opinion, even after acquiring information that a particular person of company is banking with a bank, can approach him and canvass about themselves. It is for the customers to decide with which bank to bank and a bank can not arrogate to himself the rights to deal with a customer

exclusively on the ground that he has created a data Page 2125 base of his customers and their financial portfolios. In my opinion no Bank should be allowed to create monopolies on the ground that they have developed exhaustive data of their clients/customers. Mere knowledge of names and addresses and even the financial details of a customer will not be material, as the consent of the customer and his volition as to with whom to bank, is of prime importance. The option of the customers/clients to bank with any one can not be curtailed on the plea of confidentiality of their details with any particular bank. Creating a data base of the clients/customers and then claiming confidentiality about it, will not permit such bank to create a monopoly about such customers that even such customers can not be approached. Those cases will be different where the processes and products which may be confidential are taken by another organization or company. If the plaintiff bank does not have a right to insist that no one should deal with his customers, on the ground of confidentiality of the information regarding his customers, the bank cannot be allowed to achieve the same indirectly. Another factor is that the customer who is not a party to the present suit cannot be prevented indirectly to deal with any other bank. Plaintiff can not be permitted to create and claim such monopolies, which in my view are not permissible under any statute in this country.”

The dictum laid down in the above said decision is squarely applicable

to the present facts of the case. Even in the instant case, the defendants and the clients of the plaintiffs cannot be prevented indirectly to deal with their business on their own choice. Because of the acts of the defendants, if the plaintiffs suffer any loss, the only remedy to the plaintiffs is to claim damages, which has also been claimed in this case by the plaintiffs. Therefore, the plaintiffs are not entitled to any interim injunction as sought for. Therefore, I do not find any justification in continuation of the interim injunction order.

For the foregoing reasons, the interim injunction granted by this Court O.A.No.981 of 2014 is vacated. Consequently, Application No.275 of 2015 is allowed and Original Application No.981 of 2014 is dismissed.

10.03.2015

Internet : Yes / No

Index : Yes / No

ssv

R.SUBBIAH, J.,

SSV

Pre-delivery order

in

O.A.No.981 of 2014

and

A.No.275 of 2015

in

C.S.No.793 of 2014

10.03.2015