

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO.64 OF 2016
IN
COMMERCIAL SUIT (L) NO.67 OF 2016

Exfaq Systems Private Limited ...Plaintiff
Versus
Gaurav Hemant Khear and three others ... Defendants

Mr. Sharan Jagtiani, *i/b with Mr. Maneck Mulla, Mr. Priyank Kapadia, Ms. Oorja Dhond i/b M. Mulla Associates for the Plaintiff.*
Dr. Birendra Saraf, *with Jesse Cornelious, Ajinkya Patil and Umang Mohta and Sneha G. i/b Dhaval Kishore Vussonji for Defendants Nos.1 to 4.*

CORAM: G.S. PATEL, J
DATED: 16th August 2016

PC:-

1. I believe this Notice of Motion can be disposed with a few directions without getting into an assessment of the merits of the matter. After some discussion and hearing both Mr. Jagtiani for the Plaintiff and Dr. Saraf for all the Defendants, the following directions are passed by consent. These will be in supersession of all previous orders.

- (a) Dr. Saraf's statement that the 1st Defendant (and which expression, throughout this order, includes all companies, entities, firms and businesses in which he is involved and over which he has control) will not use the name or mark **EXFAQ** or any other mark that is closely or deceptively similar to it under any circumstances or under any purposes.
- (b) All logos, artwork, device marks and service marks used by the Plaintiff as of the date of this order or registered to the Plaintiff will also not be used by the 1st Defendant or any other Defendants.
- (c) The 1st Defendant also agrees not to oppose the Plaintiff's application for registration of the **EXFAQ** trade mark.
- (d) The Plaintiff has existing contracts with various entities including government entities for the supply, installations and maintenance of Flight Tracking equipment, software and systems. It also has contracts with third parties (including private parties) for the supply, installation and maintenance of electronic surveillance equipment, CCTVs, etc. The 1st Defendant agrees and undertakes to the Court that he will not during the tenure of any of these contracts with the Plaintiff's customers, attempt to transact with those customers for the supply, installation or

maintenance of the same, similar or competing goods that are the subject matter of these contracts. He will not make any attempt to persuading any of the Plaintiff's customers to effect a premature termination of any of those contracts.

- (e) These statements are accepted as undertakings to the Court.
- (f) It is clarified that as regards the maintenance contracts, which are periodically renewable, the 1st Defendant will be entitled to offer his own services at the time of such renewals, and will be entitled without being in breach of his undertakings to this Court, to approach any of these customers between 30 and 90 days (but no earlier) before the date of such removal but not before.
- (g) As regards any fresh tenders or offers from any person, body or entity, both sides will be at complete liberty to tender and offer their services without restriction.
- (h) As regards the flight tracking software, the Plaintiff has an agreement of exclusive distributorship with a foreign principal. I express no views on this relationship or contract and I leave it to the foreign principal to decide with which party it wishes to continue to transact, and on what terms.

- (i) The 1st Defendant uses a Mercedes Benz vehicle that has been financed. The loan stands in his name. Some of the Equated Monthly Instalments have been paid out of company funds. The 1st Defendant agrees and undertakes that all future EMIs will henceforth be paid by the 1st Defendant himself. Any post-dated cheques issued by the company will be substituted by the 1st Defendant.
- (j) The 1st Defendant acknowledges that he holds a piece of flight tracking equipment manufactured by Falcon. He states that this will be delivered to the Plaintiff at its registered office address or or before 26th August 2016.

2. The 1st Defendant agrees that he will not make to any of the Plaintiff's customers or any other person a positive representation on his own of his previous association with the Plaintiff, i.e., he will not volunteer that he was associated with the Plaintiff; but should the third party enquire about his track record or experience, the 1st Defendant will be entitled to say that he worked for a period of time between 2010 and 2015 with the Plaintiff company.

3. These directions are sufficient to dispose of the Notice of Motion. This is an arrangement by consent. Both sides will be at liberty to apply should the need arise.

4. The 1st Defendant is personally present in Court. Dr. Saraf's statements are made on instructions given him in Court. Mr.

Jagtiani has agreed on the basis of telephonic instructions obtained from the Plaintiff's director by Mr. Mulla, his instructing attorney, who stepped out of the Court for this purpose.

5. List the Suit for directions on 19th September 2016.

(G. S. PATEL, J.)