

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

%

DATE OF DECISION: 17TH, MARCH 2017

+ CS(COMM) 1484/2016 & IA No.13737/2016 (u/O XXXIX R-1&2 CPC)

METRO TYRES LTD

..... Plaintiff

Through: Mr. Pravin Anand & Ms. Kruttika
Vijay, Advs.

Versus

**THE ADVERTISING STANDARDS COUNCIL
OF INDIA & ANR**

..... Defendants

Through: Ms. Avni Singh, Adv. for D-1.

CORAM:-

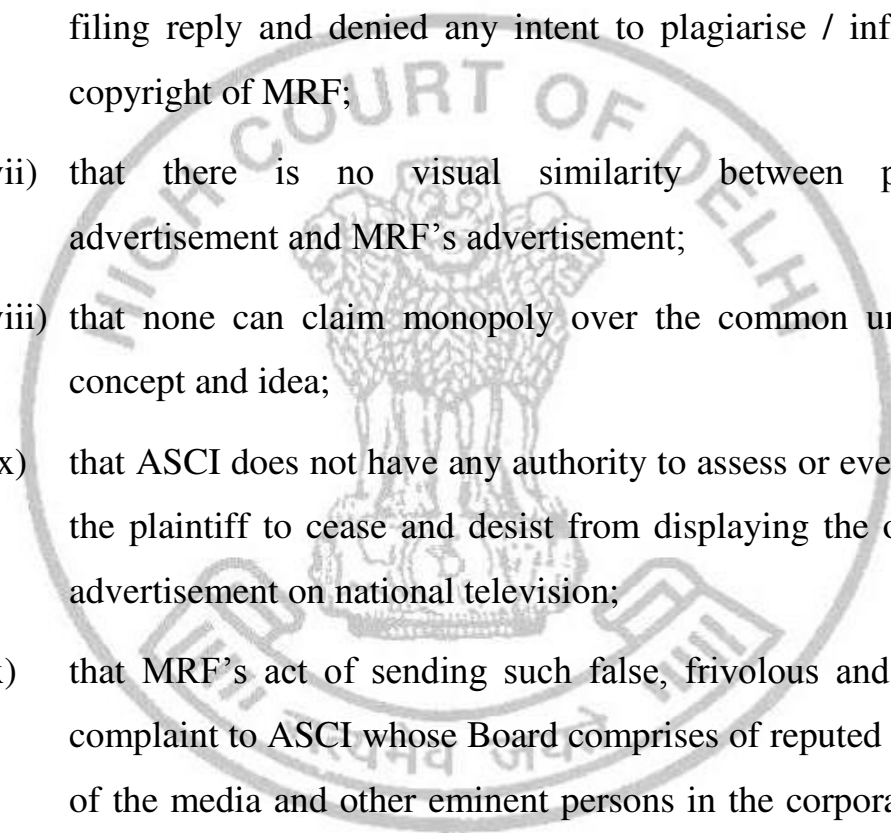
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff, a manufacturer of tyres and tubes for two wheelers and three wheelers, instituted this suit i) for restraining the defendant no.2 MRF Limited (MRF), also a manufacturer of tyres and tubes, from issuing groundless threats to the plaintiff of the plaintiff in the advertisement of its products having plagiarised/infringed the copyright of MRF in the advertisement of MRF's products and liability therefor; ii) for restraining the defendant no.2 MRF from promoting unfair competition with reference to plaintiff in any manner; iii) for declaration that such threats of institution of legal proceedings contained in MRF's letter dated 18th October, 2016 are unjustifiable and the plaintiff does not infringe or copy the advertisement of MRF; iv) for restraining MRF from defaming the plaintiff in any oral or written communication; v) for restraining the defendant no.1 Advertising Standards Council of India (ASCI) from assessing or proceeding with the

complaint of MRF; vi) for recovery of damages in the sum of Rs.1 crore from MRF on account of loss of reputation and goodwill of the plaintiff owing to the illegal activities of the defendants.

2. It was *inter alia* the case of the plaintiff in the suit titled “SUIT SEEKING RESTRAINT OF GROUNDLESS THREATS OF LEGAL PROCEEDINGS AND DECLARATION OF NON-INFRINGEMENT OF COPYRIGHT, DEFAMATION, DAMAGES ETC.”:

- (i) that the plaintiff, in September, 2016, unveiled a new range of tyres for 150cc segment to 200-250cc segments and also high-end sports motorcycles;
- (ii) that the plaintiff, to promote its new product, got created advertisement from Prominent Advertising Services and the said advertisement appears on television, on the plaintiff's website as well as through online content providers such as YouTube;
- (iii) that on 25th October, 2016, the plaintiff was shocked to receive a letter dated 21st October, 2016 from ASCI forwarding therewith complaint dated 18th October, 2016 received from MRF against the TV commercial of plaintiff and inviting plaintiff's response thereto and informing the plaintiff that the complaint had been placed for deliberation before the Consumer Complaints Council of ASCI;

- 
- (iv) that the MRF has complained that plaintiff's advertisement blatantly copied MRF's advertisement for its product REVZ Radial Tyres;
 - (v) that the plaintiff has been wrongly accused of plagiarism / infringement;
 - (vi) that the plaintiff sought extension of time from the ASCI for filing reply and denied any intent to plagiarise / infringe the copyright of MRF;
 - (vii) that there is no visual similarity between plaintiff's advertisement and MRF's advertisement;
 - (viii) that none can claim monopoly over the common underlying concept and idea;
 - (ix) that ASCI does not have any authority to assess or even request the plaintiff to cease and desist from displaying the offending advertisement on national television;
 - (x) that MRF's act of sending such false, frivolous and baseless complaint to ASCI whose Board comprises of reputed members of the media and other eminent persons in the corporate sector clearly evidences the intention of MRF to defame and harm the reputation and goodwill of the plaintiff.

3. The suit came up for admission on 7th November, 2016 when being not convinced about the maintainability of the suit, the counsel for the

plaintiff was heard. After hearing the counsel for the plaintiff further on 15th November, 2016, the following order was passed:

- “1. The counsel for the plaintiff has been heard further today.*
- 2. I am today also not satisfied about the maintainability of the present suit.*
- 3. The plaintiff has instituted this suit to restrain the defendant No.2 MRF Limited from issuing groundless threats to the plaintiff of liability for infringement of copyright in the defendant No.2 MRF Limited’s advertisement for its product REVZ and for restraining the defendant No.1 Advertisement Standards Council of India (ASCI) from in any manner assessing or proceeding with the complaint filed by the defendant No.2 MRF Limited against the plaintiff and for ancillary reliefs.*
- 4. It is inter alia the case of the plaintiff that the defendant No.2 MRF Limited in its complaint to the defendant No.1 ASCI has accused the plaintiff of having plagiarised the advertisement of the defendant No.2 MRF Limited qua a same / similar product and of infringing the copyright of the defendant No.2 MRF Limited therein; that the defendant No.1 ASCI is not empowered to go into the question of infringement of copyright and passing off and the complaint of the defendant No.2 MRF Limited to the defendant No.1 ASCI amounts to a “threat” within the meaning of Section 60 of the Copyright Act, 1957.*
- 5. I have enquired from the counsel for the plaintiff as to how there can be an injunction against the defendant No.2 MRF Limited from invoking legal proceedings. Sections 41(a) & 41(b) of the Specific Relief Act, 1963 is an absolute bar to the grant of permanent injunction to restrain another from invoking legal proceedings and Supreme Court in **Cotton Corporation of India Limited Vs. United Industrial Bank Limited** (1983) 4 SCC 625 has held that the grounds specified in Section 41(b) of the Specific Relief Act apply also to injunction under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, 1908 (CPC).*

6. *The counsel for the plaintiff has argued that though the defendant No.2 MRF Limited is a member of the defendant No.1 ASCI and the plaintiff is not.*

7. *I am of the view that once an industrial body has been established, it is not open to a member of that industry to contend that it is not a member and not bound by the procedures and mechanism of that body. More so, when the Code for Self-Regulation in Advertising of the defendant No.1 ASCI has now been given the statutory flavour by Rule 7(9) of Cable Television Network Rules, 1994.*

8. *As far as the contention of the counsel for the plaintiff, of the defendant No.1 ASCI being not authorised to go into the questions of infringement and passing off is concerned, it appears that the said pleas have to be raised by the plaintiff before the defendant No.1 ASCI and this Court cannot in this suit pre-empt the defendant No.1 ASCI from doing so. I have informed the counsel for the plaintiff that suits are coming before this Court against the decision finally taken by the ASCI and though a doubt has been raised as to the maintainability of the suit but as of now, the suits are being entertained and hearing going on, on the said aspect.*

9. *The counsel for the plaintiff has sought to contend that the suit is under Section 60 of the Copyright Act.*

10. *However, there is no plea to the said effect. Rather, in most of the complaints in suits under Section 60 of the Copyright Act which have come before me, it is found that the suit in the title thereof mentions it to be under Section 60 of the Copyright Act. The plaintiff herein has shied away from doing so.*

11. *I have also drawn the attention of the counsel to the proviso to Section 60 of the Copyright Act and have enquired from him that once the defendant No.2 MRF Limited has already invoked the jurisdiction of the defendant No.1 ASCI, how can a suit under Section 60 of the Copyright Act would be maintainable.*

12. *The counsel for the plaintiff has contended that since the defendant No.1 ASCI is not empowered to go into a question of infringement of copyright and only on institution of which action the*

proviso to Section 60 of the Copyright Act applies, the said proviso would not be applicable.

13. It is still to be decided whether the defendant No.1 ASCI is empowered to go into the said questions or not. I may at this stage only notice that Clause 4.2 of Chapter IV titled 'Fair In Competition' of the Code for Self-Regulation in Advertising of ASCI provides that "advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its product or the goodwill acquired by its advertising campaign". Similarly, Clause 4.3 provides that "advertisements shall not be similar to any other advertiser's earlier run advertisements in general layout, copy, slogans, visual presentations, music or sound effects, so as to suggest plagiarism".

14. The counsel for the plaintiff then seeks adjournment to consider amending the plaint to challenge the Code aforesaid as well as Rule 7(9) of the Cable Television Network Rules.

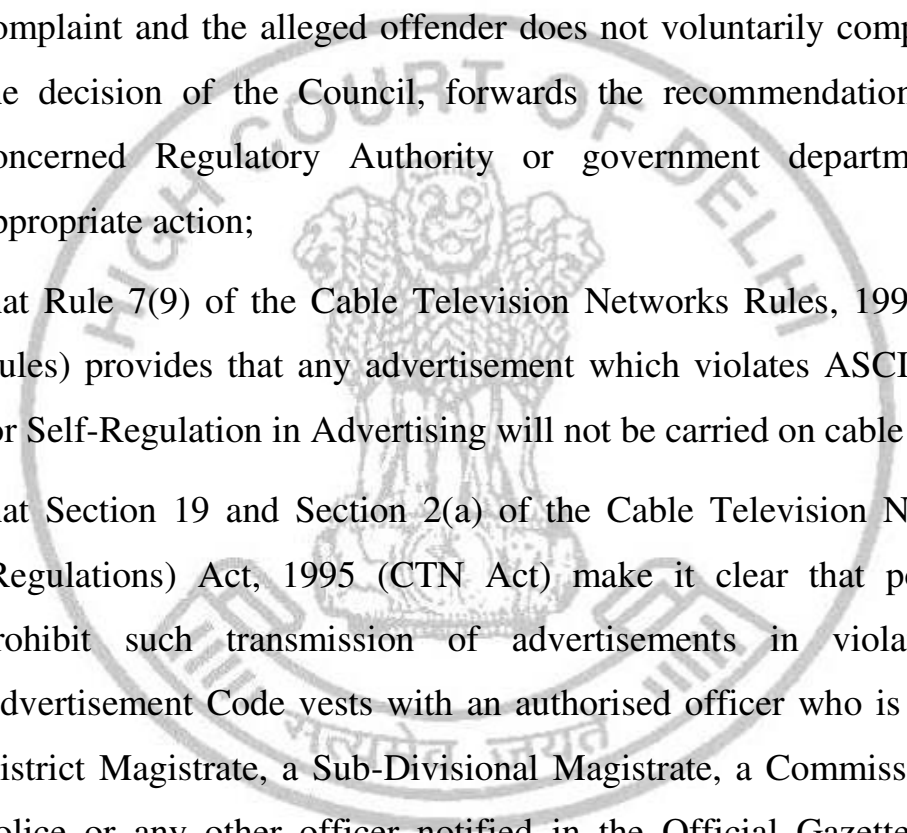
15. The counsel for the plaintiff while doing so, to also consider the interplay of Section 60 of the Copyright Act and Sections 41(a) & 41(b) of the Specific Relief Act which prohibit injunction against invocation of legal proceedings. It appears that there is conflict between the two. If that is so, how the same is to be resolved.

16. List on 29th November, 2016."

4. The plaintiff thereafter applied for amendment of plaint and which was allowed on 29th November, 2016. The plaintiff in the amended plaint has amended the title of the suit as under:

"SUIT SEEKING RESTRAINT OF GROUNDLESS THREATS OF LEGAL PROCEEDINGS UNDER SECTION 60 OF THE COPYRIGHT ACT AND SECTION 142 OF THE TRADE MARKS ACT AND DECLARATION OF NON-INFRINGEMENT OF COPYRIGHT, DEFAMATION, DAMAGES ETC."

and has added the pleas:

- 
- (i) that ASCI cannot consider the complaint of MRF as an action for infringement and passing off as such an action would necessarily have to be instituted in a Court of law in accordance with the provisions of the Copyright Act, 1957 and Trade Marks Act, 1999;
 - (ii) that ASCI is not competent to decide any legal disputes;
 - (iii) that ASCI's Consumer Complaints Council if finds merit in the complaint and the alleged offender does not voluntarily comply with the decision of the Council, forwards the recommendation to the concerned Regulatory Authority or government department for appropriate action;
 - (iv) that Rule 7(9) of the Cable Television Networks Rules, 1994 (CTN Rules) provides that any advertisement which violates ASCI's Code for Self-Regulation in Advertising will not be carried on cable service;
 - (v) that Section 19 and Section 2(a) of the Cable Television Networks (Regulations) Act, 1995 (CTN Act) make it clear that power to prohibit such transmission of advertisements in violation of Advertisement Code vests with an authorised officer who is either a District Magistrate, a Sub-Divisional Magistrate, a Commissioner of Police or any other officer notified in the Official Gazette by the Central or the State government;
 - (vi) that Rule 7(9) of the CTN Rules is in direct contravention of Section 62(1) of the Copyright Act whereunder determination of infringement of copyright can only be made by a District Court as well as in contravention of Section 134 of the Trade Marks Act, which also

states that no suit for infringement and passing off of a trade mark shall be instituted in any Court inferior to a District Court; thus no Authorised Officer as defined in CTN Act can prohibit the transmission of any advertisement on account of the fact that such advertisement may be plagiarising or taking unfair advantage of the goodwill of any other persons' advertising campaign;

- (v) that though MRF is a member of ASCI but the plaintiff is not;
- (vi) that ASCI cannot decide a complaint of a member against a non-member.

5. The reliefs of i) injunction restraining the MRF from issuing groundless threats to plaintiff with liability to causing confusion i.e passing off; ii) a direction to ASCI to amend its Code for Self-Regulation; iii) revocation of CTN Rules or amendment of Rule 7(9) thereof, have also been added in the amended plaint.

6. The counsel for the plaintiff was heard further on 20th December, 2016 and order reserved.

7. As far as the relief in the amended plaint, of impugning CTN Rules is concerned, the said Rules being statutory in character, the challenge if any thereto can, as per the Roster of this Court, be considered only by the Division Bench. Therefore the suit claiming the said relief and which suit as per Roster is to be considered by a Single Bench of this Court, cannot be subject matter of this suit. Though Order XXVIA of the CPC provides the procedure to be followed in suits involving a substantial question of law as to interpretation of the Constitution or as to validity of any Statutory

Instrument but by the suit court only and the limitation of roster would remain. I therefore, need not go into the said aspect and suffice it is to observe that the plaintiff would be at liberty to claim the said relief in accordance with law. The said relief claimed in the suit thus has to be rejected.

8. That brings me to the crux of the dispute i.e. whether ASCI, in view of jurisdiction to adjudicate disputes of passing off and infringement of copyright having been vested in a Court not below the District Court, or for any other reason, is not competent to deal with the complaint of MRF of the plaintiff having plagiarised and infringed the copyright of MRF.

9. ASCI was established in 1985 as a company under Section 25 of the Companies Act, 1956 and with advertisers, media, advertising agencies and other professional / ancillary services, industries connected with advertising as its sponsors and with the purpose of 'self-regulating the advertisements' and to ensure that the advertisements conform to the Code of self-regulation. 'The Code for self-regulation in Advertising' ('The Code') of ASCI has been drawn up by people in the profession and industries in or connected with advertising, in consultation with representatives of people affected by advertising and has been accepted by individuals, corporate bodies and associations engaged in or otherwise concerned with the practice of advertising. The Code drawn up by ASCI for self-regulation in advertising, in Chapter IV thereof titled "*Fair in Competition*" in Clause 4.2 thereof provides "advertisements shall not make unjustifiable use of the name or initials of any other firm, company or institution, nor take unfair advantage of the goodwill attached to the trademark or symbol of another firm or its

product or the goodwill acquired by its advertising campaign” and in Clause 4.3 thereof provides “advertisements shall not be similar to any other advertiser’s earlier run advertisements in general layout, copy, slogans, visual presentations, music or sound effects, so as to suggest plagiarism”

10. I have since, in ***Procter & Gamble Home Products Private Limited Vs. Hindustan Unilever Ltd.*** 2017 SCC OnLine Del 7072, held that a) ASCI has been established as a self regulatory body in the field of advertising and cannot be said to have been established for dispute resolution or for resolution of claims such as those made by the plaintiffs therein in the suits, of disparagement, against the defendant; b) ASCI, though has a Complaints Committee but only to ‘self regulate’; c) The principles applicable to grant of injunction contained in Order XXXIX Rules 1 & 2 of CPC and in the Specific Relief Act, 1963 though provide that injunctive relief shall not be granted when equally efficacious alternative remedy is available but the remedy available before ASCI cannot be said to be equally efficacious remedy; d) ASCI, even if finds merit in complaint, can only recommend to the advertiser to remove the advertisement but has no mechanism to compel removal of the advertisement or to grant any interim relief or to award damages; e) Moreover, membership of ASCI is not mandatory for all concerned; f) Reference was made to ***Century Plyboards (India) Ltd. Vs. The Advertising Standards Council of India*** MANU/MH/0030/2000 and ***Dish TV India Ltd. Vs. Advertising Standards Council of India*** MANU/DE/3049/2016 holding that the rules and machinery of ASCI are designed to complement legal controls, not to usurp or replace them; g) The CTN Act enacted to regulate the operation of cable television networks and

for matters connected therewith, in Section 6 titled “*Advertisement Code*” prohibits transmitting or re-transmitting through a cable service of any advertisement unless such advertisement is in conformity with the prescribed Advertisement Code; h) Section 11 of the CTN Act provides for seizure of the equipment of any cable operator found violating *inter alia* Section 6 of the Act and Section 19 of the CTN Act empowers the Government to prohibit the cable operator from transmitting or re-transmitting any advertisement not in conformity with the prescribed Advertisement Code; i) Section 22 of the CTN Act empowers the Central Government to by notification in the Official Gazette make rules *inter alia* for the Advertisement Code; j) The CTN Rules framed in exercise of said power, under Rule 7 titled “*Advertising Code*”, while providing that advertisements carried in cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers, vide sub-rule (9) thereof provides that no advertisement which violates The Code for self regulation in Advertising, as adopted by the ASCI from time to time for public exhibition in India, shall be carried in the cable service; k) However the said statutory flavour given to the Code would also not bar the jurisdiction of the Civil Court, even after ASCI has been approached and does not find any merit in the complaint, because the remedy available before ASCI is distinct from that available before the Civil Court; l) ASCI, even if finds any merit in the complaint with respect to any advertisement, can only make a recommendation for rectification thereof and if the recommendation remains un-complied, forward the same to the Authorised Officer under the CTN Act

and which officer is empowered to then prohibit the broadcast of the subject advertisement; m) The said route though may be available, will not bar a person aggrieved from the advertisements from approaching the Civil Court.

11. Sections 62 of the Copyright Act as under:

“62. Jurisdiction of court over matters arising under this Chapter.—

- (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.*
- (2) For the purpose of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.”*

and Section 134 of the Trade Marks Act as under:

“134. Suit for infringement, etc., to be instituted before District Court.— (1) No suit—

- (a) for the infringement of a registered trade mark; or*
- (b) relating to any right in a registered trade mark; or*
- (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's*

*trade mark, whether registered, or
unregistered,*

*shall be instituted in any court inferior to a District
Court having jurisdiction to try the suit.*

*(2) For the purpose of clauses (a) and (b) of sub-
section (1), a “District Court having jurisdiction” shall,
notwithstanding anything contained in the Code of Civil
Procedure, 1908 or any other law for the time being in
force, include a District Court within the local limits of
whose jurisdiction, at the time of the institution of the suit
or other proceeding, the person instituting the suit or
proceeding, or, where there are more than one such
persons any of them, actually and voluntarily resides or
carries on business or personally works for gain.*

*Explanation. – For the purposes of sub-section(2),
“person” includes the registered proprietor and the
registered user.”*

on the basis whereof it is contended that the ASCI would not have jurisdiction, only make a provision for the suits for infringement and / or for proceedings under those Acts. The same cannot be read as ousting the jurisdiction of any self-regulatory body as ASCI. It is nobody's case that a complaint before ASCI is a suit. The provisions aforesaid relating to suits cannot be made applicable to proceedings which do not qualify as 'suit' within the meaning of CPC. It may be taken note of that both Copyright Act, vide Section 63 thereof and Trade Marks Act, vide Section 103 thereof, also constitute infringement as an offence and provide for prosecution thereof. Certainly it cannot be said that such prosecutions are also governed by Sections 62 and 134 supra.

12. No merit is thus found in the contention of the counsel for the plaintiff that ASCI, by virtue of Section 62 of the Copyright Act and/or Section 134 of the Trade Marks Act is barred from entertaining the complaint as made by MRF against the plaintiff before ASCI.

13. Rather, I am of the view that such industry/sector specific self-regulatory bodies should be encouraged. Functioning thereof curtails litigation and allows an opportunity to constituents of the same industry/sector to have their *inter se* disputes and differences settled amicably. In fact long back Abraham Lincoln also observed “Discourage litigation. Persuade your neighbours to compromise whenever you can”. CPC was also amended w.e.f. 1st July, 2002 *inter alia* by incorporating Section 89 therein providing for settlement of disputes outside the Court. The Courts themselves have been encouraging settlement of disputes, not only by arbitration, conciliation judicial settlement including settlement through Lok Adalat, mediation after the parties have approached the Court but also prior thereto by introducing pre-litigation mediation. Such spirit is also the basis of enactment of the Legal Services Authorities Act, 1987 Chapter VIA whereof titled “Pre-litigation Conciliation and Settlement” in Section 22B thereunder requires setting-up of Permanent Lok Adalats in respect of public utility services viz. transport services, postal, telegraph and telephone services, supply of power or light or water to the public by any establishment, insurance services, service in hospital or dispensary etc. It is thus too late in the day for the plaintiff to contend that the Court should strike down the self regulatory mechanism evolved in the industry/sector of advertising. Supreme Court, in *Subramanian Swamy Vs. Union of India*

(2016) 7 SCC 221, in the context of constitutional fraternity and fundamental duty observed that fraternity means brotherhood and common interest; right to censure and criticise does not conflict with constitutional objective to promote fraternity; brotherliness does not abrogate and rescind the concept of criticism; in fact brothers can and should be critical-fault finding and disagreement is required even when it leads to disquiet or disquietude.

14. The Division Bench of this Court in ***Indraprastha People Vs. Union of India*** (2013) 200 DLT (CN) 25, in the context of CTN Act and CTN Rules, held that under self-regulation the media voluntarily commits to uphold a code of ethics that it itself drafts; it establishes a complaints mechanism to which the public can complain about perceived breaches of the Code and an independent council adjudicates on the complaints and enforces the code of practice. It was held that compliance with the Code is voluntary and the media does so out of a desire to secure the credibility of its profession and the trust of the public. Self-regulation was held to be a combination of standards setting out the appropriate code of behaviour for the media that are necessary to support freedom of expression and process how those behaviours will be monitored or held to account. The advantages and disadvantages of self-regulation were expounded upon.

15. A Division Bench of this Court of which the undersigned was a member also, in ***Sai Lok Kalyan Sanstha Vs. Union of India*** (2014) SCC OnLine Del 7024, dealing with a petition filed in public interest and flagging the issue of broadcasting of a large number of programmes/advertisements on television channels based on Astrology, 'Lal Kitab', Tarot, Numerology,

‘Devi Shakti aur Kripa’, by so called self made astrologers, ‘swamiji’, ‘panditji’, ‘guruji’ and ‘babaji’ who promise cures of various ailments, held that since (i) CTN Act and the CTN Rules and the programme code framed thereunder and Downlinking Guidelines empower the Ministry of Information and Broadcasting to impose penalty *inter alia* of suspension of the permission / registration granted thereunder and prohibit broadcast up to a period of 30 days; (ii) there also exists a Broadcasting Content Complaints Council (BCCC), a self-regulatory body of the television broadcasters, the code of ASCI, also a voluntary self-regulatory council to control the content of advertisements, provide a regulatory mechanism, the petitioner therein must first approach the said foras before rushing to the Court. I have as a member of the Division bench in ***Viacom 18 Media Private Ltd. Vs. Union of India*** (2015) 216 DLT 222 also held against the petitioner therein *inter alia* for the reason of taking the matter of self-regulation very lightly. Supreme Court also in ***Destruction of Public and Private Properties, in Re Vs. State of Andhra Pradesh*** (2009) 5 SCC 212 accepted the recommendations of the Nariman Committee of the need for self-regulation in the media at the industry level and observed that the appropriate authorities should take steps for implementation. Much has been said in the context of self-regulation through in-house procedure, also for Advocates and Judges. Reference may be made to ***C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee*** (1995) 5 SCC 457.

16. Once ASCI has been constituted as a Self-Regulatory body for the purpose of advertisements and the Code drafted and changed from time to time by ASCI has been given a statutory flavour, I am unable to perceive

any other ground on which the plaintiff can restrain ASCI from so functioning. Though the CTN Rules make the Code of ASCI one of the criteria with which the advertisements should comply with and for non-compliance wherewith the Authorised Officer under the CTN Act can be approached and the Complaints Procedure devised by ASCI is not part of The Code but I am of the view that once The Code devised by a Self-Regulatory Body as ASCI has been conferred the statutory flavor, the opinion of such Self-Regulatory Body, whether its Code has been violated or not, formed in accordance with the procedure prescribed therefor shall certainly be a relevant factor for the Authorised Officer to take a decision under the CTN Act. The complaint procedure devised by ASCI for framing such opinion cannot be said to be illegal or unlawful or contrary to any law.

17. Section 60 of the Copyright Act, invoking which the suit has been filed, as under:

“60. Remedy in the case of groundless threat of legal proceedings—*Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in section 34 of the Specific Relief Act, 1963 (47 of 1963), institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit—*

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section does not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.”

allows a person, who though is threatened with legal proceedings or liability for infringement but against whom no legal proceedings are initiated, to institute a suit as provided therein. However, here, MRF is not threatening but has already initiated proceedings before ASCI. Section 60 thus has no application. The proviso thereto expressly provides so. The argument of counsel for plaintiff that the proceedings before ASCI are not within the meaning of proviso cuts both ways. If that be so, then the body of Section 60 also will have no application. Moreover, Section 60 has to be read harmoniously with the CTN Act and CTN Rules and in my view both can operate and serve their respective purpose without one being nugatory of the other. Similarly, there can be no defamation of the plaintiff by MRF, in MRF, in accordance with the complaint procedure of ASCI, preferring the complaint against the plaintiff.

18. Though the plaintiff is not a member of ASCI but the plaintiff is indulging in activity, viz. of advertising, qua which the defendant no.1 ASCI has made a Code and for breach whereof ASCI entertains complaints. The plaintiff also admits that the advertisement was got prepared from an advertising agency and it is not the case of the plaintiff that the said advertising agency is not a member of ASCI. Similarly, the said advertisement is aired on media such as television and it is not the case of

the plaintiff that the television channels on which its advertisement is aired are not members of ASCI. Thus, if ASCI makes a recommendation and in pursuance thereto the advertising agency or the television channel refuse to air the advertisement of the plaintiff, they would be entitled to do so. No merit is thus found in the argument of the counsel for the plaintiff of plaintiff being not a member of ASCI and ASCI thus having no jurisdiction over the plaintiff.

19. The Division Bench of this Court in *Viacom 18 Media Private Ltd.* supra held that with the advent of technology enabling individual homes and other establishments to, instead of via cable, directly download satellite television channels, the Ministry of Information & Broadcasting, Government of India formulated policy Guidelines for Downlinking of all satellite television channels downlinked / received / transmitted and re-transmitted in India for public viewing; the same provide that no person / entity shall downlink a channel, which has not been registered by the Ministry under the said Guidelines; accordingly, all persons / entities providing Television Satellite Broadcasting Services (TV Channels) uplinked from other countries to viewers in India as well as any entity desirous of providing such a Television Satellite Broadcasting Service (TV Channel), receivable in India for public viewership, is required to obtain permission from the Ministry in accordance with the said guidelines known as the Downlinking Guidelines; Clause 5 of the said Guidelines prescribes basic conditions / obligations including of the company permitted to downlink registered channels complying with the Programme Code and empower the Ministry of Information & Broadcasting to impose penalty. It

would thus be seen that compliance with Programme Code/Advertisement Code is a condition for transmitting programmes/advertisements through television channels.

20. This Court in ***Star India Pvt. Ltd. Vs. Union of India*** (2011) 185 DLT 519 held that there is tacit acknowledgement by the Information & Broadcasting Ministry that the complaints received by it about objectionable content of television programmes require to be examined by a broad-based expert body. It was held that the suitability of the content concerns large cross-sections of the society.

21. The counsel for the plaintiff during the hearing relied on order dated 27th September, 2013 in CS(OS) No. 1877/2013 titled ***Quick Telemall Marketing Pvt. Ltd. Vs. The Advertising Standards Council of India*** whereby a co-ordinate Bench of this Court while issuing summons of the suit and granting *ex parte* order staying the operation of the order of ASCI recommending suspension of advertisement failing which it will be reported to the Authorised Officer, *prima facie* observed that the directions of ASCI could not bind the non-members. However not only are those observations *prima facie* but the reasoning given hereinabove was not considered or adjudicated. The counsel for the plaintiff also relied on ***Century Plyboards (India) Ltd.*** supra where also a Single Judge of Bombay High Court expressed a *prima facie* view that directions issued by ASCI adversely affecting the trade or profession of a non-member would be without jurisdiction and that the direction of ASCI for suspension of advertisement was in the nature of mandatory injunction which only a Court could issue and that ASCI could not usurp upon itself the jurisdiction of the Court and

that the Complaint Procedure of the ASCI could not be elevated to the status of arbitration proceedings. I have hereinabove given my reasons for holding to the contrary and to that extent, with respect, differ from the *prima facie* view taken by the Bombay High Court.

22. The plaintiff thus, by instituting this suit, cannot be permitted to scuttle the proceedings on complaint of MRF before ASCI. Similarly the plaintiff, by pursuing this suit cannot prevent its Advertising Agency and the TV Channels and other medium on which the advertisement of the plaintiff is airing from, if chose to abide by recommendation of ASCI with respect to said advertisement, doing so. However in the event of ASCI finding merit in the complaint and making a recommendation to the Authorised Officer, all remedies available in law shall be open to the plaintiff.

23. The suit of the plaintiff is premature and the plaintiff as of today has no cause of action and the plaint is rejected.

No costs.

MARCH 17, 2017
'gsr'

RAJIV SAHAI ENDLAW, J.