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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL APPEAL (LODGING) NO.221 OF 2019
WITH
NOTICE OF MOTION (LODGING) NO.471 OF 2019
IN
NOTICE OF MOTION (LODGING) NO.470 OF 2019
IN
COMMERCIAL SUIT (LODGING) NO.225 OF 2019

Xtreme Media Pvt. Ltd.	...Appellant
V/s.	
Shenzhen VTEAM Co. Ltd. & Ors.	...Respondents

Mr.Simil Purohit with Mr.Faran Khan, Mr.Ram Mallar, Ms.Shivangi Vengurlekar and Ms.Shraddha M. I/b Mallar Law Associates for the Appellant.

None for the Respondents.

CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.
DATE : 2ND MAY, 2019.

P.C. :-

1. The appellant is aggrieved by the fact that vide impugned order dated 8th April, 2019, the learned single Judge has refused to grant an *ex-parte ad-interim* injunction permissible under Section 42 of the Specific Relief Act, 1963, to enforce a negative covenant in an agreement, notwithstanding positive covenants breached being

subject to a claim for damages.

2. The agreement which the appellant relies upon is dated 19th June, 2018. It is the case of the appellant that the defendants had to maintain the confidentiality of the information, data etc. provided by the appellant to the defendants to manufacture the goods forming subject matter of the agreement. The negative covenant was not to use the data and information supplied by the appellant to manufacture the goods and supply it directly.

3. L & T has a contract awarded to it by the Government of India and the execution of the contract required LED equipment ; manufactured to the specifications of the contract. It is the case of the appellant that it was in touch with L & T and for the purposes of LED equipment had made available to the defendants the data and information etc. It is further the case of the appellant that using the said information etc., the defendants are threatening to effect direct supplies to L & T. It is the case of the appellant that till now, L & T has not entered into any contract with the defendants. The appellant concedes that till date even it does not have a binding contract executed in its favour by L & T. The fear of the appellant is that using the information supplied by the appellant, the defendants may ultimately effect direct supplies to L & T.

4. We find that L & T has not been impleaded as a defendant

and are *prima-facie* of the view keeping in view the averments in the plaint, L & T would be a proper party.

5. Thus, we permit the appellant to withdraw the appeal granting liberty to the appellant to implead L & T as a defendant and make suitable averments in the plaint ; and on impleadment of L & T as defendant to once again take out a motion for *ad-interim* relief before the learned single Judge seeking enforcement of negative covenant depending upon the stand taken by L & T. We also grant permission to the appellant to move the motion for impleadment and enforcement of negative covenant before the Vacation Judge.

6. Clarifying that we have not expressed any opinion on the merits of the claim of the appellant, we dispose of the appeal as not pressed granting liberty as aforesaid.

7. In view of disposal of the appeal, the notice of motion does not survive and is accordingly disposed of.

(N.M. JAMDAR, J.)

(CHIEF JUSTICE)