Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO. 233 OF 2018

IN

SUIT NO. 4913 OF 2000

WITH

CHAMBER SUMMONS NO. 1001 OF 2018

Nadeem Majid Oomerbhoy …Plaintiff

Versus

Rashid Sattar Oomerbhoy & Ors …Defendants

Mr Gaurav Joshi, Senior Advocate*, with Mrs Neeta Jain, Piyush Raheja, ZA Jariwala & Ganesh Ambekar, i/b Thakkore Jariwala & Associates, for the Plaintiff.*

Mr Kalpesh Joshi*, with Nisha Shah, for Defendants Nos. 1(a) & 1(b).*

Mr Karl Tamboly*, i/b Rahul Singh, for Defendants Nos. 2, 3 & 4(c).*

Mr Jatin Sheth*, for Zesty Foods, Bidder No. 3.*

Mrs Kavita Ambekar*, Ist Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J

DATED: 7th January 2019

PC:-

1. Heard.

2. This order will dispose of the Court Receiver's Report No. 233 of 2018 and the Plaintiff's Chamber Summons No. 1001 of

2018. The dispute pertains to certain proprietary trademarks for edible oils. There was a time when these had gained a considerable reputation. The lead mark in question is *Postman* and there were several other marks as well used in conjunction with edible oils and related products.

3. On 6th December 2000, this Court appointed the Court Receiver of the Partnership business and assets of the Suit firm namely Ahmed Oomerbhoy. This appointment was confirmed by an order of 30th July 2001 modified on 2nd August 2001. The Court Receiver then submitted a Report No. 384 of 2014 seeking directions to grant a license to one of the parties to use one or more of the marks in question. On 9th March 2015 this Court directed the Receiver to issue a public notice inviting bids for the licensing of these marks. The Court Receiver was to take the assistance of M/s WS Kane and Company to finalize the terms and conditions of the license. This order was carried in Appeal. By an order of 12th January 2018 the Division Bench directed the Receiver to act on the 9th March 2015 order. Both Appeals were then dismissed on 12th February 2018. The Court Receiver then conducted various meetings to finalize the terms of the public notice. A draft of the public notice was ultimately finalized on 11th July 2018 and public notices were issued in various newspaper including the Times of India in Marathi in Mumbai and in other newspapers in Ahmedabad, Gujarat and Indore. Four offers were received. One was from the Plaintiff ("**Nadeem**"). Another was one from the Defendant No.1a ("**Riyad**") though acting through RR Oomerbhoy Private Limited of which he is a director. The other two bidders were one Zesty Foods and Spices LLP and Liberty Oil Mills

Limited. Zesty Foods and Liberty Oil Limited withdrew. Their EMD deposits are to be returned to them if not already done. This leaves only the Plaintiff and the Defendant No.1a in the fray.

4. It is this that has persuaded me to reconsider the entire bidding process. This is in fact the principal prayer in the Plaintiffs' Chamber Summons No. 1001 of 2018. Mr Joshi points out that after the Receiver finalized the notices and had them issued an item appeared in the *Mumbai Mirror* on 28th June 2018 and this quotes Defendant No. 1a Riyad as being aggrieved by the order directing the giving of licenses by the Court Receiver, and making insinuations of arbitrary conduct by Receiver. Statements are attributed in this article to Riyad and to his Advocates. In Court before me today, both Riyad and his lawyers seek to distance themselves from these statements. They say they have been misquoted or misunderstood, or something like that. This is what everyone says in response to every news item. I am not concerned with who said what to whom or why. I am concerned with the effect that this almost certainly had on the integrity of a Court-supervised process. It is impossible to avoid the sense that this situation has been engineered where the only two bidders are the Plaintiff and the Defendant No. 1(A), Nadeem and Riyad, and all others who might have been genuinely interested have been driven out. In a partnership dispute my concern is to ensure that the assets of the firm are protected and that the firm accounts obtain the maximum possible revenue, and not to pander to desires of one or the other side. Today, this is no longer an even or level playing field.

5. There is a request by the Plaintiff to eliminate a precondition clause requiring previous experience. I am rejecting that prayer (g), and I will not grant it.

6. Mr Joshi also points out that RR Oomerbhoy Private Limited is an entity against whom there is not only an infringement action in respect of these very marks but there are strong observations and orders. Appeals against the order passed against RR Oomerbhoy Private Limited have all failed and have been dismissed. He submits that it is inconceivable that an infringer should ever be considered as a licensee and no principal of equity would ever contemplate this. It simply cannot be that an entity that has previously attempted to infringe the mark should now seek to become a Court-approved licensee of it. Further RR Oomerbhoy is also an entity that has challenged the title of firm to the mark claiming that the mark has been abandoned. Yet it is this very entity with whom Riyad has chosen to join hands, being one of its directors. Indeed this is yet another reason to stop the present process and direct that it be done afresh. There is simply no neutrality in the licensing process at this stage.

7. I will, therefore, direct the Court Receiver to stop the present process and to reissue advertisements on the same terms and conditions but with altered schedules. None of the parties will speak to the press either directly or through their Advocates or through any companies of which they are directors or entities in which they were partners or of which they are proprietors. Complete silence in the media must be maintained by the litigants to this action, their families, close friends, advisers and significant others. I will also not accept a bid by or in association with RR Oomerbhoy Private Limited because I do not see how that can ever be justified.

8. Defendant No.1(A) is at liberty to put in a bid either in his own name or through any other entity. The Plaintiff is equally at liberty to bid. Bids through collaborations, tie ups or consortiums may also be accepted provided the conditions set out are met. The other Defendants, including those Oomerbhoys who have not bid in this cycle, may also bid.

9. A few further directions are necessary.

(a) The EMDs presently submitted by the Plaintiff and Defendant No.1(A) will be returned.

(b) The Court Receiver will request M/s WS Kane and Company to renew all marks that are pending renewal at the earliest and will separately request that firm of Advocates to conduct a thorough search to find if there are any other similar or deceptive similar marks. That search report will be placed by the Court Receiver before the Court for further directions.

10. In view of this Mr Joshi does not press prayer clauses (b), (c), and (d) of the Chamber Summons.

11. The Court Receiver Report and the Chamber Summons are disposed of in these terms.

12. The costs of this Report are to be deducted from the suit account.

13. This order will effectively be an order in terms of prayer clause (a) of the Plaintiffs Chamber Summons No. 1001 of 2018.

14. Defendant No. 4c has passed away. His legal heirs are already on record. This is noted.

(G. S. PATEL, J)