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

Decided on: 15.01.2019

+ O.M.P.(I) (COMM.) 7/2019

DR. OETKER INDIA PVT. LTD.

..... Petitioner

Through: Mr. Abhinav Vashisht, Sr. Advocate
with Ms. Veronica Mohan, Ms. Priya
Singh and Mr. Aman Bhatnagar,
Advocates.

versus

MR. VIRAJ BAHL & ORS.

..... Respondents

Through: Mr. Sandeep Sethi, Sr. Advocate with
Ms. Medha Sachdev, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

I.A. No.512/2019 (exemption)

1. Allowed, subject to just exceptions.

O.M.P.(I) (COMM.) 7/2019

2. Issue notice.

3. Ms. Medha Sachdev accepts notice on behalf of the respondents. In view of the directions that I propose to pass, Mr. Sethi, learned senior counsel, who, appears on behalf of the respondents, says that he does not wish to file a reply.

4. This petition has been filed, essentially, to assert the rights which arise out of three (3) agreements. These being the Master Agreement dated 25.07.2008 (MA); the Share Purchase Agreement dated 25.07.2008 (SPA); and the Share Purchase and Share Subscription Agreement dated 25.07.2008

(SPSSA). Hereafter MA, SPA and SPSSA will be collectively referred to as agreements.

5. The array of parties in the three (3) agreements is as follows: -

i) MA stands executed between Mr. Rajiv Bahl, Mrs. Vibha Bahl, Mr. Varun Bahl, Mr. Viraj Bahl, Mr. Mukul Parakh, Mr. Anoop Aroua, Mr. Chandan Singh, Mr. Anil Bahuguna, Mr. Hemant Sharma, Ms. Meena Adhikari, Ms. Meenakshi Bala, Fun Foods Pvt. Ltd., V.R.B. Foods Pvt. Ltd., Three Vees Food Formulators on one side and Dr. Oetker India Pvt. Ltd., Mr. Oliver Mirza on the other side.

ii) Likewise, SPA was executed between Mr. Rajiv Bahl, Mrs. Vibha Bahl, Mr. Varun Bahl, Mr. Viraj Bahl, Mr. Mukul Parakh, Mr. Anoop Aroua, Mr. Chandan Singh, Mr. Anil Bahuguna, Ms. Meena Adhikari, Ms. Meenakshi Bala, Fun Foods Pvt. Ltd.(in short “FFP”), on one hand and Dr. Oetker India Pvt. Ltd., Mr. Oliver Mirza on the other.

iii) Similarly, SPSSA was executed between Mr. Rajiv Bahl, Mrs. Vibha Bahl, Mr. Varun Bahl, Mr. Viraj Bahl, Mr. Mukul Parakh, V.R.B. Foods Pvt. Ltd. (in short “VRB”) and Dr. Oetker India Pvt. Ltd., Mr. Oliver Mirza.

6. By virtue of these agreements, in substance, essentially the petitioner before me has ended up purchasing, *inter alia*, the goodwill, the trade name, trademark, formulations and recipes of the two companies in issue i.e. FFP and VRB. Besides this, in terms of the MA, assets of two partnership firms, namely, Three Vees and Food Formulators were also purchased.

7. To be noted, in so far as these two partnership firms are concerned, while the firms remain with the respondent, as indicated above, their assets were sold to the petitioner.

8. The petitioner claims that its investigator has found that the respondents are violating the provisions of the agreements by representing that they are still connected with FFP and VRB.

8.1 It is also the contention of the petitioner that having sold the formulations and recipes, the respondents cannot, *inter alia*, represent that they are inventors or developers of world's first eggless mayonnaise recipe.

9. Mr. Sethi, on the other hand, says that none of the obligations undertaken under the aforementioned agreements have been violated by the respondents. It is Mr. Sethi's contention that the non-compete clause has worked out itself as the period of 4 years has already lapsed and therefore, the respondents are well within their rights to carry on their business in their own capacity.

9.1 In so far as the assertion made in the petition based on the conversation between the so-called investigator and a representative of respondent no.5 is concerned, Mr. Sethi says that a perusal of the text of the conversation would show that it is largely based on what is historically true and correct facts i.e. the origin of the respondents.

9.2 It is Mr. Sethi's contention that, in any event, there is no declaration to the world, as contended on behalf of the petitioner, that the respondents are the original developers of the eggless mayonnaise recipe.

9.3 In other words, it is the respondents' stand that none of the assertions made in the petition are true and correct.

10. Having regard to the submissions made on behalf of the respondents, I am of the view that this petition need not be taken further as the respondents ultimately take the stand that neither has there been any violation of the agreements nor has anything been done which is otherwise not permissible in law.

11. In so far as the conversation between the investigator and the so

called employee of respondent no.5 is concerned, that by itself does not show that there is any egregious violation of the provisions of the agreement or that any assertion has been made to the public at large. In case the petitioner is in a position to demonstrate that the product in the market uses the same formula or recipe, which has been sold to it (which it has not been able to do, at least not at this juncture) then, it will have a right to move the Court. At present what I have before me is a conversation between the two persons which, to my mind, cannot form the basis of an injunction when, in any case, the respondents say that they are not in violation of any of the provisions of the agreements and nothing has been shown which would establish the contrary.

12. In these circumstances, I do not intend to take the petition any further; the petition is closed, leaving the parties to abide by their respective obligations.

13. The petition is disposed of in the above terms.

**RAJIV SHAKDHER
(JUDGE)**

JANUARY 15, 2019
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