IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 26, 2020

\+ CS(OS) 27/2018, IAs 1107/2018 & 5041/2019

EXPERION DEVELOPERS PRIVATE LIMITED ..... Plaintiff
Through: Mr. Anil Airi, Sr. Adv. with Mr. Rajan Raj, Ms. Shikha Thakur, Ms. Sukanya Lal & Mr. Mudit Ruhella, Advs.

versus

UP TELEVISION NETWORK PRIVATE LIMITED ..... Defendant
Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

IA 5041/2019

This is an application filed by the plaintiff under Order VII Rule 14 CPC in April, 2019 for bringing on record an additional document. It is noted that the statements of plaintiff's witnesses have already been recorded on or before January 21, 2019. This application has been filed belatedly. Hence dismissed.

CS(OS) 27/2018

1. This suit has been filed with the following prayers:

"(a) Pass a decree of permanent injunction restraining the Defendant, its associates, sister concerns, agents, officers, representatives, correspondents, employees and/or any other person or entity from publishing, re-publishing, carrying out reports or articles or telecasts or publicizing or disseminating in any manner directly or indirectly the Defamatory Report, in any form whatsoever including without limitation, print, television, social media, digital, Youtube, Facebook, Twitter and directing the Defendant to remove and cause the removal of the same from all forms of media, including online and digital media, Youtube, Facebook, Twitter.

(b) Pass a decree awarding damages in such sum as may be determined by this Hon'ble Court upon the Plaintiff's assessment of the impact of the Defamatory Report on the Plaintiff's business, in any event, not less than Rs.2.25 crores.

(c) Pass a decree awarding payment of all cost of the suit to the Plaintiff, including the legal costs.

(d) Pass such order, further orders, directions and decree, as this Hon'ble Court may deem fit in the facts and circumstances of this case and in the interest of justice."

2. The facts as noted from the plaint and so contended by Mr. Anil Airi, learned Sr. Counsel, are that the plaintiff is a company incorporated under the Indian Companies Act, 1956 having its registered office in F9, First Floor, Manish Plaza 1, Plot No.7, MLU, Sector 10, Dwarka, New Delhi. The plaintiff Company is engaged in the business of real estate projects, construction and development business. The plaintiff Company was formerly known as Gold Developers Pvt. Ltd. The Plaintiff changed its name to its present name vide fresh incorporation certificate dated January 23, 2012. The plaintiff is a wholly owned subsidiary of Experion Holdings Pvt. Ltd. Singapore, which is the real estate investing arm of AT Holdings Group, Singapore.

3. According to Mr. Airi the defendant is a Company with its registered office at Uttar Pradesh Television Network, Halwasiya Court, 5th Floor, 11, Mahatma Gandhi Marg, Hazratganj, Lucknow, Uttar Pradesh having another office at 10/74, Bahar-B, Sahara State, Jankipuram, Lucknow.

4. Mr. Airi stated that plaintiff has made substantial investments in India and is undertaking several prestigious residential and commercial projects including:

i. "The Windchants Project" of 23 acres based in Gurugram (563 Units) with a total saleable area of 23, 32, 171 (approx.) sq. ft. with an average base selling price of Rs.6,432 (Gross Rate) per sq. ft. in relation to sold inventory,

ii. "The Headstrong" of 15 acres in Gurugram (811 Units) with a total saleable area of 14, 83,442 sq. ft. with an average base price of Rs.5,905 (Gross Rate) per sq. ft. in relation to sold inventory,

iii. "The Westerlies" of 100 acres Township project in Gurugram with a total plot area of 2,60,982.36785 sq. yds. with an average base selling price of Rs.48,666 (Gross Rate) per sq. yds. in relation to sold inventory,

iv. "Experion Milestone Centre" which is commercial project of 4 acres in Gurugram.

He stated that it has development rights across India and is planning to develop townships, group housing projects, commercial projects, retail, hotels and resorts across Delhi NCR, Andhra Pradesh, Haryana, Goa, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh.

5. According to Mr. Airi, the plaintiff Company is a reputed as well as a recognized player in real estate industry and has won many awards such as:

I. Debutant of the year 2013 in Realty Plus Excellence Awards, 2013, New Delhi

II. Best Residential Project-Future in Cityscape Global Awards 2013, Dubai UAE

III. Best Apartment India in Asia Pacific Property Awards 2014-2015, Kuala Lumpur

IV. Highly Commended Architecture in Asia Pacific Property Awards 2014-2015, Kuala Lumpur.

6. Mr. Airi stated that the cause of action for filing the present suit arose on January 18, 2018 when the defendant started telecasting on its channel and also publishing on online media; i.e. websites such as bharatsamachartv.in, Youtube, Facebook and Twitter etc., false and malicious reports (hereinafter referred to as, the defamatory report) against plaintiff's newly launched Project "Experion Capital" which is situated at two contiguous plots of land bearing property nos. TCG /1-A-V-6 and TCG/1-A-V-7 Vibhuti Khand, Gomti Nagar, Lucknow. It is stated that the plaintiff is aggrieved by the fact that the defendant did not even speak to any of the representatives of plaintiff Company before telecasting and publishing the defamatory report.

7. Mr. Airi has drawn my attention to the plaint (para 6) and written submissions filed on behalf of the plaintiff Company to contend that all the defamatory statements are false and are rebutted in the following manner:

DEFAMATORY STATEMENTS	REBUTTAL
1. The Defamatory Report opens with a statement that the plaintiff is a 'thug builder, attempting to spread its web of deceit in Lucknow via the Experion Capital Project, which has been acknowledged by officials of the Uttar Pradesh Real Estate Regulatory Authority' (hereinafter UPRERA)	The Defamatory Report comprises of false and malicious allegations styled in an extremely abusive and sensational manner, designed to attract attention of unsuspecting viewers. Such bold, defamatory and malicious statements have not been substantiated in any manner whatsoever either has the source of the aforementioned information from UPRERA has been disclosed. The Defamatory Report further alleged that the plaintiff has come to loot customers in Lucknow, after previously looting customers in Delhi and Noida. (Referred to in Para 6 (a) of the Plaint, Defamatory Transcript at **Exhibit B – PW-3 at Page 96**.
2. Defamatory Report alleges that land on which the project has been launched was illegally acquired in collusion with politicians and is not registered or recognized by the LDA (Lucknow	1. The Experion Capital Project is a mixed use project with both residential and commercial components, spread over 27,573.95 sq. mts. contiguous plots of land, in fact is one of

Development Authority). Also, that there are disputes regarding the title of the land. (Referred to in Para 6 (b) of the Plaint Defamatory Transcript at **Exhibit B – PW3 at Page 99**.	the most prime areas in Lucknow. The said project is being built on land over which the plaintiff has clear title and after obtaining all requisite clearances as explained hereinbelow. 2. The allegations are baseless and devoid of any element of truth because the Experion Capital Project is being undertaken on two adjoining and contiguous parcels of land numbered TCG /1-A-V-6 and TCG /1-A-V-7. The said land was sold by Lucknow Development Authority ('LDA') by Registered Sale Deeds dated January 18, 2008 and March 20, 2008 to M/s. A.N.S. Construction Ltd. (Referred to in Para 6 (b) of the Plaint, **Exhibit C-PW3 at Page 3 to 33 and 49 to 62**) 3. Further, vide Registered Sale Deeds dated February 01, 2008 and April 09, 2008, aforementioned land was bought by Gold Developers Pvt. Ltd. from M/s. A.N.S. Constructions Ltd. (Referred to in Para 6 (b) of the Plaint, **Exhibit C-PW3 at Page 34 to 48 and 63 to 86**) 4. Vide fresh Certificate of Incorporation dated January 23, 2012, Gold Developers Pvt.

	Ltd. changed its name to Experion Developers Pvt. Ltd., i.e. the plaintiff herein. (Referred to in Para 6(b) of the plaint, **Exhibit A – PW-3 at Page 87**) 5. It is also pertinent to note that the investigative journalist website, Cobrapost, did a sting operation on the defendant for paid news and Under Operation 136 : Part II released by Cobrapost on May 25 2018, Marketing and Sales Head along with Editor-in-Chief and Owner of the defendant, Bharat Samachar, are seen to be attacking certain political parties.
3. Defamatory Report states that the building plan has not been sanctioned by the LDA. In support, it says RERA Registration number on RERA website and Building Plan Approval Number as stated on plaintiff's website are different.	It is submitted that such allegations are also false and misleading as the plaintiff has been given 'Permit to Construct' number, 41210 on March 08, 2017 by LDA after payment of all dues and the building plan has been duly approved on January 12, 2017. (Referred to in Para 6 (c) of the Plaint, **Exhibit F & G – PW-4 at Page 88 to 92**). The Vice Chairman, LDA has tweeted to that effect on publication of the defamatory content. (Referred to in Para 6 (c) of the Plaint **Exhibit E-PW-3 at Page 95**). The RERA registration number

	allotted to the project by UPRERA is UPRERAPRJG9224. LDA and RERA are different statutory authorities having different jurisdiction and following different approval processes LDA is responsible for approving the building plans under UP Urban Planning and Development Act, 1973 and UPRERA is an authority for registration of projects under the Real Estate (Regulation and Development) Act, 2016. Accordingly, their approvals are different and issued separately thus having different numbers. In fact, RERA registration can't be obtained without building plans being approved. Title of plaintiff is well established by registered documents of title. (Referred to in Para 6 (c) of the Plaint, **Exhibit D – PW -3 at Page 93-94**)
4. Defamatory Report also states that project is approved by UPRERA in Mohan Lal Ganj Tehsil, but the plaintiff has represented to the public at large that the location of the Experion Capital Project is at Gomti Nagar.	1.The Experion Capital Project is being developed in a phase wise manner, Phase I of the Project has been registered so far with UPRERA. The project is situated at Vibhuti Khand, Gomti Nagar, Lucknow, Tehsil – Lucknow District and reference to Mohan Lal Ganj Tehsil is erroneous on RERA website. Relevant Tehsil for project is Lucknow as is

	evident from other documents uploaded on UPRERA website at the time of registration viz – Sale Deeds clearance from LDA and other civic authorities etc., Google Map Co-ordinates etc. (Referred to in Para 6 (b) of the Plaint, Exhibit F & G – PW-4 at Page 88 to 92), (Exhibit C-PW-3 at Page 3 to 86) 2.These documents are open for public inspection but have been ignored by defamatory report. The Defendant has deliberately ignored all the available public record in order to intentionally and maliciously telecast the Defamatory Report, in order to cause significant harm and damage to the plaintiff.
5. Defamatory Report states that Plot Number on plaintiff's website is TCG/1-A-V-7 whereas on LDA website, it is TCG/1-A-V-6	1. The Defamatory Report conveniently omits to state that the Experion Capital Project is being constructed on two contiguous plots and the LDA software accepts only one plot Number for a project. Thus, only first plot number shows on LDA website. The building plan approved by LDA shows both Plot numbers. Accordingly, there is no fraud being sought to be committed by the plaintiff as alleged. 2. Gomti Nagar is one of the

	most premium areas in Lucknow and in any event, significantly more premium that Mohan Lal Ganj Tehsil. The Experion Capital Project has been marketed and advertised by the plaintiff as being located at Gomti Nagar, Lucknow.

8. According to Mr. Airi, the defamatory report has caused immense harm to the reputation of the plaintiff Company in the eyes of the potential customers / lenders / suppliers / vendors / employees / stakeholders and general public at large, especially in Delhi and other areas. Furthermore, the report is devoid of fairness and honesty and the same is blatantly false and malafide.

9. The suit came up for hearing for the first time before this Court on January 23, 2018 when summons were issued on the suit and notice on the accompanying interlocutory application bearing I.A. No. 1107/2018 under Order XXXIX Rule 1 and 2 of CPC.

10. It is also noted that on the second date of hearing i.e. January 30, 2018, the defendant Company entered appearance through Mr. Rohan Thawani, Adv. However, on the next date of hearing i.e. August 01, 2018 when the matter was scheduled for framing of issues, the defendant was proceeded ex-parte, as it was recorded that the defendant had not filed the written statement within the prescribed time and had also failed to put in appearance. The Court through the same order listed the matter before the Joint Registrar on October 03, 2018 for plaintiff's evidence.

11. Thereafter, Mr. Rakesh Kaul / PW-1, MD and CEO of plaintiff Company, Mr. Keshav Wadhwani / PW-2, Deputy Manager of plaintiff Company, Mr. Suneet Puri / PW-3, Vice President of project at plaintiff Company and Mr.Vinay Narang / PW-4, Senior GM (Group) Corporate Communications and public relations at plaintiff Company, all filed affidavits of examination-in-chief dated September 25, 2018.

12. On November 27, 2018 when the matter was fixed for ex-parte evidence of the plaintiff, PW-1 / Mr.Rakesh Kaul and PW-4 / Mr.Vinay Narang were examined and discharged. The matter next came up for the remainder of the plaintiff's evidence on January 21, 2019 when PW-2 / Mr.Keshav Wadhwani and PW-3 / Mr.Suneet Puri were examined and plaintiff's evidence was closed.

13. In their examination-in-chief, the witnesses have stated as under:

> ***"(i) PW1- Mr. Rakesh Kaul, MD & CEO of Experion Developers Pvt. Ltd.***
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> *On 18.01.2018 the Defendant started telecasting on its channel as well as publishing on online media through its website Bharatsamachartv.in and also on "YouTube", "Facebook" and "Twitter", its report against Plaintiff's newly launched project named "Experion Capital" at two contiguous plots numbers TCG/1-A-V-6 and TCG/1-A-V-7 Vibhuti Khand, Gomti Nagar, Lucknow. This project is a mixed use project with both residential and commercial components spread over 27573.95 sqmts contiguous plots of land.*
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> *The defamatory report is false, misleading, malicious, concocted and extremely defamatory. The defendants did not even bother to speak to the representatives of the Plaintiff, or to*

verity, or cross check the allegations made therein, before telecasting and publishing the defamatory reports.

When the Plaintiff has acquired the said lands from a M/s. A.N.S. Constructions Ltd. vide registered sale deeds dated 01.02.2008 and 09.04.2008 it was known as "Gold Developers Pvt. Ltd." and subsequently the name was changed to Experion Developers Pvt. Ltd. It is also stated that there are no pending litigation affecting the title of the plaintiff over the subject land.

It is alleged by the defendants that the building plans for the Experion Capital Project have not been sanctioned by the LDA and that the RERA registration number of the Experion Capital Project as on RERA's website and the building plan approval number as stated on the Plaintiff's website are different and cast doubt on the approvals and registration of the land in question.

It is submitted that building plans for the said project have been approved by the LDA on 12.01.2017. Plaintiff has also been given a 'Permit to Construct' number 41210 on 08.03.2017 based on the building plan approval. The RERA Registration number allotted for the Experion Capital Project by UPRERA is UPRERAPRJ4224.

It is stated that the Plaintiff have obtained NOCs UP Pollution Control Board, Electricity Distribution Division (Gomti Nagar), Traffic Police to LDA and Fire Services Department to LDA for the said project as required under demand letter issued by LDA dt. 21.01.2017. Furthermore, the LDA and UPRERA are two different statutory authorities and different jurisdictions and approval processes and that RERA registration is only granted after approval of building plans. Hence the contention that the building plans have not been approved are false.

Experion Capital Project is situated at Vibhuti Khand, Gomti Nagar, Lucknow Tehsil, Lucknow District and not at Mohan Lal Ganj Tehsil which is also a part of Lucknow District. The reference to "Mohan Lal Ganj Tehsil" as the relevant tehsil of the project is that at the time of selecting the relevant Tehsil from the drop down menu of the online form in the online registration submission at the RERA website is erroneous. The *plaintiff does not own any land in Mohan Lal Ganj Tehsil and that at the time of registration of the documents uploaded make it clear that the project is located in Vibhuti Khand, Gomti Nagar, Lucknow. The plaintiff cannot extract any unfair advantage over unsuspecting buyers by claiming that the project is in Mohan Lal Ganj and not in Gomti Nagar. It is the defendants who have chosen to ignore the public record available and continue to telecast the malicious report.*

The report states that the plot number of the project on the plaintiff's website reads as TCG/1-A-V-7 and whereas on the site of the LDA it reads ad TCG/1-A-V-6. The project is being constructed on both the contiguous plots and that the software used by the LDA to generate permits accepts only one single property number. Accordingly. only the first number of the plot number shows i.e. TCG/1-A-V-6 shows in the permit; the building plans approved by the LDA make it evident that both plot numbers are included.

The report contains a video clip of Mr. D.M. Katihar purportedly working for the LDA who states that the allegation levelled need to be examined. The video doesn't show the background provided to Mr. Katihar. When this video clip was brought to the knowledge of Mr. Prabhu Singh Vice Chairman, LDA on 20.01.018 he tweeted from his personal twitter handle that Experion Capital Project has been duly approved by the LDA and that the defendant should check the background before carrying out such a news item.

The Plaintiff has a network of Rs.1,127.94 Crores and is claiming only nominal damages in the present suit for loss of reputation, present and future customers and other business opportunities. The damages caused to the plaintiff are in excess of Rs. 2 Crores and currently estimated at Rs.2.25 Crores.

(ii) PW-2, Mr. Keshav Wadhwani Deputy Manager of Experion Developers Pvt. Ltd.

On 18.01.2018, the defendant started telecasting the defamatory report through various fora including its channel, website and other social media platforms such as "YouTube", "Facebook", "Twitter" along with its website bharatsamachartv.in w.r.t *plots; TCG/1-A-V-6 and TCG/1-A-V-7 Vibhuti Khand, Gomti Nagar, Lucknow.*

There is a use of abusive language against the plaintiff, and that the plaintiff are here to spread a web of deceit and that the officials of UPRERA also acknowledge the same, while no source of this information has been provided. It went on to state that the plaintiff has come to loot customers in Lucknow after having looted the customers of Delhi and Noida. Whereas the Plaintiff has not undertaken a single real estate project so far in Delhi or Noida but only in Gurgaon.

It was alleged by the defendants that the land was acquired illegally through in collusion with politicians affiliated to Ms. Mayawati and that same is not recognized or registered by the LDA, furthermore that there are disputes to the title of the land. It is stated that land was first sold by LDA to M/s. A.N.S. Construction Ltd. vide registered sale deeds dated 20.03.2008 and 18.01.2008 and brought by Gold Developers Pvt. Ltd. vide sale deeds dt. 01.02.2008 and 09.04.2008. Thereafter the name of "Gold Developers Pvt. Ltd." was subsequently changed to "Experion Developers Private Limited".

The project is being developed in a phase wise manner and that phase I of the project has ben registered with UPRERA which has been allotted the UPRERAPRJ4224 registration number. The project is situated in Vibhuti Khand Gomti Nagar and not Mohan Lal Ganj Tehsil which is also a part of Lucknow District.

The plaintiff cannot take any unfair advantage of the fact that the UPRERA website shows the project to be in Mohan Lal Ganj as the project is situated in Gomti Nagar. The defendant has chosen not to refer to the public documents attached by the plaintiff.

iii. PW-3 Mr. Suneet Puri, Vice President, Projects at of Experion Developers Pvt. Ltd.

On 18.01.2018 the defendant started broadcasting on various fora including its channel, website Bharatsamacharv.in as well as on "YouTube", "Facebook", "Twitter", the defamatory *report, wherein allegations wherein baseless made against plaintiff.*

The report states that the building plans of the project have not been sanctioned by the LDA and that the RERA Registration number of Experion Capital Project as stated on the RERA website and the building plan approval number as stated on the plaintiff's website are different and cast aspersions on the approvals for the projects and documents relating to the registration of the land in question in favour of the plaintiff.

Plaintiff's building plans have been approved by LDA on 12.01.2017 and 'permit to construct' number 41210 was given on 08.03.2017 on the said building plan approval. RERA registration number is UPRERAPRJ4224. Copy of demand letters of various charges dated 21.01.2017 issued by the LDA upon the plaintiff in respect of approval on 12.01.2017 have been attached. NOCs were appointed from various authorities such as UP Pollution Control Board, Electricity Distribution Division, Traffic Police and Fire Services Department to the LDA for the proposed Commercial cum Housing project of the plaintiff's.

LDA and RERA are different statutory authorities and follow different processes for approval. The RERA registration cannot be obtained until the building plans are approved by the LDA. Therefore the above contention that the LDA has not approved the building plans and the casting of aspers on the genuineness of the building plans displayed on the website of RERA and the plaintiff's website on the ground that they bear a different number from RERA registration number are false.

The project is situated in Vibhuti Khand, Gomti Nagar, Lucknow Tehsil and not in "Mohan Lal Ganj" Tehsil. The reference to "Mohan Lal Ganj Tehsil" as the relevant tehsil for the project at the time of selecting the tehsil from the drop down menu of the online form in the online registration submission at the RERA website is erroneous. That the plaintiff doesn't own any land in Mohan Lal Ganj Tehsil and that the project of the plaintiff is located in Gomti Nagar which is made clear by the documents uploaded on the UPRERA website.

The software by the LDA for generating its permit accepts only one single property number. Accordingly, only the first plot number i.e. TCG/1-A-V-6 shows in the permit. However, that the building plans approved by the LDA make it clear that both the plots TCG/1-A-V-6 and TCG/1-A-V-7 are included in the approval and that no fraud it being committed by the plaintiff.

(iv) PW-4, Mr. Vinay Narang Senior GM (Group) Corporate Communications and Public Relations at Experion Developers Pvt. Ltd.:

On 18.01.2018 started telecasting the defamatory report on its channel and various online fora.

The title of the land vests with the plaintiff and that there is no pending litigation related to the title of the land unlike what is averred by the defendants, as the land comprising of two plots was purchased from M/s. A.N.S. Construction Ltd. vide registered sale deeds dt. 01.02.2008 and 09.04.2008 by the plaintiff as it was then known as "Gold Developers Pvt. Ltd.".

Plaintiff has customers and employees including in Delhi who have seen the defamatory report and that the Plaintiff has many projects in Gurgaon and is heavily reliant on the persons residing in Delhi to sell such projects and due to the allegations cast by the defendant the Plaintiff has suffered significant loss of reputation and consequent losses as several customers have refused to deal with the Plaintiff. The plaintiff having a net worth of Rs.1,127.94 Crores has only claimed only nominal damages in the present Suit.

14. In support of its case, the plaintiff Company has filed the following documents:

a) Registered Sale Deed dated January 18, 2008 wherein parcel of land TCG/1-A-V-7 was sold by LDA to M/s. A.N.S. Construction Ltd., Ex-C (colly)

b) Registered Sale Deed dated February 01, 2008 wherein parcel of land TCG/1-A-V-7 was sold by M/s. A.N.S. Construction Ltd. to Gold Developers Pvt. Ltd., Ex-C (colly)

c) Registered Sale Deed dated March 20, 2008 wherein parcel of land TCG/1-A-V-6 was sold by LDA to M/s. A.N.S. Construction Ltd., Ex-C (colly)

d) Registered Sale Deed dated April 09, 2008 wherein parcel of land TCG/1-A-V-6 was sold by M/s. A.N.S. Construction Ltd. to Gold Developers Pvt. Ltd., Ex-C (colly)

e) Fresh Certificate of Incorporation dated January 23, 2012 by which Gold Developers Pvt. Ltd is renamed as Experion Developers Pvt. Ltd. (Ex-A)

f) Copy of demand letter of various charges dated January 21, 2017 issued by LDA on plaintiff. (Ex-F)

g) Copy of Permit to Construct, issued on March 08, 2017 with permit no.41210 given by LDA to plaintiff based on building plan approval. (Ex-G)

h) Registration Certificate issued under the Real Estate (Regulation and Development) Act, 2016 by UPRERA for five years commencing from December 01, 2017 to November 30, 2022. (Ex-D)

i) A printed copy of a tweet from personal handle of Mr.Prabhu Singh vice Chairman LDA. (Ex-E)

j) CD with defamatory report along with the transcript of the telecast dated January 18, 2018. (Ex-B)

k) Certificate under Section 65B of the Indian Evidence Act, 1872 for providing electronic record.

l) Affidavit on behalf of the plaintiff to bring on record its consolidated financial statement (March, 2017) along with said financial statement.

15. On the issue of territorial jurisdiction, Mr. Airi has drawn my attention to the order dated January 23, 2018, wherein the question of territorial jurisdiction was posed by this Court. Suffice it to state that the issue of territorial jurisdiction of this court to entertain the present Suit stands settled by the said order. Furthermore, Mr. Airi submitted that this Court has territorial jurisdiction to entertain the suit, as the plaintiff has customers / prospective customers of its Projects and employees in Delhi who have viewed the defamatory report. He further submitted that the plaintiff has several Projects in Gurugram and is heavily reliant on the population residing in Delhi to sell / market its Projects, including the Experion Capital Project. Due to the allegation and aspersions cast by the defendant Company, the plaintiff Company as a corporate entity has suffered significant loss of reputation. He goes on to state that, the registered office of the plaintiff is situated in Delhi and the territorial jurisdiction to entertain this suit also rests with this Court since the defamatory report continues to be telecasted on various media, including to the viewers in Delhi.

16. Having noted the aforesaid submissions made by Mr. Airi, suffice it to state that he is justified in referring to the judgment of this Court in ***Indian Potash Ltd. v. Media Contents and Communication Services (India) Pvt. Ltd. & Ors.,*** **CS(OS) 1717/2007** dated March 04, 2009, ***(MANU/DE/0234/2009),*** wherein Para 6 and 7 reads as under:

> *"6. The reliance placed by the defendant of Section 20 of CPC is misplaced and the suit of the plaintiff is covered under Section 19 of the CPC which reads as under:*
>
> > *"19. Suits for compensation for wrongs to person or movable. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.*
> >
> > *Illustrations*
> >
> > *(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.*
> >
> > *(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi."*
>
> *7. The above Section makes it abundantly clear that any suit for compensation for wrong done to a person can be filed either within the territorial limits of the jurisdiction where the defendant resides or carrying on business or it may be instituted at the option of the plaintiff if the wrong done was within the local limits of the jurisdiction of the Court. In the event of publication of defamatory material, the wrong is done where the defamatory material is communicated and the moment the same is received by the persons, for whom it has been written. The publication of defamatory material against a person gives rise to a cause of action only when it is made known to the third party. The place of the third party and the*

place where it is known to a third party gains importance. The plaintiff may be living at any place. <u>If publication of defamatory material against him is made at a place different from where the plaintiff lives or defendant lives, the Court at that place will have the jurisdiction to entertain the suit for compensation on the ground of defamation where the defamatory material is printed in books, newspaper is published, through electronic media on TV and the defamatory material directly hits the reputation demolishing the esteem and standing of the plaintiff. It is the choice of the plaintiff to file the suit either at the place where publication has been made or the place where the defendant resides. Since in case of telecasting of a feature on TV by the channel which is for Indian audience and has all India viewers, the plaintiff has a choice to file the suit at those places where the plaintiff has been hit the most. In the present case, the plaintiff was supplying milk to many organizations and institutions and marketing companies in Delhi. The business of the plaintiff was allegedly hit by broadcasting of such publication in Delhi. Therefore, the suit of the plaintiff lies in Delhi and this Court has jurisdiction to entertain the suit.</u> ***<u>(emphasis supplied).</u>*** *<u>In T.N.Seshan, Chief Election Commissioner and Ors. v. Dr. M. Karunanidhi, President of Dravida Munnetra Kazhagam Party and Ors</u>. 1995(3) ALT 108, the Andhra Pradesh High Court had similar view and observed as under:*

> *"23. Publication of defamatory matter is communicated the moment the same is received by some person other than the person for whom it has been written. Publication of defamatory matter includes communication to third party. Defamatory matter printed in books and distribute for whatever purpose constitutes publication. <u>All the there defendants must have known that the aforesaid books and, particularly, the contents of chapters 9 and 10 may be read at least by the book sellers immediately on their receipt by them because of their curiosity. In the ordinary course of business the sending of books containing defamatory matter by post or otherwise from the place where it is published to book distributor of another place is publication of that matter at latter place, particularly/</u>*

when it is read by them and/ or others. Under these circumstances, it can be safely presumed that the importance of the aforesaid book containing chapters 9 and 10 would have aroused the curiosity of at least the book-seller to go through it immediately on its receipt and, therefore, this type of communication amounts to publication at Madras. ***(emphasis supplied).***

24. As noted above, the excerpts of chapters 9 and 10 of the aforesaid book in local newspapers is distinct publication. Much publicity was given for the sale of the book as is evident from the affidavits of the defendants. Therefore, a presumption regarding awareness of the contents of the concerned newspapers can be raised against all the defendants because out of these defendants only the concerned matter would have been passed on to the newspapers concerned and thus all of them, prima facie, appear to be responsible alike for the publication of the alleged defamatory news item in the local newspapers."

17. In view of the judgment in ***Indian Potash Ltd. (supra)***, the plaintiff Company having registered office in Delhi and it being the case of the plaintiff Company that the defamatory report has been telecasted on national television channels available on various DTH platforms and websites/social media platforms such as bharatsamachartv.in, YouTube, Twitter, Facebook etc., which were accessed in Delhi and also noting the fact that the customers / prospective customers of plaintiff Company's various Projects and other stakeholders have viewed the defamatory report in Delhi, it has to be held that this Court has jurisdiction to entertain the present Suit.

18. On the question whether the plaintiff company can sue for defamation, Mr. Airi has relied upon the Judgments of the Bombay High Court in the cases of ***Union Benefit Guarantee Co. Ltd. v.***

Thakoral P. Thakor and Ors., AIR 1936 BOM 114 and ***Indian Express Newspapers (Bom.) Pvt. Ltd. Ors. v. Jagmohan Mundhara and Ors., AIR 1985 BOM 229.*** Suffice it would be to state that it is the settled position of law that a company can sue for defamation. This is because a company may have reputation for good conduct of business. In this regard, I may reproduce paragraph 22 of the Judgment of the Bombay High Court in the case of ***Indian Express Newspapers (Bom.) Pvt. Ltd. Ors. (supra),*** which reads as under:

> *"22. It is well settled that a corporation cannot suffer damages in mind or body. But as held in Metropolitan Saloon Omnibus Co. Ltd. v. Hawkins (1859) 4 H & N 87; South Helton Coal Co. v. North Eastern News Association Ltd. (1894) 1 Q.B. 133; D.L. Caterers Ltd. v. D' Ajou (1945) K.B. 364; Lewis v. Daily Telegraph Ltd. (1964) A.C. 234 and Selby Bridge Proprietors v. Sunday Telegraph (The Times Feb. 17, 1966) a trading corporation has a business reputation and can sue for defamation in respect of a publication calculated to injure its reputation in the way of its business. The position is succinctly stated in Spencer Bower on Actionable Defamation at Pp. 278-279:--*
>
> > *"It is obvious that 'reputation' in the sense in which alone it concerns the topic of defamation has relation to the particular person enjoying it. But it must not be forgotten that 'person' for this to say, it includes both 'a body of persons' and a film....'. That a commercial 'body of persons' has a trading character and that trading character I now clearly well established."*
>
> *It may be that the innuendo or the imputation may be directed against an individual connected with the management of the commercial body of persons. But if it is of such nature as to not only defame the*

individual but also injure the trading character of the commercial body of persons, then both the individual as well as the commercial body will have a cause of action to sue for defamation. To suggest that the management of the newspaper in the hands of an individual who is susceptible to political pressure, is prepared for his personal gain to victimise honest and fearless journalists who have enhanced the reputation of the newspaper by some original investigative journalism and has no qualms of conscience in suppressing truth by any means even by abetting crimes, certainly injures the trading character of the newspaper , which has acquired reputation for integrity and fearless .The first plaintiff ,therefore, has as such right to sue for defamation as the individual whom the defamation conduct is attributed in the film."

19. Mr. Airi, in order to cement his contention that the report is in fact defamatory, has highlighted some of the following contents of the report: -

(1) That the plaintiff is a thug builder.

(2) The land on which the project has been launched was illegally acquired in collusion with politicians and is not recognized by Lucknow Development Authority and there are disputes with regard to title of land.

(3) The building plan has not been sanctioned by Lucknow Development Authority. The RERA Registration Number on RERA Website and building plan approval numbers as stated on the plaintiff's website are different.

(4) The project is approved by RERA in Mohan Lal Ganj Tehsil, but the plaintiff has represented to public at large that the location of Experion Capital project is at Gomti Nagar.

20. As stated above, the plaintiff Company has given its explanation in rebuttal to each of the allegations in the report which I have already noted above. Additionally, it is noted that the witnesses have in their deposition also proved the case of the plaintiff Company. In fact, there was no cross-examination of those witnesses.

21. In substance, the plea of Mr. Airi is that allegations made against the plaintiff are false and misleading and has been aired without communicating / confirming with any of the representatives of the plaintiff Company.

22. In a suit for defamation, the plaintiff has to establish that the words are defamatory and that it has been published. It is also trite law that the defamatory words are presumed to be incorrect and therefore the defendant has to rebut the presumption by giving evidence of justification. Defendant has to show that the allegations are true. This the defendant can urge only by filing a written statement. In the present case, the defendant, though represented before this court on January 30, 2018 by Mr. Rohan Thawani, Adv., remained absent thereafter, which resulted in an order of ex-parte. In the absence of written statement, the defendant has not been able to support the case set up by the plaintiff. In other words, the justification / defence of truth or fair comment is not available to the ex-parte defendant.

23. In ***SNM Abdi v. Prafulla Kr. Mahanta and Ors. AIR 2002 Gau 75,*** the Gauhati High Court held as under:-

> ***"10**. The only defence in such a situation is that if such statement is correct, he is not liable, but he had to do so by filing a written statement to establish it as the burden being on him but in the present case the defendants did not file written statement and did not adduce any evidence in support of the article published."*

24. So it follows that in the absence of any challenge / justification by the defendant, the report, which was telecasted on January 18, 2018, the transcript of which along with CD is exhibited as Ex.B, has to be held as defamatory. It is the case of the plaintiff Company that the report is malicious, devoid of any element of honesty and fair reporting and has caused severe injury, prejudice, loss of reputation etc. to the plaintiff Company. The question of reputation and how it is cherished by a person came up for consideration before the Apex Court in ***Kiran Bedi and Jinder Singh v. Committee of Enquiry, AIR SC 714,*** wherein in para 24 and 25 the Supreme Court has held as under:

> *"24 .... The right to the enjoyment of a good reputation is a valuable privilege, of ancient origin, and necessary to human society, as stated in Libel and Slander Section 4 and this right is within the constitutional guarantee of personal security as stated in Constitutional Law. Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in libel and slander Section 4"*

"25. The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property."

25. Having concluded that the telecast on January 18, 2018 is defamatory, the issue which needs to be decided is how much damages the plaintiff is entitled to. The plaintiff Company has prayed for an amount of Rs.2.25 Crores. The prayer sought is primarily in the nature of general damages to be paid to the plaintiff Company because of the impact of the impugned report.

26. Mr. Airi has relied upon the Judgment of this court in the case of ***Hindustan Unilever Limited v. Reckit Benchiser India Ltd., ILR (2014) 2 Delhi 1288,*** which is a decision on appeal / cross-objection filed against the decree granting injunction and punitive damages. The Court with regard to the general damages, where the plaintiff is a company, in paragraph 61 has stated as under:

"61. It is an accepted principle in English law that general damages are "at large" in the case of defamation, including disparagement, slander, etc. This was first stated in South Hetton Coal Company Limited v. North-Eastern News Association Limited, [1894] 1 QB 133 that "if the case be one of libel - whether on a person, a firm, or a company - the law is that damages are at large. It is not necessary to prove any particular damage; the jury may give such damages as they think fit, having regard to the conduct of the parties respectively, and all the circumstances of the case." It is important that a successful plaintiff is allowed to recover such

damages as would compensate for the loss of its reputation. These principles were re-stated in John v MGN Ltd [1997] QB 586, where the Court of Appeal held that:

> *"The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff"s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff"s feelings by the defendant"s conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-*

examines the plaintiff in a wounding or insulting way."

*76. Of course, a company stands in a slightly different position, for it has no feelings to hurt, and it follows that considerations of aggravation which might be relevant if the claimant is an individual do not apply. However, the entitlement of a company to recover general damages has recently been affirmed by the House of Lords: see Jameel v Wall Street Journal [2007] 1 AC 359. A company"s good name is a thing of value, but it can only be hit in its pocket, and there is no evidence here of actual financial loss. That is not to say that it may not merit vindication. The function of damages for vindication was well explained by Lord Hailsham in Broome v Cassell [1972] AC 1027 at 1071c-e in terms of the need, „in case the libel, driven underground, emerges from its lurking place at some future date", for the claimant (whether personal or corporate) to be able to point to a sum sufficient to convince a bystander of the baselessness of the charge. Of course, those words were spoken in the context of a jury award, and it could fairly be said that the need for vindication by an award of damages is less in a case where some vindication is provided by a reasoned judgment." **(emphasis supplied).***

This was followed in Applause Store Productions Limited and Firscht v. Raphael [2008] EWHC 1781, where the plaintiff complained of libel on account of a fake Facebook identity which falsely described the claimant"s sexual orientation, his relationship status (that is to say, whether he was single or in a relationship), his birthday, and his political and religious views. Not all this information was truthful or accurate, and besides all of it was private *information. The Court of appeal followed John (supra) and awarded substantial damages. Earlier, Iin Jameel v. Wall Street Journal 2007 (1) AC 379, the rule was re-stated as follows:*

> *"...under the current law of England and Wales a trading company with a trading reputation in this country may recover general damages without pleading or proving special damage if the publication complained of has a tendency to damage it in the way of its business."*

In the same judgment, the Court also reiterated the existing law that once defamation s proved, the law presumes damage- a proposition which applies to a trading company also. ***(emphasis supplied).*** *Further, the Court held that:*

> *"The presumption of damage*
>
> *119. Defamation constitutes an injury to reputation. Reputation is valued by individuals for it affects their self- esteem and their standing in the community. Where reputation is traduced by a libel "the law presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff"s rights" (Bowen LJ in Ratcliffe v Evans [1892] 2 QB 524 at 528). It is accepted that the rule applies and should continue to apply to individuals. But it is argued that it should no longer be applied to corporations. Corporations, it is said, have no feelings to be hurt and cannot feel shame. If they are to sue for libel they should be required to show that the libel has caused them actual damage.*
>
> *120. These arguments, in my opinion, miss the point. The reputation of a corporate body is capable of being, and will usually be, not*

simply something in which its directors and shareholders may take pride, but an asset of positive value to it. Why else do trading companies pay very substantial sums of money in advertising their names in TV commercials which usually say next to nothing of value about the services or products on offer from the company in question but endeavour to present an image of the company that is attractive and likely to cement the name of the corporation in the public memory? Why do commercial companies sponsor sporting competitions, so that one has the XLtd Grand National or the YLtd Open Golf Championship or the ZLtd Premiership? It is surely because reputation matters to trading companies and because these sponsorship activities, associating the name of the company with popular sporting events, are believed to enhance the sponsor"s reputation to its commercial advantage. The organisers of a variety of activities some sporting, some cultural, some charitable, are constantly on the look-out for sponsorship of the activity in question by some commercial company. The choice of sponsor and the reputation of the sponsor matter to these organisers. Who would these days choose a cigarette manufacturing company to sponsor an athletic event or a concert in aid of charity? If reputation suffers, sponsorship invitations may be reduced, advertising opportunities may become difficult, customers may take their custom elsewhere. If trade suffers, profits suffer.

121. It seems to me plain beyond argument that reputation is of importance to corporations. Proof of actual damage caused by the publication of defamatory material would, in most cases, need to await the next *month"s financial figures, but the figures would likely to be inconclusive. Causation problems would usually be insuperable. Who is to say why receipts are down or why advertising has become more difficult or less effective? Everyone knows that fluctuations happen. Who is to say, if the figures are not down, whether they would have been higher if the libel had not been published? How can a company about which some libel, damaging to its reputation, has been published ever obtain an interlocutory injunction if proof of actual damage is to become the gist of the action?*

122. <u>There is no doubt that, as the case law now stands, a libel is actionable per se at the suit of a corporation as it is at the suit of an individual, without the need to prove that any actual damage has been caused. In the South Hetton Coal Co Ltd case [1894] 1 QB 133 the plaintiff, a colliery company, complained of a libel that had attacked the company in respect of its management of company houses in which some of its colliery workers lived. The Court of Appeal held that the libel was actionable per se and, at p 140, that "... the plaintiffs would be entitled to damages at large, without giving any evidence of particular damage."</u> ***<u>(emphasis supplied).</u>***

In the United States of America, too, the difficulty which a defamed or slandered claimant, particularly a commercial enterprise is put to in proving empirically and accurately the damages or injury to its reputation and enterprise has been recognized. It was thus, held in Story Parchment Co. v. Paterson Parchment Paper Co., 282 U.S. 555 (1931) that:

<u>" Where the tort itself is of such a nature as to preclude the ascertainment of the amount of</u>

> *damages with certainty, it is enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise..... If the damage is certain, the fact that its extent is uncertain does not prevent a recovery." **(emphasis supplied).***

27. In the case in hand, it is seen that the plaintiff Company is a subsidiary of Experion Holdings Pvt. Ltd., Singapore and has made substantial investments in India. It has been bestowed with many awards. The telecast on January 18, 2018 by the defendant Company on its channel, had national viewership and according to the plaintiff Company, the defamatory report was also put on websites / social-media platforms like bharatsamachartv.in, YouTube, Facebook, Twitter etc.

28. It was only on January 30, 2018, after 12 days, this court restrained the defendant from telecasting / disseminating any news / contents concerning the plaintiff. As per the stand of the plaintiff Company, before telecasting / publishing, no clarification was sought by the defendant from it. The defendant also did not choose to appear in these proceedings to defend its stand / report / telecast or in the alternative regretting the contents of the report / telecast. I am conscious of the fact that the defendant's right to speech and its freedom to express freely is an integral part of healthy democracy. Further, it is to be stated that the defendant being a media concern,

there is a likelihood, the report carries greater weight, than those of other persons and such report is likely to be believed by the ignorant (***Ref: K.P. Narayan vs. Mahendra Singh, AIR 1956 Nagpur 439).***

29. There cannnot be any dispute that the telecast on TV and putting the same on websites, social-media platforms shall have wide coverage reaching many people, showing the plaintiff in bad light apart from having a bearing on the projects of the plaintiff.

30. The consequence of suffering such defamatory report must flow in favour of the plaintiff Company. It is also clear that in a case of this nature it is not possible to quantify the exact loss to be compensated. The plea that heavy investments have been made in different Projects in India is not the yardstick to quantify the damages. So, discretion need to be exercised. This Court is of the view that an amount of Rs. 5 Lacs be quantified as damages to be paid by the defendant to the plaintiff.

31. Accordingly, the Suit is decreed and an order of injunction is passed against the defendant from telecasting the defamatory report with regard to the project of the plaintiff Company, called "Experion Project" in Lucknow, as was telecasted on January 18, 2018 on its channel and the defendant shall remove the reports from its website as well as social-media platforms, such as bharatsamachartv.in, YouTube, Facebook, Twitter etc., if still available, within three months.

32. The Suit is decreed for a sum of Rs. 5 Lacs as damages to be paid by the defendant to the plaintiff within three months. If not paid

within the time given, an interest @ 6.25% shall accrue on the said amount till payment. Decree sheet be drawn accordingly. No costs.

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In view of the decision in the Suit, the interim order dated January 30, 2018 is made absolute.

V. KAMESWAR RAO, J

MAY 26, 2020/*aky/jg*