



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY THE 30<sup>th</sup> DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.192 of 2019

and

O.A.No.263 of 2019

and

A.Nos.3453, 3454, 6825 and 6826 of 2019

M/s. Bahwan Cyber Tek Pvt. Ltd.,

Represented by its Director

Mr.V.M.Muralidharan

148, Rajiv Gandhi Salai (OMR)

Okkiyam, Thoraipakkam,

Chennai-600 097.

... Plaintiff/Applicant

-Versus-

1. Aptivaa Consulting Solutions Private Limited

841, Solitarie Corporate Park, 167

Guru Hargovindji Marg, Andheri - Ghatkopar

Link Road, Chakala, Andheri (E)

Mumbai 400 093.

2. M/s. Asymmetrix Solutions Private Limited

Represented by its directors

Mr.Dinesh Choudhary, Mr.Vinoy Nambiar

and Mr.Aman Sinha, 101, 1st Floor,

Building - 2, Millenium Business Park,

Mahape, Navi Mumbai - 400 710.

3. Dinesh Choudhary

Aged about 37 years

Son of Dharampal Singh

841, Solitarie Corporate Park, 167 Guru

Hargovindji Marg, Andheri - Ghatkopar Link

Road, Chakala, Andheri (E)

Mumbai 400 093.



4. Vinoy Nambiar Padmanabhan  
Aged about 34 years  
Son of M.V.Padmanabhan  
B301, Shri siddhi Complex  
Off RA Road, Goregaon (East)  
Mumbai 400 063.

5. Aman Sinha  
Aged about 37 years  
Son of Late Mr.Anil Kumar Sinha  
101, 1st Floor, Building - 2,  
Millenium Business Park, Mahape,  
Navi Mumbai 400 710.

... Defendants/Respondents

**C.S.No.192 of 2019**

Civil Suit praying that this Hon'ble Court may be pleased to grant  
a Judgment and decree of:

(a) Permanent injunction restraining the Defendants, themselves, their partners, successors-in-business, servants, agents, representatives, assigns and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name / trading style / trade mark ASYMMETRIX EARLY WARNING SYSTEM in respect of software products / services or other allied and cognate service / goods amounting to passing off their services / goods as and for the goods and services of the Plaintiff or as being in some way connected with the Plaintiff and / or in any manner whatsoever;

<https://hcservices.ecourts.gov.in/hcservices/> (b) Direct the 1st Defendant to deliver up for the purpose of destruction, all the offending name boards, sign boards, bill books, visiting



cards, pamphlets, brochures, any advertising materials, products, packaging materials, cartons, labels, blocks, dyes, plates, moulds and other materials including absolute deletion of the impugned brochure from the servers of the 1st Defendant along with taking down the impugned brochure from the 1st defendant's website bearing the impugned mark / name "Asymmetrix Early Warning System" or any other mark identical or deceptively similar to that of the Plaintiff's mark / trade name "Asymmetrix Early Warning System" which is in possession, power and custody of the Defendants;

(c) A preliminary decree be passed in favour of the Plaintiff directing the 1st Defendant to render accounts of profits made by them by use of the trademark / trading style ASYMMETRIX EARLY WARNING SYSTEM and a final decree be passed in favour of the Plaintiff for the amount of profits found to have been made by the Defendants after the latter has rendered accounts;

(d) Declaration that the 2nd, 3rd, 4th and 5th Defendants have breached the trust placed by the Plaintiff by allowing the 1st Defendant to use the trademark / trading style ASYMMETRIX EARLY WARNING SYSTEM thereby putting the Plaintiff to loss;

(e) Declaration that the 2nd, 3rd, 4th and 5th Defendants have breached Article II, V and X of the Final Long Form Agreement dated



(f) For costs of the entire proceedings.

**O. A.No.263 of 2019**

Original application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents/Defendants, by themselves, their partners, successors-in-business, servants, agents, representatives, assigns and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name/trading style/trade mark ASYMMETRIX EARLY WARNING SYSTEM in respect of software products/services or other allied and cognate service/goods amounting to passing off their services/goods as and for the goods and services of the Applicant/Plaintiff or as being in some way connected with the Applicant and/or in any manner whatsoever, pending disposal of the suit.

**A.No.3453 of 2019**

M/s. Bahwan Cyber Tek Pvt. Ltd.,  
Represented by its Director  
Mr.V.M.Muralidharan  
148, Rajiv Gandhi Salai (OMR)  
Okkiyam, Thoraipakkam,  
Chennai-600 097.

... Applicant

-Versus-

1. Aptivaa Consulting Solutions Private Limited  
841, Solitarie Corporate Park, 167  
Guru Hargovindji Marg, Andheri - Ghatkopar



Link Road, Chakala, Andheri (E)  
Mumbai 400 093.

WEB COPY

2. M/s. Asymmetrix Solutions Private Limited  
Represented by its directors  
Mr.Dinesh Choudhary, Mr.Vinoy Nambiar  
and Mr.Aman Sinha, 101, 1st Floor,  
Building - 2, Millenium Business Park,  
Mahape, Navi Mumbai - 400 710.

3. Dinesh Choudhary  
Aged about 37 years  
Son of Dharampal Singh  
841, Solitaire Corporate Park, 167 Guru  
Hargovindji Marg, Andheri - Ghatkopar Link  
Road, Chakala, Andheri (E)  
Mumbai 400 093.

4. Vinoy Nambiar Padmanabhan  
Aged about 34 years  
Son of M.V.Padmanabhan  
B301, Shri siddhi Complex  
Off RA Road, Goregaon (East)  
Mumbai 400 063.

5. Aman Sinha  
Aged about 37 years  
Son of Late Mr.Anil Kumar Sinha  
101, 1st Floor, Building - 2,  
Millenium Business Park, Mahape,  
Navi Mumbai 400 710.

6. Sandip Mukherjee  
Aged about 47 years,  
Son of Basudeb Mukherjee,  
841, Solitaire Corporate Park,  
167 Guru Hargovindji Marg, Andheri -  
Ghatkopar Link Road, Chakala, Andheri (E),  
Mumbai – 400 093.

... Respondents

<https://hcservices.ecourts.gov.in/hcservices/> Application praying that this Hon'ble Court be pleased to

prosecute the 6<sup>th</sup> Respondent herein for the act of perjury committed in his



affidavit dated 27.03.2019 filed in O.A.No.263 of 2019 in C.S.(Comm.Div)

No.192 of 2019.

**A.No.3454 of 2019**

Application praying that this Hon'ble Court be pleased to punish the 1<sup>st</sup> Respondent, 3<sup>rd</sup> Respondent, 4<sup>th</sup> Respondent and 6<sup>th</sup> Respondent for willful disobedience of the order of Hon'ble Court dated 27.03.2019 passed in O.A.No.263 of 2019 in C.S.(Comm.Div) No.192 of 2019.

**A.No.6825 of 2019**

Application praying that this Hon'ble Court be pleased to appoint an Advocate Commissioner to inspect the premises of the 1<sup>st</sup> Respondent at 841, Solitaire Corporate Park, 167, Guru Hargovindji Marg, Andheri-Ghatkopar Link Road, Chakala Andheri (E), Mumbai-400 093 and collect all data and information which are in the nature of or are in relation to the financial accounts of the Respondents and submit a report before this Hon'ble court detailing the transactions, turnover received and profits made by the 1<sup>st</sup> Respondent through sale of the product "Asymmetrix Early Warning System", with the assistance of a certified Chartered Accountant and / or an accountancy firm which specialized in forensic accounting.

**A.No.6826 of 2019**

Application praying that this Hon'ble Court be pleased to pass a



This suit along with these Applications coming on this day before this court for hearing in the presence of Mr.K.Shiva for M/s. Anirudh Krishnan, Advocates for the plaintiff in C.S.No.192 of 2019 and for the applicant in O.A.No.263 of 2019 and A.Nos.3453, 3454, 6825 and 6826 of 2019 and Mr.O.Solaiappa for M/s.Thriyambak J.Kannan, Advocate for the Defendant in C.S.No.192 of 2019 and for the Respondents in O.A.No.263 of 2019 and A.Nos.3453, 3454, 6825 and 6826 of 2019 and upon reading the plaint filed in C.S.No.192 of 2019 and the Judge's Summons and the affidavit of V.M.Muralidharan filed in A.Nos.3453, 3454, 6825 and 6826 of 2019 and the joint memo of compromise signed by the plaintiff and the defendants with their respective advocates and the said advocates for the parties hereto praying this court to pass a decree in terms of memo of compromises morefully set out in the schedule hereunder,

**It is in terms thereof orderd decreed as follows:-**

That the Defendants hereby duly undertake not to provide services, display, advertise in all form of media and through internet in respect of software products / services or other allied and cognate service / goods in relation to the trade name / trading style / trademark ASYMMETRIX EARLY WARNING SYSTEM, and / or 'Asymmetrix' which would be considered as to passing off their services / goods as and for the goods and services of the Plaintiff.



2. That the Plaintiff herein agrees and undertakes to waive all other reliefs as sought by the Plaintiff in the present suit and hereby further undertakes and confirm that the Plaintiff Company, subject to the Defendants abiding by the aforementioned undertaking as provided in this Memo of Compromise filed before this Hon'ble Court, have no further claims, disputes, grievances of any nature whatsoever remaining against the Defendants herein.

3. That the Plaintiff and the Defendants herein undertake that other than the ongoing matters as enlisted in Schedule - II hereinunder, there are no other pending matters, cases, litigations, notices, complaints, etc. of any nature whatsoever filed by either party against each other and all contentions are withdrawn by the Plaintiff & the Defendants against each other, and all parties agrees and undertake that they shall not file any new civil and / or criminal and / or any other case against each other for the issues which are settled via this Memo of Compromise.

4. That the Plaintiff hereby withdraws the criminal complaint dated 29 March 2019 with Inspector of Police, Central Crime Branch II, Cyber Cell, Vepery, Chennai ("Cyber Crime Cell") against several persons including the Petitioner hereinabove which was registered as Crime No.86



(ii) CrI.O.P.No.20063 of 2019 and (iii) CrI.O.P.No.26201 of 2019 thereby quashing Crime No.86 of 2019.

5. That the Plaintiff herein shall also extend all cooperation necessary including but not limited to executing all necessary documents, etc. for the Defendants to be able to obtain release of the amount of Rs.1,00,00,000/- (Rupees One Crore only) along any interest that has accrued, being held in a fixed deposit in Crime No.86 / 2019 which was duly deposited in furtherance of directions of the Hon'ble High Court of Madras on 12th July 2019 in CrI.M.P.No.9383 / 2019 and the Hon'ble Supreme Court of India in SLP (CrI) 7568 / 2019 on 27.08.2019 and Rs.10,000/- by each Petitioner (therein) with two sureties each in CrI.O.P.No.17630 of 2019.

6. That the Plaintiff and the Defendants herein agree that they shall maintain confidentiality of this Memo of Compromise.

7. That the Plaintiff and the Defendants hereto agree and confirm that they will execute such other or further document/s, deed/s and carry out all acts, matters and things that may be required of them to give effect to



9. That these O.A.No.263 of 2019 and A.Nos. 3453, 3454, 6825 and 6826 of 2019 do stand colsed.

10. That there shall be no order as to costs of this suit.

**Affidavit and Schedule MOC**



WEB COPY

KY-01.06.2021

11

C.S.No.192 of 2019  
and  
O.A.No.263 of 2019  
and  
A.Nos.3453, 3454, 6825 and  
6826 of 2019

DECREE:

DATED : 30.03.2021

THE HON'BLE MR.JUSTICE  
C.V.KARTHIKEYAN

FOR APPROVAL: 27.7.2021  
24.2.2022

APPROVED ON: 24.02.2022



WEB COPY

12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

**C.S.No.192 of 2019**  
**and A.Nos.263, 3453, 3454, 6825, 6826 of 2019**

M/s.Bahwan Cyber Tek Pvt. Ltd.,  
Represented by its Director,  
Mr.V.M.Muralidharan,  
148, Rajiv Gandhi Salai (OMR),  
Okkiyam, Thoraipakkam,  
Chennai - 600 097.

... Plaintiff

..Vs..

1.Aptivaa Consulting Solutions Private  
Limited, 841, Solitaire Corporate Park,  
167 Guru Hargovindji Marg, Andheri - Ghatkopar  
Link Road, Chakala, Andheri (E),  
Mumbai - 400 093.

2.M/s.Asymmetrix Solutions Private Limited  
Represented by its directors  
Mr.Dinesh Choudhary, Mr.Vinoy Nambiar  
and Mr.Aman Sinha, 101, 1st Floor,  
Building - 2, Millenium Business Park,  
Mahape, Navi Mumbai - 400 710.

3.Dinesh Choudhary,  
Aged about 37 years,  
Son of Dharampal Singh,  
841, Solitaire Corporate Park,  
167 Guru Hargovindji Marg, Andheri - Ghatkopar  
Link Road, Chakala, Andheri (E),  
Mumbai - 400 093.



4. Vinoy Nambiar Padmanabhan,  
Aged about 34 years,  
Son of M.V. Padmanabhan,  
B301, Shri Siddhi Complex,  
Off RA Road,  
Goregaon (East)  
Mumbai - 400 063.

5. Aman Sinha,  
Aged about 37 years,  
Son of Late Mr. Anil Kumar Sinha,  
101, 1st Floor, Building - 2,  
Millenium Business Park, Mahape,  
Navi Mumbai - 400 710.

... Defendants

**PRAYER :** Plaintiff filed under Order IV Rule 1 of the Original Side Rules, 1956 read with Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Sections 27, 134 and 135 of the Trademarks Act, 1999 read with Section 7 Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division Courts of High Court Act, 2015, prayed for a Judgment and Decree:-

(a) Permanent injunction restraining the Defendants, themselves, their partners, successors-in-business, servants, agents, representatives, assigns and all other persons claiming under them and through them from in any manner providing services, displaying, advertising in all form of media and through internet under the trade name / trading style / trade mark ASYMMETRIX EARLY WARNING SYSTEM in respect of software products / services or other allied and cognate service / goods amounting to



passing off their services / goods as and for the goods and services of the Plaintiff or as being in some way connected with the Plaintiff and / or in any manner whatsoever;

(b) Direct the 1st Defendant to deliver up for the purpose of destruction, all the offending name boards, sign boards, bill books, visiting cards, pamphlets, brochures, any advertising materials, products, packaging materials, cartons, labels, blocks, dyes, plates, moulds and other materials including absolute deletion of the impugned brochure from the servers of the 1st Defendant along with taking down the impugned brochure from the 1st defendant's website bearing the impugned mark / name "Asymmetrix Early Warning System" or any other mark identical or deceptively similar to that of the Plaintiff's mark / trade name "Asymmetrix Early Warning System" which is in possession, power and custody of the Defendants;

(c) A preliminary decree be passed in favour of the Plaintiff directing the 1st Defendant to render accounts of profits made by them by use of the trademark / trading style ASYMMETRIX EARLY WARNING SYSTEM and a final decree be passed in favour of the Plaintiff for the amount of profits found to have been made by the Defendants after the latter has rendered accounts;

(d) Declaration that the 2nd, 3rd, 4th and 5th Defendants have

breached the trust placed by the Plaintiff by allowing the 1st Defendant to



use the trademark / trading style ASYMMETRIX EARLY WARNING SYSTEM thereby putting the Plaintiff to loss;

(e) Declaration that the 2nd, 3rd, 4th and 5th Defendants have breached Article II, V and X of the Final Long Form Agreement dated 20.04.2016;

(f) For costs of the entire proceedings.

For Plaintiff : Mr.K.Shiva for M/s.Anirudh Krishnan

For Defendants : M/s.O.Solaiappa for  
M/s.Thriyambak J.Kannan

\*\*\*\*\*

### **J U D G M E N T**

A Joint Memo of Compromise has been entered into between the Plaintiff and the Defendants, which has been presented in the Court on 29.03.2021. This Memo of Compromise has been signed by the Director of the Plaintiff and by the Director of the first defendant Mr.Sandip Mullay and by the Director of the second defendant Mr.Dinesh Choudhary and by the third defendant Mr.Dinesh Choudhary and by the fourth defendant Mr.Vinoy Nambiar Padmanabhan and by the fifth defendant Mr.Aman Sinha.

2. Confirming the Memo of Compromise, affidavits have also

been filed. The relevant portions of the Joint Memo of Compromise are as



follows:

WEB COPY

"1. Without prejudice to the stand taken in their Written Statements / Replies, the Defendants hereby duly undertake not to provide services, display, advertise in all form of media and through internet in respect of software products / services style / trademark ASYMMETRIX EARLY WARNING SYSTEM, and / or 'Asymmetrix' which would be considered as to passing off their services / goods as and for the goods and services of the Plaintiff.

2. Without prejudice to the stand taken by the Plaintiff in the plaint and connected Applications, the Plaintiff agrees and undertakes to waive all other reliefs as sought by the Plaintiff in the present suit and hereby further undertakes and confirm that the Plaintiff Company, subject to the Defendants abiding by the aforementioned undertaking as provided in this Memo of Compromise filed before this Hon'ble Court, have no further claims, disputes, grievances of any nature whatsoever remaining against the Defendants.

3. The Plaintiff and the Defendants undertake that other than the ongoing matters as enlisted in Schedule - II hereinunder, there are no other pending matters, cases, litigations, notices, complaints, etc. of any nature whatsoever filed by either party against each other. All contentions are withdrawn by the Plaintiff & the Defendants against each other, and all parties agrees and undertake that



WEB COPY

they will not file any new civil and / or criminal and / or any other case against each other for the issues which are settled via this Memo of Compromise. The Plaintiff hereby withdraws the criminal complaint dated 29 March 2019 with Inspector of Police, Central Crime Branch II, Cyber Cell, Vepery, Chennai ("Cyber Crime Cell") against several persons including the Petitioner hereinabove which was registered as Crime No.86 of 2019 and has no objection for allowing the (i) CrI.O.P.No.15683 of 2019; (ii) CrI.O.P.No.20063 of 2019 and (iii) CrI.O.P.No.26201 of 2019 thereby quashing Crime No.86 of 2019. The Plaintiff shall also extend all cooperation necessary including but not limited to executing all necessary documents, etc. for the Defendants to be able to obtain release of the amount of Rs.1,00,00,000/- (Rupees One Crore only) along any interest that has accrued, being held in a fixed deposit in Crime No.86 / 2019 which was duly deposited in furtherance of directions of the Hon'ble High Court of Madras on 12th July 2019 in CrI.M.P.No.9383 / 2019 and the Hon'ble Supreme Court of India in SLP (CrI) 7568 / 2019 on 27.08.2019 and Rs.10,000/- by each Petitioner (therein) with two sureties each in CrI.O.P.No.17630 of 2019.

4. The Plaintiff and the Defendants agree that they shall maintain confidentiality of this Memo of Compromise.

5. The Plaintiff and the Defendants hereto agree and confirm that they will execute such other or further

document/s, deed/s and carry out all acts, matters and things that may be required of them to give effect to these present as mentioned in this Memo of Compromise.

6. The present Memo of Compromise has been drafted under the instructions of the Plaintiff & Defendants, all of them have read over and understood the contents thereof and after understanding the same, the Plaintiff and the Defendants herein confirm that it is in terms of the understanding arrived at amongst them.

7. The present Memo of Compromise has been signed by the Plaintiff, Defendants and identified by their respective Advocates.

8. The Plaintiff and the Defendants hereby undertake to this Hon'ble Court to abide by this memo of Compromise.

Dated this 29th day of March 2021.

sd/---  
Advocate for Plaintiff.

sd/---  
Plaintiff.  
sd/---  
Defendant No.1

sd/---  
Defendant No.2  
sd/---  
Defendant No.3  
sd/---  
Defendant No.4

sd/---  
Advocate for Defendants

sd/---  
Defendant No.5."



3. It has also been signed by the learned counsel for the plaintiff and by the learned counsel for the defendants.

4. In view of the same, suit is decreed in terms of Memo of Compromise. No order as to costs. Connected applications are closed. The Memo of Compromise and the affidavits shall form part of the decree. Since the parties had entered into compromise, plaintiff is entitled for return of the Court Fees in accordance with the Rules.

Sd./- C.V.K.J  
30.03.2021

//Certified to be true copy//  
Dated at Madras this the      day of      2021.

COURT OFFICER(O.S.)  
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.