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

+ **CS(OS) 322/2019**

ORAVEL STAYS PRIVATE LIMITED Plaintiff

Through Mr.Neeraj Malhotra, Sr.Adv. with
Mr.Mohit Chadha, Mr.Kshitij
Parashar and Mr.Tarang Aggarwal,
Advs.

Versus

**HOTELIER WELFARE ASSOCIATION, THROUGH
PRESIDENT AND ORS** Defendants

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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19.06.2019

IA No. 8571/2019 (*exemption*)

Allowed subject to all just exceptions.

CS(OS) 322/2019

Let the plaint be registered as suit.

Issue summons to the defendants through ordinary process and speed post, returnable for 05.08.2019.

IA No.8570/2019

For the reasons stated in the application, the same is allowed.

IA No.8569/2019

Issue summons to the defendants through ordinary process and speed post, returnable for the date fixed.

IA No.8568/2019

1. This application is filed under Order 39 Rules 1 & 2 CPC seeking an

ex-parte injunction to restrain defendant No.1 association and its members, etc. from giving effect to any threats advance through its undated notice and/or as mentioned in news article and/or boycotting or banning the plaintiff in any manner whatsoever by lobbying and colluding with one another during pendency of the present suit.

2. The accompanying suit is filed seeking permanent injunction. The case of the plaintiff is that the plaintiff is a hospitality company and is in the business of standardizing unbranded budget hotels, bed and breakfast and guest houses as per its specifications through online and offline channels. The plaintiff's network is spread across 230 cities in India consisting of over 9000 hotels all over the country. It is stated that the plaintiff enters into a business arrangements with the service providers/hotelier whereby the said service provider/hotelier agrees to permit the plaintiff to have full control over pricing and any booking brought in by the hotel, and give full authority to the plaintiff to determine and publish room tariffs on its website and/or mobile application at any point in time.

3. It is further pleaded that defendant No.1 association has been illegally conspiring and is colluding with other similar associations including Budget Hotel Association of Mumbai etc. to come together and protest and coerce the plaintiff to submit to the unwarranted, illegal demands, thereby making plaintiff's business halt and causing grave inconvenience/unrest to public at large. It is also pleaded that the defendants have released statements and notices/letters based on which the hoteliers have expressed their apprehension in continuing business relation with the plaintiff. Reliance is placed on the judgment of England & Wales Court of Appeal (Civil Division) in the case of *The Daily Mirror Newspapers, Ltd. v. Gardner &*

Ors., MANU/UKWA/0061/1968.

4. A perusal of the notice allegedly issued by defendant No.1 association shows that it has given a call to all hotels to support nationwide protest against OYO by boycotting and blocking OYO rooms from 20.06.2019.

5. It is apprehended that the plaintiff has more than 1,35,000 bookings across India in the present period and this may effect the travellers within India during the said period. It has also been pointed out that the defendants were earlier the business partners of the plaintiff and now have formed an association and have been acting against the plaintiff.

6. In *The Daily Mirror Newspapers, Ltd. v. Gardner & Ors.*(supra), the court was dealing with the case of The Daily Mirror Newspaper. The said newspaper used to be sold to wholesalers who would sell it to the retailers. Over time, the margins payable to the wholesalers/retail dealers were changed as the price of the newspaper was increased. The National Federation of Retail Newspapers, Booksellers and Stationers took strong objection and decided to boycott the Daily Mirror for a period of one week. In these facts, the court held as follows:

“... The first point (on inducing breach of contract) is based on the principle stated by Lord Macnaghten in *Quinn v. Leathern* , 1901 Appeal Cases, page 495 , following *Lumley v. Gye* , (1853) 2 Ellis & Blackburn, 216 : "It is a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference". The contractual relations which are here said to be interfered with are the contractual relations between the Daily Mirror and wholesalers. So we have to see what those relations are. There no written contract between them. Their contractual relations are to be derived from the course of dealing over the years. Mr.

Atkins, a director, has made an affidavit, in which he says: "The Plaintiffs" that is, the Daily Mirror "have running contracts with their wholesalers under which they supply the Daily Mirror to their wholesalers on the basis of standing orders for a specified number of copies. A wholesaler can alter the number if he so desires but in the absence of any such specific instructions or alterations, that number is delivered automatically and the wholesaler becomes liable to pay for it". In a later affidavit he says that the Daily Mirror accept returns in special circumstances, but apart from such special circumstances "the Plaintiffs have to my knowledge always regarded the contractual relationships with their wholesalers as subject to termination on reasonable notice and on the rare occasions when it has been necessary to terminate the contractual relationship with a wholesaler, notice has always been given, the length of which has varied according to the circumstances but has certainly never been less than one week".

It is on such meagre evidence we have to find the terms of the contract between the Daily Mirror and the wholesalers. So far as I can see, it is a running contract which is not determinable at will. It can only be determined on reasonable notice. The Daily Mirror could not say to a wholesaler: "We are not going to supply you with any papers after today". They would have to give reasonable notice, which might run into weeks, not days. Conversely, the wholesaler could not say to the Daily Mirror: "I will not take any copies of your newspaper after today". He, too, would have to give a notice of weeks, not of days. There might be room for a margin, whereby either side might, on short notice, vary the order, say 10% up or down. But neither could cancel the order altogether, or greatly reduce it, without reasonable notice. Nor could either side suspend supplies for a week and still keep the contract alive. The wholesaler has no right to say to the Daily Mirror: "I am stopping the order for one week but you are to start again after the week has passed". It is rather like the case of a working man who has a contract to serve determinable at a week's notice. He cannot say: "I am going to stay away one day", whether he is joining in a token

strike or just to please himself. If he does stay away for a day, he is guilty of a breach of contract. So prima facie it is a breach of contract for a wholesaler to say to the Daily Mirror: "I am going to stop taking any of your papers for a week - or greatly reduce the order - and then start again".

On the material before us it seems that the Defendants sought to induce the wholesalers to do just that very thing -to greatly reduce their order for a week - on a day or two's notice only. The reduction would seem to be at least 60% and might be more. Such conduct raises a prima facie case that the Defendants were seeking to induce the wholesalers to break their contracts with the Daily Mirror.

It is said that the Defendants did not know the terms of the contracts between the Daily Mirror and the wholesalers, especially as the evidence is so meagre as to those terms. But the answer was given by this Court in the Emerald Construction case in 1966 1 Weekly Law Reports, page 691 . Even though the person who induces a breach does not know the precise terms of the contract, he is acting unlawfully if he says to himself: "Whether it is a breach of contract or not, I care not". If he induces a breach of contract recklessly, careless whether it is a breach or not - turning a blind eye to it he is liable for interfering with contractual relations.

Then it was said that the Defendants did not directly interfere with the contracts between the wholesalers and the Daily Mirror. "They did not exert directly any pressure or inducement on the wholesalers: but at most they only did it indirectly by recommending the retailers to give stop orders. That is true, but I do not think it is an answer. Mr. Figgis relied much on the case of Thomson v. Deakin in 1952 Chancery, page 646 . He said that, in order to be actionable, the interference has got to be direct, but as at present advised, I think that is an undue restriction of the principle. I do not think that the tort is so narrowly confined as the Court there stated. I associate myself with what I gather to be the view of Lord Radcliffe expressed in

the course of argument in Stratford v. Lindley , 1965 Appeal Cases, page 307 , and mentioned in Lord Wilberforce's book on Restrictive Practices, paragraph 2605. It seems to me that if anyone procures or induces a breach of contract, whether by direct approach to the one who breaks the contract or by indirect influence through others , he is acting unlawfully if there be no sufficient justification for the interference.”

7. It appears that the said act of the defendants is essentially pushing other hoteliers/service providers to act in breach of contract between the plaintiff and its service providers/hoteliers with whom the plaintiff has an appropriate agreement. Such an act *prima facie* would be illegal.
8. The plaintiff has made out a *prima facie* case. The defendants are restrained from issuing notices or calling to hoteliers/service providers seeking boycott or ban of the plaintiff in any manner whatsoever till further orders. The defendants will also not press any such notice that may have been already issued.
9. The plaintiff to comply with the Order 39 Rules 3 CPC within three days from today.
10. Issue notice to the defendants through ordinary process and speed post, returnable for 05.08.2019.
11. A copy of this order be given *dasti* under the signatures of the Court Master.

JAYANT NATH, J.

JUNE 19, 2019/v