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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 176/2022**

ONE MOTO SCOOTERS TRADING LLC

..... Petitioner

Through: Mr. Sanjay Ghose, Sr. Advocate with
Ms. Urvi Mohan, Mr. Kunal Khanna
& Mr. Kanishka Khurana, Advocates
(M-9999757185)

versus

CENTRE SYSTEMS GROUP INTERNET CONTENT PROVIDER
(CSG ICP) & ANR. Respondents

Through: Mr. Rohan Rohatgi, Ms. Aditi
Khullar & Mr. Abhinav Garg,
Advocates (M-9811867909)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **02.06.2022**

1. This hearing has been done through hybrid mode.

I.A. 8948/2022 (for exemption)

2. This is an application filed by the Petitioner seeking exemption from filing certified / true copies of the documents. Allowed, subject to all just exceptions.

3. *I.A.8948/2022* is disposed of.

I.A. 8949/2022 (for exemption)

4. This is an application for seeking exemption from filing original documents / legible copies / better copies. Allowed, subject to all just exceptions.

5. *I.A.8949/2022* is disposed of.

I.A. 8947/2022 (for additional documents)

6. This is an application seeking leave to file additional documents under

the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter*, 'Commercial Courts Act'). The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

7. ***I.A. 8947/2022*** is disposed of.

I.A. 8946/2022 (for exemption)

8. These are applications for exempting the Defendants from filing duly executed/affirmed original notarized and apostilled affidavits. Exemption is allowed. Let the original documents be filed, within four weeks.

9. ***I.A. 8946/2022*** is disposed of.

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10. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996. The dispute between the parties arises out of the Distributor Framework Agreement dated 17th May, 2021, which has an arbitration clause. However, since the dispute is in respect of the trademark 'ONE MOTO' and other marks which were the subject-matter of the same agreement, the matter has been placed before the IP Division by the Coordinate Bench of this Court, subject to the orders of the Hon'ble Judge-in-charge.

11. By the said agreement, the Respondent No.1 - M/s Centre Systems Group Internet Content Provider (CSG ICP) was appointed as the sole and exclusive distributor of various automobile products of the Petitioner. The execution of the said agreement is not in dispute. Some of the relevant clauses of the agreement are set out below:

"2.1 The Supplier appoints the Distributor on an exclusive basis as its Authorised Distributor for the

Territory to sell and distribute the Products for the Term and upon the terms and conditions of this Agreement and the Distributor agrees to be so appointed.

2.2 The Distributor shall be entitled to appoint other parties as its sub-distributors for the purposes of effecting sales of the Products and/or providing aftersales services in the Territory. subject at all times to the Supplier's prior written approval to each such appointment and to the said parties entering into agreements in substantially the same form as this Agreement with the Distributor. Notwithstanding any such appointment and irrespective of the approval given by the Supplier. Distributor shall remain liable to the Supplier for the performance of such other parties or sub-distributors of Distributor's obligations and Distributor shall not be released from performing its obligations under this agreement by virtue of its appointment of such third parties."

12. As per the above clauses, Respondent No.1 was to be the exclusive distributor of the Petitioner's products in India and was also permitted to use the various trademarks of the Petitioner in relation to the products which are as follows: 'ONE MOTO', 'ELECT', 'COMMUTA', 'RYDA', 'SCOOTA', 'DELIVA' and 'BYKA'.

13. Respondent No.1 was also permitted to appoint sub-distributors who would, however, be also bound by the terms and conditions which are applicable to Respondent No.1. The said agreement was for a period of three years. However, the trademarks rights were to always vest with the Petitioner in terms of clause 12.1, 12.2, and 12.10.2.

14. The said agreement has an arbitration clause as per which, disputes were to be referred to arbitration under the rules of the London Court of International Arbitration (LCIA). The seat of the arbitration was to be London.

15. The case of the Petitioner is that, in terms of the said agreement, an undertaking of commitment was also executed which also included Respondent No.2 - Elysium Automotives Private Limited, of which Respondent No.1 is a subsidiary. Thus, according to the Petitioner, both the Respondents were bound by the terms and conditions of the agreement.

16. The grievance of the Petitioner in the present case is that the Petitioner learnt that one Mohd. Abdul Majid - one of the Directors of Respondent No.2 has, in his individual capacity, applied for an identical mark 'ONE MOTO', as also, the device, vide Application No.5009246 dated 18th June, 2021 on a 'proposed-to-be- used' basis. The said applicant is none other than the father of the signatory to the agreement on behalf of Respondent No.1 i.e., Mr. Muzammil Mohammed Riyaz and also one of the Directors of Respondent No.2 Company. This according to the Petitioner is in complete breach of the obligations of the Respondent No.1 and the fiduciary duty which the said entity and its promoters / directors owed to the Petitioner, under the Distributorship Agreement dated 17th May, 2021. Due to the conduct of the Respondent No.1 and the knowledge of the mark having been applied for independently by the Director of Respondent No.2 in his own name, the agreement was terminated as of 25th May, 2022.

17. The Petitioner now apprehends that the Respondents may start manufacture and sale of automotive products under the mark 'ONE MOTO'. A website was also registered by the Respondents under the domain name 'www.one-moto.in'. The printouts of the website have also been placed on record. The said domain name was created on 24th September, 2021 and the trademark application for the identical mark was also filed shortly after the said agreement was executed. Hence, the prayer in the present petition is for

an injunction restraining the Respondents from using the Petitioner's mark 'ONE MOTO' and other identical marks, as also, for taking down of the domain name.

18. Mr. Ghosh, Id. Senior Counsel appearing for the Petitioner submits that the Distributorship Agreement dated 17th May, 2021 contemplated the appointment of sub-distributors across the country, including in Delhi. Hence, a part of the cause of action arises in Delhi. Moreover, the website was also accessible in Delhi, till the filing of the present petition and has now been taken down by the Respondents.

19. On behalf of the Respondents, the maintainability of the present petition, as also, the territorial jurisdiction of this Court is challenged by Mr. Rohatgi, Id. Counsel appearing for the Respondents. However, he does not dispute the fact that the Respondents have in fact applied for the identical mark 'ONE MOTO, along with device mark, as also, the domain name - www.one-moto.in'.

20. Accordingly, considering the fact that the question of maintainability would require some hearing and that there is an imminent threat of the Respondents launching or using the mark 'ONE MOTO' in some manner, including by appointment of distributors or commencing manufacturing of automotive products, it is deemed appropriate to restrain the Respondents from changing the *status quo* as it exists today.

21. Accordingly, till the next date of hearing, the Respondents shall stand restrained from using the mark 'ONE MOTO', the device mark, or any other mark which is identical or deceptively similar to the Plaintiff's trademarks of the products 'ONE MOTO', 'ELECT', 'COMMUTA', 'RYDA', 'SCOOTA', 'DELIVA' and 'BYKA' which are the subject matter of the

Distributorship Agreement dated 17th May, 2021, executed between the Petitioner and the Respondent No.1.

22. Insofar as the website 'www.one-moto.in' is concerned, the same has currently been taken down. It is directed that *status quo* shall be maintained and the domain name shall remain blocked. Copy of this order shall be communicated to National Internet Exchange of India (NIXI) by the Id. Counsel for the Petitioner.

23. The issue of jurisdiction and maintainability of the present petition may be raised in the reply. After completion of pleadings, the said issues be considered first before proceeding in the matter.

24. In view of the fact that the Distributorship Agreement stands terminated, the Respondents cannot also proceed with any contractual arrangements with the sub-distributors in respect of these marks. Any other independent relationship is, however, not restrained.

25. Id. Counsel for the Respondents submits that the obligations which were imposed upon the Petitioner as per the Distributorship Agreement have not been carried out. Thus, insofar any sub-distributors who may have been appointed, if any transition time is required for bringing those distribution arrangements to an end, the Respondents may have negotiations with the Petitioner. In order to enable the parties to negotiate any arrangement in respect of sub-distribution arrangements or the sponsorship of the IPL team which is stated to have been made by 'ONE MOTO', **Mr. Sudhanshu Batra, Senior Advocate** is appointed as the Mediator to attempt an amicable resolution of the disputes between the parties. The same shall be without prejudice to all the claims and counter-claims which the parties may have against each other.

26. A preliminary meeting between the Id. Counsels for the parties and the Id. Mediator is fixed for tomorrow. Accordingly, list before the Delhi High Court Mediation and Conciliation Centre on 3rd June, 2022 at 4:00 pm.
27. List before Court on 23rd September, 2022.
28. Copy of the present order be communicated to the Id. Mediator and the Delhi High Court Mediation and Conciliation Centre.

PRATHIBA M. SINGH, J.

JUNE 02, 2022
Rahul/AD