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

+ **CS (COMM) 366/2022**

ECOMAX SOLUTIONS PVT. LTD. Plaintiff

Through: Mr. Anirudha Vasangkar, Ms. Pooja
Dood and Mr. Akanksha Singh,
Advocates. (M:9811128289)

versus

ENERGEO BUILDING SOLUTIONS LLP & ORS..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **27.05.2022**

1. This hearing has been done through hybrid mode.

I.A.8580/2022 (for exemption)

2. This is an application on behalf of the Plaintiff for seeking exemption from filing clear copies of dim documents and certified copies of said documents.

3. The exemption is allowed, subject to all just exceptions.

4. Accordingly, **I.A.8580/2022** is disposed of._

I.A.8579/2022 (for additional documents)

5. This is an application under Order XI Rule 4 on behalf of the Plaintiff 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'*).

6. The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.



7. Accordingly, **I.A.8579/2022** is disposed of.

I.A.8578/2022 (for exemption from advance service to the Defendants)

8. In view of the fact that the Plaintiff has sought *ex parte ad-interim* injunction along with the appointment of the Local Commissioner, the exemption from advance service to the Defendants is granted.

9. Accordingly, **I.A.8578/2022** is disposed of.

I.A.8577/2022

10. This is an application seeking permission to file the confidential documents of the Plaintiff in a sealed cover.

11. It is submitted that the confidential documents contain certain drawings. These drawings, for which confidentiality is being claimed, have admittedly already been communicated to the Defendant Nos.3 & 4, namely Mr. Vanshaj Dhawan and Mr. Ashish Dangaych respectively. The said Defendants were employees of Carrier Air Conditioning & Refrigeration Limited.

12. In any event, in order to ensure that the Defendants do not misuse the same, the documents are permitted to be filed in a sealed cover.

13. However, the Registry shall scan the same and upload in a different folder in the court record.

14. Copy of the same need not to be attached with the notice and summons.

15. Accordingly, **I.A.8577/2022** is disposed of.

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16. Let the plaint be registered as a suit.

17. Issue summons to the Defendants through all modes upon filing of Process Fee.



18. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

19. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of written statement(s). Along with the replication, if any, filed by the Plaintiff, as also an affidavit of admission/denial of documents of the Defendants to be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of said documents, the same shall be sought and given within the timelines.

20. Accordingly, list before the Joint Registrar for marking of exhibits on 8th August, 2022.

21. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

22. List before Court on 28th September, 2022.

I.A.8572/2022 (u/O XXXIX Rules 1 & 2 CPC) & I.A.8576/2022 (u/O XXVI Rule 9 CPC)

23. The Plaintiff - Ecomax Solutions Pvt. Ltd. has filed the present suit for injunction and damages under the Patents Act, 1970 and the Copyrights Act, 1957 seeking reliefs of permanent injunction, rendition of accounts/damages, delivery up, and other reliefs. The Plaintiff Ecomax Solutions Pvt. Ltd. was earlier known as Eco Green Systems LLP.

24. The Plaintiff is stated to be a company engaged in the business of providing their customers with energy and water savings solutions including the ECOMax-HE Automatic Tube Cleaning Systems for use in air-



conditioning systems. The said Automatic Tube Cleaning (*hereinafter*, “ATC”) system keeps shell and tube heat exchangers clean and more eco-friendly.

25. In the present case, the Plaintiff claims copyrights in its various drawings, which form part of the said system, as also the patent, which was granted bearing no. IN 382118. The Plaintiff is the Patentee and present owner of all the rights, title and interests in said patent. The Defendant Nos.3 & 4 who were prior employees of M/s Carrier Airconditioning & Refrigeration Limited (*hereinafter* ‘Carrier’), were also regular customers of the Plaintiff. Defendants Nos. 3 & 4 are the designated partners of the Defendant No. 1 firm, EnerGeo Building Solutions LLP.

26. The Plaintiff was supplying the said ATC system to *Carrier* for use in its air-conditioners. As part of the said business relationship, the Plaintiff is stated to have entered into a confidentiality agreement dated 4th August, 2017. In 2019, when the Defendant Nos.3 & 4 were working with *Carrier*, the Defendant Nos. 3 & 4 incorporated the aforementioned company, EnerGeo Building Solutions LLP. The Defendants had not mentioned that they were intending to incorporate a new company, especially one that intended to engage in the same kind of business, that of energy and water saving solutions. In September 2019, the drawings of the Plaintiff are stated to have been obtained by the said Defendants under the garb of being employees of the Plaintiff’s customer – i.e., *Carrier*.

27. In September 2020, for the first time the Plaintiff came to know of the Defendants’ proposal to supply a similar system for the Central Vista Project which is when the Plaintiff discovered that the Defendants were misusing those drawings which had been acquired as part of their employment with



Carrier.

28. The Plaintiff had filed a patent application for the innovative technology developed by it back in 13th April, 2012, vide application number 1202/MUM/2012. The patent was granted to the Plaintiff on 18th November, 2021. After perusing the Defendants' brochures and drawings etc., it is the case of the Plaintiff that the Defendants have -

- (1) Infringed the copyright of the Plaintiff in various drawings;
- (2) Committed breach of confidentiality of the information obtained by the Plaintiff when the Defendant Nos. 3 & 4 were working with Carrier;
- (3) Infringed upon the granted patent of the Plaintiff.

29. The Plaintiff issued a cease and desist notice to the Defendants on 12th January 2022, which was replied to by the Defendants on 22nd January, 2022. In the said reply, the Defendants failed to comply with the requisitions of the Plaintiff and claimed that the technology has been publicly known.

30. Heard. There are three facts, which deserve to be highlighted in the present case;

A. The first is that the Defendant Nos.3 & 4 obtained information from the Plaintiff as is evident from the email dated 10th September, 2019. The said email contains details and drawings for the Defendants' reference, as Carrier's employees. A perusal of the said email shows that the same was addressed by vinays@ecogreensys.com to one Vanshaj.Dhawan@Carrier.com. The same is copied to mohanc@ecogreensys.com. Thus access to the drawings was obtained in a relationship of client/customer bound by confidentiality;



B. By September 2019, the Defendant Nos.3 & 4 had already incorporated Defendant No.1 and in 2021, also incorporated the Defendant No.2 company, Energeo Works India Pvt. Ltd. These facts were not within the knowledge of the Plaintiff.

C. A perusal of the drawings, which have been shown in the brochure of the Defendants, which is placed on record at page 23, shows that broadly, the system, which is being used by the Defendants, is similar to that which is contained in the granted patent of the Plaintiff.

31. The matter requires consideration, inasmuch as the *prima facie* it appears that the Defendants are trying to misuse the information, drawings, technical system, specifications, etc of the Plaintiff. Continued misuse of the same would result in violation of the Plaintiff's statutory and common law rights both under the Copyright Act as also under the Patents Act. Customers to whom such equipment may be promoted or sold may also be misled. The balance of convenience is also in favour of the Plaintiff. Irreparable harm would be caused if the injunction is not granted as with each passing day, the Defendants may misuse, promote their business on the foundation of the Plaintiff's drawings and technology.

32. Accordingly, till the next date of hearing, the Defendants shall not accept any fresh orders for the supply of the ATC system as described in document 8 in the document file, page 23 onwards. However, if there are any pending orders, the same shall be executed by the Defendants, subject to filing of proper accounts.

33. It is made clear by the Court that insofar as the already executed and pending orders are concerned, a detailed affidavit shall be placed on record as to the period from when such systems have been supplied by the



Defendants to the third parties along with the value of the said supplies.

34. In order to ascertain the working of the system as also to collect relevant information, it is deemed appropriate to appoint two Local Commissioners in this matter to visit the premises of the Defendants.

35. Accordingly, the following two advocates, who are patent agents and are also present in Court today, are appointed to visit the premises of the Defendants.

S. No.	Details of Local Commissioner	Address of Defendant
1	Mr. Siddhant Sharma, Advocate (M:9557629905)	Flat No.-6, Pocket EV, G-8, Rajouri Garden, Maya Enclave, Hari Nagar, New Delhi-110064.
2	Mr. Sanuj Das, Advocate (M:9899844920)	Khasra No. 718/1, Village- Khandsa, Adjacent Rose Land Public School, Near Hero Honda Chowk -122001, India

36. The Local Commissioners shall visit the above premises of the Defendants and obtain the following information:

- (1) The details of the Defendants' manufacturing process and the ATC systems;
- (2) Technical material and literature, processes followed, drawings, etc of the Defendants. The same may be photocopied and obtained by the Local Commissioners.
- (3) Details of the pending orders and the orders already executed by the Defendants for the said systems.



(4) If accounts and the technical data of the Defendants are on any computer systems, passwords shall be provided to the Local Commissioners alone. The said computer systems shall be inspected only by the Local Commissioners, without access being given to the Plaintiff in any manner.

(5) Photographs/videography may also be taken by the Local Commissioners

37. The local commissions shall be executed within one week to ten days from today. Thereafter, reports by the Local Commissioners shall be filed within two weeks after collecting the data and executing the commission. While the Defendants are directed to cooperate with the Local Commissioners in the execution of such commissions, the Local Commissioners are nonetheless empowered to seek the assistance of the SHO of the area concerned, if the Commissioners feel as though it is required. The SHO of the concerned police station shall render all assistance if a request in that regard is made by the Local Commissioners. The commissions shall be executed in a peaceful manner and without disturbing the daily business of the Defendants.

38. Copy of the order and complete paper book shall be served by the Local Commissioners upon the Defendants at the time of execution of commission, which would also be deemed in compliance of Order XXXIX Rule 3 CPC. Said copies of the paper book shall be provided by the Plaintiff.

39. Additionally, one technical representative of the Plaintiff along with an advocate is permitted to visit the premises of the Defendants along with Local Commissioners.

40. The fee of the Local Commissioners is fixed at Rs.1.5 lakhs each,



excluding the other expenses to be borne by the Plaintiff.

41. If the Defendants wish to seek modification of this order, they are permitted to approach this Court by way of an application.

42. Accordingly, list on 28th September, 2022.

43. Order not to be uploaded until the Local Commissioners' reports are filed.

PRATHIBA M. SINGH, J.

MAY 27, 2022/dk/ss