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

+ **CS(COMM) 353/2023**

**BIGMUSCLES NUTRITION PVT LTD** ..... Plaintiff

Through: Mr.Darpan Wadhwa, Senior Advocate with Ms.Aditi Mohan, Ms.Sakshi Sharma, Ms.Puru Lekhi, Ms.Anoushka Rajan, Ms.Neelakshi Bhadauria and Mr.Amer Vaid, Advocates.

versus

**AVIJIT ROY & ORS.** ..... Defendants

Through: Mr.Neel Mason, Mr.Vihan Dang, Ms.Aditi Umopathy and Ms.Pragya Jain, Advocates for D-4.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**ORDER**

% **26.05.2023**

**I.A. 10484/2023 (for exemption)**

1. Subject to the plaintiff filing original, clear and legible copies of the documents on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.

2. The application is disposed of.

**I.A. 10485/2023 (exemption from providing complete name, address and detail of D-1, 2, 3, & 6)**

3. For the reasons stated in the application, the exemption is granted for the present.

4. Accordingly, the application stands disposed of.



**I.A. 10486/2023 (u/S 12A of Commercial Courts Act)**

5. In view of the urgent interim relief sought, the plaintiff is granted exemption from the requirement of pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015.

6. Accordingly, the application stands disposed of.

**I.A. 10483/2023 (O-XI R-1(4) of the Commercial Courts Act)**

7. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

8. The plaintiff is granted thirty days' time to file additional documents.

9. Accordingly, the application is disposed of.

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10. Let the plaint be registered as a suit.

11. Senior counsel appearing on behalf of the plaintiff submits that advance service of the plaint along with complete paperbook has been made on the defendants no.1, 3, 4 and 5. However, none appears for defendants no. 1, 3 and 5. The advance service could not be made on the defendant no.2 as the plaintiff did not have the email address.

12. Issue summons.

13. Summons are accepted by the counsels appearing on behalf of defendant no. 4.

14. Summons be issued to the remaining defendants through all modes. The summons shall state that the written statement(s) shall be filed by the defendants within thirty days from the date of the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff, without which the written



statement(s) shall not be taken on record.

15. Liberty is given to the plaintiff to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

16. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

17. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

18. List before the Joint Registrar on 28<sup>th</sup> August, 2023 for completion of service and pleadings.

19. List before the Court on 4<sup>th</sup> October, 2023.

**I.A. 10482/2023 (O-XXXIX R-1 & 2 of the CPC)**

20. The present suit has been filed seeking relief of permanent injunction restraining the defendants from disparaging and defaming the plaintiff and the plaintiff's products along with other ancillary reliefs.

21. The plaintiff company is engaged in the business of importing, manufacturing, processing, selling, distributing health and nutraceutical products in the Indian market. The plaintiff launched the product "100% Performance Whey" in October, 2022. The product is aimed at providing whey protein at an affordable price for promoting muscle growth, reducing exercise fatigue, preventing muscle wasting and muscle protein breakdown during the workout, and supporting a faster recovery.



22. The aforesaid product of the plaintiff was duly licensed by FSSAI under the Food Safety Act, 2006, and is further compliant with Food Safety and Standards (Food Products Standards and Food Additives) [FSSAI] Regulations 2011, Food Safety and Standards (Labelling and Display) Regulations, 2020 and WHO guidelines.

23. The product of the plaintiff sells on various marketing platforms like Amazon, Flipkart among others. The plaintiff has provided its sales figures in respect of the aforesaid product from its launch in October, 2022 till February, 2023, which shows that the volume of sales had greatly increased over the aforesaid six months period.

24. The defendants no.1, 2 and 3 are social media influencers/You-Tubers and the said defendants have uploaded various defamatory/disparaging videos on the platforms of defendants no.4 and 5 (hereinafter ‘impugned videos’). In the impugned videos, it has been stated by the said defendants that the plaintiffs’ product is amino spiked and therefore, unsafe for human consumption and can even result in death of a person. There is no material or basis for the defendants no.1 to 3 to make false claims and disseminate fallacious information. Attention of the Court has been drawn to the transcripts of the impugned videos as provided in the plaint. The URLs of the impugned videos are mentioned in paragraph 116 (b) of the plaint.

25. Further, the defendants have dishonestly and malafidely in their

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videos used the registered trademark , of the plaintiff thereby tarnishing the goodwill and reputation of the plaintiff. It is also averred by the plaintiff that the impugned videos have been



disseminated and uploaded by the defendants no.1 to 3 at the behest of the plaintiff's competitors.

26. The said defamatory/disparaging videos have affected the sales of the plaintiff, which have lowered substantially after the release, dissemination, publication and sharing of these impugned videos. The plaintiff received several complaints on 21<sup>st</sup> March, 2023, 4<sup>th</sup> April, 2023, 11<sup>th</sup> April, 2023, and 12<sup>th</sup> April, 2023 on its official email address from its users after watching the impugned videos and the plaintiff is receiving such complaints and emails till date.

27. Counsel for the plaintiff submits that since Protein Whey is a product that is used and consumed on a daily basis, any imputation that the plaintiff's product is fake and dangerous to consume will result in complete rejection of the said product by plaintiff's consumers.

28. Issue notice.

29. Notice is accepted by the counsel appearing on behalf of defendant no.4.

30. Notice be issued to remaining defendants through all modes.

31. Reply(ies) be filed within four weeks.

32. Rejoinder(s) thereto, if any, be filed within two weeks thereafter.

33. From the averments and the submissions on behalf of the plaintiff, it is clear that dissemination and uploading of the impugned videos by the defendants no.1 to 3 is a deliberate attempt to defame and disparage plaintiff's products.

34. A *prima facie* case is made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendants. Irreparable harm and injury would be caused to the reputation of the plaintiff





communicate the same to defendants no.4 and 5, who shall thereupon take down the videos/posts within 48 hours from receipt of such communication.

- iv. In the event, the aforesaid videos/posts resurface on the defendants no.4 and 5's platform, the plaintiff shall be at liberty to supply the concerned URLs to the defendants no.4 and 5, who shall take appropriate action to block/take down the same, in accordance with law. However, in case the defendants no.4 and 5 come to the conclusion that the content is not identical to the impugned videos which have been injuncted, they shall inform the plaintiff of the same, within a period of one week from the date of receipt of the request, whereafter plaintiff shall be free to take recourse to appropriate measures available under law.

36. Compliance under Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (CPC) be done within five days.

37. List before the Joint Registrar on 28<sup>th</sup> August, 2023 for completion of service and pleadings.

38. List before the Court on 4<sup>th</sup> October, 2023.

**AMIT BANSAL, J**

**MAY 26, 2023**

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