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

*Reserved on: 16<sup>th</sup> January, 2019*

*Date of decision: 15<sup>th</sup> March, 2019*

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**CS (OS) 403/2018**

TATA CHEMICALS LTD.

..... Plaintiff

Through: Mr. Amit Sibal, Senior Advocate with  
Mr. Siddharth Sharma, Ms. Bani  
Dikshit and Ms. Anshula Laroia,  
Advocates. (M:9818075966)

versus

PURO WELLNESS PVT. LTD.

..... Defendant

Through: Mr. Rajiv Nayar and Mr. Darpan  
Wadhwa, Senior Advocates with Mr.  
Vikas Mehta, Ms. Cauveri Birbal, Ms.  
Manjira and Mr. Vasanth, Advocates.  
(M:9354454983)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**Prathiba M. Singh, J.**

**I.A. 10934/2018 (u/O XXXIX Rules 1 & 2 CPC)**

1. The Plaintiff – TATA Chemicals Ltd. has filed the present suit for perpetual injunction, rendition of accounts and damages against the Defendant – Puro Wellness Pvt. Ltd. The Plaintiff is the manufacturer of *TATA Salt*. The Defendant manufactures *Puro Healthy Salt*.

***Plaintiff's case***

2. TATA Salt has been manufactured by the Plaintiff since 1983 and enjoys a market share of 24% - 25% in edible iodised salt. It claims to be a market leader in edible salt in India and was also the country's first national branded iodised white salt.

3. Prior to the introduction of TATA Salt, non-iodised salt was being

consumed in India and at that time, it was found that a large mass of the population suffered from ailments due to iodine deficiency. The Plaintiff thus commenced manufacture of iodine salt. It was the first iodine fortified salt manufactured and sold in bulk quantity to eliminate ailments relating to iodine deficiency. TATA Salt is promoted and advertised using catchphrases and slogans such as “*Maine Desh ka Namak Khaya hai*”, “*Desh Ki Sehat, Desh Ka Namak*”, etc.

4. It is claimed that the manufacture of TATA Salt is through a process of solar evaporation of sea water combined with a vacuum evaporation process to produce salt which has least contaminants. The Plaintiff was one of the two Indian companies to manufacture iodised white salt through vacuum evaporation. The same is safe for human consumption. An affidavit of the head of the Salt Division of the Plaintiff company has been placed on record, setting out the process of manufacture of TATA Salt.

5. The Plaintiff claims that TATA Salt is fully compliant with the norms under the Food Safety and Standards Act, 2006 (*hereinafter FSS Act, 2006*) read with the Regulations thereunder. It uses an anti-caking agent being E-536, which is permissible under the FSS Act, 2006 and also uses one iodisation agent, being potassium iodate.

6. There are several companies which manufacture white salt, however TATA Salt is the market leader. The sales turnover of TATA Salt was more than ₹1,300/- crores in 2017-18 and the expenses on television advertisements for the same year was approximately ₹20 crores. The Plaintiff's product TATA Salt has also won several accolades and awards.

7. The present suit has been filed against the Defendant, which manufactures Puro Healthy Salt. It is the case of the Plaintiff that the

Defendant has embarked on a consistent campaign against the Plaintiff's product - TATA Salt by;

- a) Releasing three television commercials featuring the well-known actor – Mr. Anil Kapoor;
- b) Releasing further modified television commercials which continue the false propaganda;
- c) An interview of the promoter of the Defendant company – Mr. Ruchir Modi in the Economic Times dated 14<sup>th</sup> March, 2018;
- d) Issuance of a flyer/pamphlet containing objectionable content;
- e) A video which was published and circulated by the Defendant.

All the above material is together referred to as the '*impugned material*'.

8. The allegation of the Plaintiff is that the impugned advertising material makes false, baseless and reckless statements against the Plaintiff's product - TATA Salt. The message in the material is to send a message that TATA Salt is harmful for health and not fit for human consumption. It is further alleged that the impugned material is disparaging, malicious and false. The gestures in the advertisements also are meant to cast aspersions on the Plaintiff's brand – TATA. The advertising is not merely puffery, but is false and slanderous. The first of the three videos was released in December, 2017, against which the Plaintiff approached the Advertising Standards Council of India, (*hereinafter* 'ASCI') which by email dated 13<sup>th</sup> December 2017, assured it that it was looking into the matter. During the pendency of the said complaint, the second and the third commercial and other modified commercials came to be telecasted. The Plaintiff addressed complaints to ASCI against the second and third television commercials by two separate emails dated 9<sup>th</sup> January, 2018.

9. ASCI, by emails dated 15<sup>th</sup> February, 2018 and 1<sup>st</sup> March 2018, held in favour of the Plaintiff and substantially upheld the contentions of the Plaintiff. After the first email, an undertaking of the Defendant was recorded by the ASCI that it would modify its advertisements. In the second round the Defendant did not appear or submit its response to ASCI. It is claimed that the FSSAI has also complained against the impugned material to ASCI. However, the Defendant did not comply with the recommendations given by ASCI, and has challenged the orders of the ASCI by means of a suit no.1167/2018 filed before the Bombay High Court, which is primarily on the ground that it is not a member of ASCI and is not bound by its recommendations. In the said suit, the Defendant impleaded only ASCI and did not implead the Plaintiff.

10. Further, the Indian Salt Manufacturers Association (*hereinafter 'ISMA'*) filed a suit seeking an injunction being civil suit no.432/2018 before the City Civil Court, Ahmedabad and *ex-parte* ad-interim order was granted in the said suit. The same was, however, vacated by the Gujarat High Court as the *ex-parte* order “*did not record any reason as to how the object of granting the injunction would have been defeated, if the Court would have waited for the response from the other side.*” The said suit is still stated to be pending. Another civil suit has been filed before the Court of the Principal Senior Civil Judge, Gandhidham, which is pending.

11. The Plaintiff's case is that the present suit has been preferred by it as it has a distinct and separate cause of action against the Defendant.

#### ***Defendant's case***

12. The Defendant filed its written statement. The first and the foremost allegation is that the Plaintiff is guilty of '*forum shopping*' and does not

deserve any relief, considering that there are at least three pending proceedings in respect of the same subject matter, namely,

- (i) before the Bombay High Court arising out of the ASCI complaint;
- (ii) proceedings before the City Civil Court Ahmedabad arising out of the ISMA suit; and
- (iii) proceedings before the Court of the Principal Senior Civil Judge in Gandhidham in a suit filed by an individual.

13. The argument of the Defendant is that the Plaintiff is indulging in gross abuse of process as there are three forums which are already seized of the same subject matter.

14. It is the Defendant's claim that it is a recognized start-up, which is accredited by the Government of India. Puro Healthy Salt, which is unrefined Himalayan pink rock salt, was launched in 2017. It is a natural, healthier alternative to regular refined white salt. The Defendant came out with an advertisement featuring actor – Mr. Anil Kapoor on 1<sup>st</sup> December, 2017. The salt sold as Puro Healthy Salt is *Saindhava Lavana* which is known even in ancient Indian literature to be healthy salt. There is a long history of litigation between the parties in respect of the impugned advertising commercials. The Defendant submits that this Court does not have the territorial jurisdiction to entertain the suit. Further, the Plaintiff is guilty of suppression and concealment of material facts. The video relied upon by the Plaintiff is disowned by the Defendant. A complaint regarding the video was filed with ASCI, wherein the Defendant denied that it was circulated under its behest. ASCI did not take any action and according to the Defendant, the Plaintiff is bound by the same. It is claimed that the laboratory Envirocare Labs Pvt Ltd, was not an approved laboratory in July

2017, at which time it issued the report which is relied upon by the Plaintiff. The order of the Gujarat High Court was not merely vacation of injunction on a technical ground as claimed by the Plaintiffs.

15. It is further argued that the manner, intent, storyline and message conveyed by the impugned material is true and correct and that it justifies each of the statements made in the advertising.

***Preliminary objection by the Defendant – Forum Shopping***

16. Mr. Rajiv Nayar, Ld. Senior Counsel appearing for the Defendant has taken a preliminary objection that the present suit is not liable to be entertained as the Plaintiff is guilty of forum shopping. To buttress the argument, it is contended that three complaints have been filed before ASCI, two on 13<sup>th</sup> December, 2017 and the second on 9<sup>th</sup> January, 2018. ASCI has given two decisions - on 31<sup>st</sup> January, 2018, with respect to the first advertisement and on 13<sup>th</sup> February, 2018 on the second and third advertisements. The Defendant had also modified the television commercials and started telecasting the modified commercials. A suit challenging ASCI'S decisions was filed before the Bombay High Court and on 4<sup>th</sup> May, 2018, the Bombay High Court had directed that ASCI's order would not be implemented. ASCI appealed this order before the Division Bench, and the said order was not interfered with.

17. The second proceeding was brought in Ahmedabad by ISMA, of which the Plaintiff is a member. It is contended by the Defendant that the relief sought in the ISMA suit would cover all the impugned material. Though the three advertisements were put in *lis*, a third proceeding has also been filed in Gandhidham. In view of these three proceedings, the present suit ought not to be entertained as the Plaintiff's attempt is to merely

approach various forums to somehow obtain an injunction.

18. In response, Mr. Amit Sibal, Ld. Counsel for the Plaintiff argues that in the suit filed before the Bombay High Court, the Plaintiff has not been impleaded as a party. It is the stand of the Defendant that it is not bound by the orders passed by ASCI as ASCI is only a voluntary body of which it is not a member. Secondly, the ISMA proceedings were not filed in consultation with the Plaintiff. The Plaintiff states that it had no participation in the decision making of ISMA. Thirdly, it is argued that the Gandhidham suit has no connection with the Plaintiff.

***Findings on the plea of forum shopping***

19. The impugned material in the present case, consists of three television commercials, a video allegedly circulated by the Defendant, a promotional flyer which has been circulated by the Defendant, a promotional booklet given as part of a marketing box which contains the same flyer – all of them read with an interview given by the promoter of the Defendant company. Admittedly, the subject matter of the ASCI complaints were the first three commercials and the viral video. The Defendant has, however, clearly taken a stand that it is not a member of ASCI and is hence not bound by the decisions of ASCI. It has, therefore, been granted interim protection by the Bombay High Court. In the said proceedings, the Plaintiff is not a party. Initiation of proceedings before ASCI would not bar the Plaintiff from approaching this Court. This is the settled position as held in ***Procter & Gamble Home Products Private Limited v. Hindustan Unilever Ltd., (2017) 238 DLT 585***, where a Ld. Single Judge of this Court held as under:

***“14. ASCI thus has been established as a self regulatory body in the field of advertising and cannot***

be said to have been established for dispute resolution or for resolution of claims such as those made by the plaintiff in the suits against the defendant. ASCI though has a Complaints Committee but only to 'self regulate'. The principles applicable to grant of injunction contained in Order XXXIX Rules 1 & 2 of CPC and the Specific Relief Act, 1963 though provide that injunctive relief shall not be granted when equally efficacious alternative remedy is available but the remedy available before ASCI cannot be said to be equally efficacious remedy. ASCI, even if finds merit in complaint, can only recommend to the advertiser to remove the advertisement but has no mechanism to compel removal of the advertisement or to grant any interim relief or to award damages. Moreover, membership of ASCI is not mandatory for all concerned. It was held in *Century Plyboards (India) Ltd. v. The Advertising Standards Council of India* that the rules and machinery of ASCI are designed to complement legal controls, not to usurp or replace them. To the same effect is *Dish TV India Ltd. v. Advertising Standards Council of India* also cited by the counsels for HUL.

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16. However the aforesaid statutory flavour given to The Code would also in my view not bar the jurisdiction of the Civil Court to entertain CS(OS) No. 463/2016 as filed by HUL, even after HUL approached ASCI and ASCI did not find any merit in the complaint of HUL. I say so because the remedy available before ASCI is distinct from that available before the Civil Court. ASCI, if finds any merit in the complaint with respect to any advertisement, can only make a recommendation for rectification thereof and if the recommendation remains un-complied, forward the same to the Authorised Officer under the CTN Act and which Officer is empowered to then prohibit the broadcast of the subject advertisement. The said route



though may be also available will not bar a person aggrieved from the advertisement, from approaching the Civil Court and similarly the dismissal of complaint by ASCI, though may be a relevant fact in the proceeding before the Civil Court with respect to the same advertisement, but would not bar the Court from independently looking at the grievance.”

20. The above judgment was followed in ***Metro Tyres Ltd. v The Advertising Standards Council of India (2017) 240 DLT 119***. Thus, insofar as the ASCI complaints are concerned, the present suit is clearly not barred as the Plaintiff is entitled to avail of legal remedies which are effective and binding on the Defendant.

21. Insofar as the ISMA suit is concerned, the Plaintiff is a member of the said association. The association does exist for the benefit of its members including the Plaintiff. The plaint in the ISMA suit has been perused by the Court. The reliefs sought therein are as under:

*“(A) The defendant company, their directors, servants, agents, distributors, retailers, stockists be restrained by an order of permanent injunction from commercializing or promoting the PURO brand salt through impugned TVCs on television channels and internet domains as depicted in Annexure A and also depicted in para - 10 of the plaint or any other disparaging advertisements in Hindi, English or any other language as broadcasted on television channels.  
(B) The defendant company, their directors, servants, agents, distributors, retailers, stockiest be restrained by an order of permanent injunction from further telecasting, broadcasting, advertising, relaying the impugned TVCs as depicted in Annexure - A or any other disparaging advertisements in Hindi, English or any other language as broadcasted on television channels.*

*(C) That the defendant be restrained by an order of permanent injunction from in any manner printing, circulating or distributing the point of sale posters at the consumer outlets or in the market place, where such goods are sold or in any manner publishing the impugned advertisement on the electronic media or at any other place.*

*(D) The defendant company, their directors, servants, agents, distributors, retailers, stockiest be directed to hand over all promotional materials, pamphlets, stationery materials, flyers, hoardings, bill boards containing the disparaging content or material in respect of PURO brand salt to the plaintiff organization for destruction.*

*(E) The defendant company be directed to pay the damage of Rs.10,00,00,000/- ( Rs. Ten crores) towards defamatory and denigrating the brands of members of plaintiff organization and thereby causing disparagement and loss of business, with 18% interest till realization of the suit.*

*(F) The Hon'ble Court may be pleased to grant any other relief as deem fit and necessary in the interest of justice and equity in favour of the plaintiff organization.”*

22. The description in the ISMA suit of the Plaintiff therein is that it is a society registered in Bombay and with the aim of promoting the development and growth of the salt industry in India and to protect its interests. The Plaintiff, in paragraph 61 of the plaint has stated as under:

*“61. ...The Plaintiff is not a party to the ISMA Suit and was not consulted or taken into confidence by the officers or representatives of ISMA prior to the institution of the ISMA Suit. Further, the Plaintiff as the market leader in salt in India is specially and particularly affected by the Impugned Television Commercials and thus has a distinct and independent*

*cause of action against the Defendant as compared to ISMA - all the more so in view of the direct and pointed references to the Plaintiff and to TATA Salt in the First, Second and Third Television Commercials, Impugned Viral Video and Impugned Flyer. Further, in view of the peculiar facts pertaining to the manufacturing process of the Plaintiff's salt product as more particularly described hereinabove, the Plaintiff's cause of action against the Defendant is distinct from the cause of action invoked in the ISMA Suit. The Plaintiff further submits that to the knowledge of the Plaintiff, ISMA has not sought leave under Order I Rule 8 of the Code of Civil Procedure, 1908 ("CPC") in respect of the ISMA Suit."*

23. The stand of the Plaintiff is therefore that it was not consulted prior to the institution of the suit and that it has a distinct and independent cause of action. While ISMA has a general interest in protecting all salt manufacturers, including the Plaintiff, the present suit is in respect of further additional material apart from the three television commercials and a distinct right in favour of the Plaintiff to protect its product and equity in the TATA brand and the TATA Salt product. While in the first three television commercials, a comparison is made against white salt in general, the further material, including the video, the pamphlet and the booklet clearly depict the TATA SALT packaging itself, sometimes vividly and sometimes in a blurred manner. Thus, while the ISMA suit is in respect of protecting the reputation and product equity in white salt in general, the present suit, while deriving origin from the initial three television commercials, proceeds further against other impugned material. The protection of rights and brand equity in the TATA brand is not the subject matter of any of the earlier proceedings though there is a general prayer for damages for all brands of

the members of ISMA. There are at least 40 members of ISMA as per the list on record. The present suit is based on various distinct and different causes of action including disparagement and denigration of TATA salt, specifically its brand equity, dilution of the goodwill in the product, disparagement and slander.

24. The impugned video which has been circulated on social media was not subject matter of any of the earlier proceedings and neither were the pamphlet and booklet which were distributed by the Defendant on 7<sup>th</sup> August, 2018. The ISMA suit cannot therefore act as a bar against the maintainability of the present suit. In view of the sustained, deliberate, and systematic expansion by the Defendant of its advertising from the three impugned commercials to the impugned video, impugned pamphlet, impugned booklet containing various allegations against Plaintiff's product i.e. TATA salt, it cannot be held that the present suit is not maintainable before this Court on the ground of forum shopping. In *Horlicks Ltd. & Anr. v. Heinz India (Pvt.) Limited (2009) 164 DLT 539 (DB)*, a Ld. Division Bench of this Court, while dealing with the principles of *forum non conveniens* and *dominus litis* has observed as under:

*“78. The aforesaid exposition thus shows that principles while exercising the discretionary jurisdiction under Article 226 of the Constitution of India cannot ipso facto be applied to a civil proceeding governed by the said Code. Not only that, the principle of forum non conveniens emerged as a principle of admiralty law applicable primarily to foreign forums. It finds no place in a domestic forum in India. The plaintiff is always the dominus litis and so long as the Court has jurisdiction to try a suit, a party cannot be non-suited. A suit has to be governed by the provisions*

of the said Code. In this context, we may refer to the observations made in Abdul Gafur v. State of Uttarakhand, (2008) 10 SCC 97, where the Supreme Court held that since Section 9 of the said Code provides that a civil court shall have jurisdiction to try all suits of civil nature excepting the suits of which their cognizance is either expressly or impliedly barred, the civil courts have inherent jurisdiction unless a part of that jurisdiction is carved out. Thus, the law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute. It was further observed that a plaint can only be rejected in terms of Order 7 Rule 11 of the said Code and similarly a plea of bar to jurisdiction of a civil court can be examined."

25. From the above judgment, it is clear that under Section 9 all civil suits have to be tried unless barred by law either expressly or impliedly such as under Order VII Rule 11. The Plaintiff being the *dominus litis*, if the Court has jurisdiction to try the suit, the Plaintiff cannot be non-suited. Under the provisions of CPC, a suit can be dismissed if it is barred by *res judicata* under Section 11 or is to be stayed under Section 10 if a matter in issue is also directly or substantially in issue in a previously instituted suit between the same parties. In the absence of any of these two provisions being applicable, under Section 9 of the CPC, all civil suits can be tried by Courts having jurisdiction.

26. In the present case, the Defendant has not raised any objection as to *res judicata* as none of the previous proceedings have been finally decided. The plea of forum shopping is one which is similar or akin to the principles contained in Section 10. In *Escorts Construction Equipment Ltd. and Ors.*

**v. Action Construction Equipment Pvt. Ltd. and Another (1999) 77 DLT 276**, a Ld. Single Judge of this Court, while dealing with a suit filed in this Court, which was argued to be barred in view of an earlier suit filed in Jamshedpur, held as under:

*“6. It is well settled that in order to attract provisions of S. 10, CPC, following conditions must be satisfied:-  
(i) the matter in issue in both suits must be substantially the same;  
(ii) the previously instituted suit must be pending in the same Court in which the subsequent suit is brought or in a different Court in India having jurisdiction to grant the relief claimed; and  
(iii) both the suits must be between the same parties or their representatives.”*

27. In **Escorts** (supra), it is clearly observed that for Section 10 to be attracted, the matter in issue in both the suits must be substantially the same. They should also be between the same parties and the proceeding must be in the same court or a court having jurisdiction. ASCI is not a court having jurisdiction and approaching ASCI does not bar the present suit as held in **Procter and Gamble** (supra). Further, in Ahmedabad and Gandhidham suits, the parties are not the same. It is also the settled legal position that under Section 10 even if stay of suit is being granted, a Court has powers to pass interim orders. The Supreme Court in **Indian Bank v. Maharashtra State Coop. Marketing Federation Ltd., (1998) 5 SCC 69** held as under:

*“8. Therefore, the word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to “proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit”. The object of the*

*prohibition contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the latter suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the latter suit with the earlier suit, or appointment of a receiver or an injunction or attachment before judgment. The course of action which the court has to follow according to Section 10 is not to proceed with the “trial” of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word “trial” in Section 10 is not used in its widest sense.*

Thus, the present suit is not barred by any law, nor is it liable to be stayed under Section 10.

28. The Defendant has relied upon the judgment of a Full Bench of the Rajasthan High Court in ***The R.S.E.B. Accountants Associations v. The Rajasthan State Electricity Board, Civil Writ Petition No. 338/1991, (Decided on 30<sup>th</sup> June 1995)*** to argue that once the members of an association had filed a writ petition and the same was dismissed, the members of the said association were bound by the decision given in the writ petition filed by the association.

29. In the ***R.S.E.B.*** (supra) case, there was a final decision in the writ preferred by the federation, which was then held to be binding on each of the

members of the federation. The facts of this case are distinguishable.

30. The plaint in the Ahmedabad City Civil Court shows that the impugned commercials are the first three commercials, which did not have a reference specifically to TATA salt. The first prayer in the plaint is against the said three commercials or any other disparaging advertisements. A reading of the plaint shows that the said plaint challenges the representations sought to be made by the Defendant in the first three commercials.

31. In the present suit, the Plaintiff has a wider cause of action which includes further objectionable material, including protection of the TATA brand and dilution of the same.

32. In *Union of India and Ors. v. Cipla Limited and Ors. (2017) 5 SCC 262*, the Supreme Court laid down the following test to determine whether a party is indulging in forum shopping:

*“155. The decisions referred to clearly lay down the principle that the Court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not.*

*156. Keeping all these examples in mind with several other nuances and also keeping the functional test in mind, we have examined the relief claimed by Cipla in the different High Courts and find that they have no substantive connection whatsoever with the relief claimed in the Allahabad High Court.”*

Thus, the Supreme Court prescribed the functional test to determine whether a party had indulged in forum shopping. The functional similarity in



proceedings has to be seen and it is further to be seen whether there is any subterfuge. The Plaintiff in the present case has a distinct, statutory and common law right to protect the goodwill and the equity in the TATA brand and the TATA salt product. This right can be exercised by the Plaintiff and the Plaintiff alone. No third party can seek protection of the TATA brand or the goodwill in the TATA salt product. While an association like ISMA can generally prefer a suit to prevent denigration of “white salt” as a class of products, the offending acts of the Defendant which initially commenced with the telecast of three offending commercials against white salt, expanding to a video, a pamphlet and a booklet specifically containing the TATA salt packaging, clearly affords the Plaintiff herein, which is the manufacturer and seller of TATA Salt a separate and distinct cause of action. The Plaintiff has itself candidly disclosed the previously pending proceedings in the plaint itself and thus there is no attempt at subterfuge.

33. The objection as to forum shopping is also liable to be rejected as the continuous release of advertisements, followed by the viral video, the pamphlet and the flyer constitute a continuing cause of action which are assailable by the Plaintiff which is an affected party. The Supreme Court in ***Bengal Waterproof v. Bombay Waterproof Manufacturing Company and Anr. (1997) 1 SCC 99*** held that a second suit on the misuse of a trademark was maintainable as there was continuous and recurring infringement. In the same manner, the filing of the ISMA suit to protect the reputation of white salt in general, having not deterred the Defendant which not only continued its conduct of denigrating not just white salt but started targeting the specific product – TATA salt, the same gives rise to a distinct and separate cause of action in the present suit.

34. The jurisdiction of this Court has been challenged by the Defendant. However, it is not in dispute that the television commercials and the impugned materials have been circulated in Delhi itself. Thus, the cause of action has arisen in Delhi. I.A. 12836/2018 was filed under Order VII Rule 11 raising the same pleas as to lack of territorial jurisdiction, *forum non conveniens*, which application was also dismissed as withdrawn by the Defendant.

35. Thus, it is held that the objection of forum shopping is not tenable.

***Findings on the question of delay***

36. The submission that the proceedings have been filed with gross delay is also not tenable as the Plaintiff initially approached ASCI and in respect of the first complaint before ASCI the Defendant had filed a response. Further, the suit was filed in August, 2018, within 8 months of the impugned television commercial being first telecast. The IDACON conference, where the impugned leaflet, pamphlet and booklet were circulated and the impugned video was allegedly broadcasted was held in December, 2017. The advertisements have not been telecasted since September, 2018 i.e. they were discontinued within a period of nine months and immediately after the filing of the present suit. The prayer for interim relief is thus not barred by delay.

***Proceedings in the suit***

37. The present suit was first listed on 17<sup>th</sup> August, 2018 and the following interim order was passed:

***“I.A. 10934/2018 (u/Order XXXIX Rules 1 & 2)***

*10. Issue notice in the application.*

*11. The Plaintiff has filed the present suit for perpetual injunction against disparaging advertising by*

*the Defendant and damages. Plaintiff claims to be a leading manufacturer and seller of edible salt in India with almost 27.3% market share. It is the case of the Plaintiff that it has been selling 'TATA SALT' for more than 30 years. The salt manufactured by the Plaintiff is iodised salt, which it started manufacturing since the 1980s. The Plaintiff's salt is claimed to be promoted extensively across the country with slogans such as "Maine Desh Ka Namak Khaya Hai" and "Desh Ki Sehat, Desh Ka Namak".*

12. *The Plaintiff further submits that it uses the latest technology of vacuum evaporation for manufacturing of iodised salt and the ingredients of the salt are as per the Food Safety and Standards Act, 2006 (hereinafter, 'FSSA') along with Rules and Regulations made thereunder. Mr. Amit Sibal, Ld. Senior Counsel for the Plaintiff, submits that the turnover of the Plaintiff for the product 'TATA SALT' in the last financial year is more than ₹1300 crores with over ₹20 crores being spent on advertising.*

13. *The allegation of the Plaintiff is that in December, 2017, the Defendant launched a television commercial wherein various disparaging and false remarks were made against 'white salt' as a class. The Plaintiff, being one of the leading manufacturers of white salt, was affected by the false statements made and it had approached the Advertising Standards Council of India (hereinafter 'ASCI'). After hearing the Defendant, ASCI had passed an order in favour of the Plaintiff. The Defendant had approached the Bombay High Court challenging the jurisdiction of ASCI in suit no.656/2018 wherein a Learned Singh Judge of Bombay High Court has passed an interim order restraining the implementation of decision of ASCI.*

14. *However, thereafter the Plaintiff has come to know that the Defendant has launched a publicity flyer a few days ago. The contents of the said flyer are captured hereinbelow:*

**WHY IS UNREFINED SALT BETTER FOR YOU?**

- Refined may seem pure, but when it comes to food, unrefined products offer better health.
- Refined, in this context, means that the salt has been bleached and processed till it has none of its natural nutrients intact. Whiteness in salt does not mean purity.
- Refined salt consists of bleach and anti-caking agents such as E535 (Sodium Ferrocyanide), E536 (Potassium Ferrocyanide) and E538 (Calcium Ferrocyanide), many of which have been banned in USA and Australia.
- As a thumb rule, the more refined a food is, the less nutritious it is likely to be.

So, to guarantee great health for yourself and your family, always pick Puro Healthy Salt, an unrefined salt.

**Defendant's Flyer**

15. The text of the flyer reads as under:  
 “WHY IS UNREFINED SALT BETTER FOR YOU?”

- Refined may seem pure, but when it comes to food, unrefined products offer better health.
- Refined, in this context, means that the salt has been bleached and processed till it has none of its natural nutrients intact. Whiteness in salt does not mean purity.
- Refined salt consists of bleach and anti-caking agents such as E535 (Sodium Ferrocyanide), E536 (Potassium Ferrocyanide) and E538 (Calcium Ferrocyanide), many of which have been banned in USA and Australia.
- As a thumb rule, the more refined a food is, the less nutritious it is likely to be.

So, to guarantee great health for yourself and your family, always pick Puro Healthy Salt, an unrefined salt. ”

16. In the said flyer, on the left side top, an image of the packaging of the Plaintiff's product has been printed and a message is being sought to be conveyed that the salt manufactured by the Plaintiff has been bleached and processed till none of the natural ingredients are intact. Mr. Sibal submits that this is

clearly a false statement as no bleaching is done in the process which is used by the Plaintiff and the assertion that no natural ingredients are intact in the Plaintiff's salt is a brazenly false statement being made in the said flyer. Further it is submitted that ingredients E535(Sodium Ferrocyanide) and E538 (Calcium Ferrocyanide) are not used in the Plaintiff's product. The only ingredient being used is E536(Potassium Ferrocyanide), which is an anti-baking agent and is permissible under the FSSA. Thus, the Plaintiff prays for an injunction against the flyer at this stage.

17. This Court has viewed the television commercial and the advertising flyer/pamphlet. It appears that, insofar as the television commercial is concerned, the same is also be subject matter of a proceeding filed by the Indian Salt Manufacturers Association in the Ahmedabad District Court and the Gujarat High Court.

18. Insofar as the advertising pamphlet/flyer is concerned, the same is clearly using a blurred image of the packaging of the Plaintiff's product. The product packaging of the Plaintiff is depicted herein below:



***Plaintiff's packaging***

19. *It requires no imagination to connect the flyer with the Plaintiff's product. The use of such packaging, along with incorrect statements and a misleading allusion, would cause irreparable damage to the Plaintiff's product, including its brand equity and goodwill. The flyer having been introduced just a few days ago, its circulation would result in unnecessary panic amongst the consuming public, especially since, prima facie, it consists of various statements which may not be completely accurate and true. If the same is allowed to be circulated, it would also cause enormous damage to the brand equity of the product of the Plaintiff. The law in this regard is quite well settled that while puffery is permitted, negative statements to the effect that someone's product is bad and unhealthy for consumption, cannot be made. The same would be detrimental to the distinctive character of the Plaintiff's mark and packaging and also result in tarnishment.*

20. *Accordingly, it is directed that till the next date, the flyer extracted above or any other advertising/publicity material containing an imitation of the Plaintiff's packaging, and/or any negative allusions and disparaging statements against the Plaintiff's product 'TATA SALT', shall not be put in circulation by the Defendant. The remaining reliefs shall be considered upon issuance of notice. On the receipt of notice, the Defendant shall file its reply within ten days.*

21. *Compliance of Order XXXIX Rule 3 shall be done within two days.*

22. *The Defendant, upon being served with the copy of this order and an electronic copy of the entire pleadings and documents, shall file a reply to the injunction application within 10 days.*

23. *List on 6<sup>th</sup> September, 2018 for hearing on the injunction application.*

24. *A copy of this order be given dasti under*

*signature of the Court Master.”*

38. On the last date, the Court was informed that ISMA had moved an application for withdrawal of the suit filed in Ahmedabad, which application was not allowed and the suit thus continues to be pending.

***Analysis and Findings on merits:***

39. The present suit seeks an injunction against the impugned material on the ground that the same denigrates, disparages, defames and slanders the product TATA SALT, the TATA brand as also the entire goodwill and reputation enjoyed therein. The suit is based on the premise that the Defendant does not have a right in law to make such statements to as to completely malign the respectability associated with the TATA name and brand. The details of the impugned material are set out below:

***Impugned material***

**1. Television commercials 1 to 3**

40. The three television commercials form a series wherein the lead protagonist enacted by actor - Mr. Anil Kapoor, makes the following representations:

- i) That paint is made in a chemical factory;
- ii) That white clothes are bleached;
- iii) That *safed namak* is also made in a chemical factory;
- iv) That *safed namak* is bleached;
- v) The hand is waved with the gesture of ‘bye-bye’;
- vi) That Puro Healthy Salt is 100% natural and 100% *kudrati* (natural);
- vii) That Puro Healthy Salt has 84 minerals;

- viii) That *safed namak* should be changed;
- ix) By taking Puro Healthy Salt which is healthy *namak*, the family remains healthy;
- x) Puro Health Salt is like turmeric and chilli powder, which are natural.

41. The above three television commercials, while promoting Puro Healthy Salt, make wide and generalised statements against white salt. TATA Salt is one of the white salts. The message being conveyed in these commercials is that white salt is made in chemical factories, it is bleached and it should be gotten rid of as it is dangerous for the health of the family. An argument has been made on behalf of the Plaintiff that the gesture of ‘bye-bye’ also is an allusion to ‘*tata*’ in colloquial terms.

## **2. Video**

42. The contents of the video show an image of the Plaintiff’s Mithapur factory. It also showed four salts packagings, namely, *Captain Cook*, *Aashirvaad Salt*, *Nirma Salt* and the Plaintiff’s product, *TATA Salt*. One of the slides in the video is titled “*White - is pure or poison?*” with an image showing the word “*Danger!*”. Reliance is placed on the website extract of the Plaintiff and the book titled ‘*Salt of the Earth- The Story of TATA Chemicals.*’ It is claimed it has harmful chemicals such as E-536, E-535 and E-551. It is claimed that E-536 and E-535 are anti-caking agents, which are banned in U.S.A, however, are contained in TATA salt. TATA salt is claimed to be containing “banned chemicals”. The choice is depicted as being between “*white gold*” and “*white poison*” The video then ends with the message “*Say goodbye to White Refined salts*”.

43. In its written statement, the Defendant has taken the stand that the



impugned video was neither created nor circulated by the Defendant. A complaint against the video was filed with ASCI by the Plaintiff vide e-mail dated 13<sup>th</sup> December, 2017. However, since the Defendant denied the same, no action was taken by ASCI.

### **3. Impugned article/interview**

44. In the interview given by the promoter of the Defendant, the following statements are made;

- That he and his father switched from white refined salt to pink salt. He then launched Puro Healthy Salt, which is India's first healthy salt with the concept of '*Namak healthy toh family healthy*';
- That white salt leads to hypertension;
- That white salt does not come from the sea, but is processed in chemical factories and is a by-product of soda ash.
- That Puro Healthy Salt has disrupted the market by assaulting the 'whiteness quotient' of salt;

### **4. Pamphlet/booklet**

45. A booklet was distributed along with the marketing material at a conference held in Kolkata. The pamphlet which, was distributed reads as under:

*“WHY IS UNREFINED SALT BETTER FOR YOU?”*

- *Refined may seem pure, but when it comes to food, unrefined products offer better health.*
- *Refined, in this context, means that the salt has been bleached and processed till it has none of its natural nutrients intact. Whiteness in salt does not mean purity.*
- *Refined salt consists of bleach and anti-caking agents such as E535 (Sodium Ferrocyanide), E536 (Potassium Ferrocyanide) and E535 (Calcium*

*Ferrocyanide), many of which have been banned in USA and Australia.*

- *As a thumb rule, the more refined a food is, the less nutritious it is likely to be.*

*So, to guarantee great health for yourself and your family, always pick Puro Healthy Salt, an unrefined salt. ”*

46. In the above pamphlet, the TATA salt packaging is shown in a blurred form. It is stated that the salt has been bleached and processed and does not contain any of its natural nutrients. Further, it contains anti-caking agents such as E-536, which is banned in U.S.A.

### ***Conclusions***

47. A perusal of the impugned material, as a whole, shows that the theme and message is the same in all of them. The purpose is to clearly convince customers that white salt is dangerous for health. The said message is being conveyed by making references and allusions to TATA Salt. In the video, the TATA Salt packaging is clearly visible. In the pamphlets and in the booklet, the TATA Salt packaging is blurred, but there is no doubt that the packaging is clearly discernible. TATA Salt is a product which has been sold for several decades and this is a fact of which judicial notice can be taken. It has the requisite approvals and any product which does not comply with the FSSAI statute and regulations, cannot be sold. A comparison of white salt with poison is clearly meant to create panic amongst the consuming public and if allowed to be carried on unhindered, it can have a deleterious impact not just on the Plaintiff and its product, but also on customers, who could be forced to give up on the use of white salt, which is a basic ingredient in food cooked in almost every household in the country.

The portrayal that white salt is bleached, manufactured in a chemical factory and comparable with paint or bleached clothes is not merely puffing but an exaggerated message which could lead to shaking up of customers' confidence.

48. The argument of the Defendant that each of the statements in the advertisement is true, may not be wholly correct. The showing of the Plaintiff's plant, calling it a chemical factory and making wide ranging allegations that hypertension is caused due to consumption of white salt are statements which are made without foundational facts. It is not permissible for any company, to indulge in advertising for its product which would lead to panic amongst consumers. The price difference between the two products is extremely stark. While 1 kg of TATA salt costs ₹20, the Defendant's salt is sold at ₹99 per kg i.e. five times the price of the Plaintiff's salt. Thus TATA salt is sold as a product which is consumed by the masses and the Defendant's product is not a substitute or replacement for the same, due to the pricing itself. Further, the comparison is also between two products which are not comparable products. One is iodised salt which is sold as per the FSSAI Regulations. The other is rock salt. The intent of all these commercials and advertisements is to shock the consumers.

49. The submission of Mr. Rajiv Nayar, Ld. Senior counsel appearing on behalf of the Defendant that the three TVCs are common to the present suit and the ISMA suit is correct. However, when the TVCs are seen along with the additional material from the point of view of specifically the Plaintiff's product –TATA salt, the legal and statutory rights that are affected as also the reliefs that can be claimed by the Plaintiff are those that cannot be granted in the ISMA suit. The right of the Plaintiff to protect the good

standing of TATA salt as a product and TATA as a brand is a right which cannot be replaced or exercised by ISMA which can only take general action to protect its members including the Plaintiff. The ISMA suit does not usurp the Plaintiff's rights to sue and neither can the said right be replaced by ISMA. It is admitted by the Defendant that the booklet which was circulated contains the contents of the above pamphlet at page 10. The same is however sought to be justified on the basis that it was only circulated to friends and family of the promoter of the Defendant company. The fact that the brochure was of limited circulation at that time does not take away from the contents of the pamphlet, which were clearly disparaging. Even limited circulation constitutes publication.

50. Mr. Nayar sought to defend all three statements made by the Defendant i.e. that white salt has chemicals, white salt is bleached and white salt is made in a chemical factory, on the ground that the said statements are true. In an action of this nature, what is to be seen is the statutory rights of the Plaintiff, the dominant purpose of the impugned material, the effect of the same and the message sought to be conveyed. It would not be correct to carry out a dissection of each of the statements. The campaign has to be viewed as a whole, and it is to be ascertained whether the same is legally permissible or not. Though the submission of the Plaintiff that the hand waving gesture of 'bye-bye' in the first three commercials is an allusion to 'tata' is rather amusing, at the same time, it cannot be said that the same is wholly innocent.

51. Ld. counsels have made wide ranging submissions in respect of the chemical processes which are used by both the Plaintiff and the Defendant in the manufacture of salt, and the contents of the same. The Court is merely

looking at the advertising campaign as a whole and the message sought to be conveyed by it. Reference has also been made to the book *Salt of the Earth – The Story of TATA Chemicals*, which is stated to contain various facts about the manufacture of TATA salt.

52. The chemical analysis of the two competing products, the reports of scientific experts on the contents of the said products and the effect of the same, etc. will have to be thrashed out at the stage of trial.

53. The settled position in law is clear i.e. while puffery is permitted, disparagement and denigration is not. The parties have cited various judgments in support of their respective stands. In *Colgate Palmolive Company and Ors. v. Hindustan Unilever Ltd. 206 (2014) DLT 329*, a Division Bench of this Court, was concerned with an advertisement where the competing products were toothpastes. The Division Bench held that the claim of the Defendant that it has 130% germ attack capability was mere puffing. The Plaintiff had, however, contended that serious claims made in an advertising campaign cannot be considered as puffing and only humorous or hyperbolic claims can be considered as puffery. The Ld. Division Bench considered various tests, including the multi-meaning rule, and observed as under:

*“33. However, in the event, it is found that the intent itself is to convey the meaning which is disparaging then merely because an innocuous meaning is available, the action by an aggrieved party would not be frustrated. Thus, if a person wilfully and intentionally uses a disparaging expression and puts out an advertisement which can, plausibly, be construed as disparaging the goods and services of the other and the intention of putting out that advertisement is to seek benefit from making*

*disparaging statements against competitor's goods, it would hardly be just or fair to afford such party the defence that the advertisement could also, possibly, be construed in an innocuous manner which is not harmful."*

54. The Ld. Division Bench then, having reviewed the entire case law on the subject, further observed as under:

*"38. We do not think that there is any quarrel with the principles as enunciated in the above referred passage from the decision in Tesla Motors (supra). While determining as to how average men view an advertisement, it cannot be assumed that the average men tend to choose a derogatory meaning where other simple non-disparaging meanings are available. However, in cases where the advertisement presents an impression which any reasonable person could perceive as being derogatory or defamatory or disparaging, the goods/services of another person then certainly it would not be reasonable to discard that view only because certain other meanings are also possible. The aid to the multiple meaning rule must be taken only in such circumstances where two plausible meanings are possible and it is probable that certain viewers (readers) would adopt a view which is disparaging. In the present case, it is not necessary for us to delve into these contentions much further as, in our view, the facts of the present case do not suggest the dilemma of two divergent plausible views."*

55. After viewing the commercial, the Court held that some of the representations made in the advertising were misleading and inaccurate. The Court directed deletion of some portions of the commercial and also granted an injunction restraining print advertising. Prior to the judgment in *Colgate Palmolive*, in *Dabur India Ltd. v. M/s Colortek Meghalaya Pvt. Ltd. &*

*Ors. ILS (2010) IV Delhi 489*, it was held that while a statement can be made that one's goods are better than those of the other, it is impermissible or to slander the goods of the competitor or call them bad. Similarly, in *Hindustan Unilever Ltd. v Gujarat Co-operative Milk Marketing Federation Ltd. and Ors. Notice of Motion (L) No. 690/2017 in Suit (L) No. 204/2017, Decided on 16<sup>th</sup> June, 2017*, in a recent decision, the Bombay High Court held as under:

*“23. Any campaign to educate the members of the public by placing before them the true and correct facts/ingredients used in a product should always be welcomed. However, no manufacturer can place misleading information before the consumers qua the product of his rivals and thereby disparage/discredit/belittle such product including influencing the consumer not to buy the same in the garb of educating and/or bringing the correct facts before the members of the public, as is done in the present case by Defendant No.1. Apart from educating the consumers qua the difference in products by mentioning the correct facts and following the legal route, action can also be taken against the manufacturers of products, if they are found violating Section 53 of the FSSA, 2006 as alleged by the Defendant No.1. The aforesaid excuse /reason given by Defendant No.1 therefore lacks justification and is rejected.*

...

*32. At the cost of repetition I once again clarify that it is not only because of the words 'Vanaspati' and 'Vanaspati tel' being used in the impugned TVCs, that this Court has come to the conclusion that Defendant No. 1 is guilty of disparaging the entire category of Frozen desserts which includes the products manufactured by the Plaintiff under the said category, but the Court has reached the said conclusion after*

considering the content, intent, manner and storyline of the impugned TVCs, which seen as a whole convey a false, untruthful, malicious and negative message that frozen desserts contain vanaspati (which is perceived as unhealthy) are not pure, are inferior to ice creams, not meant to be given to children, is not the right choice and should not be purchased.

33. ... The intent of Defendant No. 1 was to disparage and also get an unjustified advantage by associating the ill effects of Vanaspati with all Frozen Desserts generally and to mislead and scare the consumers. The Defendant No. 1 first used the word Vanaspati instead of vegetable oil in the first impugned TVC with a misleading disclaimer, and thereafter when objected to by the Plaintiff changed the word Vanaspati to Vanaspati tel in an attempt to confuse the public and to also create a scare in them qua the Frozen Dessert product by retaining the word 'Vanaspati' and continuing with the depiction of vanaspati flowing into the cup of frozen dessert. It is necessary to go back to the Screen Shots G & H of the first impugned TVC and Screen Shots 7 and 8 of the second impugned TVC with the voice over, " Usse real milk wala Amul ice cream khilayein" "Vanaspati tel wala nahi"

56. The Court further observed that a person watching a commercial is not expected to sit with a dictionary. Finally, the Court held as under:

"49. ....As set out hereinabove, Defendant No. 1 has knowingly denigrated the entire category of Frozen Desserts thereby also affecting the Plaintiff who is a market leader of the products falling under the category of Frozen Desserts. The present case is also not in the nature of permissible comparative advertisements in the true, proper and fair sense. This is because Defendant No. 1 shows an ingredient going into Frozen Desserts, which ingredient most Frozen Desserts do not contain at all i.e. vanaspati. In particular, the Plaintiff's Frozen Dessert does not



*contain any Vanaspati. This cannot be comparative at all. Also, even in a permitted comparative advertisement the same corresponding feature of the product must be compared and not a totally different feature, as is done in the present case i.e. milk is compared with Vanaspati/Vanaspati Tel, instead of comparing the 'fat' used in both the products.”*

57. The Defendant on the other hand has relied on the judgment of a Division Bench of the Bombay High Court in ***Gujarat Cooperative Milk Marketing Federation Ltd. v. Hindustan Unilever Ltd and Ors., Appeal No. 340 of 2017 in Notice of Motion (L) No. 690 of 2017 in Suit (L) No. 204 of 2017*** wherein the injunction granted by the Ld. Single Judge was modified and restricted to some parts of the offending commercials. However, even the Ld. Division Bench did not upset all the findings of the Ld. Single Judge.

58. A perusal of the impugned material shows that the intention of the Defendant is not merely to promote its product as a better product, but to call white salt in general, and specifically TATA salt, dangerous, as it is made in a chemical factory and is bleached. It is even compared to poison. As shown by the Plaintiff, use of the anti-caking agent is permissible under the food laws. If a product is manufactured as per the prescribed regulations, terming the same as poison or dangerous or as the cause for several diseases is obviously with an intention not to just promote one's own product but to slander the other product. The clever manner in which the Defendant has completely disowned the viral video, which is completely beneficial only to its own business, clearly shows that the Defendant does not wish to own up to its own acts. A perusal of the video shows several commonalities between

the admitted material and the disputed video. The theme in all the impugned material is the same. It is very telling that the markings which appear in the book titled '*Salt of the Earth*' as shown in the video in fact appear in the extract of the book filed by the Defendant. In the booklet which the Defendant admits to have circulated, the packaging of the Plaintiff is shown in a blurred form. The conduct of the Defendant has been far from *bona fide*. This Court holds that on the basis of the material available on record, *prima facie* the video has been circulated either by the Defendant or at its behest. The impugned commercials have admittedly not been telecasted since September, 2018. The pamphlet and booklet which were part of the marketing pack was admitted to have been circulated by the Defendant but for limited circulation. Permitting the Defendant to continue, the telecast/publication of the impugned material would lead to allowing tarnishing and denigration of a product such as TATA salt which is a household name in India. The truthfulness or otherwise of the Defendant's allegations would have to be gone into during trial. But even if it is presumed that the product is made at the Mithapur plant, where one of the by-products of the manufacture of salt from the sea is soda ash, the depiction of the same in the manner in which it is done by the Defendant is wholly unacceptable.

59. The reference to the various minutes of ISMA and the meetings and members, etc. to show the Plaintiff's control over ISMA are also not liable to be gone into at this stage, as this Court has held that the Plaintiff has a separate and distinct cause to maintain the present suit. Moreover, ISMA is not a party to the present suit and the said issue of Plaintiff's control over the same cannot be decided in its absence.

60. The Plaintiff has filed an affidavit on record which categorically states that TATA salt is manufactured from water which is taken from the sea, though it undergoes the manufacturing and refining process. Though one of the by-products of this manufacturing process is soda ash, which is used in various chemicals, the same cannot be portrayed as being manufactured in a chemical factory.

61. It is the settled position that even use of a trademark is permissible in comparative advertising, so long as such use is not detrimental to the distinctive character or repute of the mark. The manner in which the TATA salt brand and TATA salt packaging is shown in the video, pamphlet/flyer and booklet and the message sought to be conveyed therein is clearly with an intention to bring disrepute to the brand which would be violative of the rights in the brand itself.

62. It is well settled that a cause of action arises not just when the competing product is referred to by name, packaging or other insignia, but even when a general statement is made against a class of products. This has been recognized in *Karamchand Appliances Pvt. Ltd. v Shri Adhikari Brothers and Ors. CS (OS) 1184/2004 (Decided on 23<sup>rd</sup> May, 2005)* and also the recent judgment of the Bombay High Court in *Gujarat Co-operative Milk Marketing Federation Ltd.* (supra). In *Karamchand Appliances*, the court held as under

*“There is merit even in the second limb of Mr. Jaitley's contention that what the advertisement denigrates and rubbishes is the very concept of a pluggy device like the one manufactured and marketed by the plaintiff. A disparagement even if generic would remain a disparagement and can be restrained at the instance of a party, who manufactures or trades in that class of goods*

*regardless whether the technology used is modern or obsolete. The defendant is indeed entitled to boast that its product is the latest in the market and even the best but it cannot describe either the technology or the concept used by any other manufacturer or trader in the manufacture or sale of his products as obsolete or worthless.”*

63. Advertising has to be viewed from the point of view of a lay customer. The protagonist in the television commercial is a well-known actor who is known to the viewing public. The impugned advertising material has been circulated widely. A common man cannot discern the difference between the salt being manufactured in a chemical factory and soda ash being a by-product in the process of manufacture of salt. Such nuanced differences cannot be communicated to the public and the chances of consumers being misled is very high. As it is oft-said “A picture is worth a thousand words”. The TATA brand has earned an iconic status. TATA Salt was introduced by the Plaintiff and was recognised by the Government as one of the products meant to eliminate iodine deficiency. It was promoted as “Desh ka Namak Tata Namak” and has a large customer base. The swathe of population which has consumed and continues to consume a product such as TATA salt cannot be led to believe that they were consuming poison or a dangerous ingredient, without there being irrefutable proof for the same. Upholding the Defendant’s right to make such statements would mean that the regulatory authorities have turned a blind eye to poison being sold, which is also clearly unacceptable. The truth, if any, of the Defendant’s statements has to be established in trial. Until then, the Defendant cannot be permitted to make such denigratory and disparaging remarks.

64. Accordingly, the Defendant is restrained from televising or publishing

any commercials or any other advertising or promotional material in the print or electronic form which would result in disparagement or denigration of the Plaintiff's product/brand – TATA salt including the impugned three television commercials or any modified forms thereof, the viral video, the pamphlet and the flyer as also the marketing booklet or any modified forms thereof. It is however clarified that the Defendant is entitled to promote its own product – Puro Healthy Salt as a salt which is natural and healthy.

**PRATHIBA M. SINGH  
JUDGE**

**MARCH 15, 2019**  
*Rahul*

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