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

*Date of decision: 31<sup>st</sup> October, 2022*

+ **CS(COMM) 484/2021**

SOTKON SP SLU

..... Plaintiff

Through: Ms. Shwetasree Majumder, Ms. Tanya Varma, Ms. Devyani Nath and Ms. Parkhi Rai, Advocates (M: 7007410620).

versus

WESTERN IMAGINARY TRANSCON PVT. LTD.  
& ORS.

..... Defendants

Through: Mr. J. Sai Deepak, Mr. Anshul Goel and Mr. Ranjeev Kumar, Advocates (M:9971892629).

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**I.A. 12415/2022 (u/O VI Rule 17 read with Order I Rule 10 CPC)**

2. Vide previous order dated 4th August, 2022, an e-mail was issued to the Gandhinagar Municipal Corporation (*hereinafter 'the Corporation'*) at [gmc8gandhinagar@gmail.com](mailto:gmc8gandhinagar@gmail.com). The report of the registry is that the e-mail has been served at the specified e-mail ID of the Corporation. However, none appears for the Corporation today.

3. Since none appears for the Corporation despite service and given that no reply has been filed to this application, the Corporation is hereby impleaded as Defendant No. 4 in the suit. Accordingly, let proper summons be issued to the Defendant No. 4. The amended plaint is taken on record along with the amended memo of parties.

4. *I.A. 12415/2022* is disposed of.

**I.A. 16453/2021 (u/O XXXIX Rule 2A, I.A. 16455/2021 (u/O XXXIX Rule 4, I.A. 13004/2021 (stay) and CS(COMM) 484/2021**

5. The present suit relates to the alleged infringement of the Plaintiff's rights in Indian Patent No. 329620 (*hereinafter 'suit patent'*), titled as '*Subsurface System for the Collection of Refuse*', which is claimed towards a waste management system. The suit patent was filed as a PCT application, bearing application number PCT/PT2008/000038 with an international filing date of 8th October, 2008. Thereafter, the suit patent entered national phase in India on 15th March, 2011 vide application number 1909/DELNP/2011, which was published on 16th December, 2011 and granted on 17<sup>th</sup> January, 2020. The scope of the system on which the Plaintiff enjoys exclusive rights is specified in the claims. The independent claims of the suit patent are extracted below:

*"1. A subsurface system for collection of refuse comprising various independent modules according to the type of refuse to be collected, consisting of a subsurface area, an underground bunker (4) and a container for collection of the refuse (3) by means of a crane (18), on the surface a post with an input bin (1) located at a height of around 90 cm and a cover (2) which opens up to 90 degrees supporting the paving by means to open and close the cover (2) and means to automatically hitch the automatic crane (18) of a collection truck (17) to the container (3) characterised in that it includes:*

*- safety devices comprising a moving element (33) which remains stowed against the wall of the bunker (4) when the container (3) is inside the bunker (4) and tips into the horizontal position when the container (3) is collected, covering the bunker (4) opening,*

- means to open and close the input bin (1),  
 - means to measure the volume of refuse in the container,  
 - means to measure the weight of a container,  
 - means to measure the weight of refuse deposited in the input bin (1),  
 - means for automatic hitching of the automatic crane (18) of the collection truck (17) to the container (3) equipped on each side with a single set of arms (22), which at their upper extremity are connected to the coupling system (21) located at the top of the crane (18), and at the lower extremity are connected to the base (19), which is articulated by means of hinges (20) and said set of arms (22) comprising a movable arm (25) located within a fixed arm (26) coupled to the body of the container (3) and both arms having at the top a groove (27 and 27') for coupling; said coupling system (21) connected to the arms of the crane (18) having a horizontal arm (23) able to rotate 360 degrees and two other vertical arms (24) which move vertically by means of fluid operated cylinders and each of the two vertical arms (24) of the coupling system (21) comprising an outer element (28) and an inner element (29) which in turn both possess at each extremity a grip (30 and 30') for coupling said coupling being effected by means of hitching of the lower element (29) to the grooves (27) on the movable arms (25) of the container and hitching of the outer element (28) to the grooves (27') of the fixed arm (26) of the container, thus enabling rigid and automatic lifting of the container to the emptying point by vertically moving the inner element (29) of the vertical arms (24) of the coupling system (21) by means of fluid-operated cylinders, and by pushing or pulling of the movable arm (25) on the container it is thus possible to open and close the base of the container in order to empty it of refuse and on each inner side a fixed arm (31) which



*at its upper extremity has a groove (32) enabling it to be hitched to the outer element (28) of the coupling system (21).”*

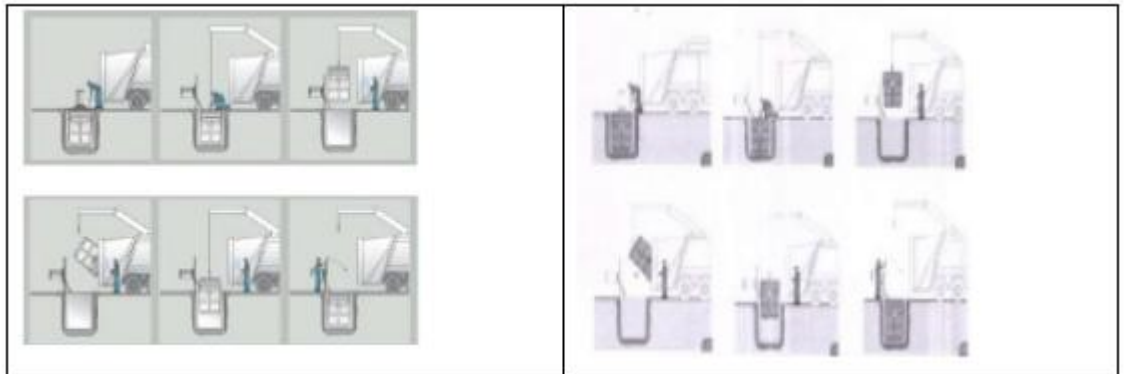
6. The Defendant No. 1, is engaged in providing waste management services. The Corporation issued an E-Tender Notice dated 3<sup>rd</sup> October, 2020 for *‘Detailed Engineering, Supply, Construction, Installation, Testing & Commissioning and Comprehensive Operations & Maintenance for 5 Years of the Smart Underground Bins for Collection and Storage of Solid Waste at Various Locations in Zones 1 and 2 of Gandhinagar City’*. In response, the Defendants submitted a bid on 2<sup>nd</sup> November 2020 along with the technical specifications. Subsequently, on 22<sup>nd</sup> December 2020, the Corporation issued a Letter of Intent to Defendant No. 1 notifying the acceptance of the bid with technical specifications. On 2<sup>nd</sup> February 2021, the Corporation issued a Notice to Proceed on Work Order to Defendant No. 1.

7. The case of the Plaintiff is that the said technical specifications submitted by the Defendants for underground bins are clearly infringing the Plaintiff’s rights in the suit patent. The Plaintiff avers that the suit patent has various novel and unique features which were recognised by the Indian Patent Office over which it enjoys exclusive rights. A perusal of the Defendant’s bid, shows that photographs from the Plaintiff’s brochure were used for showing the working of the products. The extent of imitation was such that even the Plaintiff’s trademark used in a different jurisdiction i.e., ‘ecozone’ was not changed by the Defendant while copying the photographs of the Plaintiff’s products. The present suit was thus filed seeking permanent injunction restraining infringement of the patent. Vide order dated 5<sup>th</sup>

October, 2021 an interim injunction order was passed in the following terms: -

*5. It is the case of the plaintiff that on analysis of the tender bid and the documents submitted by defendants, the plaintiff discovered that the defendants have misused the photographs of the plaintiff's products, drawings and illustrations from the plaintiff's brochure and also copied the technical specifications of the plaintiff's products which are being offered by defendants. It is pleaded that the said offer/proposed project is an infringement of the plaintiff's suit patent. A comparison of the photographs / illustrations accompanying the defendants tender bid and the plaintiff's original copyrighted work has been depicted in para 33 of the plaint as follows: -*

PLAINTIFF	DEFENDANT'S MISUSE
	
	



6. A comparison of the defendants' technical specifications and the plaintiff's suit patent has also been placed on record to show that the defendants have copied common elements of the plaintiff's suit patent. The same are reproduced in para 35 of the plaint.

7. The plaintiff has made out a prima facie case. Balance of convenience is in favour of the plaintiff.

8. **The defendants', their proprietors, partners etc. are restrained by an ex parte injunction from infringing the plaintiff's registered patent IN 329620. Defendants are also restrained from using the photographs, illustrations from the plaintiff's brochure and the technical specifications of the products that amount to infringement of plaintiff's copyright.**

8. An application under Order XXXIX Rule 2A CPC has been moved by the Plaintiff on the premise that despite the injunction order, the Defendants, are continuing to make supplies and install garbage bins across the Gandhinagar City. Ms. Majumdar, Id. Counsel relies upon the various photographs taken between 30th November, 2021 till 8th April, 2022 to show that at various locations, the same very infringing garbage bins have been installed and are in use at the moment. She submits that this is in gross

violation of the orders passed by this Court. Reliance is placed on the photographs to argue that the construction, working, shape etc of the bins are identical and hence action under Order XXXIX Rule 2A ought to be taken against the Defendants.

9. In response, the case of the Defendants is that the supplies made by the Defendants are not of the same bins which were referred to in the bid documents. The bins which were finally installed are different from that of the Plaintiffs. Hence, the Defendants claim that unless and until the Court comes to a conclusion that the bins installed violate or infringe the Plaintiff's patent rights, there is no contempt which has been committed.

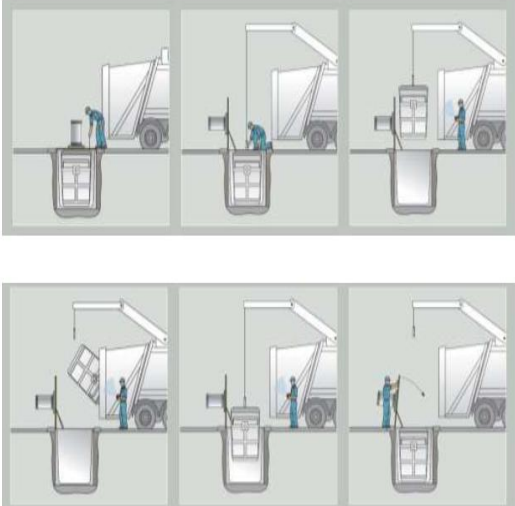
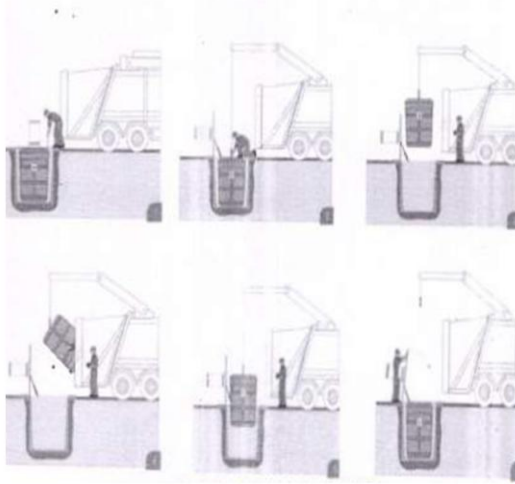
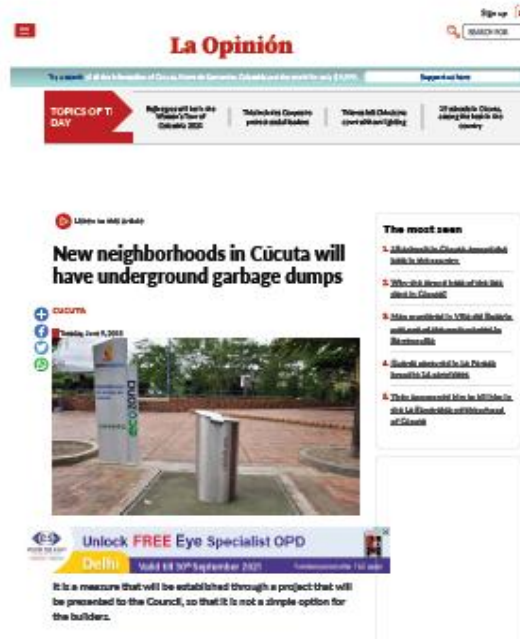

10. Reliance is placed upon certain submissions made by the Plaintiff in response to the FER to argue that some of the features in the Plaintiff's patent are not present in the Defendants' plaint.

11. Ld. counsel for the Defendants has been put the following queries: -

- i) Who is the manufacturer of these bins and where the manufacturing of the bins is undertaken?
- ii) Whether any other supplies have been made by the Defendants to any other entity in India of the bins in question?
- iii) Whether payments have been received from Gandhinagar Municipal Corporation?

12. In response to the above queries (i) and (ii), Ld. Counsel for Defendants seeks time to file proper affidavit along with photographs of the products as the counsel does not have instructions at this point of time. In so far as query no. (iii) is concerned, Ld. Counsel submits that a sum of Rs. 10 crores have been paid to the Defendants by the Corporation and only the continuous maintenance, fee etc. will now be paid in terms of the agreement.

13. Heard. The tender in question is a tender by a government agency. The bid documents leave no manner of doubt that the Plaintiff's photographs have been replicated/reproduced by the Defendants in response to the bid. The comparative photographs are extracted below:-

Plaintiff	Defendant
	
	





14. The above photographs of the Plaintiff which are extracted relate to different jurisdictions such as Colombia and Portugal where the Plaintiff's bins have been installed. The comparative photographs shows that the Defendants have unabashedly used the Plaintiff's product images to submit their bid to the Corporation. The photographs handed over today by Id.counsel for the Plaintiff also shows that the same very bins have been installed across the Gandhinagar city despite the injunction order.

15. Moreover, there can be no justification whatsoever for the Defendants to have portrayed themselves to be supplying bins of 'ecozona' which is clearly a mark of the Plaintiff.

16. Once these photographs have been submitted with the bid documents, at the *prima facie* stage, the clear conclusion would be that the Defendants' bins have the same working and arrangement as that of the Plaintiff's bins, as portrayed by them in their own bid documents. This in effect constitutes a

clear admission by the Defendants that there is no difference between the bins of the Plaintiff and the bins supplied by the Defendants.

17. The submissions being made today that though the bid documents have these photographs, the supplies made were of different bins, does not appeal to this Court. In response to a tender, once the bids are submitted to a Government Entity, it would not be permissible, barring exceptional situations, for the said entity to accept any other products than the once which have been put up in the bid by the bidder. Nothing has been shown to the Court that the bins supplied were different. A perusal of the No-Deviation Certificate submitted by the Defendants also clearly shows that there cannot be any deviation between what was offered and what was supplied by the Plaintiff. Thus, the submission that the bins are different is not tenable at this stage.

18. The Defendants have admittedly received a large amount of money from the Corporation. If the Defendant was of the opinion that the bins which were to be supplied to the Corporation were not infringing the patent of the Plaintiff, considering the manner in which the order dated 5<sup>th</sup> October, 2021 is worded, the Defendants ought to have moved an application seeking clarification before this Court for supplying bins to the Corporation, which they admitted did not do. Clearly, the Defendants are being clever by half today, by seeking to argue that the bins which have been actually supplied, do not infringe the Plaintiff's patent.

19. The interim order granted by this Court dated 5th October, 2022 clearly extracts the bid documents and photographs used by the Defendants and it is abundantly clear that the supplies being made by the Defendants to the Corporation would stand enjoined in view of the interim order. There

was no ambiguity at all in the said order. Thus, at this stage subject to anything further that the Defendants may produce, this Court is of the view that the Defendants are *prima facie* guilty of contempt. However, the Defendants are being given one last opportunity to file their affidavit and photographs subject to the condition that the Defendants deposit a sum of Rs. 2 crores with the Registrar General of this Court, within one month.

20. Further, if the Defendants intend to make any further supply of bins which are subject matter of this suit, to any other entity the Defendants shall move an appropriate application before making any such supplies.

21. List for further hearing on all pending applications on 13<sup>th</sup> January, 2023.

**OCTOBER 31, 2022**  
**MR/Am**

**PRATHIBA M. SINGH**  
**JUDGE**

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