

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

Dated 31<sup>st</sup> May, 2019

**Cyber Appeal No. 2 of 2014**

(With M.A. Nos. 439 of 2018 and 443 of 2018)

Dr. Rishi Dixit & Ors.

... Appellants

Versus

Ms. Preventive Life Care Pvt. Ltd.

... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON  
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Appellants

: Mr. Devesh Mohta, Advocate  
Mr. Kumar Mihir, Advocate

For Respondent

: Dr. Karnika Seth, Advocate  
Ms. Navya Singh, Advocate  
Mr. Clara James, Advocate

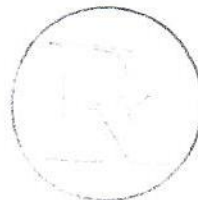
**Judgment**

**A. K. Bhargava** – Present appeal has been filed on 21-2-2014 praying for setting aside the impugned judgment and order dated 20-1-2014 passed by learned Adjudicating Officer (hereinafter referred to as AO). The respondent is a private limited company, named Preventive Life Care Pvt. Ltd, engaged in the business of providing diagnostic services related to genetic disorder for new born babies. The



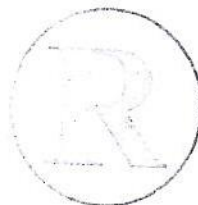
appellant no. 1 (hereinafter referred to as A-1), Dr. Rishi Dixit, was employed with the respondent as Senior Manager in the General Management from July 2010. He was in charge of the business development activities of the respondent and involved in meeting with doctors and hospital management across the country. A-1 resigned from the services of respondent in 2012. Appellant no. 2 (hereinafter referred to as A-2), Smt. Vrushali Joshi, was also employed with the respondent since 2007, working as Senior Research Associate having the job profile as division head of diagnostic services. While in the employment of respondent, A-2 was required to work on Shimadzu machines and to analyse the cases that would come for diagnosis of disorders. She resigned from the services of respondent in the month of September 2012. Appellant No. 3 (hereinafter referred to as A-3), named Navigene Genetic Science Pvt. Ltd, is a company engaged in the activities relating to genetic based diagnostic preventive health services looking into potential disorders of new borne babies. A-1 and A-2 are said to be promoters of A3 company since the date of its incorporation on 26<sup>th</sup> April 2012 and were working for A3 after resigning from respondent company.

2. In January 2013, the complainant filed a civil suit and criminal complaint against the appellants. In their complaint, respondent alleged that since January 2011, A-1 and A-2 without authorisation and having malafide intention,



dishonestly and secretly forwarded and stole some sensitive and confidential algorithm, formulas, process, client/ customer list, project, research paper, diagnostic procedure and other important information and data etc. from the computer network of the respondent. Using the said information to replicate the business model of the complainant company, by forming a company named M/s Navigene Genetic Science Pvt. Ltd. (A-3) and providing similar and identical services as that of the respondent, the appellants caused huge financial loss and damages to the respondent.

3. The complainant also filed a complaint before the learned Adjudicating Officer (AO) vide Complaint No. 17 of 2013. After detailed analysis on the basis of documents and arguments of the parties Learned AO, passed an order in this case on 20.1.2014. As per the orders, the appellants were asked to pay damages of Rs. 30 lakhs by way of compensation to the complainant within a month of the order. Aggrieved by this order, the appellants have filed an appeal under Section 57 of the Information Technology Act 2000 (hereinafter referred to as IT Act), praying that the order passed by learned AO be set aside and the complaint filed by the respondent company be dismissed with costs.





4. History and facts of the case have been noticed in the impugned order by learned AO and need not be repeated. However, we extract below the relevant analysis and conclusion of the learned AO, as contained in the para 6 and 7 of the impugned order:

*"6. My analysis of the documents before me, and the arguments made by various parties before me, is as follows:*

- I. It is clear that some employees of Complainant Company opened a rival company, while they were still serving in the complainant company. This was against the Agreement/Contract/Terms of employment. Some were also bound by non-compete clause and Non-Disclosure clauses. Also, there was clear clause in their contract of not doing any other income generating activities while they were in fulltime employment of the complainant company. In my view, that is clear disloyalty on part of the employees, but it does not come under purview of Information Technology Act.*
- II. Similarly, this adjudication forum is not going to the issue of copyright violations of any Pharma or Drug Discovery or Diagnostic procedures, processes, Research etc., and the issue of whether these can be patented or not. I will focus on Data Theft aspect only, covered under information Technology Act.*
- III. I have gone through the arguments by the respondents, and the website of NABL (National Accreditation Board for Testing and Collaborating Laboratories). It gives details about various Tests, Test methods, range of testing, limits of detection etc. However, it is clear from the documents before me, that the complainant company did lot of original Research and Development, creation of databases with control values etc., developed specialized software for Report generation etc., which goes much beyond knowledge or data tables available in public domain.*
- IV. The Respondents have repeatedly touched the point that complainants themselves were sending them official documents on their personal email addresses. In fact, in the additional documents they submitted to me, the Annexure 3 lists large number of instances, and what kind of official documents*

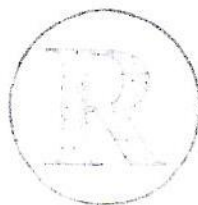


and data was sent to them on their personal emails. However, they have constantly dodged the question, whether their Report formats and processes of the company they set up are total copy of the complainant company.

V. It is clear that before they left the Complainant Company, the Respondents 1 and 2 copied many things on their emails or systems, and even did CUT and PASTE of official outlook email folders (the .PST file). The developer Mehul Shah, who developed the software of the complainant company while in fulltime employment with them, later on offered similar services to Rival company, i.e., Respondent No. 3. I have gone through the Report formats of Complainant and Rival companies very carefully. At most of the places, the Colors, Fonts, Sequence of Marker tests, abbreviations used, language of Notes etc. is verbatim copy. The spelling and grammatical mistakes are also copied. Further, it is not as if the Reports are being typed on Microsoft office etc. They are being generated by reporting Module of the software. It is very clear that the developer Mehul Shah stole the software of the Complainant, and later made cosmetic changes to it for the rival company.

VI. The NABL website and other material on the Internet mentions various Marker tests and testing techniques. However, the list of which 130 markers to use out of 250 odd markers available, their abbreviations, the Research and Development done for control value tables etc., this was developed by the Complainant at a huge cost. The Respondents may be brilliant scientists, but they were in fulltime employment of the Complainant, and any work they did there belongs to the company. The data, the source code of software is clearly the property of the company and not its employees. Developer Mehul Shah and the Respondents have stolen the data, and the source code, and then slightly modified it for their own use.

VII. The argument that because this data was sent by complainant to their personal emails, makes it their property, is ridiculous. Many software companies allow their employees to work from their homes, even on their personal machines. It does not mean that the data or the source code becomes the property of the employees. Any unauthorized copying, removal or use of data or confidential information or software source code belonging to another person or Company or organization is Data Theft. In Indian context, Section 43 of the IT Act, read with section 66 makes it clear that any unauthorized access or use of data is theft.





VIII. IT Act's Definition section 2(k) and 2(o) define "Computer resources" and "Data" respectively. Explanations (ii) and (v) of Section 43 also define "computer database" and "computer source code". The actions of respondents and developer Mehul Shah clearly attract these sections.

IX. I will not go into the details of whether Copyright Act is violated here. However, after reading of TRIPS and WIPO Agreements, and Copyright cases in various Indian courts, it seems settled position that a "Computer Program" is protected as literary work written, recorded or reduced in material form, provided sufficient effort or skill is expended by the author. In India, original databases are also protected under section 13(1)(a) of the Copyright Act. Drafts of agreements, client details etc., prepared by investing time, money and effort, are also protected. As per Section 3 of the UK Copyright Designs and Patents Act, literary work includes a table or compilation, a computer program, a preparatory design material for a computer program and a database. The UK law also creates a database right with a term of 15 years, where the right will subsist in database whether or not database or its contents form copyrighted work, if there is substantial investment, financial, human or technical resources. In United States, the courts have held that even Spread-sheets could be copyrighted matter provided that basic element of originality is established, that is, labour, skill, time and effort. In India, Section 63B of the Copyright Act deals with software piracy. Also, it is quite an established position across the world that in case of investments by a Company or Organization in the development of a database or a computer program, the copyright over the work created by the employees during the course of their employment, is with the Company, unless there is an Agreement to the contrary.

7. In view of the above, in my considered view:

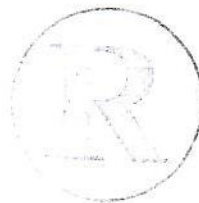
I. Due to reasons enumerated in the detailed Analysis given above, I hold all three Respondents guilty of Data theft, under Section 43(b) of the IT Act, read with sections 43(i), 43(j), and 66 of the said Act. Developer Mehul Shah is equally guilty of this, but he has not been made a party in this case.

II. Complainant has asked for damages of Rupees 2 crores. From their balance sheet, it seems they have annual profits of about Rupees 20 lacs. They have not quantified their loss in detail. Also, they have not given detailed expenditure of Research and Development, though they have indicated a broad figure of Rupees 1.5 crores. Relying on section 47 of the IT Act regarding factors to be taken into



*account by the Adjudication Officer while adjudging the quantum of the compensation, I assess that loss of one third annual income for about 5 years would be a fair metric for awarding damages. Hence I order Respondent No. 3, which is the company reaping the profits from stolen goods, to pay damages of Rupees 30,00,000 (Rupees Thirty Lacs only) by way of compensation to the Complainant, within a month of this order, failing which compound interest of 12 percent compounded monthly will also be chargeable."*

5. Both the parties operate in the same field and it seems that they have some disputes related to service agreements and copyright violations. Learned AO has rightly noted that such issues and disputes are not within the ambit of Information Technology Act. At the outset we also make it clear that, such issues and disputes not being within the jurisdiction, are not being addressed and if needed, parties may seek relief from appropriate forum in accordance with law. The main issue involved here is that of data theft. The dispute on data theft is specific to broadly two allegations that (i) the appellants have stolen, copied or misused the proprietary software developed by the respondent for generating diagnostic reports (ii) the appellants have copied the sensitive and confidential data of the respondent company without any authority and used it to further appellant's business interest. Learned AO has held the appellants guilty on both these counts for the reasons listed in his analysis as extracted in Para above. We shall primarily examine these two issues.





6. Learned AO has held all the three appellants guilty of data theft under Section 43(b) of the IT Act, read with sections 43(i), 43(j), and 66 of the IT Act. The relevant sections of the Act are extracted below -

*"43. [Penalty and compensation] for damage to computer, computer system, etc.—If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,— .....*

*(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium; .....*

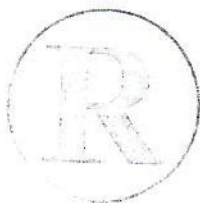
*(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;*

*(j) steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;*

*Explanation.—For the purposes of this section, .....*

*(ii) —'computer data-base' means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;*

*(iv) —'damage' means to destroy, alter, delete, add, modify or rearrange any computer resource by any means.*





(v) —'computer source code' means the listing of programme, computer commands, design and layout and programme analysis of computer resource in any form."

.....

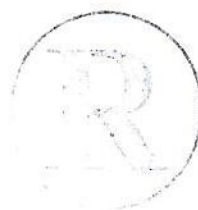
"66. Computer related offences – If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Explanation.—For the purposes of this section,—

(a) the word —"dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);

(b) the word —"fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860).

7. At the heart of the operations of both the competing companies is the Gas Chromatography – Mass Spectrometry Machine (GCMS). Both use the GCMS machine supplied by a Japanese company "Shimadzu" to diagnose metabolic disorders. We are informed that this machine has capability to identify a large number of metabolites from the sample urine. It also comes with a bundled manufacturer's software that enables the user of the machine to configure and customize the machine for analysis of the sample as per requirement and can be set up to give data output in a file which can then be further processed. Once the parameters are configured in the machine using the manufacturer's software, it gives an output which tells what all substances are present in the sample and the quantity of that substance present. Using this data, diagnostic report is generated in respect of the sample, in a format which can be



understood and used by the doctors. Respondent's case is that the reports cannot be generated by the Shimadzu machine and that they have developed proprietary software which automates and generates such report. In order to explain this, Learned counsel for the respondent Dr. Karnika Seth submits an e-mail exchange with Advisor Shimadzu Analytical India Pvt. Ltd. Relevant part of the mail are extracted here

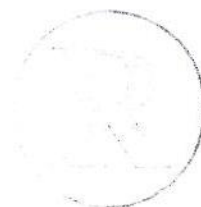
*"Will any model of Shimadzu GCMS have in built software which can give us a ready analysis in the form and format of our enclosed report? As you will observe, our reports have markers & disorders linkages and also graphical representation of risks for a wide class of disorders.*

*As you are aware that we follow the Dr. Yamaguchi's workflow of analysis. That has its own calculation algorithm and can identify 30+ disorders automatically. Also, the enclosed report of PreventiNe is different from the report generated by Shimadzu GCMS. The software from Shimadzu does not give any identification of a disorder or a graphical representation other than chromatogram. PreventiNe can take the values (area/height or area percent) from GCMS as input and use its own software to generate this kind of report as per the need of doctors.*

*If the above is not possible, then what is the best format of reporting possible from any high end GCMS with its in-built analysis software. Please share any format if you have or you may just confirm if the enclosed system generated report from Shimadzu is all that can be gained.*

*We have Multi Data Report(MDR) software which has excel based calculation report. We can modify to some extent as per the calculation formula. Kindly note that it is not diagnostic specific tool but can be customised as per the requirements. We can provide more details if required."*

According to Dr. Karnika Seth, this shows that Shimadzu machine cannot generate the report and it is the Preventine's software that generates the specific reports. She also cites a paper accepted on 20-10-2016 from journal homepage [www.elsevier.com](http://www.elsevier.com) which states that "Moreover, the computerized algorithm simplified the interpretation of samples with typical metabolic pattern of IEM and reduced the manual



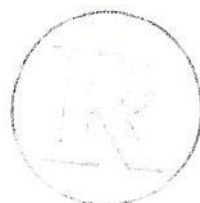


*work of expert biochemists. With such an analytical method, we could analyse 70 samples in a day using one instrument and have the potential to analyse about 21,000 samples/year/machine, based on 300 working days in a year."* According to Dr. Karnika Seth, it shows the research and development effort put in by the respondent company and that automation of the process required their proprietary software. On the other hand, Mr. Devesh Mohta, learned counsel for the appellants, submits that the configuration and customization of the GCMS machine requires only the domain knowledge (which A-2 possessed) and is not dependent on the respondent's software. Such domain knowledge is also not specific or exclusive to the respondent. Once configured, the machine would give an output in the form of a peak chart chromatogram identifying substances found in the urine sample, along with some numerical values (a sample of such chromatogram output is given at Annexure-R3). Mr. Mohta submits that the appellant company does not use an automated process. Instead, it manually populates the Excel sheet from GCMS output and uses Excel tools (macros) to generate the reports. Excel macros are not complex programs and can be developed by any IT professional having some IT knowledge and the relevant inputs from the domain expert. Developing and using such macros would not amount to theft of data and software, merely on the basis of averments that the respondent had invested huge amount of time, effort and money in developing such macros first. On examining these



submissions, we find that the reports in question are reproducible. Automating the reports would improve the productivity but it does not mean that the reports cannot be produced with part manual process as stated by the appellant. The macros are Microsoft Excel tools and can be written by person(s) having Microsoft excel tool's knowledge and domain knowledge to generate the desired reports from data in excel sheet. We are therefore not impressed by the respondent's arguments that such reports can be generated only by Preventine proprietary software.

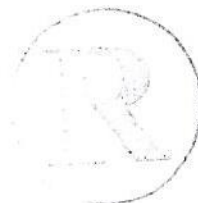
8. Dr. Karnika Seth further submits that the reports produced by the Appellant are same with similar look and feel and therefore it goes to show that they have been produced using their software. In support, she points out the reports of A-3 which contain the same metabolites with same abbreviations in same order and the disclaimer which is verbatim same. Mr. Mohta counters this by partly pointing out the dis-similarities and partly by explaining the similarities. According to him, the markers and abbreviations are provided in public domain on the NABL website and the same appear in their report. Further, the alleged spelling mistakes in the reports found to be common in both of them and therefore held to be copies of each other, are not spelling mistakes but are the standardized abbreviations of the markers (e.g. Oxlate for Oxalic acid, Homogenstate for Homogenistic Acid, Phe for Phenalalnine etc.) as provided in





the MILS report published and used by A-2. Order of listing of markers appears to be same because they are listed alphabetically. Disclosure language is same because the author is same. These facts of similarities also account for look and feel of the report being the same. The explanations offered by learned counsel for the appellants for similarities appear to be plausible based on documents or facts. We are therefore not persuaded that similarities in the reports here lead to the inference of data theft.

9. Mr Mohta also points out dis-similarities in the report, some of which are (i) first page is entirely different (ii) Appellant's report does not have charts which is a characteristic part of respondent's report (iii) A-3's report has 133 markers as against 130 of the respondent, covers 110 disorders as against 101 of the respondent and list/names of several disorders covered are different. (iv) there are several spelling errors/differences in the appellant's report which are not present thereby showing that the appellant's reports are hand typed in MS word and not made using respondent's software. (v) control values of the markers are absolutely different for each of the 133+ markers in both the reports. On examination, we find these differences significant for the purpose of report generation. An output obtained by using stolen software cannot account for such dis-similarities. Therefore, on consideration of these points, we find that on the basis of appellant's reports, it cannot be inferred or concluded that the



appellants are using the stolen software for generating these reports, thereby attracting section 43 of the IT Act.

10. Dr. Karnika Seth at this stage submits that respondent's software was stolen and then slightly modified to generate the reports. She maintains that A-1, A-2 and A-3 were together in a conspiracy for dishonest gain through stealing of software, and are thus liable under section 43 read with section 66. In this connection, she also brings to our notice the conclusion of learned AO that one Mehul Shah, who is an IT developer, has stolen the software from respondent and used it with minor modification for generation of diagnostic reports at the behest of A-3 and that he is equally guilty under section 43. On the other hand, learned counsel for the appellants, Mr. Mohta, points out learned AO's observation that since Mehul Shah is not a party mentioned in the complaint, he has not been proceeded against. He also submits that neither the association nor the responsibility of A-3 for the acts of Mehul Shah is established. In any case, since Mehul Shah is not a party and has not been charged with violation of section 43, A-3 cannot be charged with the same. He also submits that no specific software has been listed that was stolen by A-1, A-2 or that it was modified by A-1, A-2 is also nowhere substantiated. Therefore, any charge that A-1 and A-2 stole and





modified the proprietary software to help generate reports for A-3 is based only on assumption and conjecture. In facts of the case, we do not find that on this count, there is sufficient reason made out for holding appellants guilty of violation of section 43 (b) read with section 43(i), 43(j) and 66 of the IT Act.

**11.** In view of the discussion in Para 7, 8, 9 and 10, we are of the considered view that first allegation that the appellants have stolen, copied or misused the proprietary software developed by the respondent for generating diagnostic reports is not sustained against the appellants.

**12.** Learned counsel for the respondent, Dr. Seth, brings to our notice conduct of the appellants. She submits that A-3 company Navigene was incorporated on 30-4-2012 with A-1 and A-2 as promoters of this company. Thus, while A-1 and A-2 were still employed with the respondent company, they were promoting parallel and competing business company. To run a competing business, appellants illegally transferred some of the sensitive and confidential information, including analysis reports, parameters, data values and other sensitive data of the respondent company in their individual email accounts and storage devices while they were still working for respondent. Respondent collected proof of data theft from the data recovered from the hard disk of the computer system used by A-1 and A-2. From the data recovered, it was found that



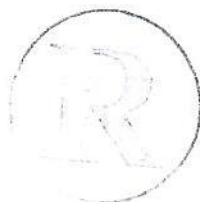
the appellants had without authorization sent confidential information, interalia, master client data, reports of life cell and data base of hospitals through several emails to their personal email ids dr.rishidixit@gmail.com and svrushalij@gmail.com and later deleted this .pst file folder from its computer system. The key issue here is to examine whether there was "unauthorized" access, transfer, possession and use of respondent's data by the appellants.

13. Learned counsel for the respondent Dr. Karnika Seth submits that A-1 was bound by the terms of the appointment letter issued to A-1 and the clauses related to data authorization and confidentiality show that A-1 transferred and used such data in unauthorized manner. The clauses relied upon by Dr. Seth are extracted below -

*"....11. You will not at any time without the consent in writing of the company during the term of your service with the company or after the termination of service by notice, discharge or otherwise, make known or divulge in any manner whatsoever any information which, while in the service of the company you have acquired as secret information concerning the technical processes, patents, transactions, finances or affairs of the company. In addition, you shall be bound by the decision of the company in regard to publications written or otherwise, of any work with which you may be associated. It is however, mutually agreed that this undertaking shall in no way affect your right to make use of the general knowledge and skill, which you have acquired in the service of the company.*

.....

14. Upon leaving the employment of the company, you shall not take with you any properties, formulae, drawing, blue print or other reproduction or any other data, tables, calculations, letters or other documents of any other writing or copy of writing of any nature whatsoever





*pertaining to the business of the company. You shall not also retain any copies or reproduction of any documents in physical, electronic or any format relating to the affairs of the company.*

.....

16. *On ceasing to be in the employment of the company you shall return forthwith all the properties of the company that are entrusted at the time of employment and / or during the course of employment with the company."*

14. Dr. Karnika Seth submits that A-1 (i) copied sensitive data unauthorizedly during the term of employment (ii) continued to retain this data after the employment (iii) shared this data with the rival company during and after the term of employment (iv) actively used this data to promote the interest of the rival company A-3 during and after the term of employment. She substantiates these charges by showing transfer/copying of confidential and sensitive data like master data of hospitals, business proposals, pricing, patient reports etc., by way of certain e-mails from official Id to personal Id of A-1. She also shows that A-1 has retained the e-mails and used them even after the term of employment. She also points out that such copied data has been used by A-1 in furthering the business interest of A-3. In this regard, she shows a proposal titled "Genetic Screening and Diagnostic Services for Patankar hospital Pune" prepared by A-1 for A-3, which is a verbatim/substantial copy of the proposal of respondent and titled "Preventine Life Care New Born Genetic Screening for Morpheus ART fertility Centre". Content of the cover letter is a verbatim copy. Learned counsel for the



appellants Mr. Mohta submits in defence that there was no written policy that no official communication can be made on personal mail-id and the clauses cited in the appointment letter also do not bar such communications. In support of his contention, he cites e-mail correspondence by some officials of the respondent to the appellant involving personal mail IDs. He also explains that many times data was sent on personal ID as well for convenience and ease of working. He further defends that verbatim copy in a business proposal happens to be on account of the fact that the author is same. He admits to the retention of e-mails even after the term of employment but submits that mere retention of e-mail in the in-box does not amount to data theft. Despite these explanations, we find A-1 to be on sticky wicket on this ground. Even if A-1 came to be in possession of such sensitive and confidential data as part of conducting his duty, such possession would be valid only during the term of his employment and for the use and benefit of his employer only. By transfer, such data does not become his property and on ceasing the employment, appellant was bound to return or delete such data so as to dispossess himself of such data. A-1 has not only failed to do so, he has actively used this data to further the business interest of A-3 and such act is certainly without the permission of the respondent. Thus, we find that A-1 has without permission accessed or extracted data or information of the respondent and used





it for the benefit of A-3 and to the detriment of interest of the respondent. A-1 being a promoter of the company A-3 since inception (even when A-1 was in the employ of the respondent), the acts and interest of A-1 and A-3 are indistinguishable. Accordingly, A-1 and A-3 are held to be in violation of section 43 (b) read with (i) and (j).

**15.** Similar allegations have been made against appellant 2 also. Dr. Seth relies upon the "Employment, confidential information and invention assignment Agreement", particularly on clauses 2, 4, 5 and 9 which are as follows

*"2. Confidential Information*

*a. Company Information-*

*i. The company agrees that upon the commencement of my employment, it will make available to me that confidential information of the company that will enable me to optimise the performance of my duties to the company. In exchange, I agree to you such confidential information solely for the company's benefit. Notwithstanding the preceding sentence, I agree that upon the termination of my employment in accordance with section 1, the company shall, have no obligation to provide or otherwise make available to me any of its confidential information. I understand that "confidential information" means any company proprietary information, technical data, trade secrets, know-how, including but not limited to research, product plans, products, services, customer lists and customers (including, but not limited to, customers of the company on whom I called or with whom I became acquainted during the term of my employment), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finance or other business information disclosed to me by the company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment. I further*



understand that confidential information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act or omission of mine or of others who were under confidentiality, obligations as to the item or items involved or improvements or new versions thereof.

ii. I agree at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use, except for the exclusive benefit of the company or to disclose to any person, firm or corporation without written authorization of the Board of Directors of the company, any confidential information of the company.

.....

4. *Conflicting Employment-* I agree that, during the term of employment with the company, I will devote my full time and efforts to the company and I will not engage in any other employment, occupation or consulting activity, nor will I engage in any other activities that conflict with my obligations to the company.

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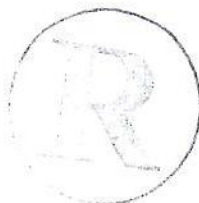
5. *Returning company documents etc.-* I agree that, at the time of leaving the employment of the company, I will deliver to the company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to my employment with the company or otherwise belonging to the company, its successors or assigns, including, but not limited to, those records maintained pursuant to paragraph 3(c). In the event of the termination of my employment, I agree to sign and deliver the "Termination Certificate" attached hereto as Exhibit C.

.....

6. *Notification of New Employer.* In the event that I leave the employ of the company, I hereby grant consent to notification by the Company to my new employer about my rights and obligations under this Agreement.

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9. *Covenant not to compete:*

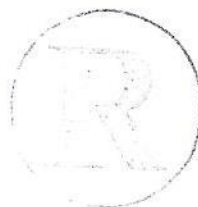




a. I agree that during the course of my employment, I will not, without the prior consent of the company, (i) serve as a partner, employee, consultant, officer, director, manager, agent, associate, investor, or otherwise for, (ii) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (iii) build, design, finance, acquire, lease, operate, manage, invest in, work or consult for or otherwise affiliate myself with, any business in competition with or otherwise similar to company's business. The foregoing covenant shall cover my activities in every part of the territory in which I may conduct business during the term of such covenant as set forth above. "Territory shall mean (i) State of Maharashtra (ii) all other states & Union Territories of the Republic of India and (iii) all other countries of the world.

b. I acknowledge that I will derive significant value from the company's agreement in Section 2 (a)(i) to provide me with that confidential information of the company to enable me to optimize the performance of my duties to the company. I further agree that for a period of six (6) months immediately following the termination of my relationship with the company for any reason, whether with or without good cause or for any or no cause, at the option either of the company or myself, with or without notice, I will not, without the prior written consent of the company, disclose nor use the company's confidential information other than for company's exclusive benefit and my obligation not to compete contained in subsection (a) above, is necessary to protect the company's confidential information and, consequently, to preserve the value and goodwill of the company. I further acknowledge the time limitations of my obligations mentioned above are reasonable, especially in the light of the company's desire to protect its confidential information, and that I will not be precluded from gainful employment if I am obligated not to compete with the company during the period and within the Territory as described above in section (a).

**16.** The agreement clause 2 entitles A-2 to possess sensitive information in course of performing her duty and also puts obligation to maintain confidentiality of information shared by respondent. Allegation is that code of conduct clause 9



does not allow use or sharing of Preventine data for non-business purposes and that obligation to maintain strict confidentiality means official data cannot be transferred to personal mail id without written consent. This agreement has been signed by A-2 on 28-6-2012. Post signing of this agreement, unlike the case of A-1, there is no evidence of "unauthorized" data transfer by e-mail by A-2 and later using it for the benefit of A-3. Of course, there is specific charge that A-2 was promoter of the A-3 company incorporated on 30-4-2012 and thus violated the employment agreement. In such a situation, respondent is entitled to take action, if any, in accordance with law. However, as stated earlier, this charge alone will not attract section 43 of the IT Act. There is also the allegation that A-2 has used the research work, data and information acquired while in the employ of the respondent for generating diagnostic reports for the benefit of A-3. We have already discussed the issue of diagnostic reports. We note that A-2 may have used the domain knowledge and assisted in generating the diagnostic report. However, we need to distinguish knowledge from data. Section 43 of IT Act does not bar use of domain knowledge but prohibits copy, download or extraction of data, database or information in unauthorized manner. Other than general allegation and inference, no such convincing evidence has been produced qua A-2 so as to

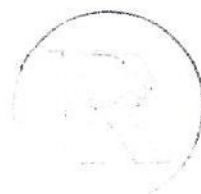




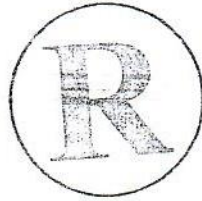
attract section 43. We therefore find that the charge of violation of section 43 of the IT Act qua appellant 2 is not sustainable.

**17.** After holding A1, A-2 and A3 guilty, learned AO has estimated a composite amount of Rs. 30 Lacs by which the respondent is to be compensated for all the violations under IT act. He has spelt out the method adopted by him in arriving this figure and has given a rationale for the same. In view of this, we rely on his estimate. However, we have found only one out of the two charges sustainable under the IT Act. Instead of all the appellants, we have also found that only A-1 and A-3 are liable for violation of section 43 (b) read with 43 (i) and 43(j). In facts of the case, we therefore hold that a compensation of Rs. 15 Lacs will be just and fair. Learned AO has also granted compound interest of 12% in case amount is not paid within one month of the impugned order. We have been generally allowing a simple interest of 8% in most of the cases before us. Though such cases may not be similar, we intend to follow the practice in this case as well.

**18.** Accordingly, we direct Appellant-1 and Appellant-3 to jointly pay a composite compensation of Rs. 15,00,000 (Fifteen Lacs) by way of compensation to the respondent along with a simple interest of 8% from the date of the



impugned order i.e. 20-1-2014 till the date of payment. The appeal succeeds to this limited extent. No order as to costs



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**(S. K. Singh, J)**  
**Chairperson**

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**(A.K. Bhargava)**  
**Member**