

LAWCHAKRA.IN

M/S BADA BUSINESS PVT. LTD. & ANR. VS SANDEEP MAHESH-WARI & ANR.

CNR No: HRFB02005709-2023

CIS No: C S/3874/2023

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**IN THE COURT OF GAGANDEEP GOYAL, CIVIL JUDGE
(JR. DIVISION), FARIDABAD.**

Present: Sh. Vineet M Bajaj, Yash Singhal, Aditya Vardhan and Karan Bansal Advocates for applicant/plaintiffs No.1 & 2
Ms. Mumtaz Bhalla & Sh. Atul Mangla, Advocates for defendant No.1
Ms. Pragya Jain, Advocate for defendant No.4
Sh. Jitender Datta Parashar, Advocate for defendant No.2

APPLICATION UNDER ORDER 39 RULES 1 & 2 READ WITH SECTION 151 CPC

ORDER:

1- By this order I shall dispose of an application under Order 39 Rules 1 & 2 read with Section 151 of CPC moved by the plaintiff.

2- Learned counsel for the applicant/plaintiff submitted that plaintiff No.2 Mr. Vivek Bindra CEO of plaintiff No.1 M/s Bada Business Pvt. Ltd. is a renowned youtuber and is recipient of many awards on National as well as World level. He is a person of unimpeachable character. There is neither any complaint nor any inquiry pending against him. Even no authority has issued any statutory notice to him. Defendant No.1 Sandeep Maheshwari is also a youtuber. He also does similar business that of plaintiff No.2. He has started a smear campaign against plaintiff in order to malign his reputation so that defendant No.1 may allure the clientage of

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plaintiffs. Defendants No.2 & 3 are the clients of the plaintiffs. Defendant No.1 without explicitly taking names of plaintiffs orchestrated a tutored video of defendants No.2 & 3 and uploaded an incomplete video of the session on 11.12.2023 on his youtube channel. He titled the video as **BIG SCAM EXPOSED** and also depicted a man suited in red Tye in complete resemblance to the business mark of the plaintiffs. Thereafter, in a community post dated 13.12.2023, defendant No.1 explicitly admitted that the contents of the video were related to plaintiffs only. The video dated 11.12.2023 has spread on social media like fire and approximately 75 Lakhs people has already seen such video. Plaintiffs have been suffering huge loss of revenue due to such video. Such video is continuously causing loss to the reputation and esteem of the plaintiffs. Plaintiffs cannot be allowed to disseminate such videos in order to satisfy his hidden agendas and motives. He also put community post wherein he straightway hold the plaintiffs guilty of indulging in a scam. Thereafter, he deleted his community post dated 16.12.2023 without making any clarification of the same. Defendant No.1 is not an authority to hold him guilty of any fraud or scam. If any of the client of plaintiffs is not satisfied with the service of plaintiff, he may go to consumer forum or he can make a police complaint but defendant No.1 has no right to upload any defamatory content against plaintiff in order to tarnish

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his image. If the video dated 11.12.2023 is not ordered to be deleted, the plaintiff would be finished at the time of final disposal of the suit. Even, if suit of plaintiff is finally decreed by this court, then he would have nothing to loose at that time. The loss being caused to plaintiff by such video cannot be compensated in the terms of money. There are various authorities of Hon'ble High Court observing that statements causing injury to the reputation of plaintiff are required to be deleted as it is difficult to contemplate the complete restitution through damages. To support his arguments, learned counsel for the plaintiffs placed reliance upon following judgments:- ***“Vinai Kumar Saxena Vs. Aam Aadmi Party and Others”*** 2022 SCC OnLine Del 3093 (Delhi High Court), ***“Naresh Kumar Vs. Wire and Others”*** 2023 SCC OnLine Del 7314 (Delhi High Court), ***“Convergytics Solutions Pvt. Ltd. and Others Vs. Randhir Hebbar and Others”*** 2021 SCC OnLine Del 4811 : (2022) 286 DLT 51 (Delhi High Court) and ***“HEWLETT PACKARD INDIA SALES PRIVATE LIMITED VS. COMMISSIONER OF CUSTOMS (IMPORT), NAVA SHEVA”*** With ***“LENEVO (INDIA) PRIVATE LIMITED VS COMMISSIONER OF CUSTOMS (IMPORT), NAVA SHEVA”*** (2023 7 Supreme Court Cases 799 : 2023 SCC OnLine SC 31

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With such submission, he requested to grant temporary injunction restraining the defendant No.1 from uploading any defamatory remark/content on social media against the plaintiff and for interim mandatory injunction seeking direction to delete/take down the video dated 11.12.2023 and community post dated 12.12.2023, 13.12.2023, 15.12.2023 and 16.12.2023.

3. Per contra, learned counsel for the defendant No.1 submitted that defendant No.1 Mr. Sandeep Maheshwari does not do any business alike to the plaintiff. Therefore, he needs not to disseminate or publish any video or post for any business gain. The content of video dated 11.12.2023 is not defamatory at all. Even the name of Mr. Vivek Bindra has not been used once in a video. Defendant No.1 uploaded video of a session on 11.12.2020 without naming any person. They only discussed about business model of a youtuber. It is plaintiff No.2, who related the video to himself and sent goons to the office of defendant No.1 to intimidate him. Thereafter defendant No.1 wrote a community post to Mr. Vivek Bindra, but he did not make any defamatory remark for him. She further submitted that plaintiff No.2 is not of an unimpeachable character. He is actually defrauding the youngsters in pretext of selling product/course. Plaintiff allures the young unemployed persons to buy his course to learn the techniques of becoming rich, but he does not provide any business course to them. When their students/clients

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ask for refund of their money then plaintiff ask them to resell such course to 3-4 other persons so as to get reimbursed of their money in the form of commission.

4- Learned counsel for the defendant No.1 has drawn attention of this court over transcription of video dated 11.12.2023 wherein no defamatory remarks has been made against any person. She has also drawn attention of this court over many posts made by various persons over Quora.com wherein people have straightway said that plaintiff company has been befooling the young unemployed persons. She further submitted that after uploading of such video, defendant No.1 has received approximately 7500 emails from the disgruntled clients of plaintiff who have been defrauded and befooled by the plaintiff company. Defendant No.1 being a public spirited person is only providing a platform to all such persons who fell pray to the business schemes of plaintiff. Defendant No.1 has not published anything wrong or false. Any imputation of truth made for public good is best defence to defamation. Social Media is replete with posts and comments made by the students and clients of plaintiffs who found themselves defrauded by the business schemes of plaintiffs. Mr. Maheshwari Piri founder of carrier 360 also made a video against plaintiff No.2 titled as “*Lakho Bachho Ke Sath Cheating*”. Plaintiff has not produced any material

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to falsify such allegations. Therefore, freedom of speech and expression guaranteed by Indian Constitution cannot be fettered on the basis of this false and frivolous suit filed by plaintiff.

5- She further submitted that relief clause of both the plaint as well as the application for stay is same. Plaintiff has been seeking direction to defendant No.1 to delete the video dated 11.12.2023 in the form of interim mandatory injunction. If this court grants the interim mandatory injunction to delete such video, it would tantamount to decreeing the suit before carrying out any trial. Interim mandatory injunction can only be granted if there is a strong *prima facie* case in favour of plaintiff, whereas, there is no base of the case of plaintiff as the video dated 11.12.2023 does not disclose the identity of the plaintiff. Defendants No.2 & 3 came to the show of defendant No.1 and they discussed about business model of plaintiff in such session. Defendant No.1 without mentioning the name of plaintiff uploaded such video on his youtube channel. It is only plaintiff who sent his goons to the office of defendant No.1 to intimidate him. Such video does not depict anything wrong or false against any person. She further submitted that even All India Council for Technical Education, a Government Department has also issued an advisory against fake MBA Programme being run by plaintiff. Plaintiff has been providing a 10 days MBA Course to young unemployed

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person. Vide public notice dated 28.12.2023, the Government has advised the students/stake-holders to be cautious of such misleading programme and not to fall prey to such fraudulent offers. She further submitted that this court has no jurisdiction to try the civil suit. As per Section 20 of Civil Procedural Court a civil suit can be filed where defendant resides or where wrong is committed. In the case in hand, defendant is resident of Delhi. The video in question was prepared in Delhi. The same was uploaded on youtube channel of defendant No.1 in Delhi. Plaintiff has filed this suit in the Civil Court, Faridabad only on the ground that he is resident of Faridabad and he saw such video in Faridabad. He has nowhere stated that such video has caused any harm to his reputation in Faridabad. He has not even pleaded that he hold any reputation in Faridabad. Therefore, this court has no jurisdiction to entertain the suit. Learned counsel for the defendants relied upon the following judgments:- ***“Ajay Pal Sharma Vs. Udaiveer Singh” decided on 28 July, 2020 (Delhi High Court), “Tata Sons Limited Vs. Greenpeace International & Anr.” 2011 SCC OnLine Del 466 : (2011) 178 DLT 705 : (2011) 45 PTC 275 (Delhi High Court, “Deoraj Vs State of Maharashtra & Others” (2004) Supreme Court Cases 697 : 2004 SCC OnLine SC 442, “Samir Narain Bhojwani Vs. Aurora Properties & Investments & Anr.” (2018) 17 Supreme Court Cases 203, “Dorab Cawasji Warden Vs.***

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Coomi Sorab Warden & Others” (1990) 2 Supreme Court Cases 117, “*Ram Jethmalani Vs. Subramaniam Swamy*” 2006 (87) DRJ 603 (High Court of Delhi), “*Dr. Subramaniam Swamy Vs. Ramakrishna Hegde*” (1990) 1 Supreme Court Cases 4, “*Banyan Tree Holding (P) Limited Vs. A. Murali Krishna Reddy & Anr.*” 2009 SCC OnLine Del 3780 : (2010) 42 PTC 361 (Delhi High Court), “*Escorts Limited Vs. Tejpal Singh Sisodia*” 2019 SCC OnLine Del 7607 (Delhi High Court), “*Balaji Ventures Pvt. Ltd. Vs. Maharashtra State Power Generation Company Ltd. and Ors.*” SLP (C) Nos. 1616 and 1673 of 2022 (Supreme Court of India), “*(India TV) Independent News Service Pvt. Ltd. Vs. India Broadcast Live LLC & Ors.*” ILR (2007) II DELHI 1231 CS (OS), and “*Tek Singh Vs. Shashi Verma & Another*” (2019) 16 Supreme Court Cases 678.

6- Learned counsel for the defendant No.2 also argued in the lines of arguments advanced by learned counsel for defendant No.1 and also requested for dismissal of stay application.

7- I have heard Sh. Vineet M Bajaj, learned counsel for the plaintiff, Ms. Mumtaz Bhalla, learned counsel for defendant No.1 and Sh. Jitender Parashar, learned counsel for defendant No.2 and perused the case file very carefully and meticulously.

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8- Plaintiff has filed the present suit for permanent and mandatory injunction against the defendants pleading that plaintiff No.2 is a renowned you tuber and is a motivational speaker. Defendant No.1 also does the same business and in order to cause loss to the business of plaintiff he has started maligning his reputation over social media. He has allured some of the students of plaintiff company and has orchestrated a tutored video with defendants No.2 & 3. He has pleaded that the video of 11.12.2023 and community post dated 12.12.2023, 13.12.2023, 15.12.2023 and 16.12.2023 have been causing huge loss to the business of plaintiff and sought interim mandatory injunction seeking direction to defendants to delete the video dated 11.12.2023 and community posts and temporary injunction restraining the defendants from passing any defamatory remark, video etc. on social media against the plaintiff.

9- On the other hand, defendant No.1 has taken defence of public good and truth against the allegations levelled by plaintiff. Defendant No.1 has brought on record various posts of social media and emails stated to have sent by students of plaintiff to defendants wherein they have accused the plaintiff of defrauding and befooling the public. Defendant No.1 has stated that he is a public spirited person and has only provided a voice to the victims of misrepresenting and misleading business programme of plaintiff.

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Defendant No.2, who is admittedly the student of plaintiff has also supported the stand of defendant No.1 and stated that he is victim of misleading and misrepresenting programme of plaintiff.

10- At this nascent stage, when both the parties are yet to lead evidence to prove their averments and to disprove the averments of opposite party, the genuineness of the allegations levelled by defendants against the plaintiffs cannot be commented upon. Both plaintiff No.2 and defendant No.1 are the renowned youtuber. Plaintiff No.2 Mr. Vivek Bindra is stated to have 21.5 Million subscribers and defendant No.2 Mr. Sandeep Maheswari is stated to have 28.5 Million subscribers. Any accusation or allegations against plaintiff made on the youtube channel of defendant No.1 certainly has potential to cause injury to the business and reputation of plaintiff. Article 19 guarantees freedom of speech and expression to every citizen, but it is not absolute. It is subject to number of restrictions mentioned in the Indian Constitution itself. Defamation is one of the exception to freedom guaranteed by Article 19 of Indian Constitution. Defendants can exercise their freedom of speech and expression only in harmony to right to business, livelihood and reputation of plaintiff. No body has any right to disparage, defame, disrepute or malign the reputation of any person unless he is in possession of sufficient material or unbiased information clearly pointing out to any kind

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of illegal and nefarious activities of such person. Freedom of speech and expression is certainly amenable to reasonable restrictions laid down in Constitution of India which includes defamation. In ***"State Vs. Bihar Vs. Lal Krishna Advani"*** AIR 2003 Supreme Court 3357, Hon'ble Supreme Court observed as under:-

(vi) "On the one hand, there is a fundamental right of freedom of speech and expression guaranteed under the Constitution of India and on the other hand, it is the right of individual to his reputation and goodwill. The question arises as to how to bring about a balance between the two rights' How far can the right of freedom of speech and expression extend and when does it become necessary for the law to step in to safeguard the right of the individual to preserve his reputation and dignity' The law of defamation seeks to attain a balance between the above two competing rights."

In ***"Ram Jethmalani Vs. Subramaniam Swamy"*** (*supra*), Hon'ble Delhi High Court observed that:-

"92. Defamation is a public communication which tends to injure the reputation of another. What statements are defamatory and the span of defences varies from jurisdiction to jurisdiction but there is common agreement in all jurisdictions that statements that are unflattering, annoying, irksome, embarrassing or hurt one's feelings are not actionable. Common element in all jurisdiction is the potential to injure the reputation.

93. Since law of defamation, by making actionable certain utterances, runs counter to another widely accepted legal tenant – the right to freedom of expression, the two have been harmonized by judicial process so that an individual's right of privacy and protection of honour and reputation is preserved and at the same time the public interest in free speech is also protected.

*94. The pendulum between reputation and expression has swung back and forth through history, but a body of positive jurisprudence evidenced by the decision in Sullivan's case (*Supra*) has developed. However, I may note that case law developed around political speeches. The aim of the law was to see*

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that there was no chilling effect. If a person is under a fear of being sued, he may not express himself freely on public issues and this would chill the public debate. Decision in Sullivan's case (supra) as followed by the Supreme Court of India in R. Rajagopal's case (supra) highlighted that Government nor Government officials, if criticized in discharge of their duties, could bring no action or injunction and could not chill a public debate. Subject to establishing actual malice, action would be brought by Government Official if his personal reputation was damaged. However, no action could be brought in relation to loss of reputation to the offence.

95. Traditional defences to an action for defamation have now become fairly crystallized and can be compartmentalized in 3 compartments: truth, fair comment and privilege. Truth, or justification, is a complete defence. The standard of proof of truth is not absolute but is limited to establishing that what was spoken was 'substantially correct'. Fair comment offers protection for the expression of opinions. Standard of proof is not that the Court has to agree with the opinion, but is limited to determine whether the view could honestly have been held by a fair minded person on facts known at the time. Unlike defence of truth, defence based on fair comment can be defeated if the plaintiff proves that the defamer acted with malice. Similar is the situation where the defence is of qualified privilege. Privilege is designed to protect expression made for the public good. Protection of qualified privilege is lost, if actual malice is established. In public interest, absolute privilege is a complete defence. Rationale of absolute privilege being restricted to Court proceedings or proceedings before Tribunals which have all the trappings of a Civil Court and Parliamentary proceedings is that if threat of defamation suits loom large over the heads of lawyers, litigants, witnesses, Judges and Parliamentarians it would prohibit them from speaking freely and public interest would suffer."

11- Defendant No.1 has produced hefty record including the posts made by public against plaintiff on Quora.com, videos of Mr. Maheswari Piri and emails stated to being sent by students/clients of plaintiff to defendant No.1 wherein plaintiff No.2 Mr. Vivek Bindra is being accused of defrauding

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or misrepresenting his clients. However, he cannot be allowed to make defamatory remarks against plaintiff as genuineness of all such record is yet to be checked. Therefore, at this stage, the defence of truth or public good cannot help the defendant No.1 to disseminate or propagate defamatory remarks or accusation against plaintiff.

12- In addition to the temporary injunction, plaintiff has also sought an interim mandatory injunction seeking direction to defendant No.1 to delete video dated 11.12.2023 and community posts dated 12.12.2023, 13.12.2023, 15.12.2023 and 16.12.2023. To obtain an interim mandatory injunction, applicant is required to establish a very strong *prima facie* case of a standard much higher than just *prima facie* case. Hon'ble Supreme Court has widely discussed law relating to interlocutory mandatory injunctions in "*Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors.*", Hon'ble Supreme Court as under"-

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:-

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1. *The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction.*
2. *It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.*
3. *The balance of convenience is in favour of the one seeking such relief.*

13- The video dated 11.12.2023 was played in the court. Even learned counsel for defendant No.1 read out the relevant transcription in her arguments. However, there is no direct imputation against plaintiff in the video. In impugned video, defendant No.1 can be seen discussing the business model of a youtuber, wherein defendants No.2 & 3 have been complaining that they purchased the business course from a youtuber for Rs.50,000/- and Rs.35,000/- as the case may be. They have been accusing that he does not impart any business education to his clients/students, rather he has been making them salesmen. In such video, they are accusing such unnamed youtuber of earning commission under the garb of providing educational courses. Such 10.01 minute video was uploaded by defendant No.1 on his youtube channel on 11.12.2023. Thereafter, defendant No.1 posted a community post wherein, he stated that plaintiff sent his employees to the office of defendant No.1 in order to intimidate him to delete such

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video. Thereafter, defendant No.1 again posted some community post mentioned at page No.97 & 98 annexed with the complaint. A complete scrutiny of video dated 11.12.2023 reflects that defendant No.1 did not make any direct imputation against plaintiff No.2. From the community post it appears that he admitted such video to be belonging to plaintiff but there is no defamatory remarks in any community post except of 16.12.2023 mentioned at page no.98 which has already been deleted by defendant No.1 as admitted by plaintiff in their plaint.

14- To prove the strong *prima facie* case in his favour, plaintiff was required to establish that the contents of such video are false and defendant No.1 has uploaded the same with malice. However, he has not even denied the business model/schemes discussed in the video and has not disclosed his actual business models/schemes in his plaint. He was supposed to specify any imputation or allegations in the video which is defamatory and false. However, plaintiff failed to point out the same. At this stage, there is nothing on record which may suggest that impugned Video dated 11.12.2023 contains any false and defamatory contents against the plaintiff. Learned counsel for the plaintiff has relied upon "*Naresh Kumar. Vs. Wire & Ors.*" and "*Vinai Kumar Saxena Vs. Aam Aadmi Party & Ors.*" (*supra*) to support their relief of interim mandatory injunctions against the

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defendants. With due respect the gist of both the authorities is not disputed but the same is not applicable to the case in hand as facts of both such cases are distinguishable. In "***Naresh Kumar. Vs. Wire & Ors.***", defendants had published and circulated article levelling direct allegations of corruption against Chief Secretary of Government of National Capital Territory, Delhi and in "***Vinai Kumar Saxena Vs. Aam Aadmi Party & Ors.***", defendant Aam Aadmi Party circulated hash tags making direct imputation against Lieutenant Governor of Delhi. However, in the case in hand, the impugned video neither contains any imputation nor contains any direct defamatory remarks against plaintiff.

15- Further the contention of learned counsel for defendants No.1 & 2 that this court has no territorial jurisdiction to entertain the civil suit on the ground that plaintiff has not suffered any loss of reputation in Faridabad does not hold very much relevance at this stage. Plaintiff Mr. Vivek Bindra carries out his business in Delhi and resides in Faridabad. His youtube channel is stated to have been subscribed by 21.05 Million persons. The impugned video has already been seen by more than 70 lakh persons. Therefore, at this stage, it would not be appropriate to hold that plaintiff does not carry any reputation in Faridabad and no person in Faridabad has seen the impugned video or the community post. Considering the peculiar circumstances of this

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case, the issue of jurisdiction in this case is mixed question of law and facts. Therefore, it cannot be decided, at this primarily stage.

16- In light of above discussion, this court is of considered view that plaintiff has failed to prove the strong prima facie case warranting this court to grant interim mandatory injunction. However, plaintiff certainly has a prima facie case to the extent that any defamatory remarks, imputation or accusation by defendant No.1 can cause huge loss to business and reputation of plaintiff. Learned counsel for the defendant No.1 has also placed on record an order dated 15.01.2024 passed by Hon'ble Delhi High Court wherein Hon'ble Court has restrained a channel Partner of plaintiff from uploading any defamatory video against defendant No.1 on the basis of order dated 22.12.2023 passed by this court. The relevant portion of order dated 15.01.2024 passed by Hon'ble Delhi High Court is reproduced as under:-

“For the aforesaid reasons, in line with the order passed by the learned Civil Court in respect of the parties to the suit, until the next date of hearing, defendant No.3 is restrained from publishing any defamatory/disparaging video against plaintiffs on social media platforms or any other online or offline mode.”

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17- Both the plaintiff and defendant No.1 are renowned youtubers. Any of their videos or posts on the social media certainly induces great number of youth following them. Therefore, to rest the controversy, both the plaintiff and defendant No.1 are restrained from uploading any defamatory/disparaging video or posts over social media or any other online and off line mode against each other. Accordingly, stay application stands partly allowed. With due respect the gist of authorities cited by learned counsel for plaintiff to support relief of interim mandatory injunction is not disputed. However, the same is not applicable to the present facts and circumstances of the case.

18- Nothing herein above stated shall be deemed to be an expression of the merits of the case.

ANNOUNCED IN OPEN COURT:

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(Gagandeep Goyal),
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Note: This order contains eighteen pages and all the pages have checked and signed by me.

(Gagandeep Goyal),
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