

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

DECIDED ON: 02.11.2010

+ **I.A. Nos.5916, 8163/2009 & 1396/2010 in CS (OS) 803/2009**

M/S BABBAR WRECKERS PRIVATE LTD. Plaintiff
Through: Mr. Hemant Singh with
Ms. Mamta R. Jha and Mr. Manish Mishra,
Advocates.

versus

M/S ASHOK LEYLAND LTD. & ORS. Defendants
Through: Mr. S.K. Bansal with Mr. Ajay Amitabh Suman,
Mr. Anand Vikas Mishra and Mr. Pankaj Kumar,
Advocates.

**CORAM:
MR. JUSTICE S. RAVINDRA BHAT**

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|----|---------------------------------------------------------------------------|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

% I.A. Nos.5916/2009 (O-XXXIX, R-1&2, CPC) & 8163/2009 (O-XXXIX, R-4, CPC)

1. The plaintiff (hereafter referred to as “Babbar Wreckers”) seeks a decree for permanent injunction against the defendants (the first defendant is hereafter called “Ashok Leyland”; the second defendant is hereafter called “Perfect” and the third defendant is hereafter called “Niles”), to restrain the manufacturing, fabrication, sale and offering for sale light recovery vehicles (LRVs) using, or reproducing in any manner engineering drawings which are the subject matter of the technical specification Nos. CQA (QFV)/VEH/STLN/003/2005 and CQA (QFV)/VEH/STLN/003/2001 (hereafter called as 2005 and 2001 specifications) and other injunctive reliefs including a decree for mandatory injunction to direct Ashok Leyland to take delivery of 50 LRVs fabricated by

Babbar Wreckers. Consequential money decrees and a decree for rendition of accounts in respect of the sale of superstructure mounted on Stallion 4X4 vehicles of Ashok Leyland produced in accordance with 2005 and the 2001 specifications, are claimed.

2. The Court had initially granted the *ex parte* injunction on 4.5.2009 restraining the use of the drawings pertaining to the two specifications or even from manufacture and supply to the fourth defendant i.e. Central Government. The defendants had carried the matter in appeal; the Division Bench disposed of the appeal recording that Ashok Leyland would move an application for vacation of the interim order. Accordingly, I.A. No.8163/2009 was filed by Ashok Leyland on which notice was served. This order proposes to dispose of the plaintiff's interim injunction application - I.A. No.5916/2009 and the defendant's application for vacation of the interim order, I.A. No.8163/2009.

3. The brief facts necessary for the case according to the suit averments are that the Babbar Wreckers claims to be engaged in manufacturing and designing wreckers (also known as LRVs) for more than 40 years and to having supplied them to various Government departments. The equipments are reliable and easy to operate and are mounted on suitable commercial vehicles. Babbar Wreckers claims to have earned substantial reputation and goodwill for the performance of its wrecker equipment and also claims to have spent considerable money in designing and development them having regard to their functionality. It is submitted that in 1980-85, one model of a wrecker known as "Babbar Model GN-7 Medium Recovery Breakdown" (BWGN-7) was designed. An application for trademark registration was made on 28.7.1983. Babbar Wreckers claims to have participated in 1995 in the India International Trade Fair and demonstrated its equipments mounted on TATA 1210D LPT to various vendees. It is submitted that in September, 1995, Central Government through the Ministry of Defence was looking for supply of LRVs and the first defendant submitted its specifications to Army Headquarters with regard to development and supply of LRV on 5/7.5 Ton Stallion MK-II on Ashok Leyland Chassis for procurement of purchase order. It is stated that this was rejected by the Ministry of Defence. Subsequently, on 9.1.1996, a technical group of the Army Headquarters wrote to the Director General, EME (Eqpt.), informing that preliminary assessment of the specifications submitted by the Ashok Leyland for

development of LRV on 5/7.5 Ton Stallion MK-II was found untenable. It is stated that the same letter recommended the plaintiff for development of LRVs of 7.5 Ton capacity. The plaintiff's name was recommended to Ashok Leyland. The said letter reads as follows: -

“4. In Dec. 95 M/s Babbar Wrecker Pvt. Ltd. demonstrated their wrecker eqpt during the exhibition of India International Trade Fair – 95. This firm has been manufacturing wrecker eqpt. for last 30 yrs and they have already supplied over 200 wrecker eqpts to various agencies in India. The gist of the points, after detailed discussion with M/s Babbar Wrecker Pvt. Ltd., are as follows: -

- (a) The firm demonstrated their wrecker eqpt mounted on Tata 1210D LPT, to Chief Automotive Engineer, which could lift 7.5 ton dead weight on outriggers, without stay anchor, with single line pull. They have already developed PTO, winch-gear, booms, super structure and outriggers to handle load up to 15 Tons on single line pull.*
- (b) M/s Babbar Wrecker Pvt. Ltd. claims that their wrecker eqpt, to handle 7.5 tons lift and line pull, will weigh under 3.5 Tons.*
- (c) The firm offers to supply wrecker eqpt with 7.5 Ton line pull within 4 to 6 weeks on receipt of orders, for trials. They have also offered to undertake development of 7.5 ton LRV on any suitable chasses.*

5. In view of para 4 above M/s Babbar Wrecker Pvt. Ltd. has been asked to provide specifications compatible to GSQR. In addition, Mr. P. Dhanasekaran, Senior Development Manager (Spl Veh) of M/s Ashok Leyland, has also been provided details of M/s Babbar Wrecker Pvt. Ltd. to facilitate development of Light Recovery Vehicle of 7.5 Ton capacity.

6. Considering the feasibility of development 7.5 ton Wrecker eqpt, the following options are now available.

- Option-1. M/s Ashok Leyland be advised to procure 7.5 ton wrecker equipment from M/s. Babbar Wrecker Pvt. Ltd. for development of prototype LRV.*
- Option-2. One 5/7.5 ton Stallion MK-II be offered to M/s. Babbar Wrecker for development of LRV preferably on 'no cost no commitment' basis under the aegis of HQ Tech Group. This option provides a scope for development of LRV by the Army Base Wksp.*
- Option-3. Assigning one of the Army Base Wksp eqpt. Ex. M/s. Babbar Wrecker. One 5/7.5 Ton Stallion MK-II be made*

available to the assigned Base Wksp for this task. This option will be suitable on long term basis as the existing financial rules and procedure would require some alterations.”

4. Babbar Wreckers contends having represented on 24.1.1996, enclosing its “Breakdown Wrecker” brochure to the Army Headquarters showing its interest for the supply of the required equipment. The suit avers that Ashok Leyland on 12.03.1996 wrote to Babbar Wreckers requesting it to provide super structure drawings and technical data in respect of 7.5 ton wrecker equipments to seek further approval from the Army Headquarters. The material part of the letter reads as follows: -

“... In order to proceed with the project, it is necessary to make a superstructure drawing and get it approved. Kindly also furnish all the technical data regarding the 7.5 ton Wrecker to enable us make an offer to Defence and to recheck at our end the Wrecker transmission ratio, service drum gear ratio and the sprocket ratio.

Kindly arrange to send the drawing and the technical details at the earliest....”

5. Babbar Wreckers submits that on 31.07.1996 it informed Ashok Leyland about fabrication of a prototype recovery breakdown Wrecker of 7.5 tons capacity on its (Ashok Leyland’s) vehicle, Stallion 4X4 and that it was ready for inspection and testing by the Army.

6. The suit further states that Ashok Leyland on 11.12.1999 wrote a letter to Babbar Wreckers asking it to prepare and submit the fabrication drawings of the LRV. The suit relies upon the Minutes of the Meeting dated 17.04.2000 held at the Army Headquarters to decide the modalities for inspection of pilot LRV 5/7.5 Stallion and states that its drawings were actually agreed to be furnished to Central Government. Babbar Wreckers states that it thereafter prepared the engineering drawings which were computer generated and specially prepared by its Draftsman under the direct supervision of Mr. Naresh Babbar, its Managing Director. The drawings were furnished to Ashok Leyland and the Central Government. They were provisionally approved by the Deputy Controller, CQAE (OFV), Jabalpur, of the Central Government. Babbar Wreckers further states that it developed and designed the wrecker equipment as per specifications of the Central Government which were tested and approved. Later on 9.6.2000, the Central

Government issued a purchase contract to Ashok Leyland for supply of 195 LRV based on 5/7.5 ton Stallion as per the approved specification No. CQA (OFV)/VEH/STLN/LRV/2K/03 (hereafter called as “2K specification”) on the understanding that Babbar Wreckers would be fabricating the LRVs on Ashok Leyland’s vehicles. Ashok Leyland thereafter issued a letter of intent dated 8.8.2000 for supply of 195 breakdown wreckers units, out of which 100 were supplied by Babbar Wreckers and 95 by Perfect. Babbar Wreckers relies upon a joint inspection and its Minutes of meeting to say that the LRVs were fabricated by it was in conformity with its engineering drawings and specifications. The Minutes of meeting/inspection report has been filed.

7. Babbar Wreckers claims to have entered into an arrangement whereby Perfect was granted license to use its drawings at the behest of Ashok Leyland; reliance is placed on agreements dated 8.9.2000, 21.9.2000, 7.2.2002 and 15.4.2002 for payment of what is termed as nominal royalty of 3% to 7% of the basic price of the LRVs. Perfect is alleged to have paid royalty to Babbar Wreckers, till 2002. The agreement between the parties dated 7.2.2002 was valid till completion of the work order. It is stated that even though Perfect did not pay royalty despite its obligation to do so, Babbar Wreckers allowed it to use the drawings as a gesture of goodwill but at the same time that cannot be construed as waiving its right to claim such royalty. Babbar Wreckers then mentions about the various contracts between 2000-2005 where the work orders were procured by Ashok Leyland for supply of the entire LRV; the fabrication and supply of wreckers were distributed between the Babbar Wreckers and Perfect. These have been detailed in paragraph-24. For the period 2000-2009, such orders for supply of 1121 vehicles was given by the Central Government in five lots; Babbar Wreckers was given the contract (or sub-contract) to fabricate 664 wreckers assemblies. Babbar Wreckers submits that according to the understanding between the parties whenever Ashok Leyland procured the orders for supply of the vehicles with the wrecker assemblies, it (Babbar Wreckers) invariably was given a proportionate order for fabrication of the wrecker assembly and Perfect was to get a proportionately lower quantity. The suit mentions about a legal notice dated 1.10.2005 to Perfect, calling upon it to pay royalty which led to intervention

of the Central Government. In this letter, the Central Government stated that unless the matter was resolved *inter se*, it would not place any further orders on Ashok Leyland. It is stated that in these circumstances, on 27.12.2005, Babbar Wreckers wrote to the Central Government stating that the matter had been resolved.

8. Babbar Wreckers relies upon the grant of provisional Proprietary Article Certificate by the Central Government on 9.6.2004, which was granted. The said Proprietary Article Certificate dated 2.2.2005 reads as follows: -

*“M/s Babbar Wrecker Pvt. Ltd.,
B-11, Mayapuri Industrial Area
Ph-1, New Delhi - 110 064*

**PAC FOR SUPERSTRUCTURE OF LRV 5/7.5 TON MODEL
BWGN-7C/BWGN-7C/A MOUNTED ON STALLION 4X4**

Dear Sirs,

*Reference: (i) Your letter No.BWPL/CQAV/04 dt. 25.12.04.
(ii) this office letter of even No. dt. 5.1.05 and 25.1.05.*

2. Superstructure Model BWGN-7C/BWGN-7C/A, developed and designed by M/s. Babbar Wreckers was trial evaluated at VRDE and by users extensively. Accordingly, Specification No. CQA (OFV)/VEH/STLN/003/2001 was formulated.

3. Details of items for which PAC is accorded except bought out and hardware items as indicated in the ISPL submitted by you are enclosed as Appendix ‘A’.

4. Further, as requested vide our letter dated 25.1.05 copy of two sets of complete manufacturing drgs. consisting of Gp 32.01 to 32.23 including Assys/Sub-Assys as given in general arrangement, Accessories and SMTs may please be forwarded to this Controllerate. The drgs. are required to be forwarded within 7 days to this Controllerate for our sealing and scrutiny purpose. It is pertinent to mention here that no changes/modification shall be carried out without the prior approval of this Controllerate.

Thanking you,

Yours Sincerely

(J.S. Sangwan)”

9. Babbar Wreckers complains that a departure from the previous understanding and

agreement took place, when Ashok Leyland was placed with an order of supply of 286 LRVs in January, 2009, the contract/order for fabrication and supply of all the wrecker assemblies was, however, placed on Perfect. It is stated that this was in breach of the agreement as Babbar Wreckers had put in tremendous labour and effort in securing its drawings approved and was entitled to at least half of the order but was content to maintain cordial relations by executing the orders for wrecker assemblies only in respect of 50 LRVs. It is submitted that if the past precedent and practice were to be taken into account, Babbar Wreckers was entitled to manufacture at least 50% of the total orders placed upon Ashok Leyland; the latter kept on evading and giving vague assurances. Ultimately, a legal notice dated 7.4.2009 was issued to the first three defendants, terminating the license to use the drawings and specifications. Babbar Wreckers claims that it is the author and owner of the copyright in the 2001 and 2005 specifications; the claim is founded on the following plea: -

“36. It is submitted that the specification no.CQA(OFV)/VEH/STLN/LRV/2003/01 and specification no.CQA (OFV)/VEH/STLN/LRV/2003/05 approved by the Ministry of Defence for fabrication of LRVs comprise of Plaintiff’s engineering drawings, specifications and technical know-how. The subject matter of the said specification contains several engineering drawings of Wrecker equipments which illustrate the functional features thereof. The said engineering drawings constitute original artistic works within the meaning of Section 2 (c) of the Copyright Act, 1957 and are entitled to copyright protection. All the engineering drawings are computer generated drawings prepared by the draftsman Mr. Aman under the employment of the plaintiff and under the supervision of Mr. Naresh Babbar, Managing Director of the Plaintiff. The said engineering drawings are artistic works, designed and created at instance of Plaintiff for valuable consideration paid. The plaintiff, therefore, is the owner of copyright therein having exclusive right to use or reproduce features thereof in any material form, directly or indirectly, including three dimensional form from two dimensional drawings or three dimensional form by the process of “reverse engineering”. The fabrication of any Wrecker equipment (LRV) based on the engineering drawings and specifications of the Plaintiff without plaintiff’s authorization constitute violation of Plaintiff’s copyright in the engineering drawings pertaining thereto, which, apart from constituting

infringement under Section 51 (a) of the Copyright Act, 1957, also amounts to cognizable offence, punishable with imprisonment up to three years and fine up to Rupees Two lakhs, under Sections-63 and 64 of the Copyright Act, 1957.”

10. The plaintiff argues that the pleadings and documents on record prove beyond doubt, that it is the copyright owner of the drawings conforming to the specifications of 2001 and 2005, used by the Ashok Leyland and Perfect for assembling the wrecker units. It is submitted that such drawings are artistic works under Section 2 (c) of the Copyright Act, 1957 (hereafter called “the Act”). Counsel argues that these drawings are product of the creative effort put in at the plaintiff’s behest. It is submitted the authority and right to exclusively reproduce the drawings in material, three dimensional form, vests in the plaintiff, which both Ashok Leyland and Perfect have infringed.

11. Babbar Wreckers relies on the judgments reported as *John Richard v. Chemical Process Equipment (P) Ltd.* AIR 1987 Del 372; *Escorts Construction Equipment Ltd. & Anr. v. Action Construction Equipment (Pvt.) Ltd.* 1999 PTC 36 (Del), etc. for the proposition that drawings are deemed to be artistic works, and entitled to protection under the Act. It is submitted that having used Babbar Wreckers drawings, and secured orders from the Central Government, which were exploited fully, the plaintiff cannot be deprived of the benefit of copyright, by the defendants. It is submitted that despite service of summons, steps have not been taken by the Central Government to contest the suit.

13. The plaintiff contends in addition that the defendants particularly the Ashok Leyland and Perfect cannot dispute its copyright because of the circumstance that royalty was consistently paid in accordance with the previous arrangements. It is argued that the Babbar Wrecker’s copyrights thereby stand explicitly established and it is entitled to the injunction as claimed. The reliance is placed upon the judgment reported as *Najma Heptulla v. M/s Orient Longman Ltd. & Ors.* AIR 1989 Del 623.

14. The first three defendants have filed a common written statement. They contend that in 1995, Ashok Leyland offered to supply LRVs consisting of its Stallion 4X4 Chassis with wrecker to the Central Government as per the latter’s requirement which was later published as JSQR No.2320-03 of 1996. It is stated that in 1995 itself Ashok

Leyland prepared its drawing X9828800 disclosing the basic lay out of the proposed LRVs. The submission is that the Ashok Leyland does not fabricate wreckers itself and, therefore, had approached various vendors. It is stated that in 1996, the plaintiff's name - for fabrication of the concerned wrecker units- was suggested to the Central Government. The defendants' claim that the wrecker units were assembled according to the specifications spelt out on the basis of the said drawing X9828800 and even the proto- type was made subsequently.

15. The defendants' emphasize on the averments in the suit to the effect that the prototype of the recovery breakdown wrecker of 7.5 tons capacity, was fabricated sometime in July, 1996 and a letter to the same effect had been given by the plaintiff. It is submitted that the documents placed on the record clearly demonstrates that the drawings on which copyright is claimed are dated 9.7.2000 and consequently the claim for creation of original drawings in 1996 is *ex facie* untenable. The defendants argue that the entire basis of the suit claim about the subsistence of the copyright, therefore, is without documentary basis.

16. Amplifying the submissions, it is further stated that the plaintiff's case that the prototype of the wrecker were ready in 1996 in turn constitute a implicit admission that they were based on some other drawings which unambiguously point to the plaintiff's JSQR No.2320-03 of 1996 specifications and drawing X9828800. The defendants argued that the plaintiff could not have developed and fabricated the wrecker unit or even its pilot prototype in the absence of drawings. It is, therefore, urged that these facts are sufficient to foreclose the claim for injunction and certainly *prima facie* rebut the submission that the plaintiff is a copyright owner of the drawings embodying in the 2001, 2003 and 2005 specifications. The defendants urged that any two dimensional rendering or reduction/recording of a three dimensional object is subject to copyright protection in terms of Section 14; according to them in this case, the three dimensional rendering was of prototype/pilot wreckers in 1996 itself. The plaintiff, it is stated, does not claim copyright over such articles - nor can claim it. Therefore, the copying or recording of such articles in two dimensional forms does not confer exclusive rights.

17. The defendants argue that the wrecker units are just constituents of an overall

article which they were contracted to supply to the Central Government. It is stated that such articles i.e. LRVs are essential for public use by the defence forces and that grant of an injunction of the kind sought for, would led to untoward consequences. The defendants, in this regard, submit that the drawings are not subject to copyright protection since they constitute Government works under Section-17 (d) of the Copyright Act, which is in the following terms: -

***“17. First owner of copyright.-Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein
Provided that-***

XXX

XXX

XXX

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;”

18. The defendants further submit that in any event, the use of drawings as is complained of does not constitute copyright infringement under Section-52 (x) of the Act which is in the following terms: -

“52. Certain acts not to be infringement of copyright. -(1) The following acts shall not constitute an infringement of copyright, namely:

XXX

XXX

XXX

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;”

19. The defendants further submit that in terms of the JSQR No.2320-03 of 1996 published by the Central Government which forms the basis or foundation in the formulation of specifications for wrecker units, the proprietary rights over all the drawings and allied literature vests with the Central Government. The relevant condition in Paragraph-37 is relied upon: -

“PROPRITORY RIGHTS

37. *In the event of the proto-type vehicle being accepted as a standardized product, the aforesaid vehicle design and literature submitted by the firm concerned shall be deemed to have become the property of Govt. of India, Ministry of Defence.”*

20. It is submitted that there cannot be any estoppel as is argued by the plaintiff; as it would amount to undermining the public interest. The reliance is placed upon the judgment of the United States Court of Appeal of the VIth Circuit reported as *Beer Nuts, INC, v. King Nut Company* 477 F.2d 326. It is stated that the said judgment though in the context of patent protection applies equally in the case of copyrights where if a monopolist claims and is granted royalty on premises which the later discovered to be unfounded, it is in the public interest that estoppel is not held against the ostensible licensee. The defendants also rely upon the judgment reported as *BRY Air India (P) Ltd. & Anr. v. Western Engineering Company* 1999 PTC (19) 48 for the submission that when information is furnished to someone on the basis of which drawings or specifications are formulated, the person who creates such drawings or specification under these circumstances cannot claim copyright.

21. It is argued that the injunction granted initially by this Court is holding up all further negotiations and consequent award of similar contracts to Ashok Leyland which was undisputedly given the assignment of all previous actions, even according to the plaintiff. Ashok Leyland argues that its tender for supply of further 116 numbers of LRVs mounted on its 4X4 Stallion is subject to advance negotiations and only the price component has to be finalized. Learned counsel argues that if the Court were to confirm the injunction, even without a formal contract, it would be mandated to award a part of the contract to the plaintiff - a proposition which is contrary to the principles for grant of injunction which clearly are that the Courts cannot in exercise of their jurisdiction compel the parties to enter into a contract. It is submitted that at best if the Court is satisfied that the plaintiff is the *prima facie* copyright owner and that the previous arrangement between the parties entitled it to royalty, suitable orders to secure the plaintiff's interest in that regard may be made.

22. It can be seen from the above discussion that Ashok Leyland manufactures the main assemblies of the LRVs; Babbar Wreckers and Pefect manufacture the wrecker

units, mounted on it (Ashok Leyland's heavy vehicle is known as the Stallion 4X4). It is the common case of parties that these vehicles are utilized by the Ministry of Defence. Babbar Wreckers claims to have been manufacturing 3.5 tonne capacity wreckers, earlier, and developed the prototype which matched the Central Government's requirements, sometime in 1995. Its positive case is that its drawings formed the basis for a prototype manufactured, for the first time, in 1996; a letter dated 31-7-1996 is relied on. Similarly, it relies on several letters by Ashok Lelyland, asking it to prepare the drawings, for manufacturing the wrecker unit. The other materials include the letter to Ashok Leyland, dated 11-7-1999, and agreements dated 8.9.2000, 21.9.2000, 7.2.2002 and 15.4.2002 for supply of various quantities of wrecker assemblies, where the second defendant had agreed to pay royalty to the plaintiff.

23. The plaintiff is correct when it submits that copyright can subsist, in mechanical drawings. The question here, however is, whether such *prima facie* case about the proprietorship as asserted by it has been made out. Though the plaintiff's argument is that the drawings were made in 1996, under its Managing Director's supervision, and direction, no such drawing has been produced. Significantly, all the drawings placed on the record are of mid-2000 vintage; each is contemporaneous to the date when the Central Government placed the orders upon Ashok Leyland. The plaintiff carefully avers that the prototypes of the wreckers, which were ultimately supplied, and were the subject matter of *inter se* understanding or arrangement with Ashok Leyland, were assembled for the first time, in 1996. Undeniably, such prototypes must have been prepared on the basis of some drawings. Yet, those drawings are not forthcoming. The plaintiff argues that the drawings were prepared, on the basis of such prototype. Now, a facial look at the product drawings and photographs would lead on to infer, at least *prima facie*, that some technical drawings were required for their manufacture, as they are expected to haul and carry heavy weights, and are to be mounted on chasis manufactured by another concern. Such being the case, the plaintiff's argument about creation of the drawings *after* the prototypes were manufactured, seems implausible, to say the least. What is *prima facie* credible, on the other hand, is Ashok Leyland's assertion that its prototype and specifications JSQR No.2320-03 of 1996 and drawing X9828800 were accepted by the

Central Government, in 1995, after which Babbar Wreckers was approached in 1996, to make the wrecker units. The *inter se* correspondence with Ashok Leyland, then becomes comprehensible, as the latter's insistence that the drawings, according to its specifications, were to be prepared.

24. The second aspect, and an important one at that is that the court cannot shut its eyes to clause 37 of the JSQR which formed the basis for awarding the contract, unambiguously states that the Central Government would be the proprietor of the design and product ("*proto-type vehicle being accepted as a standardized product, the aforesaid vehicle design and literature submitted by the firm concerned shall be deemed to have become the property of Govt. of India, Ministry of Defence.*"). This stipulation- coupled with Section 17 (d)- also *prima facie* point to copyright ownership of the Central Government, in the drawings. Here, one cannot lose sight of the fact that the contracts were primarily awarded to Ashok Leyland, which only parted with a portion of them, to the plaintiff, as regards wrecker assemblies. They were and are meant to be used for transportation of materials, and hauling of heavy loads and equipment, for defense purposes, and cater to an obvious public or national purpose.

25. As far as estoppel is concerned, the plaintiff relies on *Najma Heptulla's* case. In that, the plaintiff was a legal representative of Maulana Azad, who had supplied his book to Prof. Humayun Kabir for its narration and translation. The plaintiff had received 50% royalty for 30 years, and granted copyrights to the publisher. The court restrained the plaintiff from challenging the validity of the agreement. The plaintiff was not granted injunction to stop the defendant from publishing the book even after the said term was over. In this case, however, the materials on record suggest that Perfect had stopped paying royalty to the plaintiff, sometime in 2002; this had led to exchange of legal notices, and the Central Government intervening with the plaintiff, which had withheld supplies. The plaintiff resumed supplies, and did not claim royalties. The legal notice which preceded the present case, too, did not claim royalty arrears, nor was any leave sought to claim them; in any case, such claims are now time barred. An added circumstance is that for the subsequent supplies, there was no payment of royalty. In these facts, the court is of the opinion that having regard to the wide nature of copyright

claims, in such cases, which amount to declaration of monopolistic rights over the entire world, the grant of an equitable remedy of injunction solely on the behavioral principle of estoppel, would be inappropriate. In trademark infringement, however, considerations are different, because the nature of defences vary, as the defendant can establish honest concurrent user, prior user, etc, since the claim is uniquely asserted on a case to case basis. However, a copyright subsists for the longest duration, in the cluster of intellectual property rights, and the courts are entitled to test the wide and sweeping nature of rights asserted, undoubtedly in the context of an estoppel, but not solely on such bases. In this case, royalty was paid in about two instances, and had not been paid for over 7 years before this case was instituted. In the circumstances, there is no estoppel which bars the defendants from contesting the plaintiff's copyright in the drawings.

26. The court has noticed more than once, previously, in this judgment, that the contracts have an underlying public purpose, ie. catering to the needs of the Ministry of Defence. The documentary materials on record *prima facie* suggest that even though Ashok Leyland granted Babbar Wreckers the contract to manufacture wrecker assemblies, roughly in the proportion of 50% of what granted in the orders, there is no written arrangement. The plaintiff of course has averred that royalty of 3% to 7 % used to be paid to it by Perfect in respect of the wrecker units assembled by it. However, in the absence of any indication about the duration of the arrangement, and any positive evidence that such understanding was to operate in a specific manner, for all times to come, or for a period, it would be imprudent for the court to issue a direction to Ashok Leyland, to share its contract execution with Babbar Wreckers. Such a direction would result in the court enjoining a party to enter into a contract, which it clear cannot issue. Furthermore, the court is of the opinion that attaching any condition of the kind insisted upon by the plaintiff to permit execution of any contract by the Central Government with Ashok Leyland, would clearly not be in the public interest. Clause 37 of the JSQR, also points to the possibility of the Government being the owner and author of the works. In the circumstances, the court cannot be blind to the public interest element, which looms large in this case.

27. In view of the above discussion, it is held that the plaintiff has been unable to

establish, *prima facie*, to its being a copyright owner. At the same time, the court is conscious that it has been beneficiary in previous contracts, and that 3-7 % royalty was being paid to it – although some time ago. Having regard to these overall circumstances, and to balance the competing rights, and protect the plaintiff's interest, Ashok Leyland is directed to furnish an undertaking to pay damages in the event of the plaintiff succeeding. It shall, to that end, also file accounts, and statements, in respect of the amounts received and profits, if any, derived in the contracts that were executed when the suit was filed, and further contracts to be executed, in the event of their being awarded to it, by the Central Government. Such accounts shall be filed once each year. Ashok Leyland is also directed to furnish a bank guarantee for the sum of Rs. 30,00,000/- in favour of the Registrar of this Court, to satisfy any money decree, within four weeks from today.

28. IA Nos.5916, 8163/2009 and 1396/2010 are disposed of in the above terms.

CS (OS) 803/2009

The suit shall be listed for further proceedings, on 29th November, 2010.

**S. RAVINDRA BHAT
(JUDGE)**

NOVEMBER 2, 2010