

Pioneer Property Management Limited vs Amazon Sellers Services Private ... on 16 April, 2024

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

CS-COM 69 of 2024

(Old Nos: CS 2 of 2016 & CS 45 of 2024)

Pioneer Property Management Limited

Versus

Amazon Sellers Services Private Limited & Anr.

Mrs. Suparna Mukherjee
Mr. Sankarsan Sarkar
Mr. Ratul Das
Mr. Abhijit Sarkar
Ms. Abhipiya Sarkar
Mr. Abhik Chitta Kundu

... For the plaintiff.

Mr. Anuj Singh
Mr. Abhisek Das
Mr. Siddhartha Roy

... For the defendant no.1.

Ms. Jayati Chowdhury
Ms. Mandobi Chowdhury
Ms. Rashmi Bothra
Ms. Shreya Sen
Ms. Sutapa Dutta

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Ms. Priya Malakar
Ms. Sucheta Mitra
Ms. Rashmi Singhee

... For the defendant no. 2.

Hearing Concluded On : 19.02.2024

Judgment on : 16.04.2024

Krishna Rao, J.:

1. The plaintiff has filed the present suit against the defendants praying for a decree of Rs. 1,15,92,877/- along with an interest @18% per annum.
2. The Plaintiff carried on and/or still carries on business of providing services of brokerage and marketing.
3. The defendant no.1, carried on and/or carries on business of procuring, storing, warehousing, dispatching, promoting, packaging, formulating, buying, selling, exchanging, altering, importing, exporting, promoting, packaging, assembling, repairing, advertising, marketing, distributing or otherwise dealing in whole or in part on wholesale basis or otherwise all kinds of services of goods and merchandise either on its own or through licensees, agents, resellers, distributors and contractors.
4. The defendant No. 2 is well established in India as a progressive and professional Freight Forwarding and Logistics Management Company, and it offers a broad range of services covering Sea, Air Logistic and Projects.
5. On receipt of Writ of Summons, the defendants have entered appearance and have filed their respective written statements.

6. CASE OF THE PLAINTIFFS

- a) On 14th October, 2014, one Mr. K. Prasad representing himself to be an officer of the defendant no.1 approached the plaintiff particularly one of the Director of the plaintiff Company, namely Mr. Ramesh Kejriwal and expressed their intention to take a large warehouse in or around Kolkata on rental basis and for that purpose sought for the brokerage service of the plaintiff.
- b) On being approached, the plaintiff acting through its Director, agreed to provide brokerage services to the defendant no.1 and informed Mr. K. Prasad, regarding some of the terms and conditions, which the plaintiff follows, wherein there is a term regarding the payment of services provided by the plaintiff, and it was informed by the plaintiff to the Mr. K. Prasad that in case of lease/rent, the plaintiff charge as and by way of brokerage the sum equivalent to one month's rental plus service tax as applicable both from the tenant as well as from the landlord on finalization of the deal or on handing over possession, whichever is earlier.
- c) It was further informed by the plaintiff, that if the defendant no.1 wants to utilize such brokerage services of the plaintiff then the defendant no.1 shall not be entitled to enter into direct negotiation or direct agreement with the landlords of the warehouses/ properties to be shown and/or particulars

whereof would be furnished by the plaintiff to the defendant no.1.

d) Pursuant to such oral agreement between the plaintiff company and the defendant no.1, on or about 14th October, 2014, the said Mr. K. Prasad, being the representative of the defendant no.1, sent an e-mail to Mr. Ramesh Kejriwal with a draft of an agreement described as "Mutual Non-disclosure Agreement" and the same was acknowledged and replied by the plaintiff by an e-mail dated 18th October, 2014, indicating some minor modifications. By the said e-mail, the plaintiff also requested the defendant no. 1 to go through the proposed modifications and let the plaintiff know about the views of the defendant no. 1.

e) Ultimately, in response to a further e-mail sent by the said Mr. Ramesh Kejriwal of the plaintiff on 4th December, 2014, the defendant no.1 through the said Mr. K. Prasad by an e-mail dated 4th December, 2014 accepted such modifications in the said draft agreement described as "Mutual Non-Disclosure Agreement", and instructed the plaintiff to forward the signed copy of the said agreement to the said Mr. K. Prasad and such 'Mutual Non- Disclosure Agreement' was prepared in duplicate on requisite non- judicial stamp papers after executing both the agreements and forwarded the same to the defendant no.1 by and under cover of a letter dated 16th December, 2014. The plaintiff also requested the defendant no. 1 to return one set of the agreement after signing the same for the record.

f) The plaintiff in performance of its obligations under the said agreement started showing properties in an around Kolkata to the defendant no. 1 to perform its obligations under the said agreement, the plaintiff had forwarded photographs and details of properties in and around Kolkata to the defendant no.1 for the requirements of its warehouse.

g) The defendant no.1 pursuant to such agreement, by way of an e-

mail dated 27th October, 2014 forwarded a check-list to the Plaintiff and further requested to fill up the details of the properties in the format as provided in the check-list and the plaintiff had duly acknowledged and replied to the e-mail dated 27th October, 2014, on 28th October, 2014 by two several e-mails by filling up the check-list in respect of two properties, namely, Bantala Property and Dhulagarh Property along with photographs thereof as required by the defendant no.1

h) By an e-mail dated 31st December, 2014, the plaintiff forwarded to the defendant no.1 its proposal for a warehouse along with particulars of the property, at Sreerampore, Delhi Road, Hooghly, for its perusal which was at that point of time occupied by Khadim and was about to be vacated.

i) By an e-mail dated 12th January, 2015, Mr. K. Prasad of the defendant no.1 requested the plaintiff to send the postal address of the Sreerampore Warehouse, which was therein described as Keola Warehouse as the said warehouse was and is owned by Keola Associates Pvt. Ltd., and the same was forwarded by the plaintiff by an e-mail dated 13th January, 2015, to the defendant no.1 by the plaintiff.

j) Thereafter, time to time discussions took place between the parties regarding finalizing of the Sreerampore property, but sometime during the month of January, 2015, the said Mr. K. Prasad representing the defendant no.1 informed the plaintiff and particularly its Director, Mr. Ramesh Kejriwal that the defendant no.1 had appointed the defendant no. 2 as its agent, to select and/or choose the warehouse in or around Kolkata on its behalf and one Mr. Pankaj Dubey from the Gurgaon Office of the defendant no.2 would get in touch with the said Mr. Ramesh Kejriwal in the matter.

k) On the basis of the discussions between Mr. Ramesh Kejriwal of the plaintiff and Mr. Pankaj Dubey of the defendant no. 2 as aforesaid, Mr. Pankaj Dubey by an e-mail dated 3rd February, 2015 requested the plaintiff to share the details of the said Sreerampore Property.

l) In response to the e-mail Mr. Ramesh Kejriwal of the plaintiff by an e-mail dated 3rd February, 2015 sent to the said Mr. Pankaj Dubey with copy to Mr. R.K. Satapathy informed that the plaintiff shall share all the documents and photographs of the said Sreerampore Property and immediately on 3rd February, 2015, the said Mr. R.K. Satapathy by another e-mail addressed to Mr. Ramesh Kejriwal of the plaintiff wanted to confirm a visit to the said Sreerampore Property, and asked for details pertaining to the said property.

m) Mr. Ramesh Kejriwal by an e-mail dated 3rd February, 2015, forwarded to Mr. Pankaj Dubey and Mr. R.K. Satapathy of the defendant no.2, some photographs, drawings and copy of documents relating to the said Sreerampore Warehouse and also Google Earth Picture link showing the said Sreerampore Warehouse for their reference.

n) On the basis of the request made by the said Mr. Satapathy of the defendant no.2 for a site visit, the said Mr. Kejriwal of the plaintiff fixed such site visit on 5th February, 2015 and it was agreed that for that purpose the said Mr. Satapathy shall visit the office of the plaintiff on that day at 9.30 a.m. However, the said Mr. Satapathy did not reach the office of the plaintiff on 5th February, 2015, at 9.30 a.m. and instead reached the office on or around 12.30 p.m., as a result to that the visit of the said Sreerampore site on that date could not be done.

o) Thereafter, Mr. Satapathy informed Mr. Ramesh Kejriwal, of the plaintiff that they are not keen to finalize the tenancy relating to the said Sreerampore Property and requested for some other warehouses options in and around Kolkata. Accordingly, Mr. Ramesh Kejriwal by an e-mail dated 20th February, 2015 forwarded to Mr. Satapathy with a copy to the Mr. Pankaj Dubey proposals for four other warehouses around Kolkata.

p) On 22nd May, 2015, Mr. K. Prasad for the first time informed to Mr. Kejriwal that since the plaintiff could not offer inspection of the said Sreerampore site to the defendant no. 2 and particularly to the said Mr. Satapathy of the defendant no. 2 on 5th February, 2015, the defendant no.2 had refused to enter into further negotiation with the plaintiff.

q) Thereafter, on 28th May, 2015, the said Mr. Ramesh Kejriwal while visiting the said Sreerampore Warehouse came to know that the defendant no. 2 had directly entered into a tenancy agreement

with Keola Associates Pvt. Ltd. for taking the said Sreerampore Warehouse on rent bypassing the plaintiff and the efforts of the plaintiff.

r) Immediately on 11th June, 2015, the plaintiff caused its Advocate to write a letter to the defendant no.2 with copies thereof to the Managing Director and the Manager, H.R. of the defendant no.1 informing them that because of their conduct and action the plaintiff has suffered business loss and also loss of reputation which were assessed at Rs. 1 crore. Though the notices were served upon the defendants but neither the defendant no.1 nor the defendant no.2 had responded to the said Advocate's Letter dated 11th June, 2015.

s) The plaintiff again on 4th December, 2015 sent another notice to the defendants as reminder but no reply was sent to the plaintiff.

t) The plaintiff states that because of the wrongful and illegal acts of the defendants and each one of them in entering into the tenancy agreement directly with the landlord of the said Sreerampore property measuring about 85000 square feet which was to be let out @Rs. 20/- per square feet per month by avoiding the plaintiff after obtaining the brokerage services of the plaintiff as aforesaid, the plaintiff has suffered financial loss to the extent of two (2) month's rent amounting to Rs. 34,00,000/-.

u) In view of the aforesaid conduct of the defendants and each one of them, the plaintiff has also suffered damages by way of loss of reputation in the market, which damages the plaintiff reasonably assesses at Rs. 66,00,000/-.

7. CASE OF THE DEFENDANT NO.1 :

a) The Defendant No. 1 is a well reputed Company and has a very large customer base and amongst others, manages and operates the Website and has its registered office at Brigade Gateway, 8th Floor, 23/1, Dr. Rajkumar Road, Malleshwaram (W), Bangalore -

560055, Karnataka, India.

b) The Defendant No.1 was looking for a befitting space on a long term lease suitable to its requirement for expanding its business operations, the Defendant was in regular touch with different real estate brokerage firms and also individuals but not limited to the Plaintiff, the defendant No. 2, CBRE, a renowned commercial real estate company, etc. on a non-exclusive basis.

c) The plaintiff vide an email and letter bearing reference No. PPML/W/52/201402015, dated 25th October, 2014, had sent its proposals on a couple of properties and also its schedule of fees that would be charged as commission in the event either of the properties offered in the said letter is finalized and taken on lease by the Defendant No.1. However, the said proposal was rejected by the Defendant No.1 on account of certain legal and non- suitable issues.

d) The Defendant No.1 took a call in view of the inordinate delay in finalizing a space for its warehouse along with other activities which required expertise advice, to not enter into a direct lease in Kolkata and instead engaged a third party logistics service provider for its warehouse requirement.

e) In view of the aforesaid, the Defendant No.1 handed over the responsibilities to the Defendant No. 2, to finalize the location for the warehouse, providing support functions and related services etc. and in due course of all these arrangement, the Defendant No.1 introduced the Defendant no. 2 to the plaintiff to independently explore the possibility of a mutual relationship without any intervention of the Defendant No.1.

f) The "Clause 4-Defence and Indemnity" of the Master Services Agreement clearly enumerates that the Defendant No. 2 shall release and will defend, hold harmless and indemnify Defendant No.1 and/or its subsidiaries, affiliates, directors, officers, employees, agents, successors and assigns ("Amazon Indemnified Parties") from and against any allegation or claim based on, or any loss, damage, settlement, cost, expense and any other liability (including but not limited to claims and/or expenses arising from any compensation, salary, remuneration, contributions or any amount payable to the Personnel or required to be paid or contributed for or on behalf of or in respect of Personnel under the applicable Laws, reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification) arising from any act or omission by the Defendant No.2 and/or its Personnel, including without limitation any breach or default under this Agreement or the Work Order or allegation or claim of negligence, strict liability or misconduct.

g) Thus, it is established that no liability exists against Defendant No.1 for any act of the Defendant no. 2 and Defendant No.1 cannot be implicated for any business relationship and/or transaction between Defendant no.2 and a third party.

h) The plaintiff, vide an email dated 31st December, 2014, shared details of the subject property. However, in view of the definitive service agreement with Defendant No.2 for the warehousing services, the e-mail was overlooked as no services were required by the Defendant No.1 from the Plaintiff.

i) Later the Defendant No.1 vide an email dated 12th January, 2015, had asked for the address of the subject property from the plaintiff and it was duly forwarded to the Defendant no.2, and the plaintiff was suggested to approach the Defendant No. 2 for any service requirements.

j) The defendant no.1 states that no contract was either executed or concluded by and between the Plaintiff and the Defendant No.1 with respect to any service.

k) The details of the subject property being available on rent including the mandate to let-out the subject property was a matter of public information and the details of the same were already available with different real estate brokerage firms/agents. Therefore, any claim of confidentiality over such details/ information is neither sustainable nor maintainable.

8. CASE OF THE DEFENDANT NO. 2:

a) The Defendant No.2 is well established in India as progressive and professional Freight Forwarding and Logistics Management Company and it offers a broad range of services covering Sea, Air Logistics and Projects.

b) The Defendant no.1 as mentioned earlier is the largest e-retailer in the market and it requires services and supports from the logistic industry, due to which the Defendant No.1 and the Defendant no. 2 share a business relation since 22nd December, 2014, by way of Master Service Agreement executed by and between the defendant no. 1 and defendant no. 2. It was agreed that the Defendant no.2 will provide logistics support to the Defendant no.1 by looking for warehouse spaces and man-power for its business.

c) In the course of their business relationship, the defendant no.1's representative one Mr. Tejas Faldu, on 22nd December, 2014, contacted one Mr. Pankaj Dubey, a representative of the Defendant no.2, enquiring for availability of a ready space warehouse in Kolkata. To this enquiry made by the defendant no.1, the defendant no.2 had responded through an e-mail dated 23rd December, 2014, enquired the specifications in regards to the requirement of space necessary for the Defendant No.1.

d) Thereafter, vide an e-mail dated 24th December, 2014, the defendant no.2 intimated the defendant no.1's representative of two individual sites at Kolkata which were in a ready to move and occupy condition.

e) Regarding the requirements of the Defendant no.1 for warehouse space, both the Defendant no.1 and Defendant no.2 had communicated over e-mails sent from 30th December, 2014 upto 28th January, 2015 and accordingly, several site options were provided to the Defendant no.1.

f) Simultaneously, the Defendant no. 2 had initiated communication with CBRE, who is its listed real estate agent, to come up with some solutions for the warehouse requirements as prescribed by the Defendant no.1.

g) The defendant no. 2 by a further electronic mail dated 2nd February, 2015, had forwarded another fresh list of sites for consideration of the Defendant no.1, which had eight sites situated at Dhulagarh, Sreerampore, Durgapur Expressway (NH2), Taratala Road and Madhyamgram (Badu Road).

h) The Defendant no. 2 states that being in the business of providing logistic and warehouse services/providers, it not only has information of various sites available for rent and/or sale and also, for this purpose, has its network of real estate agent as such it is quite possible for two different agents to have same lead, as has been in the

instant case.

i) The Sreerampore site information was shared by CBRE through the Defendant no. 2 to the Defendant no.1 and the Defendant no.2 and CBRE were internally preparing for a site visit for the Defendant no.1. By an email dated 3rd February, 2015 from Mr. Pankaj Dubey, representative of Defendant no.2 to CBRE suggested that Defendant no.1 wanted to inspect the site and therefore requested one R.K. Satapathy, employee of Defendant no. 2 to coordinate the said site visit.

j) Subsequently, the Defendant no. 2's representative inspected the site of Sreerampore warehouse on 4th February, 2015 through CBRE and further fixed another inspection to be done by the Defendant no.1's representative on 6th February, 2015.

k) The defendant no.1 in its mail dated 3rd February, 2015, mentioned of one Sreerampore site and requested the Defendant no.2 to have a site visit upon getting in touch with the agent being one Mr. Ramesh Kejriwal, who is the Director of the plaintiff. On receiving the information from the Defendant no.1, it transpired that the Sreerampore site which the defendant no.2 had mentioned in its electronic mail dated 3rd February, 2015 was the same site of which the plaintiff was providing lead to the defendant no.1.

l) The defendant no.2 states that the plaintiff informed its inability to arrange for a site inspection on 4th February, 2015 but proposed to arrange the same on 5th February, 2015 and accordingly, it was rescheduled.

m) On 5th February, 2015, the representative of the defendant no.2 could not reach the location for site inspection due to unavoidable circumstances and upon informing the plaintiff, the representative had also asked the plaintiff to make alternate arrangements for such inspection. However, the plaintiff refused to arrange for the site visit that they had various other engagements to attend.

n) The defendant no. 2 had earlier clearly informed the Plaintiff that the Defendant no.2 would not be in a position to consider the said site from the plaintiff if the plaintiff cannot complete the site visit on 5th February, 2015, which will be evident from emails dated 5th February, 2015 and 17th June, 2015.

o) The Sreerampore Site, then was inspected by the Defendant no.1 and Defendant no.2 on 6th February, 2015, through CBRE and it was then finalized by the defendant no.1 on 17th April, 2015 and accordingly rent for one month was paid to the CBRE by the Owner of the Warehouse i.e. Keola Associates Private Limited.

9. ISSUES:

On the basis of the pleadings of the parties following Issues were framed:

- "1. Is the suit bad or not maintainable in its present form or is liable to be dismissed as alleged by the defendants in their Written Statements?
2. Is the defendant no.2 an agent of the defendant no.1?
3. Does the instant suit suffer from lack of or non-disclosure of cause of action as alleged by the defendants in their Written Statements?
4. Was the defendant no.1 after orally accepting the terms and conditions of brokerage services of the plaintiff and thereafter having acted in furtherance to such acceptance by forwarding the 'Mutual Non disclosure agreement', not bound and obliged to honour the terms thereof as stated in paragraph 5 of the plaint?
5. Was not acceptance of the terms of the Mutual Non Disclosure agreement by the defendant No.1 final and binding after exchange of the emails dated 4th December, 2014 as stated in paragraph 7 of the plaint?
6. Did the defendants in consent and connivance with each others violating the terms of the mutual non-disclosure agreement on one hand and taking full advantage of the plaintiff's services on the other acted to the prejudice and detrimental of the plaintiff?
7. Is the defendant no.2 bound by any contractual obligation or otherwise with the plaintiff?
8. Whether any concluded contract was entered into in between the plaintiff and the defendant No.1 which can entitle the plaintiff to obtain a decree of Rs.1,15,92,877/- as against the defendant no.1?
9. Are not the defendants liable to compensate the plaintiff as per the particulars as stated in paragraph 35 of the plaint?
10. Is the plaintiff entitled to any interest @ 18% on the sum of Rs.1,00,00,000/- on and from 31st December, 2014 till 18th November, 2015 from the defendants?
11. Whether the plaintiff is entitled to a decree as prayed for?
12. To what other reliefs is the plaintiff entitled to?"

10. EVIDENCES OF THE PARTIES :

Plaintiff has adduced one witness on its behalf being P.W.1, namely, Mr. Rajesh Kejriwal. During his evidence, the plaintiff has exhibited altogether 33 documents

being Exhibits A to EE/1 which are as follows:

- i. Exhibit-A - A copy of an email sent by the plaintiff, to the representative of defendant no. 1 dated 14th October, 2014 , namely, Mr. K. Prasad mail id with an attachment of mutual non-disclosure agreement. Certain conditions were laid upon the plaintiff by the defendant no. 1 in the following agreement.
- ii. Exhibit-B - An e-mail that the plaintiff had sent from the official mail i.d. which is ramesh@pioneerproperty.in to Mr. K. Prasad, representative of the defendant no. 1, dated- 18th October, 2014.
- iii. Exhibit-C - An e-mail arrived at the official e-mail i.d. of the plaintiff which is ramesh@pioneerproperty.in, dated- 4th December, 2014.
- iv. Exhibit-B/1 - A document, the plaintiff had sent through his lawyer and under his instruction it was prepared and modified.
- v. Exhibit-D - A copy of e-mail sent to the plaintiff by the representative of the defendant no. 1, Mr. K. Prasad on 4th December, 2014 in his official mail i.d.
- vi. Exhibit-E - A copy of e-mail received from the defendant no. 1 side, on 14th December, 2014 at 6.53 p.m. containing a Mutual Non-disclosure Agreement wherein some terms and conditions were written.
- vii. Exhibit-F - A copy of few e-mails sent by the plaintiff on 19th October, 2014 at 2.51 p.m. to the defendant no. 1 , with few attachments containing proposal letter and photos of some properties.
- viii. Exhibit-G (Collectively) - A copy of an e-mails send by the plaintiff to Mr. K. Prasad of defendant no. 1, on 19th October, 2014 containing photographs of different properties via different mails.
- ix. Exhibit-H - A copy of an e-mail which was sent to the plaintiff by Mr. K. Prasad of defendant no. 1, on 21st October, 2014 at 7.29 p.m. on his official e-mail id, vide this mail the defendant confirmed the receipt of the earlier mail and have also stated BTS(Build to Suit).
- x. Exhibit-I (Collectively) - A copy of e-mail dated 25th October, 2014 at 11.59 p.m. sent by the plaintiff to Mr. K. Prasad representative of defendant no. 1 containing proposal, few photographs and site plan of the property.
- xi. Exhibit-J - A copy of an e-mail sent by Mr. K. Prasad of representative of defendant no. 1 to the plaintiff, on 27th October, 2014 at 6.28 p.m. have sent a check list and had requesting the plaintiff to fill up the details of the properties in the check

list.

xii. Exhibit-K - A copy of e-mail, dated 28th October, 2014, at 6.37 p.m. sent by the plaintiff to Mr. K. Prasad representative of defendant no. 1, containing the site plan, duly filled up check list and some photographs of the property.

xiii. Exhibit-L - Copies of e-mails sent by the plaintiff to Mr. K. Prasad representative of defendant no. 1, dated-

a. First mail on 28th October, 2014 at 6.38 pm. b. Second mail on 28th October, 2014 at 6.39 pm. c. Third mail on 28th October, 2014 at 6.40 pm. d. Fourth mail on 28th October, 2014 at 6.40 pm. e. Fifth mail on 28th October, 2014 at 6.41 pm. f. Sixth mail on 28th October, 2014 at 7.14 pm. g. Seventh mail on 31st October, 2014 at 12.16 am. h. Eighth mail on 31st October, 2014 at 12.51 pm. i. Ninth mail on 31st October, 2014 at 12.51 pm. j. Tenth mail on 31st October, 2014 at 12.52 pm. k. Eleventh mail on 31st October, 2014 at 12.53 pm. l. Twelfth mail on 31st October, 2014 at 12.53 pm. m. Thirteenth mail on 31st October, 2014 at 12.54 pm. n. Fourteenth mail on 31st October, 2014 at 10.26 pm. xiv. Exhibit-M - Copy of e-mail sent by Mr. K. Prasad representative of defendant no.1 to the plaintiff on 1st November, 2014 at 11.29 a.m. requesting to send all the documents including the title deed.

xv. Exhibit-N - Copy of an e-mail dated 01.11.2014 at 2.10 p.m. sent by the plaintiff to Mr. K. Prasad of defendant no. 1, stating the plaintiff replied the document he was asked for had already been sent by him.

xvi. Exhibit-O - Copy of e-mail sent by the plaintiff to Mr. K. Prasad, representative of defendant no. 1 on 1st November, 2014, at 3.41 p.m. containing attachments of some drawings relating to the construction.

xvii. Exhibit-P - Copy of e-mails sent by the plaintiff to Mr. Prasad on 1st November, 2014 and to Mr. Naresh on 12th November, 2014 with attachment of the construction drawings and Structure Stability Certificate issued by Everest Industries Limited.

xviii. Exhibit-Q - A copy of an e-mail sent by Mr. Naresh to the plaintiff on 13th November, 2014, at 4.44 p.m., the copy has been marked to Mr. Prasad as well.

xix. Exhibit-C1 - A copy of an e-mail sent by the plaintiff to Mr. K. Prasad, Representative of defendant no. 1, on 4th December, 2014, the plaintiff has also attached a Mutual Non-Disclosure Agreement in which some modifications were made by the plaintiff which had already been sent to Mr. K. Prasad on 18.10.2014.

xx. Exhibit-R - A copy of an e-mail sent to the plaintiff by the representative of the defendant no. 1, on 4th December, 2014 and in this mail, he confirmed the receipt of the mail which the plaintiff had sent to the defendant on the earlier occasion.

xxi. Exhibit-S - A covering letter which was written by the plaintiff on 16th December, 2014 and had sent the same to Mr. K. Prasad, Representative of defendant no. 1, along with the documents the plaintiff had also enclosed two sets final copy of mutual non-disclosure agreement and the following documents were sent by speed post with the seal and signature of the plaintiff's company.

xxii. Exhibit-T - A copy of an e-mail which the plaintiff had sent to Mr. K. Prasad of the defendant no. 1 company on 26th December, 2014, at 3.22 p.m. in which the plaintiff had intimated him that he had already sent two final copies of mutual non-disclosure agreement by stamping and signing on the same and also requested him to send the second copy of the said document for records by getting it duly stamped and signed by defendant no.1.

xxiii. Exhibit-U (Collectively) - A copy of e-mail which was sent by the plaintiff to Mr. K. Prasad, Representative of defendant no. 1, on 31st December, 2014, at 1.42 p.m. along with the check-list of Sreerampore property by way of attachment.

xxiv. Exhibit-V - A copy of an e-mail which was sent to the plaintiff by Mr. K. Prasad, Representative of the defendant no. 1 company on 12th January, 2015 and had requested the plaintiff to send the postal address of the Sreerampore property.

xxv. Exhibit-W - A copy of an e-mail which was sent by the plaintiff to the representative of the defendant no. 1 company on 13th January, 2015 mentioning the complete postal address of the Keola ware-house at Sreerampore property.

xxvi. Exhibit-X - A copy of an e-mail which was sent to the plaintiff by Mr. Pankaj Dubey and a copy of the said document was marked to Mr. R.K. Satapathy, both are the representatives of defendant no. 2, it was received by the plaintiff on 3rd February, 2015, in this mail Mr. Pankaj Dubey had requested the plaintiff to send some photos and documents related to the Sreerampore property.

xxvii. Exhibit-Y (Collectively) - A copy of an e-mail which was sent by the plaintiff to Mr. Pankaj Dubey and also marked to Mr. R. K. Satapathy both are the representatives of the defendant no. 2 on 3rd February, 2015, the mail contained google photographs of the Sreerampore property and some kmz file.

xxviii. Exhibit-Z (Collectively) - A copy of the e-mail which was send by the plaintiff to Mr. Pankaj Dubey and Mr. R. K. Satapathy, both are the representatives of defendant no. 2, dated- 4th February, 2015 containing a copy of the conversion certificate of Sreerampore property by way of attachment.

xxix. Exhibit-AA - A copy of an e-mail which was sent by the plaintiff to Mr. R. K. Satapathy and Mr. Pankaj Dubey both are the representatives of the defendant no. 2, stating a request from the plaintiff's side that to reschedule the inspection of the

Sreerampore property which Mr. R.K. Satapathy of defendant no. 2 and the plaintiff had decided on the previous occasion over a telephonic call due to some complications related to time of the plaintiff, it was sent on 5th February, 2015.

xxx. Exhibit-BB (Collectively)- A copy of an e-mail which was sent by the plaintiff to Mr. Satapathy and Mr. Pankaj Dubey both are representatives of defendant no. 2, dated 20th February, 2015, the mail had an attachment of an offer letter of four properties as it was previously asked by Mr. R.K. Satapathy.

xxxi. Exhibit-CC - A copy of an e-mail which was sent by the plaintiff to Mr. R.K. Satapathy and Mr. Dubey both are the representative of the defendant no. 2 on 3rd February, 2015 attaching some documents relating to the Sreerampore property, some Auto CAD drawings and some photographs of the Sreerampore property.

xxxii. Exhibit-DD (Collectively) - Copies of some documents which are e-mails that were sent by the plaintiff to Mr. K. Prasad the representative of defendant no. 1 on the occasions first mail dated- 22nd April, 2015, the plaintiff had requested to return him one copy on judicial stamp paper with the seal and signature of the officials. On the second mail dated-2nd July, 2015, the plaintiff had reiterated the same facts that he had sent in his first mail. On the third mail dated-10th August, 2015 the plaintiff had requested to sent him a copy of the mail of non-disclosure agreement duly signed by the council of the defendant no. 1 with their official seal.

xxxiii. Exhibit-EE (Collectively) - Copy of the first Advocates notice which was sent to defendant nos. 1 and 2 and original receipt of the speed post which the plaintiff had caused to send the four persons officials of the defendants no. 1 and 2 through his Advocate. And the second document is also a notice which as per the plaintiff's instruction the Advocate had sent to the officials of the defendant no. 1 and 2 by speed post and the receipt of the same original is enclosed with the document.

xxxiv. Exhibit-EE/1 - AD card of the notice sent by the plaintiff's Advocate to the defendant no. 2 and the second is the track record of the notice that was sent by the plaintiff's Advocate.

11. The defendant nos. 1 has examined one witness, being D.W.1, namely Mr. Rahul Sah, who is the Area Manager in Amazon Services, herein referred as the Defendant No.1. During his evidence, only one document was exhibited being Exhibit "1" (Letter of Authority of the defendant no.1 company to the witness.)

12. Defendant no.2 had adduced one witness being D.W.2, namely, Mr. Pankaj Dubey, who is heading the Business Development Team of the Defendant no.2. During the evidence of the witness of the defendant no.2, altogether 6 (six) documents were exhibited being Exhibit - 2 to Exhibit -7 which are as follows :

- i. Exhibit-2 (Subject to objection) is the Master Services Agreement dated 22nd December, 2014, entered between defendant no.1 and defendant no.2.
- ii. Exhibit -3 are the e-mails started from the defendant no.1 and are the part of the judges brief of documents at Page No. 104 to 115.
- iii. Exhibit-4 (Subject to objection) is the e-mails appearing at page nos. 83 to 96 of the judges brief of documents.
- iv. Exhibit-5 (Subject to objection) is the e-mails appearing at page nos. 97 to 103 of the Judges brief of documents.
- v. Exhibit-6 (Subject to objection) is the document issued by the owner of the Sreerampore warehouse appearing at page no. 118 of the Judges brief of documents.
- vi. Exhibit -7 (subject to objection) is the affidavit affirmed by one Sri Harish Nagpal, General Manager, IT of the defendant no.2 to prove the electronic documents under Section 65B of the Evidence Act.

13. SUBMISSIONS OF COUNSEL FOR THE PLAINTIFF:

- a. Mrs. Suparna Mukherjee, Learned Advocate representing the plaintiff submitted that in paragraph 17 of the plaint, the plaintiff has explained that this Court is having jurisdiction to entertain the suit filed by the plaintiff as the defendant no.2 has communicated with the terms and conditions to the plaintiff at the registered office of the plaintiff which is situated within the jurisdiction of this Court. She submitted that the defendant no.2 in its written statement has accepted the contention of the plaintiff. She submitted that in response to the e-mail dated 4th December 2014, the defendant no.1 through one M.K. Prasad by an e-mail dated 4th December, 2014, accepted the modifications in the "Non-Disclosure Agreement" and instructed the plaintiff to forward the signed copy of the agreement.
- b. Mrs. Mukherjee submitted that pursuant to the oral agreement the plaintiff has started showing properties in and around Kolkata to the defendant no.1 and the plaintiff has also forwarded the photographs and details of the properties to the defendant no.1 by e-mails dated 19th October, 2014 and 25th October 2014 as well as letter dated 18th October, 2014. She submitted that by an e-mail dated 27th October 2014, the defendant no.1 has forwarded check list to the plaintiff and requested the plaintiff to fill up the details of the properties in the format as provided in the check-list. She submitted that by way of two emails, the plaintiff forwarded the filled up check-list in respect of two properties with photographs to the defendant no.1.
- c. Mrs. Mukhrejee submitted that by an e-mail dated 31st December 2014, the plaintiff has forwarded a proposal to the defendant no.1 for a warehouse at

Sreerampore along with the particulars of the said property for identification of the property. She has submitted that by an e-mail dated 12th January 2015, the defendant no.1 through Shri K. Prasad requested the plaintiff to send the postal address of the Sreerampore Warehouse and by an e-mail dated 13th January 2015, the plaintiff had forwarded the complete postal address of the Sreerampore warehouse to the defendant no.1. She has submitted that on receipt of the details time to time discussions were held between the plaintiff and the defendant no.1 and in the meantime the defendant no.1 had appointed the defendant no.2 as its agent to select and choose the warehouse in and around Kolkata. She submitted that immediately one Mr. Pankaj Dubey contacted the plaintiff and informed the plaintiff that he was appointed by the defendant no.1 as its agent. She submitted that as per the discussion with the defendant no.2, the plaintiff has shared the details of the Sreerampore property including photographs, drawings and google earth pictures to the defendant no.2 by an e-mail dated 3rd February, 2015. d. Mrs. Mukhrejee submitted that as per the request of the defendant no.2, the site visit was fixed on 5th February, 2015 and Mr. Satapathy, representative of the defendant no. 2 had agreed to visit the office of the plaintiff at 9.30 a.m but Mr. Satapathy, representative of the defendant no. 2 did not reach the office of the plaintiff at 9.30 am to visit site till 12.30 pm due to which site visit could not be done. She submits that the defendant no.2 had informed the plaintiff as the defendant no.1 is not keen to finalize the tenancy of Sreerampore property and requested the plaintiff to furnish details of some other warehouse in and around Kolkata and by an e-mail dated 20th February, 2015, the plaintiff has forwarded the details of other four warehouses to the defendant no.2 in and around Kolkata.

e. Mrs. Mukhrejee submitted that on 22nd May, 2015 for the first time the defendant no.1 had informed the plaintiff that the plaintiff could not offer inspection of the Sreerampore property to the defendant no. 2 and on 5th February, 2015, the defendant no.2 refused to enter into further negotiation with the plaintiff. She has submitted that on 28th May, 2015, when the plaintiff has visited the Sreerampore property, the plaintiff came to know that the defendant no.2 had directly entered into a tenancy agreement with Keola Associates Pvt. Ltd. She has submitted that immediately on 11th June, 2015, the plaintiff had sent a legal notice to the defendants calling upon the defendants to pay Rs. 1 Crore to the plaintiff as due to the conduct of the defendants, the plaintiff has suffered loss in business and reputation but inspite of receipt of the notice, none of the defendants have sent any reply. The plaintiff by a notice dated 4th December, 2015, corrected the typographical mistake in the notice dated 11th June, 2015.

f. Mrs. Mukhrejee submitted that the defendants have entered into a tenancy agreement directly with the landlord of the Sreerampore property measuring an area of 85000 sq.ft. which was to be let out at the rate of Rs. 20/- per sq.ft. per month and thus the plaintiff is entitled to get its brokerage services to the extent of two (2) months rent amounting to Rs. 34,00,000/- and damages of Rs. 66,00,000/-. She

further submitted that the plaintiff is also entitled to get an interest at the rate of 18% per annum.

g. Mrs. Mukherjee submitted that the defendant no.1 has admitted that during October 2014 till February 2015, the plaintiff had shared proposals of different properties by e-mails and also schedule fees that would be charged as commission. h. Mrs. Mukherjee relied upon the judgment reported in (2008) 13 SCC 597 (BSNL and Anr. -vs- BPL Mobile Cellular Limited and Ors.) and submitted that if the person making the offer to another intimacy expressly or impliedly a particular moral acceptance, the offeree can adopt that mode to conclude a binding bargain.

i. Mrs. Mukherjee relied upon the judgement reported in (2006) 5 SCC 311 (Bhagwati Prasad Pawan Kumar -vs- Union of India) and submitted that it is well settled law that an offer may be accepted by conduct but conduct would only amount to acceptance if it is clear that the offeree did the act with the intention of accepting the offer.

j. Mrs. Mukherjee relied upon the judgment reported in (2004) 6 SCC 516 (Link International and Another -vs- Mandya National Paper Mills Ltd.) and submitted that admittedly the defendant no. 2 had acted as an agent and will presume that they had not entered into the contract on behalf of the principal and thus the defendant no. 2 as agent would also be liable to pay the loss cost to the plaintiff.

k. Mrs. Mukherjee relied upon the judgment reported in 1966 SCC OnLine All 338 (Firm Rupram Kailash Nath -vs- Cooperative Union, Mallawah & Anr.) and submitted that the defendant no. 2 was acting within the scope of his authority in making the purchase of cloth from the plaintiff for the defendant no. 1 and if he made the purchase on credit and committed fraud, the defendant no. 1 was also liable for the act of his agent. l. Mrs. Mukherjee relied upon the judgment reported in (2010) 3 SCC 1 (Trimex International FZE Ltd. -vs- Vedanta Aluminium Limited, India) and submitted that in the absence of sign agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letters, telex, telegrams and other means of communications.

m. Mrs. Mukherjee relied upon the judgment reported in 1995 SCC OnLine Del 443 (M/s. Progressive Constructions Limited -vs- Bharat Hydro Power Corporation Limited) and submitted that in view of Section 4 of the Contract Act when offerer and offeree are not at one place and are exchanging the offer and acceptance through post then the contract could be deemed to have been entered into at the place where the offer was received and acceptance was posted.

n. Mrs. Mukherjee relied upon the judgment reported in (2018) 11 SCC 652 (Shivaji Balaram Haibatti -vs- Avinash Maruthi Pawar) and submitted that it is settled law that the parties to the suit cannot travel beyond the pleadings so also the Court cannot recall any findings on the issues which are not part of pleadings. o. Mrs. Mukherjee relied upon the judgment reported in (2017) 9 SCC 579 (State of Uttarakhand & Anr. -vs- Mandir Sri Laxman Sidh Maharaj) and submitted that the

defendants during the course of argument has sought to make out a case which have not been specifically pleader in the written statement and also not made out in the evidence.

p. Mrs. Mukherjee relied upon the judgment reported in (2007) 6 SCC 401 (M. Venkataramana Hebbar (DEAD) by LRS. -vs- M. Rajagopal Hebbar & Ors.) and submitted that if no denial of assertion made by the defendants in their written statement in that behalf, the said averment could, therefore, be deemed to be admitted in terms of Order VIII Rule 3 and Order VIII Rule 5 of the Code of Civil Procedure, 1908.

q. Mrs. Mukherjee relied upon the judgment reported in (2005) 12 SCC 121 (Ram Bhual -vs- Ambika Singh) and submitted that it is well settled that pleadings are very important and play a large part in adjudication of the dispute between the parties.

14. SUBMISSIONS ON BEHALF OF THE DEFENDANT NO. 1:

a. Mr. Malay Kumar Ghosh, Learned Senior Advocate representing the defendant no. 1 submitted that there is no concluded contract between the plaintiff and the defendants. He submits that there is no iota of evidence on record to say that the plaintiff and the defendant no. 1 had indeed entered into any oral agreement whereby the latter had at all bound itself to the purported brokerage services allegedly rendered by the plaintiff. b. Mr. Ghosh submitted that from the pleadings and evidence produced before this Court, the plaintiff failed to prove significant factors i.e. offer and absolute acceptance thereof, and consideration, that make up an enforceable and valid contract. He submits that noting on record to prove that absolute and unfettered acceptance flowed from the defendant no.1 towards any proposal of the plaintiff or that any consideration flowed between the parties.

c. Mr. Ghosh submitted that the defendant no.1 and defendant no.2 have entered into a Master Services agreement dated 22nd December, 2014 and from the said agreement, it would reveal that the defendant no.1 had outsourced its warehousing job to the defendant no. 2, a third logistics entity and thus the defendant no. 2 in its independent capacity could enter into agreement including tenancy agreement for renting warehouse and performing the obligations as entrusted to it under the Master Services Agreement.

d. Mr. Ghosh submitted that the case of the plaintiff is that the defendant no.1 had engaged it for brokerage services and latter introduces it to defendant no.2, as its purported agent and also pleaded that the details of the property located at Sreerampore were shared with the defendant no.2 and the plaintiff was surprised when it learnt that the defendant no. 2 had directly entered into a contract with the landlord of the said property but there is nothing on record to established that any acceptance of offer of the plaintiff by the defendant no.1 or any consideration flowed from the defendant no1.

e. Mr. Ghosh submitted that by an e-mail dated 27th October, 2014 when the defendant no.1 sought details of the concerned properties and asked the plaintiff to fill in the checklist or by an e-mail dated 12th January, 2015 when the defendant no.1 sought the postal address of Keola Warehouse from the plaintiff, the defendant no.1 did not accept any proposal of the plaintiff or enter into any agreement with the plaintiff. He submits that the purported Mutual Non-Disclosure Agreement is also misconceived as the correspondences exhibited by the plaintiff with the defendant no.1 had not affixed its signature and seal. He submits that the defendant no.1 is not at all bound by any Mutual Non- Disclosure Agreement and the defendant no.1 never acted in furtherance of any oral agreement or Mutual Non-Disclosure Agreement.

f. Mr. Ghosh submitted that the plaintiff has failed to demonstrate the basis for quantification of the purported damages and failed to prove the direct loss alleged to have been sustained by the plaintiff on account of the alleged conduct of the defendant no.1. g. Mr. Ghosh in support of his submissions has relied upon the following judgments :

i. (1990) 2 SCC 147 (Brij Mohan & Ors. -vs- Sugra Begum & Ors.).

ii. (2017) 13 SCC 243 (Vedanta Limited -vs- Emirates Trading Agency LLC).

iii. AIR 1965 SC 1981 (Karsandas H. Thacker - vs- M/s. The Saran Engineering Co. Ltd.).

iv. (2017) 8 SCC 237 (Kanchan Udyog Limited - vs- United Spirits Limited).

15. SUBMISSIONS ON BEHALF OF THE DEFENDANT NO. 2:

a. Mrs. Jayati Chowdhury, Learned advocate representing the defendant no. 2 submitted that the defendant no.1 approached the plaintiff and expressed the intention that the defendant no.1 intent to acquire a large warehouse in or around Kolkata on rental basis. The plaintiff has agreed to provide brokerage services to the defendant no.1 and informed defendant no.1 about his brokerage charges i.e. plaintiff would take one month's rental plus service tax from the tenant as well as from the landlord on finalisation of deal or handing over possession. He submits defendant no.1 had sent a Mutual Non-disclosure Agreement to the plaintiff to which the plaintiff had indicated some minor modifications by an e-mail.

b. Mrs.Chowdhury submitted that the plaintiff prepared the Mutual Non-Disclosure Agreement in duplicate on non-judicial stamp paper and the plaintiff had started showing properties to the defendant no. 1 in or around Kolkata and also forwarded the photographs and details of the properties. She submits that the plaintiff by an e-mail dated 31.12.2014 forwarded its proposal for a warehouse at Sreerampore, Delhi Road, Hooghly along with the details of the said property which was then

occupied by Khadim and was about to be vacated. She submits that Sreerampore Warehouse was described as Keola Warehouse as it is owned by Keola Associates Pvt. Ltd. till the end of January, 2015. c. Mrs. Chowdhury submitted that the defendant no.1 informed the plaintiff that the defendant no.1 had appointed defendant no. 2 to select/choose the warehouse in or around Kolkata on behalf of the defendant no.1 and also informed the plaintiff that the defendant no.2 would get in touch with the plaintiff in this regard. She submits that the defendant no. 2 has been in a business relationship with the defendant no.1 since 22nd December, 2014 and a Master Service agreement was entered between the defendant no.1 and defendant no.1 in which the defendant no.2 agreed that it will provide logistic support to the defendant no.1 by looking for warehouse and manpower support for its business purpose.

d. Mrs. Chowdhury submitted that the defendant no.1 had visited many sites arranged by the defendant no.2 but none of the sites were approved by the defendant no.1 and the defendant no.2 initiated a communication with the CBRE and the defendant no.2 had sent list of sites to the defendant no.1 for consideration. The list was prepared in PPT format by defendant no.2 on the basis of information provided by CBRE which also included the Sreerampore property. Defendant no.2 contacted the plaintiff and informed that defendant no.1 had appointed defendant no.2 to select and finalize the warehouse suitable for defendant no.1. He submits that the defendant no.2 by an e-mail dated 3.02.2015 requested the plaintiff to share the details of Sreerampore property and requested for site visit on 05.02.2015. The plaintiff had sent the documents and photographs but site visit did not take place. On 06.02.2015, the Sreerampore warehouse was inspected by the defendant no.1 and defendant no.2 with the help of CBRE and accordingly, the defendant no.1 has approved the same and completed the deal for procuring Sreerampore property with the help of CBRE and the plaintiff did not help in any way to get the Sreerampore property.

e. Mrs. Chowdhury submitted that the agreement entered between the defendant no.1 and the defendant no.2 categorically mentioned that the relation between the parties as that of principal to principal and not that of principal and agent. He submits that the defendant no.2 had initiated communication with the CBRE who is its listed real estate agent to come up with some solutions for the warehouse requirements as prescribed by the defendant no. 1. He submits that by an e-mail dated 02.02.2015, the defendant no. 2 had forwarded list of 8 sites for the defendant no.1 which included Sreerampore property and the list was prepared in PPT format by the defendant no.2 on 30.01.2015 as per the information provided by CBRE.

f. Mrs. Chowdhury submitted that the defendant no.1 approved the Sreerampore property which was ultimately finalized on 17.04.2015 between the defendant no.1 and Keola Associates Pvt. Ltd. and CBRE was paid one month's brookage by Keola Associates- Pvt. Ltd.

g. Mrs. Chowdhury in support of his submissions relied upon the following judgments :

- i. 2006 SCC OnLine Del 824 (Harison Traders Ltd. vs. Raj Bhalla).
- ii. (1990) 3 SCC 1 (Mayawanti. vs. Kaushalya Devi).
- iii. (1991) 1 SCC 1 (Rickmers Verwaltung GMB H vs. The Indian Oil Corporation Ltd.).
- iv. (2023) 5 SCC 541 (Karnataka Power Transmission Corporation Limited vs. JSW Energy Ltd. and Ors.)
- v. AIR 2015 SC 3116 (Essar Oil Ltd. vs. Hindustan Shipyard Ltd and Ors.).
- vi. AIR 1963 (P&H) 538 (Shiv Dayal Kapoor & Ors vs. Union of India & Ors).
- vii. AIR 1957 Cal 280 (Dulaldas Mullick & Ors vs. Ganesh Das Damani & Ors.).
- viii. (1968) 1 WLR 625 (Jaques vs. Lloyd D. George & Partners Ltd.).
- ix. 2 QB 144 (Ackroyd & Sons vs. Hasan).
- x. H.L. (E.) 1901 (The Commissioners of Inland Revenue vs. Muller & Co's Margarine Ltd.).

16. DECISION WITH REASONS :

a. Issue No. 1 : Is the suit bad or not maintainable in its present form or is liable to be dismissed as alleged by the defendants in their written statements?

The plaintiff has filed the suit praying for a decree for a sum of Rs. 1,15,92,877/- against the defendant no. 1 or in the alternative against the defendant no. 2. At the time of filing of the suit, leave under Clause 12 of the Letters Patent was granted. The contention of the defendants, there was no valid contract between the plaintiff and the defendant no. 1. The plaintiff has filed the suit on the basis of the communications between the plaintiff and the defendants either oral or through emails. The plaintiff has relied upon the email dated 14th October, 2014 which was forwarded by the representative of the defendant no. 1 to the plaintiff which described as Mutual Non- Disclosure Agreement and subsequent to the email dated 14th October, 2014, the plaintiff by an email dated 18th October, 2014 forwarded to the defendant no. 1, copy of the Mutual Non-disclosure Agreement indicating about minor modifications and requested the defendant no. 1 to go through the said proposed modifications and informed the views of the defendant no. 1 to the plaintiff so that the plaintiff get the said agreement printed and sent to the defendant no. 1. In the said process, the communication between the plaintiff and the defendants were continued till 20th February, 2015.

It is the specific case of the plaintiff that though there were several communications with regard to the several properties between the plaintiff and the defendants and the plaintiff had forwarded the

documents of the several properties including the Sreerampore property but after getting the documents and support from the plaintiff, the defendant no. 2 directly entered into a tenancy agreement with Keola Associates Private Limited for taking the Sreerampore Warehouse on rent ignoring the plaintiff and the efforts of the plaintiffs and accordingly the plaintiff has filed the present suit claiming damages and also paid the Court fee as per valuation and thus this Court finds that the suit filed by the plaintiff is maintainable in its present form. Issue no. 1 is decided affirmative in favour of the plaintiff.

b. Issue No. 2 : Is the defendant no. 2, an agent of the defendant no. 1?

As per the case of the plaintiff, initially the defendant no. 1 had approached one Ramesh Kejriwal who is one of the Director of the plaintiff and express that, the defendant no. 1 intends to take a larger warehouse in and around Kolkata on rental basis and for that purpose sought for the brokerage services of the plaintiff. As per request, the plaintiff had agreed to provide such brokerage services to the defendant no. 1. The plaintiff agreed for the brokerage service on 14th October, 2014. The representative of the defendant no. 1 had forwarded a draft Mutual Non-Disclosure Agreement to the plaintiff. On receipt of the same, the plaintiff had forwarded the said Mutual Non-Disclosure Agreement by indicating the same minor modifications. In this way, the communications between the plaintiff and the defendant no. 1 were continued through emails. In between, One Pankaj Dubey claiming himself to be a representative of the defendant no. 2 had contacted Mr. Ramesh Kejriwal and informed that the defendant no.2 was appointed as agent of the defendant no. 1 to select and finalize a warehouse suitable for the defendant no. 1. Subsequently, all the discussions were made between the plaintiff and the defendant no. 2 and by an email dated 3rd February, 2015, Mr. Pankaj Dubey had requested the plaintiff to share the details of Sreerampore property, accordingly, the plaintiff had sent photographs, drawings and copy of documents also google earth picture link showing that his Sreerampore warehouse to the defendant no. 2. On 4th February, 2015, Mr. Kejriwal had forwarded further documents of Sreerampore Warehouse to the defendant no. 2 as well as Mr. Satapathy who is also the representative of defendant no.2 for their record. All the correspondences were made with regard to the Sreerampore Warehouse property between the plaintiff and the defendant no. 2 that is Pankaj Dubey and Mr. Satapathy. On 28th May, 2015, the plaintiff came to know that the defendant no. 2 had directly entered into a tenancy agreement with Keola Associates Private Limited for taking the Sreerampore Warehouse on rent by bypassing the plaintiff. The case of the defendant no. 1 that the defendant no. 1 was looking for a large space on a long term lease suitable for its requirement for expanding its business operation and accordingly, he was in regular touch with different real estate brokerage firms and also individuals including plaintiff. The defendant no. 1 has admitted that the defendant has received the details of the shares by the plaintiff by an email dated 25th October, 2014 but the defendant has rejected the same on account of certain legal and non- suitable issues. It is the further case of the defendant that due to inordinate of delay in finalizing the space for its warehouse, the defendant no. 1 took a commercial call and decided not to enter into a direct lease in Kolkata instead engaged a third party logistics service provider for its warehouse requirement, accordingly, the services for providing warehousing and related solutions were outsourced by the defendant no. 1 to defendant no. 2. The defendant no. 1 has relied upon a Master Services Agreement entered between defendant no. 1 and 2 on 22nd December, 2014 being Exhibit 2. The defendant no. 1 relied upon Clause 4 of the said Master

Services Agreement which reads as follows :

"4. DEFENSE AND INDEMNITY. LSP's General Liability. KN is conducting its business in accordance to FIATA Model Rules adopted by KN. In the case of 'Monetary Limits', KN's liability for 'loss or damage to the Goods' of the Customer during warehousing services if proven to be caused by KN, is limited to INR 100,000 (hundred thousand rupees) per event/occurrence and capped at an absolute maximum limited liability of to INR 20,000,000 (Twenty million Rupees) in the aggregate per year/annum. KN shall have a damage allowance of 0.10% of the stock through out value considering the type of products and the order pattern. As regards stock taking differences, stock surpluses found during the stock take performed once a year will be set off against any stock losses incurring in the same calendar year in which the stock take is carried out. Such stock take shall constitute one event.

LSP hereby releases and will defend, hold harmless, and indemnify Amazon, and/or its subsidiaries, Affiliates, directors, officers, employees, agents, successors and assigns ("Amazon Indemnified Parties"), from and against any allegation or claim based on, or any loss, damage, settlement, cost, expense and any other liability (including but not limited to claims and/or expenses arising from any compensation, salary, remuneration, contribution or any amount payable to the Personnel or required to be paid or contributed for or on behalf of or in respect of the Personnel under applicable laws, reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification) (collectively, "Claims"), arising from any act or omission by LSP and/or its Personnel, including without limitation any breach or default under this Agreement or the Work Order, or allegation or claim of negligence, strict liability or misconduct. However, the foregoing does not apply to the extent such Claim results from Amazon's gross negligence or willful misconduct. LSP's duty to defend is independent of its duty to indemnify. LSP's obligations under this Section are independent of all of its other obligations under this Agreement. LSP will use counsel reasonably satisfactory to Amazon to defend each Claim, and Amazon will cooperate LSP with LSP in the defense. LSP will not consent to the entry of any judgment or enter into any settlement without Amazon's prior written consent, which may not be unreasonably withheld.

In connection with any action to enforce LSP's obligations under this Section with respect to any claim arising out of any bodily injury (including death) to any person directly or indirectly employed by LSP, LSP waives any immunity, defense or protection under any workers' compensation, industrial insurance or similar laws and assumes liability for such claim. This paragraph will not be interpreted or construed as a waiver of LSP's right to assert any such immunity, defense or protection directly against any of its own employees or such employee's estate or other representatives."

The defendants are relying upon the Master Services Agreement entered between the defendant no.1 and 2 dated 22nd December, 2014 but the said agreement was not disclosed to the plaintiff either at the time of introducing the defendant no.2 to the plaintiff or during the exchange of correspondences with the plaintiff. The agreement was first disclosed by the defendants in their written statement though the communication between the plaintiff and the defendants were continued till the month of February 2015. In paragraph 17 of the plaint, the plaintiff has described about the introduction of the defendant no.2 as an agent of the defendant no.1. In the written statement, the defendant no.1 has not denied the said contention of the plaintiff and the defendant no.2 in its written statement admitted that the representative of the defendant no.2 insisted the plaintiff to expedite the site visit as because the defendant no.1 was interested in the Sreerampore property. The defendant no.1 in his examination in chief stated that the defendant no.1 had rejected the proposal of the plaintiff and after that they appointed a logistics service provider which is defendant no.2 from February, 2015, the defendant no.2 entered into the picture. As per the evidence, the defendant no.1 appointed the defendant no.2 as service provider from February, 2015 but the document which the defendant no.1 relied upon that exhibited as Exhibit-2 (Master Services Agreement) is dated 22nd December, 2014 but one parties to the said agreement signed on different dates and not on 22nd December, 2014. Clause 1.1 and Clause 1.2 of the Master Services Agreement reads as follows:

"1.1. SERVICES, WORK ORDERS, 1.1 Services. LSP will provide services to Amazon non- exclusive basis, in accordance with the terms and conditions of this Agreement ("Services") as the Parties may from time to time agree and specify in work orders ("Work Orders") issued or signed by Amazon. The agreed form of Work Order is attached as Exhibit A to this Agreement. Any Affiliate of Amazon will have the right to enter into Work Orders with LSP under this Agreement, and with respect to such Work Orders, such Affiliate becomes a Party to this Agreement and references to Amazon in this Agreement are deemed to be references to such Affiliate. With respect to Amazon, each Work Order is a separate obligation of the Amazon entities or entity that execute(s) such Work Order and no other Amazon entity has any obligation under such Work Order. Amazon makes no promises or representations whatsoever as to the amount of business LSP can expect at any time under this Agreement. It is further clarified that nothing in this Agreement prevents Amazon or any of its Affiliates from procuring same or similar Services from any other third party.

1.2 Work Orders. This Agreement governs each Work Order, except that any conflict between the terms of ac Agreement and a Work Order will be resolved in favor of the Work Order, if the Work Order explicitly states that the wended to modify the conflicting terms of this Agreement. This Agreement does not obligate Amazon to engage LSP to perform any Services, or LSP to perform any Services, until both Parties have signed a Work Order. Both Parties must sign a Work Order for it to be effective. Notwithstanding the aforesaid, a Work Order will be binding on both Parties If LSP: (a) signs and returns it to Amazon; (b) begins performance; or (c) acknowledges it by email, facsimile or any other commercially reasonable means. If LSP commences Services for Amazon in the absence of a Work Order and Amazon

accepts such Services, this Agreement will nevertheless apply, unless the Parties otherwise mutually agree in writing. LSP will, at no cost to Amazon, promptly and satisfactorily correct any Services or Work Product found to be defective or not in conformity with the requirements of this Agreement and the applicable Work Order."

The Master Services Agreement relied by the defendant does not have any work order or any Exhibit-A as mentioned in the agreement. Considering the entire evidence of the parties and the documents, this Court finds that only to avoid the service of the plaintiff, the defendants have executed the said agreement after thought and the agreement cannot be relied upon as the agreement contained some date, the parties to the agreement have sign the agreement on different dates and the agreement does not contained Exhibit-A i.e. work orders.

In the written statement, the defendant no. 2 has further made out a case that by an email dated 3rd February, 2015 requested the CBRE to visit the Sreerampore Warehouse for inspection on 4th February, 2015 in the morning and subsequently the defendant no. 2 inspected the site of Sreerampore Warehouse property on 4th February, 2015 through CBRE and further fixed an inspection of the said Warehouse with the defendant no. 1 on 6th February, 2015. In paragraphs 22 and 23 of the plaint, the plaintiff has specifically made out a case that one Mr. Satapathy, representative of the defendant no. 2 has requested for site visit on 5th February, 2015, accordingly, the plaintiff had fixed the site visit on 5th February, 2015 at 09.30 A.M. but Mr. Satapathy, the representative of the defendant no. 2 had not reached due to flat tire of car of Mr. Satapathy. The said contention has also admitted by the defendant no. 2 in its written statement at paragraph 7 (k) of the written statement. The said stand of the defendants are contradictory as in one hand they have visited the site on 4th February 2015 and on the other hand they have requested the plaintiff for site visit on 5th February 2015.

The defendant no. 1 continued corresponding with the plaintiff through email till the month of February, 2015 but the defendant no. 1 has not disclosed to the plaintiff with regard to the Master Services Agreement entered by the defendant no. 1 and the defendant no. 2 on 22nd December, 2014. If, this Court beliefs the Master Services Agreement than the question arise why the defendant no. 1 continued with correspondence with the plaintiff with regard to the property which the defendant no. 1 intends to take on long term lease.

In view of the above, this Court decided the Issue No. 2 affirmative in favour of the plaintiff.

c. Issue No. 3 : Does the instant suit suffer from lack of or non-

disclosure of cause of action as alleged by the defendants in the written statement?

In the plaint, at paragraph 37, the plaintiff has stated as follows :

"37. As part of cause of action as pleaded in paragraphs 4, 7, 8, 9, 17, 28 and paragraphs 38 hereinabove have arisen within the jurisdiction of this Hon'ble Court and inasmuch as a part of the cause of action as pleaded in paragraphs 9, 17, 28, 30

and 38 hereinabove have arisen outside the jurisdiction of this Hon'ble Court, the Plaintiff prays for leave under Clause 12 of the Letters Patent to institute the instant suit in this Hon'ble Court."

The plaintiff has filed the suit against the defendants on the basis of the emails exchange between the parties with regard to the properties as required by the defendant no. 1. Initially, the defendant no. 1 had sent the email along with Mutual Non-disclosure Agreement and subsequently the said correspondences were continued till the month of February, 2015. In between the defendant no. 1 has introduced the defendant no. 2 and the defendant no. 2 had supported corresponding with the plaintiff on behalf of the defendant no. 1. The plaintiff has filed the suit on the ground that on 28th May, 2015 when Mr. Kejriwal had visited the Sreerampore Warehouse property came to know that the defendant no. 2 had directly entered into the tenancy agreement with Keola Associates Private Limited for taking Sreerampore Warehouse by passing the plaintiff though the plaintiff has provided all the documents in respect of several properties including Sreerampore Property (Keola Associates Private Limited). The defendant no. 2 in its written statement with respect to the paragraph 37 of the plaint has only denied that no cause of action as alleged as arisen in favour of the plaintiff and in the written statement, the defendant no. 2 has not denied that no cause of action for filing the suit arose and as such the issue no. 3 is decided affirmative in favour of the plaintiff.

d. Issue Nos. 4, 5, 6, 7 and 8 are taken up together as all the issues are connected with each other.

h. Issue No.4 Was the defendant no.1 after orally accepting the terms and conditions of brokerage services of the plaintiff and thereafter having acted in furtherance to such acceptance by forwarding the 'Mutual Non disclosure agreement', not bound and obliged to honour the terms thereof as stated in paragraph 5 of the plaint? i. Issue No.5 Was not acceptance of the terms of the Mutual Non Disclosure agreement by the defendant No.1 final and binding after exchange of the emails dated 4th December, 2014 as stated in paragraph 7 of the plaint?

j. Issue No.6 Did the defendants in consent and connivance with each others violating the terms of the mutual non-disclosure agreement on one hand and taking full advantage of the plaintiff's services on the other acted to the prejudice and detrimental of the plaintiff? k. Issue No.7 Is the defendant no.2 bound by any contractual obligation or otherwise with the plaintiff?

l. Issue No.8 Whether any concluded contract was entered into in between the plaintiff and the defendant No.1 which can entitle the plaintiff to obtain a decree of Rs.1,15,92,877/- as against the defendant no.1?

Paragraph 5 of the plaint, the plaintiff has made out a case that "Pursuant to such oral agreement as aforesaid on or about 14th October, 2014, the said Mr. K. Prasad, being the representative of the Defendant no.1 by an e-mail forwarded to the said Mr. Ramesh Kejriwal a draft of an agreement described as "Mutual Non-Disclosure Agreement"

The e-mail dated 14th October, 2014 sent by the representative of the defendant no.1 is marked as Exhibit-A wherein the defendant no.1 had sent Mutual Non-Disclosure

Agreement to the plaintiff and the said document is admitted by the parties. On receipt of the e-mail dated 14th October, 2014, the plaintiff has sent a reply to the representative of the defendant no.1 by an e-mail dated 18th October, 2014 at 4:37 PM in which the plaintiff has made some minor corrections and requested the defendant no.1 to go through the same and to inform the plaintiff to enable the plaintiff to get the same printed and to be sent to the defendant no.1. The email dated 18th October, 2014 is marked as Exhibit-B and the corrected Mutual-Non- Disclosure Agreement is marked as Exhibit-B/1. By an email dated 4th December, 2014, at 2:18 p.m. the plaintiff had again sent an email to the defendant no.1 again forwarding the email dated 18th October, 2014 and requested the defendant no.1 to go through the attachment and to inform the plaintiff at which address the signed copy of the agreement should be sent. The email dated 4th December, 2014, is marked as Exhibit-C. In reply to the said email, the representative of the defendant no. 1 by an email dated 4th December 2014 at 3:39 p.m. requested the plaintiff to send the same to him and had also shared the address through the said email. The email dated 4th December, 2014, is marked as Exhibit-D. By an email dated 19th October, 2014 at 2:15 p.m. the representative of the plaintiff had sent an email to the representative of the defendant no.1 by forwarding the details of about five (5) properties and also informed to the defendant no.1 that in the event of finalization of any offered properties, the plaintiff shall charge the consultation fees "equivalent to 1(one) month's rental plus service tax as applicable immediately after signing the Agreement/Possession, whichever is earlier." The email dated 19th October, 2014 along with the details of the property is marked as Exhibit -F (Collectively). On 19th October, 2014 at 2.52 p.m, the plaintiff has again sent an e-mail to the defendant no.1 along with the details of the warehouse complex at NH2, Dankuni and the said email is marked as Exhibit-G Collectively. On 21st October, 2014 at 07.29 p.m. the defendant no. 1 had sent an email to the plaintiff confirming the receipt of the earlier e-mail sent by the plaintiff and in the said e-mail, it is also stated that the defendant no. 1 is looking after BTS option (Build-to-Suit) which means if any property suits the defendant no. 1 according to the capability of the landlord, the property may be prepared and handed over to the defendant by March, 2015. The said e-mail is marked as Exhibit-H. On 25th October, 2015, at 11.59 a.m. the plaintiff had again sent an e-mail to the defendant no. 1 by sending a proposal for warehouse along with photographs of the proposed property for perusal of the defendant no. 1 and in the said e-mail, it was also informed to the defendant no. 1, the inspection of the properties can be arranged at any time, any date as per the convenience of the defendant no. 1 on prior intimation. The said e-mail is marked as Exhibit-I Collectively. On 27th October, 2014, the defendant no. 1 had sent an e-mail to the plaintiff at 06.28 p.m. wherein the defendant had sent a checklist and requested the plaintiff to fill up the properties in the check list. The said e-mail is marked as Exhibit-J. On 28th October, 2014 at 06.37 p.m. the plaintiff had sent an e-mail by enclosing the site plan, duly filled up checklist and some photographs of the property to the defendant which is marked as Exhibit-K. On 28th October, 2014 at 06.38 p.m. the plaintiff had sent an e-mail to the defendant by enclosing construction related

drawings, checklist, deeds and several documents. The said e-mail along with documents have been marked as Exhibit-L Collectively. On 4th December, 2014 at 02.18 p.m. the plaintiff had sent an e-mail along with a copy of mutual non-disclosure agreement in which some modifications were made by the plaintiff and requested the defendant to confirm the same to the plaintiff if it is correct. The said Mutual Non-Disclosure Agreement is marked as Exhibit C/1. The plaintiff had sent two numbers of Mutual Non-Disclosure Agreement on Non Judicial Stamp Papers containing six pages each duly signed by the plaintiff to the defendant on 16th December, 2014 by post requesting the defendant to return one set of Mutual Non-Disclosure Agreement to the plaintiff after signing by the defendant company. The said letter is marked as Exhibit-S. By an e-mail dated 26th December, 2014 at 03.22 p.m., the plaintiff had again informed the defendant that the plaintiff had already sent two copies Mutual Non-Disclosure Agreements duly stamped and signed by the plaintiff and requested the defendant to put the company's stamp and signature and send one copy of the said agreement to the plaintiff for the record of the plaintiff company. The said e-mail is marked as Exhibit-T. On 31st December, 2014, the plaintiff had again sent an e-mail at 01.42 p.m. along with the documents for proposal of Warehouse at Sreerampore, Delhi Road, Hooghly along with all photographs and checklist. The said e-mail is marked as Exhibit-U Collectively. On 12th January, 2015 at 12.57 p.m., the defendant had sent an e-mail to the plaintiff requesting to send the postal address of Keola Warehouse - Khadim Warehouse. In reply to the said e-mail, the plaintiff by an e-mail dated 13th January, 2015 at 10.00 a.m. had sent the postal address of Sreerampore Warehouse i.e. Keola Associates Private Limited. The said e-mail is marked as Exhibit "W". On 3rd February, 2015, at 1:11 p.m. one Pankaj Dubey, the representative of the defendant no. 2 had sent an e-mail to the plaintiff, copy to the representative of the defendant no. 2 wherein it is requested to share the documents along with pictures of Sreerampore property. The said document is marked as Exhibit "X". On 3rd February, 2015 at 03.51 p.m., the plaintiff had sent Google Earth Picture and the Link showing the warehouse with reference to the e-mail sent by Mr. Pankaj Dubey. The said e-mail is marked as Exhibit-Y Collectively. On 4th February, 2015 at 7.14 p.m. the plaintiff had sent e-mail to Mr. Pankaj Dubey as well as Mr. Satapathy by enclosing more documents like conversion and No Objection Certificate from the concerned authorities related to Sreerampore Warehouse for the purpose of record of the defendant no. 1, the said e-mail along with document is marked as Exhibit-Z Collectively. On 5th February, 2015, an e-mail which was sent by the plaintiff to Mr. R. K. Satapathy and Mr. Pankaj Dubey both are the representatives of the defendant no. 2, stating a request from the plaintiff's side that to reschedule the inspection of the Sreerampore property which Mr. Satapathy of defendant no. 2 and the plaintiff had decided on the previous occasion over a telephonic call due to some complications related to time of the plaintiff, which is marked and exhibited as Exhibit - AA. Exhibit - BB is an e-mail which was sent by the plaintiff to Mr. R. K. Satapathy and Mr. Pankaj Dubey both representatives of defendant no. 2, dated- 20th February, 2015 the mail had an attachment of an offer letter of four properties as it was previously asked by Mr.

Satapathy. Exhibit - CC is an e-mail which was sent by the plaintiff to Mr. Satapathy and Mr. Dubey both are the representatives of the defendant no. 2 on 3rd February, 2015 attaching some documents relating to the Sreerampore property, some Auto CAD drawings and some photographs of the Sreerampore property. Exhibit-DD is copy of some documents which are e-mails that were sending by the plaintiff to Mr. Prasad the representative of defendant no. 1 on the occasion's first mail dated 22nd April, 2015, the plaintiff had requested to return him one copy on judicial stamp paper with the seal and signature of the officials. On the second mail dated 2nd July, 2015, the plaintiff had reiterated the same facts that he had sent in his first mail. On the third mail dated 10th August, 2015, the plaintiff had requested to send him a copy of the mail of Mutual Non- Disclosure Agreement duly signed by the Council of the defendant no. 1 with their official seal. Exhibit - EE is a Copy of the first Advocates notice which was sent to defendant no. 1 and 2 and original receipt of the speed post which the plaintiff had caused to send to the four persons officials of the defendant nos. 1 and 2 through his advocate. And the second document is also a notice which per as the plaintiff's instruction, the Advocate had sent to the officials of the defendant no. 1 and 2 by speed post and the receipt of the same original is enclosed with the document and Exhibit - EE/1 is AD Card of the notice sent by the plaintiff's advocate to the defendant no. 2 and the second is the track record of the notice that was sent by the plaintiff's Advocate.

In the case reported in (2008) 13 SCC 597 (BSNL & Anr. vs. BPL Mobile Cellular Ltd. & Ors.), the Hon'ble Supreme Court held that:

"47. Section 8 of the Contract Act reads as under:

"8. Acceptance by performing conditions, or receiving consideration.--Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal."

It provides the acceptance of the proposal by conduct as against other modes of acceptance. It can be divided in two parts : (1) performance of the conditions of a proposal; and (2) acceptance of any consideration for a reciprocal promise which may be offered with a proposal. The latter corresponds to general divisions of proposals into those which offer a promise in exchange for an act or acts and those which offer a promise for exchange for a promise. The bills were raised on the basis of the said premise. They were accepted. The promise on the part of the appellant was acted upon by the respondent. The appellants, thus, now should not ordinarily be permitted to take a different stand. This aspect of the matter was considered in Amrit Banspati Co.

Ltd. v. Union of India wherein it was stated:

"Section 8 of the Contract Act provides that performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal. The language of the

section is rather vague but its meaning is clear. It is based on the principle that if an offer is made subject to a condition, the offeree cannot accept the benefit under the offer without accepting the condition. He cannot take the attitude, 'I shall accept the benefit but reject the condition'."

48. In *Union of India v. Rameshwarlall Bhagchand* it was stated :

"6. Section 8 provides that performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal. According to Section 2(a) of the Contract Act when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal; and clause (b) of Section 2 states that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. Section 2(f) enacts that promises which form the consideration or part of the consideration for each other are called reciprocal promises."

It was furthermore observed :

"8. Some English decisions were referred to with approval in *Patna case* [*Union of India v. Jethabhai Jesinbhai Patel and Co.*, AIR 1960 Pat 30] relied upon by Shri Dam, I think that those cases have no bearing on and relevancy to Section 8 of the Act. It is mentioned on p. 59 of the Pollock and Mulla's Commentary on the Indian Contract Act, 8th Edn., that 'nothing like the terms of Section 8 occurs in the original draft of the Indian Law Commissioners, nor so far as known to us, in any authoritative statement of English law' and that the terms of the section 'appear to have been taken from the draft Civil Code of New York with slight verbal alteration'. It follows from these excerpts that the English law has no provision parallel to Section 8 of the Act and as such recourse to English decisions for determining the scope of Section 8 may not be very apposite.

Sections 7 to 9 of the Contract Act describe the various modes in which proposal may be accepted, and, if I may say so, Section 8 provides the acceptance of a proposal by conduct as against other modes of acceptance, such as verbal or written communication contemplated by Sections 7 and 9. Therefore, in a way Section 8 provides undoubtedly a unique provision in the Contract Act. It embraces a case to cite an instance, of a reward offered for the finder of a lost article. If a person restores the found article to the one who offered the reward, without accepting the latter's proposal in any other manner, the act or conduct or restoration itself is considered sufficient acceptance of the proposal to merit the reward. True that it is an ordinary rule of law that an acceptance of an offer made ought to be notified to the person who makes the offer. But since such notification is required for the benefit of the person making the offer the latter may dispense with notice to himself if he deems that

course to be desirable. If the person making the offer to another intimates him expressly or impliedly a particular mode of acceptance the offeree can adopt that mode to conclude a binding bargain. If a man writes to another to send him certain goods, then the dispatch of goods would surely amount to acceptance of the offer."

49. In *LIC v. Raja Vasireddy Komalavalli Kamba* this Court on acceptance of provisions as envisaged under Sections 7 and 8 of the Contract Act, 1872 opined :

"14. ... Acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance."

In the case reported in (2006) 5 SCC 311 (*Bhagwati Prasad Pawan Kumar vs. Union of India and Others*), the Hon'ble Supreme Court held that:

"14. In *Amar Nath Chand Prakash v. Bharat Heavy Electricals Ltd.* the facts were that the respondent gave a contract to the appellant for doing certain construction work which was completed by the first week of March, 1965. The appellant Company prepared a final bill of the work done on 29-3-1965. The appellant signed a no-claim declaration and also gave a receipt in token of accepting the amount found due to the appellant. The appellant thereafter raised a dispute alleging short payment, etc. It invoked the arbitration clause and called upon the respondent to appoint an arbitrator. When the respondent did not respond to the notice issued by the appellant, an application under Section 20 of the Arbitration Act was filed by the appellant. The respondent contested the application contending that the appellant having given a no-claim certificate in final settlement of its claim and having accepted the payment by means of a cheque in full and final settlement of its dues, it amounted to discharge of the contract along with which the arbitration agreement also stood extinguished and, therefore, there was no dispute capable of being referred to arbitration. The High Court considered the material on record and found that though the declaration was signed by the appellant, as also the memorandum of payment, in the final bill there was an endorsement to the effect that the appellant had accepted the payment under protest. This was done on 29-3- 1965 whereas the cheque was actually prepared and delivered much later on 14-12-1965. In the absence of any oral evidence, the High Court was required to construe the document in order to ascertain the intention of the contractor in making such an endorsement and of the Company in permitting such an endorsement to be made. In the facts of the case the High Court observed that the endorsement dispelled any intention to remit the performance in regard to the balance of the claim. On the contrary, it clearly evinced that the receipt of the amount was not unconditional so as to effect the discharge of the contract. On the contrary, it safeguarded the position of the contractor and indicated that he was not accepting the payment without any reservation. The appellant specifically stated that he was receiving the money "under protest" which clearly amounted to making a reservation. The reservation could only be that the acceptance of payment was not in discharge of the contract. Consequently, it could

not be said that the appellant dispensed with, or remitted the performance of the contract, for the rest of his dues. Reliance was placed on the principle enunciated in Day v. McLea [(1889) 22 QBD 610 : 58 LJQB 293 : 60 LT 947 (CA)] in which it was observed:

"If a person sends a sum of money on the terms that it is to be taken, if at all, in satisfaction of a larger claim: and if the money is kept it is a question of fact as to the terms upon which it is so kept. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If the accord is a question of agreement, there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim, and to cause him to act upon that view. In either case it is a question of fact."

19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand, if the evidence discloses that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act."

In the present case also on 14th October, 2014, Mr. K. Prasad, the representative of the defendant no.1 had forwarded a copy of Mutual Non-Disclosure Agreement to the plaintiff by an email (Exhibit-A). The said fact was pleaded by the plaintiff at paragraph 5 of the plaint, the defendant no.1 has not denied the same in the written statement. The plaintiff with the minor modifications in the said agreement sent the same to the defendant no.1 for perusal and if the agreement is correct, the same is to be printed and will be sent to the defendant. On 4th December, 2014, the defendant no.1 through the email accepted the modifications in the Mutual Non-Disclosure Agreement and instructed to forward signed copy of the agreement to the defendant (Exhibit-D). The plaintiff after preparing the Mutual Non-Disclosure Agreement in the non-judicial bond paper in two sets and after executing the same sent to the defendant at its registered office by a letter dated 16th December, 2014 with the request to return one set of the agreement to the plaintiff for their record (Exhibit-S). Though the defendant no.1 has not sent one signed copy of the agreement to the plaintiff but the plaintiff and the defendant no. 1 continued with the exchange of mails with regard to several properties and on 31st December, 2014, the plaintiff by an email forwarded the proposal for the warehouse of Sreerampore property along with particulars for identification (Exhibit- U Collectively). On receipt of the details of the Sreerampore property, the defendant no.1 by an email dated 12th January, 2015, requested the plaintiff to send postal address of the property and by an email dated 13th January, 2015, the plaintiff has provided complete postal address of the Sreerampore property to the defendant no.1 (Exhibit-V and W). On 3rd February, 2015, the

representative of the defendant no.2 namely Pankaj Dubey sent an email to the plaintiff copy to Satapathy requesting to share documents and pictures of the Sreerampore property and on the same day the plaintiff had forwarded Google Earth Pictures and link showing the warehouse for the reference of the defendants (Exhibit-X and Y Collectively). On 4th February, 2015, the plaintiff has sent an email to the Mr. Dubey and Mr. Satapathy by enclosing more documents like conversion and No Objection certificates obtained from the concern authorities relating to Sreerampore Property (Exhibit-Z). On 3rd February, 2015, the plaintiff had again sent several documents, photographs and Auto CAD DWG to the defendants with respect Sreerampore property (Exhibit-CC Collectively).

On the request of the representative of the defendant no.2 namely Satapathy, the plaintiff fixed the site visit on 5th February, 2015 at 9.30 am but Mr. Satapathy did not reach the office of the plaintiff at the date and time fixed by the plaintiff though the representative of the plaintiff waited till 12.30 PM. The said fact is admitted by the defendant no.2 in the written statement at paragraphs 7(i), (j) and (k). On 20th February, 2015, the plaintiff had again sent details of other four properties by way of email and the same was also received by the defendants (Exhibit-BB Collectively). On 22nd April, 2015, the plaintiff by an email again requested the defendant no.1 to send back one copy of the agreement for record of the plaintiff and in the said email, the plaintiff has enclosed other emails wherein, the plaintiff had requested the defendant no.1 for sending back one signed copy of the agreement (Exhibit-DD Collectively).

Considering the above facts and circumstances this Court finds that even after receipt of Mutual Non-Discloser Agreement by the defendant no.1, the defendant no.1 had never informed the plaintiff that the defendant no. 1 will not execute the agreement or does not agree with the terms and conditions of the agreement. There is no evidence to prove that the defendant no. 1 has informed that the defendant no. 1 is not intending to continue with any deal with the plaintiff, thus this Court safely held that there is concluded contract between the plaintiff and the defendant no.1.

The defendant no.1 relied upon the judgment reported in (1990) 4 SCC 147 (Brij Mohan & Others vs. Sugra Begum and Others) wherein the Hon'ble Supreme Court held that:

"16. The High Court further held that it must be remembered that this agreement is in respect of a valuable property and the main intention was to reduce the terms of agreement into writing and when the parties are very much relying on the alleged oral agreement dated May 3, 1979, there would definitely have been a reference in Exs. A-1 and A-2 to the oral agreement said to have taken place on May 3, 1979. The absence of the same in Exs. A-1 and A-2 again throws a serious doubt about the alleged agreement, dated May 3, 1979. In any event the mere fact that there was a meeting between plaintiffs 1 and 2 and DW 2 on May 3, 1979 does not establish that there was a concluded contract between the parties on that day because admittedly defendant 1 was not present at that time. What all had happened according to PWs 1 and 3 is that they offered to pay Rs 10,00,000 for the suit building and DW 2 having contacted defendant 1 over the phone conveyed to them her acceptance of the price fixed. In the absence of evidence that the other terms also were discussed over the phone and settled at that time and defendant 1 agreed for the terms, it cannot be said

that there is a concluded contract on May 3, 1979. The fixation of price is only one of the terms of the contract and by mere acceptance of the price it cannot be said that there is a concluded contract between the parties in the absence of proof of fixation of other conditions mentioned in Exs. A-1 and A-2, viz., undertaking by defendant 1 to obtain permission from Urban Land Ceiling Authority and the amount of advance to be paid. It is not the case of the plaintiffs 1 and 2 that prior to May 5, 1979 there was an agreement between the parties as to the amount of advance to be paid. The High Court thus held that in the absence of any consensus being arrived at between the two contracting parties about these important aspects of the agreement it cannot be said that there is a concluded oral contract between the parties on May 3, 1979.

20. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. We agree with the contention of the learned counsel for the appellants to the extent that there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the plaintiffs to prove that there was consensus ad idem between the parties for a concluded oral agreement for sale of immovable property. Whether there was such a concluded oral contract or not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement.

21. Now we shall examine the facts and circumstances of the present case in order to find whether the plaintiffs have been able to prove that there was a concluded oral agreement between the parties on May 3, 1979 in order to seek decree for specific performance of contract in their favour. Admitted facts of the case are that the transaction in question related to a sale of an immovable property for no less than a sum of Rs 10,00,000 in May 1979. May 3, 1979 is the crucial date on which the oral agreement is alleged to have been concluded. Admittedly on that date even earnest/advance money had not been settled. It was also not settled as to when the earnest/advance amount and the balance amount of sale consideration would be paid. It was also not settled as to when the final sale deed would be executed and registered. No talk with regard to any terms of the oral agreement took place in the presence of the vendor defendant 1 on May 3, 1979. It was also not decided whether actual possession or only symbolical possession of the premises in question would be given by the vendor. No consideration actually passed even on May 6, 1979 and negotiations failed. Apart from the above admitted facts of the case we would consider as to what happened on May 3, 1979. The plaintiffs have alleged in the plaint that in the third week of April 1979 plaintiffs 1 and 2 along with Shri Ibrahim Moosa

and Shri Arif Ali went to the residence of the defendant who was insisting on the payment of Rs 10,00,000 as the sale price. At the said meeting the husband of the defendant was also present. Plaintiffs 1 and 2 increased their price from Rs 7,00,000 to Rs 8,00,000. Defendant 1 said that she would think over and inform the plaintiffs 1 and 2 through Shri Arif Ali. On May 3, 1979 plaintiffs 1 and 2 along with Shri Ibrahim Moosa met Shri Arif Ali. He stated that the defendant was agreeable to sell the plan schedule property to plaintiffs only for Rs 10,00,000 and not a pie less. Thereupon the plaintiffs agreed to pay Rs 10,00,000 as the sale price. Shri Arif Ali after getting the confirmation of acceptance of the said offer of plaintiffs 1 and 2 from defendant 1 said that plaintiffs 1 and 2 should meet the defendants on May 6, 1979 and that she would in the meanwhile purchase the stamp papers for making the formal agreement for sale incorporating the oral agreement arrived at. Then there is an averment with regard to the meeting of May 6, 1979 between plaintiffs 1 and 2 along with Shri Ibrahim Moosa and defendant 1 and her husband in the presence of Shri Arif Ali. It has been alleged that in the said meeting of May 6, 1979 the amount of earnest money to be paid, time for registration of the sale deed etc. were decided. Now it is an admitted case of the plaintiffs themselves that negotiations failed on May 6, 1979 and defendant 1 resiled to sign any of the receipts nor accepted any earnest/advance money nor any agreement was even typed on the stamp papers nor signed by defendant 1."

The judgment relied by the defendant is distinguishable from the facts and circumstances of the present case. In the present case, the defendant no.1 had sent the draft copy of the Mutual Non-Disclosure Agreement and in reply, the plaintiff after some modifications returned to the defendant no.1 and the defendant no.1 has accepted the modifications. The defendant had never disclosed that the defendant has not agreed with the terms and conditions of the agreement or have not accepted the same.

The defendants have relied upon the Master Services Agreement entered between the defendant no.1 and the defendant no.2 (Exhibit-

2). The said Master Service Agreement was entered between the defendant no.1 and defendant no. 2 on 22nd December, 2014 but during the examination in chief of the defendant no.1 witness at Question No. 31, a specific question was put to the witness "How and when the defendant no. 2 entered into the picture with regard to the property forming subject matter of the suit?/The defendant no.1 rejected the proposal .After that they appointed a logistic service provider which is defendant no.2 and on from February 2015, the defendant no.2 entered into the picture."

The defendant no.1 has admitted during his cross-examination with regard to the correspondences between the plaintiff and the defendant no.1 but during his examination, the defendant no. 1 has taken the stand that the plaintiff has committed inordinate delay in finalising the warehouse but the defendant no. 1 has not taken the said defence in the written statement. The defendant has also not brought any evidence on record to show that the defendant has informed the plaintiff that they have rejected the proposal of the plaintiff.

In the case reported in (2018) 11 SCC 652 (Shivaji Balaram Haibatti -vs- Avinash Maruthi Pawar), the Hon'ble Supreme Court held that:

"24. First, the respondent (defendant) had not raised such plea in his written statement. In other words, the respondent did not set up such defence in the written statement. Second, the trial court, therefore, had no occasion to frame any issue on such plea for want of any factual foundation in the written statement. Third, the trial court and the first appellate court, in these circumstances, had no occasion to record any finding on this plea either way. Fourth, in the light of these three reasonings, the High Court ought to have seen that such plea really did not arise for consideration because in order that any question is involved in the case, the party concerned should lay its factual foundation in the pleading and invite finding on such plea. Fifth, the High Court failed to see the case set up by the respondent in his written statement. As mentioned above, the defence of the respondent was that he had denied the appellant's title over the suit shop and then set up a plea of adverse possession contending that he has become the owner of the suit shop by virtue of adverse possession, which according to him, was from time immemorial.

25. It was clear that the respondent never claimed that he was in possession of the suit shop as tenant of the appellant's predecessor-in-title. On the other hand, the respondent had asserted his ownership right over the suit shop on the strength of his long adverse possession.

26. It is these issues, which were gone into by the two courts and were concurrently decided by them against the respondent. These issues, in our opinion, should have been examined by the High Court with a view to find out as to whether these findings contain any legal error so as to call for any interference in second appeal. The High Court, however, did not undertake this exercise and rather affirmed these findings when it did not consider it proper to frame any substantial question of law. It is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the court cannot record any finding on the issues which are not part of pleadings. In other words, the court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. Any finding recorded on an issue dehors the pleadings is without jurisdiction. Such is the case here."

In view of the settled position of law, the defense taken by the defendant that the defendant no.1 has rejected the proposal of the plaintiff cannot be accepted.

At the time of evidence of the defendant no. 2 witness (DW-2) documents being page Nos. 83 to 96 of the Judges brief of documents were exhibited as Exhibit-4 (with Objection) and the said documents are the emails and property related documents with respect of Sreerampore property with CBRE and other local representative. The emails are dated 3rd February, 2015 to 5th February, 2015 and the documents appearing at page nos. 93 to 96 (Exhibit-4 Collectively) are the similar

documents sent by plaintiff to the defendants i.e. Mr. Satapathy and Mr. Pankaj Dubey on 3rd February, 2015 at 1:14 PM (Exhibit-CC Collectively) but the email which the defendants are relying upon are of 5th February, 2015 at 7:19 PM. On 4th February, 2015 at 7:14 PM, the plaintiff had again sent documents to the defendants by mail (Exhibit-Z).

In one hand, the defendant no. 2 has made out a case in the written statement that the plaintiff the defendant could not considered the said site from the plaintiff as the plaintiff fail to complete the site visit on the other had from the statement of the defendant no. 2 and from the documents it is established that the defendants have already visited the site of 4th February, 2015. The said fact is also admitted by the defendant during his cross examination at Question No. 177. From the act of the defendants it proves that the defendants in connivance with each other after obtaining all the details of the properties including the property of Sreerampore from plaintiff have neglected the plaintiff only to avoid to perform the contract entered between the plaintiff and the defendant no.1.

In the case reported in (2004) 6 SCC 516 (Link International & Anr. -vs- Mandya National Paper Mills Ltd.), the Hon'ble Supreme Court held that :

"8. In this case, admittedly, the appellants had acted as agents. We will presume that they had not entered into the contract on behalf of the principal. The fact still remains that two courts have, on the basis of evidence, concluded that the appellants had facilitated playing of a fraud upon the respondent. If that be so, the appellants as agents would be personally liable to the respondent for whatever loss is caused to the respondent. Section 233 of the Contract Act permits the respondents to recover either from the agent or from the principal or from both. Nothing could be shown to us that the findings given by the trial court and the High Court that the appellants had facilitated fraud are not correct. In this view of the matter, even if the reasoning given by the two courts below is not correct, the appellants would still be liable to the respondent for the loss caused to them. We clarify that we have not concluded that the reasoning of the trial court and the High Court is not correct."

In the case reported in AIR 1967 All 382 (Firm Rupram Kailash Nath -vs- Co-operative Union, Mallawah & Anr.), the Hon'ble Allahabad High Court held that :

"13. In the present case the scope of the authority of the second defendant has to be inferred from the circumstances of the case. He was acting as the sales agent of the first defendant and was in its employment and apart from his salary received some commission as well. There is nothing to show that the plaintiff believed that when he sought the purchase of cloth on credit his act was not within the scope of his authority. If the second defendant had committed any fraud while acting in the course of business of the first defendant, it would make the first defendant liable for the act of its agent. The rule of law on the subject was quoted from Story on Agency in Mc. Gowan and Co. Ltd. v. Dyer(1873) 8 QB 141 as follows:

".....the general rule that the principal is liable to third persons in a civil suit for the frauds, deceits, concealment, misrepresentations, torts, negligences, and other malfeasances or misfeasances and omissions or duty of his agent in the course of his employment, although the principal did not authorise, or justify, or participate in, or indeed know of such misconduct, or even if he forebade the acts, or disapproved of them."

"But although the principal is thus liable for the torts and negligences of his agent yet we are to understand the doctrine with its just limitations, that the tort or negligence occurs in the course of the agency. For the principal is not liable for the torts or negligences of his agent in any matters beyond the scope of the agency, unless he has expressly authorised them to be done, or he has subsequently adopted them for his own use and benefit."

17. In the present case, as mentioned above, the second defendant was acting within the scope of his authority in making the purchase of cloth from the plaintiff for the first defendant. If he made the purchase on credit and committed fraud, the first defendant was liable for the act of his agent. So far as the plaintiff was concerned, he had no reason to believe that the second defendant was not acting within the scope of his authority in making the purchase on credit for the first defendant. The court below was therefore in error in modifying the decree of the trial court and in decreeing the suit as against the second defendant only. The trial court has rightly decreed the suit against both the defendants. The appeal is allowed with costs, the decree of the lower appellate court is modified and the suit is decreed against both the defendants in terms of the decree passed by the trial court."

As per the claim of the plaintiff the total area of the Sreerampore property is measuring about 85000 Sq.Ft which is to be let out @ Rs. 20/- per sq.ft. per month and thus the plaintiff has suffered financial loss of Rs. 34,00,000/-. This Court held that there is a concluded contract between the plaintiff and the defendant no.1, the defendants are in connivance with each other have avoided to perform the contract. It is also admitted that the defendant no.2 had entered an agreement with the Sreerampore property and not the defendant no.1. Though the defendants have taken the stand that the defendant have obtained documents from the CBRE but the said documents were also forwarded by the plaintiff to the defendant no.2 on the request of the defendant no.2. The defendants have not brought any evidence on record to prove that the defendant no.2 has paid the brokerage charges to the CBRE and the defendant no.2 had entered into an agreement with the landlord with the help of CBRE. Considering the above facts and circumstances this Court finds that the defendants have obtained details of several properties from the plaintiff including the property of Sreerampore but only to avoid the obligation of paying the brokerage charges as well as service tax, the defendant no.2 directly entered into an agreement with the landlord. In view of the above, Issue nos. 4 to 8 are decided in favour of the plaintiff.

e. ISSUE NOS. 9, 10 and 11 are taken up together for consideration:

Issue No.9 Are not the defendants liable to compensate the plaintiff as per the particulars as stated in paragraph 35 of the plaint?

Issue No.10 Is the plaintiff entitled to any interest @ 18% on the sum of Rs.1,00,00,000/- on and from 31st December, 2014 till 18th November, 2015 from the defendants?

Issue No.11 Whether the plaintiff is entitled to a decree as prayed for?

This Court already held that there is a concluded contract between the plaintiff and the defendant no.1, the defendants are in connivance with each other have avoided to perform the contract. As per the agreement between the parties, the plaintiff is entitled to brokerage charges plus service tax. The total area of the property is 85000 sq.ft and the monthly rent is Rs. 20/- per sq.ft. per month thus the defendants are jointly and severally liable to pay a sum of Rs. 34,00,000/- plus service tax to the plaintiff. As there is no evidence that the plaintiff has suffered any damages by way of loss of reputation and thus this Court is not inclined to grant any damages to the plaintiff. The plaintiff is entitled to get an amount of Rs.34,00,000/- along with interest at the rate of 12% per annum with effect from 7th January 2016 i.e. from the date of presentation of plaint till the realization of the total decretal amount along with Service Tax as applicable.

In view of the above, Issue Nos. 9, 10 and 11 are decided accordingly.

The defendants are directed to pay jointly and severally a sum of Rs.34,00,000/- along with interest @12% per annum from 7th January, 2016 till the realization of the said amount along with service tax to the plaintiff.

C.S-COM 69 of 2024 (Old Nos: CS 2 of 2016 & CS 45 of 2024) is thus disposed of. Decree be drawn accordingly.

(Krishna Rao, J.)