

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) NO. OF 2011

NITIN JAIN & ORS.

...PLAINTIFFS

VERSUS

FITJEE LIMITED & ORS.

...DEFENDANTS

**SUIT FOR DAMAGES & REIMBURSEMENT OF EXPENSES/
COSTS OF THIS SUIT/PROCEEDINGS & INTEREST.**

1. That Nitin Jain, plaintiff no.1, the son of Plaintiff No.2 & 3 secured top rank in India in the Joint Entrance Exam of IIT in 2009 as well as in the All India Engineering Entrance Exam (AIEEE) in 2009. He has also won the National Talent Search Examination (NTSE) in the year 2007. Besides this he did India proud by winning three gold medals in three International Science Olympiads held in Indonesia, Mexico and Iran during the years 2008-2009 and received fame in the whole world and generated a respect in the hearts of nations towards the talents of India. For his spectacular success in IIT-JEE and AIEEE entrance examinations in the year 2009, the plaintiff No.1 was honoured by top dignitaries of India like the then Former President of India His Excellency Dr. APJ Abdul Kalam, Honourable Prime Minister Dr. Manmohan Singh, Honourable the HRD Minister Sh. Kapil Sibal, Honourable Chief Minister of Haryana Sh. Bhupinder Singh Hooda etc. to name a few. And also, Nitin Jain was honoured by the President of Republic of Iran, the President of Republic of Indonesia, the Lok Sabha Speaker of Mexico and a Nobel Prize winner scientist.
2. That the defendant is a coaching institute wherein the plaintiff No.1 joined two year weekend classroom programme at South Delhi Centre for guidance for IIT-JEE in last week of June 2007. Mr. D.K.Goel is the Chairman of the defendant institute. Since the plaintiff no.1 was late in taking admission, the defendant institute refused to give admission to him but only after persuasion and after paying the late fee, the defendants gave him admission, however, got written from plaintiff no.2 an undertaking that if Nitin is not successful in IIT-JEE, FIITJEE will have no responsibility. On the one hand, defendant institute's officials were doubtful of Nitin's selection in IIT-JEE exam due to late admission, now when Plaintiff No. 1 topped the IIT-JEE 2009 due to

his own hard work and intellect, Defendant institute claimed it as their success.

3. That since the Plaintiff No. 1 had always been a very bright student and had topped throughout in his classes in school and that he had won NTSE scholarship and was selected for National Camp in Astronomy Olympiad (International Science Olympiads), even before joining defendant institute. Just after four months of his taking admission in the defendant institute, an all India label exam that is called FTRE 2007 (FIITJEE Talent Reward Examination) was conducted by the defendant institute wherein more than one lac students from all over India took part and the plaintiff No.1 who just joined the Institute topped in the said examination of defendant institute, the teachers of defendant institute, obviously at the instance of defendant No.2 started developing relations with the plaintiffs. While studying there, sometimes plaintiff No. 1 used to come home late evening due to his classes and then one, Mr. Vinod Aggarwal (HOD of Chemistry at South Delhi Centre of the defendant Institute), who lives in Faridabad, himself started to drop the plaintiff No.1 to his home. In the said process Mr. Vinod Aggarwal developed relations with the plaintiffs No. 1 to 3 and since he also belonged to the state i.e. Rajasthan of which plaintiffs belong, he also developed intimacy with the plaintiffs on this ground also. He even started keep watch and control on each and every activities of the plaintiff no.1. Mr. D.K.Goel, Chairman of the defendant institute i.e. defendant No.1 once solemnized a family function at Shri Fort Auditorium wherein even the teachers of the institute were not invited, invited Nitin Jain and no other student. Mr. Vinod Aggarwal himself brought Nitin in that function and brought him back at home which shows that Mr. D.K. Goel kept an eye on Nitin as he judged his talent and pushed his subordinates to follow plaintiff No. 1 to 3. This can be shown from this fact also that on a day before the IIT-JEE 2009 exam i.e. 11 April 2009 Mr. Vinod Aggarwal called the plaintiff no. 2 that he would come on the very next day and would take the plaintiff no. 1 to 3 to the exam centre himself and for most of the time he remained with plaintiffs outside the exam centre. In the evening he also took away the question papers of the plaintiff no. 1 telling that he would soon return them after photocopy. Those papers have not been returned till date.

4. That Mr. Vinod Aggarwal at the instance of defendant No.2 also played with the trust of the plaintiffs No. 1 to 3 and hatched a conspiracy as on discussion with plaintiff No.1 with respect to his papers, Mr. Vinod Aggarwal judged that Nitin Jain would secure top rank in IIT-JEE and as such, he at about 8 A.M. on 23.05.2009 just two days prior to the day when results of IIT-JEE 2009 were to be declared, came at the residence of plaintiffs No. 1 to 3 along with a team consisting of four members of some video recording team from Mumbai for the purpose of video recording. At that time the defendants understood that plaintiff No.1 would top in the list of successful candidates. The said Mr. Vinod Aggarwal insisted the plaintiffs No. 1 to 3 that they should speak in favour of FIITJEE. The plaintiffs No. 1 to 3 regarded the request of said Shri Vinod Aggarwal due to their relations which were developed by Mr. Vinod Aggarwal during the study of plaintiff No.1 in the defendant institute. They created the home of the plaintiffs No. 1 to 3 as a studio in a pre-planned manner. The questions and answers were pre-planned by Mr. Vinod Aggarwal and the video was prepared like shooting of some movie where all the dialogs are pre-planned before shooting and the actors only have to speak them. On asking about the purpose he explained that this video shall be displayed to the enrolled students only for their motivation. Since Mr. Vinod Aggarwal convinced the plaintiff No.2 & 3 about the limited purpose of the said video and also pressurised them that video recording team had a short time as they had to go to Noida for shooting video of Arnav Dutta, another bright student an classmate of plaintiff No. 1 and Jaipur to record other videos, he did not permit plaintiff No. 2 & 3 to change their clothes and hence the video was taken in the clothes which they were wearing at home at that time. But later on it was revealed that the said video was shown to the world at large for the advertisement and publicity of the business of the defendant institute. It also came to the knowledge of the plaintiffs that the said video is displayed on various porn sites also which could not be possible without the permission or instance of the defendants as it is the property of defendants and they are responsible for use or misuse of the same. Whole of the video film is based on falsehood as they have created and distorted the video to their own commercial, unlawful gains and has been prepared as per their own dictate. The defendants hired that team at their expenses and it lasted for about eight hours at the residence of the plaintiffs No.

1 to 3. Shri Vinod Aggarwal cheated the plaintiffs No. 1 to 3 and misused their innocence for the commercial benefits and profits of the defendants which is not only illegal but also unethical. The statements made by the plaintiffs No. 1 to 3 in the said video in favour of the defendant institute were untrue and not of the plaintiffs No.1 to 3 rather made at the instance of said Shri Vinod Aggarwal. The defendants kept on showing the video of Nitin Jain(May 28, 2009) on the various web sites for about one year and just on the next day of the result of IIT-JEE 2010 when the defendant institute found their results not up to the expectations, they started showing one another video of Nitin Jain(May 27, 2010) and the videos of plaintiff no.2 & 3(May 27, 2010) on those web sites so that further advantages can be gained and the students could be further lured to take admission in the defendant institute. The plaintiff No.2 & 3 felt ashamed after seeing them in the video in their home cloths which is now shown to the world at large and displaying them in such a situation conveyed a distorted message in the public that the parents of an all India topper in IIT-JEE do not have good cloths and as such lowered the image of plaintiff No. 1 to 3 in the eyes of public. These videos are still present on various sites including You-tube today and still being viewed by people.

5. That Moreover, on 23 May 2009 when the video team was recording tapes of the Plaintiffs no. 2 and 3, Mr. Vinod Aggarwal on seeing plaintiff no. 1 alone, got signed some papers from him by way of inducement who was a minor at that time in his car which the plaintiff No.2 to 3 came to know later on.
6. That on 25 May, 2009, IIT-JEE result was declared. Just after sometime of the declaration of results, Shri Vinod Aggarwal again came to the house of plaintiffs No. 1 to 3. By that time the media had also started coming at the home of plaintiffs. Since the plaintiff No.2 & 3 did not know the interest of Mr. Vinod Aggarwal, they let him and plaintiff No.1 in front of media. After staying at home for sometime, he told the plaintiffs No.2 & 3 that Plaintiff No.1 had to give some interviews to T.V. channels. He made Plaintiff No.1 sit with him in one car and plaintiff No.2 & 3 were directed to sit in another car. The interviews went on till 4 P.M. in the evening. After this in the evening Shri Vinod Aggarwal persuaded plaintiffs No. 2 & 3 that they must have been tired and should return home and told that students were waiting for Plaintiff No.1 at the FIITJEE, Kalu Sarai Centre to meet and

congratulate him and took him away with him alone assuring that he would soon drop him back at his home. However, plaintiff No.1 was taken to faculty room in the building of defendant institute in Kalu Sarai and plaintiff No.1 was directed by Mr. Vinod Aggarwal, Mr. Manish Anand and Mr. C.V. Kalyan, all teachers of defendant institute, to re-write/copy a letter which had in fact already been prepared by them. They spoke and he wrote. At that time, plaintiff No.1 was a minor and he did not have any knowledge of the consequences of the same. Defendant No. 2 dropped the plaintiff No.1 at his residence around midnight.

7. That on 26 May, 2009 i.e. the next day the said article in the writing of plaintiff No.1 was published in the larger form in the morning newspapers with the photograph of the plaintiff No.1. It was like a certificate praising the defendant institute, its teachers and their method of teaching which convert a normal student in a topper. Plaintiffs No. 2 & 3 were shocked to see it. They asked plaintiff No.1 about the same, then he disclosed the whole event. Plaintiff No.1 told the plaintiff No. 2 & 3 that he was taken to faculty room and there he was directed to write a hand-written note. Three teachers of defendant institute namely Mr. Vinod Aggarwal, Mr. Manish Anand and Mr. C.V. Kalyan were present there and they spoke the said hand written note and he had to write the same due to regard of teachers in his mind. It is important to mention here that plaintiff No.1 was a minor at that time and had no knowledge and understanding of the consequences of the same. Neither any permission of using the name and success of plaintiff No.1 like this manner was ever sought by them from plaintiff no.2 & 3 nor the same was ever given by the plaintiffs no. 2 & 3 to the defendant Institute nor the defendants have any right to get written any article in its favour from an innocent minor in this fashion hence the said act of the defendants was unethical and illegal. It may also be added here that it was revealed later on that it is a practice of defendants to get written letters from the toppers in favour of defendant institute which also consist of advice to the students to join FIITJEE only. Few such scripts/ instances are also annexed along with the suit. The key question in this regard is that why a topper student or rather all such topper students will write such kind of letters in favour of defendant institute on their own sweet will. These letters have been certainly got written by the defendants from the other several toppers students for its business purposes. Hence it cannot be

said that the words written by those topper students are true and are their own feelings and views. Students are successful due to their own hard work, skill and talent and in any case these coaching institutes can not use their name and photographs for commercial purpose under any rule or circumstance. It is interesting to note that the defendants who were doubtful of even Nitin's selection in IIT-JEE due to late admission, later on when Nitin topped the IIT-JEE 2009 due to his hard work and intellect, claimed his success as their own success. Defendants have no right to commercially exploit the skill and talent of a minor (Plaintiff no. 1).

8. That on 28 May, 2009 the said article was again published on front and full page in all the national and regional newspapers which was totally an exercise of cashing of name and fame of the success of plaintiff No.1 for benefit of business of the defendant institute. The plaintiff No. 2 after understanding that it should not be published as it harms the image of plaintiff No.1, immediately called the office of the defendant institute and told an official that plaintiff No. 2 wanted to talk to Mr. D.K. Goel. In the evening the executives of the defendant institute contacted the plaintiff no.2 on phone and informed that in the late evening Mr. D.K. Goel, Founder Chairman of defendant institute and defendant No.1 herein had invited the plaintiff no. 2 with family for dinner in a five star hotel i.e. EROS CONTINENTAL in Nehru Place. There on meeting on 28.5.2009, Mr. D.K. Goel conceded the request of Plaintiff No. 2 to not to print that advertisement any more. He assured the Plaintiff No. 2 that the same would not be published anymore. However he did not keep his promise and the article was again published in leading news papers several times even thereafter. Even the said article got written by the defendants from plaintiff no.1 is still publishing in the recent brochure of defendant Institute and is still shown on the website of the defendant institute at the web addresses www.fitjee.com/iitjeeres2009/nitin.pdf and www.fitjee.com/fitjeejava/jsp/iitjee2009result.jsp.
9. That it is also very important to mention here that in the meantime one another coaching institute i.e. Aakash IIT-JEE, a division of Aakash Educational services limited had started advertisements that plaintiff No. 1 had studied with them and showed him enrolled as their student (Aakashian). This was factually incorrect and was infact harming the business promotion campaign of defendant institute, therefore, as

understood later, they made a scheme to use plaintiff No.2 as their tool and as such Shri Vinod Aggarwal just in the afternoon of 29.05.2009, in continuation of his series of overt acts and criminal conspiracy, came at the residence of plaintiff No.1 to 3 when plaintiff No. 2 was not there. He met with plaintiff No.1 and during general discussion he persuaded plaintiff No.1 to open the e-mail I.D. of his father, Plaintiff No. 2 herein i.e. ncjain.tasg@gmail.com and as plaintiff No.1 knew the password of the email because plaintiff No.2 does not know much about the email systems of the computer and plaintiff No.1 used to deal with the same. The plaintiff No.1 obeyed the direction of Shri Vinod Aggarwal being an obedient pupil. Shri Vinod Aggarwal then sent an e-mail to several media persons all over India, the content of which had already been prepared by him on his e-mail and he just did copy-paste for sending purpose. The email was sent to 48 email i.d's of print media as well as electronic media and was written as if the email was sent by the plaintiff No.2 to the media to the effect that the claim of Aakash institute that plaintiff No.1 had taken coaching from it is false and plaintiff No.1 had taken two year coaching only from FIITJEE i.e. defendant No.1 herein and plaintiff No.1 was highly satisfied with their teaching and course books. FIITJEE teachers were regularly visitors of the house of plaintiffs No.1to3 and they used to be with plaintiff No.1 all the time and Aakash institute wanted to entice plaintiff No.1 and most of the results of Aakash Institute must be fake with a request to the media to launch a process of investigation to unearth fraudulent intention of Aakash institute and put an end to the fake claims to deceive the students. This happened as defendants thought that perhaps plaintiff no. 2 has become close to Aakash institute and if the mail of this nature goes in public from the email of plaintiff no. 2, the relationship, if any, of plaintiff no.2 and Aakash institute will come to an end. Therefore, the defendants used the email I.D. of plaintiff No.2 to settle their score with their business rival without any information to plaintiff No.2 as the plaintiff no.2 was a best tool for them for the purpose, which was not only an illegal act under cyber crime but also unethical and also shows that how the defendants use the innocent people for their own business purposes. Shri Vinod Aggarwal also sent an e-mail to himself & c.c.to Mr. C.V.Kalyan (defendant No.3) also from the e-mail I.D. of plaintiff No.2 in the evening of the same date perhaps from his own PC with a request from the plaintiff No.2 to provide him e-mail I.Ds of as many

as FIITJEE students so he can also send such e-mails to them. Shri Aggarwal was also having the mobile No. of plaintiff No.2 and the same was also sent along with the said e-mails. The difference of time of the emails can be seen easily. Since the plaintiff No.1 being a minor could not understand the consequences of the action of Shri Aggarwal, he did not think it necessary to inform the same to plaintiff No. 2 and since the plaintiff no.2 is neither well verse with the e-mail systems himself nor generally use the same, he could not know the ill action of Shri Aggarwal immediately. Plaintiff No. 2, at that time had no knowledge of the email ids of media persons nor knew them through any means. He also did not have email ids of Mr. Vinod Aggarwal or C.V. Kalyan, nor knew C.V. Kalyan at that time. However, this affair came to the knowledge of Plaintiff No. 2 after about six months. The matter was thereafter brought into notice of concerned law enforcement authorities and now the matter has now been referred to CBI which is investigating the matter.

10. That it is also important to mention here that on 3.6.2009 i.e. after declaring the result of IIT-JEE Mr. Vinod Aggarwal at the instance of defendant No.2 called plaintiff No. 2 saying that Mr. D.K.Goel wished to meet him the next day. On 4.6.2009 at around 10:00 a.m. the car of defendant institute reached the residence of plaintiffs to bring plaintiff No.2 for the purpose of meeting with Mr. D.K.Goel. However, they kept on lingering the meeting on the pretext that Mr. D.K. Goel is busy. Ultimately at about 6:00 p.m. the car of defendant institute brought plaintiff No.2 at the office of defendant no.1. However, Mr. D.K. Goel was not there rather Mr. Vinod Aggarwal introduced plaintiff no. 2 to Mr. C.V.Kalyan and they met with the plaintiff No. 2 on the pretext that Mr. Goel is still busy and Mr. Goel directed them to talk to the plaintiff No.2. They thereafter told the plaintiff No. 2 that they are going to hold some seminars at various places in Delhi, Jaipur and Kota wherein FIITJEE enrolled students would ask some questions from plaintiff no. 1 and he will answer in favour of defendant institute and they would train plaintiff No.1 as to how to do so. Five among those seminars would be held in Delhi itself on 6th & 7th June 2009 and remaining two would be held in Jaipur and Kota on 8th & 9th June 2009 respectively and they insisted plaintiff No.2 to send plaintiff No.1 in those seminars. However, the plaintiff No.2 refused to send plaintiff No.1 as Nitin was a shy boy and hesitate to speak in public and besides he was going to attend the Olympiad in Mexico soon but since plaintiff No.1 was an all

India topper and the defendants were keen to call him in its seminars at all cost they vigorously requested plaintiff No. 2 to send him in its seminars. They insisted plaintiff No.2 a lot and told plaintiff No. 2 that Mr. D.K.Goel had directed to convey him that he would pay Rs. 11 Lacs for attending five seminars in two days in Delhi and Rs. 5 Lacs each to attend seminars at Jaipur and Kota. They also informed that they have already booked the places and made all arrangements for this and if Plaintiff No.1 does not attend those seminars they will have to bear heavy loss. After much persuasion and request of the defendants and taking into consideration of the future of plaintiff No.1, plaintiff No.2 gave his consent only for those seminars and it was also made clear to them by plaintiff No.2 that plaintiff No.1 would not attend any other seminar for them except these. It was also informed to the plaintiff No.2 by them that Mr. D.K.Goel is busy and they would give the cheques to him by the next day.

11. That on the next day i.e. 5.6.2009 the plaintiff No.2 was again called by the defendants and the car of defendant Institute picked up the plaintiff No. 2 from his home and was brought to the office of defendants. However, Mr. Vinod Aggarwal and C.V.Kalyan who met him there apologised to him that since Mr. Goel got free very late yesterday and by that time accounts department was closed so the cheque could not be made and since Mr. Goel is busy in a meeting today too and would be free in the late night, therefore, they would be able to hand over the cheque at around 11:00 a.m. on the next day at the place where the seminar was going to be held. Plaintiff No.2 then returned home from defendant's institute car.
12. That on the next date i.e. 6.6.2009 the car of the defendant institute arrived at the residence of plaintiffs and took plaintiff No. 1 & 2 to the proposed site of seminar. In the morning they started their program. At around 11:00 a.m. Mr. Goel came and addressed the students and went away. When the plaintiff No.2 asked Mr. Vinod Aggarwal about that, he convinced plaintiff No.2 that there was some urgency in the office and Mr. Goel had to leave immediately. He also informed plaintiff No. 2 that Mr. Goel invited him in the office in the evening. However, in the evening Mr. Vinod Aggarwal conveyed to plaintiff No.2 that Mr. Goel is busy right now and he would meet the plaintiff No. 2 in the seminar on the next day. Plaintiff no. 2 believed him as he

had a faith in him. Plaintiff No.1 & 2 returned to their residence after attending the seminar by defendant's car.

13. That however on the next date i.e. 7.6.2009 when the plaintiff No. 1 & 2 again reached at the place of seminar and program was started, they were informed that Mr Goel would not come in the seminar on that day and Mr. Vinod Aggarwal again assured the plaintiff No.2 that Mr. Goel had invited him in the evening. In the evening it was told to us that Mr. Goel is not in his office and would not be able to meet that day. Plaintiff no.1 & 2 then came back home after attending the seminars. Then for the first time plaintiffs suspected defendants and realised the actions of the defendants. Plaintiff No.2 then again called Mr. Vinod Aggarwal that they will not attend the seminar at Jaipur and Kota. On hearing this, Mr. Vinod Aggarwal, after talking to Mr. D.K.Goel tried to convince him that the cheque is ready and would be given to him at Delhi Airport in the early morning because if plaintiff No.1 does not attend the seminar at Jaipur and Kota their whole plan and exercise would go futile.
14. That the plaintiffs again believed the words of Mr. Vinod Aggarwal. On next date i.e. 8.6.2009 at about 4:00 a.m. Mr. Vinod Aggarwal reached the residence of plaintiffs with a car and brought them at the Delhi Airport. Plaintiff No. 2 did not demand the cheque at that time in the impression that they will pay the cheque themselves. In Jaipur the plaintiffs stayed at the residence of one of their relatives. When defendants called plaintiffs to attend the seminar in Jaipur, the plaintiff No. 2 refused to do so until the fulfilment of promise by the defendants. However the defendants again failed to do so and then the plaintiffs understood that there was a conspiracy against them and they have infact been cheated and betrayed by the defendants. They advertised their coaching institute in those seminars and thereby attracted a large number of students to take admission in FIITJEE, by using the name of plaintiff No.1 and showing that plaintiff no.1 who was presented before those students secured top rank in all India due to FIITJEE only. They defrauded the plaintiffs by assuring again and again about paying an amount of Rs. 11 Lac but now it was clear that they had simply deceived the plaintiffs and took advantage of fame of plaintiff no. 1. Thereafter plaintiffs No.1 & 2 returned to Faridabad on the next day. The plaintiff No. 2 had permitted to send plaintiff No.1 in

those seminars with a view that perhaps the amount which the defendants offered may assist in building of the career and future study of the plaintiff No.1. However, same appeared to be a ploy as the defendant did not pay the said money despite taking part in the seminars held on 6.6.2009 and 7.6.2009 at Delhi and, therefore, the plaintiff No.2 refused to send plaintiff No.1 further in any seminars of defendant institute. However, it is very important to mention here that though the plaintiff No.1 did not take part in any of the seminars of the defendant institute held thereafter in different parts of the country yet the defendants used to get publish the news report on its own, showing that the plaintiff No.1 took part in those seminars and conveyed a message to the students by showing as the same was said by plaintiff No. 1 himself to join the defendant institute whereas the plaintiff No. 1 was not at all there in the said seminars held in different cities of the country which is a clear example of unethical practice on the part of defendant institute and as such promote its business by way of using the name and position of the plaintiff No.1 without any authority. It may also be submitted here that it is an open secret that the coaching institutes are themselves paying lacs of rupees to the topper students for speaking in their favour in such kind of seminars. The defendant not only offers money to the toppers but also spent lacs of amount to bring them, get them stay in five star hotels etc. in different cities for the sake of promotion of their business. The question is that why any topper will go to take part in such seminars of the defendant suo moto and why every topper of every year is going to take part in such seminars of Defendant institute. There are certain articles published in some of reputed magazines which clearly mention this fact. Copy of one of the said magazine is attached with this plaint. It is also vital to mention here that the defendants spent at least 2 to 3 crores of rupees in publishing the advertisements of seminars on full pages of the news papers on 6.6.2009 wherein Nitin Jain's name & fame was used, however, they cheated the plaintiffs by not paying the committed amount.

15. That besides this it may also be mentioned here that the defendant had committed in their prospectus to give a gold-plated plaque to the topper but the same was never given to the plaintiff No. 1 despite several reminders to the officials of the defendant institute. Besides this the defendant did not pay the amount to the plaintiff No.1 despite reminders as advertised in their booklet that they will pay one lac

rupees each year during the study in IIT, B.Tech programme to the student who will secure No.1 All India Rank, in IIT-JEE which shows their conduct and falsehood and that they do not regard their policy and as such betrayed the plaintiff no.1. From the facts mentioned hereinabove it is clear that the defendants just for the sake of its business indulge in unethical practice and they have no regard of the talent of the plaintiff No.1 rather they misused his name just for their business purpose without having any authority and permission.

16. That it is vital to mention here that the whole admission cum scholarship test policy and reward policy declared in FIITJEE's brochures (FTRE, FTSE etc.), advertisements and websites of the defendant institute are only tools to attract bright and brilliant students but the defendant institute ensures that the deserving student cannot claim that scholarship later on as they have no intention to pay the same to the successful students. Whereas they use the materials and photographs of those successful students who secure success due to their own hard work and intelligence, for its own business promotion schemes/campaigns without any authority under law.
17. That since the plaintiff No.2 kept on requesting the defendants not to publish the aforesaid article and that they were not bothering to do the same, plaintiff No.2, under compelling circumstances, sent a legal notice to Defendant through his advocate on 23.6.2009 and its reminder dated 4.7.2009 to immediately stop advertising the said article, name and photograph of plaintiff No.1. However, the defendants in a derogatory manner did not stop the said advertisement and is still publishing in the leading news papers unauthorisedly. The defendants replied the said legal notice vide its letter dated 11.7.2009 however, the contents of the same on the face of it were/are false and unsustainable. Moreover in its reply Defendants, in point no. (xvii) Falsely mentioned that the written comments in the article were given after the consent of the Plaintiff no. 2. However the Defendants failed to explain that when and in which form plaintiff no. 2 gave his permission to defendants to publish the said article. Defendants also raised a point that the objection was taken after more than 2 months, while the objection to not to publish the article was raised to the defendant No. 1 by the plaintiff No.2 within two days of its publication. The defendant No.1 even promised

that the same would not be published any more but the said promise was not kept. More so the Plaintiff no. 2 sent the legal notice within a month of all this happenings. Besides this, as a counter blast, the defendants levelled an allegation on plaintiff No. 2 that the plaintiff no. 2 had made the Plaintiff no. 1's success as a window of money. However they were unable to explain that how and when and from whom the plaintiff no. 2 demanded any money in the name of the plaintiff no. 1. The plaintiff no. 2 only requested the amount which the defendants itself offered in its brochure/booklet for All India Topper and had themselves promised for bringing the plaintiff No.1 in its seminars which were going to be conducted certain parts of India and the said amount was not paid by defendants. If the plaintiff no. 2 was after money he would have been collected huge amount of money within a week from a number of coaching institutes and publishing houses who continuously contacted the plaintiff no. 2 for seeking permission to use name and fame of plaintiff No.1 for their business promotion, which had been the practice, though illegal and unethical, of many coaching institutes including the defendant institute for last many years. By resorting to such covert acts of publishing the tutored hand written note of plaintiff No.1 which was a certificate in favour of defendant institute and releasing the edited and false video of plaintiff No.1, 2 & 3, the defendants in fact tarnished the image of Plaintiff No.1, Nitin Jain who has done proud whole of the nation by his brilliant performance representing India in International Science Olympiads, the IIT-JEE and AIEEE and people have started thinking that the plaintiff No. 1 to 3 are cashing his success and earning money by way of advertisements and people have taken him as a businessman rather than a brilliant student whereas the truth was otherwise and in fact the defendants are increasing its business by misusing the aforementioned materials without any permission from plaintiff No. 2 and thus were trying to defraud the innocent students and their parents showing that only the students who study in the defendant institute could come on the top and thereby conspired to make huge capital out of it. This can be seen from the fact that at the time when plaintiff No.1 was studying in the defendant institute, there were only about 500 teachers since 1992 to declaration of IITJEE results in 2009 engaged with the defendant institute whereas today after Nitin topped, around more than 1000 teachers (more than two times in less than two years) are teaching in the defendant institute which itself establish

that number of students increased in the defendant institute after and due to publication of advertisement/ certificate and video recordings of plaintiff No.1,2 & 3 which were fraudulently obtained.

18. That it may also be mentioned here the defendant not only kept using the said article in the newspapers but also created a fake website namely www.iitjeetopper.com and that the said article-cum-advertisement in the precise format, which was extracted from the plaintiff No.1 by the above named employees of the defendant institute on 25.05.2009 the day when IIT-JEE result was declared, was displayed on their Website. The defendants also invited from the citizens of India, queries in the name of plaintiff No.1 and showing his photo, pretending that plaintiff No.1 will be giving reply to those queries but they themselves have been answering those queries on the said website unauthorisedly. The defendant also misused the photograph of plaintiff No.1, which was collected from plaintiffs in the Year 2007 at the time of enrolment of plaintiff No.1 for admission of coaching for IITJEE with the office of the defendant. The Defendant has also created a blog in the name of plaintiff No.1 on the same Website i.e. www.iitjeetopper.com through which advertisements were issued and published by the defendants by which huge monetary gains of thousand crores of rupees were being made. The total material on the site was related to plaintiff No.1 and his family i.e plaintiff No.2 & 3 and it seems that the plaintiff no. 1 is the owner of the above mentioned site. However, no consent for the same has ever been taken from the plaintiffs No. 1 to 3. All these itself shows that the defendants are infect indulging in using and misusing the name, fame and success of the plaintiff No.1 for their own illegal profit and gain without any authority and permission from the plaintiffs no. 1 to 3. All these acts of the defendants come under cyber crime and the plaintiffs are also taking action against the defendants under cyber law. It also came to know later that the defendant institute had bought the domain name of the above mentioned website i.e. www.iitjeetopper.com just after a day of the declaration of result of IIT-JEE 2009 i.e. 26 May 2009. The above website has been registered with the same domain registration service provider who has registered the website www.fiiitjee.com.
19. That it is also very important to mention here that even the defendant institute has got printed a photograph of Nitin on many pages of its

brochure of FTRE – 2009 which was fabricated one as Nitin Jain never photographed as such. It is an edited photograph made by defendants wherein the face of Nitin Jain was fixed on the body of any other student which is a clear cut manipulation and is also a criminal offence and by this way the defendants took benefit the name and fame of Nitin Jain as students could be lured by using the picture of Nitin Jain and an unwritten message could be conveyed to the students that as Nitin Jain secured top rank after studying in the defendant institute, they could also get the same position if they get admission in the defendant institute whereas the fact was otherwise that Nitin Jain secured his top rank due to his intelligence and hard work and the contribution of the defendant institute is negligible.

20. That it may also be mentioned here that percentage wise, results of (students who joined the regular classroom or weekend classroom program for 1 or 2 years) of the defendant institute have never reached above 10% and every year almost more than 90% students of the defendant institute fail and are not selected in IIT-JEE. However, besides this they show their result to be in between 33%-75%. Besides this there are some blogs available on the internet wherein the students, ex students as well as their parents have given several instances that they or their children left the defendant institute because of poor quality of teaching and they are/were not satisfied with the same. It is also worthwhile to mention here that the defendant institute used to take full fee of its program in advance which was also paid by the plaintiff No. 2 for plaintiff No.1 and if the student left the said program of defendant institute in the middle, they do not refund the remaining fee to the parents of the student. The Delhi State Consumer Forum had not only directed the defendant institute to refund the remaining amount with fine in several cases but also ordered that the defendant institute cannot charge the fees from students for the whole duration of the course in advance and that too in one go and if done violation of the order of the State forum would attract punitive damages on the defendant institute and erring officials may be sent to jail under the provisions of the Consumer Protection Act. Despite that the defendant institute is still charging huge lump sum fee from the parents of the students and the same is not refunded in the event of his leaving the institute. These facts show that the defendant is involved in the unethical and illegal business practice. All

the relevant documents which are available in the internet in this regard are annexed along with the plaint. The Defendant institute gives advertisements nationwide with hype results however, they don't show in their advertisements that how many student enrolled them took part in different exams and how many of them have been selected in those exams and the full details of their students selected are not mentioned anywhere neither in their brochures nor on their websites. Most of the money the defendant institute collects from the students is being used in giving these ads. These ads are so false that they keep misleading Millions of students across India. All this shows that the position of the defendant institute is not good and they are using and misusing the name, fame and position of the plaintiff No.1 for the upliftment of its business.

21. That It is also vital to mention here that the defendant institute never advertise about the strength and background of their teachers or professors and take resort to only the success of individual students in their advertisement for benefit of their business which is not fair and more so in the FTRE brochure of 2009 they advertised that 11 students out of top 20 in the All India Rank in IITJEE 2009 (Long Tern Classroom Programs) were belong to the defendant institute however, the real fact is that only 4 students including plaintiff No.1 had come in the said ranks. The plaintiff No. 2 contacted the defendant institute to explain him the real position but the answer of the said question was avoided every time by the officials of the defendant institute. It may further be submitted here that if they are not cheating the innocent students and their parents they should have given the name of other 7 students out of 11 as mentioned above in their brochures. They were also showing a figure of 88 students of FIITJEE who allegedly got success out of top 200 students in IITJEE 2009 which was false and they should have given the name of those 88 students rank wise along with their address, details of fee i.e. cheque or D/D no. and Amount etc, Date of joining, in which programs and in which centre they took admission and how much reward has been paid till now as claimed in their brochure to those 88 students.
22. That it is also submitted that merely studying in the defendant institute by the plaintiff No.1 does not give the defendants a blanket right to use name and success of plaintiff No.1. Had it be so, every school wherein famous and successful persons studied would have

advertised with the photographs of those persons that they had studied in their school and became successful. It sent a wrong message for the plaintiff No.1 in the public that the plaintiff No. 1 has become a saleable icon and making money by way of such advertisements whereas the truth was otherwise which distorted the image of the plaintiffs drastically. The defendants maliciously and mischievously treated a topper student of India. They used his innocence and faithfulness for undue profit and shining of their business. Money was offered by the defendants itself just to lure plaintiff No.2 so that they could pressurise the plaintiff No. 1 to take part in the seminars of defendant institute as the plaintiff No.1 was not at all interested to join the same. Meritorious and studious students do not involve themselves in the promotion campaigns like these seminars of defendant institute. Why a topper would be eager to participate in the seminars of the institute suo moto if there is no instigation on the part of the institute. An all India topper does not require any advertisement for him. These seminars are in fact business promotion campaigns of defendant institute and not of the topper such as plaintiff No.1. It is also worthwhile to mention here that the defendant institute did not pay the complete one lac rupees to the plaintiff no 1 as reward for all India topper in FTRE 2007 which they themselves declared in their brochure on the ground of short attendance which occurred due to taking part in the International Olympiad on Astronomy and Astrophysics (International Science Olympiads) in Bandung-Indonesia, where the plaintiff No.1 went with the permission of defendant institute however, they marked him absent in the classes but on the other hand when he won the said Olympiad, the defendant started taking advantage thereof by mentioning the same in their brochures as the plaintiff No.1 won the same due to the defendant institute. This is a shameful act on the part of the defendant institute. On one hand the defendants is not giving any benefit to the plaintiff No.1 for the period when he was in Mumbai for selection camp at HBCSE (Homi Bhaba Centre of Science Education) for the said Olympiad despite knowing this fact but on the other hand taking benefit for themselves of his winning and that too without any permission from plaintiff No.2. What kind of ethics they are setting for the students. It is also worthwhile to mention here that in the brochure there was no such condition that the prize money would be paid in four parts on the basis of attendance of the student. The

unfair business methods of the defendant institute can also be seen mere perusal of the brochure as annexed with the plaint wherein the defendant institute mentioned numbers of toppers in IIT-JEE 2009 as 11 whereas they were only 4 in numbers from the defendant institute. They are not authorised to mention wrong figures in their brochure just to attract more students, under law. This act strengthen the submissions of the plaintiffs that the defendant is infact involved in unethical practice and they infact cheated the plaintiff No. 1 to 3.

23. That after the declaration of the result of IIT-JEE 2009, Nitin Jain i.e. plaintiff No.1 became an icon for the students and their parents of this generation; several queries were made by the students with respect to the method of study, books which Nitin Jain read and regarding International Science Olympiads etc. The plaintiff No.1 was also questioned by the students as to which coaching institute they should prefer and are all institute are equal and how do they choose the good coaching institute. Keeping in view all those questions plaintiff No. 1 to 3 decided that plaintiff No.1 should write a book dealing all the aforementioned questions and as such the plaintiff No.1 has written a book named "The Secret of My Success". Among other things this book delves in detail about the illegal actions of defendant institutes and how they make totally baseless, misleading and false claims with respect to the plaintiff No.1 to 3 for their monetary gains.
24. That being disturbed by the success of the book of the plaintiff No.1 and understanding that the awareness with respect to their misconducts is growing among the citizens of India, the defendant institute filed a suit for permanent and mandatory injunction (suit No. 666/2010) against the publication of the book of plaintiff No.1 before this Hon'ble High Court, however, the Ld. Single Judge vide its order dated 13.04.2010 refused to grant injunction to the defendant institute against the publication and circulation of the book of the plaintiff No.1. Being frustrated the defendant institute challenged the said order of Ld. Single Judge before the Hon'ble Division Bench of this Hon'ble High Court. However, the Hon'ble Division bench also dismissed the appeal of the defendant institute vide its order dated 28.05.2010 as no ground of injunction on the releasing and publishing the book of the plaintiff No.1 was found by the Hon'ble High Court.

25. That after being failed in securing stay from Hon'ble Delhi High Court against the book of plaintiff no.1 the defendants started threatening by other means. They sent an email to plaintiffs on dated 05.06.2010 to stop the sales of the book and also close the website i.e. www.nitinjainiitopper.com which was the website of plaintiff No.1 to 3. The email was received from id i.e. fake_email@gmail.com and the contact no. were also mentioned therein as 1234567890. The sender has also mentioned its name as Well Wisher and belonged to the city of Hyderabad. The mail was received after a week of decision of Division Bench of Hon'ble Delhi High Court against the Defendant Institute. Moreover, after about 15 days of this the plaintiff no. 2 received a threatening SMS on his cell phone whose no. is 9312977780 in midnight of 19 June, 2010. On contacting on the no. i.e. 9549744047 through which SMS was received, by police the no. was found switched off. Plaintiffs then used to receive missed calls on their phones from a lot of different numbers. This is a clear cut example that on one hand the defendants cheated the plaintiffs by so many ways, use name and fame of plaintiff No.1 for their benefits and on the other hand defame the plaintiffs in public and gave threat to them so that they can not raise their voices against the illegal and unethical acts of the defendants. It may also be mentioned here that there was no privity of contract between the plaintiffs and defendants whereby the defendant institute can use the name, photographs and forms filled up by the plaintiff No.1 and/or plaintiff No.2 & 3, as such using the same is per se illegal. Photographs etc were given to the defendants for one purpose but the defendants used the same for other purpose which was breach of trust. The defendants were not authorised to utilise the materials for commercial advertisement/ exploitation of a minor which were provided by the plaintiffs to the defendant institute at the time of admission. Those photographs are given and forms are filled up so that the institute can maintain its record and not for the purpose of commercial utilisation of the same and if it is done the same would certainly amount to breach of trust and fraud with the plaintiffs committed by the defendants.
26. That it is also important to mention here that one of the other coaching institutes namely Aakash Institute also tried to use the name, fame and photograph of plaintiff No.1 without any authority and despite plaintiff No.1 having no concern with it for commercial gain and illegal profit and for the purpose of misguiding the students and attract them

to join that particular institute and joining it would be a token of success as plaintiff No.1 succeed. However on raising objections by the plaintiffs and denial of the claim of the said coaching institute by the plaintiff No. 1 & 2 in the media, the said coaching institute approached the Hon'ble High Court of Delhi by way of suit for damages of Rs. 3 crore against the plaintiffs, however, the Hon'ble High Court dismissed the said civil suit in limini qua plaintiff no.1&2 (defendant no. 2 & 1 therein) on 11.8.2009 with the following observations:-

“The above signature of the minor at the foot of the terms and conditions does not constitute a valid contract as far as the minor is concerned. The signature of the parent does not specify that the parent is signing for and on behalf of the minor.....

.....The suit is premised on the right of the Plaintiff (Aakash Institute) to have an exclusive right to use the name of Defendant No.2 (Nitin Jain) for publicity. In the considered view of this Court, the parent or guardian of a minor cannot part with the right of the minor to have a say about the use of his photograph for publicity by an institute run on commercial basis in the event of his succeeding in an entrance examination. In the considered view of this Court a clause in a contract that permits commercial exploitation of the skill and talent of a minor would also be opposed to public policy. Such a contract being void in terms of Section 23 of the Act cannot be enforced.”

27. That the said coaching institute challenged the said order of Ld. Single Judge before the Hon'ble Division Bench of this Hon'ble Court by way of appeal, however the Division Bench of the Hon'ble High Court vide judgment dated 7.9.2009 also dismissed the appeal of the said coaching institute in limini with the following observations:

“It appears that Defendant No.2 (Nitin Jain) had not attended any classes conducted by the Plaintiff (Aakash Institute) and had not paid any fees. The learned Single Judge has come to the conclusion that since Defendant No.2 was a minor, he could not have entered into a binding contract, and no one else, including his father, could have commercially exploited his photograph, as this would be contrary to what is envisaged in Section 23 of the Indian Contract Act, 1872...

We are in complete agreement with the reasoning of the learned Single Judge to the effect that Defendant No.2 was, at the relevant time, impervious to a claim for damages because of his minority. Defendant No.1 (Nem Chand Jain), who is the father of Defendant No.2, can similarly not be found liable due to statutory embargos, inter alia, under Sections 11 and 23 of

the Indian Contract Act since his liability flows from Defendant No.2. There is no merit in the Appeal which appears to us to have the oblique motive of creating fear amongst the student fraternity from making any adverse statement against the Plaintiff. Appeal as well as the application is dismissed.”

28. That as such it has been settled by this Hon'ble Court that nobody including the parent or guardian of a minor has a right to commercially exploit the photograph or other related materials of a minor, as this would be contrary to what is envisaged in Section 23 of the Indian Contract Act, 1872. Any article or document which was got written by the minor by way of misguide or pressure or influence can not treated as a valid document and nobody has a right to use such material and/or any statement which was directed the minor to speak including his photograph and any other material which is given by him or his parents at the time of admission in the institute only for the purpose of maintaining the records of that institute as the same would amount to commercial exploitation of the skill and talent of a minor for their business purposes as the same oppose the public policy. The aforementioned decision also establishes that even the parents/guardians have no right to permit any body to use photograph of a minor in any way. Hence the action of the defendants in using the photographs of plaintiff no.1, his videos which were prepared by the defendants itself, article which was got written by the defendants by way of influence and any other material of plaintiff No.1, for their commercial gain and profit is illegal and liable to be stopped. The defendants have no right in any way to use/misuse any of aforementioned material including name of plaintiff No.1 under law especially they have been directed not to do so.
29. That as such the plaintiffs No.1 to 3 have been harassed mentally and physically in the hands of defendants. Defendants are miss-using the name, fame and position of Plaintiff No.1 without any authority and permission. They have created got created mischievously hand written article of plaintiff No.1 and video recording of plaintiff No. 1 to 3, used the photographs of plaintiff No.1 without any permission from plaintiff No.2 to 3. The also created a false photograph of Nitin Jain and used in its brochure of FTRE – 2009. They also created web site and blog therein purportedly showing that plaintiff No.1 is associated with the defendants and giving misleading replies to the queries of students/ their parents in the name of plaintiff No. 1 illegally and

unauthorisedly and as such by all these acts they conveyed a message in the public at large that plaintiff No.1 is involved in all these activities and as such is earning huge money by way of selling himself and as such distorted the image of the plaintiff No. 1. Besides this defendant institute had committed in their prospectus to give a gold-plated plaque to the topper but the same was never given to the plaintiff No. 1 despite several reminders to the officials of the defendant institute. Even the defendants did not pay the complete one lac rupees (FTRE-2007) to the plaintiff no 1 which they themselves declared in their brochure as well as they did not pay the amount to the plaintiff No.1 which they offered as honorarium despite reminders as they advertise in their booklet that they will pay one lac rupees each year during the study in IIT to the student who will secure No.1 All India Rank in IIT-JEE. Therefore, on one hand the defendants are misusing all the materials which either were given to them by the plaintiff No. 1 to 3 bonafide and in good faith and not for the purpose for which they are using them and/or created them such as web sites for their benefits and professional gains and thereby conveyed a message in the public at large that the plaintiff is earning huge money by all means by way of selling his name and as such lowered the image of the plaintiffs No. 1 in the public which is not permissible so also illegal, unauthorised and unethical. They distorted the picture and respect of plaintiff No. 1 in the public. Besides this defendants filed a false suit of permanent and mandatory injunctions against the plaintiff No.1 to 3 which also hit the image of Nitin Jain i.e. plaintiff No.1 as this Hon'ble high Court will ultimately deliver its judgement on the basis of truth after years but now this false case hit his image drastically and conveyed a bad picture of Nitin Jain in the society that Nitin Jain wrote a book which is a bundle of falsehood whereas the truth is otherwise. The conduct/misconduct was done just to malign the image of Nitin Jain and attract thousands of innocent students and their parents which also drove huge capital for the defendants. As such the damage to the reputation of Nitin Jain, plaintiff No.1 herein is assessed and estimated to Rs. 5,00,00,000/-. In addition to this releasing of false video of plaintiff No.2 & 3 wherein plaintiff No. 2 & 3 were shown in shabby condition and picture wherein they were made to depose falsely in favour of defendant institute which also harm the reputation of plaintiff No.2 & 3 as being the father and mother of an extraordinary intelligent boy, i.e. Nitin Jain they also got a respectable

position in the society, thereby lowering the image of plaintiff No.2 & 3 as such the damage to the reputation of Nitin Jain, plaintiff No.1 herein is assessed and estimated to Rs. 50,00,000/-. Besides this the disturbance and mental harassment experienced by plaintiff No. 1 to 3 and plaintiff No.2 had to run pillar to post i.e. from police/law enforcement authorities, one Government department to other to take legal action against the defendants so also plaintiff no.2 has lost his employment and remained unemployed for the last 2 years which is assessed to the tune of Rs. 5,00,000/-. More so the defendants are also bound to pay Rs. 21,00,000/- (11,00,000+10,00,000) for attending seminars at Delhi and Rajasthan. Defendants are also bound to pay Rs. 5,00,000/- by showing that the plaintiff No.1 attended the seminar at Bangalore and praised defendant No.1 whereas the plaintiff No.1 never went there as such misused the name of the plaintiff No.1 for its professional gain. Defendants are also bound to pay balance Rs. 25,000/- out of 1 lac which they committed but refused for FTRE-2007 (FITJEE Talent Research Examination). The defendants are also liable to pay Rs. 4,00,000/- which they committed in their brochure to give the plaintiff No.1 for each year in the IIT. The reimbursement of travel expenses from Jaipur to Faridabad when the plaintiffs had to return without taking part in the seminar at Jaipur and without getting the cheque as assured by defendants is also assessed as Rs. 5,000/-. As such the total damage is assessed as Rs. 5,85,30,000/- (Rupees Five Crore Eighty Five Lac Thirty Thousand only). Which the defendants are liable to pay to the plaintiffs No. 1 to 3 as damage.

30. That besides this the defendants earns unlawful gain by way of showing videos of plaintiff No. 1 to 3 all over world prepared by defendants by misusing the faith of plaintiffs and article got written by plaintiff no.1 by defendants No. 2 to 4 and presenting him in the seminars without paying anything despite assuring and shown in the news papers as plaintiff No.1 attended at Bangalore and other places of seminars and praised the defendants and advised the students to join defendant institute though he never went there. Even the photographs of Nitin Jain were used extensively and thereby earned huge amount of money. The plaintiffs prayed to this Hon'ble Court to direct the defendant institute and its associates including franchises to file their Audited Accounts reports of last two F.Y. (2009-10, 2010-11) and the plaintiffs would be paid 25% out of the profit of the defendant

institute and its associates including franchises which they earned by using the name and fame of plaintiffs.

31. That cause of action for filing the present suit firstly arose on 12.4.2009 when Mr. Vinod Aggarwal took the examination paper of plaintiff No.1 after the exam was over. The cause of action further arose on 23.05.2009 i.e. just two days prior to the day when result of IITJEE 2009 was to be declared, when Mr. Vinod Aggarwal came at the residence of plaintiffs No. 1 to 3 along with a team consisting of four members of some video recording team from Mumbai for the purpose of Video recording and prepared the false video of plaintiff No. 1 & 3. The cause of action further arose on the same day when Mr. Vinod Aggarwal on seeing plaintiff no. 1 alone, got signed some papers from him by way of inducement who was a minor at that time in his car. The cause of action further arose on 25 May, 2009, the day when IIT-JEE result was declared and plaintiff No.1 was directed by Mr. Vinod Aggarwal, Mr. Manish Anand and Mr. C.V. Kalyan to re-write/copy a letter/ article appealing the students to join defendant institute by misusing the faith of the plaintiff No.1 which he had for them as his teachers. The cause of action further arose on 26 May, 2009 i.e. the next day the said article in the writing of plaintiff No.1 was published in the larger form in the morning newspapers with the photograph of the plaintiff No.1. which was infact a false document and obtained by fraud. The cause of action further arose on the same day when defendants created a website namely www.iitjeetopper.com and a blog in the name of plaintiff No.1 and the said article-cum-advertisement in the precise format, which was extracted from the plaintiff No.1 by the above named employees of the defendant institute on 25.05.2009 was displayed on their Website by which huge monetary gains of thousands crores of rupees were being made by the defendants. The cause of action further arose on on 28 May, 2009 when the said article was again published on front and full page in all the leading newspapers. The cause of action further arose on 29.05.2009 when Mr. Vinod Aggarwal came at the residence of plaintiff No.2 when plaintiff No. 2 was not there and misused the mailing system of the plaintiff No.2 by deceiving the plaintiff No.1. The cause of action further arose on 3.6.2009 when Mr. Vinod Aggarwal at the instance of defendant No.2 called plaintiff No.2 saying that Mr. D.K.Goel wished to meet him on the next day and on 4.6.2009 Mr.

Vinod Aggarwal and Mr. C.V.Kalyan pressurized plaintiff No. 2 and offered him Rs. 11 Lac and Rs. 10 lac for sending plaintiff No.1 in the seminars of defendant institute. The cause of action further arose on 5.6.2009 when defendants again called plaintiff No.2 for the purpose of giving the cheque but not given. The cause of action further arose on 6.6.2009 & 7.6.2009 when the plaintiff No. 1 & 2 attended the seminars of the defendants yet they were not paid the requisite amount. The cause of action further arose on 8.6.2009 when the defendants brought plaintiffs to Jaipur for another seminar but again failed to pay the committed amount to them. The cause of action further arose on the dates when the news was published in all the leading news papers showing that the plaintiff No.1 took part in the subsequent seminars and conveyed a message to the students to join the defendant institute though the plaintiff No.1 did not take part in any of the seminars of the defendant institute held thereafter in different parts of the country yet the defendants used to get publish the news report on its own. The cause of action further arose on 23.6.2009 when the plaintiff No.2 sent a legal notice to Defendants through his advocate and its reminder dated 4.7.2009 to immediately stop advertising the said article, name and photograph of plaintiff No.1. However, the defendants in a derogatory manner did not stop the said advertisement and is still publishing in the leading news papers unauthorisedly. The cause of action further arose on 11.7.2009 when the defendants replied to the legal notices of the plaintiff No.2. The cause of action further arose on 05.6.2010 and just after rejecting the stay application of defendants by the Hon'ble High Court of Delhi. The cause of action further arose on the date when the said suit of the defendant against the plaintiff was dismissed in default by the Hon'ble High Court of Delhi. The cause of action further arose on each and every date when the false advertisement/ article got written by plaintiff No.1 by the defendants was published in the news papers which was obtained fraudulently and video of plaintiff No.2 & 3 was shown/seen on the internet which was obtained by breach of trust. The cause of action is still subsisting and continuous as the said article and video are still shown to the public at large.

32. That this Hon'ble Court has the territorial jurisdiction to entertain and adjudicate the plaint/suit of the plaintiffs No. 1 to 3.

33. That the valuation of the suit for the purpose of court fee and jurisdiction for the relief of recovery is Rs. 5,85,30,000/- and appropriate court fee there on could be Rs. .5,73,645/= and the plaintiffs paid a part court fee of Rs. 25,000/- and undertake to pay the remaining court fee for within two months from filing of the suit.

PRAYER

In view of the aforesaid facts and submissions, it is most respectfully prayed that the Hon'ble Court may kindly be pleased to:

- a. pass a decree of recovery of a sum of Rs. Rs. 5,85,30,000/- (Rupees Five Crore Eighty Five Lac Thirty Thousand only) in favour of plaintiffs No.1 to 3 and against the defendants towards damage of reputation;
- b. direct the defendant institute and its associates including franchises file audited accounts reports of last two F.Y. (2009-10, 2010-11) and the plaintiffs would be paid 25% out of the profit of the defendant institute and its associates including franchises which they earned by using the name and fame of plaintiffs;
- c. pass a decree for pendentelite and future interest @ 18% per annum on the claimed amount from the date of filing the plaint till the date of realization of the same, in favour of the plaintiffs No. 1 to 3 and against the defendants;
- d. direct the defendants to return all the original materials related to plaintiff No 1 to 3 (either documentary or video or other material) to the plaintiffs and stop using them immediately;
- e. pass such other order or orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the plaintiffs No. 1 to 3 and against the defendants in the interest of justice.

Plaintiffs No. 1 to 3

New Delhi

Through

(R.K.SAINI, PUNEET VERMA &
KIRAN DHARAM)

Dated: 28.05.201

Advocates for the plaintiffs No. 1 to 3

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) NO. 1430 OF 2011

NITIN JAIN & ORS

...PLAINTIFFS

VERSUS

M/S FIT JEE LTD. & ORS.

...DEFENDANTS

**WRITTEN STATEMENT ON BEHALF OF PLAINTIFFS TO THE
COUNTER CLAIM OF THE DEFENDANT NO.1**

PRELIMINARY OBJECTIONS

1. The counter claim of the defendant No.1 is suffering from Principle of Res Judicata as the defendant has already filed civil suit bearing No. CS(OS) No. 666 of 2010 praying a damage of Rs. 20,00,000/- against the plaintiffs on some particular grounds, documents, contentions and pleas which has been dismissed in default and the defendant (plaintiff therein) has moved an application for restoration of the said suit which is pending adjudication. Whereas this time the defendant is claiming a damage of Rs. 7,00,00,000/- from the plaintiffs by way of present counter claim on the same grounds, documents, contentions and pleas. Hence the counter claim of defendant is liable to be dismissed on this ground alone.
2. The counter claim of the defendant is also liable to be dismissed on the ground that the same was not verified as per Code of Civil Procedure. The affidavit as well as the verification of the affidavit signed by the deponent herein and filed along with plaint which is considered as part of the pleading is incurably defective. The affidavit as well as the verification thereof state that everything is true to the best of the knowledge of the deponent without specifying which of the allegations were true to the personal knowledge of the defendant/deponent and which of the allegations were based on the information of the defendant/deponent believed by him to be true. Neither the verification in the petition nor the affidavit gave in support of the plaint gives any indication

of the source of information of the petitioner as to such facts as were not in his own knowledge, therefore, the affidavit is bound to be rejected. Verification should invariably be made in the lines of Order 19, Rule 3, of the Civil Procedure Code. Order VI Rule 15 of CPC provide that the deponent has to verify that what part of the plaint is true and correct in his personal knowledge or on the basis of record and what part of the plaint are believe to be true and based on the information received and when the matter deposed to is not based on personal knowledge of the deponent the sources of information should be clearly disclosed. Which was not done in the present case. Contents of the affidavit of a plaint and verification thereof clearly fix the responsibility for the averments and allegations in the plaint on the person signing the affidavit and verification. In fact, the present one is a fit case where the counter claim should be rejected at the threshold for non-compliance of the mandatory provisions of law. Unverified pleadings or unaffirmed affidavits are not at all acceptable in law and in the consequence thereof the counter claim is liable to be dismissed.

3. The whole petition does not contain any single material facts and the averments in the counter claim are vague and ambiguous hence is not liable to be tried. The counter claim does not contain any definite fact and contains only wild and irresponsible allegations unsupported by facts and the same is filed just to compel the plaintiffs to give up their fight for justice.

REPLY ON MERIT

1. The aforementioned counter claim as filed by the defendants herein is nothing but a counter blast and an outburst and in fact a pressure tactic on the part of the defendants. It is also submitted with objection that Sh. Ashish Kumar Aggarwal has not been authorized to file this counter claim as per the requirement of law and as such he has no authority to file the present counter claim. Besides the defendant No.1 has filed the resolution to authorize one Lt. Col. (Retd.) K.C.Oberoi alleged Sr. Manager-HRD and Sh. Ashish Kr. Aggarwal, Manager-HRD to file the case however as per the knowledge of the plaintiff no.2, Lt. Col. (Retd.) K.C.Oberoi is

not with the defendant No.1 now and left the job much earlier and even Sh. Ashish Kumar Aggarwal is also not holding the post of Manager-HRD now and rather is holding the post of Dy. General Manager-HR with the defendant No.1. Besides it the resolution as filed by the defendant No.1 along with the counter claim had been passed on 8.11.2005 and directors of the defendant No.1, company have been changed several times in the meantime hence the Managing Director of the company should have got passed a fresh resolution to authorize Mr. Ashish Ku. Aggarwal to file a fresh case in the year 2011 which was, reason best known to him, not done by him. More so, neither there is any signature of Mr. Ashish Ku. Aggarwal on the copy of the resolution nor the same was identified by Mr. D.K.Goel, Managing Director which may prove that the person who is signing the counter claim and the affidavit is the same person or not, therefore, the defendant should have filed the current resolution to file the aforementioned counter claim and the defendant No.1 can not file any counter claim on the basis of this resolution dated 8.11.2005 and in the absence of correct and recent resolution to authorize Mr. Ashish Ku. Aggarwal, Mr. Ashish Ku. Aggarwal cannot file any petition, counter claim or written statement on behalf of defendant No.1 and, therefore, the counter claim, written statement and other pleadings should be rejected and get off the records due to not filed by the authorized person.

2. The contents of this para of the counter claim are incorrect and the plaintiffs while denying the same, reaffirm and reiterate the contents of the plaint. The allegations as made in the plaint are not mere allegations but true facts. The defendant involves in unethical and illegal practices in respect of plaintiffs and the different law enforcement agencies are investigating the same on the complaint of plaintiffs in this regard.
3. The contents of this para of the counter claim are also false and incorrect. It is strongly denied that the plaintiffs have in any way tarnished the image of the defendant company by leveling false allegations and/or the same were given wild publicity by and at the instance of the plaintiffs and/or plaintiffs have made every effort to tarnish the image of the institute of defendant No.1. It is

submitted that the defendant could not submit any document in this regard except an email dated 21.9.2009 sent by plaintiff no.2 to one business partner of defendant institute, however, interestingly the defendant no.1 had already filed a case of damages bearing No. CS(OS) No. 666 of 2010 on the basis of same email, therefore, the defendant no.1 can not file another case of damage of more than seven crore again on the basis of same document and are bound with the principle of Res Judicata. More so it may be submitted in this regards that saying truth is no crime in the eyes of law and if the contents of the said email, which came in the knowledge of MD. Of defendant No.1 on the next day, were false or incorrect the defendants should have been immediately filed a case of damage against the plaintiff No. 2 which was not done. This itself show that the facts written in the said email are true and correct. It is also denied that the defendant institute had earned any image with hard work and sincere efforts. The results of the defendant institute since its inception itself demolish the claim of the defendant institute in this regard.

4. In response to the contents of this para of the counter claim it is submitted that the defendant No. 1 had admitted in this para that it is the common practice of the defendant institute to conduct the seminars and call the successful students therein, however it is vehemently denied that the said seminars are conducted to help, guide, inspire and motivate the students to pursue their studies and it is also vehemently denied that the plaintiff No.2 was ever or actually grateful for the contributions of defendant No.1 and/or voluntarily agreed to send the plaintiff No.1 in the said seminars. It is submitted in this regard that the defendants institute spend crores of rupees in the advertisements of those seminars which were conducted only in the sequel of their business promotion activities and in the said advertisements the students were clearly and directly invited to join FIIT JEE to get success in IIT JEE. It is a commercial campaign of defendant institute and not a charitable act. It is further submitted that prior to Plaintiff No. 1 no student of defendant institute ever became topper of IIT JEE entrance except Nitin Jain and even no student of the defendant instate has

come within top 20 in the IIT JEE entrance, 2011 which itself shows the education imparting standard of defendant institute, therefore, it is denied that Nitin Jain who had already not only topped in all the classes in his education history but also won gold medal and absolute winner trophy in International science Olympiad before the declaration of the results of IIT JEE, requires contributions of defendant No.1 in his success. It is also submitted that before winning gold medal by plaintiff No. 1 in the Olympiad, no body including teachers in the defendant institute knew the name of Olympiad, therefore, they can not claim of their contribution for his success in the Olympiad. Even the plaintiff No.1 acquired no.1 rank in the all India FTRE exam conducted by the defendant institute within 4 months of his joining of defendant institute. Therefore, there is no question of being grateful of plaintiff No.2 for the contributions of defendant No.1 and/or voluntarily agreed to send the plaintiff No.1 in the said seminars. It is specifically submitted that the defendant institute offered the plaintiffs an amount mentioned in the plaint for plaintiff No.1 to take part in the said seminars itself, however, the defendant institute did not fulfill the same. The plaintiff No.2 was extensively motivated by the defendant no.2 and 3 to send plaintiff No.1 and plaintiff No.2 agreed to send plaintiff No.1 in the said seminars just to keep in view the future prospect of the career of the plaintiff No.1 as the said amount may be useful for his higher studies. Even though Nitin didn't attend seminars at Jaipur, Kota and Bangalore, FIITJEE gave false reports to media that Nitin attended these seminars for their own commercial purposes. Rest of the para of the counter claim are denied. News papers dated 6.6.2009 containing advertisements of FITJEE regarding seminars are annexed herewith and marked as **ANNEXURE D-1(COLLY)**.

5. The contents of this para are false and hence denied. It is denied that thereafter the plaintiffs started demanding huge money for participation of plaintiff No.1 in the seminars. It is submitted that since the defendants have cheated the plaintiffs in not paying the amount as itself offered by the defendants, therefore, the plaintiff No.2 sent a legal notice dated 23.6.2009 and 4.7.2009. The defendant replied the said notice by mentioning

all false and concocted contentions. It is further denied that the plaintiff no.2 sent an email to the business partner of the defendant no.1 containing malicious suggestions and distortions with a view to defame defendant company to force the defendant company to pay the demanded amount and also threatened to publish a book defaming the defendant company. It is submitted in this regard that saying truth is no offence in the eyes of law. The defendant is unable to prove in the counter claim itself that how the statements made by the plaintiff no.2 were false and incorrect and it would be an unethical, wrong and cheap practice if they improve their statement made in this regard in the counter claim, subsequently in the replication, filing of which is not their right under law, after pointing it out by the plaintiffs. Rest of the para of the counter claim are denied.

6. The contents of this para of the counter claim are denied being wrong and false. It is further denied that the plaintiffs conspired to publish book which contained defamatory contents with a sole view to harm the reputation of the defendant company and pressurize the defendant company to succumb to their illegal demands for money. It is submitted in this regard that mere reading of the book written by plaintiff no.1 it may be seen that the book was not written to malign the image of the defendant institute, however, whatever fraud which was committed by the defendant institute with the plaintiffs had been mentioned in the book which could not be controverted by the defendants. It is further reiterated that saying truth is no crime.
7. The contents of this para of the counter claim are wrong and denied. It is vehemently denied that the plaintiffs are trying to extort money from defendants by adopting every possible means. It is also denied that the plaintiffs have filed complaints to various authorities and made unsuccessful attempts to lodge criminal cases against its teachers at Faridabad. It is also denied that the present suit is culmination of their efforts to malign and defame the institute of defendant No.1 for its refusal to accept their demands. The defendant has to put the strict proof in this regard. It is also submitted that plaintiffs have not demanded any illegal amount from the defendant institute. The defendant institute had

no authority to use the name and fame of the plaintiff No.1 under law and if the defendant no.1 is using the same the plaintiffs have all the authority to demand the damages of the same. Besides it is also submitted that the plaintiffs have filed various complaints to various authorities due to illegal activities of carried out by defendant no.1 to and in the name of the plaintiffs. The investigations done by the various law enforcement agencies are going on against the defendants, therefore, it is incorrect to mention that the same were unsuccessful attempts on the part of the plaintiffs or the same was done to malign and defame the institute of defendant No.1.

8. The contents of this para of the counter claim are wrong and denied and the plaintiffs refer to and rely upon the contents of the plaint in this regard. It is denied that the allegations of cheating and other allegations are general in nature and were meant to convey to the public at large that the institute of defendant no.1 was thriving on misleading publicity and defrauding the public at large. It is submitted that the plaintiffs has given the documentary proof in regard to its submissions and the defendant is unable to prove that how the submissions made by the plaintiffs are untrue and incorrect. Rather the denial of the defendant in the written statement to the plaint of the plaintiff is not specific and is general only which is no denial in the eyes of law.
9. The contents of this para of the counter claim are wrong and denied. It is denied that the allegations are reckless, malicious and per se defamatory which has harmed the reputation of the defendant No.1 and in the institute runs by it. It is also denied that various people have made inquiries about the allegations made by the plaintiffs and became doubtful about the institute of defendant No.1 and the standard and quality of coaching there. It is submitted in this regard that the submissions as made by the plaintiffs in the plaint are based on the documentary proofs and are true and that is why the defendant can not make the statement that the same are false and untrue. For the rest the plaintiffs refer to and rely upon the foregoing submissions and contents of the plaint.

10. The contents of this para of the counter claim are wrong and denied. It is denied that the plaintiffs are liable to compensate and pay damages to the defendant claimant on account of defamation. The plaintiffs refer to and rely upon the foregoing submissions and the contents of the plaint in this regard.

11. The contents of this para of the counter claim are wrong and denied. It is denied that it is obvious and evident from the aforesaid facts that the plaintiffs have mounted a false, defamatory, scurrilous and baseless campaign against the defendant company because it refused to satisfy the plaintiffs' lust for money. It is submitted in this regard that defendant company is involved in unethical and illegal activities and leaving no stone unturned to cheat, defame, threat and pressurize the plaintiffs, hence the plaintiffs were constrained to move different law enforcement agencies including this Hon'ble Court and approaching the court and law enforcement agencies for the redressal of grievance is no crime and defendant can not seek damage on this ground. It is also denied that the damage which has been caused to the defendant company's reputation is immense and is both tangible and intangible and no price can be attached to this. It is submitted in this regard that the defendant has to prove in the pleadings of counter claim itself that whatever submitted by the plaintiffs in the plaint are false and incorrect which the defendants failed to prove besides failed to prove what actually are the tangible damages apart from the intangible damages. In fact the whole counter claim of the defendant no.1 is vague and imaginary and no definite fact has been mentioned therein, therefore, the same is liable to be dismissed at the threshold. It is also denied that the reputation developed over the years of hard work has been set at naught. It is also denied that it was through meticulous planning, hard work and scrupulous adherence to standards even at the cost of immediate financial gains that the defendant has build up its reputation and goodwill. However, It is submitted that if more than 90% students of defendant institute are failed/unsuccessful in IIT JEE and there is no classroom student of FITJEE in top 20 ranks in IITJEE 2011, then it is obvious what reputation and goodwill has been gained by

the defendant institute. It is also denied that the plaintiffs are jointly and severally liable to pay exemplary damage to the defendant company. The plaintiffs also refer to and rely upon the foregoing submissions and the contents of the plaint in response to this para. Rest of the para is denied.

12. The contents of this para of the counter claim are again wrong and denied. It is denied that any cause of action arose in the month of June, 2009 or 23.6.2009/4.7.2009. It is further denied that any cause of action arose on 11.7.2009. It is further denied that any cause of action arose on 21.9.2009 or the plaintiff no.2 ever tried to force defendant company to succumb to illegal demands of plaintiffs in any manner. It is further denied that cause of action arose in April, 2010 or plaintiffs publish the book containing defamatory and malicious contents to the defendant company. It is further denied that the cause of action arose in January, 2011 or the plaintiffs unsuccessful attempts to lodge criminal cases and its teachers only to malign and defame for their refusal to accept plaintiffs illegal demands for money. The investigations are still going on and the defendant knows it very well. It is further denied that the cause of action arose in May, 2011 or the suit of the plaintiffs is based on defamatory contents and contains imputation which not only contrary to the facts but also malicious. The suit of the plaintiffs is based on the law and documents and there is nothing defamatory therein. It is also denied that the cause of action still continuing and subsisting since then. There is no cause of action to file the present counter claim as the defendant had already filed a civil suit bearing no. CS (OS) no 666 of 2010 for damage against the plaintiffs on the same grounds and contents hence the counter claim of the defendant is barred by Res Judicata and hence liable to be dismissed.

13. The plaintiffs do not make any comments on the point of limitation however, it is denied that the counter claim of the defendant is not barred by any law. The counter claim of the defendant is barred by several laws including Res Judicate hence liable to be dismissed.

14. The contents of this para are false to the knowledge of the defendant hence the same are denied and the person who has

signed the counter claim as well as affidavit is liable for concealment as the defendant has already filed the civil suit No. 666 of 2010 for damage against the plaintiffs on the same grounds and contents and even on the same cause of actions in this Hon'ble Court itself whereas here it is declared by him that the defendant has not filed any claim of similar nature and on the same cause of action in any court. The plaintiffs are filing a separate application U/s 340 Crpc to prosecute him for the offence committed by him upon the Hon'ble Court.

15. Since the counter claim of the defendant is liable to be dismissed, the value of the counter claim is immaterial.

The prayer of the counter claim is liable to be rejected in view of the submissions made hereinabove. The claim of the defendant is based on conjecture and surmises and even on imagination and based on vague facts and in fact an attempt to pressurize the plaintiffs to bow down before it which practice is liable to be frustrated by the Hon'ble Court. It is prayed accordingly.

New Delhi

(R.K.Saini, Puneet Verma
& Kiran Dharam)

Date:

Advocate for the Defendants