

**IN THE COURT OF SH. LOKESH KUMAR SHARMA
DISTRICT JUDGE (COMMERCIAL COURTS)-05,
SOUTH DISTRICT, SAKET COURTS, NEW DELHI**

In the matter of

CS (COMM) 219/22

CNR No. DLST01-002753-2022

SIEMENS INDUSTRY SOFTWARE INC.

(Formerly known as Siemens Product
Lifecycle Management Software Inc.)

5800 Granite Parkway,

Suite 600,

Plano, Texas – 75024,

United States of America

...Plaintiff No. 1

SIEMENS INDUSTRY SOFTWARE (INDIA) PVT. LTD.

E-20, 1st & 2nd Floor,

Hauz Khas,

New Delhi- 110016

.....Plaintiff No. 2

Versus

MR. DHARMESHBHAI R SANKHARVA

Director,

M/s. Invent Cast Pvt. Ltd.

M/s. Precise Technocast Private Limited.

Plot No. G-561, Road No. 1-G,

Kishan Gate G.I.D.C. Metoda,

Lodhika, Rajkot,

Gujrat- 360021

.....Defendant No. 1

MR. HARESH PRAVINBHAI SANKHARVA

Director,

M/s. Invent Cast Pvt. Ltd.

Plot No. G-561, Road No. 1-G,

Kishan Gate G.I.D.C. Metoda,

Lodhika, Rajkot,

Gujrat- 360021

.....Defendant No. 2

M/S. INVENT CAST PVT. LTD.

Plot No. G-561, Road No. 1-G,
Kishan Gate G.I.D.C. Metoda,
Lodhika, Rajkot,
Gujrat- 360021

Also At,

Maruti Manor, Tagore Road,
Near Astron Cinema,
Rajkot, Gujrat-36001

.....Defendant No. 3

PRECISE TECHNOCAST PVT. LTD.

Plot No. G- 1931, BH. Almighty Agro Product,
Lodhika G.I.D.C. Metoda,
Gujrat- 360021

Also At

Plot No. G-561, Road No. 1-G,
Kishan Gate G.I.D.C. Metoda,
Lodhika, Rajkot,
Gujrat- 360021

....Defendant No.

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Institution of the Suit	: 31.03.2022
Arguments concluded on	: 10.01.2025
Judgment pronounced on	: 31.01.2025

J U D G E M E N T

1. The present suit has been filed by the plaintiffs for a decree for permanent injunction against the defendants, restraining them from directly or indirectly reproducing/storing/installing and/or using pirated/unlicensed software programmes of plaintiffs, thereby infringing the copyright in the plaintiffs'

computer programmes/software titles. The Plaintiffs have further prayed for rendition of accounts, damages as also for costs of the Suit.

2. Brief Facts : As per the Plaintiff No. 1, Siemens Industry Software Inc. (formerly known as Siemens Product Lifecycle Management Inc.), who is claiming itself to be the owner of the copyright in the Product Lifecycle Management (PLM) software programs developed and marketed by it, including its various versions, existing under the laws of United States of America (USA), having its corporate headquarters located at 5800 Granite Parkway, Suite 600, Plano, Texas- 75024, USA. Plaintiff No. 2, Siemens Industry Software (India) Pvt. Ltd., was stated to be an affiliate entity of Plaintiff No. 1, with the same ultimate parent entity, Siemens AG, and was marketing the software products of Plaintiff No. 1 in India, having its registered office at E-20, 1st & 2nd Floor, Hauz Khas, New Delhi, while carrying on its business from various offices, including sales offices located across India.

The present suit was filed by one Sh. Deepak Hejmadi, who was stated to be the constituted attorney of Plaintiffs no. 1 and 2 and was stated to have been duly authorized to sign and file the suit on their behalf, being fully conversant with the facts of the case.

Defendant No. 1 was stated to have been a director of Defendant No. 3 and 4 Companies. Defendant No. 3, was stated to be a company with its registered office and factory at Plot No. G-561, Road No. 1-G, Kishan Gate G.I.D.C. Metoda, Lodhika, Rajkot, Gujarat-360021, established in 2006, and engaged in the manufacturing of ferrous and non-ferrous castings, employing

CAD/CAM technologies for die mould/making, shelling, melting, heat treatment, wax pattern processing, and wax assembly.

Defendant No. 2 was also stated to be a director of Defendant No. 3 Company and, was responsible for its day-to-day business activities. Defendant No. 4 was stated to be a company with its registered office at Plot No. G-1931, BH. Almighty Agro Product, Lodhika G.I.D.C. Metoda, Gujarat-360021, and was stated to be a group company/sister concern of Defendant No. 3 due to its common directors and identical services and processes.

3. It was averred that Defendant No. 1, being the director of Defendant Nos. 3 and 4, and Defendant No. 2, being the director of Defendant No. 3, were responsible for managing the IT infrastructure of the Defendants and making day-to-day business decisions. It was further stated that Defendant No. 1 and 2 were accountable for the unauthorized installation and reproduction of the Plaintiffs' software at the Defendants' offices.

4. It was stated that Plaintiff No. 1 was a leading global provider of product lifecycle management (PLM) software, which enabled companies to efficiently manage the entire lifecycle of a product, from ideation and design to manufacture, service, and disposal. The software integrated Computer-aided design (CAD), Computer-aided manufacturing (CAM), Computer-aided engineering (CAE), product data management (PDM), and digital manufacturing. It was further stated that Plaintiff No. 1 had allowed organizations to digitally manage product information, thereby increasing business value throughout the product's life. The Plaintiff's software was used by industries such as aerospace, defence, automotive, electronics, medical, and

marine, with prestigious clients including Airbus, Audi, NASA, Ford Motors, Hyundai, Maruti Suzuki, Samsung Electronics, and Volvo, among others. To facilitate digital collaboration, Plaintiff No. 1 had developed a global platform for accessing product data, process information, and ideas, offering comprehensive PLM solutions and expert consulting services. The platform provided was stated to be a unified data management architecture for aggregating product-related information.

It was further averred that Plaintiff No.1 had various software product lines, including Digital Manufacturing, which featured the software Tecnomatix, Digital Lifecycle Management, which featured the software Teamcenter, and the Velocity Series software products, which included Solid Edge. Additionally, the Digital Product Development line featured applications such as Solid Edge Software and NX Software, the latter being the subject matter of dispute in the instant suit. Furthermore, software products including NX, NX Layout, NX Nastran, NX Power Drafting, Femap™, Solid Edge, Parasolid, FloEFD Solver, FloTHERM PCB, FloTHERM XT, FloTHERM, FloVENT, HEEDS Library, HEEDS MDO, HEEDS POST, HEEDS POST Optimate, Mechatronics Concept Designer, Plant Simulation, QuestaSim, Simcenter 3D, Simcenter Amesim, Test Lab, Valor NPI, Virtual Lab, Star CCM+, CAM Express, and Capital were stated to have been the most commonly used and popular software of the plaintiffs.

5. It was averred that Plaintiff No.1 owned the copyright for its software programs, including various versions, which qualified as 'computer programs' under Section 2(ffc) and 'literary works' under Section 2(o) of the Copyright Act, 1957. Plaintiff No.2 was stated to have marketed the software products of

Plaintiff No.1 in India and was significantly affected by the infringement of Plaintiff No.1's copyright. It was further stated that the piracy of Plaintiff No.1's software had caused considerable harm to Plaintiff No.2, thereby giving Plaintiff No.2 a substantial interest in protecting and enforcing Plaintiff No.1's copyright.

The Plaintiffs' computer programs were "*works*" that were firstly published and registered in the United States of America and under Indian Copyright laws, the copyright in a work created by an employee belonged to the employer under the "work made for Hire" doctrine. The Plaintiffs further asserted that both the computer programme and the Supplementary User Instructions and Manuals supplied along with the software had also fallen within the ambit of 'original literary works' as contemplated under Section 2(o) read with Section 13(1)(a) of the Copyright Act, 1957. The Plaintiffs asserted that the computer software, as well as the Supplementary User Instructions and Manuals, had been created as 'work for hire' by employees of Plaintiffs. Consequently, Plaintiffs had become the owner of the copyright vested in the aforementioned literary works within the meaning of Section 17 of the Act, had therefore been entitled to all the exclusive rights flowing from such ownership as set out in Section 14 of the Act.

It was further stated that, on account of both the USA and India being member countries of the Berne Convention, the Universal Copyright Conventions, and the World Trade Organization (WTO), the rights of authors in the USA were equally protected under the aegis of Section 40 of the Act, read with the International Copyright Order, 1999.

6. It was stated that Plaintiff No. 1 had a mandatory licensing system for all its software products, with a separate licence required for each installed item, available under various licence types, including "node locked," "concurrent simultaneous user," and "named user," each with specific usage restrictions. Licence details, such as the number, type, and licensed entity, were maintained in a regularly updated database used to verify legitimate software use. The licences were non-transferable without the Plaintiff's express written consent. The software was stated to be module-based, with access granted through a licence file or key, restricted to the modules purchased by the customer. Further, Plaintiff No. 1 was stated to be a globally renowned software company, recognized as the largest in its industry, with a presence across continents.

7. It was stated that, due to the high demand for Plaintiff No. 1's software, piracy remained a significant concern, with products like UG NX (formerly Unigraphics) and SolidEdge being particularly vulnerable to illegal copying. It was stated further that plaintiffs had suffer incalculable damage to their intellectual property rights and business on account of various forms of copyright piracy in their software programs. It was further stated that end-user piracy caused significant harm to the plaintiff, as it involved unauthorized duplication of the plaintiff's software by businesses, corporations, institutions, schools, and other entities. It was stated that end-user piracy occurred in the following ways: (a) exceeding the number of software copies permitted by the License Agreement, (b) installing software on more systems than licensed, (c) using pirated CD-ROMs to install unlicensed software, (d) using academic or restricted software for commercial purposes without proper licensing, and (e) taking advantage of upgrade offers without possessing a legal copy of the software being upgraded.

8. It was averred that Defendant No. 1, being the director of Defendant Nos. 3 and 4, and Defendant No. 2, being the director of Defendant No. 3 company, were responsible for managing the IT infrastructure of the Defendants and making day-to-day business decisions. It was further stated that Defendant Nos. 1 and 2 were accountable for the unauthorized installation and reproduction of the Plaintiffs' software at the Defendants' offices.

9. It was averred that in the month of March 2022, the Plaintiffs were informed through their market sources that the Defendants were using unauthorized copies of the Plaintiffs' NX (Unigraphics) software for commercial activities at their manufacturing unit situated at Plot No. G-561, Road No. 1-G, Kishan Gate, G.I.D.C. Metoda, Lodhika, Rajkot, Gujarat-360021, India.

The Plaintiffs were stated to have subsequently conducted inquiries to ascertain the license entitlements of the Defendants. This process of inquiry culminated in the Plaintiffs conducting a search within their database to determine the details of the software licenses with respect to the Plaintiffs' software titles held by the Defendants at their offices. The said search conducted by the plaintiffs had revealed that Defendant No. 3 had possessed one license for NX CAD/CAM 3 Axis Milling Found (NL), the maintenance and subscription for which had already expired. Moreover, the database check further revealed that Defendant No. 4 lacked any license to use the Plaintiffs' software, including but not limited to NX (Unigraphics). It was stated that the Defendants were involved in the unlicensed usage of the Plaintiffs' software, particularly NX (Unigraphics).

It was stated that the Plaintiffs had deputed Mr. Vincent Jose, an investigator, to conduct inquiries regarding the Defendants' use of the Plaintiffs' software programs, including NX. The investigation, conducted through internet searches and telephonic conversations between the investigator and the Defendants' employees, revealed that NX (Unigraphics) was being used on at least three computer systems in the design department of the Defendants' manufacturing and design unit. It was further asserted that Defendant No. 3 lacked sufficient licenses, and Defendant No. 4 did not possess any license for the Plaintiffs' NX software, thereby indicating that the Defendants were engaging in the unauthorized use of the Plaintiffs' software titles, particularly NX (Unigraphics).

10. Thereafter, the Plaintiffs were stated to have sent repeated requests to the Defendants seeking an amicable resolution to the matter. However, despite multiple follow-ups made by the Plaintiffs, the Defendants had chosen not to respond to the said requests.

11. It was stated that the facts presented in the plaint, the investigator's findings, and the results of the Plaintiffs' data search revealed that the Defendants were engaging in the unlicensed use of the Plaintiffs' software, thereby wilfully violating the Plaintiffs' copyright in their computer programs. Furthermore, it was asserted that the unauthorized installation and use of the Plaintiffs' software on the Defendants' computer systems constituted unauthorized reproduction of the Plaintiffs' copyrighted software, resulting in a clear infringement of their copyright. The Defendants' actions were alleged to have caused significant revenue losses to the Plaintiffs and created a 'cascading effect,' adversely impacting the interests of plaintiffs and encouraging other

players in the industry to use pirated software for their businesses simply being a highly profitable exercise.

The use of counterfeit or cracked licenses of the Plaintiffs' software, NX, was alleged to have provided unrestricted access to the software and its modules on any number of systems simultaneously available to the user. It was further stated that a cracked NX license file enabled access to over 400 modules of the software on an unlimited number of computers. The Plaintiffs claimed that such unauthorized use of their software caused a direct loss of approximately INR 1.9 crores, in addition to indirect losses. It was further alleged that the use of cracked, counterfeit, or unlicensed versions of the Plaintiffs' software was in direct contravention of the terms of the Master License Agreement (MLA) executed by the Defendants and amounted to an infringement of the Plaintiffs' copyright. The Defendants' continuous infringement was stated to have resulted into significant business losses for the Plaintiffs, including a considerable erosion of their goodwill. Consequently, the Plaintiffs had based their claim for damages on an amount of INR 20 lakhs, accounting for the illegal profits earned by the Defendants from the use of pirated software, the revenue lost by the Plaintiffs due to decreased sales of original software, and the harm caused to their reputation and goodwill arising from the Defendants' infringing activities.

12. The cause of action was stated to have arisen initially in March 2022 when the Plaintiffs became aware, through various market sources, of the Defendants' use of Plaintiff No. 1's software for commercial purposes. The cause of action arose again when the investigator gathered information regarding the Defendants' use of the Plaintiffs' software programs. Additionally, the cause of action arose when Plaintiff No. 1 conducted a search within its

entitlement database and found that the Defendants' usage did not correspond with the number of licenses held by them. It was further stated that the cause of action continued as the Defendants persisted in infringing the Plaintiffs' copyrights in their software titles, and subsisted until the Defendants were restrained by an order of Permanent Injunction granted by this Hon'ble Court.

13. It was stated that an application seeking urgent interim relief against the Defendant had also been filed along with the suit to exempt the instant suit from pre-institution mediation as per Section 12A of the Commercial Court Act, 2015.

14. Since Plaintiff No. 2 was conducting its business activities and was registered within the jurisdiction of this Court, it was stated that, by virtue of Section 62(2) of the Copyright Act, 1957, this Court had territorial jurisdiction to try and decide the present suit.

15. In light of the aforesaid facts and circumstances, the Plaintiffs had prayed for the passing of an Order of Permanent Injunction restraining the Defendants, their principal officers, directors, agents, and all others either claiming under or through them from infringing the Plaintiffs' copyright, including NX (Unigraphics) in any manner whatsoever. The Plaintiffs further sought an Order for the rendition of accounts, damages amounting to ₹20,00,000, and a decree for costs in their favour and against the Defendants, along with any other order deemed fit and proper by the Court.

16. Vide Order of this Court dated 31.03.2022, an *ad-interim ex-parte order* of injunction was granted in favour of the plaintiffs and against the defendants,

restraining the defendants from infringing the plaintiffs' software program. A Local Commissioner was also appointed by the Court to investigate the extent of alleged infringement and he submitted his report on 30.05.2022.

17. Upon service of notice, the Defendants had appeared to contest the Plaintiffs' case on its merits and had filed their written statement on record. In their statement, the Defendants had raised a preliminary objection, alleging that the Plaintiffs were guilty of making frivolous and vexatious allegations against them. It was further stated that no cause of action had arisen in favour of the Plaintiffs and against the Defendants.

18. On merits, it was stated that the suit was liable to be dismissed due to the misjoinder of parties. It was further contended that a Licensed Software Designation Agreement ("Agreement") dated 03.08.2018 was executed between Plaintiff No. 1 and Defendant No. 3 for the use of Plaintiff No. 1's software program. However, to the utter surprise and dismay of Defendant No. 3, the software was found to be incompatible with their computer system. Despite repeated requests for technical assistance, Plaintiff No. 1, acting with malafide intentions had failed to resolve the issue, rendering the purchased software unusable. It was further asserted that Plaintiff No. 1 had approached Defendant No. 3 only after the Agreement had lapsed, and that too, on the condition of renewing the license. The Defendants had denied all allegations except for those either explicitly admitted or constituted matter of record, dismissing the remaining claims as incorrect and baseless.

19. No replication to this Written statement was filed on record on behalf of the plaintiffs.

20. On the pleading of the parties, the court vide his order dated 06.03.2023, had framed the following issues:

1. *Whether defendants have infringed the copyright of plaintiff no. 1 by installing, reproducing and/or using unlicensed/pirated/unauthorized versions of the plaintiff's software 'NX' without obtaining the requisite permission/license from the plaintiff? OPP.*
2. *Whether plaintiffs are entitled to decree of permanent injunction against the defendants as prayed? OPP.*
3. *Whether plaintiffs are entitled to damages on account of unauthorized usage of their software 'NX' by the defendants? If so, what is the amount of damages payable by the defendants? OPP.*
4. *Whether plaintiffs are entitled to the costs of the present proceedings? If so, the quantification thereof? OPP*
5. *Relief.*

21. In order to prove its case by preponderance of the probabilities, plaintiffs had examined one witness namely Sh. Deepak Hejmadi, S/o Sh. Late Shri Keshav Hejmadi, aged about 52 years, R/o House no. 488-489, EHA 9th Cross, M.S Ramaiah City, Nagawara, Bangalore-560045, who had placed on record,

his affidavits Ex. **PW-1/A** and Ex. **PW1/A-1** in his examination-in-chief, wherein he had reiterated the contents of plaint on solemn affirmation. Besides this, he had also placed on record the following documents: -

- 1) **Ex. P-1-** Copy of POA issued by the plaintiff no. 1 in favour of PW-1 dated 28.10.2021.
- 2) **Ex. P-2-** Copy of POA issued by plaintiff no. 2 in favor of PW-1 dated 01.10.2021.
- 3) **Ex. P-3A to Ex. P-3F-** Six copies of the Copyright Registration Certificates of plaintiff's software programs.
- 4) **Ex. P-4** – Printout copies of Sample Master Licence Agreement of plaintiff companies.
- 5) **Ex. P-5** – Printouts from MCA's website and the websites of defendant companies/third party websites reflecting information about defendants.
- 6) **Ex. P-6** – Printout of the licence entitlements available in the name of defendants available in plaintiff's records
- 7) **Ex. P-7** – Printout of the emails pertaining to the past correspondence exchanged between the parties.
- 8) **Ex. P-8** – Declaration on oath U/s 65B of Indian Act r/w Order XI Rule 6(3) of Commercial Courts Act.
- 9) **Ex. P-9** – Report of Local Commissioner (along its annexures).

During his cross-examination conducted by the Learned Counsel for the Defendants, PW1 had stated that he had joined the Plaintiff company in 2018 and had been working as the License Compliance Manager. He further mentioned that he was currently working in the capacity of Head of License Compliance. PW1 had stated that the Plaintiff company's offices were located in Delhi, Bangalore, Chennai, Pune, and Mumbai. He had also stated that he was the head of License Compliance for India and SAARC countries.

He had stated that he had signed his evidence affidavit Ex. PW-1/A as well as the additional verification Ex. PW-1/A-1 in Delhi. However, he could not remember the exact location where it had been notarized and had denied the suggestion that he had not signed and got it notarized in Delhi. He further stated that he had worked with Mr. Vincent Jose, who was the Managing Director of the private investigation firm, Insta Quest, located in Noida.

He had further stated that he had not filed a resolution of the Board of Directors authorising him to file and sign the plaint and mentioned that there was no board resolution by Plaintiff No. 1 and 2 in his favour. He had though voluntarily stated that there was a power of attorney (POA) and, when asked to verify Ex. P-1 to confirm whether the POA had not been signed by Mr. Steven W. Dietz in his presence, he had admitted it to be correct. However, he had further volunteered that the document was signed in the USA.

He had stated that the security guard at his office had received the POA and volunteered that, as a matter of practice, all couriers and parcels were received by the security guard. However, he could not remember the exact date on which the POA was received at his office, but confirmed that it had been posted from the USA, but the envelope of post was not filed on record and was not tendered before the Collector of Stamps for the imposition of the requisite duty. It was stated further that the Bangalore office had received the POA.

He was stated to have had no conversation with Mr. Steven W. Dietz before the execution of the POA and had not made any personal inquiry to confirm whether Mr. Steven had the authority to sign the POA on behalf of Plaintiff No. 1 or not. He was not aware if there was any board resolution in favour of Mr. Steven on behalf of Plaintiff No. 1 to issue a POA to any person

or not. When asked to indicate the place where the common seal of Plaintiff No. 1 had been affixed, he had responded negatively and had affirmed that there was no witness to the execution of the said POA.

He had stated that he had accepted the POA issued by Plaintiff No. 2, which was executed by Mr. Suprakash Chaudhuri, Managing Director, who had signed it in Mumbai, and Mr. Sridhar Subramaniam, Director of Plaintiff No. 2, who had signed it in Bangalore. However, he could not recall the exact dates of their respective signatures. He had further stated that Ex. P-2 had been notarized in Pune and confirmed that the POA bore the company's seal on every page.

In his further cross-examination conducted on 08/07/2023, he had stated that he had no personal knowledge about the invoice dated 26.08.2018, which was marked as A. He had though admitted that Core Technologies was one of the dealers of the Plaintiff in Vadodara, Gujarat, and that Defendant No. 3 was stated to have bought the software. However, he was not sure if the software had been bought from M/S Core Technologies or not. He had stated that the Plaintiffs had not filed any invoice issued either by Plaintiff No. 1 and 2 in favour of Defendant No. 3 or the other Defendants. Similarly, he was not aware of any document on record indicating that Plaintiffs No. 1 and 2 had awarded any maintenance of the software to the Defendants, and there was no signed agreement regarding the sale, purchase, or maintenance of the software between the parties filed on record by the Plaintiffs.

He had stated that the certificates Ex. P-3A to Ex. P-3F did not indicate that the copyrights were granted to M/S Siemens Product Lifecycle Management Software Inc. He had further stated that he was not aware of any document filed by the Plaintiff to show that the copyrights registrations in the

USA were in the name of M/S Siemens Industry Software Inc. The Plaintiffs had not filed any document with the copyright office in the USA to show that the name of the company had been changed from M/S Siemens Product Lifecycle Management Software Inc. to M/S Siemens Industry Software Inc.

He had stated that Ex. P-3A mentioned the name of the work as NX 9, but not as NX (Unigraphics). He had though volunteered that in the past the work was referred to as Unigraphics, but Unigraphics was now known as NX. He was not aware of the exact year in which this change had occurred. He further stated that when the copyright was taken in the year 2013, the name of the software was NX 9, not Unigraphics. It was volunteered by him that the software was never known as NX (Unigraphics), but it was either NX or Unigraphics.

He had admitted that page 8 of the Plaintiff's document (part of Ex. P-3/A) mentioned NX 1847; page 11 of the Plaintiff's document (part of Ex. P-3/B) mentioned Techno Matix15; page 14 of the Plaintiff's document (part of Ex. P-3/C) mentioned NX Nastran 10; page 16 of the Plaintiff's document (part of Ex. P-3/D) mentioned Solid Edge 2020; page 18 of the Plaintiff's document (part of Ex. P-3/E) mentioned Star CCM Plus 12.02; and page 19 of the Plaintiff's document (part of Ex. P-3/F) mentioned NX 1847.

He had stated that the Plaintiffs had not filed copies of the software that were the subject matters of the copyrights from page 6 to 19 of the Plaintiff's document. The product that was licensed to Defendant No. 3 was NX 12451, and page 21 of the Plaintiff's document (Ex. P-6) contained the license details of what Defendant No. 3 had purchased, which he had printed out. However, the

invoice was between Core Technologies and Defendant no. 3 and not between the Plaintiffs and Defendant No. 3.

In his further cross-examination conducted on 22.07.2023, he had stated that the Plaintiff had obtained information about the activities of the Defendant from market sources, but he could not reveal the name of the so-called market source. He also mentioned that there was no signed copy of the license agreement between the Plaintiff and Defendant on record. However, he volunteered that the electronic copy of the license agreement had already been exhibited as Ex. P-4 (Pages 55 to 64 of the Plaintiff's document).

He had stated that he was not sure whether the name of the person had been disclosed in the plaint or in the affidavit evidence, as mentioned by Mr. Vincent Jose in his report about a conversation with someone in the defendant's organization. He was uncertain whether a transcript of the telephonic conversation between Mr. Vincent Jose and the individual in question had been filed, or if any payment receipt had been submitted. He had admitted that he had not verified Mr. Vincent Jose's license before assigning him the investigation work. He was stated to have worked with Mr. Vincent Jose on approximately 5-6 cases but couldn't recall if his reports had always favoured the plaintiff, given their longstanding professional relationship. He had denied the suggestion that he communicated only through his counsels, clarifying that communication was both direct and indirect. He had also denied the suggestion that the plaintiff had made multiple attempts to resolve the dispute amicably with the defendant. However, it appears here that this suggestion which should have been otherwise recorded in negative was typed in a positive manner due to some typographical error or omission.

He had further stated that he was not sure if there was any documentary evidence on record to support the claim of plaintiffs for damages against the defendants or whether the plaintiff had submitted any documents demonstrating the engagement of Mr. Vincent Jose. He had admitted that the plaintiffs had not provided any documentation to establish that maintenance of software was provided by them to the defendant. He was not sure if records of transactions between the plaintiff and the defendant were maintained at the plaintiff's Bangalore office or if any such transactions had taken place in Delhi. He did know as to who had accessed the MCA website for defendants No. 3 and 4 from the plaintiff's computer. The investigator was stated to have checked the website of Defendant No. 3 but he could not recall the remuneration paid to Mr. Vincent Jose. Furthermore, he had clarified that Plaintiff No. 2 had no direct transactions with the defendants prior to the filing of the Plaint.

Formal suggestions were denied by him as wrong and incorrect including the one that he was deposing falsely.

22. Thereafter Plaintiff's evidence was closed.

23. In rebuttal, the defendants had examined one of their Directors, Sh. Chandresh P. Sankharva, son of Pravinbhai Sankharva, aged about 36 years, who had filed his examination-in-chief by way of affidavit **Ex. DW1/A** in evidence, reiterating the contents of the written statement on solemn affirmation. The exhibition of documents Ex. DW1/7 to Ex. DW1/10, Ex. DW1/17, and Ex. DW1/18 was objected to by the Learned Counsel for the Plaintiff on the ground of their mode of proof, as no certificate under Section

65B of the Indian Evidence Act had been submitted along with the said documents. Additionally, the defendant had placed the following documents on record:

- i. **Ex. DW-1/1-** Copy of SPA by Defendant No. 1 in favour of the DW-1.
- ii. **Ex. DW-1/2-** Copy of SPA BY Defendant No. 2 In favour of the DW-1.
- iii. **Ex. DW-1/3-** Certificate of Incorporation of Defendant No. 3
- iv. **Ex. DW-1/4-** MOA and AOA of Defendant No. 3.
- v. **Ex. DW-1/5-** Copy of Certificate of Incorporation of Defendant No. 3.
- vi. **Ex. DW-1/6-** Copy of MOA and AOA of Defendant No. 4.
- vii. **Ex. DW-1/7-** Copy of MSME Certificate of Defendant No.3.
- viii. **Ex. DW-1/8-** Copy of GST Registration Certificate of Defendant No. 3.
- ix. **Ex. DW-1/9-** Copy of MSME Certificate of Defendant No.4.
- x. **Ex. DW-1/10-** GST Registration of Defendant No. 4.
- xi. **Ex. DW-1/11-** Copy of Lincenced Software Designation Agreement No. 875846 for Reseller Transaction Customer Quote dated 03.08.2018.
- xii. **Ex. DW-1/12-** Copy of the bill of purchase of Licence.
- xiii. **Ex. DW-1/13-** Copy of Global Maintenance Policies of Plaintiff No. 1.
- xiv. **Ex. DW-1/14-** Appointment Letter dated 01.06.2018 of Mr. Ravindra Vasani.
- xv. **Ex. DW-1/15-** Resignation letter dated 12.03.2021 of Ravindra Vasani.
- xvi. **Ex. DW-1/16-** Reliving Letter dated 01.04.2021 of Mr. Ravindra Vasani.
- xvii. **Ex. DW-1/17-** Copy of Pay roll register of Defendant No. 3 for April 2021.
- xviii. **Ex. DW-1/18-** Pay roll register of Defendant No. 3 for March 2021.
- xviii. **Ex. DW-1/18A-** Board resolution in favour of DW-1 by Defendant No. 3.
- xix. **Ex. DW-1/18B-** Board resolution in favour of DW-1 by Defendant No. 4.

During his cross-examination conducted by the Learned Counsel for the Plaintiff, DW-1 had stated that he had studied up to the 2nd year of B. Com and was working as a director with Defendant No. 3, looking after its banking and finance affairs in its day-to-day operations, and was not holding any position in Defendant No. 4. All documents pertaining to banking and finance were kept in the respective offices of Defendant No. 3 and 4. He had admitted the signatures of Dharmesh Bhai and Haresh Bhai appearing on the WS Ex. DW1/P1 at points A and B. He had stated that he had no knowledge of how many times the meeting of the Board of Directors had taken place after 30.05.2022 in respect of Defendant No. 3 and mentioned that the board meeting was convened at around 2:00-2:30 PM on 09.12.2023, when the resolution was passed in his favour.

He had admitted that he was not present at the premises and was out of station at the time when LC had visited, and had returned to Rajkot, the following night. He had stated that in April 2022, approximately 150 employees were working at the premises of Defendant No. 3, and only one employee was engaged in the job of product/computer designer. Around 70 employees were working with Defendant No. 4 at the time, and none of them was stated to be a CAD designer. Defendant No. 3 was stated to have around 25 computers/laptops.

He was aware of the "NX" software and knew that it was used by Defendant No. 3 in its day-to-day operations. Miracle software was used for accounting, and "NX" was used for designing and for all other purposes, the company had its own software "NX," which was purchased from the Plaintiff in 2018, was used for designing in that year, and no designing work had been

undertaken by Defendant No. 3 from 2020 to 2023. The "NX" software was stated to have been installed in his office by M/s Core Technologies through one Ms. Sheetal Singh, and Ravinder Vasani was stated to be working as a quality control checker in his die development department, where he used to check the quality with the aid of an instrument known as the "Vernier". He (Ravinder) used computer to store the data regarding the pieces produced by the company, and Dharmesh Bhai looked after the day-to-day affairs of Defendant No. 4, while Hareesh Bhai looked after the day-to-day affairs of Defendant No. 3.

He had denied the suggestion that there was no compatibility issue with the software of the plaintiffs installed by Defendant No. 3 and that this was the reason no complaint had ever been made in this regard by Defendant No. 3, either in writing or by any other mode. He had also denied the suggestion that he was not duly authorized to depose in this case on behalf of the defendants or that he had no knowledge about the facts of this case, and that he was deposing falsely at the behest of the defendants. He had further denied the suggestion that the defendants had used the pirated software of the plaintiff, causing huge financial losses for which the defendants were liable to compensate the plaintiff. He had also denied that Ravinder Vasani had never tendered his resignation, rather he was terminated by Defendant No. 3. He further asserted that Defendants No. 1 and 2 were solely responsible for looking after the day-to-day affairs of Defendants No. 3 and 4. Lastly, he had denied that he was deposing falsely.

24. Thereafter DE was also closed.

25. I have heard Ms. Aarshia Behl, appearing along with Sh. Anmol Kasana and Ms. Aashi Sharma, Ld. Counsels for the plaintiff, and Sh. Amit Jain, along with Sh. Sumit Kumar, Ld. Counsels for the defendants, at length and have gone through the record.

I have gone through the arguments and written submissions filed on behalf of the Plaintiff, wherein it has been contended that the copyright of Plaintiff No. 1 had been infringed. Despite the Plaintiff not getting its copyright registration in India, it is asserted that its copyright is still operative within the country as registration is not mandatory in India. The ld. counsel has claimed that even if the copyright is registered outside India, it is considered to be registered in India, citing the international recognition of such rights. Furthermore, the counsel for the Plaintiff has submitted that Plaintiff No. 1's name was changed from Siemens Product Lifecycle Management Software Inc. to Siemens Industry Software Inc. effective from 21.10.2019.

The case of the Plaintiff is that it had sold the software license NX CAD/CAM 3 Axis Milling Found (NL) to the Defendants in August 2018. The Plaintiff had claimed that the service and maintenance agreement for the software had expired on 31.10.2019, which resulted into the discontinuation of support for the software, including the inability to access any upgraded versions. The Plaintiff asserted that, due to the expiry of the service and maintenance agreement, the Defendants were not entitled to any upgrades, updates, or support services associated with the software. It has been argued that the Defendants, despite the expiry of the agreement, had continued to use the software without the necessary maintenance or upgrades, which the Plaintiff contends constituted a violation of the terms and conditions of the original sale.

Furthermore, the Plaintiff had claimed that the Defendants' unauthorized use of the outdated version of the software, beyond the scope of the agreed terms, had led to the alleged infringement of the Plaintiff's intellectual property rights, resulting into financial losses to the Plaintiff.

It has been contended that during the Local Commission proceedings, contempt was committed on two primary grounds, firstly, the Defendants had caused significant hindrances during the Local Commission proceedings, including forcefully restraining two female lawyers, thereby obstructing the due process of law. Secondly, it was discovered that the Defendants were utilizing four unlicensed systems, despite having been granted a license for only one system. It is further contended that the Plaintiffs had filed a contempt petition against the Defendants for violating this Court's order dated 31.03.2022 and despite being enjoined, the Defendants had continued to use unauthorized versions of the Plaintiffs' software till date. Consequently, the Plaintiffs sought a permanent injunction against the Defendants and initially claimed damages of ₹20,00,000 (Twenty Lakhs Only) for the unlicensed use of their software. The Plaintiffs further contended that although the exact revenue loss would have been determined only after the Local Commission proceedings and thus they revised their total claim to ₹16,59,00,000 (Sixteen Crores Fifty-Nine Lakhs Only)."

Further, in support of their claims, the Plaintiffs have relied upon the judgment in *Autodesk Inc. & Anr. v. Arup Das & Ors.*, 2013 SCC OnLine Del 4225, order dated 22.10.2013, passed by the Hon'ble High Court of Delhi, which addresses similar issues of unauthorized use of licensed software which held the following:

“25. The report of the Local Commissioner is replete with documentary evidence on the basis of which the Local Commissioner formed her belief as aforesaid vis-a-vis the premises in question. The respondents also admit the existence of such voluminous documentary evidence, which was relied upon by the petitioners and the Local Commissioner, to require the respondents to provide inspection to the Local Commissioner. In spite of the same, the respondents did not relent and consciously and deliberately disobeyed the orders of the Court by not respecting the authority and mandate of the Local Commissioner.”

26. In addition to these submissions, reliance has also been placed by the Plaintiffs on the following citations:

1. ***“Autodesk Inc. & Anr. Vs. Mr. AVT Shankardass & Ors. in FAO (OS) 116/2008 decided on 04.07.2008 (D.H.C).***
2. ***Microsoft Corporation & Ors. Vs. Satveer Gaur & Anr: CS(COMM) 1324/2016; decided on 26.05.2020 (D.H.C).***
3. ***The Foundry Vision Mongers Limited Vs. Raj Shekhar; CS (COMM) 415/2018; decided on 30.08.2018 (D.H.C).***
4. ***The Foundry Vision Mongers Limited Vs. Yuva Animation Studios Private Limited; CS (COMM) 601/2021, decided on 28.02.2024 (D.H.C).***
5. ***Trimble Solutions Corporation Vs. Mr. Vivek Gupta; T S No. 12 of 2017, decided on 10.06.2019”***

These judgments have been cited to demonstrate the legal basis for holding the Defendants accountable for the unauthorized use of the Plaintiff's copyrighted software, thereby reinforcing the Plaintiff's position in the present case.

27. The learned counsel for the Plaintiffs has submitted that the unauthorized installation and use of the Plaintiff's software on the Defendants' computer systems constituted an unauthorized reproduction of Plaintiff No. 1's copyrighted software, thereby resulting in the infringement of the Plaintiff's copyright under Section 51 of the Copyright Act, 1957.

28. Further, it has been submitted by the learned counsel that the Defendants possessed a total of five copies of the Plaintiff's software programs at their registered office, yet held a bona fide license for only one of these programs. The learned counsel for the Plaintiffs has emphasized that this form of corporate piracy represents one of the most detrimental forms of software piracy, severely impacting the Plaintiff's intellectual property rights and causing significant financial harm to it.

29. On the contrary, the Counsel for the Defendant has relied mainly on the following defences in his written submissions and oral arguments:

- a) That there was no Power of Attorney in favour of Sh. Deepak Hejmadi Who was the signatory to the plaint.
- b) That the suit filed by the plaintiff was bad for misjoinder of parties.
- c) That Local Commissioner Report was not binding on this Court.

d) That no cause of action had accrued in favour of Plaintiff No. 2. The Defendant's counsel had raised an argument regarding the maintainability of the suit, contending that, at the time of the institution of the suit, there was no existing relationship between Plaintiff No. 1 and Plaintiff No. 2. It was further argued that Plaintiff No. 2 was not authorized to institute the suit and that the agreement in question was solely between Plaintiff No. 1 and the Defendants.

Further, the Defendant's counsel has referred to Section 54 and Section 55 of the Copyright Act, which could be read as under:-

***“54. Definition.** — For the purposes of this Chapter, unless the context otherwise requires, the expression “owner of copyright” shall include—*

(a) an exclusive licensee;

(b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise established to the satisfaction of the 1 [Appellate Board] by that author or his legal representatives.”

***55. Civil remedies for infringement of copyright.** —*

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be

entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, 2 [or, subject to the provisions of sub-section (3) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears] on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

The Defendant's counsel had thus contended that the owner of a copyright and its exclusive licensee can be distinct entities. In the present case, Plaintiff

No. 1 is the copyright owner, registered outside India, and Plaintiff No. 2, not being the authorized representative, is not entitled to file the suit. Therefore, the Defendant had argued that the suit should be dismissed due to the misjoinder of parties. Additionally, the Defendant had relied upon Section 19 of the Copyright Act, which requires that any assignment of copyright must be in writing and signed by the assignor or their duly authorized agent. The Defendant asserted that no assignment document has been presented by the Plaintiffs to substantiate Plaintiff No. 2's claim.

The Ld. Counsel for the Defendant had further argued that the Plaintiff had no jurisdiction to file the case against the Defendant under Section 62 of the Copyright Act. In support of this contention, reliance has been placed on the ratio of the case *"Microsoft Corporation & Anr. vs. Mr. Sujan Kumar & Ors., CS(COMM) No. 70/2015."* However, Ld. Counsel for the Plaintiff has asserted that the same had already been overruled.

So far as the authorization of Mr. Deepak Hejmadi to institute the present suit is concerned, it was stated by him that Ex. P1 was executed in USA in his absence by the concerned person and Ex. P2 was executed in India. It is not necessary that the person in whose favour the power of attorney has been executed must remain present there at the time of execution. Moreover, it is not even the case of the Defendant that the said person was not authorized by both the plaintiffs nor there existed any power of attorney in his favour. Furthermore, it is the settled preposition of law that a principal may ratify the acts of his attorney at any stage and none of the plaintiffs had disputed or challenged the appearance of said persons as their attorney, hence, this objection is of no use and avail to the defendants.

So far as the objection with regard to mis-joinder of parties is concerned, it has not been specifically mentioned as to in which of the party's context this mis-joinder has been alleged. Similarly, so far as the plea that the report of local commissioner was not binding upon this court is concerned, since no objection to the LC report were ever filed by the Defendants at any stage during the trial challenging its authenticity and correctness with any kind of allegation of biasness or taking undue side or favouring any particular party, hence, I have no hesitation in holding that report of local commissioner carries a substantial weight in itself and is thus liable to be taken into consideration by this court while adjudicating the dispute.

So far as defendants last plea of non-existence of any cause of action in favour of Plaintiff no. 2 is concerned, I do not find any merits in the same as it is the Plaintiff no. 2 itself through whom the Plaintiff no. 1 is conducting its business in the territory of India.

30. In view of aforesaid arguments and submissions of the parties as well as evidence appearing on record, my issue wise findings are as under:

1. ***Whether defendants have infringed the copyright of plaintiff no. 1 by installing, reproducing and/or using unlicensed/pirated/unauthorized versions of the plaintiff's software 'NX without obtaining the requisite permission/license from the plaintiff? OPP.***
2. ***Whether plaintiffs are entitled to decree of permanent injunction against the defendants as prayed? OPP.***

The evidence produced by the plaintiffs including the Ex. PW1/3 Copyright Registration Certificates, in respect of software titles owned by the Plaintiffs, Plaintiff No. 1 had, therefore, been able to prove that it is the owner of the copyright in the computer programs and the Supplementary User Instructions and Manuals, and is thus entitled to the exclusive rights flowing from such ownership as set out in Section 14 of the Copyright Act, 1957. Though defendants had denied having any relationship whether direct or indirect with either of the Plaintiffs but DW1, in his examination-in-chief affidavit Ex. DW1/A in para 24 had categorically admitted having purchased the software from Plaintiffs on 03.08.2018.

It is apparent that the defendants have infringed the copyright of Plaintiff No. 1 by installing, reproducing, and using unlicensed versions of the Plaintiff's software 'NX.' The Plaintiff has provided sufficient evidence to demonstrate that the defendants did not obtain the requisite permission or license to use the software. Additionally, the defendants have failed to establish any valid defence, such as the existence of a legitimate license or authorization for the use of the software. In light of Section 51 of the Copyright Act, which prohibits the unauthorized use of copyrighted works, it is clear that the defendants have violated Plaintiff No. 1's exclusive rights over the software. Therefore, the defendants are liable for the infringement of Plaintiff No. 1's copyright. A reference may be made to the judgment of the Hon'ble Delhi High Court in *Microsoft Corporation & Ors. v. Satveer Gaur & Anr.*, CS (COMM) 1324/2016, wherein the Hon'ble Court granted a permanent injunction in favour of the plaintiff, restraining the defendants from infringing the plaintiff's software program. Furthermore, in *Dassault System SolidWorks Corporation & Anr. v.*

Spartan Engineering Industries Pvt. Ltd. & Anr., CS (COMM) 34/2021, the Hon'ble High Court observed that “*software infringement is a serious issue, and deserves to be nipped in the bud.*” The Court, in its order, granted an ad interim ex-parte injunction in favour of the plaintiffs, restraining the defendants from using, reproducing, or distributing any pirated, unlicensed, or unauthorized software programs owned by the plaintiffs.

So far as defendants' contention of software being not compatible with their system is concerned, it does not hold any water in it as defendants had failed to bring any communication on record in this regard. Moreover, DW1 during his cross-examination had also admitted the user of plaintiffs' software by the defendant no. 3.

Moreover, the learned Local Commissioner in his report dated 22.04.2022 had found infringement on part of the defendants. The report of the Local Commissioner (Ex. P-9) had remained unchallenged by the defendants. The report also found blatant attempts on part of the defendants to infringe the copyright of the plaintiffs. Further, the defendants have failed to show proof of genuine use of the plaintiffs' software programmes for all the installations that were in use at their organizations. Therefore, from the evidence led, it is evident that the defendants have infringed upon the copyright of the plaintiffs in their software programmes. The contention regarding the maintainability of the suit was not framed as an issue in the present case at the outset, and as such, it could not be considered at this stage. Accordingly, this issue is answered in affirmative and decided in favour of plaintiffs and against defendants no. 1 to 3 holding plaintiffs to be entitled to permanent injunction against these defendants. The Issue No. 2 is also decided in favour of the plaintiffs and

against the defendants no. 1 to 3 and thus defendants no. 1 to 3 either themselves or through their principal officers, directors, agents, franchises, servants and all others either acting for or on their behalf, are hereby permanently restrained from directly or indirectly using, reproducing, storing, installing the software for which their term has expired and also from using pirated/unlicensed softwares of Plaintiffs including “NX”(Unigraphics) amongst others, thereby infringing the copyright of Plaintiff in computer programmes/software titles.

However, since the Plaintiff has failed to lead any cogent evidence regarding Defendant no. 4, hence, issues are answered in its favour and decided in negative qua it.

3. ***Whether plaintiffs are entitled to damages on account of unauthorized usage of their software ‘NX’ by the defendants? If so, what is the amount of damages payable by the defendants? OPP.***

In view of the finding of this Court on Issue No. 1 and 2, it is established that Defendants were using the software till the date of inspection by Local Commissioner in the year 2022 on five (5) machines, despite lapse of genuine licence granted for only one (1) machine in the year 2018. For this violation of the license as well as for unauthorized use of pirated software by the defendants on four additional machines, there is no hesitation in my mind to hold that the Plaintiffs are entitled to recover damages from defendants no. 1 to 3 which are quantified as ₹ 20,00,000/- in total as the software in question had now been outdated, diminished in its market value and relevance due to availability of its upgraded versions in the market as it is common fact of which even this Court is

also not precluded from taking a judicial notice that due to ongoing researches and developments in the software programming, a software launched today would become redundant after six months. Moreover, the Plaintiffs have failed to adduce any evidence on record to substantiate their claim of infringement in the year 2025 entitling them to the recovery of Rs. 16.59 crores as claimed in their oral as well as written submissions. In the absence of a concrete proof establishing recent or continuing infringement, the claim for higher damages lacks merit and cannot be sustained. The aforesaid observation has come in the light of the fact that undisputedly Plaintiff no. 1 is marketing its software in India through Plaintiff no. 2 who is acting through various distributors and agents appointed by it throughout the country, hence, an unauthorized use of any software belonging to or developed and designed by Plaintiff no. 1 which could have been marketed only through Plaintiff no. 2 but not so provided in the market through the aforesaid channel is essentially going to cause loss of revenue to both the Plaintiffs. The issue is accordingly answered in affirmative and decided in favour of Plaintiffs and against the defendants no. 1 to 3.

4. ***Whether plaintiffs are entitled to the costs of the present proceedings? If so, the quantification thereof? OPP***

In light of the above findings, the plaintiffs are also held to be entitled to the costs of the proceedings, as it was the conduct of the defendants that necessitated and compelled the plaintiffs to file the present suit. Accordingly, this issue is also answered in affirmative and decided in favour of the Plaintiffs and against the defendants no. 1 to 3.

5. ***Relief.***

31. In view of my findings on the issues above, the suit of the plaintiffs is decreed to the extent that the defendants no. 1, 2 and 3 are hereby either themselves or through their principal officers, directors, agents, franchises, servants and all others either acting for or on their behalf, are hereby permanently restrained from directly or indirectly using, reproducing, storing, installing the software for which their term has expired and also from using pirated/unlicensed softwares of Plaintiffs including “NX”(Unigraphics) amongst others, thereby infringing the copyright of Plaintiff in computer programmes/software titles permanently and forever till they obtain a legal and valid software. Defendants no. 1 to 3 are further directed to pay damages to the Plaintiffs to the tune of Rs. 20,00,000/- (Rupees Twenty lakhs only) along with an interest @ 8 % p.a. from the date of institution of the suit till its actual realization as well as the costs of the suit are also awarded in favour of the plaintiffs and against defendants no. 1 to 3.

Decree sheet be drawn accordingly.

32. File be consigned to record room after completion of necessary legal formalities in this regard.

ANNOUNCED IN THE OPEN COURT
DATED: 31.01.2025

(Lokesh Kumar Sharma)
District Judge (Commercial Court)-05
South/Saket/New Delhi/31.01.2025