

V - 117 - 2012

18.05.2012

**BY REGISTERED A.D./ EMAIL**  
**WITHOUT PREGUDICE**

To,

Brus Chambers

8, Rajabhadur Mansion, 3rd Floor,

Ambalal Doshi Marg, Fort, Mumbai 400001, India

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**Subject:** Reply to legal notice dated 10.05.2012 (received on 15.05.2012) and legal notice dated 16.05.2012 (received by email on 16.05.2012)

**Your reference:** NIL

**Your Clients:** Lt Col (Retd) Gautama Dutta and Ms. Anju Dutta at Marine Solutions Distributions & Services Pvt Ltd., 54, Grants Annexe, 19/A, BK Road, Colaba, Mumbai - 400 005, Maharashtra, India

**Our client:** Ms. Vidyut Kale, A32/501 Yogi Park, Yogi Nagar, Borivali (west) Mumbai 400091

Dear Sir/Madam,

- A. We are concerned for Our Client, Vidyut Kale and under instructions of and on behalf of Our Client, we reply to your legal notice dated 10.05.2012 and 16.05.2012 forwarded by you as under:-
- B. At the very outset, the allegations and averments made in the notice under reply, unless otherwise specifically traversed and admitted herein, are strictly denied and refuted. It is stated that your aforementioned legal notice is without any basis, unfounded and does not merit any consideration. In this connection Our Client wishes to draw your attention to the following facts:
- i. Our Client is the author of the Blog "AamJanata" (accessible at <http://www.aamjanata.com/> hereinafter referred to as "the Blog") since April, 2006 and

writes about stories relating to public interest. Not only do these stories contain her analysis but often also highlight new facts which are in public interest. This is evident from a review of some of Our Client's recent blog posts which comment on issues relating to the safety of nuclear power, freedom of religion and dissent, healthcare etc.

- ii. A visit to the Blog itself demonstrates that Our Client writes on a wide range of issues with the Blog containing a total of 735 (seven hundred and thirty five) Blog entries spread over 68 (sixty eight) categories and having 195 (one hundred and ninety five) tags. The extent of public participation the Blogposts have gathered can be gauged from the Blog Posts garnering more than 2274 (two thousand, two hundred and seventy four) comments.
- iii. Due to Our Clients prolific writing on these wide ranges of issues, both the Blog and Our Client enjoy tremendous credibility. Towards this the Blog and Our Client's work is often cited in several mainstream publications, including but not limited to:
  - a. The New York Times (Article dated March 27, 2012, titled as, "When Home Is No Refuge for Women")
  - b. Tehelka Magazine (Column dated 17 March 2012, titled as, "The budget of addicts")
  - c. Mid-day (Article dated as October 10, 2011 and titled as, "Pay up if you know what's good for you")
  - d. YuvaTV (Panel discussion on the 8th May 2012 about "IT rules")
  - e. IBNLive (TV show on the 8th of May 2012 Titled "Face The Nation : has Satyamev Jayate redefined TV shows?")
- iv. On May 07, 2012 Our Client received information that a wine and cheese party was organized on board the Belvedere vessel by your Clients which was subsequently raided by the Bombay Excise Department in which arrests were made. The arrests include your Client, Mr. Gautama Dutta, These facts are stated in an article published in the Indian Express titled as, "senior official held for serving alcohol in yacht" dated May 08, 2012. Contents of the above mentioned Indian Express article are extracted below as they will be relied upon in the para wise-reply:

*"An executive director and three employees of a boating company were on Monday produced in court under the Bombay Prohibition Act, for allegedly organising a wine-and-cheese party aboard a speed boat, without licence from the State Excise Department. They were granted bail on a bond of Rs 10,000 each.*

*Gautam Dutta, executive director of Marine Solutions and an Asian medallist was arrested on Sunday evening by the State Excise Department for allegedly having evaded paying the licence fee amount and procuring permission under the 'one day provision' for serving liquor in a confined space."*
- v. As this issue concerned issues of public good, Our Client gathered several documents which formed the basis of a Blogpost titled as, "Sailgate : The party that wasn't" which was posted on May 08, 2012 and accessible at <http://aamjanata.com/sailgate-the-party->

that-wasnt/ (hereinafter referred to as "the Blogpost"). These documents will be referred in the para-wise reply to the various statements made by your Clients in the legal notice.

- vi. Our client states that the Blogpost contains statements which emanate from facts and are in the public good, being even published in the Indian Express article mentioned above. The Blogpost does in no way harm the reputation of your Client in as much the post relies on facts already in the public domain through news reports and documents which have been gathered through research. Any comments or opinions which are contained in the Blogpost arise fairly and reasonably from these documents and facts, the publication of which is in the broader public good.

C. Kindly find a parawise reply to your legal notice dated 10.05.2010 as under:

Reply to Para 1. The contents of Para 1 are denied. Our Client does not require any permission for the publication of pictures which accompanied the Blogpost. No claims as to infringement of any intellectual property are preferred or any details of ownership over the pictures have been provided by you. Additionally, the pictures which accompanied the post were merely used to pictorially depict yachts in general.

Reply to Para 2. The contents of Para 2 are denied and the contents of the Blogpost under reply are restated. Your statement that, "there was no party on belvedere", is specifically denied by Our Client as false. The incident has been described as a, "wine-and-cheese party" even in the above mentioned Indian Express article. It is also pertinent to state in this paragraph your Clients have neither denied the raid by the Bombay Excise Department on the Belvedere vessel or the subsequent arrest of Mr. Gautama Dutta.

You clients statement that, Mr. Gautama Dutta has never been accused or charged with the misappropriating of any funds is denied as false. It is pertinent to mention that Our Client does not state in the part of the Blogpost under reply that whether the misappropriation of funds was from government sources or not.

Further reference is made to the certain documents mentioned below to substantiate Our Client's statements:

- (i) Notice for hearing at issued by the Yachting Association of India (YAI) to Mr. Gautama Dutta dated December 31, 2007 to appear before the disciplinary committee for the non-submission of bills and the non-refund of unutilized YAI funds for a period exceeding 32 months.
- (ii) Minutes of YAI Disciplinary Committee meeting held on January 21, 2008 which clearly record on Para 15 that, "not satisfied with the defense presented by Lt. Col Gautama Dutta (Retd), the committee recommended the following actions.... (a) initiate criminal and civil proceedings for case of non-submission of accounts and refund of unutilized amount with interest i.e. Rs. 14,71, 909.82 in connection with participation in Laser European Circuit during Mar-Apr 2005..."; and

- (iii) Letter by Admiral Monty Khanna to the Ministry of Youth Affairs and Sports dated January 18, 2012 which notes and reports the abovementioned matter.

Also your Clients statement that, "Maj Gen S Dutta (retd) is not working with any reliance or ADAG companies" is untenable and contrary to the information put out by your Clients company website. Your Clients company webpage at <http://www.marina-india.com/team.htm> states under the category, "Chairman – Major General S Dutta VSM" that, "[p]resently he is a senior vice president of Reliance ADAG, responsible for all construction activities." In any case Major General S Dutta has not been identified by you as your Client and hence it is not understood how a response can be sent on his behalf. Inter alia, this clearly demonstrates the frivolous and the careless manner in which a legal notice has been sent to Our Client to pressure her to remove the Blogpost.

Reply to Para 3.

The contents of Para 3 are false and are denied and the contents of the Blogpost under reply are restated. It is restated that you in your notice dated May 10, 2012 and notice dated May 16, 2012 have only stated that you have been engaged by Lt Col (Retd) Gautama Dutta and Anju Dutta in their personal capacity and not as owners or employees of Marine Solutions which forms a distinct and separate entity. Hence, it is not understood on what basis, claims and clarifications are being made on behalf of Marine Solutions. Moreover, the imputations which flow from your Clients response is that Our Client has incorrectly stated that the yachts which are imported by Marine Solutions are also owned by it, however Our Client has nowhere stated that the Marine Solutions owns the yachts and has only stated that out of the 42 vessels imported by Marine Solutions, 36 have not been registered. This has not been denied by your Clients. It is also pertinent to point out the statements made by Our Client should be seen in the context of proceedings against Marine Solutions on issues of multiple registrations for the vessel ISOLA. This is clearly recorded as per a letter dated April 20, 2012 from the Office of the Chief Surveyor and Marine Engineer, Maharashtra Maritime Board.

Reply to Para 4.

The contents of Para 4 are false and are denied and the contents of the Blogpost under reply are restated. It is further stated that, your Clients statement that, "the allegation that Lt Col Dutta received any amount / commissions from the foreign supplier of such boats and/ or that the firm of marine solutions was used as a conduit for receiving any such funds is totally incorrect and false" does not deny the factum that an allegation exists on record as to the improper purchases and the receipt of commissions for the supply of such vessels. These allegations are *inter alia* contained in a report dated June 03, 2005 written by Commodore Amarjit Singh Bajwa and addressed to the President of YAI (hereinafter the Bajwa Report). The contents of the report are not being extracted or quoted since this report has not been previously published publicly; However Our Client reserves its rights to do so at a later stage. Moreover it is pertinent to note that Our Client has only stated in the Blogpost that, "[t]here were allegations that Gautam Dutta..." rather than making any positive statement on these

allegations. The factum of the existence of these allegations is undisputed and appears from the Bajwa Report which has been referred in this paragraph.

Reply to Para 5.

The contents of Para 5 are false and are denied and the contents of the Blogpost under reply are restated. The statement, that your Client, "Lt Col (Retd) Gautama Dutta is not aware of any report of a financial impropriety involving him" is incorrect and false. The documents stated in the Reply to Para No. 2 clearly record copies being dispatched to your Client. The Minutes of the YAI Disciplinary Committee meeting held on January 21, 2008 even record your Clients presence. Additionally there is a news report in The Times Of India dated 22.12.2008 relating to Tian yatch pursuant to which a show cause notice dated -- .02.2011 bearing reference number CIU/GEN/Misc-109/2008 was issued by the Commissioner of Customs to your Clients for the evasion of duty payable to the tune of Rs. 28 Crores. With respect to your Clients statement that they were, "not part of the Indian team that participated in the above mentioned international event in Birmingham and the Ireland Enterprise Worlds 2004", Our Client states it has inadvertently referred to the Ireland Enterprise Worlds 2004 instead of Laser Class European Circuit 2005. All statements otherwise with respect to this are accurate as it emanates from the Bajwa Report.

Reply to Para 6.

The contents of Para 6 are false and are denied and the contents of the Blogpost under reply are restated. Here it is pertinent to mention that as per the response of Swati Girls Hostel located at AFI building, near Bombay Hospital, Dhobi Talao, Mumbai, your Clients name appears in the hostel register as being the legal guardian of Lt Gen Tejinder Singh's daughter Ms. Nahiya from the year 2003 to 2006. As per your Clients statement, that, "Gautam Dutta's YAI membership was not terminated", it is stated that the Letter dated January 18, 2012 by Admiral Monty Khanna to the Ministry of Youth Affairs and Sports clearly records, "In addition, in the case of Lt. Col. (Retd) Gautama Dutta, a decision has been taken by the YAI General Body to terminate his Life Associate Membership of the YAI".

Reply to Para 7.

The contents of Para 7 are false and are denied and the contents of the Blogpost under reply are restated. Our client has never stated that your Clients are guilty or have been convicted of any offences and has merely stated that accusations have been made for financial impropriety against your Clients. This has been established on the basis of various documents which have been referred in the reply to various paragraphs of your notice above.

Reply to Para 8.

The contents of Para 8 are false and are denied and the contents of the Blogpost under reply are restated. Our client is in the possession of the harbour craft license of MB Godiva (BDR - IV - 01546 ) dated November 16, 2010 issued by the Mumbai Port Trust which clearly prohibits commercial use of the motor boat. Hence it is not understood, how the "requisite permissions" could be taken with respect to purported trip on the MB Godiva to, "take a few Warburg Pincus executives to JNPT". Moreover, the Hindustan Times article referred by you as

absolving all blame, clearly points to the contrary as it states, "Shete said, 'The men did not have the requisite permission for landing at the JNPT jetty though. On confirming that they were on an official visit, permission was given to them.'"

Reply to Para 9.

The contents of Para 9 are false and are denied and the contents of the Blogpost under reply are restated. The contents of the Blogpost which have been referred to in this paragraph are concerned directly with the absence of permissions for the vessel ISOLA. In this respect the Reply to Para No. 3 may be referred to. It is also pertinent to state that Our Client is not concerned or connected with Mr. Dharmesh Thakkar and claims, if any, may be taken up by your Clients directly with him.

Reply to Para 10.

The contents of Para 10 are false and are denied and the contents of the Blogpost under reply are restated. Since your Clients are not the Times of India group it is not understood how claims are sought to be made in your notice on their behalf. It is also restated that the contents of the Blogpost are accurate and constitute fair comment on issues of public interest which are based on documentary evidences.

Reply to Para 11.

The contents of Para 11 are false and are denied and the contents of the Blogpost under reply are restated. Our Client states that the Belvedere vessel is a SeaRay Sundancer 330 which has the capacity to stock the alcohol as mentioned in the Blogpost. This is clear from the marketing material of the SeaRay Sundancer 330 which mentions extra large wet bar.

Reply to Para 12.

The contents of Para 12 are false and are denied and the contents of the Blogpost under reply are restated. Our client has only stated, "politician" (in the singular) and not "politicians" (in the plural) as has been stated by your Clients. Our Client has definite information as to the name of this politician however at its option is not disclosing it at present.

Reply to Para 13.

The contents of Para 13 are false and are denied and the contents of the entire Blogpost are restated. Our client has not made any statements recklessly and scurrilously with a view to defame your Clients. The contents of the Blogpost emanate *inter alia* out of documents which have been referred to in this reply and are clearly in public interest. These documents and references are due to the meticulous research carried out by Our Client. Additionally, Our Client has published your Notice dated 10.05.2012 prominently on its Blog to present a fair and balanced view of the entire matter, however at the same time, this does not in any way constitute an admission.

D. Even though the notice dated 16.05.2012 does not contain para numbers we have numbered them for convenience in respect of which kindly find a parawise reply to your legal notice as under:

Paragraph 1

*"This has reference to the article "Sailgate: The Party that Wasn't – contributed by: Vidyut Kale" on May 8, 2012" published on your webpage/blog under the name "Aam Janata" i.e www.aamjanata.com wherein you have published*

*defamatory article which is baseless and twisted with the intent to sensationalise and the same is to your notice.*"

Reply to Para 1.

The contents of Para 1 are denied to the extent that the Blogpost is denied to be defamatory, baseless and twisted with the intent to sensationalize. In this respect the contents of the Reply to the Notice dated 10.05.2012 which are stated above may be referred.

Paragraph 2

*"We note that till May 15, 2012 the article yet remains on your site and that your site and that our notice dated May 10, 2012 to you has been published in your site and no apology tendered."*

Reply to Para 2.

The contents of Para 2 are denied as false. The Notice dated May 10, 2012 was only served on Our Client on May 15, 2012 and your client is put strict proof in case it avers service of the notice earlier to that date. On receipt of the notice dated May 10, 2012 on May 15, 2012 Our Client prominently published the notice the notice on its website on the following URL (<http://aamjanata.com/sailgate-letter-from-the-solicitors-of-lt-col-ret-d-gautama-dutta-and-anju-dutta/>). Further, the notice dated May 10, 2012 does not at any place request an apology from Our Client.

Paragraph 3

*"As per Information Technology (Intermediaries guidelines) Rules, 2011. Rule 3 which reads as..... [Extracts Rule 3 which is omitted]"*

Reply to Para 3.

The contents of Para 3 are not denied in as much Rule 3, Information Technology (Intermediaries guidelines) Rules, 2011 is quoted. However, it is not understood as to how Your Clients have sent a notice dated May 10, 2012 claiming Our Client claiming to be the author of the Blogpost and is then latter relied upon the abovementioned rules to claim that Our Client is also an intermediary. Both these positions are inconsistent as a person can either be an Author or an Intermediary.

Paragraph 4

*"We request you for the immediate removal of the said article/publication – Sailgate: The Party that Wasn't – contributed by: Vidyut Kale under rule 3(3)(b) Information Technology (Intermediaries guidelines) Rules, 2011 failing which our clients deem the same to be done knowingly hosted and published by you albeit with malicious intent."*

Reply to Para 4.

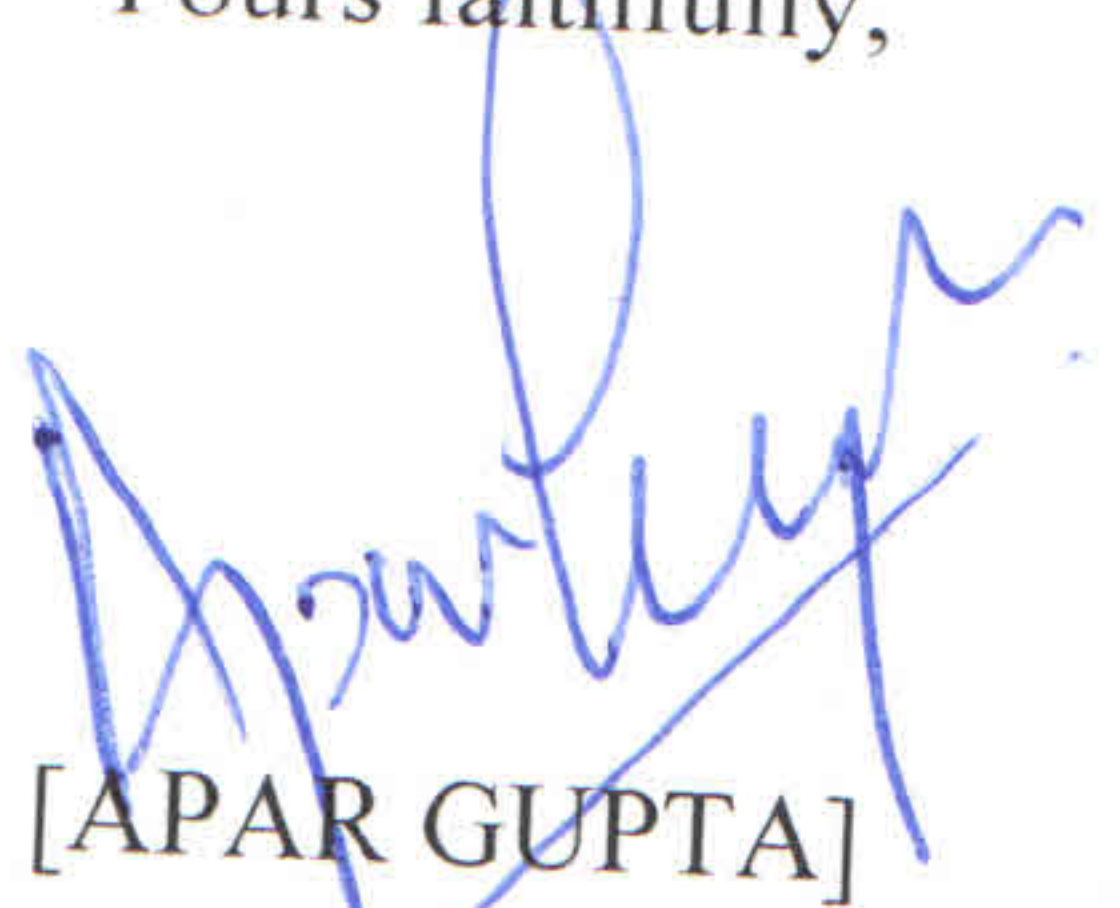
The contents of Para 4 are false and are denied. However, Our Client has taken down the Blogpost within 36 hours of receipt of this notice with a view to bring a closure to the matter. Since your notice identifies Our Client as an intermediary, consequent to the takedown Our Client is now exempted from any liability as per Section 79 of the Information Technology Act, 2000.

E With a view to bring a closure to the matter Our Client has already taken down the Blogpost on 15.05.2012 and has also prominently published the legal notice dated 10.05.2012 as requested by your Clients. Kindly note that this is without prejudice to Our Client's rights and in does not in

any way constitute as an admission. These actions are conditional on your Clients agreeing to withdraw your legal notices dated 10.05.2012 and 15.05.2012 immediately.

- F. Our Client would like to state that it will not be apologizing for authoring the Blogpost since it was in the public good and constitutes fair comment. Moreover, since Our Client has prominently published the legal notice dated 10.05.2012 on its Blog it is reserving its rights to publish this reply in order to present a fair and balanced view of the entire matter.
- G. In view of the above, you are hereby called upon to withdraw your legal notices dated 10.05.2012 and 15.05.2012 immediately. In case you initiate any legal proceedings against Our Client, based on the facts stated in the said legal notice, the same may be will be at the peril and cost of your Client and shall be dealt with by Our Client as advised. Please take notice and advise your Client accordingly.

Yours faithfully,



[APAR GUPTA]  
PARTNER