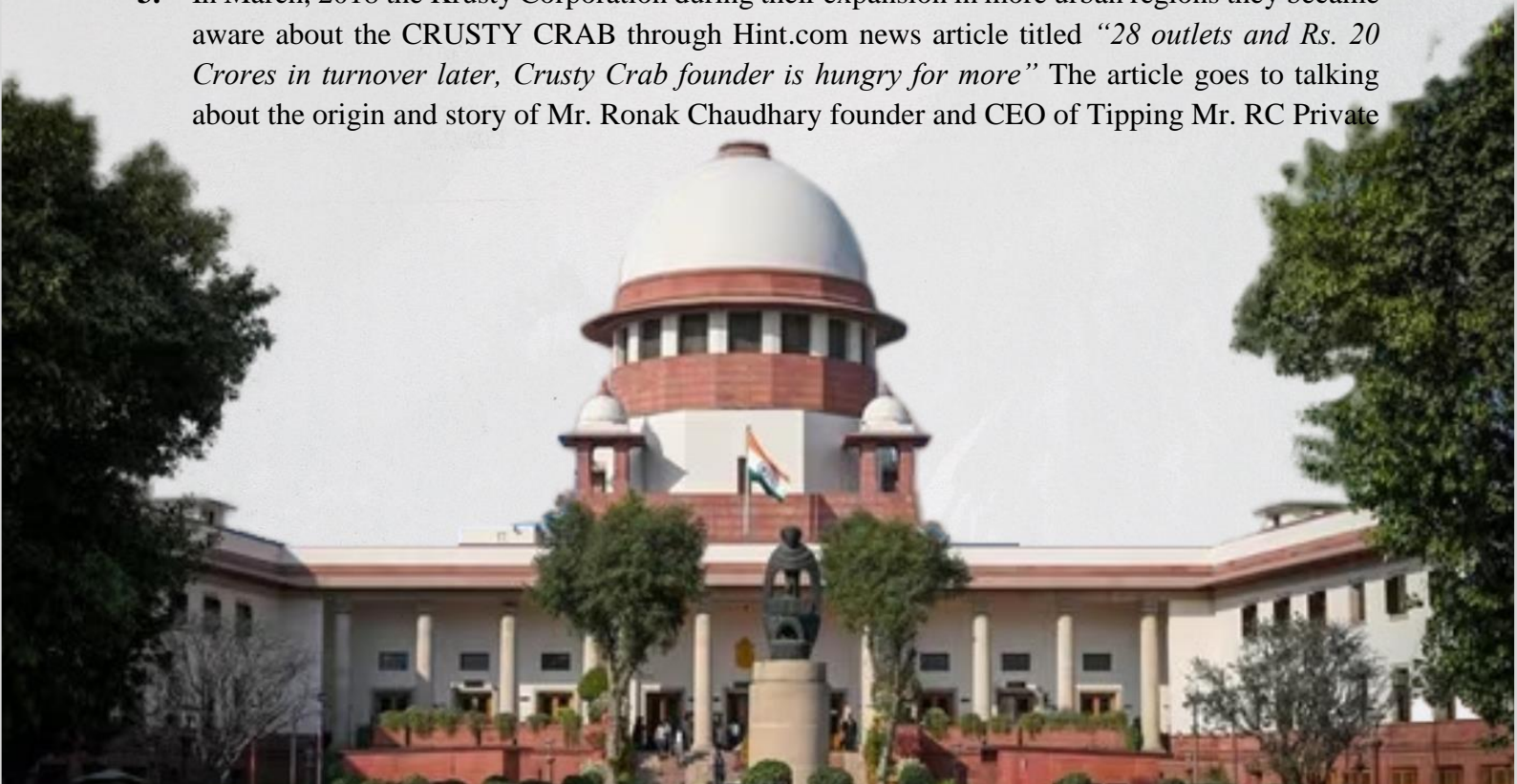


MOOT PROPOSITION

1. In the Country of “Bhojpal” with a diverse and giant patchwork of cultures as well as cuisines it has shown the surprising development in the food culture, have slowly warming up to the idea of eating in restaurants and not on just special occasions. It has been estimated by Agron & Allen associates the global restaurant consultants, the food service sales in Bhojpal are growing at about 20% annually which is double the rate as compared with a much more mature Restaurant industry in America. More than 60 foreign restaurant brands operate in Bhojpal especially in urban cities, considering the intensive growth many international full service restaurants and quick service restaurants are moving in its market. One of the American based company founded in the year 1986 under the name The Krusty Corporation.
2. The Krusty Corporation which at present is one of the leading quick service restaurant (*hereinafter referred to as “QSR”*) hamburger company in the world and the originator of krabby patty, which manages and operates a worldwide chain of 5,000 QSR, serving millions of customers in approximately 20 different countries. Their trademark “KRUSTY KRAB” is registered in over 25 different countries. In Bhojpal, the registration of the device mark in class 43 of the trademark KRUSTY KRAB dates back to July 19th 1991. In August 2017 the Krusty Corporation entered Bhojpal and opened its first restaurant in New Valley on the 9th of August and at present it operates 20 Krusty Krab restaurants in certain regions of Bhojpal with an estimated annual turnover in the year 2023 being 26 crores.
3. In March, 2018 the Krusty Corporation during their expansion in more urban regions they became aware about the CRUSTY CRAB through Hint.com news article titled “28 outlets and Rs. 20 Crores in turnover later, Crusty Crab founder is hungry for more” The article goes to talking about the origin and story of Mr. Ronak Chaudhary founder and CEO of Tipping Mr. RC Private

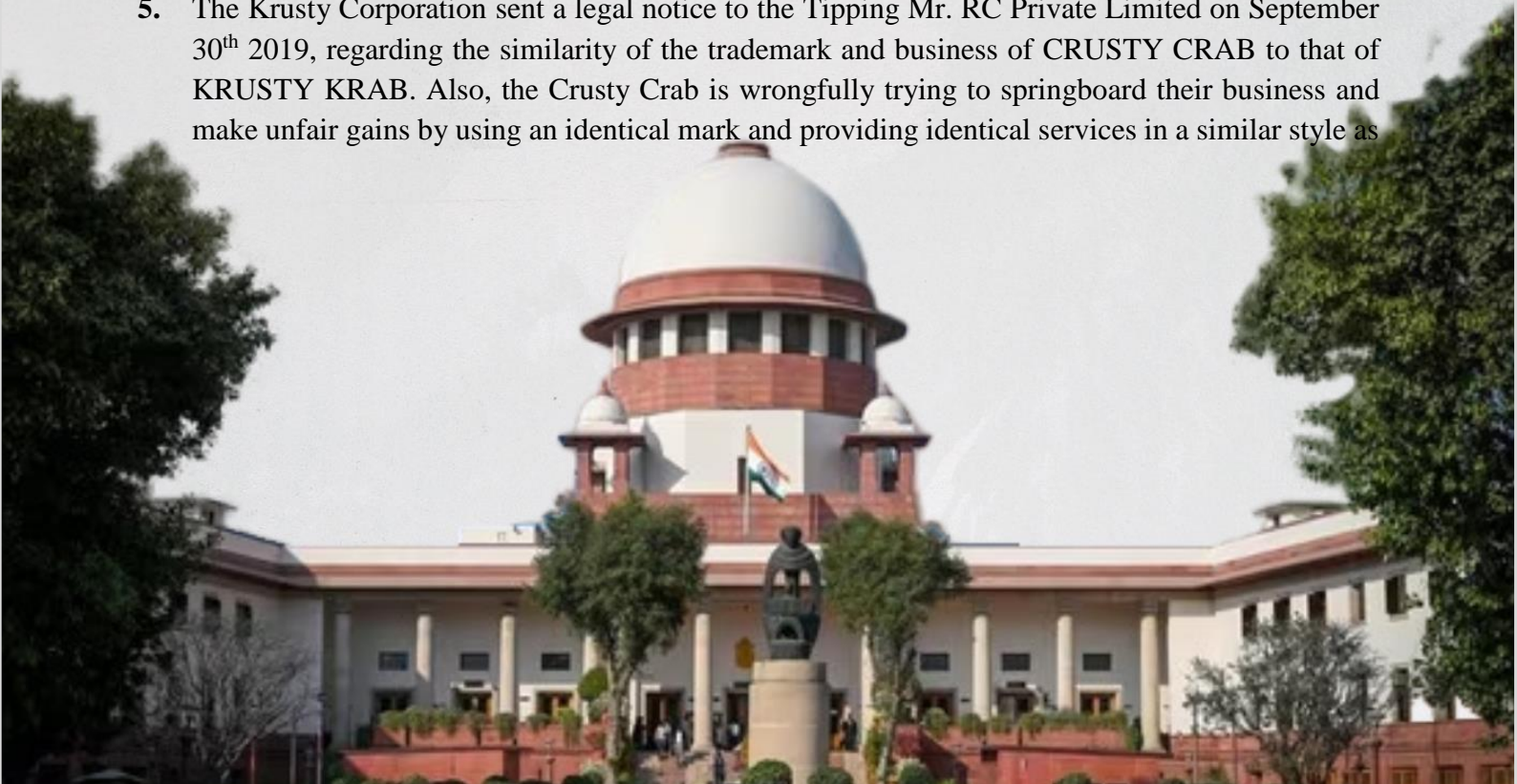


Limited which provides services regarding food and drink including restaurant services, bar services and all other related services included in class 43. Furthermore, the CEO himself while talking about CRUSTY CRAB during an interview revealed:

I went to a nearby store and purchased some masalas and tried mixing them in the Krabby patty. And to my surprise, it tasted awesome. From then onwards, I made it a habit and gradually started offering that Indo-American fusioned burger to my friends there. It was not possible to sit in America and understand the Bhojpal market so I returned back understood the business of quick service restaurant and opened the first CRUSTY CRAB outlet in November 2005 in the state of Zombay.

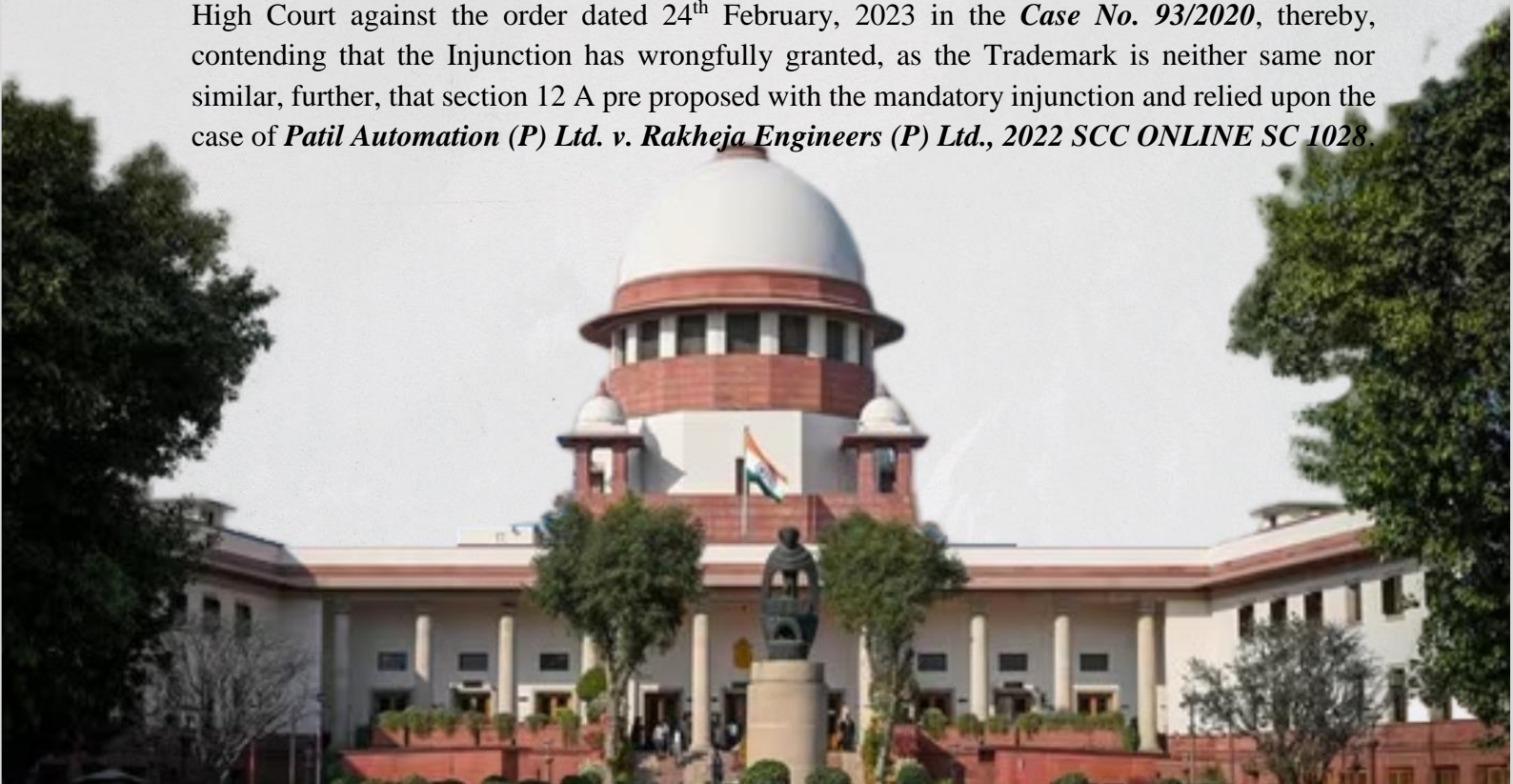
Our first outlet started doing cash break-even sales within 60 days, the acceptance of our product was much higher among customers than expected and we hardly shut our stores before the stipulated time during weekends due to high demand, our marketing strategy is simple, it is word of mouth. The repeated rates of customers are high and our customers keep praising us for our special crabby burger which is our main item on the menu with 50-60 percent of sales from it. We were very confident about the product because it took us almost nine months to craft the recipes and select the right bread and ingredients for our burgers. And so, we were accepted very well.

4. In the meantime, the Commercial Court Act, 2015 was enacted bringing Intellectual Property Rights within its ambit, therefore any dispute relating to infringement and passing off of trademark shall now be tried under the Commercial Courts Act. The Commercial Court (Amendment Act), 2018 was passed, whereby, bringing a critical development in the act, introducing section 12-A in the act. According to which a suit that does not contemplate any urgent interim relief under the act will not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation.
5. The Krusty Corporation sent a legal notice to the Tipping Mr. RC Private Limited on September 30th 2019, regarding the similarity of the trademark and business of CRUSTY CRAB to that of KRUSTY KRAB. Also, the Crusty Crab is wrongfully trying to springboard their business and make unfair gains by using an identical mark and providing identical services in a similar style as



well as passing off or enabling others to pass off their business as the business of KRUSTY KRAB because of user of trademark KRUSTY KRAB, therefore, causing loss and there was likelihood of other losses being suffered and reputation to be lost.

6. In reply, while denying all the allegations, it was contended that CRUSTY CRAB with 'C' is being utilized by the Tipping Mr. RC Pvt. Ltd. since 2005 and there was no other QSR in Bhojpal using this trademark, moreover neither the Krusty Corporation hold any reputation in Bhojpal nor have copyright over the design of the word 'KRUSTY KRAB' and the allegations of passing off/ infringement are baseless. Aggrieved by this the Krusty corporation instituted a suit for injunction under Order 39 Rule 1 & 2 of Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) before the Commercial Court of New Valley.
7. On January 29th, 2020 The Krusty Corporation (Petitioner), as per section 29 of the Trademarks Act, 1999, filed an application before the commercial court, seeking relief of permanent injunction as well as filed another interim application for temporary injunction, in response to which the Tipping Mr. RC Pvt. Ltd. (Respondent) presented under order VII Rule 11 of CPC for rejection of plaint on ground that section 12-A of the act provides for the mandatory mediation which cannot be bypassed and the Petitioner have neither presented an application for seeking urgent interim relief nor have they mentioned the same in the prayer of the application, However, it was dismissed. Thereafter filing of Affidavits in examination of chief, Petitioner presented an application for amendment under Order 6 Rule 17 of CPC seeking to change the prayer by adding "*It is therefore most respectfully prayed that this Hon'ble court may kindly grant an urgent interim relief of temporary injunction and Pass an order of permanent injunction against the Respondent upon such terms and conditions as this Hon'ble Court may deem fit and proper*". The Commercial court of New Valley then allowed the amendment application, henceforth granted temporary injunction on the conclusion that the trademark of Respondent is identical to the Petitioner and thus, causing confusion in the general public.
8. Aggrieved by the order of the District Commercial Court, the Respondent filed an appeal to the High Court against the order dated 24th February, 2023 in the *Case No. 93/2020*, thereby, contending that the Injunction has wrongfully granted, as the Trademark is neither same nor similar, further, that section 12 A pre proposed with the mandatory injunction and relied upon the case of *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., 2022 SCC ONLINE SC 1028*.



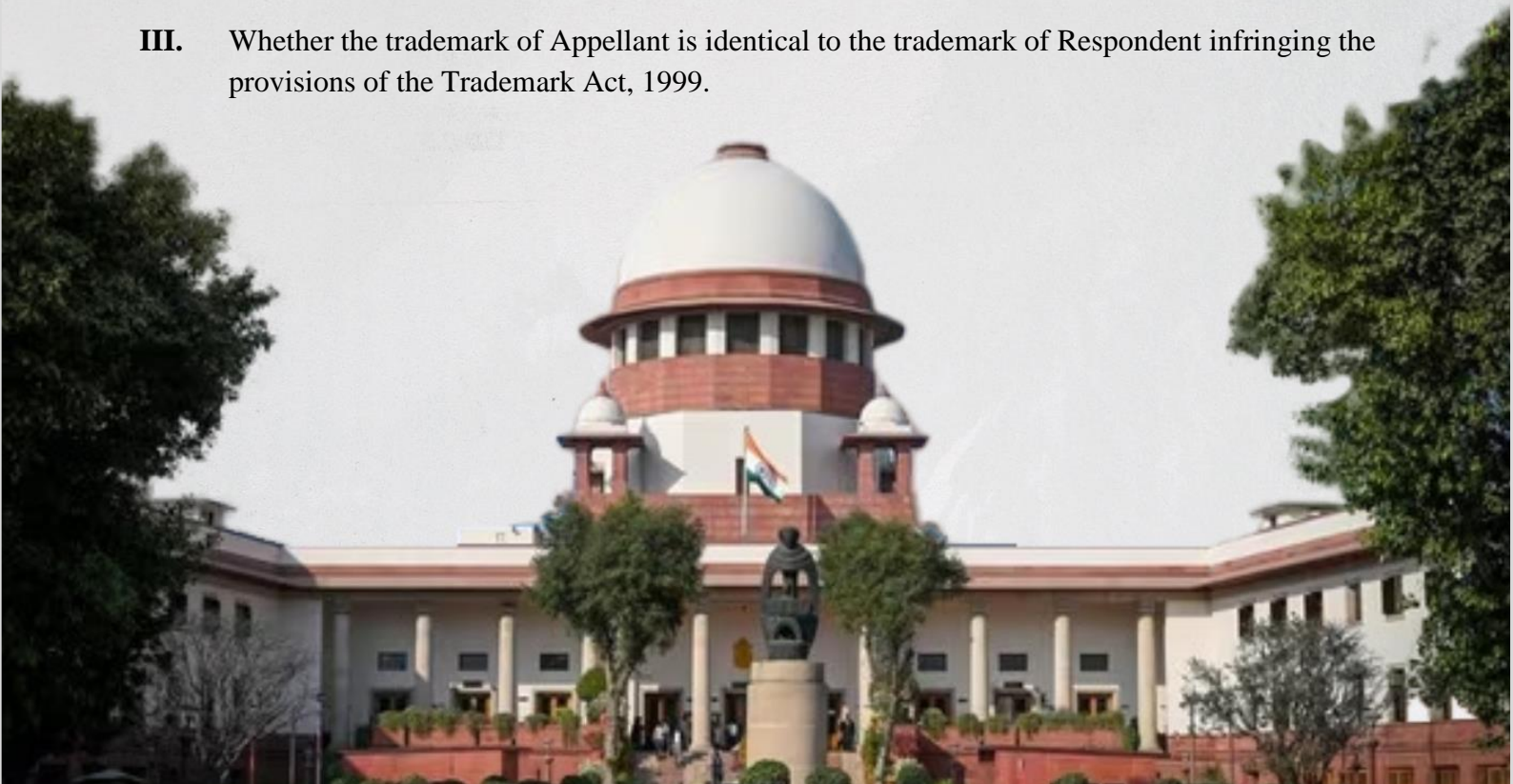
Wherein, the Supreme Court mandated the mediation under section 12 A. The High Court set aside the judgment of the District Commercial Court and stated.

"the District Commercial Court has made an error in granting the temporary injunction. In our opinion, the Respondent/Petitioner has failed to demonstrate the urgency initially, by filing a suit without seeking urgent interim relief and later amend it. Invocation of urgent relief should not be used as a pretext to circumvent or evade Section 12A of the Act, Petitioner must have exhausted the mandatory mediation on that note it is liable to be dismissed. Moreover, the Appellant's device mark, strictly speaking, cannot be identical. That apart, the mere similarity of the mark is not sufficient, additionally, it must be shown that goods or services in respect of which the earlier mark stood registered, were identical and that use of such mark results in a likelihood of confusion on the part of the public. Thus, the impugned order of the District Commercial Court is set aside. Appeal is allowed".

9. Aggrieved by the decision of the High Court Krusty Corporation decided to appeal to the Supreme Court of Bhojpal and hence the present appeal in front of the Supreme Court of Bhojpal, **Civil Appeal No. 086/2024** titled **The Krusty Corporation v. Tipping RC Private Limited**.

ISSUES

- I. Whether the plaint should be rejected for non-compliance with the pre-institution mediation requirement under the Commercial Courts Act, 2015.
- II. Whether the suit contemplates any urgent interim relief, justifying the bypassing of the mandatory provision under the Commercial Courts Act, 2015.
- III. Whether the trademark of Appellant is identical to the trademark of Respondent infringing the provisions of the Trademark Act, 1999.



Note: Laws of Bhojpal are Pari Materia to the laws of India

ANNEXURE A-1	
APPELLANT	RESPONDENT
	

