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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 114/2019**
OBEROI HOTEL PRIVATE LIMITED & ANR.

..... Plaintiff

Represented by: Mr. Aditya Gupta, Mr. Raunaq
Kamath, Advs.

versus

HOTEL TRIDENT INN & ORS.

..... Defendant

Represented by: Mr. Somesh Chandra Jha, Mr. Rahul
Narang, Advs. for D-1.
Ms. Prithvi Singh, Adv. for D-3.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
10.02.2020

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I.A. 1759/2020 (u/O XXIII R 3 CPC)

1. By this application the plaintiff and defendant No1. Seek disposal of the suit in terms of the settlement arrived at between the parties.
2. Taking the settlement agreement on record and disposing the suit in terms of the settlement between the plaintiff and defendant No.1, application is disposed of.

CS(COMM) 114/2019

1. Plaintiff has entered into a settlement with defendant No.1, 2 and 3.
2. As regards between plaintiff and defendant No.1, an application under XXIII Rule 3 CPC has been filed wherein the terms of settlement was noted whereas with regard to defendant No.2 and 3 settlement has been arrived at before the Delhi High Court Mediation and Conciliation Centre and copies

of the settlement agreement dated 16th January, 2020 in respect of settlement with defendant No.2. and settlement dated 4th February, 2020 with defendant No.3 are on record.

3. Plaintiff and defendant No.1 have entered into settlement on the following terms and conditions as noted in I.A. 1759/2019 as under:

- A.** *M/s Sinjini Movies Private Limited states and acknowledges that it is the owner of the hotel operated under the name Trident Inn, Vishnu Galli, Mahatma Gandhi Main Road, Ranchi, Jharkhand 834001. A copy of the identity card of the Authorised Representative of Defendant No. 1, Mr. Suyash Kumar is being filed herewith. The Copy of the Board Resolution in favour of Mr. Suyash Kumar is already on record.*
- B.** *M/s Sinjini Movies Private Limited states to this Hon'ble Court that apart from the above-mentioned hotel, it is neither operating nor associated/ affiliated with any other hotel or restaurant using the mark TRIDENT in any manner whatsoever.*
- C.** *M/s Sinjini Movies Private Limited, acknowledges that the Plaintiffs are the prior adopter, user and registered proprietor of the trademark TRIDENT along with goodwill and reputation in the same. Defendant No. 1 acknowledges the Plaintiffs statutory rights in the Plaintiffs trademark TRIDENT and the Plaintiffs common law rights in the well-known and world-famous trademark TRIDENT.*
- D.** *M/s Sinjini Movies Private Limited, undertakes not to challenge the validity of the Plaintiffs well-known and world-famous trademark TRIDENT or any other variant thereof, whether as a word or label, which may be registered in favour of the Plaintiffs in future.*
- E.** *M/s Sinjini Movies Private Limited, acknowledges that the use of the marks TRIDENT, HOTEL TRIDENT, TRIDENT INN infringes and violates the Plaintiffs statutory and common law rights in the mark TRIDENT and TRIDENT HOTELS.*
- F.** *M/s Sinjini Movies Private Limited, undertakes to this Hon'ble Court that they have already ceased and will not in the future use the marks TRIDENT, HOTEL TRIDENT, TRIDENT INN or any deceptively similar marks in all forms and through all means. These include but are not limited to use as a hotel name, as a domain name, on travel portals, on signages, on promotional material,*

stationery, travel portals, bill boards, brochures, pamphlets, letter heads, visiting cards, stickers, cartons, dies, blocks, labels, and in advertisements of any nature. Defendant No. 1 undertakes to take removal of all listings of its hotel using the mark TRIDENT or HOTEL TRIDENT or TRIDENT INN, on online portals including but not limited to www.oyorooms.com, www.booking.com, www.trivago.in, www.makemytrip.com, www.goibibo.com, www.tripadvisor.com, www.expedia.co.in and www.in.hotels.com.

- G.** *M/s Sinjini Movies Private Limited undertakes that they will neither adopt nor use at any time in future the marks TRIDENT, HOTEL TRIDENT, TRIDENT INN, or any deceptively similar variations thereof for any goods or services.*
- H.** *M/s Sinjini Movies Private Limited, hereby undertake that all printed material, bill boards, stationery, promotional material, brochures, pamphlets, letter heads, visiting cards, goods, stickers, cartons, dies, blocks, labels, articles, and any other material of Defendant No. 1 bearing the impugned trademark TRIDENT, HOTEL TRIDENT, TRIDENT INN, or any deceptively similar marks or any other mark deceptively similar thereto will be destroyed immediately on the date of signing of the present application by Defendant No. 1.*
- I.** *M/s Sinjini Movies Private Limited, confirms and undertakes that it or any affiliate, Sister concern has not applied for registration of the marks TRIDENT, HOTEL TRIDENT, TRIDENT INN, or any deceptively similar marks whether as a word or a label in any class. Defendant No. 1 further undertakes that it will not apply for registration of the trademarks TRIDENT, HOTEL TRIDENT or TRIDENT INN or any deceptively similar marks.*
- J.** *In consideration for the undertakings and representations contained in Clauses 2.B. to 2.I., the Plaintiffs agree not to seek damages and costs of the proceedings against Defendant No. 1. The Plaintiffs reserve the right to seek damages and costs of the proceedings from other Defendants in the above proceedings. The Plaintiffs shall be entitled to seek damages and costs against Defendant No. 1 if the undertakings contained in Clauses 2.B. to 2.I. are breached by Defendant No. 1.*
- K.** *The rights and obligations under this agreement shall be binding upon on any affiliates, relatives, assignees, successors – in – interest and title of Defendant No. 1.”*

4. The settlement agreement is duly signed by Shri S.N. Sridhar authorized signatory of the plaintiff and Mr. Suyush Kumar, authorized signatory of defendant No.1, authorizations in whose favour is on record. The application is also duly supported by the affidavits of the two authorized signatories.

5. Consequently, the suit is decreed in favour of the plaintiff and defendant No.1 in terms of prayer A, B, C, D, E & F contained in Para 28 of the plaint and defendant No.1 shall remain bound by the undertakings in Clause 2(B) to 2(I) of the application as noted above.

6. Plaintiffs and defendant No.2 have arrived at a settlement before the Delhi High Court Mediation and Conciliation Centre on 16th January, 2020. Copy of the settlement agreement between the plaintiff and defendant No.2 dated 16th January, 2020 is also on record who have settled the disputes on the following terms and conditions:

F. The parties after detailed discussions during the course of Mediation proceedings held on 30.09.2019, 15.10.2019, 07.11.2019, 13.11.2019 and 21.11.2019 and with the efforts of the Ld. Mediator, have voluntarily and as per their own free will have agreed to settle their disputes on the following terms and conditions:

- i. Ms. Santosh Dhakarwal states and acknowledges that he is the proprietor of the hotel operated under the name Hotel Trident Valley (also referred to as OYO 14338 Hotel Trident Valley) located at Hetam Ji, Before Check Post, Mount Abu, Rajasthan 307501. A copy of the identity card of Defendant No. 2 is being filed herewith.*
- ii. Defendant No. 2, through its sole proprietor states to this Hon'ble Court that apart from the above-mentioned hotel, it is neither operating nor associated/ affiliated with any other hotel or restaurant using the mark TRIDENT in any manner whatsoever.*

- iii. *Defendant No. 2, through its sole proprietor, acknowledges that they have now come to know that the Plaintiffs are the prior adopter, user and registered proprietor of the trademark TRIDENT along with goodwill and reputation in the same. Defendant No. 2 hereon acknowledges the Plaintiffs statutory rights in the Plaintiffs trademark TRIDENT and the Plaintiffs common law rights in the well-known and world-famous trademark TRIDENT.*
- iv. *The Defendant No. 2, through its sole proprietor, undertakes not to challenge the validity of the Plaintiffs well-known and world-famous trademark TRIDENT or any other variant thereof, whether as a word or label, which may be registered or unregistered in favour of the Plaintiffs in future.*
- v. *The Defendant, through its sole proprietor, acknowledges that the use of the marks HOTEL TRIDENT VALLEY infringes and violates the Plaintiffs statutory and common law rights in the mark TRIDENT and TRIDENT HOTELS.*
- vi. *Defendant No. 2, through its sole proprietor, undertakes to this Hon'ble Court that they have already ceased and will not in the future use the marks HOTEL TRIDENT VALLEY or any deceptively similar marks including but not limited to TRIDENT and HOTEL TRIDENT in all forms and through all means. These include but are not limited to use as a hotel name, as a domain name, on travel portals, on signages, on promotional material, stationery, travel portals, bill boards, brochures, pamphlets, letter heads, visiting cards, stickers, cartons, dies, blocks, labels, and in advertisements of any nature. Defendant No. 2 undertakes to take removal of all listings of its hotel using the mark HOTEL TRIDENT VALLEY or any deceptively similar mark including but not limited TRIDENT and HOTEL TRIDENT, on online portals including but not limited to www.oyorooms.com, www.booking.com, www.trivago.in, www.makemytrip.com, www.goibibo.com, www.tripadvisor.com, www.expedia.co.in and www.in.hotels.com.*
- vii. *Defendant No. 2, through its sole proprietor undertakes that they will neither adopt nor use at any time in future the marks TRIDENT, HOTEL TRIDENT, HOTEL TRIDENT VALLEY, or any deceptively similar variations thereof.*

- viii. *Defendant No. 2, through its sole proprietor, hereby undertake that all printed material, bill boards, stationery, promotional material, brochures, pamphlets, letter heads, visiting cards, goods, stickers, cartons, dies, blocks, labels, articles, and any other material of Defendant No. 2 bearing the impugned trademark TRIDENT, HOTEL TRIDENT, HOTEL TRIDENT VALLEY, or any deceptively similar marks or any other mark deceptively similar thereto has already been destroyed by Defendant No. 2.*
- ix. *The Defendant No. 2, through its sole proprietor, confirms and undertakes that it or any affiliate, relative have not applied for registration of the marks TRIDENT, HOTEL TRIDENT, HOTEL TRIDENT VALLEY, or any deceptively similar marks whether as a word or a label in any class. Defendant No. 2 further undertakes that it will not apply for registration of the trademarks TRIDENT, HOTEL TRIDENT or HOTEL TRIDENT VALLEY or any deceptively similar marks.*
- x. *In consideration for the undertakings and representations contained in Clauses F.i. to F.ix., the Plaintiffs agree not to seek damages and costs of the proceedings against Defendant No. 2. The Plaintiffs reserve the right to seek damages and costs of the proceedings from other Defendants in the above proceedings. The Plaintiffs shall be entitled to seek damages and costs against Defendant No. 2 if the undertakings contained in Clauses F.i. to F.ix. are breached by Defendant No. 2.*
- xi. *The rights and obligations under this agreement shall be binding upon on any affiliates, relatives, assignees, successors – in – interest and title of Defendant No. 2.*
- G. *The parties further agree that the order passed by this Hon'ble Court in light of the terms contained herein shall be final and binding upon the parties and they shall abide by the terms of the settlement in good faith.*
- H. *The parties further agree that the order passed by this Hon'ble Court in light of the terms contained herein shall be final and binding upon the parties and they shall abide by the terms of the settlement in good faith.*

- I. In view of the aforementioned terms and conditions, the First Party is not pressing for delivery up, damages and costs against the Second Party as claimed in prayers (E), (F), and (G) of the Plaint.*
- J. The parties acknowledge that the undertakings given herein shall be binding on all successors, representatives, licensees and assigns-in-business of the parties henceforth.*
- K. The parties herein agree that the present suit being CS(COMM) No. 114 of 2019 before this Hon'ble Court be decreed qua Defendant No. 2 (Second Party) in the aforesaid terms.*
- L. By signing this settlement, the parties hereto state that they have no further claims or demands against each other and all the disputes and differences with respect to the subject matter of the Suit have been amicably, fully and finally settled by the parties hereto through the process of Conciliation/ Mediation.*
- M. The parties undertake to comply with their part of the terms of the agreement. ”*

7. The settlement agreement is duly signed by Shri S.N. Sridhar authorized representative of plaintiff and Mr. M. Dhinakaran, authorization in whose favour is annexed with the settlement agreement.

8. Consequently, the suit is decreed in favour of the plaintiff and against the defendant No.2 in terms of prayer A, B, C & D.

9. Plaintiff and defendant No.3 have arrived at a settlement agreement dated 4th February, 2020 before the Delhi High Court Mediation and Conciliation Centre on the following terms and conditions:

- A. OYO acknowledges that it enters into agreements with and lists hotels on its OYO ROOMS portal www.oyorooms.com and on the OYO mobile application and other Online Travel Aggregators (OTAs) as well. The following hotels had partnered with OYO and were listed on OYO and other OTA's website and mobile application as on the date of the suit:
 - i. OYO 2925 Hotel Trident Inn
Vishnu Galli, Mahatma Gandhi Main Road,
Ranchi, Jharkhand 834001**

ii. *OYO 14338 Hotel Trident Valley
Hetam Ji, Before Check Post,
Mount Abu, Rajasthan 307501*

- B. *OYO has represented to the Plaintiffs and represents to this Hon'ble Court that they are not involved in any manner in the adoption of the trademarks TRIDENT by the hotels mentioned in sub – clauses i. to iii. in Clause 5.A. and, as per OYO's contract with each of these hotels, OYO is not entitled to review, approve, vote on, veto, reject or remove the name/ mark used by these hotels as its hotel name or on its signages, stationery, toiletries, in-room materials etc.*
- C. *OYO hereby agrees and undertakes to this Hon'ble Court to:*
- i. *automatically filter/ delist on any of its present or future portals, mobile applications, or websites including but not limited to www.oyorooms.com or the OYO mobile applications,*
 - ii. *not promote,*
 - iii. *not partner with,*
 - iv. *not advertise,*
 - v. *not manage,*
 - vi. *not operate, or*
 - vii. *not enter into agreements with entities which use or propose to use the trademark TRIDENT or any of the Plaintiffs' trademarks as annexed in Annexure A with or without any prefix or suffix, or any mark deceptively similar thereto, in any manner, including but not limited to, on its signages, stationery, websites and domain names.*
- D. *OYO further undertakes before this Hon'ble Court to exercise due diligence and the standard of care expected of a business of its size, in partnering or entering into agreements with hotels in the future so as to ensure that its partner hotels or franchisee hotels do not infringe or pass off trademarks over which the Plaintiffs have rights at the relevant time. In the event of any instance of violation of the Plaintiffs' trademark rights being brought to OYO's attention by the Plaintiffs with respect to any of the Plaintiffs' trademarks, OYO undertakes to forthwith and without demur delist the violating hotel on its portal and also intimate other portals carrying listings of the infringing hotel within 48 hours or 2 working days of the communication by the Plaintiffs. OYO shall ensure that such third – party portals delist the infringing hotels within 5 days of the communication by the Plaintiffs. Notwithstanding the foregoing, the Plaintiffs shall have the right to seek appropriate remedies under*

the law for any future violation of the Plaintiffs' rights in their trademarks. The Plaintiffs may intimate OYO about such infringing hotels at a dedicated email address i.e. legal@oyorooms.com and send a formal letter to the below mentioned address:

Legal Department,
OYO Hotels & Homes Pvt. Ltd.
3rd Floor, Cyber Scape, Ullhawasa, Sector – 59,
Gurgaon – 122011.

- E. OYO undertakes to immediately remove the listing of hotels from its desktop portals, mobile applications, or websites including but not limited to www.oyorooms.com or the OYO mobile applications and not to promote, advertise, partner with, manage, operate any hotels which are using the trademark TRIDENT and the Plaintiffs' registered trademarks as annexed in Annexure A or any mark deceptively similar thereto in any manner including but not limited to on its signages, stationery, websites or domain names.
 - F. OYO agrees and undertakes to this Hon'ble Court not to use or in any other manner infringe the Plaintiffs' statutory or common law rights in the trademark TRIDENT or any of the Plaintiffs' registered trademarks as annexed in Annexure A or any mark deceptively similar thereto, in any manner.
 - G. In consideration for the undertakings and representations contained in Clauses 5)B. to 5)F., the Plaintiffs agree not to seek damages and costs of the proceedings against OYO. The Plaintiffs reserve the right to seek damages and costs of the proceedings from other Defendants in the above proceedings. The Plaintiffs shall be entitled to seek damages and costs against OYO if the undertakings contained in Clauses 5)B. to 5)F. are breached by OYO.
 - H. The rights and obligations under this agreement shall be binding upon on any affiliates, assignees, successors – in – interest and title of OYO.
- 6) The parties further agree that the order passed by this Hon'ble Court in light of the terms contained herein shall be final and binding upon the parties and they shall abide by the terms of the settlement in good faith. The parties agree that the Plaintiffs' rights and the parties' contentions with respect to the registered trademark 'VILAS' standalone shall remain open and shall not be prejudiced by this settlement agreement.

- 7) *The Parties submit that the Parties' claims against each other which are the subject matter of suit no. CS (Comm) No. 114/2019 stands settled.*
- 8) *Both the parties submit that this Hon'ble Court may accept the undertakings in Clauses 5.C) to 5.F) of the present agreement including Annexure A and it is further submitted that the suit being CS(Comm) No. 114 of 2019 against Defendant No. 3 be decreed in terms of prayers (A), (B), (C), (D) contained in paragraph 28 of the Plaint in CS(Comm) No. 114 of 2019."*

10. Consequently, the suit is decreed in favour of the plaintiff and against the defendant No.3 in terms of prayer A, B, C & D contained in Para 28 of the plaint.

11. The decree sheet will incorporate the terms of settlement with each of the defendants.

12. Court fee be returned to the authorized representative of the plaintiff under Section 16 of the Court Fees Act. Registry will issue necessary certificate in this regard.

13. Suit is accordingly disposed of.

I.A. 3159/2019 (u/O XXXIX R 1&2 CPC)

Application is disposed of as infructuous.

MUKTA GUPTA, J.

FEBRUARY 10, 2020
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