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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 829/2022, I.A. 20165/2022 & I.A. 3610/2023**

PADMAVATI AGRO INDUSTRIES Plaintiff

Through: Mr. Umesh Mishra, Adv.

versus

AVIRAJ AGRO COMMODITIES PVT LTD & ORS.

..... Defendants

Through: Mr. Vikram Bhatia and Ms.
Punita Bhatia, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

11.05.2023

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1. The dispute between the parties stand settled with the intervention of the Delhi High Court Mediation and Conciliation Centre.

2. A Settlement agreement dated 9th May 2023 has been placed on record. The terms of settlement read thus:

“a) The second, third and Fourth party admit that the First Party is original and registered proprietor of the trademark/label **SAWARIYA** in respect of the goods falling in class 30 of the Trade Marks Act, 1999 and the 1 to 3 defendants acknowledge the proprietary right of the FIRST PARTY in the said trademarks.

b) The Second Party, Third Party and Fourth Party also admit and acknowledge the FIRST PARTY Copyright in the artistic features of the packaging pouches, labels including their distinctive scripts, fonts, positions and placing of features, their respective get ups, lay outs, combination of colours and arrangements of general and descriptive materials in respect of goods falling in class 30.

c) The Second Party, Third Party and Fourth Party also admit and acknowledge that the First Party is prior user of the

trademark/label **SAWARIYA** for the goods falling in class 30.

d) The Second Party, Third Party and Fourth Party further admit the FIRST PARTY to be the owner of Copyright in the artistic works as involved in the trademark/label **SAWARIYA** and the defendants shall not have any objection with respect to the registration of the pending trademark and copyright applications with regard to the trademark/artistic work **SAWARIYA** of the plaintiff in any manner whatsoever.

e) The Second Party, Third Party and Fourth Party assure and undertake not to commit any act of infringement and/or passing off by the use of the trade mark **SAWARIYA/MIRASAWARIYA** and/or any other mark which is identical and/or deceptively similar to the plaintiffs registered trademark in relation to the goods i.e. Rice etc. falling in class 30.

f) The Second Party, Third Party and Fourth Party further assure and undertake that they will not to use the scripts, fonts, positions and placement of any features, get ups, lay outs, combination of colours and arrangement as are or is identical or deceptively similar to the features, get ups, lay-outs, positions and placement or combination of colours of the FIRST PARTY pouches/packaging material in respect of and in relation to the product Rice etc.

g) The Second Party, Third Party and Fourth Party further state that there is no application pending before the Registrar of Trade Marks or any other authority filed by The Second Party, Third Party and Fourth Party bearing the trademark/label "**MIRASAWARIYA OR SAWARIYA**" or any other deceptively similar trademark/label as that of the FIRST PARTY and even in future also The Second Party, Third Party and Fourth Party shall not file any such application for the registration which may be similar or identical to the trademark/label/artistic work/trade dress of the FIRST PARTY.

h) The Second Party, Third Party and Fourth Party undertake to recall all the marketing, promotional and advertising materials, if there are any that bear or incorporate the mark "**MIRASAWARIYA**" or any other mark similar to the FIRST PARTY'S "**SAWARIYA**" mark, which have been distributed, sold or shipped before entering into the present settlement;

i) The Second Party, Third Party and Fourth Party specifically assure and undertake that they will destroy all the blocks, dies, screens, works, wrappers and any other material in which the impugned mark or infringing trade dress or copyright within fifteen days from the date of acceptance of this Settlement by the Hon'ble

High Court and an order to that effect is passed by the Hon'ble High Court.

j) The Second Party, Third Party and Fourth Party further assure and undertake that they will not either directly or indirectly, or through any of its entity apply or encourage others directly or indirectly for the registration of any trade mark "~~MIRASAWARIYA~~" or any word/mark deceptively similar to the trademark '~~SAWARIYA~~' of the FIRST PARTY.

k) All the parties agree that they shall destroy the infringing packaging material of Rice seized by the Ld. Local Commissioners bearing the mark ~~MIRASAWARIYA~~ in the presence of all the parties or their authorized representative within fifteen days of acceptance of this settlement by the Hon'ble High Court.

l) The Second Party, Third Party and Fourth Party shall hand over a Demand Drafts for Rs. 6,50,000/- to the FIRST PARTY towards cost/token damages, before the Hon'ble High Court at the time of acceptance of this settlement by the Hon'ble High Court as under:-

- Cheque No. 000019. Dated 09.05.2023 of Rs. 1,50,000/- drawn on HDFC Bank, Jalgaon Branch, of the Second Party
- DD No. 032303 dated 08.05.2023 of Rs. 2,50,000/- drawn on HDFC Bank, of the Third Party (Sarvoday Agro Industries)
- DD No. 666882 dated 02.03.2023 of Rs. 2,50,000/- drawn on IDFC, First Bank, Amalner Branch of the Fourth Party (Manish Trading)

m) The Second Party, Third Party and Fourth Party further agree and undertake to pay the FIRST PARTY a sum of Rs.30,00,000/- (Thirty lakhs only) in the event of the occurrence of any default/breach by them of any condition set forth herein above provided that such breach/default arises out of the act(s) which are directly within the power and control of The Second Party, Third Party and Fourth Party;

n) In light of above and the Second Party, Third Party and Fourth Party agreeing and complying to the above undertakings, the First Party forgoes the prayers for rendition of accounts, damages and costs of the proceedings.

o) All parties pray that the instant suit i.e. CS(Comm) 829/2022 Vs Aviraj Agro Commodities P. Ltd and Ors. may be decreed in terms of the settlement terms as contained in the instant

settlement agreement coupled with the prayer clause of the paragraph 22 (a) & (b) of the Plaint

p) It is further prayed that the present terms of settlement be also directed to become part of the Decree leaving the parties to bear their respective cost.

q) In view of the settlement and consequent decree that the Hon'ble Court may pass, the First Party agrees that it shall not institute any civil or criminal proceedings against the Second Party, Third Party and Fourth Party on the same facts and the same cause of action.

r) In the event, either of the parties breaches the aforesaid terms, the said Party shall be liable for all consequences including civil and criminal liabilities in accordance with the laws of India. Any claim arising under this Agreement shall be prosecuted exclusively before the Hon'ble Delhi High Court and the parties hereby consent to the personal jurisdiction of such court.”

It may be noted that, in the aforesaid settlement agreement, the 1st, 2nd, 3rd and 4th parties are M/s Padmavati Agro Industries, M/s Aviraj Agro Commodities P. Ltd, M/s Sarvoday Agro Industries, and Mr. Rajendra Badarmal Jain.

3. This Court has perused the terms of settlement and find them to be in order and lawful.

4. Mr. Umesh Mishra, learned Counsel for the plaintiff and Mr. Vikram Bhatia and Ms. Punita Bhatia, learned Counsel for the defendants are present and they undertake on behalf of their respective clients to remain bound by the terms of settlement.

5. As such, nothing survives for adjudication in the suit.

6. The suit stands decreed in the aforesaid terms.

7. Let a decree sheet be drawn up by the Registry.
8. The plaintiff would be entitled to refund of Court fees, if any, deposited by it.

I.A. 3610/2023 (under Section 151 of the CPC)

9. By this application, Defendants 2 and 3 seek release, to them, of rice which was seized by the local Commissioners on 24th December 2022. Mr. Bhatia submits that his client would destroy the infringing packs but may be permitted to retrieve rice from the packs and disposed of the same in accordance with law.

10. Mr. Mishra fairly does not oppose the request.

11. Accordingly, the defendants are permitted to retrieve the rice from the seized packages, subject to their destroying the packages themselves.

12. The rice which is recovered from the packages may be disposed of in accordance with law.

13. The destruction of the infringing packs would take place in the presence of the authorised representative of the plaintiff on 20th May 2023 at 11 am.

14. It is made clear that destruction should be carried out in a lawful fashion and keeping in mind the environmental concerns and in accordance with all statutory rules, regulations and guidelines existing in that regard.

15. The application stands allowed accordingly.

C.HARI SHANKAR, J

MAY 4, 2023

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