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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1058/2014**
TRIUMPHANT INSTITUTE OF MANAGEMENT EDUCATION
PVT LTD

..... Plaintiff

Through: Ms. Bitika Sharma, Adv. with Ms.
Namrita Kochhar, Adv.

versus

ASPIRING MIND ASSESSEMNT PVT LTD & ORS

..... Defendant

Through: Mr. Ranjeet Singh Sidhu, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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24.02.2016

IA 2039/2016

1. This is a joint application filed by the plaintiff and the defendants. The application has been signed on behalf of the plaintiff as well as defendants and their counsels. The application is supported by the affidavit of authorized signatory of the plaintiff and the authorized representative of the defendant Nos.1, 2 & 3.
2. The following are the averments made in the application:-

“1. That the Plaintiff has filed the present suit against the Defendants seeking permanent injunction restraining infringement of trademark/domain name, passing off, dilution etc in respect of the Plaintiff's registered mark 'AIMCAT' and the same is pending adjudication before this Hon'ble Court.

2. That vide order dated 16.04.2014, this Hon'ble Court was pleased to grant an ex-parte injunction against the Defendants restraining them from using the trademark 'AMCAT' or any other mark identical or deceptively similar to the Plaintiff's registered trademark AIMCAT or to use the said mark as a part of a domain name in relation to educational services or in respect of any goods/services in any manner whatsoever. That subsequently, vide order dated 13.05.2015 this Hon'ble Court was pleased to vacate the aforesaid injunction order.

3. That vide order dated 11.09.2015 this Hon'ble Court has recorded that the parties to the present suit wish to solve their disputes and settle the matter. That the parties, i.e., the Plaintiff and the Defendants with the aim to arrive at a compromise, have entered into a Memorandum of Understanding (MOU) dated 27.11.2015 on the following terms and conditions; -

(i) That the Defendants undertake to not use the mark AMCAT in relation to any training/coaching services for preparing students for competitive examination for admission to institutes of higher education such as Engineering, MBBS, MBA etc. including but not limited to classroom coaching, tutorials, question papers, assignments, correspondence, training, mock tests, online tests. Coaching, tests and training services through mobile, emails or any other electronic or print media etc. and such training/coaching/educational goods specified in class 16 and/or educational services specified in class 41 of the Trade Marks Act, 1999.

(ii) That the Defendants undertakes not to pursue its trademark application No. 1972013 for the mark AMCAT in class 41 and to withdraw the same within one week from the signing of the present MOU.

(iii) That the Plaintiff undertakes not to use the mark AIMCAT to enter into the services undertaken by the Defendants, i.e., in relation to conducting online or other employability tests, through a programming software designed to measure job suitability (employability) of job-seekers to provide them feedback on their job-skills or, connect them to matching jobs, or help companies hire appropriate job seekers, as specified under Class 35 of the Trademarks Act, 1999.

(iv) The present MOU shall be filed in the above mentioned suit, along with an application under Order 23 Rule 3 CPC for the final settlement of disputes between the parties.

(v) The terms of the present MOU shall be binding upon all parties including their subsidiaries, directors, partners, promoters, servants, agents etc and anyone acting for and on behalf of the parties.

That the aforesaid terms of settlement are contained in paragraphs 3(i)- (v) of the MOU entered into between the Plaintiff and the Defendants. A copy of the signed MOU dated 27.11.2015 is annexed herewith as ANNEXURE A.

4. That in case of breach of this settlement in the present CS (OS) No. 1058 of 2014, by the Plaintiff/Defendants herein or any other person acting on their behalf and proved thereof, the Plaintiff/Defendants herein shall be allowed to take action in accordance with the law and the Plaintiff/Defendant shall then be liable to pay a minimum amount of Rs. 5,00,000/- to the opposite party as damages.

5. On behalf of the Plaintiff Company, this settlement application has been signed by Mr. Manek Daruvala,

the authorized signatory of the Plaintiff Company. A copy of the said authorization is annexed herewith as Annexure B. On behalf of the Defendants, this application has been signed by Mr. Himanshu Agarwal, the authorized signatory of the Defendant No. 1. A copy of the board resolution and POA in favour of Mr. Himanshu Agarwal is annexed herewith as Annexure C. The terms of this settlement shall be binding in all parties, their family members, their successors, heirs, assignees in business and all others acting for and on their behalf.”

4. The relief prayed for in the application is that the decree of permanent injunction may be drawn up in favour of the plaintiff in terms of paragraphs 3 (i), (ii) and (iii) of the MOU dated November 27, 2015. The MOU has been annexed as Annexure-A to the application. It is noted from para 3 of the MOU, the parties have amicably settled their disputes on the following terms and conditions:-

“(i) The SECOND PARTY undertake to not use the mark AMCAT in relation to any training/coaching services for preparing students for competitive examination for admission to institutes of higher education such as Engineering, MBBS, MBA etc. including but not limited to classroom coaching, tutorials, question papers, assignments, correspondence, training, mock tests, online tests. Coaching, tests and training services through mobile, emails or any other electronic or print media etc. and such training/coaching/educational goods specified in class 16 and/or educational services specified in class 41 of the Trade Marks Act, 1999.

(ii) The SECOND PARTY undertakes not to pursue its trademark application No. 1972013 for the mark AMCAT in class 41 and to withdraw the same within one week from the signing of the present MOU.

(iii) The FIRST PARTY undertakes not to use the mark AIMCAT to enter into the services undertaken by the SECOND PARTY, i.e., in relation to conducting online or other employability tests, through a programming software designed to measure job suitability (employability) of job-seekers to provide them feedback on their job-skills or, connect them to matching jobs, or help companies hire appropriate job seekers, as specified under Class 35 of the Trademarks Act, 1999.

(iv) The present MOU shall be filed in the above mentioned suit, along with an application under Order 23 Rule 3 CPC for the final settlement of disputes between the parties.

(v) The terms of the present MOU shall be binding upon all parties including their subsidiaries, directors, partners, promoters, servants, agents etc and anyone acting for and on behalf of the parties.”

5. In view of the settlement entered into between the parties as per MOU dated November 27, 2015, the suit is decreed in terms of paras 3(i), (ii) and (iii) of the MOU dated November 27, 2015. The decree sheet be drawn accordingly. The application and the suit are disposed of.

Date of July 27, 2016 stands cancelled.

V. KAMESWAR RAO, J

FEBRUARY 24, 2016/ak