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

+ CS(OS) NO.1122/2008

MOODS HOSPITALITY PVT.LTD Plaintiff

Through: None.

Versus

NESTLE INDIA LTD. Defendant

Through: Mr. Manish K. Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.10.2016**

1. None appears for the plaintiff.
2. The counsel for the defendant states that the rectification applications filed by the defendant before the Intellectual Property Appellate Board (IPAB) and on account whereof proceedings in this suit were adjourned sine die on 8th September, 2009, are still pending consideration before the IPAB.
3. In this view of the matter, it is not deemed appropriate to dismiss the suit in default, particularly when there is a interim restraint order in favour of the plaintiff and against the defendant in this suit.
4. The counsel for the defendant however states that the order dated 1st July, 2009 of the learned Single Judge granting stay in favour of the plaintiff was set aside by the Division Bench in FAO(OS) No.255/2009 preferred by the defendant thereagainst. He has handed over copy of the said judgment reported at *Nestle India Limited Vs. Mood Hospitality Private Limited* 2010(42) PTC 514 (Del.) (DB) and on enquiry states that the said judgment has attained finality.

5. Rather than keeping the suit adjourned *sine die*, it is deemed appropriate to dismiss the suit in default with liberty however to the plaintiff to apply for revival, if so deemed necessary and appropriate, after the decision of the IPAB.

6. Dismissed in default with liberty aforesaid.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 17, 2016

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