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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 2247/2014, IAs 774/2016 & 22517/2014**

MICROSOFT CORPORATION & ORS Plaintiffs
Through: Mr.Aasish Somasi, Adv.

versus

SHAILESH KESARINATH PATIL & ORS Defendants
Through: Mr. Rahul and Mr. Angad Singh, Advs.
for D-1-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **09.02.2016**

IA 774/2016

1. This is a joint application filed by the plaintiffs and defendant Nos.1 and 2. In the application, the joint applicants have made the following prayers:-

“i) Accept the undertakings given by the Defendant Nos. 1 & 2.

ii) Dismiss the suit as withdrawn as against Defendant Nos. 3 and 4.

iii) Allow Defendant No. 1 and 2 to de-seal the computer systems seized on superdari during the Local Commission;

iv) Record the present terms of settlement as being lawful;

v) Allow the Plaintiffs' counsels to approach the requisite government bodies to remit the costs to the Business Software Alliance, USA in equivalent of US Dollars.

vi) Pass a decree in favour of the Plaintiffs in terms of the present Application under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 as a part of the decree.

Pass any further orders, as this Hon'ble Court deems fit and proper considering the facts and circumstances of the present case."

2. Today learned counsel for the defendant nos. 1 and 2 has tendered a demand draft bearing no.463709 for an amount of Rs.3 lacs in favour of Anand and Anand drawn on HDFC Bank dated 18.12.2015.

3. The amount of Rs.3 lacs which has been tendered by the defendant nos. 1 and 2 to the counsel for the plaintiffs, shall be remitted by the learned counsel for the plaintiffs to Business Software alliance in terms of FEMA notifications, Rules and regulations with the approval of the appropriate authorities in due course.

4. The averments in the application are as under:-

"1. The defendant nos.1 and 2 acknowledge that the plaintiffs are the owners/proprietors of all intellectual property rights in the various software programs developed by the plaintiffs.

2. Defendant nos.1 and 2 undertake to exercise due care and diligence to ensure that no infringement of plaintiffs' copyright subsisting in their software programs will take place in future either by copying and/or using the plaintiffs' software programs without acquiring requisite licences for the same.

3. The defendants undertake before this Hon'ble Court that they shall not use/load/deploy/instal/distribute any of the software programs of the plaintiffs in any manner whatsoever, which may amount to infringement of the plaintiffs' copyright

and further undertake that they will only use licensed versions of the plaintiffs' software programs hereinafter, and will strictly abide by the terms of the End-user license agreement and pertinent Product Use Rights (PURs) accompanying such software programs.

6. Defendant nos.1 and 2 undertake before this Hon'ble Court that the failure of defendant nos.1 and 2 to fulfil their obligations will constitute a breach of the undertakings as herein and will entitle the plaintiffs to institute appropriate legal proceedings in accordance with law.

7. Defendant No. 1 and 2 hereby agree that the present terms of compromise shall be binding on all their principle officers', directors, successors, assigns of the Defendant No. 2 Company for all times to come. Defendant No. 1 and 2 further agree that the Plaintiffs would have the right to institute appropriate proceedings under law including but not limited to execution proceedings, in case the Defendants is proved to be in breach of any of the terms and conditions as contained herein."

5. I note that the application is duly signed on behalf of the plaintiffs and the defendant nos.1 and 2 including their counsels. The application is accompanied by the affidavit of the attorney of the plaintiffs and the attorney of defendant no.1 and also the authorized representative of defendant no.2.

6. In view of the settlement entered between plaintiffs and defendant Nos.1 & 2, the applicants in this application, as reflected above, the undertakings given by the defendants 1 and 2 are accepted. The suit is decree in terms of paras 1, 2, 3, 6 & 7 of the application.

7. The suit is dismissed as withdrawn against defendant nos. 3 and 4. The defendant nos.1 and 2 to de-seal the computer systems seized on superdari during the Local Commission and to clean/delete the

hard drives of their seized computer systems, of all illegal/pirated/unlicensed versions of the Plaintiffs' software programs, if any, within 7 days of hard drives of the disposal of the present application and confirm the same in writing to the Plaintiffs' counsels.

8. Learned counsel for defendants 1 and 2 states that the original documents filed by defendants 1 and 2 on January 14, 2015 be directed to be returned back. He states that defendants 1 and 2 shall replace the original documents by certified copies. Ordered accordingly. Let parties appear before the learned Joint Registrar on 24th February, 2016 at 2.30 pm in that regard.

9. The learned counsel for the plaintiff requests for refund of the court fees. As the issues were not framed, the plaintiff shall be entitled to refund of court fee in terms of Section 16(A) of the Court Fee Act. The application and the suit are disposed of. No order as to costs.

V. KAMESWAR RAO, J

FEBRUARY 09, 2016
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