

\$~10

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

+ **CS(OS) 3427/2014**

DASSAULT SYSTEMS Plaintiff
Through: Mr. Ravin Galgotia, Adv.

versus

UMESH NIVURTTIRAO CHAVAN & ORS Defendants
Through: Mr. S.K. Sarkar, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **17.05.2016**

CS(OS) 3427/2014

1. The parties were referred to the Delhi High Court Mediation and Conciliation Centre by learned Joint Registrar vide his order dated 27th January, 2016. The Delhi High Court Mediation and Conciliation Centre Mediator Mr. Praveen Dahiya has filed the report / settlement agreement dated 11th February, 2016 consisting of 12 pages including 3 Annexures from where it is noted that the parties have settled their *inter se* disputes on the following terms:

“A. That the Defendants acknowledge the Plaintiff to be respective owners/proprietors of all the intellectual Property Rights, including but not limited to the copyrights in the software programs developed by them respectively as detailed in the Plaint.

B. That the Defendants acknowledge that they shall use Plaintiffs software programs in accordance with the

licensing terms applicable with respect to software programs deployed on their computer systems.

C. That the Defendants agree-to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the Business Software Alliance, Inc., USA which is a non-profit organisation of which the Plaintiff is a member and under whose aegis the present suit was filed, in the form of a Demand Draft dated 05.02.2016 bearing No.999192 for an amount of Rs. 1,00,000/-(Rupees One Lakh only) in full and final settlement of the present dispute and the Plaintiff shall not be entitled to claim anything more than what has been agreed between the parties to the suit. The above said Demand Draft has been handed over to Anand And Anand, Advocates (Aasish Somasi, Advocate), the Plaintiffs legal counsel in the presence of authorized representative,' Col. J.K.Sharma at the time of signing of this Settlement Agreement and is in the name of "Anand And Anand, the Plaintiffs legal counsel. The Plaintiffs legal counsel will remit the abovementioned amount in equivalent US\$ to the Business Software Alliance, USA, who is the ultimate beneficiary of the abovementioned amount, in accordance with law after obtaining permission from the appropriate authorities. The Plaintiff to the present suit has no objection to the entire amount being remitted in favor of the Business Software Alliance, USA and accordingly authorize their legal counsel Anand And Anand, Advocates to remit the said amount out of the funds so collected from the Defendants. Business Software Alliance has no Permanent Establishment in India and as such, does not earn any taxable income in India in view of the Double Taxation Avoidance Treaty between India and the USA. Copy of the said Demand Draft is annexed herewith as ANNEXURE-C.

D. That the Defendants agree that the Plaintiff would be entitled to conduct unannounced audits of the software of the Plaintiff contained on the computer systems of the Defendants at any or all of the premises of the Defendants within the next 5 years.

E. That the Defendants undertake and agree that they would be liable to pay damages, if they are found to be in breach of any of their abovementioned undertakings at any time in future. Additionally, the Defendants shall be liable to purchase the licenses for the software programs found to be in use in terms of the shortfall. Both the parties agree that either would have the right to institute appropriate proceedings under law including but not limited to execution proceedings, in case they are found to be in breach of any of the terms and conditions as contained herein.

F. The Plaintiff has no objection if the computer systems sealed by the Ld. Local Commissioner are de-sealed and released back to Defendants. The Defendants undertake to clean their computer systems of any unauthorised/unlicensed software programs of the Plaintiffs within 3 days of the de-sealing.

G. That the Defendants agree to be bound by the Plaintiff Prayer for permanent injunction restraining the Defendants their principal officers, directors, agents, franchisees, servants, and all others acting for and on their behalf, from directly or indirectly using for any kind of computer related activities or otherwise in any other manner, any rated/counterfeit/unlicensed software of the Plaintiff, or reproducing and distributing any pirated/counterfeit/unlicensed software of the Plaintiff in contravention of the terms of the End- User License Agreement (s), or infringing in any other manner or causing or enabling or assisting others to infringe the copyrights of the Plaintiff in their computer programs and related manuals; as prayed for in paragraph 40(a) of the Plaint.”

2. I note that the settlement agreement dated 11th February, 2016 is signed by the authorized representative of the plaintiff and the authorised

representative of the three defendants, their counsels and the learned Mediator.

3. The parties undertake to be bound by the settlement agreement and to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future. The undertaking is taken on record.

4. The settlement agreement also stipulates that the first party, i.e., plaintiff shall be entitled to the refund of Court Fee under Section 16 of the Court Fees Act, 1870 read with Section 89 of the Code of Civil Procedure, 1908.

5. Since the parties have *inter se* settled their disputes through process of mediation and that too at the pre-evidence stage, the plaintiff shall be entitled to the refund of Court Fees under Section 16 of the Court Fees Act, 1870.

6. The suit is disposed of

IA 22162/2014

Dismissed as infructuos.

V. KAMESWAR RAO, J

MAY 17, 2016

ig