

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 1159 OF 2016

NT Diagnostic Centre Pvt. Ltd.)
 Having its office at 11-12, 1st Floor,)
 Rose Flower Valley, Birla College Road,))
 Khadakpada, Kalyan (West) – 421 301)Plaintiff

Versus

Nucleus Diagnostic Centre Pvt. Ltd.)
 having its address at Vikas Paradise,)
 Comm Wing,Behind Santoshi Mata Mandir,))
 Below Axis Bank, LBS Road,)
 Mulund (West), Mumbai 400 080.)Defendant

CONSENT TERMS

The Plaintiff had filed captioned suit for the acts of infringement of the Plaintiff's Registered Trade mark "NUCLEUS THE DIAGNOSTIC CENTRE" bearing the registration No. 1993867 in class 44 by the Defendants and passing off due to use of impugned mark "NUCLEUS DIAGNOSTIC CENTRE" and company name "NUCLEUS DIAGNOSTIC CENTRE PVT. LTD." The Plaintiff and Defendant filed their separate notice of motions in the matter. Contempt Proceedings are also filed by the Plaintiff. The Plaintiff and the Defendant have now amicably settled dispute in the above Suit and have arrived at following terms of settlement:

1. The Defendant admits and acknowledges all the claims made by the Plaintiff in the
plaint and has accordingly agreed to suffer decree in terms of prayer clause (a) and
(b), which reads as follow:
 - a. that this Hon'ble Court be pleased to restrain the Defendant by
themselves and/or through its directors, partners, proprietors,

servants, agents, franchisee holders, employees and/or otherwise howsoever by an order of perpetual Injunction of this Hon'ble Court from in any manner using in relation to any pathology and / or diagnostic services, the impugned Trade Mark "Nucleus Diagnostics Centre" and / or Company name "Nucleus Diagnostic Centre Pvt. Ltd." as shown in Exhibit-E and E1 hereto and/or any other word or mark, which is identical with and/or deceptively similar in any manner whatsoever to the Plaintiff Registered Trade Mark "Nucleus The Diagnostic Centre", so as to infringe the Plaintiff registered trade mark "Nucleus The Diagnostic Centre" bearing registration no.1993867 being Exhibit "B" hereto;

- b. that this Hon'ble Court be pleased to restrain the Defendant by itself and/or through its directors, partners, proprietors, servants, agents, franchisee holders and/or otherwise howsoever by an order of perpetual Injunction of this Hon'ble Court from in any manner using in relation to any pathology and / or diagnostic services, the impugned Trade Mark "Nucleus Diagnostics Centre" and / or Company name "Nucleus Diagnostics Centre Pvt. Ltd." as shown in Exhibit 'E' and "E1" hereto and/or any other mark, which is identical and / or similar to the Plaintiff's Trade Mark titled as "Nucleus The Diagnostic Centre" as shown in Exhibit "B" hereto, so as to pass off Defendant's services as that of the Plaintiff in any manner whatsoever;

2. Without prejudice to the aforesaid prayers (a) and (b), the Plaintiff specifically permits the Defendant and / or Defendant's licensees and / or any other persons claiming through the Defendant as mentioned in the Defendant's affidavit in support of Defendant's Notice of Motion as follows:

(a) The Defendant is permitted to use the impugned mark “NUCLEUS DIAGNOSTIC CENTRE” and / or impugned company name “NUCLEUS DIAGNOSTIC CENTRE PVT. LTD.” in respect of Defendant’s laboratory / centre situated at Charms Star Building, Shop No. 10 and 11, First Floor, Above SBI Bank, Bail Bazar, Kalyan (West) – 421 301 till 11.02.2017. The Defendant undertakes not to use impugned mark or impugned company name and / or any other deceptively similar name to the Plaintiff’s mark “NUCLEUS THE DIAGNOSTIC CENTRE” after 11.02.2017 within Kalyan and / or Dombivli region.

(b) The Defendant is specifically permitted to use the impugned company name “NUCLEUS DIAGNOSTIC CENTRE PVT. LTD.” and / or impugned mark “NUCLEUS ~~THE~~ DIAGNOSTIC CENTRE” in relation to following centers till the period of 23.07.2017 and / or till the period of obtaining PCPNDT (Pre Conception Pre-natal Diagnostic Technique) from BMC or TMC, as the case may be. The addresses mentioned in the Defendant’s affidavit dated 10.01.2017 are as follows:

- (i) 104, Beauty Arcade, Kolbad Road, Khopat, Thane (West), Maharashtra.
- (ii) Vikas Paradise, LBS Road, Mulund (West).
- (iii) 2nd Floor, Neurogen Brain & Spine Institute, Plot No. 19, Sector 40, Opp. Rail Vihar, Seawoods (West), Navi Mumbai.
- (iv) Shop No. 1, Ground Floor, Chandiwala Apartment, Near Noor Masjid, Dr. Ansari Road, 2nd Rabodi, Thane (West).
- (v) Seawoods (East), Navi Mumbai (Licensor Suneet V. Shende)

(c) The Defendant specifically and categorically undertakes to apply within a period of two weeks from the date of signing of these Consent Terms for PCPNDT registration under new name / new Trade Mark;

- (d) The Defendant specifically and categorically undertakes that even if, PCPNDT registration is not granted or even if the Defendant fails to obtain any permission on or before 23.07.2017, the Defendant shall not use the impugned mark or impugned company name after 23.07.2017. The Defendant undertakes not to seek any extension of time under any reason whatsoever.
- (e) The Defendant undertakes to withdraw within a period of 15 days all the Trade Mark applications made by the Defendant including the Trade Mark Applications bearing numbers 3408324, 3452340 filed in relation to impugned mark or impugned company name.
- (f) The Defendant undertakes to write a letter of withdrawal of the cancellation / rectification petition filed by the Defendant challenging the validity of the Plaintiff's registered Trade Mark 1993867 in class 44 within a period of 15 days from the date of signing of these Consent Terms. The Defendant further undertakes not to challenge the Plaintiff's rights in any manner whatsoever in future.
- (g) The Defendant shall confirm the compliance clauses 2(a), 2(b), 2(e) and 2(f) by writing letter to the advocates of the Plaintiff within a period of 7 days from compliance of the aforesaid terms.
3. The Defendant undertakes that after adopting a new mark / new trade name and / or company name, the Defendant shall not show any connection with the impugned mark and impugned company name to claim the association with the same by having any reference in advertisement or promotion. The Defendant acknowledges that any such use of the impugned mark or impugned company

name while advertising new company name or new Trade Mark may amount to riding on the Plaintiff's goodwill and reputation.

4. The Defendant unconditionally admits and acknowledges the statutory and common law rights of the Plaintiff with respect to the trade mark "NUCLEUS THE DIAGNOSTIC CENTRE".
5. As regards to prayer clause (d), the Defendant is permitted to use the stationary bearing the impugned mark and impugned company name till 23.07.2017. The Defendant undertakes to destroy the remaining stationary and other material as mentioned in prayer clause (d), if any, on 24.07.2017 in presence of Plaintiff's representative. The stationary and other material in relation to Kalyan Centre can be used by the Defendant only till 11.02.2017.
6. In view of the above undertaking and settlement, the Plaintiff does not press for damages as mentioned prayer clause (c).
7. The Court Receiver to stand discharged without passing of accounts, but on payment of his dues and charges.
8. The Consent Terms are signed by the persons, who have authorization / board resolution to sign these Consent Terms. A copy of the respective authorization is annexed hereto.

**For NT diagnostic Centre Pvt.
Ltd.**

**For Nucleus Diagnostic
Centre Pvt. Ltd.**

Authorized signatory
(Plaintiff)

Managing Director
(Defendant)

Advocate for Plaintiff

Advocate for Defendant

Place: Mumbai.
Date: 24-01-2017.

Place: Mumbai.
Date: 24-01-2017.

