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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 238/2017

M/S ALLIED BLENDERS AND DISTILLERS PVT. LTD.

..... Plaintiff

Represented by: Ms. Abhilasha Nautiyal, Ms.
Pankhuri Malik, Ms. Vijay
Laxmi, Advs.

versus

MR. GAURAVH MALHOTRA & ORS

..... Defendant

Represented by: Ms. Kritika Sahni, Adv. for
D-1 with ARs of D-2&3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
13.10.2017

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CS(COMM) 238/2017

1. Parties have settled the matter before the Delhi High Court Mediation and Conciliation Centre vide the settlement agreement dated 8th September, 2017 on the following terms and conditions.

“a) The Second, Third and Fourth Parties hereby duly acknowledge the First Party’s rights in its distinctive trademark ‘Officer’s Choice’ label, registered in the name of the First Party including under Nos. A-54982/98 and A-57173/99 more particularly, shown in para 12 of the plaint in CS(COMM) No. 238/2017.

b) The Second, Third and Fourth Parties hereby declare that they have ceased to use the impugned label as shown in para 27 of the plaint in CS(COMM) No. 238/2017 for all its products after the receipt of the ex-parte ad-interim injunction order dated 29.03.2017.

- c) *The Second, Third and Fourth Parties further agree and assure the First Party that they shall not use the said impugned label in future.*
- d) *The Second and Third Parties hereto duly confirm that the Fourth Party has a valid and subsisting excise approval for the impugned label on behalf of the Third Party and the Fourth Party is only a bottler on behalf of the Third Party and does not possess any proprietary rights in the impugned label which exclusively belongs to the Third Party and to none else.*
- e) *The Second, Third and Fourth Parties further agree that they shall not apply for the renewal of the impugned label in future nor shall the said Second, Third and Fourth Parties manufacture or sell any product bearing the impugned label.*
- f) *The Second, Third and Fourth Parties further declare, assure and confirm to the First Party that they have not filed any application for registration of the impugned label as a trade mark and will not do so, either for the said impugned label, or any other label deceptively similar to the First Party's label, namely, "Officer's Choice" as mentioned in para (a) of this Settlement Agreement.*
- g) *The Third Party hereby declares and confirms that it has adopted a new label for its products, which is annexed herewith as Annexure D.*
- h) *The First Party declares that it has no objection whatsoever in the Second, Third and Fourth Parties using the aforesaid new label for its products throughout India and for export in any jurisdiction.*
- i) *The parties hereto agree and the First Party declares that the Second, Third and Fourth Parties are free to adopt any trademark containing two or more words which may commence with the alphabet "O" and/ or "C". However, the Second, Third and Fourth Parties hereby agree and undertake that the said trademark shall not be deceptively similar to the trademark "Officer's Choice" and / or its label of the First Party nor shall the said Second, Third and Fourth Parties abbreviate a mark including the mark "Oasis Classic" to "OC" while marketing*

their products and further the Second, Third and Fourth Party shall not highlight or give prominence to the letters “O” and “C” together for any of their trademarks including “Oasis Classic”.

j) The Second, Third and Fourth Parties further agree and undertake that all packaging, printed materials, stationery, promotional material, brochures, pamphlets, letter heads, visiting cards, goods, stickers, cartons, dies, blocks, labels, articles, and any other material of the said parties bearing the impugned label shall not be used to manufacture and or market any further products and the last lot remaining with the Second Party with respect to the impugned label is 5393 cases only. However, the Second, Third and Fourth Parties shall be entitled to exhaust the said stock of 5393 cases already in their power and possession bearing the impugned label by selling it to the Telangana State Beverages Corporation limited within 60 days from the date when order in pursuance of this Settlement Agreement is passed by the Hon’ble Court.

k) It is clarified between the parties hereto that the restraint upon the Second, Third and Fourth Parties to sell beyond a period of 60 days from the date of recording of this Settlement Agreement shall be restricted only to sale by the said party and not to the subsequent sale by Telangana State Beverages Corporation Limited.

l) The First Party hereto agrees and undertakes that it shall not do any act against or prejudicial to the business interest of the Second, Third and Fourth Parties inasmuch as the First Party shall not make, use or publicize the contents of the present settlement entered into between the parties by way of circulating the same either in print or through any electronic medium and/ or through any other means so as to harm the business reputation and goodwill of the said Second, Third and Fourth Parties save and except for filing the said Settlement Agreement including any consequent order passed whereupon in court proceedings, trademark authorities and regulatory authorities.

m) The First Party hereby agrees and undertakes to seek modification of ad interim ex-parte order dated 29.03.2017 passed in CS(COMM) No. 238/2017 so as to permit the second, Third and Fourth Parties to dispose of its stocks in the manner contained in para (j) of this Settlement Agreement.

n) The parties hereto agree that the undertakings of the representatives of the First Party and the representatives of the Third and Fourth Parties including the Second Party shall bind the respective companies/ entities and their directors, officers in charge of the day-to-day affairs of the said company/ entity.

*o) The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement. *

p) By signing this Settlement Agreement, the parties hereto state that they have no further claim(s) or demand(s) against each other and all the disputes and differences have been amicably settled by the Parties hereto through the process of mediation.

q) That the parties hereto undertake before the Hon'ble High Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future."

2. On behalf of the plaintiff (the first party) the settlement agreement has been signed by Mr. Pradeep Kumar Bajpai authorization in whose favour has been issued by Mr. Ritesh Shah, constituted attorney of M/s. Allied Blenders and Distellers Pvt. Ltd. authorization in whose favour has also been annexed with the settlement agreement. The settlement agreement is also signed by Mr. Gaurav Malhotra defendant No.1 (the second party) in the suit on his behalf and also as authorized representative of Oasis Distilleries Limited/ defendant No.2 in the suit (third party). Authorization in favour of Mr. Gaurav Malhotra in the form of resolution of Board of Directors of M/s. Oasis Distilleries Limited is annexed as Annexure B to the

settlement agreement. The settlement agreement is also signed by Shri Anil Vanjani on behalf of M/s. Kapitan Distilleries/ defendant No.3 in the suit (fourth party) authorization in whose favour is annexed as Annexure C to the settlement agreement. Mr. Pradeep Kumar Bajpai, Mr. Gaurav Malhotra and Mr. Anil Vanjani are present in Court and are duly identified by their respective counsels. They affirm the terms of settlement noted above and undertake to abide by the same.

3. The suit is accordingly decreed in terms of the settlement noted above. The decree sheet will incorporate the terms of settlement. Court fees be returned to the plaintiff under Section 16 of the Court Fees Act.

IA 3971/2017 (u/O XXXIX R 1&2 CPC)

Dismissed as infructuous.

OCTOBER 13, 2017

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MUKTA GUPTA, J.