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

+ **CS(COMM) 765/2016**

LOTUS HERBALS PRIVATE LIMITED

..... Plaintiff

Represented by: Mr. Mohan Vidhani, Mr. O.P. Bansal, Mr. Ashish Singh, Advs. with Mr. D.K. Gupta, A.R. in person.

versus

ASEEM SOOD & ANR

..... Defendant

Represented by: Ms. Samreen Khan, Adv. with Mr. B.P. Sood, A.R. of D-1 in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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18.09.2017

1. Parties have settled the matter before the Delhi High Court Mediation and Conciliation Centre on 29th November 2016 on the following terms and conditions:

“i) *That the Second Party admits the proprietary rights of the trade marks of the First Party, and their validity, as per the details given herein below, and undertakes not to challenge the validity of the said trade marks or trade marks applications in future.*

Trade Mark	Appl. No.	Class	Appln. Dt.	Description of Goods	Status
PHYTO-RX	1819758	35	19/05/2009	Advertising Business Administration	Regd.

				<i>and Business Management Activities including Distribution Marketing and Trading Services.</i>	
<i>PHYTO-RX</i>	<i>1819761</i>	<i>5</i>	<i>19/05/2009</i>	<i>Medicinal, Ayurvedic & Pharmaceutical preparations</i>	<i>Pending</i>
<i>PHYTO-RX</i>	<i>1819763</i>	<i>3</i>	<i>19/05/2009</i>	<i>Cosmetic preparations, Perfumes, Toilet and Bath Lotions & Beauty and Health Care preparations</i>	<i>Regd.</i>
<i>PHYTORX (Logo)</i>	<i>2176680</i>	<i>3</i>	<i>18/07/2011</i>	<i>Cosmetic Preparations, Perfumes, Toilet And Bath Lotions & Beauty and Health Care preparations.</i>	<i>Regd.</i>

- ii) *The Second Party undertakes not to challenge the validity or ownership of the trademark PROVEDA of the First Party.*
- iii) *That the Second Party further undertakes not to file any application for the registration of the trademark PHYTO-RX/PHYTORX/PHYTO RX and PROVEDA in respect of goods or services.*
- iv) *That the Second Party undertakes to withdraw all the applications for the registration of the trademark PROVEDA and PHYTO-RX/PHYTORX/PHYTO RX, if filed with the office of Registrar of Trade Marks within the period of one week from the date of this agreement with an intimation to the first party.*

- v) *The Second Party undertakes that it shall not, whether directly or indirectly, by itself or through its officers, employees, partners, affiliates, agents, distributors and/or servants use (i) any of the Plaintiff's trade marks being PHYTO-RX/PHYTORX/PHYTO RX in relation to the any goods or services which could be considered identical and/or similar to the goods and services of the First Party including goods and services under Classes 3,5,35,42 and 44; and/or (ii) any other identical and/or deceptively similar name, mark, style, corporate name, domain name and/or logo which is identical with or deceptively similar to PHYTO-RX/PHYTORX/PHYTO RX marks, or First Party's trade name, domain name, corporate name as detailed in the plaint in any manner associated with the goods and services of the First Party.*
- vi) *The packings/ packing material, labels, advertisement/ promotional material, tubes, bottles, capsules, kits, etc. bearing the trade mark PHYTO-RX/PHYTORX/PHYTO RX including the unsold stock lying with the Second Party shall be destroyed in the presence of representatives of the First Party after removing the contents thereof, the expenses of which will be borne by the Second Party solely. The second party shall provide all the assistance for the execution of the said destruction at its own cost and expenses. The peaceful execution of the above said destruction shall be carried out within a period of two weeks from the date of signing of this settlement agreement at a mutual convenient date.*
- vii) *The second party confirms that he is using the name PROVEDA only as a firm name/ trade name/ corporate name and not as a trade mark, and he undertakes not to use the said name PROVEDA as a trade mark in future.*
- viii) *The first party has no objection if the second party uses the name PROVEDA only as part of its firm name/ trade name/ corporate name.*
- ix) *The Second Party agrees and confirms that in its aforesaid use of the name PROVEDA as part of its firm*

name/ trade name/ corporate name, Second Party shall not prominently highlight the words PROVEDA, in a different colour or a bigger font, which in a manner may be construed as a trade mark, and shall use the same in a reasonable font size in which trade names/ corporate names are generally represented.

- x) That the second party undertakes to pay a sum of ₹20,000/- (Rupees Twenty Thousand Only) as token damages to the First Party within two weeks from the signing of the present Settlement Agreement.*
- xi) The parties, their agents, successors, licensees, officers, partners shall be bound by the terms of the present Settlement Agreement.”*

2. The settlement agreement is signed by Shri D.K. Gupta on behalf of the plaintiff authorization in whose favour is at Annexure A to the settlement agreement. Settlement agreement is also signed by Shri B.P. Sood, authorized representative of defendant No.2 as well as duly authorized by defendant No.1, authorization in whose favour is at Annexure B to the settlement as also page 2 filed on 8th September, 2017.

3. Mr. D.K. Gupta and Mr. B.P. Sood, the authorized representatives of the plaintiff and defendant are present in Court and affirm the settlement so arrived at between the parties and undertake to abide the same. Mr. D.K. Gupta and Mr. B.P. Sood have signed the order sheet in acknowledgement of their statement made above.

4. Suit is decreed in terms of the settlement noted above. Decree sheet will incorporate the terms of settlement. Court fees be returned under Section 16 of the Court Fees Act.

IA 7696/2016 and IA 12731/2016

Disposed of as infructuous.

MUKTA GUPTA, J.

SEPTEMBER 18, 2017

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