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

+ CS(COMM) 835/2016

MAX HEALTH CARE INSTITUTE LTD Plaintiff
Represented by: Mr. Manish Dhir, Adv.

versus

MAX SUPER SPECIALITY HOSPITAL AND
RESEARCH CENTER PVT LTD. Defendant
Represented by: Ms. Jaipriti S. Jadeja, Mr.
Amit A. Pai, Adv. for
Mr. Sudhanshu
Chaudhari, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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04.08.2017

IA 8639/2016 (u/O VI R 17 CPC)

By this application the plaintiff seeks to amend the memo of parties by amending the name of the defendant to its present corporate name i.e. 'Health At One Stop Hospital Pvt. Ltd.'.

Notice. Learned counsel for the defendant accepts notice. Learned counsel for the defendant has no objection to the amendment in the memo of parties in view of the change in the name of the defendant. Consequently the defendant be now impleaded as 'Health At One Stop Hospital Pvt. Ltd.' instead of 'Max Super Speciality Hospital and Research Centre Pvt. Ltd.'.

Amended memo of parties is taken on record.

Application is disposed of.

IA 8638/2017 (u/O XXIII R 3 CPC)

By this joint Application filed on behalf of the plaintiff and the defendant under Order XXIII Rule 3 CPC the parties seek disposal of the suit in terms of the settlement. The settlement agreement is taken on record granting leave to decree the suit in terms of the settlement.

Application is disposed of.

CS(COMM) 835/2016

Parties have entered into a settlement and have filed a joint Application being IA No. 8638/2017 incorporating the terms of settlement arrived at between the parties as under:

- a. The Defendant admits and acknowledges the Plaintiff's rights in the trade marks MAX HOSPITAL/ MAX HEALTHCARE/MAX PHARMACY/ MAX CHEMISTS and other trade marks and names containing the word MAX in relation to healthcare services and also other related services including and not limited to Pharmacy services in India and also the entire world.
- b. The Defendant agrees not to object to or oppose any of the Plaintiffs' trade mark application for the mark MAX HOSPITAL/ MAX HEALTHCARE/MAX PHARMACY/ MAX CHEMISTS and other trade marks and names containing the word MAX in relation to healthcare services and also other related services or any other trade mark containing MAX, either in full or part, or use of any of the said marks of the Plaintiff or its associated concerns anywhere in the world.
- c. The Defendant Undertakes to comply with the Orders and directions of the Hon'ble Court passed on July 18, 2016 and undertakes never to Market, advertise and sell/ provide any services either by itself and/ or through any

third party, or clients of such a third party, any product / service whatsoever under the name 'MAX SUPER SPECIALITY HOSPITAL/ MAX SUPER SPECIALITY HOSPITAL AND RESEARCH CENTRE PRIVATE LIMITED' or any other mark/ name which is a fraudulent or obvious imitation thereof and/or are deceptively or confusingly similar thereof to the Plaintiff's well known trade mark 'MAX/ MAX HOSPITAL/ MAX HEALTHCARE'.

- d. The Defendant represents that it has already taken steps to amend its corporate name MAX SUPER SPECIALITY HOSPITAL AND RESEARCH CENTRE PRIVATE LIMITED, before the Registrar of Companies, in accordance with the Order dated July 18, 2016 of this Hon'ble Court. The Defendant hereby files a copy of the fresh Certificate of Incorporation containing the amended name of its company as Annexure A.
- e. The Defendant represents that it has amended the name of its Hospital from MAX SUPER SPECIALITY HOSPITAL to Navdip Super Speciality Hospital (A unit of Health At One Stop Hospital Pvt. Ltd.), in compliance of the Order dated July 18, 2016 of this Hon'ble Court. The Defendant further represents that it has amended all the sign-ages, bill boards, marketing material, stationary and other equipment containing its hospital's name or its corporate name, to remove the word MAX. The Defendant hereby files copies of the documents and pictures showing the above change as Annexure B. It is further submitted that a formal application to record the above change of name of the Defendant has also been filed in the present Suit.
- f. The Defendant further represents that it has amended of the name of its Hospital from MAX SUPER SPECIALITY HOSPITAL to Navdip Super Speciality Hospital (A unit of Health At One Stop Hospital Pvt.

Ltd.), before various local authorities and bodies, governing the running of healthcare facility in the State.

- g. The Defendant represents that it has already stopped the operation of their domain name www.maxhospital.org and have brought down the contents of the same. The Defendant further agrees to transfer the aforementioned Domain name to the Plaintiff, without any cost or compensation. The Defendant Undertakes to sign and execute any additional document/ deed and provide all necessary assistance for affecting the transfer of the above mentioned domain name.
- h. The Defendant represents that it and its Directors/ Partners had filed the following trade mark applications before the Registrar of Trade Marks, India:

Trade Mark	Application No.	Classes	Applicant
	3213873	5	Max Super Speciality Hospital and research Centre Private Limited
	3213874	35	
	3213875	42	
	3213876	44	
max cancer care	3213877	44	Dr. Navin Rajendra Kasliwal
MAX NEURO CARE	3213878	44	Dr. Devdutt Suresh Deshmukh

The Defendant represents that it has taken steps to withdraw the above mentioned trade marks applications, filed in its own name and also in the names of its Directors/ Partners. The copies of the withdrawal letters filed before the Trade Marks registry along with the filing receipt of the same are annexed hereto as Annexure C. The Defendant and its Directors/ Partners undertake to assist the Plaintiff to have the applications withdrawn at the cost of the Defendant.

- i. The Defendant represents that other than the trade mark applications mentioned in paragraph 3(h) above, neither the Defendant itself, nor any of its Directors/ Partners have filed any application for registration of the name 'MAX SUPER SPECIALITY HOSPITAL/ MAX SUPER SPECIALITY HOSPITAL AND RESEARCH CENTRE PRIVATE LIMITED' or any other mark/ name which is obvious imitation thereof and/or are deceptively or confusingly similar thereof to the Plaintiff's well known trade mark 'MAX/ MAX HOSPITAL/ MAX HEALTHCARE', either before the registrar of Trade Marks, registrar of Companies or any other govt. or private authority or body either in India or abroad.
- j. The Defendant and its Directors/ Partners undertake that they shall never file any such application for registration of the any application for registration of the name 'MAX SUPER SPECIALITY HOSPITAL/ MAX SUPER SPECIALITY HOSPITAL AND RESEARCH CENTRE PRIVATE LIMITED' or any other mark/ name which is obvious imitation thereof and/or are deceptively or confusingly similar thereof to the Plaintiff's well known trade mark 'MAX/ MAX HOSPITAL/ MAX HEALTHCARE', either before the registrar of Trade Marks, registrar of Companies or any other govt. or private authority or body either in India or abroad.

- k. The Defendant undertakes that the Defendant Company, its successors, assigns, representatives, directors, partners, employees, agents, will be bound by the terms of settlement as agreed hereunder and shall make all efforts to honor the said terms with true spirit. The Defendant further agrees and undertakes to assist the Plaintiff, by taking such steps as may be required to honor the terms of settlement. The Defendant acknowledges that any violation of the present settlement terms shall amount to Contempt of Court and it shall be liable for all consequences, as per the order/directions of the Hon'ble Court.
- l. The Defendant has agreed to compensate the Plaintiff by paying a sum of Rs. 1,50,000/- towards their costs and litigation expenses for the present suit. The Defendant has in this respect handed over a demand draft no. 055020 dated 24-10-2016 of Central Bank of India for the above amount to the Plaintiff, the receipt of which is hereby acknowledged by the Plaintiff.
- m. The Defendant further undertakes that in case it is found to be in violation of the above terms, it shall be liable to pay liquidated damages to the tune of Rs. 20,00,000/- to the Plaintiff.
- n. In view of the terms of settlement, the Parties agree that a decree of permanent & mandatory injunction in terms of prayer clauses A and B of the plaint shall be passed and the present application shall form a part of the decree.
- o. That the above mentioned compromise terms shall bind both the Parties, their successors, assigns, agents, respective directors/partners/ representatives as the case may be.

Terms of settlement as incorporated in IA 8638/2017 are supported by the affidavit of Rakesh Prusti constituted attorney of the plaintiff who has been duly authorized and power of attorney in whose favour has been filed at pages 628 of the documents file. On behalf of the defendant application is supported by the affidavit of Dr. Devdutt Deshmukh, authorization in whose favour is annexed at pages 26 to 28 of IA 8638/2017.

The suit is decreed in terms of the settlement arrived at between the parties. The decree sheet will incorporate the terms of settlement as noted above.

IA 8221/2016 (u/O XXXIX R 1&2) & IA 2640/2017 (u/O XXIII R 3 CPC)

Learned counsel for the plaintiff seeks leave to withdraw the applications.

Applications are dismissed as withdrawn.

MUKTA GUPTA, J.

AUGUST 04, 2017

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