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

+ **CS(OS) 2400/2009**

**M/S J.C. BAMFORD EXCAVATORS
LIMITED AND ANR**

..... Plaintiffs

Represented by: Ms. Vaishali Mittal, Ms.
Geetanjali Viswanathan,
Mr. Siddhant Chamola,
Advocates.

versus

LIUGONG INDIA PVT LTD AND ANR Defendants

Represented by: Mr. Peeyoosh Kalra and
Mr. Vineet Rohilla,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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03.08.2017

I.A. No. 8180/2017 (under Order XXIII Rule 3 CPC)

1. By this joint application by the plaintiffs and the defendants under Order XXIII Rule 3 CPC, the plaintiffs and defendants seek disposal of the suit in terms of the settlement arrived at between the parties.

2. Settlement agreement incorporated in the application is taken on record and the application is disposed of permitting the suit to be decreed in terms of settlement arrived at between the parties.

CS(OS) 2400/2009

1. The plaintiffs and defendants have entered into a settlement. Terms of settlement have been incorporated in I.A.8180/2017 which is

duly supported by the affidavit of Shri Sanjeev Arora, authorized representative of the plaintiffs No. 1 and 2. The necessary authorization in favour of Shri Sanjeev Arora is at pages 26-27 of Part-III documents file. The joint application is also supported by the affidavit of Shri Wu Song on behalf of the defendant Nos. 1 and 2 and the authorizations in his favour have been placed on record at page 24-25 respectively of the documents file Part –III.

2. Parties have entered into a settlement on the following terms and conditions:

- a) *The Defendants confirm that apart from the CLG 777 Backhoe Loader models imported into India for the purpose of exhibiting at the EXCON, 2009, they due to their own independent commercial decision, have neither manufactured nor sold the said Backhoe Loader model with impugned designs and copyrights in India or anywhere in the world since the year 2011. The Defendants further undertake that they will not in future manufacture or sell the CLG 777 Backhoe Loader model with impugned designs and copyrights either in India or anywhere in the world.*
- b) *During the pendency of the present proceedings, the Defendants have further manufactured a new model of Backhoe Loader namely CLG 777A, which is a newer and an amended version of CLG 777 Backhoe Loader.*
- c) *Plaintiffs agree to withdraw the present lawsuit on the basis of the assurances given by the Defendants that the CLG 777A model does not infringe any of Plaintiffs' registered designs and copyrights. Plaintiffs further undertake not to file legal action against the Defendants for its new model of Backhoe Loader namely CLG 777A. The Defendants in view of this agree to take all steps*

necessary to withdraw their existing challenge and not to submit any further challenge to Plaintiff No. 2's registered designs.

d) The Defendants hereby agree and undertake they shall withdraw the existing challenge(s), which are pending against the Plaintiff's registered designs. The Defendants further agree and undertake to withdraw the Post Grant Opposition filed against Patent number 251037 (formerly Indian Patent Application No: 2018/DELNP/2005) before the Controller of Patents in Delhi in the Patent Proceedings, as agreed between the parties. The parties agree that the Defendants shall withdraw the existing challenge and also withdraw the Post Grant Opposition against patent number 251037 within 14 days of the present application being allowed by this Hon'ble Court.

e) In light of the aforementioned confirmation and undertakings, the Plaintiffs agree that they would not further prosecute the present suit. The plaintiffs further give up their claim for damages and costs as prayed for in paragraph 31 (e) and (f) of the present suit.

f) The Plaintiffs further agree and undertake not to interfere in the manufacture or sale of the Defendants CLG 777A Backhoe Loaders worldwide

g) All the aforesaid undertakings will be binding henceforth on the Plaintiffs and Defendants, their legal heirs and representatives and assigns in business.

3. Suit is thus decreed in terms of the settlement as noted above in favour of the plaintiffs and against the defendants. Decree sheet will incorporate the terms of settlement.

I.A. Nos. 25623/2015 (under Order XXVI Rule 9, 10, 10A CPC by plaintiff) and 5005/2014 (under Section 151 CPC by plaintiff)

Applications are dismissed as infructuous.

MUKTA GUPTA, J.

AUGUST 03, 2017

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