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

+ **CS(COMM) 1451/2016**

M/S ALLIED BLENDERS AND DISTILLERS PVT LTD

..... Plaintiff

Represented by: Mr. Sanjay Chabbra, Ms.
Abhilasha Nautiyal, Ms.
Pankhuri Malik, Advs.

versus

NEERAJ KUMAR AGARWAL & ORS

..... Defendant

Represented by: Mr. Samreen Khan, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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06.09.2017

IA 9904/2017 (u/O XXIII R.3 CPC)

By this joint application the plaintiff and defendant Nos. 1 to 3 seek decree of the suit in terms of the settlement. The settlement is taken on record and the suit is decreed in terms thereof.

Application is disposed of.

CS(COMM) 1451/2016

Parties have settled the matter, the terms whereof have been recorded in IA 9904/2017 as under:

- i. The Defendants confirm to the Hon'ble Court that they have ceased using the impugned mark and label for BLUE SHEEP whisky which was used by the Defendants prior to injunction order dated October 25, 2016. The said label (hereinafter 'Old Label') is reproduced below:*



- ii. The Defendants confirm to the Hon'ble Court that they have changed their packaging to a new label (hereinafter 'New Label'), as depicted below. The new Label is also annexed herewith as **Annexure A**:*



- iii. The Defendants undertake to the Hon'ble Court that they will not manufacture, sell, offer for sale, export,*

distribute, advertise, directly or indirectly deal in goods or services of any description bearing the Old Label and/ or any other mark or label which is identical/ deceptively similar to the Plaintiff's trademark registration no. 2159743;

- iv. The Defendants confirm to the Hon'ble Court that all Excise approvals for the Old Label have expired as of their signing the present application. The Defendants confirm that they do not have any Excise approvals or pending applications for Excise approvals for the Old Label or any other mark which is deceptively similar to the Plaintiff's trademarks stated above, including any mark or label which is identical/ deceptively similar to the Plaintiff's trademark registration no. 2159743;*
- v. The Defendants further undertake to the Hon'ble Court 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 Defendants bearing the Old Label are not in use any longer. The last lot number of the Defendants' goods sold bearing the Old Label is Batch 002 / 003 October'2016. Details of the quantity of goods bearing the Old Label with the Defendants' retailers are enclosed as Annexure A and the same shall be destroyed in the presence of a representative of the Plaintiff at Dehradun & Roorkee in last week of August' 2017.*
- vi. The Defendants confirm to the Hon'ble Court that they have not applied for registration of the Old Label or any other mark or label which is deceptively similar to the Plaintiff's trademarks/ labels before the Trademarks and/or Copyright Registry and undertake to the Hon'ble Court not to do so in the future.*

vii. The Defendants undertake to pay the Plaintiff INR 10 lakh in case of breach of the terms of the present settlement by any of the Defendants as compensation for the harm caused to the Plaintiff by such breach.

viii. The Plaintiff and Defendants agree that they have no other claims against each other and agree that the present suit may be decreed on the basis of the above terms. ”

Application is duly signed by Shri Ritesh Shah, authorized signatory of the plaintiff, authorization in whose favour is at pages 408 to 422 of the documents file. Application is also signed by defendant No.1 in his own behalf and on behalf of defendant No.2 and 3, authorization in whose favour is at Annexure B and C of IA 9904/2017.

Learned counsel for the defendant states that the undertaking of the defendants as noted in clause (v) above regarding destruction of the goods bearing the old label with the defendant's retailers as mentioned at Annexure A has not been complied with and will be complied with within a period of four weeks from today.

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

Since the parties have settled the matter before issues have been settled, Court fees be returned to the plaintiff under Section 16A of the Court Fees Act.

IA Nos. 13282/2016 and 15010/2016

Dismissed as infructuous.

MUKTA GUPTA, J.

SEPTEMBER 06, 2017

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