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

+ CS(COMM) 1556/2016 and IA 3539/2017, IA 14593/2016,
14594/2016 and 14597/2016

TRIMBLE SOLUTIONS CORPORATION & ANR. Plaintiffs

Through: Ms. Kruttika Vijay, Advocate

versus

MR. CHANDAN SINGH & ANR. Defendants

Through: Mr. Sanjeet K. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **20.03.2017**

This civil suit was instituted by two companies, the first being Trimble Solutions Corporation (the first plaintiff), a company incorporated in Finland and the second being its subsidiary Trimble Solutions India Pvt. Ltd. (second plaintiff) incorporated under the Indian Companies Act, 1956, seeking various reliefs in the nature of permanent injunction, delivery-up, rendition of accounts of profits, damages, etc. against two defendants, the second being Prosteel Detailing Services Private Ltd. (second defendant), a company incorporated in India, engaged in the business of providing steel, structure, design and detailing services, in which the first defendant Mr. Chandan Singh is a director (first defendant).

The plaint prayed for the following reliefs :-

“a. A decree of permanent injunction restraining the defendants, their agents, franchisees, servants and all others acting for and on their behalf from directly or indirectly copying, reproducing, storing, installing and / or

using pirated / unlicensed software programs of the plaintiffs including Tekla Structure and its various versions or any other software programs developed by the plaintiffs in any manner that amounts to infringement of the plaintiff's copyright subsisting in its software programs and software-related documentation.

b. An order for delivery-up to the plaintiffs, of all the unlicensed copies of the plaintiffs' software, and / or articles / software, the duplicating equipment used in the copying of the plaintiffs' software, including computers, compact disc writers, stampers, burners, "plates", hard disks, diskettes, packaging and advertising material, labels, stationery articles and all other infringing material under Section 58 of the Copyright Act.

c. An order for rendition of accounts of profits illegally earned by the defendants by reason of infringement of the plaintiffs' copyrights, including conversion damages which are presently indeterminate and a decree be passed against the defendants in the sum of the amount so ascertained.

d. An order for damages of Rs.1,00,01,000/- cumulatively to be paid by the defendants in total on account of infringement of the plaintiffs' copyright and also for loss of sales and reputation.

e. An order for costs in these proceedings."

By an *ad interim* order dated 28.11.2016, while issuing summons on the suit and notice on the applications, a Local Commissioner was appointed for inspection of the premises of the defendant.

After defendants had been served, the parties engaged each other in efforts to amicably resolve the dispute and have come up with a joint application (IA 3539/2017) under Order XXIII Rule 3 CPC seeking a decree of permanent injunction to be passed against the defendants in view of the settlement terms set out in the said

application and the undertaking given by the defendant, the other reliefs sought in the plaint having been given up by the plaintiffs.

The joint application is signed by the authorised representative of the plaintiffs and also by the first defendant he being the Director as also the authorised representative of the second defendant, the same being supported by a copy of formal authorisation letter dated 10.03.2017.

The terms of settlement as incorporated in the joint application read as under :-

“1. The defendants before this Hon’ble court acknowledges that the plaintiffs are the owners of the intellectual property rights subsisting within the various software owned by the plaintiff.

2. The defendants undertake before this Hon’ble Court that they shall not use / install / distribute any of the plaintiffs’ software in any manner whatsoever for their business purposes, which may amount to infringement of the plaintiffs’ copyright.

3. To adequately settle the present suit the defendants have agreed to procure valid licenses of the plaintiffs’ software so as to validate their usage of the plaintiffs’ software as legal, and further ensure that only licensed versions of the plaintiffs’ software will be installed and used on their computer systems for their business purposes. The defendants further agree that they will strictly abide by the terms of the Customer Order and Software License Agreements accompanying such software.

4. Accordingly, the defendants have agreed to procure licenses as per the following table :

<i>Name of Software</i>	<i>License Quantity</i>
<i>Tekla Structures</i>	<i>3</i>

5. The defendants also agree to renew the annual maintenance contract for 32 licenses of Tekla Structures

already in their possession. Copies of the Customer Order and software License Agreements signed by the representatives of the defendants have been annexed as Annexure A (colly).

6. The defendants agree that the plaintiffs shall have the right to conduct audits of the defendants' computer systems, at any of their business premises within a period of three (3) years from the date of disposal of the present application without prior intimation so the plaintiffs can accurately verify whether the defendants are using only genuine and licensed versions of the plaintiffs' software.

7. The defendants hereby agree that the terms of the present application shall be binding on their officers, directors, successors, assigns and employees for all times to come. The defendants further agree that the plaintiffs would have the right to institute appropriate proceedings under law including but not limited to execution proceedings, in case the defendants are found to be in breach of any of the terms and conditions as contained herein..."

Having heard the learned counsel on both sides and having gone through the record, the settlement presented through the joint application being lawful, the prayer is granted. The suit of the plaintiff in so far as it prayed for a decree in the nature of order for delivery-up, rendition of accounts and damages is dismissed as not pressed.

During the hearing, the learned counsel for the plaintiffs submitted that the prayer for costs is also not pressed.

The suit is thus partly decreed to the effect that the defendants, their agents, franchisees, servants and all others acting for and on their behalf stand enjoined permanently from directly or indirectly copying, reproducing, storing, installing and / or using pirated /

unlicensed software programs of the plaintiffs including Tekla Structures and its various versions or any other software programs developed by the plaintiffs in any manner that amounts to infringement of the plaintiff's copyright subsisting in its software programs and software-related documentation.

Both parties shall remain bound by their respective undertakings and are left to bear their own costs.

The date (04.08.2017) fixed by earlier order stands cancelled. The other applications pending on record are rendered infructuous and stand disposed of accordingly.

Decree sheet shall be drawn up.

R.K.GAUBA, J

MARCH 20, 2017

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