

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

% **Date of decision: 16th July, 2018.**

+ **CS(COMM) 264/2016 & IA No.7220/2016 (u/O I R-10(2) CPC)**

L.T. OVERSEAS, NORTH AMERICA **Plaintiff**
Through: Mr. J. Sai Deepak, Mr. Avinash K. Sharma and Mr. Ashutosh Nagar, Advs.

Versus

SACHDEVA AND SONS INDUSTRIES PVT. LTD. ...Defendant
Through: Mr. Jeevesh Nagrath and Mr. Rohan Ganpathy, Advs.

AND

+ **CS(COMM) 749/2016 & IAs No.3952/2016 (u/O XXXIX R-1&2 CPC), 5234/2016 (of D-1 u/O XXXIX R-4 CPC), 5397/2016 (of D-8&9 u/O XXXIX R-4 CPC), 6242/2016 (of D-1 to 7 u/S 8 of Arbitration Act) & 3846/2017 (u/S 151 CPC)**

VINOD KUMAR SACHDEVA & ORS **Plaintiffs**
Through: Mr. Jeevesh Nagrath and Mr. Rohan Ganpathy, Advs.

Versus

ASHOK SACHDEVA & ORS **Defendants**
Through: Mr. Sanjay Abbot, Mr. Tanmaya Mehta and Mr. Tarang Gupta, Advs. for D-1 to 7.
Mr. J. Sai Deepak, Mr. Avinash K. Sharma and Mr. Ashutosh Nagar, Advs. for D-8&9.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. CS(COMM) No.264/2016 (originally CS(OS) No.342/2003) has been filed, under Sections 105 & 106 of the Trade & Merchandise Marks Act, 1958 and Section 51 of the Copyright Act, 1957, for permanent injunction restraining the defendant therein from using, exporting, displaying, advertising or by any other mode or manner dealing with the impugned trade mark / label 'ROYAL' logo as well as 'ROYAL WITH DEVICE OF QUEEN' and for rendition of accounts etc., with the averments (as per amended plaint dated 13th March, 2004):

- (i) that the plaintiff is engaged in the business of processing, marketing and exporting of rice;
- (ii) that in the year 1989, the plaintiff adopted a highly distinctive trade mark 'ROYAL', logo as well as 'ROYAL WITH DEVICE OF QUEEN', in relation to the said goods and the said trade mark / labels are original artistic work within the meaning of Copyright Act and belong exclusively to the plaintiff and the plaintiff has been continuously, since the year 1989, using the said mark and has on 23rd December, 1996 and 20th October, 1997 also applied for registration of trade mark / label 'ROYAL' logo and for registration of trade mark / label 'ROYAL WITH DEVICE OF QUEEN' respectively;
- (iii) that the plaintiff also holds registration of the said trade mark / label in United States of America (USA) and Canada and other countries;

(iv) that the defendant M/s Sachdeva & Sons (since substituted by M/s Sachdeva & Sons Industries Pvt. Ltd.) (SSIPL) is engaged in same/similar business as that of the plaintiff and with full knowledge of plaintiff's trade mark/label, has adopted and started using the trade mark/label 'ROYAL' logo and 'ROYAL WITH DEVICE OF QUEEN' in an obvious attempt to ride over the immense goodwill and reputation of the plaintiff; and,

(v) that the plaintiff learnt of the impugned actions of the defendant in August, 2000, when the mark of the defendant was advertised in the Trade Mark Journal dated 21st August, 2000 and the plaintiff immediately filed opposition, which was partly allowed.

2. CS(COMM) No.264/2016 came up first before this Court on 11th February, 2003, when, while issuing summons thereof, vide *ex-parte* ad-interim order, the defendant therein and its partners were restrained from using, exporting, displaying, advertising or dealing with the trade mark / label 'ROYAL' logo as well as 'ROYAL WITH DEVICE OF QUEEN' or any other trade mark / label similar or deceptively similar thereto. Vide subsequent order dated 3rd March, 2003, on the application of the plaintiff, it was further directed that the defendant shall not, in any manner, interfere with the plaintiff's business in relation to export of rice to USA or Canada under the trade mark / label 'ROYAL' logo as well as 'ROYAL WITH DEVICE OF QUEEN'.

3. The aforesaid *ex-parte* ad-interim order in CS(COMM) No.264/2016 continued and finally, vide order dated 22nd March, 2006, the following issues were framed in the suit:

- “1. Whether the plaintiff is the proprietor of the Trade Mark “ROYAL LOGO & ROYAL WITH DEVICE OF QUEEN” under the Trade Marks Act, 1999 and artistic feature therein under the Copyright Act, 1957? *OPP*
2. Whether the defendant is passing off the plaintiff’s trade mark “ROYAL LOGO & ROYAL WITH DEVICE OF QUEEN” by manufacturing and marketing its products under the impugned trade marks/label? *OPP*
3. Whether the defendant is infringing the plaintiff’s copyright in artistic works involved in Annexure-A to the plaint by commercial reproduction of its labels i.e. Annexure-D.1? *OPP*
4. Whether this Court does not have the territorial jurisdiction to entertain this suit? *OPD*
5. Whether the suit has not been valued properly? *OPD*
6. Relief.”

4. On 16th March, 2007, with the consent of the counsel for the defendant, the *ex-parte* ad-interim order was confirmed till the disposal of the suit. Though the defendant filed IA No.10028/2007 for vacation of the interim order but the same was dismissed on 2nd July, 2009.

5. Vide order dated 17th July, 2012, the original plaintiff in CS(COMM) No.264/2016 namely Kusha Inc. was substituted by the present plaintiff M/s LT Overseas, North America (LT Overseas).

6. The recording of evidence of the plaintiff in CS(COMM) No.264/2016 stands concluded and at the stage when the suit was for cross-examination before the Court Commissioner by the counsel for the plaintiff of the witnesses of the defendant, IA No.4128/2016 dated 28th March, 2016 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) was

filed, for decreeing the suit in terms of the prayer made in the plaint and by binding the parties to the terms of the settlement contained in a Settlement Agreement dated 16th March, 2016 signed by the parties. Under the said settlement:

- (a) the defendant undertook and agreed to withdraw applications for registration of trade marks as mentioned therein and to assign to the plaintiff registration No.1175315 in class 29 in respect of edible-oils and fats, preserves and pickles etc. and to also withdraw all oppositions / rectifications filed by the defendant to the applications for registration filed by the plaintiff particulars whereof were given in the said Settlement Agreement;
- (b) the defendant agreed to recognize the plaintiff's right in the trade marks in the Territory and undertook not to challenge or assist any third party challenge thereto;
- (c) the defendant agreed to destroy all materials containing the impugned marks;
- (d) the plaintiff, in consideration of the same, agreed to pay to the defendant, a consideration amount of USD 2,00,000 with the mode of payment of the consideration being mutually decided between the parties.

7. CS(COMM) No.749/2016 (originally CS(OS) No.146/2016) was instituted on 22nd March, 2016 by (i) Vinod Kumar Sachdeva; (ii) Vaneeta Sachdeva; (iii) Vaneet Sachdeva; (iv) Varun Sachdeva; and, (v) Wani Sachdeva, against (a) Ashok Sachdeva; (b) Indu Sachdeva; (c) Tushar Sachdeva; (d) Shaffali Rastogi; (e) Ghazal Verma; (f) Sachdeva & Sons

Industries Pvt. Ltd.; (g) Sachdeva & Sons Rice Mills Ltd.; (h) LT Foods North America Inc.; and, (i) LT Food Ltd. for declaration that the Memorandums of Understanding (MOUs) dated 14th September, 2010 entered into between the five plaintiffs and the defendants No.1 to 5 are binding on the defendants No.1 to 5 and for permanent injunction to restrain the defendants No.1 to 5 from taking any steps contrary to the terms of the MOUs dated 14th September, 2010 and from entering into any understanding, agreement, arrangement in respect of the trade marks 'ROYAL', 'INDIAN HERITAGE', 'PARI' and 'AL WALIMAH' or any other trade mark which is owned by Sachdeva Family as mentioned in the MOUs dated 14th September, 2010 and from dealing with the said marks on behalf of the defendants No.6&7 with the defendants No.8&9.

8. CS(COMM) No.749/2016 first came up before this Court on 23rd March, 2016, when, while issuing summons thereof, vide *ex-parte* ad-interim order, the defendants No.1 to 7 in the suit were restrained from acting contrary to the MOUs dated 14th September, 2010 or from transferring the marks 'ROYAL', 'PARI' and 'AL WALIMAH' to any third party, including defendants No.8&9.

9. CS(COMM) No.749/2016 has been filed, pleading:

- (a) that the plaintiff No.1 Vinod Kumar Sachdeva and defendant No.1 Ashok Sachdeva are the sons of late Sh. Chaman Lal Sachdeva;
- (b) that the plaintiffs No.2 to 5 are the wife and children of Vinod Kumar Sachdeva and the defendants No.2 to 5 are the wife and children of Ashok Sachdeva;

- (c) that defendants No.6&7 SSIPL and Sachdeva & Sons Rice Mills Ltd. are closely knit family owned companies in the nature of quasi partnership in which the plaintiffs and the defendants No.1 to 5 have substantial share and interest;
- (d) that Sachdeva Family has valuable proprietary rights in the trade marks 'ROYAL', 'PARI', 'AL WALIMAH' and 'INDIAN HERITAGE' etc.
- (e) that defendants No.8&9 LT Foods North America Inc. and LT Food Ltd. are the rival companies of the Sachdeva Family;
- (f) that Sachdeva Family and their family companies are involved in acrimonious litigation and court cases against defendants No.8&9 since the year 2003;
- (g) that sometime in the year 2010, certain issues relating to business and trade marks and intellectual property rights cropped up between Sachdeva Family i.e. plaintiffs on the one hand and the defendants No.1 to 5 on the other hand and with a view to avoid any dispute and to continue to run the family business in harmony, the two groups arrived at two MOUs, both dated 14th September, 2010;
- (h) that under the said MOUs, the trade marks were agreed to remain as common and joint property till the same were disposed of by sale/assignment;
- (i) that the defendants No.1 to 5 however, acting for defendants No.6&7, acted in derogation and to the disadvantage of the plaintiffs

by clandestinely and stealthily entering into an agreement with the defendants No.8&9; and,

(j) that defendant No.1 Ashok Sachdeva had been defending CS(OS) No.342/2003 on behalf of the defendants No.6&7 SSIPL and Sachdeva & Sons Rice Mills Ltd. and has illegally entered into an agreement and in breach of the fiduciary duty owed by him and behind the back of the plaintiffs, agreed to surrender the proprietary rights in the trade marks 'ROYAL' and 'INDIAN HERITAGE' for a very meagre amount of money, though the defendant No.6 SSIPL was likely to succeed in CS(OS) No.342/2003.

I may mention, that the plaint in CS(COMM) No.749/2016 mentions Suit No.342/2003 as filed by the defendant no.8 LT Foods North America Inc. or by LT Foods North America Inc. and LT Food Ltd., even though it was filed by LT Overseas, North America and the written statement filed by defendants also refers to LT Overseas, North America and LT Foods North America Inc. interchangeably.

10. IA No.4128/2016 under Order XXIII Rule 3 of CPC in CS(COMM) No.264/2016 came up before the Court on 30th March, 2016, when the following order was passed:

"I.A. No.4128/2016

This application has been filed by the parties under Order 23 Rule 3 CPC to record their settlement. On behalf of the defendant, the application is signed by the authorised signatory Mr. Ashok Sachdeva. The application is signed by the counsel representing the defendant Mr. Sameer Vasisht. When the application is taken up, counsel for the defendant has appeared and states that he was misled into filing this application. He states that he was not made aware by Mr. Ashok Sachdeva that the compromise had been entered into without the consent of all

the stakeholders. He states that Mr. Sameer Vasisht would, therefore, like to withdraw his power of attorney on behalf of the defendants. At this stage, Ms. Anusuya Nigam puts in appearance on behalf of Ashok Sachdeva group.

It has been brought to the notice of this court that an ex-parte ad-interim order of injunction has been passed by this court in C.S.(OS) No.146/2016 on 23.03.2016 restraining the defendants in the said suit – which includes the parties to the present suit, from transferring the trademarks “ROYAL”, “PARI” & “AL WALIMAH”, (some of which are the subject matter of the present application). For the aforesaid reasons, the present application, in any event, cannot be granted.

I may observe that Mr. Nagrath, who appears on behalf of Vinod Sachdeva group, to oppose the application, claims to be the 50% owner of the mark in question.

Counsel for the plaintiff states that since the present application cannot be granted at this stage, he wishes to withdraw the application with liberty to file afresh as and when the occasion arises. Dismissed as withdrawn with liberty as prayed for.

The submissions of Mr. Nagrath in regard to this application are preserved.”

11. Both the suits came up before the undersigned on 1st February, 2017, when the following order was passed:

“1. CS(COMM) No.264/2016 was filed by the sole plaintiff therein to restrain the sole defendant therein from using the trademark ‘ROYAL’, averring that the plaintiff therein was the prior user and proprietor of the said trademark and the use thereof by the sole defendant therein amounted to the sole defendant therein passing off their goods as that of the sole plaintiff therein.

2. The sole defendant in CS(COMM) No.264/2016, was controlled by Sachdeva family of which the five plaintiffs and

the defendants no.1 to 5 in CS(COMM) No.749/2016 are members. In a Memorandum of Understanding (MoU) dated 14th September, 2010 arrived at between the said family members it was inter alia admitted that the said Sachdeva family has valuable rights inter alia in the said trademark 'ROYAL' and the defendant no.1 in CS(COMM) No.749/2016 Mr. Ashok Kumar Sachdeva was empowered to negotiate and enter into Sale Agreements as per his wisdom for sale inter alia of the said trademark 'ROYAL'.

3. The aforesaid Mr. Ashok Kumar Sachdeva in or about March, 2016 acting on behalf of the sole defendant in CS(COMM) No.264/2016 settled with the sole plaintiff therein to give up rights in the said trademark on receipt of about Rs.1,40,00,000/- and which amount is stated to have been paid by the sole plaintiff in CS(COMM) No.264/2016 to the sole defendant therein and a compromise application was filed in CS(COMM) No.264/2016.

4. At that stage CS(COMM) No.749/2016 was filed to restrain Mr. Ashok Kumar Sachdeva as well as the defendants no.2 to 5 therein inter alia from so selling the trademark 'ROYAL', contending that the empowerment of Mr. Ashok Kumar Sachdeva to sell the assets including 'ROYAL' was in trust and he was acting in breach of trust as the value of the trademark was much more than the amount of Rs.1,40,00,000/- for which rights therein were being transferred. An interim injunction restraining Mr. Ashok Kumar Sachdeva from so selling the trademark was granted in CS(COMM) No.749/2016 and which resulted in the settlement in CS(COMM) No.264/2016 being not recorded.

5. Several applications are for consideration and hearing on the application under Section 8 of the Arbitration Act in CS(COMM) No.749/2016 was commenced.

6. The counsel for the plaintiffs in CS(COMM) No.749/2016 to show that Mr. Ashok Kumar Sachdeva is underselling the trademark 'ROYAL' has stated that the plaintiffs are willing to buy the said trademark themselves for the price for which it has

been agreed to be sold to sole plaintiff in CS(COMM) No.264/2016.

7. To obviate any inference the plaintiffs in CS(COMM) No.749/2016 merely putting a spoke in the wheel, I have enquired from the plaintiffs in CS(COMM) No.749/2016 whether they are willing to offer for the trademark 'ROYAL' Rs.50,00,00,000/-, which the counsel for the defendants no.1 to 7 in CS(COMM) No.749/2016 states is the value put by the plaintiffs in the plaint.

8. Though the counsel for the plaintiffs in CS(COMM) No.749/2016 controverts that the value of 'ROYAL' has been put to Rs.50,00,00,000/- but still it has been enquired from him, how much they are willing to offer, inasmuch as if they are not willing to offer anything substantially more than Rs.1,40,00,000/-, then their conduct would appear to be mala fide and only obstructive.

9. The counsel for the plaintiffs in CS(COMM) No.749/2016 seeks time to obtain instructions as to how much maximum the plaintiffs themselves are willing to offer or have a buyer to buy 'ROYAL'.

10. I may also record that it is not in dispute that the share of the five plaintiffs in CS(COMM) No.749/2016 and the share of the defendants no.1 to 5 in CS(COMM) No.749/2016 in the consideration to be received for 'ROYAL' is equal.

11. Needless to state that all the aforesaid is without prejudice to the contentions of the counsel for the sole plaintiff in CS(COMM) No.264/2016.

12. List on 6th February, 2017."

12. Thereafter, on 6th February, 2017, the following order was passed:

"1. This order is in continuation of the earlier order dated 1st February, 2017.

2. The counsel for the plaintiffs in CS(COMM) No.749/2016 states that the plaintiffs therein are willing to offer the value of the trademark 'ROYAL' of Rs.2,80,00,000/- and are willing to pay a sum of Rs.1,40,00,000/- to the defendants No.1 to 6 in CS(COMM) No.749/2016 towards their 50% share of the value and are willing to contest CS(COMM) No.264/2016.

3. The counsel for defendants No.1 to 6 in CS(COMM) No.749/2016 states that he will have to take instructions from the said defendants whether they want to take Rs.1,40,00,000/- instead of Rs.70,00,000/-.

4. It is surprising that the said defendants would not be willing to take more towards their share of the value.

5. The counsel for defendants No.8&9 in CS(COMM) No.749/2016 and who are the plaintiff in CS(COMM) No.264/2016 contends that the plaintiffs in CS(COMM) No.749/2016 having empowered the defendant No.1 in CS(COMM) No.749/2016 and the defendants No.8&9 therein, having on the basis of the said empowerment dealt with the defendant No.1, cannot renege from their commitment in the agreement.

6. All the three counsels agree that as far as CS(COMM) No.749/2016 is concerned, it entails only an interpretation of the terms of the two Memorandum of Understanding (MOUs) entered into between the members of Sachdeva family and does not require recording of any oral evidence and can be disposed of on the basis of the findings on the said interpretation i.e. whether the defendant No.1 in CS(COMM) No.749/2016 under the MOUs was entitled to sell the trademark 'ROYAL' for whatever price he may deem fit and the other members are bound by the said price or whether the other members could object to the price or could bring a better price.

7. The outcome of CS(COMM) No.264/2016 would depend on the findings aforesaid in CS(COMM) No.749/2016. If CS(COMM) No.749/2016 is dismissed, then the compromise arrived at by the defendant No.1 in CS(COMM) No.749/2016

with the plaintiff in CS(COMM) No.264/2016 will be allowed. However, if CS(COMM) No.749/2016 is decided in favour of the plaintiffs therein, then the said compromise would be of no avail.

8. *List for arguments on the aforesaid aspect on 21st March, 2017.*

9. *It is informed that IA No.10280/2016 of defendants No.8&9 under Order XIII-A CPC in CS(COMM) No.749/2016 has been filed for the said purpose only. Similarly, defendants No.1 to 7 in CS(COMM) No.749/2016 have filed IA No.1355/2017 in this respect.*

10. *With the aforesaid order, both IAs No.10280/2016 & 1355/2017 in CS(COMM) No.749/2016 are disposed of.*

11. *IA No.7162/2016 of plaintiffs in CS(COMM) No.749/2016 to buy out defendants No.1 to 6 share in trademark 'ROYAL', also stands disposed of in terms of above order.*

12. *It is further clarified that the question of summary judgment shall be considered on the pleadings in the suit de hors the pleadings in the applications and accordingly, the right to file reply to the applications for summary judgment is waived."*

13. The counsels were heard on 16th May, 2017 and judgment reserved.

14. IA No.3846/2017 in CS(COMM) No.749/2016 has been filed by defendants No.8&9 therein for correction of the order dated 6th February, 2017 to the effect that IAs No.10280/2016, 1355/2017 & 7162/2016 have not been disposed of, rather are to be heard.

15. The counsel for the defendants No.8&9 in CS(COMM) No.749/2016 has also filed written arguments.

16. The counsel for Vinod Kumar Sachdeva drew attention to the following clauses of the Master MOU between Vinod Kumar Sachdeva and Ashok Sachdeva, both also acting for their respective wives and children, with Vinod Kumar Sachdeva being referred therein as 'Party of First Part' and Ashok Sachdeva being referred therein as 'Party of Second Part'.

"2. *That in pursuance of the agreement and in consideration of the premises, the parties aforementioned have agreed that the 'Party of Second part' who had been managing the affairs of business heretofore and having been principally and legally answerable & liable before the creditors / lenders, is empowered and fully competent to negotiate, enter in to sale agreements as per his wisdom and the 'Party of First Part' will put in his / their signatures without any objection whenever and wherever required for effecting the sale / alienation of the assets in any manner whatsoever and shall cooperate with 'Party of Second part' for final sale thereof.*

.....

7. *That in pursuance of the agreement and in consideration of the premises, the parties aforementioned have agreed that all the "Trade Marks" shall remain as a common and joint property till the time the same are disposed off by way of sale / assignment / transfer and both the parties shall continue to use the same for the business now being independently undertaking by both the parties. No party as such will have any right to permit the use of any of the Trade Marks by any other person, whether in partnership, leave, license, franchisee or otherwise. On sale / assignment / transfer of any of the Trade Mark and / or Copyright, the net consideration value shall be treated as a joint fund in the same manner as in case of other properties. The expenses in relation to registrations, renewals, protection thereof in India and abroad and other miscellaneous charges / fees relating*

thereto shall be out of the joint account for the discharge of the liabilities.

.....

9. *That in pursuance of the agreement and in consideration of the premises, **the parties aforementioned have agreed that a separate agreement in regard to the Trade Marks and Copyrights be executed** as per the advice of M/s Arora Registration Service, the Trade Mark Attorneys already looking after the issues relating to such Trade Marks and Copyrights, **which agreement shall form integral part of this Understanding / Agreement.***

and to the following clauses of the Trade Marks MOU:

“The ‘Sachdeva’ family (i.e. comprising of both the ‘party of first part’ and ‘party of second part’) has been hitherto doing the business in trade of rice & other cognate/allied goods and products including the ‘milling and exports’ thereof in name of the following companies:

1. *Sachdeva & Sons Industries (P) Limited (formerly ‘Sachdeva & Sons’).*
2. *Sachdeva & Sons Rice Mills Limited.*
3. *Pari Foods (P) Limited.*

*WHEREAS the **business of the afore-mentioned Companies was managed principally by the party of second part with the representative of party of second part as ‘Director’ in ‘M/s. Pari foods (P) Limited’ only** and the above-referred Companies have earned substantial goodwill and reputation in the markets of India as well as in major countries of the world, on account of superior quality of various kinds of rice and/or such other edible goods for human consumption and under their various Trade Marks/Labels/copyrights (as mentioned exhaustively in the **Annexure ‘A’** to this Memorandum of Understanding) and has also secured the proprietary rights to the exclusive use thereof by virtue of respective Registration and/or Registration-Applications thereof under the relevant provisions of The Trade*

Marks Act 1999 and Copyright Act 1957, in addition to 'common law rights' and in respect of the aforesaid goods and/or services as well as in respect of various other kind/description of goods and/or services.

.....

- 5) *That both the parties agree that all the Brands, Trade Marks, Labels, Copyrights and other Intellectual Property Rights (as belonging to and owned by the aforesaid Companies "SACHDEVA & SONS INDUSTRIES (P) LIMITED", "SACHDEVA & SONS RICE MILLS LIMITED" and "PARI FOODS (P) LIMITED" including their predecessors) may be used simultaneously by both the parties as if owned in ratio of 50% share of each party, without any restriction or objection by the other party subject to prominent display/mention of the respective Trade Names of the concerns "PARI AGRO EXPORTS" by party of first part and "PARI INDIA") by party of second part, and no party shall have the exclusive rights in any manner on the Brands, Trade Marks, Labels, Copyrights and Intellectual Property Rights as belonging to and owned by the aforesaid Companies including their predecessors. However in order that there is no interference in the matter of use of the Trade Mark Pari, it has been agreed that the party of First part shall confine the use of the Pari Brand for its export business abroad only whereas the party of second part shall confine the use of Pari Brand for its domestic business in India only for a period of one year from the date of this agreement or till the date of final discharge of the joint liabilities, which ever is earlier and it has also been agreed that after the expiry of the period of one year or earlier as mentioned hereinabove, all these brands will be **EITHER SOLD OR DIVIDED** between both the parties **AT MARKET VALUE** and consideration value / the difference in the value payable by any of the party on the basis of division at **MARKET VALUE** as the case*

may be, shall be distributable in the ratio of 50% for each party.

.....

- 10) *That no party as such, under any circumstances, shall have any right to permit the use of any of the Brands, Trade Marks, Copyrights and Intellectual Property Rights by any other person, whether in partnership, leave, license, franchisee or otherwise and on sale/assignment/transfer of any of the Brands, Trade Marks and/or Copyrights etc., and the net consideration-value shall be treated as a 'joint fund' in the same manner as in case of other properties, and distribution of the proceeds thereof shall be in the same manner as jointly agreed under the Settlement-Deed. Notwithstanding this Agreement, all the terms and conditions, as agreed therein shall be applicable."*

and contended:

- (i) that both the MOUs are dated 14th September, 2010; Ashok Sachdeva continued to defend CS(COMM) No.264/2016, even after the MOUs aforesaid and entered into the Settlement Agreement with LT Overseas on 16th March, 2016;
- (ii) that though under Clause 2 of the Master MOU, Ashok Sachdeva was authorised to sell trade mark 'ROYAL' but in terms of Clause 5 of the Trade Marks MOU, only at the market value thereof;
- (iii) that the position of Ashok Sachdeva, in the matter of sale of trade mark 'ROYAL', was of a trustee and Ashok Sachdeva was required to exercise the power of such sale as a trustee of Vinod Kumar Sachdeva and exercise of such power by Ashok Sachdeva can be controlled by this Court;

- (iv) that under Section 111 of the Evidence Act, 1872, the burden of proving that Ashok Sachdeva acted in good faith in the matter of sale of the trade mark 'ROYAL', is on Ashok Sachdeva;
- (v) that Vinod Kumar Sachdeva, in the plaint in CS(COMM) No.749/2016, has pleaded that the brand 'ROYAL' is an extremely valuable and popular brand in the commodity rice and is easily capable of fetching more than Rs.50 crores in the open market;
- (vi) that the defendants No.8&9 in CS(COMM) No.749/2016 i.e. LT Foods North America Inc. and LT Food Ltd., in their written statement, have not disputed the said averment in the plaint and have merely stated that they were not obliged to pay market price to SSIPL.

17. Per contra, the counsel for the plaintiff in CS(COMM) No.264/2016 and who is the counsel for defendants No.8&9 in CS(COMM) No.749/2016 argued:

- (a) that all the three counsels, on 6th February, 2017, consented that CS(COMM) No.749/2016 entails only an interpretation of the terms of the two MOUs entered into between members of Sachdeva Family and that CS(COMM) No.749/2016 does not require recording of any oral evidence and can be disposed of on the basis of findings on the said interpretation, as is recorded in para 6 of the order of said date, and it is now not open to the counsel for Vinod Kumar Sachdeva group to contend that good faith in the matter of execution of Settlement Agreement dated 16th March, 2016 is required to be established by evidence under Section 111 of the Evidence Act;

- (b) that the consideration of Rs.1,40,00,000/-, which LT Overseas under the Settlement Agreement dated 16th March, 2016 has agreed to pay to SSIPL, has to be judged in the light of the fact that interim injunction in CS(COMM) No.264/2016 against SSIPL was in force since 11th February, 2003 and had been confirmed; under the said interim injunction, SSIPL stands barred in terms of Section 56 of the Trade Marks Act, 1999 from selling rice under the brand 'ROYAL' to USA and Canada;
- (c) that LT Overseas itself purchased the said mark from earlier proprietor thereof for USD 15 million and had mortgaged the same for USD 10 million;
- (d) that the language of Clause 2 of the Master MOU, reproduced hereinabove, clearly vests sole discretion in Ashok Sachdeva;
- (e) that the Trade Marks MOU does not dilute the authority of Ashok Sachdeva in any manner whatsoever;
- (f) that the two MOUs have to be read together;
- (g) that a reading of the two MOUs in their entirety shows that they do not contemplate any such dispute as has been raised by Vinod Kumar Sachdeva;
- (h) that on the basis of such understanding of the two MOUs, rooted in the express language of MOUs, LT Overseas entered into Settlement Agreement dated 16th March, 2016 with Ashok Sachdeva, to put a quietus to long pending litigation with respect to the marks 'ROYAL' and 'INDIAN HERITAGE'; CS(OS) No.653/2009 with

respect to 'INDIAN HERITAGE' already stands settled; 'INDIAN HERITAGE' was not part of the Trade Marks MOU;

(i) that LT Overseas will pay the consideration agreed in the Settlement Agreement dated 16th March, 2016 in the account of SSIPL and which payment will be subject to orders in any litigation between Ashok Sachdeva and Vinod Kumar Sachdeva;

(j) that the position of Ashok Kumar Sachdeva was not of a trustee and the provisions of Indian Trusts Act, 1882, do not apply;

(k) that vide Section 94 of the Evidence Act, when language used in a document is plain in itself and when it applies accurately to existing facts, evidence cannot be given to show that it was not meant to apply to such facts;

(l) that the principles as applicable to enforcement of family settlement would apply in the matter of interpretation of the MOUs aforesaid;

(m) that no valuation of the trade mark is given in the MOUs;

(n) that LT Overseas cannot be compelled to bid along with Vinod Kumar Sachdeva inasmuch as LT Overseas in CS(COMM) No.264/2016 claims rights in the subject trade mark and LT Overseas is not buying the trade marks in open market, to be made to bid with Vinod Kumar Sachdeva therefor;

(o) that the reliance placed by Vinod Kumar Sachdeva on Clause 2 of the Trade Marks MOU is an afterthought, inasmuch as no

reference thereto is to be found in the order dated 23rd March, 2016 when CS(COMM) No.749/2016 came up first before the Court.

18. The counsel for Ashok Sachdeva argued that in view of the consent recorded in para 6 of the order dated 6th February, 2017, the counsel for Vinod Kumar Sachdeva today cannot call upon Ashok Sachdeva to prove his *bona fides*.

19. The counsel for Vinod Kumar Sachdeva, in rejoinder argued (i) that Vinod Kumar Sachdeva, as far back as in May, 2016 i.e. at about the contemporaneous time with the Settlement Agreement dated 16th March, 2016, vide IA No.7162/2016 had offered to pay the same price of Rs.1,40,00,000/-; (ii) that Ashok Sachdeva, before agreeing to receive Rs.1,40,00,000/- from LT Overseas for giving up claims to the trade marks, made no attempt to value the same or to enquire about the sale price thereof in the hands of SSIPL; (iii) that Vinod Kumar Sachdeva group is the equal owner along with Ashok Sachdeva in the trade mark 'ROYAL'; (iv) that since the order dated 23rd March, 2016, the mark 'INDIAN HERITAGE' has been disposed of.

20. The counsel for LT Overseas, in sur-rejoinder contended that no valuation of the mark 'ROYAL' in the hands of SSIPL is possible, since there have been no sales by SSIPL under the said mark since the year 2003 owing to the injunction order in CS(COMM) No.264/2016.

21. The counsel for LT Overseas, on 17th May, 2017 has also handed over written submissions further highlighting:

- (a) that Clause 2 of the Master MOU clearly states that Ashok Sachdeva had been vested with the exclusive discretion to take any

decision that he deems fit with respect to the sale, alienation of assets, loan, moveable property and intellectual property on behalf of the entire Sachdeva Family in order to discharge the liabilities/debts owed by Sachdeva Family to third party; the said clause also states that the other members of the family including Vinod Kumar Sachdeva will sign whatsoever required, without any objection, on the request of Ashok Sachdeva, in order to facilitate sale/alienation of assets;

(b) that thereby, exclusive discretion was vested in Ashok Sachdeva since he was principally responsible for managing the companies except Pari Agro Exports, as recorded in the two MOUs;

(c) that Ashok Sachdeva group owns over 93% of shares in SSIPL and Vinod Kumar Sachdeva group owns only 0.02% share herein; it is for this reason that exclusive discretion with respect to sale and alienation of assets was vested with Ashok Sachdeva;

(d) that Ashok Sachdeva therefore was not a mere constituted attorney who was acting under the instructions of the rest of the family members;

(e) that the responsibility, under the MOUs, not only of sale of assets but also of settling with creditors/lenders, was of Ashok Sachdeva;

(f) that the only right of Vinod Kumar Sachdeva with respect to sale/alienation of assets was to supervise that the proceeds of the sale are being used for discharge of debts;

- (g) that there is not a single provision in either of the two MOUs empowering anyone else within the Sachdeva Family including Vinod Kumar Sachdeva, to question the decision taken by Ashok Sachdeva with respect to sale of assets;
- (h) that such an arrangement was arrived at in order to facilitate expeditious sale of assets and consequent discharge of debts;
- (i) that the Settlement Agreement dated 16th March, 2016 with LT Overseas was entered into to put a quietus to the long pending litigation in respect of 'ROYAL' and 'INDIAN HERITAGE' marks;
- (j) that 'INDIAN HERITAGE' mark is not part of the Settlement Agreement dated 16th March, 2016 but Vinod Kumar Sachdeva group has still instituted CS(COMM) No.749/2016 with respect thereto as well.

22. The counsel for Vinod Kumar Sachdeva referred to:

- (I) ***M. Arul Jothi Vs. Lajja Bal*** (2000) 3 SCC 723 holding that once the parties entered into a contract, then every word stated therein, which reveals the rights and obligations between the parties, has to be given its due meaning and no part of the agreement or words used therein could be said to be redundant;
- (II) ***Sandvik Asia Pvt. Ltd. Vs. Vardhman Promoters Pvt. Ltd.*** 2007 (94) DRJ 762, holding that principle of harmonious construction applies to interpretation of deeds/agreements also;
- (III) ***Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal*** 166 (2010) DLT 305 (FB), in para 101 thereof

citing with approval M. Gandhi's book on 'Equity, Trusts and Specific Relief' authoring that Section 88 of the Indian Trusts Act applies to a Director of a company;

(IV) ***Shanti Vijay and Co. Vs. Princess Fatima Fouzia*** (1979) 4 SCC 602, where, observing that since nobody really knew the actual value (in that case of jewellery), the best course was to invite fresh tenders;

(V) ***Ram Chandra Singh Vs. Savitri Devi*** (2003) 8 SCC 319, holding that fraud and deception are synonymous;

(VI) ***Krishna Mohan Kul alias Nani Charan Kul Vs. Pratima Maity*** (2004) 9 SCC 468, holding that a person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with jealousy all transactions between such persons so that the protector may not use his influence or the confidence to his advantage and when the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable and no advantage has been taken of his position.

23. The counsel for LT Overseas has referred to:

(A) ***Kale Vs. Deputy Director of Consolidation*** (1976) 3 SCR 202 at pages 216 & 226, to contend that family arrangement being binding on the parties to the arrangement, operates as an estoppel;

(B) *Union Territory of Pondicherry Vs. P.V. Suresh* (1994) 2 SCC 70 at page 77, to contend that the Court has no jurisdiction to alter the terms or rewrite the contract between the parties;

(C) *Puravankara Project Ltd. Vs. Hotel Venus International* (2007) 10 SCC 33 at page 51, to contend that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to the contract in part;

(D) *Export Credit Guarantee Corporation of India Limited Vs. Garg Sons International* (2014) 1 SCC 686 at pages 690 & 691, to contend that the terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interest of the parties adversely;

(E) *Polymat India P. Ltd. Vs. National Insurance Co. Ltd.* AIR 2005 SC 286 at page 292, to contend that the terms of the contract have to be construed strictly, without altering the nature of the contract, as the same may affect the interest of the parties adversely.

24. I have considered the pleadings and the rival contentions. Suffice it is to state that Vinod Kumar Sachdeva group has till date not reneged from the consent recorded in the order dated 6th February, 2017, particularly in paras 6 & 7 thereof, to the procedure for disposal of the two suits.

25. Though on 1st February, 2017 and 6th February, 2017 it appeared that the best way to determine whether Ashok Sachdeva, in the matter of entering into the Settlement Agreement dated 16th March, 2016 with LT Overseas was not underselling the rights claimed by SSIPL in the marks subject matter of CS(COMM) No.264/2016 and not taking advantage of

representing SSIPL in CS(COMM) No.264/2016 and not concealing the true consideration agreed to be paid by LT Overseas by appropriating some part thereof for himself, was to ask Vinod Kumar Sachdeva whether Vinod Kumar Sachdeva was willing to pay a higher price for the said mark, but on further consideration I tend to agree with the counsel for LT Overseas that the same does not offer the correct parameter of the valuation. It cannot be forgotten that LT Overseas, being the plaintiff in CS(COMM) No.264/2016, is claiming rights in the said trade mark adversely to SSIPL and this Court having found LT Overseas to have *prima facie* better rights than the rights claimed therein by SSIPL has, for the last fifteen years, restrained SSIPL from using the said mark and as aforesaid, the application filed by SSIPL under Order XXXIX Rule 4 of the CPC has also been dismissed. It is not the case of Vinod Kumar Sachdeva that though LT Overseas under the Settlement Agreement dated 16th March, 2016 is offering Rs.1,40,00,000/- only to SSIPL, someone else is willing to offer more than Rs.1,40,00,000/- for buying the rights professed by SSIPL in the said trade marks on 'as is where is' basis i.e. subject to the outcome of CS(COMM) No.264/2016, for it to be said that Ashok Sachdeva entered into the Settlement Agreement for less or that Ashok Sachdeva is taking, part of the real consideration from LT Overseas, on the side. In fact, owing to the interim injunction in force in CS(COMM) No.264/2016, at the moment, it is not even possible for SSIPL to enter into any such agreement with any other person. As far as the offer by Vinod Kumar Sachdeva group to pay Rs.1,40,00,000/- to Ashok Sachdeva group and to contest CS(COMM) No.264/2016 is concerned, though the same on first blush looked attractive but on further consideration, it is found that the outflow by

Vinod Kumar Sachdeva group remains the same as from LT Overseas i.e. of Rs.1,40,00,000/-. Though Vinod Kumar Sachdeva group, in the plaint in CS(COMM) No.749/2016, put the value of the subject marks at Rs.50 crores but has failed to give the offer for the said amount and has offered only Rs.2,80,00,000/-. The consideration for LT Overseas to offer Rs.1,40,00,000/- is for buying peace and not in acceptance of any rights of SSIPL in the marks.

26. I am thus of the view that merely from the offer invited by the undersigned on 1st February, 2017 from Vinod Kumar Sachdeva, no inference can follow. In any case, the parties, as aforesaid, have consented to decision of CS(COMM) No.749/2016 on the basis of interpretation of the two MOUs.

27. The Master MOU also records:

- (i) that the shareholding of Ashok Sachdeva group in SSIPL was 93.27% of the total share capital and the share holding of Vinod Kumar Sachdeva group in the said company was 0.02% of the total share capital;
- (ii) that the management of SSIPL as also of other companies mentioned in the MOU was with Ashok Sachdeva and Vinod Kumar Sachdeva was not having any control on the affairs of the companies and firms except Pari Foods (P) Ltd. and that Vinod Kumar Sachdeva had been doing only the liaison work for the companies and firms and the ownership of Vinod Kumar Sachdeva had come on inheritance of proportionate share in the estate of father Sh. Chaman Lal Sachdeva;

(iii) that of the nine landed properties (excluding the residential properties at Amritsar, Punjab) in ownership of the companies/firms, whether standing in the name of the companies or in the individual names, seven properties were mortgaged to banks/financial institutions;

(iv) that the group also had market liabilities and other unsecured loans amounting to approximately Rs.20 crores and there were other contingent liabilities also;

(v) that the parties desired that the issue of settlement of realisation of financial assets of the companies be resolved amicably and any debts/disputes or litigations amongst them at later stage should be avoided;

(vi) that *inter alia* for the aforesaid reasons, the parties had “agreed that considering the huge liability burden and further interest accruing on the loans/debts, the aforesaid assets be liquidated/released as early as possible, without any intentional delay.”;

(vii) that the parties had agreed that realisation/sale value of scrap, machinery, electric installations etc. and immoveable properties comprising of land and building including rights attached thereto shall first be utilised for discharge of liabilities to banks/financial institutions, private lenders, government, semi-government institutions, staff and employees, other creditors and suppliers, payment of credit balance in companies and firms other than capital account, payment to non-family shareholders and only the surplus, if

any would be distributed between Vinod Kumar Sachdeva and Ashok Sachdeva;

(viii) that the parties had agreed that Vinod Kumar Sachdeva may maintain a parallel account with himself and shall have the right to inspect and tally the accounts to verify the sales/realizations made by Ashok Sachdeva and utilisation/deployment of received funds towards due discharge of liabilities;

(ix) that a separate agreement in regard to trade marks and copyrights was being entered into only as per advise of Trade Mark Attorneys (and not to record agreement different from Master MOU) and which shall form integral part of the Master MOU;

(x) that to have a smooth and amicable settlement and to preserve family harmony and avoid litigation, it had been agreed that though the share of Vinod Kumar Sachdeva in the various assets of the various companies/firms of the family was only proportionate to his shareholdings in the said companies/firms, but Vinod Kumar Sachdeva should get 50% of the actual surplus;

(xi) that both the parties shall abide by the agreed terms;

(xii) Clauses 15 to 17 of the Master MOU are as under:

“15. That in case of any clarification needed or dispute arising, the same shall be referred for settlement and arbitration to Revered Maa Deva Ji and / or Sh. Surinder Kumar alias Chhindi ji of Ghaziabad and / or if required, to any other person to be mutually appointed and decision of the arbitrator (s) shall be binding on both the parties. The arbitration shall however, always be in

accordance with The Arbitration and Conciliation Act, 1996', as amended from time to time.

16. *That in pursuance of the mutual agreement and in consideration of the premises, the parties aforementioned have agreed that both the parties shall abide by the agreed terms and the decision of the Arbitrators appointed in case of any dispute. It has also been understood and agreed by both the parties that in case the 'Party of Second part' does not comply with the terms agreed and fails to abide by the decision of the Arbitrator (s), the 'Party of First part' shall have the right to have the present agreement enforced through Courts of Law in the jurisdiction of Amritsar. In case the 'Party of First part' does not comply with the terms agreed and fails to abide by the decision of the Arbitrator (s), the present understanding / agreement will become Null & Void and the 'Party of First part' shall be entitled to claim only the legal rights as per the inheritance of late Sh. Chaman Lal Sachdeva.*
17. ***That the parties hereby further declare that they have taken the independent advice from their respective advisors and they know and understand the true meaning and effect of this Memorandum of Understanding / Settlement / Agreement."***

28. What falls for adjudication is, whether the action of Ashok Kumar Sachdeva in the matter of sale, in exercise of powers under Clause 2 of the Master MOU, is as a trustee or otherwise for and on behalf of Vinod Kumar Sachdeva and whether Vinod Kumar Sachdeva has a right to interfere in exercise of rights by Ashok Sachdeva under Clause 2 of the Master MOU.

29. Per Section 3 of the Indian Trusts Act, 1882, a 'trust' is an obligation annexed to the ownership of property, and arising out of a confidence

reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. Section 5 of the said Act provides that no trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. Section 6 of the Act provides that a trust is created when the author of the trust indicates with reasonable certainty by any words or acts, (i) an intention on his part to create thereby a trust, (ii) the purpose of the trust, (iii) the beneficiary and, (iv) the trust property, and transfers the trust property to the trustee.

30. Needless to state, the two MOUs are not found to satisfy the aforesaid parameters for creation of any trust.

31. However, Chapter IX of the Trusts Act is titled “Of Certain Obligations in the Nature of Trusts” and Section 80 thereunder provides that an obligation in the nature of a trust is created “in the following cases”. Sections 81 & 82 thereafter have been deleted with effect from 19th May, 1988. Section 84 titled “Transfer for illegal purpose”, Section 85 titled “Bequest for illegal purpose”, Section 86 titled “Transfer pursuant to rescindable contract” and Section 87 titled “Debtor becoming creditor’s representative” are also not applicable and have not been invoked. Thereafter, Section 88 titled “Advantage gained by fiduciary” provides that where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into

any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained. Needless to state that neither of the MOUs describes Ashok Sachdeva as a trustee and vide the MOUs, Ashok Sachdeva was not created as a trustee of the subject trade marks. Ashok Sachdeva cannot also be said to be an executor or a partner or an agent or a director or a legal adviser.

32. For a person to be said to be bound in a fiduciary character, the power, to exercise which he was bound, must be vested in him in such terms as reposing faith in him. The powers, vested under a contract, cannot be labeled as of fiduciary character.

33. The other sections under the aforesaid Chapter IX of the Trusts Act also are not found to cover Ashok Sachdeva. Mention may however be made of Section 90 titled “Advantage gained by qualified owner” which inter alia provides that where a co-owner or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of rights of other persons interested in property, or where any such owner, representing all such persons interested in the property, gains any advantage, he must hold, for the benefit of all persons the advantage so gained but subject to repayment by such persons of their due share of expenses properly incurred. Though Vinod Kumar Sachdeva group neither in pleadings nor in arguments has invoked the said provision, but I may mention that in ***Balakrishnan Vs. Makkam*** AIR 1974 Kerala 18, it has been held, that it is the use by a person placed in a fiduciary position of the

advantage that imposes the obligation to hold the gains in trust and the mere fact that an advantage has been gained by qualified owner is therefore, by itself not sufficient to enable other persons interested in the property to claim that the benefit enures to them also. It was held to be well-settled that a co-owner does not stand in fiduciary position to the other co-owners unless a covenant in an agreement between co-owners places such a co-owner in a position different from that of a co-owner pure and simple. I may emphasize that the same also, leads to interpretation of the MOUs only.

34. Section 111 of the Evidence Act, also invoked, provides that where there is a question as to good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving good faith of the transaction is on the party who is in a position of active confidence. For the said provision also to apply, position of active confidence is necessary.

35. The counsel for Vinod Kumar Sachdeva thus, is found to have raised the argument of trust, without even laying any foundation therefor and without arguing as to how the sale of the subject trade mark, which Ashok Sachdeva admittedly is entitled to conduct, is as a trustee of Vinod Kumar Sachdeva group or as to how Ashok Sachdeva is in a position of active confidence. The parties to a contract are not in a position of active confidence qua each other. In fact, in the plaint in CS(COMM) No.749/2016, no foundation therefor has been laid down.

36. The MOUs, instead of stating that Vinod Kumar Sachdeva group is reposing faith in Ashok Sachdeva for the sale or for fetching the best

possible price, has the following recitals, in pursuance to which the power of sale of the subject trade mark was vested in Ashok Sachdeva:

- (i) that Ashok Sachdeva was holder of 93.27% shares of SSIPL which alone was using the subject trade mark and Vinod Kumar Sachdeva group had only 0.02% share therein;
- (ii) that Ashok Sachdeva only was in management and control of SSIPL and Vinod Kumar Sachdeva had no direct control over the affairs thereof and was doing only liaison work for the said company;
- (iii) that 0.02% share held by Vinod Kumar Sachdeva group in SSIPL, which alone was using the subject trade mark, had come to be held by him as an heir of the father Sh. Chaman Lal Sachdeva; else, during the lifetime of father Sh. Chaman Lal Sachdeva, Vinod Kumar Sachdeva or his group had no stake in SSIPL, the sole user of the subject trade mark;
- (iv) that most of the properties of SSIPL and other companies held by Sachdeva Family were mortgaged and there were huge liabilities of Sachdeva Family and which were growing day by day and Sachdeva Family was desirous of liquidating the said liabilities at the earliest;
- (v) that the parties being closely related, wanted to avoid any future litigation between them; though the rights of Vinod Kumar Sachdeva group in the subject trade mark was proportionate to the shareholding of Vinod Kumar Sachdeva in SSIPL, in which alone the subject mark vested, but the parties with the same intent of avoiding any disputes, were agreeing that Vinod Kumar Sachdeva group will

also get instead of 0.02% share of the sale proceeds of the subject trade mark, 50% share of the sale proceeds of the subject trade mark;

(vi) that the parties had agreed for a time of one year only to affect the sale;

(vii) that the proceeds of the sale, including of subject trade mark, were agreed to be utilised for extinguishing the liabilities of Sachdeva Family and of which also, the responsibility was put on Ashok Sachdeva.

37. The absence of fiduciary relationship is also evident from the parties, for the sake of expediency, having provided that Vinod Kumar Sachdeva will put his signatures, without any objection and will only be entitled to maintain an account and to satisfy himself that the sale proceeds were utilised for extinguishing debts of Sachdeva Family.

38. Vivian Bose J., speaking for the High Court of Nagpur, in ***Mohammad Hussain Khan Wajir Mohammad Khan Vs. Bala Laxman Kunbi*** AIR 1941 Nagpur 261 held that it is sometimes difficult to distinguish a trust from a contract because the law of trusts and law of contract overlap in places because it is impossible so to define a contract that the definition shall not cover at least three quarters of all the trusts that are created; but various tests serve to separate the two; in the first place, it is essential in every trust which is not wholly unilateral that there should be a confidence reposed; in a hard business deal, though each party may trust the other to carry out its part of the bargain, neither reposes confidence in other in the sense in which the term is used in the law of trusts; though there is always fiduciary relationship between the trustee and beneficiary but none

between creditor and debtor as such. Finding the deed in that case to be bringing into existence a valid and binding contract enforceable as such, it was held that there was no trust. A Division Bench of the Punjab & Haryana High Court, also in *Ripudaman Singh Vs. Surinder Kumar* AIR 1959 P&H 92 was concerned with a suit for accounts pursuant to an agreement that the defendant therein would pay six and a half percent on the net amount received from Public Works Department (PWD) in respect of the work entrusted / assigned. The claim of the plaintiff was that he was entitled to the increase if any affected by PWD in the contracted rates. The contention of the plaintiff was that the relationship between plaintiff and defendant was of beneficiary and trustee and principal and agent and consequently plaintiff was entitled to rendition of accounts. It was held that a number of features distinguish a trust from a contract. Trust always involves an equitable ownership whereas a contract is a legal obligation based on an undertaking supported by a consideration, which obligation may or may not be fiduciary in character. The beneficiary of a trust has the beneficial interest in the trust property while beneficiary of contract has only a personal claim against the promisor. There is no fiduciary relationship between promisor and promisee. To constitute a trust, there must be a distinct fund which the trustee is required to preserve intact and for which he must eventually account, while for contract, person receiving money has unrestricted use thereof being liable to pay similar amount to third person and there is only a personal obligation to pay the money. It was further held that if a question arises whether parties to a transaction intended to create a trust, courts should enquire whether they intended that the person receiving the money should have beneficial as well as legal

interest in it. If he was intended to have use of the money as his own and to be merely under personal obligation to pay money to a payer or third person, debt is created. Finding the Agreement to be creating a relationship of contractor and sub-contractor between parties, it was held that Section 88 of Trusts Act did not apply. The High Court of Madras, in ***Rama Rao Vs. Chandra Gopal*** 1969 SCC OnLine Mad 99, was concerned with a contention that the plaintiff therein, under the agreement between the parties, was constituted a trustee for sale of the property and under which trust, there was an obligation on the plaintiff to pay agreed amounts within the time stipulated and the plaintiff was thus bound to sell the property. Construing the agreement, it was found that while allocating shares of each of the members of the family and while making a provision for the mother, schedule C property was allocated to the plaintiff and to equalize the shares, it was provided that the plaintiff will pay certain amounts to defendant within prescribed time and till then, defendant would be entitled to reside in the schedule C property and the said amount if not paid together with stipulated interest would be a charge on schedule C property. It was further found to have been agreed that if schedule C property was sold and fetched a price above the stipulated, the excess would be shared. Deciding the contention, it was held – (i) that the document at best disclosed a contract between the parties; (ii) distinction between a trust and a contract has to be borne in mind; (iii) whereas there is always a fiduciary relationship between trustee and beneficiary, none exists between parties to contract; (iv) that while beneficiary has beneficial interest in trust property, the beneficiary under a contract has merely a personal claim against promisor and even if contract is personally enforceable, certain legal rights only are available; (v)

that the plaintiff under the document had the power to deal with the property and sell it and this power with him was a discretionary one and not imperative which would be the case if trust is created. If what is contemplated is that the person has discretion to act on his volition and if what is expressed is only a pious wish of others who are parties to the instrument, then no such power can be misunderstood as an obligation in nature of trust which is annexed to the property; vi) the plaintiff under the document had five years' time to pay the said amount and only if he secured a price above that stipulated was the defendant entitled to any share; and, (vii) the equitable charge agreed to by the parties under the contract entered into by them did not disclose a trust.

39. A Full Bench of the High Court of Calutta, in ***Ghasiram Agarwalla Vs. The State*** AIR 1967 Cal 568, though in the context of appeal against conviction of a retailer of a Fair Price Shop for the offence of criminal breach of trust under section 409 of the Indian Penal Code, 1860, interpreted the agreement entered into between the Governor of State of West Bengal and the said retailer and on such interpretation held the title in the missing goods to have stood transferred in favour of the retailer and the retailer thus being the owner of the missing goods. Axiomatically, it was held that since the retailer was full owner of goods, it could not be said that there was an 'entrustment' within the meaning of Sections 405 of the IPC or criminal breach of trust within the meaning of Section 409 of the IPC and it was only a case of breach of contract. The fact that the sale by the Governor to the retailer was for the purpose of the retailer to further distribute the goods on the terms prescribed in the agreement, was held to be not amounting to entrustment of goods to the retailer. It was yet further

held that if the intent was to constitute the retailer as agent, it should have been expressly so mentioned in the agreement. Restriction on exercise of ownership rights was held not to constitute entrustment.

40. The parties, having contractually agreed to the manner of sale, mere use of the words ‘market value’ in the Trade Marks MOU would not entitle Vinod Kumar Sachdeva to raise objection, which he had agreed he would not raise, by contending the price agreed by Ashok Sachdeva to be not the market price.

41. The liabilities of Sachdeva Family which were sought to be extinguished from proceeds of sale of the properties / assets of Sachdeva Family were in the region of over Rs.25 crores to Rs.30 crores and therefrom, it can safely be assumed that the sales to be affected by Ashok Sachdeva under the MOUs to be of about the same or more value and the value of the subject trade mark put by Vinod Kumar Sachdeva also in comparison thereto, is miniscule. There is no averment of Vinod Kumar Sachdeva, of any of the other properties mentioned in the MOUs, having been undersold by Ashok Sachdeva.

42. Merit is also found in the contention of counsel for LT Overseas that the MOUs aforesaid are in the nature of family settlement and have to be enforced as such. The parties, being family members, having agreed to a particular mode of sale in a spirit of “give and take” whereunder Ashok Sachdeva also had agreed to give 50% of the sale proceeds of the subject trade mark to Vinod Kumar Sachdeva group despite Vinod Kumar Sachdeva group having only 0.02% share in SSIPL in whom the subject matter vested, Vinod Kumar Sachdeva cannot be permitted to, by raising

disputes, frustrate the very reason for which Ashok Sachdeva had entered into the same.

43. Thus, on an interpretation of the MOUs between the parties and the pleadings, I am unable to find the plaintiffs in CS(COMM) No.749/2016 to be entitled to restrain Ashok Sachdeva from entering into the settlement with LT Overseas, merely on the ground of the consideration agreed to be received by Ashok Sachdeva being insufficient. Else, Ashok Sachdeva through counsel has already stated that he will be bound by the MOUs and act in terms thereof and with which statement Ashok Sachdeva is ordered to be bound.

44. Thus, CS(COMM) No.749/2016 fails and is dismissed.

45. Resultantly, IA No.4128/2016 in CS(COMM) No.264/2016 under Order XXIII Rule 3 of the CPC stands allowed and a decree is passed in favour of the plaintiff in CS(COMM) No.264/2016 and against the defendant therein in terms of the Settlement Agreement dated 16th March, 2016 and in terms of prayer paragraphs 24 (a), (b) and (c) of the amended plaint dated 13th March, 2004 in CS(COMM) No.264/2016.

46. It is however made clear that the said decree will come into force only on receipt of the amount of USD 2,00,000 in the bank account of M/s Sachdeva and Sons Industries Pvt. Ltd. and particulars whereof to be furnished by counsel for defendant in CS(COMM) No.264/2016 to the counsel for the plaintiff therein.

47. Decree sheet in CS(COMM) No.264/2016 be drawn up. IA No.4128/2016 in CS(COMM) No.264/2016 and Settlement Agreement dated 16th March, 2016 enclosed therewith to form part of the decree sheet.

The parties are left to bear their own costs.

JULY 16, 2018
'bs'..

RAJIV SAHAI ENDLAW, J.

