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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 1272/2016, IA No.11299/2016

SOCIETE DES PRODUITS NESTLE, S.A & ANR

..... Plaintiffs

Through: Ms.Mamta Rani Jha, Mr.Manish K
Mishra and Ms.Akansha Singh,
Advocates.

versus

MR RAHUL KISHORE & ANR

..... Defendants

Through: Mr.Bishwbandhu, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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12.09.2018

Plaintiff has filed the present suit against the defendants for declaration, permanent injunction, restraining infringement of trade mark, dilution, unfair competition, for rendition of accounts of profits / damages and delivery up. During the pendency of this suit, the matter was referred to the Delhi High Court Mediation and Conciliation Centre and the parties have entered into a settlement dated 09.05.2018 inter alia to the following terms:-

“a. The Defendants acknowledge the rights of the Plaintiffs' in the NESTLE marks and also acknowledge the validity of the registrations mentioned in the plaint and undertake not to challenge the same before any authority whatsoever. The Defendants undertake not to use, manufacture, sale, offer for sale, advertise in any manner including on internet and/or directly or indirectly deal in any goods/services under NESTLE marks or any other trade mark/logo/label/packaging which is identical or deceptively similar to the Plaintiffs' NESTLE marks which amounts to infringement of the Plaintiffs' registered trade mark apart from passing off and unfair competition.

b. The Defendants have filed applications for registration of the mark NESLEY AQUA under No. 2298222 in Class 32. Defendants agree to

forthwith withdraw the said application within two weeks under intimation to the Plaintiffs.

c. The Defendants agree not to apply for registration of any other trademark or copyright or any other application, which is identical to or deceptively similar with the NESTLE marks which may violate intellectual property rights of the Plaintiffs.

d. The Defendants undertake to destroy all infringing material which had been seized by the Local Commissioner appointed by the Hon'ble Court on September 15, 2016 as well as all other infringing material in their possession, which have not been seized and which bear the Impugned Mark (NESLEY) within a week from signing of the present Settlement Agreement at their own cost. The Defendants shall send a confirmation letter alongwith photographs of destruction to the Plaintiffs within a week of signing of the present Settlement Agreement.

e. In view of the settlement arrived above, the Plaintiffs do not press for damages as claimed in the plaint. However, the Defendants have handed over a cheque for Rs. 2,00,000/- (Rupees Two Lakhs Only) to the Plaintiffs as token damages bearing no. 710281 dated 09.05.2018 drawn on Canara Bank, Hanuman Nagar, Patna at the time of signing of the present Settlement Agreement.

f. The Defendants and all the persons acting on their behalf, specifically and categorically represent that they have not transferred, sold or licensed usage rights or any other rights in the Impugned Marks (NESLEY) or any other trade mark that may be deceptively similar to the NESTLE marks of the Plaintiffs to any third party

g. In case of any breach of this settlement by the Defendants herein or by any person acting on their behalf, the Plaintiffs herein shall be at liberty to initiate appropriate action against the Defendants.

h. The abovementioned undertaking has been tendered by Mr. Rahul Kishore Sole Proprietor of MIs. R. K. Industries having address at C-C/34, P.C. Colony, Kankarbagh, Patna - 800020 and the same shall be binding on the Defendants, its servants, agents, franchisee, assigns in business, its dealers, stockist and successor-in-interest, for all times to come.

i. The parties to this Settlement Agreement have agreed that this Hon'ble Court may be pleased to pass decree in terms of prayer clause of the plaint leaving the parties to bear their own respective costs. The terms of the present Settlement Agreement may also be ordered to be part of the decree.

j. The Hon'ble Court may consider refund of the court fees to the Plaintiffs in terms of Section 16 of the Court Fees Act, 1870 read with Section 89 of the Code of Civil Procedure.

k. By signing this Settlement Agreement the parties hereto state that they have no further claims or demands against each other of any nature whatsoever subject to the adherence of the present Settlement Agreement. and all dispute and differences have been amicably settled by the parties hereto through process of Mediation, voluntarily and of their own free will

and accord.

l. That the parties undertake before the Hon'ble court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.”

It is submitted by the learned counsels the settlement is voluntarily and without any coercion from any corner. Since the settlement is lawful one, hence the learned counsels say decree in terms of clauses No.a to l (supra) be passed.

In the circumstances, the suit of the plaintiff stands decreed in terms of the clauses No.a to l, (supra) of the settlement agreement dated 09.05.2018 which shall form part of the decree. The pending application also stands disposed of.

Since the parties have settled the matter before the Delhi High Court Mediation and Conciliation Centre, the plaintiff shall be entitled to the refund of the Court fees as per provisions of the Indian Court Fees Act. Parties to bear their own costs. Decree sheet be prepared.

YOGESH KHANNA, J

SEPTEMBER 12, 2018

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