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

\+ CS(COMM) 716/2017, IA No.13543/2017 (u/S 151 CPC), IA No.12186/2017 (u/O XXXIX R-1&2 CPC) & IA No.13121/2017 (u/O XXXIX R-4 CPC)

AJANTA INDIA LTD ..... Plaintiff

Through: Mr. Kapil Wadhwa & Ms. Devyani Nath, Advs.

Versus

SUMIT KUMAR GUPTA & ANR ..... Defendants

Through: Mr. Pankaj Kishore Gupta, Adv. for D-6.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **22.01.2018**

1. The sole plaintiff instituted this suit to restrain the two defendants viz. Sumit Kumar Gupta and Dyzen Greentech Pvt. Ltd., from passing off their goods as that of the plaintiff by adopting the trade dress and packaging of the plaintiff and from, for infringing the copyright of the plaintiff therein and for ancillary reliefs.

2. The suit was entertained and vide *ex parte* ad-interim order dated 24th October, 2017, the defendants restrained from selling, manufacturing, advertising or promoting their goods with the trade dress / packaging which is identical or deceptively similar to the plaintiffs' packaging with respect to CFL and LED products including but not limited to its 3 watt, 7 watt and 9 watt packaging.

3. A commission was also issued to visit the premises of the defendants and to seize the infringing goods.

4. The defendants contested the suit by filing written statement.

5. Vide order dated 20th November, 2017, the parties were referred to the Mediation Cell of this Court.

6. Mediation is reported to be unsuccessful.

7. The counsel for the plaintiff states that though the defendants have changed their trade dress and packaging to the satisfaction of the plaintiff but mediation remained unsuccessful because the parties were unable to reach a settlement qua damages. It is stated, that while the plaintiff was seeking a sum of Rs.10 lacs towards damages, the defendants offered only upto Rs.7 lacs.

8. The counsel for the defendants though confirms having changed the packaging and for this reason having no objection to injunction as sought being passed but states that the defendants had offered damages of Rs.6 lacs only. It is also stated that the defendants have placed before this Court their audited accounts and the entire profit earned has been offered to the plaintiff as damages.

9. The counsel for the plaintiff states that according to the plaintiff, the defendants have sold goods with the impugned packaging / trade dress for a period longer than that for which accounts have been filed.

10. In the aforesaid state of affairs, it is not deemed appropriate to allow the parties to continue litigating for the aforesaid difference.

11. Exercising powers under Order XIIIA of the CPC and as interpreted recently in ***Godfrey Philips India Limited Vs. P.T.I. Privated Limited***, it is deemed appropriate to summarily decide the suit by intervening and resolving the minor difference which remains between the parties.

12. It is deemed appropriate that the defendants, besides damages in the

sum of Rs.6 lacs as offered, also reimburse the plaintiff the litigation costs incurred, in the sum of Rs.1.50 lacs.

13. Accordingly, a decree is passed, in favour of the plaintiff and jointly and severally against the two defendants i) of permanent injunction in terms of prayer paragraphs 'A' to 'C' of the plaint dated 16th October, 2017 (the counsel for the defendants states that packaging now adopted by the defendant has been filed along with additional documents filed by the defendants but which have not come on record; a copy of the new packaging is handed over in the Court and for the sake of identification, Exhibit-C1 is put thereon in today's date and the same is taken on record; the Registry is directed to place on the file, the documents / applications filed in this suit, if lying under objection or under process); ii) of recovery of damages in the sum of Rs.6 lacs; the said damages, if not paid within two months as sought, shall also incur interest thereon at the rate of 11% per annum from the date of decree till the date of payment / realization; iii) of costs assessed at Rs.1.50 lacs (consolidated).

14. Decree sheet be drawn up.

15. The representative of the plaintiff to visit the premises of the defendants on 29th January, 2018 at 1100 hours when the *Superdar,* to whom the goods were entrusted, will, in the presence of the representative of the plaintiff, remove the seal and the packaging containing the impugned trade dress shall be destroyed and the goods contained therein will be handed over to the defendants.

RAJIV SAHAI ENDLAW, J

JANUARY 22, 2018/'gsr'..