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

+ **CS(COMM) 176/2018**

HADLEY INDUSTRIES OVERSEAS HOLDINGS LTD & ANR
..... Plaintiffs

Through: Ms. Vaishali Mittal and Ms. Vrinda
Gambhir, Advocates.

versus

ASHFAQUE KHAN & ANR Defendants

Through: Mr. Ankit Arvind and Mr. Manish
Mishra, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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08.08.2019

I.A. 10825/2019 (under Order 23 Rule 3)

1. This is a joint application on behalf of the parties seeking a decree on the basis of an amicable settlement between the parties.

2. The present suit is for permanent injunction restraining infringement of their Indian Patent No. 198658 (hereinafter referred to as ("IN '658")), infringement of copyright of their brochure and packaging for GYPSTEEL ULTRA, passing off, damages, etc. The Defendants have filed their Written Statement and a Counter Claim No. 85/2013 questioning the patentability/validity of Indian patent No. 198658. It is stated that parties have now amicably resolved their disputes as per the terms and conditions contained in para 2 of the application, which reads as under:

“A. The Defendants undertake that they have never conducted in the past till the expiry of the suit patent any activity amounting to the use of the Plaintiffs valid Indian Patent No. 198658 as defined under the provisions of the Indian Patents Act, 1970. The Defendants hereby acknowledge that the products being corrugated metal sheets manufactured by the Defendants conform with and are prepared in accordance with the claims of the GB Patent bearing application No. 2272662A. Accordingly, without prejudice to their rights, interests and contentions, the Plaintiffs undertake to give up their relief for grant of infringement of patent, as prayed for in paragraph 38 (a) .and (b) of the plaint;

B. The Defendants hereby agree and undertake that subject to the abovementioned terms, the Defendants shall withdraw the counter claim filed by them in the present proceedings, being C.C. No. 85 of 2013;

C. The Defendants hereby acknowledge that the Plaintiffs are the holder of copyright, as claimed in the present proceedings, in literary and artistic work (drawings) contained in the Plaintiffs brochure and packaging for GYPSTEEL ULTRA. ;The Defendants hereby agree that they have ceased making use of their impugned brochure and packaging in relation to any of their activities, on all platforms on the internet and otherwise;

D. The Defendants hereby agree to use the revised brochure and packaging as submitted by them for their product "Lucky Steel Ripple" at page numbers 192 to 193 of the list of documents filed by them via Index dated March 23, 2013;

E. The Plaintiffs undertake to not have any objection against the Defendants' use of the said revised brochure (a copy of which is annexed herewith), or any other work so long as the said work does not amount to a substantial reproduction of the artistic and literary work which forms part of the copyright vested with the Plaintiffs;

F. The Defendants further agree and undertake that they shall not

engage in any activity which has a likelihood of causing confusion in the minds of consumers that the products or services of the Defendants actually emanate from the Plaintiffs instead;”

3. The application is duly supported by the affidavits of the parties and signed by the Plaintiffs the Defendants and their respective counsels.

4. The counsels support the Settlement Agreement and seek a decree in terms thereof. I have perused the compromise/settlement arrived at between the parties and find the same to be lawful.

5. A decree is passed, in terms of the Settlement as recorded in the application marked as Exhibit C-1 which along with the Annexure thereto shall form part of the decree sheet.

6. Decree sheet be prepared.

CC 85/2013

7. Learned counsel for the Defendant states that in view of the above settlement he has instruction to withdraw the counter claim.

8. Dismissed as withdrawn.

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9. In view of the settlement the next date before the Court i.e. 30th September 2019 stands cancelled.

SANJEEV NARULA, J

AUGUST 08, 2019/nk