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

+ **CS(COMM) 321/2020**

M/S BHAGYALAXMI INDUSTRIES Plaintiff

Represented by: Mr. Saif Khan, Advocate with
Mr. Shobit Agrawal & Mr. Deepank
Singhal, Advocates

versus

PRAMOD KUMAR & ANR. Defendants

Represented by: Mr. Kapil Gulati, Advocate for D-1 &
D-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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24.08.2020

The hearing has been conducted through Video Conferencing.

I.A. 7287/2020 (Order XXIII Rule 3 CPC – jointly moved by the parties)

1. By this joint application filed by the plaintiff and defendant Nos.1 &
2, they seek decree in the suit in terms of the settlement arrived at between
the parties which is enumerated in Para 3 of the application as under:-

*“3. That the parties have accordingly arrived at a mutual
settlement of the said disputes, as mentioned hereunder: -*

*a) The Defendants acknowledge the Plaintiff to be the
proprietor of the ‘ROBOTOUCH’ trademarks as specified in
ANNEXURE A including those mentioned in Paragraphs 6 and
7 of the Plaint (“the ROBOTOUCH trademarks”), for all types
of goods and services including but not limited to those falling*

under Class-09, Class-10 and Class-35, and the Defendants shall never raise any challenge or dispute or any kind of proceedings whatsoever against the Plaintiff's proprietorship over the ROBOTOUCH trademarks.

b) That each of the Defendants undertake to this Hon'ble Court not to import, export, offer for sale, sell, supply, advertise, manufacture or cause to be manufactured, or in any way deal in any kind of goods or services including but not limited to massage, wellness, health, fitness or lifestyle products or services, using the ROBOTOUCH trademarks or any other trademark deceptively similar to these trademarks, through any means, including dealing in such products through any store/shop/outlet or e-commerce or online platform.

c) That the Defendants further undertake to this Hon'ble Court not to do any other act amounting to passing off of the Defendants' goods as those originating from the Plaintiff.

d) The Defendant No.1 undertakes to unconditionally withdraw the trademark registration no. 3983823 in Class-10 for the mark ROBOTOUCH within 2 weeks of recordal of the present terms, and simultaneously furnish written confirmation of having applied for the withdrawal to the Plaintiff. The Defendants shall not seek to register any mark identical or similar to ROBOTOUCH ever in future.

e) The Defendant No.1 undertakes to unconditionally withdraw the Opposition No.1046299 filed by it to Plaintiff's trademark application No. 4299916, within 2 weeks of recordal of the present terms and simultaneously furnish written confirmation of having applied for the withdrawal to the Plaintiff.

f) The Defendants agree and undertake to not cause any kind of interference or hindrance in the peaceful conduct of the Plaintiff's business under the mark ROBOTOUCH.

g) The Defendant no. 1 & 2 affirm that to the best of their knowledge they are not in possession of any infringing goods under the mark ROBOTOUCH, still for the sake of removing any ambiguity both defendants hereby undertake to destroy all infringing goods of any description in their possession if any found upon their discovery and shall not in any case use it for any commercial purpose.

h) That any wilful or deliberate breach of any of the undertaking(s) given herein by the Defendant(s) shall automatically entitle the Plaintiff to claim for the damages prayed for in the present suit.

i) In consideration to the abovementioned undertakings given by the Defendant No. 1 and 2 and subject to adherence of the same by the Defendants for all times to come, the Plaintiff foregoes its claim for delivery up of infringing products, rendition of accounts, damages and costs under paragraph 43 (f), (g) (h) and (i) of the Plaint.”

2. Annexure A to the present application is as under:-

“ANNEXURE- A

ROBOTOUCH (word mark, in any font, size, case, colour etc.)

RoboTouch
robotouch

3. The present application is duly signed by Mr. Yerram Balakrishna, Proprietor of M/s Bhagyalaxmi Industries/plaintiff, Mr. Pramod Kumar, sole Proprietor of Indobest Health Science Private Limited/defendant No.1 and Mr. Dheeraj Arora, Director and authorized signatory of Indobest Health Science Private Limited/defendant No.2.

4. Though the affidavit in support of this application of Mr. Yerram Balakrishna is attested, however, that of Mr. Pramod Kumar and Mr. Dheeraj Arora is not attested. However, Mr. Pramod Kumar and Mr. Dheeraj Arora are present through video conferencing and are identified by the learned counsel for the defendants.

5. Both the parties are bound by the terms and conditions of the settlement arrived at between the parties. Decree in terms of the settlement as per prayers 43 (a) to 43 (e) of the plaint is passed.

6. Since the settlement was sought to be arrived at between the parties by the intervention of this Court on the first date of hearing itself, the Court fee deposited by the plaintiff be refunded to the plaintiff. Necessary certificate in this regard will be issued by the Registry to the Proprietor of the plaintiff.

7. Application is disposed of.

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1. In view of the settlement arrived at between the parties, the suit is decreed in terms of prayers 43(a), 43(b), 43(c), 43(d) and 43(e) of the plaint. Decree sheet will incorporate the terms of settlement.

I.A. 6917/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A. 6918/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

I.A. 6919/2020 (exemption from filing attested affidavits, original/ clearer/ translated copies)

I.A. 6920/2020 (exemption from filing court fee)

1. Since the suit is decreed in terms of the settlement as above, these applications are disposed of having infructuous.
2. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

AUGUST 24, 2020

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