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

+ **CS(COMM) 556/2019**

DABUR INDIA LIMITED

..... Plaintiff

Represented by: Mr. Manish Kr. Mishra, Mr. Nikhil
Sonekar, Advs.

versus

ACCRA PAC(INDIA) PRIVATE LIMITED & ANR. Defendant

Represented by: Mr. Agnish Aditya, Adv. for D-1.
D-2 ex-parte.
Ms. Megha Agrawal, Resolution
Professional appointed for D-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

04.03.2020

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1. In the present suit the plaintiff has impleaded ACCRA PAC (INDIA) PRIVATE LIMITED as defendant No.1 and L B INDUSTRIES PRIVATE LIMITED as defendant No.2.

2. The plaintiff by this suit claims that it is the owner of the trademark MISWAK and MESWAK which were adopted by the plaintiff's predecessor in the year 1990 and 1998 respectively.

3. The plaintiff having acquired good-will and reputation in the trademark MISWAK was aggrieved by the defendant No.2 infringing the plaintiff's trademark MESWAK and also passing its goods as that of the plaintiff's by using identical mark MESWAK.

4. Pursuant to summons being issued defendant No.1 has filed a written statement stating that defendant No.1 company acted as a job worker/

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contract manufacturer for manufacture and supply of cosmetics and toilet preparations as ordered by defendant No.2 company under the brand name/ trademarks provided by defendant No.2 company and based on the recipe provided by the said defendant No.2 company.

5. In view of this stand of defendant No.1, learned counsel for the plaintiff gives up defendant No.1, the same being not a necessary party to the suit.

6. Defendant No.1 is thus directed to be deleted from the array of parties.

7. Despite affidavit of service being filed by the plaintiff, none appeared on behalf of defendant No.2 and thus defendant No.2 was proceeded ex-parte vide order dated 10th December, 2019.

8. Today Ms. Megha Agrawal, the Resolution Professional appointed for the defendant No.2 company by the NCLT is present in Court on behalf of defendant No.2. She states that by virtue of the order dated 19th November, 2019 passed by the NCLT, Mumbai Bench she has been appointed as an Interim Resolution Professional to carry out the functions of the company as mentioned under the code and a moratorium has been issued in respect of defendant No.2 company. She, however, further states that presently defendant No.2 company is not selling any products under the trademark MESWAK. She also states that right now there is no proposal to assign or create any third party rights in the rights of the defendant No.2 if any, in relation to the trademark and as and when the said right is exercised based on material available with defendant No.2, a notice of the same will be issued to the plaintiff.

9. Defendant No.1 has been given up as not being necessary party to the suit and the Resolution Professional on behalf of defendant No.2 company against which proceedings under the IBC (Insolvency & Bankruptcy Code) are going on, states that defendant No.2 is not using the trademark MESWAK and in case of assignment if any notice will be given to the plaintiff. Learned counsel for the plaintiff seeks leave to withdraw the suit with liberty to file a fresh suit in case any fresh cause of action so arise.

10. Learned Resolution Professional on behalf of defendant No.2 is personally present in Court and has placed photocopy of her UIDAI Card on record.

11. Suit is dismissed as withdrawn with liberty as prayed for.

I.A. 13736/2019 (u/O XXXIX R1&2 CPC)

Application is disposed of as infructuous.

MUKTA GUPTA, J.

MARCH 04, 2020

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