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

+ CS(COMM) 866/2017 & I.A. 15273/2017, I.A. 11606/2018, I.A.
1533/2020, I.A. 2998/2020
WESTERN DIGITAL TECHNOLOGIES, INC. & ANR Plaintiff
Represented by: Mr.Prithvi Singh, Adv.

versus

AJAY GERA & ORS Defendant
Represented by: Ms.Nupur Lamba, Adv. with
Ms.Sanya Sood, Adv.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
03.03.2020

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I.A. 2998/2020 (under Order XXIII Rule 3 CPC)

1. By this joint application, the plaintiffs and defendants seek decree in the suit in terms of the settlement arrived at between the parties.
2. Taking the settlement agreement on record, application is disposed of.

CS(COMM) 866/2017

1. Plaintiff Nos. 1 and 2 i.e. Western Digital Technologies Inc. and Western Digital U.K. Ltd. have filed the present suit impleading Ajay Gera, Cruiser Technologies and Nickel Technologies as defendant No.1 to 3 respectively, inter alia, seeking a decree of permanent injunction restraining the defendants, their agents etc. from selling, importing, offering for sale,

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advertising goods infringing the plaintiffs' trademarks as also restraining them from passing off the goods of the defendants as that of the plaintiffs besides a decree of delivery up, damages and costs.

2. Plaintiffs and defendants have arrived at a settlement on the following terms and conditions as noted in paras 4, 5, 6 and 7 of the joint application under Order XXIII Rule 3 CPC as under:

4. *The Plaintiffs and the Defendants have now agreed to settle their disputes amicably and the terms of the settlement are as under:*
 - a) *The Defendants acknowledge that Plaintiff No. 1 is the proprietor of the Western Digital trademarks as listed in the plaint;*
 - b) *The Defendants acknowledge that the Plaintiffs' Western Digital trademarks have acquired the status of well-known marks, under the statute and in common law and admit the validity of the Plaintiffs' trademarks in India;*
 - c) *The Defendants undertake to hand over all the products (bearing the Western Digital trademarks) seized by the local commissioners at the premises of Defendant No. 2 and at New Custom House, Mumbai to the Plaintiffs' for destruction of the same;*
 - d) *The Defendants undertake to hand over all unauthorized promotional material, stickers, cartons, packing, papers etc. currently in their possession bearing the Western Digital trademarks or any of its variants which are deceptively similar to the Western Digital trademarks within 15 days of recordal of this compromise;*
 - e) *The Defendants undertake to this Hon'ble Court that they will not import, buy, sell or indulge in any kind of transaction of any unauthorized or illegitimate products bearing the Western Digital trademarks which may be identical with or deceptively similar variants of the Plaintiffs' Western Digital trademarks amounting to infringement thereof;*

- f) The Defendants and their representatives undertake to this Hon'ble Court not to use the Western Digital trademarks and/or any other mark similar or identical thereto, as a part of the name of their products/goods, as a part of their trade/business or on their website so as to pass off such goods as that of the Plaintiffs;*
 - g) The Defendants undertake that they have not filed any application for registration of Western Digital trademarks or any other mark deceptively similar to the trademarks of the Plaintiffs or any of its variants and will not file any application for registration of the Western Digital trademarks or any other mark deceptively similar to the said marks or any other similar mark whether in the form of a word, label or other composite mark in respect of any goods or services whatsoever;*
 - h) It is however clarified that the above undertakings by the Defendants will not prevent the Defendants from purchasing and selling genuine, lawful and authorized products bearing the Western Digital trademarks in the domestic market.*
- 5. The Defendants have agreed to pay token damages amounting to a total sum of Rs. 1,00,000/- to the Plaintiffs in consideration of settlement of all disputes.*
- 6. Should the Defendants or their representatives be found to be in breach of this settlement agreement at any date in the future, they will be liable to pay a sum of Rs. 30,000 (Rupees Thirty Thousand) to the Plaintiffs for each infringing article found in their possession.*
- 7. The aforesaid undertakings have been given by Defendant No. 1 Mr. Ajay Gera in his capacity as the proprietor of Defendant Nos. 3 and by Mr. Mr. Girish Dhingraas proprietor of Defendant No. 2. The undertakings given herein shall be binding on the Defendants, their partners, affiliates, agents, representatives and assigns-in-business henceforth”.*

3. The application is signed and duly supported by the affidavit of Vishal Vig, authorized signatory of plaintiff No. 1 and plaintiff No.2 and Ajay Gera as defendant No. 1 and proprietor of defendant No. 3 and Girish Dhingra as proprietor of defendant No. 2. Authorization in favour of Vishal Vig has already been placed on record.

4. Learned counsel for the defendants has handed over a sum of ₹ 1 lakh by way of two cheques bearing Nos. 898954 drawn on Axis Bank, Nehru Place Branch, New Delhi-19 and 478238 drawn on ICICI Bank, Nehru Place Branch, Jyoti Building, New Delhi-110019, dated 03rd March, 2020 for ₹ 50,000/- each. Learned counsel for the defendants further states that the infringing goods and articles will be handed over to the plaintiff within a period of ten days.

5. The suit is consequently decreed in terms of paras 4(a), 4(b), 4(c), 4(d), 4(e), 4(f), 4(g), 4(h), 5, 6 and 7 of the settlement agreement as also in terms of prayers A and B of para 45 of the plaint.

6. Decree sheet will incorporate the terms of settlement.

7. Court fees is directed to be returned to the authorized representative of the plaintiffs under Section 16 of the Court Fees Act. Registry will issue a necessary certificate in this regard.

IA 1533/2020 (under Order XXXIX Rule 2A CPC by plaintiffs)

1. Learned counsel for the plaintiffs states that in the light of the settlement arrived at between the plaintiffs and defendants, plaintiffs do not press this application.

2. Application is dismissed as not pressed.

I.A. 11606/2018 (u/O VIII R 1 CPC by P)
I.A. 15273/2017 (u/O XXXIX R 1&2 CPC)

Applications are disposed of as infructuous.

MUKTA GUPTA, J.

MARCH 03, 2020/akb

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