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

Decided on 19th February, 2021

+ **CS(COMM) 166/2020**

**ALLIED BLENDERS AND
DISTILLERS PVT LTD.**

..... Plaintiff

Through: Mr. Shrawan Chopra, Mr.
Vibhav Mithal and Mr. Rohit Hebbale,
Adv. (Anand and Anand, Advocates)

Versus

**AGRIBIOTECH INDUSTRIES
LIMITED (ABIL).**

....Defendant

Through: Ms. Smriti Churiwal and Mr.
Jaivir Sidhant, Adv.

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

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19.02.2021

(Video-Conferencing)

**IA 2508/2021 (Order XXIII Rule 3 CPC) and CS(COMM)
166/2020**

1. This is a joint application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, for decreeing the suit as per the terms of the settlement, which have been arrived at between the parties. The terms of the settlement, as contained in para 2 of the application, may be reproduced.

“a. The Defendant acknowledges that the Plaintiff is the registered proprietor of the "Officer's Choice" and "Officer's

Choice Blue" trademarks and labels, as stipulated under Paragraph 8 of the Plaint, and that the Plaintiff is also the owner of the copyright in the labels bearing the "Officer's Choice" and "Officer's Choice Blue" trademarks.

b. Subsequent to the filing of the present suit the Defendant undertakes before this Hon'ble Court that it will cease the use of the label/trade dress/ mark as shown below:-



(Hereinafter collectively may also be referred to as the impugned label/trade dress) for all of their goods.

c. The Defendant shall not use in any manner whatsoever the

impugned label/trade dress/any mark which is identical/deceptively similar to the Plaintiff's trademarks, "Officer's Choice", "Officer's Choice Blue" and "Choice" as set out in the Plaint, and/or pass off the Plaintiffs goods as their own.

d. The Defendant further undertakes to not infringe upon the copyright in the "Officer's Choice and "Officer's Choice Blue" labels of the Plaintiff.

e. However, it is clarified and agreed between the parties that the Defendant is not by virtue of these compromise terms in any manner refrained, prohibited or restrained from using, manufacturing, trading, selling, exporting, importing, offering for sale, distributing, advertising, directly or indirectly in respect of any alcoholic beverage specially IMFL or goods of any description any label and/or trade dress that may contain / include the colours viz red, white and/or the combination of red and white provided it does not infringe or violates Plaintiffs Trademarks and copyright.

f. The Defendant has applied for the trademark  on 23.07.2020 bearing Trademark Application No. 4580698 in class 33 and undertakes to withdraw this trademark application within one week from this Hon'ble Court taking the present compromise application on record.

The Defendant states that it is currently using the following label in yellow colour having pantone shade number P 1-5 C (hereinafter referred to as "New Label").



The Plaintiff has no objection to the New Label.

g. The Plaintiff hereby agrees that it shall not have any objection to the exhaustion of the Defendant's stock bearing the impugned label/trade dress presently in existence and manufactured prior to the order of restraint by tile Hon'ble Court passed on 15.10.2020 (hereinafter referred to as "already manufactured stock of the impugned product"). The particulars of the already manufactured stock of the impugned product have been provided by the Defendant's representative to the Plaintiff's representative, and the same have been reproduced hereinbelow.

Particulars regarding the Defendant's product "CHETAK WHISKY" as on 1/02/2021	Quarts (in cases)	Pints (in cases)	Nips (in cases)	90 MI (in cases)	Total Qty.	Appx Value in INR
Duty Paid Stock at various locations across India	-	-	3829	-	3829	
Location Details:						
Corporation Depots	-	-	1925	-	1925	
Manufacturing Unit	-	-	1904	-	1904	
Non-Duty Paid Stock at various locations across India	-	-	-	-	-	-
Location Details:	-	-	-	-	-	-

h. The Plaintiff hereby agrees and affirms that it shall not pursue its claim for delivery up of the impugned CHETAK WHISKY products, as stipulated in Paragraph 65 (vii) of the Plaint, provided that the Defendant complies and conforms with the compromise terms and conditions as mentioned hereinabove, in letter and spirit.

i. The Plaintiff hereby agrees and affirms that it shall not pursue its claim for rendition of accounts of profit against the Defendant, as stipulated in Paragraph 65(vi) of the Plaint, provided that the Defendant complies and conforms with the compromise terms and conditions prescribed as mentioned hereinabove, in letter and spirit.

j. The Plaintiff hereby agrees and affirms that it shall not pursue its claim for recovery of damages against the Defendant, as stipulated in Paragraph 65(v) of the Plaint, provided that the Defendant complies and conforms with the compromise terms and conditions prescribed as mentioned hereinabove, in letter and spirit.

k. The Plaintiff hereby agrees and affirms that it shall not pursue its claim for costs of the present proceedings, as

stipulated in Paragraph 65(viii) of the Plaint, provided that the Defendant complies and conforms with the compromise terms and conditions prescribed as mentioned hereinabove.”

2. Learned counsel for the parties are present and they confirm the settlement of the disputes between their clients.

3. As such, nothing survives for adjudication in the present case. The parties shall remain bound by the afore-extracted terms of the settlement.

4. The suit stands decreed in accordance with the terms of settlement, reproduced hereinabove. The Registry is directed to draw a formal decree in accordance with law.

5. The application is allowed and disposed of.

6. The plaintiff would be entitled to refund of 50% of the court fee.

C. HARI SHANKAR, J

FEBRUARY 19, 2021

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