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

% ***Date of decision: 22.07.2021***

+ **CS(COMM) 341/2020**

N.V. NUTRICIA & ANR. Plaintiffs

Through: Mr. Praveen Anand, Advocate

Versus

NUTRICA INTERNATIONAL PVT. LTD. & ORS. Defendants

Through: Mr. Shailen Bhatia, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

CS(COMM) 341/2020 & IA No. 7294/2020 (u/O XXXIX R 1 & 2 r/w Sec. 151 CPC by the plaintiffs); I.A. 7799/2020 (u/O 39 R 4 r/w Sec. 151 CPC by the defendants); I.A. 11593/2020 (by defendants) & IA No. 8744/2021 (u/O 1 R 10(2) r/w Sec. 151 CPC)

1. Plaintiffs have filed the present suit, *inter alia*, for permanent injunction restraining infringement of trade mark, passing off, dilution, unfair competition, misrepresentation, damages, rendition of accounts, delivery up, etc. against the defendants.

2. Pertinently, plaintiff No.1- N.V. Nutricia is a company incorporated

under the laws of The Netherlands. Plaintiff No.2, Nutricia International Private Limited, is a wholly owned subsidiary of the plaintiff No.1. The trade mark 'NUTRICIA' has been used in association with the products of plaintiff No.1, both as a brand as well as the trade/corporate name.

3. According to plaintiffs, the trade mark 'NUTRICIA' was coined, conceived and adopted by plaintiff No.1 in the year 1901 and has since been extensively used by the plaintiff No.1 as a brand as well as the dominant and operative part of its corporate name. Over the years, as the plaintiff No.1 and its group companies have expanded across the globe and established themselves as leaders in the specialised nutrition market, the trade mark 'NUTRICIA' has become progressively well-known across the world, and has become exclusively associated with the plaintiff No.1 and its group companies. The plaintiff No.1 also has several registrations for the trade mark 'NUTRICIA' in its favour in various other countries apart from India. Thus, the trade mark 'NUTRICIA' is solely and exclusively associated with the plaintiffs.

4. The Defendant No.1, "Nivisa Healthcare Pvt. Limited", formerly known as Nutrica International Private Limited, is a company incorporated under The Companies Act, 2013 and is in the business of manufacturing,

supplying and selling infant food in the form of health supplement protein powders under the trade mark and trade name 'NUTRICA'. Defendant No.2, Mr. Nitin Rohatgi, is the director of the defendant No.1 and defendant No.3 is a third party. Defendants No.2 and 3 came to be employees of the plaintiff No.2 but after their resignation, they were discharged from their services on 30.06.2019 and 04.12.2017 respectively.

5. Further, in February, 2020 an Investigator of plaintiffs revealed that the defendants were in the business of manufacturing, supplying and selling health supplement protein powders for infants under the trade mark and trade name 'NUTRICA'. Further plaintiffs came to know that the defendants have applied for trade mark registration for the label  under class 5 of the classification followed by India's Trade Mark Registry. According to plaintiffs, defendant Nos. 2 and 3 being ex-employees of the plaintiff No. 2 were clearly aware of the Plaintiffs' rights and goodwill in the mark 'NUTRICIA' and still, they deliberately and dishonestly adopted the mark 'NUTRICA'. In such a view of the matter, the present suit was filed by the plaintiffs seeking:-

“A decree of permanent injunction restraining each of the defendants, its partners, directors, proprietors, subsidiaries,

affiliates, franchisees, officers, servants, agents, distributors, stockists, representatives, licensees and anyone acting for or on their behalf directly or indirectly, as the case may be,

(a) from selling, offering for sale, advertising, manufacturing, mentioning on their websites, dealing in any manner whatsoever or otherwise using, including as a part of a corporate name, domain name or trade name, the



mark 'NUTRICA' or the label  any other mark identical or deceptively similar to the Plaintiff No.1's registered trade mark 'NUTRICIA', especially in relation to the business of manufacturing or selling food supplements, amounting to infringement;

(b) from selling, offering for sale, advertising, manufacturing, mentioning on their websites, dealing in any manner whatsoever or otherwise using, including as a part of a corporate name, domain name or trade name, the



mark 'NUTRICA', or the label  or any other mark identical or deceptively similar to the Plaintiffs' trade mark 'NUTRICIA', especially in relation to the business of manufacturing or selling food supplements, amounting to passing off;

(c) from performing any actions which is likely to lead to the dilution or tarnishment of the Plaintiffs' trade mark as well as corporate name, or amounting to unfair competition;

and,

(d) from selling, offering for sale, advertising, manufacturing, mentioning on their websites, dealing in any manner whatsoever or otherwise using, including as a part of a corporate name, domain name or trade name, the



mark 'NUTRICA', or the label  or any other mark identical or deceptively similar to the Plaintiffs' registered trade mark 'NUTRICIA', or performing any other action which amounts to misrepresentation."

6. Learned counsel for the plaintiffs further submits that in terms of mediated Settlement Agreement dated 15.03.2021, the present suit has to be decreed in terms of prayers made in Para Nos. 61 (a), (b), (c) and (d) of the plaint. Further submitted that it is agreed that in lieu thereof, plaintiffs shall not raise the claim of damages mentioned in prayer made in Para Nos. (f) to (h) of the plaint.

7. Learned counsel for defendants has reverted in positive and he submits that the present suit can be decreed in terms of prayers in Para Nos. 61 (a), (b), (c) and (d) of the plaint in favour of plaintiffs and against the defendants.

8. This Court has gone through the terms of settlement incorporated in the Settlement Agreement dated 15.03.2021 and the same is found to be valid and lawful.

9. In view of aforesaid, the present suit is decreed in terms of prayers in Para Nos. 61 (a), (b), (c) and (d) of the plaint in favour of plaintiffs and

against the defendants. Decree sheet be accordingly drawn. The Settlement Agreement dated 15.03.2021 shall form part of the decree sheet.

10. At this stage, learned counsel for plaintiffs submits that in view of Section 16 of the Court Fees Act, 1870, the plaintiffs seeks refund of entire court fees, as the dispute *inter se* parties stands amicably settled through mediation and before commencing of pleadings.

11. A Division Bench of this Court in ***Nutan Batra Vs. M/s. Buniyaad Associates 2018 SCC OnLine Del 12916***, relying upon decision of Hon'ble Supreme Court in ***Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited, (2010) 8 SCC 24***, had allowed an appeal against the order of refusal of refund of entire court fee in a suit. Further, a Coordinate Bench of this Court in ***Munish Kalra Vs. Kiran Madan and Others 2019 SCC OnLine Del 8021*** taking into account the fact that the dispute stands amicably settled between the parties, had relied upon decisions in ***Afcons Infrastructure Limited (Supra)*** and ***Nutan Batra (Supra)*** and directed refund of the entire court fees.

12. Concurring with afore-noted decisions, the plaintiffs are entitled to refund of entire court fees. Registry is directed to issue necessary certificate/ authorization in favour of the plaintiffs to seek refund before the appropriate

authorities.

13. With aforesaid directions, the suit and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 22, 2021

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