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

+ **CS(COMM) 514/2022 & I.A. 11794/2022, I.A. 11797/2022,
I.A. 15646/2022**

GLAXO GROUP LIMITED Plaintiff
Through: Mr.Dushyant K. Mahant, Adv.

versus

NARESH GOEL & ORS. Defendants
Through: Mr.Amit Jain and
Ms.Sreelakshmi Menon, Adv.

**CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR**

ORDER (O R A L)

% **20.04.2023**

1. The dispute between the parties stands settled with the intervention of the Delhi High Court Mediation and Conciliation Centre. The settlement agreement dated 18th April 2023 has been placed on record. The terms of settlement read thus:

“1. The Second Party acknowledge the First Party's right, title and interest in (i) the mark BETNESOL, (ii) variations of the mark BETNESOL, such as BETNESOL-N and BETNESOL FORTE, (iii) the silver-coloured aluminum strip packaging with red lettering that features a distinctive get-up and layout (as shown in Annexure-B), (iv) the outer box packaging with red stripes featuring a distinctive get-up and layout (as shown in Annexure-C), (v) the orange-coloured injection outer box packaging featuring a distinctive get-up and layout (as shown in Annexure-D) and (vi) the orange-coloured injection vial packaging featuring a distinctive get-up and layout (as shown in Annexure-E). The mark BETNESOL and variations of the mark BETNESOL referred to in

paragraphs 1(i) and 1(ii) are hereinafter collectively referred to as the "the Plaintiffs Marks", and the packaging referred to in paragraph 1(iii), 1(iv), 1(v) and 1(vi) is hereinafter collectively referred to as the "Plaintiffs Packaging."

2. The Second Party states that it is engaged in the business of manufacture, marketing, and sale of pharmaceutical and medicinal products, specifically, tablets and injections, under the mark BESOL. The current packaging for the tablets bearing the BESOL mark are sold in a silver-coloured aluminium strip packaging with red lettering, which in turn, is contained in a red and white outer packaging (shown in Annexure - F) and the injections bearing the BESOL mark are sold in an orange-coloured injection vial packaging, which in turn are contained in an orange outer packaging (shown in Annexure-G) (hereinafter, the packaging shown in Annexures F and G is collectively referred to as "Defendants' Objectionable Packaging").

3. The Second Party state that as of the date of this settlement agreement, they have ceased, directly or indirectly, all use, marketing, manufacturing, and sale of goods, including tablets and injections, bearing the Defendants' Objectionable Packaging, in any manner or form, and shall forever cease and desist from the use, marketing, manufacturing and sale of goods bearing the Defendants' Objectionable Packaging.

4. The Second Party undertake that they will never, directly, or indirectly, in the future, use (i) the First Party/ Plaintiffs Marks & Plaintiffs Packaging, as described herein above (ii) any mark similar to the Plaintiff s Marks, except the "BESOL" mark, (iii) the Defendants' Objectionable Packaging, (iv) any packaging similar to the Plaintiffs Packaging on and in relation to any pharmaceutical or medicinal products, including, but not limited to, tablets and injections. The term 'use' includes, but is not limited, to use on and in relation to tablets/injections and/or any other pharmaceutical or medicinal products, on promotional and advertising

material, on the Second Party/Defendant's own website or its listings on third-party business listing websites and e-pharmacies.

5. The Second Party undertake to only use the "BESOL" mark in a standalone manner, and will not combine "BESOL" with any other words or terms in any manner, or use any BESOL formative mark(s) in relation to its goods/ services.

That the Second Party further undertake that, without prior express written approval by the First Party, the Second Party will not use, manufacture, market or sell products under the trade mark BESOL in any other packaging other than the new approved proposed packaging attached as Annexure-H and Annexure-I.

6. That the First Party acknowledges and accepts that the Second Party would be entitled to seek trade mark registration for its trade mark BESOL and its packaging as given in Annexure-H and Annexure-I and the First Party/Plaintiff will not oppose the said application for trade mark/copyright.

7. The Second Party agrees and undertakes that they would never, now, or in the future, challenge, or take any action against, the First Party's /Plaintiffs rights in the Plaintiffs Marks as described in paragraph 1 of the present settlement agreement, the Plaintiffs Packaging as described in paragraph 1 of the present settlement agreement or any mark or packaging that the First Party/Plaintiff may create or adopt in the future.

8. The Second Party will not hold themselves as being related to the First Party in any way.

9. The Second Party will not, whether, directly or indirectly, cause, enable or assist another/third party to do any of the acts that they are undertaking not to do under the present settlement agreement.

10. The Second Party will pay the Plaintiff a sum of

INR 82,000 (Rupees Eighty-Two Thousand) as settlement amount for arriving at the settlement via bank transfer into the bank account of the Plaintiffs counsel. The bank details of the First Party's / Plaintiffs counsel are provided below:

Name: Sujata Chaudhri IP Attorneys
Bank Name: Axis Bank Ltd.
Current Account No: 914020022909462
IFSC Code: UTIBOOO1149

11. Subject to the declarations, assurances and undertakings made herein by the Second Party, the First Party has agreed to forgo its claim for damages, costs etc. as claimed in the suit against the Second Party.

12. The Parties have agreed that the Commercial Suit for infringement of trade marks, passing off, rendition of accounts, damages, etc. being C.S.(Conim.) No. 514 of 2022 be decreed by the Hon'ble High Court of Delhi in terms of the present settlement agreement whilst binding the both the parties to the undertakings given hereinabove in the present Settlement Agreement.

13. That the contents of the present Settlement Agreement have been read over to both the parties in their vernacular language (Hindi & English) by the Mediator and both the Parties have understood and agreed to the same.

14. The Parties agree that they have executed the present Settlement Agreement by their free will and volition without any force or pressure from anybody. The Parties also agree that they have understood the contents of the present Settlement Agreement as the same have been explained to them by the Mediator and the respective Counsel, in the presence of each other and they have consented to the same in its true letter and spirit, and as such they shall not dispute the same ever in future.

15. The Parties agree that they shall abide by the terms

and conditions set out in the present Settlement Agreement and shall not dispute the same hereinafter in the future. The Parties further agree that the statements made by them in this Settlement Agreement shall be taken as their respective undertakings to the Hon'ble Court and the defaulting party shall be held liable for contempt of court under the Contempt of Courts Act, 1971.

16. All the Parties undertake to present themselves before the Hon'ble Court during the physical/virtual court hearing confirming the terms of the Settlement Agreement.

17. That the Parties undertake that they are bound by this Settlement Agreement and further undertake to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.”

2. The parties are represented by respective Counsel who agree, on behalf of their clients to abide by the aforesaid terms of settlement. As such, nothing survives for adjudication in the present case.

3. The Court has perused the terms of settlement and find them to be lawful.

4. The suit accordingly stands decreed in terms of the aforesaid terms of settlement by which the parties shall remain bound. The plaintiff would be entitled to refund of court fees, if any, deposited by it. Miscellaneous applications are also stand disposed of.

C.HARI SHANKAR, J

APRIL 20, 2023/kr