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

+ **CS(COMM) 753/2022**

APRICA HEALTHCARE LIMITED & ANR. Plaintiffs

**Through: Ms. Archana Sahadeva and Mr.
Siddharth Raj Choudhary, Advs.**

versus

SKYSUN LIFESCIENCES PRIVATE LIMITED & ANR.

..... Defendants

**Through: Mr. Sai Kaushal, Adv. for D-1 &
D-2**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% 05.04.2023

1. The dispute between the parties stands settled with the intervention of the Delhi High Court Mediation and Conciliation Centre.

2. The Settlement Agreement dated 13th March 2023 has been placed on record.

3. The terms of settlement read thus:

“6. The Parties in the present suit have amicably settled their dispute without delving into the merits of the present case. The settlement terms agreed between the parties are as follows:

(a) This settlement agreement binds Defendants 1 and 2, their successors and/or subsequent assignees, or any entity or concern in which the said Defendants hold a majority of shares or that is otherwise under the control of the Defendants and / or the directors of the said Defendants in their individual and personal capacities.

(b) Defendants acknowledge the Plaintiffs' right, title and interest in the marks



"ROSIFLEX", and variations of the mark "ROSIFLEX", such as ROSIFLEX-C, ROSYFLEX TRIO, COROSIFLEX etc. (hereinafter collectively referred to as the "Plaintiffs Marks")

(c) Defendant no. 1 states that it was, in conjunction with Defendant no. 2, manufacturing, exporting, distributing and supplying the tablets and capsules, under

the mark ROSYFLEX  hereinafter referred to as "Impugned Mark"). The said Defendants further acknowledge that the Impugned Mark is nearly identical to the Plaintiffs' Marks.

(d) Defendants undertake that they have ceased, directly or indirectly, all use, marketing, manufacturing, and selling of the Impugned Mark as of the date of this settlement agreement, in any manner or form.

(e) Defendants undertake that they will never, directly or indirectly, in the future, use the Impugned Mark, the Plaintiffs Marks and/or any mark identical with or deceptively similar to the Plaintiffs Marks on and in relation to any pharmaceutical or medicinal products. The term 'use' includes, but is not limited to, use on and in relation to tablets, capsules and/or any other pharmaceutical or medicinal products, on promotional and advertising material, on the Defendants' personal website, social media platforms, or its listings on third-party business listing websites and e-pharmacies.

(f) Defendants state that they have not filed or obtained registrations for, and undertakes that it will not, whether directly or indirectly, at any future time, file, any trademark / copyright application(s) to register the Impugned Mark, the Plaintiffs' Marks or any mark identical or deceptively similar to the Plaintiffs' Marks on or in relation to any goods or services, including, but not limited to, pharmaceutical or medicinal products and related goods and services.

(g) Defendants will never, now, or in the future, challenge, or take any action against, the Plaintiffs' rights in the Plaintiffs' Marks or any mark that the Plaintiffs may

create or adopt in the future.

(h) Defendants will not hold itself as being related to the Plaintiffs in any way.

(i) Defendants will not, whether, directly or indirectly, cause, enable or assist another party to do any of the acts that it is undertaking not to do.

(j) The Plaintiffs and the Defendants agree to be bound by the terms and conditions of this present Settlement Agreement and further undertake that they shall neither challenge nor violate the terms and conditions of this Settlement Agreement.

(k) The Plaintiffs and the Defendants agree that a decree may be passed by the Hon'ble Court in terms of this present Settlement Agreement. The parties understand that in case the decree so passed by the Hon'ble Court is not complied with or any default is committed by either of the parties, the other party shall be at liberty to execute the said decree against such defaulting party in the court of law.

(l) In view of the aforesaid undertakings by the Defendants, the Plaintiffs forego their relief seeking damages and costs.

(m) The Hon'ble Court may consider refund of the court fees to the Plaintiffs' counsel in terms of Section 16 of the Court Fees Act, 1870 read with Section 89 of the Code of Civil Procedure, 1908.

(n) The parties agree that they have arrived at the present Settlement Agreement with their own free will and desire and without any pressure, fraud, force, coercion or undue influence by either of the parties and they undertake to be bound by the terms thereof.

(o) By giving consent to the present Settlement Agreement, the Parties hereto state that they have no further claims or demands against each other and all the disputes and differences have been amicably settled by the Parties hereto through the process of mediation.

(p) The parties further agree that they shall appear before the Hon'ble Court during the hearing to make their statements in terms of the present settlement agreement.”

4. Ms. Archana Sahadeva learned Counsel for the plaintiff and Mr.

Sai Kaushal, learned Counsel for the defendants are present. They agree on behalf of their respective clients to remain bound by the terms of settlement.

5. As such, nothing further survives for adjudication in the present suit.

6. The suit stands decreed in terms of the aforesaid terms of settlement.

7. The Registry is directed to draw up a decree sheet accordingly.

8. The plaintiff shall be entitled to refund of court fee, if any, deposited by it.

APRIL 5, 2023
dsn

C. HARI SHANKAR, J