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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 15/2021 & I.A. Nos. 481/2021, 6420/2021, 6421/2021**
12604/2023
ANIL RATHI & ORS. Plaintiffs

Through: Mr. Sagar Chandra, Ms. Srijan Uppal,
Ms. Mehek Dua and Ms. K. Natasha,
Advocates.

versus

BALMUKUND SPONGE AND IRON PRIVATE LIMITED & ANR.
..... Defendants
Through: Mr. Dilip Singh and Ms. Raj
Lakshmi, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

% **ORDER**
06.02.2024

1. Counsel for the parties inform the Court that mediation between the parties has been successful and a settlement has been arrived at, which is recorded before the Delhi High Court Mediation and Conciliation Centre (“**DHCMCC**”) on 24th January, 2024. Mediation report in this regard is also already received from the DHCMCC. The terms of the Settlement are as under:



- i. The Defendants hereby acknowledge the Plaintiff No. 1's Statutory and Common Law rights in the Trade Marks as mentioned in Paragraph 15 and 17 of the Plaint in the present Suit and **Annexure – E** (as annexed along with the present Agreement) and that the Trade Mark '7 STAR' has been in use extensively and uninterruptedly by the Plaintiffs at least since the year 2014. The afore-mentioned marks are collectively referred to as '**Plaintiff No. 1's Trade Marks**'.
- ii. The Defendants declare that they have already stopped, and undertake not to further manufacture and/or in any manner use, the Impugned Marks "BALMUKUND 7 STAR 600 EQR , "7 STAR", "7*****", "SEVEN STAR", "BALMUKUND 7 STAR , "Balmukund 7 Star 600 EQR / , "Balmukund 7 Star / " and/or any other mark/logo deceptively similar to the Plaintiff No.1's Trade Marks.
- iii. The Defendant No. 1 undertakes to withdraw all the Trade Mark Applications as applied for before the Trade Marks Registry bearing Application Nos. 4441785 in Class 6, 4441786 in Class 19, 4441787 in Class 35 and 4087380 in Class 19 before the next date of hearing before the Hon'ble Court i.e. 6th February, 2024 and shall undertake to further not apply afresh for any of the marks identical or deceptively similar to the Plaintiff No.1's Trade Marks. A copy of the Withdrawal Letters as filed before the Trade Marks Registry in relation to Defendant No. 1's Trade Mark Applications bearing Nos. 4441785, 4441786, 4441787 and 4087380 along with the filing receipt shall be provided by the counsel for the Defendants to the counsel for the Plaintiffs before the next date of hearing i.e. 6th February, 2024.
- iv. The Defendants further undertake not to object to or challenge the Plaintiffs' rights in the marks being 7 STAR, SEVEN STAR, 7***** and 7 STAR HAR ZAROORAT KA RIGHT FTI! 



- v. The Defendants shall not file any application/form/appeal/review as the case may be, seeking revival/restoration and/or file fresh applications in relation to the marks bearing Application Nos. 4022686 in Class 6, 3433393 in Class 19, 3433394 in Class 19, 4087381 in Class 35, 3433395 in Class 35, 4441785 in Class 6, 4441786 in Class 19, 4441787 in Class 35 and 4087380 in Class 19 in the future, before the Trade Marks Registry or in relation to its Copyright Application bearing No. A-1358852/2021 before the Copyright Office, in the future, which is deceptively similar to Plaintiff No.1's Trade Marks.
- vi. The Defendant No. 1 undertakes to withdraw the Rectification Petition bearing No. 270593 as is filed against the Plaintiff No.1's Registered Mark '7 STAR' bearing Application No. 2845420, before the Trade Marks Registry before the next date of hearing before the Hon'ble Court i.e. 6th February, 2024 and a copy of the Withdrawal Letter along with the filing receipt shall be provided by the counsel for the Defendants to the counsel for the Plaintiffs before the next date of hearing i.e. 6th February, 2024.
- vii. The Defendant No. 1 undertakes to seek Cancellation of the Copyright Application bearing No. A-1358852/2021 as filed before the Copyright Office for the Impugned Artistic Label being  before the next date of hearing before the Hon'ble Court i.e. 6th February, 2024 and a copy of the document evidencing the same shall be provided on behalf of the counsel for the Defendants to the counsel for the Plaintiffs before the next date of hearing i.e. 6th February, 2024. Further, the Defendants undertake to not file any Copyright Applications in the future which are identical and/or similar to Plaintiff No.1's Trade Marks.
- viii. The Defendants undertake that within 3 months from the date of signing of the present Agreement, they will destroy or discard the materials, labels, cartons, brochures, dies, rolls, raw materials, embossing materials, packaging and any other document and/or



stationery, or goods bearing the Impugned Marks/ Logo "BALMUKUND 7 STAR 600 EQR/, "7 STAR", 7*****", "SEVEN STAR", "BALMUKUND 7 STAR/, "Balmukund 7 Star 600 EQR/, "Balmukund 7 Star/" and/or any other mark consisting and comprising of "7 STAR/*****/7 STAR (DEVICE)" and/or any other deceptively similar mark bearing Packaging identical or deceptively similar to the Plaintiff No.1's Trade Marks/ Packaging.

- ix. The Defendants shall undertake that they will not post in future and have taken down, as on the date of the signing of the present Agreement, all the posts/videos etc. from any social media platforms, websites and/or official website consisting of the Impugned Marks/Logo "BALMUKUND 7 STAR 600 EQR/, "7 STAR", 7*****", "SEVEN STAR", "BALMUKUND 7 STAR/, "Balmukund 7 Star 600 EQR/, "Balmukund 7 Star/" and/or any other mark consisting of "7 STAR/*****/7 STAR (DEVICE)" and/or any other deceptively similar mark, which is at their command.
- x. The Defendant No. 1 further states that they have been independently using the logo bearing No. 3001638 being  and logo



bearing No. 1469032 being  as are Registered in Class 6 in the name of Defendant No. 1 (hereinafter referred to as '**Balmukund Labels**'). It is further understood and agreed between the parties that the terms of the present Agreement only pertain to the use of the Impugned Marks/Logo "BALMUKUND 7 STAR 600 EQR ", "7 STAR", "7*****", "SEVEN STAR", "BALMUKUND 7 STAR/ ", "Balmukund 7 Star 600 EQR/ ", "Balmukund 7 Star/  and/or any other mark consisting of "7 STAR/*****/7 STAR (DEVICE)" and/or any other deceptively similar mark. Accordingly, the Plaintiffs have no objection to the use of the aforementioned Balmukund Labels, as long as the said labels, as are depicted in Trade Mark Application Nos. bearing 3001638 and 1469032, are used independently and in consonance with the terms of the present Agreement.

- xi. The Defendant No. 1 further agrees and undertakes to file the withdrawal and/or cancellation letters, as the case may be, as stated herein-above in Clauses 5 (iii), (vi), (vii) before the next date of hearing before the Hon'ble Court i.e. 6th February, 2024. It is hereby agreed and unequivocally understood between the parties that the present Agreement shall cease to exist in the event of non-compliance of the said terms by the Defendants.
- xii. The Defendants agree that the afore-stated undertakings given by the Defendants contained in the present Settlement Agreement shall be taken as undertakings to the Hon'ble Court and agree that if they are found violating any of the terms, then they will be liable for contempt of the Orders of the Hon'ble Court and Damages for a sum which shall be determined by an appropriate Court of Law.
- xiii. In consideration of the above acknowledgements and undertakings by the Defendants, the Plaintiffs agree to give up their claim for costs, rendition of accounts, damages etc.



- xiv. That the Parties agree that in view of the above undertakings and acknowledgements the Suit bearing CS (COMM) 15/2021 may be decreed against the Defendants in terms of the present Settlement Agreement and Prayer (i) – (iv) of the Plaint.
- xv. The Hon'ble Court may pass appropriate Orders in view of the Settlement Agreement including refund of Court Fees under Section 16 of the Court Fees Act, 1870.
- xvi. The Parties hereto confirm and declare that they have voluntarily and of their own respective free will have arrived at this Settlement Agreement in the presence of the Mediator and that the same shall be binding on their successors, sister concerns, directors, executives, subsidiaries, subsequent assignees etc. as the case may be and all those acting for and on their behalf.
- xvii. By signing this Settlement Agreement, the Parties hereto state that they have no further claims or demands against each other in relation to the subject matter of the present Suit and all the disputes and differences in the present suit have been amicably settled by the Parties hereto through the process of Mediation.
- xviii. The Parties also agree that they have understood the contents of the present Settlement Agreement as the same have been explained to them (in their vernacular language English) by their Counsel in the presence of the Mediator and 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.
- xix. The parties undertake to present themselves before the Hon'ble Court to confirm the terms of the Settlement Agreement.
- xx. 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. In view of the same, nothing further survives for adjudication in the present suit. The said mediation settlement is signed by the authorized signatories for plaintiff as well as defendant, as also by respective counsel for the parties.

3. The suit, therefore, may be decreed in terms of the settlement as noted above and in accordance with the following prayers made in the plaint:

- i. A Decree for permanent injunction restraining the Defendants, their directors, sister concerns, executives, partners or proprietors, as the case may be, their officers, servants and agents or any other persons acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner dealing in *Iron, Steel and TMT Bars, Angles, Joists, Channels Flats, T-Iron, Iron Sheets, Iron Wire* and/or such allied and cognate goods under the Impugned Mark '7 STAR', '7*****', 'SEVEN STAR',

Impugned 7 STAR Labels  BARMUKUND 7 STAR 600 EQR,  and



or any other identical and/or deceptively similar Mark/Label/Device Mark to the Plaintiff No. 1's registered mark '7 STAR' amounting to infringement of the Plaintiff No. 1's Registered Mark;



- ii. A Decree for permanent injunction restraining the Defendants, their directors, sister concerns, executives, partners or proprietors, as the case may be, their officers, servants and agents or any other persons acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner dealing in *Iron, Steel and TMT Bars, Angles, Joists, Channels Flats, T-Iron, Iron Sheets, Iron Wire* and/or such allied and cognate goods under the Impugned Mark '7 STAR', '7*****', 'SEVEN STAR',

Impugned 7 STAR Labels   and



as well as any other mark/label/device mark which is identical and/or

deceptively, Phonetically, visually, conceptually and structurally, similar to the Mark of the Plaintiffs being '7 STAR' or doing any other thing which will lead to Passing off of the goods of the Defendants as those of the Plaintiffs;

- iii. A Decree for permanent injunction restraining the Defendants, their directors, sister concerns, executives, partners or proprietors, as the case may be, their officers, servants and agents or any other persons acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner dealing in *Iron, Steel and TMT Bars, Angles, Joists, Channels Flats, T-Iron, Iron Sheets, Iron Wire* and/or such allied and cognate goods under the Impugned Mark '7 STAR', '7*****', 'SEVEN STAR',

Impugned 7 STAR Labels   and



or any other Mark/Label/Device Mark identical/deceptively similar,

Phonetically, visually, conceptually and structurally, similar to the Mark of the Plaintiffs being '7 STAR' or doing any other thing which will lead to dilution of the Plaintiffs' Trade Mark '7 STAR'.



- iv. A Decree for permanent injunction restraining the Defendants, their directors, sister concerns, executives, partners or proprietors, as the case may be, their officers, servants and agents or any other persons acting for and on their behalf from manufacturing, selling, offering for sale, exporting, advertising, marketing and/or in any manner using directly or indirectly in relation to *Iron, Steel and TMT Bars, Angles, Joists, Channels Flats, T-Iron, Iron Sheets, Iron Wire* and/or such allied and cognate goods under the Impugned Mark '7 STAR', '7*****',



'SEVEN STAR', Impugned 7 STAR Labels **BALMUKUND 7 STAR 600 EQR**,



and or any other mark/label/device mark identical/deceptively, Phonetically, visually, conceptually and structurally, similar to the mark/s of the Plaintiffs being '7 STAR' or doing any other thing which will amount to unfair competition;

4. Decree sheet be drawn up accordingly.
5. Considering that the present suit was filed in the year 2021, has been pending since last three years, and has been contested by the parties prior to the mediation proceedings, in the opinion of this Court, plaintiff is entitled to refund but only of 25% of the court fees paid.
6. The suit is, accordingly, disposed of.
7. Pending applications, if any, are rendered infructuous.
8. Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 6, 2024/ssc/sc