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

+ CS(COMM) 226/2023, I.A. 7292/2023-Stay, I.A. 7293/2023-Appointment of LC, I.A. 14861/2023-O-7,R-11, I.A. 15230/2023-O-1,R-10 by D-6, I.A. 15231/2023-O-1,R-10 by D-3 to 5
SAGAR RATNA RESTAURANTS PVT LTDPlaintiff

Through: Mr. Rahul Kumar and Ms. Shreya Malik, Advocates

versus

SHREE SHUBH RATHNAM ASSOCIATES AND ORS
.....Defendants

Through: Mr. Sudarshan Kumar Bansal and Mr. Arpit Dudeja, Advocates

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER
05.09.2024

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I.A. 38533/2024-Order XXIII, Rule 3, CPC

1. This is a joint application on behalf of the plaintiff and the defendants seeking a consent decree based on the terms of the Memorandum of understanding dated 11.10.2023, as enumerated in paragraph no.4 of the present application, which is reproduced hereinbelow:-

“a) There are Seven Outlets being run and managed by the defendants under the trademark "SAGAR EXPRESS" The seven outlets as mentioned herein below which will now become the Franchisee of the plaintiff under a separate, independent and distinct Franchise Agreement with respect to each restaurant outlet being run by the defendants jointly and severally. The seven restaurant outlets being run by the defendants are at the following locations:



i. SAGAR EXPRESS

SCO NO. 405,406 BASEMENT AND GROUND FLOOR AND TERRACE AT SECTOR-35C, CHANDIGARH, 160022

ii. SAGAR EXPRESS

SCO-19, 1st FLOOR (ABOVE BATA) NEAR PLAZA, SECTOR- 17-E CHANDIGARH-160017,

iii. SAGAR EXPRESS

HOTEL TURQUOISE 29/7 INDUSTRIAL & BUSINESS PARK PHASE 2, CHANDIGARH 160002, INDIA

iv. SAGAR EXPRESS

MANDIR ROAD, NEAR MAIN TEMPLE, KHATOO, RAJASTHAN, 332602

v. SAGAR EXPRESS

BALAJI MANDIR, NEAR, SALASAR SIKAR RD, SALASAR, RAJASTHAN, 331506

vi. SAGAR EXPRESS

SCO 293 GROUND FLOOR, SECTOR 20, PANCHKULA, HARYANA 134117

vii. SAGAR EXPRESS

SCO 23, SAS NAGAR, NEAR FOOTBALL STADIUM. PHASE 10, MOHALI.

b) That as far as the operations at the restaurant outlet based in Sector 17 market, Chandigarh and at Hotel Turquoise are concerned, it has been agreed between both the parties that the defendants may either change the location of the said restaurant or change the name of the said restaurant with the mutual consent of both the parties herein. Further it has been agreed that such name will not be similar/identical or deceptively similar to the trademarks a "SAGAR", "RATNA", "SAGAR RATNA" or "SAGAR EXPRESS" and "SHREE RATHNAM/ SHREE RATNAM/ SRI RATHNAM".

c) That apart from the other terms and conditions of the franchise agreement, it has been agreed that the monthly Franchise Commission in the said Franchise Agreements will be @5% per month of the net sales generated at the particular restaurant outlet. Furthermore more the said franchise agreement will be valid for a period of 9 years from the date of execution of the said Franchise Agreement between the parties unless terminated by either party prior to such time, subject to the terms and conditions of the franchise agreement. That the said franchise agreement may be executed after the expiry of 9 years for



such further period as may be agreed between the parties. That the respective parties will be duly bound by the terms of the said franchise agreement.

d) The defendants acknowledge all the trademarks of the plaintiff and the defendants further undertake not to use any trade mark or trade name which is similar/identical/phonetically similar to the plaintiff trade mark/trade name "SAGAR" , "RATNA" "SAGAR RATNA" or "SAGAR EXPRESS" and "SHREE RATHNAM/ SRI RATHNAM/ SHREE SHUBH RATNAM/ SHUBH RATTAN/ SHRI SHUBH RATAN/ RATHNAM/ RATTAN. That the defendants-have unequivocally agreed to surrender by way of appropriate application within 30 days from the date of order allowing the present application, the trademark "SAGAR EXPRESS" along with goodwill and all statutory and common law rights together with the right to sue for damages and all other remedies in respect of infringement and to retain any damages obtained as a result of such action.

e) Furthermore, the Defendants have also agreed to execute all the necessary documents required or may be required in future to facilitate the surrender of the said trademark as mentioned in preceding paragraph before the Trademarks Registry. The Defendants further undertakes to take all such steps that may be required to execute the complete act of surrender before the Trademark Registry. That the parties herein have agreed that the Defendants will surrender all third party operations inclusive of online delivery through platforms like SWIGGY or ZOMATO, cloud kitchen, etc. and further undertakes to surrender all their rights and claims arising in respect of the said trademark "SAGAR EXPRESS". Further, the Defendants unequivocally and wilfully undertake that they, their representatives or any of their related or allied parties shall not raise or cause to be raise, any objections of any nature or oppose the claims, whatsoever, be it past, present or future, of the plaintiff, towards the trade mark "SAGAR EXPRESS".

f) The defendants also undertakes to not dispute the validity of the said trademarks or trade names of the plaintiff and to further withdraw within 30 days from the date of passing of the order allowing this application the oppositions filed to the trademarks of the Plaintiff as enumerated below:



Sr. No.	Trademark Image	Trademark Name	Application Number	Classes	Proprietor Name	Oppositions
1.		SAGAR RATNA	5510655	30	Sagar Ratna Restaurants Private Limited	Opposition - 1201882 - SUDARSHAN LAL KATARIA
2.		SAGAR RATNA	5510654	29	Sagar Ratna Restaurants Private Limited	Opposition - 1202259 - SUDARSHAN LAL KATARIA
3.		SAGAR RATNA	5510635	30	Sagar Ratna Restaurants Private Limited	Opposition - 1201883 - SUDARSHAN LAL KATARIA
4.		SAGAR RATNA	5510657	29	Sagar Ratna Restaurants Pvt. Ltd	Opposition - 1202257 - SUDARSHAN LAL KATARIA
5.		SAGAR RATNA	5510656	43	Sagar Ratna Restaurants Private Limited	Opposition - 1200355 - SUDARSHAN LAL KATARIA
6.		SAGAR RATNA	5510658	30	Sagar Ratna Restaurants Private Limited	Opposition - 1201884 - SUDARSHAN LAL KATARIA

and all other pending opposition filed by them against any of the marks of the Plaintiff that are pending consideration before the Trademark registry and undertakes not to oppose the registration of "SAGAR" "RATNA", "SAGAR RATNA" or "SAGAR EXPRESS" and "SHREE RATHNAM / SHREE RATNAM / SRI RATHNAM" by the plaintiff in any font or shape or style. The defendants further undertake to not use any trade mark or trade name that is similar/identical/phonetically similar in any manner to the registered marks of the plaintiff "SHREE RATHNAM/SHREE RATNAM/ SRIRATHNAM" which, belongs to sister concern of the plaintiff i.e, M/S Shree Rathnam Restaurants Pvt. Ltd.

g) That the Defendants undertakes to withdraw within 30 days from the date of order allowing this application all applications for registration of trademark before the trademark registry which is enumerated below:



Sr. No.	Trademark Name	Application Number	Classes	Proprietor Name	Status
1.	SAGAR EXPRESS	5858556	43	M/S S.S Hospitality	Objected
2.	SAGAR EXPRESS	5858559	30	M/S S.S Hospitality	Objected
3.	SHUBH RATNAM	5766757	43	M/s Mirunalini Hospitality Private Limited	Abandoned
4.	SHUBH RATNA	5766650	43	M/S Ansols Services Private Limited	Abandoned
5.	SHREE SHUBH RATNAM	5577641	43	M/S Garib Nawaz Industries Pvt. Ltd.	Objected
6.	SHRI SHUBH RATAN	5720165	43	M/S Garib Nawaz Industries Pvt. Ltd.	Abandoned
7.	SHUBH RATAN	5766826	43	M/S Garib Nawaz Industries Pvt. Ltd.	Opposed
8.	SHUBH RATTAN	5757711	43	M/S Garib Nawaz Industries Pvt. Ltd.	Abandoned
9.	SHUBH RATTAN	5871675	43	M/S Garib Nawaz Industries Pvt. Ltd.	Objected



Defendants further undertake to withdraw any other applications for registration of trademark before the trademark registry, which is identical/ similar/ deceptively similar or phonetically similar to the trademarks "SAGAR", "RATNA", "SAGAR RATNA" or "SAGAR EXPRESS" and "SHREE RATHNAM/ SRI RATHNAM/ SHREE SHUBH RATNAM/ SHUBH RATTAN/ SHRI SHUBH RATAN/ RATHNAM/ RATTAN of the Plaintiff or its sister concern, filled by defendants or by their associates within 30 days from the date of order allowing this application.

h) The parties further undertake to withdraw within 30 days from the date of order allowing this application all the litigations filed by the respective parties against each other which are pending before the Hon'ble Delhi High Court, District Court Saket, New Delhi or/and before District Court, Chandigarh or any other Court or tribunal including but not limited to criminal cases and complaints filed by the respective parties against each other or each other's representative.

i) The Defendant is agreeable to a decree of permanent injunction being passed in the matter, in pursuance to Prayer Clause 30(a) and 30(b) of the accompanying suit.

j) In view of the aforesaid, Plaintiff agrees to give up its claim pertaining to a decree of damages, rendition of accounts and costs as sought for in the present suit against the Defendant, as specified in Para 30(c), 30(d), 30(e), 30(f), 30(g) and 30(h) of the Prayer Clause of the present suit."

2. The present application is duly supported by affidavits of the authorized representatives of the parties.

3. The counsels for the respective parties confirm the aforesaid terms of the Memorandum of understanding dated 11.10.2023 and identify the signatures of their respective clients and pray that the suit be decreed in terms of the Memorandum of understanding dated 11.10.2023, as reproduced hereinabove.

4. This Court has perused the aforesaid terms of Memorandum of understanding dated 11.10.2023, as recorded inter se the parties and finds them to be lawful.



5. As such, this Court sees no impediment in decreeing the present suit on the basis of the terms contained in the Memorandum of understanding dated 11.10.2023, arrived *inter se* the parties. The suit is thus decreed accordingly.

6. Learned counsel for the plaintiff prays that since the disputes between the parties have been settled amicably in terms of the Memorandum of understanding dated 11.10.2023, hence the court fees paid by the plaintiff be refunded in terms of Section 16 of the Court Fees Act, 1870.

7. This Court is of the view that since the disputes between the parties have been amicably settled, on an oral prayer made by the learned counsel for the plaintiff, refund of 50% of the court fees paid by the plaintiff is deemed justifiable.

8. Let a Certificate of refund of 50% of the court fees paid by the plaintiff be prepared by the Registry and handed over to the learned counsel for the plaintiff.

9. In view thereof, the present application is allowed and disposed of.

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10. The learned counsel appearing for the plaintiff, in view of the aforesaid settlement entered *inter se* the parties, prays that since the disputes between the parties have been amicably settled, therefore, the present suit be decreed on the terms thereof.

11. The present suit is decreed in terms of the Memorandum of



understanding dated 11.10.2023.

12. Decree sheet be drawn up accordingly.

13. The parties shall remain bound by the aforesaid terms of Memorandum of understanding dated 11.10.2023.

14. Pending applications are disposed of.

SAURABH BANERJEE, J

SEPTEMBER 5, 2024/Ab