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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 425/2017 I.A. 7037/2017**
NV DISTILLERIES PVT. LTD. Plaintiff

Through: Mr. Nikhil Singh & Mr. Sarthak
Katyal Advs.

versus

A.D.S. SPIRITS PVT. LTD. Defendant

Through: Mr. Chirag Ahluwalia, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
29.01.2024

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I.A. 2028/2024 (under Order XXIII Rule 3 CPC)

1. This application has been filed jointly by the parties seeking decree of the suit in terms of settlement arrived at between them, terms of which have been included in paras 2 (a) to 2(d), 3 to 6 of this application as extracted below:

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- (a) *That Defendant acknowledges and recognizes the Plaintiff's sole and exclusive proprietary rights in the mark 'BESTO,' or any other mark containing the word 'BESTO,' in India and in various countries across the world where Plaintiff has subsisting trademark registrations. The Defendant undertakes not to challenge the Plaintiff's rights thereon, now or in the future, in any manner.*
- (b) *That Defendant acknowledges and recognizes that Plaintiff is the owner of the copyright over the artistic work comprising the label 'BESTO' and undertakes not to challenge Plaintiff's rights thereon, now or in the future, in any manner.*
- (c) *That Defendant acknowledges and recognizes that Plaintiff has sole and exclusive rights over the trade dresses used in association with the BESTO Trademarks, their get-up, colour*



combination, and/or a combination thereof. The Defendant undertakes not to use any such trade dress, or a trade dress deceptively similar thereto, for any goods or services.

- (d) That Defendant undertakes not to challenge, now or in the future, any trademark application filed or trademark registration secured for the BESTO Trademarks by Plaintiff through any means, including the filing of opposition, rectification. the mark 'THE BEST'/'BEST' or any other BESTO trademarks, or any other mark comprising or consisting of the BESTO Trademarks, or any mark deceptively similar to the BESTO Trademarks, in India or any other country. The Defendant undertakes not to file any such application now or in the future.*

3. That the Parties agree that they shall not act in any manner against or prejudicial to each other's reputational interest. They shall not directly or indirectly make use of and/or publicize the contents of the present settlement/compromise entered between the parties by way of publication/circulation in any newspaper, pamphlet, and/or publicity material and/or through any other means, whether print or electronic. However, the same shall not preclude either of the parties from relying upon the judgment laid down in the present matter in future third party brand disputes and/or any court proceedings.

4. That the Parties agree that the present terms of the compromise are binding henceforth upon the Parties, their affiliates, directors, proprietors, principal officers, successors, principals, agents, servants, and assignees in business, interest, or title, and all others acting for or on their behalf.

5. That the parties further agree that in the event of a breach of any of the terms of this settlement by the Defendant or anyone acting for and, on its behalf, including its affiliates. suit, defence in a suit, counter-claim, or through any proceedings intended to invalidate or cancel a subsisting trademark registration, or impede any application for the registration of a trademark before any authority, court, tribunal, or body in India or abroad.

- (e) That the Defendant herein declares and undertakes that they*



are not using and will not use, in any manner in future, in India or abroad, the trademark, 'THE BEST' or any other trademark: visually, phonetically, structurally, or in any other manner, similar to the BESTO Trademarks. Defendant further undertakes not to use the mark BESTO in relation to any goods or services; on stationery, trade dress, or product packaging, as part of any label, composite mark, trade name, corporate name, or as part of the name of a business concern, domain name, meta tags, keywords, promotional material of any type, part of any slogan, or in any other manner whatsoever.

(f) That Defendant undertakes not to deal in any goods: or services using the BESTO Trademarks, or any other trademark deceptively similar, identical, or phonetically similar thereto, which do not emanate from Plaintiff.

(g) That the Defendant undertakes that they do not have any trademark application or registration for directors, proprietors, principal officers, successors, principals, agents, servants, and assignees in business, interest, or title, the Plaintiff shall have the right to seek from the Defendant any remedies available to the Plaintiff in law and equity, including punitive damages and the actual costs of any proceedings which the Plaintiff may have to initiate against the Defendant: to ensure compliance with the above terms.

6. That the Plaintiff in view of the, present settlement/ compromise arrived at between the Parties, agrees to forgo its relief for delivery-up rendition of accounts; damages and costs as stipulated in paragraph: 15 (iv), (v), (vi), (vii) and (viii) of the plaint against the defendant.”

2. This Court has perused the settlement terms and found the same to be lawful and acceptable.
3. The application has been signed by respective authorised representatives of both the plaintiff and the defendant and is supported by their affidavits.
4. In light of the aforesaid, nothing further survives for adjudication in the present suit.



5. The parties shall be bound by the terms of settlement.
6. The suit is accordingly decreed. Decree sheet be drawn up by the Registry in terms of above paras 2 (a) to 2(d), 3 to 6 of the application and paras 15(i) to (iii) of the plaint which are extracted as under:

“i. An order and decree for permanent injunction restraining the Defendant, its directors, promoters, officers, servants, agents, distributors and all persons, in active concert or participation with the



Defendant from using the mark “BEST”, or any other mark/logo/label/device which is identical or deceptively similar to the Plaintiffs trademark “BESTO” and the Plaintiff’s labels thereby amounting to infringement of the Plaintiff’s trademarks.

ii. An order and decree for permanent injunction restraining the Defendant, its directors, promoters, officers, servants, agents, distributors and all persons, in active concert or participation with the



Defendant from using the mark “BEST”, or any other mark/logo/label/device which is identical or deceptively similar to the Plaintiff’s trademark “BESTO” and the Plaintiff’s labels thereby amounting to passing off.

iii. An order and decree for permanent injunction restraining the Defendant, its directors, promoters, officers, servants, agents, distributors and all persons, in active concert or participation with the



Defendant from using the label , or any other mark/label/device which is a reproduction of the Plaintiffs labels, thereby infringing Plaintiff's copyright in its artistic works.”

7. Plaintiff shall be entitled to refund of the court fee in accordance with applicable rules.
8. This application stands disposed of accordingly along with the suit.
9. Pending applications, if any, are disposed of as infructuous.
10. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 29, 2024/sm/sc