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

+ **CS(COMM) 1189/2024**

NUVOCO VISTAS CORPORATION LIMITEDPlaintiff

Through: Ms. Jaya Negi and Ms. Yashi
Agrawal, Advs.

versus

MANGALPUR CEMENT PVT LTDDefendant

Through: Ms. Kanchan Yadav, Ms. Sonia
Dube and Ms. Saumya Sharma,
Advs.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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30.05.2025

I.A. 14452/2025-under Order XXIII Rule 3 of CPC

1. This is a joint application under *Order XXIII Rule 3* of the Code of the Civil Procedure, 1908 (**CPC**) filed on behalf of the plaintiff and the defendant seeking a consent decree based on the terms of settlement as mentioned in *para 3* of the present application, which is reproduced as under:-

“a) The Defendant acknowledges the Plaintiff to be the prior adopter, user, and the rightful owner/ proprietor of the trade marks *inter alia*

'CONCRETO', 'CONCRETO (Device Mark) i.e.  ,

'CONCRETO (Device Mark) i.e.  ' (Hereinafter collectively referred to as the Plaintiff's 'CONCRETO' trade marks), 'DURA-GUARD (Device Mark) i.e. **DURA-GUARD**', 'DURAGUARD (Device

Mark) i.e.  , 'DURAGUARD Xtra (Device Mark) i.e.



, (Hereinafter collectively referred to as the Plaintiff's DURA GUARD trade marks). The Defendant do not claim any rights over such trade marks and/ or any mark, which comprises of and/ or is deceptively similar and/ or identical in any manner to such marks of the Plaintiff;

b) The Defendant further acknowledges the Plaintiff to be the prior adopter, user, and the rightful owner of the copyright subsisting in the following packaging/ artistic work:



i.



ii.

and the Defendant do not claim any right over such packaging/ artistic work and/ or any packaging/ artistic work, which comprises of and/ or is confusingly similar and/ or identical in any manner to such artistic works of the Plaintiff.

c) The Defendant hereby confirm that they have already ceased using, and undertakes that shall never use in the future, the impugned marks, or the impugned packaging including any packaging, trade dress, lay-out or get-up deceptively similar to the packaging used in association with the Plaintiffs 'CONCRETO' and 'DURAGUARD' brand in the past or present, , in any manner whatsoever, including in relation to cement products and/ or any other allied and cognate goods or services, in India or in any other country;

d) The Defendant also undertakes to remove and destroy all business cards, brochures, flyers, note pads, books, documents and/ or any other such material bearing the impugned marks 'JP CEMENT CONCRETO', 'JP CEMENT CONCRETE'; and 'DURAPROOF XTRA



CONCRETE' and the impugned packaging'



and/ or any other confusingly similar mark/ packaging thereto in the possession of the Defendant within 7 days of signing the present application. The destruction of the packaging and any other existing material bearing the impugned marks and packaging shall be done at the cost of the Defendant.

e) The Defendant acknowledges that it filed a Trade Mark Application seeking registration of the mark 'BHARAT CONCRETO (Device Mark)' before the Trade Marks Registry bearing the following details:

Trade Mark	Application No.	Class	Application n Date	Status
BHARAT CONCRETO  (Device Mark)	5574081	CLASS 19 Cement	18/08/202 2	Abandone d

The Defendant further confirms that the status of the said Trade Mark Application as appears on the online records of the Trade Marks Registry is 'Abandoned'. An extract of the same as downloaded from the official website of the Trade Marks Registry is filed along with the present Application as '**Document-A**';

f) The Defendant further acknowledges that it has a trade mark registration for the impugned mark 'DURAPROOF XTRA CONCRETE (LABEL)' bearing the following details:

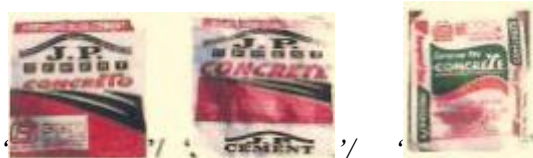


Trade Mark	Application No.	Class	Application Date	Status
DURAPROOF XTRA CONCRETE (LABEL)  (Device Mark)	2169650	<u>CLASS 19</u> Cement	04.07.2011	Registered

g) The Defendant confirms that they shall file a letter/ request before the Trade Marks Registry seeking voluntary cancellation of the above-mentioned trade mark registration within 7 days of signing the present application and will share a copy of the said request with the Plaintiffs Counsels upon filing such request before the Trade Marks Registry.

h) The Defendant undertakes not to file any applications seeking registration/revival of any deceptively similar mark to that of the Plaintiff's trade mark 'CONCRETO' and/or 'DURAGUARD' and undertakes not to attempt to register any deceptively similar trade mark with respect to cement products, or any other allied and cognate goods or services in the future;

i) The Defendant further confirms that save and except as mentioned in Para 3 (e) and (f) of the present application, no other trade mark applications/ registrations of the defendant are pending before the Registrar of trade marks comprising the impugned marks 'JP CEMENT CONCRETO', 'JP CEMENT CONCRETE'; and 'DURAPROOF XTRA CONCRETE' and the impugned packaging



confusingly similar mark/ packaging thereto;

j) Subject to the undertaking made herein by the Defendant, the Plaintiff has agreed to forgo their claim of damages, cost and rendition of accounts claimed in the suit. The Defendant undertakes and agrees that they shall remain fully compliant with the terms of this



agreement. The Defendant agrees to pay to the Plaintiff a total sum of INR 50,000/- (Rupees Fifty Thousand) as a token amount towards costs to the Plaintiff in the present proceedings by way of a Demand Draft No. 209933 dated April 25, 2025 drawn on Punjab National Bank. A copy of the said Demand Draft is attached herewith as 'DOCUMENT-B';

k) The Defendant further agrees that the Plaintiff will have the right to institute appropriate proceedings under law, including but not limited to execution proceedings and civil suits for breach of contract and recovery of monies, in case of breach of any of the terms and conditions contained herein by the Defendant;

l) The Plaintiff agrees that the Plaintiff shall not have any other claim against the Defendant as long as the Defendant acts in terms of the instant settlement."

2. The present application is duly supported by affidavits of the authorized representatives of the plaintiff and the defendant.

3. Learned counsels of the parties confirm the terms of the settlement and identify the signatures of their respective clients and pray that the suit be decreed in the aforesaid terms as mentioned in *para 3* of the present application.

4. This Court has perused the terms of settlement as recorded *inter-se* the plaintiff and the defendant and finds them to be lawful.

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

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6. The learned counsel appearing for the plaintiff, in view of the aforementioned settlement entered *inter-se* the plaintiff and the defendant, prays that since the dispute *inter se* the parties have been settled, the present suit be decreed in the terms of aforesaid settlement as mentioned in *para 3* of the application bearing no. I.A. 14452/2025.

7. Accordingly, the present suit is decreed in terms of the settlement as



recorded hereinabove in *para 3* of the application bearing no. I.A.14452/2025, which are reproduced hereinabove.

8. Needless to mention that the plaintiff and the defendant shall remain bound by the terms of settlement as recorded in *para 3* of the application bearing no. I.A. 14452/2025.

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

10. This Court is of the view that since the disputes between the parties have been amicably settled and in view of the prayer made by the learned counsel for the plaintiff, the refund of 50% of the Court fees paid by the plaintiff is deemed justifiable.

11. 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.

12. Registry is directed to draw up Decree sheet accordingly.

13. Needless to mention, the aforesaid terms as mentioned in *para 3* of the application bearing no. I.A. 14452/2025, shall form a part of the decree sheet.

14. Accordingly, in view of the above, the present suit, stands disposed of.

15. The date already fixed stands cancelled.

SAURABH BANERJEE, J

MAY 30, 2025/bh