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

+ CS(COMM) No.1592/2016

BAYER INTELLECTUAL PROPERTY GMBH  
& ANR

..... Plaintiffs

Through: Mr. Pravin Anand and Mr. Aditya  
Gupta, Advs.

versus

ALEMBIC PHARMACEUTICALS LTD ..... Defendant

Through: Ms. Prathiba M. Singh, Sr. Adv. with  
Ms. Saya Choudhary Kapur, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **15.12.2016**

1. The senior counsel for the defendant in pursuance to yesterday's order without prejudice to the rights and contentions of the defendant, under instructions, states that the defendant has till now not commercially launched the drug 'RIVAROXABAN' in India and has only exported the said drug within the meaning of Section 107A of the Patents Act, 1970. It is further stated that the defendant if at any time in future intends to launch the drug 'RIVAROXABAN', will give one month's notice to the plaintiffs to enable the plaintiffs to avail their remedies if any. It is further stated that binding the defendant to the said statement, the suit can be disposed of.

2. The counsel for the plaintiffs states that to the knowledge of the plaintiffs the defendant has exported at least 90 kgs. of drug 'RIVAROXABAN' worth Rs.3,00,00,000/- and export of such large quantity cannot be within the meaning of Section 107A supra. It is also urged that sale and export are not within the meaning of Section 107A.

3. I have drawn attention of the counsels to W.P.(C) No.1971/2014 titled *Bayer Corporation Vs. Union of India* in which judgment has been reserved on the ambit of Section 107A i.e. whether it allows exports and if so how the same are to be regulated to be within the confines of Section 107A.
4. It is deemed appropriate to hear the counsels, who were not the counsels in the matter in which judgment has been reserved, on the said aspect.
5. The defendant is ordered to be bound by the statement aforesaid and is directed to hereafter, before effecting any export, give at least 15 days notice thereof by making an application to this Court.
6. The senior counsel for the defendant states that while so applying, the particulars of export if required to be furnished, will be furnished in a sealed cover.
7. The same is permitted.
8. In view of the aforesaid, at this stage need for written statement is not felt.
9. The counsels are at liberty to file their written submissions on the interpretation of Section 107A on or before 10<sup>th</sup> January, 2017.
10. List for consideration on 17<sup>th</sup> January, 2017.

**RAJIV SAHAI ENDLAW, J**

**DECEMBER 15, 2016**

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