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

\+ FAO (COMM) 235/2025

NEWAY INDUSTRIES PVT. LTD. .....Appellant
Through: Mr. Vikas Khera, Ms. Sneha Sethia and Mr. Rohit, Advs.

versus

MOLD-TEK PACKAGING LIMITED .....Respondent
Through: Mr. Jayant K. Mehta, Sr. Adv. with Mr. Ashutosh Kumar, Mr. Vinod Chauhan, Ms. Radhika Pareva, Mr. Adithya B., Mr. Yagya Passi, Mr. Ayush Sharma and Mr. Om, Advs.

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\+ FAO (COMM) 241/2025, CM APPL. 53979/2025, CM APPL. 53981/2025, CM APPL. 53982/2025 & CM APPL. 53983/2025

MOLD TEK PACKAGING LTD .....Appellant
Through: Mr. Jayant K. Mehta, Sr. Adv. with Mr. Ashutosh Kumar, Mr. Vinod Chauhan, Ms. Radhika Pareva, Mr. Adithya B., Mr. Yagya Passi, Mr. Ayush Sharma and Mr. Om, Advs.

versus

NEWAY INDUSTIES PVT. LTD. .....Respondent
Through: Mr. Vikas Khera, Ms. Sneha Sethia and Mr. Rohit, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 28.01.2026

C. HARI SHANKAR, J.

The *lis*

1. Indian Patents IN 401417[1], for a "Tamper-Evident Leak Proof Pail closure System" and IN 298724[2] for a "A Tamper Proof Lid Having Spout for Containers and Process for Its Manufacture"[3] stand registered in favour of Mold Tek Packaging Ltd[4]. Mold Tek alleged that Neway Industries Pvt Ltd[5] was manufacturing and selling products which infringed the suit patents without any licence from it, within the meaning of Section 48[6] of the Patents Act, 1970.

2. Mold Tek, therefore, has instituted CS (Comm) 01/2024[7] against Neway, praying for a decree of permanent injunction restraining Neway from manufacturing or dealing in any product which would infringe the suit patents.

3. The suit was accompanied by an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908[8], seeking an interim injunction against Neway, restraining continued

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[1] "IN'417" hereinafter
[2] "IN'724" hereinafter
[3] "the suit patents" collectively hereinafter
[4] "Mold Tek" hereinafter
[5] 'Neway" hereinafter
[6] **48. Rights of patentees**.—Subject to the other provisions contained in this Act and the conditions specified in Section 47, a patent granted under this Act shall confer upon the patentee—
(a) where the subject-matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;
(b) where the subject-matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India:
[7] **Mold Tek Packaging Ltd v. Neway Industries Pvt Ltd,** also referred to, hereinafter, as "the suit"
[8] "CPC" hereinafter

infringement of the suit patents, pending disposal of the suit.

4. By *ad interim* order dated 8 January 2024, the learned District Judge (Commercial Court)-01, Patiala House[9] granted an *ad interim* injunction in favour of Mold Tek and against Neway.

5. Neway moved an application under Order XXXIX Rule 4 of the CPC, for vacation of the *ad interim* injunction granted on 8 January 2024.

6. By the impugned order dated 20 August 2025, the learned Commercial Court has confirmed the *ad interim* order of injunction qua IN'417 and has vacated the *ad interim* order qua IN'724.

7. Mold Tek and Neway are, therefore, both in appeal before us. Neway assails the impugned order to the extent it grants interim injunction qua IN'417. Mold Tek assails the order to the extent it rejects the prayer for interim injunction qua IN'724.

8. We have heard Mr. Vikas Khera for Neway and Mr. Jayant Mehta, learned Senior Counsel for Mold Tek, at length.

9. Neway pleaded, in the case of each of the suit patents, that its product did not infringe the patent and, additionally, that the patent itself was vulnerable to being revoked under Section 64[10] of the

[9] "the learned Commercial Court" hereinafter

[10] **64. Revocation of patents.—**
(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, be revoked on a petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent by the High Court

Patents Act, availing the liberty to raise such a defence as provided by Section 107[11] thereof.

10. We proceed, now, to deal with the appeals individually.

FAO (COMM) 235/2025 [*Neway Industries Pvt Ltd v. Mold Tek Packaging Ltd*]

11. Neway, by this appeal, assails the impugned order to the extent it allows the Order XXXIX application of Mold Tek in respect of IN'417.

12. The learned Commercial Court has, while arriving at the impugned decision, individually addressed the aspects of the infringement and invalidity.

13. Re. plea of invalidity

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on any of the following grounds, that is to say,—

(a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;

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(d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

(e) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in Section 13;

(f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim;

[11] **107. Defences, etc. in suits for infringement**.—

(1) In any suit for infringement of a patent, every ground on which it may be revoked under Section 64 shall be available as a ground for defence.

(2) In any suit for infringement of a patent by the making, using or importation of any machine, apparatus or other article or by the using of any process or by the importation, use or distribution of any medicine or drug, it shall be a ground for defence that such making, using, importation or distribution is in accordance with any one or more of the conditions specified in Section 47.

13.1 On the aspect of invalidity, the learned Commercial Court has held that Neway did not provide any comparative analysis between the claim and the suit patent IN'417 and the prior art patent application IN 288127[12], so as to establish a credible challenge to the validity of the suit patent *vis-à-vis* the said prior art. We may, in this context, reproduce paras 18 to 20 of the impugned order, thus:

> "18. The defendant's principal objection is that the plaintiff's product lacks novelty and inventive step, alleging prior use of similar products patented in the United States and other jurisdictions and they are using the same product i.e. "Tamper-Evident Leak Proof Pail Closure Systems" way prior then the plaintiff. One of the US patent no. 5,307,948 which is filed by the defendant in which the product has the tamper proof and tamper evident closure system in for the use with a plastic container body and lid of the type wherein the container body has an opening defined by the continuous side wall and the lid has a depending skirt terminating at a lower edge, with the skirt overlapping the side wall adjacent the opening when the lid covers the opening. The closure system comprises a shield flange projecting outwardly from the side wall of the container body immediately adjacent the lower edge of the lid when the lid covers the opening of the container body and a tamper evidencing band frangible connected to the shield flange along a separation path spaced from the side wall of the container body. The tamper-evidencing band includes a blocking lug substantially covering the cut-out section of the shield flange when the tamper evidencing band is connected to the shield flange. Similarly in another US Patent no. US8,251,242 B2 in which a container is having a base, a lid, and a tamper-evident, closed band. The base includes a sealing section and defines a space and an opening at a periphery that has an outwardly extending base flange with a contact surface. The lid has a lid sealing section and an outwardly extending lid flange having a contact surface. The base sealing section and the lid sealing section form a reclosable snap fit. The lid and base flanges can also include a removed portion to create an increased distance between contact surfaces on the lid and base flanges. The tamper-evident, closed band can attach at a first end to one of the base and lid, with a free second end, can be substantially detachable from the base or lid as a closed band, and can also extend to substantially prevent direct manual access to the lid and base flanges.

[12] "IN'127" hereinafter

19. The plaintiff's Indian Patent IN'417 discloses a container with a lid locking system involving a pilfer-proof arrangement designed to provide leak-proof and tamper-evident sealing, ensuring safe and secure storage and transportation of contents. It incorporates coordinated inner and outer locks on the lid engaging with corresponding portions of the container, a tamper-evident peel-off ring with a pull tab that can be removed in an anti-clockwise direction to separate the lid into upper and lower parts, allowing user-friendly first opening and reuse. A gasket between the container and lid ensures complete leak-proofing, shock absorption, protection against ambient temperature variations, and stable stacking. In contrast, the defendant's US Patent No.5,307,948 relates to a tamper-proof closure wherein a lid skirt overlaps the container side wall and a shield flange supports a frangibly connected tamper-evidencing band with a blocking lug, but it lacks the dual-locking system, gasket sealing, and specific anti-clockwise tear-away mechanism of IN'417. Similarly, US Patent No. 8,251,242 B2 provides a base, lid, and tamper-evident closed band with a reclosable snap-fit, where the closed band prevents direct manual access to the lid and base flanges, but it does not combine the features of coordinated inner and outer locks, anti-clockwise peel-off ring, leak-proof gasket, and environmental resistance as claimed in the plaintiff's invention.

20. I have carefully examined all the prior patents relied upon by the defendant to establish prior art. While certain prior products exhibit similarities, they do not replicate the distinctive combination of features claimed in the plaintiff's patent. The defendant has neither produced any comparative analysis between Patent IN'417 and the plaintiff's earlier Patent Application No. IN 288127 nor furnished any document establishing the existence of the said earlier patent to substantiate its plea of lack of novelty. I, therefore, find that Patent IN'417 embodies a novel and inventive tamper-evident closure container combination, distinct from the prior patents cited by the defendant."

13.2 Having heard learned Counsel, we find no reason to disagree with this finding of the learned Commercial Court.

13.3 Mr. Mehta points out, in this connection, that Neway did not, during arguments before the learned Commercial Court, press the aspect of invalidity except with respect to IN'127, and that, vis-à-vis IN'127, Neway did not even provide any material to indicate that the

claims in IN'417 were anticipated, or obvious, from those in IN'127.

13.4 We find this to be correct.

13.5 We may enter a clarification at this point. Oftentimes, it is seen that though, in pleadings, several points are raised, arguments are restricted only to some. In the present case, for example, though the written statement filed by Neway alleged invalidity of IN'417 vis-à-vis various prior arts, the written submissions filed before the learned Commercial Court essentially asserted only IN'127 as the prior art vis-à-vis which IN'417 was anticipated and/or obvious. The purpose of requiring Counsel to place written submissions on record is, oftentimes, not to assist the Court, which is peopled by judges who are generally more than competent to adjudicate on the *lis* before them without the assistance of any submissions in writing. It is so as to enable Counsel to identify the issues which are urged and asserted during arguments. Once the submissions are reduced to writing, it is ordinarily not open to the party to, in appeal, ventilate issues which are not captured in the written submissions, or in the recording of the arguments advanced before the Court in the order under challenge, on the ground that these issues were pleaded. It is open to a Counsel to argue only some of the issues or grounds which are urged in pleadings, and, if that is done, the appellate Court, or any other forum before whom the order passed is brought in challenge, would examine the correctness of the order vis-à-vis the issues which were argued before the Court which passed the order.

13.6 There is, in fact, no comparative analysis of the claim in the suit

patent IN'417 with the prior art IN'127, though Neway alleged that the invention in IN'417 was anticipated by, and was obvious from, the disclosures in IN'127.

13.7 We have gone through the arguments of Neway as noted in the impugned order, the written submissions filed by Neway before the learned Commercial Court as well as the written statement filed Neway by way of response to the plaint to ascertain whether there was, *at any point*, any comparison made between the claim in IN'127 and that in IN'417, so as to substantiate the allegation of anticipation and obviousness. There is, in fact, none.

13.8 No credible challenge to the validity of the suit patent, within the meaning of Section 107 of the Patent's Act read with Section 64 thereof could, therefore, be said to have been made out by Neway before the learned Commercial Court.

13.9 We have, in our recent decision in ***Zydus Lifesciences Ltd v. E.R. Squibb & Sons LLC***[13], had occasion to advert to the necessity of product-to-claim mapping, as a necessary element of any patent infringement suit, except where it is *impossible* to do so. In this regard, we have observed and held thus:

> "7. Rule 3(A)(ix)[14] of the High Court of Delhi Rules

[13] **MANU/DE/0186/2026**

[14] **A. Plaint:**
The Plaint in an infringement action shall, to the extent possible, *inter alia*, contain a description of the following:
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(ix) Precise claims versus product (or process) chart mapping including claim chart mapping through standards;

> Governing Patent Suits, 2022[15] specifically requires product-to-claim mapping as one of the necessary ingredients of a patent infringement suit. However, the impugned judgment holds that the words "to the extent possible", in Rule 3A may, in a *quia timet* action, justify doing away with the requirement of product-to-claim mapping altogether.
>
> 8. This is of vital importance, as Section 48 of the Patents Act, 1970 confers, on the holder of a registered patent, the exclusive right to prevent third parties from using, offering, selling or importing *that product* in India, without consent of the patentee. The issue of whether, in the absence of any mapping of the defendant's product to the plaintiff's granted claim in the suit patent, the defendant's product can be said to be *that product*, therefore, requires serious consideration. Especially so as the product is a life-saving drug needed for cancer therapy.
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> *****
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> 25.2 In the case of a product patent, therefore, Section 48 confers, on the patentee, exclusive right to prevent third parties from making, using, offering, selling or importing *that product* in India, without consent of the patentee. "That product", obviously, refers to the product which is subject matter of the patent. It is for this reason that mapping of the product to the granted claim in the patent becomes indispensable, for it is only then that it can be said that the product in which the defendant is dealing is the product which is subject matter of the plaintiff's patent."

13.10 We, therefore, find no error in the view expressed by the learned Commercial Court in para 20 of the impugned order.

14. Re. infringement

14.1 On the aspect of infringement, the learned Commercial Court has, in paras 25 and 26, clearly set out the similar features between the Neway's product and the claim in the suit patent, thus:

> "25. Although the defendant's product exhibits dimensional,

[15] "the DHC Patent Suits Rules" hereinafter

structural, and stylistic differences but the core functional elements that constitute the inventive concept of the plaintiff's IN'417 patent are still present. These include: -

i) A tamper-evident tear band positioned between primary and secondary lid sections.

ii) A primary and secondary locking mechanism functioning to secure the lid to the container.

iii) Teeth on the periphery on the closure of the container

iv) Structural arrangement allowing the upper lid portion to be removed while the lower portion remains attached.

v) Stackability features integrated into the container and lid design.

vi) To facilitate the opening the pail or container provided with a tear band and tear knob.

vii) Leak-proof sealing means (albeit defendant claims improved performance).

viii) A sealing arrangement between the lid and the container designed to prevent leakage of contents under normal storage and transportation conditions

26. Minor variations in dimensions, tooth configuration, or ancillary features etc., which do not affect the essential mode of operation of the invention, cannot absolve the defendant from liability for infringement. On comparison, and upon applying the doctrine of pith and marrow as well as the doctrine of equivalence, the modifications introduced in the defendant's product are found to be mere engineering variations and not material departures from the patented combination. The essential features of Patent IN'417 stand embodied in the defendant's product. It is further relevant to note that while the plaintiff's invention is protected under the Patents Act, the defendant's product is registered under the Designs Act, which does not confer any right to appropriate the substance of a patented invention. In view of the above, the defendant's product, prima facie, falls within the scope of the plaintiff's patented claims infringement."

14.2 Mr. Khera has not been able to disabuse the Court of the

correctness of these findings. His only repeated assertion is that the features noted in para 25 are also part of the prior art IN'127.

14.3 That, in our view, cannot constitute any basis to controvert the findings of infringement. Besides, we have already expressed our agreement with the learned Commercial Court in its view that Neway did not make any effort to demonstrate that the suit patent was obvious from the prior art IN'127. The onus, in this regard, was clearly on Neway, and, as Neway failed to discharge it, we can find no fault with the decision of the learned Commercial Court.

14.4 As such, we find no reason to interfere with the findings of the learned Commercial Court on the aspect of infringement either.

14.5 The impugned judgment, to the extent it grants injunction in favour of Mold-Tek and against Neway following a finding of infringement of the Mold-Tek's suit patent IN'417, therefore, does not call for any interference.

14.6 FAO (Comm) 235/2025 is, therefore, dismissed.

FAO (Comm) 241/2025 [*Mold Tek Packaging Ltd v. Neway Industries Pvt Ltd*]

15. By this appeal, Mold Tek challenges the impugned order dated 20 August 2025 to the extent it rejects Mold Tek's claim for injunction against Neway for infringement of IN'298724.

16. Re. infringement

16.1 The learned Commercial Court has found, on infringement, in favour of Mold Tek and against Neway, and holds Neway's product to infringe IN'724.

16.2 There is no cross-appeal by Neway on this aspect. Nor has Neway filed any cross-objection on this aspect.

16.3 As such, the findings on infringement, by Neway's product, of Mold-Tek's suit patent IN'724 are affirmed.

17. Re. invalidity

17.1 On the aspect of invalidity, the findings of the learned Commercial Courts are contained in paras 27 to 33 of the impugned judgment, which read thus:

> "27. Learned Counsel for the plaintiff has submitted that the suit patent IN'724 relates to a novel and inventive product, namely a tamper-proof lid having a leak-proof spout for containers, which provides for a leak-proof pull-up spout assembly incorporating a special 'M'-shaped contour at the circular periphery to ensure a perfect leak-proof joint when assembled with the main lid and adapted to support the pull-up operation. It is further contended that an inverted 'U'-shaped contour in the spout closure facilitates a leak-proof fit with the base by means of a threaded interconnection, thereby creating a leak-proof barrier through the spout base orifice. In response, the defendant has produced material to demonstrate prior use of similar products by third parties and has contended that the plaintiff's product is generic in nature and lacks novelty.
>
> 28. From the perusal of the record, it is evident that the plaintiff had previously filed an application for Patent No. IN 207276 on

28.09.1998 for an invention titled "A Pull-Up Spout with Tamper-Proof Seal", which subsequently ceased on 29.09.2008. A comparison of the earlier patent with the present suit patent IN'724 reveals that both inventions are directed towards providing lids with tamper-proof characteristics to ensure the security and integrity of containers. Each incorporates a pull-up spout mechanism enabling controlled dispensing of contents, along with structural provisions to achieve leak-proof sealing through shrink-fit areas, tail rings, and threaded engagements. Both patents further emphasize the pull-up operation of the spout closure to facilitate convenient opening and closing. The overall functional purpose in both cases remains identical namely, to provide a secure, tamper-evident, and leak-proof solution for dispensing from containers.

29. It is therefore evident that the plaintiff had previously held a patent on a substantially similar product, which fact has not been disclosed in the present pleadings. This indicates the existence of prior art. The defendant has accordingly argued that the features claimed in Patent IN'724 are generic and devoid of inventive step.

30. From the documents produced by the defendant, it further emerges that there are several players in India as well as in foreign countries manufacturing and marketing similar products, namely tamper-proof lids with pull-up spouts, designed to provide a leak-proof assembly of the spout in an interlocked arrangement with the main lid and incorporating tamper-evident features. As regards the comparative analysis of the plaintiff's and defendant's products, the plaintiff has placed on record a claim mapping chart indicating that the defendant's product embodies the essential features of the suit patent. No corresponding claim mapping has been filed by the defendant in respect of Patent IN'724.

31. On a prima facie comparison of the plaintiff's Patent IN'724 with the features of the defendant's impugned product, it appears that the defendant's product incorporates all the essential elements claimed in the suit patent. The material on record demonstrates the presence of a tamper-proof lid having a leak-proof and pilfer-proof spout, a spout base positioned within a shrink-fit area accompanied by a tail ring for additional sealing, a spout closure with a downwardly protruding cylindrical portion and an inverted 'U'-shaped contour, as well as a circular gripper and M-shaped configuration to ensure leak-proof assembly and support for pull-up operation.

32. Ld. Counsel for defendant relied upon ***judgment F. Hoffmann-LA Roche Ltd. and Anr. v. Cipla Ltd.***[16] wherein it was

[16] **2009 (110) DRJ 452 (DB)**

held that: -

> "52. Given the scheme of Patents Act it appears to this Court that it does contemplate multiple challenges to the validity of a patent. Unlike Section 31 of the Trade Marks Act which raises a prima facie presumption of validity, Section 13(4) of the Patents Act 1970 specifically states that the investigations under Section 12 "shall not be deemed in any way to warrant the validity of any patent." Section 48 of the Act also is in the form of a negative right preventing third parties, not having the consent of the patent holder, from making, selling or importing the said product or using the patented process for using or offering for sell the product obtained directly by such process. It is also made subject to the other provisions of the Act. This is very different from the scheme of the Trade Marks Act as contained in Section 28 thereof. Section 3(d) itself raises several barriers to the grant of a patent particularly in the context of pharmaceutical products. It proceeds on the footing inventions are essentially for public benefit and that non-inventions should not pass off as inventions. The purpose of the legal regime in the area is to ensure that the inventions should benefit the public at large. The mere registration of the patent does not guarantee its resistance to subsequent challenges. The challenge can be in the form of a counter claim in a suit on the grounds set out in Section 64. Under Sections 92 and 92A the Central Government can step at any time by invoking the provision for compulsory licencing by way of notification. Therefore, the fact that there is a mechanism to control the monopoly of a patent holder (Section 84 and Section 92) and to control prices (by means of the drug price control order) will not protect an invalid grant of patent."

33. Upon a careful consideration of the records, including the prior art and evidence of similar products in the market, it is evident that the features claimed in Patent IN'724 such as a tamper-proof lid with a pull-up spout, leak-proof sealing through shrink-fit areas and tail rings, threaded engagement for securing the spout closure, and the provision of wings to facilitate tightening and dispensing are not exclusive to the plaintiff's invention. These features constitute common technical solutions employed in the packaging industry to achieve the standard objectives of tamperevidence, leak prevention, and controlled dispensing. The existence of multiple manufacturers producing lids with comparable configurations demonstrates that such features are generic and form part of routine design practice in the trade. Consequently, the subject patent does not disclose an invention

> within the meaning of Sections 2(1)(j) and 2(1)(ja) of the Patents Act, and falls within the bar under Section 3(d). The patent is further vulnerable to revocation under Section 64(1)(e) for lack of novelty and inventive step. Therefore, the plaintiff cannot claim an exclusive monopoly over such common features."

17.2 So far as paras 27 and 33 are concerned, the learned Commercial Court, while referring to prior art, makes no reference to the prior art to which it makes reference while returning findings of lack of novelty and obviousness.

17.3 The only prior art which is specifically addressed by the learned Commercial Court is Mold-Tek's own prior patent IN 207276[17], which is addressed in para 28 of the impugned order.

17.4 *Vis-à-vis* these findings, we are in agreement with Mr. Mehta that the learned Commercial Court has not properly appreciated the claim in the suit patent *vis-à-vis* the said prior art IN'276, as the suit patent claims a lid of which a spout is a part, whereas IN'276 is a claim for a spout *per se*. A reading of para 28 of the impugned order reveals that the learned Commercial Court has only addressed what it perceives to be similarities in the two spouts, without exhibiting application of mind to the fact that the suit patent is for a lid incorporating a spout and not merely for a spout *per se.*

17.5 We do not wish to state anything more, so far as the aspect of invalidity of the suit patent IN'274 *vis-à-vis* prior art is concerned, as we are of the opinion that these aspects required to be concerned *de novo* by the learned Commercial Court. However, so far as the aspect

[17] "IN'276" hereinafter

of infringement is concerned, we uphold the findings of the learned Commercial Court.

17.6 Needless to say, should the learned Commercial Court find that the suit patent IN'724 is in fact vulnerable to invalidity within the meaning of Section 107 read with Section 64 of the Patents Act, that finding would prevail over the finding of infringement as Section 107 offers a defence in every case of the infringement of a patent.

18. Re. para 34 of impugned order

18.1 We may note, here, that, in para 34 of the impugned judgment, it is noted by the learned Commercial Court thus:

> "34. In light of the foregoing, this Court is of the view that *there is no infringement on the part of the defendant*, as *the plaintiff's this patent is generic in nature, suffers from lack of novelty and inventive step, and is subject to prior art and prior use by multiple players in the industry."*
>
> (Emphasis supplied)

18.2 The afore-extracted finding of para 34 is, strictly speaking, not legally correct.

18.3 In returning this finding, learned Commercial Court appears to have conflated the aspects of infringement and invalidity. The finding that the respondent's suit patent is generic or suffers from lack of novelty or inventive step cannot impact the existence of infringement. To the extent that para 34 holds that there is no infringement on the part of the appellant because the suit patent suffers from want of novelty, therefore, the order cannot sustain.

19. Reversal of burden of proof

We also agree with Mr. Mehta's contention that, in para 36 of the impugned judgment, the learned Commercial Court has effectively reversed the burden of proof in establishing a plea of invalidity within the meaning of Section 107. In the Patents Act, the onus to prove infringement lies on the plaintiff. However, once a *prima facie* case of infringement is made out, as Section 107 provides a defence in cases of infringement, where a credible challenge to the validity to the suit patent on one or more of the grounds envisaged in Section 64 is made out, the onus in that regard has to be on the defendant and not on the plaintiff. It is, therefore, for the defendant to make out a credible challenge to the validity of the suit patent.

20. Accordingly, we dispose of this appeal in the following terms:

(i) The finding that Neway's product infringes Mold Tek's suit patent IN'724 is upheld.

(ii) However, the findings on the aspect of invalidity of the suit patent *vis-à-vis* prior art are quashed and set aside. The aspect of invalidity of the suit patent IN'724 *vis-à-vis* prior art is remanded to the learned Commercial Court for consideration afresh.

(iii) All aspects of facts and law shall remain open to be urged by both sides before the learned Commercial Court on this

aspect.

21. The sequitur would be that the impugned order, to the extent it has rejected Mold Tek's application under Order XXXIX Rules 1 and 2 and has upheld Neway's application under Order XXXIX Rule 4 with respect to IN'724 would be set aside. This would result *ipso facto* in revival of the *ex parte ad* interim order dated 8 January 2024 which was in existence till the impugned order was passed.

22. We are not prepared to countenance Mr. Khera's submission that the *ex parte ad* interim order has merged in the final order and that, therefore, it cannot revive. This is contrary to the basic principles of merger. Once the *ex parte ad* interim order was in force till the impugned order came to be passed whereby the application of the respondent under Order XXXIX Rules 1 and 2 was dismissed and the appellant's application under Order XXXIX Rule 4 was allowed. The inexorable sequitur of setting aside that order would be that the *ex parte ad* interim order would be revived.

23. Mr. Khera has apparently conflated the aspects of merger and eclipse.

24. The issue is too self-evident to brook detailed discussion. The setting aside of the impugned judgement would obviously restore the position as it stood prior to its rendition. That would, *ipso facto*, result in revival of the earlier existing *ex parte ad interim* injunction.

25. Accordingly, we clarify that the *ex parte ad* interim order dated

8 January 2024 would revive till the learned Commercial Court takes a fresh call on the respondent's application under Order XXXIX Rules 1 and 2 of the CPC.

26. However, in order to avoid prejudice to either side, we direct the parties to appear before the learned Commercial Court on 17 February 2026. It would be for the learned Commercial Court to take a decision afresh on the respondent's application under Order XXXIX Rules 1 and 2 of the CPC, seeking injunction for infringement of IN'724.

27. We make it clear that the consideration of the learned Commercial Court would be restricted to the challenge to the validity of IN'724 as raised by Neway before the learned Commercial Court. Needless to say, the ultimate decision of the learned Commercial Court on Mold-Tek's application would abide by the outcome of the said decision.

28. Let the parties appear before the learned Commercial Court on 17 February 2026. Learned Counsel for both sides undertake not to take any adjournment from the learned Commercial Court on the said date.

29. In order to facilitate hearing, we also direct learned Counsel to place a four page note of their submissions at least 48 hours in advance of the hearing before the learned Commercial Court so that the decision would be expedited. We request the learned Commercial Court to take up the matter on the said date and hear arguments on

Mold Tek's application under Order XXXIX Rules 1 and 2 and Neway's application under Order XXXIX Rule 4 of the CPC on the aspect of invalidity of IN'724 and to pass orders thereon either on the same day or as expeditiously as possible.

30. Both these appeals are disposed of in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

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AR/AT