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

+ CS(COMM) 15/2022 & I.A. 360/2022, I.A. 361/2022, I.A. 362/2022, I.A. 363/2022, I.A. 364/2022

NOVARTIS AG

..... Plaintiff

Through: Mr. Hemant Singh, Ms.Mamta Jha  
and Mr.Saif Rahman Ansari, Advs.

versus

MSN LABORATORIES PVT LTD

..... Defendant

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**ORDER**

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**10.01.2022**

(Video-Conferencing)

**I.A. 364/2022 (exemption)**

1. For the reasons stated in the application, exemption is granted from the requirement of pre-institution mediation.

2. The application is disposed of.

**I.A. 363/2022 (exemption)**

3. Subject to the plaintiff filing notarized/oath commissioner attested copies of the affidavits and pleadings, as soon as it is possible to do so, exemption is granted for the present.

4. The application is disposed of.

CS(COMM) 15/2022

Page 1 of 4



**I.A. 362/2022 (exemption)**

5. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.

6. The application is disposed of.

**CS(COMM) 15/2022, I.A. 360/2022(under Order XXXIX Rules 1 & 2 of the CPC), I.A. 361/2022**

7. The plaintiff alleges infringement, by the defendant, of the suit patent IN 233161 (IN 161 in short) registered in favour of the plaintiff and covering a product by name Eltrombopag Olamine.

8. The patent continues to be alive till 21<sup>st</sup> May, 2023.

9. It is alleged that, without obtaining any license from the plaintiff, the defendant has launched its own Eltrombopag Olamine product, under the trade name 'REBOPAG' in December, 2021.

10. This, alleges the plaintiff, is clear infringement of the suit patent.

11. The issue is covered in favour of the plaintiff by a recent decision of this Court in *Novartis AG v. Natco Pharma Ltd.*<sup>1</sup>

12. In view thereof, an *ex parte ad interim* injunction has to follow.

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<sup>1</sup> 2021 SCC OnLine Del 5340



13. As such, let the plaint be registered as a suit.
14. Issue summons in the suit. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff, be filed within four weeks, with advance copy to learned Counsel for the plaintiff, who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendant, within two weeks thereof.
15. List before the Joint Registrar for completion of pleadings, admission and denial of documents and marking of exhibits, on 29<sup>th</sup> March, 2022.
16. Issue notice on IA 360/2022 and IA 361/2022, returnable before the Court on 1<sup>st</sup> April, 2022. Replies, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto, before the next date of hearing.
17. Till the next date of hearing, the defendant as well as its distributors and dealers are restrained from manufacturing, clearing or selling in the market the impugned product 'REBOPAG' or from manufacturing, marketing, selling, exporting or importing in the market Eltrombopag Olamine or any product containing Eltrombopag Olamine, in respect of which the plaintiff holds a valid suit patent IN 161, under any other brand or name.



**18.** The defendant is directed to issue necessary instructions to its distributors and dealers intimating them of the aforesaid order.

**19.** The defendant is also directed to place, on affidavit, the quantum of the stock of its pharmaceutical product containing Eltrombopag Olamine, manufactured, cleared and sold by it, as well as the amounts realised by virtue of such sales. Should the defendant seek to keep the sales figures confidential, it may do so under cover of an appropriate application in that regard.

**20.** As this order has been passed *ex parte*, the plaintiff would comply with the requirements of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 within a period of four weeks from today.

**C. HARI SHANKAR, J.**

**JANUARY 10, 2022/kr**