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

+ **CS(COMM) 709/2019**

PHARMACYCLICS, LLC & ANR.

..... Plaintiffs

Through: Mr. Sudhir Chandra, Sr. Adv. with
Ms. Archana Shanker, Mr. Dhruv
Anand, Ms. Udit Patro & Ms. Kavya
Mammon, Advs.

versus

NATCO PHARMA LIMITED

..... Defendant

Through: Mr. Chander Lall, Sr. Adv. with
Ms. Rajeshwari H., Mr. Saif Rahman
Ansari & Mr. Tahir A.J., Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.12.2019**

IA No.18053/2019 (for exemption)

1. Allowed subject to just exceptions.
2. The application stands disposed of.

IA No.18052/2019(u/O.XI R-1(4) CPC)

3. For the reasons stated, the plaintiffs are permitted to file the additional documents latest with the replication, if any.
4. The application is disposed of.

CS(COMM) 709/2019 & IA No.18051/2019(u/O.XXXIX R-1&2 CPC)

5. The two plaintiffs namely (i) Pharmacyclics, LLC; and, (ii) Johnson & Johnson Private Limited, have sued to restrain NATCO PHARMA LTD. from infringing the plaintiffs Indian Patent No.262968 and for ancillary reliefs.

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6. The counsel for NATCO PHARMA LTD. appears on seeing the matter in the cause list.

7. It is *inter alia* the case of the plaintiffs that the defendant NATCO PHARMA LTD. is preparing to launch the infringing product within the next two to four weeks and it has also been learnt that the defendant has already exported some consignments of infringing product on four occasions, i.e. in May, 2018, October, 2018, March, 2019 and August, 2019.

8. On enquiry, whether the defendant has launched the product, the senior counsel for the defendant under instructions answers in the affirmative and states that the defendant is possessed of bill(s) to prove the same.

9. It is also the contention of the senior counsel for the defendant that the defendant NATCO PHARMA LTD. is only the marketeer of the product marketing whereof is sought to be restrained and the manufacturer, under license/agreement from whom the defendant is marketing the product, has not been impleaded. It is contended that the said manufacturer has also filed a post-grant opposition which is pending consideration.

10. The plaintiff in the plaint has disclosed filing of post-grant opposition to the patent by Laurus Lab Ltd.

11. The senior counsel for the defendant states that the defendant NATCO PHARMA LTD. is marketing the impugned product under license/agreement from Laurus Lab. Ltd.

12. M/s. Laurus Lab Ltd. is found to be a necessary and proper party to the suit and is ordered to be impleaded as defendant no.2 to the suit.

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13. Amended memo of parties be filed within the course of the day.
 14. Issue summons of the suit and notice of the application for interim relief to the defendants.
 15. The counsel for the defendant NATCO PHARMA LTD. accepts summons/notice on behalf of both the defendants including Laurus Lab Ltd.
 16. Let two copies of paper books be supplied to the counsel for the defendants in the course of the day.
 17. The senior counsel for the plaintiff has pressed for interim reliefs contending that the patented product has been highly awarded across the globe, for treatment of Leukemia, and has been granted patent in 87 countries. With respect to the plea of post-grant opposition by Laurus Lab Ltd., attention is drawn to Section 25 of the Patents Act, 1970, particularly, sub-section (3) thereof and to page 312 and page 355 of Part IIIA File being the recommendations of the Opposition Board for maintaining the patent. It is argued that thus there is no merit in the post-grant opposition.
 18. However, under sub-section (4) of Section 25, the Controller of Patent, on receipt of recommendation of the Opposition Board, is to grant further opportunity for hearing and empowered to order either maintenance of the patent or amendment or revocation thereof. It is thus not as if the post-grant opposition of defendant no.2 Laurus Lab Ltd. has attained any finality till now.
 19. In my view, the interim arrangement required to be made, is to direct the defendants (i) to on or before 24th December, 2019, under affidavit of both the defendants, file with advance copy to the counsel for the plaintiffs, documents (invoices) to show the date when the marketing of the impugned
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product was commenced and the quantum of the sales effected till now, in terms of quantity, price and batch numbers; (ii) to hereafter, continue to file in this Court, with advance copy to the Advocate for the plaintiffs, the particulars of the sales effected on a quarterly basis.

20. It is ordered accordingly.

21. The plaintiffs also, to on or before 24th December, 2019, on affidavit disclose to this Court with advance copy to the counsel for defendants, the loss that will be suffered by the plaintiffs on account of infringement if ultimately proved by the plaintiffs and which loss, the defendants shall be liable to make good to the plaintiffs in the event of failing in their defence.

22. Since the application for interim relief is pending, written statement be filed on or before 15th January, 2020.

23. Replication on or before 31st January, 2020.

24. List for framing of issues, if any, and for consideration of the application for interim relief on 7th February, 2020. Each counsel to have not more than half an hour to argue on the interim application on that date.

RAJIV SAHAI ENDLAW, J

DECEMBER 19, 2019

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