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

+ CS(COMM) 608/2022, I.A. 14194/2022-Stay, I.A. 14196/2022-For
discovery.

FMC CORPORATION & ORS.

.....Plaintiffs

Through: Mr. Sandeep Sethi, Sr. Advocate,
Dr. Sanjay Kumar, Ms. Arpita
Sawhney, Ms. Pallavi Kiran, Mr.
Arun Kumar Jana, Ms. Meenal
Khurana, Ms. Pratiksha Varsney
and Mr. Priyansh Sharma,
Advocates.

versus

BEST CROP SCIENCE LLP & ANR.

.....Defendants

Through: Mr. Chander M. Lall, Senior
Advocate with Ms. Shilpa Arora,
Dr. Victor Vaibhav Tandon and Mr.
Saif R. Ansari, Advocates.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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06.08.2024

I.A. 4703/2024 (*Direction and Stay*)

1. By virtue of the present application under Rule 19 of the Delhi High Court Intellectual Property Rights Division Rules, 2022¹ read with Rule 17 of the Delhi High Court (Original Side) Rules, 2018² read with Section

¹ Hereinafter referred as "DHC IPD Rules"

² Hereinafter referred as "DHC OS Rules"



151 of the Code of the Civil Procedure, 1908³ the plaintiffs seek to exclude the name of Dr. Shilpa Arora from the list of members of the Confidentiality Club submitted by the defendants as also an *ad-interim* injunction restraining the defendants from infringing the patent rights of the applicants/ plaintiffs under Indian Patent no. 298645 by using directly or indirectly any of the processes covered/ claimed by the suit patent IN'298645 granted by the Controller of Patents on 06.12.2005.

2. This Court vide order dated 12.09.2022 constituted a Confidentiality Club, which was comprising of counsels and independent experts of both sides with the consent of the parties noting as under:-

“14. The learned senior counsel for the defendants submits that his client is agreeable to disclose his process albeit under the aegis of a duly constituted Confidentiality Club comprising of counsels and independent experts (and not plaintiffs' or their in-house experts) only as their process constitutes proprietary trade secret.

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16. With the consent of the parties, it is agreed that a Confidentiality Club shall be constituted comprising of counsels and independent experts (and not plaintiffs' or their in-house experts) only. It is further directed that:

a. A Confidentiality Club is constituted which will comprise only of the nominated lawyers and experts of the parties as also the Independent Experts/ Scientific Advisers;

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3. As such, the defendants in their list of members of the Confidentiality Club nominated Mr. Chander Mohan Lall, Senior Advocate, Ms. Sneha Jain, Advocate, Dr. Shilpa Arora, Advocate and Patent Agent, Dr. Amitavo Mitra, Advocate and Patent Agent, Dr. Indrani Adhikari, Patent Agent, Mr. Bhalchandra Mahadeo Bhanage, Scientific

³ Hereinafter referred as “CPC”



Expert from its side.

4. Since, as per plaintiffs there cannot be more than three advocates who are not/ have been in-house lawyers of either party in a Confidentiality Club, they raised an objection and this Court vide order dated 30.05.2023 recorded “... ..*that Defendants shall restrict the number of nominated lawyers to the Confidentiality Club to two (02) and their names shall be disclosed to the Plaintiffs within one week from today.*”.

5. Thus, the defendants vide e-mail dated 04.06.2023 nominated Dr. Shilpa Arora and Dr. Amitavo Mitra as members of the Confidentiality Club from their side.

6. Hence, the plaintiff has filed the present application. Learned senior counsel for the plaintiffs, relying upon [i] a letter dated 01.12.2021, which is accompanied with a corporate presentation to be circulated to investors/ analyst, wherein the said Dr. Shilpa Arora has not only in one place been shown as being the “*IP Lead*” of the defendant no.1 and it is mentioned “*At Best Agrolife she is responsible for prior art searching, conducting FTO studies, preparing landscapes and advising on white spaces, patentability analysis, patent application drafting, preparing responses to examination reports, and patent litigation.*” but in another place it is also mentioned below her photograph that she is the “*IP-Lead, Best Agrolife Ltd.*” as also upon [ii] an extract from the ‘Indian Chemical News’ wherein also it is mentioned below her photograph in the list of Speakers as “*Dr. Shilpi Arora, IP-Lead, Best Agrolife Ltd.*” and [iii] an Instagram post of the defendant no.1 which carries her photograph mentioning “*Representing BAL, our Intellectual Property Lead, Miss Shilpa Arora, took the stage as a speaker, sharing invaluable insights on 'Innovation*



and Research-led Marketing.”, submits that the same is in contravention of *Rule 19* of the DHC IPD Rules as also *Rule 17* of the DHC OS Rules.

7. In view of the aforesaid, as per learned senior counsel for the plaintiffs since one of the nominated members by the defendants, Dr. Shilpa Arora is involved in daily affairs and management of the defendants as she has been designated as “*IP Lead*” by the defendant no.1/ Best Agrolife Limited as per publicly available website link <https://www.bseindia.com/xmldata/corpfilings/AttachHis/a849eebf-69e7-444a-bafecb4e8de5ac50.pdf>., the name of Dr. Shilpa Arora has to be excluded from the list of proposed members of the Confidential Club members submitted by the defendants in compliance of order dated 12.09.2022.

8. *Per Contra*, learned senior counsel for the defendants submits that Dr. Shilpa Arora is working as an external Intellectual Property Rights counsel of the defendants in an advisory capacity. Learned senior counsel also submits that the website page relied upon by the plaintiffs is of a third party over which the defendants have no control.

9. Learned senior counsel for the defendants, then relying upon a Retainership Agreement dated 27.10.2020 vide which the said defendant no.1 appointed Dr. Shilpa Arora as its ‘Retainer’ and which though is subject to renewal, is valid and subsisting till date, submits that the relationship *inter-se* the defendants and Dr. Shilpa Arora is determined by a contract or arrangement and not on the basis of any designation.

10. Lastly, learned senior counsel for the defendants has drawn the attention of this Court to the relevant part of the affidavit of Dr. Shilpa Arora, wherein she has stated as under:-



“10. I further say that the second set of documents referred by the Plaintiffs is that of letter sent to Bombay Stock Exchange Limited where the website of the Defendants mentions myself in a leadership role and that of Instagram page of the Defendants where this page mentions myself as representing Defendants in Agrochem Summit. In response, I say that firstly, this was not in my knowledge and secondly, that the work relationship between two parties is always determined by the contract or arrangement which two parties may have with each other and not on the basis of any designation, which the party may refer to. I reiterate that I am not the nominated representative of the Defendants in any manner.”

11. Based thereon, learned senior counsel for the defendants submits that since Dr. Shilpa Arora is only a ‘Retainer’ and their counsel, she is neither in charge of nor actively involved in the day-to-day business operations and management of the defendants.

12. I have heard the learned senior counsel(s) for the parties and gone through the contents of the present application as also the accompanying documents on record along with the list containing details qua filing of vakalatnamas before the Delhi High Court as also filing of Power of Attorney before the Patents Office by Dr. Shilpa Arora as handed over during the course of hearing.

13. Before proceeding, I note that since no submissions qua the relief seeking restraining the defendants from using plaintiffs patent IN’298645 were advanced by the learned senior counsel for the plaintiffs, the said relief is deemed to have been given up by the plaintiffs and thus requires no adjudication by this Court. Even otherwise, the same is beyond the scope of both *Rule 19* of the DHC IPD Rules as also *Rule 17* of the DHC OS Rules.

14. Now, advertent to the issue before me, as per *Rule 19* of the DHCIPD Rules it is explicit that for maintaining the integrity of



confidential information of the parties before this Court, the members of the parties constituting the Confidentiality Club *may* also be someone who are not in charge of or active in the day-to-day business operations and management of the respective parties so as to maintain the integrity of the information so disclosed.

15. Similarly, as per *Rule 17* of the DHC OS Rules it is explicit that each party is allowed to nominate not more than *three* Advocates, who are not and have not been inhouse Advocates of either of the parties involved along with not more than two external experts, who shall alone be entitled to inspect the confidential documents/ information before the Court.

16. In effect, the moot issue for consideration before me is pertaining to the credentials of Dr. Shilpa Arora, i.e. whether she can/ cannot be allowed to be a part of the list of members of the Confidentiality Club submitted by the defendants in compliance of order dated 12.09.2022 under the existing circumstances.

17. For this, the complete relevant extract of corporate presentation relied upon by the learned senior counsel for the plaintiffs qua Dr. Shilpa Arora as also her photograph mentioning her as “*IP-Lead, BAL*” are reproduced as under:-

“Dr. Shilpa Arora

IP-Lead

A Graduate in Medicine and a Post Graduate in Pharmaceutical Drug Regulatory affairs Shilpa is a registered Patent Agent with Indian Patent Office and an advocate & Trademark Attorney. Apart from her extensive experience in patent prosecution she has successfully handled and represented a major Swiss Pharmaceutical Company in its patent litigation pertaining to blockbuster molecules. At Best Agrolife she is responsible for prior art searching, conducting FTO studies, preparing landscapes and advising on white spaces, patentability analysis, patent application drafting, preparing responses to examination reports, and patent litigation.



(Emphasis supplied)



Dr. Shilpa Arora

IP Lead
Best Agrolife Ltd

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18. In my opinion, it is apparent from the aforesaid that Dr. Shilpa Arora is shown to be responsible for prior art searching, conducting FTO studies, preparing landscapes and advising on white spaces, patentability analysis, patent application drafting, preparing responses to examination reports, and patent litigation as any Patent Agent/ Advocate is expected/ assigned to do. Similarly, the designation given below her photograph and/ or the information in the ‘Indian Chemical News’ and/ or the Instagram post, which is only pertaining to a particular Seminar, does not, and in fact cannot, mean that Dr. Shilpa Arora is a person who is either in charge of or active in the day-to-day business operations and management of the defendants or that she is an inhouse lawyer of the defendants.

19. Furthermore, Dr. Shilpa Arora has filed her Retainership Agreement dated 27.10.2020 with the defendant no.1 before this Court reflecting that she was only appointed as a ‘*Retainer*’ by the defendant no.1, which has not been disputed by the plaintiffs at any stage.

20. In any event, the said Dr. Shilpa Arora is a practising advocate



enrolled with the bar having Enrolment No. D/3043/2011 and it is not disputed that she is in fact the counsel on record for the defendants before this Court in the present suit. Not only that, she had also handed over a list containing details of as many as *four* cases wherein Dr. Shilpa Arora has filed her vakaltnama for and on behalf of different clients before the Delhi High Court from time to time as also as many as *nine* proceedings wherein she has filed her Power of Attorney for and on behalf of different clients before the Patent Office from time to time.

21. In view of the aforesaid, I find no reason to conclude that Dr. Shilpa Arora was/ is in any manner in charge of or actively involved in the day-to-day business operations and management of the defendants or is their inhouse lawyer. In my opinion, holding so under the existing facts and circumstances would be too far-fetched.

22. Therefore, there is no occasion for me to exclude/ remove the name of Dr. Shilpa Arora from the list of proposed members of the Confidential Club members submitted by the defendants in compliance of order dated 12.09.2022 and the provisions of *Rule 19* of the DHC IPD Rules and/ or *Rule 17* of the DHC OS Rules are inapplicable to the facts before me.

23. Accordingly, the present application is dismissed.

SAURABH BANERJEE, J

AUGUST 6, 2024/akr