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

+ CS(OS) 1026/2009

MERCK SHARP & DOHME CORP & ORS. Plaintiffs
Through: Mr. Pravin Anand, Ms. Tusha
Malhotra and Ms. Udit Patro, Adv.

Versus

VIRCHOW BIOTECH PVT LTD AND ANR. Defendants
Through: Ms. Rajeshwari H. and Mr. Kumar
Chitranshu, Adv.

AND

CS(OS) 2900/2011

MERCK SHARP & DOHME CORP & ANR. Plaintiffs
Through: Mr. Pravin Anand, Ms. Tusha
Malhotra and Ms. Udit Patro, Adv.

Versus

VIRCHOW BIOTECH PVT LTD AND ANR Defendants
Through: Ms. Rajeshwari H. and Mr. Kumar
Chitranshu, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.12.2017**

IA No.13291/2017 in CS(OS) No.1026/2009 (u/O XXIII R-3 CPC)

1. The three plaintiffs namely (i) Merck Sharp & Dohme Corp.; (ii) MSD International Holdings GMBH; and, (iii) Fulford (India) Ltd. in CS(OS) No.1026/2009 and the two plaintiffs namely (a) Merck Sharp & Dohme Corp.; and, (b) Fulford (India) Ltd. in CS(OS) No.2900/2011 and the two defendants namely (i) Virchow Biotech Pvt. Ltd.; and, (ii) Bioviz Technologies Pvt. Ltd. in CS(OS) No.2900/2011 and the defendant No.1 namely Virchow Biotech Pvt. Ltd. in CS(OS) No.1026/2009, both for infringement of patent and for ancillary reliefs and consolidated for the

purposes of trial, were referred to the Mediation Cell of this Court.

2. Mediation has been successful with the efforts of Mr. Raj Malhotra, Advocate/Mediator and a Settlement Report dated 25th September, 2017 has been received from the Mediation Cell of this Court.

3. The counsel for the plaintiffs in both the suits and the counsel for all the defendants in both the suits support the settlement agreement and seek decree/disposal in terms thereof.

4. The Settlement Report dated 25th September, 2017 refers to Annexure-A thereto. However, there is no Annexure-A found to the said Settlement Report.

5. The counsels, on enquiry, state that since the parties were in different jurisdictions, IA No.13291/2017 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) for recording the compromise in both the suits was prepared and which application is listed today.

6. I have perused the settlement as contained in IA No.13291/2017 and find the same to be lawful and allow the same.

7. The counsel for the defendants states that the defendants No.2&3 namely Piramal HealthCare Limited and Ranbaxy Laboratories Ltd. (as per amended plaint dated 12th April, 2010) in CS(OS) No.1026/2009 are not selling the impugned drug and are therefore willing to suffer a decree in terms of IA No.13291/2017 and adopt the same settlement.

8. The application is allowed and disposed of.

CC No.89/2009 & CC No.58/2011 in CS(OS) No.1026/2009

9. The counsel for the counter-claimants states that in view of the settlement aforesaid, the counter-claims do not survive.

10. The counter-claims are accordingly disposed of.

CCP(O) No.60/2010 in CS(OS) No.1026/2009

11. The counsel for the plaintiffs/petitioners states that in view of the settlement aforesaid, he does not press this petition.

12. The petition is disposed of as not pressed.

CS(OS) No.1026/2009 & CS(OS) No.2900/2011

13. A decree is passed in favour of the plaintiffs in both the suits and against the defendants in both the suits in terms of settlement contained in IA No.13291/2017 in CS(OS) No.1026/2009 which shall form part of the decree sheets, leaving the parties to bear their own costs.

14. The undertakings of the respective parties as contained in IA No.13291/2017 in CS(OS) No.1026/2009 are also accepted by this Court and the respective parties are ordered to be bound therewith and cautioned through their counsel of consequences of breach of undertaking given to the Court. No costs.

Decree sheets be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 07, 2017

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