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

+ CS(COMM) 1646/2016 & IA No.15827/2016 (u/O XXXIX R-1&2 CPC)

BAYER INTELLECTUAL PROPERTY GMBH & ANRPlaintiffs
Through: Mr. Pravin Anand and Mr. Nishchal Anand, Adv.

Versus

MEHTA API PVT LTD Defendant
Through: Mr. Afzal B. Khan, Adv.

AND

CS(COMM) 1647/2016 & IA No.15835/2016 (u/O XXXIX R-1&2 CPC)

BAYER INTELLECTUAL PROPERTY GMBH & ANR.....Plaintiffs
Through: Mr. Pravin Anand and Mr. Nishchal Anand, Adv.

Versus

HETERO DRUGS LIMITED & ANR Defendants
Through: Mr. Prithvi Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **28.02.2018**

1. The suits are listed today in pursuance to the order dated 26th September, 2017.

2. The counsels for the defendant/s in each suit state that the defendant/s in each of the suits have filed an affidavit *inter alia* stating that
CS(COMM) 1646/2016 & CS(COMM) 1647/2016

the defendant/s in each suit is engaged in the business of Research and Development, Manufacturing and Marketing of an Active Pharmaceutical Ingredients and are not manufacturing any drugs violating the patent, subject matter of both the suits, and are only carrying on the activities permissible under Section 107A of the Patents Act, 1970.

3. The counsel for the plaintiffs states that the plaintiffs have no objection to these suits being decreed in terms of aforesaid and the plaintiffs do not press any other reliefs claimed in the plaint. It is further stated that appeal, being RFA(OS)(COMM) No.6/2017 titled ***Bayer Intellectual Property GMBH & Anr. Vs. Alembic Pharmaceuticals Ltd.***, has been heard by the Division Bench of this Court and only one date of hearing of fifteen minutes remains. It is stated that the decree be made subject to the outcome in the said proceedings.

4. I have enquired from the counsel for the plaintiffs, what will happen in the event of the judgment reported in RFA(OS)(COMM) No.6/2017 being set aside by the Division Bench i.e. whether the plaintiff will be required to sue the defendant/s in these suits afresh or will revive the present suits.

5. The counsel for the plaintiffs states that he will have to consider the said aspect.

6. A decree is accordingly passed, in favour of the plaintiffs and against the defendant/s in each of the suits in terms of prayer paragraphs 35(a) in CS(COMM) No.1646/2016 and 37(a) in CS(COMM) No.1647/2016 of the plaint, both dated 2nd January, 2017, in the two suits but with the clarification that the said decree will not injunct the defendant/s in each of the suits from carrying on the activities permissible under Section 107A of CS(COMM) 1646/2016 & CS(COMM) 1647/2016

the Patents Act.

7. It is further clarified that in the event of the judgment impugned in RFA(OS)(COMM) No.6/2017 being set aside, altered or modified by the Division Bench or by the Supreme Court, the plaintiff/s shall be entitled to take appropriate action.

8. The parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 28, 2018

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