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

+ **CS (COMM) 1216/2018**

SULPHUR MILLS LIMITED Plaintiff
Through: Dr. Shilpa Arora and Ms. Sakshi
Jhalani, Advocates. (M:9971234481)
versus

MRIGDHARA AGRO INDIA PRIVATE
LIMITED & ORS. Defendants
Through: Mr. Arun Daga Mulane, Directors of
D-1 & 2 in person.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **14.12.2018**

CS (COMM) 1216/2018 & I.A. 17204/2018 (u/O XXIII Rule 3 CPC)

1. The plaintiff has filed the present suit seeking an injunction against the infringement of granted patent number 282429. The patent relates to a novel agricultural composition, which is a fertiliser. The patent is valid for a period of 20 years.
2. The Defendants had started manufacturing the product '*THIOGREEN WG*', which is an agricultural composition. According to the Plaintiff, the same was infringement of the Plaintiff's patent. On 2nd November, 2018, this Court had granted an ad-interim injunction restraining the Defendants in the following terms.

“13. Plaintiff has made out a prima facie case in its favour. Balance of convenience rests in favour of the Plaintiff and irreparable harm would be caused to the Plaintiff if the Defendant is not enjoined. Considering that the patent has been granted after stiff opposition

by at least seven parties who had filed pre-grant oppositions, the patent, has undergone enormous scrutiny. Moreover, the life of a patent is limited and during that period, the statutory rights under Section 48 deserve to be safeguarded. The Defendant already has notice of the plaintiffs patent but has simply denied infringement. The plaintiff has no option but to seek an injunction. Accordingly, till the next date, the Defendant is restrained from making any fresh manufacture of the product "THIOGREEN WG" or any other agricultural composition, resulting in infringement of registered patent number 282429. Defendant shall also not advertise its products under the brand 'THIOGREEN WG' till the next date. However, in respect of existing stock, which is being sold, Defendant shall file a complete statement of account disclosing to the Court as to the stock, which is available with it and its dealers and the value of the said stock. Compliance of Order XXXIX Rule 3 CPC be made within ten days."

3. The suit has been filed against M/s. Mrigdhara Agro India Pvt. Ltd.- Defendant No.1, Agri Search (India) Private Limited- Defendant No.2 and Safal Agro Seeds – Defendant No.3. I.A. 17204/2018 has been filed under Order XXIII Rule 3 CPC reporting that the parties have entered into a settlement. The application is signed both by the Plaintiff's authorized signatory and Mr. Arun Daga Mulane, who is the director of the two companies i.e. Defendant Nos.1 & 2. He is present in person. He submits that Defendant Nos.1 & 2 have settled their disputes with the Plaintiff. On being queried by the Court, he submits that the Defendant Nos.1 & 2 have agreed to pay a sum of Rs.12 per kg for sales of 'THIOGREEN WG' products or any other products, which use the Plaintiff's patented composition, as recorded in the application. He is conversant with the terms

of settlement. The statement of Mr. Arun Daga Mulane has been recorded today in court.

4. The Court has perused the terms of settlement and the same are lawful. There is no impediment in recording the settlement. The settlement terms are contained in paragraph Nos.2(i) to (viii) of the application and the same are reproduced herein below.

“i. The Defendants admit and accept the rights of the Plaintiff in patent being IN 282429 (the "Patent") and acknowledge the validity thereof;

ii. The Defendants undertake that they will not directly or indirectly challenge or assist any third party to challenge the validity of the Patent during its term;

iii. The Defendants either by themselves or through their directors, group companies, associates, divisions, assigns in business, licensees, franchisees, agents, officers, servants, distributors and dealers, undertake not to manufacture, sell, advertise, offer to sell, import, export, directly or indirectly deal in Plaintiff's patented agricultural composition itself which is the subject matter of patent no 282429 or any other agricultural composition as may amount to infringement of Indian Patent No. 282429;

iv. The Defendants agree to enter into a non-exclusive license agreement with the Plaintiff in respect of Plaintiff's IN 282429 patent. Subject to the terms of such license agreement, the Defendants agree to pay royalty as under:

*a. at the rate of Rs 12/kg for all the past sales i.e. since 2014, of their product "Thiogreen WG" or any other product (Sulphur 90% formulation) sold under different brand covered by IN 282429 patent
and*

b. at the rate of Rs 12/kg for all the sales of their product "Thiogreen WG" or any other product (Sulphur 90% formulation) sold under different brand - covered by IN 282429 patent starting from the date of the signing of this agreement and shall continue until expiry of IN 282429 patent i.e. 08th January, 2027.

c. The Defendants agree that the rate of Rs 12/kg for past sales will be paid in full within 60 days of the end of third financial year i.e. 2021-2022 i.e. by May 30, 2022. However, the Plaintiff agrees that the amount accrued on account of the past sales will be waived off if the cumulative sales for the succeeding three financial years from the date of the signing of the agreement i.e. 2019-2020, 2020-2021 and 2021-2022 is at least or more than 600 MT.

d. The Defendants agree that in case the cumulative total sales of three financial years from the date of signing of the agreement i.e. 2019-2020, 2020-2021 and 2021-2022 is less than 600 MT for any reason whatsoever, the waiver for the past sales as stated in sub clause (c) will not apply and a rate of Rs 20/kg will be payable for the quantity falling short of 600 MT within 2 months from the end of the financial year 2021-2022.

e. The Defendants agree that the Plaintiff has consented to a deferred payment for the past sales on account of the inability expressed by the Defendants to make an immediate payment and a waiver for the past sales only in lieu of an guaranteed assurance from the Defendants that the future sales of their product "Thiogreen WG" or any other product (Sulphur 90% formulation) sold under different brand - covered by IN 282429

patent, will not be less than the 600 MT which is the cumulative total sales of three financial years from the date of signing of the agreement i.e. 2019-2020, 2020-2021 and 2021-2022.

v. The Defendants further agree to disclose and share with the Plaintiff on a sworn affidavit the actual sale of their product "Thiogreen WG" or any other product (Sulphur 90% formulation) sold under different brand - covered by IN 282429 patent, since 2014 and till the date of signing of the agreement for the purpose of calculation of applicable royalty rates;

vi. The Defendants further agree to disclose and share with the Plaintiff the actual future sale of their product "Thiogreen WG" or any other product (Sulphur 90% formulation) sold under different brand covered by IN 282429 patent, from the date of entering into the present settlement and execution thereof and thereafter on a monthly basis until the expiry of IN 282429 patent i.e. 08th January, 2027;

vii. The Defendants further agree that the above mentioned royalty rates shall be applicable as on the date of entering into the present settlement and execution thereof;

viii. The Defendants further agree that they will endeavour to increase the sales of their product "Thiogreen WG" or any other product (Sulphur 90% formulation) sold under different brand covered by IN 282429 patent and not undertake any activity either directly or indirectly which may cause dilution of the brand equity of the product or reduction of sales of the product."

5. Defendant No.3 is a dealer/distributor of the Defendant Nos.1 & 2. Defendant No.3 is not the exclusive distributor of Defendant Nos.1 & 2, The Plaintiff does not press any relief against Defendant No.3 qua the subject

matter of the present suit. Hence, Defendant No.3 is deleted from the array of the parties.

6. The suit is decreed against Defendant nos 1 and 2, in terms of the settlement. The settlement application shall form the part of the decree. Decree sheet be drawn up.

7. Application and suit are disposed of. Next dates of hearing i.e. 4th February, 2019 and 20th December, 2018 before the Court stand canceled. No order as to costs.

PRATHIBA M. SINGH, J.

DECEMBER 14, 2018/dk