

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 744/2017**
MERCK SHARP & DOHME CORP. & ANR

..... Plaintiff

Represented by: Mr. Pravin Anand, Ms. Udit M.
Patro, Ms. Pankhuri Malik, Adv.

versus

VENKATESHWAR KUMAR THADURI & ORS

..... Defendant

Represented by: None for D-5.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
14.02.2020

%

1. By the present suit plaintiffs had sought a decree of injunction against Venkateshwar Kumar Thaduri, Stereokem Pvt. Ltd., Stereokem Pharmaceuticals Pvt. Ltd., Stereokem India Pvt. Ltd. and Srinu Pharmaceuticals Pvt. Ltd. being defendant No.1 to 5 respectively impleaded in the suit.

2. Plaintiffs and defendants No.1 to 4 had already entered into a settlement and a decree qua plaintiffs and defendant No.1 to 4 based on the settlement have been passed by this Court vide order dated 18th December, 2019.

3. Plaintiffs and defendant No.5 have also now entered into a settlement before the Delhi High Court Mediation and Conciliation Centre. Copy of the settlement agreement dated 7th February, 2020 is on record.

4. Plaintiffs and defendant No.5 have entered into settlement on the

following terms and conditions:

- (i) *“The Second Party acknowledges the validity of the suit patent IN209816 and the First Party’s exclusive right in dealing in products containing Sitagliptin or any of its pharmaceutically acceptable salts, including Sitagliptin Phosphate Monohydrate, which is the subject matter protected by the said suit patent. The Second Party further admits that during the lifetime of IN 209816, any act of making, using, offering for sale, selling or importing, exporting or otherwise using the subject matter of IN 209816, namely the Sitagliptin free base and also its pharmaceutically acceptable salts including Sitagliptin Phosphate Monohydrate, will violate the statutory rights of the First Party herein.*
- (ii) *The Second Party undertakes that they shall not manufacture, use, offer for sale, sell, import or export Sitagliptin, either as an API or a finished product, commercially or indulge or participate in any other activity that constitutes infringement of IN 209816 till the expiry of the patent on July 05, 2022;*
- (iii) *Subject to the aforesaid undertakings given by the Second Party herein, the First Party foregoes their claim for damages, rendition of accounts and costs of the proceedings as regards the Second Party, as prayed for in paragraph 87 clauses (b) to (e) of the Plaint. However, in the event of a breach of these undertakings by the Second Party, the First Party reserves their right to seek any remedies available to them in law and equity. Furthermore, the above named Second Party shall be liable to indemnify the First Party against all costs and damages incurred, either INR 2 crores or the actual costs and damages incurred by the First Party, whichever is higher, in light of such breach by the said Second Party.*
- (iv) *In lieu of the past damages, the Second Party is handing over to the First Party a Demand Draft No. 013142 dated 06.02.2020 drawn on HDFC Bank, for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) in favour of “MSD PHARMACEUTICALS PVT LTD” at the time of signing of the present settlement agreement to the First Party. The copy of the Demand Draft bearing the acknowledgment of the receipt by the First Party is annexed herewith as ANNEXURE-D.*
- (v) *The Hon’ble Court may consider refund of the court fees to the First Party in terms of the Section 16 of the Court Fees Act 1870 read with Section 89 of CPC, 1908.
The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediator.*

By signing this Settlement Agreement, the parties hereto state that they have no further claims or demands against each other and all the disputes and differences have been amicably settled by the Parties hereto through the process of Mediation.

That the parties undertake to abide by the terms and conditions set out in the present Settlement Agreement. ”

5. The settlement agreement is duly signed by Muralidhar V. Karanam and Mohammad Hani Rizvi, authorized representatives of plaintiff No.1 and 2 and by K. Bajee Reddy, authorized representative of defendant No.5. Copies of authorizations in whose favour are enclosed with the settlement agreement.

6. Learned counsel for the plaintiff states that the defendant No.5 has already paid the damages of ₹50,000/- in terms of Clause (iv) of the settlement agreement by way of a demand draft dated 6th February, 2020.

7. Suit is accordingly decreed in favour of the plaintiffs and against the defendant No.5 in terms of the settlement as noted above.

8. Decree sheet will incorporate the terms of settlement.

9. Since the plaintiffs have entered into a settlement with all the defendants, court fee be refunded to the authorized representative of the plaintiff No.1 under Section 16 of the Court Fees Act.

I.A. 12546/2017 (u/O XXXIX R 1&2 CPC),

I.A. 3135/2018 (u/O XIII A CPC by D-1 to 4)

Applications are disposed of as infructuous.

MUKTA GUPTA, J.

FEBRUARY 14, 2020

‘ga’