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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 103/2021 & I.A.3178/2021, I.A. 3179/2021,
I.A.3180/2021, I.A.3181/2021, I.A.7368/2021, I.A.7369/2021
H. LUNDBECK A/S & ANR. Plaintiff
Through: Mr. Pravin Anand, Ms. Prachi
Agarwal, Ms. Ridhie Bajaj, Ms. Mishthi
Dubey, Advs.

versus

SYMED LABS LIMITED Defendant
Through: Mr. Prithvi Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

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04.06.2021

(Video-Conferencing)

I.A.7369/2021 (exemption)

1. Exemption allowed subject to all just exceptions.
2. The application is disposed of.

I.A.7368/2021 (under Order XXIII Rule 3 of the CPC)

1. This is a joint application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC), for decreeing of the suit in terms of the settlement arrived at between the parties. The terms of settlement have been set out in para 2 of the application which is, for ready reference, reproduced thus:

“2. That the Parties have amicably resolved the present dispute regarding the Indian Patent No. 227963 filed against the Defendant, on the basis of the following terms: -

- i. The Defendant acknowledges the validity of the Indian Patent No. 227963 during its subsistence.
- ii. The Defendant undertakes that it will not be commercially launching any product, including but not limited to Vortioxetine and/or Vortioxetine Hydrobromide violating the suit patent IN 227963 (hereinafter, ‘IN ‘963 patent’) during its subsistence.
- iii. That the Defendant undertakes that it will furnish a statement to the Plaintiffs and their counsel, every 6 months, starting from the date on which the settlement is recorded and until the subsistence of the IN ‘963 patent, containing the particulars and quantities of Vortioxetine and/or Vortioxetine Hydrobromide supplied/ to be supplied to third parties whether in the domestic market or by export for R&D purposes prescribed under S. 107A of The Patents Act, 1970 (hereinafter, ‘Patents Act’).
- iv. That the Defendant undertakes that at all times and until the subsistence of the IN'963 patent, the Defendant will obtain declarations/ and undertakings from all third-party customers that such purchase/sale/export of Vortioxetine and/or Vortioxetine Hydrobromide is for the purposes prescribed under S. 107A of the Patents Act and provide the same to the Plaintiffs and their counsel.
- v. That the Defendant further undertakes that, going forward and till the subsistence of the Indian Patent No. 227963, it will supply Vortioxetine and/or Vortioxetine Hydrobromide to only those entities which will provide them

the information on the quantities of Vortioxetine and/or Vortioxetine Hydrobromide required for regulatory purposes under the laws of their country and/or any other country where they are applying for regulatory approval, whichever is applicable. That upon obtaining the said information, the Defendant will provide the same to the Plaintiffs and their counsel.

- vi. That the Defendant further undertakes that if, during the subsistence of the Indian Patent No. 227963, it is discovered that any of the parties to whom the Defendant has supplied the product Vortioxetine and/or Vortioxetine Hydrobromide, are commercializing the product, the Defendant will promptly inform the Plaintiffs and their counsel along with requisite proof of such commercialization. Further, the Defendant would also stop the supply of the product to such party immediately and provide a confirmation thereof in writing to the Plaintiffs and their counsel.
- vii. That the Defendant further undertakes that all communications to be made by the Defendant to the Plaintiffs and their counsel, in writing, in compliance of the aforesaid terms, would be at their respective postal addresses or email addresses, mentioned below:

- a) H. Lundbeck A/S Plaintiff No. 1

Ottiliavej 9
2500 Valby
Denmark
E-mail address:- jmp@lundbeck.com

- b) Lundbeck India Private Limited Plaintiff No. 2

HM Towers, I Floor,
#58, Brigade Road, Kodihalli BD,

HAL II Stage, Bangalore

Karnataka – 560025

India.

E-mail address:- MSAW@lundbeck.com

- c) Anand and Anand
Advocates of Plaintiff Nos. 1 and 2

First Channel Building,

Plot No. 17A, Film City, Sector 16A,

Noida-201301.

UP.

E-mail address: -
email2@anandandanand.com

- viii. That the Plaintiffs reserve their right to seek revival of the instant law-suit if the Plaintiffs find the Defendant herein has made commercial use of the suit patent, IN 227963.
- ix. The present suit may be decreed in view of the aforesaid terms and that the Plaintiffs may be entitled to refund of court fees under the Court Fees Act, 1870.”

2. Learned Counsel for the parties are present.

3. In view thereof, nothing survives for adjudication in the present suit. Accordingly, the suit is decreed in terms of settlement which shall be treated as part of the judgment and order of decree.

4. The Registry is directed to draw up a decree sheet in terms thereof.

5. Ms. Prachi Agarwal, learned Counsel for the plaintiff also seeks refund of the entire court fees paid by the plaintiff.

6. She cites, in this context, Section 89 of the CPC and Section 16 of the Court Fees Act, 1870, as well as the judgment of this Court in *Munish Kalra v. Kiran Madan*¹. In the said decision, this Court has taken a view, following earlier decisions, that, where the matter is settled in accordance with the protocol prescribed in Order XXIII Rule 3 of the CPC, Section 16 of the Court Fees Act entitles the plaintiff to complete refund of court fees.

7. Order XXIII Rule 3 of the CPC reads thus:

“3. Compromise of suit. - Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation – An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of

¹ 2019 SCC OnLine Del 8021

1872), shall not be deemed to be lawful within the meaning of this rule.”

8. The settlement in the present case is clearly in accordance with Order XXIII Rule 3 and, therefore, *prima facie* entitles the plaintiff to entire refund of the court fees.

9. Full refund of the court fees prayed by the plaintiff is also justified for the reason that the suit stands settled even before notice is issued in the matter, at the earliest possible stage.

10. In view thereof, the plaintiff is held to be entitled to refund of the entire court fees deposited by it. I.A. 7368/2021 and the suit alongwith pending applications stand disposed of accordingly.

JUNE 4, 2021/kr

C.HARI SHANKAR, J

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