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

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Date of decision: 02.09.2021

+ **FAO (OS) (COMM) 116/2021**

MICRO LABS LIMITED

.....Appellant

Through: Mr. J Sai Deepak with Mr. G. Nataraj,  
Mr. Avinash K Sharma, Mr. Ankur  
Vyas and Mr. R. Abhishek,  
Advocates.

versus

BRISTOL MYERS SQUIBB HOLDINGS IRELAND UNLIMITED  
COMPANY & ORS.

.....Respondents

Through: Mr. Sudhir Chandra, Senior Advocate  
with Mr. Pravin Anand, Ms. Prachi  
Agarwal, Ms. Tusha Malhotra, Ms.  
Ridhie Bajaj and Ms. Richa  
Bhargava, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE TALWANT SINGH**

**RAJIV SHAKDHER, J.: (ORAL)**

[Court hearing convened via video-conferencing on account of COVID-19]

**CM APPL. 29441/2021**

1. Allowed, subject to just exceptions.

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**CM APPL. 29439/2021** [Application filed on behalf of the appellant  
seeking interim relief]

**CM APPL. 29440/2021** [Application filed on behalf of the appellant to file  
additional documents]

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2. This appeal is directed against the order dated 16.08.2021, passed by the learned Single Judge, in I.A. No.7681/2021, filed in CS(COMM) 302/2021.

2.1. The operative directions, issued by the learned Single Judge, are contained in paragraph 36 of the impugned order, which, for the sake of convenience, is extracted hereafter:

“36. Accordingly, an ex-parte ad- interim injunction is passed restraining the defendant, its directors, employees, officers, servants, agents, stockists, wholesalers etc. from using, making, selling, distributing, advertising, marketing, exporting, offering for sale in any generic Apixaban product under any brand name, including but not limited to ‘APIVAS’, which infringes the suit Patent IN 247381. The defendant will also recall the impugned generic products which infringe the suit patent from its distributors, wholesalers etc.”

2.2. Although, paragraph 39 of the impugned order, indicates that, the reply has been filed by the appellant [i.e., the original defendant] to the aforementioned interlocutory application, on being queried, Mr. J. Sai Deepak, on instructions received from Mr. G. Natraj, i.e., counsel-on-record for the appellant, clarifies that, a written statement had been filed and a request was made to the learned Single Judge to treat the same as a reply.

2.3. Both, Mr. Deepak and Mr. Natraj, continue to hold the same position, which is, that they need not file a separate reply to the aforementioned interlocutory application.

2.4. Therefore, the other direction contained in paragraph 39 of the impugned order, whereby, time is granted to the respondents [i.e., the plaintiffs] to file the rejoinder, has, in a sense, lost its efficacy.

2.5. Since the aforementioned interlocutory application is pending

consideration before the learned Single Judge, counsel for the parties are agreed that, the best way forward, would be to direct disposal, of the pending application.

2.6. Mr. Sudhir Chandra, Senior Advocate, on instructions of Mr. Pravin Anand, who appears on behalf of the respondents, says that a replication will be filed, within one week from today.

2.7. Mr. Deepak says, this Court could consider, at least, suspending that part of the operative direction, whereby, the learned Single Judge has directed the appellant to “recall the impugned generic products which infringe the suit patent, from its distributors, wholesalers etc.”.

3. In these circumstances, the appeal and the pending applications are disposed of in terms of the following directions:

- (i) The learned Single Judge is requested to decide the pending interlocutory application, i.e., I.A. No. 7681/2021, at the earliest.
- (ii) The respondents, i.e., the original plaintiffs, will have liberty to file a replication, in the underlying suit, albeit, within one week from today,
- (iii) The appellant will have leave, to put forth its plea, before the learned Single Judge that, if not the entire impugned order, at least, that part of the order, be kept in abeyance, till the disposal of the application, which concerns the recall of the impugned generic products. If such a plea is put forth, the learned Single Judge will consider the same and pass appropriate directions, after hearing the counsel for the respondents, in the matter.
- (iv) In fitness of things, so that the rights claimed by both the sides are not impacted, the learned Single Judge would endeavour to dispose of the aforementioned application, as indicated above, within the next four weeks.
- (v) To hasten this exercise, counsel for the parties will appear before the

learned Single Judge, on 13.09.2021.

4. The case file shall stand consigned to record.

**RAJIV SHAKDHER, J**

**TALWANT SINGH, J**

**SEPTEMBER 2, 2021**

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[Click here to check corrigendum, if any](#)

