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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 7th October, 2022
 + **CS(COMM) 271/2022 and I.A. 6501/2022, 13907/2022, 13908/2022**
BASF SE Plaintiff

Through: Mr. Pravin Anand, Mr. Shrawan Chopra, Mr. Vibhav Mithal, Mr. Achyut Tewari, Advocates
 (M:8604633567)

versus

GSP CROP SCIENCE PRIVATE LIMITED Defendant
 Through: Mr. Avinash K. Sharma, Advocate.
 (M:8130459281)

CORAM:
JUSTICE PRATHIBA M. SINGH
Prathiba M. Singh, J.(oral)

1. This hearing has been done through hybrid mode.

I.A. 13908/2022(for exemption)

2. This is an application on behalf of the Defendant seeking exemption from filing duly notarised and attested affidavits. Binding the deponent of the affidavit to the contents of the application, the exemption is granted. Let the notarised affidavit be filed within four weeks.

3. *I.A. 13908/2022* is disposed of.

I.A. 13907/2022(for delay)

4. This is an application on behalf of the Defendant for condonation of delay in filing the written statement. The delay is condoned.

5. *I.A. 13907/2022* is disposed of.

CS(COMM) 271/2022 & I.A. 6501/2022(for stay)

6. The Plaintiff- BASF SE, a German company, has filed the present suit against the Defendant- 'GSP Crop Science Private Limited', seeking



enforcement of Patent IN 271338 titled '*Crystalline Complexes of Agriculturally Active Organic Compounds*' (hereinafter '*suit patent*'). The invention claimed in the suit patent is stated to be commercialised and sold by the Plaintiff under the mark 'XELORA' which is useful in combating plant diseases caused by harmful fungi. According to the Plaintiff the said patent covers '450 g/l of Thiophanate Methyl and 50 g/l of Pyraclostrobin FS' which is also the active compound in the Plaintiff's product.

7. The Plaintiff's grievance in the present suit is that the Defendant had obtained registration for a combination of 'Thiophante Methly 450 g/l + Pyraclostrobin 50 g/l (w/v) FS' under Section 9(4) of the Insecticides Act, 1968 (hereinafter '*Act*') as a follow-on product to 'XELORA' which has already been granted registration under Section 9(3) of the Act. The case of the Plaintiff is that the suit patent covers a new co-crystalline form containing 'Thiophanate Methyl 450 g/l + Pyroclostrobin 50 g/l(w/v) FS' and is used for combating multitude of fungi on cultivated plants.

8. The submission of Mr. Anand, Id. counsel appearing for the Plaintiff is that the crystalline complex is a supra crystal or a co-crystal, which has properties that are fundamentally different from the molecule which was known. It is further submitted that the crystalline complex is identified by X-ray diffraction parameters, as set out in the claim.

9. The Plaintiff had acquired knowledge of the Defendant's approval and had, accordingly, filed the present suit seeking an interim injunction against the Defendant. The suit itself was *quia timet* in nature as the Defendant had not commercially manufactured or launched the product. As per the plaint, on the basis of the registration granted by the Registration Committee under the Insecticides Act, 1968, the Plaintiff had apprehended



that the Defendant would begin promotion and also plan to commercially launch the product. On 28th April, 2022, ld. Counsel for the Defendant had submitted as under:

“16. Mr. Sai Deepak, ld. counsel appearing for the Defendant, upon instructions, submits that the Defendant has not yet commercially launched the fungicide in question and undertakes to this Court not to launch the same till the next date of hearing. He further submits that an affidavit would be filed by the Defendant, detailing the status of the Defendant in terms of the readiness for manufacture/sale of the impugned fungicide. This order would, however, not affect the manufacture or sale of the products, in terms of Section 107A(a) of the Patents Act, 1970, for the purpose of research and development only.”

10. Since then, the written statement has been filed in which the Defendant has taken the plea that it has not launched the product. In addition, the Defendant has also filed an affidavit dated 20th July, 2022 of Mr. Manish Garg, who is the authorized representative of the Defendant. As per the said affidavit, the Defendant has given the following undertaking/assurances:

“4. That I am under instructions by my Company to state, submit and stipulate as follows:

a. That the Defendant shall not be launching '450 g/l of Thiophanate Methyl and 50 g/l of Pyraclostrobin FS' or any other product covered by the claims of IN 271338 till the expiry of IN 271338 on 08.02.2028 or until there is any finding of invalidity in respect of such patent;

b. That there has been no commercial use of any kind whatsoever in relation to '450 g/l of Thiophanate Methyl and 50 g/l of Pyraclostrobin



FS' or any other product covered by the claims of IN 271338 till date and there shall be no commercial launch of '450 g/l of Thiophanate Methyl and 50 g/l of Pyraclostrobin FS' or any other product covered by the claims of IN 271338 till the time as mentioned in paragraph 4(a);

c. That the Defendant reserves its rights available under statute, including the provisions of Section 107A of the Patents Act, 1970, to carry out such activity in relation to development and submission of information in India or elsewhere where the laws provide for or mandate the submission of such information;

d. That in the event there is any change in commercial interest of the Defendant in '450 g/l of Thiophanate Methyl and 50 g/l of Pyraclostrobin FS' or any other product covered by the claims of IN 271338 in the future and before expiry of IN 271338 or a finding of invalidity thereof, the Defendant shall, through its Counsel, intimate the Plaintiff in writing at least four weeks prior to any such intended date of launch of '450 g/l of Thiophanate Methyl and 50 g/l of Pyraclostrobin FS' or any other product covered by the claims of IN 271338."

11. It is submitted by Id. Counsel for the Defendant that the suit can be decreed in terms of paragraph 4(a) to 4(c) of the said undertaking, however, it is submitted that if there is any finding on invalidity in respect of suit patent, the Defendant would not be bound by the undertaking given in paragraph 4(a) to 4(c) as extracted above.

12. Considering the stand taken by the parties, the suit is decreed in terms of paragraph 4(a) to 4(c) of the affidavit of Mr. Manish Garg dated 20th July, 2022 which is on record. The Plaintiff does not press for relief of damages.

13. In case, the suit patent is declared invalid prior to its expiry, before



taking any steps for commercial launch the Defendant shall intimate the Plaintiff and give 4 weeks notice before the commercial launch to the Plaintiff.

14. The suit is decreed in the above terms. Let the decree sheet be drawn accordingly.

15. The suit and all pending applications are disposed of.

16. 50% of the court fee is directed to be refunded to the Plaintiff through counsel by the Registry.

PRATHIBA M. SINGH
JUDGE

OCTOBER 7, 2022

dj/sk

