



2025:DHC:611-DB



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

Date of Decision: 31.01.2025

+ **FAO(OS) (COMM) 43/2024**

NATCO PHARMA LIMITED

.....Appellant

Through: Mr. J. Sai Deepak, Sr. Adv.
with Mr. Mohit Goel, Mr.
Sidhant Goel, Mr. Deepankar
Mishra & Mr. Aditya Goel,
Advs.

versus

KUDOS PHARMACEUTICALS LIMITED & ORS.

.....Respondents

Through: Mr. Pravin Anand, Ms. Vaishali
Mittal, Mr. Siddhant Chamola
& Mr. Gursimran Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J (ORAL)

1. This appeal has been filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (CPC), read with Section 13(1) of the Commercial Courts Act, 2015, and Section 10 of the Delhi High Court Act, 1966, challenging the Judgment and Order dated 01.03.2024, passed by the learned Single Judge of this Court in I.A. No.907/2023 in CS (COMM) 29/2023, titled *Kudos Pharmaceuticals Limited &*



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Ors. vs. NATCO Pharma Limited, by which the learned Single Judge has granted an *ad interim* injunction restraining the appellant herein from manufacturing and selling or in any manner dealing with Olaparib, either under the brand name BRACANAT or under other brand name, till the disposal of that suit.

2. The learned counsels for the parties agree that the subject patent has since expired.

3. The learned counsel for the respondents has placed before us the Order dated 02.08.2024, passed by the Supreme Court in SLP (C) 16237/2024 titled **Novartis AG & Anr. vs. Natco Pharma Limited**, and the Order dated 15.10.2024, passed in the Review Petition (Civil) (D No. 43943/2024) in the abovesaid SLP, by which the Supreme Court observed that once the patent had expired, the judgment passed by the learned Single Judge would cease to have any practical relevance, and therefore, the Division Bench was not right in proceeding to consider the appeal on merits, despite this fact having been brought to its notice.

4. He also places reliance on the Order dated 06.10.2022, passed by the Division Bench of this Court in FAO(OS) (COMM) 3/2020, titled **Indoco Remedies Ltd. v. Bristol Myers Squibb Holdings Ireland Unlimited Company & Ors.**, which also has taken a similar view.

5. The learned Senior Counsel for the appellant, however, submits that the impugned order may cause prejudice to the appellant in the trial of the suit and, even otherwise, may be cited in other proceedings.



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6. Having considered the submissions of the learned counsels for the parties, we are inclined to take the same view as expressed by the Supreme Court and the Division Bench, referred hereinabove. Once the patent has expired, we would not like to entertain the matter of dispute in the present appeal. We, however, clarify that all questions/issues shall remain open before the learned Single Judge trying the suit, and the Impugned Judgment and Order shall not cause prejudice to either of the parties in the trial or be read as expressing an opinion on the merits of the dispute that is binding on the parties.

7. We further make it clear that disposal of this appeal shall not be treated as an affirmation of the view expressed by the learned Single Judge, and the question of law is left open.

8. With the above observations, the appeal is disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 31, 2025/ab/sk

Click here to check corrigendum, if any