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A No. 709 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-03-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

**A No. 709 of 2026
IN C.S(COMM DIV) NO. 324 OF 2025**

Adalvo Ltd
Malta Life Sciences, Building 1, Level 4,
Sir Temi Zammit Buildings,
San Gwann Industrial Estate,
San Gwann SGN3000, Malta
Represented by its Authorized Signatory
Arthi Banerjee

..Applicant(s)

Vs

1. Lotus Pharmaceutical Co Ltd
17F, No. 277, Song Ren Road,Xin Yi
District,Taipei City 110, Taiwan Represented
by it Constituted Attorney, Mr. Mohit
Patwardhan
2. Softgel Healthcare Pvt Ltd
No. 15, Gopalakrishna Road,T.Nagar, Chennai
600017and also atSurvey no. 20/1,Vandalur-
Kelambakkam Road,Pudupakkam Village
603103,Tamil Nadu

..Respondent(s)

PRAYER: To Revoke the leave to sue granted to the 1st Respondent on
A.No.6095 of 2025 in C.S.(Comm.Div) No.324 of 2025 dated 08/12/2025.



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For Applicant(s):

M/S.Thriyambak J Kannan

For Respondent(s):

Mr.Vijay Narayan, Senior Advocate
for M/s.Arun C.Mohan for R1 / Plaintiff

M/s.A.K.Balaji for R2 / D2

ORDER

The plaintiff is an entity incorporated under the laws of Taiwan. The first defendant is an entity incorporated under the laws of Malta. They entered into a Master Out-Licensing Agreement dated 31.07.2019 (the Agreement) *inter alia* in relation to the grant of exclusive rights by the plaintiff to the first defendant to use the Dossier provided by the plaintiff to obtain marketing authorization for the Product and other rights such as the exclusive right to import, market and sell the Product in the Territory. Product is defined as any product developed or being developed by the plaintiff for out-licensing under the Agreement and Territory is defined as covering the world, but excluding countries expressly mentioned unless included on product-to-product basis with the plaintiff's consent. The Agreement contains both a confidentiality clause and a governing law and jurisdiction clause.

2. The governing law and jurisdiction clause is set out below:

“17. Governing Law and Jurisdiction

(1) This Agreement and any dispute or claim arising out of or



in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales without application of conflict of law provisions and United Nations Convention on International Sale of Goods.

(2) Each party irrevocably agrees that the courts of London, UK shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). ”

3. Alleging that the plaintiff had unlawfully diverted samples of formulations containing the API, Nintedanib, to the second defendant in Chennai and that the second defendant, being a manufacturing company, intends to utilize the Dossier and samples for manufacturing and selling formulations containing Nintedanib, the plaintiff instituted the action before this Court to restrain both the defendants from dealing with the confidential information in any manner, including by manufacturing and selling products based thereon.

4. Before instituting such action, the plaintiff applied for and obtained leave to sue the first respondent in A. No.6095 of 2025 on 08.12.2025. The order granting leave, in relevant part, reads as under:

“2. Learned counsel for the plaintiff submits that



confidential information was disclosed to the second defendant, who carries on business within the jurisdiction of this Court, and had imported samples of the relevant product.

3. Upon examining the draft plaint and affidavit in support of the application and finding that at least a part of the cause of action has arisen within the jurisdiction of this Court, this application is allowed by granting leave to the applicant to sue the respondents before this Court. As a corollary, the Registry is directed to number the suit, if otherwise in order.”

5. By this application, the first defendant seeks to revoke leave. The application to revoke leave is based primarily on the exclusive jurisdiction clause in the Agreement. Relying thereon, the first contention of learned counsel for the applicant / first defendant is that this application should be examined in a manner akin to an application under Section 8 of the Arbitration and Conciliation Act, 1996 (the A&C Act). He also contends that the Court should examine *prima facie* whether an anti-suit injunction would be granted by the Courts in the United Kingdom, if an application were to be made by the first defendant, and, if so, revoke leave. The third contention is that *forum conveniens* is an important consideration while deciding applications for grant of leave or for the revocation thereof.

6. In support of the contention that a clause conferring exclusive jurisdiction on one or more courts having jurisdiction does not violate public



policy, the judgment of the Supreme Court in *AVM Sales Corporation v. Anuradha Chemicals Private Limited* (2012)2 SCC 315 is cited. By relying on two judgments of the Delhi High Court in *U.Can Migrate Consultants (P) Ltd. v. Canadian Connections Groups Ltd.*, 2007 SCC OnLine Delhi 1390 and *Dqs Certification India (P) Ltd. v. Isaca Inc.*, 2025 SCC OnLine Delhi 1892, it is contended that a clause conferring jurisdiction on a neutral foreign country is valid and enforceable under Indian law. In support of principles relating to *forum conveniens*, learned counsel relied on the judgment of the Division Bench of the Delhi High Court in *Horlicks Ltd. v. Heinz India (P) Ltd.*, 2009 SCC OnLine Delhi 3342 and the judgment of the Full Bench of this Court in *Duro Flex Pvt. Limited v. Duroflex Seatings System*, 2014(6) CTC 577. Reliance was also placed on other judgments, which it is not necessary to refer to for present purposes.

7. In response, learned senior counsel for the plaintiff submitted that the suit was instituted not only under the Commercial Courts Act but also under the Intellectual Property Division Rules, 2022 (the IPD Rules) of this Court. Adverting to the definition of IPR disputes therein, he points out that even disputes relating to breach of confidentiality agreements falls within the scope thereof. He next submitted that the Agreement is related to the obtaining of regulatory marketing approval in multiple jurisdictions by the first defendant. Pursuant thereto, he pointed out that samples were sent to the first defendant in



Lithuania and that those samples were unlawfully diverted to the second defendant, which received the same in Chennai. He referred to the averments relating thereto in paragraph 12 to 15 of the plaint.

8. In contrast to the fact situation in judgments relied upon by the first defendant, learned counsel submits that the dispute herein involves a third party, namely, the second defendant. He also submits that no part of the cause of action has arisen in the United Kingdom, whereas a part of the cause of action has arisen within the jurisdiction of this Court. In support of these contentions, he relies upon the following judgments:

(i) *A.B.C. Laminart Pvt. Ltd., and another v. A.P.Agencies, Salem* (1989)2 SCC 163.

(ii) *Hanil Era Textiles Ltd., v. Puromatic Filters (P) Ltd.*, (2004)4 SCC 671.

(iii) *Hakam Singh v. M/s.Gammon (India) Ltd.*, (1971)1 SCC 286.

9. Upon taking stock of the rival contentions, I am unable to countenance the contention of the first defendant that this application should be tested by adopting the standard used in applications under Section 8 of the A&C Act. A high threshold for refusing reference is adopted therein because parties have contractually opted out of the public court system. Such is not the case here and, therefore, the analogy is inappropriate.



10. Although both parties advanced arguments with regard to the validity of the exclusive jurisdiction clause in the Agreement, it is both unnecessary and inappropriate to adjudicate thereon for purposes of deciding this application. Said agreement relates to *inter alia* obtaining regulatory approval for marketing and selling any product developed or being developed for out-licensing under the Agreement in multiple jurisdictions across the world. Parties agreed that the Agreement would be governed by and construed in accordance with the laws of England and Wales. Therefore, the validity of the clause should be adjudicated by courts in London in accordance with the laws of England and Wales and not by this Court in accordance with Indian law.

11. I conclude as above also for the reason that it is possible that disputes may arise with regard to the obtaining of regulatory approval by the first defendant in any of several jurisdictions, other than India, forming the subject of the Agreement. The dispute presented before this Court for adjudication is a specific dispute pertaining to the alleged diversion of samples of one product to the second defendant in Chennai and is clearly not the only dispute that may arise under this Agreement. The pertinent question for purposes of deciding this application is whether the governing law and jurisdiction clause has the effect of ousting the jurisdiction of this Court.



12. In the plaint at *inter alia* paragraphs 12 to 15 thereof, the plaintiff has explained the facts and circumstances under which this Court was approached for relief. At this juncture, the application to revoke leave should be tested on the assumption that those averments, assertions and allegations are true. Proceeding on that basis, it appears that the Dossier and samples were sent by the first defendant from Lithuania to the second defendant at Chennai. It is also stated that the Dossier and products were received in Chennai by the second defendant. The second defendant admittedly carries on business within the jurisdiction of this Court. In these facts and circumstances, it cannot be concluded that part of the cause of action did not arise within the jurisdiction of this Court. The other material aspect is *forum conveniens*.

13. The applicant / first defendant relied heavily on the judgment of the Division Bench of the Delhi High Court in *Horlicks* and on the Full Bench of this Court in *Duro Flex* with regard to *forum conveniens*. Both those judgments did not deal with a situation wherein a third party to the relevant contract was operating within the jurisdiction of this Court in alleged breach of the agreement between the parties thereto. In response to a question as to whether the first defendant agrees to the extension of the order of interim injunction for a reasonable period of time so as to enable the plaintiff to approach courts in the United Kingdom subject to the second defendant also agreeing to join such proceedings, learned counsel for the first defendant was unable to accede to



such course of action. Considering that urgent relief was prayed for and such relief would not be effective unless the second defendant were to be arrayed as a party and directly restrained, I conclude that the convenience of the first defendant would not be a deterrent in the facts and circumstances for the exercise of jurisdiction.

14. As regards the specific dispute raised before this Court for adjudication, the first defendant has not contended or established that the cause of action arose in London or anywhere in England or Wales. Considering the totality of facts and circumstances, I conclude that the governing law and jurisdiction clause does not have the effect of ousting the jurisdiction of this Court. For reasons aforesaid, the application to revoke leave is dismissed without any order as to costs.

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SENTHILKUMAR RAMAMOORTHY, J.

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