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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 7th February, 2026*+ **C.A.(COMM.IPD-PAT) 36/2024****MANU CHAUDHARY**

.....Appellant

Through: Ms. Rajeshwari H., Ms. Garima Joshi
and Ms. Sawani Chothe, Advocates.

versus

CONTROLLER OF PATENTS AND DESIGNRespondentThrough: Mr. Jagdish Chandra, CGSC with
Mr. Sujeet Kumar, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This appeal is filed on behalf of the Appellant under Section 117A(2) of The Patents Act, 1970 ('1970 Act') challenging order dated 22.02.2024 passed by the Respondent/The Controller of Patents & Designs. It is further prayed that the Patent Application IN 201711047431 be revived.

2. As per the case of the Appellant, the invention of the patent application, which is subject matter of the present appeal relates to:

(a) Oral herbal pain killer composition for peripheral pains comprising essentially effective amount of selected herbal components (specific part of herbs associated with specific chemical constituents) in specific predefined ratios which ultimately provides synergistic effect by achieving pharmaco-dynamic efficacy; and



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(b) Process of preparation of the oral herbal pain killer compositions wherein the composition is simplified and made reproducible while maintaining the safety, efficacy and stability of the compositions.

3. It is stated that Appellant is a highly accomplished pharmaceutical researcher and inventor with over 30 years experience in the field and has made significant contributions to the discovery, development and IP protection of various platform technologies in the field of Antimicrobial Resistance Research, natural products and reviving life of existing drugs getting resistant. The bibliographic details are as follows:-

Application No.	2545/DEL/2010
Title	Oral herbal Pain Killer Formulations
Filing Date	30.12.2017
Applicant	Manu Chaudhary
Publication Date	02.08.2019
Request for Examination Date	08.12.2021
FER Date	22.12.2021
Response to FER	21.06.2022
Date of Final Hearing	09.10.2023
Date of Refusal	22.02.2024

4. It is stated that there are alternative medications, which exist in the market today for pain relief, however, the objective of the claimed invention is to provide herbal pharmaceutical compositions comprising herbal analgesic premix having efficacy at par or better than many existing formulations such that side effects are reduced and these can be used for any class of patients, including those with ulcers.

5. It is stated that in response to the examination request by the Appellant, Respondent issued First Examination Report ('FER') on



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22.12.2021 indicating that all claims were novel and industrially applicable, however, objections of ‘lack of inventive step’/‘obviousness’ and Section 3(d), (e) and (p) were raised by the Respondent in view of teachings of prior arts D-1 to D-7. An objection was also raised that no permission was obtained by the Appellant from National Biodiversity Authority (‘NBA’) as required under Section 10(4)(ii)(D) of 1970 Act.

6. It is stated that Appellant filed a response to the FER and explained the invention and its distinguishing features over the cited prior arts and the fact that the invention was novel and involved inventive step. In fact, to get over the objections and expedite the examination process, Appellant amended its claims from Claims No. 1-10 to Claims No. 1-7. After perusing the response, vide hearing notice dated 30.08.2023 Respondent raised objections only with respect to NBA approval and Section 3(p) of 1970 Act, basis the cited prior arts D3, D6 and D7, implying that other objections had been given up.

7. It is stated that Appellant attended the hearing on 09.10.2023 through her authorized representative and made submissions on the objections raised. Written submissions were also filed, wherein Appellant pointed out that non-submission of Form 3 was not attributable to the Appellant but was owing to technical glitches and that all steps have been taken to file the same. Appellant had sent an e-mail to the Respondent on 28.12.2023 intimating the acknowledgement received from NBA, which was evidence to the fact that she had applied for approval and the matter was pending. The patent application was, however, examined by the Respondent on the basis of objections raised in the hearing notice dated 30.08.2023 and the impugned order was passed refusing the patent application under Section 15



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of 1970 Act, ignoring the fact that Appellant's case for approval from NBA was pending.

8. Ms. Rajeshwari H., learned counsel for the Appellant submits that the patent application has been rejected primarily on three grounds, one of which is hyper-technical and two are untenable in law: (a) Appellant did not take approval from NBA within the prescribed period of 15 days; (b) non-patentability under Section 3(p) stating that all biological materials used in the present invention were already recognized as herbal medicine and Appellant had only made new use of its herbal composition and hence, there was no technical advancement in the invention; and (c) Appellant did not follow the requirement of Sections 128 and 132 of 1970 Act, which provide that only authorized Patent Agents and Advocates are entitled to represent their clients in hearings/proceedings before the Controller of Patents and was represented by authorized representative at the time of hearing.

9. Coming to the ground of non-approval from NBA, it is asserted that that there can be no quarrel with the proposition that Section 10(4)(ii)(D) of 1970 Act requires that if biological material obtained from India is used in an invention, then permission has to be taken from NBA. In the present case, Appellant had applied for approval from NBA but the same was granted only on 04.07.2024. However, Appellant had sent an e-mail to the Respondent on 28.12.2023 intimating the acknowledgement received from NBA and this was well before the impugned order was passed on 22.02.2024 and therefore, Respondent ought to have deferred the final order till the approval was received. Respondent failed to appreciate that Appellant cannot control the working of NBA or the time frame within



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which the approval is to be granted and cannot be faulted for the delay in grant of approval by NBA.

10. It is further argued that neither 1970 Act nor the National Biological Act, 2002 ('2002 Act') contain any provision for rejection of a patent application in the absence of approval from NBA. Section 6(1A) of 2002 Act only mandates registration of an invention with NBA before grant of patent. Likewise, paragraph 19 of '*Guidelines for Processing of Patent Applications relating to Traditional Knowledge and Biological Material*' only provides that patent should not be granted unless NBA permission is submitted by the Applicant. This position is reiterated in paragraph 22 of the said Guidelines. Moreover, Section 15 of 1970 Act bestows power and discretion on the Controller to require the application, specification or other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuses the application on failure to do so. In the instant case, the discretion was not exercised correctly inasmuch as once the Respondent was informed that Appellant had applied for approval with NBA, time ought to have been given to place the document on record. Non-submission of NBA's approval, cannot be construed as a 'failure', once Appellant had taken all required steps to seek approval.

11. On the aspect of non-appearance of the Patent Agent or the Advocate for hearing as also on the merits of the case, it is submitted that if the Court is inclined to remand the matter to the Respondent for re-examination of the application, in light of the approval received from NBA, Appellant will engage a Patent Agent/counsel for hearing and address arguments on the merits as according to the Appellant, refusal on merits is also misconceived. It is also urged that if the patent agent/advocate was not present, Respondent



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should have raised an objection and deferred the hearing enabling the Appellant to take necessary steps, instead of proceeding with the hearing and passing the impugned order.

12. Counsel for the Respondent submits that Appellant ought to have given the approval of NBA along with the patent application or on the date of hearing or at least before the impugned order was passed. Approval has been received from NBA on 04.07.2024, which is after the impugned order was passed and can be of no avail to the Appellant. He supports the impugned order on merits as also on the ground that Appellant's authorized representative was not entitled to attend the hearing.

13. Heard learned counsels for the parties.

14. As rightly placed by learned counsel for the Appellant, impugned order refusing the patent application has been passed on three grounds, as aforementioned. As far as the approval of NBA is concerned, it is not denied by the Appellant that the same is required as a mandate of law. The contention, however, is that having applied for the approval, it was not in the hands of the Appellant to receive the approval from NBA. This contention is well-founded. It is important to note that on 28.12.2023, Appellant had sent an e-mail to the Respondent intimating the acknowledgement receipt from NBA, which was proof enough to show that Appellant had applied for approval. In these circumstances, Respondent ought to have deferred the final order, which was not done for reasons best known to the Respondent. Appellant is right that Section 6(1A) of 2002 Act only mandates that the Applicant shall register with NBA before intellectual property rights are granted, wherever applicable. This position of law is fortified by paragraphs 19 and 22 of the Guidelines mentioned above. Paragraph 19



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provides that the patent should not be granted unless NBA permission is submitted by the Applicant. Paragraph 22 provides that no patent shall be granted without necessary permission from NBA in cases where invention uses biological material from India or the source and/or the origin of the biological material is from India as per disclosure in the specification. There is no provision and none has been shown by counsel for Respondent, which provides that once an application for approval has been made by the Applicant, the application must be rejected if the approval is not placed with the application and/or during the hearing. This is particularly important since the approval has to be granted by NBA and it is not in the hands of the Applicant to insist on the authority to grant approval within a time frame. Once Respondent was informed that approval was awaited from NBA, proper course of action was to defer the order, especially, when Respondent was satisfied that the invention was novel.

15. Appellant is also right in her submission that Section 15 of 1970 Act grants wide powers to the Controller to even permit amendment of the application, specification and/or the documents and only where applicant fails to take steps for amendment, the application shall be refused. In the present case, Respondent should have exercised the discretion and deferred the final order awaiting the outcome of approval application instead of refusing the patent application.

16. Accordingly, without entering into the merits of the case, this appeal is disposed of, directing the Respondent to re-examine the patent application after granting opportunity of hearing to the Appellant and taking into account the approval of NBA and other arguments, both oral and written. Appellant undertakes that she will be represented by a Patent Agent and/or a



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counsel on the date of the hearing. No fresh material will be placed by the Appellant before the Respondent, save and except, the NBA approval. The question of non-patentability under Section 3(p) of 1970 Act is left open to be decided by the Respondent, in accordance with law.

17. The decision will be taken by the Respondent within two months from the date of receipt of this order.

18. Appeal stands disposed of in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 7, 2026/YA