



\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

C.A.(COMM.IPD-PAT) 91/2024

FRESENIUS KABI ONCOLOGY LTD

.....Appellant

Through: Mr. Vishal Sudan and Ms. Gurpreet
Kaur, Authorized Representatives.

versus

**THE ASST CONTROLLER OF PATENTS
AND DESIGNS**

.....Respondent

Through: Ms. Nidhi Raman, CGSC with Mr.
Om Ram and Mr. Arnav Mittal, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

%

23.01.2026

1. This appeal is filed by the Appellant under Section 117A (2) of The Patents Act, 1970 (1970 Act) challenging order dated 30.07.2024, passed by the learned Assistant Controller of Patents & Designs, whereby patent application bearing no. IN202012010179 filed on 09.03.2020 by the Appellant in respect of 'PHARMACEUTICAL COMPOSITIONS OF PEMETREXED', has been refused.
2. Mr. Vishal Sudan, Authorized Representative of the Appellant has canvassed several points to demonstrate that the Respondent has illegally and arbitrarily refused to grant the patent. Ms. Nidhi Raman, appearing for the Respondent has also argued at some length, supporting the impugned order and refuting the submissions of the Appellant.
3. Indisputably, the claimed invention titled 'PHARMACEUTICAL COMPOSITIONS OF PEMETREXED' is a divisional application from the parent/mother Application No.1648/DEL/2012 and has been refused on the sole ground that since the claims of mother application, which have the same technical features as those of the present divisional application, have already



been refused by the Patent Office, the instant application lacks merit and does not meet the requirements of Section 16 of 1970 Act. Both parties are *ad idem* that during the pendency of this appeal, the mother application has been granted on 11.03.2025.

4. In light of this crucial development, the only reason for refusing the divisional application is no longer tenable and in these circumstances, this is a fit case for remanding the matter back to the Respondent for re-consideration of the present divisional application.

5. Accordingly, this appeal is disposed of directing the Respondent to re-consider and re-examine the present divisional application bearing No. IN202012010179 filed on 09.03.2020 titled 'PHARMACEUTICAL COMPOSITIONS OF PEMETREXED'. Both parties will be at liberty to file fresh written submissions and needless to state that opportunity of hearing shall be granted to the Appellant by the Respondent before taking a decision. Respondent shall decide the application within 3 months from today. It is made clear that this Court has not expressed any opinion on the merits of the case and Respondent is at liberty to take a decision in accordance with law.

6. Court appreciates the assistance rendered by Mr. Vishal Sudan as also Ms. Nidhi Raman.

JYOTI SINGH, J

JANUARY 23, 2026/YA