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

+ CS(COMM) 442/2021 & I.A. 21887/2022, I.A. 102/2023

PFIZER INC & ORS.

..... Plaintiffs

Through: Mr. Pravin Anand, Adv. with Ms. Tusha Malhotra and Ms. Richa Bhargava, Advs.

versus

TRIVENI INTERCHEM PRIVATE LIMITED & ORS.

..... Defendants

Through: Mr. Sandeep Sharma, Adv. with Mr. Shailender Pratap Singh, Mr. Anand Darshan, Mr. Amit Choudhary, Mr. Sarthak M., Ms. Kanika Mitra and Mr. Om Batra, Advs. for D-1, 2 and 4
Mr. Naman Joshi, Adv. for D-3

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

24.01.2023

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I.A. 10246/2022 (under Order XXXIX Rule 2A)

1. This is an application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC). By this application, the plaintiff alleges that Defendant 1 (Triveni Interchem Private Limited, through its director Kamlesh Singh) is guilty of wilful and contumacious disobedience of order dated 21st October 2021, passed by this Court in I.A. 11916/2021 (preferred by the plaintiff under Order XXXIX Rules 1 & 2 of the CPC), whereby this Court had granted *ad interim* relief to the plaintiff and

against the defendants in the following judgments:

“17. In view of the aforesaid, the following interim directions are passed, to remain in force till the next date of hearing or pending further orders passed by this Court:

- (i) Defendant Nos. 1 and 2 are restrained from making, selling, distributing, advertising, exporting or importing or in any manner directly or indirectly dealing with any product, which has, as an ingredient, Palbociclib or any pharmaceutically acceptable salt thereof, as would infringe the plaintiffs' suit patent IN 218291.
- (ii) Defendant Nos. 1 and 2 are further directed to remove, from their websites, any indication that they are marketing or offering for sale Palbociclib or any pharmaceutically acceptable salt thereof, forthwith.
- (iii) Defendant Nos. 1 and 2 are directed to remove any references to products claimed under the subject matter of the suit patent IN 218291 from their websites and to ensure that the said product is not sold or advertised by them through any third party's websites.
- (iv) Defendant No. 3 is directed to delist and permanently remove all advertisements and names relating to Palbociclib API in powder form sold by the Defendant Nos. 1 and 2, or any of its employees, officers, servants, agents, associate and group companies from its platform.
- (v) Defendant Nos. 1 and 2 are further directed to disclose, to this Court, the details regarding the earnings made by them by sale of their Palbociclib products, under cover of an appropriate affidavit. The said details should the said defendants so choose, may be furnished in a confidential form.”

2. Alleging that Defendants 1 and 2 (hereinafter “the defendants”) had, by merely altering the packing in which Palbociclib was being sold by it, continued to indulge in sale of Palbociclib on its own website as well as on third party website, the plaintiff filed the present application for punishment of Kamlesh Singh, director of the defendants, for contempt.

3. Finding *prima facie* merit in the aforesaid contention, this Court, on 7th July 2022, passed a detailed order, paras 4 to 8 of which read thus:

“4. The Court has perused the online listings, which are extracted in the application. It is clear that the Defendant No. 1- Triveni Interchem Private Limited, has uploaded fresh listings of the product 'Palbociclib', on Defendant No. 3 - IndiaMart Intermesh Ltd. 's, online platform. Defendant No. 2 i.e Triveni Chemicals, is a sole proprietorship of Mr. K. K. Singh.

5. Mr. Rao, Id. Counsel appearing for IndiaMart submits that his client would take down the fresh listings within 24 to 48 hours. It is made clear that if the Plaintiffs give notice of any further fresh listings to IndiaMart, the said listings shall also be taken down within 48 hours.

6. Insofar as the Defendant Nos.1 & 2 are concerned, the said Defendants shall file a specific reply as to the manner in which these listings came to be put up by them on IndiaMart, especially with the altered packaging, as this Court is *prima facie* of the view that the changing of the packaging shows deliberate and conscious conduct of the Defendant Nos.1 &2.

7. Accordingly, Mr. Kamlesh J. Singh shall file a specific affidavit in response to the said contempt application within two weeks.

8. Mr. Kamlesh J. Singh shall also remain present in Court on the next date of hearing.”

4. Thus, this Court, even in the order dated 7th July 2022, found the act of the defendants in continuing to sell Palbociclib, in the teeth of the injunction granted by this Court, in a different packing, as evincing wilful and contumacious conduct on their part.

5. Following the directions contained in the afore-extracted paragraphs from the order dated 7th July 2022, the defendants filed affidavits, in which it was sought to be contended that the infringing

products had inadvertently not been removed from the internet listing on the platform of Defendant 3. However, the affidavit sought to state that, thereafter, the products had been removed from internet listings including the platform of Defendant 3. Inasmuch as the aforesaid affidavit was not in terms of the directions contained in the order dated 7th July 2022, this Court, on 14th December 2022, queried of Mr. Shailender Pratap Singh, learned Counsel who appeared on behalf of Mr. Kamlesh Singh, who reiterated the submission that the defendants had never manufactured or sold Palbociclib.

6. The Court, in its order dated 14th December 2022, noted that the submission was clearly false, as the defendants had, in their affidavit dated 12th September 2022, acknowledged having continued to list Palbociclib on their websites (though they pleaded inadvertence), even after the injunction order passed by this Court on 21st October 2021. The Court also took stock of an email dated 20th July 2021 addressed by Defendant 1 to the plaintiff and with the quotation attached therewith, which reads thus:

Email dated 20th July 2021

“**Romila Tarar** <mktg7@triveniinterchem.com> Tue, Jul 20, 2021 at 5:40 PM

To: gpharma11@gmail.com

Dear Ms. Sheetal Mishra,

Hope you are doing well.

Thank you for your valuable enquiry. Please find the quotation for Palbociclib as requested by you.

Request you to kindly go through the same and let me know your feedback on the same.

Awaiting a positive response from your end!!!

Thanks & Regards,

ROMILA TARAR
(API & AROMA Dept.)”

Quotation

“To

No. 10686

M/s:- Ganpati Pharma Consultants
Nehru Palace Branch
New Delhi-110019, South Delhi
Delhi, India.

Kind Attn. Ms. Sheetal Mishra

Dear Sir/Madam,

This is with reference to your mail regarding our products. We are pleased to quote our rate as under.

Item Name	Grade	Item details	Quantity	Packing	Unit Price	Total Amount
Palbociclib	In-House	Powder	100 Gram	Packets	95,0000 INR per gram	95,00,000 INR

GST: 18%

Delivery: 7 Days

Packing: 100 gm Packet

Freight: Extra

Offer Validity: 2 Days

Payment: Advance

Hope you will find our offer most competitive and we are awaiting your order at earliest.

Regards
For Triveni Interchem Pvt. Ltd.

ROMILA TARAR

20/07/2021 5:39PM”

7. Despite having been shown the said emails, Mr. Shailender Pratap Singh, on concerting his client, continued to maintain the position that the defendants were not engaging in any sale of Palbociclib.

8. In these circumstances, as the defendants were completely unwilling to acknowledge the fact that it was selling Palbociclib, the Court was constrained to hold the defendants guilty of wilful and contumacious disobedience of its orders and, therefore, found the defendants guilty of having committed contempt of this Court within the meaning of Order XXXIX Rule 2A of the CPC.

9. The matter was, thereafter, listed for considering the aspects of sentence.

10. The defendants have not chosen to challenge the order dated 14th December 2022. Nor is it the contention of Mr Sandeep Sharma, learned Counsel for the defendants, that they intend to do so. The defendants have, therefore, admitted the fact that they are indeed guilty of contempt within the meaning of Order XXXIX Rule 2A.

11. Thereafter, the defendants have has filed one more affidavit, which does not address the aspect of sentence at all, rather, the affidavit seeks to contend that though, in 2020-21 and 2021-22, Defendant 1 sold pharmaceutical preparations worth ₹ 18,97,26,560/- and ₹ 36,17,27,880/- respectively, no Palbociclib was sold during the said period. Para 8 of the

affidavit seeks to contend that the only purchase and sale of Palbociclib effected by the defendants was on 22nd July 2022, on which date Defendant 1 claims to have purchased Palbociclib valued at ₹ 11,800/- and sold the said Palbociclib for ₹ 16,402/-.

12. The plaintiff has also placed on record figures of sale and purchase figures of drugs effected by Defendant 1 from the year 2018-19 to the year 2022-23. If one were to go by these figures, sale of Palbociclib has been reflected by the defendant only once during the year 2022-23, to the extent of ₹ 16,402/-, on 22nd July 2022.

13. This position is, *ex facie*, not acceptable. The plaintiff noted the fact that the plaintiff had come across listing of Palbociclib on the defendants' website in July 2021. The defendant, while acknowledging the fact that Palbociclib was indeed listed on its website in July 2021, and continued to remain listed on its website even after the order of injunction dated 21st October 2021, has sought to contend, in para 8 of the affidavit now filed before this Court on 17th January 2023, that the only transaction of Palbociclib, in which the defendant has ever embarked, is a purchase of Palbociclib valued at ₹ 11,800/- on 22nd July 2022, which was sold on the same day i.e. 22nd July 2022 for ₹ 16,402/-. No such stand was ever taken before this Court at any earlier point of time, even in the earlier affidavit dated 12th September 2022. According to the affidavit now filed and the data filed therewith, the Defendant 1 has not, at any point of time prior thereto or thereafter, purchased or sold Palbociclib.

14. Clearly, Defendant 1 has absolutely no regard for the truth. It

appears that, with stark impunity, Defendant 1 is resorting to misstatement after misstatement before this Court. To a pointed query as to why the defendant had been listing Palbociclib on its website since a point of time prior to July 2021, if the only transaction of Palbociclib undertaken by the defendant was a sale and purchase both of which took place on 22nd July 2022, Mr. Sandeep Sharma, learned Counsel for the defendant has no ready answer to offer and submits that this is the instruction which his client has given him.

15. On the face of it, the present affidavit which has been filed before this Court and the sale and purchase figures annexed thereto, which do not reflect any purchase or sale of Palbociclib save and except on 22nd July 2022, cannot be believed.

16. The apology tendered in the said affidavit is also, therefore, unacceptable, coming from a person who is completely unwilling to disclose, to this Court, the exact quantity of Palbociclib which Defendant 1 dealt in. It is impossible for this Court to believe that Defendant 1 continued to show Palbociclib as a product in which it was dealing, on its own website as well as on third party websites, and never purchased or sold any Palbociclib whatsoever. If the present affidavit is to be believed then, even in the absence of any stock of Palbociclib with it, the defendant was advertising Palbociclib for sale on the internet. This is a clearly unacceptable position and is contrary to basic principles of trade.

17. Nor, for that matter, is there any explanation, in the present affidavit, as to why, in the absence of any stock of Palbociclib, the

defendant had advertised Palbociclib for sale. It is not the case of the defendant that, if a person were to place an order for Palbociclib, the defendant would thereafter source the Palbociclib and make it available.

18. *Prima facie*, therefore, this Court is of the view that the defendant, who has already been found guilty of wilful and contumacious disobedience, against which the defendant has not preferred any appellate or other remedy, is also unwilling to come clean before this Court or to disclose to this Court the amount of Palbociclib in which it has dealt.

19. The defendant is, therefore, liable to be punished for having committed wilful and contumacious contempt of this Court within the meaning of Order XXXIX Rule 2A of the CPC.

20. Mr. Sandeep Sharma, learned Counsel for the defendant relied on a judgment of the Supreme Court in *Samee Khan v. Bindu Khan*¹. In the said decision, the Supreme Court held that the provision for attachment of the property of a guilty contemnor, envisaged by Order XXXIX Rule 2A, was only intended to make good the financial loss on account of the contempt and, when the contempt seized, the attachment of property would come to an end. The judgment, however, also goes on to state that, where the contemnor has actually committed contempt, the Court could consider the award of the alternative punishment to the contemnor, envisaged by Order XXXIX Rule 2A, of detention in civil prison. Mr. Sharma has also cited, before me, the judgment of a co-ordinate Single Bench of this Court in *Citigroup Inc. v. Citicorp Business & Finance*

¹ 1998 7 SCC 59

*Pvt. Ltd.*², in which the Court, finding the contemnor guilty of contempt within the meaning of Order XXXIX Rule 2A of the CPC, for having failed to comply with binding injunction orders and also displaying of contumacious conduct, directed detention of the contemnor in civil prison for 15 days.

21. At the same time, the Court is aware of the legal position that detention in civil prison compromises the liberty of the contemnor and is an extreme step, to be taken only where there is no other manner in which the contempt could be purged.

22. The affidavit dated 17th January 2023 now filed by the defendant discloses that, the defendant sold pharmaceutical products to the tune of ₹ 18,97,26,560/- during the year 2020-21, ₹ 36,17,27,880/- during the year 2021-22 and ₹ 13,36,38,551/- during the period April to September 2022.

23. In view of the aforesaid, I am of the opinion that, as the defendant has clearly committed wilful and contumacious contempt of this Court within the meaning of Order XXXIX Rule 2A of the CPC, the Defendant 1 through Mr. Kamlesh Singh, he has rendered himself liable to punishment. Accordingly, in the interest of justice, the Court deems it appropriate to dispose of this application by directing Kamlesh Singh, the director of Defendants 1 and 2 to pay, to the plaintiff, an amount of ₹ 2,00,00,000/- within a period of two weeks from today, failing which he shall be taken into custody and detained in a civil prison for a period of

² 2018 SCC OnLine Del 12864

two weeks at Tihar Jail, Delhi.

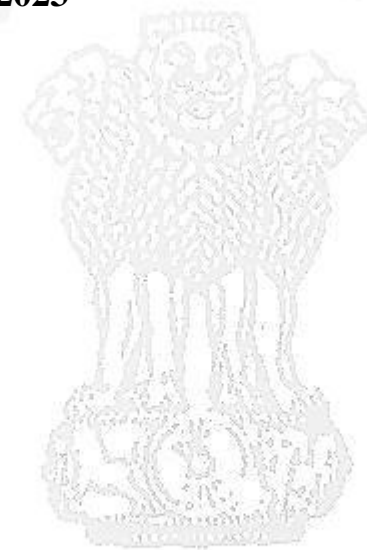
24. This application stands disposed of in the aforesaid terms.

I.A. 102/2023

25. Re-notify on 16th March 2023.

JANUARY 24, 2023
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C.HARI SHANKAR, J



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