

**SML Ltd. Vs. M/S Happy Agro Chemicals & Ors.**

**COMS No.3 of 2024**

**12.01.2024 Present:** Mr. Ashok Aggarwal, Sr. Advocate with Dr. Sanjay Kumar, Mr. Atul Jhingan, Ms. Meenal Khurana, Mr. Priyansh Sharma and Ms. Akshita Prasad, Advocates, for the plaintiff.

**OMP No.43 of 2024**

This application is filed by the plaintiff-applicant seeking exemption from instituting pre-litigation mediation under Section 12 A of the Commercial Courts Act, 2015.

**2.** Plaintiff's case is that it has instituted the instant Commercial Civil Suit for protection of its right under a specific patent, which is being infringed by the defendants-respondents. For protection of its rights under the suit patent IN282092, the plaintiff-applicant has also moved an application under Order 39 Rules 1 and 2 CPC for grant of interim relief.

**3.** It is the case of the plaintiff that the infringing product of the defendants "SELZIC", which is already in the market or any other product covered by the suit patent would cause irreparable loss to the plaintiff-applicant. There is an urgent need to restrain the defendants-respondents from advertising, launching, making, manufacturing, using offering for sale, selling, importing and/or exporting said product covered by the subject patent.

**4.** Considering the submissions and the law laid down by Hon'ble Apex Court in ***SLP (C) Diary No(s) 32275 of 2023***, decided on 13.10.2023 (***Yamini Manohar Vs. TKD***

**Keerthi),** I am satisfied that a case is made out to exempt the applicant from undergoing mediation with the respondents. Hence, the application is allowed. Applicant-plaintiff is exempted from undergoing mediation prescribed under Section 12A of the Commercial Courts Act, 2015.

The application stands disposed of.

**COMS No. 3 of 2024**

**5.** Notice. Summons be issued to the defendants through all modes, returnable for 26.04.2024, on taking steps within a week. Summons to be issued to the defendants with clear stipulation that written statement is to be filed within a period of 30 days from the date of service of summons. Plaintiff, if advised to file replication, may do so within fifteen days of receipt of the written statement.

**OMP No. 34 of 2024**

**6.** Notice in the aforesaid terms. Reply be filed within four weeks and rejoinder within two weeks thereafter.

**7.** Heard. The plaintiff-applicant seeks interim relief for restraining the defendants-respondents from infringing the plaintiff's-applicant's rights in Indian Patent No.282092, Brand name (TECHNO-Z). Learned Senior Counsel for the plaintiff-applicant submitted that plaintiff's-applicant's pleaded case as supported with the documents is that:-

**7(i)** The plaintiff-applicant is a research-driven organization involved in developing and promoting the use of advanced high-performance, end to end sustainable

solutions in crop nutrition, crop protection, bio-stimulants and bio-fertilizers.

**7(ii)** The plaintiff-applicant had turnover of around INR 1464 Crores for the financial year 2022-23.

**7(iii)** Indian Patent No.282092 was originally granted to one Sh. Deepak Pranjivandas Shah on 10.03.2011 for a period of 20 years. Under an assignment agreement, all rights, tittles and interests in the said patent were assigned by the grantee Sh. Shah to Sulphur Mills Limited. On 18.10.2022, Sulphur Mills Ltd. changed its name to SML Ltd. (the plaintiff). The plaintiff-applicant is the patentee of the suit patent in the Register of Patents. The suit patent is still alive and valid till 10.03.2031. The plaintiff-applicant is the sole repository of the suit patent.

**7(iv)** Pre-grant and post-grant oppositions to the suit patent preferred under Sections 25(1) and 25(2) of the Patents Act have all been dismissed by the Patent Office.

**7(v)** The plaintiff-applicant has been filing the statements regarding working of the patented invention on commercial scale in India on Form 27 before the Indian Patent Office.

**8.** It was also submitted that the plaintiff's-applicant's grievance is concerning the infringement of its above mentioned patent by defendants No.1, 2 and 3. Defendants No.1 is stated to be an agricultural store located in State of Himachal Pradesh; Defendant No.2 is the manufacturer, distributor and marketer of wettable Sulphur

and liquid Sulphur etc., whereas defendant No.3 is the wholesaler; Defendant No.3 sells various agricultural products on its platform; It is the registered proprietor of a trade-mark "SELZIC", being manufactured and marketed by defendant no.2. The plaintiff-applicant has put forth its case that "SELZIC" is nothing but generic version of plaintiff's patented product IN'092.

**9.** It is the plaintiff's-applicant's case that claims No.11 and 12 out of total 12 claims granted to it in the suit patent, have been infringed by the defendants. Claim No.11 of the suit patent is directed to:-

*"11. A fertilizer composition comprising Sulphur in the range of 30% to 87% w/w of the total composition, zinc oxide in the range of 3% to 25% w/e of the total composition and at least one agro-chemically acceptable excipient, in the form of micro-granules or broadcast granules wherein the particle size is in the range of 0.1 microns to 50 microns."*

Reliance has been placed on the affidavit of an expert Dr. P.K. Patanjali, to contend that defendants' product "SELZIC" comprising 68.5% Sulphur, 23.5% Zinc Oxide, 8.3% excipient and 100% of the particles are between the range of 0.1 microns to 50 microns, falls within the scope of claim 11 of the suit patent IN 092 and therefore, infringes it.

Claim No.12 of the suit patent is directed to:-

*"12. The fertilizer composition of claim 11, wherein the composition is in the form of micro-granules in the size range of 0.1 mm to 0.5 mm or broadcast granules in the size range of 0.75 mm to 5 mm."*

Referring to the report of Dr. P.K. Patanjali, it has been contended that the defendants' product "SELZIC" is in the form of broadcast granules wherein around 93% of granules are in the range of 0.75 mm to 4.75 mm and, hence, falls within the scope of claim 12 of IN'092 and therefore, infringes it.

**10.** Learned Senior Counsel for the plaintiff-applicant has also referred to order dated 23.03.2023 passed by High Court of Delhi in CS (COMM) No.119 of 2023 (SML Ltd. Vs. & Anr.) and submitted that the said suit was instituted by the plaintiff-applicant for infringement of the suit patent, *inter alia* against one Sulphur Crop. Care Private Limited. In terms of the order dated 23.03.2023, the suit was decreed in favour of the plaintiff-applicant as per the settlement agreement executed between the parties. In the said agreement, the defendants therein had acknowledged the validity of suit patent IN' 092. Attention has also been invited to two orders passed by a Co-ordinate Bench of this Court on 24.07.2023 in COMS Nos. 6 and 7 of 2023 (SML Ltd. Vs. Mohan & Company and another). The said suits were instituted by the plaintiff for infringement of IN' 092 i.e. suit patent by the defendants therein. The Court vide separate orders dated 24.07.2023 had granted ad interim injunction, restraining the defendants therein from infringing the patent rights of the plaintiff-applicant.

**11.** Learned Senior Counsel for the plaintiff-applicant submitted that since the plaintiff has the exclusive rights of patent IN'092, therefore, under Section 48 of the Patents Act, third parties, who do not have plaintiff's-applicant's consent cannot infringe the suit patent. Such an infringement will cause irreparable loss and injury to the plaintiff.

**12.** In view of above, at this stage, I am of the considered view, a prima facie case is made out in favour of the plaintiff-applicant for grant of ex-parte ad-interim relief. Balance of convenience lies in favour of the plaintiff-applicant as otherwise, irreparable loss and injury shall be caused to it in case prayer is not considered. Accordingly, the defendants are restrained by themselves, their Directors, partners, licensees, stockists and distributors, agents and/or anyone claiming through any of them, jointly and severally from infringing the patent rights of the plaintiff-applicant under Indian Patent No. 282092 in any manner including by advertising, marketing and/or selling such product by and through any website(s)/e-portal(s), itself or third-party or any other mode, launching, making, using, offering for sale, selling, importing and/or exporting any product including "SELZIC" or any other product covered by the suit patent IN 282092 granted on 30.03.2017 to the plaintiff-applicant.

**13** Compliance under Order 39 Rule 3 CPC be ensured as per law.

List on **26.04.2024.**

**CMP No.35, 37 and 42 of 2024**

**14.** Notice in the above terms.

Jyotsna Rewal Dua  
Judge

January 12, 2024  
(*R.Atal*)