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

+ **CONT.CAS(C) 846/2018**

MERCK SHARP & DOHME CORP & ANR. Petitioners
Through: Mr. Pravin Anand, Ms. Tushar Malhotra,
Ms. Udit P and Ms. Pankhuri Malik,
Advocates.

Versus

ABHAYAKUMAR DEEPAK & ANR. Respondents
Through: Mr. Jasmeet Singh and Mr. Aditya Madaan,
Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 11.03.2019

1. The petitioners have sought initiation of contempt proceedings against the respondents for their wilful breach of this Court's order dated 05.05.2016. The petitioners are owners of International Non-Proprietary Name (INN) - SITAGLIPTIN. They have an Indian patent in the said molecule amongst other molecules. Sitagliptin is a chemical compound manufactured and marketed by the petitioners for treatment and/or prevention of diabetes. The lis got amicably settled between the parties. The petitioners had filed a suit seeking injunctions against the respondents. The said suit was disposed off by an order of this Court dated 05.05.2016 in terms of the compromise entered into between the parties. On the said date the CEO of the defendant company was present in Court. A joint application under Order 23 Rule 3 CPC had been filed seeking disposal of the suit by way of a compromise between the parties. The compromise deed formed part of the decree.

2. Despite the clear terms of the compromise the respondents have breached it and the decree of this Court. The respondents' website alluded to manufacture the aforesaid pharmaceutical composition and its sale under two brand names namely, Januvia and Janumet, under which the Sitagliptin is marketed in India by the petitioners. The latter contend that they hold patent in Sitagliptin in 102 countries and offer its sale under the name Januvia and Janumet. It is also marketed as Istavel and Istamet. It is claimed that the Januvia family enjoys a market share of 73% by value, in the global DPP-4 inhibitor market. The sales turnover of the said product in India by petitioner no.1 for the period 31.12.2012 was Rs. 5,30,83,78,887/-, while the sale of petitioner no.2 for the period ending 23.02.2013 was Rs. 72.86 crores.

3. It is contended that the respondents have wilfully breached this Court's order for their economic benefit, much to the detriment of the petitioners' interest i.e. dilution of the brand value in the products manufactured by them; therefore, the licence of the respondents to manufacture the drugs in India, should be cancelled. Mr. Pravin Anand, the learned counsel for the petitioners, submits that exemplary punitive costs should be imposed upon the respondents.

4. At the outset, Mr. Jasmeet Singh, the learned counsel for the respondents, submits upon instructions that clearly a mistake has been committed by the respondents; that they ought not to have manufactured or offered the aforementioned pharmaceutical composition for sale; they acknowledge that they are in breach of this Court's order. He submits that the respondents hold this Court in the highest esteem and are duty bound to obey its orders and directions; that they offer their unconditional apology to

the Court and for atonement of the breach they subject themselves to such terms as may be put by the Court.

5. Mr. Pravin Anand, the learned counsel for the petitioners, submits that the respondents' conduct cannot be considered as inadvertent especially in terms of the joint compromise application filed by the parties, which got converted into a decree of this Court. He submits that the respondents are in wilful breach of this Court's order and should be put to the strictest terms for the said breach. He contends that the respondents are owner of some immovable assets in various States including two in Chennai, Tamilnadu and one in Nellore, Andhra Pradesh, and the same may be attached for further proceedings. He further submits that respondents own many other movable and immovable assets, some of which are listed in this contempt petition. However, he submits that the petitioners are engaged in manufacture of medicinal preparations so as to cure the people of ailments, and their objective is to contribute towards better health of people all over the world. He submits that for extension of this philosophy, they would forego any damages or monetary terms that may be imposed upon the respondents if the same is towards larger public benefit or for better public health. He submits that in two other cases wherein the turnover of the product involved was of a lesser amount or so, this Court had imposed costs in the range of Rs. 36 lacs and Rs. 20 lacs and in another case the Supreme Court had imposed a cost of Rs. 1.26 crores.

6. At the request of the learned counsel for the respondents, the case was passed-over for taking instructions, as to what should be the quantum of monies that they would be agreeable to expend for any public or charitable cause. After receiving instructions he submits that Rs.20-25 lacs may be

considered for any public good.

7. The Court would note that respondent no.1 is the Managing Director of M/s Venkatanarayana Active Ingredients Pvt. Ltd. (formerly M/s Nutra Specialities Private Limited). He is a literate person and cannot be considered to be uninitiated in the world of business, law, legal procedure and the orders of this Court. The said company is stated to have an annual turnover in excess of Rs. 100 crores. It has been in the business of manufacturing pharmaceutical compositions which caters primarily to domestic and semi-regulated export market¹ for the past many years and has the felicity of assistance of lawyers and qualified managers.

8. In view of the above, let the respondents file an unconditional apology, as conveyed to the Court by their counsel, within two weeks from today. Looking at the clear terms of the compromise between the parties, the decree of this court, the background, and stature of the respondent; the felicity of legal and administrative advice available to them; the extensive business and financial footprint of the company, the Court deems it appropriate to impose a cost of Rs. 80 lacs upon the respondents, to be utilized for the larger public good.

9. The Court would take judicial note of the fact that for the past four years the air quality in Delhi has gotten from bad to worse. It has often been categorized as 'severe' i.e. it has reached at emergency levels, turning the city into a gas chamber. The deleterious effect of such polluted air in Delhi on the health of the residents of the city especially on the children, the elderly and the infirm, can only be a matter of conjecture. Because of the extreme air pollution, the suffering of the people living in the National

Capital Territory of Delhi and its neighbourhood is a reality which everyone would like to alter for the better. The city is virtually gasping for fresh air and such fresh air would be created by photosynthesis i.e. by planting more trees. An article² by ENVIS hosted by Council for Scientific and Industrial Research (CSIR) - National Botanical Research Institute, Lucknow, sponsored by Ministry of Environment, Forest and Climate Change, Government of India reports that: Urban trees affect air quality area in four ways: (i) Temperature reduction and other microclimatic effects; (ii) Removal of air pollutants; (ii) Emission of volative organic compounds and tree maintenance emissions; and (iv) energy effects on buildings. It further reports that: Tree transpiration and tree canopies affect air temperature, radiation absorption and heat storage, wind speed, relative humidity, turbulence, surface albedo, surface roughness and consequently the evolution of the mixing- layer height. These changes in local meteorology can alter pollution concentrations in urban heights. The report further states that: “trees usually contribute to cooler summer air temperatures, their presence can increase air temperatures in some instances”. So for a city gasping to breathe fresh air every moment, the plantation of trees in a large scale would be the first priority. The aforesaid amount of Rs. 80 lacs should be expended towards the creation of a large green area in and around the city.

10. According to the Delhi Master Plan, 2021, there are large tracts of land in Central and South Delhi, which are part of the Aravali Ridge. The area has been notified as Reserve Forest. The relevant part of the Master

¹ <https://www.icra.in/Rationale/ShowRationaleReport/?Id=78008>

² <http://www.nbrienvs.nic.in/WriteReadData/CMS/tree%20reducing%20air%20pollution.pdf>

Plan reads as under:

“....9.2.2 ARAVALI RIDGE/ REGIONAL PARK

The Aravali Range in the NCT of Delhi comprises the rocky outcrop stretching from the University in the North to the NCT Border in the South and beyond, the sizeable areas of the same have been designated as the Ridge. This is not a continuum as various intervening stretches have, over a period of time, been brought under urbanisation – for example, the Central Ridge area was planned as an integral part of New Delhi, at the time of the development of New Delhi as the Capital in the early part of the twentieth century. The Master Plan of 1962 identified a further stretch of the South Central Ridge near Mehrauli. Master Plan-2001 has designated the total ridge as Regional Park, which is divided in four parts as below:

- 1. Northern Ridge 87 ha*
- 2. Central Ridge 864 ha.*
- 3. South Central Ridge (Mehrauli) 626 ha.*
- 4. Southern Ridge 6200 ha.*

The area of the Ridge as per MPD-2001 is 7777 hectares and has been notified as Reserve Forest under section 4 of the Indian Forest Act, 1927 vide notification dated 24.5.94...”

11. The Court is informed that, in the Central Ridge located in the heart of Delhi stretches to over 864 hac. of land (equivalent to 2135 acres) of this, the Forest Department, Govt. of NCT of Delhi has approximately 935 acres. In other words, this area will always have to be green. If nurtured optimally this forest area can become a more responsive residual carbon sump to serve the city for many future generations.

12. According to the website of the New Delhi Municipal Council (NDMC) it has six important parks, of which three would be relevant, they

are: Lodhi Garden, Nehru Park and Talkatora Park having a covered area of 80 acres, 75 acres and 48 acres respectively. The number of trees planted in the said gardens are 5400, 3700 and 2000 respectively. Jahapanah City Forest and Yamuna Bio Diversity park also in the stretch over 435 acres and 457 acres respectively. These patches of green in the city can never be sufficient for the rising air pollution and, therefore, in addition to other mitigating steps, more green lungs have to be developed to ameliorate the ever burgeoning levels of air pollution in Delhi. Clean fresh air is the very basic necessity for life. It ought to be available to humans in abundance so that they can survive with grace, dignity and in good health. Citizens would have a right to insist upon nurturing of green areas to the optimum. Residents of a city are not only to take from the city; they must also contribute in some measure to the city's health and environment. The city of New York continues to reap the benefits of over 1.3 million trees it planted years ago to tackle its air pollution³.

13. Human enterprise has always sought to harness nature, however, human co-existence has to be in harmony with nature. A landlocked city like Delhi does not have inexhaustible natural resources. For the inhabitants of city to keep on drawing benefits from limited resources of the city without seeking to replenish, care, nurture or augment the said resources would not be fair to future generations, as the resources would sooner or later get depleted or become woefully inadequate or negligible. The duty to care for our natural resources has been cast upon all citizens by Article 51A of the Constitution of India in the following words:

“ Article 51A. Fundamental Duties.

³ www.milliontreesnyc.org

*Xxxx It shall be the duty of every citizen of India -
Xxxx
(g) to protect and improve the natural environment
including forests, lakes, rivers and wild life, and to have
compassion for living creatures... ”*

14. This magnificent exhortation by the Constitution must be robustly responded to in the larger public interest. The plantation of trees for creation of green belts, city forests, green zones for regular supply of fresh oxygen and for other ameliorative benefits which accrue from forests, is a dire need and its value can never be over-emphasized. The trees now planted will hopefully be around for many decades for the benefit of generations of citizens.

15. The Central Ridge and the area in the possession of the Forest Department is largely covered by *Vilayati Keekar* (*Prosopis juliflora*). As the name suggests the tree is *vilayati* – of foreign origin. It is not a native tree of India. It has origins in Mexico has been identified as an invasive weed for Asia, Africa, Australia and elsewhere. It quietly spreads over a large area. Its canopy gives the impression of a green cover but provides no real shade or carbon absorption. The other portions of the Central Ridge are covered by Lantana bushes. The Court is informed that the Forest Department is in the process of clearing the Lantana Bushes and pruning the *Vilayati Keekar*, so as to increase the green cover with indigenous plants.

16. The United Nations vide its System-Wide Earthwatch⁴ has elaborated as under:

*“...Forests actively contribute to the world’s
environmental stability and are used as economic resources*

⁴ <http://www.un.org/earthwatch/forests/forestloss.html>

to produce subsistence and industrial forest products. In addition, they have cultural and recreational value. They perform multiple roles, such as preventing soil degradation and erosion, protecting watersheds or stabilizing mountainous areas. They limit the greenhouse effect contributing to global warming, by absorbing CO2 emissions. According to some experts, forests serve as natural habitats to almost two thirds of all Earth's species, therefore acting as a stronghold to safeguard biodiversity. On an economic level, forests may be used as a direct source of energy or raw materials. Finally, forests play a cultural role in almost all societies, as mythical sceneries or historical backgrounds and as living habitats for about 60 million people worldwide (indigenous and non-indigenous)...”

17. In view of the above, let the respondents file the affidavit of unconditional apology. Keeping in mind the turnover of the respondents, owners of M/s Nutra Specialities Private Limited now re-christened as M/s Venkata Narayana Active Ingredients Pvt. Ltd. or their Authorized Representatives are directed to plant 1,40,000 trees on the Central Ridge. For this purpose they will report to the Deputy Conservator of Forests (South) on 20th March, 2019 at 11.00 am, who will identify to them the area for the plantation.

18. The plants shall be of deciduous indigenous variety and they shall be of nursery age of three and a half years old and have a height of at least six feet. The Delhi Preservation of Trees Act, 1994 defines the tree as: “*any woody plant whose branches spring from and are supported upon a trunk or body is not less than five centimeters in diameter at a height of thirty centimeters from the ground level and is not less than one metre in height from the ground level*”. It is in this context that the nursery age and size of

the tree has been specified for plantation as the same would aid in their survival, because as per available statistics the attrition rate of new plantations is stated to be between 33-50% depending upon the area where afforestation is undertaken.

19. Furthermore, on any given day the overall population of Delhi would be in the range over 20 million people, and this population is ever burgeoning because of births within the city as well as by migrant population. The sequitor of such increase in population and the concomitant consumer needs would put further stress on the city. Therefore, there is an imperative need for larger green areas. The sense of urgency for green city forests can never be emphasised. It is expected that if the nursery age of the trees being planted are of three and a half years, we would hopefully cover some of the lost time.

20. The respondents will take care of the plants at least till the end of the rainy season. Depending upon the soil type and topography, the DCF may consider the following types of trees for plantation:-

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|--|-------------------------------------|
| (i) Gular (Cluster Fig) | (ii) Kadamba (Burflower Tree) |
| (iii) Pilkhan (White Fig) | (iv) Jaamun (Black Plum) |
| (v) Bargad (Banyan Tree) | (vi) Mango |
| (vii) Amaltas (Golden Shower)
[Indian Laburnum] | (viii) Mahua (Butter Tree) |
| (ix) Putranjiva | (x) Badh |
| (xi) Sagwan (Teak Wood) | (xii) Safed Siris (Albizia Procera) |
| (xiii) Kala Siris | (xiv) Anjeer |
| (xv) Kathal- Jackfruit | (xvi) Palash |
| (xvii) Arni | (xviii) Bistendu |
| (xix) Rohida | (xx) Medshingi |
| (xxi) Palash/Tesu/Dhak | |

21. Development of small water reserves or culverts too shall be the

responsibility of the respondents. Bills with respect to the expenses etc. shall be filed by the respondents in due course. Compliance Report shall be filed by them and the DCF concerned by 15.04.2019. Aerial pictures of the plantation shall be furnished both by the respondents and the DCF concerned, on the said date. Follow-up of such tasks as well as aerial photographs taken by drone mounted cameras, as per procedure, too shall be filed. Care shall be taken that the adjacent Cantonment Area or security areas are not photographed. The DCF shall also ensure the compliance of the following directions:

- (i) Area earmarked for plantation for 1.40 lacs trees should be shown on a map and demarcated.
- (ii) Identify the source from where water could be drawn for watering the trees. Treated water too could be considered and sourced from the nearest Sewage Water Treatment Plant.
- (iii) Minor water retention systems, such as culverts and small *bundhs* shall be put in place by the Forest Department within six weeks so that maximum benefit could be obtained from the monsoon rains. Let a proposed plan of action of building culverts and small *bundhs* be filed by the DCF within four weeks from today.
- (iv) The DCF and the respondents shall ensure strict compliance of the height of the plants and its age so as to ensure its survival rate.
- (v) Each tree shall be numbered.
- (vi) The Court appoints Mr. M.A. Niyazi, Advocate (Ph. 9810413706) and Mr. Sumeet Pushkarna, Advocate (Ph. 9811042847) as Court Commissioners to inspect the plantation and its upkeep, both by the respondents as well as the Forest Department.

They shall visit the site of plantation every fortnight and file their response along with photographs in a week after each visit.

22. The respondents may take the assistance of Professor C.R. Babu (Add: CEMDE, Department of Environmental Studies, University of Delhi, Delhi – 110 007) and/or his team which assisted in creating the Yamuna Bio Diversity Park, as well as assistance of Director, Centre for Science and Environment.
23. Mr. Gautam Narayan, the learned ASC for the Govt. of NCT of Delhi has taken notice and ensures due compliance.
24. List for compliance on 30.04.2019.
25. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

MARCH 11, 2019
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Teenu Colms.
Hobhimp Smt
16/03/2019
- Court Master
High Court of Delhi
New Delhi

sdt-
NAJMI WAZIRI, J.