

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

% Decided on: November 18, 2022

+ **CS(COMM) 27/2020**

BRISTOL-MYERS SQUIBB HOLDINGS  
IRELAND UNLIMITED COMPANY & ORS.

..... Plaintiffs

Represented by: Mr. Pravin Anand, Ms. Prachi  
Agarwal, Ms. Ridhie Bajaj & Ms.  
Rashi Punia, Advs.

Versus

BDR PHARMACEUTICALS  
INTERNATIONAL PVT. LTD. & ANR.

..... Defendants

Represented by: Mr. Parag P. Tripathi, Sr. Adv. with  
Mr. J. Sai Deepak, Mr. Avinash  
Kumar Sharma, Mr. Srinivasan  
Ramaswamy and Mr. Ankur Vyas,  
Advs.  
Raheel Dharmesh Shah, respondent  
No.4 through video conferencing.

**CORAM:**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**I.A. 2321/2020 (under Order XXXIX Rule 2A CPC)**

**I.A. 4451/2020 (under Order XXXIX Rule 2A CPC)**

**I.A. 5240/2020 (under Order XXXIX Rule 2A CPC)**

1. The plaintiffs filed the above suit, inter alia, seeking a decree of permanent injunction against the defendants, its employees, officers, agents, etc. for directly or indirectly dealing in any product including but not limited to generic APIXABAN product that infringes the subject matter of the Indian Patent No. IN'247381, delivery up of all stocks of generic APIXABAN in

possession of the defendants to the representatives of the plaintiff which infringes those subject matter of IN'247381.

2. When the suit came up before this Court on 21<sup>st</sup> January, 2020 the suit was registered and as learned counsel for the defendants entered appearance, arguments in I.A. No.803/2020 under Order XXXIX Rule 1 and 2 CPC were heard. Vide order dated 30<sup>th</sup> January, 2020 this Court passed an ad-interim injunction in favour of the plaintiff and against the defendants in terms of prayer (a) of para 17 of the application. Prayer (a) in para 17 of the application reads as under:

“a) An order for ad interim injunction restraining the Defendants, its directors, employees, officers, servants, agents, stockists, retailers, semi-stockists, wholesalers, marketers, distributors, any other entity/person in the chain of supply and all others acting for and on its behalf from using, making, selling, distributing, advertising (including on the Defendants' website and third party websites), marketing, exporting. offering for sale, importing or in any other manner, directly or indirectly, dealing in any product including but not limited a generic Apixaban product that infringes the subject matter of the Indian Patent No. IN 247381;”

3. Alleging that despite ad-interim injunction granted by this Court vide order dated 30<sup>th</sup> January, 2020 the defendants were selling their products in the open market, the plaintiffs filed I.A. No.2321/2020 under Order XXXIX Rule 2A CPC and in view of the fact that the case of the defendants was that the product being sold in the market were prior to the injunction order, this Court issued notice *simpliciter* in the application granting time to file reply to the application. This was followed by another application being I.A. No. 4451/2020 under Order XXXIX Rule 2A CPC wherein the plaintiffs alleged that the four respondents i.e. defendant No.1 & 2 who were impleaded in the

suit as also Dharmesh Mahendra Shah and Raheel Dharmesh Shah i.e. respondents No.3 & 4 in the application being the Chairman & Managing Director and Director of respondent No.1 company respectively, submitted a tender offering for sale of APIXABAN and the said act of defendant No.1 and its officers/directors amounts to willful disobedience of the order of this Court dated 30<sup>th</sup> January, 2020. Considering the documents placed on record, prima facie, it was revealed that the defendant No.1's agents at Varanasi had offered to sell APIXABAN and thus this Court issued show cause notice against the two above-noted persons, namely, Dharmesh Mahendra Shah and Raheel Dharmesh Shah, the Chairman & Managing Director and Director of the respondent No.1 respectively, as to why proceedings under the Contempt of Court Act be not initiated against them. Time was granted to file the reply affidavit.

4. Thereafter, the plaintiff filed a third application being I.A. No. 5240/2020 under Order XXXIX Rule 2A CPC alleging that the respondents, their directors, agents, etc. were still violating the order of this Court dated 30<sup>th</sup> January, 2020 and placed on record documents to show that one M/s. Jai Ganesh Pharmaceuticals, Delhi which was issued an authority letter dated 9<sup>th</sup> January, 2020 by the respondents as its authorized institutional distributor to submit the rates quotation, collect the supply orders, to make the supplies and to collect payments on behalf of the respondents for the financial year 2019-2021, had applied for a bid to supply APIXABAN to the Medical Store, Command Hospital, CC Lucknow on 12<sup>th</sup> May, 2020 in contravention of the order of this Court dated 30<sup>th</sup> January, 2020. On the application this Court issued fresh show-cause notice to Mr. Dharmesh Mahendra Shah &

Raheel Dharmesh Shah as to why proceedings under the Contempt of Court Act be not initiated against them.

5. In support of the violation of the order of this Court, plaintiff has placed on record documents and action of the third parties who are agents of the respondents to fortify the instances of contempt as under:

- i. Sale of the Respondents' APIXABAN product BDPIXA 2.5mg and BDPIXA 5mg at AARK Pharmaceuticals in Chandigarh on February 11, 2020.
- ii. Participation in tender no. 11205456 published by DLW, Varanasi on May 20, 2020.
- iii. No withdrawal of the tender no. 11205456 till June 11, 2020.
- iv. Participation in tender no. 11195445C published by DLW, Varanasi on Jan 20, 2020.
- v. No withdrawal of the tender no. 11195445C till June 11, 2020.
- vi. No cancellation of the authority in favour of Ms. Jai Ganesh.
- vii. No withdrawal of goods from M/s Jai Ganesh, till 18<sup>th</sup> June, 2020."

6. It was also contended on behalf of the plaintiff that respondents are habitual violators of the patent rights and multiple suits have been filed against them including suits by Pfizer, Bristol Myers Squibb Company, Bayer Intellectual property GMBH, Abentis Pharma S.A and Sanofi India Limited, F. Hoffman La Roche, etc. It was further contended by the plaintiffs that the contempt of the order of this Court by the respondents is clearly repetitive and deliberate and thus, willful. The respondents have not placed on record any document/ material to show that they had taken steps towards compliance of the order of this Court dated 30<sup>th</sup> January, 2020. Reliance was placed on the decision cited as (2014) 5 SCC 429 SEBI v. Sahara India Real Estate Corpn. Ltd.

7. It was claimed on behalf of the respondents that the respondents did not sell any products post the order of this court dated 30<sup>th</sup> January, 2020. It was contended that although certain errors were made by the respondents, however, neither of them were willful disobedience. Inadvertent error on the part of the respondents and their officers cannot be held to be contempt. Learned senior counsel for the respondents fairly stated that the bid should not have been filed by the respondents, and while it may amount to disobedience, but it was not willful and reliance in this respect was placed on the decisions reported as (2019) 20 SCC 666 U.C. Surendranath v. Mambally's Bakery and (2010) 3 SCC Sahdeo v. State of U.P. It was further contended that the “willfulness” must be proved beyond doubt and reliance was placed on the decisions reported as (2019) 3 SCC 544 Ramasamy v. Venkatachalapathi and 2019 SCC OnLine All 5318 Makkhan Singh v. Shyam Singh & Ors.

8. It was further contended on behalf of the respondents that the object of Order XXXIX Rule 2A is to enforce the order of injunction and not to punish the person in disobedience of the order. The power under Order XXXIX Rule 2A requires exercise with caution since such power vested in the Court is punitive in nature. Further, proceedings under Order XXXIX Rule 2A are of a penal nature and conviction on contempt cannot be based on suspicion or as a matter of course. Reliance was placed on the decisions cited as 1973 SCC OnLine All 296 Sitaram v. Ganesh Das, (2009) 5 SCC 665 Food Corpn. of India v. Sukh Deo Prasad and MANU/GJ/1464/2019 Jagdishbhai Madhubhai Patel v. Saraswati Ben and Ors.

9. Before dealing with individual applications, it would be appropriate to note the legal principles qua the proceedings under Order XXXIX Rule 2A

CPC in respect of disobedience of the orders of the Court and the implementation thereof.

**10.** In the decision reported as (2010) 3 SCC Sahdeo v. State of U.P., with respect to the contempt proceedings, it was held by the Hon'ble Supreme Court:

*“15. The proceedings of contempt are quasi-criminal in nature. In a case where the order passed by the court is not complied with by mistake, inadvertence or by misunderstanding of the meaning and purport of the order, unless it is intentional, no charge of contempt can be brought home. There may possibly be a case where disobedience is accidental. If that is so, there would be no contempt. [Vide B.K. Kar v. Chief Justice and Justices of the Orissa High Court [AIR 1961 SC 1367]”.*

**11.** In the decision cited as (2019) 20 SCC 666 U.C. Surendranath v. Mambally's Bakery, it was observed by the Hon'ble Supreme Court that a person is guilty under Order XXXIX Rule 2A CPC only where the disobedience is wilful and disobedience simpliciter would not invoke Order XXXIX Rule 2A CPC. It was observed:

*“6. At the request of the respondent, the Commissioner again inspected the appellant's shop on 20-11-2015. It is to be pointed out that on his second visit, the Commissioner noted that the sale of tea cakes and masala cakes prepared, were without “wrappers/labels” meaning thereby that on the date of the second visit of the Commissioner the appellant was not using the mark of the respondent “Mambally's Bakery”. During the second visit, of course, the Commissioner noted that the hoarding “Mambally's Bakery” which was displayed in front of the appellant shop was not removed. In this regard, the appellant has offered his explanation stating that since the hoarding is situated at height of 13 ft and also due to the scarcity of the labour force, he could not immediately remove the hoarding. Mr P.V. Surendranath, learned Senior Counsel*

*appearing for the appellant, has submitted that the appellant is 40% disabled and he was incapacitated from climbing up and removing the hoarding by himself.*

*7. For finding a person guilty of wilful disobedience of the order under Order 39 Rule 2-A CPC there has to be not mere “disobedience” but it should be a “wilful disobedience”. The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere “disobedience” but a “wilful disobedience”. As pointed out earlier, during the second visit of the Commissioner to the appellant's shop, tea cakes and masala cakes were being sold without any wrappers/labels. The only thing which the Commissioner has noted is that “non-removal of the hoarding” displayed in front of the appellant's shop for which the appellant has offered an explanation which, in our considered view, is acceptable one.*

*8. In the facts and circumstances of the case, we do not find any “wilful disobedience” on the part of the appellant warranting invoking Order 39 Rule 2-A CPC and sentencing the appellant to one week's civil imprisonment”.*

**12.** Similarly, in (2019) 3 SCC 544 Ramasamy v. Venkatachalapathi, returning a finding that no case for willful disobedience was made, it was held:

*“7. We have heard the learned counsel for the parties and perused the impugned order and the other materials on record. Violation of the order of injunction is a serious matter and unless there is a clear evidence that the party has wilfully disobeyed the order of the court, the party cannot be punished for disobedience and sent to imprisonment. Though the appellant is said to be the father-in-law of the second respondent, no materials were placed before the court to show that he had the knowledge of the interim order dated 9-12-2004. However, the fact remains that the second respondent and the appellant are the daughter-in-law and the father-in-law. The second respondent vendor having been found not guilty of contempt of court in the revision [being CRP (NPD) No. 1593*

*of 2014], the appellant cannot be placed in a worse situation than his vendor. It is also pertinent to point out that the first respondent decree-holder also had got the sale deed executed on 7-12-2006. The first respondent has also said to have taken the possession of the property in dispute”.*

**13.** However, correctness of the decision in *U.C. Surendranath (supra)* was doubted by the Hon’ble Supreme Court in the decision cited as (2022) 1 SCC 209 *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd.* Hon’ble Supreme Court noted that the addition of the word “wilful” in *U.C. Surendranath (supra)* is not correct and requires review by a larger bench. It was held:

*“61. It is one thing to say that the power exercised by a court under Order 39 Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order 39 Rule 2-A requires not “mere disobedience” but “wilful disobedience”. We are prima facie of the view that the latter judgment in adding the word “wilful” into Order 39 Rule 2-A is not quite correct and may require to be reviewed by a larger Bench. Suffice it to say that there is a vast difference between enforcement of orders passed under Order 39 Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order 39 Rule 2-A is primarily intended to enforce orders passed under Order 39 Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature [ When an order for permanent injunction is to be enforced, Order 21, Rule 32 provides for attachment and/or detention in a civil prison. Orders that are passed under Order 21, Rule 32 are primarily intended to enforce injunction decrees by methods similar to those contained in Order 39 Rule 2-A. This also shows the object of Order 39 Rule 2-A is primarily to*

*enforce orders of interim injunction.] . Orders passed under Section 17(2) of the Arbitration Act, using the power contained in Order 39 Rule 2-A are, therefore, properly referable only to the Arbitration Act. Neither of the aforesaid judgments are an authority for any proposition of law to the contrary”.*

**14.** Discussing the purpose of Order XXXIX Rule 2A CPC in the decision cited as 1973 SCC OnLine All 296 Sitaram v. Ganesh Das, it was held:

*“2. ... The purpose of Order 39, Rule 2-A of the CPC is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order 21. Rule 32 of the CPC which provide for the execution of a decree for injunction The mode of execution given in Order 21, Rule 32 is the same as provided in Rule 2-A of Order 39. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison.*

*3. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of State of Bihar v. Sonabati Kumari, AIR 1961 SC 221: while dealing with O. 39, Rule 2(iii) of the CPC (without the U.P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the provisions of O. 21. R. 32 and of O. 39, R. 2(iii) of the CPC which is similar to Order 39. R. 2-A. This curative function and purpose of Rule 2-A of Order 39 of the CPC is also evident from the provision in Rule 2-A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary. Hence, even if Sitaram had earlier been sent to the civil*

*imprisonment, he would have been released on the tinshed being removed, and it would therefore now, serve no purpose to send him to prison. For the same reason the attachment of property is also no longer needed. The order of the Court below has lost its utility and need no longer be kept alive”.*

**15.** As to the burden of proving contempt in terms of Order XXXIX Rule 2A, it was held by the Hon’ble Supreme Court that the complainant must prove the same beyond doubt. In the case of (2009) 5 SCC 665 Food Corpn. of India v. Sukh Deo Prasad, it was held:

*“38. The power exercised by a court under Order 39 Rule 2-A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under Order 39 Rule 2-A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the “order”, on surmises, suspicions and inferences. The power under Rule 2-A should be exercised with great caution and responsibility”.*

**16.** Thus as per the decisions noted above the power exercised by a Court under Order XXXIX Rule 2A CPC is punitive in nature and akin to power to punish for civil contempt under the Contempt of Courts Act and has to be exercised with great circumspection. As noted above, the purpose to take action under Order XXXIX Rule 2A CPC is to enforce the order of the Court, rather than punish the person. Further even though Order XXXIX Rule 2A CPC does not employ the word “wilfully” the law as laid down in the decision reported as U.C. Surendranath (supra) will prevail till overruled

by the larger bench of the Hon'ble Supreme Court. Hence, if no "wilful" disobedience is made out, the respondents cannot be punished by passing an order of sentence or fine.

**17.** With respect to the first application being I.A. 2321/2020, it was contended by the respondents that they had launched the products on 18<sup>th</sup> January, 2020 i.e. after expiry of the patent on 17<sup>th</sup> December, 2019 and before the interim injunction order in favour of the plaintiff dated 30<sup>th</sup> January, 2020. It was contended that as per the injunction order, there was no direction by the Court to recall the already launched product or withdrawal of any bid. It was submitted that at best, any breach of the said order is an inadvertent breach due to no specific direction by the Court to recall the product as the same were already put into commercial stream before passing of the injunction order dated 30<sup>th</sup> January, 2020 by this Court.

**18.** It was countered on behalf of the plaintiffs that the said averments on behalf of respondents is an afterthought because as per the injunction order dated 30<sup>th</sup> January, 2020, it was recorded at para 47 that the respondents had not commercially sold APIXABAN in open market as yet i.e. 30<sup>th</sup> January 2020. Further, in the written submissions dated 23<sup>rd</sup> January, 2020, the defendants stated that they are ready to launch the product and have participated in the institutional sales for the supply of the product. It is thus evident that till 23<sup>rd</sup> January, the product was not launched, even though defendants were ready with the product and had participated in the bids for institutional sales. Further, on 18<sup>th</sup> February, 2020, it was submitted by defendants before this court that the products for which violation is alleged were sold in the open market prior to the injunction order, and in their reply to IA 5240/2020, in para 6, the respondents stated that they had supplied the

products to M/s Jai Ganesh on 25<sup>th</sup> January, 2020. It was also submitted in para 3(d) of the affidavit of defendant No.3 that BDPIXA was sold to 56 distributors of which M/s Jai Ganesh was one. It was contended on behalf of the plaintiff that despite a categorical finding in the order of this Court, the respondents made no effort to clarify the same to the court and further no statement was made that steps were being taken to stop the sale of the infringing products or that efforts were being made to recall the products that have been already and wrongly placed in the commercial stream. Further, no Apixaban product of the respondents was found through the investigation and market survey conducted prior to the filing of the suit.

**19.** As noted above, the order of interim injunction was passed by this Court on 30<sup>th</sup> January, 2020 and though in the written submissions dated 23<sup>rd</sup> January, 2020 it was not stated that any supply had been made, it was stated that the product was ready for launch though not launched. There being no interim injunction till 30<sup>th</sup> January, 2020 alleged supply of products to M/s. Jai Ganesh on 25<sup>th</sup> January, 2020 cannot be treated as a disobedience of the order of this Court much less a willful disobedience even though propriety demanded that when the arguments were being heard on day-to-day basis in the application for interim injunction, the same concluded on 27<sup>th</sup> January, 2020 and the order on the said application was pronounced on 30<sup>th</sup> January, 2020, the respondents ought not to have proceeded to supply their products to the agents. Thus, the action as alleged in I.A. 2321/2020 does not amount to disobedience of the order of this Court dated 30<sup>th</sup> January, 2020.

**20.** With respect to the second application being I.A. 4451/2020, it was submitted that one Mr. Vinod Dua was in employment of respondent No.1 and holding the post of Chief Marketing Officer who resigned from the post

on 19<sup>th</sup> November, 2019, which caused a disruption in the functioning of respondent No.1 and it was not able to keep proper checks and measures on its sales and marketing. It was deposed by the respondents No. 3 and 4 vide affidavit dated 25<sup>th</sup> August, 2020 that upon receipt of court order on 30<sup>th</sup> January 2020, the management had a board meeting on 04<sup>th</sup> February, 2020 whereafter, an inter-office memo was circulated and all division heads and sales team were asked to refrain from bidding for any tender of Apixaban/BDPIXA product and a decision to cease production of BDPIXA was also taken. It was further contended that as per the SOP of the respondent no.1, the sales team personnel is authorized to submit bid or tender upto a value of Rs.10 Lacs without requiring prior approval of Board of Directors. Thereafter, all marketing activities were closed in view of the lockdown from 22<sup>nd</sup> March 2020 to 11<sup>th</sup> May, 2020. As some members of the office tested positive, the office was completely shut from 28<sup>th</sup> June, 2020 till 18<sup>th</sup> July, 2020, and work was carried out from home. However, one employee of the respondent No.1 Mr. Bhavesh Shah filed and submitted a tender for supply of 10,000 tablets of Apixaban 5 mg for a value of Rs.4.92 Lacs using digital signatures of Mr. Manoj Kapoor. This bid was not informed to any person higher up in the hierarchy including Mr. Manoj Kapoor. The respondents No. 3 and 4 became aware of the said tender on receipt of the cease and desist notice of the plaintiff dated 03<sup>rd</sup> June, 2020. The respondents thereafter, issued show cause notice and explanation was sought from both Mr. Bhavesh & Mr. Manoj. Mr. Bhavesh Shah tendered his explanation and stated that because of work pressure, prevailing medical and financial issues he lost sight of the circular dated 01<sup>st</sup> February 2020 instructing the employees not to deal with APIXABAN. It was contended

that Mr. Bhavesh Shah bid for about 600 tenders during the concerned period and only one pertained to APIXABAN. The respondents withdrew the bid vide letter dated 11<sup>th</sup> June, 2020 addressed to DLW. It was contended on behalf of the respondents that it was bona fide lapse as despite various other tenders being floated for APIXABAN, no tender was ever submitted by the respondents.

**21.** It was contended on behalf of the plaintiff that the story of the defendant is full of contradictions. On 09<sup>th</sup> June, 2020 the respondents replied to the email of the plaintiffs dated 02<sup>nd</sup> June, 2020 and stated that an error of filing for tender occurred due to lack of information of the injunction order of the court, but the affidavit filed by the respondents states that the said injunction order was circulated as an internal memo dated 05<sup>th</sup> February, 2020 after the Board Meeting of the Directors on 04<sup>th</sup> February, 2020. No justification was given for the delay in holding the meeting as well. It was further contended by the plaintiff that it was unfathomable how the external members of the supply chain were informed about the injunction on 01<sup>st</sup> February, 2020 without the Board meeting which allegedly took place on 05<sup>th</sup> February 2020. Further, in reply to I.A. 4451/2020, it was mentioned by the respondents that the employees were made aware about the court order on 01<sup>st</sup> February, 2020. Further, despite the fact that the office of the respondent No.1 was shut on 05<sup>th</sup> June, 2020, Mr. Bhavesh & Mr. Manoj were suspiciously issued hard copies of the notice. It was also contended that no explanation was offered as to why these documents were not filed with the reply date 18<sup>th</sup> June, 2020 filed by the respondents, and were filed later on the direction of the court. It was further contended on behalf of the plaintiff that the letter dated 11<sup>th</sup> June, 2020 filed by the respondents to

cancel the acceptance of bid is for a different tender i.e. 11195445C and not for the alleged tender 11205456. Rather, respondents' letter revealed that they had filed another tender i.e. 11195445C issued on 31<sup>st</sup> January 2020, i.e. a day after the injunction order, for which respondents are again in contempt.

**22.** In respect of the alleged violation of the order dated 30<sup>th</sup> January, 2020 respondents have explained the special circumstances when the office was completely shut and despite an inter-office memo being circulated, one of the officers, namely, Bhavesh Shah submitted the tender for supply of 10,000 tablets of APIXABAN 5 mg for a value of ₹4.92 lakhs using the digital signatures of Mr. Manoj Kapoor. As per the affidavit filed, Bhavesh Shah has already tendered his explanation and during the said period has submitted 600 tenders, of only one related to APIXABAN. After the cease and desist notice was issued by the plaintiff, the respondents withdrew their bid vide letter dated 11<sup>th</sup> June, 2020. Though submitting the bid for supply of 10,000 tablets of APIXABAN 5 mg was clearly a violation of the order of this Court, however in the circumstances explained it cannot be held that the same was willful and hence show cause notice issued to the respondents as to why proceedings under the Contempt of Court Act be not initiated in IA No. 4451/2020 is discharged.

**23.** With respect to the third application being I.A. No. 5240/2020, it was submitted on behalf of the respondents that the alleged Tender ID 2020\_ARMY\_341513\_1, published by Command Hospital (CC), Lucknow on April 29, 2020, for Apixaban 2.5 mg tablets was filed by M/s Jai Ganesh Pharmaceuticals and not by respondent No.1. It was submitted that the authority letter issued to M/s Jai Ganesh was on 9<sup>th</sup> January, 2020 i.e. prior

to the injunction order and after the court order, on 01<sup>st</sup> February, 2020, the respondents had informed all its distributor about the court order.

**24.** These contentions were countered on behalf of the plaintiff and it was submitted that M/s Jai Ganesh was granted authorization by the respondent no.1 on 9<sup>th</sup> January 2020 which was valid till 31<sup>st</sup> March 2021 or until cancelled by the respondents. It was contended that no steps were taken by the respondents to cancel/revoke the authorization pursuant to the injunction order of the court, and therefore, the respondents would be liable for the acts of M/s Jai Ganesh. It was also contended that the said letter dated 01<sup>st</sup> February, 2020 issued by the respondents, seems to be an afterthought as there was no mention of the same in any of the earlier replies filed by the respondents. The said letter was issued to all its distributors and no specific letter was communicated to M/s Jai Ganesh. Neither any proof of dispatch of the said letter to M/s Jai Ganesh was filed nor was any clarification sought and furnished by M/s Jai Ganesh regarding the tender.

**25.** As noted, the tender had been floated by Jai Ganesh Pharmaceutical, Delhi who had been authorized prior to the passing of the injunction order dated 30<sup>th</sup> January, 2020. The case of the respondents has been consistent that entire preparations for launching the product had been made, though till 23<sup>rd</sup> January, 2020 as stated in the written submissions, the product had not been sold. The preparations thus included authorization of the distributors as well. A copy of the letter dated 1<sup>st</sup> February, 2020 has been annexed as Document 'A' regarding discontinuation of supply of BDPIXA, however there is no document to show the manner in which it was communicated to its suppliers and agents. As noted in the order dated 30<sup>th</sup> January, 2020 interim injunction was granted in favour of the plaintiff and against the

respondents in terms of prayer 'A' of I.A. 803/2020 under Order XXXIX Rules 1 & 2 CPC.

**26.** Thus the interim injunction also restrained the agents, stockists, retailers, wholesalers, distributors, etc. in the chain of supply of the respondents from making, selling, distributing, advertising, marketing, exporting, offering for sale of the products infringing the suit patent IN 247381. In the absence of any specific document as to how communication was made to their stockists, agents of not violating the interim injunction order, it is evident that proper care was not taken by the respondents to implement the order of this Court dated 30<sup>th</sup> January, 2020. However, considering the circumstances in which national lockdown was announced in March, 2020, disruption in the functioning of the company cannot be ruled out and a finding cannot be returned that there was a willful disobedience of the order of this Court dated 30<sup>th</sup> January 2020. Consequently, the show cause notice issued in I.A. 5240/2020 is discharged.

**27.** In view of the facts noted above, it is evident that there has been repeated violations by the respondents of the order dated 30<sup>th</sup> January 2020 which may though not be willful but even accepting the explanation offered by the respondents show the callous manner in which work is carried out by the respondents. The conduct of the respondents though not amounting to willful disobedience but surely callous, the applications are disposed of, warning the respondents to be careful in future.

**28.** Order be uploaded on the website of this Court.

**(MUKTA GUPTA)**

**JUDGE**

**NOVEMBER 18, 2022**  
'ga/akb'

