In the Commercial Court No.II, Gautam Buddh Nagar

Present: Kunal Vepa (HJS)

UP ID. 2162

Original Suit No.370 /2024

M/s Jubilant Generics Ltd Through its Authorized Representative, Mr Sanjay Gupta Having its Registered Office at: 1 A, Sector 16-A, District Gautam Buddh Nagar;

…….Plaintiff;

Versus

1. M/s Medreich Limited Having its Registered Office at: Medreich House No. 12/8, Saraswathi Ammal Street, Maruthi Seva Nagar, Bangalore, Karnataka, India 560033;

2. M/s V S International Private Limited Having its Registered Office at: A-204, Neelam Centre, Hind Cycle Road, Worli, Mumbai, Maharashtra India 400030;

3. M/s Gracure Pharmaceuticals Ltd Having its Registered Office at: 251-254, IInd Floor, DLF Tower 15 Shivaji Marg, West Delhi, New Delhi-110015;

4. M/s Jamp India Pharmaceuticals Private Limited Having its Registered Office at: 1201 to 1204 & 1207 to 1212, 12th Floor, Navratna Corporate Park, Ambli Bopal Road, Ahmedabad, Gujarat, India- 380058;

…....Defendants;

Application under Rule 1, 2 and 4 of Order XXXIX of CPC

ORDER

1. This Court is seized of this matter, which is an application under order XXXIX Rule 1 and Rule 2 of the CPC filed by the plaintiff and subsequent application under order XXXIX Rule 4 of the CPC by the defendant, which are pending disposal in this permanent injunction suit filed by the plaintiff against the defendants for copyrights infringement,

misappropriation of trade secrets, intellectual property of the plaintiff and seeking rendition of accounts, declaration and damages.

2. Before an adjudication on the above mentioned applications, a brief chronology of events surrounding this matter is ineluctable. The plaintiff has instituted this original suit for permanent injunction against the defendants on 23/08/2024, and the court on the same day, after hearing the plaintiff has passed an ex parte ad interim temporary injunction against the defendants, restraining them from using the product dossier purportedly belonging to the plaintiff, and furthermore restraining the defendants from manufacturing, distribution and export of certain medicines. Thereafter, after the defendants appearing in this matter and filing applications under rule 4 of the aforesaid order, the incharge District Judge of this Court, vide order dated 07/11/2024, disposed of the applications of the plaintiff under rule 1 and 2 of the CPC and of the defendants under rule 4 under Order XXXIX, and held that the ex parte ad interim temporary injunction passed by the court at the inchoate stage is effective till the final disposal of the main suit. Being aggrieved by the same, the defendants preferred an appeal before the Allahabad High Court, which is FAFOD No 21 of 2025, and the High Court partly allowed the appeal by setting aside the order dated 07/11/2024, wherein the matter was remanded back to this Court, with a direction to decide the aforesaid applications under order XXXIX rule 1 and 2 CPC of the plaintiff and application of the defendants under order XXXIX rule 4 of the CPC within a period of four weeks from the date the parties appear before this Court. On the directions of the High Court, the plaintiff and defendants have appeared before this Court on 30/01/2025.
3. The learned counsels for the plaintiff and the defendants have been heard on 19/02/2025 on the aforesaid applications, and accordingly, after hearing both the sides and after perusing the entire records of the case, order is being accordingly passed.
4. At the very outset, it is imperative to illuminate the factual matrix surrounding this case. The plaintiff, M/s Jubilant Generics Ltd has purportedly developed a product dossier for the following pharmaceutical products, namely Losartan, Amlodipine and Citalopram (hereinafter be referred to as the products), and the said product dossier was provided to

Jamp Pharma Corporation (hereinafter to be referred to as Jamp Pharma), a Canadian company, under a mutual confidentiality and non-disclosure agreement dated 13/05/2010, and separate non-exclusive license, supply and distribution agreements for the aforesaid products, wherein Jamp Pharma acquired a fully paid-up, perpetual, royalty free license and right to manufacture, distribute and sell the products in the territory using such product dossiers. Defendant No. 4, a subsidiary of Jamp Pharma, and defendant No 1 to 3 are Indian-based companies, who are said to be purportedly manufacturing the said products for Jamp pharma for the territory of Canada. It is contended by the plaintiff that the product dossier for the aforesaid products, is a literal work of the plaintiff, thereby entitling him to protection under the Copyright Act. Furthermore, according to the plaintiff, Jamp pharma has committed breach of the license by sharing the product dossiers with the answering defendants of the present suit, as the products were only meant for the territory of Canada. There is apparently a arbitration proceedings going on in canada between the present plaintiff and Jamp Pharma, and as the answering respondents of the present suit were not privity to the mutual confidentiality and non-disclosure agreement, and separate non-exclusive license, supply and distribution agreements for the aforesaid products, they are not arraigned as answering respondents in the aforesaid arbitration, and therefore, the plaintiff has brought this present injunction suit against the answering defendants, in which an application for ad interim temporary injunction has been made.

5. In the application under order XXXIX rule 1 and 2 of the CPC, the plaintiff has stated that they have filed the instant suit for permanent injunction et cetera against the defendants on account of their illegal and unauthorized use of the plaintiffs product dossier, which constitutes its confidential information, copyrights and trade secrets. As per the application, the plaintiff has developed the written product dossier for the territory of Canada for the aforesaid products, and the said dossier was provided under separate agreements to Jamp pharma, in order to enable Jamp Pharma to obtain its own notice of compliance and drug identification number in the territory of Canada. Vide the said agreement, the plaintiff has also given the right to jamp Pharma to sublicense its rights under the agreement to its affiliates in Canada or third person

retailers in the territory of Canada. It is further averred that nowhere in the said agreements, it was agreed that jamp Pharma would have a right to sublicense to any third party outside the territory of Canada. It is submitted that defendant number 1 to 4 are primarily involved in the manufacturing and supplying of the aforesaid products using the technology which forms a part of the product dossiers developed and created by the plaintiff, thereby infringing the copyrights of the plaintiff. The said product dossier was developed by the plaintiff after extensive research and studies, and the plaintiff holds copyrights for the said dossiers, and the act of defendant number 1 to 3 in concert with different No. 4 in manufacturing, distributing and exporting the said products to Jamp Pharma is causing substantial losses to the plaintiff, and is also infringement of the plaintiffs copyrights under section 51 of the copyrights act, 1957. It is also submitted that the plaintiff has a prima facie case and balance of convenience lies in its favour and irreparable injury will be inflicted on it, if injunction is not granted. It is also averred that the plaintiff being the author/developer of the product dossiers, is entitled to enjoy the protection as provided under section 55 of the copyrights act, 1957. It is also submitted that the plaintiff has cause of action, and this Court has jurisdiction, and this is a commercial dispute, and lastly, exemption is sought under section 12A of the Commercial Court Act, 2015. It is lastly prayed that injunction to restrain defendant no. 1 to 4 their promoters, shareholders, directors, officers, servant, employees or others in capacity of principal or agent from using the right protected dossier of the plaintiff in an unauthorized manner be granted. Further, to restraint the manufacturing and further transfer of the restricted dossier and damages. The plaintiff further prays for ad interim temporary injunction to restraint the defendants from producing, manufacturing, distribution and export the said medicines/products during the pendency of the suit.

6. In reply to the application of the plaintiff under rule 1 and 2 of Order XXXIX of the CPC, defendant No.1 has submitted that the plaintiff has concealed vital facts and got the ex parte injunction, whereas the said license agreements have expired due to efflux of time, and this defendant repeats and reiterates and adopts all the averments made by defendant No. 4 in their reply. That this defendant has been authorized by Jamp Pharma to manufacture Citalopram using the product dossier acquired from the

plaintiff, and the said product is manufactured by the defendant for sale and distribution in Canada. The subject matter of the dispute is governed by the law of Canada and is subject to arbitration. Defendant No. 2 has stated in their reply under Order XXXIX rule 1 and 2 and rule 4 for the vacation of ex parte ad interim injunction that they are authorized by Jamp Pharma to manufacture the said product, namely Amlodipine using the product dossier of the plaintiff for sale and distribution in Canada, and the rest of the averments of this defendant is similar to the stand taken by defendant number one, and therefore, the same may not be repeated. That the subject matter is governed by the laws of Canada and the dispute resolution through arbitration only, and the instant suit is a classic case of forum shopping, and accordingly, the ex parte order ought to be vacated. Similarly, defendant No. 3 in their reply under rule 1 and 2 and rule 4 of Order XXXIX of the CPC has taken an identical stand, as defendant number 1 and 2, except for the fact that, they have stated that they are authorized to manufacture the said product, namely Losartan using the product dossier of the plaintiff for sale and distribution in Canada.

7. Defendant No. 4 has replied to the aforesaid application of the plaintiff, and has taken a more or less similar stand in their reply to rule 1 and 2 and rule 4 (vacation of stay) of Order XXXIX CPC, and have stated and submitted that the application suffers from suggestio falsi and suppressio veri. That the suit is not maintainable, and the existence of copyright over the product dossier is itself a tribal issue for which the court has no territorial jurisdiction. That the plaintiff has misled the court, and the defendant No. 4 parent company had a perpetual license to manufacture, market and sell and distribute the said products, and in furtherance of the same, the product dossiers were shared with the defendants who were duly authorized to manufacture the products on behalf of Jamp pharma. In the present case, there has been no marketing, distribution or sale of the products in India, and therefore the plaintiff’s commercial suit and application for alleged infringement and breach of confidentiality is completely misconceived. That the present dispute is subject to arbitration and governed by the laws of Canada, (clause 15.11 and 15.12 of the license agreement) and this fact pertaining to arbitration has been suppressed by the plaintiff. The non-exclusive license, supply and

distribution agreement dated 09/02/2012, and two agreements dated 16/05/2014 which are the subject matter of the suit and application shows that they are governed by the law of Canada, and any dispute is subject to dispute resolution through arbitration only. Even the mutual confidentiality and non-disclosure agreement is governed by the law of Switzerland. The very maintainability of the present suit is questionable. The arbitral tribunal at Canada is already seized of this issue of alleged infringement, and an award is expected shortly. The present suit and application has been filed by the plaintiff as a counterblast to minimize the effect of the impending arbitral award. The present dispute is only a contractual dispute between Jamp Pharma and the plaintiff and not a copyrights infringement as alleged by the plaintiff. That there is no prima facie case in favour of the plaintiff. The product dossiers for the said product were duly acquired by Jamp Pharma by means of a perpetual license under the said license agreements. It is understood in the industry, and also the understanding of Jamp Pharma and the plaintiff under the license agreements that as there are hardly any manufacturing units in the territory of Canada, after expiration or earlier termination, the manufacturing activities would be done outside the territory of Canada, and marketing and sale of the products to be strictly done within the territory of Canada. The definition of the term license under clause 1.1 of the aforesaid agreement clearly shows that the licence was granted to Jamp Pharma by the plaintiff, which was fully paid-up, perpetual, royalty free and transferable non-exclusive license, and at the end of the term or earlier termination of the license agreements, Jamp pharma had full right to use, improve, reproduce, modify and copy the product dossiers, and could manufacture or have manufactured each of the products. Such a right to get the products manufactured was not in any way restricted to the territory of Canada after termination or expiry of the license agreements. The said license for the aforesaid products had expired, and Jamp Pharma had the liberty to manufacture or have manufactured the said products from any third party as the desired using the product dossier licensed by the plaintiff. It was the plaintiff who stopped supplying the products to the Jamp Pharma, and after the expiry of the agreements, Jamp Pharma had the right to either manufacture the same or get it

manufactured from the present defendants, and the plaintiff raising this issue after 3 years from the expiry of the agreements is not coming with clean hands, and therefore, there is no prima facie case in favour of the plaintiff. There is also no likelihood of any irreparable loss being caused to the plaintiff in the present case warranting a temporary injunction. The products are not being sold in India and only the manufacturing activities are being undertaken in India, the drugs being exported to Canada, and any purported loss to the plaintiff can always be compensated by way of damages. The balance of convenience is in favour of the defendants, as they are manufacturing the said products for Jamp Pharma from early 2021. Severe loss and prejudice will be caused to the defendants and Jamp Pharma if the present application is allowed. The products are being manufactured since 2021 by the defendants, and the same is within the knowledge of the plaintiff since 2021, or at least since April 2024, as evident from emails placed on record by the plaintiff itself, and it is the defendant's business interests which are being prejudiced by the ex parte order passed by the court. Mere manufacture of the products does not cause any loss to the plaintiff and Jamp Pharma has the right to market, sell and distribute the products manufactured by the defendants in Canada, and any alleged loss to the plaintiff can be compensated by way of damages. The ex parte order has been obtained by the plaintiff through misrepresentation of facts, and if not vacated, will cause irreparable harm and injury to Jamp Pharma. The plaintiff has concocted a fake urgency, as they have been aware since 2021 about the manufacture by the defendants, and therefore, they have not complied with the requirements of section 12A of the Commercial Courts Act, 2015. The plaintiff was well aware in 2021 that one of the products, namely Citalopram was being manufactured by defendant No 1, an Indian company not having any manufacturing unit in Canada, and the plaintiff's contention that cause of action first arose in the month of April 2024 is a blatant lie. It has been held by the Supreme Court in M/s Patil Automation Private Limited and others Vs Rakheja Engineers Private Limited (2022) 10 SCC 1 that any suit filed violating the mandate of section 12A of the commercial Courts act must be visited with rejection of the suit under order VII rule 11 of the CPC. It has been lastly stated in the said

applications that there is no case of infringement of copyrights or breach of confidential information or trade secrets, the plaintiff having failed to show irreparable harm, the balance of convenience lying in favour of the defendants, it is submitted that the ex parte order be vacated and the present applications ought to be rejected with cost.

8. The plaintiff has relied on the following relevant documents in Volume II of the plaintiffs list of documents, which are as follow. Copy of Plaintiffs product dossiers for the said medicines/products. Drug notification form along with drug identification number issued by health Canada to the plaintiff for the said products. Mutual confidentiality and nondisclosure agreement dated 13/05/2010. Non-exclusive, supply and distribution agreement dated 14/05/2014 and 16/05/2014. Affidavit by way of second supplemental witness filed by Mr Sukhad Juneja. Copy of relevant emails between plaintiff and Jamp Pharma and defendant No. 4 and Jamp Pharma. Copy of the monograph for the said products of Jamp Pharma and the plaintiff. Table representation of the comparative study of the test results of the products manufactured by the defendant No 1 to 3 and the plaintiff. Information, which includes scientific information about the said products in volume III of the plaintiffs list of documents. The Defendants on the other hand have relied on the following documents, namely Copy of the post hearing brief of the plaintiff in the pending arbitration proceedings dated 11/06/2024. Legal notice dated 29/08/2024 issued by the plaintiff to Jamp Corporation.
9. The plaintiff has filed written arguments and it has been argued by the learned counsel for the plaintiff that this case involves infringement of the copyrights of the plaintiff by the answering defendants, which has been admitted by defendant No. 4. As the confidentiality and license agreements were with Jamp Pharma, a Canadian company, and arbitration proceedings are also pending between them at Canada, the defendants being third parties who have violated the rights of the plaintiff by using their product dossiers and manufacturing the said products, the plaintiff had no choice, but to bring an injunction suit against the answering defendants. The word territory in the license agreements, means only the territory of Canada, and therefore, Jamp Pharma during the pendency of the agreements and even after expiry, had no right to get the said products

manufactured through the answering defendants in India. The plaintiff's statutory right has been contravened, and the suit is maintainable, this Court has jurisdiction, and there is cause of action, and therefore, it is prayed that temporary injunction may be granted to the plaintiff till the disposal of the final suit.

10. On the contrary, the learned counsel for the defendants have also filed written arguments and have argued that the suit of the plaintiff is not maintainable as alleged copyrights infringement is not made out, this court has no jurisdiction as arbitration proceedings is pending between the plaintiff and Jamp Pharma at Canada, in which the present issue of this suit has been raised by the plaintiff as counterclaim. The plaintiff was aware of the defendants manufacturing the said products in 2021, and therefore there is no cause of action. The plaintiff has not complied with section 12A of the Commercial Court Act, 2015. The said license agreements have expired by efflux of time, and Jamp Pharma has lawfully shared the product dossiers of the plaintiff with the answering defendants, which is as per the said agreements, and the manufacture of the said products are only in India, and they are only meant to be sold in Canada as per the agreements. The plaintiff has resorted to forum shopping, which cannot be permitted and is an abuse of the process of the court. Balance of convenience is in favour of the defendants and irreparable harm will be caused to the defendants, as the said products are life-saving drugs, and the commercial interest of the defendants are endangered. The plaintiff can be adequately compensated in terms of money and there is no prima facie case in favour of the plaintiff for temporary injunction. The ex parte ad interim order was obtained by the plaintiff by misleading the Court, and therefore, the plaintiff has not come with clean hands. The plaintiff apprehends that adverse arbitral award will be passed in the arbitration proceedings, and therefore this suit has been instituted only to deflect attention from the real facts in issue. It is lastly argued that the ex parte ad interim order in favour of the plaintiff may be vacated and the application of the plaintiff under Rule 1 and 2 of Order XXXIX of the CPC be dismissed with cost. The aforesaid argument of defendant No. 4 has been adopted by the learned counsels for defendant No 1 to 3.

11. The plaintiff has relied on a mammoth list of case laws, and some of the relevant ones are herein stated. Eastern Book Company and Ors. Vs. D.B. Modak and Ors. [AIR (2008) SC 809 Supreme Court[; Salgunan N. and Ors. Vs. Ram Gopal Edara and Ors., [Manu/TN/9246/2019-Madras High Court]; Renaissance Hotel Holdings Inc. Vs. B. Vijaya Sai and Ors. [(2022) 5 SCC-1 Supreme Court]; Sai Chemicals Vs. Jai Chemical Works [Manu/UP/0130/2024 Allahabad High Court]; MMI Tabacco Pvt. Ltd. and Ors. Vs. Iftikhar Alam [Manu UP2401/2024 Allahabad High Court]; Marico Limited Vs K.L.F. Nirmal Industries Pvt. Ltd. [Manu/MH/5159/2023-Bombay High Court]; Asian Hotels North Ltd. VS. Yes Bank Ltd. and Ors. [Manu/DE/7046/2024 Delhi High Court]; Sanjay Soya Private Limited Vs. Narayani Trading Company [Manu/MH/0879/2021 Bombay High Court]; Nagpur Distilleries Pvt Ltd Vs Karmaveer Shankarrao Kale, Sahakari Sakhar Karkhana Limited, [MANU/MH/2340/2017- Bombay High Court], Nav Sathitya Prakash and others Vs Anand Kumar and others, 1980 SCC Online ALL 444: AIR 1981 ALL 200.
12. The defendants on the other hand have placed reliance on several rulings and for the sake of brevity, some of the important citations are as follow. Bharat Aluminum Co Vs Kaiser Aluminum Technical Services Inc, (2012) 9 SCC 552, Reckeweg and Co. Gmbh Vs Adven Biotech (P) Ltd, 2008 SCC Online Del 1741, Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), F. Hoffmann-La Roche Ltd and Ors Vs Cipla Ltd, (148 (2008) DLT598), State of Kerala Vs Union of India [(2024) 7 Supreme Court 183]; Union of India And Others Vs Cipla Limited And Another [(2017) 5 Supreme Court Cases 262]; K.K.Modi Vs K.N.Modi And Others [(1998) 3 Supreme Court Cases 573]; Asma Lateef And Another Vs Shabbir Ahmad And Others [(2024) 4 Supreme Court Cases 696], Emergent Genetics India Pvt Ltd Vs Shailebdra Shivam and Ors, 2011 (125) DRJ 173, Tech Plus Media Private Ltd Vs Jyoti Janda, CS(OS) 119/2010, IA Nos. 920 and 924/2010 and Rochem Separation Systems (India) Pvt Ltd Vs Nirtech Private Limited and Ors, Commercial IP Suit (L) No. 29923 of 2022 .
13. The voluminous documents produced, like the non-disclosure agreement, license agreements and other material on record have to be perused

threadbare along with the testimonies of the witnesses in the original injunction suit at the time of final disposal of the suit. At this very inchoate stage, this Court ought not to delve into the ultimate merits of the case, which may have a bearing on its eventual final disposal. This court will confine itself purely to the question of temporary injunction, which hinges on three points, namely, prima facie case, balance of convenience and irreparable injury. However, it is made clear that if some of the issues discussed while deciding this temporary injunction application has any reverberations on the merits, it will not have any bearing on the final outcome of this case.

14. The first edifice of a temporary injunction is prima facie case, to be established by the plaintiff, and the question of maintainability, jurisdiction, cause of action and exemption from section 12A of the Commercial Courts Act, 2015 will be dealt with under the above head of prima facie case. The plaintiff has averred and also argued that they possess copyrights over the product dossier for the said products, and Jamp Pharma, which is a Canadian company and not a party to this present suit, has shared the product dossier of the plaintiff with defendant number 1 to 4, which amounts to copyright violation of the plaintiff's right. Defendant No. 4 has argued and also stated in the reply that the suit of the plaintiff and the subsequent application for temporary injunction is not maintainable, as the question of alleged copyright infringement of the plaintiffs product dossier is itself a questionable fact, which is pending disposal before the arbitrator at Canada, in the arbitration proceedings between Jamp Pharma and the present plaintiff, and therefore, this present suit ought to be dismissed at the threshold on the question of maintainability. It is pertinent to mention, that the question of maintainability should be raised by the defendant at any subsequent stage under Order VII rule 11 of the CPC, or as a preliminary issue. However, as this issue of maintainability has been raised in the application of the plaintiff for temporary injunction under Order XXXIX rule 1 and 2 of the CPC, this Court will not be constrained from touching the issue of maintainability of the present suit in this application for temporary injunction. The term copyrights is an intangible legal right, which confers upon the creator of an original work, exclusive control over its use and distribution for a certain period of time, which may differ in every

jurisdiction. Copyrights may subsist in various nature of works, like literary work, architectural work, music and performances etc. For any subject matter to be copyrightable, intellectual creativity, imagination, inventiveness, along with time, efforts and resources being expended in its creation is a sine qua non. The plaintiff has stated in his plaint that in relation to development of finished formulations, the plaintiff prepares technical dossiers for a range of products. A dossier is a comprehensive document that contains all details about the entire life-cycle of the pharmaceutical formulation and all the information and material to allow assessment of the safety and effectiveness of the proposed formulation. The plaintiff has stated and argued that their product dossier are created through exercise of creative judgement, research, data analysis and are original literary work, entitled to protection. It will not be out of context to state that not every product dossier would be entitled to copyright protection per se, and also not every part of the product dossier would be copyrightable. A product dossier, albeit not the original work, but if it's an adaptation and abridgement, with an element of creativity and novelty, will pave the way for copyright protection. This fundamental question will be decided at the conclusion of the trial on the basis of evidences, and this Court is not inclined to delve deep into this question at this juncture. Be that as it may, from a bare perusal of the list of documents of the plaintiff, especially volume-III of the papers filed with the plaint from 22167 to 22372, it is revealed that several facets of the said products, like health and professional information and scientific information is exhibited, and the question of the plaintiff having a substantive right, which is akin to a copyrights over the product dossiers, which is a right in rem is not ruled out. Having said that, the final adjudication of this question is directly proportionate to the evidence adduced and other material on record, which will be decided at the final stage of the trial. The plaintiff has relied upon the ruling of Eastern Book Co and others Vs D.B Modak and others AIR (2008) SC 809 SC and Salgunan N and Ors Vs Ram Gopal Edara and Ors Manu/TN/9246/2019-Madras High Court, which are citations of the Hon'ble Supreme Court and High Court respectively in the arena of copyrights. As a counter, the learned counsel for defendant No. 4 has placed reliance on BALCO Vs KAISER Aluminum Technical Services Incorporation (2012) 9

SCC 552, wherein the judicial interference in foreign seated arbitrations has been reduced.

15. It is not the law, that any subject matter of copyrights has to be compulsorily registered under the Indian law. Even sans registration, the protection of the copyrights act of 1957 will still be available. The fact that the plaintiff entered into a mutual confidentiality and non-disclosure agreement dated 13/05/2010, and subsequent non-exclusive license agreements for the said products with Jamp Pharma lends credit to the fact that the product dossiers, which is an intangible right of the plaintiff, may qualify as an intellectual property of the plaintiff, which has necessitated the entering of the above agreements. The said license agreements were with Jamp Pharma, a Canadian company, and they have said to have expired by efflux of time. Defendant No. 4, a subsidiary of Jamp Pharma have admitted in their application under rule 4 of Order XXXIX of the CPC, that they have shared the product dossiers of the plaintiff with the other answering defendants for manufacturing the said products. Defendant No 1 to 4 are not privity to the license agreements between the plaintiff and Jamp Pharma, and the product dossier of the plaintiff is alleged and admitted to be in the possession of the answering defendants. This fact, which is admitted by defendant No. 4, will confer a right upon the plaintiff to institute a suit against the answering defendants for the purported infringement of the plaintiffs copyrights. The citation of BALCO (supra) relied upon by defendant No. 4 is not squarely applicable to the facts of this case, and therefore, the contention of the defendants that the present suit of the plaintiff is not maintainable is bereft of merit. As far as the question of jurisdiction is concerned, section 62 of the copyrights act, 1957 r/w section 20 of the CPC, enables the plaintiff to institute a suit in this Court on the touchstone of pecuniary, territorial and subject matter jurisdiction. Furthermore, section 2(1)c(ii) of the Commercial Courts act, 2015 establishes the jurisdiction of this forum to try the plaintiffs suit for permanent injunction, which includes any relief for temporary injunction in the aforesaid suit between the litigating parties. On the objections of the defendants that the plaintiff has not complied with the requirements of section 12A of the Commercial Courts act, 2015, this Court is of the view that the said section makes pre-institution mediation in commercial disputes mandatory, unless any urgent interim relief is

contemplated. Based on the material on record, the plaintiff has made out a case for hearing them on interim urgent relief, and therefore, the mandate of section 12A on pre-institution mediation is dispensed with. As far as the cause of action is concerned, the defendants have argued that the plaintiff learnt about them manufacturing the said products way back in 2021, and this, according to them is confirmed in the admission of the plaintiff in paragraph 24 of the plaint, and also a trail mail, which is document number 22116 in volume II of the plaintiffs document, which happens to be a trail mail from Jamp Pharma, in which an employee of the plaintiff has been marked as cc. In the said mail, a mention has been made of one of the products of the plaintiff, which is Citalopram. It is the argument of the defendant that the plaintiff was aware that defendant number 1 to 3 were manufacturing the said product, as early in July 2021, and they elected to do nothing for 3 years, and it was only in the year 2024, that they have brought in this present suit, which is only to pre-empt any adverse award, which may be passed against them in the arbitration proceedings between the plaintiff and Jamp Pharma in Canada. As a matter of fact, the knowledge of the above fact of the defendants manufacturing the above-mentioned product of the plaintiff is imputed to them vide the said trail mail, and this contention is fortified by the fact of admission of the plaintiff in paragraph 24 of the plaint. However, knowledge of this fact will not always preclude the plaintiff, or amount to waiver of their right to sue in the near future, or lead to any inference of acquiescence by the plaintiff towards the act of the defendant. It is the plaintiff’s case that officially on 02/04/2024, when Jamp Pharmas witness, one Mr Sukhad Juneja filed his affidavit in the said arbitration proceedings, disclosing that they have implemented technology transfer in favour of defendant number 1 to 3, the first cause of action arose to them. This Court is inclined to accept the stand of the plaintiff, that the first cause of action arose on 02/04/2024, as the stand taken by one of the witnesses of Jamp Pharma was on affidavit in a legal proceedings before the arbitrator, and the previous knowledge of the plaintiff of the alleged breach in July 2021, and omission on their part to initiate appropriate proceedings will not have any bearing on the merits of this case and the present cause of action. The said cause of action is a continuing one, and based on the above facts, this Court is of the firm view that cause of action rightly arose in

favour of the plaintiff on 02/04/2024, and the contention of the defendant on this aspect is inconsequential.

16. Establishment of a prima facie case for a relief of temporary injunction is an indispensable requirement and a bounden duty of the plaintiff. It is an undisputed fact that the nondisclosure and the license agreements were entered into between the plaintiff and Jamp Pharma, which is not a party to the present suit. As per the aforesaid agreements, Jamp Pharma, acquired the product dossiers for the said products from the plaintiff in consideration of a license fees. It will be pertinent here to reproduce the relevant clauses, which is clause number 1.1 and other clauses, which is common to all the three license agreements for all the three products/medicines of the plaintiff.

1.1. License: In consideration of the license fees ("License Fees") described below, Jamp is hereby acquiring:

(a) a copy of the Product Dossiers for the Territory for each Product, and which was used or will be used by JLL in order to obtain its NOCs for the relevant Product, including all biostudies and all improvements to the molecules and changes made pursuant to any requirement of Health Canada; and

(b) a fully paid-up, perpetual, royalty-free and transferable license (the "License") to register, manufacture, market, distribute and sell the Products in the Territory, including, without limitation, the rights to sub-license the foregoing rights to (i) any of Jamp's Affiliates or related parties in the Territory, or (ii) third Person retailers in the Territory for private label sales, the whole notwithstanding any termination of this Agreement (as a whole, or for any Product) for any reason. Such License shall include the full rights to use, improve, reproduce, modify and copy the Product Dossiers and the Product Information, to make an ANDS for the corresponding Products and to be issued an NOC and a DIN therefor, and to use the formula therein to manufacture or have manufactured the corresponding Products following the end of the Initial Term or any Subsequent Term or any earlier termination of this Agreement.

JLL shall provide all necessary assistance and documentation to allow Jamp to obtain a complete copy of the Product Dossiers.

Jamp will also be given a copy of, and the License will include all rights associated with, any improvements to the corresponding Product Dossiers

made at any time between the date hereof and the end of the Initial Term and any Subsequent Term for each such Product, and any additional period during which such Product is supplied by JLL to Jamp. Until the end of the Initial Tern and any Subsequent Term for such Product, and any additional period during which such Product is supplied by JLL to Jamp, JLL may not make any changes to the Product Dossier without first informing Jamp and obtaining Jamp's prior written consent (which consent cannot be unreasonably withheld, and must be given if the changes are required by Health Canada). No such changes to the Product Dossiers may be made if they negatively affect the commercialization of the applicable Product by Jamp. Any such changes shall form part of the License.

1.4 Cross-License: JLL hereby grants to Jamp and any Affiliate of Jamp designated by it in writing from time-to-time a non-exclusive cross-license ("Cross-License") to (i) register, promote, market, sell and distribute, each Product in the Territory for the Initial Term and any Subsequent Term as it applies to each such Product; and (ii) to use the Product Information for such Product for all purposes in connection therewith. This Cross License to JLL's ANDS (as and when filed) for each of the Products is granted so that Jamp may obtain its own NOC and DIN until such time as Jamp receives a separate NOC and DIN pursuant to its own ANDS and all rights granted as a result of same shall from part of the License rights described in Section 1.1(b) above.

Term and Termination.

2.1. Term: This Agreement shall be effective from the date first written above and shall continue on a Product by Product basis and strength by strength basis (including each new product which the Parties have expressly elected to add as a Product following the signature date of this Agreement) for a period of seven (7) years from the issuance of Jamp's NOC and DIN of the corresponding Product pursuant to Jamp's ANDS therefor (the "Initial Term"), unless sooner terminated in accordance with the provisions contained in this Agreement. Thereafter this Agreement may be extended for additional periods of three (3) years each on a Product by Product basis' and strength by strength basis (each such renewal, a "Subsequent Term") upon mutual written consent of the Parties, such consent to occur by no later than twelve (12) months prior to the end of the Initial Term or any Subsequent Term, as the case may be.

2.2 Termination: Notwithstanding anything to the contrary in Section 2.1 or any other provision in this Agreement, the Parties or the applicable Party, as the case may be, may terminate the Product supply on a Product by Product basis and strength by strength basis (i) upon mutual written consent of the Parties; (ii) by Jamp, in the event that within twenty four (24) months from JLL's filing of an ANDS with Health Canada for a designated Product it fails to obtain its NOC and DIN for such Product; (iii) by JAMP in the event that JLL has failed to file its ANDS for a Product with Health Canada within a period three (3) months following the expected ANDS filing date for such Product as indicated in Annex 1; (iv) by Jamp if it is unable to sell the applicable Product due to JLL's breach of its undertakings under this Agreement, such as, without limitation, those related to the supply, delivery, and quality of the Product, in which case all sums disbursed by Jamp with respect to such Product (including License Fees) shall be reimbursed by JLL within thirty (30) days from Jamp's notice; (v) by Jamp, if the average Canadian selling price (Jamp ex factory) for a Product has dropped to a level which renders this Agreement no longer commercially viable for such Product, it being understood that purchase orders submitted to JLL prior to such a drop shall remain binding on Jamp, provided that JLL is not in breach of its obligations under this Agreement. This Agreement may also be terminated earlier during the Initial Term or a Subsequent Term in accordance with the provisions set forth in Section 14.1.

JLL will have the obligation to maintain the Product NOC and DIN active in the Territory until completion of Product liquidation under Section 2.3.

2.3 Product Liquidation: Upon expiration or termination of this Agreement for any reason with respect to a Product, Jamp shall be entitled to sell any inventory of the Product on hand at the date of such termination for a period not to exceed the greater of: (i) the remaining shelf life of the Product, or (ii) two (2) years following termination of this Agreement with respect to the Product. JLL shall supply the Product to Jamp to satisfy Firm Purchase Orders received prior to the expiration or termination of this Agreement with respect to such Product. The respective rights and obligations of the Parties set forth in this Agreement for such Product shall continue during the period of Product liquidation. All Products in Jamp's possession after the Product liquidation period contemplated by this Section 2.3 shall be the responsibility of Jamp to dispose of at its own cost and expense and in accordance with all applicable Laws.

For greater certainty, Jamp shall continue to have a perpetual right to manufacture, market, distribute and sell each Product after expiration or termination of this Agreement for any reason for each Product (save and except if said termination is due to Jamp's uncured material breach of this Agreement for each Product).

17. According to sub-clause (a) of 1.1, Jamp acquired a copy of the product dossiers for the territory for each product, to be used to obtain NOC for the relevant products. Sub-clause (b) of 1.1 talks about the fully paid-up, perpetual, royalty free and transferable non-exclusive license, to register, manufacture, market, distribute and sell the products in the territory, which is inclusive of the right to sub-license the following rights to any of the affiliates of jamp or related parties in the territory, or third person retailers in the territory, and this is notwithstanding any termination of the aforesaid agreements. The sub clause further states that such license shall include rights to use, improve, reproduce, modify and copy the product dossiers, and use the formula to manufacture or have manufactured the corresponding products following the end of the initial term or any subsequent term or any earlier termination of this agreement. Sub-clause 1.3 provides for cross license to be provided to Jamp and its affiliates for the initial term or any subsequent term for the said product in the territory. Sub-clause 1.6 envisages that for the initial term or any subsequent term, Jamp Pharma shall be under an obligation to purchase from the plaintiff all its requirements in the territory, and the only exception being the breach of the plaintiff of its undertaking under the agreement. On the aforesaid clauses of the said agreement, it is the argument and contention of the defendants that after the expiry or termination of the agreements, Jamp Pharma, who had an unfettered right to the product dossiers, was at liberty to manufacture the said products on the basis of the dossier through any of its affiliates, including third parties, anywhere in the world, including India, provided the said products were only sold in the territory, which was Canada as provided in the agreement. This Court is of the opinion that when the above sub-clauses are read in conjunction, the following mechanism is deciphered, which the plaintiff and Jamp Pharma had mutually agreed upon in relation to the product dossier and the said products. During the initial

and subsequent term of the agreement, Jamp Pharma was duty bound to purchase the said products from the plaintiff, except in case of breach by the plaintiff. Jamp Pharma had a carte blanche to register, manufacture, market, distribute and sell the products in the territory, which also included, right to sub-license the above rights to any of its affiliates or third parties in the territory. A cross license was also provided from time to time in writing by the plaintiff to Jamp Pharma and its affiliates to do the above acts, provided they were in the territory for the initial term or any subsequent term. Article 2 of the agreement, pertaining to term and termination provided under sub-clause 2.3 that the respective rights and obligations of the parties set-forth in this agreement for such product shall continue during the period of product liquidation, and Jamp Pharma shall continue to have a perpetual right to manufacture, market, distribute and sell the product in the territory after expiration or termination of the agreement. From a bare perusal of the above sub-clauses, the fact of pivotal importance is the term territory, which is running through every sub-clause. Article 15 of the said agreement, which deals with the definition clause, defines territory on page 22061 of volume II of the plaintiff's documents as "territory means the whole of Canada." There is no novation of the agreement or any addendum to the said agreements, or anything to the contrary on record, which shows that the word territory was given an enlarged and expanding meaning. This makes it clear, that territory, which is of paramount importance to the said agreements, is the territory of Canada and none other. It has been brought to the notice of this Court that some of the agreements have expired by efflux of time and dispute pertaining to the nuances of the agreement is pending adjudication before the arbitrator at Canada. This Court is of the considered view that after the expiry or termination of the said agreements, Jamp Pharma is at liberty to do all acts pertaining to the said products on the basis of the product dossier, which include manufacture, market, distribute and sell the same, either through itself or third parties and affiliates, provided it is done within the length and breadth of the territory of Canada. So going by the above reasoning and interpretation of the relevant clauses, it is clear that Jamp Pharma can get the products manufactured using the plaintiff's dossier from any person, as long as the

same is manufactured in the territory of Canada. This implies that the said products cannot be manufactured in India, which is the present case as admitted by the defendants, even after the expiry or termination of the agreements. Defendant No. 4 is a subsidiary of Jamp Pharma, who is said to have shared the product dossier with the other defendants, who are Indian-based companies, manufacturing the products of the plaintiff on the basis of the intellectual property of the plaintiff. The present defendants of the suit are not parties to the license agreements and are also not parties before the arbitrator. This permanent injunction suit will be adjudicated on merits at a later stage on the basis of issues framed and other testimonies adduced. Nevertheless, after deciphering the relevant clauses of the said agreements, this Court will not hesitate in holding that a prima facie case for temporary injunction is made out by the plaintiff at this rudimentary stage.

18. The next ingredient and factor to be considered before granting or confirming ad interim temporary injunction is the principle of balance of convenience. The court ought to weigh the potential harm to both the parties, if the injunction is granted or denied. It has to be ensured that the decision of the court at the nascent stage of the case does not render justice, and maintains the status quo until the final judgement. It is the argument of the defendants that Jamp Pharma had acquired the exclusive rights from the plaintiff to manufacture the said products, and the plaintiff has breached the license agreement, and some of them have expired by efflux of time, defendant No. 4, the Indian subsidiary of Jamp Pharma, has lawfully shared the product dossier with defendant number 1 to 3, for getting the same manufactured in India, and its subsequent sale in Canada. The dispute pertaining to the license agreement is pending adjudication before the arbitrator at Canada. The answering defendants are not selling the said products in India, and only getting them manufactured for sale in Canada, and therefore, there is no copyrights violation or breach of the license agreement, as alleged by the plaintiff. The plaintiff was aware of this fact of the said product being manufactured by the defendant way back in the year 2021, as it is only now, that they have filed this injunction suit for undoing the adverse award, which may be passed against the plaintiff. The conduct of the plaintiff amounts to forum shopping, which cannot be permitted. The

inventory and stock of the said products manufactured by the defendants are lying unsold due to the ex parte ad interim order passed by this Court on 23/08/2024, and because of this, the shelf life of the medicines will expire, which will cause untold commercial losses to the defendants. It has been finally submitted by the defendants that because of the aforesaid reasons, the balance of convenience lies in favour of the defendants. The plaintiff on the contrary has argued that this is a case of copyright infringement by the answering defendants, who are not even a party to the license agreements and arbitration proceedings. It was only Jamp Pharma, the Canadian company, which had acquired the product dossier of the plaintiff vide the license agreements, and the defendants have unlawfully encroached upon the rights of the plaintiff, by manufacturing the said products in India, which is also admitted by the defendant No. 4, and as the term territory means only Canada, the act of the defendants in manufacturing the said products in India is a blatant breach and infringement of the copyrights of the plaintiff. It has been lastly argued that the defendants are the wrongdoer, who have wrongly got access to the product dossiers of the plaintiff, the plaintiff having all the rights to protect his intellectual property, the balance of convenience lies in favour of the plaintiff.

19. The license agreements for the product dossiers of the said products is between Jamp Pharma, which is not a party to the suit and the present plaintiff. The answering defendants are not privity to the license agreements, therefore, they are naturally not a party in the arbitral proceedings between Jamp Pharma and the plaintiff. The license agreements has vested the rights in Jamp Pharma and its associates or third parties to manufacture the said products, provided it is done in the territory, which is Canada, as envisaged in the agreements. Defendant No. 4 has unequivocally admitted in their reply under rule 4 of Order XXXIX that they shared the product dossiers of the plaintiff with the other answering defendants. The license agreements further provide that even after the expiry of the same, territory would only be Canada. The product dossiers of the plaintiff, does qualify as a copyright, and therefore, it warrants protection under the copyrights act. The said product dossiers are not registered as copyrights, however, it is not mandatory for getting the same registered. The act of defendant number 1 to 3 in manufacturing the said products of the plaintiff in India for Jamp

Pharma after expiry of the license agreements adds to the vicissitudes of the plaintiff, and is an affront to the plaintiff's right of copyright protection of the product dossier. The dossiers of the plaintiff is an incorporeal property, to which defendants, who were not privity to the license agreements, should not had access to them, and the act of defendant No. 4, the subsidy company of Jamp Pharma in sharing the product dossiers with the other defendants, falls beyond the scope of the license agreements. This predicament of the plaintiff cannot be adequately compensated by damages, as the defendants as third parties have intruded into the sphere of rights of the plaintiff in an unauthorised manner. The conduct of the plaintiff is not unfair or unethical, whereas, the conduct of the defendants in manufacturing the products by using the product dossier of the plaintiff in an unauthorised manner is transgressing and grossly outrageous. The unsold inventory lying with the defendants are not life-saving drugs, and at the most, it may cause commercial losses to the defendants as admitted by them. The defendants cannot take advantage of their own wrong, as any party who is involved in a wrong ought not to benefit from it. The citation of F. Hoffmann-La Roche Ltd and Ors Vs Cipla Ltd, (148 (2008) DLT598) relied by the defendants are not squarely applicable to the facts of the present matter, as it does not involve lifesaving drugs. In fact the said product of the plaintiff are said to treat hypertension and depression. The plaintiff's right to protect their incorporeal property shall prevail over the commercial interest of the defendant. The said drugs manufactured by the defendants are not life-saving drugs, and therefore a temporary injunction in favour of the plaintiff will not jeopardise public interest. The core issue between the plaintiff and Jamp Pharma, pertaining to the license agreements is pending adjudication before the arbitrator, and the defendants being alien to the said license agreements and the arbitration proceedings, and more so ever, they having the access to the intellectual property of the plaintiff, should be fettered from having access to the product dossiers and selling the unsold inventory, including future manufacture, sale and distribution by them in India through an instrumentality of a temporary injunction. This Court is therefore concomitantly of the view that balance of convenience lies in favour of the plaintiff, and therefore, the arguments by the learned counsel for the defendants on this aspect are fallacious and devoid of merit.

20. The last constituent or ingredient for grant of temporary injunction is irreparable harm. As stated above in the aforesaid reasoning, a prima facie case does exist in favour of the plaintiff for infringement of its copyright. The same is admitted by defendant No. 4 in their reply under rule 4 of order XXXIX CPC. The present suit of the plaintiff is found to be maintainable and cause of action does exist in favour of the plaintiff. The penultimate requirement of balance of convenience also squarely lies in the plaintiff's favour, as discussed in the preceding paragraph. Creation of an intellectual property like patents, trademarks and copyrights involves extensive use of resources, effort and time. Enormous research and intellectual creativity fosters the innovation and creation of an incorporeal property. The product dossiers of the plaintiff is exactly a result of these efforts, and is entitled to adequate protection under the copyrights act. The defendant cannot be permitted to unjustly enrich themselves at the expense of the plaintiff. The sharing of the product dossiers of the plaintiff with the defendants may have led to the incorporeal property of the plaintiff falling in the public domain, which qualifies as an irreparable injury, when looked at from the prism of copyrights law. Vacating the ex parte ad interim injunction dated 23/08/2024 existing in favour of the plaintiff will cause substantive loss to the plaintiff, but its continuation will not prejudice the defendants of the present suit, as they have not stepped into the shoes of Jamp Pharma. Unauthorised access of the defendants to the dossiers of the plaintiff contravenes the relevant provisions of the copyrights act, thereby causing irreparable harm to the plaintiff. Commercial and pecuniary interest of the defendants should necessarily yield to the statutory rights of the plaintiff. The violation by the defendants lead to loss of unique property of the plaintiff, which cannot be recompensed in monetary terms. The harm which may be inflicted on the plaintiff is imminent, and not merely speculative or hypothetical. As the said products are manufactured in India by the defendants, as opposed to being manufactured in the territory of Canada, and information of the product dossier is in the exclusive possession of the defendants, a third party to the license agreement, the probability of the dossiers of the plaintiff falling in public domain, and to the world at large cannot be ruled out. Taking into consideration all these factors, this Court is of the firm view that irreparable harm will be caused to the plaintiff, and not to the defendants. The

defendants being on the wrong side of the law, the arguments advanced by the learned counsels for the defendants being bereft of merit, ought to be dismissed outright.

21. In view of the above discussion, the answering defendants are hereby restrained from reproducing or using in any manner the copyrights protected product dossiers of the plaintiff in relation to the said products, and also for manufacturing, distributing and exporting the said products to any entity. The defendants are also restrained from sharing with any third party, or using directly or indirectly the plaintiff confidential information including the product dossiers in whole or in part for the said products.
22. It is iterated that if the findings given by this Court while deciding the temporary injunction application may have inadvertently touched the merits of the case, it will not have any impact on the final outcome of the suit, which will eventually be decided on the basis of testimonies coupled with strict proof of documentary evidences.
23. The application under Rule 1 and 2 of Order XXXIX of the civil procedure code, and application under Rule 4 of the said order are accordingly decided on the edifice of the above reasoning.
24. Temporary injunction is granted and continued till the final disposal of the main suit.
25. Put up on 09/04/2025 for disposal of the question whether the written statements of the defendants are not filed within the stipulated period under the schedule r/w section 16 of the Commercial Courts Act, 2015.

Date: 25/02/2025

(Kunal Vepa)

Commercial Court No II,
Gautam Buddh Nagar.