

# Vifor (International) Ltd. & Anr vs Macleods Pharmaceuticals Ltd on 6 April, 2023

**Author: Sanjeev Narula**

**Bench: Sanjeev Narula**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CS(COMM) 194/2023  
VIFOR (INTERNATIONAL) LTD. & ANR.

Through: Mr. Dayan Kri  
Advocate with Ms. Vai  
Mr. Rohin Koolwal and  
Desai, Advocates.

versus

MACLEODS PHARMACEUTICALS LTD.  
Through:

Mr. J. Sai Deepak, Mr  
Ms. Harshita Agarwal  
Nautiyal, Advocates.

CORAM:  
HON'BLE MR. JUSTICE SANJEEV NARULA  
ORDER

% 06.04.2023 I.A. 6409/2023(under Order XI Rule 1(4) r/w Section 151 of the Code of Civil Procedure, 1908 ['CPC'] seeking leave to file additional documents)

1. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

2. Plaintiffs, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

3. Disposed of.

I.A. 6410/2023(under Section 151 of CPC seeking exemption) & I.A. 6412/2023(under Section 151 of CPC seeking exemption from filing notarised affidavits)

4. Exemption is granted, subject to all just exceptions.

5. Plaintiffs shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

6. Disposed of.

I.A. 6411/2023(under Section 149 r/w Section 151 of CPC for extension of time for filing court fees)

7. For the grounds and reasons stated therein, the application is allowed. Time period to file court fees is enlarged by a period of one week from today.

8. Disposed of.

I.A. 6413/2023 (under Section 12A of the Commercial Courts Act, 2015 r/w Section 151 of CPC seeking exemption from requirement of pre-institution mediation)

9. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.,<sup>1</sup> exemption from attempting pre- institution mediation is allowed.

10. Disposed of.

I.A. 6408/2023(under Order XI Rule 2 amended by the Commercial Courts Act, 2015 r/w Section 151 of CPC)

11. Issue notice. Mr. G. Nataraj, counsel for Defendant, accepts notice.

12. He seeks and is granted one week's time to file reply to the application. Rejoinder thereto, if any, be filed within a period of three days thereafter.

13. Re-notify on 17th April, 2023 before appropriate bench.

CS(COMM) 194/2023

14. Let the plaint be registered as a suit.

15. Issue summons. Summons are accepted by Mr. G. Nataraj, counsel for the Defendant. Written statement shall be filed by the Defendant within 30 days from the date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

16. Liberty is given to the Plaintiffs to file replication(s) within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiffs, affidavit(s) of admission/denial of documents of the Defendant, be filed by the Plaintiffs, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

17. In the plaint, Plaintiffs have averred as follows:

"43. In the present case, the Defendant appears to be engaged in inter alia the marketing, offer for sale and sale of generic, infringing versions of the Plaintiffs' FERRIC CARBOXYMALTOSE manufactured by a third-party entity. Indeed, the impugned products of the Defendant, at least under the brand IROZORB FCM, appear to have been manufactured by an entity named BDR Pharmaceuticals International Private Limited (hereinafter "BDR"). It is verily believed that the Defendant's impugned product under the brand RUBIRED FCM is also likely to be manufactured by BDR.

44. For the sake of complete disclosure, the Plaintiffs wish to highlight that they have already filed a suit for infringement of the Plaintiffs' patent IN 221536 bearing CS (COMM) No. 505/2022 against inter alia BDR, for its acts of manufacturing, offering to sell and selling infringing FERRIC CARBOXYMALTOSE products under BDR's own brand BDCARBOXY, as well as for manufacturing and supplying the infringing products to third DHC Neutral Citation: 2022/DHC/004454.

parties to be marketed and commercialized by such third parties under their own brand names. The filing of the aforementioned suit was precipitated by a suit instituted by inter alia BDR before the Vadodara District Court seeking a declaration of non-infringement of IN 221536. BDR's Vadodara suit has since been transferred by the Hon'ble Supreme Court to the Delhi High Court and as of the present day, the pair of suits between the Plaintiffs and inter alia BDR remain pending for adjudication before the Hon'ble Delhi High Court."

18. The suit - CS(COMM) 505/2022, is being heard by the Bench of Hon'ble Mr. Justice Amit Bansal. Considering the same, it would be appropriate that the instant suit be heard by the same Bench which is in seisin of CS(COMM) 505/2022.

19. Subject to orders of Hon'ble the Judge in-Charge (Original Side), list the matter along with CS(COMM) 505/2022 before appropriate bench on 17th April, 2023.

I.A. 6407/2023(under Order XXXIX Rules 1 and 2 r/w Section 151 of CPC)

20. Issue notice. Mr. G. Nataraj, counsel for Defendant, accepts notice.

21. He seeks and is granted one week's time to file reply to the application. Rejoinder thereto, if any, be filed within a period of three days thereafter.

22. Re-notify on 17th April, 2023.

SANJEEV NARULA, J APRIL 6, 2023/d.negi