IN THE HIGH COURT AT CALCUTTA
Intellectual Property Rights Division
ORIGINAL SIDE

IA NO: GA-COM/1/2024
In
IP-COM/25/2024

NOCIL LTD
VS
FINORCHEM LTD AND ANR

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

For the petitioner/plaintiff	: Mr. Ranjan Bachawat, Senior Advocate. Mr. Nishad Nadherni, Advocate. Mr. Shounak Mitra, Advocate. Ms. Nisha Austine, Advocate. Ms. Vaibhavi Pandey, Advocate. Ms. Khushboo Jhunjhunwala, Advocate. Mr. Arakadeep Kundu, Advocate. Mr. Bhavesh Garodia, Advocate. Ms. Rakshita Singh, Advocate. Ms. Tiasha Gupta, Advocate.
For the respondent no. 1/ defendant no.1	: Mr. S.N. Mookherjee, Senior Advocate. Mr. Rudraman Bhattacharyya, Senior Advocate Mr. Sidhartha Das, Advocate. Mr. Saptarshi Mukherjee, Advocate. Mr. Akash Munshi, Advocate. Ms. Yamini Mookherjee, Advocate. Mr. Souvik Kundu, Advocate.
For the respondent no.2/ defendant no.2	: Mr. Sourojit Dasgupta, Advocate. Mr. Satyaki Mukherjee, Advocate. Ms. Amrita Panja Moulick, Advocate.
Heard On	: 16.09.2026
Judgment On	: 07.10.2026

Ravi Krishan Kapur, J:

1. The suit is for patent infringement and breach of confidentiality. By this interim application, the petitioner *inter-alia* seeks reliefs on the grounds of infringement of the petitioner's process patents and restraint orders against the respondents misappropriating and misusing any of their confidential information or trade secrets.

2. The petitioner is one of the largest manufacturers of rubber chemicals in India. During the course of business, the petitioner has expended huge sums of money in research and development with the aim of introducing innovation products. In or about 2012, the petitioner had developed a novel invention capable of industrial application comprising of a unique process and method for manufacturing a chemical intermediate i.e. 4-Aminobibhenylamamine (commonly known as 4-ADPA). The product 4-ADPA is a chemical composition used as an anti-oxidant for rubber and polimar applications and as an intermediate in the manufacture of other antioxidants. Subsequently, the petitioner has also improved the efficiency and other key features of 4-ADPA. The petitioner has also registered its patents and earned exclusive rights to use and exploit the same. The petitioner has three patents namely (i) *"AN IMPROVED PROCESS FOR MANUFACTURE OF 4-AMINO DIPHENYLAMINE & ITS N-ALKYLATED PRODUCTS" bearing Indian Patent Number* ***341922****, based on Application Number 2573/ MUM/2012 filed on 5 September 2012 and granted on 17 July 2020.* (ii) *"AN EFFICIENT CONTINOUS PROCESS FOR MANUFACTURE of 4-AMINODIPHENYLAMINE ROM ANALINE NITROBENZENE" filed via PCT*

application no. PCT/ IB2012/ 051829 on 13 April 2012 and nationalized via Indian Patent application Number 1594/ KOLNP/2014 on 29 July 2014 and granted as Indian Patent No. ***366559****.* and (iii) *"IMPROVED PROCESS FOR PREPARING 4-AMINODIPHENYLAMINE" filed on 7 March 2012 through application no. PCT/IB2012/051059 and nationalized Indian Patent application No. 1593/KOLNP/2014 filed on 29 July 2014 granted as Indian Patent No.* ***389262,*** all of which relate to the processes for manufacturing the end product 4-ADPA. The petitioner also enjoys the following equivalent United States (US) registrations i) Suit patent 389262 is equivalent to the petitioner's patent no. US 9708243B and ii) Suit patent no. 366559 is equivalent to the petitioner's patent no. 9102585 granted in the United States.

3. The respondent no. 2 is a Bachelor of Science graduate and had joined the services of the petitioner in 1987 as a 'Production Supervisor'. The respondent no.2 ultimately retired on 30 September 2020 as DGM- Process Technology. After several promotions, the respondent no.2 had been transferred to one of the plants of the petitioner situated at Dahej as Head of operations and was involved in the programme for the development of novel and proprietory processes relating to the manufacture of 4-ADPA. In this regard, the respondent no. 2 had a key role in the development and implementation of the said processes which made him privy to various confidential information and trade secrets. The respondent no. 2 has also entered into a Non-Disclosure Agreement (NDA) with the petitioner dated 11 May, 2012 which specifically refers to 4-ADPA. The NDA records that the

respondent no. 2 was a member of the trade working team on the said project involving unique steps and methods to be tried at the laboratory and a pilot plan before commercialization. All such information relating to the project was the subject matter of secrecy and confidentiality and the respondent no. 2 was contractually bound not to disclose the same.

4. The grievance of the petitioner in the filing of this suit was an Environmental Impact and Risk Assessment (EIRA) Report filed by the respondent no. 1 in relation to its plant where it proposed to manufacture 4-ADPA. Upon receipt of such information and after making enquiries, it transpired that after termination of services, the respondent no. 2 had been engaged by the respondent no. 1 for manufacture of 4-ADPA.

5. Diverse correspondence ensued by and between the petitioner and the respondent nos. 1 and 2 prior to filing of the suit. In fact, upon receipt of the notices from the petitioner, the respondents immediately filed caveats before different Courts. On 19 April, 2024, the respondent no. 1 also applied for a process patent for the same product 4-ADPA. By an order dated 26 November, 2025, the respondent no. 1 was directed to provide proof of the process used by it in manufacturing the product 4-ADPA. On 6 February 2026, the respondent no. 1 also applied for amendment of its patent application which is on record.

6. On behalf of the petitioner, it is contended that the suit patents are old, established and have been subjected to examination against numerous prior arts in different jurisdictions. In any event, the respondent no.1 has failed to discharge the onus under section 104A of the Patents Act, 1970. There is

also nothing to demonstrate that the respondent no.1 had taken any prior step to challenge the patents i.e. "*clear the way*" despite being put on notice. Additionally, the conduct of the respondents has been dishonest and evasive. The respondent no. 1 has also taken inconsistent and irreconcilable positions insofar as its proposed process is concerned. In such circumstances, the balance of convenience is overwhelmingly in favour of orders being passed as prayed for by the petitioner.

7. On the aspect of breach of confidentiality by the respondent no. 2, it is contended that the entire recruitment by the respondent no. 1 of the respondent no. 2 is surreptitious. There is no statement on oath by the respondent no. 2 and all affidavits have been filed by one Mr. Pugalia a Senior Manager of the respondent no. 1, who could possibly not have had personal knowledge of the employment of the respondent no. 2. The respondent no. 1 has knowingly procured breach of the NDA between the petitioner and the respondent no. 2. In such circumstances, there has been breach of confidentiality and misappropriation of trade secrets by the respondent no. 2 in connivance with the respondent no. 1. In support of such contentions, the petitioner relies on the decisions in *Raj Parkash v. Mangat Ram Chowdhry, 1977 SCC OnLine Del 33, John Richard Brady & Ors. v. Chemical Process Equipments P. Ltd. & Anr. 1987 SCC OnLine Del 236, Smith Kline Beecham v Generics UK LTD, [2001] 10 WLUK 610, J Mitra & Co Pvt Ltd v. Kesar Medicaments, 2008 SCC OnLine Del 255, Hi-Tech Systems & Services Ltd. v. Suprabhat Ray & Ors, 2015 SCC OnLine Cal 1192, 3M Innovative Properties Ltd & Anr v. Venus Safety & Health Pvt Ltd.*

2016 SCC OnLine Del 5232, Communication Components Antenna Inc. v. ACE Technologies Corp. and Ors. 2019 SCC OnLine Del 9123, Eisai Co Ltd v Satish Reddy, 2019 (79) PTC 568, Sotefin SA v. Indraprasstha Caner Society 2024 SCC OnLine Del 516, SNPC Machines Private Ltd. and ors. v. Vishal Choudhary 2024 SCC OnLine Del 1681, Mold Tek Packaging Ltd v. Pronton Plast Pack Pvt Ltd 2025 SCC OnLine Del 4883, AstraZeneca AB v Glenmark Pharmaceuticals Europe Ltd, [2025] EWCA Civ 480, Vishal Choudhary v. SNPC Machines Private Ltd. and Ors. Judgment dated 16.01.2026 in FAO (OS) (COMM) 64/2024 and *Zee Teleflims Ltd. and Anr. vs. Sundial Communications Pvt. Ltd (2003) SCC OnLine Bom 344.*

8. On behalf of the respondent no.1, it is submitted that registration does not *prima facie* ensure validity of the suit patents under the Act. The provision of section 104A of the Act relied on by the petitioner is wholly inapplicable. In any event, at this stage, the respondent no. 1 is only required to demonstrate a credible challenge to the validity of the suit patents. There has been an effective challenge to the validity of the suit patents raised by the respondent no. 1 which disentitles the petitioner to any relief. In support of such contentions, the respondent no. 1 relies on the decisions in *Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries, (1979) 2 SCC 511 @ paras 49, 62 &63, Hindusthan Lever Ltd. v. Godrej Soaps Ltd. & Ors. 1996 SCC OnLine Cal 145, Natural Remedies Pvt. Ltd. v. Indian Herbs Research & Supply Co. Ltd. & Ors. 2011 SCC OnLine Kar 4561 @ paras 23 & 71, Alloys Wobben v. Yogesh Mehra (2014) 15 SCC 360 @ paras 6,9,10-*

11,13,18-20,25,26 and Natco Pharma v. Novartis AG & Anr. 2024 SCC OnLine Del 3064 @paras 43-46.

9. On behalf of the respondent no. 2, it is submitted that he was not privy to any confidential information while working with the petitioner and there is no question of sharing any information with the respondent no. 1. The respondent no. 2 is not the named inventor. In fact, during the commissioning process all raw materials and each component process, results were kept coded and was confidential. In such circumstances, all allegations against the respondent no. 2 are vague, uncertain and based on conjectures.

10. There is no quarrel with the proposition that registration of a patent is not *prima facie* validity of that patent. This would be evident from a conjoint reading of sections 12 and 13(4) of the Act. The mere fact that the petitioner has been granted three patents does not automatically mean that the patents are valid. To this extent, the Act marks a significant deviation from the Trade Marks Act 1990 where by virtue of section 31, registration is *prima facie* evidence of validity. This view is also supported by the decisions in *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, (Supra)* and *Hindustan Lever Limted vs. Godrej (Supra)*. Nevertheless, at this *prima facie* stage, the grant of a patent after a rigorous process of examination deserves recognition and should not be outrightly disregarded.

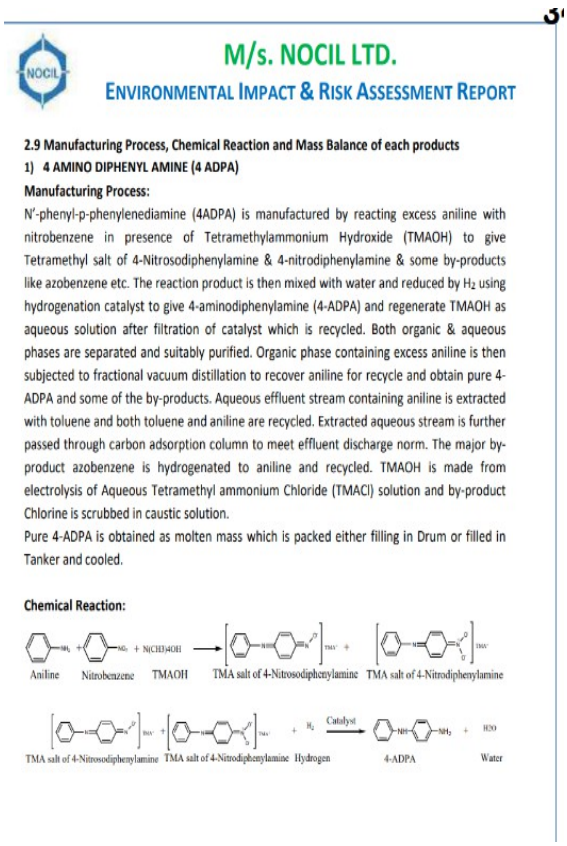
11. Under section 107 of the Act, a defendant is entitled to raise every ground on which a patent is vulnerable to revocation under section 64 of the Act as a ground of defence. To this extent, there is no dispute with the proposition

in *Aloys Wobben v. Yogesh Mehra, (Supra)* cited on behalf of the respondent no.1, that in a suit for infringement, a defendant can always file a counterclaim challenging the validity of the suit patent. At this stage, a defendant is not required to make a full case of vulnerability of the suit patents for revocation. All that it has to do is raise a credible challenge. The onus to establish such challenge is on the respondent no. 1. A credible challenge is a challenge which is not fanciful, illusory or moonshine but must be *prima facie* acceptable. The defence should not be a mere shot in the dark but should have some basis. In such circumstances, the factum of grant of a patent though weighs in favour of the petitioner, it is open for a respondent to raise a sustainable or credible challenge either of invalidity or non-infringment. [*Mold Tek Packaging Ltd v. Pronton Plast Pack Pvt Ltd (Supra), 3M Innovative Properties Ltd & Anr v. Venus Safety & Health Pvt Ltd. (Supra)].*

12. The fact is that the suit patents are old, established and working patents. Such patents have been granted after extensive examinations in India and in other jurisdictions. It is to be assumed that they have fulfilled all the requirements of being patentable inventions. They have been worked and have been commercially exploited without any interruption for years. Thus, even though there is no presumption as to the validity of the suit patents, due weightage must be given to the grant of the petitioner's patents. The undisputed enjoyment coupled with the exclusive user for more than a decade are factors which, at this stage, weigh in favour of the petitioner

patentee. (*Kerr* on *Injunctions* at pages 21 and 22 and *Pratibha M. Singh, on PATENT LAW para 13-038*).

13. For convenience, the two EIRA Reports of the petitioner and the respondent are set out below:



M/s. NOCIL LTD.

ENVIRONMENTAL IMPACT & RISK ASSESSMENT REPORT

2.9 Manufacturing Process, Chemical Reaction and Mass Balance of each products

1) 4 AMINO DIPHENYL AMINE (4 ADPA)

Manufacturing Process:

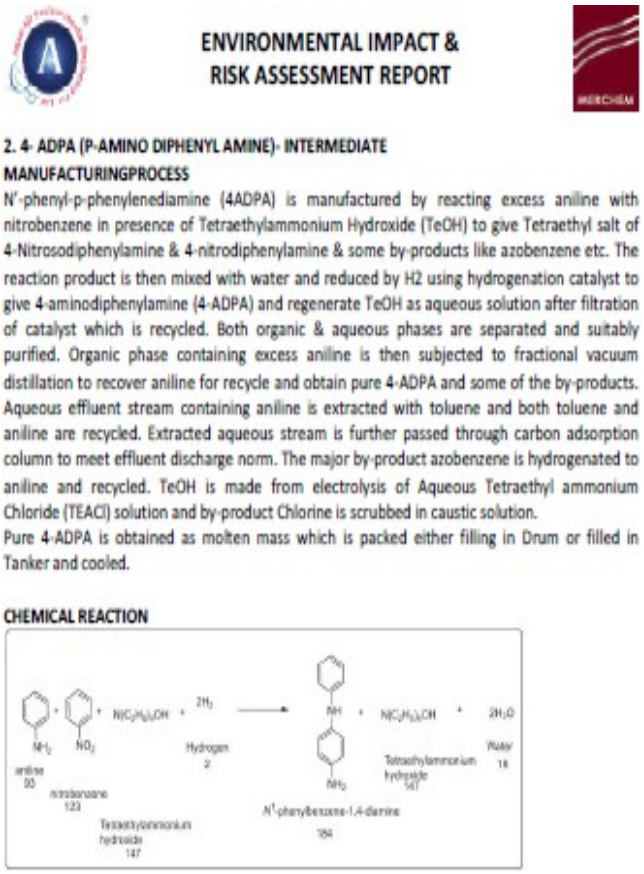
N'-phenyl-p-phenylenediamine (4ADPA) is manufactured by reacting excess aniline with nitrobenzene in presence of Tetramethylammonium Hydroxide (TMAOH) to give Tetramethyl salt of 4-Nitrosodiphenylamine & 4-nitrodiphenylamine & some by-products like azobenzene etc. The reaction product is then mixed with water and reduced by H_2 using hydrogenation catalyst to give 4-aminodiphenylamine (4-ADPA) and regenerate TMAOH as aqueous solution after filtration of catalyst which is recycled. Both organic & aqueous phases are separated and suitably purified. Organic phase containing excess aniline is then subjected to fractional vacuum distillation to recover aniline for recycle and obtain pure 4-ADPA and some of the by-products. Aqueous effluent stream containing aniline is extracted with toluene and both toluene and aniline are recycled. Extracted aqueous stream is further passed through carbon adsorption column to meet effluent discharge norm. The major by-product azobenzene is hydrogenated to aniline and recycled. TMAOH is made from electrolysis of Aqueous Tetramethyl ammonium Chloride (TMACl) solution and by-product Chlorine is scrubbed in caustic solution.

Pure 4-ADPA is obtained as molten mass which is packed either filling in Drum or filled in Tanker and cooled.

Chemical Reaction:

Aniline Nitrobenzene TMAOH TMA salt of 4-Nitrosodiphenylamine TMA salt of 4-Nitrodiphenylamine

TMA salt of 4-Nitrosodiphenylamine TMA salt of 4-Nitrodiphenylamine Hydrogen 4-ADPA Water



ENVIRONMENTAL IMPACT & RISK ASSESSMENT REPORT

2. 4- ADPA (P-AMINO DIPHENYL AMINE)- INTERMEDIATE

MANUFACTURINGPROCESS

N'-phenyl-p-phenylenediamine (4ADPA) is manufactured by reacting excess aniline with nitrobenzene in presence of Tetraethylammonium Hydroxide (TeOH) to give Tetraethyl salt of 4-Nitrosodiphenylamine & 4-nitrodiphenylamine & some by-products like azobenzene etc. The reaction product is then mixed with water and reduced by H2 using hydrogenation catalyst to give 4-aminodiphenylamine (4-ADPA) and regenerate TeOH as aqueous solution after filtration of catalyst which is recycled. Both organic & aqueous phases are separated and suitably purified. Organic phase containing excess aniline is then subjected to fractional vacuum distillation to recover aniline for recycle and obtain pure 4-ADPA and some of the by-products. Aqueous effluent stream containing aniline is extracted with toluene and both toluene and aniline are recycled. Extracted aqueous stream is further passed through carbon adsorption column to meet effluent discharge norm. The major by-product azobenzene is hydrogenated to aniline and recycled. TeOH is made from electrolysis of Aqueous Tetraethyl ammonium Chloride (TEACl) solution and by-product Chlorine is scrubbed in caustic solution.

Pure 4-ADPA is obtained as molten mass which is packed either filling in Drum or filled in Tanker and cooled.

CHEMICAL REACTION

aniline 93 nitrobenzene 123 Tetraethylammonium hydroxide 147 Hydrogen 2 Tetraethylammonium hydroxide 147 Water 18 N1-phenylbenzene-1,4-diamine 184

14. *Prima facie*, there is a striking similarity of the EIRA Reports of the petitioner and the respondent no. 1. There is no merit in the explanation by the respondent no. 1 that its Report was prepared by the same agency. *Prima facie*, a perusal of the two reports would demonstrate that they are virtually identical. Unless the process being used by the respondent no. 1

was identical to that of the petitioner, there could be no reason for such verbatim reproduction. This is no coincidence. The petitioner's EIRA Report being prior in time it is difficult to explain the resemblance of the two reports.

15. In most jurisdictions the Courts now recognize that insofar as patent matters are concerned, if a would be entrant seeks to launch a process which may be covered by an existing patent, it must take steps to *clear the way* i.e. remove all obstacles before commencing its activities rather than waiting to be sued for infringement. This is purely commercial common sense and the most rational thing to do. If there is an obstacle in your way, *clear it out*. The respondent no. 1 has failed to avail any of the statutory remedies available whether by filing a pre-grant opposition under section 25(1) of the Act, filing of a post-grant opposition under section 25(2), filing a suit for declaration that the use of the process does not constitute infringement under section 105, filing a suit for restoration under section 106, or by filing a revocation application under section 64 prior to the filing of this suit and they have failed to do what it could have done to clear the path so that there was little chance for any further action against them. This is also a factor which would weigh with the Court at this *prima facie* stage. [(*Smith Kline Beecham v Generics UK LTD, (Supra), AstraZeneca AB v Glenmark Pharmaceuticals Europe Ltd, (Supra), Eisai Co Ltd v Satish Reddy, (Supra*)].

16. A crucial factor at this stage is the respondent no. 1's initial failure to disclose its process and the inconsistent positions which it has taken during

the hearing of this application. By an order dated 26 November 2025, the respondent no. 1 was directed to provide proof of the process used by it to manufacture 4-ADPA. There are at least three different versions of the processes which the respondent no. 1 has sought to disclose. In its EIRA, the process disclosed by the respondent no. 1 was substantially identical to the process of the petitioner with the only apparent distinction being the use of TeOH and TEMOH as a catalyst. This was false and it was found that the respondent no. 1 proposes to use the same catalyst as that of the petitioner. Subsequently, the process disclosed in the respondent no. 1's application dated 19 April 2024 had been abandoned. Later, the respondent no. 1 had filed an affidavit disclosing its patent application. The process revealed by such application was virtually the same as the petitioner's patent with trifling differences creating an illusion of not infringing the petitioner's patents. This process has also been abandoned by the respondent no. 1. Then again, during the hearing, the respondent no. 1 disclosed the fact that it had applied for amendment of its patent application. The drastic amendments sought by the respondent no. 1 are nothing more than an attempt to evade liability for infringement. For example, the respondent no. 1 had originally disclosed in its patent application that the molar ratio of analyzing aniline to nitrobenzene at the beginning of their reaction is in the range of 6:1 to 10:1, which has been deleted, replacing it with the vague expression of predetermined ratio. This changes raises serious questions regarding the correctness and completeness of the respondent no. 1's earlier disclosure on oath and lends support to the petitioner's contention that the

amendments have been proposed with a view to creating an illusion of differences to avoid the consequences of infringement. By the proposed amendment, the respondent no. 1 has attempted to re-write its original patent application. The proposal to make the second hydrogenation step in its process is optional (which is an inventive feature of the suit patents) is with the intent of avoiding infringement which goes to demonstrate the calculated attempt of the respondent no.1 to disguise the real process being used by the respondent no. 1.

17. An analysis of the two processes reveal that there are a number of common steps in the suit patents which have been adopted by the respondent no.1. Admittedly, the end products in both processes are identical. These steps are as follows:-

A- Reacting aniline with TMAH, distilling aniline water mixture and subsequently adding nitrobenzene for coupling eraction.
B- Use of a series of continuous reactors, including CSTR and Plug flow reactor with continuous water removal.
C- Hydrogenation of coupling reaction products to produce 4-ADPA.
D- Separation of hydrogenation catalyst by filtration.
E- Separating organic and aqueous phases.
F- Recycling aqueous base (containing TMAH) back to coupling reaction of step A.
G- Dehydration and fractional distillation below 130°C to remove water and aniline.
*H- Second hydrogenation for azobenzene reduction****
I- Separating hydrogenation catalyst by filtration
J- Distillation and recovery of 4-ADPA.
K- Addition of MIBK(Methyl Isobutyl ketone)
L- Conversion of 4-ADPA to 6-PPD.

18. The differences attempted to be made by the respondent nos. 1 are the following:

a. *Anilide was removed from D1 in its original application. The same was replaced with general expression with regard to formation of "re-active anilide" and "Anilide-rich mixture" in its amended claim.*
b. *ATFE and FCRFE mentioned are only varieties of continuous flow reactors which are covered by the Suit Patents. The mention of specific reasons by the respondent no. 1 is inconsequential as the suit patents cover use of continuous flow reactors generally.*

c. The respondent no.1 in its amended claim falsely labelled the 2nd hydrogenation step as "optional" to avoid falling foul of a key inventive step of the suit patent while retaining the right to use the same.

19. All such differences or minor variations have been explained in the expert evidence relied on by the petitioner which remains uncontroverted. *Prima facie*, the processes and ingredients are equivalent and so is the final outcome. The governing test in determining infringement is by comparing the claims of the patent with the process employed by the respondent no. 1. It is the pith and marrow i.e. the essential inventive features of the patented process which have to be examined and one does not get lost in the detailed specifications or undertake a meticulous analysis. To this extent, unessential features or trifling variations in an infringing process are to be ignored. The burden of proof to show that the petitioner's patents are most likely to be revoked is on the respondent no. 1. [*Sotefin SA v. Indraprasstha Cancer Society (Supra), SNPC Machines Private Ltd. and Ors. v. Vishal Choudhary (Supra), Vishal Choudhary v. SNPC Machines Private Ltd. and Ors. (Supra) and Raj Parkash v. Mangat Ram Chowdhry, (Supra)].*

20. The alleged prior arts cited by the respondent no. 1 in the background of the suit patents have all been explained and dealt with by the petitioner. Significantly, the challenge to the equivalent US patents of the petitioner has also been dismissed. The European Patents have also been explained. All the cited prior arts have been overcome by the petitioner and have been considered in both the proceedings in India and the USA. Insofar as the aspect of mosaicing is concerned, the legal position is clear, it is not permissible for the respondent no. 1 to rely on different citations to plead

that the process of the patent is known. Thus, it cannot be said that the process of the petitioner is anticipated by any of the prior arts cited by the respondent no. 1. [*J. Mitra And Co. Pvt. Ltd. vs Kesar Medicaments And Anr. (Supra)]*

21. In this context, the decision in *Natural Remedies Pvt. Ltd. v Indian Herbs Research and Supply Company Ltd and Ors. (Supra)* cited by the respondent no. 1 is distinguishable and inapposite. The decision was rendered at the final hearing of the suit and after a full-fledged trial. In addition, it was found that the rival end products were not identical and therefore there was no burden to discharge under section 104(A) of the Act. In the instant case, it is an admitted position that both processes i.e. the one adopted by the petitioner and the one adopted by the respondent no. 1 are in respect of the very same product i.e. 4-ADPA. Once the petitioner satisfies the Court that the products are similar, it is for the respondent to prove that the process used is different from the patented process. This decision is also not an authority for the proposition that validity is to be first established by the petitioner before the burden shifts under section 104(A) of the Act. Such as approach is contrary to the Act and the well settled judicial decisions.

22. Similarly, the decision in *Hindusthan Lever Limited v. Godrej Soaps Limited (Supra)* cited by the respondent no. 1 is also distinguishable. The facts were inapposite. The refusal of injunction was based on a number of factors, namely, that the patent had been granted only recently and had never been worked or commercially exploited. In addition, the validity challenge had been instituted well before the filing of the suit demonstrating that the

defendant had taken steps to '*clear the way*'. There also existed rival expert opinions on the issues in dispute.

23. The conduct of the respondents prior to the filing of the suit and even subsequently has been clandestine. The respondents have been secretive and have not approached the Court with clean hands. This would be evident from the evasive reply of the respondents prior to the suit notwithstanding the enquiries being made by the petitioners. The belated challenge to the invalidity of the suit patents and the fact of not contemporaneously disclosing the relationship between the respondent nos. 1 and 2 are also relevant considerations. In addition, the fact that the respondent no.1 had applied for an identical patent application in April 2024 and that too after a period of 15 months post filing of the suit cannot be ignored. The repeated changes which have been made in the process followed by the respondent no.1 are all factors at this stage which *prima facie* demonstrate the dishonest conduct of the respondents.

24. The NDA to which the respondent no.2 was a party records that he was working in a team on the project involving "unique steps and methods to be tried at the laboratory and pilot plan before commercialization". The circumstances imposing an obligation of confidence are evident from a plain reading of the NDA. All such information relating to the project was the subject matter of secrecy and confidentiality and could not have been disclosed. An employee or ex-employee cannot be allowed to take advantage of the trade secrets and confidential information developed by another and use it for his own gain. All such confidential information and trade secrets

are required to be protected. The respondent no.1 has incorrectly alleged that he was an employee in an administrative capacity and was not involved in technical aspects. This is falsified by a plain reading of the NDA. The NDA specifically refers to the processes involving 4-ADPA and cannot be interpreted as a general agreement. There is sufficient evidence even at this stage to disclose that appraisal and assessment reports have been signed by the respondent no.2. All this relates to the plant operations and the involvement of the respondent no.2 with 4-ADPA. The contention that the respondent no.2 was not a technical person is contradicted by his own qualifications. Similarly, there is nothing to substantiate that the petitioner had copied Chinese processes. The duty to maintain confidentiality by the respondent no.2 is evident from a plain reading of the NDA. The replies of the respondent no.2, his failure to personally affirm any pleading and his evasive conduct regarding the circumstances in the appointment by the respondent no.1 are strong factors indicating that there has been both breach of confidentiality and breach of the NDA by the respondent no.2. In addition, the surrounding circumstances of engagement of the respondent no. 2 by the respondent no. 1 have also been concealed. In such circumstances, the conduct of the parties, the sequence of events, the affidavits and the pre-suit correspondence all of which indicate that the respondents are working together. The facts reveal that the respondents are trying to set up a rival business and operate in manufacturing the same product i.e. 4-ADPA which cannot be ignored. The cumulative impact of all these factors *prima facie* indicate that the respondent no. 1 intended to

procure breach of the NDA. The apprehensions of the petitioner are well founded and there is an imminent danger which cannot be compensated in money. [*John Richard Brady & Ors. v. Chemical Process Equipments P. Ltd. & Anr. (Supra)* and *Hi-Tech Systems & Services Ltd. v. Suprabhat Ray & Ors, 2015 SCC OnLine Cal 1192 (Supra)].*

25. The contention of the respondents that the question of breach of confidentiality and infringement are mutually destructive is also without merit. There is no obligation on the patentee to disclose all information material to the patent. The Act only requires that the complete specification must describe the best method of performing the invention known to the applicant, including the one, which he may have acquired during the period of provisional protection prior to the date of filing the complete specification. (Article 29 of the TRIPS Agreement, Section 10 of the Manual of Patent Office, Practice and Procedure). In *Zee Teleflims Ltd. and Anr. vs. Sundial Communications Pvt. Ltd. (*Supra*),* the Court noted that information can retain the quality of confidence even though some of its constituent elements are themselves available in the public domain.

26. The danger to innovation is all too obvious. The law protects something which would not have existed but for the inventor. Otherwise, it would be more profitable to be a copyist rather than an inventor and that is what the Act seeks to prohibit. Under section 48(b) of the Act, the patentee of a process has the exclusive right to prevent third parties from using the process. Ultimately, this question would have to be finally decided after assessment of the expert evidence at trial.

27. In the above facts and circumstances, the petitioner has made out a strong *prima facie* case for grant of interim reliefs. The respondent no.1 has failed to raise any credible challenge to the validity of the suit patents. The mere filing of a counter claim is insufficient to prevent protective reliefs. Moreso, the records demonstrate that the process disclosed by the respondent no.1 is equivalent and substantially similar to the processes claimed in the suit patents. The differences raised by the respondent no. 1 are minor and inconsequential. The role of the respondent no.2 in accessing the petitioner's confidential information and trade secrets relating to the product 4 ADPA is belied from the available materials on record. The conduct of the respondents in not coming clean, suppressing material facts, taking irreconcilable positions and the failure to make full disclosure are added factors which weigh in favour of the petitioner when balancing the equities. The balance of convenience is in favour of the petitioner and irreparable injury would be caused if interim protection is not granted. There is a conscious risk which the respondents had taken. It is also an admitted position that the respondent no.1 has not yet initiated commercial production. In such circumstances, there shall be an order in terms of prayers (a) and (b) of the Notice of Motion.

28. With the above directions, GA-COM 1 of 2024 stands disposed of.

(Ravi Krishan Kapur, J.)