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**(2020) 08 IPAB CK 0018**

**In the Intellectual Property Appellate Board**

**Case No : M.P. No. 8/2020, OA/46/2020/PT/DEL**

Pharmacyclics, Llc

APPELLANT

Vs

Controller Of Patents, Designs Trademark And Geographical  
Indications Office And Ors.

RESPONDENT

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**Date of Decision : 07-08-2020**

**Acts Referred:**

Patents Act, 1970 — Section 25(2), 25(3), 25(4), 56, 62(4), 117A  
Patents Rules, 2003 — Rule 55(A), 57, 58, 59, 60, 61, 62, 62(4)

**Citation : (2020) 08 IPAB CK 0018**

**Hon'ble Judges :** Manmohan Singh, J;Dr. Onkar Nath Singh, Technical Membe

**Bench :** Division Bench

**Advocate :** Pravin Anand, Archana Shankar, Rajeshwari Hariharan

**Final Decision :** Allowed

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**Judgement**

Manmohan Singh, J

1. The present appeal has been filed by the appellant under Section 117-A of the Indian Patents Act, 1970 against the Impugned Order dated

04.03.2020 issued under Section 25(2) by the Joint Controller of Patents & Designs, Patent Office, New Delhi by revoking Indian Patent no. 262968

(1642/DELNP/2009) of the appellant.

2. The said appeal as stay application came before IPAB on 10.06.2020. Notice was issued in the main appeal for final hearing on 09.07.2020.

3. After hearing both sides, the interim order was passed on 12.06.2020 till the order is vacated or modified.

4. The said order was challenged by the respondent no. 3 before the Hon'ble High Court of Delhi by filing of Writ Petition no. W.P. (C) 3582/2020.

The same was disposed off on 17.06.2020. Paras - 8 to 10 of above Order dated

17.06.2020 of the Hon'ble Court are reproduced hereunder:-

8. IPAB has given a short date. The matter is coming up for hearing on 9.7.2020.

9. Keeping in view the facts and circumstances of the case it would be appropriate that the petitioner, if it so desires, can move an appropriate

application for vacation of the interim order before IPAB where all the submissions urged before this court may be raised. In case such an application

is filed IPAB is requested to deal with the same as per law as expeditiously as possible.

10. It is also directed that on the next date of hearing before IPAB, namely, on 9.7.2020 respondent no. 3 shall not seek any adjournment.

5. No counter-affidavit was filed by the respondents.

6. An application for adjournment was filed by the respondent no. 3 on the ground that counsel was unwell. The same was not opposed. The stay

application and main appeal were adjourned to 24.07.2020.

7. The respondent no. 3 did not file any reply or an application for vacation of order dated 12.06.2020 as per directions of the High Court as per time granted.

8. On 22.07.2020, an application was filed by the respondent no. 3, by stating that the appeal be heard by Chairman and Technical Member (Patent)

who is now appointed. Reply to the stay application was also filed for vacation of order dated 12.06.2020.

9. The main appeal, stay application and fresh application were taken up. As far as main appeal is concerned, it was agreed that the same be

adjourned. The Technical Member is yet to join.

10. After some discussion, both parties have agreed to argue the stay application. Counsel for the respondent no. 3 did not agreeable for continuation

of interim orders. Thus, no option to hear the stay application.

11. So, both parties made their submissions. The order was reserved.

12. The present order is passed in continuation of order dated 12.06.2020 passed by IPAB.

13. In order to decide the present application, it has become necessary for the appellant to make out a prima facie case and balance of convenience

and injury are to be in favour of appellant, if any, to be explained.

14. The appeal is fixed for final hearing on 14.08.2020.

15. Now, it is to be examined as to whether interim order should continue during the hearing of appeal and till the final order is passed or not.

16. Let us first give the details of Opposition Process:-

17. In the present case, parties admittedly completed their respective evidence under rules 57 to 61 of the Act after the completion of pleading. There

is no provision or rule to produce new evidence once the hearing to be conducted by the parties except there is a small window of sub rule 4 of Rule

62 where either party is allowed to rely on any publication at the hearing by giving notice to the other party and to controller not less than five days

notice of his intention with details of such publication.

18. In the reply, it is stated on behalf of respondent no. 3 that the appellant has mislead IPAB for listing the appeal on urgent basis. Non-present of

two members of the Opposition Board not fatal. It does not matter if the additional evidence and rebuttal evidence is not sent to the Opposition Board.

In rest of reply, the respondent no. 3 has denied all the averments made in the stay application. The prayer is sought to vacate the order. Counsel for

the respondent no. 3 has supported the impugned order and made her submissions in the stay application on the same line.

19. Mr. Pravin Anand, learned counsel appearing on behalf of appellant has refuted all the arguments addressed on behalf of respondent no. 3. It is

also inter-alia that the patent in question is a strong and robust patent. He has referred many documents and pleadings in support of his submission and

also pointed out many irregularities in the impugned order. He has argued that the respondent no. 2 has ignored the mandatory provision of the Act by

not sending the additional and rebuttal evidence to the Opposition Board, and has also ignored the High Court order as all Members of Opposition

Board at the time of hearing are not present. It is stated by him that all issues are decided in favour of appellant by the Opposition Board. The

respondent No. 2 has confirmed the report but the issue of obviousness was decided against the appellant. He has referred few decisions in support of

his submission. It is also submitted by him that the issue of obviousness is mixed question of law and fact and particularly once the respondent no. 2

has decided the issue of novelty in favour of appellant by holding that it is novel invention, the findings of obviousness ought to have been decided in

favour of appellant as per settled law. He has also tried to make his submission

on merit in the appeal, but told him that it would amount to decide the main appeal itself thus both counsel should restrict their submissions only to extend of the stay application.

20. Two issues which are necessary and argued by both sides are as to whether the respondent No. 2 has ignored the mandatory provisions of Act as

raised on behalf of the appellant by not sending the additional and rebuttal evidence to the Opposition Board and secondly attendance of Opposition

Board Members are required under the law and as per order of the Hon'ble High Court. At this stage, we have to give our prima facie views.

21. In order to understand the situation in the present case as far as the issue of Opposition Board and mode of hearing to be conducted and dealing

with additional evidence, it is become necessary to refer the mandatory provision of Sub-section 3 of Section 25 of The Patent Act, 1970 and Rule 60-

62 of the Patents Rules, 2003

Sub-section 3 of Section 25 of The Patent Act, 1970

(3)(a) Where any such notice of opposition is duly given under sub-section (2), the Controller shall notify the patentee.

(b) On receipt of such notice of opposition, the Controller shall, by order in writing, constitute a Board to be known as the Opposition Board consisting

of such officers as he may determine and refer such notice of opposition along with the documents to that Board for examination and submission of its

recommendations to the Controller.

(c) Every Opposition Board constituted under clause (b) shall conduct the examination in accordance with such procedure as may be prescribed.

Rule 60 - 62 of The Patents Rules, 2003

60. Further evidence to be left with the leave of the Controller.--No further evidence shall be delivered by either party except with the leave or

directions of the Controller:

Provided that such leave or direction is prayed before the Controller has fixed the hearing under rule 62.

61. Copies of documents to be supplied.--[(1) Copies of all documents referred to in the notice of opposition or in any statement or evidence filed in

connection with the opposition and authenticated to the satisfaction of the Controller, shall be simultaneously furnished in duplicate unless the

Controller otherwise directs.

(2) Where a specification or other document in a language other than English is referred to in the notice, statement or evidence, an attested translation

thereof, in duplicate, in English shall be furnished along with such notice, statement or evidence, as the case may be.

62. Hearing.-- (1) On the completion of the presentation of evidence, if any, and on receiving the recommendation of Opposition Board or at such

other time as the Controller may think fit, he shall fix a date and time for the hearing of the opposition and shall give the parties not less than ten days'

notice of such hearing and may require members of Opposition Board to be present in the hearing.

(2) If either party to the proceeding desires to be heard, he shall inform the Controller by a notice along with the fee as specified in the First Schedule.

(3) The Controller may refuse to hear any party who has not given notice under sub-rule (2).

(4) If either party intends to rely on any publication at the hearing not already mentioned in the notice, statement or evidence, he shall give to the other

party and to the Controller not less than five days' notice of his intention, together with details of such publication.

(5) After hearing the party or parties desirous of being heard, or if neither party desires to be heard, then without a hearing, and after taking into

consideration the recommendation of Opposition Board, the Controller shall decide the opposition and notify his decision to the parties giving reasons

therefore.]

21.A. Admittedly before hearing of opposition by the respondent No. 2 Hon'ble High Court of Delhi on 20/11/2019 in the writ-petition filed by the

appellant being No. 12105/2019 has passed the detailed order. Para 33, 38-43 of the order is reproduced:

33. The further evidence under Rule 60, thus, has to be prior to the hearing notice being given. The permission to cite any further documents is

restricted to publication five days before the hearing. These two provisions, in the overall scheme of the Act and Rules, ought to be treated as

exceptions and not the rule. In respect of any further evidence given by either party under Rule 62 and publication cited at the hearing, the Opposition

Board would not have had an opportunity to look at the same. Thus the presence

of the Members of the Opposition Board at the hearing is permitted

in order to ensure that these documents are also discussed in the presence of the Opposition Board.

38. All these provisions clearly go to show that enormous sanctity is placed on the two-stage decision making process in a post-grant opposition. Since

by the time post-grant oppositions are filed and adjudicated, the patent application has already gone through rigorous examination along with pre-grant

oppositions, if any, post-grant oppositions are passed through two stages i.e. the Opposition Board and the Controller. The endeavour of all parties and

the patent office ought to be ensure that all documents and evidence pass through the two-stage process.

39. Therefore, the following general principles out to be followed while dealing with a post-grant opposition:

i) The Opponent and the Patentee have adequate freedom to file their initial pleadings and evidence by relying upon all the documents and expert

testimonies that they wish to.

ii) The opponent's rejoinder in Rule 59 ought to be strictly confined to the Patentee's evidence.

iii) Once the Opposition Board is constituted and the material is transmitted to the Board, further evidence is not permissible.

iv) Under Rule 60, if any further evidence comes to light which either party wishes to rely upon, the same can only be done prior to the issuance of

notice of hearing, with the leave of the Controller.

v) Under Rule 62(4), only publicly available documents i.e. publications, can be considered provided they are served to the opposing party, five days

prior to the hearing and the date/time of the publications as also the relevant portions are highlighted, so that the opposite side can deal with the same

at the time of hearing. Any document the authenticity of which is in doubt would not be entertained;

vii) The hearing in the opposition would be usually granted upon request and Opposition Board Members may also be present in order to elicit their

views and assist the Controller in deciding the post-grant opposition.

40. In the background, the last question that arises is whether, if a hearing is adjourned, further evidence out to be permitted or not prior to the next

hearing. Clearly from the scheme of the Act, filing of further evidence would not

be permissible after the first notice of hearing is issued. Thus, in terms of Rule 60, the hearing as contemplated in the said Rule would be the first notice of hearing. Such an interpretation would ensure that parties do not unduly delay the hearing of oppositions by seeking adjournments and utilising the adjourned period to dig up more evidence, especially as such evidence would in any case have not been considered by the Opposition Board.

41. The filing of further evidence prior to the hearing or reliance on publications under Rules 62(4) would not ordinarily permit an adjournment of the hearing. In the Controller's discretion within a reasonable time parties may be permitted to support their oral arguments with written submissions which would again be transmitted simultaneously and would not again be treated as documents to which responses can be filed.

42. Though the Rule does not stipulate any timelines for fixing the date of hearing considering the patent rights have a limited term the Opposition Board ought to give its recommendations within three months after the final Opponent's rejoinder is received under Rule 59. After the receipt of the recommendations of the Opposition Board a hearing ought to be fixed within three months thereafter. An endeavour ought to be made by the Patent Office to ensure the post-grant oppositions are decided expeditiously as pendency of post-grant oppositions delays adjudication of infringement suits, if any, in respect of the patent and also keeps the rights of the Patentee under a cloud or in doubt.

43. In the present case, the matter has already been fixed for final hearing on 22nd November, 2019. The Opponent has filed documents and evidence prior to the hearing and Patentee sought an adjournment of the hearing accordingly. However, now the Patentee has had an opportunity to responded to all the documents and evidence filed by the Opponent - which the Opponent has already done. Thus, this Court does not deem it appropriate to direct non-consideration of the said further evidenced filed by the parties. The decision would now be rendered by the Controller after taking into consideration all the pleadings, documents and evidence including the additional evidence filed by the parties on record.

22. In the present case, the report/recommendation of the Opposition Board was submitted on 23.02.2017. On the basis of report on 14.09.2017, the respondent no. 2 appointed hearing for 16.11.2017 as per Rule-62. The

procedure that time for production of evidence by the opponent and patentee and reply evidence of opponent under Rules 58 to 59 is completed. Rule-60 gives one more chance to the parties to produce further evidence to be left with the respondent no. 1 and 2. Once the date of hearing under Rule-62 is fixed under the scheme of the Act, the request for further evidence can not be accepted except as provided under Rule 62(4) to both parties if any of the party intends to reply on any publication of the hearing already mentioned in the notice, not less than five days notice of his intention together with the details of such publications. If Rule 62 is read in meaningful manner, the language is very clear that the said rule it is not akin to the Rule 60. Rule of 62 merely allows any party before hearing of opposition before 5 days to rely upon the publication. However, once the hearing is fixed under Rule 62, Rule 60 cannot be invoked as per scheme of the statute and no further evidence is to be filed by any party.

23. In the present case when the date of 16.11.2017 was fixed, none of the parties has availed the option at Rule 62(4) of the Act.

24. However, after adjournment when the matter was fixed again for 25.09.2019, the respondent no. 3 filed seven additional documents, as further evidence by way of affidavit of Dr. B.M. Chaudhery. The respondent no. 2 has heavily relied upon the said affidavit in the impugned order.

25. It is not denied that it was not merely publication to be relied upon but by the respondent no. 3 but also filed detailed affidavit of Dr. Chaudhery.

The said liberty was available to any party if Rule 62(4) is read. Thus no evidence or additional evidence may be filed under Rule 62(4) except

publication. The additional evidence in the present case was filed on 10.09.2019. therefore, it is to be considered as to period of 2 years is extendable

at the time of final hearing even for reliance of publication ground of sufficient cause is shown and any publication relied under Rule 62(4) filed prior to

the hearing has to be highlighted and the details under Rule 62(4) would mean the date of publication, name of publication and exact portion to be

relied upon.

26. Rule-62(4) is to be treated as exception and not a rule as observed by the Hon'ble Delhi High Court in para-33 of the judgment in W.P. No.

12105/2019 filed by the appellant. The Hon'ble High Court of Delhi in W.P. No. 12105/2019 has allowed the additional and rebuttal evidence in the

present case and we are bound by the said order.

27. In paras 39-42 of the order, it is observed by the court that in the present case, the Court did not go into merits of the evidence and publication filed

and permitted the Patentees/Appellant to raise all legal arguments with regard to the merits of the case, including that the evidence is beyond the

pleadings at the hearing and left it for the Controller to decide.

28. The Appellant in their written submission as well as at the hearing before Respondent no. 2 clearly stated as under.

The Patentee had filed writ petition before the Hon'ble High Court in W.P. No. 12105 of 2019. Pursuant to the directions, the Hon'ble Judge directed

the proceedings to take place on the scheduled date. Upon seeking clarification from the Court by the Patentee, the Hon'ble Judge clarified that

preliminary issues with regard to the evidence being time barred can be raised by the Patentee before the Controller of Patents. Further, the Hon'ble

Judge clarified that the Patentee is open to raise preliminary issues in relation to the submissions/evidence being beyond the pleadings. The Court was

of the view that the Learned Controller should decide these issues.

29. The only explanation given by the counsel appearing on behalf of respondent no. 3 that it may be due to shortage of time and it does not matter of

additional and rebuttal evidence not sent for discussion by the Members of Opposition Board. It is also stated that it is not mandatory that all Members

must be present at the time of final hearing being procedural part.

30. We do not agree with the said submissions as we are of view that mandatory provisions of the Special Act are not be ignored. The respondent no.

2 was to follow the provisions of the Act strictly and to follow the High Court order. The finding at page no. 45 of the impugned order is not

acceptable when the respondent no. 2 held that he has not sent the additional and rebuttal evidence to the Opposition Board as this would take another

six months and delay the proceedings. The said findings are against the law and direction of the High Court.

31. The respondent No. 2 has not considered the said aspect as raised. We will consider the same in the civil order after hearing both parties. In para

- 33, it was also observed that in case any further evidence is filed under Rule 60 and publication under Section 62(4), the presence of Opposition

Board member is permitted to ensure that the documents are discussed in

Opposition Board. However, the same has not happened in the case.

32. We are not aware and even no valid reasons are mentioned in the impugned order why the respondent No. 2 has not followed the mandatory

provision and direction of the court despite of having awareness about the pendency of suit for infringement of same patent in the High Court filed by

the appellant against the respondent no. 3. Under the Statute once the patent is revoked after acceptance of post grant of patent the suit proceedings

would be closed. The suit and interim application are not pending against the respondent no. 3 but other suits are pending where the injunctions were

operating against the third parties. Therefore, all the more reason the respondent No. 2 ought not have been more careful about the mandatory

provisions of the Act and directions of the court.

33. The second issue is that the time of hearing, all members of the Opposition Board were not present, except one Examiner, Shri Proful Kumar

Manwatkar. In the impugned order, it did not mention any reason about their absence. In para - 25, the Hon'ble High Court clearly held that the

scheme of Rules envisages that the Opposition Board ought to consider all the pleadings and documents prior to giving recommendation and timelines

provided by the Rules has to be followed strictly.

34. Constitution of Opposition Board

Section 56 mandates for constitution of opposition board in all opposition proceedings. There is a valid purpose behind it because three members are to

submit a report with reasons to each ground taken in the notice of opposition with its recommendation. In the present case all three members have

given their report by recommending after consider each and every ground on merit in favor of appellant. Under Sub Rule 5 of Rule 62, mandates that

the Controller shall decide the opposition after taking into consideration the recommendations of Opposition Board and giving reasons thereof.

35 The scheme of Rules 55(A) to 63 is a two stage decision making process:

The first Stage 1 is where the reference to the Opposition Board of all pleadings and evidence for the purpose of recommendation in its report and the

other is Stage 2 is the decision to be rendered by the Controller after receiving the recommendation of the Opposition Board. It is rightly observed in

paras - 29 and 38 of the order dated 20/11/2019 of Hon'ble High Court of Delhi.

36. It is a cardinal rule of interpretation that the language used by the Legislature is the true depository of the legislative intent and that the words and phrases occurring in a Statute are to be taken not in isolated but are to be read together and construed in the light of the purpose and object of the Act

itself and when context makes the meaning of a words quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings.

37. After the order passed by the Court, the matter was taken up by the respondent No. 2. It was the admitted position that two members of the Opposition Board were not present at the time of hearing.

38. Supreme court order in SLP no. 34504-34505/2012 in respect of Cipla vs. UOI while dealing with Patents Act held as under:-

Provisions of the Act and the Rules, therefore, clearly indicate that the Opposition Board has to make its recommendations after considering the

written statement of opposition, reply statement, evidence adduced, by the parties with reasons on each ground taken by the parties. Rule 62 also

empowers the Controller to take into consideration the reasons stated by the Opposition Board in its Report. In other words, the Report of the

Opposition Board has got considerable relevance while taking a decision by the Controller under Section 25(4) of the Act read with Rule 62(5) of the

Rules.

Section 25(3)(b) read with Rule 56(4) cast no obligation on the Opposition Board to give a copy of the Report to either of the parties. So also no

obligation is cast under Section 25(4) or under Rule 62 on the Controller to make available the report of the recommendation of the Opposition Board.

It was also held as under:-

Considering the fact that the report of the Opposition Board can be crucial in the decision making process while passing order by the Controller under

Section 25(4), principle of natural justice must be read into those provisions

In view of judgment of the Hon'ble Supreme Court, prima facie we feel that there is no force in the argument of counsel for the respondent No. 3 that

the report of Opposition Board has no relevance as it is for the Controller only to take the decision.

39. On the contrary, in the impugned order the Respondent No. 2 states the following:

The Opposition Board has not considered all the matters in this much detail and therefore though I have read the recommendations, I have not agreed with the Board on this issue. After the recommendations of the Board have come, there were further affidavits filed by both parties. I have not sent all of this to the Board once again as this would consume another 6 months and delay the proceeding. This is also not necessary in procedure and none of the parties have requested for this also. Therefore I thought it fit to give sufficient opportunity to both parties to file all their documents and then I have considered the same.

40. Therefore, prima facie, we are of the view that mandatory provisions are ignored as well as observations of the Hon'ble High Court in the order dated November 20, 2019 passed in W.P. (C) 12105/2019 in Pharmacyclics LLC vs. UOI. In para 33 of judgment it was observed as under:

Thus, the presence of the Members of the Opposition Board at the hearing is permitted in order to ensure that these documents are also discussed in

the presence of the Opposition Board.

Admittedly the respondent No. 2 did not invite the members of the Opposition Board let alone the Chairman Mukesh Kumar Jangid (Chairman of Opposition Board); Rewa Bhardwaj (Examiner & Member of Opposition Board) and only a member of the Opposition Board Praful Manwatkar was present.

41. The Respondent No. 2 heard the main hearing in the absence of members of the opposition board, which was mandated by the writ court, order dated November 20, 2019.

42. With regard to impugned patent, it is stated by Mr. Praveen Anand that the Indian Patent IN 968 is a strong and a robust patent, being first of its kind. He has referred few bullet points in support of his submission. The same are:

- (a) Breakthrough/ground-breaking invention - 1st BTK inhibitor.
- (b) 1st irreversible BTK inhibitor (BTK was not even a validated target to begin drug discovery program).
- (c) Corresponding patent has been granted over 87 countries as per Form-3.
- (d) Ibrutinib is the first of its kind irreversible BTK inhibitor to be approved by any regulatory agency in the world. Marketing approval obtained in 45

countries including US, BR, China, Chile etc.

(e) IN '968 patent is an "old patent" and 14 years of the patent term are already over. The said patent relates to a new chemical entity and has not been invalidated in any of the countries.

The Opposition Board recommendation is in favour of the appellant.

#### 43. ABOUT THE INDIAN PATENT AS PER APPELLANT

(a) The IN '968 patent covers, amongst other compounds, a compound having an International Non-Proprietary Name (INN), IMRUTINIB (WHO

Drug Information, Vol. 27, No. 1, 2013, the API active pharmaceutical ingredient (API) of the drug IMBRUVICA ®, that is useful for the treatment of disease associated with B-cell malignancies.

(b) Indian Patent No. 262968 is in relation to irreversible BRUTON TYROSINE KINASE (BTK) inhibitor.

(c) The amino acid sequence in the binding domains compared in Figure 1 of the patent specification.

44. The respondent no. 3 has its own case of merit. We do not wish to decide the case of parties on merit, otherwise it amounts to decide the appeal

itself. But one thing is very clear from the facts that corresponding patent has been granted over 87 countries of the world as per Form-3. It is alleged

that the impugned patent is an old patent and in years patent terms are expired and the same relates to a new chemical entity and it has not been

invalidated in any countries as per counsel. No doubt, the Opposition Board and respondent no. 2 have confirmed its novelty.

45. The issue of obviousness is decided by the respondent no. 2 against the appellant. It is argued by Mr. Pravin Anand that it is settled that it is a

mixed question of law and fact as held in the case of Bishwanath Prasad Radhey Shyam Vs. Hindustan Metal Industries (AIR-1982 S.C. 1444) and

in the case of Roche V/S. Cipla Ltd. However, the respondent no. 2 in para - 46 determined that it is a factual issue.

46. The test obviousness has been discussed in various precedents like Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. BDR

Pharmaceuticals International Pvt. Ltd. & Anr. (para 36) wherein it is observed that test of deciding obviousness in India is pretty much in sync with

universally accepted laws. Prima facie, at this stage, We do not wish to express any opinion on this issue. At the time of final hearing after hearing

both parties, we will decide this issue without the influence of this order.

47. We do not wish to comment anything at this stage, otherwise it will harm the case of one of the parties but we are of the opinion at this stage that

the appellant has made a prime facie case for grant of stay is made out. The balance of convenience is in favour of the appellant and against the

respondent no 3. As far as principles of injury is concerned, if the interim order is not continue, the proceedings in all suits filed against the respondent

no 3 and third party would not continue. Therefore the appellant has made a case of injury.

48. In the light of above, the prayer made in the application is allowed. The interim order passed on 12.6.2020 shall continue till the appeal is finally

decided. Our findings are tentative in nature and shall have no bearing when the appeal is decided on merit.

49. The application is decided accordingly.

50. List the appeal for hearing on 14/08/2020 along with fresh application filed by the respondent no. 3. The appellant is given 10 days time to file

reply.