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

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**LPA 358/2017, CAV No.473/2017 &
CM Nos.17884-886/2017**

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Date of decision : 12th May, 2017

NATIONAL PHARMACEUTICALS PRICING AUTHORITY
& ANR

..... Appellants

Through : Mr. Kirtiman Singh, CGSC
with Mr. Prateek Dhanda, Adv.

versus

MODI-MUNDIPHARMA PVT LTD

..... Respondent

Through : Mr. Akhil Sibal, Sr. Adv. with
Mr. Salil Seth, Adv

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

Caveat No.473/2017

Caveator is represented and has been heard. The caveat is discharged.

CM No.17886/2017 (Exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM No.17884/2017 (Condonation of delay of 92 days)

1. Notice.
2. Mr. Salil Seth, Advocate accepts notice for the respondent.
3. Having regard to the nature of the application, counsels are orally heard on this application seeking condonation of delay.
4. We are satisfied that the appellants were prevented by sufficient cause from presenting the appeal within the statutory period of limitation. Thus, the delay of 92 days is condoned.

This application is allowed.

LPA 358/2017 & CM No.17885/2017 (Stay)

1. It appears that an order dated 9th May, 2016 was issued by the appellants herein under the Drug (Price Control) Order No.S.O.1687(E) regarding the respondent's product *TRAMADOL* Tablet by which its ceiling price was fixed, it being one of the scheduled formulations. The respondent sent a representation dated 16th May, 2016 *inter alia* contending therein that the formulation was not covered under the *National List of Essential Medicines 2015*.
2. By a letter dated 3rd June, 2016, appellants herein sought information regarding the respondent's formulations which was furnished on 16th June, 2016. The appellants again conveyed to the respondent that the *TRAMADOL* Tablet was covered under the *National List of Essential Medicines 2015* vide its order dated 5th July, 2016.

3. Unfortunately, the respondent's review application with regard to these findings of the appellants under para 31 of the Drug (Price Control) Order 2013 was filed beyond the stipulated 30 days period. The appellants rejected the review for this reason by the order passed on 19th September, 2016.

4. The respondent's rejection thereto was also not favourably considered resulting in filing of the WP(C)No.11802/2016. This writ petition was accepted by the Id. Single Judge by an order passed on 19th December, 2016 holding that the respondent herein had rendered sufficient explanation for not being able to file the review petition within the stipulated time period of 30 days.

5. The present appeal has been filed by the appellants assailing the order dated 19th December, 2016 passed in WP(C)No.11802/2016 whereby the Id. Single Judge had directed hearing of the review petition of the respondent on merits by the Appropriate Authority of the appellant.

6. Today, the respondent is represented before us by Mr. Akhil Sibal, learned Senior Counsel. We are informed by both Mr. Sibal, Senior Counsel and Mr. Kirtiman Singh, Id. Standing Counsel for the appellants that since the passing of the order dated 19th December, 2016, the respondent has once again invoked the jurisdiction of the Id. Single Judge having filed CM No.8215/2017 on 27th February, 2017 wherein the respondent has contended that the appellants have failed to comply with the directions of the Id. Single Judge made as back as

on 19th December, 2016 and that the delay is causing grave and irreparable prejudice and hardship to it. In view thereof, the respondent has prayed for an order by the Id. Single Judge directing adjudication of the writ petition itself on merits, instead of relegating the consideration on merits to the Authority constituted by the respondent.

7. Mr. Kirtiman Singh, CGSC submits that the Id. Single Judge has already issued notice of the application and that the application is listed before the Id. Single Judge listed on 19th May, 2017. The Id. CGSC has handed over a copy of the application which is taken on record. It is further submitted by Mr. Kirtiman Singh, CGSC that the appellants also have no objection if the matter is heard on merits before the Id. Single Judge and that this submission would be made on 19th May, 2016 when the matter is listed.

8. In view of the above, it is evident that the order dated 19th December, 2016 deserves to be set aside and quashed. Furthermore, for expediency, an order permitting hearing of the writ petition on merits deserves to be passed today.

9. Learned counsels for both sides joined in submitting that they would make a request before the Id. Single Judge for an expedited hearing. If so requested by both parties, the Id. Single Judge may favourably consider the request of expeditious hearing after taking into account the urgency in the matter.

In view thereof, we direct as follow:

(i) The impugned order dated 19th December, 2016 is set aside and quashed and W.P.(C)No.11802/2016 is remanded for hearing to the Id. Single Judge.

(ii) The parties shall appear before the Id. Single Judge on the 19th of May 2017 when the Id. Single Judge would pass appropriate directions regarding hearing of the writ petition on merits.

This appeal is allowed in the above terms.

Dasti to parties.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

MAY 12, 2017

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