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

+ **W.P.(C) 4589/2018**

CADILA HEALTHCARE LIMITED Petitioner

Through: Mr. Sanjay Jain, Sr. Advocate.

versus

UNION OF INDIA AND ANR. Respondents

Through: Ms. Maninder Acharya, ASG.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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01.05.2018

1. At the outset, Mr. Sanjay Jain, learned senior counsel, on instructions, says that, for the moment, the prayer made in the writ petition is confined to challenge being made to the Minutes of Meeting (MOM) dated 26.2.2018 and the order dated 9.3.2018, passed by respondent no.2/NPPA.

2 The record shows that respondent no.2/NPPA had fixed a ceiling price of the subject formulation i.e. Co-Trimoxazole Tablets vide notification dated 14.02.2017 which was reviewed by the Government of India (GOI), Ministry of Chemical & Fertilizers, Department of Pharmaceuticals vide order dated 24.08.2017. While passing the order, GOI had noticed the grievance articulated by the petitioner and

the response of respondent No. 2/NPPA to the same. That part of the order wherein this aspect is noticed is extracted hereafter:-

<i>Sl. No.</i>	<i>Company's Grievances</i>	<i>NPPA's comments</i>
1.	<i>Company has stated that NPPA has not considered PTR of their formulation Oripim DS Tablet in calculation of the ceiling price for Co-trimoxazole tablet (Sulphamethoxazole 800mg + Trimethoprim 160mg). Company has also pointed out that PTR considered for SEPTRAN DS 800/160 MG TABLET 10 is not correct.</i>	<i>NPPA has considered the PTR for Co-trimoxazole tablet (Sulphamethoxazole 800mg + Trimethoprim 160mg) as per data provided by Pharmatrac for the month of August, 2015 and fixed the ceiling price Rs. 0.98 per tablet as per the provisions of DPCO, 2013.</i>

3. The record also shows that based on the decision taken at the meeting held on 26.2.2018 via the impugned order dated 9.3.2018, respondent no.2/NPPA communicated to the petitioner that its review petition had been closed. Pertinently, in the MOM of 26.02.2018, the following is noticed qua the petitioner:

9(vi)	31015/33/2017-Pricing dated 24.8.2017	Cadila Healthcare Ltd	Co-trimoxazole [Sulphamethoxazole (A)+	Rs.0.96 per tablet	no change	The petitioner company has not furnished all the documents as per OM dated 13.4.2017. In the absence of adequate information, it was decided to close the case.
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4. Being aggrieved, the petitioner has approached this court by way of the instant writ petition.

5. It is the contention of the petitioner that the order is without jurisdiction as respondent no.2/NPPA has not carried out the mandate of GOI as communicated to it vide order dated 14.02.2017. In this behalf, learned senior counsel for the petitioner has drawn my attention to the principal grievance of the petitioner which was noticed by GOI in its order dated 14.02.2017, to which a reference is made in paragraph 2 above.

5.1. Learned counsel for the petitioner emphasised the fact that a perusal of the order dated 24.8.2017 would show that because the grievance of the petitioner was not dealt with, appropriately, the GOI was constrained to direct respondent no.2/NPPA to examine the documentary proof submitted by the petitioner and, only thereafter, re-fix the ceiling price of the subject formulation, albeit, after verification and based on merits.

6 As would be noted from the grievance articulated by the petitioner in the earlier round before the GOI, its main objection to the ceiling price fixed by respondent no.2/NPPA was that it had not factored in the Price to Retailer (in short “PTR”) of its formulation, which went by the name: Oriprim DS Tablet.

6.1. The petitioner’s grievance, it appears, is that, respondent no.2/NPPA has, in fact, taken into account the PTR of another formulation known as SEPTRAN DS 800/160 MG TABLET, which

is not the subject formulation.

6.2 This apart, the petitioner also takes the stand that since it has more than 1% of the market share, under the provisions of the extant DPCO, 2013 (2013 DPCO), respondent no.2/NPPA is required to consider the documentary evidence placed before it by it.

6.3 In addition thereto, it is also the petitioner's contention that under paragraph 9 of the 2013 DPCO, respondent no.2/NPPA is empowered to seek data only for previous 6 months. Thus, according to the petitioner, respondent No. 2/NPPA could not have sought data for August 2015. It is further contended on behalf of the petitioner, that despite this limitation, the petitioner, on its own volition, has provided the data even for August 2015.

6.4 In any event, according to the learned counsel for the petitioner, since the data is available in public domain, respondent no.2/NPPA should be in a position to collect the same from the website known as "PharmaTrac".

7. Ms. Acharya, learned ASG, on the other hand, says that under the provisions of paragraph 4 of the 2013 DPCO, the petitioner is required to furnish the PTR pertaining to retailers and since the same was not furnished, the petitioner's review petition was closed. According to Ms. Acharya, respondent no.2/NPPA was unable to deal with the review petition as the invoices which were placed on record

by the petitioner were those of the stockists and not the retailers and therefore, the necessary exercise in terms of OM dated 13.4.2017, could not be completed.

7.1 Ms. Acharya, on instructions, says that if the necessary documents are furnished by the petitioner, which should include the invoices generated by the retailers of the petitioner's stockists, respondent no.2/NPPA would be able to revisit the impugned decisions which were taken on 26.2.2018 and 9.3.2018.

8. Thus, having regard to the submissions made by the learned counsel for the parties, the writ petition is disposed of with the following directions:

- (i) The decision taken at the MOM dated 26.2.2018 and the communication dated 9.3.2018 are set aside.
- (ii) Respondent no.2/NPPA will revisit the review petition filed by the petitioner.
- (iii) The petitioner will furnish the sample invoices (which would include invoices for August 2015) generated by its stockists qua its retailers. In addition to the documents already furnished to respondent No. 2/NPPA. The sample invoices referred to above will be furnished by the petitioner within the next two weeks.
- (iv) Respondent no.2/NPPA will be free to write to the petitioner to furnish further information and upon receipt of such communication, the petitioner will endeavour to supply the same within the shortest possible time.

(v) Respondent no.2/NPPA will attempt to dispose of the review petition as expeditiously as possible, though, not later than 4 weeks from the date when the requisite information is made available by the petitioner.

(vi) Respondent No. 2/NPPA will pass a speaking order, which will deal with all contentions raised by the petitioner.

8. Pending the aforesaid exercise, by respondent no.2/NPPA, no coercive steps will be taken against the petitioner.

9. Needless to say, in case, the order passed by respondent no.2/NPPA is contrary to the interest of the petitioner, it will have the liberty to assail the same in the manner known to law. In such an eventuality, the interim protection granted to the petitioner by this order, will extend for a period of one week from the date when respondent no.2/NPPA passes its order.

10. *Dasti.*

RAJIV SHAKDHER, J

MAY 01, 2018/cks