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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5228/2018**
DATT MEDIPRODUCTS PRIVATE LIMITED Petitioner
Through Ms. Aparna Jain, Adv.

versus

DRUGS CONTROLLER GENERAL (INDIA) Respondent
Through Mr. Ripu Daman Bhardwaj, Adv. for
R-1 & 3

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% 16.05.2018

CM APP No. 20238/2018

1. Allowed, subject to just exceptions.

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2. Issue notice. Mr. Bhardwaj accepts notice on behalf of respondents no.1 and 3

3. For the moment, no notice needs to be issued to the remaining respondents which include two official respondents, i.e. respondents no.2 and 4. The reason being that I intend to issue directions to respondents no.1 and 3 to inquire into the representation dated 21.3.2018 made by the petitioner via its advocate.

4. Learned counsel for the respondents no.1 and 3 says that insofar as the other two official respondents are concerned, necessary inputs will be obtained from them before concluding the enquiry.

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5. The petitioner has approached this Court, principally, on the ground that its competitors, i.e. respondents no.5 to 7 (hereafter referred to as “private respondents”) are selling drugs, medical products/devices with misleading labels.

6. The complaint, in particular, pertains to drug/medical device referred to as: NPWT-NEGATIVE PRESSURE WOUND THERAPY Dressings/Wound Drainage Kits/ Canisters/ MAPC Tubing/Y Connector.

7. According to the petitioner, the aforementioned drug/medical product/device falls in Schedule C of Drugs and Cosmetics Act, 1940.

8. It is alleged by the petitioner that respondent no.5 is selling aforementioned drug/medical product/device in collaboration with respondent no.7 without the necessary license and by mislabelling the said products.

9. It may be relevant to note that the petitioner had approached this Court earlier by way of a writ petition under Article 226 of the Constitution. This writ petition was numbered as W.P.(C) 9169/2016. The said writ petition was finally disposed of vide order dated 6.11.2017.

9.1 Just prior to the said order, whereby the writ petition was disposed of, the licences of respondents no.5 and 6 were suspended for a period of three months spanning between 27.11.2017 and 26.2.2018. The record shows that, since, according to the petitioner, the infraction continued, a review petition was filed.

9.2 The review petition which was numbered as 54/2018, however,
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came to be dismissed on 13.2.2018.

9.3. The principal ground on which the review petition was dismissed was that the name of the manufacturer was mentioned on the labels.

9.4 The prayer made by the petitioner in the review petition that respondents no.5 and 6 ought to be restrained from selling mislabelled products was, thus, rejected.

10. Ms. Aparna Jain, who, appears for the petitioner says that the drug/medical product/device manufactured and sold in the market bear on their packaging, a non-existent license number and the endorsement 'CE' with due approval.

10.1 According to the petitioner, the licence number given on the products reads as: "ALW/Mfg./2017/001"

10.2 It is the petitioner's case that no such license is in existence. For this purpose, my attention is drawn to page 107 of the paper book. The said document is an internet download from the website of Medical and Health Department, Govt. of Rajasthan.

10.3 Besides this, the petitioner also contends, as alluded to above, that respondent no.5 is selling the aforementioned drug, medical product/devices with the endorsement CE, with the view to delude customers into believing that it has the approval of the European Union.

10.4 Leaned counsel for the petitioner says that, even though, a representation in this behalf has been made to the official respondents as recently as on 21.3.2018, no inquiry has been made with respect

to the allegations contained therein against respondents no.5 to 7/private respondents.

10.5 According to the counsel for the petitioner, the continued illegality in the conduct of the respondent No. 5 to 7/private respondents have the potentiality of putting the lives of the ultimate consumer to great peril.

10.6. Learned counsel for respondents no.1 and 3 says that he would have no difficulty if a direction is issued by this Court that an enquiry be made in the matter.

11. Accordingly, the writ petition is disposed of with the directions to respondents no.1 and 3 to enquire into the allegations levelled against respondent No. 5 to 7/private respondents by the petitioner as contained in its representation dated 27.3.2018.

12. While conducting the inquiry, respondents no.1 and 3 shall interface with other official respondents as also respondent No.5 to 7/private respondents against whom allegations has been made.

12.1. The principles of natural justice will be followed before any conclusion is reached either way.

12.2 The inquiry will be concluded with due expedition, though, not later than eight weeks from the receipt of the copy of this order.

13. Pending application shall stand disposed of.

14. *Dasti.*

RAJIV SHAKDHER, J

MAY 16, 2018

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