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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5928/2018**
WALTER BUSHNELL LABORATORIES PVT LTD

..... Petitioner

Through Mr. C.S. Vaidyanathan, Sr. Adv with
Mr. Manoj, Ms. Aparna Sinha and
Ms. Vasundhra Singh, Advs

versus

UNION OF INDIA AND ANR

..... Respondents

Through Mr. Sanjeev Narula, CGSC with Ms.
Anumita Chandra, Adv for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **29.05.2018**

C.M. Appl. No. 23150/2018

1 Allowed, subject to just exceptions.

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2 Issue notice.

2.1 Mr. Narula accepts notice on behalf of the respondents.

3 In view of the order that I propose to pass, Mr. Narula says that he does not wish to file a counter affidavit in the matter.

4 The substantive prayers made in the writ petition are as follows:

“(a) Pass a writ, order or direction in the nature of certiorari or any other writ, order, or direction of like nature by quashing and setting aside the impugned order cum show cause notice dated 26.09.2016/5.10.2016, impugned order dated 23/25.1.2018 and impugned demand notice dated 17.4.2018/ 19/4/2018 issued by the National Pharmaceutical Pricing Authority.

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(b) Pending the admission, hearing and final disposal of the present writ petition, stay and suspend the operation and implementation of the impugned demand notice dated 17.4.2018 / 19/4/2018 issued by the National Pharmaceutical Pricing Authority.

(c) Pending the admission, hearing and final disposal of the present writ petition, retrain the Respondents from taking any coercive steps against the Petitioner pursuant to the impugned demand notice dated 17.4.2018/ 19/4/2018 issued by the National Pharmaceutical Pricing Authority.”

5 Briefly, it is the case of the petitioner that the ceiling price fixed for the sale of Nitrofurantoin 100 mg tablet by respondent No. 2/NPPA under the DPCO of 2013 cannot be applied to Nitrofurantoin Modified Release Dosage Forms 100 mg tablet.

6 To be noted, the said drug is sold by the petitioner under the brand name MARTIFUR 100 mg tablet and MARTIFUR MR 100 mg tablet respectively. It is the petitioner's say that despite clarifications having been issued in that behalf by the Department of Pharmaceuticals, respondent No. 2/NPPA has issued the impugned demand.

7 Mr. Vaidyanathan, Sr. Advocate, who, appears on behalf of the petitioner, for this purpose, *inter-alia*, draws my attention to the minutes of meetings held on 21.08.2013, 29.08.2013 and 03.09.2013, convened by the Department of Pharmaceuticals (see Annexure P-5,

page 127 of the paper book) and Office Memorandum dated 06.12.2013, issued by the Government of India, Ministry of Health and Family Welfare (see Annexure P-8, page 136 of the paper book).

7.1 Mr. Vaidyanathan also submits that several requests have been made to respondent No. 2/NPPA for according a personal hearing in the matter.

8 Mr. Narula says that in view of the above, if the petitioners were to apply for a review under the concerned DPCO, the respondents will accord an opportunity in that behalf. Furthermore, Mr. Narula says that a personal hearing will be given to the authorised representative of the petitioner. Counsel also submits that pending the aforementioned exercise, no coercive measure will be taken qua the impugned demand.

9 Mr. Narula, however, wishes to emphasize that the entire case of the petitioner is pivoted on NLEM, 2011 which has been superseded by NLEM, 2015. Furthermore, learned counsel says that all rights and contentions of respondent No. 2/NPPA should be kept open. It is also Mr. Narula's contention that the petitioner should be put to notice that if he does not file its review within the time frame indicated below, the respondents will be free to enforce the demand.

10 I have heard the arguments advanced by learned counsel for the parties and perused the record.

11 Accordingly, the writ petition is disposed of with the following directions:

- (i) The petitioner will file a review within two weeks from the date of receipt of this order.
- (ii) Pending the said exercise, no coercive measures will be taken against the petitioner qua the impugned demand.
- (iii) The rights and contentions of both the parties are kept open.
- (iv) In case the petitioner does not move respondent No. 2/NPPA within the timeframe stipulated above, the interim protection granted by this Court shall stand dissolved.
- (v) Lastly, in case the petitioner is aggrieved by the final determination made by respondent No. 2/NPPA, it will have the liberty to assail the order in accordance with law.

12 Furthermore, it is also made clear that the observations made above will not impact the merits of the case.

13 Pending application shall stand closed.

RAJIV SHAKDHER, J

MAY 29, 2018

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