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

+ **W.P.(C) 3335/2015 and CM No. 5984/2015**

M/S. HESA PHARMACEUTICA Petitioner
Through: Mr R. Sudhinder and Ms Prerana
Amitabh, Advocates.

versus

NATIONAL PHARMACEUTICAL PRICING
AUTHORITY & ANR Respondents
Through: Mr Vikram Jetly, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **02.11.2018**

1. The petitioner has filed the present petition, *inter alia*, impugning a demand notice dated 05.01.2015 (hereafter 'the impugned notice') issued by respondent no.1/National Pharmaceutical Pricing Authority (hereafter 'NPPA') calling upon the petitioner to pay a sum of ₹82,41,518/- as interest on the amount overcharged by the petitioner.
2. The petitioner is a manufacturer of pharmaceutical products. It is stated that the petitioner, has charged a price in excess of the ceiling price fixed for the formulation 'Propynate E Cream 30 GM.'.
3. According to the respondents, it is estimated that the petitioner had collected an aggregate sum of ₹80,68,675/- in excess of the ceiling price from the consumers in respect of the subject formulation. In this regard, NPPA had issued a show cause notice dated 26.03.2013 calling upon the

petitioner to provide the quantitative details of the subject formulation manufactured and sold by the petitioner. The notice also indicated that NPPA had estimated that the petitioner had overcharged an aggregate sum of ₹51,33,582/- in excess of the ceiling price during the period from January 2008 to December 2012.

4. The petitioner had responded to the said notice by furnishing the requisite details. The same indicated that the petitioner had overcharged a sum of ₹80,68,675/-.

5. Admittedly, the petitioner had already paid the amount of ₹80,68,675/- prior to the issuance of the impugned notice. The controversy involved in the present petition relates to the demand for interest at the rate of 15% per annum. In addition, the petitioner also claims that it is entitled to an adjustment on account of dealer margin at the rate of 16%.

6. Although, the petitioner claims that he is entitled to an adjustment of dealer margin, the petitioner has, nonetheless, paid the amount as estimated by NPPA (that is, ₹80,68,675/-). Admittedly, both the aforesaid issues – that is, whether the petitioner is entitled to adjustment on account of dealer margin and is liable to pay interest – are covered by the earlier decisions of a Coordinate Bench of this Court in ***Best Laboratories Pvt. Ltd. v. Union of India and Ors.: 2011 (124) DRJ 390*** decided on 30.05.2011 and ***Shimal Investment and Trading Co. v. Union of India and Ors.: W.P.(C) 3125/2001, decided on 21.10.2013***. In terms of the said decisions, the demand for interest can only be made once the petitioner fails to pay the amount as demanded within the specified period as indicated in the

impugned notice.

7. In the present case, the petitioner had already paid a sum of ₹80,68,675/- prior to the issuance of the impugned notice and therefore, no interest is payable.

8. Mr Jetly, learned counsel appearing for respondents contends that in *Best Laboratories Pvt. Ltd. (supra)*, this Court had followed the decision of a Division Bench of Allahabad High Court in *T.C. Healthcare Pvt. Ltd. V. Union of India: W.P.(C) 33753, decided on 20.04.2010*. He states that the respondents have preferred an SLP against the said decision, which is pending before the Supreme Court. He further states that the decision of this Court in *Shimal Investment and Trading Co. (supra)* was also appealed against before the Division Bench of this Court in LPA 859/2013 which is also pending consideration before the Division Bench.

9. Be that as it may, since the issues are covered by the decisions of a co-ordinate bench of this court, the petition is liable to be allowed.

10. In view of the above, the present petition is allowed and the impugned notice is set aside. NPPA is directed to re-compute the aggregate amount payable after adjusting the amount of dealer margin.

11. The petition is disposed of. The pending application also stands disposed of.

VIBHU BAKHRU, J

NOVEMBER 02, 2018RK