

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9246-2013 (O&M)
Date of Decision:-14.02.2019.

M/s Ind-Swift Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate and
Mr. Paramveer Singh, Advocate for the petitioner.

Mr. Alok Kumar Jain, Senior Panel counsel for
Union of India-respondent Nos.1 and 2.

Mr. Shubham Jain, Advocate for
Mr. Suman Jain, Advocate for respondent No.4.

ARUN MONGA, J. (Oral)

The present petition has been filed seeking, *inter alia*, issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 27.09.2007 (Anexure P-1) passed under the Drugs (Prices Control) Order, 1995, whereby, the respondent No.2 has determined the price of the Multivitamins and Mineral Tablets being manufactured by the petitioner-Company.

2.) Learned Senior counsel for the petitioner contends that under the Drugs (Prices Control) Order, 1995 hard and soft gelatin capsules are described as distinct products. Learned Senior counsel further submits that

both these are manufactured under distinct and separate processes and are commercially different products. However, while passing the impugned order dated 27.09.2007 (Annexure P-1), the National Pharmaceutical Pricing Authority has clubbed hard and soft gelatin tablets together for the purpose of price fixation. Learned Senior counsel further submits that fixation of the price of soft capsules has to be higher than the hard capsules. He further contends that the impugned order dated 27.09.2007 (Annexure P-1) passed by the National Pharmaceutical Pricing Authority is non-speaking in nature as it does not contain any reason for clubbing the prices of the hard and soft capsules.

3.) I have gone through the impugned order dated 27.09.2007 (Annexure P-1) passed by the National Pharmaceutical Pricing Authority. Upon its perusal, I, *prima facie*, am of the opinion that the contentions of the petitioner-Company have been given a short shrift while determining the price fixation of the hard and soft capsules.

4.) In the additional affidavit dated 06.03.2018, the stand taken by the respondents is that the present writ petition has been filed without exhausting the remedy of review under Rule 22 of the Drugs (Prices Control) Order, 1995. Learned counsel for respondents submits that the above contentions can be examined and decided in review by the competent authority. The learned Senior counsel appearing for the petitioner, under instructions from Mr. Vibhav Jain, Advocate, states that the petitioner has no difficulty in filing the review as per the objection taken by the respondents and would be doing the needful within a period of 2 weeks from today.

therefore, direct, that upon the petitioner's filing of review petition, the respondent No.2 shall pass a speaking order by dealing with the petitioner's contentions; and give his decision stating reasons thereof.

6.) It is made clear that respondent No.2 shall pass the fresh order on the review petition without being prejudiced by the order dated 05.04.2010 (Annexure P-9), which has been impugned herein. Let the needful be done expeditiously, as possible after the filing of the review petition.

7.) Till the passing the fresh order, pursuant to the filing of review petition, the operation of the impugned order dated 27.09.2007 (Annexure P-1) and the recovery notices dated 14.10.2008, 23.12.2008, 22.03.2010, 06.07.2010, 26.05.2011 and 06.02.2013 (Annexures P-2, P-6, P-8, P-11 Colly, P-14 and P-24, respectively) shall remain stayed.

8.) Disposed of accordingly.

(ARUN MONGA)
JUDGE

February 14, 2019.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.