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

+ **W.P.(C) 80/2018 & CM APPL. 370/2018**

TORRENT PHARMACEUTICALS LTD. Petitioner

Through Mr Ashish Verma, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through Mr Vinod Diwakar, CGSC with
Mr Sayandeep Pahari, Mr Radhika Ray, Advocate
for NPPPA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **25.03.2019**

1. The petitioner has filed the present petition, *inter alia*, impugning a demand notice 14.12.2017 (hereafter 'the impugned notice') issued by respondent no.3 (National Pharmaceutical Pricing Authority – NPPA).
2. By the aforesaid impugned notice, the petitioner has been called upon to deposit a sum of ₹2,23,16,013/- inclusive of interest upto 15.12.2017. The impugned notice has been issued on the premise that the petitioner has charged an amount in excess of the ceiling price for its formulation "Alprax 0.25 mg Tablets, 10's" containing "Alprazolam 0.25 mg". It is alleged that the ceiling price for the said formulation was fixed at ₹1.03 per tablet, which translates to ₹15.45 for a strip of 15 tablets. As against the aforesaid amount, the petitioner is alleged to have charged ₹18.18 per strip of fifteen tablets. It is relevant to note that the aforesaid allegation pertains to the period with

effect from 01.04.2016.

3. It is stated that the said formulation (Alprazolam) was deleted from the National List of Essential Medicines, 2015, which was incorporated as Schedule I to the Drugs (Prices Control) Order, 2013 (DPCO, 2013), with effect from 10.03.2016.

4. Undisputedly, the formulation in question ceased to be a scheduled formulation with effect from the said date. In the aforesaid circumstances, the NPPA could not have enforced a ceiling in the said formulation. Notwithstanding that a ceiling price could be fixed for the said formulation, the manufacturers were, nonetheless, restrained – in terms of paragraph 20 of the DPCO, 2013 – from increasing the Maximum Retail Price (MRP) of the said formulation beyond 10% of the prevailing MRP during the preceding twelve months. It is the NPPA's contention that by the Office Memorandum dated 06.04.2016, the price of the formulation as fixed by a notification dated 02.03.2016, was frozen for a further period of one year from 01.04.2016.

5. The ceiling price, as fixed by the notification dated 02.03.2016 (being S.O. 644 (E)), would have come into effect from 01.04.2016. However, the said ceiling price did not come into effect as prior to the said date, the formulation in question was deleted from Schedule-I to the DPCO, 2013.

6. The issue whether the NPPA could issue the office Memorandum dated 06.04.2016 was considered by this Court in ***Alembic Pharmaceuticals Limited v. Union of India and Ors.: W.P. (C) 11391/2017 decided on 08.02.2019***, wherein this Court held that the said Office Memorandum dated 06.04.2016 was without jurisdiction. Concededly, the controversy involved

in the present petition is squarely covered by the decision of this Court in *Alembic Pharmaceuticals Limited* (*supra*). Thus, for the reasons stated therein, the present petition is allowed and the impugned demand notice dated 14.12.2016 is set aside.

7. The petition and the pending application are disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

MARCH 25, 2019

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