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

+ **W.P.(C) 5450/2019**

M/S D. M. PHARMA

..... Petitioner

Through: Mr Adil Alvi with Ms Barnali,
Advocates.

versus

ADDITIONAL COMMISSIONER NORTH DELHI

MUNICIPAL CORPORATION

..... Respondent

Through: Ms Puja Kalra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **17.05.2019**

CM APPL. 23909/2019

1. Exemption is allowed, subject to all just exceptions
2. The application stands disposed of.

W.P.(C) 5450/2019 and CM APPL. 23908/2019

3. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent not to recover any amount paid by the respondents for the drug *Syp. Ofloxacin 50mg + Ornidazole 125 mg (each 5 ml)*.
4. The petitioner states that manufacture and sale of the said Fixed Dose Combination (FDC) was proscribed by a notification dated 07.09.2018 issued under Section 26A of the Drugs and Cosmetics Act, 1940. However, prior to that, the respondent had issued a notice inviting tenders for the supply of the said FDC. The petitioner had participated in the said tender and made the supplies as required. However, in view of the subsequent

notification, the respondent called upon the petitioner to lift the stocks already supplied and the petitioner had complied with the said direction.

5. It is the petitioner's case that no deduction could be made by the respondent from payments due to it, since at the material time, the said FDC was permitted and it was supplied at the instance of the respondent. It is contended that the loss on account of the ban imposed must necessarily be borne by the respondent.

6. It is seen from the above that the disputes raised by the petitioner relate to the contractual arrangement between the parties and there is no element of public law involved in this dispute.

7. In view of the above, this Court does not consider it apposite to entertain the controversy in this petition. The petition is, accordingly, disposed of. The pending application is also disposed of.

8. The petitioner would be at liberty to institute appropriate action with regard to the said dispute. It is clarified that all rights and contentions of the parties are reserved.

VIBHU BAKHRU, J

MAY 17, 2019

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