

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.801 OF 2014

The Chemists And Druggists Association ...Petitioner
Goa rep. By its General Secretary.

Versus

Competition Commission of India rep. By ... Respondents
its Registrar And 6 Ors.

Mr A. F. Diniz, Senior Advocate *with Mr Gaurish Agni, Advocate
for the Petitioner.*

Mr Venkatesh A. Nayak Salatry, Advocate *for the Respondent No.1.*

Mr Pravin Faldessai, Deputy Solicitor General of India *for the
Respondent No.3.*

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE,JJ.**

DATED : 6th DECEMBER, 2022

ORAL ORDER:

Heard Mr A. F. Diniz, Senior Advocate who appears alongwith
Mr Gaurish Agni, learned counsel for the petitioner, Mr Salatry,
learned counsel for the respondent no.1. Mr Pravin Faldesai, learned
Deputy Solicitor General of India appears for respondent no.3.

2. The challenge in this petition is to the orders made by the Competition Commission of India (CCI) under Sections 27 and 43 of the Competition Act, 2002 (said Act).

3. Rule was issued in this petition on 23.10.2015 but all preliminary objections raised by the respondents were kept open. Accordingly, we heard Mr Salatry on the preliminary objections. He submitted that the petitioners have alternate and efficacious remedy before the Appellate Tribunal constituted under Chapter VIII-A, which includes, inter alia, Sections 53-A and 53-B of the said Act. He pointed out that an appeal will lie to the Appellate Tribunal constituted under Section 53-A of the said Act against any directions issued or decision made or order passed by the CCI inter alia under Section 37 and 43 of the said Act.

4. Mr Salatry pointed out that at the time when this petition was entertained, then, the Appellate Authority had been constituted, the same was not functional. Mr Diniz, learned counsel clarifies that the Appellate Authority was constituted almost 10 days after the petition was instituted. Be that as it may, there is no dispute that presently the Appellate Authority is functional.

5. We find merit in the objection now raised by Mr Salatry but at the same time we cannot be oblivious to the position that Rule was issued in this petition on 23.10.2015. Therefore, we dispose of the petition by granting leave to the petitioners to avail of the alternate and efficacious remedy available to them under Chapter VIII-A of the said Act. Mr Diniz, on instructions, states that the necessary appeals will be instituted within 4 weeks from today. Mr Salatry states that if the appeals are indeed instituted within 4 weeks from today, then no objection based on limitation will be raised and the respondents would consent to the disposal of the appeals on their own merits. These statements are accepted as statements made to this Court.

6. The petitioners have already deposited in this Court an amount of ₹25 lakhs in terms of our order dated 23.10.2015. It was subject to the deposit of this amount that an interim order was made staying the impugned orders and their execution. Now that we are relegating the petitioners to the alternate remedy, it is only appropriate that the interim relief granted by us on 23.10.2015 continues for a period of 8 weeks from today to enable the petitioners to seek interim relief from the Appellate Authority. The amount of ₹25 lakhs to continue to remain deposited in this Court

for the present. However, this amount, will ultimately abide my such orders as the Appellate Authority may deem appropriate to make in this regard.

7. All contentions of all parties including contentions based on jurisdictional issues are expressly left open. However, this will not include the liberty to oppose petitioner's appeals on ground of limitation, provided, the petitioners institute the appeals within 4 weeks from today.

8. This petition is disposed of in above terms without any order for costs.

9. All concerned to act based on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

MARIA SUZANA REBELLO
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