

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2102 OF 2024

Piramal Pharma Limited

... Petitioner

Versus

State of Maharashtra & Ors.

... Respondents

Mr. Jitendra Motwani i/b. Economic Laws Practice for the Petitioner.

Ms. Shruti D. Vyas, Addl. G. P. a/w. Mr. Sachin H. Kankal AGP for State.

ASHVINI
BAPPASAHEB
KAKDE

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ASHVINI
BAPPASAHEB KAKDE
Date: 2024.03.23
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CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 20th MARCH, 2024

P.C.

1. We have heard learned Counsel for the parties.
2. This Petition is filed praying for the following substantive reliefs:-

“(a) That this Hon'ble Court be pleased to issue a writ of certiorari or order or directions in the nature of certiorari or any other writ, order or direction of like nature, to call for, examine and quash and set aside the Impugned Letter No. FLR 112022/4303/E/Desk-6 dated 23.01.2024 (Exhibit @ hereto) issued by the Respondent No. 3;

(b) That alternatively this Hon'ble Court be pleased to issue a writ of mandamus or order or directions in the nature of mandamus or any other writ,;

i. directing the Respondent No. 3 to withdraw the Impugned Letter No. FLR 112022/4303/E/Desk-6 dated 23.01.2024 (Exhibit Q hereto);

ii. directing the Respondent No. 3 to change the name on the RS - II License from Hemmo Pharmaceuticals Pvt. Ltd. to Piramal Pharma Limited in view of the NCLT Order dated 12.08.2022 and IA Order dated 27.03.2023;

iii. directing the Respondent No. 4 to permit the Petitioner from clearing its Ethanol consignment which is presently

lying at warehouse of ASLPL and transport the same to the Petitioner's manufacturing facility located at Turbe without payment of the "Special Fees" in view of the Stay Order dated 16.03.2017 as passed by this Hon'ble High Court in WP No. 2560 of 2017 and IA Order dated 27.03.2023.

(c) That pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to direct the Respondent No. 4 to permit the Petitioner from clearing its Ethanol consignment which is presently lying at warehouse of ASLPL, and transport the same to the Petitioner's manufacturing facility located at Turbe without payment of the "Special Fees".

(d) Ad-interim relief in terms of the prayer clause (c) above;

(e) For costs of this petition and orders thereon;

(f) For such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

3. At the outset we may observe that by the impugned communication dated 23rd January 2024, the Superintendent, State Excise Department, Thane has refused to accept the Petitioner's application for incorporation of the change in its name from "Hemmo Pharmaceuticals Pvt. Ltd." to "Piramal Pharma Limited" on the ground that there are tax dues payable by Hemmo Pharmaceuticals Pvt. Ltd. The impugned communication (official translation of which is placed on record in pursuance of our earlier order), is required to be noted which reads as under:-

(Translation of a Photocopy of a Letter, typewritten in Marathi.)

Exhibit "Q"

Office of the Superintendent, State Excise, Thane State Excise Building, First Floor, Chendani Koliwada, Mith bundar Road, Thane (East) 400603.

From,
Collector, Thane
(State Excise Department)

To,
M/s. Hemmo Pharmaceuticals Pvt. Ltd., RS-2 No. 363/2016- 17, C-3, MIDC, TTC Industrial Area, Turbhe, Opposite Thane-Belapur Road, Navi Mumbai, Dist. - Thane,

(Through : Inspector, State Excise, "E" Ward, Thane)

Number: - FLR 112022/ 4303/E/Section-6 Thane, Date: 23rd January, 2024

Subject: - Regarding changing the name of the Licensed Commercial Establishment viz. M/s. Hemmo Pharmaceuticals Pvt. Ltd., RS-2 No. 363/2016- 17, C-3, MIDC, TTC Industrial Area, Turbhe, Off. Thane- Belapur Road, Navi Mumbai, Dist. - Thane as M/s. Piramal Pharma Limited in place of M/s. Hemmo Pharmaceuticals Pvt. Ltd.

Reference:- Your Request Application dated 8th September, 2022.

Pursuant to the above referred application in connection with above noted subject, you are informed as under.

As per the order of the Hon'ble National Company Law Tribunal, Mumbai, the companies viz. M/s. Hemmo Pharmaceuticals Pvt. Ltd. and M/s. Piramal Pharma Limited have been merged with each other and therefore, by the Application under reference, you have requested to change the name of the Licensed Commercial Establishment viz. M/s. Hemmo Pharmaceuticals Pvt. Ltd., RS-2 No. 363/2016-17, C-3, MIDC, TTC Industrial Area, Turbhe, Off. Thane- Belapur Road, Navi Mumbai, Dist. - Thane as M/s. Piramal Pharma Limited in place of M/s. Hemmo Pharmaceuticals Pvt. Ltd. Further, you, the Establishment viz. M/s. Hemmo Pharmaceuticals Pvt. Ltd., without making renewal of the licence for the period from the year 2016-17 to March 2022 has purchased, imported, used and made a stock of Ethanol in the said Establishment and hence, as per the Letter dated 22.06.2022 of the Hon'ble Commissioner, State Excise, Maharashtra State, Mumbai, a Letter of Demand, dated 25.11.2022 was issued to you to deposit Government duty of Rs.2,76,14,400/- and Delay charges of Rs. 1,43,10,240/-, thus total duty of Rs.4,19,26,640/- in the Government Treasury. However, instead of paying the said duty, you have filed Interim Application No. IA(L) No. - 4891/2023 in Writ Petition No. 2560/2017 before the Hon'ble High Court, Mumbai and the said matter is subjudice. Thus, as the companies viz. M/s. Hemmo Pharmaceuticals Pvt. Ltd. and M/s. Piramal Pharma Limited have been merged pursuant to the order of the Hon'ble National Company Law Tribunal, Mumbai, it has been proposed to change the name of the company as M/s. Piramal Pharma Limited, in view thereof. However, a Letter of Demand has been issued to the Licensed Establishment viz. M/s. Hemmo Pharmaceuticals Pvt. Ltd. to deposit the duty of Rs.4,19,26,640/- and in the said matter, you have filed a Writ Petition in the Hon'ble Court and the said matter is subjudice.

Therefore, as the said matter is subjudice before the Hon'ble Court, it would not be proper to take an action of changing the name of the licensed Establishment. Hence, the necessary action of changing the name of the said Licensed Establishment will be undertaken only after the Hon'ble High Court passes the Order in the said Court matter filed by the said Licensed Establishment.

Under the approval from the Hon'ble Collector, Thane.

(Signature Illegible)
Superintendent, State Excise,
Thane.

True Copy
(Signature Illegible)
Advocate

(Stamp of Notary
S.N. (Illegible)
Mumbai Maharashtra
Reg. No. 15376)

4. Having heard learned Counsel for the parties and having perused the record, we are of the clear opinion that there are no provisions under the Maharashtra Prohibition Act, 2022, which would permit the Superintendent of Excise to take a position as taken in the impugned order, to the effect that merely because there are tax dues payable by Hemmo Pharmaceuticals Pvt. Ltd., the legal effect of an amalgamation namely the change in the name of the said Company to Piramal Pharma Limited, cannot be granted. The changes to be incorporated need to be as per the orders passed by the NCLT dated 12 August 2022 and IA order 27th March 2023. Thus, as the impugned communication itself as issued, is not on the basis of any statutory provision under the Maharashtra Prohibition Act or any rules, regulations, notification or circular issued thereunder, we cannot sustain the same. It is accordingly set aside, insofar as, it rejects the Petitioner's Application for incorporating the

necessary change in the name of the Petitioner to be incorporated in the registration and the license as granted. The Petition is thus required to be allowed in terms of prayer clause (a).

5. The necessary change in the name of the Petitioner be incorporated in the licenses as expeditiously as possible and within a period of two weeks from the date a copy of the present order is placed before the appropriate officers/ Respondent No.3.

6. Ordered accordingly.

7. It is however clarified that insofar as the tax demand as made by the Respondent against Hemmo Pharmaceuticals Pvt. Ltd. is concerned, the department is free to take recourse to appropriate remedy and recover the same in accordance with law. All contentions of the parties in that regard are expressly kept open.

8. It is further clarified that we also keep open Petitioner's contentions with regard to the relief as sought in the prayer (b)-iii.

9. Petition stands disposed of in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)