

2024.PHHC:172572



IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH.

257

Reserved on: 05.12.2024

Date of Decision: 19.12.2024.

(1) CWP-11347-2024 (O&M)

M/S SYNTHIMED LABS PRIVATE LIMITED

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

(2) CWP-9966-2024 (O&M)

M/S SYNTHIMED LABS PRIVATE LIMITED

... Petitioner(s)

Versus

UNION TERRITORY OF CHANDIGARH AND
OTHERS

... Respondent(s)

2024.PHHC:172572



CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

ARGUED BY:

Mr. Akshay Bhan, Sr. Advocate, with
Mr. Amitabh Tewari, Advocate,
Mr. Rajiv Bhatnagar, Advocate,
Mr. Ishan Khanna, Advocate,
Mr. Agni Sen, Advocate,
Ms. Dilmrig Nayani, Advocate,
Ms. Sneha Janakiram, Advocate and
Mr. Harsh Gupta, Advocate,
for the petitioner(s).

Mr. Aman Kumar, Advocate, for
Mr. Arav Gupta, Advocate,
Mr. Jaivir S. Chandail, Addl. Standing Counsel,
for the respondents/U.T. Chandigarh.

Mr. Satya Pal Jain, ASGI, with
Mr. Sourabh Goel, Senior Panel Counsel, with
Ms. Anju Bansal, Advocate, and
Ms. Geetika Sharma, Advocate,
for the respondents/NCB.

VINOD S. BHARDWAJ, J.

1 POINT FOR DETERMINATION

1.1 As to whether a protection against proceedings
under the Narcotics Drugs and Psychotropic Substances
(Regulation of Controlled Substances) Order, 2013, would

2024.PHHC:172572



be extended to a subsequent purchaser in a 'slump sale' for a statutory period of three (03) months, both these writ petitions are being decided by a common judgment. The facts are, however, being extracted from CWP-11347-2024.

2 FACTS

2.1 The petitioner, a private company limited by shares, has challenged the rejection order dated 25.04.2024 (signed on 23.04.2024) issued by the Narcotics Control Bureau, Chandigarh Zonal Unit, Chandigarh (hereinafter referred to as 'NCB'), whereby the request of the petitioner-company for issuance of Unique Registration Number (hereinafter referred to as 'URN') has been rejected on the ground of violation of the Narcotics Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, (hereinafter referred to as 'Controlled Substances Order, 2013'). A further prayer has also been made for directing the respondents to grant a fresh registration under the Controlled Substances Order of 2013.

2024.PHHC:172572



2.2 The petitioner-M/S Synthimed Labs Private Limited is incorporated under the Companies Act, 2013 and is involved in the business of pharmaceuticals and active pharmaceutical ingredients (“API”) manufacturing business and it claims to have been granted a valid license(s) to manufacture 89 (biological as well as non-biological) varieties of drugs. It has recorded a turnover of INR 1166 crores and produced drugs quantified at 716 tons and employs a workforce of 2000 persons. The petitioner-company is supplying Acamprosate API (in the research and manufacture of which the two controlled substances, forming subject matter of the present writ petition, i.e. Acetic Anhydride and Anthranilic Acid are used) to the USA pharmaceuticals market with Drug Master File (DMF) No.21481. Acamprosate Calcium is an essential medicine used for the maintenance of abstinence from alcohol in patients and the petitioner-company is a major supplier of this Active Pharmaceuticals Ingredients (API) to the USA end market with over 90% of the market share. The facilities maintained by the petitioner-company are

2024.PHHC:172572



approved by various global regulatory authorities such as the United States Food and Drug Administration, European Directive for Quality of Medicines and Healthcare, Pharmaceutical and Medical Devices Agency Japan etc. for the past twenty years.

2.3 Aggrieved of the rejection of the application for issuance of a license, which impacts and hinders the ability of the petitioner-company to meet the global requirements of Acamprosate Calcium, it has approached this Court by way of the instant writ petition(s).

2.4 The grievance of the petitioner originates from the acquisition of the business of “Essix Bioscience Limited (hereinafter referred to as “Essix”) and Ind-Swift Laboratories Ltd. (hereinafter referred to as “ISLL”). Both the said companies ran successful API manufacturing businesses and research and development (R&D) business with valid Unique Registration Numbers issued for the three premises i.e. (a) Plot No. B-4 and B-5, Industrial Focal Point, Dera Bassi - 14050 ("Essix Premises"); (b) Plot No. E-5, Industrial Area, Phase-2 SAS Nagar, Punjab

2024.PHHC:172572



160055 ("R&D Facility"); and (c) Village Bhagwanpur Barwala Road, Derabassi, Punjab 140507 ("ISLL Premises").

2.5 On 06.09.2023, ISLL and Essix as well as the Petitioner entered into a Business Transfer Agreement ("BTA"), pursuant to which the API manufacturing business and R&D business of ISLL and Essix was proposed to be transferred to the Petitioner, in terms of the applicable laws, on a going concern basis, by way of a slump sale. The consideration for the transaction was fully paid on 18 March 2024. The transition process to the petitioner was still under process and various approvals/sanctions were to be obtained by the petitioner in its own name as the transferee of the business, in various jurisdictions.

2.6 Being mindful of the requirement of licenses for manufacture of pharmaceuticals and APIs, the petitioner-company maintained a correspondence with the respondent-NCB as well as with the competent authority under the Drugs and Cosmetics Act, 1940 (hereinafter

2024.PHHC:172572



referred to as D.C. Act) and took essential steps for being a compliant unit.

2.7 The petitioner-company further acknowledged that there were stocks of Acetic Anhydride and Anthranilic Acid taken over by it in terms of the business transfer and an intimation regarding the stock of controlled substance was duly sent to the NCB. The same was also reconciled by it to establish whether there has been sale or trafficking of any controlled substance by the petitioner. The details of the controlled substances in each Unit are tabulated as under:-

<i>R & D Facility: Plot No.E-5, Industrial Area, Phase-02, S.A.S. Nagar, Punjab-160055</i>			
<i>Sr. No.</i>	<i>Date</i>	<i>Quantity of Controlled Substances</i>	
		<i>Acetic Anhydride</i>	<i>Anthranilic acid</i>
<i>1</i>	<i>18.03.24</i>	<i>14.503 Kgs.</i>	<i>3.124 Kgs.</i>
<i>3</i>	<i>23.04.24</i>	<i>14.491 Kgs.</i>	<i>3.124 Kgs.</i>
<i>Difference in start</i>		<i>0.012 gms.</i>	<i>No</i>

2024.PHHC:172572



<i>and end value</i>		<i>used solely for R&D purposes</i>	<i>difference i.e. no Anthranilic Acid used</i>
<i>ISLL Facility: Vill. Bhagwanpur, Barwala Road, Derabassi, Punjab, S.A.S. Nagar, Punjab,</i>			
<i>4</i>	<i>18.03.24</i>	<i>31,914 Kgs and one tanker in transit containing the captioned stock weighing 18,560 Kgs.</i> <i>Total= 50,474Kgs.</i>	<i>These premises did not store Anthranilic Acid</i>
<i>6</i>	<i>22.04.24</i>	<i>Panchnama not shared with the petitioner</i>	
<i>Difference in start and end value</i>		<i>9753 Kgs (sealed by the NCB)</i> <i>40,721 Kgs. Used in production of Acomprosate Calcium (available on site)</i>	
<i>Essix Facility: Plot No.4, Industrial Focal Point, Derabassi, S.A.S. Nagar, Punjab -140507</i>			
<i>1</i>	<i>18.03.24</i>	<i>1,607.55 Kgs.</i>	<i>These premises did not store</i>

2024.PHHC:172572



			Anthranilic Acid
3	23.04.24	1607.55 Kgs.	-
<i>Different in start and end value</i>		<i>No difference i.e. no controlled substances were used during this period</i>	-

2.8 Despite the petitioner claiming following of adequate and effective steps to ensure compliances, the NCB still registered File No.NCB/CZU/CR. No.08/2024 on 22.04.2024 and conducted raids on the three premises, as set out above, of the petitioner-company and the stocks of Acetic Anhydride and Anthranilic Acid, which were procured and secured under the URNs of Essix and ISLL and duly intimated to the NCB, were seized.

2.9 While declining the application of the petitioner-company for grant of fresh URN, the reasons assigned was about violation of the Controlled Substances Order of 2013. The respondent-NCB also issued notices under Sections 67 (b) and (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to

2024.PHHC:172572



as 'NDPS Act') to the petitioner as well as its employees for seeking documents and information concerning various transactions.

3 **RESPONSE BY RESPONDENT-NCB**

3.1 In the response filed by the NCB, it has been submitted that the writ petition is liable to be dismissed since the petitioner-company has violated the provisions of the NDPS Act as well as the Controlled Substances Order, 2013. It is stated that as per Section 9-A of the NDPS Act, 1985 read with Clauses 3 and 4 of the Order of 2013, no person can indulge in possession, sale and purchase etc. of controlled substances except without a valid license from the competent authority. The contravention of the Controlled Substances Order, 2013, attracts punishment under Section 25-A of the NDPS Act. Hence, action in accordance with the applicable Statutes has been taken by the respondent-NCB. It is further stated that the petitioner could not have purchased, processed; stored or consumed the controlled substances, under the garb of a slump sale, and that the petitioner-company cannot be said to be in

2024.PHHC:172572



legitimate possession of the controlled substance without a valid registration. It is further averred that apart from the transferee, even the transferor company(ies) is liable for its illegal acts. It is also averred that Clause 4 of license condition has been wrongly interpreted by the petitioner-company as well as ISLL and Essix and that the said interpretation is in a conflict with the plain meaning and interpretation of the said clause.

3.2 It is also averred that the controlled substances in possession of the petitioner could be used in manufacturing of high quantity of drugs. It is stated that 2.5 litres of Acetic Anhydride is sufficient to manufacture 1 kg. of Heroine whereas the possessed quantity of the controlled substance with the petitioner was more than 50,000 Kgs.

3.3 It is also averred that URN issued to Essix and ISLL is non-transferable. Once the URN is non-transferable, a claim that by way of a slump sale, there is a change in the entity operating under the URN and therefore it has 03 months' moratorium time to operate under the

2024.PHHC:172572



existing URN of the erstwhile entity is in conflict with clause 4 of the URN which mandates information to the issuing authority within 15 days of any change in the material details mentioned in the registration including constitution of the person or the entity operating under the registration. It is further required that a fresh registration be obtained in the name of the new person or the entity, within three months of such change. Since there is no change in the constitution of the person or the entity operating under registration and the entity of the companies ISLL and Essix Bio-sciences, who were operating under the registration, remains in-tact and they have only transferred their business, by way of slump sale, and there is no change in share-holding pattern or legal status in the shareholders or directors of the Company and all those things remain the same, hence, condition No.4 of URN is of no help to the petitioner.

3.4 A mere correspondence by petitioner or M/s Essix and M/s ISLL about the transaction would not eradicate the offence. The D.C. Act, has different

2024.PHHC:172572



applicability and would have no bearing in the case. Since the stock of Acetic Anhydride and Anthranilic acid was available and was taken over in violation of Controlled Substances Order of 2013, hence, Crime No.8/2024 was registered at S.A.S. Nagar and the request dated 01.04.2024 for grant of fresh URN was rightly rejected. A prayer was made to dismiss the writ petitions.

4 **ARGUMENTS BY THE PETITIONER**

4.1 Learned Senior counsel appearing for the petitioner-company has impugned the rejection order as well as the issuance of notices dated 25.04.2024 signed on 23.04.2024 as well as the notices dated 26.04.2024 and 06.05.2024 issued under Sections 67 (b) and (c) of the NDPS Act contending that the Clause 4 of the prior URN's read with Form-A of the Controlled Substances Order, 2013, provides that in the event of change in constitution of the person or the entity operating under the Registration for dealing in controlled substances, the existing URN shall be deemed to be valid for a period of three months from the date on which the change took place. Since the

2024.PHHC:172572



business transfer agreement fructified between the petitioner-company and ISLL and Essix on 18.03.2024, upon payment of consideration, hence, the prior URNs would have a deemed statutory validity in favour of the petitioner till 17.06.2024 and that the petitioner-company repeatedly made applications with the competent authority about grant of fresh URN during the above period. It is further argued that the slump sale transaction for transfer of business in favour of the petitioner-company culminated on 18.03.2024. He contends that “slump sale” is defined under Section 2 (42) of the Income Tax Act, 1961 being a transfer of a business for a lump sum consideration without value being assigned to the individual assets and liabilities, on a going concern basis. The undertaking sought to be transferred is defined to cover a unit, or business of a business activity akin as a whole but does not include individual assets. The ISLL issued a letter dated 19.03.2024 to the NCB informing it of the transfer of business to the petitioner-company as a part of strategic business restructuring w.e.f.18.03.2024 i.e. on the very

2024.PHHC:172572



next day. It was confirmed by the ISLL that there was no physical change in the API manufacturing facility, its layout, instruments and machines, technical staff, production process and quality management system etc. The details with respect to the stock of Acetic Anhydride and Anthranilic Acid transferred to the petitioner-company was also conveyed to the NCB. A similar letter was also written by Essix on the same day. On 21.03.2024 and 22.03.2024, the petitioner-company also applied to the F&DA (Food and Drug Administration) seeking licenses in its name for manufacture under the Drugs and Cosmetics Act, 1940 in relation to ISLL and Essix premises. In response thereto, a communication was sent by the F&DA to the petitioner intimating that in terms of condition no.5 of the manufacturing license issued to ISLL under the Drugs and Cosmetics Act, 1940 and the rules framed thereunder, there is a deemed extension of three months in the validity of the existing license. The sale of business to the petitioner-company is a deemed extension of the existing license in terms of condition No.5 of the

2024.PHHC:172572



manufacturing license. The said condition no.5 of the license under the Drugs and Cosmetics Act, 1940, is extracted as under:-

"The Licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the license. Where any change in the constitution of the firm takes place, the current license Shall deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh license has been taken from the Licensing Authority in the name of the firm with the changed constitution."

(Emphasis supplied)

4.2 The petitioner-company also submitted an application for issuance of a fresh registration in its name under Clause 4 (2) of Controlled Substances Order of 2013 on 31.03.2024. The petitioner-company also addressed a letter to the NCB on 01.04.2024 referring to the transaction and informing about the submission of the online application for seeking a new registration for the same

2024.PHHC:172572



premises. All the necessary details including the stock in possession that the petitioner-company had taken over from the ISLL and Essix was also mentioned in the application form. Since it was informed by the respondents that two licenses cannot be issued simultaneously to two separate entities for the same premises and that the vendors ISLL and Essix were required to surrender the prior URNs before the application of the petitioner-company could be processed, hence, the Essix and ISLL also sent communication dated 18.04.2024 for surrender of the URN's issued to them. A reminder letter was again sent by the petitioner-company to the NCB requesting that grant of a new URN to it be expedited. However, the premises of the petitioner-company were still searched on 22.04.2024 and 23.04.2024 and notices under Sections 42, 43 and 49 read with Section 53 of the NDPS Act were issued and the controlled substance was seized after preparation of a *panchnama*. It is also established that the entire transferred material was available in-tact and that there had been no consumption or usage of the said material. The petitioner-

2024.PHHC:172572



company accordingly submitted a representation to the respondents on 25.04.2024 highlighting the steps taken by it to ensure compliance along with the complete correspondence with NCB about the transaction and also about the status of the pending application. However, despite the same, the proceedings under the NDPS (Substance Control Order), 2013, have been initiated against the petitioner-company which are unsustainable and are liable to be set aside.

4.3 It is further argued that the term “change in constitution” as used in condition no.4 of the ‘Form-A’ of the Substance Control Order of 2013, includes a “business transaction” and that the use of the expression “including”, in a condition under the Statutory form enlarges the scope of the provision meaning to include not only things which are signified by the natural input but also to give them an extended statutory meaning. Reliance is placed on the judgment in the matter of **Ramanlal Bhailal Patel and others Vs. State of Gujarat, reported as (2008) 5 SCC 449** in support of the above argument. He further argues that

2024.PHHC:172572



an application for URN is required to be submitted under Form-B of the Controlled Substances Order, 2013 and that Part III (C) of the said application form requires an applicant to select “constitution of the business” and the provided options of different business models, including ‘Proprietorship’, ‘Partnership’, ‘Registered Company’, ‘etc.’ He submits that the “constitution” of a URN holder includes the operating entity of that business and that any change in it by way of transfer of ownership or control from one entity to another would amount to change in the constitution. He contends that if a business transfer would not have been contemplated as a “change in constitution” there would be no requirement of a fresh URN and only an intimation was required to be sent by the existing URN holder. The necessity of obtaining a fresh URN, after change in the constitution, itself demonstrates that a business transfer is contemplated under the provisions.

4.4 He further submits that the term “slump sale” under the Income Tax Act, 1961 includes transfer of an undertaking for a lump sum consideration without

2024.PHHC:172572



assigning any value to an individual property. On account of such business transfer, there would be a change in its constitution since a new-entity steps into the shoes of the erstwhile owner. Such transfer of business or change of business cannot be equated with a sale or purchase of a controlled substance. The restrictions on the sale of a substance should not be extended to mean and include any transfer of business for which no permission for sale was otherwise required. Under the garb of its license condition, the NCB should not control or restrict the transfer of business, which is otherwise permissible not only under the Income Tax Act, 1961 but also under the Companies Act, 2013.

4.5 It is also argued that if the legislature ever intended to prohibit transfer of business, the expression ‘including change in its constitution or change of the entity carrying on operation’, in condition No.4 in Form A would not have been incorporated at all.

4.6 It is also argued that other Statutes such as Central Goods and Services Act, 2017, as well as the

2024.PHHC:172572



Customs House Agents Licensing Requirements 2018 formulated under the Customs Act, 1962, refers to the term “change in constitution” and specifically includes a business transfer within the scope of events which leads to a change in constitution. It is further argued that condition no.1 of Form-A of the order 2013 has to be read harmoniously with condition no.4 and that even though a URN cannot be transferred to any person by the original holder, however, where the original URN holder's constitution has changed and a new entity has stepped into its position, a fresh registration must be obtained within 3 months. The above said period has been granted to facilitate business and make smooth business transfers possible. Since there is a change in constitution in the present case, it is not a case of transfer of URN, hence, the holding of the controlled substance for a period of three months would not constitute any statutory violation. Hence, the submissions of the respondent-NCB that there was a transfer of URN or that the same is not transferrable is based upon misunderstanding of the provision.

2024.PHHC:172572



4.7 He further contends that the respondent-NCB has failed to bring any circular or notice pertaining to the manner or the confines within which “change of constitution” must operate. In the absence of any such communication/instructions/office orders/ circulars, no unreasonable restrictions can be imposed by the NCB on the functioning of business. The construction of the clause by the NCB is based on an absolute impractical understanding of law and to extend a meaning that runs contrary to all the other statutory provisions which recognise such transfer and imposes unreasonable restrictions on business operations that were never intended by the Legislature.

4.8 An argument has been raised that the NCB cannot adopt an interpretation at a contrasting opposite from the Food and Drugs Administration Authorities which have also interpreted condition no.5 of the license under the Drugs and Cosmetics Act, 1940, where similar conditions have been incorporated. The F&DA acknowledged and interpreted the condition No.5 vide its

2024.PHHC:172572



letter dated 25.03.2024, as an inherent extension of the license for a period of three months. He submits that Section 80 of the NDPS Act necessitates that the NDPS Act has to be read in addition to the Drugs and Cosmetics Act, 1940 and not in derogation of the same. Hence, an identical meaning and intention ought to be inferred when identical condition or provision exists in both the licenses regulating the same activity. The interpretation of clauses of the Substances Control Order, 2013 by the respondents amounts to completely ignoring the provisions of Section 80 of the NDPS Act, which gives prominence to the D.C. Act, 1940. Consistency and harmony should be duly reflected in the actions and interpretation by different State functionaries.

4.9 A further argument has been raised that the rejection order is unreasoned and violative of principles of natural justice as no opportunity of hearing was granted to the petitioner. The essential rights of the petitioner-company to carry on a business involving controlled substances was being severely prejudiced and as such, an

2024.PHHC:172572



opportunity of hearing ought to have been extended. An act which does not adhere to the foundational principles of law and is completely unreasonable and illegal or is based upon incorrect interpretation of the statutory provision can thus be challenged by way of a writ petition. It is also argued that in the event of any ambiguity or doubt as to whether an offence for which a person is being charged is made out or not, the ambiguity is to be interpreted to the favour of the person charged. He submits that the bona fide of the petitioner can very well be assessed on the fact that NCB was informed of the complete transactions at all stages and the petitioner did not sell or consume the controlled substance or the finished products using controlled substance. There was thus no violation of any provision whatsoever on the part of the petitioner.

5 ARGUMENTS BY RESPONDENTS

5.1 Responding to the above, learned counsel for the respondent-NCB refers to the statutory provisions (same are not being extracted here and would be referred to during the discussion and considerations) and contends that

2024.PHHC:172572



as per Sr. No.1 of the Form-A, Drug licenses issued to Essix and ISLL, the URN is not transferred and as per clause no.4, in the event of any material change in the details given in the statutory form, including the change in the constitution or entity operating under the said registration, an intimation has to be sent to the issuing authority within a period of 15 days and a fresh registration must be obtained in the name of the person or the entity regarding change in constitution within three months of such a change. He contends that the change in constitution has to be read in context of the details given in the registration form and that in the event of any change in the said details, the fresh registration is required to be obtained. Above, business transfer would not be construed as change in constitution of a person since only the business operation has been transferred and so far as “the person carrying on business” i.e. the juristic entity is concerned, the same remains in-tact. Since the license was granted to Essix and ISLL which were separate juristic entities and there is no change in the constitution of said

2024.PHHC:172572



juristic entity, hence, the petitioner cannot claim a change in constitution of the said person i.e. Essix and ISLL by way of purchase of a business unit.

5.2 In reference to the change of entity, he contends that the same extends the concession when the same juristic entity converts itself into another juristic entity such as from sole partnership to a partnership concern; from partnership to a private limited company; or from private limited company to a public limited company etc. Since none of the above positions exists in the present case, hence, there is neither a change in the constitution of a person nor change in the entity operating under the Registration. Hence, there was a violation of the essential terms and conditions of the Substances Control Order, 2013 read with the NDPS Act, 1985, hence, the proceedings have rightly been initiated against the petitioner company.

5.3 He further argues that a ‘slump sale’, as defined under Section 2 (42) (c) of the Act does not protect any transaction which is otherwise prohibited under any other

2024.PHHC:172572



Statute. Hence, a “slump sale”/transaction which is recognised for taxation purposes would not insulate the parties from any offence that may have so occurred during such a transaction. The illegality cannot be overlooked and the penal consequences under the other statute(s) would become applicable against the petitioner.

5.4 It is also argued that the activities or transaction which are to be treated neither as a supply of goods nor a supply of services are provided under Schedule III of the CGST Act, 2017 and that a “slump sale” does not fall under the said Schedule. Thus, the transaction of a slump sale has to be construed as a supply of goods. Merely because a specific value has not been assigned to the controlled substance does not mean that there is an absence of an act of sale of a controlled substance. An existence of a separate pecuniary valuation assigned to such a controlled substance, for construing commission of offence under the Controlled Substances Order, 2013 and the NDPS Act, 1985 has not been provided in law. In any case, even if it is not specifically assigned, the value of the said

2024.PHHC:172572



controlled substance inheres in the transaction of slump sale that took place amongst the contracting parties.

5.5 He further contends that even though change in constitution of a person or entity operating under the registration is not defined under the NDPS Act or the Controlled Substances Order, 2013, however, a similar expression is used in Rule 3 (j) of the Medical Devices Rules, 2017 and a business transfer is not stipulated as a change in the constitution.

5.6 It is also argued that under condition no.4 of the registration, the law does not recognise any third party and that it stipulates a fresh registration to be obtained from the issuing authority in the name of the person or the entity with the changed constitution. Since a transfer or a sale of controlled substance to a buyer, who do not possess a valid registration is prohibited under Regulation 8 and 4 of the Substances Control Order of 2013, hence, the action has rightly been taken. A transaction of purchase of controlled substance under the garb of slump sale would still be in contravention of the law and the license application of the

2024.PHHC:172572



petitioner has thus been rightly declined. He thus argues that the application moved by the petitioner deserves to be dismissed.

6 **COURT QUERY**

6.1 On a specific query as to whether any instructions, office orders, guidelines etc. have been issued by the Department about what would constitute a change in constitution of a business or a change in its entity, counsel for the petitioner contends that no such instructions/orders or rules have been framed by the authorities.

6.2 It is also put to the counsel for the respondent as to whether there has been any other instance involving similar circumstances, he submits that such a situation has not been faced by the respondent-NCB earlier.

7 **CONSIDERATION AND DISCUSSION**

7.1 I have heard the learned counsel appearing on behalf of the parties and has gone through the pleadings as well as the documents appended as also the judgments relied upon by the counsel for the petitioner.

2024.PHHC:172572



7.2 Before proceeding further in the matter, it would be appropriate, at this juncture, to refer to the statutory provisions under the NDPS Act, 1985, the Substances Control Order, 2013 and other different rules/orders that had been relied upon by the counsel for the respective parties. The same are reproduced as under:-

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985.

2. Definitions.—In this Act, unless the context otherwise requires,—

xxx xxx xxx

“(vii-d) “controlled substance” means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance;

xxx xxx xxx

9A. Power to control and regulate controlled substances.—(1) If the Central Government is of the opinion that, having regard to the use of

2024.PHHC:172572



any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the power conferred by sub-section (1), an order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any controlled substance.

XXX XXX XXX

25A. Punishment for contravention of orders made under section 9A.—*If any person contravenes an order made under section 9A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:*

2024.PHHC:172572



Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding one lakh rupees.

XXX XXX XXX

29. Punishment for abetment and criminal conspiracy.—(1) *Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.*

(2) *A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—*

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an

2024.PHHC:172572



offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India

XXX XXX XXX

80. Application of the Drugs and Cosmetics Act, 1940 not barred.—*The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.*

**THE NARCOTIC DRUGS AND
PSYCHOTROPIC SUBSTANCES
(REGULATION OF CONTROLLED
SUBSTANCES) ORDER, 2013,**

“4. Prohibition of manufacture, trade and commerce, possession and consumption of controlled substance in "Schedule A".-(1) *No person shall manufacture, distribute, sell, purchase, possess, store, consume, offer for sale or distribution or mediate in the sale/purchase through website, social media or in any other manner of any controlled substance included in Schedule A, without a unique registration number in Form A, issued by the Zonal Director of the Narcotics Control Bureau:*

2024.PHHC:172572



Provided that the requirement of registration under this clause shall be complied within a period of 180 days of the coming into force of this Order:

XXX XXX XXX

(2) Every application for registration under sub-clause (1) shall be made in Form B to the Zonal Director of Narcotics Control Bureau having jurisdiction over the area (and in the manner as may be specified by the Director General, Narcotics Control Bureau).

3) The Zonal Director of Narcotics Control Bureau shall issue a unique registration number in Form A or deny the registration within thirty working days from the date of receipt of an application in Form B.

(4) In case the registration number is not issued within the stipulated time period or denied, the Zonal Director of Narcotics Control Bureau or any other officer authorised by him in this regard shall inform the applicant the reasons thereof.

5. Surrender of registration.-A holder of a registration number issued under sub-clause (1)

2024.PHHC:172572



of clause 4 may, if he so desires, surrender his registration by giving notice in writing to the issuing authority and acknowledgement therefor.

6. Disposal of stocks on surrender of controlled substance in Schedule A. *The stocks of controlled substance in Schedule A as may be in the possession of a holder of a registration number issued under sub-clause (1) of clause 4 on the surrender of his registration, shall be disposed of in such manner as may be specified by the issuing authority in this behalf.*

xxx xxx xxx

8. Selling of Controlled substance in Schedule A. *No person shall sell a controlled substance in Schedule A to a buyer who does not possess a valid registration number issued under sub-clause (1) of clause 4:*

Provided that a controlled substance may be sold to a buyer specified in second proviso to sub-clause (1) of clause 4 without a registration number.”

xxx xxx xxx

2024.PHHC:172572



FORM -A

xxx xxx xxx

CONDITIONS OF REGISTRATION

1. *This registration is not transferable.*
2. *This registration shall be kept on the approved premises and shall be produced at the request of an officer designated/authorized by the authority issuing this registration.*

xxx xxx xxx

4. *The holder of this registration shall inform the issuing authority in writing within fifteen days, of any change in the material details mentioned in the registration including the constitution of the person or the entity operating under the registration and in the event of a change in the constitution of the person of the entity operating under the registration, a fresh registration must be obtained from the issuing authority in the name of the person or the entity with the changed constitution within three months of such change.*
-

FORM -B

xxx xxx xxx

PART III

2024.PHHC:172572



xxx xxx xxx

(C) Constitution of the business (Please put “tick mark” in appropriate box)

Proprietorship		Partnership	
Registered company		Unregistered company	
Trust		Society	
Others (Please specify)			

Note-. In the case of a partnership firm, details of partnership; in the case of a registered/unregistered company, details of the Chairman/Managing Director/Director/Chief Executive Officer; in the case of Society or Trust, details of the Chairman or President and Members/Trustee and in case of others, details of the key personnel engaged in the management of the business are to be provided in a separate sheet. Details shall include name/ complete postal address with PIN Code/Telephone/ Fax Number (with city code)/e-mail ID]/ copy of photo identity card issued by a Government Organisation or the Election Commission.

2024.PHHC:172572



INCOME TAX ACT, 1961

Section 2 (42C) – ‘slump sale’ means the transfer of one or more undertakings, by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such transfer.

CENTRAL GOODS AND SERVICES TAX ACT, 2017

Section 18. Availability of credit in special circumstances.
xxx xxx xxx

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

LICENSE UNDER THE DRUGS AND COSMETICS ACT, 1940

2024.PHHC:172572



Condition No.5

“The licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the licence. Where any change in the constitution of the firm takes place, the current licence Shall deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh licence has been taken from the Licensing Authority in the name of the firm with the changed constitution.”

MEDICAL DEVICES RULES, 2017.

Section 3.

(j) “change in the constitution of a licensee” in relation to,-

(i) a firm means change from proprietorship to partnership including Limited Liability Partnership or vice versa;

(ii) a company means-

(A) its conversion from a private to a public company, or from a public to a private company; or

(B) any change in the ownership of shares of more than fifty per cent of the voting capital in the body corporate or in case of a body corporate not having a share capital, any change in its membership; and where the managing agent, being a body corporate is a subsidiary of another body

2024.PHHC:172572



corporate, includes a change in the constitution of that other body corporate within the meaning of this clause.”

7.3 The primary dispute revolves around Condition/ Clause No.4 of the Form A i.e. the registration for manufacturing/ distribution/sale purchase of controlled substances in Schedule Category A, and as to whether there would be a statutory protection for a period of three months of change in the constitution of a person or entity operating under the erstwhile registration. While the respondent has relied upon its interpretation by relying upon “change in constitution” as described under the Medical Devices Rule 2017 notified under the Drugs and Cosmetics Act, 1940; the counsel for the petitioner has emphasized that the restricted interpretation as proposed by the NCB is contrary to the statutory intent and he has placed much emphasis on the interpretation of ‘condition no.5’ as given by the F&DA under the Drugs and Cosmetics Act, 1940, which such clause is akin to condition/clause no.4 as incorporated in Form A issued under the Controlled Substances Order, 2013. He had

2024.PHHC:172572



further contended that the government functionaries have to maintain a parity and harmony in interpreting similar clauses and that the interpretation under the NDPS Act, has to be undertaken after examining Section 80 of the NDPS Act, 1985 which provides that the provisions of the NDPS Act are in addition to and not in derogation to the Act of 1940.

7.4 Even though the contention of the respondent NCB about instances of “change in constitution” as defined under the Medical Devices Rules, 2017 cannot be said to be without any valid foundation and would certainly be an indicator towards assigning a meaning to the expression so used in ‘Form A’ of the substances control order 2013, however, all the different clauses and provisions have to be examined purposively before a final interpretation or construction can be given to it.

7.5 To understand the expression ‘change in constitution of the person’, it has to be kept in mind that there are multiple diverse acts that may be seen as an act of change in the constitution. Change in a corporate structure

2024.PHHC:172572



by way of an amalgamation/merger; demerger or conversion to any form of a company is recognised as a change in the constitution apart from changes in memorandum of association and articles of association including alteration in its objects, change of name, change in capital structure, change of registered office, conversion of activity etc. Apart therefrom, even when part of business separates in the new categories, an original constitution may be stated to be altered. There may also be instances of ‘change in the constitution of a person’ due to insolvency or liquidation or where there is a reconstitution by the CIRP. Law also recognizes a transfer amounting to change in the legal identity of the entity that manages the business to be also amongst change in constitution of the person.

7.6 A closer scrutiny of the Condition No.4 shows that the expression used, which has to be examined while deriving the legislative intent, is “including”, and its placement in clause 4. The condition thus refers to an intimation to be sent to the issuing authorities within 15 days of change in not only the material details mentioned

2024.PHHC:172572



in the registration but also ‘including’ the constitution of a person or entity operating under the registration. The expression “including” thus is of a wider significance. The argument of the respondent that the expression “the change in the constitution of the person” has to be read only to the extent of “any change in the material details mentioned in the registration” would not reflect a correct approach at statutory interpretation. If the said argument is accepted and the meaning of change in the constitution of the person has to be read restrictedly to change in the material details only, then there was no necessity for the use of the above expression, since the details would in any case fall within the expression “change of material details.”

The law mandates that while interpreting statutes, it has to be borne in mind that the legislature does not use meaningless expressions or superfluous words. Every expression or words is curated to reflect what the legislature intended and has to be interpreted, as far as possible, to assign a meaning to it. Hence, the Courts, while interpreting statutory provisions, must endeavour to

2024.PHHC:172572



assign meaning to each and every form/expression that has been so used. In light of the above said guiding rules of interpretation, it cannot be held that “the change in the material details” was the only change contemplated or intended in the “change in the constitution of the person” under clause 4. The use of the expression “including” as a prefix to “change in the constitution of the person or the entity operating under the registration” is thus essential. In its ordinary understanding, the suffix then is illustrative only and is not a self-contained exhaustive interpretation. A wider import is thus required to be given to the “changes in the constitution of the person or the entity operating under the registration” since expression “includes” has been explained by the Hon’ble Supreme Court of India in the matter of **Ramanlal Bhailal Patel and others Vs. State of Gujarat, reported as (2008) 5 SCC 449**, as thus:-

“23. The word “person” is defined in the Act, but it is an inclusive definition, that is, “a person includes a joint family”. Where the definition is an inclusive definition, the use of the word “includes” indicates an intention to

2024.PHHC:172572



enlarge the meaning of the word used in the statute. Consequently, the word must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Thus, where a definition uses the word “includes”, as contrasted from “means”, the word defined not only bears its ordinary, popular and natural meaning, but in addition also bears the extended statutory meaning (see S.K. Gupta v. K.P. Jain [(1979) 3 SCC 54 : AIR 1979 SC 734] following Dilworth v. Commr. of Stamps [1899 AC 99 : (1895-99) All ER Rep Ext 1576 : 79 LT 473] and Jobbins v. Middlesex Country Council [(1949) 1 KB 142 : (1948) 2 All ER 610 (CA)]).

7.7 Hence, the expression ‘includes’ cannot be interpreted so as to give a restricted interpretation to the clause and to confine it only to the instances as cited or referred to under the Meical Device Rules, 2017. Had such been the intent of the legislature, either there would have been no reason to incorporate the words “the constitution

2024.PHHC:172572



of the person or the entity operating under the registration” after “includes” as all said aspects would in any case be covered in the expression “change in the material details” mentioned in the registration.

7.8 Further, this court also notices that neither the NDPS Act, 1985 nor the rules framed thereunder or even the Controlled Substances Order, 2013, defines “the change in the constitution or the entity operating under the registration” and as such, this Court is also required to take into consideration, the practical applicability of the interpretation as proposed by the counsel for the respondent NCB and as to whether acceptance and implementation thereof is likely to lead to a smooth working of the Statute while fulfilling the object or is likely to create a greater hardship.

If the argument of the respondent NCB is taken in its strict interpretation and the expression “including the constitution of the person or the entity operating under the registration” has to be confined only to the material details as mentioned in the registration, there could be numerous

2024.PHHC:172572



circumstances which may otherwise be acts in furtherance of a statute or a statutory provision but would tantamount to Commission of a criminal offence under the Substances Control Order, 2013. As an illustration, if a company which has been granted a license under Form A of the Substances Control Order, 2013 goes under Liquidation and a Liquidator under the Companies Act or a Resolution Professional is appointed under the IBC Code 2016, whether the official liquidator and/or the Insolvency Resolution Professional, who come in possession of the entity to whom license had been granted would be liable to be prosecuted for breach of the provisions under the NDPS Act or the Controlled Substances Order, 2013.

Similarly, in the event of any merger/de-merger or acquisition of any business entity, which such act would otherwise be permissible under all other statutory regulations, would the subsequent entity be penalized for its acquisition of such business or entity or not. The above are only illustrative instances where a person or entity may

2024.PHHC:172572



come in possession of some controlled substance as a part of its otherwise legitimate transaction.

The legislature would not have intended that all business transactions in relation to the premises/entities dealing in controlled substances be subjected to the absolute supervision and control of the Issuing Authority under the Controlled Substances Order, 2013 and to completely ignore all other rights that may be so vested in the respective parties to transfer a business or its operations.

The condition in a license is thus being sought to be given an interpretation as would confer the issuing authority with an overriding power over all other statutory provisions notwithstanding that such a power is neither contemplated under the Act nor under the Rules/Orders framed thereunder. The cascading impact of the above interpretation may be exponentially huge in some circumstances. There may be a situation where the Official Liquidator and/or the Resolution Professional takes over the business and may have to liquidate or re-structure its

2024.PHHC:172572



revival and the controlled substance in possession of the juristic entity may be of a substantive value. The argument of the NCB that if the purchasing/transferee entity of the business does not possess a valid registration, the controlled substance ought to be destroyed by it, may thus erode such entity of its substantive worth causing prejudice to the rights of the shareholders as well.

7.9 The suggestive interpretation of the respondents that even a transferee must obtain a license/URN before acquiring the controlled substance does not appear logical as it becomes inherently contradictory given the fact that the registration and license to be granted to an entity is 'premises specific' and there can be no change even of the premises where such controlled substance is stored or possessed and the respondent authorities would not grant two separate URNs simultaneously for the same premises. Hence, there cannot be a co-existence of two independent licenses in the name of two or more separate entities for the same premises at any one given point of time. Once the statute restricts one license for a premises and to one single

2024.PHHC:172572



entity, there is bound to be situation where a separate entity intends to take over the premises and it would require some processing time before it can be granted a URN by the issuing authority. Seemingly, keeping in mind such possibilities that the requirement to obtain a fresh registration in the name of the person or the entity, with the changed constitution, within three months of such change was thus incorporated. A statutory protection has thus been seemingly granted for a period of three months of change in the constitution of the person or the entity under the registration. The suggestive interpretation of the respondent, if accepted, the circumstance of sale of a business or transfer of a business, merger/de-merger/acquisition/ liquidation/insolvency resolution etc. would never be permitted and give rise to an assumption that such circumstances were never contemplated by the legislature. It would be naive to assume that the legislature did not contemplate aforesaid aspects and did not intend to permit any of such activities illustrated above or that there

2024.PHHC:172572



was a complete omission on the part of the legislature in comprehending such exigencies.

7.10 There is also no presumption about existence of a casus omissus and the Court would ordinarily avoid such assumption if the Statute can cover those fields by meaningful reading of the conditions. Lord Justice Devlin observed in the matter of **Gladstone VS. Bower, reported as 1960 Vol.3 All England Reports 353**, that “the Courts will always allow the intention of a statute to override the defects of wording but the Courts ability to do so is limited by the recognised canons of interpretation. The Court may prefer an alternative construction which is less fitted to the words but better fitted to the intention of the Act.”

The use of the expression “including” between the expressions “change in the material details mentioned in the registration” and “constitution of the person or the entity operating under the registration” would evidently be a situation where an interpretation which flows from the legislative intent fills up the gap and it would not be a case of legislative lacking being filled up. The Hon’ble

2024.PHHC:172572



Supreme Court in the matter of *M. Pentiah and others Vs. Muddala Veeramallapa and others, reported as AIR 1961 SC 1107*, referred to the case of *Seaford Court Estates Ltd. Vs. Asher, reported as (1949) 2 AER 155, 164* wherein Lord Justice Denning observed that “when a defect appears, the Judge cannot simply hold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the requisite words so as to give “force and life” to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act have themselves come across ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is governed but he can and should iron out the creases.”

From the case of *Seaford Court Estates Ltd. Vs. Asher (supra)*, Justice Denning restated the same thing in a new form in the judgment of *Rural District Council of Magor & Saint Mellons RDC Vs. Newport Corporation*,

2024.PHHC:172572



(1951) UKHL J1025-2 and said “we sit here to find out the intention of Parliament and Ministers and carry it out and we do this better by filling-in the gaps and making sense of the enactment than by opening it up to a destructive analysis.”

The aforesaid rule of construction stated by Lord Justice Denning were approved by the Hon’ble Supreme Court of India in the matter of **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others, reported as (1978) 2 SCC 213** while dealing with the definition of an Industry. The position thus remains settled to the effect that although a Court cannot supply a real casus omissus, but it is equally clear that it should not interpret a statute so as to create a casus omissus when there is really none as ruled by the Hon’ble Supreme Court also in the matter of **State of Karnataka Vs. Union of India and another, reported as AIR 1978 SC 68**, where it said that “it is a trite law that there is no presumption that a casus omissus exists and a Court should avoid creating a casus omissus when there is none. It is a fundamental rule

2024.PHHC:172572



of interpretation that the Courts would not fill up the gaps in Statutes, their functions being *jus discre non facere* i.e. to declare or decide the law.”

It is in the said background that this Court has delved into interpreting the use of expression “including” as it would be impractical to assume that there was a casus omissus, rather, the Court would be more inclined to place reliance on the use of expression “including” to hold that the legislature intended all such changes in the constitution of a person or entity operating, as was permissible under the appropriate governing and regulating Statute, and since it was not possible to contemplate, describe, define or confine such changes in the constitution or change in the entity, hence, it chose to use the expression “including” followed by the expression, “the change in the constitution or the entity operating under the registration.”

Besides, law is also well settled that when any penal statute having harsh consequences has a doubtful interpretation, the one which supports an accused ought to be accepted. I am further fortified in my aforesaid view

2024.PHHC:172572



from the judgment of the Hon'ble Supreme Court in the matter of **Abhishek Vs. State of Maharashtra, reported as (2022) 8 SCC 282.** Para 36 of the same reads thus:-

“36. So far as the applicability of the rule of strict construction qua MCOCA is concerned, it being a special penal statute, this much is clear that no one is to be made subject to this law by implication or by presumption; and all doubts concerning its application would, ordinarily, be resolved in favour of the accused. However, the rule of strict construction cannot be applied in an impracticable manner so as to render the statute itself nugatory. In other words, the rule of strict construction of a penal statute or a special penal statute is not intended to put all the provisions in such a tight iron cast that they become practically unworkable, and thereby, the entire purpose of the law is defeated.”

7.11 It would also be appropriate at this juncture to refer to the judgment of the Hon'ble Supreme Court in the matter of **Standard Chartered Bank and others Vs. Directorate of Enforcement and others, reported as AIR (2005) 4 SCC 530,** wherein it is held by the Hon'ble

2024.PHHC:172572



Supreme Court that when there is an ambiguity or doubt as to whether in a given case an offence is made out or not or about who can be the offender in respect to the given offence, the ambiguity is to be resolved in favour of the person charged. The relevant extract thereof reads thus:-

“42. So far the principle regarding strict construction of penal statutes is concerned there can be no quarrel. However, we need not misapply the principle. This principle has developed only in the context of the provisions in statutes which lay down the elements of an offence and the persons who can be charged with it. If there is any ambiguity or doubt as to whether in a given case an offence is made out or not or about who can be an offender with respect to the given offence, the ambiguity is to be resolved in favour of the person charged. In Maxwell on the Interpretation of Statutes, 12th Edn., the rule is stated as under:

“Strict construction of words setting out the elements of an offence.—If there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful

2024.PHHC:172572



whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged. This is, in practice, by far the most important instance of the strict construction of penal statutes.”

Various illustrations discussed in Maxwell in this connection deal only with cases where there was ambiguity or doubt regarding ingredients or elements of an offence as stated in a statute. Not a single instance has been brought to our notice about the above rule being applied in relation to sentencing part of penal statutes. Rather in sentencing courts have always enjoyed a certain amount of discretion. For instance, in spite of a statute prescribing punishment for an offence the courts have been empowered to grant probation to a person found guilty in certain cases.”

7.12 Additionally, it would be appropriate to comparatively examine condition No.5 of the license issued by the F&DA under the Drugs and Cosmetics Act, 1940 as well as Condition/clause 4 of the Form-A under

2024.PHHC:172572



the Controlled Substances Order, 2013. The same are being extracted together as under to better appreciate the legislative intent:-

	<i>Condition no.5 of the license issued by the F&DA under the Drugs and Cosmetics Act, 1940</i>	<i>Clause 4 of the Form-A under the Controlled Substances Order, 2013.</i>
	<i>"The Licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the license. Where any change in the constitution of the firm takes place, the current license Shall deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh license has been taken from the Licensing</i>	<i>4. The holder of this registration shall inform the issuing authority in writing, within fifteen days, of any change in the material details mentioned in the registration including the constitution of the person or the entity operating under the registration and in the event of a change in the</i>

2024.PHHC:172572



	<i>Authority in the name of the firm with the changed constitution."</i>	<i>constitution of the person or the entity operating under the registration, a fresh registration must be obtained from the issuing authority in the name of the person or the entity with the changed constitution within three months of such change.</i>
--	--	--

It is evident from a perusal of both the expressions that the condition no.5 of the license under the Drugs and Cosmetics Act, 1940 talks of about informing the licensing authority in the event of any change in the constitution of the firm operating under the license and extends the validity of the current license for a period of three months to enable to obtain a fresh license to be

2024.PHHC:172572



obtained in the name of the firm with the changed constitution. The expression(s) as used in condition no.4 of Form A under the Controlled Substances Order, 2013 is wider in its meaning and scope since it uses multiple expressions i.e. “change in material details”; “including”, “the change in the constitution of the person”; or “the entity operating under the registration”.

The F&DA vide its letter dated 28.3.2024 (Annexure P-7) rather conveyed that there would be no necessity for any fresh authorization for continuation of manufacturing of sale in the domestic market or for sale of exports considering that condition no.5 of the retention letter was self-explanatory and provided a validity for a maximum period of three months from the date of change. The said communication by the F&DA Punjab is extracted as under:-

“To

*Synthimed Labs Private Limited,
Village- Bhagwanpur, Barwala Road, Dera
Bassi,
District-S.A.S Nagar (Mohali), Punjab, India.*

2024.PHHC:172572



No.Drugs(1)Pb.2024/2486 Date: 28-3-24

Sub: (A) Authorization for continuation of manufacturing for sale in the domestic markets under the ML, CoA and label of Ind-Swift Laboratories Ltd. ("ISLL") by Synthimed Laboratories Pvt. Ltd. ("SLPL") for the grace period provided under the drug manufacturing license.

(B) Authorization for continuation of manufacturing for sale for exports markets under the ML, CoA and label of Ind-Swift Laboratories Ltd. by Synthimed Laboratories Pvt. Ltd., till the time the required approvals from the respective export countries are obtained.

This has reference to your application dated 26-03-2024, on the subject noted above.

It is intimated that after the scrutiny of the documents produced by your firm with the application and the record of this office, it has been found that your firm has applied for grant of Drug Manufacturing Licenses in Form 24 & 27 in Invest Punjab Portal under Pin

2024.PHHC:172572



240319025 due to change in the constitution and title of the firm. Your firm has taken over the firm M/s Ind-Swift Laboratories Ltd. Village Bhagwanpur, Barwala Road, DeraBassi-140507, District S.A.S Nagar (Mohali) holding DML No. 1610-OSP & 1615-B, retained up to 31-12-2027. In the condition no, 5 of the retention letter dt.15- 09-2022 it is mentioned that The licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the licence. Where any change in the constitution of the firm takes place, the current licence Shall deemed to be valid for a maximum period of three months from the date on which the change takes place unless, in the meantime, a fresh licence has been taken from the Licensing Authority in the name of the firm with the changed constitution and the same is self explanatory.”

The Drugs and Cosmetics Act, 1940, being a central legislation, the interpretation adopted by the authorities would be deemed to be given in exercise of power conferred upon the authority under the

2024.PHHC:172572



parliamentary statute. The interpretation of NCB, on the other hand, runs contrary to the same even though the source of power flows in both Statutes from a Parliamentary Legislation notwithstanding the administrative control over the Licensing authority.

7.13 The Hon'ble Supreme Court, in the matter of **Central Warehousing Corporation Limited Vs. Adani Ports & Special Economic Zone Limited, reported as 2022 SCC Online SC 1398**, held that it does not augur well for Union of India to speak into two contradictory voices. The two Departments cannot be permitted to take stands which are diagonally opposite. The operative part thereof reads thus:-

“57. We are of the considered view that it does not augur well for the Union of India to speak in two contradictory voices. The two departments of the Union of India cannot be permitted to take stands which are diagonally opposite. We may gainfully refer to the following observations made by a three-Judge Bench of this Court in Lloyd Electric & Engg. Ltd. v. State of H.P. [Lloyd Electric & Engg.

2024.PHHC:172572



Ltd. v. State of H.P., (2016) 1 SCC 560] : (SCC p. 564, para 14)

“14. The State Government cannot speak in two voices. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-3-2009, up to 31-3-2013, and the Notification dated 29-5-2009, accordingly, having been issued by the Department concerned viz. Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the government policy and not their own policy.”

Under the given circumstances, the interpretation of similar conditions given by the Licensing Authority under the Drugs and Cosmetics Act, 1940, has also to be examined vis-à-vis the interpretation suggested by the NCB under the Substance Control Order of 2013

2024.PHHC:172572



and considering that Section 80 of the NDPS Act, 1985, stipulates that the provisions of the NDPS Act have to be read in addition to the Drugs and Cosmetics Act, 1940. Hence, both the authorities are enjoined upon by the legislature to work in unison so as to give effect to the corresponding objects under both the Statutory provisions and that the NCB cannot claim unto itself any superior or overriding powers as compared to the competence of the authority under the Drugs and Cosmetics Act, 1940. The NDPS Act, 1985 is thus not an overriding statutory enactment provision and that a harmonious construction and workability has to be ensured while examining the circumstances that are governed by both the statutory mechanisms.

The interpretation of NCB, if applied, thus may lead to an impractical approach as the sanctity and acceptance given under Drugs and Cosmetics Act, 1940, by the competent authority would become meaningless even though manufacturing of Drugs and Pharmacy is primarily governed by the Act of 1940.

2024.PHHC:172572



7.14 Some of the principles of interpretation of Statutes quoted on approval from Maxwell 12 Ed. by the Hon'ble Supreme Court in the matter of **Afcons Infrastructure Ltd. and another Vs. Cherian Varkey Construction Company Private Limited and others,** **reported as 2010 (8) SCC 24**, are extracted as under:-

“21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make

2024.PHHC:172572



the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

21.1. *Maxwell on Interpretation of Statutes (12th Edn., p. 228), under the caption “modification of the language to meet the intention” in the chapter dealing with “Exceptional Construction” states the position succinctly:*

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual

2024.PHHC:172572



meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.”

*This Court in **Tirath Singh v. Bachittar Singh** [AIR 1955 SC 830] approved and adopted the said approach.*

21.2. In Shamrao V. Parulekar v. District Magistrate, Thana [(1952) 2 SCC 1 : AIR 1952 SC 324 : 1952 Cri LJ 1503] this Court reiterated the principle from Maxwell: (AIR p. 327, para 12)

“12. ... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction

2024.PHHC:172572



which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.”

21.3. In *Molar Mal v. Kay Iron Works (P) Ltd. [(2000) 4 SCC 285]* this Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. This Court observed: (SCC p. 295, para 12)

“12. ... That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning.”

2024.PHHC:172572



21.4. In *Mangin v. IRC* [1971 AC 739 : (1971) 2 WLR 39 : (1971) 1 All ER 179 (PC)] the Privy Council held: (AC p. 746 E)

“... the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.”

21.5. *A classic example of correcting an error committed by the draftsman in legislative drafting is the substitution of the words “defendant's witnesses” by this Court for the words “plaintiff's witnesses” occurring in Order 7 Rule 14 (4) of the Code, in *Salem Bar (II)* [(2005) 6 SCC 344]. We extract below the relevant portion of the said decision: (SCC pp. 368-69, para 35)*

“35. Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by

2024.PHHC:172572



the defendant. Under Order 8 Rule 1-A(4) a document not produced by the defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order 7 Rule 14(4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words 'plaintiff's witnesses', would be read as 'defendant's witnesses' in Order 7 Rule 14(4). We, however, hope that the mistake would be expeditiously corrected by the legislature."

21.6. *Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise Principles of Statutory Interpretation (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in **Stock v. Frank Jones (Tipton) Ltd. [(1978) 1 WLR 231: (1978) 1 All ER 948 (HL)]**: (WLR p. 237 F-G)*

2024.PHHC:172572



“... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly.”

The aforesaid rules of interpretation, on being considered in light of the different application by two different agencies under an active exercise of the powers conferred upon them under the Parliamentary legislation, have to be examined with a view as to which such interpretation would advance the object of the Act and would be reducing the hardship, in acceptance of its applicability.

2024.PHHC:172572



On a comparative analysis and consideration, the respondent-NCB has evidently resorted to a much stricter interpretation, despite use of broader expressions and that in doing so, the respondent NCB has ignored the rights, provisions, and the operation of other statutory frameworks and has chosen an interpretation as would subjugate every other statutory provision to its dominion and control.

Considering it from any of the aforesaid settled legal principles, it is evident that the respondent-NCB has resorted to an interpretation which may not be a correct or purposive constructive approach towards interpreting the condition.

It is also not the case of the respondent NCB that the petitioner has disposed of any material to its advantage and rather it is undisputed fact that all the controlled substances has been kept in-tact.

Besides, the entire sequence also shows that immediately on conclusion of a business transfer under the agreement, an intimation was sent to the respondents by

2024.PHHC:172572



the earlier registered entity about the transfer of business followed by an application by the petitioner for grant of URN. The vendors also moved an application for surrender of the licenses since two licenses could not have been issued against the same premises, as per the condition under clause 3 of the registration condition as per the procedure to fulfil condition No.4 of the registration.

Under the above circumstances, I am of the opinion that the initiation of the proceedings against the petitioner and including rejection of the application submitted by the petitioner for grant of URN, on the ground of violation of Condition No.4 of the Controlled Substances Order, 2013, is misplaced and is liable to be set aside being based on erroneous and impractical interpretation of the statutory registration.

The impugned communication dated 25.04.2024 [signed on 23.04.2024 (Annexure P-18)] rejecting the application form submitted by the petitioner along with the proceedings initiated by the respondents for being in possession of Controlled substance under the

2024.PHHC:172572



slump sale are set aside. The respondent NCB is directed to take a fresh decision on the application submitted by the petitioner under Form B on its merits and in accordance with law and without being influenced by the reasons that formed the basis of rejection of the earlier application submitted by the petitioner.

Let the aforesaid exercise be undertaken by the NCB within a period of 03 months of receipt of a certified copy of this order. The respondents shall also de-seal and return the entire seized material to the petitioner.

Since the contention of the petitioner has been accepted hence, File No.NCB/CZU/Cr. No.08/2024 registered by respondent-NCB against petitioner along with all consequential proceedings emanating from the notices under challenge are also set aside.

Since CWP No.9966 of 2024 was filed before rejection of the application of the petitioner for issuance of URN and CWP No.11347 of 2024 was filed thereafter, all the prayers of said writ have also been made in CWP

2024.PHHC:172572



No.11347 of 2024, the said writ is also disposed of in terms of CWP No.11347 of 2024.

8 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

9 Photocopy of the order be placed on the file of connected case.

December 19, 2024. (VINOD S. BHARDWAJ)
raj arora JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No