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

+ **W.P.(C) 8749/2018**

B. BRAUN MEDICAL (INDIA) PVT. LTD. Petitioner

Through: Mr S. Ganeshan, Sr. Advocate, Mr
Sandeep Sethi, Sr. Advocate with Dr
B. K. Dash and Mr Manoj,
Advocates.

versus

UNION OF INDIA AND ANR. Respondents

Through: Ms Maninder Acharya, ASG with Mr
Ravi Prakash, CGSC with Mr Nitish
Gupta, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 05.09.2018

C.M. No. 33618/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 8749/2018 & C.M. No.33617/2018

2. Issue notice. Learned counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition impugning a demand notice dated 25.07.2018, whereby the respondents have demanded a sum of ₹42,11,27,840/- (comprising of ₹32,19,07,152/- as the amount overcharged and a sum of ₹9,92,20,688/- as interest upto 31.08.2018).

4. In terms of paragraph 20(1) of the Drugs (Price Control) Order, 2013 (hereafter 'DPCO 2013') an annual increase upto 10% of the price of non-



scheduled formulations and drugs is permissible. The aforesaid demand has been raised on an allegation that the petitioner had charged a price higher than that permissible under paragraph 20(1) of the DPCO 2013.

5. Mr S. Ganesh, the learned senior counsel appearing for the petitioner has assailed the impugned order, essentially, on four grounds. First, he submits that the power to demand overcharged amount cannot exceed a period of twelve months prior to the date of notice and in this case the demand has been raised for a period of 15.05.2015 to 31.12.2017. Second, he submits that the petitioner would be entitled to increase the price by 10% annually and since, last price was increased in the year 2014; 10% annual increase in the price of the product in question would result in the MRP of about ₹240/-. He submits that in this view, no amount is payable by the petitioner. Third, he submits that paragraph 20 of the DPCO 2013 can only apply to the drugs and formulations where a price has been fixed by the Government. He has referred to the definition of the expression 'maximum retail price' as provided by clause (r) of paragraph 2(1) of the DPCO 2013. He submits that since the price of the drug in question (Intrafix Safeset) has not been subjected to any price control, the same is outside the purview of paragraph 20 of the DPCO 2013. Lastly, he submits that the petitioner is not liable to pay any interest for a period prior to the demand. He relies on the decision of this Court in **Best Laboratories Pvt. Ltd. v. Union of India and Ors.: W.P.(C) 639/2009** in support of this contention.

6. Undoubtedly, the contention advanced by Mr Ganesh, learned senior counsel appearing for the petitioner requires consideration. However, this Court is not inclined to accept to the request that impugned demand be stayed unconditionally.



7. *Prima facie*, it appears that the object of paragraph 20(1) of the DPCO 2013 is to ensure that the price of non-scheduled formulations and drugs are not increased excessively. The concerned authorities in their wisdom have considered 10% annual increase to be acceptable. In this view, it would be apposite if the petitioner is directed to deposit the overcharged amount calculated on the basis of permitting the petitioner 10% annual increase.

8. Ms Acharya, learned ASG appearing for the respondents opposes this view; she states that once the petitioner has been found contravening the provisions of paragraph 20 of the DPCO 2013, the petitioner would not be entitled to increase the price in terms of the last sentence of paragraph 20(1) of the DPCO 2013.

9. At this stage, this Court is not inclined to accept the aforesaid view (only for the purpose of the interim order) as it does appear that the prohibition not to increase the price for a further period of 12 months is imposed as a penalty. At this stage, where the basis of the demand has been challenged, this Court does not consider it apposite that the petitioner be also called upon to deposit an amount which is in the nature of a further penalty.

10. Ms Acharya, learned ASG has also handed over a calculation sheet indicating the amount that would be required to be deposited by the petitioner on the aforesaid basis. Mr Ganesh seeks time to examine the same.

11. List on 07.09.2018 for further proceedings.

VIBHU BAKHRU, J

SEPTEMBER 05, 2018
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