



**COMPETITION COMMISSION OF INDIA**

***Suo moto* Case No. 02 of 2012 and Ref. Case No. 01 of 2013**

***Suo moto* Case No. 02 of 2012**

**In Re: Bengal Chemist and Druggist Association**

**And**

**Reference Case No. 01 of 2013**

**Re: Reference Case No. 01 of 2013 filed under section 19(1)(b) of the Competition Act, 2002 by Dr. Chintamoni Ghosh, Director, Directorate of Drugs.**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Dr. Geeta Gouri  
Member**

**Mr. Anurag Goel  
Member**

**Mr. M. L. Tayal  
Member**

**Mr. Justice (retd.) S.N. Dhingra  
Member**

**Mr. S. L. Bunker  
Member**



**Appearances:** M/s Seth Dua and Associates through Mr. V.K. Aggarwal Advocate with Mr. Tushar Chakraborti, General Secretary for Bengal Chemist and Druggist Association and its Executive Committee Members.

### **Order under Section 27 of the Competition Act, 2002**

This common order shall govern the disposal of *Suo moto* Case No. 02 of 2012 and Reference Case No. 01 of 2013 as similar issues are involved in these cases.

#### **Facts:**

##### ***Suo moto* Case no. 02/2012**

2. This case was initiated on the basis of an e-mail dated 28.08.2012 from one Shri Arun Kumar Singh wherein attention of the Competition Commission of India (hereinafter referred to as the 'Commission') was drawn to the alleged anti-competitive practices adopted by the Bengal Chemist and Druggists Association (hereinafter referred to as 'BCDA'). It was alleged that BCDA is engaged in anti-competitive practice of directly or indirectly determining the sale price of drugs and controlling the supply of drugs in a concerted manner in violation of Section 3(3)(a) and 3(3)(b) of the Competition Act, 2002 (the Act).
3. Based on the information received from Shri Singh and other relevant information available in the public domain, the Commission decided to undertake a *suo moto* enquiry into the matter under section 19(1) of the Act.



4. It was stated that BCDA is an association of wholesalers and retail sellers of drugs and is affiliated to All India Organization of Chemist and Druggist (hereinafter referred to as AIOCD). It is registered as company under section 25 of the Companies Act 1956. It has approximately 34000 members who are engaged in wholesale and retail sale of drugs in the state of West Bengal. It was alleged by the Informant that the BCDA's executive committee directed its retailer member not to give discount on the MRP in the sale of medicines to consumers. The directives issued by the BCDA have been minuted in its Executive Committee meeting dated 23.06.2012 and the same are available on the website of BCDA. Further, the Informant alleges that in order to ensure strict compliance of its directives, BCDA has been carrying out vigilance operations to identify the retailers defying the directions issued by it, and has even forced the defiant members to shut their shops as a punishment measure. The Informant, therefore, alleged that the conduct of BCDA has curtailed the freedom of trade for the retailers and that discount is not being passed on to the end consumers. This, in the opinion of the Informant, has resulted into directly or indirectly determining, the sale prices of drugs by prohibiting its retailer members from giving discounts on MRP and controlled and limited the production/supply of medicines and the market of provision of services by forcing them to close their business and adversely affected the interest of retailers and consumers.

Ref. Case No. 01 of 2013

5. The present reference has been filed by Dr. Chintamani Ghosh, Director, Directorate of Drugs Control, West Bengal (hereinafter referred to as 'the Director') under Section 19 (1) (b) of the Act against BCDA alleging *inter alia* that it is engaged in issuing anti-competitive circulars directing the retailers not to give any discount to the consumers, which is in contravention of the provisions of section 3 of the Act.



6. In the aforesaid reference, it is stated that Shri Arun Kumar Singh, a member of All India Drugs Action Network (AIDAN) sent two e-mails on 24.06.2012 & 27.06.2012 complaining against BCDA that Hoogly District Committee of the BCDA has issued circulars prohibiting the retailers from giving any discount to the consumers. It is also stated that Hoogly District Committee compelled the retailers to display “No Discount” pamphlet in their shop. The averment that BCDA has formed a vigilance committee for enforcing its aforesaid decisions against the defying retailers also finds place in the said e-mail.
7. Taking into consideration the gravity of the allegations of Shri Arun Kumar Singh, the Director investigated the matter through a joint team. The team visited about six medical shops in Chinsurah and Serampur area on 18.10.2012. From the investigation report submitted by the joint team, it transpired that out of six shops inspected, three shops displayed “No Discount” pamphlet in their shop premises as per the direction/circular of BCDA. The team also interviewed few customers present at the shop and some of them verbally admitted the fact that they used to get discount on the price of medicines purchased prior to the aforesaid “No Discount” circular/notice. The team also inspected three medical shops on 08.11.2012 in Howrah and Kolkata and also found leaflets mentioning “No Discount” displayed in the shops there.
8. In view of the aforesaid facts and circumstances, the Director submitted that BCDA has contravened the provisions of Section 3(1), Section 4(1) and Section 4(2) of the Act relating to anti-competitive agreements and abuse of dominant position respectively.



### **Directions to the DG**

9. The Commission after considering the entire material available on record vide its order dated 11.10.2012 passed in *Suo moto* Case No. 02 of 2012 directed the Director General (DG) to cause an investigation to be made into the matter and to submit a report.
10. A similar order was passed by the Commission in Ref. Case No. 01 of 2013 on 27.05.2013. Further, it was also ordered that since the Commission has already directed investigation to be made in *Suo moto* Case No. 02 of 2012 on similar facts, the DG shall club the investigation of this case along with the investigation of Ref. Case No. 01 of 2013, and submit a consolidated report in respect of both the cases.
11. It is pertinent to mention here that the DG vide its communication dated 30.09.2013 on the subject of forwarding of investigation report under section 26(3) in Ref. Case No. 01 of 2013 brought to the notice of the Commission that by the time the order of the Commission in Ref. Case No. 01 of 2013 to club the investigation was received in the office of DG, the investigation report in *Suo moto* Case No. 02 of 2012 had already been submitted to the Commission and hence, could not be clubbed then with *Suo moto* Case No. 02 of 2012. However, after going through all the facts of the Ref. Case No. 01 of 2013, documents, information, allegations and alleged conduct of the BCDA (being same in both the matters), the DG found them to be identical with *Suo moto* Case No. 02 of 2012. Consequently, the DG treated and adopted the main investigation report dated 29.05.2013 and supplementary report dated 24.09.2013 submitted in *Suo moto* Case No. 02 of 2012 as investigation report of



Ref. Case No. 01 of 2013 also, and placed the same before the Commission for consideration.

### **Investigation by the DG**

12. It is noted by the DG in his investigation report that BCDA has indulged in the concerted anti-competitive practice of sale of drugs only on MRP. It is further noted that the collusive action has been taken to ensure that the trade margins do not get determined on a competitive basis and are uniform for all the wholesalers and retailers respectively.
13. In the opinion of the DG, the fact that BCDA has decided that drugs be sold only at their MRP and that no discounts be offered implies that the maximum retail price has been decided to be the ruling price, thus precluding the possibility of drugs being sold at prices lower than the MRP. The DG observed that the concerted and collusive activities of the BCDA members have prevented price competition between one retailer and the other. Such conduct of BCDA, in DG's opinion, contravenes the provisions of Section 3(3)(a) read with Section 3(1) of the Act. Further, when sale of drugs is determined to take place only at MRP, on account of agreement entered into amongst the members of the BCDA, then such a trade practice causes or is likely to cause an appreciable adverse effect on competition, especially when almost all the retailers and wholesalers are members of BCDA.
14. The DG found that BCDA and its affiliated District/Zonal Committees have taken concerted action against retailers offering discounts, by launching organizational movements, threatening them with dire consequences, picketing their shops, collecting fines from them, forcing them to shut their shops, directing their wholesale members not to make



supplies and not to cooperate with such retailers. The DG concluded that the above said conduct has resulted or is likely to result in controlling and or limiting supply of medicines and the market of provision of drugs, which contravene the provisions of Section 3(3)(b) of the Act.

15. On another aspect, the DG observed that the concerted activities of BCDA and its affiliated District/ Zonal Committees in enforcing the sale of drugs on MRP have not only adversely affected the interests of retailers, who have been denied their right to freedom of trade and business, but have also adversely affected the consumers.
16. The DG in his report notes that the BCDA has taken a plea of ignorance of law in defence of its action. It has also taken a plea that the sale of drugs on MRP ensures a margin which has been granted under the DPCO and is accepted in the industry. The DG stated that in an affidavit dated 3rd May, 2013 Shri Tushar Chakraborti, General Secretary, BCDA while not admitting of indulged in unlawful activities, he has stated that BCDA will cease and desist from the impugned practice.
17. Be that as it may, the DG observes that the activities of trade association, *inter alia*, to direct its members to sell drugs only at their MRP is a palpable anti-competitive conduct which cannot be justified. The DG concludes that the activities of the BCDA are in conflict with the objects of the competition law as they cause restraint of trade, stifle competition and harm the consumers.
18. Based on the above findings, the investigation conducted by the DG concluded that BCDA and its District and Zonal Committees were engaged in anti-competitive practices of directly or indirectly determining the sale prices of drugs and controlling or limiting the supply of drugs through concerted and restrictive practices, in violation



of the provisions of Section 3(3)(a) and (b) read with Section 3(1) of the Act.

### **Consideration of the DG report by the Commission**

19. The Commission considered the main investigation report in *Suo moto* Case No. 02 of 2012 in its ordinary meeting held on 18.06.2013. Later, on 17.10.2013, the Commission also considered the supplementary investigation report in the same matter submitted by the DG in an ordinary meeting. Consequently, the Commission decided to send a soft copy of main and supplementary investigation reports (non-confidential version) to the parties for filing their replies/objections within two weeks of receipt of the report. The Commission also directed that the opposite parties be asked to file their profit and loss accounts/balance sheet/turnover for the last three financial years alongwith the reply/objections to the DG report. The Commission also directed the parties to appear for oral hearing, if they so desire, through their authorized representatives on 26.11.2013.

### **Replies/ Objections/ Submissions**

20. The BCDA filed its replies/objections to the main investigation report as well as to the supplementary investigation report of the DG besides making oral submissions. The parties have also filed written submissions.

### **Replies/ Objections/ Submissions of BCDA to the Main Investigation Report**





21. After providing brief information about the organization, structure of, and welfare activities undertaken by, BCDA in its reply, submitted that the DG has violated principles of natural justice by not providing copy of the complaint of the Director and documents/affidavits furnished by certain persons, upon which the DG has relied, thereby disabling BCDA to cross-examine such persons to test their veracity apart from denying any opportunity for rebutting the allegations.
22. It is contended by BCDA that the prices of scheduled drugs are fixed under the DPCO order by the government and for non-scheduled drugs by the manufacturers and hence, passing of resolutions by BCDA allegedly to the effect asking retailers not to sell medicines below Maximum Retail Price (MRP) is not covered within the mischief of Section 3(3)(a) read with Section 3(1) of the Act. According to BCDA, it is not fixing the sale price of the medicine either directly or indirectly.
23. It is argued on behalf of BCDA that the DG failed to prove scarcity of any of the medicines as he could not examine any of the consumers in this regard. Hence, it is submitted that BCDA has not violated section 3 (3) (b) of the Act.
24. The plea of ignorance of law is taken next by BCDA. It is submitted that there is absence of level playing field in the State of West Bengal in retail pharmaceutical trade. Due to the heavy discounts offered by big retailer, the business of small retailers is being wiped out. Consequently, around 15 to 20 per cent of small retailers in different districts/villages in the state of West Bengal are forced to close their business. It is in this context that the alleged resolutions were passed under a bona fide belief that there is no violation of any law. It is further stated that they were primarily passed for the purpose of organizing protest processions against entry of big national capitalists in retail pharmaceutical trade and making a



presentation before the local government authorities of state of West Bengal.

25. It is submitted by BCDA that on coming to know that such acts of BCDA are in conflict of the provisions of the Act, a resolution dated April 20, 2013 was passed by BCDA in its executive meeting resolving that it shall not initiate any organizational movement against any wholesaler/retailer offering discounts below MRP. Thereafter, an affidavit dated May 02, 2013 was filed before the DG apprising that vide resolution dated April 20, 2013 BCDA has resolved and minuted in its executive meeting that it shall not initiate any organization movement against any wholeseller/retailer or any other party selling drugs by offering discounts/selling drugs below MRP. In the aforesaid affidavit, it is further stated that the wholesalers/retailers may give any discount as per their own discretion and no action restricting their right to carry on trade shall be taken by BCDA. Furthermore, it is stated in the said affidavit that BCDA has ceased the impugned practice of opposing sale of drugs by offering discounts or selling them below MRP and undertakes to desist from doing the same in future. In view of the above, BCDA submits it has already “ceased” to commit such practices and undertaken to “desist” from the same in future.
26. An attempt is also made by BCDA to take aid of a judgment of Hon’ble Supreme Court of India in the matter of *All India Organization of Chemists and Druggists and Others v. Director General, Investigation & Registration, New Delhi* reported in 2002 CTJ 4 (Supreme Court) (MRTP) and an order of the Hon’ble Competition Appellate Tribunal in the matter of *Director General v. Voltas Limited and another* reported in 2010 CTJ 4 (COMPAT) (MRTP) to support its argument that if the currency of agreement/acts/practices which is the subject-matter of the notice of enquiry has expired, the notice of enquiry becomes infructuous.



27. Lastly, it is argued that since BCDA has voluntarily complied with the requirement of section 27(a) of the Act, no penalty should be imposed by the Commission under section 27(b) of the Act. If at all circumstances warrant imposition of penalty, mitigating factors like voluntary compliance and undertaking by BCDA, acting under bona fide belief, ignorance of law *etc.* be considered by the Commission
28. In view of the above, BCDA prays for closure of the matter.

*Replies/ Objections/ Submissions of Shri Tushar Chakraborty, Hon. General Secretary, BCDA to the Supplementary Investigation Report*

29. At the outset, it was submitted by Shri Tushar Chakraborty that since the main investigation report of DG is allegedly against BCDA and not against its individual office bearers and executive members, this reply is confined to the supplementary investigation report, and the reply of BCDA in the main investigation report be allowed to be adopted by the Commission as his reply to the main investigation report.
30. Shri Tushar Chakraborty in his reply refutes all the allegations made in the supplementary report of the DG. It is submitted by him that neither the complaint dated August 28, 2012 of Shri Arun Kumar Singh nor the confidential version of the main report of the DG has been provided to him. Further, it is alleged that the rejection of his request for supply of copy of the main investigation report resulted in denial of any chance for rebuttal of allegations, if any, during the supplementary investigation by the DG. It is also submitted that even a copy of the order rejecting his request to give copy of investigation report and other material is not supplied to him resulting in violation of principles of natural justice. It is contended that in the absence of aforesaid material, he could not



meaningfully respond to the letter of the DG dated July 03, 2013 issued during supplementary investigation. He also sought clarification from the DG as to whether the relevant section being invoked against him is section 48(1) or section 48(2) of the Act. However, he received no response from the DG.

31. It is averred that section 48 of the Act may not be applicable to the office bearers and executive members of BCDA as their liability is limited as per the Memorandum of Association of BCDA being a non-profit company registered under section 25 of the Companies Act, 1956. It is submitted that mere presence in a particular executive meeting of BCDA may not be treated as violation of section 48 of the Act.
32. Shri Tushar Chakraborty has contended that the initial notice dated July 3, 2013 issued by the DG to him under proviso to section 48(1) of the Act was bad in law being not in terms of the order of the Commission dated June 18, 2013 which directed DG to investigate under section 48(2) of the Act.
33. Other submissions of Shri Tushar Chakraborty are identical to the submissions made by BCDA in its reply to main investigation report stated above and hence, not reproduced here again for the sake of brevity.

### **Analysis**

34. It may be pertinent to state at the outset that the issue of sale of drugs, *inter alia*, at fixed trade margins on account of sale of drugs on MRP, by the members of the Chemists and Druggists Associations in different states has been considered by the Commission in (a) MRTPC Case No. C-127/2009/DGIR (4/28), in the matter of *Varca Druggists and Chemists and others v. Chemists and Druggists Association, Goa* (b) MRTPC Case No. C-87/2009/DGIR in the matter of *Vedant Bio Sciences v. Chemists*



*and Druggists Association of Baroda* (c) Case No. 20/2011, in the matter of *Santuka Associates Private Limited v. AIOCD* (d) Case No. 30/2011, in the matter of *Peeveear Medical Agencies v. All India Organization of Chemists and Druggists and Janssen Cilag Pharmaceuticals*, (e) Case No. 41/2011, in the matter of *Sandhya Drug Agencies v. Assam Drug Dealers Association and others* and (f) Case no. 60/2012 in the matter of *M/s Arora Medical Hall, Ferozpur v. Chemists & Druggists Association, Ferozpur & Ors.* The Commission, after inquiry, has disposed of all these matters. In these cases, the Commission has, *inter alia*, observed that the Chemists and Druggists Associations, arrayed as opposite parties in these cases, have indulged in anti-competitive practices in violation of section 3 of the Act. It has passed cease and desist orders and imposed monetary penalties against the respective Chemists and Druggists Associations. The Commission *inter alia* has directed them to ensure that the members of the trade associations were free to give discounts to the customers and not to fix their respective trade margins. Similarly, the All India Organization of Chemists and Druggists (AIOCD), which is the apex body of the Chemists and Druggists Associations, was also *inter alia* required to issue circulars/letters to this effect to all its members, *i.e.* the various state Chemists and Druggists Associations.

35. As a matter of trade practice, the members of the various Chemists and Druggists Associations of the districts/states have been seeking and enforcing fixed trade margins of 20% to retailer and 10% to distributor/stockiest, in terms of the various MOUs signed between All India Organization of Chemists and Druggists (AIOCD) and the Organization of Pharmaceuticals Producers of India (OPPI) and the Indian Drugs Manufacturers Association (IDMA). The above fixed margins are possible only if drugs are sold at their respective MRPs and the sellers do not indulge in undercut by way of offering discount to their customers. Even though the various MOUs signed between AIOCD-OPPI-IDMA



have been officially rescinded by the respective parties (as submitted in Case No. 20/2011, in the matter of Santuka Associates Private Limited v. AIOCD), the instant allegation against BCDA, which is a member of AIOCD, indicate that the practice of sale of drugs only on MRP, so as to ensure fixed trade margins to the retailers and the wholesalers, is still being practiced.

36. It is submitted by BCDA that it is a non-profit company registered under Section 25 of the Companies Act, 1956. It was incorporated in year 1921 under the provision of Companies Act, 1913. As per the Memorandum of Association, the liability of each member is limited and the income and property of BCDA shall be applied solely towards the promotion of the objects and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to any member of BCDA. Further, upon the winding up or dissolution there remains after the satisfaction of all its debts and liabilities and property whatsoever, the same shall not be paid or distributed among the members, but shall be given and transferred to some other institutions having object similar to the object of BCDA. As regards the structure of BCDA, it is Bengal based and a three-tier organization viz. Zones, Districts and the State. BCDA is covered by 214 Zones and 24 Districts. As per the delegated power of the Executive Committee, Zonal Committees and District Committees are formed. The Executive Committee in consultation with the members of the Association where committee is going to be formed shall convene a General meeting and shall request the members present to elect the Zonal Committee, Office-Bearers and Executive Committee members as per stipulation of the Articles of the Association. The boundary of the Zonal Committee is decided by the Executive Committee. Thus, 214 Zone Committees have been formed. Individual Zone Committee is formed on the basis of ranging from less than 100 to more than 300 members. Thus, BCDA is organizationally covered by 214



Zones. The District Committee is formed by all the elected Zone Committee members in a District. The list of such elected members is placed in the Executive Committee meeting for being approved as the District Committee. Individual District Committee is formed on the basis of members ranging from 1000 to beyond 4000. The total number of District Committees is 24. Both the Zone and District Committees formed by Clause 26(a) have tenure of two years from the date of formation/election. The State Committee is formed by the District representatives so nominated proportionately by the Districts. The tenure of the State Committee is one year from the date of formation.

37. Coming back to the essence of the matter, on a careful perusal of the information/reference, the report of the DG and the replies/ objections/ submissions filed by the parties and other materials available on record, the following issues arise for consideration and determination in the instant matters:

- (i) Whether BCDA and its District and Zonal Committees were engaged in anti-competitive practices in violation of the provisions of section 3 of the Act?
- (ii) If finding on the issue No. (i) is in the affirmative, whether the members/office bearers of the Executive Committee of BCDA and its District and Zonal Committees are also liable for the violation of section 3 of the Act?

### **Determination of issues**

*Issue No. (i): Whether BCDA and its District and Zonal Committees were engaged in anti-competitive practices in violation of the provisions of section 3 of the Act?*



38. The Commission notes that the DG in his report has concluded that BCDA and its District and Zonal Committees were engaged in anti-competitive practices of directly or indirectly determining the sale prices of drugs and controlling or limiting the supply of drugs through concerted and restrictive practices, in violation of the provisions Section 3(3)(a) and (b) read with Section 3(3)(b) of the Act. Before proceeding to arrive at a conclusive finding on this aspect, it is apposite to refer to the law as contained in section 3(1) and section 3(3) of the Act which reads as under :

**Section 3(1)** *“No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.”*

**Section 3(3)** *“Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which –*

*(a) directly or indirectly determines purchase or sale prices;*

*(b) limits or controls production, supply, markets, technical development investment or provision of services;*

*(c) .....*

*(d) .....*





*shall be presumed to have an appreciable adverse effect on competition.*

39. For the purpose of proper appreciation of applicability of relevant provisions relating to anti-competitive agreements, it is useful to consider the various elements of section 3 of the Act in detail. Section 3(1) of the Act prohibits, and section 3(2) makes void, all agreements by association of enterprises or persons in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which cause or are likely to cause appreciable adverse effect on competition within India. Therefore, if any agreement restricts or is likely to restrict the competition, then it will fall foul of section 3 of the Act.
40. Further, section 3(3) of the Act applies not only to an agreement entered into between enterprises or associations of enterprises or persons or association of persons or between any person and enterprises but also with equal force applies to the practice carried on or decision taken by any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services which has the purpose of directly or indirectly fixing prices, limiting output or sales for sharing markets or customers. Once existence of the prohibited agreement, practice or decision enumerated under section 3(3) is established, there is no further need to show an appreciable adverse effect on competition because in such a case, a rebuttable presumption of law is drawn that such conduct has an appreciable adverse effect on competition and is therefore anti-competitive. In effect, the onus of proof shifts on to the opposite parties to show that the impugned conduct does not cause an appreciable adverse effect on competition.
41. The first question which arises before the Commission is whether BCDA is covered under the category of entities enumerated in section 3(3) of the



Act. In this respect, the definition of ‘enterprise’ as provided in section 2(h) assumes significance which runs as follows:-

*“enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind ..... but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space.*

42. As is clear from the above definition, ‘enterprise’ means a person or department of the Government engaged in any economic activity, excluding any activity of the Government relatable to the sovereign functions of the Government. All activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space are also excluded from the purview of the definition of ‘enterprise’. As per Articles of Association of BCDA, any person, firm or company carrying on the business of Chemists and Druggists and of Dealers of Drugs, Medicines and of Allied Products and of Manufacturer of Medicines, Drugs, Pharmaceuticals etc. and possessing a drug license under the Drug and Cosmetics (Amendment) Act and of the accredited Agents and Representatives of such licenses of other States having their office in this State (i.e. West Bengal) can become an ordinary Member of the Association subject to the provisions and restrictions contained in those Articles. Thus, it is not the case that any person can become a member of BCDA but only those persons falling within the aforesaid category can become member of BCDA. Since every member of BCDA



is actually a person engaged in an economic activity, the obvious inference is that he/she falls squarely under the definition of ‘enterprise’. Thus, BCDA which comprises of enterprises is an association of enterprises.

43. Further, Section 3(3) of the Act not only covers agreements entered into between enterprises or associations of enterprises but also the practice carried on or decision taken by any association of enterprises engaged in identical or similar trade of goods or provision of services. Thus, all actions and practices of BCDA including those relating to issues such as alleged fixation of trade margins, issuing circulars directing its retailer members not to give discount on the MRP in the sale of medicines to consumers, conducting raids in order to ensure strict compliance of its directives, carrying out vigilance operations to identify the retailers defying the direction issued by it, forcing the defiant members to shut their shops as a punishment measure etc. would fall squarely as ‘practice carried on’ or ‘decision taken by’ an ‘association of enterprises’ under Section 3(3) of the Act.
44. The Commission, therefore, holds that BCDA, being an association of its constituent enterprises, is taking decisions relating to distribution and supply of pharma products on behalf of the members who are engaged in similar or identical trade of goods and that such practices carried on, or decisions taken, by BCDA as an association of enterprises are covered within the scope of Section 3(3) of the Act.
45. The Commission has carefully perused the evidence/facts collected by DG in his report. In view of the denial of the allegations by the BCDA and its submission that it has not taken any measures against those members who offered medicines at discounts, the Commission considered it necessary to examine the minutes of the Executive Committee of



BCDA for the years 2011 to 2013 so as to assess the veracity of the contention of BCDA in the matter. The salient points which emerge from the examination of the relevant minutes are discussed hereunder:

(i) In the minutes of the Executive Committee meeting dated 24.03.2011, under Agenda No.5, organizational movement has been proposed to be launched against chain stores like Medplus, who allegedly indulge in under cutting and home delivery service. It has also been proposed that those who are not the members of BCDA should not be serviced and that the wholesalers should stop the medicine supply to the chain store.

(ii) In the minutes of the Executive Committee meeting dated 21.04.2011, under Agenda No.4, it has again been stated that supply of medicines to chain stores should be immediately stopped and that the various Districts and Zonal Committees should strictly enforce the guidelines of BCDA, to control the chain stores who are indulging in undercutting. In this meeting, the General Secretary has also requested all the District Secretaries, through their members, not to provide any service to Medplus.

(iii) In the minutes of the Executive Committee meeting dated 26.05.2011, under Agenda No.4, it has been stated by the General Secretary that the undercut problem both in retail and wholesale level is very serious in nature. He has further mentioned that as per norms, the State Executive Committee is the policy making body whose implementing machinery is the Zones, under the guidance of districts only. He has further stated that BCDA is strict on its earlier stand to maintain Wholesalers' margin in wholesale level and Retailers' margin in retail level. He also expressed that the BCDA strongly believes that the Zone leaders with the help of the District leaders should keep a close vigil on the shops to check the undercut problem.



(iv) The minutes of the Executive Committee meeting dated 25.06.2011, 16.07.2011, 11.08.2011 and 14.10.2011 do not refer to the issue of sale of Drugs on MRP. However, in the minutes of the Executive Committee meeting dated 08.11.2011, under Agenda No.4, it has been stated that five to six meetings have taken place regarding undercut. General Secretary also mentioned that the present committee is very serious on the chain store issue and that they would call the chain store people. In the minutes of the Executive Committee meeting dated 10.12.2011, under Agenda No.6, the Organizing Secretary has appealed to all the members that the undercut problem is to be thought of very seriously. He has further stated that after three months they will review the issue and from the month of April 2012, the Organizing Sub-Committee will take steps.

(v) In the minutes of the Executive Committee meeting dated 11.01.2012, under Agenda No.4, a decision has been taken by the Calcutta Coordination Committee to stop undercutting. The Organizing Secretary has also told that a street corner meeting is to be organized at 5- Points crossing at Shyambazar against undercut. It was also proposed to take some steps against Medplus, Metro and Lifeline. It has also been mentioned that undercutting is rampant at Calcutta and that they have to come down to the street against it.

(vi) The Agenda No.5 for the meeting dated 17.02.2012 of the Executive Committee, was 'To discuss about uniformity of retail prices and the role of the Organization in this regard'. In this meeting, the Organizing Secretary proposed for formation of Action Committee in order to arrest undercut in retail level. It has also been mentioned that a meeting was held with Life and Metro and it was observed that they were very audacious as to give more discount. It has been mentioned that Metro Pharma and Life has been giving exorbitant discount which, in turn, is damaging the



discipline of the trade. It was also assured that North Calcutta District Committee would participate in organizational programmes as decided by the State Executive Committee. The General Secretary has appreciated the endeavour of North Calcutta District Committee in keeping a close vigil on M/s Life. He has proposed taking strong decision not only against M/s life but also against Frank Ross, Dhanwantary, Medplus, etc. It was further stated that launching of organizational movement at any Zone/District is to be intimated to the State Committee. It was also mentioned that the undercut problem is centered in Kolkata and its surrounding Districts only.

(vii) In the minutes of the Executive Committee meeting dated 17.03.2012, under Agenda No.4, the Organizing Secretary has reported that the undercut problem has been concentrated upon in the two meetings of the Action Committee and another meeting with the District Organizing Secretaries. He has also proposed about the programme of 1<sup>st</sup> April 2012 to sell medicines from the retail outlet on MRP basis, and on 18<sup>th</sup> April 2012, to organize a protest procession against entry of big national capitalists in retail pharmaceutical trade. The House unanimously approved the proposal. The Organizing Secretary also stated that the state leadership is very rigid to prevent undercut. He has stated as follows: "*We should move forward to prevent undercut. The Organizational Vigilance committee will keep close watch. Organizational movement against a few non-cooperating members must be initiated. We will move from 1<sup>st</sup> April 2012*". One member stated that supplies to non-cooperating members are to be restricted while another member urged for concrete decision and stressed organizational movement against non-cooperating members and that the District Committees must take drive against undercut. Similarly, a member proposed to identify the members in the Zone who are giving discount. Another member stated that on 10<sup>th</sup> March meeting, 20 Districts representatives have agreed to prevent the undercut and that against undercut a clear directive is necessary from the State Committee. It was



further stated that if any stockiest supplies to any non-cooperating member from South Calcutta, Action committee can take any action as they like. Thereafter, the President announced that from 1<sup>st</sup> April 2012, sale of medicine on MRP would be implemented and Organizational Vigilance Committee would be formed at Zone level at the earliest to ensure its proper implementation and that the State Organizing Secretary will oversee the entire process. The House unanimously approved this programme.

(viii) In the minutes of the Executive Committee meeting dated 10.04.2012, under Agenda No.5, the Organizing Secretary has reported that on the basis of the information available, the activities for the programme on 18<sup>th</sup> are in progress. He has further mentioned about the movement against under cut from 1<sup>st</sup> April 2012. He has also stated that a meeting with the vigilance committee members will be held to get them acquainted with the Zone/District areas and that efforts should be made on postering, distribution of leaflets and propaganda *etc.* The Organizing Secretary has also stated that the suppliers to M/s Life and Medplus would be called for a meeting. In this meeting, the General Secretary has proposed for organizational movement against M/s Life with immediate effect and to talk to Metro Pharma and launch protest against them for giving discount. The Office Bearers were empowered to take decision regarding withdrawal of organizational movement. The House approved the proposal.

(ix) In the minutes of the Executive Committee meeting dated 19.05.2012, under Agenda No.5, the Organizing Secretary stated that as per the recommendation of East Calcutta District Committee, organizational movement should be implemented against M/s. Charu Medical Stores and M/s. Charu Marketing Agency for giving discount. One member also reported that by vigilance drive both Charu's have been caught. Another member has stated that both the Charu's have been told



not to give discount. The Organizing Secretary has mentioned that 1<sup>st</sup> April 2012 programme is on undercut and that their policy is faced with a problem created by M/s. Life Line, Medplus, Dhanwantary. He has also stated that this problem is mainly centered in Kolkata Districts. The General Secretary also requested the members to strictly follow the organizational movement on Life Line and others. One member stated that they should collect the information as to who purchase medicines from M/s Life and who are supplying medicines to Medplus. Another member stated that when chain stores are giving discount what will they reply to other retailers. The said member also stated that Dhanwantary has taken the Hospital supply with discount and proposed for organizational movement against Dhanwantary. It was also proposed by a member that the State committee should call the chain stores representatives and sit with them to persuade them to stop undercut. Vigilance teams were also proposed to be detailed in front of SSKM Hospital and CMRI. The Organizing Secretary proposed to write a letter to Medplus and other chain stores to honour the guideline of BCDA. He also proposed to call the Calcutta Wholesale EC body in BCDA. The General Secretary proposed the Organizing Secretary to call all the EC members of Calcutta Wholesale in BCDA within a short time. He further proposed that the vigilance activities in Districts will be organized. The House approved the above proposals.

(x) The Agenda No.3 for the meeting dated 23.06.2012 of the Executive Committee was 'To discuss about the action plan on Trade Policy.' In this meeting, the General Secretary has referred about State Committees' programme to stop discount from 1<sup>st</sup> April, 2012. It has also been mentioned that in the meeting with Life Line on 12.06.2012, the company has agreed to stop discount with immediate effect and as a result, the organizational movement has been withdrawn against Life Line. The Organizing Secretary has reported that Kolkata and other District





Committees have stopped the discount. Life Line has stopped discount and that some members have been cautioned by BCDA Vigilance. He has also mentioned that Shyambazar Zone under North Calcutta is still giving discount and that M/s. Jitendra Mohan should be penalized. One member has stated that discount is going to start again which is very painful to BCDA members. He emphasized that discount in Shyambazar Zone must be stopped for which he proposed to call the members of Shyambazar Zone on 25th June 2012 in State Office to persuade them to stop the discount. One member has stated that they have been activating the Zone Vigilance Committee continuously and are in constant touch with the Zone Vigilance Committee to implement the BCDA directive. Another member has stated that they have been able to convince the retailer members against discount and has noted that East Calcutta is very rigid. One member has stated that Canning Zone is very adamant and anti-propaganda against BCDA has been made. He has also mentioned that the State Vigilance Committee has been asked to intervene in the case of Mandai Pharmacy. He has however observed that the overall picture of the District Vigilance is good. One of the member has said that during a visit to the Shyambazar 5- Point crossing, it has been found that 3-4 shops have given discount including Frank Ross. He proposed that the State Committee should sit with the shop owners of Shyambazar Zone and persuade them to stop discount. Thereafter, the President directed that, as proposed, the retail shop owners of Shyambazar Zone would be called for a meeting on Monday the 25<sup>th</sup> June, 2012 in BCDA Office. One member complained that the root cause of undercut problem in South Calcutta is Dhanwantary and has sought the intervention of the State Committee in the matter. Another member has stated that undercut is prevailing at Baranagar and Dum Dum Zone and that the 24 Parganas North District Committee has been in constant touch with them. Another member has complained that North Calcutta is not taking any fine from the shops who are giving discount. The Organizing Secretary has mentioned that they have taken



necessary steps for implementation of trade policy. He also stated that discount is going on in Kolkata and surrounding Districts and recommended to continue vigilance operation in very rigid manner. He also reported that the Calcutta Wholesale EC Committee has assured to stop under cut. One member stated that Dhanwantary, Chemist Corner, Medplus *etc.* were the first to introduce discount system in the trade and that they are to be caught through vigilance operation. Another member stated that the new traders coming in this trade are giving discount and suggested to sit with them. He also proposed that the supply point to Medplus and others is to be detected first and to take extreme measures against those who are caught. He also proposed that M/s Jatindra Mohan is to be caught. General Secretary concluded the agenda stating that based on the discussions held, Calcutta Coordination Committee and Action Committee will decide the names of the firm against whom action is to be taken and that the interests of wholesalers and sub-wholesalers are to be safeguarded.

(xi) In the minutes dated 31.07.2012 of the Executive Committee meeting, under Agenda No. 2, one member has stated that since the government has decided to open retail outlets in government hospitals on PPP model, unhealthy competition would crop up and amount of discount will go on increasing rapidly. Another member stated that retailers outside the hospital would be affected seriously and proposed collective movement against such move of the government which is interested to get the big houses in the trade.

(xii) In the minutes of the Executive Committee meeting dated 25.08.2012, under Agenda No.3, one member stated that the present Executive committee has been successful in many matters but it has not been able to go against MRP.



(xiii) In the minutes of the Executive Committee meeting dated 24.11.2012, under Agenda No. 5, one member stated that Dhanwantary is giving their cards to the senior citizens and requested the Calcutta Wholesale leaders to think about the retailer's interest. Another member stated that with the entry of FDI, some retail shops would go under *coma* in West Bengal. Another member stated that Modi Mundy is giving discount @ 18% and 16% and by this way many companies are depriving the trade. In this meeting, the General Secretary informed the house that a case has been filed against the BCDA in the Competition Commission of India. It was proposed to send the Bengali translation of the Notice of Competition Commission to each Zone and District and to elaborately discuss in their organizational meeting.

(xiv) In the minutes of the Executive Committee meeting dated 21.12.2012, under Agenda No. 3, the General Secretary reported that the Zones have been agitated in West Bengal as in two government hospitals, the government has opened fair price shop with 60% less. The Organizing Secretary stated that a list of suppliers who have been supplying medicines to Medplus and others has been prepared which will be announced in time.

(xv) In the minutes of the Executive Committee meeting dated 23.02.2013, under Agenda No.5, the Organizing Secretary mentioned that their members are scared due to the visit of the Drug Inspectors and issue of show-cause notice. Another member stated that eight firms have received show cause notice and that the reply, as prepared by the State Committee, has been submitted to the Drug Controller's office.

(xvi) In the minutes of the Executive Committee meeting dated 20.04.2013, under Agenda No.5, it has been resolved that Bengal Chemists & Druggists Association shall not initiate any organizational



movement, like in earlier times also, against any wholesaler/retailer offering discounts below the MRP.

46. It is thus evident from the various minutes as discussed herein above that BCDA and its affiliated District and Zonal Committees have taken concerted action against the retailers, largely the chain stores, who have indulged in sale of medicine below MRP by offering discounts to the customers. They had launched organizational movement with effect from 1st April, 2012 against these entities and have tried to enforce their decision regarding sale of drugs on MRP by activating Vigilance and Zonal Committees in the various Districts and Zones of Kolkata. Thus, the contention raised by BCDA that it has not taken any measures against those members who offered medicines at discounts does not appear to hold any trace of truth in it and is bound to be rejected.
47. It is argued by BCDA and Shri Tushar Chakraborty that the DG has violated principles of natural justice by not providing copy of the complaint of the Director and documents/affidavits furnished by certain persons, upon which the DG has relied, thereby disabling them to cross-examine such persons to test their veracity apart from denying any opportunity for rebutting the allegations. In this regard, the Commission observes that the Commission after considering the main investigation report and the supplementary investigation report decided to send a soft copy of main and supplementary investigation reports (non-confidential version) to the parties for filing their replies/objections. Thereafter, the parties had notice of all the allegations made against them. Further, the parties also had ample time and opportunity to meaningfully present their side of defence along with evidence in support thereof.
48. Furthermore, the perusal of various minutes of the meetings of BCDA clearly reveal that BCDA and its affiliated District and Zonal



Committees have taken concerted action against the retailers, largely the chain stores, who have indulged in sale of medicine below MRP by offering discounts to the customers. They had launched organizational movement with effect from 1<sup>st</sup> April 2012 against these entities and have tried to enforce their decision regarding sale of drugs on MRP by activating Vigilance and Zonal Committees in the various Districts and Zones of Kolkata. Under such circumstances, an opportunity, during investigation by the DG, to rebut the allegations or to test the veracity of the persons testifying to the effect that BCDA forces them not to give any discount and to sell drugs only on MRP would not have made any difference or caused any prejudice to them. Thus, the argument advanced by the BCDA and Shri Tushar Chakraborty that the DG has violated principles of natural justice is not tenable.

49. BCDA has taken plea of ignorance of law in its defence. It is submitted by it that there is absence of level playing field in the State of West Bengal in retail pharmaceutical trade. Due to the heavy discounts offered by big retailer, the business of small retailers is being wiped out. Consequently, around 15 to 20 per cent of small retailers in different districts/villages in the state of West Bengal are forced to close their business. It is in this context that the alleged resolutions were passed under a bona fide belief that there is no violation of any law. It is further stated that they were primarily passed for the purpose of organizing protest processions against entry of big national capitalists in retail pharmaceutical trade and making a presentation before the local government authorities of state of West Bengal. This argument of BCDA is bound to fail. It is a trite law that ignorance of law is no excuse. Further, BCDA has not brought on record any evidence to suggest that the business of significant number of retailers was seriously affected by heavy discounts being offered by big retailers leading to closure of their business which compelled it to pass such resolutions. Even assuming



without conceding that the argument put forth by BCDA is based on true facts/actual state of affairs, no such practice or decision which contravenes the law of the land in force can be allowed to continue.

50. In respect of the contention of Shri Tushar Chakraborty that the initial notice dated July 3, 2013 issued by the DG to him under proviso to section 48(1) of the Act was bad in law being not in terms of the order of the Commission dated June 18, 2013 which directed DG to investigate under section 48(2) of the Act, the Commission is of the view that procedure is not a mistress but only a handmaid to the administration of justice. The important point here to be noted is that irrespective of the provision under which notice was issued, nonetheless an opportunity was given to Shri Tushar Chakraborty to meaningfully respond to the observations of the Commission, and thus, there was no violation of principles of natural justice.
51. It is pertinent to note here that on the issue of sale of drugs on MRP, Shri Tushar Chakraborty, in his statement recorded on 30.04.2013 before the DG, has stated as under:

*".....The decision to sell drugs only at MRP has been in practice for a very long time and 01.04.2012 was not the first occasion when organizational movement has been started on the issue. The problem of discount has become very acute for the last two to three years on account of opening of several retail chains in and around Kolkata and other urban and suburban areas. On account of the discounts given by the retail chains the survival of the small retail members of our association is threatened which has necessitated further organizational movement."*

He has further elaborated the issue as under:



*"The retailers demand discount from the wholesalers and sub-wholesalers. As a result, the wholesalers and sub-wholesalers do not get sufficient margins so as to meet their establishment expenses and bank interests. If there was uniformity in the trade then all the wholesalers, sub-wholesalers and retailers would have got the agreed margin. However, on account of grant of discounts by few parties some of the wholesalers, sub-wholesalers and retailer are edged out and they are not in a position to carry on their business any longer."*

52. Shri Tushar Chakraborty has denied that the BCDA has issued the 'No Discount' stickers or has used any coercion against those who have indulged in the sale of drugs below MRP by offering discounts. In this regard, he has submitted against as under:

*" .....the State BCDA has always adopted a policy of consultation and discussion with those parties who are not in agreement with the stated policy of BCDA in the matter of discounts etc. We never use any coercive method to enforce our decisions. Even in the matter of discounts, we have neither issued any 'No Discount' sticker to be pasted at prominent place of the shop nor have threatened anybody with dire consequences as the association only tries to persuade the parties by discussion and tries to convince them to see reason in what we are trying to achieve. I am aware that in few localities, some of the agitated and hyper active members of the organization belonging to the zonal and the district committees have issued "No Discount" stickers and circulars unauthorizedly, as the State BCDA has never approved the same. We have warned such members not to indulge in such practices which are not authorized by the State BCDA as the same brings disrepute to the association ....."*



53. The contention of Shri Tushar Chakraborty that the organizational movement of BCDA was limited to moral suasion of those retailers and wholesalers who were indulging in sale of drugs below MRP and that they did not indulge in any coercion is facile, as by his own admission some of the hyper active members of its affiliated Zonal and District Committees have issued "No Discount" stickers. Further, the minutes of the BCDA are replete with instances, as mentioned above, wherein the BCDA has supported picketing, collection of fines, stoppage of supplies and other measures against the parties who have not cooperated with its directives regarding sale of drugs on MRP. In fact, the Commission finds that there is no whisper in any of the minutes of the BCDA that picketing, collection of fines, stoppage of supplies and other measures taken against the non-cooperating parties by the various District/Zonal/Vigilance Committees have been condemned or even disapproved by the BCDA.
54. Suffice it to state at this stage that notwithstanding their policy, the organizational movement regarding enforcing sale of drugs on MRP has not been very successful, as can be observed from the various minutes of the BCDA wherein several references of discounts being given by the retailers have been mentioned. It appears that the BCDA decided to formally call off the organizational movement against wholesalers/retailers offering discounts below the MRP vide its minutes dated 20.04.2013 as they were unable to contain the so called 'undercut' problem. The decision to call off the organizational movement could also be an attempt to wriggle out from their culpability in the matter in the background of the Competition Commission of India initiating enquiries against similar anti-competitive practices by various other Chemists and Druggists Associations and imposing deterrent penalties after enquiry.





55. Be that as it may, the Commission also examined the submissions of the various retailers before the DG named in the minutes of the BCDA, who all testified regarding the concerted action of the BCDA and its affiliated District and Zonal Committees in enforcing their decision regarding sale of drugs on MRP, which clearly show that coercive methods, in contrast to mere moral suasion as claimed by Shri Tushar Chakraborty, have been deployed in various areas of Kolkata and the adjoining areas by the various District and Zonal Committees affiliated to the BCDA. For the sake of felicity, the submissions are discussed hereunder:

- (i) Optival Health Solutions Pvt. Ltd., having approximately 1200 retail outlets in several states in India, including 69 outlets in Kolkata, under the brand name 'Medplus', have submitted that they offer a discount of 10% on selected medicines to customers. They have stated that there have been several occasions in the past few years wherein BCDA representatives have asked them not to offer any discounts on the sale of medicines in Kolkata and have asked them to take membership of BCDA and follow the rules laid down by the BCDA. The company has enclosed a letter dated 26.03.2012, circulated by the BCDA addressed to all its District Secretaries, wherein it is stated *inter alia* that as per decision adopted in the State Executive Committee meeting held on 17.03.2012, the retail outlet members are requested to sell medicines on MRP basis from 01.04.2012 and in order to ensure its implementation, each Zone and District Committee would form an Organisational Vigilance Committee. The company has also stated that it has been warned orally of severe action including closure of shops and threats of physical violence against its managers and employees *etc.* on countless occasions by several individuals who claimed to be members of the BCDA. It has also attached copies of the complaints lodged by it in respective police stations wherever such threats almost



led to physical violence or there was physical violence against its employees in Kolkata.

Shri K.Paramesham, Manager, M/s Optival Health Solutions Pvt. Ltd. in his statement on 29.04.2013 has stated as under:

*"...we give discounts to all our customers not only in Kolkata but in all the outlets of MedPius across the country. We pass on approximately 50% of the margin that we get to the customers. The BCDA has a no discount policy. As such some of the wholesalers and distributors do not like to deal with us and they insist that we bring an NOC from the BCDA. However, we are still able to carry our business as many others make supplies to us. In times of increased association activities of BCDA, we also source medicine through our Hyderabad Warehouse. In any case, our business has been growing in the Kolkata Region, despite not being a member of BCDA. I may mention here that some time BCDA tell us that the bill should only be prepared on the basis of MRP even if we are passing discounts to the consumers. However, since we do all the transaction through bills we have not agreed to the suggestion of the BCDA."*

The above said official has further stated as under:

*"The local area committee of the BCDA creates problems for us on account of discounts being offered by us. They come as decoy customers and once they get the bill from us showing discount they start making unpleasant scenes at our outlets, in front of other customers also. They use abusive language and threaten our staff members. Our employees have been beaten by them....."*

Regarding the restrictive practices of the BCDA, he has stated as under:



*"The BCDA primarily has three demands from us. They want us to take membership of BCDA, stop discounts at our retail shops and to observe weekly closure. We are willing to take the membership of BCDA provided we are allowed to give discount and get exemption from weekly closure. The BCDA is a powerful body with strong financial and political backing. They run Pharmacy College, collect PIS charges and other contribution from manufacturers etc. Every wholesaler and retailer is their member and is therefore politically well connected. So even though we are trying to pass on the benefits to the customers and observe all the statutory requirements we are facing opposition from the BCDA."*

- (i) M/s Jatindra Mohan, situated at Dum Dum Kolkata, has submitted that BCDA has been pressing its members not to sell medicines below MRP price and in the name of vigilance operations are harassing members by threatening to stop business. It has further stated that the orders of the BCDA not to give discount to its customers are made verbally. It has disputed the claim of BCDA that it is trying to save small retailers as being false, baseless and fabricated having no justification as all the retailers near its shop are giving 10% discounts to all their customers. It has further stated that surprise checks were carried out by BCDA on several occasions and on one occasion, it was verbally threatened by the BCDA Central Investigation team when it was found to have given discount of 10-11% to one its customer. The firm has, however, submitted that the BCDA has never forced it to shut its shop but has stated that some of the distributors were forced to stop supply of medicines to it. It has also submitted that as per call of BCDA, M/s Jatindra Mohan had to stop giving any discount to its customers for few months.



(ii) Charu Medical Stores and Charu Marketing Agency, which are sister firms, have stated that it is true that the BCDA members take decision from time to time on the issue of discount or not to sell drug below MRP. They have further stated that BCDA has issued a circular to them requiring them to follow the norms fixed by them and to adopt a collective policy of carrying out the trade. They have also submitted that BCDA / or their Zone Vigilance Committee had taken decision that forced them to shut shop on the issue of discount. As regards the penal action taken by BCDA, they have submitted that no documentary evidence/written notice was issued by the BCDA. However, one circular dated 02.04.2012 issued by Ultadanga-Kankurgachi Zone Committee asking the retail outlet members to sell medicines on MRP basis from 01.04.2012, as per decision adopted in the State Executive Committee meeting held on 17.03.2012 has been enclosed. The said circular is a verbatim reproduction of the circular dated 26.03.2012 issued by the BCDA to its District Secretaries as furnished by the Optival Health Solutions Pvt. Ltd.

(iii) **Dhanwantary Medicare & Research Centre Pvt. Ltd.** has submitted that its shops are located throughout Kolkata and Howrah and it normally offer a discount on sale of medicines @ 5% to 15% on MRP on general medicines whereas the discount given on generic products including cancer and others varies from 10% to 70% on MRP of the product. It has submitted that BCDA or its Zonal offices have never forced it to shut shops on the issue of discount. In response to query regarding surprise checks by the BCDA, It has stated that BCDA officers do visit its shops occasionally but they do not discuss about discount matters with its employees. The company has also submitted that it does not receive any instruction/communication from BCDA regarding discount structure on medicines. However, Shri R.Khandelwal, Managing Director of Dhanwantary Medicare &



Research Centre Pvt. Ltd., which has about 20 medicine outlets in Kolkata, in his statement recorded before the DG on 23rd April 2013, has stated as under:

*"Usually BCDA Zonal Committee members approach their local retailers and motivate them not to sell any medicines below the MRP, as it is against their committee guidelines. If the retailer does not cooperate with them then they call such retailers in person at their respective Zonal offices to virtually threaten him to either cooperate with them or face the consequence of their non cooperation and boycott which means non supply of medicines by their wholesaler I distributor I CNF Agent etc. Dhanwantary Group of Pharmacies has also faced similar treatment from them since last so many years. Every time a new elected committee takes over they try to enforce the diktat of not allowing any drugs to be sold below the MRP. However, we have continued to give discounts till date in our shops."*

On the issue of 'NO DISCOUNT' sticker, Shri Khandelwal has submitted as under:

*"Yes. Though we opposed the idea of displaying the stickers but after their persistent pressure we allowed them to paste the 'NO DISCOUNT' sticker at our different pharmacies. Our CEO Mr. S.S. Jha was also forced to issue notices to all the pharmacies to stop giving discounts to our customers with effect from 24th July, 2012 as suggested by BCDA."*



(iv) He has also submitted that on the issue of discounts, its Manicktala and Kasba outlets had to be shut since the Zonal committee members of BCDA were threatening to put down the shutters on the ground that their instruction of not granting any discounts was not being honoured. It has submitted that the shops could only be opened once the BCDA team had left. He has also submitted that as a result of the policies of BCDA, the ability to do business is adversely impacted and that the consumers of drugs are deprived of the discounts and services during odd hours. He has also emphasized that the BCDA office bearers do not allow them to open their medicine outlets on Sundays, nor do they allow their three 24 x 7 shops to operate for 24 hours on Sundays even though there is no such restrictions in terms of the Shops and Establishment Act of Govt. of West Bengal. He has also emphasized that they also do not want any retailer to give discount and force them to sell medicines only on MRP.

(v) M.S. Life drug House Pvt. Ltd., which deals with wholesale business of drugs, has submitted that they are always in touch with BCDA on different issues but could not recall whether any discussion was made on the issue of discount. The company has further stated that they have not received any notice/ circular regarding the same and are continuing the practice of discount to the customer at large at the rate of usually 6% to 7%. The company has however submitted that it came to know from different sources that BCDA imposed boycott on it without any notice but as the Kolkata Wholesale Market area Committee (BCDA) stood in its support, its business was not hampered.

(vi) Lifeline (A unit of GSA Surgical & Medicine Pvt. Ltd.), which deals with sale of drugs through retail and is a sister concern of M.S. Life drug House Pvt. Ltd., has furnished a similar reply but have stated that they give a discount of 10-12% to the customers in general. During the recording of the statement of Shri Swapan Das, the Managing



Director of M.S. Life drug House Pvt. Ltd., who is also the Director of Lifeline, on 26.04.2013 has submitted as under:

*"We give 5% to 8% discounts on Trade price in sale of drugs for wholesale and 10% to 12% discount on MRP in retail sale. We have been offering discounts since the very beginning as a matter of policy to promote our sales and to offer the best prices to the consumers."*

He has further stated as under:

*"The BCDA is against sale of drugs on discount. It is their contention that big pharmacies/retailers like us may be in a position to give discounts but small retailers cannot pass on similar discounts and on account of discounts by big players the small retailers may go out of business. Since, we are against this move of BCDA we have suffered on account of their reaction towards us. The BCDA unofficially tells all its members in the State of West Bengal not to make any purchases from us and not to release payments for purchases already made. We have countered such moves of BCDA by offering more discounts so that our sales are not adversely affected. The BCDA also use their influence over the stockists and distributors not to place order on us in respect of those companies whose C&F is with us. We took up the matter with the BCDA on the ground that the jobs of several people engaged in these companies would be at stake for no fault of theirs. We also acceded to their demand of stopping discounts. The BCDA relaxed its boycott call against us. The stockists and distributors started placing order for companies whose C&F is with us. Once the situation became normal we re-started giving discounts for retail sales. Thereafter, on account of intervention of CCI in the matter our company is able to give discount without any open objection from the BCDA for the present."*



The said official of the company has however submitted that they have never been forced to shut down their shops on the ground that they have violated the BCDA's 'No Discount' policy.

(vii) Chemist Corner, Biren Roy Road (East) Kolkata, has stated that till date no communication has ever been received by it from the BCDA containing any directive to stop discount on sale of medicines. It has further stated that its store has never ever faced any coercive measures or discriminatory activity from any person or persons claiming to act on behalf of BCDA and thus no incident of forced closure have ever taken place. It has also stated that it is not aware of any surprise check by BCDA or its vigilance committee in its shop. It has submitted that it has offered discounts, wherever possible and practicable based on its own policy without any external influence.

(viii) Chemist Corner, Diamond Harbour Road, Kolkata has also given an identical reply as furnished by the Chemist Corner, Biren Roy Road (East) Kolkata, even though both the retail outlets are owned by different parties. It is further observed that both their replies are copies of the reply that has been drafted by BCDA. In their identical statements on 25.04.2013, Shri Subir Paul, Proprietor, Chemist Corner, Diamond Harbour Road and Shri Kumar Chandra Mandai, Proprietor, Chemist Corner, Biren Roy Road, have stated that drugs used to be sold mostly on MRP prior to 2011. However, due to intense competition in the market they give various discounts depending upon the nature of drug, value of purchase etc., to the customers and such discounts generally range from 5% to 10% of the MRP. They have further stated that:

*"It is a matter of fact that BCDA members do tell us to sell drugs only at MRP and have also come to our shop questioning our policy of selling drugs below MRP, by giving discounts. However, we have categorically*





*BCDA members that our sales would be adversely affected if we do not give discounts. We have also told them that if others are giving discounts then there is no way that we can make sales without giving similar discount at our shop. We have also told them that they should not force small shopkeepers like us to sell drugs on MRP when large shopkeepers and others who have retail chains are already giving discounts to the customers."*

56. They have also stated that the BCDA representatives have given them 'No Discount' stickers to be displayed at prominent place in their shop. However, there has never been any occasion when they have been told to shutdown their shops on account of sale of drugs below the MRP. They have also submitted that the BCDA members circulated draft reply to them and others in response to the notices issued by this office and that since they are small shopkeepers they could not muster courage to send a different reply to the office of the DG.
57. From the submissions of the various wholesalers and retailers as above, it is evident that the BCDA had launched organizational movement to enforce sale of drugs on MRP w.e.f. 01.04.2012. In accordance with the above decision, various District and Zonal committees have also issued similar directions. Perusal of few such circulars on record dated 26.03.2012, 27.03.2012, 02.04.2012 and 07.04.2012 reveal that the BCDA and their affiliated District and Zonal committees have strictly directed their members not to sell drugs below the MRP. They have further informed their members that the respective District and Zonal committees and the respective Vigilance Committees would work together to curb undercutting. The parties have submitted that the BCDA members have forcibly pasted 'No Discount' stickers/pamphlets at prominent places at their shops. They have also stated that they have been threatened and forced to discontinue their discount schemes by



the concerted action of the BCDA and their affiliated district and Zonal committees. As a result, they had to sell drugs only on MRP.

58. It may be pertinent to state herein that apart from Optival Health Solutions Pvt. Ltd., M/s Jatindra Mohan, Charu Medical Stores and Charu Marketing Agency, it appears from the replies of others like Dhanwantary Medicare & Research Centre Pvt. Ltd., M.S Life Drug House Pvt. Ltd., Lifeline, B.B.Avenue, Kolkata, Lifeline Medical Stores, Vivekanand Road, Kolkata, Chemist Corner, Biren Roy Road, (East) Kolkata and Chemist Corner, Diamond Harbour Road, Kolkata that they do not openly/directly support the allegation against the BCDA. However, it is evident from the statements of all the parties that they unequivocally support the allegation. It appears that they were apprehensive of the possible retaliatory action of the BCDA, in view of its immense organizational strength and the likely loss to their business at the behest of BCDA. The BCDA had also circulated a draft reply to the notice issued by this office to be signed by them. While some of the parties simply appended their signatures to it, few others chose to be evasive in their replies so as not to invite any wrath of the BCDA. However, when these parties received summons from DG for recording of their statements on oath, they chose to speak the full facts.
59. The report of the Assistant Director, Hooghly district Drug Control office further seconds the finding that BCDA had launched organizational movement to enforce sale of drugs on MRP. As per the said report, the officers visited 6 medicine shops on 18.10.2012 at Chinsurah and Serampur areas during which they found 'No Discount' pamphlets displayed at one of the medicine shops. Further, during the said investigation, the proprietor/partners or persons present at three of the shops also stated that they had earlier displayed the 'No Discount' pamphlets in their shops as per the direction/circular of BCDA, but are



not being displayed at present. The report of the Assistant Director also stated that the officers examined certain consumers on the spot and some of them verbally admitted the fact that they used to get discount on the price of medicines purchased prior to the aforesaid 'No Discount' circular/notice. Copies of verbal statements of the consumers reduced in writing by the officers at the time of enquiry have also been enclosed with the report of officers. The Director has also submitted that the inspecting officers of the Prosecution Cell of the Directorate also visited some medicine shops in Kolkata and Howrah on 08.11.2012 and found leaflets mentioning 'No Discount' displayed at the said shops. Copies of some photographs showing display of 'No Discount' pamphlets and notice are also on record. It is evident from the report of the Director that the BCDA and its affiliated District/Zonal Committees have issued 'No Discount' pamphlets which were required to be displayed at the medicine shops. It is also observed from the oral submissions of the consumers on the spot that they used to get discount on the price of medicines purchased prior to the aforesaid 'No Discount' circular/notice.

60. The Commission notes that fixed trade margins for the wholesalers/retailers respectively are only possible if they sell drugs on their MRP. However, faced with increased competition in the market, accentuated by the opening of retail chains in the last few years, the BCDA decided to enforce sale of drugs at MRP so as to protect the interests of its members. Accordingly, it has launched an organizational movement w.e.f 01.04.2012, to ensure that no retailer or wholesaler grants any discount and that drugs are sold only at their MRP. It has enforced its decision/diktat through its District/Zonal and Vigilance Committees, and has acted in a concerted manner to ensure that drugs are sold only at their MRP.



61. The Commission opines that the BCDA has indulged in the concerted anti-competitive practice of sale of drugs only on MRP. The collusive action has been taken to ensure that the trade margins do not get determined on a competitive basis and are uniform for all the wholesalers and retailers respectively. It would be pertinent to mention that while working out the price of scheduled drugs, the National Pharmaceutical Pricing Authority (NPPA) makes an allowance for 16% margin on price to retailer (as per DPCO, 1995) and 8% margin to wholesaler as per practice. However, for non-scheduled drugs (drugs not under price control), the margins to the retailers or the wholesalers are to be determined as per market forces. As per the industry practice, these margins are at least 20% on price to retailer and 10% to the wholesalers. The BCDA has argued that these margins to be earned on sale of drugs on their MRP are reasonable. In this regard, the Commission observes that it does not matter whether these are reasonable or not. The fact that BCDA has decided that drugs be sold only at their MRP and that no discounts be offered implies that the maximum retail price has been decided to be the ruling price, thus precluding the possibility of drugs being sold at prices lower than the MRP.
62. The Maximum Retail Price only sets the upper most price boundary beyond which a product cannot be sold. It does not preclude sale of drugs below the MRP. As can be observed from the replies and oral submissions of the parties on record, there are large number of retailers who are willing to offer discounts on MRP to the customers. However, the concerted and collusive activities of BCDA members have prevented price competition between one retailer and the other. The same has resulted in fixation of the selling prices as the drug prices are not allowed to be determined by the independent market forces. Such conduct of the BCDA contravenes the provisions of Section 3(3)(a) read with Section 3(1) of the Act. When sale of drugs is determined to take place only at



MRP, on account of agreement entered into amongst the members of the BCDA, then such a trade practice causes or is likely to cause an appreciable adverse effect on competition, especially when almost all the retailers and wholesalers are members of the BCDA.

63. The Commission notes that the BCDA and its affiliated District/Zonal Committees have taken concerted action against retailers offering discounts, by launching organizational movements, threatening them with dire consequences, picketing their shops, collecting fines from them, forcing them to shut their shops, directing their wholesale members not to make supplies and not to cooperate with such retailers. Accordingly, a chilling signal has been or is conveyed to the market wherein the manufacturers and/ or the wholesalers are most unlikely to risk their business by making supplies to retailers offering discounts, as the same would be in violation of the decision of the BCDA. In the opinion of the Commission, the above said conduct has resulted or is likely to result in controlling and or limiting supply of medicines and the market of provision of drugs, which contravene the provisions of Section 3(3)(b) of the Act.
64. The Commission further observes that the concerted activities of the BCDA and its affiliated District/ Zonal Committees in enforcing the sale of drugs on MRP have not only adversely affected the interests of retailers but have also adversely affected the consumers. The retailers have been denied their right to freedom of trade and business. Those retailers who have been selling drugs by offering discounts and also offering other innovative and better services like privilege card membership, 24x7 service, free home delivery etc., have been denied the opportunity to expand their sales /business. When the trade associations indulge in taking commercially sensitive business decisions on behalf of the entire industry as to whether or not to offer discounts, 24x7 service,



free home delivery etc., then competitive forces are not allowed to operate in the market for furtherance of one's business. Innovative business practices, superior services, consumer choice, lower prices, etc., take a back seat and do not become the guiding force for doing business. Consequently, not only the businesses suffer but irreparable harm is caused to the consumers. The consumers buy drugs as a matter of necessity to save themselves from suffering (pain/death). They are deprived of their legitimate right to get medicines prescribed by the doctors at competitive / cheapest rates by the impugned conduct of the trade association. In light of the above, it is concluded that the BCDA and its affiliated District/Zonal Committees have indulged in anti-competitive activities which have caused or is likely to cause appreciable adverse effect on competition.

65. The Commission further observes that the activities of trade association *inter alia* to direct its members to sell drugs only at their MRP is a palpable anti-competitive conduct which cannot be justified on the ground that most of the members of the BCDA, would be ruined if competitive forces are allowed to operate in the market. Further, the attempt to justify sale of drugs only on MRP on the basis that the margins have been fixed under the DPCO and accepted in the market is untenable as the issue is not the reasonability or the quantum of trade margins but the concerted action to fix uniform trade margin by an agreement amongst the members of the trade association. The activities of the BCDA are in conflict with the objects of the competition law as they cause restraint of trade, stifle competition and harm the consumers.
66. In the aforesaid circumstances, the Commission holds that the BCDA and its District and Zonal Committees were engaged in anti-competitive practices of directly or indirectly determining the sale prices of drugs and controlling or limiting the supply of drugs



through concerted and restrictive practices, in violation of the provisions of Section 3(3)(a) and (b) read with Section 3(1) of the Act. The plea taken by the BCDA that since it has ceased from the alleged practices of opposing sale of drug on discounts or selling them below MRP and therefore, in the light of the judgment of Supreme Court of India in the matter of *All India Organization of Chemists and Druggists and Others v. Director General, Investigation & Registration, New Delhi* reported in 2002 CTJ 4 (Supreme Court) (MRTP) and an order of the Competition Appellate Tribunal in the matter of *Director General v. Voltas Limited and another* reported in 2010 CTJ 4 (COMPAT) (MRTP) the notice of enquiry has become infructuous, in the opinion of the Commission have no application in the facts of the present case.

67. The Commission, while considering the main investigation report of DG in *Suo Moto* Case no. 02/2012, had observed that DG had not investigated the role of individual office bearers of the Managing Committee/Executive Body of the Association in decision making and accordingly had directed the DG to ascertain the role of the Office Bearers vide order dated 18.06.2013. A supplementary investigation was accordingly conducted by DG and supplementary investigation report dated 24.09.2013 had been submitted to the Commission.
68. The DG in its supplementary investigation report has concluded that anti-competitive decisions were taken/ratified by the office bearers and executive committee members of BCDA in the executive committee meetings of the Associations held from time to time. DG has also identified the office bearers and executive committee members who were complicit in the decision making process/practices of BCDA that have been found to be contravening the provisions of the Act.



69. The office bearers in their common reply to the DG report have taken the plea regarding non application of the provisions of Section 48 of the Act upon the office bearers and executive members of BCDA as their liability is limited as per the Memorandum of Association of BCDA, being a non-profit company registered under Section 25 of the Companies Act, 1956.
70. As held by the Commission in Case no. 60/2012 (*in the matter of M/s Arora Medical Hall, Ferozpur Against Chemist & Druggist Association, Ferozpur & Ors*), the Commission reiterates that the provisions of Section 27 of the Act are sufficient to make office bearers liable for contravention without the aid and assistance of the provisions of Section 48 of the Act.
71. Additionally, the Commission notes from the records that BCDA is a company registered under Section 25 of the Companies Act, 1956 and provisions of Section 48 of the Act are undoubtedly applicable to the BCDA. Thus, there seems to be no occasion to draw any distinction on the count. Therefore, the Commission is of the view that the office bearers and executive members of the BCDA are guilty of the contravention and are liable to be punished.

### **ORDER**

72. Considering the discussion in the earlier part of this order, the Commission directs the BCDA and its office bearers & executive committee members to cease and desist from indulging in anticompetitive practices found to be anticompetitive in terms of the provisions of Section 3 of the Act in the preceding paras of the order.
73. On the aspect of penalty under Section 27 of the Act, the Commission is of the view that the said anticompetitive acts and conducts require to be penalized to cause deterrence in future among the erring entities engaged





in such actions. Accordingly, it is required that the degree of punishment is scaled to the severity of the violation. On this count, the position of BCDA to control the market of drugs and medicines in its area of operation is undoubted. It has come clear during the investigation that BCDA and its District and Zonal committees are engaged in anticompetitive practices of directly or indirectly determining the sale prices of drugs and controlling or limiting the supply of drugs through concerted and restricted practices in violation of Section 3(3) (a) and (b) read with Section 3(1) of the Act. Therefore, the conduct of BCDA and its office bearers & executive committee members requires to be sternly dealt with. Further, no mitigating factor is shown by the parties and none is borne out from the records. The Commission notes that one of the then office bearers Shri Niranjana Raha has since deceased and another office bearer Shri Dinesh Parolia has not submitted his financial statements. Further, one more executive committee member mentioned by the DG namely Shri Pradip Kumar Paul vide letter dated 29.11.2013 has submitted to the Commission that he is not in the business since 2010 and has requested exemption from submitting the financial statements. A decision on the quantum of penalty with respect to Shri Parolia and/or further view on non submission of financial statements by Shri Parolia and Shri Paul shall be taken separately.

74. Having given due consideration on the issue of quantum of penalty as well as the totality of facts and circumstances, the Commission decides to impose a penalty on the BCDA & its those office bearers who are directly responsible for running its affairs and play lead role in decision making @10% and on the executive committee members @7%, of their respective turnover/income/receipts based on the financial statements filed by them as follows:



Income/ Turnover in Rupees (Figures in Actuals)								
Sl. No.	Name	Designation	2009-10	2010-11	2011-12	2012-13	Avg. for 3 years	10% of Avg. Turnover
1	BCDA	Association		3471717.9	6801229	29459003.9	13243983.60	1324398
2	Ranendra Narayan Roy	President	1800000.00	1897600.00	2230000.00		1975866.67	197587
3	Sunil Chandra Dey	Vice President		13316573.00	14905115.00	14927180.00	14382956.00	1438296
4	Shyamal Dhar	Vice President		8118336.00	11395691.00	15300768.00	11604931.67	1160493
5	Joydeep Roy	Vice President		1901930.00	2131265.00	2533605.00	2188933.33	218893
6	Rastrapati Dey	Vice President		1231300.00	1284710.00	1345940.00	1287316.67	128732
7	Tushar Chakraborty	Hon Gen Secy		9328372.00	11121702.00	12311127.00	10920400.33	1092040
8	Subodh Kumar Ghosh	Org Secy		358620956.09	411487670.95	443803769.80	404637465.61	40463747
9	Sankha Roy Choudhury	Adm Secy		788838.00	13425193.00	14106576.00	9440202.33	944020
10	Rabin Ray	Fin Secy		123001560.00	133021732.00	157659552.00	137894281.33	13789428
11	Hironmoy Kundu	Treasurer		17697808.00	14363834.00	25578867.00	19213503.00	1921350
12	Sajal Gangopadhyay	Co-ord. Secy		75490439.60	91796048.68	113546141.41	93610876.56	9361088
13	Rama Prasad Banerjee	Co-ord. Secy		3675839.00	6000000.00	6500000.00	5391946.33	539195
14	Debasish Guha	Co-ord. Secy		8815527.00	9621914.00	12780811.00	10406084.00	1040608
Income/ Turnover in Rupees (Figures in Actuals)								
Sl. No.	Name	Designation	2009-10	2010-11	2011-12	2012-13	Avg. for 3 years	7% of Avg. Turnover
15	Anil Kumar Vora	Exe Comm Mem		28084103.00	36176264.00	41569969.00	35276778.67	2469375
16	Ajit Kumar Majumder	Exe Comm Mem		4278756.00	5526804.00	7685780.00	5830446.67	408131
17	Amitava Roy	Exe Comm Mem		29382515.00	28345581.00	30718952.99	29482349.66	2063764
18	Amit Kumar Paul	Exe Comm Mem		314259.00	442515.00	262439.00	339737.67	23782
19	Ajoy Kumar Lohia	Exe Comm Mem		84490728.00	95318938.00	95377448.00	91729038.00	6421033
20	Atanu Majumdar	Exe Comm Mem		3387094.31	3286442.69	3481187.00	3384908.00	236944
21	Angshuman De	Exe Comm Mem		37595372.71	41898722.60		39747047.66	2782293
22	Alip Saha	Exe Comm Mem	11492225.56	10409877.66	7869668.37		9923923.86	694675
23	Bimal Chandra Bhowmik	Exe Comm Mem		7697534.00	5447106.00	6703751.00	6616130.33	463129
24	Biswanath Bhakat	Exe Comm Mem		1252650.00	1528630.00	1832860.00	1538046.67	107663
25	Bablu Paul	Exe Comm Mem		3220516.00	3958146.00	3979360.00	3719340.67	260354
26	Chandresh B. Sanghvi	Exe Comm Mem		46624654.00	54066673.00	54897750.00	51863025.67	3630412
27	Debapriya Bose	Exe Comm Mem		5956477.00	6542233.00	7260718.00	6586476.00	461053
28	Md. Entaz Ali	Exe Comm Mem		965821.00	1254785.00	2475163.00	1565256.33	109568
29	Fazlur Rahaman Khan	Exe Comm Mem		1440765.00	1610360.00	1811310.00	1620811.67	113457
30	Gora Chand Tripathy	Exe Comm Mem		27448528.93	33589305.59	35864731.00	32300855.17	2261060
31	Goutam Kumar Das	Exe Comm Mem		12260237.00	17991063.00	19438243.00	16563181.00	1159423
32	Goutam Patra	Exe Comm Mem		157409796.00	187208147.00	202943677.00	182520540.00	12776438
33	Gouranga Saha	Exe Comm Mem		65904085.00	75089372.00	85815876.00	75603111.00	5292218
34	Gouranga Dhar	Exe Comm Mem	5575828.00	5852737.00	5972055.00		5800206.67	406014
35	Hirak Subhra Mukherjee	Exe Comm Mem		4369219.00	5112972.00	5253617.00	4911936.00	343836
36	Md. Irfan Khan Lodhi	Exe Comm Mem		526910.00	687270.00	897640.00	703940.00	49276



Sl. No.	Name	Designation	2009-10	2010-11	2011-12	2012-13	Avg. for 3 years	7% of Avg. Turnover
37	Jayanta Kumar Dey	Exe Comm Mem		89887412.00	91747782.00	82354505.00	87996566.33	6159760
38	Jayanta Dey	Exe Comm Mem	3101500.00	3420000.00	2405200.00		2975566.67	208290
39	Jayanta Kumar Mondal	Exe Comm Mem		27153634.00	28327095.00	33292613.00	29591114.00	2071378
40	Kartick Chandra Das Modak	Exe Comm Mem		19007326.00	22459709.00	18636159.00	20034398.00	1402408
41	Kanchan Chatterjee	Exe Comm Mem		40268429.00	43899428.00	23841476.00	36003111.00	2520218
42	Manik Lal Das	Exe Comm Mem		1500500.00	1680500.00	1810000.00	1663666.67	116457
43	Milan Chakraborty	Exe Comm Mem	2118370.00	2121060.00	2242813.00		2160747.67	151252
44	Mrinal Chakraborty	Exe Comm Mem		82316021.00	100748734.00	113686795.00	98917183.33	6924203
45	Mrinmay Mishra	Exe Comm Mem		21501552.00	16569187.00	18956612.00	19009117.00	1330638
46	Madhab Ch. Patra	Exe Comm Mem		2495475.00	4051150.00	3074244.00	3206956.33	224487
47	Niladri Mukherjee	Exe Comm Mem		1208470.00	1403440.00	1707020.00	1439643.33	100775
48	Nandan Banerjee	Exe Comm Mem		20530061.00	24766029.23	28827921.29	24708003.84	1729560
49	Prabir Prasad Ghosal	Exe Comm Mem		1034036.00	1218284.00	1536227.00	1262849.00	88399
50	Pradip Ghosh	Exe Comm Mem		10129795.24	11621892.00	12531520.00	11427735.75	799942
51	Pratap Rudra Mahapatra	Exe Comm Mem		42628005.00	51112480.00	46801685.00	46847390.00	3279317
52	Prodyot Banerjee	Exe Comm Mem		22984849.00	25537059.00	29509994.00	26010634.00	1820744
53	Prakash Saha	Exe Comm Mem		307134.11	310054.00	307929.00	308372.37	21586
54	Prithwi Bose	Exe Comm Mem		591715.00	1026857.00	1187778.00	935450.00	65482
55	Prasun Sarangi	Exe Comm Mem		2548172.00		2864706.00	2706439.00	189451
56	Ripan Saha	Exe Comm Mem		37675190.00	43775840.00	47452650.00	42967893.33	3007753
57	Ramendra Narayan Roy	Exe Comm Mem	15474061.00	16558432.00	17342662.00		16458385.00	1152087
58	Swapan Kumar Sil	Exe Comm Mem		<b>No turnover</b>	306998.00	304133.00	305565.50	21390
59	Swapan Kumar Karak (Now Resigned)	Exe Comm Mem		65835000.00	70434328.00	67884052.00	68051126.67	4763579
60	Shibsankar Nag Sarkar	Exe Comm Mem		8625175.00	10464133.00	9630935.00	9573414.33	670139
61	Subhas Chakraborty	Exe Comm Mem		2836400.00	3050400.00	3216440.00	3034413.33	212409
62	Samir Ranjan Das	Exe Comm Mem		86968602.00	161492728.00	94412520.71	114291283.57	8000390
63	Susanta Kumar Kar	Exe Comm Mem		34462695.00	39635192.00	42294547.00	38797478.00	2715823
64	Subir Sen	Exe Comm Mem		13741248.00	14859467.45	13558010.00	14052908.48	983704
65	Swapan Kumar Saha Roy	Exe Comm Mem	32897871.85	36437421.57	37771137.10		35702143.51	2499150
66	Samar Kumar Dey	Exe Comm Mem	1654178.80	1972403.00	2032606.00		1886395.93	132048
67	Subir Chatterjee	Exe Comm Mem		3838869.00	3832519.00	4502429.00	4057939.00	284056
68	Soumen Chakraborty	Exe Comm Mem	814125.00	575750.00	2347451.00		1245775.33	87204
69	Shyamal Kumar Saha	Exe Comm Mem		34964106.00	44659896.00	56449691.00	45357897.67	3175053
70	Sushanta Ghosh	Exe Comm Mem		14694976.00	18942316.00	24555183.00	19397491.67	1357824
71	Siddheswar Chowdhury	Exe Comm Mem	6622371.00	8222826.10		15469339.61	10104845.57	707339
72	Samindra Nath Banerjee	Exe Comm Mem	---	2540300.00	2290450.00	2130450.00	2320400.00	162428
73	Susanta Patra	Exe Comm Mem	2618490.00	1847620.00	2835324.00		2433811.33	170367



Sl. No.	Name	Designation	2009-10	2010-11	2011-12	2012-13	Avg. for 3 years	7% of Avg. Turnover
74	Suwendu Mazumder	Exe Comm Mem	---	1714710.00	2208780.00	2603140.00	2175543.33	152288
75	Soumy Brata Rakshit	Exe Comm Mem	---	5867349.00	10176606.00	11385831.00	9143262.00	640028
76	Samit Das	Exe Comm Mem	---	34106076.09	41417446.00	51402751.00	42308757.70	2961613
77	Tarun Kumar Roy	Exe Comm Mem	2010000.00	3001000.00	3361000.00		2790666.67	195347
78	Timir Baran Das Mahapatra	Exe Comm Mem	---	55507158.00	60990181.00	70632210.00	62376516.33	4366356
79	Udaychand Chatterjee	Exe Comm Mem	---	938773.00	1144373.00	1344373.00	1142506.33	79975

75. The directions in para 72 above must be complied immediately. The BCDA is further required file an undertaking to that effect within a period of 30 days from the date of receipt of this order. The amount of penalty imposed is directed to be deposited within 60 of the receipt of this order.
76. The Secretary is directed to inform the parties accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(Geeta Gouri)**  
**Member**

**Sd/-**  
**(Anurag Goel)**  
**Member**

**Sd/-**  
**(M. L. Tayal)**  
**Member**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

New Delhi

Date: 11/03/2014