



**COMPETITION COMMISSION OF INDIA**

**Case No. 60 of 2015**

**Shri Nadie Jauhari**

Medhraj Amber, D. K. Nagar,  
Gangapur Road,  
Nashik-422013,  
Maharashtra.

**Informant**

**AND**

**Retail and Dispensing Chemists Association  
(RDCA)**

301, Manish Commercial Centre, 216-A,  
Dr. Annie Besant Road, Worli,  
Mumbai-400030  
Maharashtra.

**Opposite Party**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

**Mr. Augustine Peter  
Member**

**Mr. U. C. Nahta  
Member**

**Present**

*For the Informant:* None

*For the Opposite Party:* Mr. Nakul Mohta, Advocate  
Mr. Nitin Maniar, President and Hony. General Secretary,  
RDCA



## ORDER

### **A. Background:**

1. The present information was filed by Shri Nadie Jauhari (**the Informant**) under Section 19(1)(a) of the Competition Act, 2002 (**the Act**) against Retail & Dispensing Chemists Association(**RDCA/Opposite Party**) alleging, *inter-alia*, that the Opposite Party was collecting Product Information Service (**PIS**) charges from manufacturers of pharmaceutical products in violation of the provisions of the Act.
2. The Opposite Party *i.e.* RDCA, an association of chemists, located at Mumbai, is affiliated to Maharashtra State Chemists and Druggists Association (**MSCDA**) which in turn is affiliated to All India Organisation of Chemists and Druggists (**AIOCD**). The Opposite Party is registered as a limited company under the Indian Companies Act, 1913. As per the Memorandum of Understanding (**MOU**) dated 27.01.1999 executed between AIOCD, Indian Drug Manufacturers Association (**IDMA**) and Organisation of Pharmaceutical Producers of India (**OPPI**), the objective of the Opposite Party is to achieve progressive and economic welfare of its members so as to promote and motivate them to implement “Good Pharmacy Practices” and also to establish healthy relationship with all members, affiliated bodies, various regulatory bodies, to uplift professionalism with a view to provide better health care system to the society.
3. In the Information, a reference was made to the public notice issued by the Commission in the newspapers including the issue dated 30.01.2014 of Hindustan Times, wherein attention was drawn to certain anti-competitive practices prevailing in the nature of issuance of no objection certificate (NOC) or letter of consent (LOC), compulsory payment of PIS charges by pharmaceutical firms, fixation of trade margins, *etc.* followed by all India Level, State Level, District Level associations of chemists, druggists, stockists, wholesalers and manufacturers and exhorting that such practices be forthwith stopped, failing which action shall be initiated by the Commission.



4. In the present case, it has been *inter-alia*, alleged that the Opposite Party was charging and collecting PIS charges from various manufacturers of pharmaceutical products. In support of the allegations, a copy of the letter dated 10.06.2015 of the Chartered Accountants of the said association was enclosed alongwith the information, wherein it was mentioned that during the year 2012-13, the Opposite Party earned an income of Rs. 15,61,397.75/- towards PIS charges. Based on the said allegations, the Informant sought investigation against the Opposite Party.

**B. *Prima facie* consideration by the Commission:**

5. Upon considering the information and allegations therein, the Commission was convinced that there existed a *prima facie* case of contravention of the provisions of Section 3(1) read with Section 3(3)(b) of the Act. Accordingly, the Commission passed an order dated 25.08.2015, under Section 26 (1) of the Act, directing the Director General (**DG**) to cause an investigation into the matter. The DG was also directed to investigate the role of the office bearers/ persons who, at the time of contravention, if any, by the Opposite Party, were in-charge of and responsible for the conduct of activities of the Opposite Party.

**C. Proceedings before the Hon'ble Delhi High Court:**

6. Being aggrieved by the order dated 25.08.2015, passed by the Commission under Section 26 (1) of the Act, directing investigation and pursuant thereto, notices having been issued by the DG, the Opposite Party approached the Hon'ble Delhi High Court by filing a Writ Petition being W.P. No. 11163/2015. The Hon'ble Delhi High Court *vide* order dated 02.12.2015, directed the Commission and the DG to restrain from taking any coercive steps till the next date of hearing before the Delhi High Court. The Commission and the DG, however, were given liberty to continue with the investigation. However, *vide* order dated 19.03.2018, the Hon'ble Delhi High Court directed that while interim order dated 02.12.2015, would continue to operate till further orders of the Court, if any final order is passed by the Commission, it would be subject to the orders in the writ petition.



#### **D. Findings of Investigation:**

7. The DG submitted its Investigation Report on 05.01.2017, after conducting a detailed investigation into the allegations made by the Informant. During the course of investigation, the DG considered submissions of the Informant, replies of the Opposite Party and third parties, including MSCDA and certain pharmaceutical companies, who were examined.
8. From the material and evidence collected during investigation, the DG found that the Opposite Party was levying and collecting PIS charges in Mumbai. The DG investigation also showed that PIS charges though stated to be voluntarily paid by the pharmaceutical companies were in the nature of approval by the Opposite Party to pharmaceutical companies to launch their products in Mumbai. The DG found no substance in the claim made by the Opposite Party and the pharmaceutical companies that the PIS charges were furthering the cause of advertising or were in compliance of Drug Price Control Orders (**DPCO**). For the sake of brevity, the evidence relied upon by the DG would be referred to and dealt with appropriately while analysing the case on merits.
9. A brief of findings of investigation is as under:
  - a. A sum of Rupees 500/- per product, per district, was collected from the pharmaceutical companies, who voluntarily approached MSCDA, seeking advertisement of their new products, through publication in the bulletin of the Opposite Party. MSCDA, out of the said Rupees 500/- after deducting Rupees 100/- towards service tax and operational cost transferred the remaining amount to the District Associations, affiliated to it. The remaining 20 percent of the amount was kept by MSCDA for meeting operational cost of manpower, stationary, clerkage, bank charges, *etc.* MSCDA was not earning any profit from the said 20 percent amount;



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- b. The Opposite Party submitted that during the FY 2012-2013, FY 2013-2014 & FY 2014-2015, it collected PIS charges amounting to Rupees 15,61,397.25, Rupees 8,40,659/- and Rupees 7,06,306/- respectively.
- c. About eighteen pharmaceutical companies were examined in relation to payment of PIS charges by the DG, who informed that such PIS charges were paid by them voluntarily, to seek advertisement of their products in the bulletin published by the District Associations including the Opposite Party. It was also, *inter-alia*, mentioned that PIS charges are not mandatory now, however, considering that PIS amount was small compared to overall promotional expenses, the company prefers to pay PIS, which would supplement other promotional programmes;
- d. Many drugs were launched by some of the pharmaceutical companies, for which though PIS charges were collected by the Opposite Party from such pharmaceutical companies, but information about them was not published in the bulletin even after considerable lapse of time;
- e. Information was being published by the Opposite Party in its bulletin about new products, for which PIS charges had been received, with no adherence to any time frame and there being no uniform frequency of release of bulletin;
- f. Pharmaceutical companies were not getting copies of bulletin, in which their advertisements were published by the Opposite Party, despite payment of such PIS charges;
- g. Information being published was not as per format prescribed by DPCO as it did not contain the formulation of the drug. However, objective of the company was to make the retailer aware of the brand name and price of the drugs;



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- h. Letter forwarded by Pharmaceutical companies to MSCDA for publication in the district bulletin mentioned “*Contribution*” and MSCDA put the rubber stamp on Form V filed by the Companies, wherein it was mentioned “*product approved for advertisement*”. The DG also found that two pharmaceutical companies wrote cover letters to MSCDA seeking a No Objection Certificate (NOC) for launch of their products, which brought out the purpose of PIS.
10. Based on the above evidence, the DG found that the practice of the Opposite Party of demanding PIS charges from pharmaceutical companies, was not for the purpose of any advertisement. Rather the DG opined that pharmaceutical companies did not mind paying Rupees 500/- per drug, per dose/form for securing the goodwill of the association (*i.e.* the Opposite Party) and it was meant only for the purpose of getting prior permission of the Opposite Party to launch new drug in the market in a garbed manner. The DG thus concluded that collection of PIS charges was in contravention of provisions of Section 3(1) read with Section 3(3)(b) of the Act, as the levy of such charges limited and controlled free supply of products by pharmaceutical companies.
11. The DG also opined that the practice of levying PIS charges by the Opposite Party would result in appreciable adverse effect on competition in the market, based on the factors under Section 19(3) of the Act, due to the following reasons. *Firstly*, the said practice would distort the supply of medicines in market and thus would create barriers to entry for pharma companies wishing/planning to enter the market. *Secondly*, such practice would foreclose competition in the market as there are very few products of similar kind available in the market. *Thirdly*, action on part of the Opposite Party would be detrimental to the economic development as it would restrict distribution mechanism of new drugs or launch by way of any change in product brand, dosage, form, strength, *etc.* *Fourthly*, this practice would put unwarranted restrictions on the objective of freedom of trade to be enjoyed by market participants and finally, the interest of consumers would be adversely affected by this practice.



12. The investigation also identified certain office bearers of the Opposite Party who were in charge of and looking after the day to day activities of the Opposite Party during 2012-2015 and thus, found to be responsible under Section 48 of the Act.

**E. Consideration of Investigation Report by the Commission:**

13. The Commission considered the Investigation Report submitted by the DG, in its ordinary meeting held on 25.04.2017 and decided to forward copies of the same to the parties for filing their objections / suggestions. The Opposite Party was also directed to file its audited financial statements including balance sheets and profit and loss accounts for the financial years 2013-14, 2014-15 and 2015-16. The Commission also directed the Informant and the Opposite Party along with its office bearers to appear before the Commission for final hearing on 10.08.2017.
14. On 03.07.2017, the Informant filed his written submissions. However, the Opposite Party, *vide* letter dated 09.08.2017 filed an application seeking adjournment of oral hearing by four weeks. On 10.08.2017, the Commission considered the request of the Opposite Party and adjourned the matter to 16.08.2017. In the hearing on 16.08.2017, an oral request was made by the Opposite Party, seeking adjournment of the proceedings till disposal of Writ Petition No. 11163/2015, before the Hon'ble Delhi High Court relating to the present matter. In this regard, the Commission directed the Opposite Party to file an Affidavit in support of its contention and to appear on 14.09.2017, for hearing on the application of the Opposite Party and the Investigation Report.
15. Subsequently, the Opposite Party, *vide* application dated 17.08.2017 and submissions dated 13.09.2017, requested the Commission to adjourn the proceedings *sine-die* pending the decision of Hon'ble Delhi High Court. On 14.09.2017, the authorised representative of the Opposite Party appeared before the Commission and argued that the Hon'ble Delhi High Court, *vide* order dated 02.12.2015, in Writ Petition No. 11163 of 2015 had directed the Commission not to take coercive steps against the Opposite Party apart from inviting suggestions/objections from the Opposite Party. In this



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connection, the Commission observed that seeking objections/suggestions from the Opposite Party and conducting final hearing on the Investigation Report cannot be termed as coercive action against the Opposite Party. Accordingly, the Commission directed the Opposite Party and its office bearers to file their submissions to the Investigation Report along with their financial statements latest by 16.10.2017. The Informant was granted time to file his reply to the aforesaid submissions of the Opposite Party latest by 23.10.2017. The Parties were directed to appear before the Commission for final hearing on 07.11.2017. The Informant filed his submissions on 10.10.2017 and the Opposite Party filed its objections to the Investigation Report on 06.11.2017.

16. Meanwhile, Jalgaon District Medicine Dealers Association, the Opposite Party in Case No. 61 of 2015 filed an application dated 03.11.2017, seeking cross-examination of three witnesses, namely, (i) Mr. Dilip Sawant (Head Distribution, Wanbury Limited) (Witness 1); (ii) Mr. Sushant Nandkumar Chachad (Executive, Sales and Admin, Cerovene Healthcare Private Limited) (Cerovene) (Witness 2); and (iii) Mr. Mohammed Salem (Proprietor, Unifab Pharmaceutical Limited) (Witness 3), whose statements were recorded during the course of investigation by DG. Since the issues in the present matter were similar to those in Case No. 61 of 2015, the said matter was also listed on 07.11.2017, alongwith the present matter. On 07.11.2017, the Commission allowed the aforesaid application filed by the Opposite Party in Case No. 61 of 2015, seeking cross-examination of abovementioned witnesses. Witness 1 and Witness 3 were cross-examined by the Opposite Party on 15.12.2017 and 02.02.2018, respectively. However, cross-examination of Witness 2 could not be conducted as the said witness failed to present himself for cross-examination on various dates despite several notices issued by the Commission. Owing to the said developments in Case No. 61 of 2015, the hearing in the present case was rescheduled *vide* orders dated 16.05.2018 and 24.05.2018, passed by the Commission. Due to further developments in Case No. 61 of 2015 in relation to initiation of penalty proceedings under Section 43 of the Act, *inter-alia*, against Witness 2, the Commission, *vide* order dated 27.06.2018, fixed the hearing of the parties on the Investigation Report in relation to Case No. 61 of 2015 as well as the present case on 09.08.2018.





17. In the meantime, the Hon'ble Delhi High Court *vide* order dated 19.03.2018, in Writ Petition (C) No. 11163 of 2015, directed that while interim order dated 02.12.2015 would continue to operate till further orders of the Court, any final order passed by the Commission would be subject to the orders in the writ petition. In view of the said order of the Hon'ble Delhi High Court, the Commission notes that there is no impediment to pass any final order under the provisions of the Act. However, the said final order would be subject to the orders of the Hon'ble Delhi High Court in the above mentioned writ petition.
18. As cross-examination proceedings of Witness 2 are still underway in Case No.61 of 2015, the Commission decided to hear the parties on the Investigation Report in Case No.60 of 2015, i.e. the present case and delink the present proceedings with Case No. 61 of 2015. Accordingly, on 09.08.2018, the Commission heard the Opposite Party. However, the Informant did not appear. Upon completion of hearing on 09.08.2018, the Opposite Party was directed to file synopsis of the oral arguments made by the Opposite Party before the Commission during the hearing latest by 17.08.2018.

**F. Objections filed by the Opposite Party:**

19. The Opposite Party filed its objections on 06.11.2017. Further, a synopsis of the oral submissions made by it during the final hearing held on 09.08.2018 was filed on 21.08.2018. A brief of the objections and synopsis filed by the Opposite Party is summarised hereunder:
- a. The Opposite Party had challenged the order dated 25.08.2015, passed by the Commission under Section 26(1) of the Act directing the DG to conduct investigation. It argued that since the superior Court i.e. Hon'ble Delhi High Court *vide* order dated 02.12.2015, directed the Commission as well as the DG not to take any coercive steps, it was expected of the subordinate court (i.e. the Commission) to steal its hands away from the proceedings and await further orders in the matter as passed by the superior court.



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- b. Pharmaceutical companies entail huge expenditure towards promotion and advertisement of newly launched drug. In addition to the advertisements, DPCO requires the pharmaceutical companies to furnish the price list of products to all the wholesalers/retailers/dealers. The dissemination of information to various wholesalers/retailers/dealers was not possible for every pharmaceutical company due to lack of manpower. Thus, pharmaceutical companies paid nominal charges on account of Product Information Service to district associations for publishing the price list information in the bulletin for dissemination of information.
- c. During the DG investigation, most of the companies stated that the purpose of PIS was to ensure widespread dissemination of information and to create awareness about the new drugs launched by these companies. The same was stressed upon by Ajanta Pharma, Akumentis Healthcare Ltd., Ronyd Healthcare Limited, Corona Remedies Pvt. Ltd, Rowan Bioceuticals Pvt. Ltd., Jubliant Lifesciences Pvt. Ltd., Biozeal Lifesciences Pvt. Ltd., Torrent Pharmaceuticals Ltd., Macleods Pharmaceuticals Ltd., Alkem Laboratories Ltd., Brinton Pharmaceuticals Ltd., Lupin Ltd., Novartis Healthcare Limited.
- d. The DG had not found any evidence to substantiate that the Opposite Party was forcing the pharmaceutical companies to pay PIS charges. On the contrary, pharmaceutical companies including Novartis Healthcare Pvt. Ltd., Ronyd Healthcare Pvt. Ltd., Corona Remedies Pvt. Limited., Torrent Pharmaceuticals Ltd. in their statements recorded during the course of investigation stated that PIS charges are not mandatory and many products sold by them in Mumbai were without paying PIS charges. Further, there had been no instance of refusal to publish PIS or obstruction from selling products for want of PIS.
- e. From January, 2013 to April, 2015, more than 4000 new drugs had been introduced in the market without paying PIS charges, which proved that PIS was not mandatory for launching or selling medicines. In support of the said submission, a list of new drugs, which were introduced in the market in the above mentioned period and sold without any PIS approval was placed on record. Reliance had been



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placed upon the statements of pharmaceutical companies including Akumentis Healthcare Ltd., Ronyd Healthcare Pvt. Ltd., Rowan Bioceuticals Pvt. Ltd., Torrent Pharmaceuticals Ltd., Alkem Laboratories Ltd., Brinton Pharmaceuticals Ltd. and Novartis Healthcare Pvt. Ltd. to show that pharma companies had sold medicines within the territory of Mumbai, even without paying the PIS charges to the Opposite Party.

- f. Reliance was also placed upon cases including *Varca Druggist & Chemist and others Vs. Chemists & Druggists Association*, MRTP Case No. C-127/2009/DGIR (4/28) and *Santuka Associates Pvt. Ltd. Vs. AIOCD and Others*, Case No. 20 of 2011, decided by the Commission wherein it was held that the voluntary payment of PIS charges by the pharmaceutical companies was not an anti-competitive practice under the Act.
- g. Further, contents of the public notice dated 31.01.2014, published by the Commission in Hindustan Times newspaper were also referred to, wherein it was stated that compulsory payment of PIS charges by pharmaceutical firms to associations for release of new drugs is anti-competitive, which impliedly permitted the voluntary payment of PIS by pharmaceutical companies.
- h. The Opposite Party is a non-profit association operating with limited financial and human resources. The office bearers of the Opposite Party are retailers operating in the city of Mumbai and are not taking any remuneration from the Opposite Party.
- i. Details of a few medicines were not published in PIS journal even though the charges were paid due to oversight. Further, the DG was informed that there was turbulence in the pharmaceutical trade due to unexpected action of the FDA during the period of 2012-2015, due to which details of medicines were not published in the bulletins. Even though the details of the medicines were not published in bulletins, hard copies of the leaflet containing the price details were circulated amongst the authorised stockist for onward circulation. From January, 2013 up to April, 2015, the Opposite Party had published 12 bulletins in which details of 7410 drugs were published.



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- j. Even if there was default in PIS publication, such an omission to publish or default in publication was not a competition law dispute and was purely a contractual issue between pharmaceutical companies and the chemist and druggist association. The delay, if any, in the publication did not limit the supply and distribution of medicines, since many medicines were sold without paying any PIS charges. Thus, delay in PIS publication did not raise any competition issue. Further, there was no written stipulation of the time within which the price list had to be published in the bulletin or otherwise. At times, the Opposite Party was unable to publish the price list in its next edition because of lack of availability of sufficient pages in the bulletin. On some occasions, even though the intimation was received from MSCDA, the Opposite Party awaited for funds before publishing the price list as the Opposite Party did not have any independent source of income and it was entirely dependent upon MSCDA for managing its operations. Therefore, delay in publication of price list was on account of bonafide reasons.
- k. No complaint was filed by the pharmaceutical company against the Opposite Party in respect of the alleged default in publication of price list.
- l. The bulletin is meant for distribution amongst the members of the Opposite Party. The pharmaceutical companies had never requested the Opposite Party for copies of the bulletins published by it. Moreover, the charges paid by the pharmaceutical companies for publication in the bulletin were nominal in comparison to the funds spent by it in research of medicines or advertisement and promotion of medicines by way of medical representatives or in print media or digital media.
- m. Since the year 1999, price list was being published in the bulletin in the format used earlier by the Opposite Party. Even though the bulletins were not directly sent to the pharmaceutical companies, it was sent to the stockists appointed by the pharmaceutical companies.
- n. Regarding the publication not in DPCO Form V format, it was stated that the said format was for compliance by pharmaceutical companies and did not apply to a



chemist and druggist association. Moreover, the primary objective of PIS was not DPCO compliance, but to create publicity of the pharmaceutical product.

- o. As regards the letters dated 22.12.2012 and 01.09.2013, sent by Bestochem Formulations (I) Limited and Raks Pharma Pvt. Ltd. to MSCDA seeking NOC, it was clarified by MSCDA that the said letters were issued prior to the undertaking given by AIOCD to the Commission, that PIS was not mandatory anymore. The two pharmaceutical companies *viz.* Bestochem and Raks Laboratories were not examined by the DG and thus the letters of the said companies lack evidentiary value.
- p. The charges paid by the pharmaceutical companies, to the Opposite Party, for publishing information about new products in the bulletin and circulating it amongst its members was negligible in comparison with other modes of advertisements. Further, the use of terminology 'contribution' did not lend any credence to the inference drawn by the DG that PIS charges were being paid towards getting approval of the Opposite Party in a manner, before the launch of any new product by pharmaceutical companies in Mumbai.
- q. The provisions of Section 3(1) and Section 3(3)(b) of the Act, could not be invoked in the present case. The practice of PIS was introduced solely for the benefit of pharmaceutical companies pursuant to a mutually agreed Memorandum of Understanding between the pharmaceutical companies and associations.
- r. As regards the liability of office bearers, the DG mechanically observed that because the said office bearers were present in the executive meeting, they were liable for the actions of the Opposite Party.

#### **G. Submissions filed by the Informant**

20. A brief of the submissions of the Informant dated 29.06.2017 and 07.10.2017, is as follows:



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- i. Mr. Nitin Maniar, Hon. General Secretary of the Opposite Party had misled the investigation. He was not a retail chemist and was still made Hon. General Secretary and therefore was unable to explain about PIS charges or the problems faced by the chemists.
- ii. Reliance was placed upon a letter dated 22.12.2016, written by Mohd. Imran Qureshi, Proprietor, National Chemists & General Stores Kurla, Mumbai to FDA, Mumbai, to state that Kurla Chemists Association collected Rs, 51,000/- from him and sent a warning to all wholesalers that if they supply goods to him, they would be banned. A letter dated 27.04.2017, written by USV Private Limited to Shah Agencies, Nashik was also relied upon to state that USV Private Ltd. did not offer services to wholesalers which were not recognised by MSCDA.
- iii. PIS charges were neither furthering the cause of advertising nor compliance of DPCO as claimed by pharma`s companies and the Opposite Party. The evidence relied upon by the DG suggested that PIS charges were in fact in the nature of securing approval by the Opposite Party from pharma companies for the launch of their products.
- iv. Many drugs for which payment was actually received by the Opposite Party, information about them were not published in the bulletin even after considerable lapse of time.
- v. As per the information available in the audited balance sheet and Income and Expenditure Account of MSCDA for the year ended 31.03.2016 and 2017, under the heading “significant accounting policies and notes to accounts” it was stated that PIS was started by MSCDA for providing information service to their district association members. The contribution received from pharma companies were paid to the District Association, to the extent of 80 percent for utilising the same for dissemination of information to their respective district members for publication of PIS in news bulletin and the balance of 20 percent was retained by MSCDA subject to a maximum of Rupees 100/- per product, as a contribution for



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meeting its own expenses. The donations received by MSCDA in the year 2015 were Rupees 2,85,25,157/-, service tax collected was Rupees 47,15,914/- and amount payable to District Association was Rupees 2,32,70,070/-. In the year 2016, donations received by MSCDA was Rupees 3,23,83,447- service tax collected was Rupees 47,33,333/- and amount payable to District Association was Rupees 2,06.12.931/-. In the year 2017, donations received by MSCDA was Rupees 1,74,67,302/-, service tax collected was Rupees 50,82,549/- and amount payable to District Association was Rupees 2,21,69,042/-.

#### **H. Analysis and findings of the Commission**

21. The Commission has perused the information, the Investigation Report, submissions of the parties to the Investigation Report, other material available on record as well as the contentions raised by the Opposite Party during the hearing held on 09.08.2018. Upon consideration of the aforesaid, the following issues arise for determination in the present matter:

*i. Whether the collection of PIS charges by the Opposite Party from pharmaceutical companies was made mandatory/compulsory by the Opposite Party in contravention of provisions of Section 3 of the Act?*

*ii. If answer to Issue 1 is in affirmative, whether office bearers of the Opposite Party are liable for violation under Section 48 of the Act?*

22. In the last few years of its enforcement, the Commission has dealt with several cases concerning practices carried out by Chemists & Druggists associations in various parts of India. Thus, before dealing with the merits of the present case, the Commission finds it imperative to provide a brief background about its decisional practice in relation to PIS charges.

23. PIS is in the nature of a fee charged by chemists and druggists associations for introducing a new product/drug launched by the pharmaceutical companies in the



bulletins/ newsletters published by such associations. In return, the said associations publish the information and circulate it amongst all the dealers, distributors, etc.

24. In *Sankuta Associates Pvt. Ltd. and All India Organization of Chemists & Druggists & Others*, (Case No. 20 of 2011), the Commission in its order dated 19.02.2013, passed under Section 27 of the Act, observed as follows:

*“25. In view of the preceding discussion and assessment of evidence forwarded by the DG, the Commission is in agreement with the DG’s finding that AIOCD and its affiliates actions regarding delay or withholding of PIS approval on any ground is in violation of Section 3(3)(b) read with Section 3(1) of the Act.*

.....  
*28.19. From the examination of the evidence forwarded by the DG, as discussed above, the Commission observes that the practice of PIS approval from the State Chemists & Druggist Association on payment of the prescribed charges in the name of advertisement in the association bulletin is again a sine qua non in absence of which new products are not allowed to be introduced in the distribution channel. The DG had mentioned that the issue of PIS also forms part of the various MOU’s between AIOCD, OPPI and IDMA. It was also mentioned by the DG that the bulletin carries the information as per Form V of the DPCO.*

*28.20. The justification / rationale for making payment of the prescribed charges for PIS approval had been explained by Shri AniruddhaRajurkar, Vice President, German Remedies, a division of Cadila Healthcare Ltd. (at page no. 76 of the DG report) that it (PIS approval) helps to circulate and inform large number of retailers regarding price and availability of new products. The relevant excerpts from the reply of Shri Rajurkar is reproduced here under :*

*“..... As regards PIS approval, the PIS publication from the association helps to circulate and inform large number of retailers regarding price and availability of new products. In the absence of PIS approval, the company would have to bear huge time and money and resources to provide the same information regarding the product and prices to the retailers .....*”

*28.21. The DG, in this regard, has observed that the payment of PIS charges by the pharma companies in the name of advertisement charges to the State Chemists & Druggists Associations at the time of the product launch or any change in product brand / dosage form / strength thereof in the respective PIS bulletin ensures not only deemed compliance of the law but also enables it to advertise and circulate product information to all the retailers at a very nominal cost. However, the launch of product in the market being made*





*contingent on PIS approval by the concerned association of Chemists & Druggists sometimes results in restraint of trade and leads to denial of market access / controlling of supply / market for any product of a company which can also deprive consumers of the benefits of such drugs.*

*28.22. The DG has mentioned that there are many instances where the association of Chemists & Druggists refuses to grant PIS approval on a variety of factors, including asking for charges in excess of the prescribed charges in the MOU. The Secretary General of IDMA has also testified to this effect. As and when the different AIOCD affiliates ask for exorbitant charges, the new product launches get delayed and cause hindrance to freedom of trade of the manufacturers and deprive the consumers of the products. The DG, in view of the same, has concluded that any attempt on the part of the members of AIOCD and or its affiliates to delay or withhold any PIS approval on any ground which limits or controls supply or market thereof has to be treated as a kind of boycott, thus attracting the provisions of Section 3(3) (b), read with Section 3(1) of the Act.*

.....  
*35. Accordingly, the Commission passes the following orders under Section 27 of the Act against AIOCD.*

- (i) .....*
- (ii) .....*
- (iii) .....*
- (iv) .....*
- (v) It shall also issue circular that PIS charges were not mandatory and PIS services could be availed by manufacturers/pharmaceuticals firms on voluntary basis.*
- vi).....*

25. From the above, it is clear that the decisive factor of whether PIS charges are anti-competitive or not is the nature of such charges. If the same are mandatory in the sense that absence of payment will lead to the new drugs not being introduced in the market, the practice shall be termed as anti-competitive. Juxtaposed to this, a voluntary decision of manufacturers/ pharmaceutical companies to avail it on voluntary basis makes it fall outside the purview of the Act. The Commission *vide* its public notice dated 30.01.2014, informed that the practice of compulsory payment of PIS charges by pharmaceutical firms/ manufacturers to associations for release of new drug/ new formulation is anti-competitive. As a corollary, voluntary payment of PIS charges by pharmaceutical companies to chemist and druggist associations does not fall foul of the provisions of the Act.



26. Against the aforesaid background, the Commission proceeds to determine the issues framed above.

***Issue 1: Whether the collection of PIS charges by RDCA from pharmaceutical companies was mandatory/compulsory and thus in contravention of provisions of Section 3 of the Act?***

27. In order to ascertain the need and purpose for which PIS charges were paid by pharma companies before launch of products in Mumbai, the DG considered the replies of certain pharmaceutical companies namely, Ajanta Pharma Ltd., AkumentisHealthcare Ltd., Ronyd Healthcare Pvt. Ltd., Eisen Pharmaceutical Co. Pvt. Ltd., Corona Remedies Pvt. Ltd., Emonex Healthcare, Vitane Pharmaceutical Pvt. Ltd., Rowan Bioceuticals Pvt. Ltd., Kadsun Healthcare Pvt. Ltd., Jubilant Life Sciences Ltd., Biozeal Lifesciences Pvt. Ltd., Torrent Pharmaceuticals Ltd., Macleods Pharmaceuticals Ltd., M/s Alkem Laboratories Ltd., Brinton Pharmaceuticals Ltd., Lupin Ltd., Molekule (India) Pvt. Ltd., Unifab Pharmaceuticals and M/s Novartis Healthcare Pvt. Ltd.
28. The DG, after considering the replies of aforesaid pharmaceutical companies observed that they were paying PIS charges to the tune of Rupees 500/- per product, per district to MSCDA, for getting the same published in the bulletin/magazine published by the respective district association. It was further observed by the DG that the pharmaceutical companies usually paid PIS charges for all the new products launched by them, except for some products for which no charges were paid to the association, even though these were sold in the territory of Mumbai. The DG, however, observed that the evidence nevertheless established the existence of a practice of demanding payment of PIS charges by the Opposite Party from the pharmaceutical companies for publication in bulletin/magazine published by the association. The Opposite Party, on the other hand, claimed that the PIS charges were not mandatory but voluntary.
29. To weigh the counter claims, the Commission perused the replies of the following pharmaceutical companies recorded before the DG, the relevant excerpts of which are reproduced below:



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- a. Ajanta Pharma in its reply dated 21.12.2015, to the DG's notice, stated as under:  
*"V ..... We are publishing advertisement in MSCDA for creating general awareness of our products amongst customers."*
- b. Akumentis Healthcare Ltd. in its reply dated 30.12.2015, to DG's notice stated as under:  
*"V. To reach out the retailers and public at large we have paid for advertisement in the bulletin published by MSCDA/ RDCA."*
- c. Ronyd Healthcare Ltd. in its reply dated 15.12.2015, to DG's notice stated as under:  
*"V. The sole intention of the management of the company was to get its product details published in MSCDA bulletin so that Doctors and Chemists are made aware of the products since we are initiating our operations in Mumbai."*
- d. Eisen Pharmaceutical Co. Pvt. Ltd. in its reply dated 18.12.2015, stated as under:  
*"V. "Information about new drugs" is published in Chemist & Druggist Association's publications for the purpose of advertising availability of newly launched product. It is our experience that when we advertise the product in such way we have better chances to get sales orders from our distributors."*
- e. Corona Remedies Pvt. Ltd. in its reply dated 18.12.2015, stated as under:  
*"5. The purpose of information published in Bulletin is to give awareness to Retailers about our new product."*
- f. Emonex Healthcare in its reply dated 11.01.2016, stated as under:  
*"VI. That publication of information about new drugs in bulletin did not violate any provision of DPCO, 2013. It did help in reaching out information about our drugs to all concerned."*
- g. Rowan Bioceuticals Pvt. Ltd. in its reply dated 09.12.2015, stated as under:  
*"5. My purpose of publishing the products in RDCA Bulletin was that our company and products should be known to entire chemists/ retailers of Mumbai/Suburbs in the shortest possible time frame for ensuring the honouring of prescriptions at chemists levels to avoid any inconvenience to patients. Total 18 products were planned to be launched in 1st phase for that we paid Rs. 500/- per product for Mumbai and suburbs."*



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- h. Jubilant Life Sciences Ltd. in its reply dated 18.12.2015, stated as under:
- “For disseminating awareness about launch of new products with details of composition/ content & prices to ensure right honouring of doctor’s prescription.”*
- i. Biozeal Lifesciences Pvt. Ltd. in its reply dated 12.12.2015 stated as under:
- “It is in addition to whatever provided in the DPCO 2013. Our company has no address of thousands of retailers. Hence price list circulation through district bulletin is advisable and economical way of circulation”*
- j. Torrent Pharmaceuticals Ltd. in its reply 23.12.2015, stated as under:
- “(V): As a part of promotional activities of the Company, a list of new products with prices used to be sent to the MSCDA for publishing information in their respective district bulletin.”*
- k. Macleods Pharmaceuticals Ltd. vide affidavits dated 23.12.2015 and 28.10.2016, stated as follows:
- “7..... the publication of product information in the MSCDA bulletin is for publicising information about new product amongst maximum number of retailers. This is an additional and cheapest way to communicate information to retailers.”*
- l. Alkem Laboratories Ltd. vide its affidavit dated 11.02.2016, stated as follows:
- “The purpose of getting the “information about new drugs” published with the MSCDA is to create market awareness for the customers with regard to the new drugs that are launched by Alkem. By publishing information on the new drugs in these bulletins the drug companies are able to provide information about the new drugs to the wholesalers and retailers, thereby lending transparency to wholesalers and retailers on the constituents of different drugs.”*
- m. Lupin Ltd. vide affidavit dated 12.01.2016, stated as under:
- “4. Publication of information about its new drugs in the association’s bulletin ensures last mile connectivity in a cost efficient manner (i.e.) directly reaching the dealers, stockists, and retailers etc. which Lupin is not able to accomplish in normal course. Accordingly, Lupin publishes information about its new drugs in the bulletins/ newsletters published by various district associations in order to disseminate information and raise awareness about its new products.”*
- n. Unifab Pharmaceuticals in reply dated 14.12.2015, stated as under:
- “V. Circulation of our Product Price List in Mumbai area to Retailers and General Public”.*



30. A collective reading of the responses of various pharmaceutical companies as reproduced above indicates that these companies found the publication of their products in the association's bulletin/ newsletter as an effective way to spread awareness about the new products. However, as stated earlier, the decisive test of whether PIS is anti-competitive or not is whether it was mandatory or voluntary.
31. To ascertain whether PIS charges were mandatory or voluntary, the Commission considered the following statements of representatives of pharmaceutical companies recorded before the DG during investigation:

- i. Sh. Navaneeth Kumar, Head – Disease Area Immunology and Dermatology, M/s Novartis India Ltd.

*“Q5 Please clarify whether it is mandatory for the company to get the PIS published through MSCDA before selling said product in the State of Maharashtra?”*

*Ans. The publication of PIS through MSCDA is not mandatory. However, since the various players in the pharma industry have close operational relationships, such as one between MRs/ Sales Managers of our company and wholesalers/ retailers/ their association. Therefore, considering that the PIS amount is small amount compared to overall promote promotional expenses, the company prefers to pay PIS which would supplement other promotional programmes.*

*Q6 Please clarify whether in the last four years (2012 to 2016) MSCDA ever refused to publish PIS of your company due to any reason.*

*Ans. No, our company has launched only few products during the said period for mass marketing and never faced any such problem.”*

- ii. Sh. Goldie Sethi, Director, M/s Ronyd Healthcare Pvt. Ltd.

*“Q8 Please clarify whether it is mandatory for the company to get the PIS published through MSCDA before selling the said product in the State of Maharashtra?”*

*Ans. To widespread the information about new drug in the State of Maharashtra, the company get the PIS published through MSCDA. However, now availing said service/ publication is not mandatory. Earlier, before taking action by CCI against AIOCD regarding PIS charges, it was*



*mandatory to pay the said charges before launch of any product. Now the companies are paying PIS as per their own wish.*

iii. Sh. Bhaven S. Shah, Vice-President, M/s Corona Remedies Pvt. Ltd.

*“Q3 Your company has paid PIS charges to MSCDA in the period 2012 to 2015. Please explain the purpose and nature of this payment and whether it is being continued?”*

*Ans. The company has no data of the retailers in the State of Maharashtra, therefore to widespread the information about the new drug to them, the company paid PIS charges during the said period for the advertisement of drugs in different bulletins of MSCDA.*

*Q14 Please clarify whether it is mandatory for the company to get the PIS published through MSCDA before selling said product in the State of Maharashtra.*

*Ans. To widespread the information about the new drug in the State of Maharashtra, the company get the PIS published through MSCDA. However, said service/ publication is not mandatory.*

iv. Sh. K.C. Mathew, Manager, M/s Torrent Pharmaceuticals Ltd.

*“Q3 Your company has paid PIS charges to MSCDA in the period 2012 to 2015. Please explain the purpose and nature of this payment and whether it is being continued?”*

*Ans. PIS charges were paid to MSCDA for publication in Bulletins brought out by district Associations which serve the purpose of spreading information about new products. This payment was made voluntarily by the company. Since around April 2014 (I shall reconfirm the month on 02.11.2016 with supporting documents) our company has stopped paying PIS charges as per public notice issued by the Competition Commission of India. I recollect that there was also a related circular issued by some Association in this regard. I will furnish a copy of same by 02.11.2016.*

*Q9 Please clarify whether it is mandatory for the company to get the PIS published through MSCDA before selling said product in the State of Maharashtra?*

*Ans. To widespread the information about the new drug in the State of Maharashtra, the company get the PIS published through MSCDA. However, said service/ publication is not mandatory. We have stopped this payment since Apr 2014 and we are launching new products as usual without any problem from any association.”*

- v. Sh. Arun Kumar Singh, General Manager, (Sales/ Admn.). M/s Ajanta Pharma Ltd

*“Q8 Please clarify whether it is mandatory for the company to get the PIS published through MSCDA before selling said product in the State of Maharashtra?”*

*Ans. To widespread the information about the new drug in the State of Maharashtra, the company get the PIS published through MSCDA. However, said service/publication is not mandatory.*

*Q9 Despite not being mandatory, please clarify how come your company has made PIS payment to MSCDA for all new products introduced by it during 2012 to 2015?*

*Ans. As I have already stated that we publish the PIS for widespread circulation of information about the new drug, therefore all the new drugs manufactured by the company during the said period were published through MSCDA.”*

- vi. Sh. MohammedSaleem, Proprietor, M/s Unifab Pharmaceuticals

*“Q8 Please clarify whether it is mandatory for the company to get the PIS published through MSCDA before selling said product in the State of Maharashtra?”*

*Ans. To comply with DPCO requirement, my concern gives PIS to MSCDA ”*

32. The Commission notes that the above statements of representatives of pharmaceutical companies are self-speaking and demonstrates that payment of PIS charges by pharmaceutical companies to the Opposite Party is not mandatory, but voluntary. Given the fact that almost all pharmaceutical companies have stated that the PIS charges are voluntary, it is difficult to accept the conclusions/ findings of the DG.
33. The Commission further notes that the counsel for the Opposite Party also relied upon letters dated 23.04.2013 and 18.04.2013, issued by OPPI and AIOCD to pharmaceutical companies, issued pursuant to the order dated 19.02.2013, passed by the Commission in Case No. 20 of 2013. The relevant extracts of above mentioned letters are as under:



- a. Letter dated 23.04.2013, issued by OPPI:  
*“It will not be mandatory to give PIS charges and PIS services could be availed by manufacturers/ pharmaceutical firms on voluntary basis.”*
  - b. Letter dated 18.04.2013, issued by AIOCD:  
*“It will not be mandatory to give PIS charges and PIS services could be availed by manufacturers/ pharmaceutical firms on voluntary basis.”*
34. Relying on the aforesaid letters, it has been argued that the chemist and druggist association had issued letters to pharmaceutical companies pursuant to the order dated 19.02.2013, passed by the Commission that it will not be mandatory for pharmaceutical companies to pay PIS charges and PIS could be availed by them on a voluntary basis.
35. The Commission further notes that some pharmaceutical companies have stated that they have sold certain products in the territory of Mumbai without paying the PIS charges. Ajanta Pharma in its reply dated 21.12.2015, provided details of product not published in the Opposite Party bulletin, which contained a list of twenty six products. Further, Ronyd Healthcare Ltd. in its reply dated 15.12.2015, provided details of about twenty products which were not advertised in bulletin of associations.
36. During the oral hearing, the counsel for RDCA had pointed out that from January, 2013 to April, 2015, more than 4000 new drugs had been introduced in the market which evidences that PIS is not mandatory in the territory of Mumbai for launching of medicines. In support of its submission, the Opposite Party has provided a list of new drugs which were introduced in the market from January 2013 to April 2015 and sold without any PIS approval. The aforesaid evidence demonstrates that launch of the new products is not contingent upon payment of PIS charges in the territory of Mumbai.
37. Further, there is no instance or allegation that the Opposite Party has refused to publish any Drug information as such. The evidence on record does not reveal even a single instance of refusal of publishing of PIS due to any reason in the present case, which is evident from the following statements of pharmaceutical companies:
- s. Sh. Navaneeth Kumar, Head – Disease Area Immunology and Dermatology, M/s Novartis India Ltd.





*“Q6 Please clarify whether in the last four years (2012-2016) MSCDA ever refused to publish PIS of your company due to any reason.*

*Ans. No, our company has launched only few products during the said period for mass marketing and never faced such problem.”*

t. Sh. Mohammed Saleem, Proprietor, M/s Unifab Pharmaceuticals

*“Q11 Please clarify whether in the last four years (2012 to 2016) MSCDA ever refused to publish PIS of your company due to any reason?*

*Ans. It has never happened.”*

38. The Commission notes that the submissions of the Informant as regards the letter dated 22.12.2016 written by Mohd. Imran Qureshi, Proprietor, National Chemists & General Stores Kurla, Mumbai to FDA, Mumbai, and letter dated 27.04.2017, written by USV Private Limited to Shah Agencies, Nashik are nowhere related to the facts of the present case. Also, the information provided in the audited balance sheet and Income and Expenditure Account of MSCDA for the year ended 31.03.2015 and 2016 deals with the collections which cannot be relied upon for supporting the allegations in the present case as the facts and circumstances of the present case deal with the payment of PIS charges.

39. The Commission further notes that during the course of investigation, the DG relied upon certain evidences which showed that the PIS charges were neither furthering the cause of advertising nor compliance of DPCO stipulations. As per the DG, pharmaceutical companies were paying such charges as a matter of practice only. The DG found that non-publication in bulletins of price list by the Opposite Party even after lapse of considerable time, delayed publication in such bulletins, non-publication as per DPCO format, use of word ‘contribution’ in the covering letters issued by pharmaceutical companies to MSCDA, and marking of ‘product approved for advertisement’ by the said association on receipts issued to pharma companies *etc.* suggested that the Opposite Party was conveying approval for launch of new drugs in Mumbai which is in contravention of the provisions of Section 3(1) read with Section 3(3)(b) of the Act. The said practice restricted the entry of pharma companies in the territory of Mumbai. As per the DG, the circulation of price list through MSCDA by



way of publications in the bulletins of the Opposite Party, but not publishing the same in the manner and format as forwarded by the pharmaceutical companies in compliance with the DPCO guidelines disrupted the chain of transmission of information to the end consumer. It thereby resulted in denial of benefits accruing to consumers and deprived them of vital information about the particulars of the formulations resulting in appreciable adverse effect on competition in the market.

40. The Commission notes that the DG relied upon the statement of the General Secretary of the Opposite Party and found that information about certain drugs was not published in its bulletin though, MSCDA, forwarded the details which were required to be published, along with PIS charges. This, as per the DG, establishes that the purpose of PIS was not to spread information about new drugs in the district. Had it been so the Opposite Party, in its bulletin, ought to have published the information supplied by the pharmaceutical company for every drug/dosage/strength. The DG also considered the statements of representatives of pharmaceutical companies which brought out that where companies paid PIS charges to MSCDA, prior to launch of their drugs, yet they were not concerned about the timeframe, within which, the information about their new drugs will be published in the bulletin of the Opposite Party. The DG inferred that the absence of such timeframe for publication of the information about new drugs reflected that the pharmaceutical companies were making the payments to the Opposite Party through MSCDA, only for the purpose of getting approval for launch of their products in Mumbai, in the garb of their publication in the bulletin of the Opposite Party. The DG also recorded statements of representatives of pharmaceutical companies and found in this regard that they had never seen copy of such bulletins as it does not reach them. The Commission notes that the DG has pointed out that the companies were also not cross checking whether their 'advertisement' is actually published or not. Therefore, after making the payment of Rupees 500/- (per new drug launched or changes to an existing drug, in relation to its dose/form/strength *etc.*) to the Opposite Party, the pharmaceutical companies were actually not even concerned whether their information was published by the Opposite Party, which indicated that the payments made by them in the name of PIS was actually not for the purpose of advertisement or DPCO compliance.



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41. In this regard, the Opposite Party has submitted that from January 2013 to April 2015, it published twelve bulletins containing price list of medicines in respect of 7410 drugs of several pharmaceutical companies. As regards delay in publication, it was explained by the Opposite Party to the DG that the said omissions to publish were merely due to oversight and also for the reason that in the period from 2012 to 2015 there was a turbulence in the pharmaceutical trade due to unexpected actions of the FDA during which time there were lapses in the management of the Opposite Party. Further, the Opposite Party submitted that no complaint was filed by any pharmaceutical company against the Opposite Party in respect of the alleged default in publication of price list. Opposite Party, in its submissions has pointed out that there was no written stipulation of time, within which the price list had to be published in the bulletin. It was unable to publish the price list in its next edition because of lack of availability of sufficient pages in the bulletin. Moreover, the Opposite Party awaits funds before publishing the price list because it is entirely dependent upon MSCDA for managing its operations. Therefore, delay in publication of price list was due to bonafide reasons. The Opposite Party pointed out that the bulletin is meant for distribution amongst the members of the Opposite Party. The pharmaceutical companies had never requested the Opposite Party for copies of the bulletins published by it.
42. Though the Commission is not sufficiently convinced with the submissions of the Opposite Party in relation to non-publication of price list or delay in publishing product of product information in the bulletin by the Opposite Party, the issue which requires determination is whether PIS charges were mandatory or not. Most of the companies have claimed that PIS was beneficial and was aimed at spreading awareness. Further, almost all the pharmaceutical companies who were investigated by the DG clarified that PIS was not mandatory in the city of Mumbai. There is not even a single instance in the present case to suggest that PIS was mandatory or that any of the Drugs were ousted from the market or denied market entry because of non-publication. Rather the fact of introduction of drugs despite non-publication goes against the claims made by the Informant. Thus, in absence of evidence to the contrary, reliance on conjectures and surmises may not be appropriate. Thus, the Commission is of the view that evidence on



record does not suggest that PIS charges were mandatory for introduction of new drugs in Mumbai.

43. The Commission further notes that as regards the products not published as per DPCO format, the DG observed that actual publication in the bulletin was not as per the prescribed format of Form-V, as the publication in the bulletin did not contain details about the formulation of the drug. In this regard, the Opposite Party submitted that since 1999 the price list was being published in the bulletin in the same format and even though the bulletin was not directly sent to the pharmaceutical companies, it was sent to the stockists appointed by the pharmaceutical companies. With respect to this, the Commission observes that non-compliance with the DPCO format by the Opposite Party is not a competition issue and thus cannot be regarded as contravention of the provisions of the Act by the Opposite Party.
44. The Commission notes that the DG examined the documents furnished by pharmaceutical companies containing a cover letter under which the details of new products were mentioned and payment was sent to MSCDA, for publication in bulletin published by district level associations which mentioned the word 'contribution'. Moreover, after taking PIS charges from the companies, MSCDA put a rubber stamp mentioning "*product approved for advertisement*" on the receipts issued by it to pharmaceutical companies. The Commission observes that mere use of term 'contribution' does not lead to a conclusive finding that PIS charges were mandatory and were being paid towards getting approval of the Opposite Party before the launch of a new product in Mumbai. In the absence of any corroborative evidence and given the statements of pharmaceutical companies that PIS charges were not mandatory, the Commission finds it difficult to accept the conclusions of the DG in this regard.
45. The Commission notes that as per the findings of the DG, the treasurer of MSCDA was unable to give any explanation about the two letters written by pharmaceutical companies namely M/s Bestochem Formulations Pvt. Ltd. and M/s Raks Laboratories on 22.12.2012 and 01.09.2013, respectively regarding seeking NOC for their products. As per the DG, answers given by MSCDA, indicated that the payments were made by



the said companies to district associations, through MSCDA for the purpose of permission for launch of their new products. As regards the aforesaid letters, the Opposite Party submitted that MSCDA clarified that these letters were issued prior to the undertaking given by the AIOCD to the Commission that PIS was not mandatory. In this regard, the Commission notes that the issue in the present case pertains to mandatory or voluntary nature of PIS charges. Thus, the inference of contravention of the provisions of the Act by the Opposite Party is unfounded.

46. Based on the above, the Commission concludes that there is no cogent evidence on record to suggest that collection of PIS charges by the Opposite Party from pharmaceutical companies was mandatory. This is especially, after such companies, which are directly affected parties, have come forward during investigation to say that there has been no compulsion to pay such charges, post the previous orders and directives issued by the Commission, finding such mandatory seeking of charges by various retailers associations to be anti-competitive. Thus, in the facts and circumstances of the present matter, no case of contravention of provisions of Section 3 is made out against Opposite Party.

***Issue 2: Whether office bearers of RDCA are liable for violation under Section 48 of the Act?***

47. The DG found the office bearers namely Sh. Damji Bhai Palan, President, (2007-2014), Sh. Prashad W. Danave, President, (2015 onwards)/ Hony. General Secretary (2007-2014), Sh. Nitin Maniar, Joint Secretary (2007-2014)/ Hony. Gen. Secretary (2015), Sh. Preveen Vyas, Hony. Treasurer, (2007-2014 & 2015 onwards), Sh. Rasool Bhai Balsania, Vice President, (2007-2014), Sh. Ayaz Hakim, Vice President, (2015 onwards) Sh. Lal Bahadur Yadav, Joint Secretary (2015 onwards) and Sh. Deepak Chheda, Joint Treasurer, (2015 onwards) as being the persons who were responsible for conduct of the Opposite Party's activities under Section 48 of the Act. Thus, accordingly, besides the Opposite Party, the contravention of the provisions of Section 3(1) read with Section 3(3)(b) of the Act, were committed by these persons as the meetings were duly held by these office bearers and the decision was taken on consensus of the said office bearers. The Opposite Party has submitted that the DG has



mechanically observed that as the said office bearers were present in the executive meeting, they are liable for the actions of the Opposite Party. Further, under Section 48 of the Act, office bearers of the Opposite Party can be proceeded against only when there is final order of contravention against office bearers.

48. In this regard, the Commission is of the view that since the Opposite Party is not found to be in contravention of Sections 3(1) read with 3(3)(b) of the Act, no question of liability of the office bearers of the Opposite Party arises in the present case.
49. The implementation of the decision passed in the present case, shall be subject to proceedings before the Hon'ble Delhi High Court in CWP No.11163 of 2015.
50. The Secretary is directed to inform the parties accordingly. A copy of the order be also sent to MSCDA and AIOCD.

**Sd/-  
(Sudhir Mital)  
Chairperson**

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(U. C. Nahta)  
Member**

**New Delhi  
Dated: 08.11.2018**