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Anti-competitive activities found amongst Bengal Chemists and Druggists Association and certain pharmaceutical companies

The Competition Commission of India ('Commission') has passed an order finding Bengal Chemists and Druggists Association ('BCDA'), its two District Committees *i.e.* Murshidabad District Committee and Burdwan District Committee and their office-bearers, to be indulging into anti-competitive practices in contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Competition Act, 2002 (the 'Act'). Such anti-competitive practices being found to be indulged into by BCDA are: (i) it used to require pharmaceutical companies in at least some Districts of the State of West Bengal have their new stockists obtain a prior Stock Availability Information ('SAI')/ No Objection Certificate ('NOC') from BCDA before supply of drugs can be commended to them; (ii) it used to collect monetary considerations from the prospective stockists against issuance of SAI to them, through its District Committees; and (iii) Promotion cum Distributor ('PCD') agents of pharma companies had to obtain Product Availability Information ('PAI') from BCDA after payment of monetary considerations to it in the form of donations, to start marketing drugs of their respective pharma companies in the State of West Bengal.

Further, the Commission has found that pharmaceutical companies Alkem Laboratories Limited ('Alkem') and Macleods Pharmaceuticals Limited ('Macleods') had an anti-competitive agreement with BCDA whereby these companies, after issuing the offer letter of stockistship ('OLS') to prospective stockists, demanded from them SAI/ NOC/ Approval Letter/ Circulation Letter from BCDA, before supplies of drugs can be commenced to them. For their such conduct, the Commission has found Alkem and Macleods liable for contravention of the provisions of Section 3 (1) of the Act and their various officials have also been found liable by the Commission for such conduct in terms of Section 48 of the Act.



Accordingly, the Commission has directed BCDA, its District Committees of Murshidabad and Burdwan, their office bearers, pharmaceutical companies *viz.* Alkem and Macleods, and their respective officials who have been held liable in terms of the provisions of Section 48 of the Act, to cease and desist in future from indulging in practices which have been to be in contravention of the provisions of Section 3 of the Act. However, the Commission, noting that BCDA has been able to show that post the decision of the Commission in *Santuka Associates Pvt. Ltd. v. AIOCD and Others, 2013 Comp.L.R. 223 (CCI)*, it has taken several steps in the direction of ending the practice of requiring NOC/ SAI and noting that Alkem and Macleods have taken the plea before the Commission that they were indulging in the impugned conduct under threat/ duress/ directions from BCDA, decided not to impose any monetary penalty on the erring entities. In terms of Section 27 (g) of the Act, the Commission only directed BCDA to conduct advocacy events by way of outreach activities with its District Committees/ Zone Committees and their office bearers, to impress upon them the need to comply with the provisions of the Act in letter and in spirit.

Detailed order of the Commission will follow.