

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

C.P No.D-4497 of 2023

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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Priority

1. For hearing of CMA No.20795/2023 (Stay Application)
2. For hearing of main case

**19.10.2023**

Mr. Anwar Mansoor Khan, Advocate for the petitioner alongwith  
Ms. Umaimah A. Khan, Advocate  
Mr. Khaleeq Ahmed, DAG  
Mr. Irfan Ahmed, Advocate for DRAP alongwith Syed M. Ghazanfar  
and Aamir Latif, Deputy Director (Law), DRAP/Respondent Nos.2-5  
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Petitioner claims to be one of the leading pharmaceutical companies incorporated under the Companies Ordinance, 1984 engaged *inter alia* in the business of manufacturing, importing, marketing and distribution of pharmaceutical products for the last 50 years.

While a number of prayers are made through the instant petition however core grievance of the petitioner is that it being manufacturer of *inter alia* 17 different types of medicines detailed in paragraph-6 of the memo of the petition, moved applications for increase in Maximum Retail Price (MRP) to Drug Regulatory Authority of Pakistan (DRAP), being empowered under Section 7(c)(vii) of DRAP Act, 2012 to regulate pricing, which applications after complying with all the formalities have been included in the final report issued by DRAP dated 17.07.2023, however, while the law prescribes a period of 60 days to the Federal Government to decide such matters under Drug Pricing Policy, 2018 (paragraph-9(5)), but Federal Government has not issued appropriate notification causing serious prejudice to the interests of the petitioner and not only so, such an inaction has also created acute shortage of some of these life-saving drugs and resultantly huge foreign exchange is also spent on the import of the other generic versions of the molecules in question. He, therefore, requests that as prayed in Prayers III, VI, VII

and XI appropriate directions be issued to the Respondent No.1 to issue notification. At the last leg of his submissions, learned counsel for the petitioner also draws Court's attention to the notice issued to the petitioner, available at page 869, where the petitioner has been threatened by the DRAP for coercive action on account of shortage of subject drugs.

Valuable assistance has been provided by the learned counsel for Respondent No.2-DRAP and learned DAG, who stated that the Federal Government is ready to implement the hardship cases, where appropriate increase has been proposed through DRAP letter dated 17.07.2023, however, on account of a stay order passed in the original side of this Court dated 06.09.2023 in bunch of cases led by Suit No.1470 of 2023, this Court has restrained DRAP to give effect to clause (c) of its Notification dated 19.05.2023 (SRO 595(I)/2023) which pertained to the new MRPs of the hardship cases.

Learned counsel for the petitioner at this juncture state that some of the pharmaceutical companies may have challenged the said Notification (SRO 595(I)/2023) for the reasons best known to them and this Court was pleased to suspend operation of clause (c), however, those orders were passed in *personam* i.e. in favour of the plaintiffs alone and do not operate in *rem* for all the pharmaceutical companies in Pakistan, which are more than 650.

Heard the learned counsel for the petitioner as well as learned DAG and learned counsel for Respondent No.2-DRAP and perused the material available on record.

Admittedly, DRAP in consequence of SRO 595(I)/2023 has already provided one-time dispensational increase up to 14% in MRPs of essential drugs and 20% for all other drugs, which notification seemingly has been given effect in all cases other than the hardship cases, which increase is

calculated on account of high cost of imported ingredients and while the hardship cases were to be dealt separately under clause (c) and where proposals have been made for appropriate changes in various pharmaceutical products through DRAPs letter dated 17.07.2023, where recalculated MRP has been recommended, but on account of the stay order passed on 06.09.2023 in Suit No.1470 of 2023, SRO 595(I)/2023 is not given full effect, but the fact is that the stay is only for the benefit of the respective plaintiffs, who are only a handful and where the stay order cannot be considered to operate in *rem* against all the 650 pharmaceutical companies, we, therefore, are of the view that while the plaintiffs, who have moved to this Court on its original side and have sought stay order, those to proceed with the respective suits and to their extent clause (c) can continue to be stayed (till the court at the original side decides otherwise), however the petitioner, who has not filed any civil suit *in fact* craves for the implementation of SRO 595(I)/2023 in letter/spirit and in toto, and has been condemned unheard causing prejudice to it, therefore, we dispose of this petition with directions to Respondent No.1 to pass appropriate notification with respect to the drugs of the petitioner (seemingly listed at Sr.Nos.86, 89, 90, 92, 95, 99, 101, 102, 107 and 113 of the letter dated 17.07.2023) as to the extent of MRPs as recommended in the letter dated 17.07.2023, as well as the duty casted under paragraph-9(5) of the Drug Pricing Policy, 2018 on the Federal Government be discharged without any further loss of time in the interest of justice and fair play, as well in the meanwhile no coercive action as per the letters dated 15.09.2023 (page 869/871 etc.) be taken against the petitioner.

ACTING CHIEF JUSTICE

JUDGE