

IN THE HIGH COURT OF SINDH AT KARACHI

S.NO.	P A R T I E S	SUIT NUMBER
1.	M/s. Ferozsons Laboratories Limited Vs. Federation of Pakistan & others	1294/2023
2.	M/s. Getz Pharma (Private) Limited Vs. Federation of Pakistan & others	1404/2023
3.	M/s. Indus Pharma (Private) Limited Vs. Federation of Pakistan & others	254/2021
4.	M/s. Indus Pharma (Private) Limited Vs. Federation of Pakistan & others	535/2021
5.	M/s. Novo Nordisk Pharma (Private) Limited Vs. Federation of Pakistan & others	563/2021
6.	M/s. GlaxoSmithKline Pakistan Limited Vs. Federation of Pakistan & others	1262/2021
7.	M/s. Don Valley Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	2118/2021
8.	M/s. CCL Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	2119/2021
9.	Brookes Pharma (Private) Limited, Vs. Federation of Pakistan & others	2883/2021
10.	M/s. High-Q Pharmaceuticals Vs. Federation of Pakistan & others	2925/2021
11.	M/s. Indus Pharma (Private) Limited Vs. Federation of Pakistan & others	1073/2023
12.	Sami Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	1074/2023
13.	Healthtek Private Limited Vs. Federation of Pakistan & others	1075/2023
14.	M/s. Hakimsons Impex (Private) Limited Vs. Federation of Pakistan & others	1076/2023
15.	M/s. Ambrosia Pharmaceuticals Vs. Federation of Pakistan & others	1077/2023
16.	Sigma Pharma International (Private) Limited Vs. Federation of Pakistan & others	1242/2023
17.	Maple Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	1286/2023

18.	Maxtech Pharma (Private) Limited Vs. Federation of Pakistan & others	1287/2023
19.	Swiss Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	1290/2023
20.	Hiranis Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	1291/2023
21.	M/s. BF Biosciences Limited Vs. Federation of Pakistan & others	1295/2023
22.	M/s. High Q Pharmaceuticals Vs. Federation of Pakistan & others	1296/2023
23.	M/s. High Q International Vs. Federation of Pakistan & others	1297/2023
24.	Helix Pharma (Private) Limited Vs. Federation of Pakistan & others	1299/2023
25.	M/s. The Searle Company Limited Vs. Federation of Pakistan & others	1317/2023
26.	M/s. The Searle Pakistan Limited Vs. Federation of Pakistan & others	1318/2023
27.	M/s. Searle IV Solution Private Limited Vs. Federation of Pakistan & others	1319/2023
28.	M/s. Lucky Core Industries Limited Vs. Federation of Pakistan & others	1320/2023
29.	M/s. GlaxoSmithKline Pakistan Limited Vs. Federation of Pakistan & others	1332/2023
30.	M/s. Nextar Pharma Private Limited Vs. Federation of Pakistan & others	1333/2023
31.	M/s. Himmel Pharmaceuticals Private Limited Vs. Federation of Pakistan & others	1334/2023
32.	M/s. Punjab Medical Services Vs. Federation of Pakistan & others	1335/2023
33.	Efroze Chemical Industries (Private) Limited Vs. Federation of Pakistan & others	1342/2023
34.	MEDIPAK Limited Vs. Federation of Pakistan & others	1343/2023
35.	Otsuka Pakistan Limited Vs. Federation of Pakistan & others	1344/2023
36.	M/s. Haleon Pakistan Limited Vs. Federation of Pakistan & others	1352/2023

37.	M/s. Pharmatec Pakistan Private Limited Vs. Federation of Pakistan & others	1353/2023
38.	M/s. Bosch Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	1354/2023
39.	M/s. Linz Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	1355/2023
40.	M/s. CCL Pharmaceuticals Private Limited Vs. Federation of Pakistan & others	1365/2023
41.	M/s. AGP Limited Vs. Federation of Pakistan & others	1366/2023
42.	M/s. Aspin Pharma (Private) Limited Vs. Federation of Pakistan & others	1367/2023
43.	Pfzer Pakistan Ltd Vs. Federation of Pakistan & others	1368/2023
44.	Wyeth Pakistan Ltd. Vs. Federation of Pakistan & others	1369/2023
45.	M/s. Nabi Qasim Industries Private Limited Vs. Federation of Pakistan & others	1373/2023
46.	M/s. Surge Laboratories Private Limited Vs. Federation of Pakistan & others	1374/2023
47.	M/s. Martin Dow Marker Limited Vs. Federation of Pakistan & others	1390/2023
48.	M/s. Martin Dow Limited Vs. Federation of Pakistan & others	1391/2023
49.	M/s. Seattle Private Limited Vs. Federation of Pakistan & others	1392/2023
50.	M/s. Marin Dow Specialties Private Limited Vs. Federation of Pakistan & others	1393/2023
51.	M/s. Frontier Dextrose Limited, Vs. Federation of Pakistan & others	1396/2023
52.	Macter International Limited Vs. Federation of Pakistan & others	1400/2023
53.	Opal Laboratories (Private) Limited Vs. Federation of Pakistan & others	1410/2023
54.	M/s. Reckitt Benckiser Pakistan Limited Vs. Federation of Pakistan & others	1416/2023
55.	RG Pharmaceuticals Vs. Federation of Pakistan & others	1452/2023

56.	M/s. Tabros Pharma (Private) Limited Vs. Federation of Pakistan & others	1471/2023
57.	Curatech Pharma (Private) Limited, Vs. Federation of Pakistan & others	1539/2023
58.	Asian Continental (Private) Limited Vs. Federation of Pakistan & others	1546/2023
59.	Genix Pharma (Private) Limited Vs. Federation of Pakistan & others	1547/2023
60.	Daneen Pharma Private Limited Vs. Federation of Pakistan & others	1548/2023
61.	M/s. Abbott Laboratories Pakistan Limited Vs. Federation of Pakistan & others	1571/2023
62.	Lab Diagnostic System (SMC) Private Limited Vs. Federation of Pakistan & others	1591/2023
63.	Herbion Pakistan Private Limited Vs. Federation of Pakistan & others	1595/2023
64.	M/s. Abbott Laboratories Pakistan Limited Vs. Federation of Pakistan & others	1682/2023
65.	Excel Healthcare Laboratories (Private) Limited Vs. Federation of Pakistan & others	1837/2023
66.	Ethical Laboratories (Private) Limited Vs. Federation of Pakistan & others	1922/2023
67.	Bio-Labs (Private) Limited Vs. Federation of Pakistan & others	1923/2023
68.	Siza International (Private) Limited Vs. Federation of Pakistan & others	Nil (--1792/2023)
69.	M/s. Don Valley Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	Nil (--1793/2023)
70.	Himont Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	Nil (--1794/2023)
71.	Raazee Therapeutics (Private) Limited Vs. Federation of Pakistan & others	Nil (--1795/2023)
72.	Shaigan Pharmaceuticals (Private) Limited Vs. Federation of Pakistan & others	Nil (--1904/2023)
73.	M/s. Graton Pharma Vs. Federation of Pakistan & others	Nil (--2458/2023)

APPEARANCE

Mr. Abdul Sattar Pirzada advocate for plaintiffs in Suit Nos.1294 of 2023, 254, 535 & 563 of 2021, 1073, 1074, 1075, 1076, 1077, 1262, 1295, 1296, 1297, 1317, 1318, 1319, 1320, 1332, 1333, 1334, 1335, 1352, 1353, 1354, 1355, 1365, 1366, 1367, 1373, 1374, 1390, 1391, 1392, 1393, 1416, 1471, 1571 & 1682 of 2023.

Mr. Faisal Siddiqui advocate for plaintiff in Suit No.1404 of 2023.

Mr. Rashid Mureed, advocate for plaintiffs in Suit Nos.1242, 1286, 1287, 1290, 1291, 1299, 1342, 1343, 1344, 1400, 1410, 1452, 1546, 1547, 1548, 1591, 1595 & 1837 of 2023.

Mr. Haroon Dugal advocate for plaintiffs in Suit Nos.2118, 2119 & 2925 of 2021, 1922, 1923, --1792, --1793, --1794, --1795 & --1904 of 2023.

Mr. Shahab Imam advocate for plaintiff in Suit No.--2458/2023.

Syed Muhammad Ali Mehdi advocate, associate of Mr. Khalid Anwar advocate for plaintiffs in Suit Nos.1368 & 1369 of 2023.

Syed M. Ghazanfar advocate for defendant-Drugs Regulatory Authority of Pakistan.

Mr. Muhammad Ahmed, Assistant Attorney General.

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Date of hearing : 8th, 16th, 22nd and 28th November, 14th,
15th, 18th, 19th and 20th December,
2023.
Date of announcement : 23rd January, 2024.
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ORDER

SALAHUDDIN PANHWAR, J: Captioned Suits were filed by **Plaintiffs-pharmaceutical companies** for “*declaration, permanent and mandatory injunction against Defendants-Federation of Pakistan, Drug Regulatory Authorities and others*”. This **common order** will dispose of respective **stay applications**, filed in respective suits by the plaintiffs as well as issue of **jurisdiction** as raised by the defendant-**Drugs** Regulatory **Authority** of Pakistan.

2. In sum and substance, the *plaintiffs* in captioned suits pleaded that they are *research* based **pharmaceutical** companies in the country with local/national and *international* operations; some of them are *exporters*, have manufacturing facility approved by **WHO**

(*World Health Organisation*) and/or by the Pharmaceutical Inspection Co-operation Scheme (**PICS**), contributors to the Central Research Fund, and also contributes to the Corporate Society Responsibility, also **ISO-certified**, certificate holder(s) of Good Manufacturing Practice (**GMP**) issued by '**Drug Regulatory Authority of Pakistan** (*hereinafter referred to as 'DRAP'*), and various local/international award winners; that defendant-**DRAP** with the approval of Policy Board and Federal Government, notified Drug Pricing Mechanism, termed as **Drug Pricing Policy 2018** (*hereinafter referred to as DPP 2018*), on **06.06.2018** under section **7 (c) (vii)** read with section **11 (1) (a)** of the Drug Regulatory Authority of Pakistan Act 2012 (*hereinafter referred to as 'DRAP Act'*), such **policy** was *specifically* issued *inter alia* on directions of **Apex** court vide order dated 28.02.2018 in H.R.C. No.2858/2006 and subsequently *endorsed* vide **order** dated 03.08.2018 respectively; that subsequent to **DPP 2018**, plaintiffs in the years **2018** and **2019**, intimated the **DRAP** under section **7** of the DRAP Act about annual adjustment in Maximum Retail Price (*hereinafter referred to as MRP*) of their products and **increased** the price after **30** days of such letters as no objection was raised by **DRAP**. However, in the year 2020, when the plaintiffs intimated the **DRAP** about annual adjustments in **MRP** of their products, before expiry of **30** days' period DRAP on the recommendation of its Policy Board and with the approval of Federal Government, amended DPP 2018 vide **Notification No.F.11-2/2020-DD(P) dated 15.07.2020**.

3. That subsequent to amendment in **DPP 2018** plaintiffs intimated **DRAP** about annual adjustments in **MRPs** of their products for financial years 2020-2021, 2021-2022 and 2022-2023,

in some cases *revised prices* were duly issued within **30** days and in other cases as no *revised prices* were issued within stipulated period, hence, after *lapse* of that **mandatory period**, plaintiffs increased the prices as intimated; it was pleaded that in view of recent *unquestionable* rapid inflationary trend, continuous decrease in the parity *value* of **rupee** and resultant increase in the cost of production of drugs, it had become completely *unsustainable* and *unviable* for pharmaceutical **industry**; including plaintiffs to continue producing drugs at prevailing **MRPs**, hence though their *representative* body viz. Pakistan Pharmaceutical Manufacturers Association (**PPMA**), made a representation to the **DRAP** for an across the board upward adjustment of **38.5% in MRPs of drugs**, but to no avail hence they instituted Writ Petition No.3086/2022, before Islamabad High Court that was disposed of vide order dated 24.08.2022, with directions to **DRAP** to decide the representation, however, DRAP *failed* to decide the same, resulting in filing of Criminal Original Petition No.175/2022 by **PPMA**, wherein DRAP filed compliance report; containing purported decision of Policy Board of DRAP, regretting the said Representation; since it was without giving opportunity of hearing to **PPMA**, they moved to the said court with Writ Petition No.983/2023 and that court vide order dated **21.03.2023** directed **DRAP** to afford an opportunity of hearing to **PPMA** and decide the contentions raised by **PPMA**, that the Policy Board convened its **45th** meeting on 24.03.2023, invited the **PPMA** to attend the meeting and after hearing them, *DRAP* with the approval of Federal Government issued a **Notification bearing SRO No.595(1)/2023 dated 19.05.2023**, which is impugned herein, through present proceedings.

4. That, plaintiffs through various **letters** sent in the year 2023 intimated **DRAP**, that they will be availing price increase on Essential and other related Drugs, as allowed vide **Notification** dated 19.05.2023 and however, DRAP revised prices accordingly. Plaintiffs *inter alia* prayed for the following relief(s);

- (a) **Declare** that he impugned **clause (a) of SRO No.595(1) of 2023 dated 19.05.2023 is unconstitutional**, without jurisdiction, malafide, illegal and of no legal effect,
- (b) **Declare** that the plaintiff is **entitled** to the **annual increase** in the Maximum Retail Price of its products for the financial year 2023-2024 strictly in accordance with paragraph No.7 of the Drug Pricing Policy 2018.
- (d) permanently **restrain** the defendants from **invoking** the impugned Clause (a) of **SRO No.595(1) of 2023 dated: 19.05.2023**, for **rejecting** the vested right to annual increase in the **Maximum** Retail Prices of the Plaintiffs' products and consequently, once the **Maximum** Retail Prices for the financial year **2023-2024** have been **increased**, from taking any coercive and/or adverse action against the plaintiffs,
- (e) grant costs of the Suit,
- (f) grant such further and/or other relief as this Honourable Court may deem just and equitable.

5. Plaintiffs mentioned at serial No.3 to 10 above, filed their Suits in the year **2021** pleading therein that they had sent letters including letters dated **06.07.2020** and **28.09.2020** intimating the defendants about upward adjustment in **MRP** of their products in accordance with paragraph No.7 of **DPP** 2018, defendants-**DRAP** by letter dated **16.07.2020** communicated that certain amendments have been made in paragraph **No.7** of DPP 2018, plaintiffs adjusted **MRP** of their products in accordance with paragraph No.8 of **DPP 2018** intimated vide letter dated **31.12.2020**, however vide impugned letter bearing No.F.9-8/2020-DD(P) dated **11.01.2021** it was informed that **no increase** in MRP can be *extended* to any

applicant for preceding years if increase/revision linked with **CPI** under **DPPs** 2015 and 2018 was not availed in that particular **FY**, it shall tantamount to *nullifying* the price increase for that **FY** and same will be included while verifying the **MRP** of preceding years, that policy shall also be applicable to new entrants like plaintiffs under paragraph **No.8** of DPP 2018; that defendant-DRAP has attempted to illegally restrict the adjustment in the **MRP** of plaintiffs' drugs in violation of paragraph No.8 of **DPP** 2018, same is malafide and without jurisdiction; hence those plaintiffs sought **declaration** as to the illegality and **nullification** of *letter* dated **11.01.2021** and declaration that plaintiffs are entitled to adjustment in MRP for their products and also prayed for restraining orders.

6. **Written Statements** were filed on behalf of Defendant-DRAP raising legal *objections* that plaintiffs though availed price increase but malafidely challenged clause **(a)** of subject notification to have increase in price twice and that instant suits are not maintainable as plaintiffs have alternate remedy available under the law; that per **Section 39 of the Drugs Act 1976**, decisions/**orders** passed by the Policy Board or any other authority under that Act shall be *final* and cannot be called in question, before any Court or authority; further according to section **38** no suit or legal *proceedings* can be filed against Government or any other authority for anything done or intended to be done in good faith; that plaintiffs have alternate remedy under section **56(i)** of Specific Relief Act, **1877** and no injunction can be granted, when *equally* efficacious relief can be obtained by any other **usual** mode of proceedings under drug laws; that **DPP** 2018 is a policy decision by Federal Government and not amenable to judicial *review*. It was further objected, that under

Section-9 of the CPC 1908, Courts have no jurisdiction regarding matters, for which their jurisdiction has been ousted by law; that no cause of action accrued to the plaintiffs. It was further asserted that DPP 2018 was enacted pursuant to order of Apex Court, with **consensus** of pharmaceutical industry, this DPP 2018, inter alia provides two methods of *increase* in price of drugs and medicines which concern present dispute, viz. **(i)** Annual Price Increase under paragraph No.7 of DPP 2018 and **(ii)** Increase in prices of drugs under paragraph **No.12(8)** of the DPP 2018; in relation to first one it was stated that Consumer Price Index (*hereinafter referred to as CPI*) is a standard for measuring inflation rate published by Pakistan Bureau of Statistics', that paragraph No.7 allows the companies to **increase** their prices *annually*, as per notified **CPI** by applying, a set formula in respect of **two** type of drugs namely **(a)** Essential Drugs/biologicals (*excluding lower priced drugs*) and **(b)** Other Drugs/biologicals and *lower priced drugs*, as per scheme companies before raising price have to submit their revised price, after calculating the increase in impact of **CPI** to **DRAP**, which is empowered to issue corrected/revised price within **30** days from such receipt, in case pharmaceutical company has erred in its calculation; in respect of second method as referred above, it was explained that section **9** of DRAP Act creates **Policy** Board, which under Section-**11(a)** is empowered to *frame* all policies relating to DRAP authority, paragraph No.**12(8)** of DPP 2018, provides for a method for increasing the price of drugs, whereby the Policy Board recommends to the Federal Government for increase in policy, by giving its reasons in writing; that by making such recommendation.

7. The Policy Board under paragraph **No.12(8)** is empowered to recommend **MRP** of drugs to be raised in modification of the Policy, it was stated that Policy Board of **DRAP** has also the power to *modify* the policy, such *recommendations* are to be approved by Federal **Government**. It was stated, that the statutory provision, as provided in view of **Section-9** of the **Drugs Act 1976**, creates '**Appellate Board**' which is a statutory forum of **appeal**, before which orders/decisions by authority functioning under the **Drugs Act, 1976** and DRAP Act can be challenged, that Apex Court vide referred Order dated **03.08.2018** restrained the Courts from *entertaining* any matter relating to **pricing** of drugs in its original Civil jurisdiction as *alternate* remedy is available before Appellate Board; again in referred order dated 29.06.2020 apex Court has held that all decisions taken by authorities functioning in statutory framework of DRAP including SROs/Notifications issued relating to pricing should be challenged before Appellate Board, further in case of **Pfizer Pakistan (2019 MLD 1849)** it was also held that interim relief can also be granted by Appellate Board.

8. The **DRAP**, in written statements further stated that **PPMA** filed representation dated **28.07.2022** with the Policy Board demanding an across the board price increase for all medicines under paragraph No.12(8) of DPP 2018 in modification of that policy, meanwhile filed W.P No.3086/2022 before The Islamabad High Court Islamabad seeking decision thereon, **Policy** Board was directed to decide that *representation* which was rejected in its **44th** meeting held on **08.12.2022**, on various grounds including the fact that all companies received annual price increase under paragraph **No.7** of DPP 2018 to cover up *inflationary rise*, which was challenged before

same court, through Writ Petition No.983/2023 and the Court as a result thereto, directed Policy Board to *reconsider* the request of **PPMA** and that Policy Board in its **45th** meeting dated 24.03.2023, decided to allow the request of **PPMA** and made one time prospective modification, to **DPP** 2018, same was approved by Federal Government vide Notification as **SRO** No.595(1)/2023 (*the impugned notification*); that clause **(a)** of its modified paragraph No.7, disallows any further **CPI** linked price for **FY** 2023-2024 starting from 1st July 2023; that since price increase under subject SRO was deemed to be **CPI** linked increase under paragraph No.7, therefore applicable procedure required the companies to submit revised **MRP** under paragraph No.7(2); that all pharmaceutical *companies* in the country **raised** their prices in accordance with subject **SRO**, hence on one hand accepted the modification of **DPP** 2018 which allowed them annual **CPI** linked price increase both early and at higher rates and on the other hand they malafidely **challenged** clause (a) which modified the policy disallowing **CPI** price increase, hence these suits are liable to be **dismissed**.

9. I have heard learned counsel for plaintiffs and DRAP as well learned Assistant Attorney General and perused the record with their able assistance.

10. Mr. Abdul Sattar Pirzada, Mr. Faisal Siddiqui, Mr. Rashid Mureed and Mr. Shahab Imam; counsel for respective plaintiffs have advanced their submissions, while rest of the counsel appearing for other plaintiffs adopted the same. It was *contended* that plaintiffs have only challenged clause **(a)** of impugned Notification dated 19.05.2023, whereby defendants have *illegally* and *arbitrarily* precluded the *plaintiffs* from making an annual adjustment in the

MRPs of its drugs for the financial year **2023-2024** on the basis that a **one-time** special increase in the MRPs of the drugs granted through the Notification for the financial year 2022-2023, and the same be considered as an annual adjustment for the financial year 2023-2024; that Notification is reproduced as under:-

“NOTIFICATION

Islamabad, the 19th May, 2023.

S.RO. 595(1)/2023. — In exercise of the powers conferred by clause (a) of section 7 of the Drug Regulatory Authority of Pakistan Act, 2012 (XXI of 2012) read with section 12 of the Drugs Act, 1976 (XXXI of 1976) and sub-paragraph (8) of paragraph 12 of the Drug Pricing Policy-2018, the Drug Regulatory Authority of Pakistan with the approval of the Federal Government is pleased to fix maximum retail prices of drugs and biologicals, subject to the conditions specified below, namely:-

As a one-time dispensation, enabling manufacturers and importers to increase their existing MRPs of essential drugs and biologicals (excluding lower priced) equal to 70% increase in CPI (with a cap of 14%) and MRPs of all other drugs and biologicals and lower priced drugs up to increase in CPI (with a cap of 20%) on the basis of average CPI for current year i.e. the 1st day of July, 2022 to the 1st day of April 2023 subject to the following conditions, namely:-

- a) **it shall be considered as annual increase under the said Policy for financial year 2023-24 and no increase under this category shall be granted in next financial year;**
- b) the Policy Board of the Drug Regulatory Authority of Pakistan shall review the situation after three months i.e. in July 2023 and shall make its recommendations to the Federal Government for its consideration regarding price decrease, if Pak Rupee appreciates in value;
- c) hardship cases that have been recommended by the Drug Pricing Committee and are under submission for approval from the Federal Government, shall be reviewed for adjustment; and
- d) the revised maximum retail prices shall be printed on the label in the manner prescribed by the Drugs (Labelling and Packing) Rules, 1986 and manufacturers and importers of drugs and biologicals shall, before affecting increase, furnish calculations of revised maximum retail prices of drugs and biologicals to the Division of Costing and Pricing of the Drug Regulatory Authority of Pakistan.

AAMAR LATIF,
Deputy Director (Legal Affairs).”

It was further argued that such Notification has been purportedly issued under section **7(a)** of DRAP Act read with Section 12 of Drugs Act 1976 read with paragraph **No.12(8)** of DPP 2018, however the said paragraph **12(8)** stipulates that the MRP of a particular drug or a specific class of drugs may be *fixed* or *reduced* or *raised* in modification of the Drug Pricing Policy by the Federal Government on the **recommendation** supported with reasons in writing, of the Policy Board of the **DRAP**, It is therefore abundantly clear that the said paragraph **12(8)** of DPP 2018 does not stipulate that the **MRPs** of all the drugs/biologicals can be fixed or reduced or raised in modification of the **DPP** 2018, hence the Clause **(a)** of impugned Notification which does not pertain to any particular drug or specific class of drugs, could not have been issued under that paragraph **12(8)**; that impugned Notification is neither *identical* nor similar to Paragraph 7 of the DPP which is evident from the fact that Clause **(b)** of the impugned Notification stipulates that the increase in **MRP** is subject to review and the **MRP** may be decreased if the Pak Rupee value appreciates, whereas; the annual adjustment in Paragraph 7 of the **DPP** is permanent and cannot be revised; that Clause **9 (c)** of the impugned Notification, envisages adjustments in hardship cases as well, whereas the **DPP** does not provide any subsequent adjustment in the MRPs of hardship cases; that the only similarity between the impugned Notification and the **DPP** is that just like under the **DPP**, the only requirement for increasing the **MRPs** under the impugned Notification is to intimate the **DRAP**, about the price increase. It was further argued that malafide intentions of the defendants, in inserting the Impugned **Clause (a)** in impugned Notification is in essence to suspend the operation of Paragraph 7 of the DPP in

relation to annual adjustments in the **MRPs** of drugs for the financial year 2023-2024, whereas paragraph **7** of the DPP which continues to remain in field, entitles the plaintiffs to an annual adjustment in the **MRPs** of its drugs even for the **FY** 2023-2024; that the DPP was issued by DRAP with the approval of its Policy Board and the Federal Government, under Sub-Clause **(vii)** of Clause **(e)** of Section 7 read with Sub-Section **(1)** of Section **11** DRAP Act, whereas impugned Notification has been *purportedly*, issued under Clause **(a)** of Section 7. DRAP Act, read with, Section-**12**, of Drugs Act, read with, Paragraph **12(8)** of the Drug Pricing Policy. Therefore, as the impugned Notification has purportedly been issued, *inter-alia*, under Paragraph **12(8)** of the Drug Pricing Policy, it is legally and admittedly subservient to the **DPP**, it is settled principle of law that a subordinate notification cannot nullify a statutory policy, *inter-alia*, under which the said subordinate notification was issued therefore, impugned Clause **(a)** is ultra vires to the **DPP**, illegal and of no legal effect; that paragraph **7(2)(vii)** of the DPP envisages that the Federal Government can deny an annual adjustment in the MRPs of the drugs however on the following conditions, *firstly*, it has to be only in relation to a specific **category** of drugs/biological. This is line with Paragraph **12(8)** of the Drug Pricing Policy which also *envisages* that the Policy Board of the Defendant No.2 can recommend, for reasons in writing, to the Federal Government that the **MRP** of a drug or class of drugs be fixed or *reduced* or raised in **modification** of the DPP, that in view of the aforementioned paragraph **12(8)** and paragraph **7(2)(vii)** of the DPP it is abundantly clear that the **DPP** envisages that any restriction on the annual adjustment in **MRPs** can be laid only in relation to a particular drug or a class of drugs, *secondly* it has to be

through a notification containing cogent reasons; that admittedly the impugned Clause **(a)** of the Notification has not been issued under Paragraph **7(2)(vii)** of the DPP, even otherwise paragraph **7(2)(vii)** of the DPP only comes into operation when an intimation is submitted with the **DRAP**, therefore impugned Clause **(a)** is *ultra vires* to the DPP, illegal and of no legal effect; that impugned Clause **(a)** of the Subject **SRO** is violative of **Articles 4** and **25** of the Constitution, 1973 irrational, illegal and of no legal effect; that the defendants have malafidely attempted to take away and/or curtail the vested rights of the plaintiffs to make annual adjustments in the **MRPs** of its drugs under Paragraph **7** of the DPP; that such vested rights are evident from the fact that *firstly*, the Plaintiffs have been relying on these annual adjustments in the MRPs of its drugs under Paragraph **7** of the DPP for the last 5 years and has planned its business accordingly, *secondly* such a right to annual adjustments in the MRPs of its drugs has been granted under Paragraph **7** of the DPP and the said Paragraph **7** continues to remain in field as it has not been amended, *thirdly*, a vested right created by way of a higher statutory instrument, i.e. the DPP cannot be taken away by way of a subordinate statutory instrument, i.e. the impugned Notification (SRO); furthermore it is settled principle of law that where there is an ambiguity in the **interpretation** of a statutory instrument effecting vested rights then an *interpretation* which is in favour of the citizen is to be applied, it was contended that there is glaring ambiguity in the interpretation of the Impugned Clause **(a)** which is evident from the facts that there is an ambiguity that is whether vested right created by way of a higher statutory instrument, i.e. the Drug Pricing Policy, can be taken away by way of a subordinate statutory instrument, i.e.

Impugned Clause **(a)** in the Notification, *secondly*, the Impugned Clause **(a)** makes no reference to paragraph **7** of the **DPP**, therefore, it cannot be said that it is *expressly* overriding the aforesaid Paragraph **7**, *thirdly* the impugned Clause **(a)** does not contain any clause in order to override Paragraph **7** of the DPP, therefore it is abundantly clear that there is *ambiguity* in how to read in harmony both-impugned Clause **(a)** and paragraph **7** of the DPP and hence it is liable to be interpreted in favour of the plaintiffs as it effects their vested rights. It was argued that as the plaintiffs in present Suits have challenged the vires of the impugned Notification which has been issued by the **DRAP** with the approval of the Federal Government therefore there is **no alternate** remedy under the law, i.e. the **Drugs** Act and the **DRAP** Act including before the Appellate Board under Section **9** of the Drugs Act as the said Appellate Board has been constituted by the Federal Government and the impugned Notification has also been issued with the approval of the Federal Government; moreover, the **Appellate** Board cannot decide the question of vires of the impugned Notification, even otherwise, the plaintiffs have been *informed* that the said Appellate Board is not functional and therefore, it cannot hear and decide any appeals at present, and it is this court that has *jurisdiction* to adjudicate and decide the issue; that even if plaintiffs file an appeal before appellate Board under section 9 of the Drugs Act 1976 any challenge to the decision of the Appellate Court before the High Court or later to the apex court will be limited to examining the defects in the decision of Appellate Board, therefore if the Appellate Board cannot look into the vires of the impugned clause **(a)** then even the High Court or apex Court cannot go beyond the jurisdiction of Appellate Board as they

are merely examining the defects in the decision of Appellate Board challenged before them; that that cause of action arose to the plaintiffs on 19.05.2023 when the impugned Notification was issued by the DRAP. They have relied upon PLD 2014 Sindh 135, PLD 2014 Sindh 389, 2017 SCMR 1179, PLD 2022 Sindh 319, 2009 CLD 1498, 2000 SCMR 1703, PLD 2001 SC 340, 2018 SCMR 1444, 1993 SCMR 1905, 2006 SCMR 901, 2002 PTD 632. AIR 1996 SC 1089, 2014 PLC (CS) 1153, PLD 1978 SC 220, 1983 CLC 1585, 1992 SCMR 1652 and 1995 PLC CS 761.

11. Learned counsel for DRAP contended that since plaintiffs have availed price increase and malafidely challenged **clause (a)** of subject notification, hence instant suits are not maintainable under section **56(i)** of Specific Relief Act 1877 as plaintiffs have **alternate** remedy; even otherwise per section **39** of the Drugs Act 1976 decisions/orders passed by the Policy Board or any other authority under that Act are final, hence cannot be called in question before this Court; that these suits are hit by section **38** of Drugs Act 1976; that under section **9** of the CPC Courts have not jurisdiction regarding matters whereby its jurisdiction has been **ousted** by law; that DPP **2018** is a policy decision by Federal Government not amenable to judicial review by this Court; that **no cause of action** accrued to plaintiffs; that DPP 2018 was *enacted* pursuant to order of Apex court with *consensus* of pharmaceutical industry, that Apex Court vide referred order dated **03.08.2018** restrained the Courts from entertaining any matter relating to pricing of drugs in its original civil jurisdiction as alternate remedy is available before Appellate Board; that in referred order dated **29.06.2020** Apex Court again held that all decisions taken by authorities functioning in

statutory framework of DRAP including **SROs**/Notifications issued relating to pricing can only be challenged before Appellate Board; that in case of **Pfizer Pakistan** reported in 2019 MLD 1849 it was held that interim relief can also be granted by Appellate Board.; that Policy Board in its **45th** meeting dated **24.03.2023** decided to allow request of PPMA and made one time prospective modification to **DPP** 2018 and approved by Federal Government vide Notification as **SRO** No.595(1)/2023 thus plaintiffs chose to file present suits incompetently, that clause **(a)** of paragraph No.7 of notification disallows further **CPI** hiked price for FY 2023-2024 starting from 1st July 2023; that since price increase under subject **SRO** was deemed to be **CPI** linked increase under paragraph **No.7**, therefore applicable procedure required the companies to submit revised **MRP** under paragraph **No.7(2)**; that all pharmaceutical companies including plaintiffs raised their prices in accordance with subject SRO, hence on one hand accepted the modification of DPP 2018 which allowed them annual CPI linked price increase both early and at higher rates and on the other hand they malafidely challenged clause **(a)** which modified the policy *disallowing* CPI price increase, hence these suits are liable to be **dismissed**.

12. Learned counsel for DRAP has submitted a list of plaintiffs in **34** Suits who have approached the Appellate Board under section **9** of the Drugs Act 1976 by availing remedy under that law. Detail of plaintiffs with their Suit numbers is as follows;

S.NO.	APPEALS PENDING BEFORE APPELLATE BOARD AGAINST THE ORDER DATED 31.08.2023 PASSED BY THE DRUG PRICING COMMITTEE & RESPECTIVE SUIT NUMBER FILED BEFORE THIS COURT
1.	M/s Ferozsons Laboratories Limited, Lahore (Suit No. 1294/2023)
2.	M/s Tabros Pharma (Pvt.) Limited, Karachi

	(Suit No. 1471/2023)
3.	M/s Hakimsons (Impex) Pvt. Limited, Karachi (Suit No. 1076/2023)
4.	M/s Sami Pharmaceuticals (Pvt) Limited, Karachi (Suit No. 1074/ 2023)
5.	M/s Healthtek (Pvt) Limited, Karachi (Suit No. 1075/2023)
6.	M/s Indus Pharma (Pvt) Limited, Karachi (Suit No. 1073/2023)
7.	M/s Ambrosia Pharmaceuticals, Islamabad (Suit No. 1077/2023)
8.	M/s Lucky Core Industries (LCI), Pakistan Limited, Karachi (Suit No. 1320/2023)
9.	M/s BF Sciences Limited, Lahore (Suit No. 1295/2023)
10.	M/s Himmel Pharmaceuticals (Pvt) Limited, Lahore (Suit No. 1334/ 2023)
11.	M/s Punjab Medical Services, Lahore (Suit No. 1335/2023)
12.	M/s AGP Limited, Karachi (Suit No. 1334/2023)
13.	M/s AGP Limited, Karachi (Suit No. 1366/2023)
14.	M/s Martin Dow Limited, Karachi (Suit No. 1391/2023)
15.	M/s Martin Dow Marker Limited, Karachi (Suit No. 1390/2023)
16.	M/s Martin Dow Marker Limited, Quetta (Suit No. 1393/2023)
17.	M/s Seatle (Pvt) Limited, Lahore (Suit No. 1392/2023)
18.	M/s Reckitt & Benckiser Pakistan Limited, Karachi (Suit No. 1416/ 2023)
19.	M/s Aspin Pharma (Pvt) Limited, Karachi (Suit No. 1367/2023)
20.	M/s Nextar pharma (Pvt) Limited, Karahi (Suit No. 1333/2023).
21.	M/s Searle IV Solution (Pvt) Limited, Karachi (Suit No. 1319/2023)
22.	M/s The Searle Company Limited, Karachi (Suit No. 1317/2023)
23.	M/s Searle Pakistan Limited, Karachi (Suit No. 1318/2023)
24.	M/s Hiranis Pharmaceuticals (PVt) Limited, Karachi (Suit No. 1291/ 2023)
25.	M/s Helix Pharma (Pvt) Limited, Karachi (Suit No. 1299/2023)
26.	M/s Maxitech Pharma (Pvt) Limited, Karachi (Suit No. 1287/2023)
27.	M/s Herbion Pharma (Pvt) Limited, Karachi (Suit No. 1595/2023)
28.	M/s Martin Dow Specialities (Pvt) Limited, Karachi (Suit No. 1393/ 2023)
29.	M/s Swiss Pharmaceuticals (Pvt) Limited, Karachi (Suit No. 1290/ 2023)
30.	M/s Sigma Pharma International (Pvt) Limited, Karachi (Suit No. 1242/2023)
31.	M/s Daneen Pharma (Pvt) Limited, Lahore (Suit No. 1548/2023)
32.	M/s Genix Pharma (Pvt) Limited, Karachi (Suit No. 1547/2023)
33.	M/s Maple Pharmaceuticals (Pvt) Limited, Karachi

	(Suit No. 1286/ 2023)
34.	M/s Pharmatec Pakistan (Pvt) Limited, Karachi (Suit No. 1353/2023)

Learned counsel for DRAP has also submitted a list of companies located out of the Province of Sindh (same is referred as list No.2 at page number 21) which is not denied by the plaintiffs, but they have filed Suits before this and obtained **ad-interim** orders. Name of plaintiffs and their respective suit numbers are that:-

LIST OF PLAINTIFF COMPANIES LOCATED OUTSIDE THE PROVINCNE OF SINDH			
S.NO	NAME OF COMPANY	SUIT NUMBER BEFOR THIS COURT (OF 2023)	LOCATION
1.	Ferozsons Laboratories Limited	1294	Lahore
2.	Siza International (Pvt.) Ltd.	-1792	Lahore
3.	Don Valley Pharmaceuticals (Pvt.) Ltd.	-1793	Lahore
4.	Himont Pharmaceuticals (Pvt.) Ltd	-1794	Lahore
5.	Raazee Therapeutics (Pvt.) Ltd	-1795	Lahore
6.	Shaigan Pharmaceuticals (Pvt.) Limited	-1904	Lahore
7.	Ambrosia Pharmaceuticals	1077	Islamabad
8.	BF Biosciences Limited	1295	Lahore
9.	Searle IV Solutions Private Limited	1319	Factory locate in Lahore
10.	Himmel Pharmaceuticals Private Limited	1334	Lahore
11.	Punjab Medical Services	1335	Lahore
12.	Medipak Ltd.	1343	Lahore
13.	CCL Pharmaceuticals Private Limited	1365	Lahore
14.	Surge Laboratories Private Limited	1374	Factory locate in Lahore
15.	Seatle Private Limited	1392	Lahore
16.	Frontier Dextrose Limited	1396	Lahore: actory located in KPK
17.	Curatech Pharma (Private) Limited	1539	Lahore
18.	Daneen Pharma Private Limited	1548	Lahore
19.	Lab Diagnostic Systems (SMC) Pvt Ltd.	1591	Rawalpindi
20.	OTSUKA Pakistan Limited	1344	Hub, Balochistan

13. Learned Assistant Attorney General for Pakistan adopted the contentions of learned counsel for DRAP.

14. **Perusal** of Suit No.1294/2023 reflects that by order dated 10.08.2023 counsel for plaintiff sought permission to file fresh application before defendant No.2-DRAP for *fixation*/annual **increase** in the **prices** of **drugs** in terms of paragraph No.7 of the DPP 2018, accordingly permission was granted with direction that application shall be filed within **seven days** and competent authority at Islamabad shall pass speaking order by **31st August 2023** in accordance with paragraph No.7 of the aforesaid Policy and the approved Rules, Regulations and law. Accordingly, authority after hearing the **plaintiff** (s) at Islamabad passed fresh order whereby application of plaintiff was rejected. Though that fresh order is not assailed by any of the plaintiff before appellate forum or by *amending* the respective suits filed by them before this court, however, Mr. Abdul Sattar Pirzada and Mr. Faisal Siddiqui *vehemently* argued that order is subject to *outcome* of these civil suits as on 1st August operation of that clause of impugned notification to the extent of limiting any increase in the prices in the next financial year shall remain suspended, hence there is no *impediment* to allow the prayer and this court has to decide the issue.

15. In case of **Rashid Latif** reported in **PLD 2014 Sindh 135 (Rasid Latif vs. Federation of Pakistan and others)**, this Court observed that lis can be filed within territorial jurisdiction of this Court if same is against Federation and impugned action affects the rights of public at large or any community or if cause of action

accrues in the area where office of any functional authority of Federation is situated. Paragraphs No.5, 6 and 11 of referred case are reproduced:-

“5. Before addressing the merits of the case, it would be significant to examine the **jurisdiction** of this Court, thus it would be conducive to reproduce **Article 199(1)(a)(i) & (ii)**, of the Constitution of Pakistan, which read as follows:-

(i) **directing** a person performing, within the territorial jurisdiction of the Court, functions in **connection** with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not **permitted** by law to do, or to do anything he is required by law to do, or

(ii) **declaring** that any act done or proceeding taken within the **territorial** jurisdiction of the Court by a person performing functions in connection with the affairs of the Federal, a Province or a local authority has been done or taken without lawful authority and is of no legal effect;

Bare perusal of the above clause (s), illustrates that the High Court (s) have been **vested** with **powers, jurisdiction** and authority **to examine** any order/action **complained** to be unlawful because the High Court is the ultimate guardian of the rights of the people residing within its territorial jurisdiction. Thus function (s) or act (s) / **proceeding** (s) of the Person on behalf of Federation are not exempted from **judicial** scrutiny and examination of the High Court (s). The purpose and object behind this seems to be nothing but that **rights, interest and fundamental rights of the people residing in territorial jurisdiction (s) of all High Court (s), likely to be effected by such function (s) or act (s) of the Federation, are not left unattended by the Legislature (s)**.

6. Further, the plain reading of the **clause (i)** shows that what the **legislature has insisted upon for invoking Constitutional Jurisdiction of the High Court is the phrase**" within the territorial jurisdiction of the Court, functions in connection with the affairs of the federation.....".

(Underlining is provided for emphasis).

This phrase is required to be given its due weight and meaning in its true spirit as intended by legislature. The clause (i) has been confined to the word "**function**" which, per Black's Law Dictionary means:

- (1) Activity that is appropriate to a particular business or profession;
- (2) **Office**; duty; the occupation of an office and if the said meaning is taken in continuity of the phrase "within the territorial jurisdiction of the Court" it can well be concluded that it is the impact of function (activity, office, duty or the

occupation of an office) which should have been within territorial jurisdiction, which would be sufficient for one to invoke the Constitutional Jurisdiction if the same results in effecting the person residing within jurisdiction of such High Court. We may further add here that it is always the impact (s) and effect (s) of an act or order which makes one to invoke the constitutional jurisdiction or to approach court of law for legal rescue and not the act or order itself alone. **The citizens residing at place "A" cannot be allowed to suffer from the effect (s) of an act or order solely for the reason that it was done/passed at place "B" rather the High Court of place "B", being ultimate guardian of the rights, interests and claims of the public masses, shall have to come forward for rescue else it would frustrate the purpose of justice because the principle of judicial system is that justice at no cost and at no stage be allowed to fall prey to the procedural technicalities. Thus technicalities must be ignored if they tend to create hurdle in the way of justice."**

.....

"11. Now, we come to what we find from comparative study and analysis of case-laws on the said point. This can well be mewed as follows:-

- (a) The Federal Government or anybody or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the provinces shall still be deemed to function all over the country for those act (s) / action (s) which are meant for whole of the State;
- (b) If such Government, body or authority passes any order or initiates an action at Islamabad which has an effect of general applicability upon all souls of the State or a particular class of people;

In such like situation the aggrieved party shall be well within rights to seek help and constitutional protection towards its / their rights.

However, if a particular order or action of an authority is not having its impact upon people at large but is confined to a particular individual, then the jurisdiction to challenge such order or action shall remain with the High Court wherefrom that order or action has been done or taken."

[Emphasis added]

16. At this juncture it would be conducive to refer relevant paragraph No.6 of case of **M/s. Karachi Iron and Steel Merchants Association and others vs. Anti-Dumping Appellate Tribunal and others** (2021 PTD 1150) as under:-

“6. It is an undeniable position that the appellant (s) did contest the matter before the Tribunal, constituted at Islamabad over which this Court has got no administrative control therefore, mere plea of '**convenience**' is never sufficient for choosing the Court (s) rather it is always the **commandment** of the law and law alone which describes the 'jurisdiction'. **Failure of the Federation in establishing Tribunal (s) at other provinces is also no ground to press right of convenience.** Further, the matter appears to be between the parties alone hence the same, legally, can't be taken as having applicability thereof on people at large. It is conducive to refer the case of Rashid Latif v. Federation of Pakistan through Secretary Ministry of Inter Provincial Coordination (PLD 2014 Karachi 135 (authored by me in a DB matter) wherein the issue of jurisdiction is discussed in detail while discussing all the citations. The conclusion was that **in case an action of Federation, if affecting community or public at large then same may be challenged before High Court of other province, too but if the same is personam relating to any party then the jurisdiction would lie with the High Court of the area where order is passed.**”

[Emphasis added]

17. Being relevant, sections 9 and 12 of the Drugs Act 1976 are reproduced herewith:-

“9. Appellate Board.-(1) The: Federal Government shall, in accordance with the rules, constitute an Appellate Board for the disposal of appeals preferred by persons aggrieved by any decision of the Central Licensing Board or the Registration Board or the Licensing Authority or a Board or Authority to which the powers of the Federal Government under section 12 have been delegated under sub-section (3) of that section and for revision of any such decision on its own motion.

(2) The Appellate Board shall consist of such representatives of the Federal Governments and the Provincial Governments, including a Chairman, as the Federal Government may from time to time appoint.

(3) Subject to sub-section (4), the Chairman and other members of the Appellate Board shall hold office for the prescribed period.

(4) The Chairman or any other member of the Appellate Board may, by writing under his hand addressed to the Federal Government, resign his office or shall vacate his office if the Federal Government, being of opinion that in the public interest it is necessary so to do, so directs.

(5) The members of the Appellate Board shall exercise such powers, including the powers of an Inspector, as may be prescribed.

(6) The Appellate Board may appoint experts for the purposes of detailed study of any specific matter before it.

(7) The Appellate Board shall, with the approval of the Federal Government and by notification in the official Gazette, make regulations to regulate the conduct of its business.

(8) The Appellate Board shall meet at least every month and shall decide any appeal preferred to it within sixty days of receipt of appeal unless the Board is prevented from doing so for sufficient cause to be recorded.

9A. Appeal to the Provincial Appellate Authority- (1) Any person aggrieved by any decision of the licensing authority may prefer appeal to the Provincial Appellate Authority.

(2) The Provincial Government shall constitute a Provincial Appellate Authority for the disposal of appeal preferred under sub-section (1) as may be prescribed.”

.....

“12. Power to fix maximum prices of drug, etc.- (1) The Federal Government may, by notification in the official Gazette,-

- (a) fix the maximum price at which any drug specified in the notification is to be sold; and
- (b) specify a certain percentage of the profits of manufacturers of drugs which shall be utilized, in accordance with the rules for purposes of research in drugs.”

Perusal of above reflects that appellate forum is available at Islamabad and some of the plaintiffs have already availed that remedy as referred above by way of filing appeals. Admittedly plaintiffs pursuant to direction followed the proceedings of Board at Islamabad.

18. Further, Bosch Pharmaceutical (Private) Limited plaintiff in Suit No.1354/2023, had invoked the writ jurisdiction of Islamabad High Court by filing Writ Petition No.4739/2022, which was dismissed, being relevant order dated 25.10.2023 of that court is reproduce herewith:-

“It has been brought to the attention of the Court that another petition with the same subject-matter has been filed before the Sindh High Court in relation to actions taken by the Federal Government with regard to determination of drug prices including, inter alia,

issuance of SRO 595/2023 and its legality. ***Every petitioner has a right to elect the forum for pursuing a legal remedy where more than one forum is available. But once a forum has been elected, propriety demands that any related subject-matter which affects the outcome of the decision in the case may also be pursued before the same High Court as opposed to indulging in forum shopping.*** Given that exercise of constitutional jurisdiction under Article 199 is an extraordinary remedy of an equitable nature, the Court finds that the conduct of the petitioner in filing a subsequent suit before the Sindh High Court, seeking an injunctive order re SRO 595/2023, while pursuing contempt and related application before this Court without disclosing the filing of the suit and grant of injunctive order is such that disentitles the petitioner from grant of relief in the court's equitable jurisdiction. The petition is therefore dismissed.”

By virtue of **P.O. No.18 of 1980** followed by S.R.No.1316 (1)/80 dated **31.12.1980**, the Islamabad Capital Territory *attained* provincial status for the purpose of its governance on *administrative* side, but it remained without its own High Court. Albeit the Islamabad High Court has been established for Islamabad Capital Territory by virtue of the Islamabad High Court (Establishment) Order 2007, but its cessation took place as a result of the verdict of the Apex Court in Case of ***Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary Ministry of Law and Justice, Islamabad and others (PLD 2009 SC 879)***. Later on the Islamabad High Court Act 2010 (Act No.XVII of 2010) established an independent High Court for Islamabad Capital Territory having original, appellate and other jurisdiction, as under the Constitution or other laws and also brought all Civil, Criminal, Revenue, Special Courts & all Tribunals which were exercising jurisdiction and functions in the Islamabad Capital Territory immediately before the commencement of the Act under the superintendence and control of the Lahore High Court, Lahore under the supervision and control of the Islamabad High

Court. Article 198 deals with the seat of the High Court, which reads:-

“198. (1) Each High Court in existence immediately before the commencing day shall continue to have its principal seat at the place where it had such seat before that day.

(1A) The High Court for Islamabad Capital Territory shall have its principal seat at Islamabad.

(2) Each High Court and the Judges and divisional courts thereof shall sit at its principal seat and the seats of its Benches and may hold, at any place within its territorial jurisdiction, circuit courts consisting of such of the Judges as may be nominated by the Chief Justice.

(3) The Lahore High Court shall have a Bench each at Bahawalpur, Multan and Rawalpindi; the High Court of Sindh shall have a Bench at Sukkur; the Peshawar High Court shall have a Bench each at Abbottabad, Mingora and Dera Ismail Khan and the High Court of Balochistan shall have a Bench at Sibi and Turbat.

(4) Each of the High Courts may have Benches at such other places as the Governor may determine on the advice of the Cabinet and in consultation with the Chief Justice of the High Court.

(5) A Bench referred to in clause (3), or established under clause (4), shall consist of such of the Judges of the High Court as may be nominated by the Chief Justice from time to time for a period of not less than one year.

(6) The Governor in consultation with the Chief Justice of the High Court shall make rules to provide the following matters, that is to say,—

(a) assigning the area in relation to which each Bench shall exercise jurisdiction vested in the High Court; and

(b) for all incidental, supplemental or consequential matters”.

It is matter of record that the Order dated **25.10.2023** passed by Islamabad High Court in Writ Petition No.4739/2022 has not been challenged by the Plaintiff (s) before the Supreme Court of Pakistan, thus, the same has attained finality for all legal intents, purposes and implications.

19. As well as in cases of hardship as reported in PLD 2020 Sindh 527 (**Martin Dow Limited vs. Federation of Pakistan**) and 2021 MLD 709 (**Sanofi-Aventis Pakistan Limited vs. Federation of Pakistan**) some of the plaintiffs filed petitions, whereas in present scenario, they have chosen forum of original side. It is pertinent to mention here that no one can be allowed to pick and choose the jurisdiction, particularly in cases of policy decision and in present cases issue relates to the prices of drugs/medicines which are essential items and relate to public at large and by that no one can be allowed to thwart the coercive action of the Authorities. In similar fashion, interim relief was extended by this court on original side hence apex court took cognizance, by way of **Suo Moto** Petition and issue was decided by apex court, therefore in my view this court on original side, on account of **Rashid Latif's** case when plaintiffs are not representing any communities, who are individual(s), they have also participated in proceedings before the board at Islamabad; they have offices in all Provinces, as well as in the list No.2 as referred, their factories are not falling within the territorial jurisdiction of this Court; thus judicial propriety demands that only Islamabad High Court has jurisdiction in present suits; particularly in absence of territorial jurisdiction, this court has no jurisdiction to entertain these suits.

20. It is well-settled proposition of law that the jurisdiction of the Court does not depend upon the whims and wishes of the parties to select forum. No Court shall assume jurisdiction which is not conferred by virtue of the Constitution or any law for the time being in force. In Case of **Syed Ibrar Shah v. Commissioner, Kohat Division and others (PLD 2004 Supreme Court 907)**, it was held

by the Apex Court that: “We are conscious of the fact that jurisdiction cannot be assumed by any forum merely on the consent of the parties which is to be conferred upon in a categorical manner by some statute or enactment. It is, however not understandable that why the writ petition filed earlier before the High Court by the appellant was withdrawn who thereafter surrendered to the jurisdiction of Political Agent as conferred upon him under section, 8 of the Frontier Crimes Regulation, 1901. It does not depend upon the whims and wishes of the petitioner to select the forum of his own choice”. In Case of **Muhammad Salman v. Naveed Anjum and others (2021 SCMR 1675)**, it was held by the Apex Court that: “It is well entrenched constitutional mandate that no Jurisdiction can be conferred on the Court by the consent of the parties unless the jurisdiction is conferred on it by the constitution or by or under any law”. The underlining is supplied.

21. Giving choice to elect remedy from amongst several coexistent and or concurrent remedies does not frustrate or deny right of a person to choose any remedy, which best suits under the given circumstances, but to prevent recourse to multiple or successive redressal of a singular wrong or impugned action before the competent forum/court of original and or appellate jurisdiction, such rule of prudence has been evolved by courts of law to curb multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. I am fortified with the dictum laid down by the Apex Court in Case of **Jubilee General Insurance Co. Ltd., Karachi v. Ravi Steel Company, Lahore (PLD 2020 Supreme Court 324)**, wherein it was held that: “*Even otherwise, it is by now*

well entrenched in our jurisprudence that where multiple remedies are available against any order judgement and or decision then it is the prerogative of the suitor to elect and pursue one out of the several hierarchy or channel of remedies. A suiter having availed and exhausted one of the several hierarchy or channel of remedy, doctrine of constructive res judicata, as discussed above debars him to adopt one after another hierarchy, course or channel of remedies”.

22. Appropriate remedy is appeal before Appellate Board and if aggrieved, writ jurisdiction at Islamabad High Court, therefore captioned complaints are liable to be rejected Under Order VII Rule 11 C.P.C along-with injunction applications. However subsequently in view of directions issued by this court, authority passed speaking order, but the same has not been assailed before Appellate Authority in line with the provisions of Section **9 & 9A**, of the Drugs Act, 1976, nor the complaints were amended, as a result of which the present suit proceedings would not serve any purpose, therefore, suits having become infructuous, are dismissed on both accounts.