



## COMPETITION COMMISSION OF INDIA

***Suo Motu Case No. 04 of 2020***

**In Re:**

**Alleged anti-competitive practices by the Chhattisgarh Chemist and Druggist Association in limiting supply of drugs/medicines in the State of Chhattisgarh.**

**CORAM**

**Mr. Ashok Kumar Gupta**  
**Chairperson**

**Ms. Sangeeta Verma**  
**Member**

**Mr. Bhagwant Singh Bishnoi**  
**Member**

**Appearances:**

*For Chhattisgarh Chemist  
Druggists Association and  
Officials*

- (1) Mr. Nakul Mohta, Advocate
- (2) Mr. Aditya Chadha, Advocate
- (3) Mr. Dhruv Rajain, Advocate
- (4) Mr. Avinash Agarwal, General Secretary

**ORDER**

**A. Background**

1. In the present case, a complaint dated 14.08.2019 was received in the Commission from Mr. Basudev Jotwani against the Chhattisgarh Chemist and Druggist Association (CCDA). It was, *inter alia*, mentioned in the said complaint that CCDA is duly registered with the Registrar of Firms and Society, Chhattisgarh, *vide* Registration No. 54, and has been in existence since November 2000, with about



7000 members and its office at Raipur. The members are stated to comprise both wholesalers and retailers of medicines in the State of Chhattisgarh.

2. It has been alleged in the complaint that members of CCDA collectively ensure that no new medicines can be launched by pharma companies in the markets of Chhattisgarh unless a sum of Rs. 5000/- per medicine is given to the said association. CCDA issues receipts against these charges collected towards Product Information Services (PIS) and Letter of Consent/No Objection Certificate (LOC/NOC) and has illegally collected crores of rupees. Because of the unity of the association, no pharma company is able to take any steps against them and even if some company raises any protest, they are boycotted in the State of Chhattisgarh.
3. The Complainant further averred that, if the notes forming part of audit report filed by CCDA with the assessing officer of the Income Tax Department for the period 2016-17 are perused it, would disclose not just violation of the law pertaining to the registration of firms and societies but violation of the provisions of the Competition Act, 2002 ('the Act') as well. It was also averred that the assessing officer had raised a demand of Rs. 59,66,760/- and raised certain objections relating to disclosures made by CCDA which is a subject matter of appeal by CCDA. The pressure created by CCDA, whereby it collects monies illegally without which a medicine cannot be launched by pharmaceutical companies, collecting monies for meetings, preventing appointment of new stockists by pharmaceutical companies, misusing official positions, etc., shows violation of the provisions of the Act. Lastly, the Complainant prayed that suitable action be taken against the concerned officers of CCDA, which would be in the interest of the general public and the market.
4. The conduct of CCDA was also stated to be reported in a news article on patrika.com published by Patrika News Network, wherein it was mentioned that CCDA is generating an amount ranging from Rs. 50,000/- to Rs. 5,00,000/- per company in a



year by levying the aforementioned charges. The Complainant also alleged that CCDA was taking money under the garb of building and bulletin fund.

5. Copy of receipts issued by CCDA to various pharmaceutical companies have also been filed along with the complaint, details of which are as under:

**Table 1: Details of Receipts**

| Receipt Number | Date of Issue | No. of Products | Name of Company       | Amount (Rs) |
|----------------|---------------|-----------------|-----------------------|-------------|
| 10137          | 24.04.2018    | 13              | Intas Pharma Ltd.     | 65,000/-    |
| 10119          | 16.04.2018    | 15              | Koye Pharma Pvt. Ltd. | 75,000/-    |
| 10134 & 10135  | 24.04.2018    | 39              | Intas Pharma Ltd.     | 1,95,000/-  |
| 10048          | 12.03.2018    | 01              | Alkem Labs Ltd.       | 5,000/-     |
| 10006          | 13.02.2018    | 02              | Alkem Labs Ltd.       | 10,000/-    |

6. It was alleged that CCDA's practice of collecting PIS/LOC/NOC charges for launching new medicines by pharma companies in the State of Chhattisgarh is in contravention of provisions of Section 3(3)(b) read with Section 3(1) of the Act.

**B. Prima-facie consideration of Commission**

7. Based on the examination of averments contained in the complaint, the facts and circumstances stated therein, and the evidence on record, the Commission was of the *prima facie* view that there is a violation of Section 3(3)(b) read with Section 3(1) of the Act, as CCDA appeared to be collecting PIS charges for the launch of new medicines by pharmaceutical companies in the State of Chhattisgarh. Through such conduct, CCDA seemed to be directly or indirectly limiting or restricting the supply of medicines/pharmaceutical drugs in the market and provision of services of stockists to pharmaceutical companies as well as the end consumers. The Commission noted that there seemed to be no justification for such conduct on the



part of CCDA and its members, which has caused and has the potential to cause appreciable adverse effect on competition in the market. Accordingly, the Commission passed an order dated 22.05.2020 under Section 26(1) of the Act directing the Director General (DG) to cause an investigation into the matter and submit the Investigation Report within a period of 60 days from the receipt of the order.

8. The DG was also directed to investigate the role of the persons/officers who were in-charge of and responsible for the conduct of the activities of such entities, who may be found to have indulged in anti-competitive conduct including CCDA and the pharmaceutical companies viz. Intas Pharmaceuticals Limited ('Intas'), Koye Pharma Pvt Ltd. ('Koye'), and Alkem Limited ('Alkem'), at the time the alleged contravention was committed, as well as persons/officers with whose consent or connivance the alleged contravention was committed in terms of the provisions of Section 48 of the Act.

**C. Findings of the Investigation**

9. The DG, pursuant to the directions of the Commission, investigated the matter and after seeking due extensions of time, submitted the Investigation Report dated 02.11.2021. 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. A brief of the findings of investigation by the DG is as under:
  - a. After considering the submissions of CCDA, and of pharmaceutical companies such as Intas, Alkem, and Koye, as well as statements of office bearers of CCDA the investigation was of the view that CCDA is collecting PIS charges from pharmaceutical companies for the launch of new pharmaceutical products/drugs.
  - b. To corroborate the submissions of CCDA, that pharma companies are paying PIS charges for disseminating the information, on a voluntary basis, CCDA was directed by the DG to submit the bulletin published by it in respect of newly



launched products for the period 2017-20. CCDA failed to submit the copies for the said period. Just one day before submission of Investigation Report, CCDA submitted a bulletin published in 2013. Thus, the investigation brought out that there is nothing on record to indicate that payment of PIS charges was for the sole purpose of publication of bulletin to inform about the launch of new drugs. The depositions of the President and the Treasurer of CCDA disclosed that CCDA was not publishing any bulletin. The General Secretary of CCDA, however, stated that CCDA was publishing a bulletin till 2014, but after that, they began disseminating information through post, WhatsApp, etc.

- c. After analysis of the email dump of CCDA, the Investigation was of the view that CCDA is mandatorily charging payments in the form of PIS/NOC/LOC charges for the launch of new products by pharma companies.
- d. The investigation further observed that there is a contradiction in the responses submitted by CCDA. Earlier CCDA had refused to submit the email dump, mentioning that the emails of office bearers are highly confidential. But during the deposition, the office bearers stated that they are not using the email ID of the association and they were not aware of any email communication made on the ID of the association.
- e. One pharmaceutical company, i.e. Macleods Pharmaceuticals stated in its reply that PIS payment was mandated by CCDA and that it was never a voluntary exercise. It has also been submitted that CCDA has the practice of charging PIS to publish and inform its members in the State of Chhattisgarh about the launch of new products. At times, such payment is made prior to launch, and at times it, is made post launch of a new product.
- f. Bye laws of CCDA do not provide for the publication of bulletin for product information relating to trade and any collection of charges in the form of PIS/LOC/NOC may amount to breach of bye laws of the said association. Even



the office bearers of CCDA were aware of the fact that PIS was not provided in the bye laws.

- g. The Assessing Officer, Income Tax, in its assessment order dated 11.12.2018, had observed that the object of CCDA does not permit it to publish any bulletin for product information relating to trade, but CCDA has received contributions to the effect. It had been further mentioned in the said order that CCDA has been receiving contributions from pharmaceutical companies, and the same is divided into two parts: 60% towards advertisement and bulletin charges and 40% towards building fund contributions.
- h. Pharmaceutical companies are bound to pay PIS or LOC/NOC for the launch of new products; however, the same is denied by them as, ultimately, they are at the receiving end and want to sell their products in the market without any hindrances, and it would be difficult for pharma companies to report such practices of CCDA.
- i. AIOCD submitted a response to the DG that they are not aware of the fact that CCDA is collecting PIS and that no complaint was received against CCDA for collecting PIS or any other charges from any pharmaceutical company. However, in several emails, DG found AIOCD be acting hand-in-glove with CCDA as AIOCD has itself written emails to CCDA regarding PIS and has also received complaints from pharmaceutical companies with respect to the demand of PIS charges in cash by CCDA or by district associations based in the State of Chhattisgarh.
- j. Investigation also observed regarding existence of some emails wherein the issue of granting NOC/LOC by CCDA for the appointment of stockist of the pharma companies was observed. Though stockists denied the allegation that NOC/LOC is mandatorily charged by CCDA, from the emails retrieved, it appeared that various stockists, before applying to be the stockist of any pharma company, informed CCDA about the same. The DG observed that no stockist has come



forward, which shows that the position of CCDA is so strong in the State of Chhattisgarh that people engaged in the pharma sector are hesitant to come forward and report such practices of the State Association.

- k. The DG was of the view that there may be issues relating to the appointment of stockist of pharma companies in the State of Chhattisgarh, however, in the absence of evidence, it is difficult to ascertain whether stockist have to seek NOC/LOC of CCDA before their appointment as stockist.
- l. The DG concluded that payment of PIS/NOC/LOC appears to be mandatory. The DG also concluded that collection of PIS/NOC/LOC charges by CCDA are not voluntary; rather pharmaceutical companies, are bound to pay in order to avoid the hindrance of non-distribution/supply created by CCDA or any other local chemist or druggist association in the State of Chhattisgarh, which proves the allegation and brings the conduct of CCDA under the ambit of provisions of Section 3(3) (b) of the Act.
- m. The DG also found the following office bearers of CCDA to be liable under Section 48 of the Act, namely, Mr. Subhash Agrawal (President of CCDA), Mr. Avinash Agarwal (General Secretary of CCDA), and Gautam Chand Jain (Treasurer of CCDA).

#### **D. Consideration of Investigation Report by the Commission**

- 10. On 11.01.2022, the Commission considered the Investigation Report and decided to forward an electronic copy of the report to CCDA to file its objections/suggestions to the Investigation Report, if any, latest by 21.02.2022. The Commission also decided to forward the electronic copy of the Report to the persons/individuals identified by the DG as being responsible under Section 48 of the Act to file their objections/suggestions to the Investigation Report, if any, latest by 21.02.2022. The Commission further directed CCDA to furnish copies of its financial statements/balance sheet and/or income & expenditure account, duly audited by a



Chartered Accountant, for the last three financial years *i.e.*, 2018-19, 2019-20 and 2020-21, latest by 21.02.2022. The persons identified under Section 48 of the Act were also directed to submit a copy of their Income Tax Returns for the period 2018-19, 2019-20 and 2020-21, latest by 21.02.2022. The Commission further decided to hear CCDA and persons identified under Section 48 of the Act on the Investigation Report on 03.03.2022 through video conferencing. Thereafter, *vide* email dated 28.02.2022, counsel for CCDA requested an extension of two weeks' time to file its objections to the Investigation Report. On 28.02.2022, the Commission considered the aforesaid request of CCDA and allowed the same. CCDA was granted time till 21.03.2022 to file its objections to the Investigation Report. The hearing in the matter was rescheduled to 04.05.2022 through video conferencing (VC) and the hearing scheduled on 03.03.2022 was cancelled.

11. Thereafter, on 07.03.2022, an application was moved by CCDA seeking provision of the certified copy of the contents of a DVD relied upon by the DG stating that CCDA cannot access the content as the same is password-protected. On 16.03.2022, the Commission considered the application dated 07.03.2022 filed by CCDA and, in the interest of justice, decided to provide access of the contents of the DVD to CCDA and directed CCDA to file its objections without further delay. The Commission further directed CCDA to maintain confidentiality in respect of the contents of the DVD. Accordingly, the Commission directed CCDA and its individuals identified by the DG under Section 48 of the Act to file their objections/suggestions to the Investigation Report, if any, latest by 11.04.2022, instead of the earlier granted time, *i.e.*, up to 21.03.2022. The Commission further directed CCDA and its individuals to furnish copies of its financials for the last three financial years *i.e.*, 2018-19, 2019-20 and 2020-21, as directed in the earlier order dated 11.01.2022, latest by 11.04.2022. The Commission further decided to hear CCDA and persons identified under Section 48 of the Act on the Investigation Report on 04.05.2022 through VC. On 18.04.2022, the matter was listed with the permission of the Chair. For



administrative reasons, the Commission decided to postpone the said hearing to 02.06.2022 through VC.

12. In terms of order dated 16.03.2022, CCDA and its officials filed their objections to the Investigation Report belatedly on 01.06.2022.
13. On 02.06.2022, the Commission heard CCDA and its office bearers at length, and the hearing was concluded. The Commission accordingly decided to pass an appropriate order in due course. The Commission also gave liberty to CCDA and its office bearers to file their written submissions/synopsis of their oral arguments within one week of receipt of the order. In terms of order dated 02.06.2022, passed by the Commission, CCDA filed its written submissions on 13.06.2022.

**E. Objections /Submissions of CCDA and its Officials**

14. A summary of submissions made by CCDA and its officials is as under:
  - a. The DG has inadequately assessed the evidences and responses of third parties to the investigation, namely, Intas, Koye, Alkem, AIOCD, and other third parties. PIS charges are not mandatory and are always paid on a voluntary basis by the third parties. Majority of the third parties (pharma companies) stated before the DG that they made voluntary payments of PIS to CCDA, and the DG cherry picked the evidence of Macleods Pharmaceutical Limited, wherein it has been stated that PIS charges were mandated by CCDA and ultimately came to the conclusion that CCDA is in contravention of provisions of the Act. It has been submitted that, even in the reply of Macleods Pharmaceutical Limited, there is a contradiction, as Macloeds Pharmaceuticals Limited has also stated that there has been no instance of any boycott or restraining product launch for want of PIS, which is contrary to the statement made earlier.



- b. The pharmaceutical trade in India is regulated. The State controls not just the procurement, wholesale, and retail of pharmaceutical products, but also determines the price for the consumer or the maximum retail price at which the pharmaceutical companies can sell to retailers and stockists. The Drug Price Control Order, 2013 prescribes that pharmaceutical companies should circulate the price list of new products to medicine dealers in the prescribed format.
- c. PIS charges are not mandated and are always paid on a voluntary basis by pharmaceutical companies to CCDA. PIS charges do not amount to taking 'approval' of CCDA. The purpose of receiving PIS charges is to enable the dissemination of information and create awareness about new drugs launched by pharmaceutical companies. PIS system is a step towards fulfilling the government's policy of ensuring access to quality medicines and healthcare. It emerges from various responses by the third parties (pharma companies) that PIS charges were paid by them to CCDA voluntarily, with no element of coercion. Moreover, there were several pharmaceutical products being marketed without any payments of PIS charges. Traditional advertisement of drugs and pharmaceutical products by manufactures is restricted. The dissemination of information to various wholesale/retailers/dealers is not possible for every pharmaceutical company due to lack of manpower, staff, resources, network, etc.
- d. There is established jurisprudence of the Commission that holds that voluntary payment of PIS is not anti-competitive. Moreover, the DG did not find any conclusive evidence that any LOC/NOC were being accepted by CCDA either.
- e. There was no appreciable adverse effect on competition in India, and the voluntary payment of PIS charges to CCDA do not meet the factors provided under Section 19(3) of the Act as the charges paid by third parties do not create any barriers to new entrants in the pharmaceutical industry and, in fact, helps new products enter the market. There is no hindrance preventing pharmaceutical companies that do not pay PIS charges from introducing the products in the



market, and numerous products enter the market every year even without payment of PIS charges.

- f. The emails that show correspondence among CCDA, AIOCD, and other district associations are simply routine communications and do not in any manner suggest that PIS charges were being charged mandatorily.
- g. Pharma companies have sold medicines within the territory of Chhattisgarh even without paying the PIS charges through CCDA, which shows that the payment of PIS was not necessary to sell medicines.
- h. Upto 2013, PIS was published in bulletins published by CCDA; however, from 2014 onwards, the information contained in PIS was distributed amongst the district associations and dealers through post and WhatsApp.
- i. The documents annexed as Annexure Q1 to Q8 to the Investigation Report (emails extracted from dump) are printouts of electronic record that is not admissible in evidence without certificate under Section 65B of Indian Evidence Act, 1872. The certificate copy of the access log of the email [ccda\\_raipur@rediffmail.com](mailto:ccda_raipur@rediffmail.com) clearly shows that the email account has not been opened after 18.12.2016. Accordingly, it has been stated that the communications sent after the said date were neither received nor acted by the CCDA nor its office bearers, and thus, the contents of said emails should not be read against CCDA and its office bearers.
- j. With regard to liability of office bearers, it has been submitted that the finding of the DG in respect of office bearers of CCDA is premature and without jurisdiction. The current office bearers are only following the earlier practice established by CCDA and no decision has been taken by the current office bearers in relation to PIS charges. The responsibility of implementation of PIS was with the Treasurer of CCDA, Mr Gautam Chand Jain, which he has also admitted in his statement before the DG.



- k. In view of the foregoing, CCDA has prayed to the Commission to distinguish the practice of voluntary payment of PIS charges from mandatory payment of PIS charges and return a finding that voluntary payment of PIS charges to CCDA does not amount to violation of Section 3 of the Act and also exonerate the office bearers found liable by the DG in its report.

**F. Analysis of the Commission**

15. The Commission has carefully perused the Investigation Report and evidence in support thereof submitted by the DG, the oral submissions made by CCDA on 02.06.2022, the synopsis of arguments subsequently submitted, and other material available on record. Upon consideration of the aforesaid, the following issues arise for determination in the present matter:

*Issue 1: Whether the collection of PIS charges by CCDA from pharmaceutical companies was made mandatory/compulsory by CCDA in contravention of provisions of Section 3 of the Act.*

*Issue 2: If answer to Issue 1 is in the affirmative, whether office bearers of CCDA are liable for violation under Section 48 of the Act.*

16. In the last few years of its enforcement, the Commission has dealt with several cases concerning practices carried out by chemists and druggist associations in various parts of India. The Commission notes that PIS is stated to be in the nature of a fee charged by chemist and druggist associations for the dissemination of information pertaining to the introduction of a new product/drug/dosage launched by the pharmaceutical companies in the bulletins/newsletters published by such associations. In return for the PIS, the said associations are required to publish the information and circulate it amongst all the dealers, distributors, etc. In its earlier decisions, the Commission had held 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 anti-competitive. Juxtaposed against 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.

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

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

18. The Commission notes that the DG concluded that CCDA is collecting PIS charges from pharmaceutical companies to the tune of Rs. 5000/- per product for the launch of new pharmaceutical products/drugs. The Commission further notes that the DG, after analysis of evidence collected during the course of investigation in the form of email dump of CCDA, submissions of various pharmaceutical companies, non-submission of copies of publication in bulletin after 2013, etc., opined that collection of PIS/NOC/LOC charges by CCDA are not voluntary in nature. Rather the DG found that the pharmaceutical companies are bound to pay in order to avoid any hindrance in the distribution/ supply of the new pharmaceutical products/drugs, created by CCDA or any other local chemist or druggist association in the State of Chhattisgarh. DG opined that this proves the allegation and brings the conduct of CCDA under the ambit of provisions of Section 3(3)(b) of the Act. CCDA, on the other hand, claimed that the PIS charges were not mandatory but voluntary. It has been stated by CCDA that PIS charges were paid by pharma companies voluntarily, with no element of coercion.



Moreover, there were several pharmaceutical products which were launched and marketed in Chhattisgarh without any payments of PIS charges to CCDA.

19. In order to weigh the counter claims, the Commission perused the replies of the certain third parties, including pharmaceutical companies, submitted before the DG.
20. The investigation in this regard sought replies from some leading pharmaceutical companies operating in the State of Chattisgarh, viz. Intas Pharmaceuticals Limited, Koye Pharmaceuticals Limited, Sun Pharmaceuticals Industries Limited and Mankind Pharmaceuticals Limited. All the said companies informed that the launch of their new products in the State is not impeded by CCDA for want of PIS and payment of PIS is made on a voluntary basis to the association by carrying & forwarding (C&F) agents. PIS is paid towards the publication of newly launched products in the bulletin to leverage the wide network of CCDA and facilitate effective dissemination of information about pharmaceutical products to distributors and retailers. One of the pharmaceutical companies, viz. Macleods Pharmaceuticals Limited, stated as under:

**(a) Macleods Pharmaceuticals Limited**

***“Response to question ii of DG’s Notice***

*We do not seek any NOC or consent from any association of CCDA, nevertheless the CCDA has a practice of charging PIS to publish and intimate its members the chemists and druggists in the state of Chhattisgarh of new product launches. For such a publication it charges pharmaceutical manufacturers as ours a PIS. At times such a payment is made prior to launch and at times it is made post launch of a new product as well. This is a process followed by the CCDA and we have been following the established practice in the state. But we as a company do not have any policy of seeking NOC of any nature from any district/state body or association.*

***Response to question vi of DG’s Notice***



*The PIS payment was mandated by the CCDA and it was never a voluntary exercise*

***Response to question vii of DG's Notice***

*There has been no instance when Macleods' product launch was not allowed by CCDA for want of payment of PIS. There have been instances where the PIS is paid after the launch of the product.*

***Response to question viii of DG's Notice***

*We are not aware of any instance of boycott of any company by CCDA for want of payment of PIS.*

***Response to question xiv of DG's Notice***

*The CCDA has not either directly or indirectly impeded the launch of our products in Chhattisgarh."*

21. The Commission notes that though Macleods Pharmaceuticals Limited though has stated that PIS is mandatory and not voluntary it has, in the same breath, stated that CCDA has not thwarted the launch of any product for want of PIS. The Commission, thus, is not in agreement with the finding of the DG, based on the reply of Macleods Pharmaceuticals Limited, that PIS is not voluntary.
22. Delving further into this aspect, the Commission notes that the DG has stated that the pharma companies have submitted that PIS is not mandatory and there are number of products which are being sold without PIS charges. The DG has, however, stated that there is no evidence on record to prove that PIS was voluntary, and the pharma companies paid such charges for the sole purpose of publication in the bulletin. Rather, CCDA had stopped the publication of bulletin after 2014 and were disseminating the information through post and WhatsApp. The Commission appreciates the predicament of the investigation inasmuch as, though the pharmaceutical companies are in unison in their approach that they are not coerced to pay any PIS charges to the association, yet there is no evidence submitted in the form of publication in the bulletin



or through any other mode of dissemination of information of the launch of drugs, the precise object with which such charges are paid by pharmaceutical companies and collected by the association. It seems to be a classic case where despite, receipt of no services, the pharmaceutical companies are continuing to pay to CCDA and do not appear to be bothered about actual publication of information in the bulletin. Going a step further, even assuming that publication in the bulletin has stopped and dissemination is done through messages/WhatsApp, it is a little curious as to why any charges are payable for an electronic dissemination, which is low-cost compared to the publication in the bulletin. Nevertheless, since it has come on record that PIS is not a hindrance towards the launch of new products in the state, and no product launch has been held up for want of PIS, the Commission is inclined to give benefit of doubt to CCDA in this regard. The Commission notes that, except for Macleods Pharmaceuticals Limited, the pharma companies before the DG submitted that the payment of PIS was voluntary. As discussed earlier, it is pertinent to note that Macleods Pharmaceuticals Limited, despite stating that PIS payment was mandated, also stated that there has been no instance when their product launch was not allowed by CCDA for want of payment of PIS and there have been instances where PIS is paid after the launch of the product. Thus, from the replies of pharmaceutical companies, it appears that the payment of PIS charges was made voluntarily by them and was not mandatory. Consequently, the Commission holds that it is not conclusively established that CCDA has mandated payment of PIS.

23. The Commission also notes that the DG has relied upon certain email exchanges between the office bearers of AIOCD, CCDA, district associations, and certain pharmaceutical companies, extracted from the email dump of CCDA which, according to the DG, shows that CCDA was mandatorily charging payments in the form of PIS/NOC/LOC for the launch of new pharma products.



24. The Commission notes that, though the DG has given a finding based on the emails extracted from the email dump of CCDA that PIS/LOC was mandatory, yet the Commission would like to extend benefit of doubt to CCDA inasmuch as the pharmaceutical companies before the DG have categorically stated they have not faced any issue in respect of the launch of new drugs at the hands of CCDA for want of PIS. This may be indicative of the fact that distribution of pharmaceutical products is not adversely affected to the detriment of any of the stakeholders in the value chain including the end consumer. Further, the emails appear to be of an older period and having regard to the market dynamics and the evolving changes in the distribution of drugs, the Commission tends to believe that restrictive practices in such measure as to have a significant competition concern may not exist.
25. With regard to the finding of the DG that PIS collection is beyond the objects of the association, the Commission is of the view that the same be dealt with by the appropriate authority and need not be examined within the confines of Section 3(3) of the Act.
26. Based on the above, the Commission concludes that there is no cogent evidence on record to suggest that collection of PIS charges by CCDA from pharmaceutical companies was mandatory. This is especially after such companies, which are directly affected parties, have come forward during the investigation to say that there has been no compulsion to pay such charges. Thus, in the facts and circumstances of the present matter, no case of contravention of provisions of Section 3 is made out against CCDA.

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

27. In this regard, the Commission is of the view that since CCDA 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 facts of the present case.



28. The Secretary is directed to communicate to CCDA and its officials accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**

**Date: 05.07.2022**