No.31015/47/2023-Pricing (E-23605)
GOVERNMENT OF INDIA
MINISTRY OF CHEMICALS & FERTILIZERS
DEPARTMENT OF PHARMACEUTICALS
.....

Room No. 340-B, A Wing, Shastri Bhawan,
New Delhi-110 001.

Order

M/s La Renon Healthcare Pvt Ltd (hereinafter called the "Applicant") filed a Review Application dated 21.03.2023 under Para 31 of the Drugs (Prices Control) Order, 2013 (hereinafter called the DPCO) against price fixation order issued vide S.O. No. 879 (E) dated 24.02.2023 by the National Pharmaceutical Pricing Authority (NPPA). Vide its aforesaid Order, NPPA, inter alia, fixed the ceiling price of Valgress CR-200 Tablet 10'S containing Sodium Valproate 135mg + Valproic acid 58mg (controlled release).

2. On the aforesaid plaint, reference was invited by the Department of Pharmaceuticals from NPPA. Both the parties entered appearance on 22.06.2023 and presented their respective logics.

3. Major contentions raised by the Applicant:

It was contended, on behalf of the Applicant, that NPPA has erred in determining the ceiling price of the above drug and hence may be directed to revise the same on the following grounds:

3.1 The Applicant is a privately held limited company engaged in marketing "Vaigress CR-200 Tablet 10's" containing "Sodium Valproate 135mg + Valproic Acid 58mg (controlled Release)". The Applicant contends that the formulation "Valgress CR-200 Tablet 10's" is not included in Schedule-I of the DPCO, 2013 as amended with effect from 11th November, 2022. However, NPPA under the Department of Pharmaceutical, Ministry of Chemicals and Fertilizers, Government of India vide Notification No S.O. 879(E) dated 24th February, 2023, fixed the ceiling prices of 80 scheduled formulations, including *inter alia* the price of the non-scheduled formulation "Vaigress CR-200 Tablet 10's".

3.2 The Applicant stated that Schedule-I of the DPCO, 2013 includes 'Sodium valporate' and specifically the strength of 200mg, 300mgg and 500 mg conventional release tablets and 300mg and 500mg modified release tablets. Modified release "Sodium Valproate 135mg + Valproic Acid 58mg" is not specifically included in Schedule-I of DPCO, 2013 and hence must be construed as non-scheduled formulation. NPPA has erred by including modified release formulation "Sodium

Valproate 135mg + Valproic Acid 58mg" in its calculation of ceiling price for conventional "Sodium valproate 200mg" tablets.

3.3 The company referred Explanation Note 6 to the Schedule-I of DPCO 2013 as amended on 11th November 2022 which states as under:

> *"Innovation in medicine must be encouraged. The formulations developed through incremental innovation or novel drug delivery systems like lipid/liposomal formulations etc. should be considered as included only if specified in the list against any medicine. Such different formulations should be considered differently for purposes such as procurement policy, pricing, etc"*

and maintained that as per this Note even if their formulation, "Vaigress CR-200 Tablet 10's" containing "Sodium Valproate 135mg + Valproic Acid 58mg (controlled Release)" was included in the Schedule-I of DPCO 2013, it must have been given a separate ceiling price.

3.4 The ceiling price calculation of "Sodium valproate 200mg" tablets must only include conventional tablets and not modified release formulations containing the same strength. The price calculation of a conventional tablet includes the prices of modified release formulations is in direct violation of Explanation Note 6 to Schedule-I of DPCO, 2013. Therefore, ceiling price of formulation "Vaigress CR-200 Tablet 10's" containing "Sodium Valproate 135mg + Valproic Acid 58mg (controlled Release)" should not have been included in draft calculation of ceiling prices

3.5 The Applicant referred to the Report on amendment of NLEM 2022 wherein the SNCM committee has clearly stated under the heading "Use of the term 'Modified Release' with respect to tablets/capsules" that

> *"Modified release dosage forms are drug delivery systems (DDS) that, by virtue of their formulation and product design, provide drug release in a modified form which is different from that of the conventional/ immediate release dosage forms. The oral modified release (MR) dosage forms are developed by altering the rate/kinetics and site of drug release and absorption to confer advantages like improved patient compliance, optimized efficacy and/or reduced adverse events. This may be achieved through specialized formulation design or innovative manufacturing methods. The various types of delivery technologies could be as extended, delayed, controlled, prolonged, multiphasic release system, etc".*
>
> The modified release dosage forms may sometimes offer following advantages over conventional formulations e.g. improved patient compliance - by reducing the frequency of drug administration, the reduction in the total cost of therapy as lesser number of pills may be required. The MR forms may also offer better bioavailability. Another advantage that modified release dosage forms may offer is to minimize the fluctuations in drug plasma concentrations and facilitating continuous levels above minimum effective concentrations. This may also avoid certain adverse drug reactions.

In NLEM 2015, various modified release solid oral dosage forms were listed as sustained release, controlled release, delayed release, extended release, prolonged release, etc. However, the drug delivery systems are evolving rapidly, and the pharmaceutical industry is increasingly focusing on novel drug delivery systems. Many of these are often introduced with incremental innovation. To broadly reflect all such modified release dosage forms, in NLEM 2022, the term Modified Release has been used to represent controlled release, sustained release, prolonged release, extended release etc. with respect to tablets and capsules as the case may be..."

3.6 The SNCM has also clarified that there is a significant difference between conventional tablets and modified release tablets. The incremental innovation of modified release tablets has also been specifically discussed and acknowledged and hence, inclusion of conventional tablets in NLEM 2022 / Schedule-I of DPCO, 2013 does not imply inclusion of a modified release tablet.

4. Gist of clarifications made by NPPA:

NPPA on the other side argued that the instant review is not tenable on the following grounds:

4.1 The methodology approved and followed for the pricing of MR Variant/Conventional Variant by the Authority is as below:

"Wherever, MR variant is specifically mentioned in any formulation the data of only MR variants (CR, SR, XL, ER delayed release etc.) may be considered for fixation of ceiling price. However, where MR variant is not specifically mentioned, data of conventional as well as MR variants may be considered for ceiling price fixation. This is in line with methodology of NLEM 2015 also. Similarly, where DT/effervescent/soluble/MD, etc. is specifically mentioned in any formulation the data of only such variants may be considered. However, in absence of any variant being specifically mentioned, the DT/effervescent /soluble/MD may be considered along with conventional form."

Further, the above methodology is same as was followed for fixation of ceiling prices under NLEM 2015. (Reference 105th Authority meeting).

4.2 The MR variants form an integral part of essential and lifesaving drugs and taking them out of price control is not the objective of SNCM. NLEM as well as Revised Schedule-I of DPCO, specifically mentions as below:

"All modified release formulations of same strength such as sustained release, controlled release, extended release, prolonged release etc. are included."

4.3 Further, this methodology followed in relation to conventional / modified releases is same as followed for fixation of ceiling prices under NLEM 2015. Examples are:

Case 1: Formulation appearing in Schedule-I: Metformin 500mg

Since, the variant i.e. Conventional / modified is not stated in Schedule-I, all variants were considered included in Schedule-I and the ceiling price was fixed considering all the variants. Further, the ceiling price was applicable to all variants.

Case 2: Formulation appearing in Schedule-I: Metformin 1000mg and Metformin 1000mg MR

Since, both variants i.e. conventional and MR are specifically stated in the schedule, separate prices were fixed for both i.e. conventional and non-conventional variant. If the petitioner's suggestion is considered, the prices of Modified releases will not be covered under Schedule-I in case where only conventional variants are mentioned and will make the MR variants of the formulation de-regulated.

4.4 Sodium Valproate is covered under Section 5.1.10 (Section 5 Medicines used in Neurological Disorders) and 23.2.2.2 (Medicines used in treatment of Psychiatric Disorders) of Schedule-I of DPCO, 2013. It may be noted that in NLEM 2022 for Sodium Valproate 200 mg, modified release is not separately mentioned. Hence, all releases are included for ceiling price calculation.

4.5 The formulation of Sodium Valproate includes combination of Sodium Valproate and Valproic Acid together corresponding to Sodium Valproate of the stated strength. Further, 1mg of valproic acid is equivalent to 1.15 mg of Sodium valproate. Therefore, Sodium Valproate 200 mg tablet may be available in any of the following forms:

i. Sodium Valproate Tablet 200mg
ii. Sodium Valproate 133.3 mg + Valproic Acid 58mg

Table: Sales (in Rs. crore) for Sodium Valproate 200mg

Formulation	July, 2022 (data month for CP fixation)	
Sodium Valproate	16.06 crore	35.30%
Sodium Valproate modified release	29.43 crore	64.70%
Total	45.49	100.00%

It may be seen that in case of Sodium Valproate 200mg tablet 64.70% market share (July 2022 database) is of modified release. If the same are not considered to be scheduled as contended by the company, majority of the market will become deregulated, which is not the intent of NLEM, 2022.

5. Examination:

5.1 The National List of Essential Medicines (NLEM) prepared by Standing National Committee on Medicines (SNCM) under Ministry of Health and Family Welfare (MoH&FW) forms the basis of Schedule-I of the DPCO 2013, which is amended,

whenever the NLEM is revised. The latest NLEM (2022) was notified on 13.09.2022 and accordingly, Schedule-I to DPCO, 2013 was revised on 11.11.2022 vide Gazette Notification SO No. 5249 (E).

5.2 The NLEM is prepared with the objective of satisfying the priority health care needs of the population. The list is made based on disease prevalence, efficacy, safety and comparative cost-effectiveness of the medicines. The aim behind formulating NLEM is to ensure that these medicines are available in adequate quantity, in appropriate dosage forms and strengths with assured quality. NLEM does recognize such innovations in drugs where substantial improvements, effectiveness and efficacy have been introduced either in terms of quality or in the delivery system or both. Accordingly, NLEM mentions such innovative drugs separately under different categories commonly named as Modified Release (MR) versions in the same list where such criteria are fulfilled. When the same is not mentioned separately, then all such varieties of such drugs for the specified dosages are considered to be part of variants appearing in the list. The objective of NLEM, inter alia, is to ensure availability of the essential drugs as well. This objective may be adversely affected by the exclusion of different variants from the NLEM based on criteria such as MR etc., as such exclusion may encourage essential drugs simply moving out of NLEM. This may not be in line with the spirit and purpose of including these drugs in the list of essential medicines in the first instance.

5.3 Therefore, in view of the facts as at paras 5.1 and 5.2 above, arguments and logics given by NPPA are accepted.

6. Decision:

The action of NPPA fixing the ceiling price of subject formulation vide S.O. No. 879(E) dated 24.02.2023 is upheld and the Review Application under consideration is accordingly rejected.

Issued on this, the 10th day of October, 2024.

10/10/2024

(Awadhesh Kumar Choudhary)
Sr. Economic Adviser to the Government of India
[For and on behalf of the President of India]

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Copy to:

1. Chairperson, NPPA, New Delhi
2. PSO to Secretary (Pharma), Shastri Bhawan, New Delhi
3. Technical Director, NIC for uploading the order on DoP's Website.
4. Guard File