



DEVELOPMENTS IN THE INDIAN E-PHARMACY INDUSTRY

News & Updates • August 9, 2019

Safir Anand and Vaishali Sharma share their views. The issue of regulating online sale of drugs by e-pharmacies has been grabbing much attention in the last few years, especially in past one year, since the introduction of Draft Rules in August 2018. As per the Madras HC Order in December last year, the government was to finalise the Draft Rules by January 31, 2019 which was later extended to July 31st. Through the introduction of these Rules, an attempt is being made to ensure that e-pharmacy portals comply with substantive laws and obtain valid registrations apart from following prescribed procedure for online sale of drugs. In fact, in June, a meeting was held between Ministry of Health, Department of Pharmaceuticals along with the officials of the Niti Aayog, the Drug Controller General and key stakeholders discussing several aspects involved while finalizing the Draft Rules. Even though these Draft Rules mandate requirement of a prescription, the format of prescription that may be permissible still remains a key issue for consideration. This is so, as currently, e-pharmacy apps allow users to merely upload a snapshot of a written prescription, which in actual, may even be fake, tampered, modified or repeated as opposed to uploading a valid e-prescription or electronic version received from prescribing doctors directly. Concerning the cases against e-pharmacies, in March this year, a PIL was withdrawn in Calcutta High Court and very recently, on August 7, in a PIL filed in the Bombay High Court, the Court has terminated the proceedings noting the Centre's confirmation to release final notification on Draft Rules by December this year. Meanwhile, in the Delhi High Court, in a plea seeking contempt action against the e-pharmacies for continuing to sell drugs online despite the DHC Order in December last year staying such activity, the e-pharmacies and Centre have sought time to file their reply and the matter is now listed for September 24, 2019. In December last year, the Madras High Court had suspended their Order banning online sale of drugs upon an appeal filed by e-pharma companies. With the recent developments in this arena, both the Indian Government as well as Courts appear to be positive towards regularizing the ever-growing e-pharmacy industry, but with a watch dog over them. However, much depends upon as to how soon these Draft Rules are notified in the Official Gazette and the manner of their implementation, which is to be seen in the days to come. Also, from the perspective of trademarks law, there is ample reason to consider the liability of an e-Pharmacy for wrong dispersion of medicines, as well as any issues relating to spurious, misbranded and sub-standard drugs and also counterfeit or look alike medicines.

