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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3593/2016 & CM No.15400/2016

LIFECARE INNOVATIONS PVT. LTD.

..... Petitioner

Through: Mr Arshad Hidayatullah, Sr. Adv. with
Ms Manjula Srinivasan, Mr Avinash Jain
& Mr Aakar Tandon, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms Suparna Srivastava, Adv. for R-1, R-
2 & R-4.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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17.02.2017

We have heard this matter on several occasions at length. Mr Hidayatullah, the learned senior counsel appearing for the petitioner, has now limited his prayer to the registration of the petitioner's life saving drug Liposomal Amphotericin B (intravenous) (LAmB) under the name 'fungisome' with the Medical Stores Organisation (MSO). This is independent from the eligibility to participate in any tender that may be taken out by the MSO which would turn on its own terms and eligibility criteria. We feel that a decision should be taken by the competent authority in the Department of Health and Family Welfare, Ministry of Health and Family Welfare, Government of India with regard to the registration of the petitioner with the MSO as a manufacturer of the above life saving drug. The decision be taken within four weeks and be communicated to the petitioner. We are making it clear that in case the registration is granted to the petitioner, this would by itself not entitle the petitioner to participate in any tender floated by the MSO which would depend upon terms and conditions and eligibility criteria of the tender itself independent of the registration.

We have given the above direction because the Procurement and Operational Manual for Medical Store Organisation and Government Medical Store Depots is silent on this aspect. Even the earlier manual which was of the year 1979 was also silent on the aspect of registration/manufacture. The competent authority shall take a call on the issue of registration sans the requirement of turnover.

Insofar as the e-Tender for supply of drugs and medicines to the Department of Health and Family Welfare, Government of NCT of Delhi under tender reference No.16_08 is concerned, we had passed an interim order on 06.05.2016 to the effect that the bid submitted by the petitioner shall not be rejected on the ground that it does not meet the minimum turnover prescribed. We are informed that thereafter there has been no further progress in the said tender. We are also informed that the petitioner is the only approved Indian manufacturer of the life saving drug. It is in these circumstances that we direct respondent no.5, who has issued the tender, to reconsider the question of minimum turnover and to take a call on the matter within four weeks. The decision on that would also be communicated to the petitioner immediately thereafter. The petitioner may also move a representation before the respondent no.5 within a week putting forth its submissions. Till the decision is taken by respondent no.5, the e-Tender No.16_08 shall not be finalised.

The writ petition and the pending applications stand disposed of in view of the above directions.

A copy of the order be given *dasti* under the signature of the Court Master.

BADAR DURREZ AHMED, J

FEBRUARY 17, 2017/ns

ASHUTOSH KUMAR, J