

\$~28

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

Date of Judgment: 23.10.2018

+ **W.P.(C) 11445/2018**

BHUSHAN PHARMACEUTICALS PVT. LTD. Petitioner
Through Mr.Sanyam Khetarpal, Adv. with
Mr.Armaan Grover, Adv.

versus

GOVERNMENT OF NCT OF DELHI AND ANR. Respondents
Through Mr.Ramesh Singh, Std. Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S.RAVINDRA BHAT,J. (ORAL)

CM Appl.44313/2018

Allowed, subject to all just exceptions.

W.P.(C) 11445/2018 & CM Appl.44312/2018

1. The petitioner's grievance is that the documents in response to the e-tender of the Govt. of NCT of Delhi for procurement of Ayurvedic and Unani medicine could not be uploaded in the website www.govtprocurement.delhi.gov.in. In support of this contention, it has placed on record photocopies of the screenshots indicating that though repeated attempts to freeze and therefore, upload its bid were made, the website was not accepting it, and consequently, the petitioner was timed out at 1:00 p.m on 12.10.2018, which was the stipulated time for close of bidding.

2. The Government of NCT of Delhi is represented and has appeared on advance notice. The relevant file relating to the tender procurement as well as appraisal of the petitioner's bid – to the extent that it did not relate to electronic/digital submission of documents, has been shown to the Court. Besides uploading documents on the portal in question, every bidder had to produce the bank guarantee towards Earnest Money Deposit (EMD) requirement, spelt out in the tender. Besides, as the procurement was for medication, the samples of the medicines, from which the bidders wished to offer, too had to be submitted at or before the designated time, i.e. 1p.m. on 12.10.2018.

3. The respondent's record shows that besides the omission to upload digitally the tender documents, the petitioner had not furnished the samples as stipulated, by the prescribed time. Factually, this is not disputed by the petitioner, but it is contented that it proposed to submit the physical samples only after uploading the bid electronically.

4. The Court notices that the relevant condition with respect to the EMD and sample submissions are as follows:

“Earnest Money Deposit

i. An amount of ₹ 66,00,000/- (Rupees sixty six Lakhs only) as earnest money shall have to be deposited in person in the form of Demand Draft/Fixed Deposit Receipt/Bank Guarantee in favour of Director (AYUSH), Government of NCT of Delhi payable at Delhi, in the office of Deputy Director (ISM), Directorate of AYUSH, A & U Tibbia College Campus, Karol Bagh, New Delhi-110005, latest by the last date and time of bid submissions, in physical form and details of the same shall be submitted online with Bid.

ii. The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered in the submitted Bid.

Otherwise the uploaded bid will be rejected.

iii. EMD would be refunded to the successful bidder on receipt of Performance Security.

iv. EMD of the unsuccessful bidders would be returned to them on or before the 30th day after the award of the contract.

v. The EMD may be forfeited if a bidder withdraws its Bid during the period of Bid validity specified by the bidder in the tender document.

vi. The EMD of the successful bidder will be forfeited if the bidder fails to sign the contract or to furnish Performance Security for the work awarded to him within the stipulated period.

3. SAMPLE SUBMISSION:

*i. Four samples of each enquired medicine are to be submitted **by the stipulated date and time as per the details given below.** Failure to do so shall entail the quotation liable to be rejected.*

*ii. Samples must reach the office of the Deputy Director (ISM), Directorate of AYUSH, A & U Tibbia College Campus, Karol Bagh, New Delhi-110005, **latest by the last date and time of bid submissions in a sealed pack** along with a list of supplied samples without quoting rates. Ayurvedic and Unani medicine samples are to be submitted in separate packs.*

iii. The labeling of samples should comply with the provision of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, The Drugs & Cosmetics Act, 1940 and rules made there under and are as per the specifications of AFI/ NFUM/Authoritative texts mentioned in First Schedule in case of classical medicines and as per approved formulae in case of proprietary/patent medicines.

iv. Samples submitted for tender purpose against the quoted medicine should contain the following quantity (as specified in Annexure C1-C4 for each medicine). Technical sheet must be submitted as per Annexure F:

Ayurvedic Medicines:

S. No.	Dosage from	Unit A/U	S. No.	Dosage from	Unit A/U
1.	Asava/Arishta	200 ml	10.	Churna/Lepa/ Powder/ Granules	50 gm
2.	Arka/Syrups	100 ml	11.	Taila/Oil	10 ml /50 ml
3.	Avaleha/Paka/ Khanda	100 gm	12.	Vati/Gutika/ Madura	10 gm (each tab of 125 mg wt)
4.	Kwatha Churna	100 gm	13.	Lauha	5 gm (each tab of 125 mg wt)
5.	Guggulu	10 gm (each tab of 250 mg wt)	14.	Bhasma	5 gm / 10gm
6.	Ghrita	100 gm	15.	Tablets/Capsules /Pills	40
7.	Kshar	10 gm	16.	Ointments	20 gm
8.	Parpati	5 gm/ 10 gm	17.	Malahara	25 gm
9.	Rasa	10 gm (each tab of 125/250 mg wt)			

Unani Medicines:

S. No.	Dosage from	Unit A/U	S. No.	Dosage from	Unit A/U
1.	Tabs/Caps/ Pills	30 per pack	8.	Raughan (oils)	50 ml
2.	Arqiyat	200 ml	9.	Powder/granules	50 gm
3.	Syrups	200 ml	10.	Balm/Ointment	25 gm
4.	Paediatric drops	50 ml	11.	Single drugs	50 gm
5.	Majoon/Laboob/ Jawarish/Laoq/	100 gm	12.	Khamira	60 gm

	Itriphal				
6.	Arq-e-Ajeeb	05 ml	13.	Kushta	10 gm
7.	Zaroor Qula	10 gm			

(Emphasis supplied)

5. The ‘Bidding Schedule’ specified in the tender document stated as follows”:-

<i>I</i>	<i>Date of release of e-tender on https://www.govtprocurement.delhi.gov.in</i>	<i>20.09.2018 at 10:00 AM</i>
<i>II</i>	<i>Date of pre-bid meeting</i>	<i>26.09.2018 at 11:00 AM</i>
<i>III</i>	<i>Start date of upload of Bid</i>	<i>28.09.2018 at 10.00 AM</i>
<i>IV</i>	<i>Last date and time of receipt of online Bids</i>	<i>12.10.2018 till 01:00 PM</i>
<i>V</i>	<i>Last Date and time of depositing EMD</i>	<i>12.10.2018 till 01:00 PM</i>
<i>VI</i>	<i>Last date and time of submitting samples</i>	<i>12.10.2018 till 01:00 PM</i>
<i>VII</i>	<i>Date and time of opening of Pre-qualification Bid</i>	<i>12.10.2018 at 02:00 PM</i>
<i>VIII</i>	<i>Date and time of opening of Technical Bid</i>	<i>17.10 .2018 at 10:00AM</i>
<i>IX</i>	<i>Address for Communication, pre-bid meeting and for submission of samples and for opening of all bids</i>	<i>Director (AYUSH), Directorate of AYUSH, A & U Tibbla College Campus, Karol Bagh, New Delhi-05</i>
<i>X</i>	<i>Amount of Earnest Money Deposit</i>	<i>₹ 66,00,000/-</i>

6. It is apparent that there were separate conditions – besides the other stipulations with regard to uploading bids on the website, as far as submission of EMD of ₹ 66 Lacs, and sample submission are concerned. The stipulation in clause 3(ii) was that the samples had to reach the concerned office i.e. the Deputy Director (ISM), Directorate of AYUSH, A & U Tibbia College Campus, Karol Bagh,

New Delhi-110005, “latest by the last date and time of bid submission in a sealed pack”.

7. In the opinion of the Court, it is clear and unambiguous – and also not capable of two interpretations. There may be some merit in the petitioner’s arguments with respect to its inability to upload the tender documents electronically, as the copy of screenshot placed on the record does indicate that the essential documents were uploaded and at the same time, that its attempt to submit the bid were unsuccessful. However, it is equally apparent that the petitioner failed to comply with or completely misinterpreted, the tender condition with respect to the submission of samples. The samples had to reach the respondent’s designated office by the time and on the date designated. They did not.

8. In this set of circumstances, even if the petitioner were to succeed in its argument regarding the technical error with respect to the respondent’s web portal, the petitioner’s bid would be treated as non-responsive.

9. In view of the foregoing discussion, this Court is of the opinion that there is no merit in the petition. It is accordingly dismissed. The pending application has become infructuous.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

OCTOBER 23, 2018/ab