

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO. 3143 OF 2018

Theon Pharmaceuticals Ltd .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

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- Mr. Rohan P. Surve for the Petitioner
 - Mr. A.L. Patki, AGP for the Respondents
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : AUGUST 7, 2019.

P.C.:

1. Petitioner had responded to a tender for providing certain medicines floated by respondent No. 3 - The Haffkine Bio Pharmaceutic Corporation Ltd, a Government of Maharashtra undertaking. The petitioner's bid was also found responsive. The petitioner was asked to complete necessary formalities for awarding contract for supplying of such medicines. However, at the last moment, respondent No. 3 rejected the petitioner's candidature on the ground that the petitioner firm had been blacklisted by J & K Medical Supplies Corporation Ltd. ("**JKMSCL**" for short). The

petitioner has, therefore, challenged the said communications dated 23.8.2018 and 31.8.2018.

2. Having heard the learned counsel for the parties, we are of the opinion that the ground on which the petitioner's candidature was rejected is invalid. The petitioner had brought to the notice of the Authorities a fact that the order of blacklisting the petitioner company was passed by JKMSCL. Such order was stayed by the Jammu and Kashmir High Court. Thus, as long as, the order of Jammu and Kashmir High Court suspending the order of blacklisting of the petitioner company survives, the factum of such blacklisting cannot be pressed in service for denying awarding of contract to the petitioner. Any other view would amount to diluting or nullifying the order of Jammu and Kashmir High Court. In that view of the matter, the Authorities were not justified in refusing awarding of the contract to the petitioner when on all other grounds, the petitioner was found meritorious.

3. In the present case, however, it is pointed out that the period for which such medicines had to be supplied as per the tender notice is over. That being the case, no question of directions for awarding the contract to the petitioner would arise. Learned counsel for the petitioner pointed out that the respondent No.3 has not even returned the EMD of Rs. 2,50,000/- deposited by the petitioner at the time of applying. He further pointed out that the petitioner had also provided the bank guarantee of sum in excess of Rs. 31 Lakhs in anticipation of awarding the contract. He also voiced an apprehension that Authorities in future may on similar grounds, declare the petitioner ineligible for being awarded similar contract.

4. The respondents obviously cannot retain EMD amount and must refund the same to the petitioner. The bank guarantee if not cancelled and returned, the same has to be done. In future also, surely, respondents cannot disqualify the petitioner only on this ground.

5. Under these circumstances, Writ Petition is disposed of with following directions:-

- (i) Respondents shall return the petitioner's EMD of Rs. 2,50,000/- within two weeks from today;
- (ii) Respondents shall return the bank guarantee if not already done;
- (iii) The respondents more particularly respondent No. 3 shall not disqualify the petitioner from future contract only on the ground that the petitioner has been blacklisted by JKMSCL as long as the stay of the Jammu and Kashmir High Court to such blacklisting continues.

6. In respect of clause (iii), the petitioner shall communicate to respondent no. 3 any further interim or final order on merits passed by Jammu and Kashmir High Court if the petitioner has applied for any contract or has been awarded the same and such developments take place during the pendency of such proceedings.

7. Writ Petition is accordingly disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]