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

Date of Decision : 20.07.2020

+ **W.P.(C) 3588/2020 & CM No. 12769/2020**

**ISPA PHARMACEUTICALS(P) LTD. THROUGH ITS
AUTHORIZED REPRESENTATIVE Petitioner**

Through: Mr.Abhijit Banerjee, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.

..... Respondents

Through: Mr.Anil Grover, SC with
Ms.Noopur Singhal, Mr.Satish
Kumar, Advs. for R-1-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioner challenging the order dated 21.02.2020 passed by the respondents, blacklisting the petitioner from participating in all procurements of the New Delhi Municipal Council (NDMC), New Delhi for a period of two years from the date of issuance of the said order and forfeiting the Earnest Money Deposit made by the

petitioner towards E-tender for procurement of Ayurvedic medicines for the years 2017-18. (Tender No.2017_NDMC_140709_1,2017_NDMC_140709_2,2017_NDMC_140709_3, 2017_NDMC_140709_4).

3. The Impugned Order has been premised on the fact that the petitioner while participating in the said tender had submitted NABL Test Reports along with the medicine samples as was mandatory under Clause 15 of the Notice Inviting Tender. On verification, NABL Analytical Test Reports issued from M/s Sophistic Industrial Materials Analytic (SIMA) Labs Pvt. Ltd. were found to be false/fabricated as confirmed by the M/s SIMA Labs.

4. A Show Cause Notice dated 16.10.2018 was issued to the petitioner and the petitioner submitted its response vide letter dated 24.10.2018.

5. The Impugned Order further goes on to record as under:-

"7. Accordingly, as per the directions of the Vigilance department, NDMC, the APSC (Purchase Committee) held on 12.02.2020 recommended that the firm M/s ISPA Pharmaceuticals Pvt. Ltd., Lucknow may be Blacklisted for 2 years from participating in all procurements of NDMC along with forfeiture of EMD on account of submission of false/fabricated NABL test reports.

8. Therefore, your firm M/s ISPA Pharmaceuticals Pvt. Ltd., 2-A Krishna Nagar, Lucknow-226023, Uttar Pradesh is hereby Blacklisted for participating in all

procurements of New Delhi Municipal Council (NDMC), New Delhi, for a period of 2 (two) years (from the date of issuance of this communication) and your EMD stands forfeited."

6. The learned counsel for the petitioner submits that though the Impugned Order refers to some directions of the Vigilance Department, the said directions were confined only to two other firms namely M/s Bhushan Pharmaceuticals (P) Ltd. and M/s Rhonpal Biotech Pvt. Ltd. and not to the petitioner. He further submits that the petitioner had submitted a detailed reply to the Show Cause Notice clearly detailing the circumstances in which the said reports were received by the petitioner and relied upon while submitting the tender document. He submits that the petitioner was equally hoodwinked into accepting such reports and forwarding them to the respondent and in this regard, the petitioner has filed a complaint with the police as also an application under Section 156(3) of the Cr.P.C. He submits that all these submissions were made during the oral hearing granted to the petitioner, however, the Impugned Order does not deal with any of the submissions and places reliance on the recommendations of the APSC (Purchase Committee) held on 12.02.2020, which in turn, never granted any hearing to the petitioner. The Impugned Order also does not reflect any application of mind of the said Committee on the reply submitted by the petitioner to the Show Cause Notice.

7. On the other hand, the learned counsel for the respondents submits that the fact of a false report having been submitted by the petitioner along with its tender is not disputed by the petitioner. The petitioner is merely making a false claim regarding itself having been hoodwinked into accepting such report. He submits that the petitioner has clearly not acted in a *bona fide* manner in the present case. He further submits that as the tender was for supply of medicines, strict standards had to be applied and no leniency could be shown to the petitioner for having submitted a false report. He further submits that till date, the petitioner has not forwarded any report to show that the medicines of the petitioner do, in fact, qualify the standards required by them.

8. I have considered the submissions made by the learned counsels for the parties. I have also perused the relevant file Notings forwarded by the learned counsel for the respondents in response to the direction of this Court in its order dated 16.07.2020.

9. A perusal of the Noting Sheet would show that the petitioner is right in his submission that the report of the Vigilance Department was confined to the other two firms and not to the petitioner. The recommendations do not seem to have taken into account the case of the petitioner at all.

10. A perusal of the file further shows that even the Purchase Committee, while making its recommendation dated

13.02.2020, did not consider the reply of the petitioner as pleaded by it in its response to the Show Cause Notice.

11. Even the Impugned Order does not reflect the reply of the petitioner having been considered nor gives any reasons why the same was not found to be acceptable.

12. In view of the above, I find that the Principles of Natural Justice have been violated on more than one count in passing the Impugned Order.

13. Firstly, the Purchase Committee, whose recommendations have been relied upon, did not grant any opportunity of hearing to the petitioner. In any case, the reply submitted by the petitioner to the Show Cause Notice does not seem to have been considered by the Purchase Committee and further, the Minutes of Meeting supplied by the learned counsel for the respondents, do not reflect any reasons for the Committee not having accepted the explanation given by the petitioner.

14. Equally, the Impugned Order has placed reliance on the recommendations of the Purchase Committee, which were not supplied to the petitioner for its comments. It has further placed reliance on the directions of the Vigilance Department, which, as noted hereinabove, did not consider the case of the petitioner at all.

15. In *Khulja Industries Ltd. v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd. & Ors.*, (2014) 14 SCC 731, the Supreme Court has reiterated that a fair hearing to the party being blacklisted is an essential precondition for the proper exercise of power and a valid order of blacklisting made pursuant thereto.

16. In view of the above, the Impugned Order dated 21.02.2020 cannot be sustained. However, at the same time, it shall be open to the respondents to initiate fresh proceedings against the petitioner in accordance with law, if so advised.

17. The learned counsel for the respondents at this stage submits that the proceedings can be initiated from the stage of consideration of the reply submitted by the petitioner. He further submits that looking into the present situation due to ongoing COVID-19 pandemic, the hearing may also be granted to the petitioner through video conferencing.

18. It is ordered accordingly. However, it shall be open to the petitioner to file supplementary reply, if so advised, to the respondent within ten days from today. The respondent shall thereafter proceed to consider the same in accordance with law.

19. The petition is allowed in the above terms. There shall be no order as to costs.

20. The order shall be provided to the learned counsels on the e-mail address provided.

21. It is made clear that this Court has not expressed any opinion on the merits of the claim made by either party.

NAVIN CHAWLA, J

JULY 20, 2019
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