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

Date of Decision: 19th March, 2021

\+ **W.P.(C) 3606/2021 and CM APPL. 10958/2021, 10959/2021, 10960/2021**

RHONPAL BIOTECH PVT. LTD. ..... Petitioner

Through: Mr. Neeraj Malhotra, Sr. Advocate with Ms. Tejaswi Shetty, Mr. Aditya Wadhwa, Mr. Sougat Mishra and Mr. Siddharth Sunil, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR. ..... Respondents

Through: Mr. Anil Grover, Standing Counsel with Ms. Noopur Singhal and Mr. Satish Kumar, Advocate for NDMC. (M:9873901275)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The Petitioner is aggrieved by the blacklisting order dated 18th January, 2021 passed by Respondent No. 1 - New Delhi Municipal Council (*hereinafter referred as 'NDMC')*.

2. Bids were invited on 23rd November, 2017 from manufacturers and authorised distributors of Ayurvedic medicines. The Petitioner had submitted its bid along with the Earnest Money Deposit (*hereinafter referred as 'EMD'*), but withdrew the same on 29th December, 2017. The NDMC, however, found that the Petitioner had submitted laboratory reports which, according to it, were false, as per the information obtained from the laboratory. In view thereof, the first blacklisting order of the

NDMC was passed vide its order dated 28th March, 2018, which blacklisted the Petitioner indefinitely and barred it from participating in the procurement of Ayurvedic Medicines of NDMC. The EMD was also forfeited, as per Clause 18 of the tender documents. This blacklisting order was challenged by way of a writ petition in ***WP (Civil) 3336/2018*** titled ***Rhonpal Biotech Pvt. Ltd. v. New Delhi Municipal Council & Anr.*** The blacklisting order was set aside and remanded by the Court in the following terms:

> *"The impugned order dated 28.03.2018 would stand withdrawn. However, it is made clear that the respondents would be at liberty to take appropriate action against the petitioner by issuing a fresh show cause notice and granting an opportunity to the petitioner to submit its explanation. The respondents would also give an opportunity of personal hearing to the petitioner's authorized representative and would be at liberty to pass a fresh order as deemed fit, on all grounds including the grounds taken in the impugned order."*

3. This was followed by a show cause dated 25th April, 2018, issued by the NDMC by which the Petitioners were called upon to show cause as to why they should not be proceeded against in view of the false and fabricated test reports etc., On 9th May, 2018, the Petitioner filed its response to the said show cause notice. The second blacklisting order, dated 21st February, 2020, was then issued, by which the Respondent blacklisted the Petitioner for a period of 2 years with respect to all procurements of the NDMC and the forfeiture of the Petitioner's EMD was also confirmed.

4. The Petitioner was aggrieved by this second blacklisting order and

approached this Court in ***W.P. (C) No. 3642/2020*** titled ***Rhonpal Biotech Pvt. Ltd. v New Delhi Municipal Council & Ors.*** Vide order dated 21st February, 2020, the blacklisting order was upheld in the following terms:

> *"53. As observed by me above, the period of blacklisting the petitioner and whether it has to be only with respect to those Ayurvedic medicines for which the petitioner had participated in the tender, has not been properly considered by the respondents. I therefore, follow the approach guided by the Supreme Court.*
> *54. The impugned order dated 21.02.2020, blacklisting the petitioner is upheld. The respondents shall, however, redetermine the period and whether the same is to operate with respect to all or some of the Ayurvedic medicines, afresh. The needful shall be done by the respondents/competent authority expeditiously but not later than three months from today."*

5. Thus, the Court had directed that on the period of blacklisting and whether the same should apply *qua* all Ayurvedic medicines or only those medicines which were sought to be supplied by the Petitioner, the matter would be redetermined. Vide the impugned order, the Respondents have reiterated the ban period for a period of two years from 21st February, 2021 and for all medicines in the following terms:

> *"28. NOW, therefore, in the pursuance to the Hon'ble High Court Order dated 25.09.2020, it was considered by the APSC and decided with the approval of Competent Authority that the blacklisting of M/s Rhonpal Biotech Pvt. Ltd, Delhi, from participating in all procurement processes for a period of 2 years undertaken by New Delhi Municipal Council (NDMC) from the date of issuance i.e. from 21.02.2020 including Forfeiture of*

> *EMD of the firm will remain the same and the imposed 2 years of blacklisting period is applicable for all medicines manufactured by the firm irrespective of the number of items quoted.*"

6. It is clear from the chronology of events that the bid of the Petitioner was submitted on 18th December, 2017 and the first forfeiture of the EMD took place on 28th March, 2018. Since then, the Petitioner has stood blacklisted and the Petitioner has not participated in any tenders of the NDMC. Initially, the blacklisting period was indefinite and thereafter, it was imposed for a period of two years.

7. The Supreme Court in ***Kulja Industries Ltd v. Western Telecom Project BSNL & Ors., (2014) 14 SCC 731*** has held:

> ***25.*** *Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.*
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> ***26.*** *In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.*

27. *The next question then is whether this Court ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the authority to do so having regard to the attendant facts and circumstances.*

28. *A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. We say so for two precise reasons:*

28.1 *Firstly, because blacklisting is in the nature of penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same. In the realm of service jurisprudence this Court has no doubt cut short the agony of a delinquent employee in exceptional circumstances to prevent delay and further litigation by modifying the quantum of punishment but such considerations do not apply to a company engaged in a lucrative business like supply of optical fibre/HDPE pipes to BSNL.*

28.2 *Secondly, because while determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor."*

Thus, even after the order dated 21st February 2020 of this Court remanding the matter for reconsideration on the period of blacklisting and whether it will apply to all medicines, vide the impugned order the blacklisting on both counts has been reiterated.

8. Considering that the period contemplated for blacklisting is itself for two years and almost three years have already lapsed since the forfeiture of EMD and four years have elapsed since the submission of the bid, this Court is of the opinion that the two-year blacklisting period cannot continue indefinitely. This Court accordingly holds that the period between 2017 till date during which the Petitioner is admittedly not stated to have participated in any tenders, would be counted into the period of two years of blacklisting having already been undergone. The Petitioner is accordingly held to have undergone the blacklisting period of two years. In view thereof, no further orders are required to be passed. The fact that the Petitioner was blacklisted between 2018 to 2021 would not debar the Petitioner in participating in future tenders of the Respondent or any other third-party including government establishments or PSUs. Needless to add that the merits of the blacklisting are not being gone into in view of the above factual background.

9. With these observations, the present petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

MARCH 19, 2021
dj/AP