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

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Date of Decision: 02.06.2022

+ **W.P.(C) 7105/2022**

CGMP PROJECTS PVT LTD

..... Petitioner

Through: Mr. H.M. Mukherjee and Mr. K. BhimrajAchary, Advocates.

versus

FOOD SAFETY AND STANDARDS

AUTHORITY OF INDIA AND ANOTHER

..... Respondents

Through: Ms.Aishwarya Bhati, Additional Solicitor General with Mr. Rakesh Chaudhary, Mr. Suransh Chaudhary, Mr. Sushaar Chaudhary, Mr. Vijay and Mr. Gulshan Sharma, Advocates for respondent no. 1 and 2/FSSAI.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J.(ORAL)

W.P.(C) 7105/2022 and C.M. Appl. No. 21817/2022

1. The present petition has been filed by the petitioner 226 of the Constitution of India read with Section 151 Code of Civil Procedure, 1980, seeking the following reliefs:-

“(a) Issue writ of mandamus against the Technical Evaluation Committee of the Respondent directing them to withdraw the findings dated 22.04.2022 against the Petitioner and to consider the Petitioner's representation and documents;



(b) Direct the Respondent to allow the Petitioner to participate in the financial bidding”

2. The background in which the present petition has been filed is that respondents issued a request for RFP No. 04/2021-22 dated 07.01.2022 for setting up of Microbiology Section and Installation of Equipment on turnkey basis in 05 (five) regions across India, i.e., Eastern, North-Eastern, Western, Northern and Southern India. Bids were invited under two bid system, i.e., technical bid and commercial bid. As per the tender conditions, the technical bids are to be opened, first and commercial bids of only those firms will be opened whose technical bids were found complete after technical evaluation. A corrigendum was issued on 31.01.2022 making some changes in the specification of equipments in the RFP and extending the deadline for submission of bids.

3. The petitioner submitted its bid after which a meeting of the Technical Evaluation Committee (TEC) was held on 12.04.2022. The TEC observed therein as under:-

“6. All the 8 bidders presented their strengths in similar work. Based on presentation, documents submitted along with the bid and interaction with the bidders, the recommendations of the committee w.r.t clause 7 (e) of the tender document is as under:

S. No.	Name of Bidder	Recommendation
(a)	M/s Asian Scientific Industries,	Recommended
(b)	M/s 7 Steps Consultores Pvt. Ltd. –Lead M/s Syntec Airflow System Pvt.Ltd.- Consortium	Recommended
(c)	M/s G&G Empire India Services Pvt. Ltd. – Lead M/s Advait Imports Exports - Consortium	Not –Recommended (Reason –M/s G&G Empire India Services Pvt. Ltd, being the lead bidder, does not



		possess the work experience of similar nature i.e. setting up of Microbiology lab. Hence not meeting the requirements of Clause 6.4 a (ii)
(d)	M/s Auriga Research Pvt. Ltd. – Lead M/s ArbroPharmasecuticals Pvt. Ltd. – Consortium	Recommended
(e)	M/s CGMP Projects Pvt. Ltd. – Lead M/s Beardsell Ltd. – Consortium	Recommended
(f)	M/s Lab Nation – Lead M/s Vasu Scientific Company - Consortium	Recommended
(g)	M/s MM Drugs & Pharma – Lead M/s MultitechTechnofab Enterprises – Consortium M/s Dharma Trading Corporation – Consortium	Not –Recommended (Reason –M/s MM Drugs & Pharma, being the lead bidder, does not possess the work experience of similar nature i.e. setting up of Microbiology lab. Hence not meeting the requirements of Clause 6.4 a (ii)
(h)	M/s Pillar9 TAE India – Lead M/s Eagle Techsec Communications (I) Pvt Ltd.- Consortium M/s Gennext Scientific and IT Solutions – Consortium	Recommended

4. On the basis of the above, it has been contended by the petitioner that its bid was found to be technically compliant by the tender evaluation committee and that it was wrong to thereafter find the Petitioner ineligible.

5. It is further pointed out that on 22.04.2022, another meeting of the Technical Evaluation Committee was held. Annexure III of the minutes of meeting dated 22.04.2022 contains a technical compliance statement of the eligible bidders. In the said statement, the following observations have been made with regard to technical compliance by various bidders, including the petitioner:-



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Annexure III to TEC Report

Food Safety and Standard Authority of India

Technical Compliance Statement of the eligible bidders for 'Empanelment for setting up microbiology section and installation of equipment'

TEC meeting dated 18-20 April 2022

Sl. No	Items	ASIAN SCIENTIFIC INDUSTRIES	7 STEPS CONSULTORS	AURIGA RESEARCH PVT. LTD	CGMP PROJECTS	LAB NATION
Part A- Setting up of clean room and civil/electrical work						
	Clean room as per specification attached at Annexure II and III of RFP and the Associated Civil and Electrical work as per the Model Layout attached at Annexure IV, VI and VII	Complying Signed and Stamped copy of Annexure II to VII attached	Complying Signed and Stamped copy of Annexure II to VII attached	Complying Signed and Stamped copy of Annexure II to VII attached	Complying Signed and Stamped copy of Annexure II to VII attached	Complying Signed and Stamped copy of Annexure II to VII attached
Part B. Microbiology Laboratory Equipment						
1.	Laminar Air Flow	Make: Asind MODEL: ASI-LAF/422/V/SS	Make- Ettore Darvi Model- AS-LAF-4V-S	Make- Airttech Model- SW-CJ-2FD	Make- Scientek Hub Model- SVLF-3	Make: Labtop Model: LLF-4VG
2.	Bio Safety	Make: ESCO	Make- Airttech	Make - AIRTECH	Make- Next Era	Make:

Sl. No	Items	ASIAN SCIENTIFIC INDUSTRIES	7 STEPS CONSULTORS	AURIGA RESEARCH PVT. LTD	CGMP PROJECTS	LAB NATION
	Cabinet Class II Type B2 (Total Exhaust)	Model LBC-4B1-E	Model- ESC-1104HB2	Model - ESC-1104HB2	Technologies Model: NXT-CHE2422	LABCONCO Model: 4 Further Logic Class II Type B2
3.	Autoclave Vertical	Make: Asind Model: ASI-ATL/980z/RVA	Make- Enstroms Model - SLEDD #7410-4072	Make- NSW Model: NSW 327 VA-5.5	Make- Scientek Hub Model: SACV-4	Make- MACRO Model: #/VF-91 (PROPLUS-SS)
4.	Incubators: Ambient to 70 °C	Make: Asind Model : ASI-INC-101020/D	Make - Equipmen Model - #7251-150	Make: BEING (USA) Model No. BPH-9272	Make- Next Era Technologies Model- NXT- 216L	Make: LABTOP Model: LCB-300G
5.	Incubators: 5 °C to 50°C	Make: Asind Model : ASI-BOD/50C/D	Make - Equipmen Model - #7142-150	Make: BEING (USA) Model No. BPH-9272	Make- Next Era Technologies Model- NXT-300GLI	Make: LABTOP Model: LCB-300G
6.	Digital Colony Counter	Make: Interscience Model : SCAN 100	Make - Interscience Model - SCAN- 100	Make- Interscience Model- Scan 100	Make- Next Era Technologies Model- NCTCC87	Make- York Model- YES-150Ex
7.	Biomasher (Lab Blender)	Make: Merck Millipore Model: Enrichment Sample Homogenizer (ESR)	Make - Interscience Model - Bag Mixer-400CC	Make- Interscience Model- EAGMIXER 400CC	Make- MicroBiology International Model- EZ-Mix-400	Make - Interscience Model- EAGMIXER 400G
8.	Water Bath - Serological(Capacity 12 Liters)	Make: Asind Model: ASI-SWB-2RK	Make - Equipmen Model - #7514	Make- NSW Model- SED-1 NSW	Make- Next Era Technologies Model- NXT-12WB	Make: LABTOP Model: LWB14
9.	Analytical Balance	Make: Mettler Toledo Model : ME204	Make - Shimadzu Model - ATX- 224R	Make- SARTORIUS Model-QUINTIX-	Make- Next Era Technologies	Make- METTLER



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Sl. No	Items	ASIAN SCIENTIFIC INDUSTRIES	7 STEPS CONSULTORS	AURIGA RESEARCH PVT. LTD	CGMP PROJECTS	LAB NATION
				334-101N	Model- NCT-320AB	Model- ME304
10.	Upright Frost Free Vertical Deep Freezer (-20 °C)	Make- Trufront Model : G 600 BTM with microprocessor	Make- Trufront Model - G 600 BTM with advanced Controller	Make- MBPL Model- DFS-400	Make- Next Era Technologies Model- NCT-290DF	Make- LABTOP Model- LDF390
11.	UV-Vis Spectrophotometer	Make- Thermo Scientific Model : Evolution Pro	Make- Thermo Scientific Model - Evolution Pro	Make- LABINDEGA Model-UV3200 TouchScreen	Make- Next Era Technologies Model- NCT-UV2000	Make- LABINDIA Model-UV3200 TouchScreen
12.	Binoocular Microscope	Make- (Magnus) Model : MLXI-TR Plus	Make - Magnus Model - MLXI-TR Plus	Make- Easeman Model- OX3015 Trinocular	Make- Next Era Technologies Model- NCT-H200	Make- Magnus Model- MLXI PLUS FREEDOM
13.	Howard Mold Counter	Make- HAUSSER Scientific Model : 3820	Make - Hausser Scientific Model - 3820	Make - Hausser Scientific Model - 3820	Make - Hausser Scientific Model - 3820	Make - Hausser Scientific Model - 3820
14.	Refrigerated Centrifuge	Make- GYROMEN Model : 1848R	Make- Gyncoen Model - 1848R	Make- Eppendorf Model- Eppendorf 5430 R	Make- Next Era Technologies Model- NCT-RC70	Make- Eppendorf Model- Eppendorf 5410 R
15.	BOD incubator	Make- Anind Model : ASI-BOD-10CF/D	Make - Equitron Model - #7142-400	Make- Newtronics Model- MLB116SI	Make- Next Era Technologies Model- NCT-350CLI	Make- LABTOP Model- LCI400
16.	Ptera Filtration Assembly	Make- Merck Millipore Model : EZFIT M103	Make - Acova Model - TPS/PWN	Make- FALL LIFE SCIENCES Model- Serfimo	Make- Next Era Technologies Model- NCT-FA	Make- FALL LIFE SCIENCES Model- 4889
17.	Digital pH Meter	Make- Hanna Model : HI5231	Make - Hanna Model - HI-5231-03	Make - Hanna Model - HI-5231-03	Make- Next Era Technologies Model- NCT-10PH	Make- Thermo Model- Syntech pH 700

Sl. No	Items	ASIAN SCIENTIFIC INDUSTRIES	7 STEPS CONSULTORS	AURIGA RESEARCH PVT. LTD	CGMP PROJECTS	LAB NATION
18.	Fumigator	Make- NanoFog Model : ULV 3018 (SFD)	Make - Radiant Innovation Model - Fogstar - Powerjet	Make- Sanitech Innovations Model- SANO-MIST	Make- Next Era Technologies Model- NCT-6FMG	Make- NANOFOG Model- 3018 SFD (Nanofog)
19.	UV Viewing Chamber	Make- Anind Model : ASIUVIC/ Pro	Make - Ethos Darvi Model - ED-UVC	Make- CAMAG Model- CAMAG UV CABINET 4	Make- Next Era Technologies Model- NCT-UVC	Make- Anshvikiana Model- UVP Chromato-Vue
20.	Anaerobic Jar (Anaerobic Jar Filling System)	Anaerobic Jar Filling System Make- Biotoma Model: Oria-100	Make - INSET Model - I-AJFS	Make- Don Whitley Scientific Model- A05050	Make- Don Whitley Scientific Model- A05050	Make- Anacomat Model- ANX1130
21.	Hot Air Oven	Make- Anind Model : ASI-HO/2030/D	Make - Ethos Darvi Model- ED-OH-221P-1	Make- MBPL Model- MO-200	Make- Next Era Technologies Model- NCT-200HAO	Make- LABTOP Model- LLO-200
22.	Micropipette	Make- BRAND Model : Transferrpette S	Make - Brand Model - D-200, D-1000, D-10000	Make- BRAND Model- Transferrpette	Make- Next Era Technologies Model- Consumable	Make- BRAND Model- Transferrpette
23.	Carbon dioxide incubator	Make- Memmert Model : IC050	Make - Memmert Model - IC050	Make- Eppendorf Model- Cellspert C170	Make- Next Era Technologies Model- NCT-180CO2	Make- EPPENDORF Model-GALAXY 48R
24.	Frost Free Double door (side by side) Refrigerator	Make- Trufront Model : VC 700 NF with microprocessor	Make - Trufront Model - VC 700 NF with advanced Controller	Make- MBPL Model- PR-360 & PR- 600 MBPL	Make- Next Era Technologies Model- NCT- BMRP	Make- whirlpool Model- Genes, WS SBS 537
Comments of the Committee		All the equipment are complying	All the equipment are complying	All the equipment are complying with slight deviations in	M/s CGMP project has quoted for Next Era Technologies make for	None of the Next Era make equipment could be found



Sl. No	Items	ASIAN SCIENTIFIC INDUSTRIES	7 STEPS CONSULTORS	AURIGA RESEARCH PVT. LTD	CGMP PROJECTS	LAB NATION
				following equipment for which undertaking is required. 1. Item no. 5. Incubator- 5 to 50° C- The bidder shall provide the already quoted model at item no. 15 Make- Newmontec. Model- NLS116SI instead of Make- Being (USA) model BPH-9272 2. Item no. 10 Upright Front Free Vertical Deep Freezer (-20 °C) - The bidder shall provide 55 interior as per specification provided in RFP	19 out of 24 equipment. There is no mention of the website on the technical brochures of this make. The committee looked at the website of new era technologies from india which belongs to china whereas brochures submitted by CGMP indicates manufacturing location as Delhi. None of the New Era make equipment could be found on the website, therefore committee was unable to check the technical compliance from authenticated source. The bidder was asked to submit list of user of the makes and models quoted on 19.4.2022 and was	in the website.

Sl. No	Items	ASIAN SCIENTIFIC INDUSTRIES	7 STEPS CONSULTORS	AURIGA RESEARCH PVT. LTD	CGMP PROJECTS	LAB NATION
					given time till 20 th April, which they could not provide even after 2 days.	
Recommendation of the committee		Recommended	Recommended	Recommended subject to submission of required undertakings mentioned above	Not recommended	Recommended

6. The factual veracity of the above observations could not be disputed by learned counsel for the Petitioner. It is also admitted that the Petitioner was unable to give the aforesaid clarification within the stipulated time. However, the petitioner contends that more time ought to have been granted to the petitioner for the said purpose.



7. It is in the aforesaid backdrop that the present petition came to be filed. On 06.05.2022, while issuing notice and directing the respondents to file their counter affidavit, the following directions were given:-

“In the meantime, we direct the respondents to either not open any of the financial bids or, if they wish, they may open all the financial bids, including that of the petitioner. In case, the financial bids are opened and the petitioner is not found to be the lowest bidder, the respondents may proceed with the Impugned Tender. Same shall be done without prejudice to the rights and contentions of the parties.”

8. We are informed that pursuant thereto, the bid of the petitioner was opened and the petitioner was found to be the L-1 bidder.

9. We are also informed that in light of the grievance made out by the petitioner in the instant petition, another meeting of the Technical Evaluation Committee was held on 18.05.2022 taking notice of the order passed by this Court on 06.05.2022. The said minutes record as under:-

“The order of the Hon’ble High Court dated 06.05.2022 in WP(C) No. 7105 of 2022 was shared with the members of the Technical Evaluation Committee (TEC). It was informed that in compliance with the said order from Hon’ble High Court, the financial bid of M/s CGMP Projects Private Ltd was opened on 10.05.2022 which is subject to the right and contentions of the parties as per the said order dated 06.05.2022. It is a matter of record that that the Technical Evaluation Committee (TEC) had evaluated the Technical Bids of all the qualified 05 bidders including that of M/s CGMP Projects Private Ltd. between 18.04.2022 to 20.04.2022 and the approved MOM dated 22.04.2022 of the TEC were uploaded on the CPP portal and the financial bids of 04 bidders were recommended for opening which were opened on 28.04.2022. It is further a matter of record that the Technical Bid of M/s CGMP Projects Private Ltd. had been rejected vide TEC MOM dated 22.04.2022. The Technical Bid of M/s CGMP Projects Private Ltd. was primarily rejected on the ground that M/s CGMP Projects Private Ltd. had failed to



supply/provide the required documents despite granting time till 19.04.2022 and with prima-facie findings towards the rejection of the bid. The said demanded/required documents were received for the first time on 21.04.2022 (i.e. by the time the Technical Evaluation had already been completed by the TEC, as evaluation was completed on 20.04.2022). Therefore, in absence of all the required documents, the Technical Compliance of the bid of M/s CGMP Projects Private Ltd. could not be completed. Hence, a meeting of the committee has been called for scrutinizing / evaluating the Technical Bid of M/s CGMP Projects Private Ltd in light of the additional documents received on 21.04.2022 (after due date) and the earlier documents submitted by M/s CGMP Pvt Ltd. Meanwhile, FSSAI contacted the users as per the user list of Next Era Technologies and Scientek hub (for 3 quoted instruments) submitted by M/s CGMP projects pvt ltd. The details are at Annexure IV.

The observations of the TEC are as under

1. TEC while scrutinizing the equipment details of M/s CGMP found that the specification of the instruments where the company has mentioned "YES" in the compliance statement, were actually differing from the specifications mentioned in the brochure provided by the company. Moreover many of the details including certification details were missing in the brochures provided by the company. For example, as per the compliance statement of the bidder, the efficiency of HEPA filters is mentioned as 99.999 % for particle size of 0.1-0.3 micron, whereas in the brochure, the efficiency is mentioned as 99.95% submitted by M/s CGMP., besides there is no mention of UV life meter in the brochure which are very crucial parameters for efficient working of this instrument. There was no mention of the website on the brochure and other documents submitted by the company; therefore TEC was unable to check the compliance against tendered specifications. Technical compliance details of all the equipment are attached as Annexure II. Since none of the expert had ever used majority of the quoted makes, the committee sought the user list of such instruments to check about the performance and service support in order to have a comprehensive evaluation of the technical details. As the required details were not received by TEC even by 20/04/2022



when the committee had finalized its proceedings, the technical bid of M/s CGMP Projects Pvt Ltd was rejected.

2. M/s CGMP Projects Pvt Ltd submitted the user list of 20 instruments from Next Era Technologies (Make/ Model NXT) through mail on 21st April 2022. The committee observed as under :

- a. There is no mention of Make and Model in the Users list for four (04) instruments.*
- b. For two (02) instruments the Make in the User list is different than the quoted Make which is quite misleading.*
- c. For nine (09) instruments, the quoted Models are different than those given in the user list.*
- d. There is no information regarding fumigator in the user list*

Therefore, the compliance and performance of the quoted Makes and Models could not be established. Details are attached as Annexure III.

3. In the petition, M/s CGMP Projects Pvt Ltd has mentioned that all the documents related to Next Era Technologies have been provided by the bidder. However, after checking the brochures and bid document, it was observed that the complete details including safety certificates are not provided by the bidder. The website of Next Era Technologies as mentioned by the petitioner is www.nexteratechnologies.in wherein no details are given about the specifications of the instruments but only the name of the instrument and a picture are only available. There is no mention about the required performance and safety certificates of different instruments to confirm the compliance of the instruments.

Since the instruments offered by M/s CGMP Projects Private Ltd are not compliant to the tender specifications, the bidder is not found technically competent with respect to the equipment quoted in the bid.”



10. Annexure – II of the aforesaid minutes contain a detailed analysis of the make and model of each of the instruments offered by the petitioner, also containing reasons as to why the petitioner was not compliant with regard to most items.

11. In the above background, learned counsel for the petitioner contends that although there were minor deviations/infirmities in the bid of the petitioner, the same were insignificant in nature and ought to have been condoned/ overlooked. It is further contended that in the case of another bidder the respondents have in fact condoned/overlooked certain minor deviations. It is further contended that another opportunity must be afforded to the petitioner to satisfy the respondents with regard to the deficiencies noticed with regard to make and model of the instruments submitted by the petitioner/bidder.

12. Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for respondent no. 1 has submitted that the main prayer of the petitioner was that respondent should withdraw the findings contained in the minutes dated 22.04.2022 against the petitioner and to consider the petitioner's representation and documents. It is submitted that this grievance has in fact been addressed, inasmuch as, all the documents/material submitted by the petitioner has been examined in detail in the minutes of Technical Evaluation Committee held on 18.05.2022. Elaborate reliance is also placed by Ms. Bhati on Annexure-II of the minutes of meeting dated 18.05.2022 wherein it has been brought out as to how most of the instruments of the petitioner did not meet the prescribed technical criteria.

13. We have heard learned counsels for the parties and have given our



anxious consideration to the matter.

14. At the outset, we must note that the petitioner has been taking different pleas at various stages of the proceedings. It is rightly pointed out by Ld. ASG appearing on behalf of the respondent that in the first instance the petitioner relied upon the minutes of the Technical Evaluation Committee dated 12.04.2022 to contend that it had already met the relevant technical parameters. However, this submission of the petitioner is in the teeth of paragraphs 7 and 9 of the minutes dated 12.04.2022 itself, which specifically recorded that the Tender Evaluation Committee had recommended that pending documents may be obtained from various bidders, including the petitioner. Further, paragraph 9 of the same minutes dated 12.04.2022 records that “... *technical evaluation of these six tentatively eligible bidders may be started.*” It was thereafter, that a detailed technical evaluation was carried out in the Technical Evaluation Committee meeting held from 18-20 April, 2022, where shortcomings in respect of the petitioner’s proposed equipments were noticed and the petitioner was asked to submit certain information till 20.04.2022, which admittedly the Petitioner failed to do so.

15. We note that when this writ petition first came up for consideration, the primary grievance of the petitioner was that some further time ought to have been given to it to allay the concerns / shortcomings expressed in the aforesaid meeting of the technical evaluation committee which took place from 18-20 April, 2022.

16. It transpires from a perusal of the records of the case filed along with the counter affidavit on behalf of the Respondent No. 1, that, in fact, even



the additional documents/information belatedly furnished by the petitioner were elaborately considered during the meeting of the Technical Evaluation Committee held on 18.05.2022. Now again, the petitioner seeks to contend that another opportunity must be accorded to it to submit further clarifications/information.

17. We must express out disapproval at the manner in which the petitioner has sought to take divergent pleas at different stages and elongate the tender process.

18. We also note that the observations made in the minutes of the Technical Evaluation Committee held on 22.04.2022 were, by themselves, sufficient to disqualify the petitioner; however, the respondent has in fact been more than accommodating in considering the belated information/documents submitted by the petitioner, and conducting another detail evaluation of the petitioner's instruments with a view to assess compliance with the relevant tender specifications. As mentioned, a detailed analysis was conducted by the Technical Evaluation Committee in respect of the make and model of the instruments offered by the petitioner and the same is contained in Annexure – II of the minutes dated 18.05.2022. The relevant portion thereof reads as under:-



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Annexure II

Make and Models of the instruments submitted by bidder by M/s CGMP Projects Pvt Ltd

Sl. No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
1.	Laminar Air Flow	Make- Sciencet Hub Model- SVLF-3 Optional Make- Next Era Technologies Model- NXT-42LAF	Certification	Product must be ISO 9001: 2015 Certified CE Marked CE marked product GMP Certified	Not Complying because the certificates of applicable standards (Performance and Safety Standards) as required in the bid document are not attached for both the makes and models quoted by the bidder	Yes
2.	Bio Safety Cabinet Class II Type B2 (Total Exhaust)	Make- Next Era Technologies Model- NXT-CIB2422 Optional Make- Sciencet Hub Model- 5BSC-3A-B	Applicable Standards	EN ISO 14971:2012/EN ISO 13485: 2012/EN 980:2008/EN 1041: 2008/EN 61010-1:2010/EN61326 1:2013/EN 12469:2000	Not Complying because of the following reasons: A. HEPA filter 99.95% efficiency is mentioned in the brochure against ≥99.999%	Yes

NOTIFICATION

Sl. No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
			Intelligence Alarm System	Safety purpose Audio & Visual alarm for air velocity fluctuation and for life of the HEPA filter and UV light	required as per tendered specifications B. No details about the Intelligence alarm system are available either in the bid document or the attached brochure of the bidder	
			Ultra violet life meter	Continuously display UV Hour on display		
			Certification	An ISO 9001: 2015 Certified Company CE Marked CE marked product GMP Certified Product, NSF 49 Certified and EN ISO 14971:2012/EN ISO 13485: 2012/EN 980:2008/EN 1041: 2008/EN 61010-1:2010/EN 61326-1:2013/EN	C. Life meter are available either in the bid document or the attached brochure of the bidder Performance and safety standards certificates as required in the bid	



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Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
				12469:2000 NSF 49/EN1249 or Equivalent standard Test Certificate for Mini-Pleat HEPA Filters Calibration Certificate for Pressure Gauge Calibration Certificate for Air Velocity Anemometer	document are not attached for both the makes and models quoted by the bidder The brochure of Make: Scientek hub, model SBSC-3A-B are not attached by the bidder	
3.	Autoclave Vertical	Make- Scientek Hub Model- SACV-4 Optional Make- Next Era Technologies Model- NXT 95VA	Certificates Performance and safety standards (specific to the device type); Local and/or international	Should be FDA/CE/BIS approved product. Manufacturer/ Supplier should have ISO 13485 certification under ISO 9001 for quality standards. Electrical safety conforms to the standards for electrical safety IEC	Not Complying because the Performance and safety standards certificates as required in the bid document are not attached for both the	Yes

Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
				60601- General requirements (or equivalent BIS Standard)/Certified to be compliant with IEC 61010-1/ IEC 61010-2-40 for safety	model quoted by the bidder	
4.	Incubators: Ambient to 70 °C	Make- Next Era Technologies Model- NXT- 216L	Certificates Performance and safety standards (specific to the device type); Local and/or international	- Should be FDA/CE/BIS approved product. - Manufacturer / Supplier should have ISO 13485 certification under ISO 9001 or quality standards. - Electrical safety conforms to the standards for electrical safety IEC 60601- General requirements (or equivalent BIS Standard)	Not Complying because the Performance and safety standards certificates as required in the bid document are not attached for the model quoted by the bidder	Yes
5.	Incubators: 5 °C to 50°C	Make- Next Era Technologies Model- NXT-200CLI			Not Complying because the specification details or the brochure were	Yes



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Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
					not provided in the bid document by the bidder	
6.	Digital Colony Counter	Make- Next Era Technologies Model- NXTCC37	Certificates Performance and safety standards (specific to the device type); Local and/or international	- Should be FDA/CE/BIS approved product. - Electrical safety conforms to the standards for electrical safety IEC 60601-General requirements (or equivalent BIS Standard	Not Complying because the Performance and safety standards certificates as required in the bid document are not attached for the model quoted by the bidder	Yes
7.	Stomacher (Lab Blender)	Make- MicroBiology International Model- EZ-Mix 400 Optional Make- Optics technology			Complying	Yes
8.	Water Bath – Serological(Capacity 12 liters)	Make- Next Era Technologies Model- NXT-12WB	Certificates Performance and safety standards (specific to the device type); Local and/or international	- Should be FDA/CE/BIS approved product. - Manufacturer / Supplier should have ISO 13485	Not Complying because the Performance and safety standards certificates as required in the bid	Yes

Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
				certification under ISO 9001 for quality standards. Electrical safety conforms to the standards for electrical safety IEC 60601-General requirements (or equivalent BIS Standard)/Certified to be compliant with IEC 61010-1, IEC 61010-2-40 for safety	document are not attached for the model quoted by the bidder	
9.	Analytical Balance	Make- Next Era Technologies Model- NXT-220AB	Certificates Performance and safety standards (specific to the device type); Local and/or international	- Should be FDA/CE/BIS approved product. - Electrical conforms to the standards for electrical safety IEC 60601-General requirements (or equivalent for safety	Not Complying because the Performance and safety standards certificates as required in the bid document are not attached for the model quoted by the bidder	Yes
10.	Upright Frost Free Vertical	Make- Next Era Technologies	Certificates Performance and	Should be FDA/CE/BIS approved	Not Complying because the	Yes



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Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
	Deep Freezer (-20 °C)	Model- NXT-290DF	safety standards (specific to the device type); Local and/or international	- product. Manufacturer/ Supplier should have ISO 13485 certification under ISO 9001 for quality standards. - Electrical safety conforms to the standards for electrical safety IEC 60601- General requirements (or equivalent BIS Standard)/Certified to be compliant with IEC 61010-1, IEC 61010-2-40 for safety	Performance and safety standards certificates as required in the bid document are not attached for the model quoted by the bidder	
11.	UV-Vis Spectrophotometer	Make- Next Era Technologies Model- NXT-UV2800	Wavelength Accuracy Wavelength Repeatability	$\pm 0.3\text{nm}$ or better for entire range $\pm 0.1\text{nm}$ or better	Not Complying because of the following reasons A. Wavelength accuracy $\neq 0.5\text{nm}$ B. Wavelength Repeatability $\leq 0.2\text{ nm}$	Yes

Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
			Scanning speed	Selectable Variable wavelength scan rate 10 nm/min to 2500 nm/min or better	C. Scanning speed- Max Speed 2000 nm/min	
			Baseline Stability-	$< 0.0005\text{ A/hr}$ (500 nm, 1-hour warm-up)	D. Baseline Stability- $\pm 0.001\text{ A}$ 500 nm	
			Baseline flatness	$\pm 0.0005\text{ Abs}$ or better	E. Baseline flatness $\pm 0.001\text{ A}$	
			Certificates Performance and safety standards (specific to the device type); Local and/or international	Should be FDA/CE/BIS approved product. Electrical safety conforms to the standards for electrical safety IEC 60601- General requirements (or equivalent BIS Standard)/ Certified to be compliant with IEC 61010- 1, IEC 61010-2-40 for safety	F. Performance and safety standards certificates as required in the bid document are not attached for the model quoted by the bidder	
11.	Binocular Microscope	Make- Next Era Technologies Model- NXT-H200	Certificates Performance and safety standards (specific to the	- Should be FDA/CE/BIS approved product - Manufacturer and	Not Complying because the Performance and safety standards	Yes



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Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
			device type); Local and/or international	Supplier should have ISO 13485 certification under ISO 9001 for quality standards. • Electrical safety conforms to the standards for electrical safety IEC 60601-General requirements (or equivalent BIS Standard)/Certified to be compliant with IEC 61010-1, IEC 61010-2-40 for safety	certificates as required in the bid document are not attached for the model quoted by the bidder	
13.	Howard Mold Counter	Make - Hausser Scientific Model - 3820			Complying	Yes
14.	Refrigerated Centrifuge	Make- Next Era Technologies Model- NXT-RC70	Rotors	• Fixed Angle Rotor for 6 x 50 ml Falcon tube with 8 adapters for 15 mL conical bottom culture tubes/falcon/oakridge	Not Complying because of the following reasons: A. The quoted model is for 12 x 2 ml fixed angle rotor instead of the desired specification	Yes

Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
			Certificates Performance and safety standards (specific to the device type); Local and/or international	Should be FDA/CE/BIS approved product. • Rotor for 1.5-2.0 mL Eppendorf tubes (24 places or better) and adaptors for 0.2 and 0.5 mL tubes • Electrical safety conforms to the standards for electrical safety IEC 60601-General requirements (or equivalent BIS Standard)/Certified to be compliant with IEC 61010-1, IEC 61010-2-40 for safety	of 6 x 50 mL. Fixed angle rotor or better B. The information regarding the other rotors is not provided by the bidder in the bid document. C. Performance and safety standards certificates as required in the bid document are not attached for the quoted model by the bidder	



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Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
15.	BOD Incubator	Make- Next Era Technologies Model- NXT-350CLI	Capacity	350-400 Litres	Not complying because of the following reasons: A. As per the brochure submitted by the bidder, the maximum capacity of 340 L is mentioned. B. No information is provided in the bid document and brochure regarding the quoted model by the bidder	Yes
16.	Micro Filtration Assembly	Make- Next Era Technologies Model- NXT-FA			Complying	Yes
17.	Digital pH Meter	Make- Next Era Technologies Model- NXT-10PH	Mv	- Range 0 - ±1999 - Accuracy=1mV	Not Complying because of the following reasons A. Details of Conductivity	Yes

Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
			Documents/ Certificates Performance and safety standards (specific to the device type); Local and/or international	- Resolution 1mV - Manufacturer / Supplier should have ISO 13485 certification under ISO 9001 for quality standards. - Electrical safety conforms to the standards for electrical safety IEC 60601-General requirements (or equivalent BIS Standard)/ Certified to be compliant with IEC 61010-1, IEC 61010-2-40 for safety	are not mentioned either in the bid document or the brochure submitted by the bidder. B. Performance and safety standards certificates as required in the bid document are not attached for the quoted model by the bidder	
18.	Fumigator	Make- Next Era Technologies Model- NXT-6FMG			Complying	Yes



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Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
19.	UV Viewing Chamber	Make- Next Technologies Model- NXT-UVC	Certificates Performance and safety standards (specific to the device type); Local and/or international	- Should be FDA/CE/BIS approved product. - Manufacturer/ Supplier should have ISO 13485 certification under ISO 9001 for quality standards. - Electrical safety conforms to the standards for electrical safety IEC 60601- General Requirements (or equivalent BIS Standard)/ Certified to be compliant with IEC 61010-1, IEC 61010-2-40 for safety	Not Complying because the Performance and safety standards certificates as required in the bid document are not attached for the model quoted by the bidder	Yes
20.	Anaerobic Jar (Anaerobic Jar Filling System)	Make- Don Whitley Scientific Model- A05050			Complying	Yes
21.	Hot Air Oven	Make- Next Technologies Model- NXT-200HAO	Certificates Performance and safety standards (specific to the device type); Local and/or international	- Should be FDA/CE/BIS approved product. - Electrical safety conforms to the standards for electrical safety IEC 60601- General	Not Complying because the Performance and safety standards certificates as required in the bid document are not	Yes

Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
				requirements (or equivalent BIS Standard)/ Certified to be compliant with IEC 61010-1, IEC 61010-2-40 for safety	attached for the model quoted by the bidder	
22.	Micropipette	Make- Next Technologies Model- Consumable	Capacity / Volume	20-200 micro liter (Variable) 100-1000 micro liter (Variable) 1-10ml (Variable) *2 each x 3 = 6	Not Complying because of the following reasons: A. No mention of the 1-10 ml pipette either in the bid document or the brochure submitted by the bidder. B. There is no mention of Volume Lock to prevent drifting either in the bid document or the brochure submitted by the bidder.	Yes
			Feature	Single-channel/manual Volume lock to prevent drifting		



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Sl No	Name of Instrument	Make and model quoted by M/s CGMP Projects Pvt Ltd	Tender Specification by FSSAI		Comments of TEC	Compliant statement Mentioned by M/S CGMP projects Pvt Ltd
23.	Carbon dioxide incubator	Make- Next Era Technologies Model- NXT- I80CO2	Capacity	45 litres or above	Not Complying because the Capacity of the instrument not given either in the bid document or the brochure submitted by the bidder	Yes
24.	Frost Free Double door (side by side) Refrigerator	Make- Next Era Technologies Model- NXT- 700 BMRF			Complying	Yes

19. It is beyond the province of this Court to sit in judgement over the aforesaid elaborate scrutiny conducted, and the conclusions drawn by the tender evaluation committee.

20. In *Meerut Development Authority vs Association of Management Studies and Anr., 2009(6) SCC 171* the Supreme Court clarified the rights of a Tenderer participating in the Tender Process as under:

"17. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process. The



bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

21. In the case of *Agmatel India Pvt. Ltd. Vs. Resoursys Telecom and Others*, 2002 SCC OnLine SC 113, after noticing authoritative pronouncements in the cases of *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.*, (2016) 16 SCC 818, *Bharat Coking Coal Ltd. v. AMR Dev Prabha* 2020 SCC OnLine SC 335, *Silppi Constructions Contractors v. Union of India*, 2019 SCC OnLine SC 1133, *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517 and *Montecarlo Ltd. v. NTPC Ltd.*, (2016) 15 SCC 272, the Supreme Court has reiterated that, "(i) the authority that authors the tender documents is the best person to understand and appreciate the requirements and this its interpretation should not be second-guessed by a Court in judicial review proceedings; (ii) the expert evaluation of a particular tender, particularly when it comes to technical evaluation, is not to be second -guessed by a writ Court; (iii) Technical evaluation or comparison by the Court is impermissible. Proceedings under Article 226 of the Constitution of India are concerned with the decision making process and are not meant to substitute the appraisal of any expert body/committee which has carried out the tender



evaluation.

22. We notice that the Technical Evaluation Committee in the instant case comprised of high ranking scientists, microbiologists and food analysts. In the facts of the present case, there is no justification whatsoever to substitute or set aside the views of the said expert committee.

23. In the circumstances, we find no merit in the instant petition and the same is, hereby, dismissed with costs amounting to Rs.25,000/- payable to the Delhi State Legal Services Authority. Costs be deposited within four weeks.

SACHIN DATTA, J

VIPIN SANGHI, ACJ

JUNE 2, 2022/