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W.P.No.26127 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.26127 of 2024

M/s. Ornate Labs Private Limited,
Bela Industrial Estate,
Muzaffarpur – 842 005.
Represented by its Director

...Petitioner

Vs.

1. The Manager Director,
Tamil Nadu Medical Services Corporate Limited,
No.417, Pantheon Road,
Egmore, Chennai – 600 008.
2. The General Manager,
Tamil Nadu Medical Services Corporate Limited,
No.417, Pantheon Road,
Egmore, Chennai – 600 008.

...Respondents

Petition filed Under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondent to consider the representation of the petitioner dated 11.01.2024 and to consequently repay an amount of (i) Rs.1,01,85,849.72/-, deducted by the respondent as liquidated damages; and (ii) Rs.1,01,03,915.20/-, deducted by the respondent as Non supply charges, towards orders made during the Covid period, to the petitioner in line with the Office Memorandum of Govt. of India, vide Notification No.F.1/1/2023-PPD dated 11th April 2023 and Notification No.F.18/4/2020-PPD dated 19.02.2020.



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For Petitioner : Mr.S.Sathiyandarayanan

For Respondents : Mr.K.Tippusulthan, GA

ORDER

This Writ petition has been filed seeking direction to the respondent to consider the petitioner's representation dated 11.01.2024 and to consequently repay an amount of Rs.1,01,85,849.72/-, deducted by the respondent as liquidated damages and Rs.1,01,03,915.20/-, deducted by the respondent as Non supply charges, towards orders made during the Covid period, to the petitioner in line with the Office Memorandum of Govt. of India, vide Notification No.F.1/1/2023-PPD dated 11th April 2023 and Notification No.F.18/4/2020-PPD dated 19.02.2020.

2. Mr.K.Tippusulthan, learned Government Advocate takes notice on behalf of the respondents. In view of the consent expressed by the learned counsel on either side, this matter is taken up for final hearing at the admission stage itself.



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3. The case of the petitioner is that, the petitioner is a manufacturer and supplier of drugs and medicines and a Small scale industry falling under the MSME Segment. The petitioner participated in the tender floated by the respondent in the year 2020 and was awarded the contract for supply of drugs and medicines and the petitioner was supplying various drugs and medicines to the respondent, in terms of the awarded contract promptly. During the past six years, the petitioner supplied 346 batches of medicines to the respondent, out of which, the respondent has reported 9 batches as Non-Standard Quality drug on account of variation in PH Level on the basis of some incorrect lab reports and based on the same, 1st respondent blacklisted the petitioner, vide order No.RAN011-B/TNMSC/QC/2022-23 dated 04.05.2023. While so, though the petitioner was continuously supplying various drugs to the respondent, due to Covid pandemic, the time line of supply was severely hit by various factors, however, without appreciating the same, the respondent imposed Liquidation damages for delay in supply of drugs and medicines, which is contrary to the Office Memorandum dated 11.04.2023 and its subsequent amendments, which provides certain benefits to MSME on account of difficulties faced due to Covid 19



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pandemic. Further, as on 12.11.2022, the respondent deducted a sum of Rs.1,47,67,360.93/- as Late Delivery charges against the supply made by the petitioner during the period from December 2019 to March 2022. Thereby, the petitioner made several representations to the respondents, seeking refund of deductions made by the respondent, which evoked no response and the respondent deducted a sum of Rs.1,01,85,849.72/- towards liquidated damages and Rs.1,01,03,915.20/- towards Non supply charges, for orders made during the Covid period. Hence, the petitioner has come up with this Writ petition.

4. Heard learned counsel on either side and perused the material documents placed on record.

5. Though very many grounds have been raised by the learned counsel for the petitioner, at the time of arguments, when this Court expressed its opinion that the prayer sought for by the petitioner in this Writ petition cannot be granted and the same has to be ventilated either before the Arbitrator or before the civil court, the learned counsel for the petitioner restricted the prayer and sought for liberty of this Court to workout the remedy in the manner known to law before the appropriate



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forum. Learned Government Advocate appearing for the respondents has also not expressed any objection for the limited relief sought for by the learned counsel for the petitioner.

6. In view of the aforesaid stand taken by the learned counsel for the petitioner, this Court, without going into the merits of the case, grants liberty to the petitioner to workout its remedy in the manner known to law either before the Arbitrator in terms of the tender clause or before the competent civil court.

7. With the above liberty, this Writ petition stands dismissed. No costs.

10.09.2024

skt

NCC : Yes/No
Index : Yes / No
Speaking Order : Yes / No

To

1. The Manager Director,
Tamil Nadu Medical Services Corporate Limited,
No.417, Pantheon Road, Egmore, Chennai – 600 008.
2. The General Manager,



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M.DHANDAPANI, J.

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