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

+ **W.P.(C) 4598/2021**

MAHENDER AGGARWAL

..... Petitioner

Through: Mr. Saumitri Pradhan and Mr. Vivek
Chaurasia, Advocates.

versus

**AIIMS (ALL INDIA INSTITUTE OF MEDICAL SCIENCES) &
ANR.**

..... Respondents

Through: Ms. Sonali Malhotra and Ms. Nidhi
Narwal, Advocates for AIIMS.
Mr. Vivek Goyal, CGSPC with Mr.
Gokul Sharma, Advocate for UoI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

06.02.2024

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1. The Petitioner seeks to challenge the communication dated 16.09.2020 issued by the Respondent debarring the Petitioner for a period of two years from participating in any tenders at AIIMS.
2. Material on record discloses that a tender was floated by the Respondent/AIIMS for purchase of syringe infusion pumps. The Petitioner, Mahender Aggarwal, is the sole proprietor of M/s Bhagat Jee & Sons and M/s Toptex Woollens. Both the proprietorship concerns made a bid for the tender. There are, therefore, two bids of the same proprietor.
3. Stating that the bid was contrary to the terms and conditions of the tender, a show cause notice dated 05.01.2018 was issued to the Petitioner.



The show cause notice reads as under:-

ANNEXURE J
ALL INDIA INSTITUTE OF MEDICAL SCIENCES
ANSARI NAGAR, NEW DELHI-29
(HOSPITAL STORES)
 Ph. 011-26588790/509 Ext.No.4627, Fax. 011-26588739
 E-mail - storesofficer.aiims@gmail.com

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(5)

Most Urgent/Time Bound
Dated: 05.01.2018

To

M/s Bhagat Jee & Sons,
 C-2/B, Pragati Market, Ashok Vihar,
 Phase-II, Delhi-1100522
 Ph - 011-27450354
 E-mail - bjcindia@gmail.com

Sub: Procurement of Syringe Infusion. – Show Cause Notice thereof.
 Ref. Tender No.- 05/H/M&E/2017-18.

Dear Sir/Madam,

With reference to your quotation submitted against the tender No.- 05/H/M&E/2017-18 for the purchase of Syringe Infusion Pump, you are hereby informed that credentials submitted by two bidders (M/s Bhagat Jee & Sons and M/s Toptex Woolens – Healthcare Division) were scrutinized and observed the detailed given in the following table:-

S. No.	Documents	M/s Bhagat Jee & Sons	M/s Toptex Woolens(Healthcare Division)
1.	Model & Make quoted	Make-M/s Electromedicals Model – Infusor II	Make - M/s Changsha Deepmed Medical Technology Co., Ltd. Model – DPFusion SP1
2.	Name of Firm	M/s Bhagat Jee & Sons	M/s Toptex Woolens (Healthcare Division)
3.	Postal Address	C-2/B, Pragati Market, Ashok Vihar Phase-II, Delhi-52	49-HUDA, Sector-11, Phase-1, Panipat - 132103
4.	Legal Status	Proprietorship	Proprietorship
5.	Name of Proprietor	Mr. Mohinder Kumar Aggarwal	Mr. Mohinder Kumar Aggarwal
6.	PAN	AB8PK2823M	AB8PK2823M
7.	TIN no.	07170160865	06582604862
8.	E.M.D.	Customer I.D. No-CDZ011248, Dated: 03.08.17 Punjab National Bank – (Branch serial No. – 145600), Applicant address - 49 – HUDA, Sector-11, Phase-1, Panipat – 132103	FDR No- CDZ012828, Dated: 03.08.2017 Punjab National Bank - (Branch serial No. – 145600), Applicant address - 49 – HUDA, Sector-11, Phase-1, Panipat – 132103

After going through above information available in above table, that proprietor of both firms (M/s Bhagat Jee & Sons and M/s Toptex Woolen, Healthcare Division) is same and there are also other same information which proves that there is cartelization between both the bidders.

- The above table confirms that there is a cartelization between M/s Bhagat Jee & Sons and M/s Toptex Woolen, why not administration action against M/s Bhagat Jee & Sons may be taken as per guidelines.
- In case, reply is not submitted within stipulated period (07-days from the issue of the letter) or satisfactory reply is not received, administrative action as deemed fit as per CVC guidelines or terms & condition of tender shall be taken against M/s Bhagat Jee & Sons without any further notice.

This may be accorded TOP PRIORITY.

140029
51/18
STORES OFFICER (H)

Copy to:-

- Officer-In-Charge (M & E)
- Medical Superintendent

4. The show cause notice does not indicate that an Order of debarment



would be passed against the Petitioner and the Petitioner cannot bid in future tenders floated by the Respondent.

5. The short contention raised by the learned Counsel for the Petitioner that an Order of debarment cannot be passed without a show cause notice and, therefore, the Debarment Order is bad in law. The Petitioner places reliance on the judgment passed by the Apex Court in Gorkha Security Services v. Govt. Of NCT of Delhi, (2014) 9 SCC 105.

6. In view of the above, since there is no show cause notice indicating that the Petitioner would be debarred from participating in future tenders, the Order of debarment is set aside.

7. It is always open for the Respondent to issue a fresh show cause notice indicating that the Petitioner would be debarred from participating in future tenders in view of the violations of tender conditions and pass appropriate orders after issuing the show cause notice.

8. It is made clear that it is always open for the Petitioner to raise all contentions available to him in reply to the show cause notice.

9. The fact that the Petitioner has already undergone two years of debarment be kept in mind by the Respondent/AIIMS while issuing a fresh show cause notice.

10. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 6, 2024

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