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

+ **W.P.(C) 14975/2024, CM APPL. 62798-62799/2024**

M/S GENTECH HEALTHCARE PVT. LTD. & ANR.Petitioners

Through: Mr. Sushant Mahapatra, Ms. Yashika Gupta, Mr. Rahul Kumar, Ms. Shreya Malik and Ms. Shubhangi Jain,
Advocates.

versus

THE GOVT OF NCT OF DELHI & ANR.Respondents

Through: Mr. Tushar Sannu, SC with
Mr. Nikhil Kadha, Advocate for R-2.
Ms. Mehak Nakra, ASC (Civil)
GNCTD with Ms. Gunjan Suyal and
Ms. Anjali Pandey, Advocates for R-1.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

ORDER

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24.10.2024

1. The Petitioners impugn order dated 30th December, 2023,¹ whereby Institute of Human Behaviour and Allied Sciences,² a hospital based autonomous academic institute under the GNCTD, has forfeited the Petitioners' performance bank guarantee and blacklisted them as per the terms of the Rate Contract dated 20th October, 2021.

2. A brief background leading to the filing of the present petition is as follows:

¹ "the impugned order"/ "the blacklisting order"

² "IHBAS"



2.1. Petitioner No. 1, a manufacturer of drugs, participated in a tender floated by IHBAS for supply of the drug *Pantaprazole-40 mg*³ and emerged as the successful bidder. Consequently, a Rate Contract dated 20th October, 2021 was executed between IHBAS and Petitioner No. 1. Subsequently, Petitioner No. 1 appointed Petitioner No. 2, M/s Charka Enterprises, as their authorized distributors for the supply of the drug in question to IHBAS.

2.2. Thereafter, IHBAS issued the impugned order dated 30th December, 2023, blacklisting the Petitioners and forfeiting their performance bank guarantee on the ground that the samples of the drug in question for batch No. GENT5138 were “Not of Standard Quality”.

2.3. Aggrieved by the same, several representations were sent to IHBAS seeking to replace the remaining quantity of the drug in question with a fresh batch in accordance with Clause 6 of the Rate Contract. However, no response has been forthcoming by the Petitioners.

2.4. In this background, the Petitioners have invoked the jurisdiction of the Court seeking to set aside the blacklisting order.

3. Amongst the grounds of challenge, Petitioners’ chief grievance is that no show cause notice was issued by the Respondents before passing the blacklisting order which is in complete violation of principles of natural justice as the Petitioner has been deprived of an opportunity to put forth their stand. This renders the impugned order to be untenable in law and is liable to be set aside on this ground alone.

4. The Court has considered the facts and contentions raised by the parties. At the outset, it must be noted that Petitioner has approached this

³ “the drug in question”



Court nearly after one year from the passing of the blacklisting order. Notably, the blacklisting order has been passed on the allegation that the drug in question as supplied by the Petitioners have been found to be of sub-standard quality, subsequent to the testing of the samples of the drug in question. In such circumstances, while the Petitioners' challenge to the blacklisting order on the ground of non-issuance of the show cause notice has some merit, however, considering the fact the Petitioners are engaged manufacture and supply of pharmaceuticals, a greater degree of caution is required to be exercised in public interest. Therefore, in the opinion of the Court, the appropriate course of action in the present case would be for the Respondents to afford an opportunity to the Petitioners to put forth their defence against the blacklisting order.

5. In view of the foregoing, the present writ petition is disposed with the following directions:

a. The present writ petition shall be considered as a representation to the Respondents in response to the allegation made in the impugned blacklisting order. Petitioners are permitted to submit additional representation, if so required, within a period of ten days from today.

b. Upon receipt of the same, the Director (Admn.), IHBAS shall consider the same and take a decision afresh, in accordance with law, within a period of four weeks from today. Since the impugned order does not specify the scope or period of blacklisting, the Respondents shall also examine this aspect while deciding the Petitioners' representations.

c. In case the decision is adverse to the Petitioners, they shall be at liberty to take recourse against the same, in accordance with law.

6. It is made clear that the Court has not expressed any opinion on the



merits of the case and all rights and contentions of the parties are left open.

7. With the above directions, the present petition, along with pending applications, is disposed of.

SANJEEV NARULA, J

OCTOBER 24, 2024

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