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

+ **W.P.(C) 5092/2025, CM APPL. 23323/2025**

MEDIPOL PHARMACEUTICAL INDIA PVT LTDPetitioner
Through: **Mr. Samman Vardhan Gautam, Ms. Khushi Sharma, Adv.**

versus

GOVERNMENT (NCT OF DELHI) & ANR.Respondents
Through: **Mr. Tushar Sannu, Mr. Utkarsh Singh, Mr. Pushkar Dwivedi, Adv.**

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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02.05.2025

1. The present petition has been filed by the petitioner assailing an order dated 11.04.2025 issued by the respondent no.2/Bhagwan Mahavir Hospital, Pitampura, Delhi, whereby the petitioner was blacklisted by the respondent no.2. The said order reads as under:-

“With reference to your bid against e-tender no. 2024_BMH_262823 (PROCUREMENT OF DRUGS/MEDICINES) it is to inform that your contract has been terminated as you failed to deposit the required security within the time specified in spite of giving several reminders. Your firm is hereby disqualified for any future tender as per terms and conditions.”

2. The dispute between the parties have arisen in context of a tender dated 27.09.2024 issued by the respondent no.2 for procurement of Drugs and Medicines. Vide Letter of Acceptance dated 10.01.2025 (LoA), the said tender, for supply of medicines specified in the LoA, was awarded to the petitioner by the respondent no.2 for a period of one year w.e.f from 08.01.2025 to 07.01.2026.



3. A bare perusal of the impugned order reveals that by the virtue of the aforesaid impugned order, the petitioner has been “disqualified for any future tender as per tender terms and conditions”.
4. Learned counsel for the petitioner submits that the impugned order is vitiated on account of flagrant violation of the principles of natural justice inasmuch as the same has been passed without issuing a show cause notice and without affording an opportunity of hearing to the petitioner. He further submits that the impugned order is unreasoned since it does not even specify the period for which the petitioner has been sought to be disqualified/blacklisted.
5. It is submitted that the order purports to virtually disqualify the petitioner for an indefinite period, thereby infringing upon the petitioner’s right under Article 19 of the Constitution of India.
6. Mr. Tushar Sannu, learned counsel for the respondents submits that there were serious omission/lapses on the part of the petitioner in discharge of the contract inasmuch as the performance bank guarantee that was required to be given by the petitioner pursuant to acceptance of his bid was not given by the petitioner despite innumerable reminders.
7. He submits that even the letter accepting the LoA was given by the petitioner belatedly after many reminders. Furthermore, supply orders were also not fulfilled by the petitioner, causing great prejudice to the respondent.
8. He further submits that the non-supply of essential drugs and medicines is an extremely serious matter and causes grave prejudice to the concerned patients, and as such the impugned action has been taken in



accordance with Clause 3.2.7.1 of the tender terms and conditions¹.

9. He, however, concedes that prior to taking of the impugned action, no show cause notice was given to the petitioner, putting the petitioner to notice as to the debarment/blacklisting action proposed to be taken. He submits that in the facts and circumstances of the present case, by virtue of Clause 3.2.7.1 of the tender terms and conditions, there was no requirement for issuance of a show cause notice.

10. The aforesaid plea of the learned counsel on behalf of the respondent is untenable inasmuch as it has been held by the Supreme Court in **Gorkha Security Services Vs. Government (NCT of Delhi) and Ors.**, (2014) 9 SCC 105 and **UMC Technologies Pvt. Ltd vs. Food Corporation of India and Anr.**, 2021 2 SCC 551 that an action of debarment has to be preceded by a notice specifically informing the noticee that it is proposed to be debarred. In the absence of any such notice, the order of debarment cannot sustain. In this regard, the Supreme Court has specifically observed in **Gorkha Security Services** (supra) as under:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”

¹ 3.2.7 PENALTIES:-

3.2.7.1 If the successful tenderers fails to execute the agreement and/ or fails to deposit the required security within the time specified or withdraws his tender after the intimation of acceptance of this tender has been sent to him or owing to any other reason or he is unable to undertake the contract, his contract will be cancelled and the firm will be disqualified for any future tender.



11. In the circumstances, the contention on behalf of the respondent that it was not required to issue a show cause notice prior to debarment of the petitioner cannot be acceded by this Court. Consequently, the impugned order dated 17.03.2025 is set aside.

12. However, the respondent is granted liberty to issue a show cause notice to the petitioner if it seeks to take any action under Clause 3.2.7.1 of the tender terms and conditions. In the event of any such show cause notice being issued, let the petitioner be given an opportunity to respond thereto, as also an opportunity of hearing. Let a reasoned order be passed subsequent thereto.

13. It is made clear that this Court has not interdicted with the termination of the contract between the petitioner and the respondent.

14. The petition is disposed of in the above terms. Pending application, if any, also stands disposed of.

SACHIN DATTA, J

MAY 2, 2025/uk