



\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7744/2025, CM APPL. 34329/2025 & CM APPL. 34330/2025**

M/SMEDIPOL PHARMACEUTICAL INDIA

PVT.LTD.THROUGH MR.SANJAY AGARWALPetitioner

Through: **Mr. Samman Vardhan Gautam, and
Ms.Khushi Sharma, Advs.**

versus

GOVT (NCT) OF DELHI

.....Respondent

Through: **Mr.Tushar Sannu, with Ms.Aqsa,
Advs.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **29.05.2025**

1. Heard learned counsel for the parties.
2. This petition under Article 226 of the Constitution of India has been instituted challenging the decision of the Tendering Authority whereby, the petitioner has been held to be technically disqualified in pursuance of his participation in the bid for supply of drugs. The tender was floated by the Directorate General of Health Services, Government of NCT of Delhi.
3. It has been argued by learned counsel for the petitioner that the impugned decision holding the petitioner technically disqualified does not assign any reason and further that the reason for such a decision can be found even in a communication dated 24.02.2025, received by the petitioner from the Directorate, according to which, the petitioner has submitted certain false declaration/affidavit regarding blacklisting of the specified products by



Rajasthan Government. His submission is that the said reason is not sustainable in view of the requirement of the Clause 16 of the Tender.

4. Drawing our attention to Clause 16 of the tender conditions, it has been argued by learned counsel for the petitioner that as per the said tender condition, the tenderers were required to submit certificate on self attested non-judicial stamp paper stating that there is no Vigilance/CBI Case pending against the bidder, and that the bidder has not been blacklisted/debarred on the date of submission of the bid by any Central Government/State Government department/Hospital or any Public Sector Undertaking. His submission is that what was required to be submitted along with the bid by the bidder was a certificate to the effect that the firm itself has not been blacklisted or debarred.

5. Learned counsel for the petitioner has tried to draw distinction between particular items/medicines/drugs supplied by a firm in respect of which blacklisting or debarment order has been passed, and the blacklisting/debarment order passed against the firm itself. Learned counsel has also drawn our attention to the reply submitted by the petitioner to the email dated 24.02.2025, which is available as *Annexure P-9* to the writ petition and is dated 25.02.2025.

6. It has been stated by learned counsel for the petitioner that it was clarified to the Tendering Authority that only blacklisted or debarred firms were ineligible to participate and further that the tender conditions did not specifically prohibit participation in individual items that may have been blacklisted/debarred by the other departments.

7. We have considered the submissions made by learned counsel for the petitioner, however, we are convinced that the reasons given by the



respondents in declaring the petitioner technically non-responsive, do not call for any interference by us in this writ petition. Clause 16 of the Section VIII – Qualification Criteria in the subject e-tender is extracted herein below:-

“16. Certificate on self attested non-judicial stamp paper of Rs.10/- stating that there is no vigilance/ CBI case pending against the firm/supplier and the firm has not been blacklisted/debarred on the date of submission of the bid by any Central Govt./State Govt. department/hospital/PSUs etc. Bidder should also provide information regarding blacklisting/debarring of the firm in last three years (2021-22, 2022-23 and 2023-24) by any Government or Private organization/Hospital. In case of any false information provided or concealed the information by any bidder, the bidder shall be debarred for two years and EMD/Bid Security/Performance Security submitted by the firm shall be forfeited.”

8. The reason for declaring the petitioner’s bid technically non-responsive, can be found in the email communication dated 24.02.2025, which is based on certain information received by the Directorate in respect of blacklisting of two drugs being supplied by the petitioner-firm to Rajasthan Government.

9. From the reply submitted by the petitioner dated 25.02.2025, to the email communication dated 24.02.2025, it is more than apparent that the petitioner nowhere denies that the petitioner-firm was blacklisted by Rajasthan Medical Services Corporation Limited (“RMSCL”). The information received by the Tendering Authority was to the effect that the two drugs, namely, *Domperidone* and *Escitalopram* were blacklisted by RMSCL which is apparent from the perusal of the contents of the document available at Page 161 of the writ petition.

10. When we peruse the reply dated 25.02.2025 submitted by the petitioner to the email communication dated 24.02.2025, we find that there is no denial of blacklisting of the petitioner-firm in respect of the supply of the aforesaid



two medicines rather, a stand was taken by the petitioner that tender conditions did not specifically prohibit participation in individual items that may have been blacklisted/debarred by other departments.

11. In our considered opinion, it is immaterial as to whether a bidder/firm has been blacklisted/debarred in respect of individual items or the firm as a whole. The subject tender relates to supply of medicines and in case, any bidder or tenderer has been found to be blacklisted even in respect of individual items, in our considered opinion, he ought to have made the declaration as per the requirement of Clause 16 of the tender conditions. The stand taken by learned counsel for the petitioner that the tender conditions do not specifically prohibit participation in individual items that may have been blacklisted/debarred by other departments, in our considered opinion does not hold any ground.

12. Debarment of the firm as a whole or debarment of the same firm in respect of certain individual items will amount to breach of Clause 16 of the tender.

13. In the aforesaid view of the matter, we are not satisfied with the submissions made by learned counsel for the petitioner; rather the reason given for holding the petitioner firm technically non-responsive is not liable to be interfered with by the Court in this writ petition.

14. Further, we may also note that the impugned decision technically disqualifying the petitioner-firm was taken on 04.03.2025 and thereafter, even the financial bids were opened on 04.03.2025. We have also been informed that pursuant to the tender process, the letter of award was also issued on 02.05.2025. Such a delay after the entire process of the subject tender is over, also leads us to find an additional ground for not interfering with the



impugned decision of respondent.

15. Resultantly, the writ petition fails and it is hereby, dismissed along with pending applications.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

MAY 29, 2025/MJ