

GAHC010283562025



2026:GAU-AS:1959

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Writ Petition [Civil] no. 7345/2025

M/s Protech Telelinks, represented by its authorised signatory Bhupinder Pal Singh, having its registered office at SCO – 104, Sector 17, HUDA Jagadhri, Yamuna Nagar – 135001, Haryana, and its factory premises at Village – Mauza Ogli, Suketi Road, Kala Amb, District – Sirmour, Himachal Pradesh – 173030.

.....**Petitioner**

-VERSUS-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati, PIN – 781006, Assam.
2. Assam Medical Services Corporation Limited, represented by the Managing Director, having its registered address at Central Drug Ware House Campus, Patherquery, Narengi, Guwahati, Assam, PIN – 781026.
3. The Managing Director, Assam Medical Services Corporation Limited having its registered address at Central Drug Ware House Campus, Patherquery, Narengi, Guwahati, Assam, PIN – 781026.
4. The General Manager, Procurement, QC, IT, Logistics, Assam Medical Services Corporation Limited.

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Petitioner : Mr. G.N. Sahewalla, Senior Advocate, Mr. M. Sahewalla, Advocate

Respondents : Mr. D.P. Bora, Standing Counsel, Health & Family Welfare Department

Date of hearings : 03.02.2026, 05.02.2026 & 12.02.2026

Date of pronouncement of judgment : 12.02.2026

Whether the pronouncement is of the Operative part of the judgment ? :

Whether the full judgment has been Pronounced ? : Yes

JUDGMENT & ORDER

In this writ petition under Article 226 of the Constitution of India, assail is made to a Firm Debarment Notice bearing e-File no. : 509791/20138 dated 15.11.2025 [Annexure-XXIII] issued under the hand of the Managing Director, Assam Medical Services Corporation Limited [AMSCL], that is, the respondent no. 3. The Firm Debarment Notice has been issued on the ground of non-supply of thirteen nos. of drugs and seventeen nos. of Purchase Orders [POs] where supplies were found below 90%. By the Firm Debarment Notice, the petitioner has been blacklisted and debarred from participating in any tender for a period of 3 [three] years from the date of issuance of the impugned Final Debarment Notice in terms of Clause no. 5,

Sub-Clause – H, Pt. no. [ii] & Pt. no. [iii] and Sub-Clause – M for default in supply of thirteen nos. of essential drugs against seventeen nos. of Purchase Orders [POs] as per details mentioned in Annexure-A to the Firm Debarment Notice.

2. In order to understand the nature of challenge, the events leading to the issuance of the Firm Debarment Notice would require an exposition : By a Notice Inviting Tender [Framework Agreement] dated 09.02.2023, the AMSCL invited online tenders for empanelment of manufacturers for supply of essential drugs to various health facilities under the Department of Health & Family Welfare, Government of Assam by entering into a Framework Agreement valid for three years.

3. As per the Notice Inviting Tender [NIT] and the Bidding Document, the primary objective of the AMSCL is to act as the central procurement agency for procurement of essential drugs, surgical, consumables & equipment, etc. on behalf of all the directorates / body / agency / mission under the Health & Family Welfare Department and the Medical Education & Research Department of the Government of Assam. By the NIT, the AMSCL had intended to establish a Framework Agreement with manufacturers and the process of empanelment would be valid for a period of three years with option to further extend the period for another one year.

4. The petitioner is a company registered under the Companies Act, 1956 with its registered office at Yamuna Nagar, Haryana and its factory at Mauza Ogli, District – Sirmour, Himachal Pradesh. The petitioner company [hereinafter also referred to as 'the petitioner', at places, for easy reference] is a pharmaceutical manufacturer and supplier. It has claimed work experience in the field of supplying medicines and essential drugs to different Government and non-Government agencies across the country.

5. Finding itself eligible to submit bid as per the terms and conditions of the NIT dated 09.02.2023, the petitioner submitted its bid. Upon bid evaluation, the bid of the petitioner

was adjudged as a valid bid. On 28.07.2023, the office of the respondent no. 3 issued a Letter of Intent [LoI] to 185 nos. of bidders informing them that they had been empaneled, after the process of e-tendering, for entering into a Framework Agreement each with the AMSCL for three years for supply of essential drugs as per specification given in details in the annexures attached to the LoI. In the list of 185 empaneled vendors, the name of the petitioner company figured at Serial no. 185.

6. In the NIT, the terms and conditions for the Framework Agreement were set forth. The relevant terms and conditions were also mentioned in the LoI. It was stated that for every procurement process, the empaneled manufacturers would be asked to submit price of the item and Purchase Orders [POs] would be generated on the L-1 rate. Purchase Orders [POs] would be issued in the ratio : 60 : 25 : 25 to the L-1 : L-2 : L-3, subject to the condition that L-2 and L-3 would match the L-1 rate. If L-2 or L-3 would not match the L-1 rate, then the next lowest bidder would be offered to match the L-1 rate. However, if the value of purchase was less than Rs. 5.00 lakh, then the entire quantity would be awarded to the L-1 bidder. In case the Tender Inviting Authority / Procuring Authority would find that L-2 and L-3 would not be able to supply, then the Tender Inviting Authority / Procuring Authority would allot the quantity to the L-1 bidder. It was further mentioned that the Tender Inviting Authority / Procuring Authority would be at liberty to terminate the contract without assigning any reasons thereof either wholly or in part on thirty days' notice. The supplier would not be entitled for any compensation whatsoever in case of such termination.

7. The process of arriving at Contract Rate in the post-empanelment stage was laid down. On the aspects of delivery and inspection, it was laid down in the following manner :-

E. Delivery & Inspection

- i. Delivery Schedule as mentioned shall remain firm throughout the contract period. Cross Conditions such as "SUBJECT TO AVAILABILITY" "SUPPLIES WILL BE MADE AS AND

WHEN SUPPLIES ARE RECEIVED” etc., will not be considered under any circumstances and the bids of those who have given such conditions shall be treated as incomplete and Tender will be summarily rejected. Supplies should also be made directly by the bidder and not through any other agency.

ii. Point of Delivery: The ordered items shall be delivered at State Drug Ware House based on Guwahati or different District Drug Stores / Medical College Stores located in different districts of Assam in accordance to instructions in the order. All supplies will be scheduled for the period from the date of purchase order till the completion of the supply or, as would be stipulated in the Purchase Order. However, if the total value of the Purchase Order [not the value of individual item included in PO] will be less than equal to Rs. 1.00 lakh, the consignment to be delivered centrally at Guwahati.

iii. Purchase Order will be placed on the successful Bidder at the discretion of the AMSCL. If the Purchase Order quantity is less than 1,00,000 Tab / Cap, or less than 10,000 injections / bottles / tubes / tests in one supply order or PO [Purchase Order], the supplies will be allowed in trade pack where both generic & brand name should be there. However, the label should possess the required logogram & the price should not appear on the label.

iv. Delivery Period: Supply shall commence within best possible time from the date of Order and supply of full quantity shall be completed within 60 days from the date of issuing the order. In case supply is not started within contractual delivery period then Purchase Order may be cancelled.

* * * * *

vi. E Way Bill : AMSCL will not take any responsibility for providing the E-Way Bill. It will be the responsibility of supplier to arrange for Way Bill for dispatch of consignments to Assam.

8. On receipt of the LoI, the petitioner submitted a duly filled and signed agreement along

with the necessary annexure to the Tendering Authority on 31.07.2023. A Framework Agreement was entered into between the respondent no. 3 and the petitioner on 31.07.2023. The detailed list of the drugs quoted by the petitioner company for supply was mentioned in the annexures to the Framework Agreement. As per the Framework Agreement, the petitioner company was to supply the requisite items [drugs] at the designated locations in Assam as and when required and as per the instructions given in the Purchase Orders [POs] issued from time to time.

9. According to the petitioner, it was consistently executing the Purchase Orders [POs], issued from time to time. The petitioner has projected that most of the drugs ordered through the POs were satisfactorily supplied and delivered to the designated warehouses and locations as per the instructions given therein.

10. However on 02.07.2024, the respondent no. 4 made a communication to the petitioner in reference to six Purchase Orders [POs] issued between 02.02.2024 to 06.02.2024 to inform that the petitioner did not complete the supplies within the contracted delivery period, that is, 75 days from placing the POs and due to such delayed delivery, it had attracted the highest late delivery charges @ 2% of the value of delayed goods per week of delay or part thereof subject to a maximum of 10% of the total value. The petitioner was given 10 days' time to complete the supply from 02.07.2024 or else, penalties would be levied upon the petitioner as per Tender Clause no. 5, Sub-Clause – H, Pt. no. [i] 'Product Debarment'; Pt. no. [ii] 'Firm Debarment'; Pt. no. [iii] 'Forfeiture of Performance Security'; and Clause no. 5, Sub-Clause – M, 'Alternative Purchase'. Reference of the concerned Purchase Orders [POs] was made in Annexure-A to the said Letter. In response, the petitioner vide its Letter dated 03.07.2024 made an assurance that they would be able to complete the delivery within a period of 20 days approximately at all specified locations and apologized for any inconvenience caused for the delay.

11. Subsequent Letters as regards default in supply of drugs on the part of the petitioner

were also issued to the petitioner from time to time mentioning that since the items [drugs] ordered were essential in nature for needy patients in Government Hospitals of the State, their non-supply had resulted in non-availability and hindrances and such late delivery / non-delivery would attract debarment / blacklisting. Such Letters were issued on and from 12.09.2024 onwards. In most of the occasions, the petitioner was found to have responded in writing to request for additional time to complete the supply and not to proceed with any action for debarment or blacklisting. The Procuring Authority had extended the time period of supply on many occasions till 21.05.2025.

12. While extending the time period for supply in terms of the Purchase Orders [POs] beyond the stipulated delivery period, the Tendering Authority / Procuring Authority had also issued Show Cause Notices in the interregnum. The first Show Cause Notice bearing no. 509791/87773 was issued on 06.01.2025 followed by a second Show Cause Notice bearing no. 509791/115735 on 07.03.2025. A Final Show Cause Notice for default in supply was issued on 21.05.2025. By referring to the delivery status in the DVDMS Portal, as on that date and as per Annexure-A thereto, the Tendering Authority / Procuring Authority by the Final Show Cause Notice asked the petitioner to show cause as to why its products should not be debarred as per the penal clauses of the Tender, namely, Clause 5 : 'Terms & Conditions', Sub-Clause – H : 'Debarment / Blacklisting' for failure in execution of supply / non-supply / default in supply. The petitioner was asked to submit its reply within three days indicating that in the event of non-submission of reply, administrative as well as financial penalties would be levied. In response, the petitioner sent a mail on 11.06.2025 expressing regret for the inconvenience caused and seeking certain clarifications regarding validity of the Purchase Orders [POs]. On 01.07.2025, while giving extension of seven days to complete the supply of entire items mentioned in Annexure-A thereto, citing greater public interest, the Tendering Authority / Procuring Authority reiterated its proposed action in terms of Clause 5. In Annexure-A, reference of 39 Purchase Orders [POs] were made indicating the details of percentage of delivery made till 27.06.2025 against each PO. Extension for further ten days was made on 12.08.2025.

13. Another Show Cause Notice terming it as a Final Show Cause Notice was issued to the petitioner on 09.09.2025 proposing to take action, as indicated in the earlier Show Cause Notices, in terms of Clause 5 of the Terms and Conditions. Another extension of seven days to complete the supplies was given on 26.09.2025. On 07.10.2025, the petitioner made a request for extension of delivery period for another fifteen days. Again on 04.11.2025, another notice terming it as Final Notice was issued to the petitioner while granting seven days as last opportunity to complete the pending supply failing which there would be debarment of products / company.

14. It was in the backdrop of the afore-stated facts and circumstances, the impugned Firm Debarment Notice for non-supply of required quantity of ordered essential drugs came to be issued in reference to the earlier Show Cause Notices including the Final Notice -cum-Extension issued on 04.11.2025. It was mentioned that all efforts through the previous notices, show causes, extensions, official communications were made to get the supplies from the petitioner and enough opportunities were given to the petitioner to execute the supplies of essential drugs in terms of the POs in a time-bound manner. Yet, the petitioner had defaulted creating non-availability of essential drugs resulting in increase in expenditure. It was indicated that as per the DVDMS Portal, as on that date, there was total non-supply of thirteen nos. of essential drugs against seventeen nos. of Purchase Orders [POs]. Supplies were found below 80% in respect of eleven Purchase Orders [POs]. In case of six Purchase Orders [POs], supplies were found above 80% but below 90%. Supply in respect of one Purchase Order [PO] was not even started. Reiterating that the tender norms required supply of a minimum of 90% within the stipulated delivery period, the impugned Final Notice mentioned that in the greater public and patient interest, the petitioner company had been blacklisted and debarred from participating in any tender for three years from the said date as per Clause no. 5, Sub-Clause – H, Pt. no. [ii] & Pt. no. [iii] and Sub-Clause – M for default in supply of thirteen nos. of essential drugs against seventeen nos. of Purchase Order [POs], as per details mentioned in Annexure-A to the Firm Debarment Notice.

15. I have heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. M. Sahewalla,

learned counsel for the petitioner and Mr. D.P. Bora, learned Standing Counsel, Health & Family Welfare Department for all the respondents.

16. Mr. Sahewalla, learned Senior Counsel appearing for the petitioner has highlighted the various terms and conditions incorporated in the Bidding Document and the Framework Agreement. Specifically referring to Clause 5, Sub-Clause – H, he has contended that the petitioner company has been shortlisted for a nos. of items [drugs]. From time to time, Purchase Orders [POs] were issued with a stipulated delivery period of 75 days. Each Purchase Order [PO] pertained to one item [drugs] with delivery destinations. As per Sub-Clause [i] of Clause 5H, it is only in case of non-supply or incomplete supply i.e. less than 90% of the total ordered quantity for a particular item [drugs] within the agreed delivery period including the delayed penalty period or any extended delivery period, the Procuring Authority can resort to the action of cancellation of the Rate Contract at first and the empaneled vendor can be debarred from participating in any bidding process called by the Procuring Authority for a period of five years from the date of debarment for that particular item [drugs] only. It is only in the event an empaneled vendor is debarred for all the items where it has Rate Contract for less than three items or at least three items where it holds Rate Contract more than equal to three items, the action of blacklisting and debarment can be contemplated. The Procuring Authority cannot resort to the penalty of Firm Debarment without resorting to Product Debarment, that too, for at least three items [drugs] at first. On the factual front, he has contended that if all the Purchase Orders [POs] in respect of each of the items [drugs] are calculated, it would be evident that the petitioner company had delivered at least 90% in respect of all the items [drugs]. Therefore, there could not have been cancellation of any Rate Contract and resultantly, Product Debarment. As no such situation had arisen, the action taken in the form of Firm Debarment is clearly arbitrary and high handed and therefore, the impugned Firm Debarment Notice is liable to be set aside and the petitioner company shall be allowed to proceed for delivery of any remaining quantity of items [drugs], if any. He has further submitted that the issue arisen in this case is covered by a judgment of a Bench of co-ordinate jurisdiction rendered in W.P.[C] no. 6735/2025 [Nestor Pharmaceutical Limited and another vs. the State of Assam and five others].

17. Per contra, Mr. Bora, learned Standing Counsel, Health & Family Welfare Department representing the respondents has submitted that it would be evident from the Show Cause Notices, notices with regard to default in supply, extension notices, etc. issued to the petitioner company from time to time with regard to the Purchase Orders [POs] referred therein that there had been consistent failures on the part of the petitioner company in delivering the ordered items [drugs] at the destinations within the stipulated delivery periods and even, within the extended delivery periods. It was in such extreme compelling situations, there was no option left to the respondent authorities but to take the action of Firm Debarment against the petitioner. It is the public interest which is behind the action taken. He has submitted that the ordered items [drugs] are meant for needy patients admitted in various health facilities across the State and any case of non-supply or incomplete supply has serious consequences. He has contended that the case of the petitioner in Nestor Pharmaceutical Limited [supra] cannot be readily made applicable to the case of the petitioner herein without examining and comparing the facts and circumstances of the two cases at first. It is his contention that the action taken against the petitioner is as per the terms and conditions of the Bidding Document and the Framework Agreement and therefore, no interference is called for in respect of the Firm Debarment Notice dated 15.11.2025.

18. I have considered the submissions advanced by the learned counsel for the parties and have also gone through the materials on record.

19. As the actions taken through the impugned Firm Debarment Notice are based on various sub-clauses under Clause 5H of the terms and conditions of the Bidding Document, it is appropriate to refer to them at first. Clause 5G is with regard to 'Delivery, Shortage & Delay Penalty'. The various relevant sub-clauses of Clause 5G and Clause 5H are as under :-

G. Delivery, Shortage & Delay Penalty

i. In case there is delay in delivery beyond the stipulated period as mentioned in the purchase order, there shall be penal deduction @ 2.0% of the value of delayed goods per week of delay or part thereof subject to a maximum of 10% of the total order value. Once the maximum price reduction is reached, termination of the Purchase Order will be considered.

ii. In case alternate purchase is made, the incremental / additional cost, if any incurred for such purchase shall be recovered from the defaulter.

H. Debarment / Blacklisting for failure in execution of supply / non-supply / default in supply.

i. Product Debarment : In case of non-supply or incomplete supply [i.e. less than 90% of the total ordered quantity] by the approved manufacturer / importer [Firm] within agreed delivery period including the delay penalty period or any such extended delivery period then the concerned rate contract cancelled and manufacturer / importer [Firm] shall be debarred for participating in any bid called by the Authority for 5 years from the date of debarment for that item. In case the manufacturer / importer [Firm] supply 90% or more of the ordered quantity but fails to supply the entire quantity within the allowed delivery period then the firm shall be levied a penalty @ 10% of the value of the short supplied item and same shall be adjusted against the payment for supply.

ii. Firm Debarment : The firm shall be blacklisted and debarred from participating in any tender by the TIA or procuring agency for 3 [three] years if the company is debarred for all the items [where it has RC-‘Rate Contract’ for less than 3 items] or at least 3 items [where it holds RC-‘Rate Contract’ for more than equal to 3 items].

iii. Forfeiture of Performance Security :

[a] In case of Product Debarment : In addition to product debarment the performance security deposited by the supplier for that particular product shall be forfeited and apportioned towards financial penalty.

[b] In case of Firm Debarment : In addition to firm debarment entire performance security deposited by the supplier shall be forfeited and apportioned towards financial penalty.

iv. The order stands cancelled after the expiration of delivery period, and if the extension is not granted with or without liquidated damages. Apart from risk / alternate purchase action, the Bidder shall also suffer forfeiture of the performance security and shall invite other penal action like blacklisting / debarring disqualification from participating in present and future Bids of Bid Inviting Authority / Ordering Authority.

v. If the supplier, or any of its approved items gets debarred / banned / blacklisted in any state after entering into agreement with AMSCL it shall be the responsibility of the supplier to inform AMSCL without any delay about the same.

vi. The Successful Bidder shall not, at any time, assign, sub-let or hand over the contract or the benefit thereof or any part thereof to any person or persons whatsoever.

vii. It shall be the responsibility of the supplier for any shortages / damage at the time of receipt in warehouse. AMSCL is not responsible for the items supplied at the point of delivery, for which no order is placed.

20. Annexure-B of the Framework Agreement [Contract Agreement] listed 67 nos. of drugs quoted by the petitioner company. The Framework Agreement has mentioned that the petitioner company as the supplier had agreed to supply to the Procuring Authority the items

with specifications mentioned in the Schedule attached. The petitioner company as the supplier shall make supplies of the items on the basis of Purchase Orders [POs] placed on it from time to time by the Ordering Authorities specifying the quantities required to be supplied at the specified locations in the State of Assam.

21. From the materials brought on record by the petitioner company including the notices for default issued to it by the Procuring Authority, it reveals that more than fifty Purchase Orders [POs] were issued to the petitioner company during July – October, 2025. During the year 2024, more than thirty-five Purchase Orders were issued to the petitioner company for delivery. It was in the Extension Notice to complete the supply issued on 21.04.2025, mention was made of maximum thirty-eight nos. of Purchase Orders [POs] issued between the period from 02.02.2024 to 05.12.2024 stating that in respect of those Purchase Orders [POs] delivery were not made within the stipulated delivery period of 75 days mentioned in the Purchase Orders [POs]. It was mentioned that except eleven Purchase Orders [POs], percentage of delivery did not reach 90%. The thirty-eight Purchase Orders [POs] include more than one Purchase Orders [POs] for the same drug. For example, there were three Purchase Orders [POs] for 'Dopamine Injection 40 mg/ml' for different quantities. There were four Purchase Orders [POs] for 'Carboprost Trometahmine Injection mg/ml' for different quantities on different dates. For the drug, 'Piperacillin [A] Plus Tazobactam [B] Powder for Injection 4 g [A] Plus 500 mg [B]', there were six different Purchase Orders [POs] on different dates for different quantities. The Statement annexed to the Extension Notice dated 21.04.2025 showed different dates of delivery against different Purchase Orders [POs]. Similarly, the statement attached to the Extension Notice dated 01.07.2025 mentioned about thirty-nine Purchase Orders [POs] issued during the period from 17.04.2024 to 14.05.2025 for different drugs with a number of Purchase Orders [POs] for the same drug. The statement projected a similar scenario as like the Extension Notice dated 21.04.2025.

22. In the Firm Debarment Notice dated 15.11.2025, the respondent authorities to support its case have referred to delivery status of in respect of seventeen Purchase Orders [POs], as on 14.11.2025, uploaded in the Drug and Vaccine Distribution Management System. The

Drugs and Vaccine Distribution Management System [DVDMS] is an IT-based application used for managing the supply chain of drugs and vaccines. The contention of the respondents is controverted by the petitioner by stating that the Purchase Orders [POs] issued for each drug including the thirteen drugs enumerated in the impugned Firm Debarment Notice were as per the Rate Contract which had resulted pursuant to submission of the bid by the petitioner. It is contended that the supply was required to be made in terms with the firm rate arrived at. It is further contended that all the Purchase Orders [POs] against each Rate Contract for each drugs had to be taken together for ascertaining the total amount / percentage of supply made by the petitioner. The petitioner has taken a stand that Clause 5, Sub-Clause – H, Pt. no. [i] of the Bidding Document do not refer to Purchase Orders [POs] but refers to the total ordered quantity and it is only non-supply of 90% of the total ordered quantity would lead to Product Debarment. The petitioner has sought assert that in its case, if the cumulative supply of all the thirteen drugs as mentioned in the impugned Firm Debarment Notice dated 15.11.2025 is taken together on per drug basis, then the petitioner has a supply percentage of more than 95% for all the drugs except one i.e. Vecuromium Powder for Injection 4 mg, where the petitioner had supplied only to the extent of 67.34% as a whole. In support of its such contention, the petitioner has annexed a statement showing cumulative percentage of the debarred items of the petitioner. On perusal of the statement showing cumulative percentage of the debarred items, it is noticed that the petitioner has projected that it had achieved more than 90% delivery status in respect of thirteen items [drugs] as against the Purchase Orders [POs] issued in its favour from time to time. The claim of the respondents as regards delivery of lesser than 90% and the counterclaim of the petitioner as regards delivery of more than 90% in respect of the concerned thirteen items [drugs] are matter of factual determination. Irrespective of it, the issue of debarment is to be examined also in the context of the procedure followed for debarment of the company.

23. An order of debarment / blacklisting has the effect of preventing a person or an entity from the privilege and advantage of entering into lawful relationship with the State or an instrumentality / agency of the State. It is well settled that in the context of debarment / blacklisting of a person or an entity by the State or an instrumentality / agency of the State,

the requirement of a valid, particularized and unambiguous show cause notice is crucial due to the serious consequences of debarment / blacklisting and the stigmatization that accrues to the person / entity being debarred / blacklisted. Debarment / blacklisting visits the persons / entity with long lasting civil consequences for the further business prospects of the debarred / blacklisted person / entity.

24. The matters of Rate Contract and Parallel Rate Contracts involved in the empanelment process initiated by the NIT dated 09.02.2023 and envisaged by the terms and conditions in the Framework Agreement came up for consideration before a co-ordinate Bench in a writ petition, W.P.[C] no. 6735/2025 [Nestor Pharmaceuticals Limited and another vs. the State of Assam and five others], decided on 11.12.2025. In the said case, the interpretation with regard to Rate Contract and Parallel Rate Contract have been in deference to the provisions of the Assam Public Procurement Act, 2017, an Act enacted by the Assam State Legislative Assembly, and the Assam Public Procurement Rules, 2020 framed thereunder as the provisions therein are found applicable to the type of procurement carried out by the respondent authorities herein.

25. Analyzing the terms and conditions contained in Clause 5H[i] of the Bidding Document, it has been observed that upon issuance of a Purchase Order [PO] to the L-1 bidder or any other bidder who agrees to supply at the L-1 rate and if there is a failure to supply or there is an incomplete supply to the extent of less than 90% of the total ordered quantity, the Rate Contract for the essential drug would be cancelled and upon such cancellation, the manufacturer / importer firm shall be debarred from participating in any bid called by the authority for five years from the date of debarment for that essential drug / item. The cancellation of the Rate Contract would be qua the L-1 bidder or the Parallel Rate Contract qua the bidders who matches the L-1 rate. It has been observed that in a circumstance where there is no Parallel Rate Contract but only one Rate Contract and the said Rate Contract being cancelled, it would lead to a fresh procurement process for the purpose of ascertaining the lowest price for the item in question. It is under such circumstances, Clause 5H[i] of the Bidding Document imposes a penalty of Product Debarment in respect to the item for a

period of five years. Such penalty is in a form of deterrent so that the supplier does not fail to supply or supplies less than 90% of the total ordered quantity.

26. The Court has, interpreting the sub-clause [i] and sub-clause [ii] of Clause 5H of the Bidding Document, has proceeded to hold as under :-

40. Clause 5H[ii] of the Bidding Document pertains to 'Firm Debarment' i.e. the manufacturer or the importer with whom a rate contract has been entered into for less than three items when debarred for all the items or when the manufacturer / supplier is debarred at least for three items where it holds rate contract for more than or equal to three items. It is to be kept in mind that Firm Debarment is a more punitive action than a Product Debarment inasmuch as upon Product Debarment, only one item is debarred whereas in the case of Firm Debarment, the manufacturer as a whole is debarred irrespective of how many items it had a Rate Contract.

41. This Court finds it pertinent to observe that the recourse to Firm Debarment can only take place when a manufacturer is debarred for all items where it has a rate contract for less than three items and a manufacturer would be debarred when the manufacturer has a rate contract of more or equal to three items and three items have been debarred. It is apposite to observe that the items first have to be debarred by cancellation of the rate contract or in other words, Product Debarment precedes Firm Debarment.

42. It is therefore the opinion of this Court that without there being a Product Debarment upon cancellation of the Rate Contract for the item, the question of going into Firm Debarment is not envisaged on a conjoint reading of Clause 5H[i] and Clause 5H[ii] of the Bidding document.

27. In so far as the facts involved in the case of Nestor Pharmaceutical Limited [supra] are

concerned, the respondent authorities had resorted to taking action for Firm Debarment in terms of Clause 5H[ii] of the Bidding Document without carrying out Product Debarment in respect of the four essential drugs of the petitioner company therein by cancellation of the Rate Contracts against each of the four items. By a Debarment Notice dated 17.11.2025, the respondent authorities had blacklisted and debarred the petitioner company therein from participating in any tender for three years from the date of issuance of the Debarment Notice in terms with Clause 5, Sub-Clause – H, Pt. no. [ii] and Pt. no. [iii] and Sub-Clause – M for default in supply of four nos. of essential drugs against four nos. of Purchase Orders [POs]. The Court has further recorded that the respondent authorities had on the basis of non-supply of 90% of the ordered quantity in respect to one Purchase Order [PO] against each four essential drugs arrived at an opinion that the petitioner company therein had failed to supply 90%. The Court has observed that Clause 5[i] of the Bidding Document did not refer to Procurement / Purchase Order but referred to the total ordered quantity and non-supply of 90% of the total ordered quantity would lead to Product Debarment. The consolidated table prepared by the petitioner company there had revealed that though the petitioner company did not complete 90% in respect to one Purchase Order [PO] against each of the four items but the overall supply it had made against the total ordered quantity against each four items was much more than 90%. Observing so, the Court has observed that the question of cancellation of the Rate Contract or Product Debarment in terms of Clause 5H[i] of the Bidding Document did not arise and at the most, the respondent authorities could have resorted to Clause 5G[i] of the Bidding Document to levy the penalty of 10% of the value of the short-supply by adjusting the same against the payment for the supply or could have made alternate purchase. The Court has further held that in no case, the question of Product Debarment or Firm Debarment had arisen in the facts and circumstances of the case.

28. Reverting back to the facts of the case in hand, the Show Cause Notices and the Notices for default in supply and extension of time, as mentioned above, were found to have emphasized on the different Purchase Orders [POs], not specifically on the ordered items [drugs] therein. In a same Notice, more than one Purchase Orders [POs] were referred to and accordingly, percentage of supply were mentioned against each individual Purchase

Order [PO]. There were no mention of non-supply or incomplete supply on the basis of total ordered quantity of each items [drugs]. Moreover, different Notices made mention of different Purchase Orders [POs] of different periods. Resultantly, no consistency is found in the Notices when considered in seriatim beginning from 02.07.2024 to the Firm Debarment Notice issued finally on 15.11.2025. In such obtaining fact situation, the Notices were found lacking specific particulars vis-à-vis the provision contained in Clause 5, Sub-Clause – H, Pt. no. [i]. The impugned Firm Debarment Notice dated 15.11.2025 was not issued for the purpose of Product Debarment as per Clause 5, Sub-Clause – H, Pt. no. [i].

29. The law is well settled that a decision rendered by a co-ordinate Bench is binding on the subsequent Benches of equal or lesser strength. The law is settled that a decision of a Bench of co-ordinate jurisdiction is to be followed and respected by another Bench of similar jurisdiction. Judicial discipline envisages that a co-ordinate Bench should follow the decision of an earlier co-ordinate Bench and no decision is to be arrived at contrary to or inconsistent with the law laid down by the co-ordinate Bench. It is admitted at the Bar that there is no appeal pending, as on date, against the Judgment delivered in W.P.[C] no. 6735/2025. In such situation, a co-ordinate Bench has to proceed to decide matters on the basis of the law as it stands, as the Judgment and Order rendered in the case of Nestor Pharmaceutical Limited [supra] has vested, as on date, attaining a status of finality.

30. When the basis of challenge made to the Firm Debarment Notice issued in the case of Nestor Pharmaceuticals [supra] and the basis of interference are compared with the impugned Firm Debarment Notice involved in the present case and the basis on which interference has been sought for, this Court is of the considered view that there is similarity in the two cases. The issue is settled that as per the terms and conditions of the Bidding Document and the Framework Agreement that there cannot be Firm Debarment without being preceded a Product Debarment upon cancellation of the Rate Contracts or Parallel Contracts for at least for three items [drugs]. In the case in hand, the respondent authorities have resorted to take action for Firm Debarment in terms of Clause 5, Sub-Clause – H, Pt. no. [ii] of the Bidding Document without carrying out Product Debarment for at least three

essential items [drugs] by cancellation of the Rate Contracts or Parallel Rate Contracts against at least those three essential drugs.

31. In view of the facts involved in the case, as noted above, and the circumstances leading to the impugned action of Firm Debarment qua the clauses in the Bidding Document, the action of the respondent authorities in issuing the Firm Debarment Notice dated 15.11.2025 without being preceded by any action of Product Debarment / Rate Contract is to be held as arbitrary and not sustainable. Accordingly, the impugned Firm Debarment Notice is set aside and quashed. As a result, all other subsequent and consequential actions taken on the basis of the Firm Debarment Notice dated 15.11.2025 are also termed as invalid.

32. Clause 5, Sub-Clause – G has prescribed for penal deduction and termination of Purchase Order. It is made clear that this Court has not made any observation as regards any delivery beyond stipulated period as mentioned in any Purchase Order [PO] and any penalty imposed, if any, on the ground of delayed delivery of items [drugs] earlier to the impugned Firm Debarment Notice.

33. With the observations made and findings reached above, the writ petition is allowed to the extent indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant

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