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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 234/2025, I.A. 14870/2025 & I.A. 14871/2025**

Date of Decision: **02.07.2025****IN THE MATTER OF:**

MEDIPOL PHARMACEUTICAL INDIA PVT LTD THROUGH ITS
DIRECTOR MR. SANJAY AGARWALPetitioner

Through: Mr. Rajesh Yadav, Sr. Adv. with Mr.
Samman Vardhan Gautam, Ms.
Khushi Sharma and Mr. Priyam
Tiwari, Advs.

versus

UNION OF INDIA AND ANR.Respondents

Through: Mr. Siddhartha Shankar Ray, CGSC
with Ms. Smritika Kesri, Adv.

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

The instant petition under Section 9 of the Arbitration and Conciliation Act, 1996 [**'the Act'**] seeks injunction against the respondents with respect to the order of debarment/ blacklisting dated 01.05.2025 till an Arbitral Tribunal is constituted and the application under Section 17 of the Act is decided by the Arbitral Tribunal.

2. The facts manifest that the petitioner participated in e-tenders dated 28.02.2022 and 09.05.2023, floated by respondent No.2, inviting online bids for supply of PVMS No. 010633, Clarithromycin 500 mg Tab (*hereinafter referred to as "Clarithromycin"*) and of PVMS No. 012491, Cough Sedative



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Syp 5 ml containing Chlorpheniramine 2.5 mg, Guaphenesin 100 mg, Noscapine 15 mg, Sodium Citrate 60 mg in flavoured base, bottle of 100 mg (*hereinafter referred to as "Noscapine"*). The petitioner was termed to be the L1 bidder. The petitioner, thereafter, entered into a contract with the respondents for the supply of the aforementioned medicines. The stipulated period of the first contract had commenced from 30.11.2022 to 29.11.2024, and of second contract had commenced from 17.08.2023 to 16.08.2025.

3. Thereafter, *vide* letter dated 04.12.2024 of Deputy Drugs Controller, Central Drugs Standard Control Organisation, the petitioner was directed to recall a batch of *Clarithromycin* as the same had allegedly been declared as '*Not of Standard Quality*' by the Central Drugs Laboratory, Kolkata. It appears that the petitioner, thereafter, recalled the aforesaid batch.

4. Reiterating the same, respondent No.2 issued a letter dated 25.01.2025 stating therein, that the test report dated 28.11.2024 issued by the Government Analyst, CDL, Kolkata, declaring *Clarithromycin* as '*Not of Standard Quality*' as the sample allegedly did not conform to prescribed I.P. with respect to dissolution, and instructed the petitioner to refund whole cost of regular quantity of 142700, amounting to Rs. 15,80,659/-, either by cheque or demand draft, latest by 28.02.2025.

5. It appears that respondent No.2 issued a show cause notice (SCN) dated 21.03.2025 *vide* email dated 25.03.2025, directing the petitioner to explain as to why the petitioner should not be debarred for two years for the entire range of drugs as per their policy and Office Memorandum dated 02.11.2021. It is also pertinent to mention herein that along with the SCN, respondent No.2 sent an unclear and illegible copy of alleged Test Report dated 05.08.2024, whereby, sample of *Noscapine*, manufactured by the



petitioner, has been declared as '*Not of Standard Quality*' by Government Analyst, Drug Testing laboratory, Madurai, as the sample did not confirm to Label Claim with respect to content therein. The petitioner appears to have submitted a reply dated 19.04.2025.

6. Subsequently, the petitioner, thereafter, was debarred for two years by the respondent no.2 *vide* order dated 01.05.2025.

7. It is against the said debarment order that the petitioner has filed the instant petition. Further, the petitioner has also invoked the arbitration clause and issued a notice under Section 21A of the Act.

8. Mr. Rajesh Yadav, learned senior counsel appearing for the petitioner, takes this Court to Clause 3 of Part-III of the Standard Conditions of Request for Proposal of notice inviting e-tender and submits that there exists a valid arbitration clause. He further submits that till the Arbitral Tribunal is constituted, the rights and interests of the petitioner need to be adequately protected.

9. Learned senior counsel also submits that if the policy of the respondent No.2 is carefully perused, it would indicate that at the first instance of any complaint against the drugs manufactured by the petitioner, it can direct the supplier to replace the sub-standard medicine. Therefore, according to Mr. Yadav, learned senior counsel, respondent No.2 ought not to have been taken such a drastic step of blacklisting/ debarment.

10. He further contends that the reply to the SCN was furnished to respondent No.2 and the petitioner was expecting a personal hearing. It is then stated by the petitioner that without affording the same, the impugned order has been passed. He, therefore, contends that till the Arbitral Tribunal



is constituted, the Court may consider staying the operation of the impugned order.

11. The submissions made on behalf of the petitioner are vehemently opposed by Mr. Siddhartha Shankar Ray, learned CGSC, appearing for the respondents. He has filed a counter affidavit on behalf of the respondents and contends that as per clause 3.5.1 of the Defence Procurement Manual (DPM), 2009, when the misconduct of a firm or its continued poor performance is found, the same justifies the imposition of a ban on business relations with the firm. He submits that the only mandatory requirement is to afford an opportunity of hearing to the petitioner and to take into consideration all the facts and circumstances. He, then, contends that in the instant case, it is not denied that the opportunity of hearing was not extended.

12. Mr Ray, learned CGSC further submits that it is the continued poor performance of the petitioner noticed by respondent No.2 which has led to the order dated 01.05.2025. He justifies the impugned debarment order and submits that, looking at the nature of the goods supplied, which relate to the essential medicine, the impugned order does not call for any interference of the Court.

13. I have heard learned counsel appearing for the parties and have perused the record.

14. The Clause 3.5.1. of DPM, 2009 reads as under:

“3.5.1 Ban on dealings: When the misconduct of a firm or its continued poor performance justifies imposition of ban on business relations with the firm, this action should be taken by the appropriate authority after due consideration of all factors and circumstances of the case and after giving due notice.”



15. Further, the impugned order dated 01.05.2025 is also extracted as under:

"1. Refer to this office 5567/DGAFMS/DG-2/PCMC/Medipol/2025 dt 29 Jan & 21 Mar 2025 and your letter No Nil dated 19 Apr 2025.

2. Contention of your firm is not agreed to as repeated failure in quality of drugs makes your firm liable to be debarred for two years for future business dealing with this office for entire range of products as per extant SoP of this office. Kindly be informed that RFP for instant drug is governed by the provisions of DPM 2009 & its supplement 2010. As per Para 3.5.1 of DPM 2009, any firm which has lacked in performance may be banned for future procurement. In this connection please also refer to Para 5 (a) & (c) of DoE, MoF O.M. No. F.1/20/2018-PPD dated 02 Nov 2021.

3. Replacement of defective batches is also not acceptable. Only equivalent amount of entire defective batch needs to be deposited by your firm or recovered from the pending bills of your firm as per extant policy of this office. In this connection, your attention is drawn to Para 12 of Rate Contract No 51245/DGAFMS/DG-2/RC-Cough Sedative Syp/22-23/332/86 dated 17 Aug 2023 & 51153/DGAFMS/DG-2/RC-Clarithromycin 500 mg/21-22/483/159 dated 30 Nov 2022, wherein it has clearly brought out that in case of defective, the cost of the entire ordered qty of the batch declared defective would be recovered from the firm.

4. However, your firm may challenge the test report and take the matter with appellate authority i.e. CDL Kolkata under Section 25 of the Drugs and Cosmetic Act 1940 for re-testing if, your firm is not agreed with the verdict of the first test report but punitive action in such case may not be held up because of the same. However, as and when the report of re-testing is received from appellate authority, the debarment status of the firm may be reviewed accordingly by this office.

5. In view of the above, your firm is debarred for two years as per extant policy and instructions have been issued that neither any fresh tender nor supply order will be issued in favour of your firm for any drugs during the validity of the debarment period or recovery of the entire cost of the defective batches of subject drugs from your firm, whichever is later. However, Rate Contracts of any other drugs concluded before debarment shall not be affected by the debarment order. In case of any existing Rate Contract of other drugs, the Rate Contract will hold good till such time it is valid but such Rate Contract will not be renewed on expiry during the



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debarment period. In this connection please refer to Para 5 (a) & (c) of DoE, MOF O.M. No. F. 1/20/2018-PPD dated 02 Nov 2021”

16. If the impugned order is perused on the anvil of Clause 3.5.1 , the same would indicate that respondent No.2 had considered the replies submitted by the petitioner, coupled with the test report. While rejecting the contentions of the petitioner, respondent no.2 observed that the petitioner, if has any grievance, has the liberty to challenge the test report and take up the matter with an appropriate authority, i.e., Central Drugs Laboratory (CDL), Kolkata, under Section 25 of the Drugs and Cosmetics Act, 1940 for re-testing. It was further observed that the debarment is necessary in view of the extant policy and instructions.

17. Consequently, the Court finds that an opportunity of hearing was extended to the petitioner and his reply has also been considered. On due consideration, if respondent No.2 found that the petitioner company was in continued poor performance, the same, *prima facie*, justified the debarment for a period as stipulated in the impugned order unless the same is interfered with by the Arbitral Tribunal after affording an adequate opportunity of hearing to both parties.

18. The Court, however, finds that till the legitimacy of the impugned order dated 01.05.2025 is fully tested by the Arbitral Tribunal, the petitioner should not be subjected to any further debarment by any other firm/company/government with which the petitioner may have been engaged.

19. At this stage, it is thus clarified that the debarment of the petitioner for two years by the respondents is not interfered with. However, the petitioner shall not be debarred by any other Government Department from any future



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participation on the basis of the impugned debarment. Further, the same shall not result in the discontinuation of the petitioner's ongoing contracts.

20. All the submissions made on behalf of the petitioner and the respondents, however, shall be considered by the Arbitral Tribunal while adjudicating the main dispute.

21. With the consent of the parties, the Court also deems it appropriate to appoint an Arbitrator who shall adjudicate the dispute that has arisen with respect to the termination of the petitioner's contract.

22. Accordingly, Ms. Mitakshara Goyal (Mobile No.:-9958966077, e-mail id: mgoyal@svarniti.com) is appointed as the sole Arbitrator.

23. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Act.

24. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the Act; or as may otherwise be agreed to between the parties and the Sole Arbitrator.

25. The parties shall share the Arbitrator's fee and arbitral cost, equally.

26. All rights and contentions of the parties in relation to the claims/counterclaims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

27. Let a copy of the said order be sent to the Arbitrator through the electronic mode as well.

28. Accordingly, the instant petition stands disposed of.

JULY 02, 2025/p/mj

PURUSHAINdra KUMAR KAURAV, J

Click here to check corrigendum, if any