

File No.- BMSIC/10050/11-2023/4990

Date: 18/09/2023

Order

M/s Om Surgical Industries, situated at 7.7 KM Stone, V & PO, Titoli, Jhind Road, Rohtak-124001, Haryana filed a writ petition before Hon'ble Patna High Court, i.e. C.W.J.C No- 8609 of 2023 against The State of Bihar and Others in the matter of Blacklisting for its quoted product Absorbent Cotton Wool IP 500gm, against Tender No- BMSIC/MEDICAL DEVICES/CONSUMABLES/21-12.

The Hon'ble Patna High Court in C.W.J.C No- 8609 of 2023 dated 23-06-2023 has disposed of the petition with the following directions:-

"Writ petition is allowed, reserving liberty to the Managing Director to pass a fresh order after due consideration of all the three showcause notices and reply of the petitioner and proceed to pass speaking order after due consideration of each of the contention stated by the petitioner in his reply and communicate the decision. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

The petitioner is also at the liberty to file additional material or reply, if any, within a period of one week from today.

The managing director is hereby directed to take note of the additional material or statement of facts which would be filed, if any by the petitioner."

In light of the judgment passed by Hon'ble Patna High Court in C.W.J.C No- 8609 of 2023 dated 23-06-2023, BMSICL issued notice to M/s Om Surgical Industries to appear before M.D., BMSICL regarding hearing in this matter on 26.07.2023 vide Letter No. - 3167 dated 19-07-2023. The firm, through its authorized representative, appeared and submitted its representation on 26.07.2023, which was considered in light of documents i.e agreement, lab test reports. The facts related to the cases are as follows:

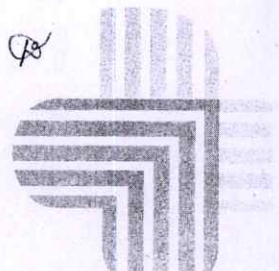
1. M/s Om Surgical Industries, situated at 7.7 KM Stone, V & PO, Titoli, Jhind Road, Rohtak-124001, Haryana has participated tender reference no.- BMSIC/MEDICAL DEVICE/CONSUMABLES/21-12 and was issued a Letter of Intent (LoI) vide letter no. BMSIC/40030/104-2022/3981 dated 10-09-2022 for submitting the requisite documents, security deposit and to execute the Rate-Contract within 10 days from the date of receipt of LoI, i.e by 19-10-2022, for the below mentioned products:-

(i) Cap @ 0.66/-.

(ii) Cotton Absorbent Cotton Wool IP 500gm Net @ 98.74/-

Subsequently, the firm, M/s Om Surgical Industries, was issued Purchase Orders for above said surgical items vide letter no. 6404 dated 08-11-2022.

2. The following batches of Cotton Absorbent Cotton Wool IP 500gm Net supplied to Patna, Purnia and Muzaffarpur warehouses of BMSICL, against the above mentioned purchase order, has been declared as 'Not of Standard Quality' as per BMSICL empanelled Quality Testing Laboratories test report:-



S.No	Name of the item	Batch No
1.	Absorbent Cotton Wool IP 500 gm	1911
2.		1910
3.		1901~D201220221623
4.		1904
5.		1903
6.		1899~D201220221044
7.		1913
8.		1912
9.		1904~D281220221453
10.		1903~D281220221453
11.		1902~D281220221453
12.		1901~D201220221044
13.		1914
14.		1906
15.		1900~D201220221044
16.		1902~D201220221623
17.		1916
18.		1902
19.		1899
20.		1905
21.		1909
22.		1907
23.		1900
24.		1901
25.		1908

3. Thus BMSICL, vide **Letter No. 8624 dated 03.02.2023**, issued Show Cause Notice to the firm, for 08 failed batches of Cotton Absorbent Cotton Wool IP 500gm Net, directing to submit its reply in context to the Clause 24(e), 24(f), 24(g) and 27 B (3) of Standard Bid Document, within 07 days of receipt of letter. The said firm on 14-02-2023 submitted its reply only in the light of Clause 24(f).
4. Again for 17 failed batches of Cotton Absorbent Cotton Wool IP 500gm Net, BMSICL vide **Letter No- 9063 dated 17-02-2023**, issued another Showcause Notice to the said firm directing to replace and submit reply in context to the Clause 24(e), 24(f), 24(g) and 27 B (3) of Standard Bid Document, within 07 days of receipt of letter. The said firm on 25-02-2023 submitted its reply only in the light of Clause 24(f).



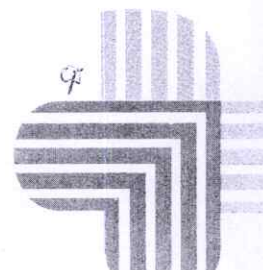
5. Further 02 batches of Cotton Absorbent Cotton Wool IP 500gm Net was found to be Not Of Standard Quality and hence BMSICL vide Letter No- 9975 dated 15-03-2023, issued Showcause Notice to comply to the conditions mentioned in Clause 24(e), 24(f), 24(g) and 27 B (3) of Standard Bid Document, where the firm replied to challenge the report of NABL Labs as they are not satisfied with the BMSICL empanelled lab test report.
6. None of the above replies submitted by the firm complies with the provisions mentioned in Clause 24(e), 24(g) and 27 B (3) of Standard Bid Document. The replies were found to be unsatisfactory. It is pertinent to note that different sample of the product, Absorbent Cotton Wool IP 500gm, supplied by M/s Om Surgical Industries, were regularly declared of 'Not of standard quality' by BMSICL empanelled laboratories in different lab test reports.
7. Timely supply of MEDICAL DEVICES/CONSUMABLE of good quality, involving procurement as well as logistics management, is of critical importance in health system of State of Bihar. In order to ensure quality products for the people of State of Bihar, BMSICL asks for test/ analysis reports furnished by independent NABL Accredited Drugs Testing Laboratory/Central Drug Testing Laboratory/In House Quality Control Laboratory of all the batches of the MEDICAL DEVICES/CONSUMABLE supplied. In addition to pre, post-shipment quality tests are also required, especially in the case of purchase of MEDICAL DEVICES/CONSUMABLE. The objective of post shipment quality test is to ensure that MEDICAL DEVICES/CONSUMABLE received by BMSICL is of the standard quality required for their intended use. This assures the MEDICAL DEVICES/CONSUMABLE complies with the standards applied by the procurement agency.
8. As per Clause 24(c) of Bid Document, "Random samples of each supplied batch will be chosen at the point of supply or distribution/storage points for testing. The samples will be sent to different BMSICL empanelled laboratories."

As per Clause 27 (B) (1) of the bid document, "each and every batch of MEDICAL DEVICES/CONSUMABLE supplied by the supplier shall be subjected to quality test by the Empanelled laboratories as per the procedure adopted by BMSICL."

As per Clause 20(a) of the Bid Document, "The MEDICAL DEVICES/CONSUMABLE supplied by the successful bidder shall be of the Standard Quality and shall comply with the specifications, stipulations and conditions specified under Drugs and Cosmetics Act and Rules there under and also should confirm to Terms and Conditions laid down in NIT and Rate Contract/agreement."

Clause 24(e) of the Bid Document states, "The MEDICAL DEVICES/CONSUMABLE shall be of standard quality throughout the shelf life period of the item. Samples can be drawn for quality testing periodically throughout the shelf life period. If the sample is declared to be "NOT OF STANDARD QUALITY" or spurious or adulterated or misbranded, such batch / batches will be deemed to be rejected goods and action will be taken as per tender clause."

Clause 24(f) of the Bid Document states that, "if the product / sample fail in quality test, every failed batch shall be taken back by the supplier at their own cost and BMSICL shall not be responsible for any damage during this period."



Clause 27 (B) of the bid document deals with blacklisting for Quality Failure/Quality test by the empanelled laboratories of BMSICL. Clause 27 B (3) of Bid Document, mentioned in the Show Cause notice, clearly states that "if 3 batches of a particular item supplied by the supplier is reported to be failing in ASSAY content (above 50% but below prescribed limit) and/or other parameters, then the particular item of the firm shall be blacklisted for minimum of two years besides forfeiture of Security Deposit of that particular product(s)".

9. As per Clause 24(g) of Bid Document, "if a sample is found as not of standard quality by the Tender Inviting Authority, the distribution of NSQ batch will be frozen. The bidder will be liable for appropriate action as per the tender conditions and also for other legal actions under the Drugs & Cosmetics Act & Rules. The Tender Inviting Authority, at his discretion may terminate the Contract and in case of such termination, the supplier shall be liable for all losses sustained by the Tender Inviting Authority, which may be recovered from the Security Deposit made by the Supplier and / or any other money due or becoming due to him. In the event of such amounts being insufficient, the balance may be recovered from the Supplier as per the provisions of Law."
10. Thus in light of the provisions contained in the tender document, the firm, **M/s Om Surgical Industries**, situated at 7.7 KM Stone, V & PO, Titoli, Jhind Road, Rohtak-124001, Haryana is hereby blacklisted for its quoted product **Absorbent Cotton Wool IP 500 gm** for a period of two (02) years from the date of issue of this order apart from forfeiture of security deposit of that particular product. The unexecuted Purchase Orders issued earlier shall also stand cancelled.


(Managing Director)

Memo No. - BMSIC/10050/11-2023/4990

Date: 18/09/2023

Copy to: The Managing Director, **Om Surgical Industries**, for information and action.


(Managing Director)

Memo No.- BMSIC/10050/11-2023/4990

Date: 18/09/2023

Copy to:

1. The Additional Chief Secretary, Department of Health, Govt. of Bihar for kind information please.
2. Executive Director, State Health Society, Bihar for kind information please.
3. The CGM (Supply Chain), General Manager (Logistics), General Manager (Finance), BMSIC for information and necessary action. GM (Logistics) is requested to ensure publication of this order on the official website of BMSICL and Notice Board as well.
4. MD, All Medical Corporations and Procurement Agencies all over India for information and necessary action please.
5. CEO, Government e- Marketplace for information and necessary action please.
6. All Civil Surgeons, Bihar and Superintendents of all Govt. medical colleges and hospitals of Bihar for information and necessary action.


(Managing Director)

