

File No- BMSIC/40025/33-2021/6638

Date: -16/11/2022

Order

M/s Kras Pharmaceuticals Pvt. Ltd having its head office at C-15, phase II, Industrial Area, Fatuha-803201, Patna, Bihar has participated in Tender No- **BMSIC/DRUGS/19-12** and was issued a Letter of Intent (LoI) vide letter no.- BMSIC/40025/33-2021/9097 dated 23-02-2021 for submitting the requisite documents, security deposit and to execute the Rate-Contract for the said drug within 15 days from the date of receipt of LoI, for the below mentioned products:-

- (i) Ampicillin 250mg Capsule/Tablet. (Rs. 0.73/- per Unit).
- (ii) Amoxycillin 500mg Capsule/Tablet. (Rs.1.35/- per Unit).
- (iii) Co-Trimoxazole Tablet (80mg+400mg) (Rs. 0.61/- per Unit).
- (iv) Co-Trimoxazole Tablet (160mg+800mg). (Rs. 1.15/- per Unit).
- (v) Co-Trimoxazole Oral Liquid (40 mg+200 mg/5 ml), Oral Solution 50ml Bottle. (Rs. 6.34/- per Unit). (L-1 Bidder)
- (vi) Loperamide Tablet, 2mg. (Rs. 0.16/- per Unit). (L-1 Bidder).

Subsequently, the firm M/s Kras Pharmaceuticals Pvt. Ltd was issued Purchase Order for above mentioned drug items vide Letter No. - BMSIC/40025/33-2021/695 dated 30-04-2021. The firm didn't supply the ordered quantity against above mentioned Purchase Order, but asked for extension of delivery schedule vide mail dated 02-08-2021 stating that, *"In reference of above PO we have received SIX items as this one is first PO against reference Tender, So we have to undergo for Fresh designing, artwork, cylinders for foil, inner & outer cartoon. Due to delay in Packing Material our Production is get delayed, Because he is doing his work with the norms of this Pandemic Situation related to Man Power and Working hours and other appropriate norms during lock down period from April to June 2020. Even the availability of raw material is not as reachable as before, which has also delayed the supply schedule, though we have supplied a few quantities of a few items, earlier on 28.06,21. No we are like to supply the rest quantity and rest medicines at your warehouse within 20days."* BMSICL, vide Letter No- BMSIC/40025/33-2021/3524 dated 06-08-2021 granted extension for the supplies received against Po No- BMSIC/40025/33-2021/695 dated 30-04-2021.

The firm, M/s Kras Pharmaceuticals Pvt. Ltd, was again issued a Purchase Order for above mentioned drug items vide Letter No- BMSIC/40025/33-2021/6385 dated 02-12-2021, BMSIC/40025/33-2021/9324 dated 02-03-2022 & BMSIC/40025/33-2021/3365 dated 22-08-2022. The firm didn't supply the ordered quantity against Po no- BMSIC/40025/33-2021/6385 dated 02-12-2021 and hence, M/s Kras Pharmaceuticals Pvt. Ltd was issued show cause notices vide mail dated 14-03-2022 & 29-09-2022.

The firm, M/s Kras Pharmaceuticals Pvt. Ltd replied vide mail dated 21-03-2022 & 31-05-2022 stating that, *"In reference of above PO we have received three/Four items and unable to supply the same in schedule time. As this item is delayed due to the unavailability of Raw material and steep hike in raw material, because of COVID 19. Even the availability of raw material is not as reachable as before. And now the situation is so worst as of those days and we are in process of procuring the raw material in huge loss just for the sake of needy people of Bihar and hope we will get it very soon in our hand, in the while it has affected the delivery schedule. And in that respect the Govt. of India, Ministry of Finance considering all relevant points and entire position of the case has also taken cognizance of it and declared vide office memorandum dated 19 February 2020.- That the disruption of the supply chains due to spread of corona virus spread in China will be covered in the Force Majeure Clause."*

Corona Virus impact is continuously hampering the entire system in that period, which compel to overcome with a lot of practical problems, Hence, it makes a delay in supply schedule. As these items are



delayed due to the unavailability of Raw material and steep hike in raw material, because of COVID 19 Even the availability of raw material is not as reachable as before. And now the situation is not so worst as of those days and we are in process of procuring the raw material in huge loss just for the sake of needy people of Bihar. We are unable to supply Ampicillin Capsule 250 mg & Amoxicillin Capsule 500mg capsules due to 60% to 70% price hike in raw material, respectively." And the firm has not supplied the ordered quantity as yet.

According to Force Majeure Clause (FMC), "A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organization only. In such a situation, the purchase organization is to communicate with the supplier along similar lines as above for further necessary action. **If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.**"

Hence, in view of the provisions in the contract relating to Force Majeure Clause, the rate Contract of:-

- Ampicillin 250mg Capsule/Tablet. (Rs. 0.73/- per Unit).
- Amoxycillin 500mg Capsule/Tablet. (Rs.1.35/- per Unit) with M/s Kras Pharmaceuticals Pvt. Ltd., C-15, phase II, Industrial Area, Fatuha-803201, Patna, Bihar is hereby terminated with immediate effect apart from forfeiture of security deposit. The non-executed purchase orders for Ampicillin 250mg Capsule & Amoxycillin 500mg Capsule issued earlier shall also stand cancelled.

(Managing Director)

Memo No. - BMSIC/40025/33-2021/ 6638

Date: - 16/ 11 /2022

Copy to: The Managing Director, M/s Kras Pharmaceuticals Pvt Ltd for information and needful action.

(Managing Director)

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Date: - 16/ 11 /2022

Copy to:

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

(Managing Director)

