

File No- BMSIC/40025/66-2021/6591

Date: -15/ 11 /2022

Order

M/s Healer's Lab, having its Head Office at E-100, Phase-II, Transport Nagar, Kanpur Road, Lucknow-226001, have participated in Tender No- BMSIC/DRUGS/20-10 and was issued a Letter of Intent (LoI) vide letter no.- BMSIC/40025/66-2021/9560 dated 09-03-2021, for submitting the requisite documents, Performance security deposit and to execute the Rate-Contract for the following drugs:-

- (i) Amlodipine 5 mg Tablet
- (ii) Atenolol 50 mg Tablet
- (iii) Glimepiride, 1 mg Tablet.
- (iv) Glimepiride 2 mg Tablet
- (v) Levocetirizine Dihydrochloride 5 mg, Tablet
- (vi) Levofloxacin 750 mg Tablet
- (vii) Linezolid 600 mg Tablet
- (viii) Ofloxacin 200 mg Tablet
- (ix) Telmisartan, 40 mg Tablet

Subsequently, the firm M/s Healer's Lab was issued Purchase Orders for 4, 00,000 units of Levofloxacin Tablet 750 mg, vide Letter No. - BMSIC/40025/66-2021/1643, dated 05-06-2021. The firm didn't supply the ordered quantity against above mentioned Purchase Order, but asked for extension of delivery schedule vide mail dated 26-07-2021.

BMSICL, vide Letter No. 3302 dated 05-08-2021, granted extension for 25 days for the supply of Levofloxacin Tablet 750 mg. The firm supplied only 2, 00,000 units.

In view of the above, M/s Healer's Lab was issued a show cause notice, vide Letter No. 4256, dated 06-09-2021.

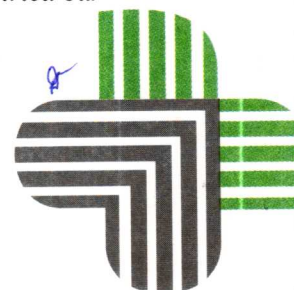
The firm, M/s Healer's Lab, was again issued a Purchase Order for 10, 00,000 units of Levofloxacin Tablet 750, vide Letter No. BMSIC/40025/66-2021/6877, dated 20-12-2021. The firm didn't supply the ordered quantity. Hence, BMSICL vide mail dated 14-03-2022 issued a showcause notice.

The firm, M/s Healer's Lab, vide mail dated 16-03-2022 replied that, "We have not denied to supply this item, we are just waiting for your confirmation for extension of this PO for 30 days as due to shortage of raw material of the said item, supply got delayed for the production of fresh batches of goods."

In view of the above reply of the firm and in the interest of general public of the State, BMSICL vide Letter No. 419 dated 19-04-2022, extended the delivery schedule for 20 days for Levofloxacin Tablet 750 mg against Purchase Order No- 6877 dated 20-12-2021.

The firm didn't start supplying till 26-05-2022 and hence a 2nd showcause notice was issued vide mail dated 26-05-2022 to the firm for Non-supply of the ordered drug against Purchase Order no- BMSIC/40025/66-2021/6877 dated 20-12-2021.

The firm, vide mail dated 26-05-2022, submitted its reply stating, "This is to highlight towards COVID pandemic that led to extreme market fluctuations & scarcity of major APIs/ raw materials in the country. CORONA VIRUS PANDEMIC and its resultant restrictions badly affected all major sectors of the economy. India imports more than 70% of the API needs from China. It created a threat due to heavy dependence on China coupled with shortage in supply of key APIs. A lot of hardships has aroused to various domestic pharmaceutical firms in manufacturing medicines & supplying to its major health institutions. Prices of raw materials have gone upto 150% -200% its normal extent. In this regard, this is to apprise that we have satisfactorily supplied total 8 out of 9 LOA items to BMSICL warehouses. In PO No. 6877 also, we have successfully completed supply of other 5 items, but as far as Levofloxacin 750mg tab is concerned, we tried our



level best in procurement of raw materials & its in-house arrangement, despite the best efforts we are unable to procure raw materials & thus manufacturing & production is also affected. Presently we are not in a position to supply you Tab. Levofloxacin 750mg after incurring heavy losses to our firm, it will shake our companies' expenses as market rate has gone extreme high which is beyond our limits. It should be also worth noting that inspite of difficulties faced, we have supplied 400,000 tabs in your last PO No. BMSIC/40025/66-2021/1643 dt 05/06/2021 of levofloxacin 750mg tab with incurred loss of Rs. 0.90/- per tab."

Meanwhile, BMSICL again issued a Purchase order for 8, 00,000 & 12, 00,000 units of Levofloxacin Tablet 750 mg vide Letter No. 2248 dated 30-06-2022 & 3347 dated 22-08-2022. 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 obligation s 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 or 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 Force Majeure Clause, the rate contract of Levofloxacin Tablet, 750 mg with M/s Healer's lab is hereby terminated with immediate effect apart from forfeiture of security deposit submitted for Levofloxacin Tablet 750 mg. The non-executed purchase orders for Levofloxacin Tablet 750 mg issued earlier shall also stand cancelled.

(Managing Director)

Date: - 15/ 11 /2022

Memo No. - BMSIC/40025/66-2021/6591

Copy to: The Managing Director, M/s Healer's Lab for information and needful action.

(Managing Director)

Date: - 15/ 11 /2022

Memo No. - BMSIC/40025/66-2021/6591

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), BMSICL 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)

