

File No- BMSIC/40025/71-2021/ 6749

Date: -23/11/2022

Order

M/s **MARC Laboratories Ltd**, having its Head Office at Avanbhai Mansions, 3-Vidhan Sabha Marg, Lucknow-226001 (UP), has participated in Tender No- **BMSIC/DRUGS/20-10** and was issued a Letter of Intent (LoI) vide letter no.- BMSIC/40025/71-2021/9355 dated 04-03-2021 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) Piperacillin Sodium + Tazobactam, 1000mg + 125mg (1.125gm), Powder for Injection, Vial @ 14.65/-.
- (ii) Piperacillin Sodium + Tazobactam, 4000mg + 500mg (4.5gm), Powder for Injection, Vial @ 47.16/-.

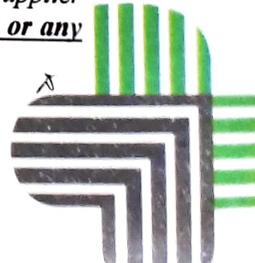
Subsequently, the firm M/s MARC Laboratories Ltd was issued Purchase Order for above mentioned drug items vide Letter No. - BMSIC/40025/71-2021/1506 dated 03-06-2021. The firm didn't supply the ordered quantity against above mentioned Purchase Order, but asked for extension vide mail dated 26-07-2022 stating that, "this is to inform you that we have partly supplied Inj. Piperacillin & Tazobactam 4.5gm till date but there is some delay in supplying the remaining quantities of both items within the stipulated time due to the following reasons:-

- Unavailability of raw materials due to price hike in China
- COVID's 2nd wave that severely affected the whole country
- Work restrictions in our factory & limited manpower resources as some of our factory staff & co-workers were also suffering from the pandemic. Therefore due to COVID pandemic expansion & it's serious repercussions, we are unable to procure & supply / deliver the goods to the consignees within the due date." BMSICL, vide Letter No-BMSIC/40025/71-2021/3535 dated 06-08-2021 granted extension for above mentioned drug items.

The firm, M/s MARC Laboratories Ltd, was again issued a Purchase Order for above mentioned drug items vide Letter No- BMSIC/40025/71-2021/5329 dated 11-10-2021 & vide BMSIC/40025/71-2021/6796 dated 16-12-2021. The firm didn't supply the ordered quantity and hence, M/s MARC Laboratories Ltd was issued show cause notice vide Letter No- BMSIC/40025/71-2021/8400 dated 02-02-2022.

The firm, M/s MARC Laboratories Ltd replied vide mail dated 09-02-2022 stating that, "As far as current supplies are concerned, you must be well aware of 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." 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 Force Majeure Clause, the rate contract of Piperacillin Sodium + Tazobactam, 1000mg + 125mg (1.125gm), Powder for Injection, Vial and Piperacillin Sodium + Tazobactam, 4000mg + 500mg (4.5gm), Powder for Injection, Vial with M/s MARC Laboratories Ltd is hereby terminated with immediate effect apart from forfeiture of security deposit submitted for Meropenem Injection, 250mg. The non-executed purchase orders for Piperacillin Sodium + Tazobactam, 1000mg + 125mg (1.125gm), Powder for Injection, Vial and Piperacillin Sodium + Tazobactam, 4000mg + 500mg (4.5gm), Powder for Injection, Vial issued earlier shall also stand cancelled.

Memo No. - BMSIC/40025/71-2021/ 6749

Copy to: The Managing Director, M/s MARC Laboratories Ltd for information and needful action.

Sd/-

(Managing Director)

Date: 23/11/2022

Memo No. - BMSIC/40025/71-2021/ 6749

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) 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 college and hospitals of Bihar for information and necessary action.


(Managing Director)

