
(2019) 09 GAU CK 0039
In the Gauhati High Court
Case No : Writ Appeal No. 346 Of 2018

**India Medtronic Private Limited @APPELLANT@Hash State Of Assam And
2 Ors**

Date of Decision : 16-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 14
Drugs And Cosmetics Rules, 1945 — Rule 28, 122(A)

Citation : (2019) 09 GAU CK 0039

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : S Dutta

Final Decision : Disposed Off

Judgement

Manish Choudhury, J

1. Heard Mr. N. Dutta, learned Senior Counsel assisted by Mr. K. Sah and Mr. V. Rajkhowa, learned counsel for the appellant. Also heard Mr. D. Saikia, learned Senior Counsel assisted by Mr. B. Gogoi, learned Standing Counsel, Health Department appearing for respondent nos. 1 and 2 and Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. M. Sarma, learned counsel appearing for respondent no. 3.

2. This intra-court appeal is directed against the judgment and order dated 29.10.2018 passed by the learned Single Judge in the writ petition, W.P.(C) No. 1648/2018. By the said judgment and order dated 29.10.2018, the learned Single Judge by holding that the challenge made by the appellant as the writ petitioner, cannot be legally sustained, has dismissed the said writ petition.

3. The genesis of the present lis is an e-Tender Notice dated 08.09.2017 issued by the office of the Mission Director, National Health Mission (NHM), Assam i.e. the respondent no. 2. By the said Notice dated 08.09.2017, e-Tenders in two-Bid System (Technical Bid & Price Bid) were invited from manufacturers/direct importers only for entering into Rate Contract for supply of "Essential Surgicals &

Sutures" to Government Health Institutions in Assam for a period of two years from the date of finalization of Rate Contract (Two year Rate Contract ending on 30.09.2019). Initially, the last date of submission of bids was 07.10.2017 before 2-0 p.m. Later on, the last date of submission of bids was extended upto 27.11.2017 till 2-00 p.m. vide Extension Notice - 6 dated 08.11.2017 and it also mentioned that bids would be opened on 27.11.2017 till 3-00 p.m. A Corrigendum No. 2 dated 16.11.2017 also mentioned that the bids would be opened at 3-00 p.m. on 27.11.2017. By the e-Tender Notice, bids were invited in respect of 237 items and at 'Annexure - XIII : Items with Quantities thereto', the quantity of each item was indicated with the condition that actual quantity to be procured from time to time by the different procuring agencies/purchasing authority shall be based on need assessment of the concerned agency/authority. The said Annexure - XIII : Items with Quantities stood modified by Corrigendum No. 2 and by the said 'Modified Annexure - XIII : Items with Quantities', the list of items with specification and quantity had been indicated.

4. Responding to the said e-Tender Notice, the appellant-writ petitioner claiming itself to be a direct importer holding valid import licences, thus, satisfying the 'Eligibility Criteria' stipulated in the e-Tender Notice, submitted its bid (Technical Bid & Price Bid) for 68 nos. of items, out of the 237 items, by uploading the same in the concerned official website of the respondent no. 2 on 27.11.2017.

5. As stipulated, the Bid Evaluation Committee consisting of (i) Executive Director, NHM, Assam; (ii) Director of Finance & Accounts, NHM, Assam; (iii) Consultant, Maternal Health, NHM, Assam; (iv) Procurement Expert, NHM, Assam; (v) Financial Advisor, NHM, Assam; (vi) DSM, SHQ, NHM, Assam; & (vii) DSM, SHQ, NHM, Assam, opened the technical bids on 27.11.2017 in presence of the authorized representatives of the participating bidders and on opening, a total of 51 nos. of bidders were found to have participated in the bidding process. The Minutes of the Bid Evaluation Committee, signed on 02.01.2018, reflects that out of the 51 bidders, bids of 36 bidders were found technically responsive against the parameters of the e-Tender Notice and technical bids of 15 nos. of bidders were rejected finding them not fulfilling the criteria and for non-submission of relevant documents. In the list of 36 nos. of technically responsive bidders, the names of respondent no. 3 and the appellant found figured at serial no. 2 and serial no. 13 respectively. In the said Minutes dated 02.01.2018, a general remark was made to the effect that all the items quoted by the 36 nos. of bidders were not technically acceptable due to absence of 3 years Market Standing Certificate as well as non-availability of execution of similar contract. The comparative statement prepared on the basis of the technical bids, submitted by the above technically responsive bidders, were uploaded by the respondent no. 2 on its official website along with the Minutes of the meeting dated 02.01.2018. It was also mentioned that in view of such techno-commercial evaluations, the Committee had recommended opening of the Financial Bids of 36 nos. of technically accepted bidders.

6. In the comparative statement prepared by the Bid Evaluation Committee, the technical bid of the appellant was shown as 'Accepted'. Against the entries (a) import licence (if applicable), and (b) 3 years Market Standing Certificate (FY : 2014-2015, 2015-2016, 2016-2017) in respect of the appellant, the Bid Evaluation Committee remarked 'Yes' in the comparative statement. In respect of the entry, 'valid ISO 13485 : 2012 Certificate for Surgical/Suture both', the Bid Evaluation Committee had made the remark, 'equivalent USFDA is submitted as these quoted items exclusively manufactured in USA & further imported into India'.

7. The financial bids (the BOQs) submitted by the 36 technically responsive bidders were published and made open for public viewing on 04.01.2018. On a comparison of the financial bids of those technically responsive bidders, the appellant found that the price offered by it in the financial bid in respect of 12 nos. of items viz. 205, 217, 218, 220, 221, 222, 223, 224, 225, 226, 229 & 236 was the lowest (L-1). As its price was L-1 in respect of the said 12 items, the appellant anticipated to receive the rate contract later confirming the acceptance of its bid and award of the contract. The case of the appellant is that when neither such formal communication was published by the respondent no. 2 in its official website, nor any letter was received by it, it enquired about the outcome of its tender with the respondent no. 2. When it did not receive any information about finalisation of the award except hearing an unconfirmed news on 30.01.2018 about selection of the respondent No. 3 as L-1 bidder in respect of the afore-mentioned 12 items for which the appellant claimed to have stood as the L-1 bidder on the basis of the comparative analysis of BOQ/financial bids submitted/uploaded by the respondent no. 2 for all the technical/qualified bidders, it submitted a number of communications to the respondents including e-mails, on 02.02.2018, 06.02.2018, 07.02.2018, 13.02.2018, 14.02.2018, etc., apart from meeting the various officials in the office of the respondent no. 2 including the respondent no. 2 asserting, inter-alia, that the appellant had submitted a valid bid; that there were serious discrepancies in the bid of the respondent no. 3; that if the contract was awarded to the respondent no. 3, there would be financial loss of approx. Rs. 130 crores to the State exchequer; etc. It is the case of the appellant that all these while, the appellant was never informed that the results of the bidding process had been declared and the rate contract had been given to the respondent no. 3. The respondent no. 2 also did not formally declare the results on its official website or in the public domain.

8. On 16.03.2018, the appellant stated to have received a Speaking Order dated 14.03.2018 from the respondent no. 2 wherein it was disclosed that the appellant was amongst the 36 technically qualified bidders whose evaluation of financial bids was made on 04.01.2018 by the Bid Evaluation Committee. On such financial bid evaluation of 36 technically qualified bidders, the Bid Evaluation Committee found that 16 of those bidders did not have 3 financial years (FY) Market Standing Certificate or performance i.e. execution of similar contract for some of the items for which bids were invited. The Bid Evaluation

Committee, accordingly, found these bidders/firms not eligible for those specific items which did not qualify in respect of market standing and hence, the Committee did not consider their financial bids for those items. The Committee decided to consider the financial bids of only those bidders for all items or only for such items where the condition of 3 years market standing was fulfilled. The Speaking Order further mentioned that the Bid Evaluation Committee in its Minutes dated 04.01.2018 had declared the same. It further mentioned that the rates given by all technically qualified bidders for all items quoted would be revealed on e-Tender portal.

9. In respect of the bid of the appellant, it was mentioned that on perusal of the market standing condition by the Bid Evaluation Committee, it was found that as per the declaration submitted by the appellant in Annexure-A of the bid document, the 1st date of product permission had been shown as 29.06.2015, 15.07.2015 and 24.06.2015 which confirmed that the appellant did not fulfill the required condition of 3 financial years market standing on the date of the tender from the date of product permission. It further mentioned that the Market Standing Certificate dated 18.07.2017, issued by the Central Drugs Standard Control Organisation (the CDSCO, in short), was issued in favour of one M/s Covidien Healthcare India Pvt. Ltd. and not in favour of the appellant and the certificate did not clearly specify the years as to whether the same was calendar year or financial year. The Speaking Order further mentioned that it was found on detail scrutiny that the specifications quoted in respect of 19 items out of the 68 items for which rates were quoted by the appellant i.e. for item nos. 198, 199, 200, 201, 205, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229 and 236, were not as per the required specification mentioned in the tender and were deviated from the given specification which was ascertained after verification of the documents related to import licence and product permission issued by the competent authority and furnished by the appellant. It further mentioned that though the appellant furnished certain other documents like old product permissions and old import export permissions in support of its claim for consideration as L-1 bidder for those 12 products along with his petition dated 06.02.2018, the same could not be considered as those were not submitted earlier along with the bid. The Speaking Order further mentioned that the rate contract was issued on 30.01.2018 only to those eligible L-1 bidders who had the required market standing. Since the appellant was not an eligible L-1 bidder, the matter was not informed to the appellant. It further mentioned that though initially qualified in the technical bid, the appellant was subsequently found to have not fulfilled the required conditions during the stage of financial evaluation and, therefore, the bids/rates quoted by the appellant against the items were not considered eligible for financial evaluation. Accordingly, the bids of the appellant for those 12 items were rejected by the authority in exercise of its right to reject tender, available in the tender document.

10. On being aggrieved, the appellant as the writ petitioner, had preferred the writ petition, W.P. (C) No.1648/2018, seeking the following reliefs :-

"(i) setting aside and quashing the impugned order dated 14.03.2018 passed by the respondent no. 2 whereby the respondent no. 2 declared that petitioner failed to qualify in the financial bid evaluation and rejected the financial bid of the petitioner;

(ii) cancelling the purported rate contract letter dated 30.01.2018 issued by the respondent no. 2, whereby respondent no. 2 has arbitrarily and illegally declared respondent no. 3 as L-1 in respect of the 12 items and thereby awarding the rate contract letter to respondent no. 3;

(iii) to direct respondent no. 2 to consider the petitioner as qualified for the technical bid and consider the financial bid of the petitioner as the petitioner has filed its technical bid in terms of the NIT and consequently declared technically responsive vide the Minutes of meeting dated 02.01.2018;

(iv) show-cause as to why an appropriate writ, order or direction should not be issued so as to give full relief in the matter and/or;

(v) call for the records and on perusal thereof and after hearing the parties may be pleased to make the Rules absolute and/or may be pleased to pass such further or other order/orders as may deem fit and proper.

11. It has, thus, emerged that the appellant is aggrieved by its non-selection in respect of 12 nos. of items (205, 217, 218, 220, 221, 222, 223, 224, 225, 226, 229 & 236) where its bid was L-1, out of the 68 items for which the appellant had quoted from the 237 nos. of items, for which rates were invited by the e-Tender Notice dated 08.09.2017.

12. An interim order was passed on 22.03.2018 in the writ petition, W.P.(C) No. 1648/2018. In the said order, this Court had observed that as the contract was supposed to expire in the month of September, 2019, it would be appropriate, taking the overall requirement that was projected, to direct that until further orders, the State would not accept the 12 items in which the petitioner i.e. the appellant had emerged the lowest tenderer beyond 10 percent of the total requirements. When the writ petition was dismissed by the judgment and order dated 29.10.2018, that interim order stood recalled.

13. The respondent no. 2 had filed affidavit-in-opposition denying the allegations made in the writ petition. The respondent no. 2 had reiterated the same reasons, as reflected in the Speaking Order, for rejecting the bid of the appellant in respect of the condition as regards the market standing for 3 financial years. It further mentioned that the Market Standing Certificate dated 18.07.2017 in favour of M/s Covidien Healthcare India Pvt. Ltd. did not clarify the years as to whether the same was calendar year or financial year. As the 1st date of product permission, as per Annexure-A of the bid document, was shown as 29.06.2015, 15.07.2015 and 24.06.2016 respectively, it did not fulfill the required condition and nowhere, in the declaration, it was mentioned that those dates were the dates of renewal of earlier import licences and neither any relevant product

permission or import licence documents was submitted. It further stated that the Bid Evaluation Committee during the financial bid evaluation of the 36 technically qualified bidders found that 16 bidders including the appellant, did not have 3 financial years Market Standing Certificate or performance i.e. execution of similar contract for all or some of the items for which bids were invited and accordingly, their bids were not considered. In this regard, the appellant was duly informed by the Speaking Order dated 14.03.2018 which was communicated to the appellant vide communication dated 16.03.2018. The documents submitted subsequently by the appellant were not considered. It was further averred that on a detailed scrutiny, the specifications in respect of the 19 items, out of the 68 items quoted by the appellant, were found to be not in conformity with the specifications mentioned in the tender document. It was mentioned that the total budget for procuring all the Government notified drugs / surgical / suture / consumables / linens / chemicals of the State Government is Rs. 100 crores. It was stated that after the financial evaluation of the bid, the Bid Evaluation Committee found the item wise L-1 rates and the L-1 bidders for the items tendered. Without elaborating further, it was stated that the rates contract on 30.01.2018 was only issued to eligible L-1 bidders for fulfilling all the tender conditions including the required 3 years market standing. It was specifically contended that the documents relating to market standing, submitted by the appellant, were from June, 2015 indicating non-completion of 3 financial years 'Market Standing' which was the prescribed eligible criteria of the tender document and the respondent no. 3 who had been awarded with the rate contract, had fulfilled the said 3 financial years 'Market Standing' and the respondent no. 3 had submitted a clear declaration that the dates of product permission were older than 3 financial years. A copy of the Minutes of the meeting of the Committee dated 04.01.2018 for evaluation of financial bids was annexed thereto wherein the remarks in respect of the bids of the respondent no. 3 and the appellant were as under :-

"2. Johnson & Johnson Pvt. Ltd.

Doesn't have 3 years market standing for tender specified item no. 233, 234, 235 and also doesn't have performance (execution of similar contract) for these items, but eligible for rest of the items quoted.

13. India Medtronic Pvt. Ltd.

Doesn't complete 3 FY years market standing as market standing was not available for FY-2014-15, as per Annex-A (declaration submitted by India Medtronic Pvt. Ltd) the 1st date of product permission is from June, 2015. Hence not eligible for any of the quoted items (Tender sl no. 136, 138, 139, 140, 141, 142, 143, 144, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 173, 174, 175, 176, 185, 186, 188, 189, 190, 191, 194, 195, 198, 199, 200, 201, 203, 205, 206, 207, 208, 209, 210, 211, 212, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229 and 236).

Also India Medtronic didn't submit the ISO 13485 : 2012 Certification for the above items quoted, which was asked in the Corrigendum No - 2 to the tender."

14. The said copy of the Minutes of the meeting of the Committee dated 04.01.2018 was not annexed to the writ petition nor the contents of the said Minutes were reflected in the writ petition, on the stated ground that the appellant did not receive the same at the time of filing of the writ petition. In the affidavit-in-reply of the appellant to the affidavit-in-opposition of the respondent no. 2, the appellant contended that the complete Minutes of the meeting dated 04.01.2018 was never uploaded. It was further stated that the same was uploaded by the respondent no. 2 on its website only on 22.03.2018 i.e. after the filing of the writ petition. By an additional affidavit, filed on 21.03.2018, the appellant had brought in the letter dated 30.01.2018 issued by the respondent no. 2 to 28 nos. of successful bidders including the respondent no. 3, informing them about their selection for entering into rate contract for supply and empanelment of drugs. The said letter dated 30.01.2018, which is being assailed by the appellant, had further mentioned that the two year rate contract would start from the date of signing of contract agreement and would end on 30.09.2019.

15. The respondent no. 3, in its affidavit-in-opposition filed on 14.05.2018, had raised a preliminary objection on the maintainability of the writ petition in view of presence of an arbitration clause in the tender document. Refuting the contentions of the appellant-writ petitioner, the respondent no. 3 had stated that the appellant was disqualified on two grounds i.e. (i) the appellant did not provide the 3 years Market Standing Certificate as per the tender document and 19 items of the appellant did not meet the tender specifications, which got detected on scrutiny of their Import Licences and product specifications. The respondent no. 3 stated to have submitted a representation dated 08.01.2018 highlighting the discrepancies in the appellant's documents with the request to review the decision regarding acceptance of the technical bid of the appellant. The State respondent authorities after having revisited their earlier decisions, found that the technical bid of the appellant did not fulfill the required conditions and by order dated 14.03.2018, the appellant's bid was rightly rejected in terms of Clause 11B of the tender document. Highlighting the products' specifications of the appellant's 12 items under reference (Item nos. 205, 217, 218, 220, 221, 222, 223, 224, 225, 226, 229 & 236) vis-à-vis the products specifications of those items mentioned in 'Modified Annexure XIII : Items with quantities', the respondent no. 3 projected the deviations therein. It further raised the contention that all the licences, submitted by the appellant in the tender process, were in the name of one M/s Covidien Healthcare India Pvt. Ltd. and under the Drugs and Cosmetics Act, there is no provision for automatic transfer of licences including import licence, to the transferee company. A transferee company is required to complete all the necessary formalities as laid down by the regulator in order to get the licences in the name of the new legal entity. It was contended that the appellant being the transferee company, cannot use any licence or

'Market Standing Certificate' issued in the name of M/s Covidien Healthcare India Pvt. Ltd. unless the regulator had expressly authorized the appellant to do so as per a fresh licence duly endorsed and issued. The appellant had failed to comply with the conditions of Clause 4 (I) of the tender document wherein it was prescribed that the bidder should have at least 3 years market standing (2014-2015, 2015-2016, 2016-2017) as a manufacturer of the items quoted or for imported items, three years standing as importer/manufacturer, to be supported by valid import licence. Specifically referring to the Market Standing Certificate dated 18.07.2017, submitted by the appellant along with their bid, it was contended that the same was issued only to M/s Covidien Healthcare India Pvt. Ltd. and no other document was submitted by the appellant to show that the said certificate was allowed to be used by the appellant by any competent authority. Even if it is assumed that the said certificate can be used by the appellant as a Market Standing Certificate, then also the said certificate did not show that the appellant had fulfilled the norms of 3 years market standing (2014-2015, 2015-2016, 2016-2017). As the appellant did not qualify during the stage of evaluation of their technical bid, the question of considering L-1 prices of the appellant for the afore-mentioned 12 items did not arise. It was in such backdrop situation, the respondent no. 3 had contended that the appellant was rightly disqualified for the reasons assigned in the Speaking Order dated 14.03.2018. Responding to the appellant's contention regarding alleged loss to the State exchequer to the tune of Rs. 130 crores as a direct result of award of contract to the respondent no. 3 in respect of the 12 items under reference, the respondent no. 3 by referring to Clause 10A of the tender document, had stated that the quantity of the products were tentative and the State respondent authorities would order the products only if the same were required in their hospitals and as such, the appellant's figure of alleged loss of Rs. 130 crores on the basis of the quantity stated in the tender document was wrong, incorrect and misleading. With specific reference to item no. 205, the respondent no. 3 contended that the appellant did not have a product which met the tender specifications for that item, which required to have made up of ORC (Oxidised Regenerated Cellulose), whereas its products met the tender specifications as well as requisite quality standards. It was contended that the respondent no. 3 being the next lowest eligible bidder in respect of the 12 items under reference, had rightly been awarded the contract by the respondent authorities.

16. In the affidavit-in-reply filed by the appellant, on 12.07.2018, to the affidavit-in-opposition of the respondent no. 2, the appellant referring to the Minutes of the meetings dated 02.01.2018 and 04.01.2018, had raised the plea that once the Committee had found the appellant's bid as compliant, it, on a later date, could not have rejected the same on wrong and untenable ground that the appellant did not have 3 financial years Market Standing Certificate. It stated that the requirement was only to have a valid import licence which the appellant did possess and the reference to the dates, 29.06.2015, 15.07.2015 and 24.06.2015, by the respondent no. 2, was misleading. It has been contended

that the respondent no. 3 could not have been awarded the contract as its bid was ex-facie not compliant as the respondent no. 3, as per its own admission, did not upload certain documents in the technical bid uploaded on the website. As all the bidders required to upload their bids on the e-portal of the respondent no. 2 and when the respondent no. 3 failed to upload and submit a number of essential documents on the e-portal including the import licences, its technical bid could not have been declared as qualified. In such view of the matter, the action of the respondent no. 2 in accepting the technical bid of the respondent no. 3, to the prejudice of the appellant, is ex-facie discriminatory and arbitrary. The State and its instrumentalities cannot extend relaxation to some bidder and deny the benefit of relaxation to some other bidders who stand on an equal footing. The respondent no. 3, the appellant alleged, had also filed similar Market Standing Certificate which stated that the respondent no. 3 had been importing medical devices for the last 3 years. The action of the respondent no. 2 in opening and accepting the financial bid of the respondent no. 3 and awarding the rate contract to the respondent no. 3 is not actuated on account of desire to get the best price or the best quotation, for those 12 items, but for reasons other than bonafide. The Market Standing Certificate was issued to M/s Covidien Healthcare India Pvt. Ltd. which is an entity duly acquired by the appellant and the fact of amalgamation was duly informed to the respondent no. 2 by submitting the order of amalgamation dated 10.08.2017 with the bid documents. The respondent no. 2 had wrongly disregarded the said Market Standing Certificate, which clearly reflected that the appellant's 3 years standing, either by way of financial year or by way of calendar year. The action of the respondent authorities in not uploading the Minutes of the meeting dated 04.01.2018 in the official website clearly demonstrates the arbitrariness and illegality committed by the respondent authorities. It is further contended that once the appellant's financial bid was opened, the Committee of the respondent no. 2 could not have re-evaluated the technical bid of the appellant and the same was done wrongfully.

17. The learned Single Judge had observed that in meeting of the Bid Evaluation Committee, also referred as Tender Committee, held on 04.01.2018, after evaluation of financial bids, the Committee rejected the bid of the appellant on two grounds, firstly, the appellant did not have 3 years market standing for the quoted items as market standing was not available for the financial year 2014-2015, and secondly, the appellant did not submit ISO Certificate for the quoted items. Upon consideration of the pleadings and rival submissions, the learned Single Judge had further observed that two questions arose for consideration:-firstly, whether the Tender Committee was justified in rejecting the technical bid of the appellant on the ground that it did not have Market Standing Certificate for 3 years i.e. for the financial year 2014-2015 and that it did not submit ISO Certificate? and secondly, whether the Tender Committee was justified in rejecting the technical bid of the appellant at the stage of price evaluation, having found the appellant to be technically responsive at the time of technical evaluation.

18. For better appreciation of the submissions made by the learned counsel for the parties while assailing and supporting the decision of the learned Single Judge in this intra-court appeal, we, at this stage, deem it apposite to quote the relevant Clauses of the e-Tender Notice dated 08.09.2017, on which the entire controversy has veered around :-

3. ELIGIBILITY CRITERIA

a) Bidder shall be a manufacturer having valid manufacturing licence or direct importer holding valid import licence. Distributor/Dealers/Suppliers/Agents are not eligible to participate in the tender.

c) Bidder should have at least 3 years market standing (FY 2014-15, 15-16, 16-17) as a manufacturer for the items quoted in the bid, on the date of bid opening. The bidder should also have manufactured at least 3 commercial batches of the quoted item every year in the last 3 consecutive year (FY 2014-15, 15-16, 16-17). In the case of imported products, the product should have minimum 3 years standing in the market (FY 2014-15, 15,16, 16-17). The importer should have at least 3 years standing as manufacturer/importer in general.

d) Explanatory Note : The merger/amalgamation/transfer of business of assets etc. of a firm affects the bid condition relating to Past Performance/Market Standing in preceding years. The eligibility of a bidder in this regard shall be ascertained by the Tender Committee on the basis of the Stated Agreement/BOD/CA Certificate or any other document/certificate annexed with the tender.

j) Details of supplies (Quoted items) made during the past 3 financial years 2014-15, 2016-17 supported by Purchase Orders for each quoted items must be submitted. Moreover minimum 3 Attested/notarized copies of supply orders executed for Government organizations during the last 3 financial years 2014-15, 2015-16, 2016-17 must be enclosed.

4. TECHNO-COMMERCIAL BID-COVER "A" D. IMPORT LICENCE

Attested photocopy of import licence (in Form 10 with Form 41), as per Rule 122A of the Drugs and Cosmetics Act, 1940, if the product is imported should be furnished. The licence must have been renewed up to date. A copy of the licence for the sale of items imported by the firms issued by the State Licensing Authority shall be enclosed. If the manufacturing Licence is on renewal, that will not be considered.

I. MARKET STANDING CERTIFICATE OF THE MANUFACTURER

Bidder should have at least 3 years market standing (2014-15, 2015-16, 2016-17) as a manufacturer for the items quoted in the bid.

For imported items, the quoted item should have 3 years market standing (2014-15, 2015-16, 2016-17), for which bills of entry, sale invoices, etc. should be submitted to establish the claim. The importing firm should have 3 years

standing as importer / manufacturer of medicines in general. The bidder shall submit valid import licence for direct import of the quoted item.

19. It is also apt to extract the Market Standing Certificate dated 18.07.2017, issued to M/s Covidien Healthcare India Pvt. Ltd. by the Central Drugs Standard Control Organisation (CDSCO), in its entirety, as under :-

"Central Drugs Standard Control Organisation

Diary no.13010

Dated 24/05/2017

Directorate of General of Health Services

Ministry of Health & Family Welfare

(Medical Devices & Diagnostics Division)

Food & Drugs Administration Bhawan,

Kotla Road, New Delhi-110002

F. No.: MD/NC/2017-DC (12) Date : 18 JUL 2017

MARKET STANDING CERTIFICATE

This is to certify that M/s Covidien Healthcare India Pvt. Ltd., situated at Doshi Towers, 6th Floor, #156, Poonamallee High Road, Kilpauk, Chennai - 600010 is holding Import Licence (s) No. MD-796-1333 valid upto 30.06.2018; MD-933-1299 valid upto 31.05.2018 ; MD-948-1342 valid upto 31.05.2018; MD-949-1344 valid upto 30.06.2018 and MD-1201-1852 valid upto 31.05.2018, for import of Medical Devices as stated in Import Licence.

It is further certified that the firm is importing Medical Devices (List enclosed) for the last three years.

The certificate is valid for One Year Only.

(Dr. S. Eswara Reddy)

Joint Drugs Controller (I)"

20. The learned Single Judge had observed that as per the above Market Standing Certificate, M/s Covidien Healthcare India Pvt. Ltd. had valid Import Licences up to 30.06.2018, 31.05.2018, 30.06.2018 and 31.08.2018 for import of medical devices as stated in the Import Licences wherein, it was also certified that the said company was importing medical devices for the last 3 years. It was further observed that the 4 licences, annexed to the writ petition, were dated 15.07.2015, 24.06.2016, 29.06.2015 and 03.07.2015 which meant that M/s Covidien Healthcare India Pvt. Ltd. could have exported the licence items only from the dates of those licences. If the above dates were taken into consideration, the financial year 2014-2015 i.e. from 01.04.2014 to 31.03.2015

would stand excluded. Therefore, it did not stand to reason as to how the CDSCO could have certified that M/s Covidien Healthcare India Pvt. Ltd. was importing medical devices for the last 3 years. Reference was made to the order dated 10.08.2017 of the National Company Law Tribunal (NCLT), Chandigarh Bench, whereby, the Scheme of Amalgamation between M/s Covidien Healthcare India Pvt. Ltd. as the transferor company and the appellant as the transferee company was sanctioned. The learned Single Judge had negated the claim of the appellant to the effect that the experience of M/s Covidien Healthcare India Pvt. Ltd. should be treated as the experience of the appellant being the transferee company, for the purpose of satisfying the eligibility criteria of 3 years market standing. After having referred to a number of decisions in the field, the learned Single Judge was of the opinion that the experience of the transferor company acquired prior to amalgamation, could not become the experience of the transferee company post-amalgamation, which, in the instant case, is the appellant. Upon such deliberation, the Single Judge was of the view that it cannot be said that the decision of the respondent no. 2 to declare the appellant as technically deficient was arbitrary or unreasonable. In view of the tender condition contained in Clause 3(d) of the tender document, it was observed that the view so taken cannot be faulted. It was further observed that the shortlisting of 36 bidders including the appellant, as reflected in the Minutes dated 02.01.2018, was in the nature of conditional shortlisting as it was observed therein itself that all the items quoted by the said bidders were not technically eligible due to absence of 3 years Market Standing Certificate as well as non-availability of execution of similar contract. It was held that in such scenario, it cannot be said that the appellant having been shortlisted on 02.01.2018, could not have been technically disqualified on 04.01.2018 as such a decision is permitted by the tender document itself by providing that L-1 bids of the qualified tenderer would be declared only after technical and commercial evaluation.

21. Opening his submissions, Mr. Dutta, learned Senior Counsel for the appellant has submitted that the Minutes of the meeting of the Tender Committee dated 04.01.2018 recorded, while evaluating the financial bids, that the bid of the appellant was found deficient on two counts, firstly, the appellant did not have 3 financial years market standing as market standing was not available for FY : 2014-2015, since as per Annexure-A the first date of product permission was from June, 2015. Hence, the appellant was not found eligible for any of the 68 quoted items, and secondly, the appellant did not submit ISO 13485:2012 Certification for the above 68 items quoted, which was asked in the Corrigendum No. 2 to the tender. In respect of the ground regarding non-submission of ISO 13485:2012 Certificate, Mr. Dutta has referred to the certificate submitted by the appellant in support of the same which is in the name of M/s Covidien LLC, USA wherein the applied standard clearly recorded the fact that its medical surgical products etc. are of ISO 13485:2012 standard and as such, the second ground of rejection by the Bid Evaluation Committee was untenable. At this stage, Mr.

Saikia, learned Senior Counsel appearing for the respondent authorities has fairly submitted that the said ground of rejection would not be urged by him as the certificate, referred to by Mr. Dutta, appears to have met the standard required for imported items. In such view of the matter, it is not necessary for us also to dilate further on the said issue.

22. Submitting on the aforesaid first ground of rejection, Mr. Dutta has submitted that the Tender Committee had adopted an erroneous approach in respect of the Market Standing Certificate of the appellant in a discriminatory manner. He has submitted that the period of validity of an Import Licence in Form 10, granted under the Drugs and Cosmetics Rules, 1945, is 3 years from the date of its issue. He submits that the duration of validity of the Import Licence dated 29.06.2015 was from 29.06.2015 to 31.05.2018. Similarly, the period of validity of the Import Licence dated 15.07.2015 was from 15.07.2015 to 30.06.2018. It was in that view of the matter, the CDSCO had issued the Market Standing Certificate dated 18.07.2017 certifying that the appellant was importing medical devices, as per the list enclosed, for the last 3 years and the items for which the appellant had submitted its bid were included in the list of the products, enclosed with the said Certificate. The period of last 3 years, indicated in the Market Standing Certificate dated 18.07.2017, takes within its fold the year 2014-2015. When the competent Licencing Authority has certified that the appellant has 3 years market standing, it is not open to the respondent authorities to hold otherwise. Thus, the observation made by the Bid Evaluation Committee on 04.01.2018, also echoed by the respondent no. 2 in the Speaking Order dated 14.03.2018, to the effect that the appellant did not fulfill the required condition of 3 financial years market standing on the date of tender from the date of product permission is misconceived. Similarly, the observation that the Market Standing Certificate dated 18.07.2017 did not specify the years as to whether the same was calendar year or financial year is irrelevant and not tenable. To clarify and to avoid any confusion regarding 1st date of production, the appellant had submitted previous Form 10 dated 20.07.2011, 18.04.2012, 24.04.2012, etc. and the Market Standing Certificate which would go to establish the fact that the appellant had market standing prior to 2014-2015 and the same ought to have been considered by the respondent no. 2 before passing the Speaking Order dated 14.03.2018 and non-consideration of those documents has made the action arbitrary.

23. The learned Senior Counsel has submitted that the observation recorded in the Speaking Order dated 14.03.2018 to the effect that the specifications of 12 nos. of items where the appellant was L-1, did not meet the requisite standard, stated to have been found out after verification of the Import Licences and Product Permission, is a new introduction as such a finding was not recorded in the Minutes of the meeting dated 04.01.2018. When the Bid Evaluation Committee had recorded two grounds for rejection of the bid of the appellant, it is not open for the tendering authority to introduce other additional grounds. It was only after the submission of the representation by the appellant, the

respondent no. 2 by going beyond the findings of the Bid Evaluation Committee, had recorded such finding. Mr. Dutta has submitted that though the appellant was found L-1 in respect of 12 nos. of items, the appellant is not mounting its challenge in respect of 2 of the said 12 items viz. Item nos. 221 and 226 where the appellant, he fairly concedes, does not meet the product specifications qua Annexure-XIII. In respect of Item No. 224, he submits that on scrutiny, the appellant has found that its bid was not L-1. But in respect of the rest 9 items, he has asserted, referring to the chart annexed to the writ petition, that the products of the appellant meet the criteria and, therefore, not awarding the rate contract to the appellant in respect of those 9 items is clearly arbitrary, illegal and discriminatory.

24. On the issue of rejection of the writ petition by the learned Single Judge on the point of merger and/or amalgamation, it is submitted by Mr. Dutta that the finding of the learned Single Judge in paragraph 38 of the impugned judgment that the experience of the transferor company acquired prior to amalgamation would not become the experience of the transferee company, post-amalgamation, is contrary to the observation contained in paragraph 23 of the decision of the Hon'ble Supreme Court in *New Horizons Ltd. vs. Union of India*, reported in (1995) 1 SCC 478, on which reliance was made by the appellant before the learned Single Judge also. Referring to the Scheme of Amalgamation between M/s Covidien Healthcare India Pvt. Ltd., the transferor company with the appellant, the transferee company and the order dated 10.08.2017 of the NCLT, Chandigarh, he has submitted that the appointed date as per the proposed scheme is 26.08.2016 and with effect from the appointed date, the transferor company with all its assets, liabilities, etc. would stand transferred and vested in the transferee company i.e. the appellant as a going concern. The Scheme had provided that from the appointed date i.e. 26.08.2016, all permits, approval, licences and registrations etc. relating to the transferor company shall stand transferred to and vested in the transferee company. Sanctioning the Scheme, it has been ordered by the Tribunal, he submits, that the properties, rights and powers of the transferor company have been transferred to and vested in the transferee company without further act or deed. As the Scheme provided that any statutory and other licences, registrations, permissions, exemptions, approvals etc. issued to carry on the operations to the transferor company shall stand vested in or transferred to the transferor company without any further act or deed and shall be appropriately mutated by the statutory and other authorities concerned in favour of the transferee company upon the Scheme becoming effective, the import licences as well as the benefit of market standing of the transferor company stood automatically vested in the appellant. This vital aspect has not been adverted to by the learned Single Judge and as such, the said finding is required to be interfered with. If the order of the NCLT sanctioning the Scheme of Amalgamation is taken into consideration in the proper perspective along with the other materials on record, the bid of the appellant, under no count, could have been disqualified in respect of at least the 9 items where it had

emerged as L-1. The Explanatory Note to Clause 3 of the tender document has not been properly interpreted resulting in prejudice to the appellant. It is further submitted that the claim of loss to the State exchequer to the tune of Rs. 130 crores is ex-facie apparent on the face of the record and to substantiate the same, the learned Senior Counsel has drawn the attention to the price differences of the products quoted by these two contesting parties, with particular reference to the higher priced Item no. 205.

25. Lastly, he submits that two different standards were applied by the tendering authority in evaluating the bids of the appellant and the respondent no. 3 in the context of the Market Standing Certificate, issued by the CDSCO, in favour of the appellant and the respondent no. 3 respectively. By referring to the communication dated 21.04.2015 and the Import Licence in Form 10 with validity period from 01.04.2015 to 31.03.2018, he submits that the respondent no. 3 also would not have qualified in respect of 3 financial years market standing, had the tendering authority applied the same yardstick, as has been applied in respect of the appellant. Moreover, the said Import Licence only reflects 14 items of staplers only without cutters. The Market Standing Certificate dated 02.01.2017 issued by the CDSCO in favour of the respondent no. 3 on the basis of import licences, quoted therein, goes to show that the respondent no. 3 does not have 3 years market standing w.e.f. 01.04.2014 in respect of the staplers. In respect of Item no. 205, a higher value product, the respondent no. 3 did not have any import licence, he alleges. He, thus, submits that if the appellant stands disqualified by interpretation of the Market Standing Certificate with the import licences, granted in its favour, in one particular manner than the Market Standing Certificate with the import licences, granted in favour of the respondent no. 3, must have to be interpreted in that particular manner only. If same interpretation is made then the selection of the respondent no. 3 in respect of the 9 items and the rate contract offered thereto, are vitiated and liable to set aside. He has placed reliance in the decision of the Hon'ble Supreme Court in the case of Vasavi Engineering College Parents Association vs. State of Telangana and others, 2019 SCC Online SC 805.

26. Mr. Saikia, learned Senior Counsel appearing for respondent nos. 1 and 2 has submitted that the core issue for consideration is as to whether the appellant had 3 years market standing, as required by the tender document, in respect of the 12 items in respect of which the appellant has claimed to have emerged L-1. It is submitted by him that the State respondents are not taking the point of ISO Certification, already noted above, and, therefore, his submissions would be confined to the core issue and the issues relatable to the core issue. He categorically asserts that the Market Standing Certificate dated 18.07.2017 does not fulfill the criteria of 3 financial years market standing. Clause 3(c) has clearly prescribed that a bidder should have at least 3 years market standing (FY : 2014-2015, 2015-2016, 2016-2017) as a manufacturer for the items quoted in the bid, on the date of bid opening. In the case of imported products, the product should have minimum 3 years standing in the market (FY : 2014-2015,

2015-2016, 2016-2017) and the importer should have at least 3 years standing. There is no ambiguity that 'FY' means Financial Year. When in the aforesaid context, the import licences of the appellant were examined it was found that none of those import licences were from a period w.e.f. 01.04.2014 or any date earlier. After evaluation of the technical bids, when the Minutes of the Technical Committee were prepared on 02.01.2018 it was clearly observed that all the items quoted by the 36 bidders whose bids were found technically accepted, were not technically qualified due to absence of 3 years Market Standing Certificate as well as non-availability of similar contracts. By observing so, the Committee had kept reserved its right to re-examine the matter. When on further evaluation, the Committee found that the appellant did not have 3 financial years market standing from FY : 2014-2015 in respect of any of the 68 items quoted by it, it was decided to reject the tender of the appellant and the same was reflected in the Minutes of the meeting dated 04.01.2018. Such right is very much available with the tendering authority in Clause 11A of the tender document. After issuance of the rate contract in favour of the selected bidders, the matter of re-examination of the bid of the appellant after submission of additional documents did not arise. He further submits that by a mere look at the import licences, it cannot be presumed that the same were issued by way of renewal. The supply order was issued on 30.01.2018 and the appellant had chosen to submit its complaint only on 06.02.2018. The total budget of the State exchequer in respect of the supplies under reference is Rs. 100 crores and as such, the claim of the appellant about the loss of Rs. 130 crores to the State exchequer, for awarding the supply order to the respondent no. 3, is unfounded and baseless. He also submits that though the appellant submitted its bid for 68 items, the present litigation was initiated for 12 items. Out of these 12 items too, the appellant has already admitted that 3 of its items, out of those 12 items, either do not meet the product specifications of the tender document or its product was not L-1. But, he submits that the appellant did not satisfy the products specifications in respect of rest of the items also. He has referred to the averments made in the affidavit-in-opposition filed on behalf of the respondent no. 2 to buttress his submissions. By specifically referring to the chart, annexed to the affidavit as Annexure-F, he has submitted that on a detail scrutiny, the specifications of the items quoted in respect of 19 items out of the 68 tendered items of the appellant were found to have failed to meet the required specifications and the deviations so found are indicated in Annexure-F. Thus, the present appeal does not merit any consideration and the same is to be dismissed. To buttress his submissions, Mr. Saikia has placed reliance in the decisions in *Tata Cellular vs. Union of India*, reported in (1994) 6 SCC 651 (para 69, 77 & 94), *Central Coalfields Limited* and another vs. *SLL-SML (Joint) Venture Consortium* and others, reported in (2016) 8 SCC 622 (para 35, 41 & 42) and *Jagdish Mandal vs. State of Orrisa* and others, reported in (2007) 14 SCC 517.

27. Mr. Choudhury, learned Senior Counsel appearing for respondent no. 3 apart from endorsing the submissions of Mr. Saikia, has advanced submissions on

three grounds. The results of evaluation of the financial bids, recorded in the Minutes of the meeting of the Tender Committee dated 04.01.2018, are not put to challenge by the appellant in the writ petition. Notwithstanding the initial plea that the copy of the Minutes dated 04.01.2018 was not available at the time of filing of the writ petition, the appellant did not challenge the results of evaluation of the financial bids even after being aware of the same on 25.05.2018, when the respondent no. 2 filed its affidavit-in-opposition by annexing the copy of the said Minutes dated 04.01.2018. He has further submitted that the allegation that there will be loss to the tune of Rs. 100 crores to the State exchequer is misleading and preposterous. By projecting the same as a scam, the appellant has sought to draw mileage by giving the same a different colour altogether, when the items tendered by the appellant did not meet the specification criteria. He submits that the quantity of each item shown at Annexure-XIII is indicative only and actual quantity to be procured depends on need assessment. In so far as item no. 205 (Tissue separating Mesh made of ORC, 15/15, 15/20, 20/20 CM) is concerned though Annexure-XIII indicated 1,00,000 units but in reality, supply orders for the said item, used for Hernia operation, have been received for less than 400 items till date. But, in any view of the matter, the specification of appellant's quoted item no. 205 did not have ORC (Oxidised Regenerated Cellulose) whereas, the product specification of the respondent no. 3 meets the criteria. Similarly, in respect of item nos. 225, 226, 227, 228, 229 and 230, the products of the appellant did not include any cutter stapler. From Annexure-I-A : Undertaking, submitted by the appellant, wherein the dates of product permission obtained from the Licencing Authority for each of the items tendered by the appellant are indicated, it is clear that the appellant did not have any product permission prior to 29.06.2015. After tendering such undertaking, it is not open for the appellant to challenge the decision of the respondent no. 2. Mr. Choudhury further submits that the sanctioning of the Scheme of Amalgamation by the order dated 10.08.2017 does not further the case of the appellant as regards transfer of the import licences in question in any manner. With regard to the matter of merger of M/s Covidien Healthcare India Pvt. Ltd. with the appellant, he submits that the earlier licensee M/s Covidien Healthcare India Pvt. Ltd. had ceased to exist and as a result, the import licences did not automatically get transferred in the name of the appellant in order to reap any benefit out of those licences, in view of the conditions of licence. In the event of any change in the constitution of the firm operating under a licence, a fresh licence has to be taken from the Licencing Authority in the name of the firm with the changed constitution. As the import licences were in the name of a ceased entity and the appellant having failed to renew the licences from the Licencing Authority in its name, the import licences are to be termed as invalid on the date of submission of the tender, 27.11.2017. Thus, the ultimate findings arrived at by the learned Single Judge as regards lack of market standing of the appellant cannot be termed to be unjustified. The contention regarding favourable treatment towards respondent no. 3 is unfounded as from the Minutes of the meeting dated 04.01.2018, it is revealed that the bid of the respondent no. 3 for item no. 233,

234 and 235 was not accepted for the reason that it did not have 3 years market standing. The bid of the appellant had rightly been rejected by the respondent no. 2 on the basis of Clause 3(c), which decision has been upheld by the learned Single Judge and, therefore, this appeal deserves to be dismissed.

28. In reply, Mr. Dutta submits that the contention of the State respondents as regards FY : 2014-2015 has demolished the submission of both the respondent no. 2 and the respondent no. 3. The Market Standing Certificate dated 02.01.2017, issued by the CDSCO in the name of the respondent no. 3, does not also fulfill the criteria of eligibility in case of imported products, as laid down in Clause 3(c) of the tender document. If the approach of the State respondents in rejecting the bid of the appellant is assumed to be correct, then by applying the same yardstick read with Clause 3(c), the bid of the respondent no. 3 in respect of those items where the appellant had emerged L-1, is to be rejected. Thus, it is clear that the decision of the respondent authorities suffers from clear non-application of mind. In reply to Mr. Saikia's reliance in *Tata Cellular* (supra), Mr. Dutta has placed reliance in paragraph 70 of the said decision. Just because the work order is not challenged, the appellant cannot be non-suited for the simple reason that the whole premises regarding non-selection of the appellant and selection, allegedly arbitrarily, of the respondent no. 3 have been challenged. The discriminatory treatment adopted towards two bidders has been challenged, as irrelevant factors were taken into account while rejecting the bid of the appellant and the entire process has become vitiated on the vices of Article 14. Once results were declared on 02.01.2018, no re-look was possible. It is submitted by him that pursuant to the order dated 28.08.2018 of the Court, the parties were allowed to inspect the bid document of respondent no. 3 which took place on 10.09.2018. Pursuant to inspection, the appellant had filed an additional affidavit wherein, it has been specifically contended that the ISO Certificate submitted offline by the respondent no. 3, was different from the one uploaded online, defeating the very object of transparency. No import licences of 2014 were filed by the respondent no. 3. The Market Standing Certificate dated 02.01.2017 contained reference only of the existing licences of April, 2018. But surprisingly for item no. 205 i.e. the largest item, the respondent no. 3 did not have an import licence and for item nos. 217, 218, 222, 223, 224 and 229, the respondent no. 3 did not have the licence for linear cutter stapler but have licence for stapler only. It is further submitted by Mr. Dutta that the argument that item nos. 222, 223 and 225 of the appellant do not have colour code is arbitrary because all its stapler products specifications were colour coded. Replying to the submission of Mr. Choudhury as regards requirement of obtaining fresh import licence in the name of the appellant, Mr. Dutta has submitted that once the NCLT, a quasi-judicial body, has rendered its decision on the Scheme of Amalgamation, the executive is not permitted to take any other decision on the same and if such an action is permitted, the same would amount to subjecting the decision of a quasi judicial body to the scrutiny of the executive. For the said proposition, reliance is placed upon the decision in *Union of India vs. K.M.*

Shankarappa, reported in (2001) 1 SCC 582.

29. We have considered the submissions advanced by the learned counsels for the parties. We have also perused the materials available in the records.

30. On consideration of the submissions of the parties, it has emerged that the appellant is assailing the process adopted by the respondent authorities in rejecting the bid of the appellant in respect of the following 9 items where the appellant has claimed to have emerged L-1, on the purported grounds that the appellant did not have 3 years market standing in respect of those products and its products were found to be in deviation of the products specifications, indicated in Annexure-XIII of the tender document, and in selecting the bid of the respondent no. 3 for those items despite its ineligibility :-

Sl. No.

Name of the item with specification

Pack Size

Quantity

205

Tissue Separating Mesh Made of ORC, 15/15, 15/20, 20/20

Per Piece

100000

217

Linear cutter Stapler 55-60 mm

Per Piece

400

218

Linear cutter Stapler 75-80 mm

Per Piece

400

220

Linear cutter Stapler 45 mm

Per Piece

400

222

Linear cutter Stapler reloads (white/blue/green) 55-60 mm

Per Piece

600

223

Linear cutter Stapler reloads (white/blue/green) 75-80 mm

Per Piece

600

225

Linear cutter Stapler reloads (white/blue/green) 45 mm

Per Piece

600

229

Circular Stapler 33/34/35 mm

Per Piece

400

236

Hemorrhoidal stapler

Per Piece

500

31. It has been held in Central Coalfields Ltd. (supra) that whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders. It is not a case of the appellant here that the tendering authority had permitted the other bidders to submit any further document in support of their eligibility, after the date of submission of bid was over. In the present case, the appellant claimed to have submitted additional documents after 27.11.2017 i.e. the last date of submission of bids, and in response to the general remarks of the Minutes of the meeting dated 02.01.2018 wherein it was observed that 3 years Market Standing Certificate was absent in respect of some items of some of the bidders whose bids were technically accepted earlier for further evaluation, in support of its 3 years Market Standing Certificate. Any such submission of additional document after the last date of submission of the tender is over, is not acceptable for the simple reason that there would be no level playing field if the tendering authority accepts such document for consideration to the exclusion of

other bidders. In such view of the matter, non-consideration of other documents like old product permission, etc., submitted by the appellant on 06.02.2018, by the respondent no. 2, as reflected in the Speaking Order dated 14.03.2018, on the ground that the same did not form a part of the bid document submitted by the appellant is justified. The validity or otherwise of a tender is to be considered on the basis of the bid document submitted by a bidder on or before the last date of submission of a tender to the tendering authority.

32. Clause 3(c) of the tender document has clearly prescribed that in case of imported products, the product should have minimum 3 years standing in the market (FY : 2014-2015, 2015-2016, 2016-2017) and an importer should have at least 3 years standing as manufacturer/importer in general. There is no ambiguity on the fact that 'FY' stands for 'Financial Year' and in India, a Financial Year starts from 1st April and ends on 31st March of the following year. FY 2014-2015 was from 01.04.2014 to 31.03.2015. If one examines the Annexure-1-A : Undertaking submitted by the appellant, required to be submitted as per Clause 4G of the tender document, then it is noticeable that the appellant itself had mentioned the dates of product permission obtained from the Licencing Authority i.e. the CDSCO for the 9 nos. of items, mentioned in the table above, as (i) 29.06.2015 for item no. 205 vide Import Licence in Form 10 : MD-933-1299; (ii) 15.07.2015 for item nos. 217, 218, 220, 222, 223, 225 & 229 vide Import Licence in Form 10 : MD-796-1333 and (iii) 24.06.2016 for item no. 236 vide Import Licence in Form 10 : MD-1701-2583. On the other hand, a perusal of the Market Standing Certificate dated 18.07.2017 shows that Import Licence in Form 10 : MD-933-1299 had validity upto 31.05.2018 and Import Licence in Form 10 : MD-796-1333 had validity upto 30.06.2018. The Import Licence in Form 10 : MD-1701-2583 had validity upto 31.05.2019 from 24.06.2016. By e-Tender Notice dated 08.09.2017, the last date of submission was fixed on 07.10.2017, which later on was extended to 27.11.2017. If the period is related back by 3 years, then the benchmark date would be 07.10.2014 or 27.11.2014, as the case may be, and in either of the two situations, the import licences issued in favour of the licensee (M/s Covidien Healthcare India Pvt. Ltd) do not take within its fold the entire Financial Year of 2014-2015 i.e. from 01.04.2014 to 31.03.2015.

33. Rule 28 of the Drugs and Cosmetics Rules, 1945 prescribes that a licence, unless it is sooner suspended or cancelled, shall be valid for a period of 3 years from the date of its issue. Situated thus, the period of 3 years is to be reckoned from the date of the Import Licence in Form 10 only. No fault can be found in such a decision if the standard followed is consistent, transparent and bonafide. It has been held in Central Coalfields Ltd. (supra), that the issue of acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. The terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision

making process can certainly be subject to judicial review.

34. The Bid Evaluation Committee while evaluating the bids of 51 bidders initially and technically accepting the bids of 36 nos. of bidders therefrom, had observed that all the items quoted by those 36 bidders were not technically acceptable due to the absence of 3 years Market Standing Certificate as well as non-availability of execution of similar contract. From the said remark it is manifest that the Bid Evaluation Committee was alive to the situation that though the bids of those 36 bidders were, prima facie, accepted technically, there was further requirement to evaluate their bids item-wise individually in respect 3 years Market Standing Certificate on the basis of import licences or 3 years performance, on the basis of supply orders, etc. It is, thus, clear that the Bid Evaluation Committee and the employer had reserved its rights to make further evaluation of the tenders with reference to technical and commercial parameters to determine the technically qualified bidders for all items as per Clause 11A of the tender document. The said clause further mentions that price bids of technically qualified bidders would be evaluated with reference to the quoted price of each item to determine the L-1 (Lowest) Price. It transpires that when the Bid Evaluation Committee evaluated the bids of those 36 bidders whose bids were technically accepted earlier, it detected discrepancies or deviations in some of the bids of those 36 bidders. From the Minutes of the meeting dated 04.01.2018, it can be noticed that it is not only the appellant who was disqualified but there were few others who had been disqualified for reasons mentioned therein. The submission that once the bid of the appellant has been accepted technically, there could not have been a re-look, at a later date, in order to disqualify the appellant is not to be sustained.

35. The Import Licences in Form 10 granted in favour of M/s Covidien Healthcare India Pvt. Ltd. were issued by the Licensing Authority i.e. the CDSCO in the format prescribed in Schedule A of the Rules, 1945. As per the order dated 10.08.2017 of the NCLT, the appointed date under the Scheme of Amalgamation is 26.08.2016 and while sanctioning the scheme, the Tribunal further ordered that all the property, rights and powers of the transferor of company shall stand transferred, contends the appellant, to the appellant 'without further act or deed'.

36. Another contention of the appellant that the validity or otherwise of the decision of the employer to reject the tender of an unsuccessful bidder should be limited to the reasons assigned by the employer only. The employer has not raised the issue of validity or otherwise of the import licences of the appellant in the instant lis and the same was not a reason cited by the employer for rejection of the tender of the appellant. The eligibility of a bidder in this regard is to be ascertained by the Tender Committee on the basis of the documents / certificates annexed with the tender.

37. Much stress has been laid by Mr. Dutta to paragraph 23 of the decision in New Horizons Limited and another vs. Union of India and others, reported in (1995) 1 SCC 478 in assailing the findings of the learned Single Judge in the

impugned judgment, to say that the experience of the transferor company, for all purport, is to be accepted as the experience of the transferee company i.e. the appellant. In order to appreciate the said submission, paragraph 23 of New Horizons Limited and another (supra), is quoted hereunder:-

"Even if it be assumed that the requirement regarding experience as set out in the advertisement dated 22-4-1993 inviting tenders is a condition about eligibility for consideration of the tender, though we find no basis for the same, the said requirement regarding experience cannot be construed to mean that the said experience should be of the tenderer in his name only. It is possible to visualise a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration. Similarly, a company incorporated under the Companies Act having past experience may undergo reorganisation as a result of merger or amalgamation with another company which may have no such past experience and the tender is submitted in the name of the reorganised company. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganised company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganised company which does not have experience in its name. Conversely there may be a split in a company and persons looking after a particular field of the business of the company form a new company after leaving it. The new company, though having persons with experience in the field, has no experience in its name while the original company having experience in its name lacks persons with experience. The requirement regarding experience does not mean that the offer of the original company must be considered because it has experience in its name though it does not have experienced persons with it and ignore the offer of the new company because it does not have experience in its name though it has persons having experience in the field. While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company. The same has to be the approach of the authorities while

considering a tender received in response to the advertisement issued on 22-4-1993.

This would require that first the terms of the offer must be examined and if they are found satisfactory the next step would be to consider the credentials of the tenderer and his ability to perform the work to be entrusted. For judging the credentials past experience will have to be considered along with the present state of equipment and resources available with the tenderer. Past experience may not be of much help if the machinery and equipment is outdated. Conversely lack of experience may be made good by improved technology and better equipment. The advertisement dated 22-4-1993 when read with the notice for inviting tenders dated 26-4-1993 does not preclude adoption of this course of action. If the Tender Evaluation Committee had adopted this approach and had examined the tender of NHL in this perspective it would have found that NHL, being a joint venture, has access to the benefit of the resources and strength of its parent/owning companies as well as to the experience in database management, sales and publishing of its parent group companies because after reorganisation of the Company in 1992 60% of the share capital of NHL is owned by Indian group of companies namely, TPI, LMI, WML, etc. and Mr Aroon Purie and 40% of the share capital is owned by IIPL a wholly-owned subsidiary of Singapore Telecom which was established in 1967 and is having long experience in publishing the Singapore telephone directory with yellow pages and other directories. Moreover, in the tender it was specifically stated that IIPL will be providing its unique integrated directory management system along with the expertise of its managers and that the managers will be actively involved in the project both out of Singapore and resident in India."

38. The learned Single Judge took notice of the fact that M/s Covidien Healthcare India Pvt. Ltd., a company incorporated under the Companies Act, 1956, was acquired by the appellant, also a company incorporated under the Companies Act, 1956 as well as 'the Scheme of Amalgamation' ('the Scheme', in short) entered into for amalgamation of M/s Covidien Healthcare Pvt. Ltd., the transferor company with the appellant, the transferee company. It was also noted that the Scheme provided that all the permissions, approvals, licences and registrations, etc. relating to the transferor company shall stand transferred to and vested in the transferee company and the said Scheme was sanctioned by the NCLT by its order dated 10.08.2017. It was observed that post amalgamation, the two companies did not become a joint venture and prior to amalgamation, the transferor company was not a subsidiary of the transferee company. It was further observed that the transferor company had an independent existence prior to amalgamation and post amalgamation, it had ceased its existence altogether having merged with the transferee company. It was held that in such a scenario, the experience of the transferor company, acquired prior to amalgamation, would not become the experience of the transferee company post amalgamation. From the order dated 10.08.2017 of the NCLT, it transpires that the Scheme provided for merger of the entire business of

the transferor company with the transferee company and the Scheme provided that any statutory and other licences, registrations, permissions, approvals, etc. issued to carry on the operations to the transferor company shall stand vested in or transferred to the transferee company without any further act or deed and shall be appropriately mutated by the statutory and other authorities concerned in favour of the transferee company upon the Scheme becoming effective and the benefit of all such statutory and regulatory permissions, licences, approvals, consents, etc. shall vest in and become available to the transferee company pursuant to the Scheme. In view of such provision in the Scheme which was sanctioned by the NCLT by its order dated 10.08.2017, in the present case, with the complete merger of the transferor company, the erstwhile licensee with the transferee company-appellant, the market standing experience acquired by the transferor company holding an Import Licence could have been considered, in essence, as the experience of the transferee company-appellant, in the light of the decision in *New Horizons Limited* and another (*supra*), subject to compliance of the statutory formalities, if any. Thus, it is not wholly correct to hold, on the part of the learned Single Judge, that the experience of the transferor company acquired prior to amalgamation would not become the experience of the transferee company post amalgamation. Neither in the Minutes of the meeting dated 02.01.2018 nor in the Minutes of the meeting dated 04.01.2018 of the Bid Evaluation Committee, the eligibility or otherwise of the technical bid of the appellant was considered in the aforesaid perspective for invalidation of the same. It was the duration of the experience, not the manner of acquisition of experience, of the appellant which was taken by the Bid Evaluation Committee as the reason of ineligibility. Similarly, in the Speaking Order dated 14.03.2018, such a ground was not assigned. In the aforesaid view of the matter, it cannot be said that the tendering authority had invalidated the technical bid of the appellant on the ground that the market standing experience, indicated in the Market Standing Certificate, was not of the appellant but the technical bid was rejected only on the ground that the appellant company did not have 3 financial years market standing. It is relevant to mention that Mr. Saikia also has not urged this point, which is already noted above.

39. In *Tata Cellular (supra)*, it is held that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism, but there are inherent limitations in exercise of that power of judicial review. The principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. The Court is only concerned with the manner in which a decision has been taken and the Hon'ble Supreme Court has classified three broad grounds (i) illegality, (ii) irrationality, and (iii) procedural impropriety, without ruling out addition of further grounds in course of time, upon which an administrative action is subject to control by judicial review.

40. During the course of hearing, the departmental counsel was asked to be ready with the relevant records. When the matter of ineligibility of the

respondent no. 3 was raised, by the appellant, on the ground that the respondent no. 3 also did not have the requisite market standing, we requested the Standing Counsel of the department to produce the Market Standing Certificate, available in the records, in respect of the respondent no. 3 and the import licences, if any. In response, the learned Standing Counsel has submitted, after going through the original records, that a Market Standing Certificate dated 02.01.2017 issued in favour of the respondent no. 3 by the CDSCO is available therein and has produced a copy of the same, the contents of which are extracted herein below, for ready reference, :-

"Central Drugs Standard Control Organisation

Diary no. 35284

Dated 09.12.2016

Directorate General of Health Services

Ministry of Health & Family Welfare

(Medical Devices & Diagnostics Division)

Food & Drugs Administration Bhawan,

Kotla Road, New Delhi-110002

F. No. MD/NC/2016-DC (13) Date: 02 Jan, 2017

MARKET STANDING CERTIFICATE

This is to certify that M/s. Johnson and Johnson Private Limited., situated at J-1, Ground Floor, Gala No. 1 to 10, Shree Arihant Complex, Reti Bunder Road, Kalher, Bhiwandi-15, Thane Zone 5, Pin- 421302 is holding Import License (s) No. MD-1054-1656 valid upto 31.03.2018; MD-1092-1657 valid upto 31.07.2018; MD- 1144- 1678 valid upto 15.09.2018; MD-1239-1973 valid upto 28.02.2017; MD- 738(A)-1064 valid upto 15.03.2019; MD- 1315-1873 valid upto 31.03.2017; MD-762-1253 valid upto 15.01.2017; MD-798(A)-1323 valid upto 30.04.2017 & MD-827-1294 valid upto 15.03.2017 for import of Medical Devices as stated in Import License.

It is further certified that the firm is importing Medical Devices mentioned below for the last three years:

List of Products

S. No.

Product name

Import license

Valid till

1

Proximate Linear Staplers and Reloads

MD-1054-1656

31-Mar-2018

2

Proximate Plus MD skin Staplers

3

Proximate Hemorrhoidal Circular Staplers

4

Ethicon-Endo Surgery Reloads

5

CONTOUR Curved Cutters and Reloads

6

ECHELON Endoscopic Linear Cutter Reloads

7

Ligaclip Extra Ligating Clips

8

Vicryl* Rapide - Polyglactin 910 Synthetic Absorbable Suture

MD-1092-1657

31-July-2018

9

VICRYL* (Polyglactin 910) Sutures

MD-1144-1678

15-Sep-2018

10

Vicryl Polyglactin 910 Synthetic Absorbable Sutures

MD-1239-1973

28-Feb-2017

11

Monocryl (Poliglecaprone 25) Monofilament Suture

12

Prolene Polypropylene Suture

MD-738(A)-1064

15-Mar-2019

13

Ethibond Excel Polyester Suture Dyed and Undyed

14

Surgicel Original Absorbable Hemostat

15

Surgicel Fibrillar Absorbable Hemostat

16

Surgicel Nu-Knit Absorbable Hemostat

17

Surgicel Snow Absorbable Hemostat

18

Dermabond Advanced Topical Skin Adhesive

19

Spongostan Absorbable Haemostatic Gelatin Sponge

MD-1315-1873

31-Mar-2017

20

Surgiflo Haemostatic Matrix

21

Ultrapro mesh

MD-762-1253

15-Jan-2017

22

Vypro Mesh

23

Vicryl Plus Suture with Triclosan

24

Vicryl Rapide Polyglactin 910 Synthetic Absorbable sutures

25

Coated VICRYL* (polyglactin 910) Suture (w/wo needless)

MD-798(A)-1323

30-Apr-2017

26

ETHIBOND* EXCEL Polyester Suture (w/wo needless)

27

PDS* II (polydioxanone) Suture (w/wo needless)

28

Proceed Surgical Mesh

MD-827-1294

15-Mar-2017

41. From the list of products shown in the Market Standing Certificate dated 02.01.2017, it transpires that the items appearing in serial no. 1 to 6 are different kind of staplers, for which the import licence was granted vide MD-1054-1656 with validity upto 31.03.2018. It is noticeable from the table in paragraph 30 above, 8 out of the 9 items, involved in the present proceeding, are staplers. On a query of the Court on 05.08.2019, the learned Standing Counsel, Health Department has submitted that no copy of any import licence issued in favour of respondent no. 3 in respect of item no. 205 is available therein in the records made available to him, but a reference to the licence is available. It is further submitted by him that the party had given another certificate where the composition were the same. The learned Senior Counsel for the appellant has, by referring to Annexure-XIII vis-à-vis the products specifications of the items quoted by the appellant read with the import licences, sought to explain that the items offered by it meet the criteria and, therefore, the rejection of the bid on the appellant was unjustified. He has further referred to the product specification of the items offered by respondent no. 3 to bring home the point that the items of the respondent no. 3 do not meet the criteria. On the other hand, the learned counsel appearing for the respondent projected the opposite version. This court does not have requisite expertise to embark on an exercise to find out as to whether the specifications of the 9 items of the contesting parties meet the criteria exactly prescribed in the tender document or not.

42. Going back to the pleaded case of the parties, at the cost of repetition, it is

seen that the appellant, in paragraph 16 of the writ petition, had pleaded that on 06.02.2018, upon scrutiny of the technical bid of the respondent no. 3 the appellant found out that the technical bid submitted online by the respondent no. 3 materially differed from the requirements specified in the e-Tender Notice in as much as the respondent no. 3 failed to upload few essential documents in the technical bid. The appellant did not find any Form 10 of the respondent no. 3 in alignment with their Market Standing Certificate, as contended by the respondent no. 2. Further, the appellant pleaded that the technical bid of the respondent no. 3 did not contain documents like import licence in Form 10, EMD documents, Performance Certificate, USFDA Certificate for import licence, etc. It was pleaded that the appellant informed the respondent no. 2 by its letter dated 07.02.2018 that similar documents like that of the appellant, with regard to the requirement of 3 years market standing was submitted by the respondent no. 3. In reply to the said contentions, the respondent no. 2, while denying the same, only stated that it was scrutinized by the Bid Evaluation Committee and found in order, fulfilling the tender criterion and also matched the exact specifications what was mentioned in the bid which is the real need of surgeon for public interest. Apparently, those averments of the appellant were not specifically traversed. In its affidavit-in-opposition, the respondent no. 3 denied that it did not fulfill the required norms of the tender document. It was stated that all the requisite documents in physical form were submitted by them to the respondent authorities within the stipulated time. It was admitted that some of the documents might not have been inadvertently uploaded on the website. It was further stated that the tender document was required to be submitted in a sealed cover and, therefore, the question of non-submission of documents does not arise. In its affidavits-in-reply to the affidavits-in-opposition of the respondent no. 2 and the respondent no. 3, the appellant while reiterating its contentions had contended that any document submitted only physically by the respondent no. 3 in sealed cover and not uploaded in the website as required by the tender conditions cannot be considered by the respondent no. 2. By an order dated 28.08.2018, an inspection of the bid documents was allowed to the parties by the learned Single Judge. Pursuant to such inspection, the appellant filed an affidavit on 13.09.2018 wherein it again categorically asserted about anomalies and shortcomings in the bid of the respondent no. 3 including non-submission of import licence in respect of Item no. 205 and submission of licence for staplers only for Item nos. 217, 218, 222, 223, 224 and 229 without any licence for linear cutter staplers, which averments were not traversed by way of rebuttal in writing, by any of the contesting respondents. Mr. Choudhury raising objection, has submitted that such affidavit could not be taken into consideration as the said affidavit was submitted after the exchange of pleadings amongst the parties was over. Countering the same, Mr. Dutta has submitted that whatever have been averred in the said affidavit are reiteration of the averments already made in the writ petition and on the basis of materials available in the records. We are not persuaded to accept the submission of Mr. Choudhury as the basis is the materials available in the records.

43. The tender document provided a check list wherein the 22 nos. of documents including Import Licence and Market Standing Certificate, required to be uploaded in the e-Portal and submitted in a sealed cover for the technical bid and for financial bid/BOQ to be uploaded in the e-Portal. Thus, it transpires that documents accompanying the technical bid by way of uploading and by way of submitting in sealed cover must be the same. There could not be any deviation in that respect. Considering the situation that has emerged in respect of the bid of the respondent no. 3, as delineated above, and the submissions made on behalf of the appellant, as has been recorded in the preceding paragraphs, it does not inspire the confidence of the Court that the same yardstick had been followed by the Bid Evaluation Committee in evaluation of the bid of the appellant and the respondent no. 3.

44. If the Market Standing Certificate dated 02.01.2017 was the only certificate submitted by the respondent no. 3 at the time of submission of its bid, then from the said certificate, it transpires that the situation of respondent no. 3 in respect of 3 financial years market standing is no different than the situation of the appellant, whose bid is held to be deficient on account of lack of 3 financial years market standing for the imported products on the basis of the Market Standing Certificate dated 18.07.2017. The period of validity of the import licence issued in favour of the respondent no. 3, relatable to the items in the category of staplers, was upto 31.03.2018. Considering the fact of period of validity of 3 years for such an import licence under the Drugs and Cosmetics Rules, 1945, the period of issuance of the import licence would not be relatable to a period prior to the year 2015. If such is the situation, then the market standing experience of the respondent no. 3 would not cover the Financial Year : 2014-2015, the very same reason for which the bid of the appellant had been found to be deficient by the Tendering Authority. In the matter of evaluation of the bid of the respondent no. 3, it is observed that the tendering authority had adopted a different yardstick and as a result, the decision making process has suffered by elements of arbitrariness, unfairness and discrimination.

45. It is settled that the basic requirement of Article 14 of the Constitution of India is fairness in action by the State and the same principle is also applicable for the instrumentalities of the State. In the matter of award of contracts, the State and its instrumentalities have to act reasonably and fairly without any discrimination at all point of time. Non-arbitrariness and non-discriminatory treatment are to be observed even in matters of competitive bidding process. The minimum a participating bidder is entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. A bidder has that enforceable right in a court of law to call into question as to whether he has been treated unfairly, unequally or discriminatorily. An action of the State or its instrumentalities wherein fairness is absent, is amenable to the judicial review.

46. In the case of Vasavi Engineering College Parents Association Vs. State of Telangana and others, 2019 SCC Online SC 805, the Hon'ble Supreme Court has

observed that judicial review lies against the decision making process. If the decision-making process is flawed, inter-alia, by violation of the basic principles of natural justice, is ultra vires the powers of the decision maker, takes into consideration irrelevant materials or excludes relevant materials, admits materials behind the back of the person to be affected or is such that no reasonable person would have taken such a decision in the circumstances, the Court may step in to correct the error by setting aside such decision and requiring the decision maker to take a fresh decision in accordance with the law. The Court, in the garb of judicial review, cannot usurp the jurisdiction of the decision maker and make the decision itself. Neither can it act as an appellate authority, by entering the arena of disputed facts and figures to opine with regard to the manner in which the executive authority ought to have proceeded. If the executive authority has not exercised jurisdiction properly the option is to remand the matter for fresh consideration.

47. In view of the discussions made above in respect of the validity or otherwise of the bids of the appellant and the respondent no. 3 and in the light of the principles of judicial review in matters related to competitive bidding process, expounded in the decisions cited above, this Court is of the considered view that as the bidders participating in the competitive bidding process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by them in response to notice inviting tenders in a transparent manner, the matter shall be remanded to the respondent authorities as there is requirement on the part of the tendering authority to revisit the decision of rejection of bid of the appellant as well as selection of bid of the respondent no. 3 in respect of the 9 nos. of items because of the manner in which the bids of the two bidders were evaluated, as has been observed above. Accordingly, it is directed to the tendering authority to revisit its decision of rejection of bid of the appellant as well as selection of bid of the respondent no. 3 in respect of the 9 nos. of items, mentioned in the table at paragraph 30 above, and to arrive at a fresh decision by taking into consideration the observations made above, as expeditiously as possible. The earlier decision of selection of respondent no. 3 will abide by the fresh decision so arrived at. The decision so arrived at shall be communicated to the contesting parties in the present appeal forthwith.

48. This Court is conscious of the fact that the term of rate contract is going to be over on 30.09.2019 and also not oblivious of the nature of the items under reference. We take note of the submission of Mr. Saikia, learned Senior counsel appearing for the respondent authorities that the respondent authorities in all likelihood is not going to extend the rate contract beyond 30.09.2019 and will initiate a competitive bidding process for the subsequent period. Considering the nature of the items and their intended uses, we deem it appropriate to direct that any supply of the items under reference, in the interregnum, will be only on need assessment basis.

49. With the above observations and directions, this writ appeal stands disposed of. No order as to costs.