

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	09.05.2025		WPMB No. 305 of 2024 <u>Hon'ble G. Narendar, C.J.</u> <u>Hon'ble Alok Mahra, J.</u> Mr. D.S. Patni, learned Senior Counsel assisted by Mr. Himanshu Yadav, learned counsel for the petitioner. 2. Mr. Saurav Adhikari, learned Standing Counsel for the Union of India / respondents. 3. Heard learned Senior Counsel for the petitioner and learned Standing Counsel for the Union of India / respondents. 4. The contentious clause reads as under:- <u>"10. PERFORMANCE SECURITY GUARANTEE AND AWARD OF CONTRACT</u> The successful bidder will have to furnish a Performance Security along with unconditional acceptance for supply of medicines to Wellness Centres where the bidder has been declared as H1 bidder. <u>An amount equivalent to 5% of the average annual expected business for three years</u> in respect of each Wellness Centre to be allotted to him (as per Annexure-D) <u>is to be deposited as performance security in the form of either an Account payee Demand Draft</u> favouring "Pay and Accounts Officer, PAO (NICD)/Banker's Cheque of Scheduled Commercial Bank or as per Performance Bank Guarantee valid for 60 days beyond all contractual obligations, as per Annexure H. No claim shall be made against Government of India / Additional Director, CGHS, Dehradun / HQ / MSD/ Zone in respect of interest accrued, if any, due on the Performance Security deposit. The Performance Security Guarantee shall be returned to the ALC after completion of 60 days beyond the validity of the contract, on submission of the "No Claim Certificate" at Annexure A and after penalty deduction if any.

If the Performance Security received from the successful bidder is in the form of a Bank Guarantee, it must be ensured by Additional Director that a copy of the BBG is sent to the Bank (email/physical copy), to confer the genuineness of the PBG (as per CVC guidelines OM No. 02-07-01-CTE-30 dated 31/12//2007).

The provisions under the Bid Securing Declaration shall come into force, if :

a) Performance Security is not deposited within 07 days of unconditional acceptance of offer by the bidder. Relaxation can be given for deposition of Performance Security by another seven days by Additional Director, CGHS, Dehradun, on the written request by the eligible bidder and / or

b) The contract is not signed by the successful bidder within the maximum of 21 days of unconditional acceptance of offer letter, failing which the offer will be withdrawn.

In case of extension of contract, the Performance Security should be renewed to ensure that it remains valid upto 60 days beyond the validity of extended contract period. The bidder should ensure validity of Performance Security for extended period."

5. On reading of the above, it is apparent that the performance security is to be calculated on the basis of average expected business in the three years of the Wellness Centres and the amount to be furnished as performance security is 5% of the three year average.

6. We do not find either the impugned order or any other material referring to an exercise, whereby the respondents have calculated the three year average and have intimated the figures to the petitioner and the petitioner failing to furnish the performance security by way of bank guarantee to the respondents.

7. In the absence of calculation and crystallisation of the sum equivalent to 5%, it is not open for the respondents to point fingers at the petitioner and accuse the petitioner of having failed in complying with the conditions of the contract.

8. It is not the case of the respondents that it is open for the petitioner or the contractor to calculate 5% of the three year average of the expected business and make the deposit. In fact, it is not the case of non-deposit, it is a case of deposit, the quantum of which is disputed by the respondents.

9. If it is the case of the respondents that the amount furnished by way of performance security is falling short of the real figures, then it was for the respondents to state, what is the actual figure.

10. We do not even find any whisper of the same anywhere in the proceedings.

11. In that view, there shall be an interim stay of the operation of the impugned proceedings dated 09.05.2024 (Annexure-9 to the writ petition).

12. The interim order will not come in the way of the respondents to calculate the three year average of the expected business and intimate the exact figures for which the performance security by way of bank guarantee is to be furnished.

13. The performance security, by way of bank guarantee, shall be furnished to the respondents within a period of seven days from the date of intimation. The intimation shall be by way of e-mail and whatsapp to the registered phone number.

14. List on 08.07.2025.

(Alok Mahra, J)

09.05.2025

(G. Narendar, CJ)

09.05.2025

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