



Review Petition No. PPRA/RP-52/2024
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad
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ORDER

M/s Ziafco Engineers & Contractors

...the "Petitioner"

Vs.

State Life Insurance Corporation (SLIC)

...the "Respondent"

Date of Hearing	
23.04.2025	Mr. M. Rehan Khalid Joiya (AHC), Mr. Hamza Siddiqui (Advocate), Mr. Waleed Ahmed Ranjah (Advocate) (On behalf of Petitioner)
26.03.2025	
18.03.2025	
03.01.2025	Syed Ishtiaq Haider (ASC), Syed Madad Ali Shah, Mr. Hussain Ahmed, Shagufta Malik (Law Officer), Mr. Saleem Akhtar Sial (AGM) (On behalf of Respondent)
26.12.2024	
19.12.2024	

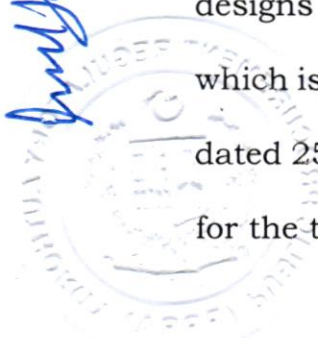
**REVIEW PETITION UNDER RULE 19(3) OF THE PUBLIC PROCUREMENT
RULES, 2004**

The above mentioned learned counsels and representative(s) of the parties tendered appearance before the Review Petition Committee and furnished their arguments at length.

2. At the outset of the hearing, learned counsel of the petitioner i.e., M/s Ziafco Engineers & Contractors submitted that they engaged in business activities since 1978 and primarily engaged in the management of one of the most

extensive elevator supply and maintenance enterprises within the territory of Pakistan. That the building, commonly known as SLIC Tower, Plot No.61. Jinnah Avenue, Blue Area, Islamabad was constructed around the year 2008. For various reasons the said project got delayed, including its Civil, Electrical, MEP and HVAC works. The installation of elevators was also delayed.

3. The counsel of the petitioner also submitted that, in the year of 2012, the State Life Insurance Corporation ("the SLIC" / "the Respondent") had invited tenders for pre-qualification and technical tender document for the installation and maintenance of four (04) lifts at State Life Tower, Islamabad, along-with requirements and features of the equipment to be installed. The Petitioner submitted Technical Proposal, the General and Financials Clauses for said tender were based on the features of the pre-qualification tender. After that the Petitioner submitted the Technical Submittal and shop drawings, in addition to amendments in the measurements in June 2013, which were all approved by the Consultants (International Consultants) of the Respondent without any comments. In 2013, after amendments and approval of the designs and the revised technical submittal of Di-1 Model, which is a geared model, the parties signed a Form of Agreement dated 25.03.2013 pertaining to the abovementioned documents for the total contract price of Rs.27,123,000/-.



4. The counsel of the appellant further submitted that, the payment terms mentioned in the General and Financial Clauses set out that 15% of the quoted rates of imported items would be paid as advance against bank guarantee, and after its release, the letter of credit would be opened. The 35% of the quoted rates of imported items shall be paid as advance against bank guarantee on submission of negotiated shipping documents and arrival of equipment at Karachi port and the 20% would be paid after the inspection of the equipment. The General Clauses also stipulate the bid amount to be Rs.600,000/- (Rupees Six Hundred Thousand Only), which was paid by the Petitioner. Further, the bid of Petitioner was accepted by Respondent and the Petitioner was requested to furnish a Performance Bond of Rs.2,712,300/- in favour of the Respondent for the period of 21 months. The Petitioner complied and furnished the requisite bond.

5. The counsel of the petitioner further added that, referring to the Addendum No.2 dated 21.06.2012, the consultants to the Respondent had stipulated that the equipment manufactured in China must carry warranty from the European principal and not from China. The same had been confirmed by the Petitioner vide letter dated 07.12.2012 that the manufacturer, Sigma is wholly owned subsidiary of OTIS Elevators, USA and while the equipment is manufactured in China, the warranty for the same is carried by the principal. In order to address any other concerns of the Respondent the

Petitioner in the same letter offered in alternative Korean manufactured elevators in the same for the contract price of Rs.29,989,000/. The alternative was accepted vide letter dated 19.12.2012 on the condition that the contract price remains the same. The Petitioner agreed to establish LC (Letter of Credit) for South Korea for the same contract price of Rs 27,123,000/- through its own expense and absorbed a loss of Rs.2.86 Million.

6. The counsel of the petitioner also submitted that after arrival of the equipment i.e., 04 lifts at Karachi on 27.06.2013, the Respondent was informed and invited for the inspection, but the Respondent delayed and eventually the equipment was inspected by the Respondent and its consultants on 24.10.2013. The equipment(s) were then accepted on 23.11.2013 i.e., after almost a month's delay. However, the equipment was promptly delivered by the Petitioner at the Islamabad site on 28.11.2013, where the equipment(s) were again inspected and approved by the Respondent's consultants. The Petitioner had provided a letter from Sigma, the manufacturer, confirming that the HIGEN machines are part of the lift assembly supplied by them. The Petitioner had also provided Letter of Credit, Certificates of Origin and Shipping Documents which were subsequently approved by the Respondent and its consultants.

7. The counsel of the petitioner further submitted that, during this process, when the lifts were delivered at the site, the Respondent was required to pay 65% of the contract amount to

the Petitioner i.e., Rs.18,986,100/- (Rupees Eighteen Million Nine Hundred Eighty Six Thousand One Hundred Only). The Respondent failed to comply with the payment terms as agreed by the Parties under the Contract. Despite all this, the Respondent demanded from the Petitioner to proceed with the installation and the Petitioner continuously requested the Respondent to release the payments. Ultimately the Respondent paid Rs.8,802,000/- after 2 years of arrival of the equipment at Karachi port. Moreover, in January 2014, the Respondent, through its consultant, had asked the Petitioner as to why geared equipment(s) have been provided instead of gearless one and why there was a discrepancy in the model numbers in LC, to which the Petitioner answered that technical submittal was based on architectural designs which after being submitted to OTIS, Korea were again evaluated in consideration of every aspect and geared equipment(s) were offered as the best possible solution and that the discrepancy in documents was because the documents accommodated the number of the equipment(s) suggested by the manufacturer. Furthermore, the Petitioner explained that there is a delay in completion of work as the civil work, such as overhead travel height, which is the responsibility of the Respondent, and because the Petitioner has not received payment in accordance with the payment terms agreed upon.

8. The counsel of the petitioner further added that the Petitioner also provided a letter dated 07.02.2014 from

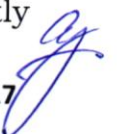
manufacturer, suggesting geared elevators for the installation's specifications. Despite the assurances by the manufacturers that the geared elevators were the best possible solution for the specifications provided, the Respondent insisted upon gearless equipment. Consequently, in January 2015, the parties *inter alia* agreed that geared equipment(s) will be replaced by gearless. In January 2016, upon the request of the Respondent, the Petitioner, with great efforts and no compensation by the Respondent, imported gearless equipment(s) for the elevators. However, the Respondent did not approve the gearless drive system as its origin was from China and not Korea, despite being informed by the Petitioner multiple times that the gearless system would only be manufactured in China and not in Korea.

9. The counsel of the petitioner further argued and submitted that in addition to the above, before the arrival of the equipment(s) in 2016, the Petitioner had provided letters from the manufacturer assuring that the equipment(s) are in production with them. The Petitioner even provided a letter by the OTIS, Korea assuring the guarantee and warranty of the new equipment(s). The Petitioner's offer to supply elevators manufactured in Korea was a one-time offer and to the detriment of the Petitioner. However, it is to be noted that the manufacturing factories of the Petitioner's vendor are in China. Upon request of the Respondent, the Petitioner issued a Performance Bond of Rs.2,712,300/- dated 02.04.2015 and a Secured Advance Bond of Rs.8,827,000/- dated 02.06.2014 to

Alpha Insurance Company Ltd., in favor of the Respondent. Thereafter, the committee constituted in July 2017 consisted of Engineers i.e., (NESPAK Pvt. Limited), and it was agreed upon that the geared machinery would be installed with the deduction of Rs. 2.3 Million from the contract price as the cost difference between geared and gearless equipment, to which the Petitioner readily agreed to.

10. The counsel of the petitioner further argued and submitted that, at the stage of the installation, multiple hindrances at the installation site were faced by the Petitioner. Firstly, the lift pits were filled with water, due to which the scaffolding installation work was delayed. Secondly, there was no power supply at the site which was required for installation of the elevators. The Petitioner had asked the Respondent multiple times to clear the hindrances as soon as possible so, the work could be proceeded. That in spite of the amicable agreement reached in 2017 regarding the installation of geared equipment, the Respondent initiated unwarranted challenges and levied false accusations regarding the origin and suitability of the equipment in accordance with the site specifications and tender documents. The Petitioner had reassured them that at the time of tender, the model numbers were tentative and were based on architectural designs, but after the site survey, new measurements were taken and the LCs accommodated the new numbers. Despite numerous inspections conducted by the Respondent and its consultants, the Respondent persistently





raised objections, thereby impeding the smooth progress of the agreed-upon arrangements.

11. The counsel of the petitioner further submitted that, notwithstanding the Petitioner's diligent efforts to proceed with the project without any compensation, the Respondent, in contrast, remained stuck on numbers and origin even though the same equipment(s) and the documents had been approved by it multiple times. The Respondent invoked various pretexts to terminate the contract in February 2018, and imposed a 10% penalty of Rs. 2,712,300/- along with a refund of Rs.8,802,000/- which was disbursed two years after the arrival of the equipment(s), an amount egregiously disproportionate to the agreed contract sum, constituting less than half thereof. Further submitted that, in their Termination Notice, the Respondent refers to a letter dated 04.10.2017 by NESPAK (Pvt.) Limited, wherein certain allegations were made against the Petitioner which were duly satisfied by the Petitioner vide letter dated 10.10.2017, where it has been emphasized that the allegations are based on the documents of geared model which had been duly approved by the Respondent at the initial stage. Furthermore, it is submitted that the allegations made by the NESPAK (Pvt.) Limited are based on incomplete documents.

12. The counsel of the petitioner also added that the Respondent in the year of 2018, issued a Notice to the Petitioner, whereby the contract was terminated and required the Petitioner to refund the amount of the contract along with a

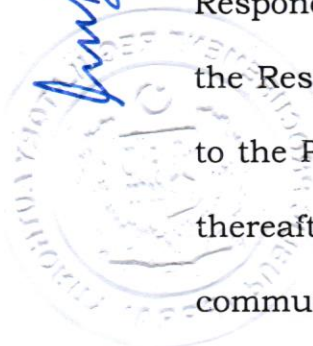
penalty i.e., 10% of the contract amount. The Petitioner replied to the said Notice vide its Reply dated 09.04.2018, and thereafter, its Reminder dated 24.04.2018, whereby the Petitioner rejected the allegations leveled in the Legal Notice referred above. The Petitioner replied to each and every allegations leveled in the Notice and finally, the Respondent vide letter dated 08.05.2018 insisted the Petitioner to pay the amount of penalty and to remove the equipment(s). The Respondent wished to invoke Arbitration but the same was not agreed by the Petitioner. Thereafter, finally, in the year of 2022 the Petitioner informed the Respondent that the Petitioner is ready to take back the consignments and to refund the amount to the Respondent. The Petitioner's offer was accepted by the Respondent, thereafter, the inspection of consignment was carried, whereby some parts of the equipment(s) were found missing. The Petitioner paid the amount of Contract as well as penalty imposed by the Respondent.

13. The counsel of the petitioner further submitted that, before depositing the penalty and retrieving the equipment(s), the Petitioner conducted an inspection in accordance with their inventory records, the Petitioner identified the missing parts of the equipment(s). Specifically, three DOC Cards, three DPC Cards, and several counterweights were found to be missing, collectively valued at Rs.2.5 million. Subsequently, the Petitioner formally requested the Respondent to share partial responsibility for the cost incurred due to the missing parts.

Regrettably, the Respondent declined to acknowledge any liability in this matter. Moreover, the contract awarded to the Petitioner in the year of 2013 was finally terminated by the Respondent and the amount of contract price paid to the Petitioner was returned.

14. The counsel of the petitioner also submitted that, despite the groundless penalty, the forced indemnification, the waiver of the Petitioner's rights, and an incomprehensible loss to the Petitioner, the Respondent served a letter dated 10.04.2023 to the Petitioner, wherein a reference of Show Cause Notice dated 03.03.2023 and its Reminder dated 22.03.2023 and 31.03.2023 was mentioned, whereas the Petitioner has neither received any Show Cause Notice nor its Reminder as alleged in letter dated 10.04.2023. The Petitioner was called in the said letter for hearing before the Committee on 12.04.2023 in the office of the Respondent. The Sole Proprietor of the Petitioner was out of station, as such, the Petitioner's representative vide its letter dated 12.04.2023 requested the Respondent for extension of time. That the Petitioner's Sole Proprietor after its arrival, approached the Respondent and informed that the contract was unilaterally terminated by the Respondent and the dispute has already been resolved, when the Respondent has retrieved the entire contract amount paid to the Petitioner and also received the amount of penalty, and thereafter, the Petitioner has not received any kind of communication from the Respondent regarding the said

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dispute. Further, the Respondent reassured the Petitioner at the time that the matter would be resolved and wrapped up.

15. At the last, the counsel of the petitioner further submitted that, in the month of October 2024, the Pakistan Airports Authority invited the bids for improvements / rehabilitation / replacement of E&M Facilities / System at Jinnah International Airport Karachi. The Petitioner approached Pakistan Airports Authority was informed that name of his firm has been placed on the website of PPRA being blacklisted by the Respondent. It is submitted that the Petitioner is engaged in the business with Provincial Government, as such, the Petitioner was completely unaware about its blacklisting available at the website of PPRA. That the dispute was concluded and resolved between the parties, whereby, a penalty was imposed on the Petitioner and the amount of contract which was paid to the Petitioner was refunded, as such, the subsequent action of blacklisting the Petitioner would constitute a form of double jeopardy, contravening the stipulations outlined in Article 13 of the Constitution of Pakistan, 1973, hence, being aggrieved, filed the instant Review Petition.

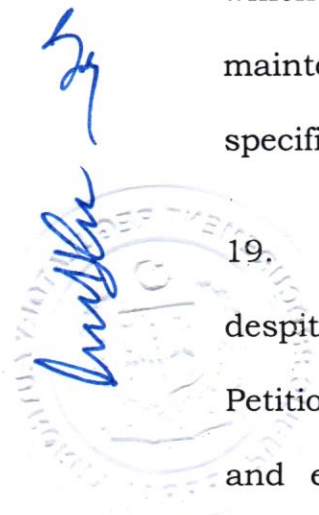
16. On the other hand, learned counsel of the respondent i.e., State Life Insurance Corporation (SLIC) raised preliminary objections regarding the maintainability of the instant Review Petition. The representative argued that the subject review petition is badly barred by time in term of Rule 19(3) of the PP

Rules, 2004. Hence, the Review Petition is not competent and is liable to be rejected. Moreover, perusal of record annexed with the review petition clearly showed that the Petitioner has not sought condonation of delay by giving explanation of each and every day of delay. Hence, the Review Petition is liable to be rejected.

17. The counsel of the respondent also submitted that the Petitioner has admitted that the Order dated 19.04.2023 was received by the Petitioner on 20.04.2023, therefore, he cannot take the plea that he was not aware of the Order passed by the Respondent No.1 and came to know from the website of the Authority, hence, the subject Review Petition is liable to be dismissed.

18. The counsel of the respondent further submitted that as per the tender / contract, they required *gearless lifts* manufactured by a European firm within Europe. However, contrary to this, the Petitioner supplied *geared lifts*, initially from Korea, later tried to modify them using parts from China, which were not accepted due to potential operational and maintenance issues and which is also against the tender specification as defined in the bidding documents.

19. The counsel of the respondent further added that, despite clear requirements and specification of the tender, the Petitioner continuously tried to have the geared lifts accepted, and even requested to alter the equipment post-delivery,



without prior approval. Moreover, discrepancies were found in the shipping and technical documents submitted by the Petitioner. The counsel of the respondent further argued that the Petitioner's failure to provide contractually compliant equipment led to substantial delay and the original 09 month timeline extended to several years, causing financial losses and re-tendering of the project in 2018.

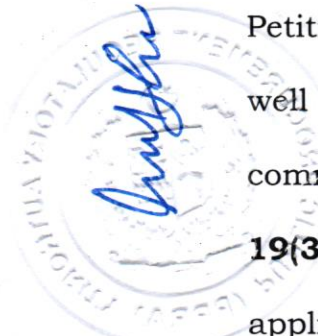
20. The counsel of the respondent also submitted that due to the Petitioner's breach and failure to provide the said items as per tender specifications, the respondent (SLIC) suffered huge financial loss approximately PKR 823.47 million in terms of rental income and PKR 30.663 million loss in terms of additional project costs. Moreover, with regard to the intimation provided to the petitioner regarding blacklisting proceedings, the respondent (SLIC) issued multiple notices dated 03.03.2023, 22.03.2023, and 31.03.2023 to the petitioner. Further, opportunity of personal hearing was provided on 10.04.2023 and the Petitioner's representatives attended the said hearing but failed to satisfactorily refute the charges. Therefore, after a proper inquiry, blacklisting was imposed on the petitioner for 10 years under Rule 19 of Public Procurement Rules, 2004.

21. The counsel of the respondent further argued and submitted that the Claim of the petitioner regarding late knowledge / communication of blacklisting order dated 23.10.2024 is totally wrong, whereas, the said order was

communicated to the petitioner by the respondent on 19.04.2023. The counsel of the respondent further added that the Petitioner was given full opportunity to respond and be heard and the proceeding of blacklisting were conducted strictly in accordance with Public Procurement Rules, 2004 and internal Blacklisting Policy of the respondent.

22. At the last, the counsel of the respondent also submitted that the petitioner involved in the concealment of fact that the lifts were *geared* and of non-European origin and submitted discrepant documentation seeking post-facto approvals regarding the said. It is very relevant to mention that the petitioner admitted the failure by agreeing to refund the contract amount and penalty as well, therefore, the counsel of the respondent request for dismissal of the instant Review Petition.

23. After perusal of all the available record and arguments made by both the parties, the Review Petition Committee ("the Committee") observed that the petitioner filed the instant Review Petition on **05.11.2024** and as per the tracking record provided by the respondent, the blacklisting order was issued on **19.04.2023** and was received by the Petitioner on **20.04.2023**. The instant Review Petition was filed well beyond the prescribed timeframe i.e., 30 days from the communication of the blacklisting order as defined under **Rule 19(3) of the Public Procurement Rules, 2004**, without any application for **condonation of delay** or explanation for each



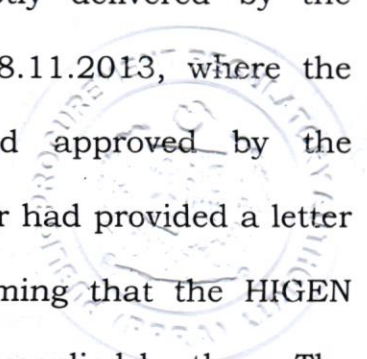
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day's delay. Therefore, the petition suffers from **inordinate delay** and is **prima facie not maintainable**.

24. The Committee also observed that the contract explicitly required gearless elevators of European origin. The petitioner initially offered geared lifts, substituted models post-approval, and failed to supply equipment as per agreed terms. Therefore, these actions constitutes material non-compliance and misrepresentation, and leads to administrative action under Rule 19. Moreover, the Petitioner refunded the contract amount and the imposed penalty, indicating **acceptance of contractual failure and misrepresentation**. It is very relevant to point out that, the argument of "*double jeopardy*" under **Article 13 of the Constitution** raised by the counsel of the petitioner does not apply in this context, as **contractual remedies and administrative actions** are separate and distinct. Therefore, the respondent rightly justified to blacklist the Petitioner.

25. The Committee further observed that equipment was inspected by the Respondent's consultants on 24.10.2013 and the same were then accepted on 23.11.2013 by the respondent. Therefore, the equipment was promptly delivered by the Petitioner at the Islamabad site on 28.11.2013, where the equipment was again inspected and approved by the Respondent's consultants. The Petitioner had provided a letter from Sigma, the manufacturer, confirming that the HIGEN machines are part of the lift assembly supplied by them. The

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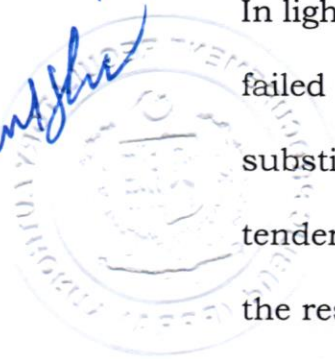
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Petitioner had also provided Letter of Credit, Certificates of Origin and Shipping Documents which were subsequently approved by the Respondent and its consultants. After that, in January 2014, the Respondent, through its consultant, had asked the Petitioner as to why geared equipment(s) have been provided instead of gearless one and, why there was a discrepancy in the model numbers in LC. From the said facts, it reveals that the respondent was very well aware from the fact since 23.11.2013 that the lifts / items were not in accordance with the specification as defined in the bidding documents. Irrespective to this, the respondent company approved the said item by compromising his own defined criteria and later on objected the said items. However, this should have happened when the respondent terminated the contract at that time and initiated the blacklisting proceeding against the petitioner, but nonetheless the respondent delay the matter and finally terminated the said contract and re-tendered in 2018.

26. The Committee further observed that as per the own stance of the respondent, they (SLIC) suffered huge financial loss approximately PKR 823.47 million in terms of rental income and PKR 30.663 million loss in terms of additional project costs.

In light of said, the Committee is of the view that the respondent failed to enforce contract terms strictly and also accepted the substituted equipment post-contract approval without fresh tendering or addendum, indicating the negligence on the part of the respondent.

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Amjad



Amjad