



Appeal No. PPRA/AP-01/2025
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 Creative Electronics (Pvt.) Limited

...the "Appellant"

Vs.

Islamabad Electric Supply Company (IESCO), etc.

...the "Respondent(s)"

Dates of Hearings	
08.04.2025 24.03.2025 04.03.2025 10.02.2025 06.02.2025	<p><i>Mr. Tahir Maqsood Butt (AHC), Mr. Khuzaima Aslam (Advocate), Mian Sultan Mahmood (CEO)</i></p> <p style="text-align: right;">(On behalf of the Appellant)</p> <p><i>Mr. M. Asif Khan (Advocate Supreme Court), Mr. Masood Ahmed (Director Procurement), Mr. Muzaffar Ali, Mr. Mohsin Raza Gillani (PD- AMI), Mr. Kamran Aftab (CE-Dev.), Mr. Rajesh Kumar (Director)</i></p> <p style="text-align: right;">(On behalf of the Respondent)</p> <p><i>Mr. Misbah ul Mustafa (Adv. Supreme Court),</i></p> <p style="text-align: right;">(on behalf of M/s STZ Engineers)</p>

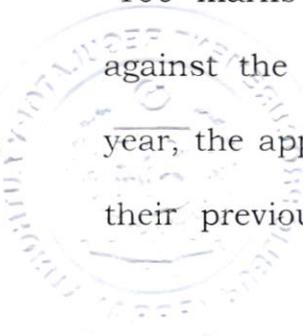
APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The above-mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Appellate Committee and presented their arguments at length.

2. At the very outset of hearing, the learned counsel of the Appellant i.e., M/s Creative Electronics (Pvt.) Limited submitted that they challenged the decision of the Grievance Redressal Committee (Respondent Nos. 3, 4 and 5) of the Islamabad Electric Supply Company's (IESCO). The said order was conveyed through Director (Procurement) Project

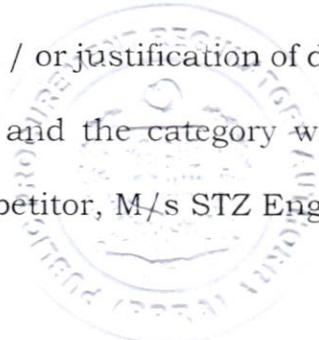
Management Unit IESCO (Respondent No.2), Letter No. 7879-83/PMU/IESCO/NCB-198 Dated 27.12.2024. Further submitted that the Respondent i.e., IESCO advertised a tender under “Single Stage Two Envelop Procedure”, for “Procurement of Carriage, Installation, Testing and Commissioning of AMI (PLC/GSM) Meters and Communication Equipment in Jurisdiction of IESCO (Subdivisions of Taxila Division & Remaining Areas of City and Cantt. Circles and return of dismantled material to IESCO designated Store”.

3. The counsel of the appellant also submitted that they participated in said tender, along-with other Bidders, including “M/s STZ Engineers”. The technical bids were opened on 20.11.2024 and the appellant completely qualify for full Technical Scores in all the relevant conditions of “Evaluation and Qualification Criteria” (Qualification, Experience and Evaluation Criteria) of Bid Data Sheet and deserved 100% marks under the Law and the given Criteria, but the Evaluation Committee treated discriminately and deprived from legitimate right of getting “full” marks against the designated criteria in each division of the Technical Evaluation, and were granted only 88.08 marks out of the total “100” marks to the appellant. Strangely, during the evaluation, against the same documentary evidence re-submitted this year, the appellant has been allocated 05 marks lesser than their previously submitted Bidding Proposal in the same



category of (1.2.5) Vehicles and (3.1) Installation Methodology vide IESCO's recent similar Tender No. IESCO/PMU/Services/AMI/NCB 128-R dated 02.02.2024.

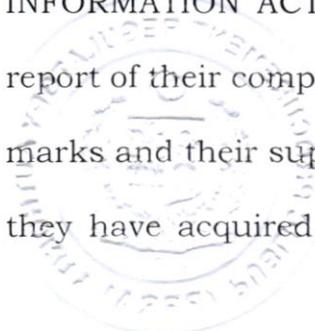
4. The counsel of the appellant further submitted that an invalid and discriminated Evaluation Report was prepared by the Evaluation Committee by making unlawful considerations of granting them low marking than their legally deserved privileges and claims and deprived off their legitimate rights. Resultantly, the appellant, lodged a complaint against Evaluation Report before the IESCO Grievance Redressal Committee ("GRC") on 16.12.2024. The appellant appeared before the Grievance Redressal Committee on the time, date and place as directed by the Additional Director (Procurement), PMU IESCO vide letter dated 17.12.2024 and produced the complete documentary evidence before the GRC. The GRC partially accepted their view point and increased our marks from 88.08 to 90.58, by disregarding the illegal report of Evaluation Committee and the Respondent No.2, conveyed the decision of the GRC on 27.12.2024 to the appellant. This intimation dated 27.12.2024, about the GRC decision was conveyed without any relevant record including signed copy of the decision by the GRC Members, proceedings of the meeting with the appellant and / or justification of deductions in lawful claims for full marks and the category wise detail of marks given to the their competitor, M/s STZ Engineers.



5. The counsel of the appellant further added that, during the personal hearing with the IESCO GRC dated 19.12.2024, the appellant requested the GRC to provide the category-wise detailed marking awarded to each Bidder, especially M/s STZ Engineers, so that the appellant could be able to compare and analyze the integrity of marks given to our competitors, especially to M/s STZ Engineers, in each category, against the set forth making Evaluation Criteria. The Appellant further requested the GRC that since they are the aggrieved party, but they were not allowed, while the appellant also requested and apprised the Committee that under the “RIGHT OF ACCESS TO INFORMATION ACT, 2017”, it is their legitimate right to get the requested information of comparative statement of detailed marking sheet of M/s STZ Engineers, but their request was ignored.

6. The counsel of the appellant further argued and submitted that they submitted a written request vide letter No. C.E.Co/BD/2024/9082 dated 20.12.2024 to Chief Engineer (Development) IESCO, Respondent No.1, to revisit the allotted Technical score in the light of the documentary evidence. It was also requested under the “RIGHT OF ACCESS TO INFORMATION ACT. 2017” to share the detailed evaluation report of their competitor, M/s STZ Engineers acquiring 92.72 marks and their supporting documents in the category, where they have acquired full marks, but the information has not



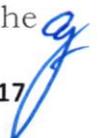
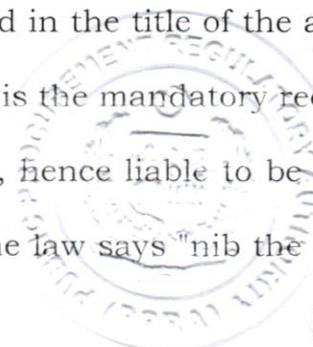





been provided as yet. Furthermore, the Respondent No.1 has fixed 06.01.2025 for opening of Financial Bids, hence filed the instant appeal.

7. It is very relevant to mention that the appellant filed an application dated 21.01.2025 under Order (1) Rule (10) Read with Section 151 of the CPC 1908 with the request to implead M/s STZ Engineers (Pvt.) Ltd., Lahore (M/s STZ), as necessary party in the instant Appeal. Further, the Appellant (M/s Creative Electronics (Pvt.) Limited) submitted another application dated 10.02.2025 under Order 6 Rule 17 C.P.C. for Amendment in Memorandum of titled Appeal. The said applications are self-explanatory and placed on record. The Committee already decided the said applications through orders dated 22.01.2025 and 10.02.2025.

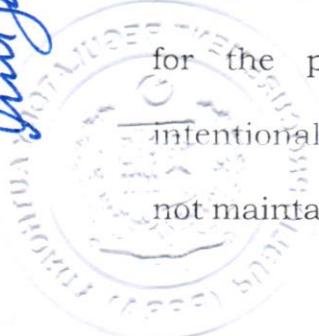
8. On the other hand learned counsel of the respondent i.e., Islamabad Electric Supply Company (IESCO) raised the preliminary objections in the instant appeal and submitted that the titled appeal is not maintainable in the light of Section 29 of CPC because the subject appeal has been filed on behalf of the company but without any proper authority and authorization through board resolution as prescribed under the law which neither mentioned in the title of the appeal nor in the body of the appeal which is the mandatory requirement of the law and incurable defect, hence liable to be dismissed on its very inception because the law says "nib the evil in the



bud before it surface" therefore the instant appeal may be dismissed on this score alone moreover reliance is placed on the dictum laid down by the honourable Supreme Court of Pakistan in its reported judgment 2014 CLD 415 TELECARD LIMITED Versus PTCL Relevant portion of the same is reproduced here "Appeal filed by Telecommunication Company Appellant was a limited company, and appeal on its behalf under S.7 of the Pakistan Telecommunication (Re-organization), 1996, had been filed by a person not having authority under Articles of Association or a Board Resolution of the company-Held, that a *lis* could not be initiated on behalf of a company, which was a juristic person, without having due authority either in terms of its Articles of Association, or the Board Resolution: which were conspicuously missing in the present case Appellant had not even appended any document to establish that the Chief Executive Officer (CEO) of the Company, who had allegedly signed the memo of the appeal, had authority to do so-Appeal was dismissed, in circumstances."

9. The counsel of the respondent (IESCO) also submitted that the instant appeal is barred by law and jurisdiction because the appellant has badly failed to evaluate the matter for the purpose of jurisdiction of this Authority and intentionally undervalued the matter which render the appeal not maintainable such as in the light of Order 7 Rule 11 of civil

Judgment

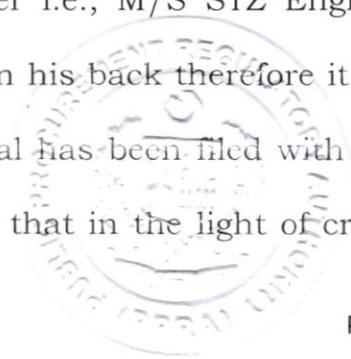


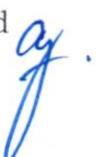
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procedure code. It is important to mention here that the value of bid for the valuation of the purpose of court fee is mentioned already in bidding document therefore the appellant should have deposited the accurate fee before filling the instant appeal. Therefore the appellant was supposed to deposit the full fee before filling the appeal to be entertainable before this authority because subject bid amount is 803 Million rupees hence instant appeal is liable to be dismissed on this score alone, specially in the light of relevant SRO of PPRA issued in this regards. The honourable Supreme Court has upheld that the courts are not expected to fill up the gaps left by any party which creates valuable rights in favour of the other party and the same cannot be taken away.

10. The counsel of the respondent (IESCO) further submitted that the appellant has not come before this Authority with clean hands and the instant appeal is hit by Non-Joinder and miss-joinder of necessary parties because the appellant has not impleaded the successful bidder as party of the proceedings since his complaint before GRC and also before this authority which render this appeal not maintainable and liable to be dismissed. The appellant did not implead the successful bidder i.e., M/S STZ Engineers (as party just to grab the relief on his back therefore it has been proved that the instant appeal has been filed with mala-fide intension. Further submitted that in the light of criteria laid







down by the honourable apex courts in its various judgments, the instant appeal is badly time barred hence not maintainable moreover neither any application for condonation of delay has been filed nor can be condoned the delay which has created right in favour of the respondent hence instant appeal may be dismissed in the interest of justice.

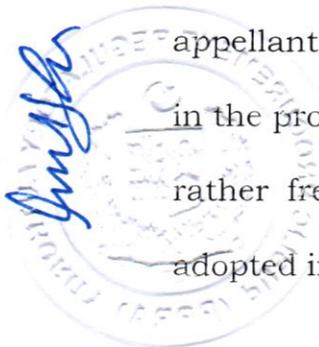
11. The counsel of the respondent (IESCO) further added that in the light of Rule 66 (5) (Redressal of grievances by the procuring agency) which is reproduced as: "In case, the complaint is filed after the issuance of the final evaluation report, the complainant cannot raise any objection on technical evaluation of the report". Therefore since the instant appeal has been filed after the opening of financial bid therefore is not maintainable in the eye of law and is liable to be dismissed. Moreover, the issues and grounds raised in this appeal have never been raised before during the course of proceedings in the complaint therefore instant appeal is not maintainable because the appellant cannot raise new issues in appeal according to dictum laid down by the honourable apex courts.

12. The counsel of the respondent (IESCO) further argued that the IESCO invited sealed bids from prospective Bidders for the Project titled CARRIAGE, INSTALLATION, TESTING & COMMISSIONING OF AMI (PLC/GSM) METERS AND COMMUNICATION EQUIPMENT IN JURISDICTION OF

IESCO (SUBDIVISIONS OF TAXILA DIVISION & REMAINING AREA OF CITY AND CANTT CIRCLES) & RETURN OF DISMANTLED MATERIAL TO IESCO DESIGNATED STORE, tender was published in newspapers on 11.10.2024 along with uploading on IESCO & PPRA websites on Single Stage Two Envelope on Quality Cost Selection (QCSB) basis and corrigendum published on 06.11.2024 regarding extension in bid opened date 20.11.2024. As it has been mentioned in the preliminary objections, the instant appeal has been filed with malafide intention just to disrupt the smooth and transparent bidding process for illegal gains. Actually Eleven (11) No. of bidders purchased the bidding documents out of which five (05) No of following bidders participated Sr. No. Name of Bidder M/s Creative Electronics Pvt. Ltd, Lahore M/s STZ Engineers Lahore, M/s Microtech Industries Pvt. Ltd, Lahore, M/s KBK Electronics (Pvt) Ltd Lahore, M/s National Pak Construction Company Subhan Technologies Rawalpindi (JV).

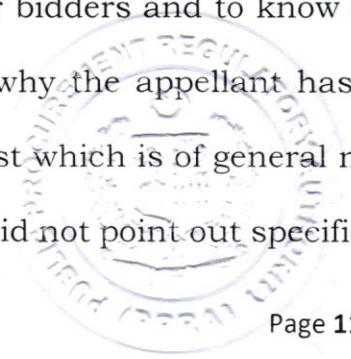
13. The counsel of the respondent (IESCO) further submitted that the appellant has qualified in technical bid but not most advantageous bidder because technically and financially stood second rank because the appellant's combine scores after decision of the GRC is 87.93 whereas most advantageous bidder secured 89.64 marks finally hence misleading the authority with false and fabricated story. In light of "Rule 29 of the Public Procurement Rules, 2004,

Evaluation criteria”.-Procuring agencies shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated. Such evaluation criteria shall form an integral part of the bidding documents. Failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to misprocurement therefore in compliance of the same rule, an unambiguous evaluation criterion was set forth and made integral part of bidding document. It is incorrect and false statement of the appellant that the appellant has qualified full technical score which neither the appellant qualified ever nor even the GRC has given full 100 score to the appellant while deciding the complaint of the appellant, that an independent Bid Evaluation Committee (BEC) evaluated each bid in light of set forth qualification and evaluation criteria of bidding document. BEC evaluated bid of petitioner and awarded 88.08 score out of 100 (in technical proposal) with detail justification and reasons for deduction of score in its BER. Neither there was any event of discrimination nor any discrimination has been meted out with the appellant. It has been upheld by the honourable apex courts that mere levelling and allegation of discrimination is very easy but almost impossible to prove. The appellant has badly failed to point out any material irregularity in the process on which the appellant can claim his full marks rather free, fair and transparent bidding process has been adopted in the light of applicable Public Procurement Rules by



adhering them in its true letter and spirit. Further added that, Appellant has obtained 100% score in many traits except of following traits. Since each tender is to be considered separately and accordingly evaluation of tender is to be carried out separately. In previous tender BEC awarded 70 Score to petitioner contrary in subject captioned tender and obtained 88.08 score. Further scope of this project is bit different and area of project is different. Therefore quoting example of previous tender(s) is not justified for the instant tender and irrelevant.

14. The counsel of the appellant further argued and submitted that, in response of results of evaluation report, aggrieved bidders M/s Creative Electronics Pvt. Ltd, Lahore (Appellant) and M/s Microtech Industries Pvt. Ltd, Lahore lodged grievance petition / Complaint in light of Rule-48 of the Public Procurement Rules, 2004 ("PP Rules, 2004") before GRC. It is well establish law point that, which has not been raised earlier during course of first step of litigation that cannot be raised at appellate stage because the appellant raised the point in this appeal had never been part and parcel of the grievance petition of the appellant which was in general nature for demanding of documents of other bidders and to know about the reasons to understand that why the appellant has been evaluated & ranked as 2nd highest which is of general nature not in specific and the appellant did not point out specific trait



where score has been deducted before IESCO GRC, hence the instant appeal is liable to be dismissed.

15. On the other hand, learned counsel of the respondent no. 06 i.e., M/s STZ Engineers also raised preliminary objection regarding the instant appeal and submitted that the appellant, contrary to the settled principles of law, in essence seeks that PPRA should substitute its opinion / findings on the hyper-technical issues with that of the experts of the field. The appellant has also failed to substantiate its bald allegations of fraudulent practices, favouritism and discrimination which have to be specifically alleged and proved and hence in their absence the law does not warrant interference of PPRA and substitute its opinion with that of the experts. Needless to mention that marks were assigned to the bids on the basis of documents submitted by the bidders which have been carefully examined by the Evaluation Committee of IESCO consisting of experts and professionals. Moreover, the so-called grievance of the appellant was heard and decided by the Grievance Redressal Committee of IESCO ("GRC"). There is no room for further re-assessment or re-evaluation of the bid submitted by the appellant. It is settled law that the issue whether a particular contractor is qualified or not is either a policy issue or commercial transaction requiring knowledge in the specialized fields and the Courts lack the expertise to express any opinion



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as to technical expertise or managerial capabilities of a contractor. The Courts ordinarily refrain from entering in policy making domain of executive authority unless those acts smacks of arbitrariness, favouritism and a total disregard of the mandate of law. Reliance in this regard is placed on "Dr. Akhtar Hassan Khan and others Vs. Federation of Pakistan and others" (2012 SCMR 455).

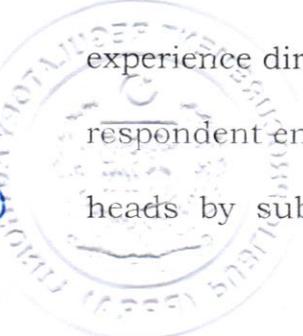
16. The counsel of the respondent no. 06 also submitted that M/s STZ Engineers came out first in the ranking at the stage of Technical Evaluation of the bids. The appellant was also one of the bidders who was lower in ranking in the competition at Technical Evaluation stage. Feeling aggrieved by its lower ranking, the appellant filed a complaint to the GRC on 16.12.2024. The record shows that the appellant raised its grievance in respect of non-provision of evaluation report in hard form and it also requested for provision of 'complete details of weightage marking all the 5 bidders'. The GRC vide its decision dated 27.12.2024 decided the matter in the following terms:-

"It is intimated that Grievances Redressal Committee (GRC) considered your grievance and decided to increase the marks of your firm from 88.08 to 90.58, after checking the record."

17. The counsel of the respondent no. 06 further submitted that although the appellant remained successful in its complaint before GRC but the said decision of GRC was

taken without hearing M/s STZ Engineers and other bidders. It may be noted that it is settled law that the quasi-judicial authorities are bound to follow the due process and to adhere to the principles of natural justice. In fact, the GRC failed to provide any opportunity of hearing to M/s STZ Engineers which was essential as the rights and interests of the respondent no. 06 were involved in the said proceedings.

18. The counsel of the respondent no. 06 further added that the Evaluation and Qualification Criteria provided in the Tender was quite elaborate and self-contained. The scoring mechanism was well defined and structured in a way that each particular head has its further detailed prompts for assessment. This shows the transparency and clarity in grant of marks to the bidders. There is no doubt that the bids are examined on the basis of documents submitted by the bidders and there is no other way of assessing their capabilities. It is obvious that all marks were granted to bidders against each of said heads on the basis of their documents. The answering respondent had submitted all documents in support of each head of the evaluation criteria and maintained Quality of Proposal, Work Plan and Installation Methodology of AMI Meters and Communication Equipment being having experience directly on same and similar works. The answering respondent ensured to prove its credentials regarding the said heads by submitting valid and reliable documents well in



order. The Evaluation Committee comprised experts and professionals followed a pre-defined clear and consistent scoring system, which was applied uniformly to all bids, hence request for dismissal of the instant appeal.

19. After perusal of all available record and arguments made by all the parties, the Appellate Committee ("the Committee") observed that, as per the stance of the counsel of the respondent (IESCO), the said tender was published in newspapers on 11.10.2024 along with uploading on IESCO & PPRA websites on Single Stage Two Envelope on Quality Cost Selection Basis (QCSB) and corrigendum published on 06.11.2024 regarding extension in bid opened date 20.11.2024. However, the record shows that the respondent (IESCO) did not provide / forward the said tender advertisement to this Authority for uploading the same on PPRA's website. Despite this, only corrigendum of the said tender was provided by the respondent to this Authority for uploading.

20. It is important to highlight that Rule 12 of the PP Rules, 2004 relates to the "Methods of advertisement" and Rule 12(2) states that:

All procurement opportunities over three million Pakistani Rupees should be advertised on the Authority's website as well as in other print media or newspapers having wide circulation. The advertisement in the newspapers shall principally appear in at least two national dailies, one in English and the other in Urdu.

So, in light of the said rule the respondent company (IESCO) violated the spirit of the above mentioned rule.

21. During the course of hearing, the Committee inquired from the counsel of the respondent (IESCO) about the mode of procurement, either it was conducted / processed manually or electronically. Upon this, the counsel of the respondent agency apprised that it was conducted manually and processed through respondent's own website / portal.

22. In this regard, the Appellate Committee observed that all the procuring agencies are under obligation to carry out the procurement process through e-Pak Acquisition and Disposal System (EPADS) under Rule 7A of the PP Rules, 2004 and the Regulations made thereunder i.e. e-Pak Procurement Regulations, 2023. The Committee also pointed out that despite of PPRA intimation to the IESCO through letter No.9-1/05-11/IT/2024 dated 18.11.2024 regarding implementation of procurement activities through E-PADS as per the Regulation namely E-Pak Procurement Regulations, 2023, the respondent i.e., IESCO conducted the said procurement process manually, which is contrary to the abovementioned Rule & Regulations. This fact is sufficient to nullify the entire procurement process.

23. The Committee further observed that the Appellant requested the GRC of the IESCO to provide the category-wise detailed marking awarded to each bidder,

including M/s STZ Engineers, and to provide the breakdown of each mark awarded, so that, as per the appellant's stance, they could be able to raise meaningful objections regarding the technical evaluation. However, in the instant case, the respondent company did not provide the detailed breakdown of category-wise marks awarded to the appellant and other bidders.

24. For what the reasons mentioned above, since the numerous violations of the Public Procurement Rules, 2004 have been made by the Respondent i.e., IESCO, hence, the entire procurement process is required to be reinitiated through E-PADS, so that, the spirit of Rule 4 of the PP Rules, 2004 may be fulfilled. Therefore, the appeal in hand is **disposed of** accordingly.


(Dr. Muhammad Aslam Waseem)
Director General (Legal)
(Member)


(Sheikh Afzaal Raza)
Director (M&E)
(Member)


(Hasnat Ahmed Qureshi)
Managing Director (PPRA)
(Chairman of the Committee)

Each page of the order has been signed by all members of the Appellate Committee. The order comprises of seventeen (17) pages.

