



Appeal No. PPRA/AP-12/2025
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 Bismillah Metal Impex (Pvt.) Limited

...the "Appellant"

Vs.

Northern Power Generation Company Limited, etc.

...the "Respondent"

Date of Hearing 16.04.2025	<i>Barrister Muhammad Ahmad Pansota (ASC)</i> (On behalf of the Appellant) <i>Mr. Rizwan Faiz (ASC), Barrister Afzal Khan Shinwari, Barrister Malia Haq, Mr. Muhammad Akram Sheikh (CEO), Mr. Mujeebullah (Additional Director), Mr. Haider Ali, Mr. Shahzad Dilawar</i> (On behalf of the Respondent) <i>Mr. M. Irshad Shani, Mr. Kaukab Hussain Bhatti</i> (On behalf of NESPAK)
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APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004
[AGAINST THE DECISION OF THE GRIEVANCE REDRESSAL COMMITTEE
NPGCL DATED 16.03.2025]

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. The Appellate Committee ("the Committee") initially inquired from the counsel of the appellant regarding deposit of the balance fee as required under Regulation 7 of the



Redressal of Grievances Regulations, 2021. It is pertinent to mention that the appellant had earlier submitted Rs.200,000/- as fee along-with the instant appeal, which is deficient in amount as required under the said Regulation. However, since the matter in hand involves national and public interest and it has huge impact on the public exchequer. Therefore, considering these aspects and with the consent of the respondent and request made by the appellant, the Committee decided to proceed further. Before entering into detailed arguments, the Committee directed the counsel of the appellant to deposit the remaining / balance fee strictly in accordance with Schedule-II of the Redressal of Grievances Regulations, 2021, on the same day of hearing till the closing time of office hours, so that, the requirement of the Regulation 7 of the Redressal of Grievances Regulations, 2021 may be fulfilled.

3. At the outset of hearing, the learned counsel of the Appellant i.e., M/s Bismillah Metal Impex (Pvt.) Limited submitted that the Respondent No. 3 i.e., Northern Power Generation Company Limited (NPGCL) invited sealed bids through Single Stage Two Envelope international competitive bidding procedure from eligible bidders having the nationality of Pakistan or one of the countries notified by Ministry of Interior, Government of Pakistan as Business-Friendly Countries towards the cost of Disposal of Old and Defunct Power Plants of NPGCL comprising its 5 lots situated in different parts of the country. After that, the NPGCL in strict adherence to the provisions outlined in the bidding documents, proceeded to issue an official addendum.

4. The counsel of the appellant also submitted that subsequently, they submitted a formal letter of the technical bid on 04.03.2025 in accordance with the bidding process,



addressing it to Respondent No. 03. In this letter, the Appellant explicitly stated and affirmed that it met the prescribed eligibility criteria as outlined under Clause IB.2 of the bidding documents. Furthermore, the Appellant enclosed the requisite bid security as mandated by the bidding terms, specifically for three out of the total five lots. The Appellant explicitly stated that it was submitting only 2% of the bid security for the tender at the time of submission. The Appellant further clarified that, in the event of being declared successful, it would fulfill the remaining payment obligations in accordance with Option 2 of the price schedule specified in the bidding documents. However, the Appellant asserted that it would not be providing a bank guarantee, as the payments would be made in installments as per the provisions set forth in the bidding documents and the amendments introduced through Addendum No. 01. This submission was made in line with the terms and conditions governing the tender process, ensuring compliance with the financial structuring permitted under the bidding framework.

5. The counsel of the appellant further submitted that the respondent (NPGCL), relying on the report issued by Respondent No.02, proceeded to issue a Technical Evaluation Report in accordance with Rule 35 of the Public Procurement Rules, 2004 ("PP Rules, 2004"). Based on the findings of this evaluation, the Appellant was declared non-responsive. This determination effectively disqualified the Appellant from further participation in the bidding process, as it was deemed not to have met the necessary technical or procedural requirements stipulated under the relevant procurement rules and bidding documents. Further submitted that the technical evaluation report did not explicitly provide any reasons for declaring the petitioner as



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non-responsive, the Appellant, upon inquiry, was informed that the basis for this decision was its failure to furnish a bank / performance guarantee. It is important to emphasize that no other reason was cited for declaring the Appellant as non-responsive. The sole basis for disqualification, as conveyed to the Appellant, was the absence of a performance bond. It had met every criterion essential for the successful execution of the Disposal of Old and Defunct Power Plants of NPGCL.

6. The counsel of the appellant further added that, on 08.03.2025, the Appellant formally communicated with the Chief Executive Officer (CEO) of NPGCL via email, wherein, it was explained the reasons for its initial reluctance to furnish the performance bond. In this correspondence, the Appellant clarified its position and reaffirmed its commitment of fulfilling all necessary financial obligations in accordance with the procurement requirements. Furthermore, the Appellant informed the CEO that it was actively expediting its internal processes to align with the bidding requirements and was in the final stages of arranging the submission of a performance bond equivalent to 10% of the required amount. Further submitted that, a writ petition was filed before Honorable Lahore High Court, Lahore bearing W.P. No. 15301 of 2025 titled as "Bismillah Metal Impex (Pvt.) Ltd. Vs. Federation of Pakistan etc." in which the Court was pleased to dispose of the case on 13.03.2025 with the direction to the Respondent to decide the grievance petition filed by the Appellant under Rule 48 of the PP Rules, 2004.

7. The counsel of the appellant further argued that, on 13.03.2025, the respondent also issued a notice dated 13.03.2025, wherein, it was advised to appear before the Chief Executive Officer, NPGCL on 14.03.2025 along-with requisite documents for hearing under Rule 48 of PP Rules,



2004. After that, the representative of Appellant appeared before the GRC on 15.03.2025 and a decision was intimated that the grievance petition of the Appellant was dismissed and no reasons for dismissal of the same was provided to the Appellant through a letter dated 16.03.2025 ("Impugned Order").

8. The counsel of the appellant further submitted that the NPGCL issued the Impugned Order declaring the Appellant's bid as non-responsive without providing any explanation or justifications. Despite the Appellant having submitted all necessary documentation and clarifications in response to NPGCL's requests, and having fully complied with the requirements set forth in the bidding documents, NPGCL failed to outline the specific grounds for declaring the bid as non-responsive. This lack of transparency in the decision-making process raises concerns, as the Appellant was not afforded any clear rationale or opportunity to address the alleged issues, if any, with the bid. The absence of a reasoned explanation from NPGCL leaves the Appellant in a position of uncertainty and prevents them from understanding the basis of the decision, undermining the principles of fairness and accountability in the procurement process. The counsel further added that, when the Grievance Redressal Committee (GRC) concluded that the grievance petition filed by the Appellant was without merit, it failed to provide any reasons for its decision. This lack of reasoning is a significant oversight, particularly in the context of public procurement and the principles of natural justice, hence, filed the instant appeal. Moreover, the counsel of the appellant also added that the appellant filed a petition against the decision of GRC before the Lahore High Court, Lahore bearing W.P No.16693 of 2025 which is pending before the Court.



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9. On the other hand, learned counsel of the respondent submitted that Northern Power Generation Company Limited ("NPGCL") began the process of disposing-off its redundant, old and defunct power plants as per the timeline set by the Prime Minister of Pakistan, communicated through the Task Force / Ministry of Energy (Power Division) and GENCO Holding Company Limited. After getting the required approvals from the NPGCL's Board of Directors, salvage valuations for these plants and inventory were conducted by a State Bank approved valuator. In accordance with Rule 42(f) of the PP Rules, 2004. Further, in accordance with Rule 42(f) of the PP Rules, 2004 M/s NESPAK was engaged by NPGCL to provide consultancy services for the disposal process, including the preparation of bidding documents and the technical and financial.

10. The counsel of the respondent also submitted that, in the light of the recommendations of NESPAK and the valuator's report, NPGCL invited the sealed bids through a Single Stage Two Envelope international competitive bidding process from eligible bidder through advertisement dated 31.01.2025. The bidding document of disposal tender (D-SC-44 (SP-01)) has clear instructions to bidders, draft contracts and the Employer's Requirements as well as comprehensive information regarding NPGCL's five (05) old and defunct power plants, which were to be disposed-off. The bids were divided into five lots, with the following details:

Lot#	Description of Lot	Location	Reserve Price
1	NGPS(D) Multan (260 MW)	Piranghaib, Multan	1,878,208,586.00
2	TPS Multan Cantt. (MESCO) (20 MW)	Multan Cantt.	84,896,076.00
3	GTPS Faisalabad (247 MW)	Nishatabad, Faisalabad	1,862,728,215.00
4	SPS Faisalabad (132 MW)	Nishatabad, Faisalabad	1,601,257,549.00
5	GTPS Shahdara (85 MW)	Shahdara, Lahore	324,582,319.00



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11. The counsel of the respondent further submitted that, under the invitation to bids, the closing date for submission of bids was 05.03.2025. Thus, NPGCL gave a sufficient time to all the prospective bidders to understand the Bidding Documents and in this regard a pre-bid meeting was also arranged on 22.02.2025, which was attended by the Appellant. Moreover, in the light of the recommendations of various bidders, some clauses of bidding documents were modified and communicated as "Addendum No.1" through newspapers, website and PPRA Website to facilitate the potential bidders for wide competition. Further submitted that, the Disposal Tender was opened on 05.03.2025 by the Tender Opening Committee which consisted of officer of NPGCL, representative of GHCL and representative of NESPAK. NESPAK completed the technical evaluation of bids for the said tender in accordance with the bidding documents and submitted their evaluation report of technical bids on 08.03.2025. Moreover, according to the technical evaluation of the bids by NESPAK, eight (08) bidders participated in the disposal tender, with five (05) being declared substantially responsive and three (03) bidders being declared as non-responsive in their respective quoted lots.

12. The counsel of the respondent further added that according to the Summary of Technical Bids recorded on 05.03.2025, the Appellant participated in the tender for Lot-1 (NGPS Piranghaib), Lot-2 (TPS Multan Cantt - MESCO) & Lot-5 (GTPS Shahdara, Lahore). Further, in accordance with Rule 35 of the PP Rules, 2004, the Technical Evaluation Report was uploaded at PPRA Website on 10.03.2025 and the key finding of the report were shared with all the bidders. Moreover, in the light of the recommendations of NESPAK, financial bids were opened on



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18.03.2025 by the Tender Opening Committee and NESPAK completed the final / financial evaluation of bids for the tender in accordance with the received commercial proposals of the bidders and submitted their report on 19.03.2025.

13. The counsel of the respondent further argued that the Final Evaluation Report in accordance with the PPRA Rules, 2004 was uploaded to the Authority's website on 20.03.2025 and the Financial Proposals & Bid Securities of the Appellant were retained in the office of Manager (Supply Chain), TPS Muzaffargarh due to the Appellant's grievance being *sub-judice* before the Lahore High Court. Further added that, the Appellant submitted its bids for Lots 1, 2, and 5, and in each of the bids, with its "Technical Bid", stated that: "We are submitting a 2% security for this tender. In case we win, we will make the remaining payment as per Option 2 of price schedule. However, we will not provide a Performance Guarantee because we will make payments in installments". After the bid closing date of 05.03.2025, and the completion of the technical evaluation of bids by NESPAK on 08.03.2025, the Appellant sent an email to NPGCL on 09.03.2025, in which they stated: "We have learnt through the results of technical evaluation on the website that M/s Bismillah Metal Impex (Pvt.) Ltd. has not been qualified for the evaluation. However, if the reason is inadvertent decline of performance bond in our technical bid, we are extending our alignment through this email to submit a performance bond of 10% (if inevitable)".

14. The counsel of the respondent also submitted that, since the Appellant's offer could not be accepted under Rule 31 of the PP Rules, 2004. The Appellant however challenged the same in W.P No. 15301/2025 before Lahore High Court, and on 13.03.2025, the Court was pleased to



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issue a direction to the Chairman or NPGCL's Grievance Redressal Committee ("GRC") to decide the Appellant's grievance under Rule 48 of the PPRA Rules, 2004. In compliance with the said Hon'ble Court Order, the Convener GRC, issued notices to the Appellant to appear before him on 15.03.2025. The Appellant appeared before the GRC through its duly authorized representative, and was given a chance of being heard. After the hearing, the GRC dismissed the Appellant's grievance vide order dated 16.03.2025, which was duly communicated to the Appellant. It is relevant to mention here that the said decision of respondent's GRC was based on M/s Bismillah Metal Impex's failure to meet the requirements set out in Clause IB.23 and IB.29 of the Bidding Documents, as also highlighted in the NESPAK's evaluation report.

15. The counsel of the respondent also submitted that the Appellant thereafter assailed the decision of the GRC in W.P. No. 16693/2025 before the Lahore High Court, and on 18.03.2025, the Court was pleased to pass the following order:-

"Notice for the above dated 07.04.2025, in the meanwhile the further steps in the bid process shall be subject to the final out-come of this Writ Petition."

Further added that, since the High Court had not stopped NPGCL from taking "further steps", therefore, the financial bids were opened on 18.03.2025, which prompted the Appellant to file CrI. Org. No. 17719-W/2025 as well as C.M No. 3/2025 in W.P No. 16693/2025, in which, it sought, *inter alia*, a stay order against award of the contracts for the bids in which the Appellant had participated. After that, the matter was fixed on 21.03.2025, however, on the said date, the Hon'ble Court adjourned the matter and now the case was thereafter fixed before Mr. Justice Shahid Kareem of the



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Lahore High Court on 07.04.2025, and was adjourned to 20.05.2025. On the same date, the Appellant's counsel informed NPGCL's counsel that the Appellant had taken his grievance before the Authority under Rule 48(7) of the PP Rules, 2004.

16. At the last, the counsel of the respondent further submitted that the Appellant has failed to justify its conditional bid, which was a clear deviation from the instructions to bidders and the Bidding Documents. They could have corrected their mistake (if the same was done inadvertently as claimed by the Appellant in its email) prior to the bid closing date of 05.03.2025, however, under Rule 31 of the PP Rules, 2004, no changes can be made to the bid after the bid closing date. The appellant however tried to rectify its mistake through email dated 09.03.2025. Moreover, the counsel of the respondent pointed out that, in the Technical Evaluation Report of the bids submitted by NESPAK, it has been clearly mentioned that the Appellant has taken a material deviation in its bids in the shape of their statement regarding the non-providing of bank / performance guarantee which was a mandatory requirement under Clause IB.29 of Bidding Documents. Thus, NESPAK had declared the Appellant's bid as non-responsive under Clause IB.23 of Bidding Documents. However, after the completion of technical evaluation of bids, the Appellant clearly came to know of the reason for their bid being declared non-responsive, as was stated in their email of 09.03.2025. Thus, it is quite astonishing that in para-11 of the titled appeal, the Appellant was ignored regarding the reasons for its bid being declared non-responsive, hence request for dismissal of the instant appeal.



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17. After concluding the arguments, at the very first, the Committee highlighted that the appellant did not meet the requirement of Regulation 7 of the Redressal of Grievances Regulations, 2021 till the official time of the day end despite clear direction of the Committee.

18. After perusal of all available record and arguments made by all the parties, the Committee observed that as per the stance of the Appellant, they submitted their bids for Lots 1, 2, and 5, and in each of the bids, with the submission that they will submit a 2% security for this tender, in case the appellant wins, they will make the remaining payment as per Option 2 of price schedule. It is further observed by the Committee that, as per the stance of the appellant they will not provide a Performance Guarantee because the appellant will make payment in installments. On this, the Committee pointed out that the appellant submitted conditional bid which is not allowed and also not covered in any Rule of the Public Procurement Rules, 2004, hence, violates Rule 4 of the PP Rules, 2004.

19. The Committee also observed that the Appellant sent an email to the respondent (NPGCL) on 09.03.2025, with the request that if the reason of rejection or non-responsiveness is only because of non-submission of performance security / bond, then the appellant is ready to submit the same. This act of appellant tantamount to deviation or alteration in the bid. It is crystal clear that such type of deviation and alteration is not allowed in the PP Rules, 2004. The Committee further mentioned that, it was the mandatory requirement under Clause IB.29 of the bidding documents to submit the Performance Guarantee / bond. The Committee further observed that Clause IB.23 of Bidding Documents clearly states that the bids shall be examined and their responsiveness shall be determined as



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per the conditions stated in the Bidding Documents. It is important to highlight that Rule 23 of the PP Rules, 2004 and Clause IB.23 of the Bidding Documents clearly states that the bids must be examined strictly in accordance with the Bidding Documents, whereas, non-compliant bids are non-responsive.

20. Furthermore, Rule 31(1) of the PP Rules, 2004 states that “no bidder shall be allowed to alter or modify his bid after the bids have been opened. However the procuring agency may seek and accept clarifications to the bid that do not change the substance of the bid.”

21. In this context, reliance is made on the judgement **AIR 2006 SC 871** (*Reliance Energy Ltd. v. MSRDC*), the Hon'ble Supreme Court held that public tendering must adhere strictly to the stated terms to ensure fairness, transparency, and equality. Any deviation compromises the integrity of the process. In the instant case, the rejection of M/s Bismillah Metal Impex's bid is consistent with this principle, as it failed to meet mandatory requirements and sought unfair post-bid modifications.

22. The Committee further observed that as per stance of the appellant the Technical Evaluation Report did not explicitly provide any reasons for declaring the petitioner as non-responsive. However, the record reveals that the reasons regarding rejection of the appellant's bid were provided through the GRC decision 16.03.2025. In this context, the respondent (NPGCL) was bound to proceed in accordance with Rule 35 of the PP Rules, 2004 which clearly states that the procuring agency shall announce the result of bid evaluation in the form of final evaluation report giving *justification* for acceptance or rejection of bids at



least fifteen days prior to the award of procurement contract.

23. In light of the above, the Committee is of the view that the Appellant failed to comply with essential requirements of the bidding documents (Clause IB.29) and the PP Rules, 2004. The declaration of non-responsiveness to the appellant by the respondent is lawful and justified under Rules 23 and 31 of the PP Rules, 2004.

24. For what the reasons mentioned above, the Committee upheld the decision of the GRC of the respondent dated 16.03.2025. Therefore, the appeal in hand is hereby **dismissed** being devoid of merits and disposed of accordingly.


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


(Sheikh Afzal 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 thirteen (13) pages.

