



Appeal No.PPRA/AP-21/2025
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 ZKB - SMC (Joint Venture)

...the "Appellant"

Vs.

National Highway Authority, etc.

...the "Respondent(s)"

Date of Hearing	Mr. Jawad-Ur-Rahim Malik (Advocate), Mr. Babbar A. Khan (Advocate), Mr. M. Bilal Aslam (Advocate) (On behalf of Appellant)
12.06.2025	
08-07-2025	
23-07-2025	Mr. Taimur Aslam ASC, Mr. Fayyaz Ahmed (GM P&CA), Mr. Muhammad Talha, Mr. Abdur Rehman (On behalf of Respondent (NHA))
	Mr. Afnan Karim Kundi (ASC), Mr. Adeel Aftab Ch. (Barrister), Mr. Amir Ali Qureshi, Mr. Wang Cheng Hu, Mr. Zou Yongchao (On behalf of Respondent M/s NXCC, M/S RA, M/s DC)

APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004 AGAINST DECISION OF THE GRIEVANCE REDRESSAL COMMITTEE

Project: Construction of Additional Carriageway from Rajanpur-DG Khan N-55 Highway Section (121.5Km) and DG Khan – DI Khan N-55 Highway Section (208.0Km) from Two Lane to Four Lane under One Package Comprising of Four Lots

Lot-4: Tibi - Qaisrani - DI Khan via Ramak Section (Km 233+200 - 329+445=96.245 KM)

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



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2. At the very outset, learned counsel of the Appellant i.e., M/s ZKB - SMC Joint Venture submitted that this Appeal has been filed against the decision of the Grievance Redressal Committee ("GRC") dated 20.05.2025 as the said decision given by the GRC is an attempt to give cover to the blatant violations of procurement laws and is itself not in accordance with the provisions of the Public Procurement Rules, 2004 ("PP Rules, 2004").

3. The Appellant further submitted that they have grave concerns regarding the procurement process for the Central Asia Regional Economic Cooperation ("CAREC") Corridor Development Investment Program (Tranche-III) Lot-4 (Section N-55) ("Project"), specifically in relation to the evaluation reports for the Project. Both the reports provide very basic information about the status of the bidders and the reports are devoid of any details justifying the decision regarding fate of the bidders. The Final Evaluation Report dated 09.05.2025 was only made public on National Highway Authority's website on 13.05.2025. Resultantly, the Appellant preferred this instant Appeal in accordance with Rule 48(7) of the PP Rules, 2004.

4. The counsel of the appellant further submitted that after making the final evaluation report public on the Procuring Agency/NHA's website on 13.05.2025, the bidders were required to file their grievances before the GRC of the Procuring Agency / NHA within 5 days as per Rule 48 of the PP Rules, 2004 and the stated 05 days were set to expire on 18.05.2025. However, 17th & 18th of May were holidays as they fell on Saturday and Sunday, the Appellant filed its complaint before the GRC on the next working day, i.e. 19.05.2025, which is on record. Whereas, the GRC has rejected the complaint / grievance of the Appellant by simply stating that the complaint is barred by limitation and such conduct also reeks of suspicion because the Procuring Agency / NHA ignored the grave reservations brought to its knowledge and it did not discuss any

of them while dismissing the complaint. This becomes very important especially in view of the obligation of the Procuring Agency / NHA under Rules 17 and 18 of the PP Rules, 2004 to voluntarily act against a bidder who has provided false information about its credentials.

5. The counsel of the appellant also submitted that the final evaluation report was uploaded with a delay of four days from the date stated on the document and that seemingly was an attempt to discourage any bidders from contemplating the idea of approaching the GRC and PPRA under Rule 48 of the PP Rules, 2004 against the said evaluation.

6. The counsel of the appellant further added that the Procuring Agency has conducted the entire procurement process in a very surreptitious manner by apparently making sure that no objection can be raised against the declaration in favor of the purported lowest bidder. Perusal of the evaluation reports reveal that no detail whatsoever has been given regarding successful bidders that creates serious doubts on the entire process. In both the reports the only detail about the purported lowest bidder, i.e., M/s Ningxia Communications Construction Co. Ltd ("M/s NXCC / respondent No.4"), in the technical evaluation report states "qualified" and "1st" in the final evaluation report along with the bid price.

7. The counsel of the appellant also submitted that the conduct of the respondent constituted a serious violation of the fundamental principles of transparency as well as Rule 35 of the PP Rules 2004. The said rule imposes a mandatory obligation on the Procuring Agency to give detailed reasons for accepting or rejecting the bids. In the present scenario no detail for acceptance of bids has been provided in evaluation reports and no independent evaluator can review the reports and see propriety of the process. This further contravenes the law that imposes an obligation on the authorities like the Procuring



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Agency/NHA to always pass a speaking or reasoned order as is stipulated by section 24A(2) of the General Clause Act 1897, that provides: *"The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially."*

8. The counsel of the appellant further added that the constitution of the GRC was not in compliance with law settled through judgments of the superior Courts wherein the GRCs are supposed to include independent outside experts that cannot be influenced by the senior management of the Procuring Agency/NHA. This requirement was also ignored and this too casts doubts on the transparency of the entire redressal of proceedings. Moreover, a very serious concern of the Appellant related to declaration of M/s NXCC / respondent No.4, as the purported lowest bidder for all the four Lots by the evaluation reports, despite their documented unsatisfactory performance in the past.

9. The counsel of the appellant also added that a very crucial matter related to M/s NXCC's submission, through an affidavit, whereby it has been stated that "the firm has never been involved in any litigation / blacklisting with Government Departments / Semi-Government Departments or Private Sector since its establishment." This assertion amounts to a clear and blatant violation of Eligibility Criteria, [Section-2] clause 2.2.3 of ITB, that relates to requirements concerning detail of pending litigation and reputation of the bidders and M/s NXCC's assertion, constitutes a clear and blatant misrepresentation of the actual status of its litigation. It needs to be appreciated that the details about litigation is a matter of public record, easily available for everyone to see, and an attempt to conceal such an obvious information with such



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audacity leads to very serious breach of trust regarding all the statements of M/s NXCC regarding its credentials.

10. The counsel of the appellant also submitted that M/s NXCC has a track record of very poor performance on other large scale civil works / projects of the procuring agency / NHA and that can be demonstrated through clear documentation available on record. Further M/s NXCC was declared as defaulter due to slow progress and ultimately the procuring agency terminated the project. Moreover, M/s NXCC initially approached the learned subordinate court under Section 20 of the Arbitration Act, 1940, seeking the appointment of an arbitration tribunal. This application was dismissed by judgment dated 17.04.2023. Subsequently, M/s NXCC filed an appeal before the Islamabad High Court (FAO No. 38 of 2023). The Honourable Court directed through order dated 20.03.2024 to approach arbitration tribunal. Thereafter, arbitration proceedings were conducted and an award dated 19.11.2024 was rendered in favour of M/s NXCC and the fate of the award is yet to be adjudicated and is still pending under learned court for Rule of Court proceedings and this establish the existence of litigation between M/s NXCC and the Procuring Agency (NHA). The Procuring Agency should have conducted the strict scrutiny of M/s NXCC for having given a false declaration in the instant matter.



11. The counsel of the appellant further submitted that despite being in active litigation with the Procuring Agency / NHA at the time, M/s NXCC submitted a bid on 26.09.2024 through a joint venture (NXCC-RA-DC), and submitted false affidavit declaring no involvement in any litigation or blacklisting. This clearly constitutes a criminal misrepresentation and a breach of trust. Additionally, the appellant has also discovered that M/s NXCC has been involved in various litigation in different other jurisdictions and that fact too has been concealed from the procuring agency / NHA. This

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concealment violates clause ITB 3.1(ii), Section-1 of the bidding documents and the Procuring Agency should have disqualified NXCC. Instead, their qualification is seen as preferential treatment, undermining the integrity of the bidding process and potentially harming the public interest.

12. The counsel of the appellant also submitted that according to the prequalification report dated 27.10.2022, for the project Dualization & improvement of National Highway N-50 from Yarik – Sagu – Zhob: Section-1 Yarik – Sagu, M/s NXCC was disqualified for poor performance on the Lodhran-Multan project, which was terminated by the Procuring Agency on 16.01.2023. Furthermore, GM (P&CA) of the respondent department sought information from GM (Construction) Pb-South, who confirmed via letter dated 26.07.2024 that M/s NXCC was in litigation with the Procuring Agency / NHA and was a defaulter due to prior poor performance. Further submitted that, it is simply inconceivable that the Procuring Agency, which recently disqualified M/s NXCC, now considers the same entity eligible and qualified for the instant Project. Clause 2.2.1 of ITB requires both joint venture partners to meet the condition that “Non-performance of a contract did not occur as a result of default of contractor since 1st July, 2018.” Despite this stipulation and the record of default by M/s NXCC, the Procuring Agency/NHA suddenly appears satisfied.

13. The counsel of the appellant further argued and submitted that the Procuring Agency / NHA is not challenging the award in favor of M/s NXCC is quite obviously a special relaxation being made for the apparent blue-eyed bidder by the Procuring Agency / NHA. Such conduct of the Procuring Agency / NHA violates the ITB 11.4 of Section-2. The bidding documents had built-in safeguards to minimize the risks of Ghost Contracting under ITB 11.4 of Section-2 whereas the Procuring Agency / NHA has also ignored the same and did not

ensure active participation of the JV partners. Moreover, pursuant to clause ITB 11.2(d) provision of written confirmation authorizing the signatory of the Bid to commit the Bidder is a mandatory requirement and specific Power of Attorney of Authorized Representative is required. The submitted Power of Attorney by the purported lowest bidder is not specific but limited in authorization and it does not even meet the authorization required for this specific project thus the authorization of signatory of the bid is not valid and resultantly the bid is liable to be rejected.

14. At the last, counsel of the appellant also submitted that there is a mandatory requirement for qualification that requires the Average Annual Construction Turnover (AATO) from construction contracts (for last three (03) years based on certified payments) of the bidder to match the required threshold. In case of a joint venture the Lead Partner should qualify with 50% of the requirement while the associate partner should qualify with a minimum 30% of the required criteria. Further, in pursuant to clause 1.8 of Section-3 the lowest bidder is required to qualify, the aggregated qualification criteria of all Lots where he has been announced lowest in terms of:

- a. Average Annual Construction Turn over (AATO);
- b. Financial resources;
- c. Equipment to be allocated;
- d. Personnel to be fielded.

15. At the very last, the counsel of the appellant further added that, both, M/s Dynamic Constructors (respondent No.5) and Rustam Associates (respondent No.6), did not satisfy the required criteria of AATO (Construction contracts only as required). Moreover, the record becomes especially doubtful where a contractor, that has not executed major projects in the recent past few years, claims to have fulfilled cumbersome threshold to qualify for a certain project, hence filed the instant appeal.

16. On the other hand, at the first instance, learned representative of the respondent i.e., National Highway Authority (NHA) raised preliminary objection on the jurisdiction and submitted that this appeal relates to the procurement for a project funded by the Asian Development Bank (ADB) under the "Central Asia Regional Economic Cooperation (CAREC) Corridor Development Investment Program Tranche-III," governed by a loan agreement covering four lots. All procurement activities are being carried out under ADB's Procurement Policy for Goods, Works, non-consulting and Consulting Services (2017, as amended) and the Procurement Regulations for ADB Borrowers for Goods, Works, non-consulting and Consulting Services (2017, as amended). The bidding documents were finalized in accordance with ADB's standard templates of bidding documents. Wherein, clause ITB 46.1 of Section 2 (Bid Data Sheet) specifies procedure for grievances / complaints. Further submitted that, being an ADB financed project, the ADB's guidelines / regulations shall prevail over the national rules, in case of conflict, as per Rule 5 of the Public Procurement Rules, 2004.

17. The representative of the respondent (NHA) submitted that the appellant has raised objections on the lowest bidder, qualified in the technical evaluation report, announced in January 2025 and has filed the complaint after the announcement of final evaluation report in May 2025 and thus the appeal is non-maintainable, and therefore, do not confer any right of appeal in accordance with Appendix 7 of ADB's Procurement Regulations. (*Procurement Regulations for ADB Borrowers*).

18. The representative of the respondent (NHA) also raised objection on the limitation and submitted that the Appellant's complaint before Grievance Redressal Committee (GRC) was non maintainable, as the complainant has raised objections on the lowest bidder qualified in the technical evaluation report

announced in January 2025 and has filed the complaint after the announcement of final evaluation report and thus the appeal is non maintainable, and therefore, do not confer any right of appeal to the respective complainant in accordance with Clause 11 duly read with its corresponding footnotes of Appendix 7 of ADB's Procurement Regulations. (*Procurement Regulations for ADB Borrowers*)

19. The representative of the respondent (NHA) also submitted that the appellant has mentioned that the final evaluation report was uploaded on 13.05.2025. However, as procurement method Single-Stage-Two-Envelope was adopted, the technical evaluation Report was notified on 20.01.2025. The appellant's / complainant objections pertain to the technical evaluation report. A complainant cannot raise objections on the technical evaluation after the issuance of the final evaluation report. Therefore, the appellant's attempt to challenge the technical evaluation at belated stage is not permissible. It is also pertinent to note that the complainant raised these grievances upon realizing that he was not the lowest bidder. This sequence of events suggests that the complaint is not founded on genuine procedural concerns but is instead a reaction to the unfavorable outcome. It is clarified that there is no credible or substantiated evidence presented before the Procuring Agency by the appellant indicating that any bidder, including the successful one, has provided false information.



20. The representative of the respondent (NHA) further submitted that the interval between the date mentioned on the Final Evaluation Report 9th May, 2025 and it uploaded on 13th May, 2025 due to national crisis in those days. Evaluation Reports were prepared and published in accordance with the prevailing standard format and contain all relevant information required under the applicable rules. These include, but are not limited to, the names of bidders, their technical responsiveness, and financial standings. The claim that the lack of detailed

narrative discouraged bidders from seeking redress, is not supported by any regulatory requirement. The adopted format is designed to provide transparency while maintaining procedural efficiency. Moreover, the donor agency, i.e., Asian Development Bank (ADB), also did not express any concerns in this regard and GRC adjudicated the matter within its jurisdiction and found the complaint to be non-maintainable.

21. The representative of the respondent (NHA) also submitted that Bidding Document ITB 26.1 and 26.2 provided as under:

“26.1 Information relating to the examination, evaluation, comparison, and post-qualification of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on the Contract award is communicated to all Bidders

26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.”

The Procuring Agency has complied fully with the requirements of transparency, including publishing the evaluation reports in the prescribed format. The evaluation reports contain all information required by the Public Procurement Regulatory Authority and the Asian Development Bank guidelines, ensuring adequate disclosure to all stakeholders.

22. The representative of the respondent (NHA) further submitted that the allegation suggesting favouritism toward M/s Ningxia Communications Construction Co. Ltd ("M/s NXCC") as the purported lowest bidder, is unfounded. The evaluation of bids was conducted strictly in accordance with the ADB approved criteria duly reflected in the bidding document. Thus, M/s NXCC-RA-DC (JV) emerged as the lowest evaluated bidder through a fair and transparent competitive process.

23. The representative of the respondent further added that the subject procurement has been carried out in a transparent



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manner under the supervision of ADB technical expert team, adhering to all of the ADB procurement regulations / guidelines and no leniency towards any bidder has been made during the procurement process. All of the aspects required for technical evaluation has been included in the technical evaluation criteria as per ADB requirements. Compliance of relevant provisions of ADB guidelines and evaluation criteria has duly been acknowledged / concurred by ADB while issuing No Objection Letter for the revised TBER containing detailed deliberations on complaint of similar nature received during the evaluation process and complaint received to ADB and ADB's 'No-Objection' Letter on the Technical Bid Evaluation Report are also available on record.

24. The representative of the respondent also submitted that they clearly refutes the complainant's allegation that the National Highway Authority (NHA) announced the bid opening date with only two day notice and without addressing prior complaints, whereas, Invitation for Bids issued on 9th August, 2024. Thereafter, a complaint was filed by Chinese Bidder (M/s China Construction Third Engineering Bureau Group CCTEB) on 13th November, 2024, and accordingly a detailed report was prepared and submitted to ADB for review on 23rd November, 2024. ADB after going through the report and attached documents, disposed of the complaint after agreeing with the findings of the report. Moreover, technical evaluation report was announced on 20th January, 2025, after obtaining formal concurrence from the Asian Development Bank (ADB). After that, Second Complaint was filed on 22nd January, 2025 before the Grievance Redressal Committee (GRC) by M/s CCTEB (having the similar contents as of complaint of 13th Nov, 2024), and accordingly disposed-off by the GRC as non-maintainable on 4th February, 2025.

25. The representative of the respondent further added that final report announced on 9th May, 2025, after obtaining formal



concurrence from the Asian Development Bank (ADB). Subsequently, complaints filed by M/s ZKB for Lot 1 and M/s ZKB-SMC JV for Lot 4 on 19th May, 2025 regarding technical evaluations, and the same were dismissed by the GRC by observing the following;

A significant price advantage of PKR 13.2 billion exists between the lowest and second-lowest bids.

All grievances have been repeatedly addressed and dismissed by the competent forums after obtaining ADB's concurrence.

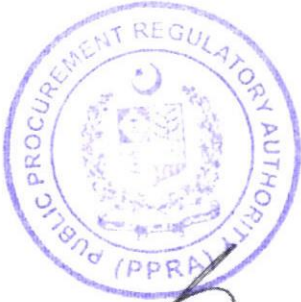
Further submitted that the participation of M/s Ningxia Communications Construction Co. Ltd (NXCC) was in accordance with applicable rules. Any previous contractual issues were duly reviewed, and the firm's eligibility was determined as per Bidding Documents. The matter of their prior performance had been addressed appropriately through formal mechanism.

26. At the last, the representative of the respondent (NHA) also submitted that the assertion regarding the requirement for independent, external members was overlooked is unfounded and contrary to the actual facts. NHA's Grievance Redressal Committee is constituted of officers independent from procurement proceedings along with the addition of two independent experts-Mrs. Saida Mujtaba, a Financial Expert, and Mr. Umar Iqbal, a Procurement Expert-neither of whom are employees of NHA. Both experts function autonomously and without influence from NHA's management. The firm M/s NXCC was evaluated strictly in accordance with the criteria set out in the Bidding Documents. The evaluation process, including the firm's qualification, was reviewed and endorsed by the Asian Development Bank (ADB), ensuring transparency, fairness, and compliance. Therefore, the allegation lacks merit and is not supported by the facts or the applicable procurement framework.

27. At the very last, the representative of the respondent also submitted that, NHA verified M/s Dynamic Constructors (one of JV partner of successful / lowest evaluated bidder) financial statement from M.A.P.S Mohiuddin & Co and A.B.M & Co Chartered Accountants. The respondent (NHA) also verified M/s Rustam Associates (one of JV partner of successful / lowest evaluated bidder) financial statement from M.A.P.S Mohiuddin & Co. and A.B.M & Co Chartered Accountants. Therefore, the allegations levelled by the appellant regarding AATO is nothing but merely based on assumptions, hence request for dismissal of the instant appeal.

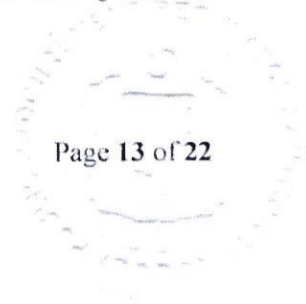
28. On the other hand, learned counsel of the respondents no. 4 to 6 (i.e., M/s NXCC, M/S RA, M/s DC respectively) raised preliminary objection regarding the maintainability / jurisdiction of this Authority and argued on this point at length and submitted that jurisdiction of PPRA has been wrongly invoked under rule 48(7) of the Public Procurement Rules, 2004 in the captioned appeal. The counsel further submitted that Rule 5 of the PP Rules provides that provisions of an agreement with an international financial institution shall prevail over any conflicting provisions of PP Rules. An independent complaint resolution mechanism applies in the instant procurement that too as a mandatory obligation instead of Rule 48 of PP Rules and the same totally replaces Rule 48's complaint before GRC and appeal to the Authority and is sanctioned under an agreement of the Federal Government with an international financial institution as envisaged by Rule 5 of PP Rules.

29. The counsel of the respondents no.4 to 6 also submitted that the burden of proof lies squarely on the party asserting a claim. In this regard, Article 117 of the Qanun-e-Shahadat Order, 1984 states as under:



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"117. Burden of proof.- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The Appellant, being the complainant before the Grievance Redressal Committee (GRC) and now the appellant before this Authority, is obligated to prove its allegations with credible evidence. The august Supreme Court in its judgement reported as **2022 SCMR 1054** (Nasir Ali vs Muhammad Asghar) has held that:

"6. According to the Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and burden of proof lies on him. The terminology and turn of phrase "burden of proof" entails the burden of substantiating a case. The meaning of "onus probandi" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him....."

30. The counsel of the respondents no.4 to 6 further submitted that the Appellant's assertions are vague, unsubstantiated, and lack evidentiary support before both GRC and this Authority. Even when prompted by this Appellate Committee to discharge its burden and substantiate its claims, the Appellant failed to produce any satisfactory evidence and instead deflected by calling for a general inquiry into the entire procurement process. The Hon'ble Lahore High Court in case reported as **2023 YLR 767** (M.Haroon Ashraf vs Dr Fayyaz Ranjha & 9 others) dismissed a petition while holding as under:

"6. In view of what has been discussed above, it is observed that this Constitutional petition is based on jumbled and incoherent facts narrated in a confused manner, vague in details, raising multifarious and indefinite grounds and allegations requiring roving inquiry in affairs of various departments for fishing out

