



Review Petition No. PPRA/RP-40/2024
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 Good Luck Enterprises

...the "Petitioner"

Vs.

National Highway Authority (NHA)

...the "Respondent"

<u>Date of Hearing</u>	<i>Mr. Jameel Hussain Qureshi, Advocate Supreme Court</i>
05.12.2024	<i>(On behalf of the Petitioner)</i>
	<i>Barrister Atif Rahim Burki</i>
	<i>(On behalf of the Respondent)</i>

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

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

2. At the very outset of hearing, the learned counsel of the Petitioner i.e., M/s Good Luck Enterprises submitted that their firm is aggrieved and dissatisfied with the impugned order / letter No. Blacklisting Committee/NHA/2024/6 dated 04.04.2024, wherein the respondent i.e., National Highway Authority (NHA) debarred the petitioner firm from participating

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in any ongoing and future bidding in NHA for one (01) year or till payment of dues whichever is later.

3. The counsel of the petitioner also submitted that the respondent i.e. National Highway Authority published "Invitation for e-Bids" (IFB) for provision of Operations, Management and Maintenance (OM&M) of 68x Toll Plazas (Manual) and collection of toll revenue on National Highways on contract basis for a period of 01.07.2018 to 30.06.2019 with Bid Security of 2% of the Quoted Bid Price based on Single Stage - Two Envelope procedure, wherein, the petitioner was the successful bidder for the Toll Plaza Sadiqabad and Gujranwala and awarded with the contract accordingly and after completing all codal formalities required before the commencement of toll operations, the commencement letters dated 11.07.2018 for Gujranwala Toll Plaza and dated 30.06.2018 for Sadiqabad Toll Plaza was issued by the respondent and the petitioner was handed over the said toll for toll operations.

4. The counsel of the petitioner further submitted that on 17.11.2018, the petitioner wrote the letter to the General Manager (Revenue) of the respondent, whereby the respondent was apprised regarding the situation going on in whole of Pakistan. In fact, during that period, there were strikes of several religious parties against the acquittal of Asia Bibi and owners of Tankers / Goods Transporters. The news was well

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documented and it was a result of this situation that the petitioner could not collect the amount of toll revenue as the flow of traffic was closed and the petitioner made a request for an exemption. Thereafter, the Director (Revenue Operations) of the respondent issued letter dated 10.12.2018 to the petitioner regarding the termination of the Gujranwala Toll Plaza w.e.f. 11.12.2018 along with forfeiture of securities subject to adjustment of shortfall and directions were given to hand over the Toll Plaza and its operations to General Manager (Punjab North) NHA, Lahore. Similarly, for the Sadiqabad Toll Plaza, the Assistant Director (Tolling) NHA issued a letter dated 06.12.2018 regarding termination of contract mentioning therein that the competent authority has terminated the said contract w.e.f. 07.12.2018 along with forfeiture of securities subject to adjustment of shortfall.

5. The counsel of the petitioner further argued that later on, a meeting took place between officials of the respondent and the petitioner was informed to pay a shortfall amount of Rs.13,32,452/- and the respondent agreed to adjust the forfeited securities as already mentioned in its respective letters mentioned above. Resultantly, the petitioner on 15.10.2019 wrote a letter to the respondent NHA and enclosed a pay order amounting Rs.13,32,452/- dated 15-10-2019 (the actual agreed upon shortfall) and the respondent accordingly provided a statement to the petitioner showing zero balance for

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the said toll plaza(s). After payment of the actual shortfall, the petitioner wrote a letter dated 27.11.2019 to the respondent with a request to issue NOC in favor of the petitioner allowing it to participate in the bidding process of other OM&M contracts of Toll Plaza, police fine collections and weigh stations and upon such request, the NOC was issued in favor of the petitioner by the respondent mentioning therein that the competent authority had approved participation of the petitioner in the bidding process which meant that there was nothing outstanding against the petitioner, as otherwise the respondent would have issued no such NOC.

6. The counsel of the petitioner further argued and submitted that after a lapse of many years, the petitioner shockingly received a letter dated 05.01.2022 stating therein to clear the outstanding dues for the respective Toll Plaza for FY 2018-19 as tabulated in the respective letter dated 05.01.2022 within 07 days failing which legal proceedings will be initiated. The petitioner accordingly replied the same vide letter dated 09.01.2022 and explained all the position as mentioned in the facts narrated above and requested to withdraw the letter dated 05.01.2022 and clear the firm or send the matter for arbitration. Thereafter, again a letter dated 14.01.2022 being final reminder was sent through *Whatsapp* to the petitioner for clearing the dues which was accordingly replied by the petitioner on 14.01.2022 to consider the



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previous letter as response. The counsel further submitted that in the meanwhile, the respondent filed two civil suits on 04.01.2023 for declaration, permanent injunction and recovery of Rs.75,082,526/- for Sadiqabad Toll Plaza and Rs. 76,884.326/- for Gujranwala Toll Plaza along with the interest & penalties as per the contract in between the parties which is pending adjudication before the District Judge Islamabad - West.

7. The counsel of the petitioner further added that again surprisingly, the respondent issued the show cause notice (SCN) / charge sheet dated 19.01.2023 which was accordingly replied by the petitioner vide letter dated 27.01.2023 to put the stance of the petitioner against the SCN with a denial of any outstanding dues. Again, a notice dated 16.05.2023 was sent which was again replied by the petitioner stating its stance and position therein with mentioning the cases pending in the court filed by the respondent. However, despite the facts narrated above and the illegal, unlawful and unjustified actions of the respondent on the face of it, the respondent issued the impugned letter order No. Blacklisting Committee/ NHA/2024/6 dated 04.04.2024 wherein the respondent debarred the petitioner firm from participating in any ongoing and future bidding in NHA for on (01) year or till payment of dues whichever is later and, that the Impugned order / letter dated 04.04.2024 is patently and ex-facie illegal has been



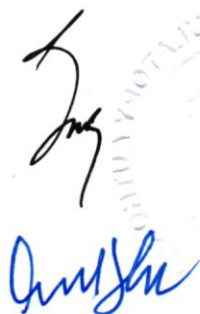


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issued without lawful justification as well as being a non-speaking letter/order, the same is liable to be set aside, hence filed this review petition.

8. On the other hand, learned counsel of the respondent i.e., National Highway Authority (NHA) submitted that the Petitioner's claims are without merit, and the respondent has adhered to all contractual, procedural, PAC as well as DAC directives in handling the matter. The Petitioner's default and failure to comply with contractual obligations justify the actions taken by the Respondent / NHA, including contract termination, forfeiture of securities, and blacklisting. So the instant review petition has been filed with malafide intentions without referring to any illegality or impropriety on the part of the answering respondent and the petitioner has no locus-standi to file the instant review petition, hence not approached this authority with clean hands.

9. The counsel of the respondent also submitted that the Respondent terminated the contracts of both Toll plazas due to default committed by the Petitioner, similarly due to default by the Petitioner, the Respondent forfeited the securities of the petitioner to adjust the shortfall under clause 9.2(i) Article IX of the conditions of contract. The total shortfall against the petitioner is of Rs.1,348,193,795/- and after the deduction of Covid-19 and Flood claims the shortfall remained Rs.1,003,740,880/- and the securities amount available with



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the Respondent is Rs.456,277,904/- after the deduction of securities the shortfall against the petitioner which is payable is of Rs.547,462,976/- till June 2024.

10. The counsel of the respondent further submitted that the said shortfall discrepancy was highlighted during the audit of FY 2018-19 of the respondent department, which noted that the adjustment of securities against the shortfall was contradictory to the contract clauses, i.e., 9.2(i) and 6.1 of Article IX of the conditions of contract. The Public Accounts Committee (PAC) upheld this audit observation during their meeting held on 02.12.2021, and directed the Respondent to recover the shortfall from the defaulters in addition to forfeiting the securities. In compliance with PAC directives, the Respondent reinstated the default amount and forfeited the securities. Subsequently, recovery notices followed by reminders were issued to the petitioner for the clearance of their outstanding dues.

11. The counsel of the respondent further argued and submitted that the petitioner did not comply with the said notices. It is pertinent to highlight that, as per clause 19.1(c) (Bidder to Inform himself) of the ITB of the contract, the bidder was responsible for obtaining, at their own cost and responsibility, all necessary information for preparing the bid and entering into the contract. Clause 20 (Local conditions) of the ITB further emphasized that the bidder must verified and

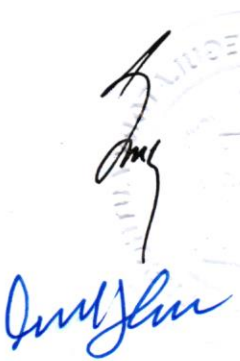


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supplement, through their own investigations, all necessary information about the site, traffic volumes, local conditions, and volume of exempted vehicles for the purposes of submitting their bid and entering into the contract. The request for contract cancellation and adjustment of securities was not in compliance with the contract's stipulations, and the Respondent acted appropriately under the contract's terms and PAC and DAC directives.

12. The counsel of the respondent further added that despite several notices / letters given to the petitioner and the petitioner failed to comply with the same. Resultantly, the Respondent issued a show cause notice to the petitioner stating that the petitioner firm has committed monetary loss to the Respondent on account of non-submission of guaranteed Bid amount against toll collection and failed to fulfil contractual obligations as per contract and caused huge loss to the public exchequer. Hence, the respondent initiated the blacklisting proceeding against the petitioner.

13. At the last, the counsel of the respondent also submitted that, consequently, the matter was referred to the respondent's (NHA) blacklisting committee. The committee, formed in accordance with the guidelines of the Public Procurement Regulatory Authority (PPRA) and under the applicable laws, conducted due process and subsequently blacklisted the petitioner firm for being a defaulter of the NHA.



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The blacklisting decision was made following a thorough and lawful process, including issuing multiple notices and giving the petitioner ample opportunity to address their outstanding dues. The blacklisting committee adhered to all required legal and procedural guidelines, ensuring that the petitioner's rights were not infringed upon. The blacklisting and debarment from participating in any ongoing and future bidding of the NHA, as communicated in the decision / letter dated April 4, 2024, was carried out with full legal authority. The actions of the respondent (NHA) were in compliance with the directives of the PAC and DAC and were necessary to uphold the integrity of the contractual and financial obligations, hence, requested for dismissal of the instant review petition.

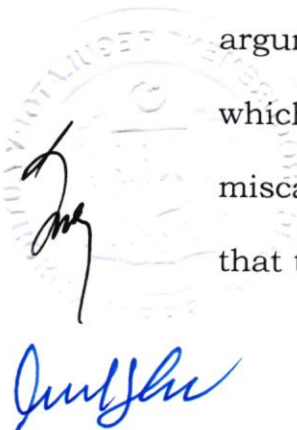
14. After perusal of all the available record and arguments made by both the parties, the Review Petition Committee ("the Committee") observed that, it was decided and agreed between the officials of the respondent and the petitioner in a meeting to pay a shortfall amount of Rs.13,32,452/- and adjusted the forfeited securities as mentioned in its respective letters. Resultantly, the petitioner paid (the actual agreed upon shortfall) an amount of Rs.13,32,452/- through pay order dated 15.10.2019 and the respondent accordingly provided a statement to the petitioner showing zero balance for the said toll plaza(s). Accordingly, NOC was issued by the respondent to the petitioner for

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participating in the bidding process of other OM&M contracts of Toll Plaza, police fine collections and weigh stations, which meant that there was nothing outstanding against the petitioner. Later on, initiating the proceeding of blacklisting by the respondent against the petitioner in lieu of the said shortfall is merely a clear example of misuse of authority.

15. The Committee also observed that the respondent blacklisted the petitioner for the period of one (01) year under Rule 19(1)(b) of the Public Procurement Rules, 2004. In the said rule, the procuring agency shall initiate the blacklisting proceedings after exhausting the forum of arbitration, if the bidder fails to perform his contractual obligations during the execution of contract or breaches the contract due to his capacity and capability to perform or otherwise. In the instant petition, no such contractual breach was made by the petitioner, however, issue of the shortfall had arisen and the same was already settled down with mutual consent / understanding of the respondent and the petitioner as well. This also shows that the respondent misinterpreted the said rule and wrongly blacklisted the petitioner's firm.


16. The Committee further observed that the entire argument of the defendant is based on recoverable amount which is pointed out by statutory audit, and is based on some miscalculation on part of defendant. Further the record shows that this miscalculation was due to misinterpretation of rules




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by the respondent. The committee decided that the appellant should not be punished due to some error on part of the respondent. Moreover, the grounds for blacklisting in the instant case are not covered under the relevant provisions of Public Procurement Rules-2004. Therefore, the Committee unanimously decided that the blacklisting of the Petitioner is without merit and not covered under the Rule 19(1)(b) of the Public Procurement Rules, 2004.

17. For what the reasons mentioned above, the order of blacklisting dated 04.04.2024 passed by the respondent (NHA) is hereby **set-aside**, accordingly, the petition in hand is disposed of.


(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)

Note: A copy of this order is being forwarded to Director-IT, PPRA, Islamabad) for implementation of this order and to **de-list the petitioner's company i.e., M/s Good Luck Enterprises** from the list of active blacklisted / debarred firms on PPRA's website.

Each page of the order has been signed by all members of the Review Petition Committee. The order comprises of eleven (11) pages.