

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 2171 / 2018

Plaintiff: M/s Ahsan Engineering Works through
Mr. Mohsin Qadir Shehwani Advocate.

Defendants: Pakistan Petroleum Limited & others
through Mr. Basil Nabi Malik Advocate.

- 1) *For hearing of CMA No. 18678/2018.*
- 2) *For hearing of CMA No. 18501/2018.*
- 3) *For hearing of CMA No. 16582/2018.*

Date of hearing: 21.02.2019, 14.03.2019, 05.04.2019.

Date of order: 23.05.2019.

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration and Injunction and through application at Serial No.3 the Plaintiff seeks a restraining order against the Defendants from proceeding further on the basis of tender published in newspapers on 8.11.2018. Application at Serial No.2 is for alleged Contempt of order dated 22.11.2018, whereas, application at Serial No.1 has been filed by the Defendant under Order 39 Rule (4) CPC for setting aside of order dated 22.11.2018.

2. Precise facts are that Plaintiff owns a fleet of vehicles and is a prequalified contractor of Defendant No.1 for hiring of such vehicles, whereas, for the last three years, being the lowest bidder, has been awarded the tender(s). It is further stated that on 10.07.2018 a fresh tender was invited for the year 2018 to 2021 in which the Plaintiff also participated; however, miscalculated the total financial bid; but furnished the correct bid bond of 2%, and immediately approached the defendants for making such correction which was not accepted. Thereafter, a fresh tender was invited and being aggrieved, Plaintiff has filed instant Suit. On 22.11.2018 by way of an ad-interim order, it was observed that Defendants may receive bids in respect of the fresh

tender, but the bids shall remain sealed and shall not be opened until further orders.

3. Learned Counsel for the Plaintiff has contended that initially the financial bid was quoted as Rs. 56,613,540/-; however, the bid amount of 2% was furnished correctly, which was in fact for an amount of Rs. 73,597,602/- and such correction was immediately notified but was not entertained and accepted by the Defendants notwithstanding the fact that in previous years similar requests were accepted in identical facts; hence, the Plaintiff has been discriminated. He has further submitted that even otherwise, there were only three bidders in the tender, out of which one was disqualified and the other had withdrawn his bid, therefore, it was only the Plaintiff who was left in the field as a successful bidder; hence, the tender ought to have been awarded to the Plaintiff and no fresh tenders could have been called. Per learned Counsel, as soon as a fresh tender was published, the Plaintiff approached Defendant No.1 but was informed on 10.11.2018 that the earlier tender has been cancelled, which according to the learned Counsel was not justified and was against the principles of natural justice as well as the Public Procurement Rules 2004, including Rules 33, 34 and 38 as such cancellation is without assigning any reasons and therefore, the fresh tender is liable to be cancelled and revised bid of the Plaintiff has to be accepted. He has further argued that correction in the bid amount was notified much before opening of the bid which is permissible under Rule 31 of the PPRA Rules, 2004 therefore, the Defendants should have accepted the same. Learned Counsel has also contended that despite several reminders and emails no positive response was given and surreptitiously a fresh tender has been called which has prejudiced the rights of the Plaintiff who has already been found to be the lowest bidder. According to the learned Counsel, since Plaintiff is working with Defendant No.1 since many years, therefore, the arrangement of hiring of his vehicles is still continuing such an arrangement pending settlement of this dispute. He has prayed that fresh tender be cancelled and the bid already submitted by the Plaintiff be directed to be accepted. In support of his contention he has relied upon **Messrs Shaheen Construction Company through Mrs. Zeeshan Fatima V. Pakistan Defence Offices Housing Authority through Administrator (P L D 2012 Sindh 434), Crescent Steel and**

Allied Product Limited V. Suit Southern Gas Co. Limited (2015 C L D 745), Kitchen cuisine (Pvt.) Ltd. V. Pakistan International airlines Corporation and others (P L D 2016 Lahore 412).

4. Conversely, learned Counsel for the Defendants has contended that three bids were received in response to the tender, out of which one bidder was disqualified, whereas, the other bidder namely Gul Traders is in fact the father of the Plaintiff and once it transpired that the third bidder has been disqualified technically, the father i.e. Gul Traders withdrew his bid and created a vacuum in the tender proceedings, leaving only the Plaintiff as the sole bidder. According to the learned Counsel, since the modification and change was in the quotation itself; and that too by enhancing it to more than 30%, the same could not have been accepted merely on the ground that the 2% bid bond was of a higher amount of bid. Moreover, according to the learned Counsel, the exact figure of the bid bond of 2% even otherwise, does not tally with the revised figure and the quotation; hence, this also appears to be not only an afterthought, but in the given circumstances an attempt to keep the Defendants as hostage with a sole and only bidder. Per learned Counsel, according to the plaint the amount quoted was Rs. 56,613,450/- and was thereafter increased by 30% which comes to around Rs. 73,597,602/- whereas, the 2% bid bond was for Rs. 14,20,000/- and therefore, if the bid bond amount is to be made basis of the revised quotation, then the same ought to have been Rs. 71,000,000/- which is not the case; therefore, this argument is misconceived and cannot be entertained. Per learned Counsel under the PPRA Rules, 2004, it has not been provided that the entire substance of the bid could be changed or permitted as if this is allowed then the entire spirit and the purpose of bidding would be defeated and every now and then bidders would take advantage and alter their quotations in this manner. According to him, the procuring agency can seek clarification of the bids; however, this does not permit any bidder to alter and amend the bid before opening in any manner, including enhancement of the bid amount. Per learned Counsel, Defendant No.1 being 67% owned by the Government of Pakistan has to follow PPRA Rules for Procurement; hence, in the given facts, the tender was liable to be cancelled and no vested right had accrued in favour of the Plaintiff. Insofar as the earlier precedent of accepting revision in

quotation relied upon by the learned Counsel for the Plaintiff is concerned, he has contended that in that case it was correction of the unit price which was a genuine mistake, and therefore, the same is not applicable in the instant matter. He has further argued that after withdrawal of other bidder, the Plaintiff itself wrote an email on 19.09.2018 wherein, he has stated, that if my revised bid is not acceptable and if you are not agreeing to rectify the error, then kindly return my sealed commercial bid, since it has not yet been opened, therefore, no question of being a lowest bidder or acceptance of the bid arises. According to the learned Counsel, this in itself is enough to justify the stance of the Defendant for cancelling the said tender. According to him, if the request of the Plaintiff is accepted in the manner it is being prayed, then no transparency would be left, whereas, this is a matter of public funds; hence, cannot be entertained. Per learned Counsel, the Defendants as a gesture of goodwill have already informed the Plaintiff to come and participate in the fresh tender; however, he has not acceded to such request and has filed instant Suit which appears to be an attempt to pressurize the Defendants for accepting his revised quotation. Per learned Counsel, there is no question of any vested right being accrued in favour of the Plaintiff as the bid was never opened or accepted; therefore, no case is made out. Per learned Counsel, the objection to the effect that no reason has been assigned for cancellation is not justified as now the only question which is left is to the effect that whether after withdrawal of the quotation vide email dated 19.09.2018 the Defendants were even required to issue a formal cancellation letter or not. Per learned Counsel, the entire conduct and act of the Defendants is of substantial compliance and in the interest to safeguard the public money, therefore, no ill will or malafide or even discrimination can be attributed against the Defendants by calling fresh tenders. As to his application under Order 39 Rule 4 CPC, learned Counsel has contended that the earlier tender / arrangement was valid till 31.12.2018, whereas, during the process of fresh tender, the Plaintiff came before this Court and obtained an ad-interim order on 22.11.2018 restraining the Defendants from opening the bids which order continued and on 28.12.2018, since the matter was still pending, the Defendants approached this Court with an application and the Court was pleased to order that Plaintiff shall not withdraw its vehicles from the Gas field of Defendant No.1 after

31.12.2018 with further directions to the parties to continue with negotiations for an amicable settlement. He has contended that since the operation of the field must continue in the larger interest of the country, whereas, the fresh tender could not be finalized due to a restraining order, and if this Court comes to a conclusion that the injunction application is to be dismissed, then a sudden withdrawal of Vehicles already plying, would seriously hamper the operation of the Defendants, therefore, till such time the proceedings of fresh tender and the award is completed, the Plaintiff may be directed to continue with the arrangement already in field after 31.12.2018. In support of his contention he has relied upon **Messrs Pakistan Gas Port Ltd. V. Messrs Sui Southern Gas Co. Ltd. and 2 others (P L D 2016 Sindh 207)**, **Muhammad Ayub and Brothers V. Capital Development Authority Islamabad and 5 others (P L D 2011 Lahore 16)**, **Data Steel Pipe Industries Pvt. Ltd. V. Sui Southern Gas Co. Ltd. and others (2012 C L D 832)**, **Safehaven Marine Ltd. Ireland V. Karachi Port Trust (2012 C L D 1269)**, **Messrs Nishat Mills Limited V. Superintendent of Central Excise Circle II and 3 others (P L D 1989 SC 222)** and **Dr. Iftikhar Hassan Khan and others V. Federation of Pakistan and others (2012 S C M R 455)**.

5. I have heard both the learned Counsel and perused the record. It appears that the facts as noted hereinabove are not much in dispute as pursuant to a tender dated 10.07.2018 the Plaintiff participated and gave his bid for an amount of Rs. 56,613,540/-; however, it appears that before opening of financial bids, the Plaintiff realized that he has miscalculated the bid amount due to misunderstanding and immediately approached Defendant No.1 for enhancing the bid by 30% which comes to around Rs.73,597,602/-. It is the case of the Plaintiff that the 2% bid amount was already for the enhanced bid and this justifies his bonafides. However, it may be noted that the 2% bid amount does not tally or correctly match the enhanced bid of the Plaintiff inasmuch as the bid bond was for Rs.14,20,000/- which could only be for a bid amount of Rs. 71,000,000/-, whereas, the revised bid with 30% increase would come to Rs.73,597,602/-. Therefore, the contention to the effect that it was a bonafide mistake does not seem to be plausible and or appealable. It further appears from the record that three bidders participated and one was disqualified technically as he

had failed to enclose the bid bond and resultantly two bidders were left. It is not in dispute that the other bidder is the father of the Plaintiff. An argument has been raised that the father and the Plaintiff run their business independently and have no nexus with each other, and therefore, they ought to be treated as individual and independent bidders, and withdrawal of bid by the father must not be construed against the bonafides of the Plaintiff. Though, perhaps there could not be any cavil to this proposition if a father and a son are engaged in the same business as they could do such business independently and lawfully; but when it comes to a situation, where there are only two bidders in a tender in respect of supply of vehicles and one withdraws, it must be examined threadbare, and cautiously, more so when the question involves public money. Nothing has been placed on record on behalf of the Plaintiff to substantiate such claim that the father and the Plaintiff owned vehicles in their names independently, and could supply the same after meeting the conditions of the tender themselves. The only support which has been placed on record is in respect of independent tax numbers which does not impresses the Court, as this is a legal requirement. The argument of being independent and doing business individually could have only impressed when it was shown that father and the Plaintiff owned vehicles in their own names independently and had participated in the tender on such basis. If not, then presumption would be against this argument, and to this effect no prima facie case is made out.

6. As to the claim of being the lowest and lone successful bidder, even otherwise, it is settled proposition of law that mere filing of a bid and being the highest or the lowest bidder, as the case may be, does not ipso facto creates a vested right until and unless such bid is accepted by the competent authority. In this case, in fact it is even on a lower pedestal, as the financial bid was yet to be opened and before that, the Plaintiff came with an enhanced quotation which in the given facts cannot be accepted. A learned Division Bench of this Court in the case of **Messrs Pakistan Gas Port Ltd.** (supra) has been pleased to deal upon this aspect of the matter and has been pleased to observe as under:-

9. We now like to deal with the issue regarding claim of the petitioner that being successful in technical evaluation of bids is tantamount to acceptance of bid creating a vested right in favour of the contractor, so declared, to the contract. What learned counsel tried to say was that since the petitioner qualified in the technical evaluation process, its bid stood accepted and thereafter there was no going back for the company and in the event of disqualification of the respondent No.3, it should have been awarded the contract being the next lowest bidder. We are afraid that we cannot subscribe to such proposition of law as it simply goes against the very scheme of 2004 Rules. Rule 36 of 2004 Rules explains the procedure of open competitive bidding, according to which in a single stage-two envelope procedure two separate envelopes containing financial and technical proposals separately are submitted and initially the envelope marked as technical proposal is opened for evaluation while the envelope marked as financial proposal is retained by the procuring agency. Sub-rule (viii) to above Rule (36) indicates that upon approval of technical proposals the financial proposals are publically opened at the appointed time. The approval of technical proposal has been equated there with acceptance of technical bid, but that admittedly cannot be construed as acceptance of bid for all the future purposes creating inalienable right in favour of technically successful bidder. For reference the said sub-rule is reproduced herewith. "(viii) after the evaluation and approval of the technical proposal the procuring agency, shall at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposal of bids found technically non-responsive shall be returned unopened to the respective bidders; and" (underlined by us). 2004 Rules have a very clear concept of what the acceptance of bid, means, in our view the bid is accepted only when, in addition to being the lowest financially, it is not in conflict with any other law, rules, regulation or Policy of the Federal Government, and it culminates into a procurement contract in terms of rules 38 and 44. For convenience of reference we like to reproduce rule 38 "Acceptance of bids.-The bidder with the lowest evaluated bid, if not in conflict with any other law, rules, regulations or policy of the Federal Government, shall be awarded the procurement contract, within the original or extended period of bid validity". It is obvious that the award of the contract is contingent upon acceptance of the bid. A declaration at the time when financial proposals are opened that a particular party is a lowest bidder would not mean that its bid stands accepted. The procedure in terms of rules 35 and 38 has to be followed before a bid can be declared to have resulted into contract. The success at technical evaluation stage is a procedural step forward for the vying bidder, then his/its status of being the lowest one or not is determined at the time of opening of the financial proposals. Rule 35 comprehensively speaks out about the stage where either a bid's acceptance or rejection is announced through a report at least ten day before the award of the procurement contract. It being relevant is reproduced herewith. "Announcement of evaluation reports: - Procuring agencies shall announce the results of bid evaluation in the form of a report giving justification for acceptance or rejection of bids at least ten days prior to the award of procurement contract". Therefore, as per vires of this rule, even announcing acceptance of the lowest bid would not result immediately into a contract unless ten days mandatory period is over during which in our view the study in terms of rule 38 is carried out by the procuring agency. We are very clear in our mind that the petitioner's bid did not stand accepted at any time after its qualification in technical evaluation process but the petitioner succeeded only to cross one barrier of an ongoing process concerning tender enquiry and got the status of being technically qualified.

11.....Additionally the very notice published on 19th October, 2014 for inviting bids for tender vests a right on the company to cancel or reject bids or cancel the bidding process at any time at its discretion. That brings out a clear unambiguity qua the authority of the company to cancel bidding proceedings at any time

before the bidding process is over or the result in terms of Rule 35 are announced. The reproduction of Rule 33 would not be out of place here to highlight the company's authority to reject bids before their acceptance, "Rejection of bids:- (1) The procuring agency may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring agency shall upon request communicate to any supplier or contractor who submitted a bid or proposal, the grounds for its rejection of all bids or proposals, but is not required to justify those grounds. (2) The procuring agency shall incur no liability, solely by virtue of its invoking sub-rule (1) towards suppliers or contractors who have submitted bids or proposals. (3) Notice of the rejection of all bids or proposals shall be given promptly to all suppliers or contractors that submitted bids or proposals." (Underlined by us). If the procuring agency is wielding authority in terms of this rule, it has to give only a notice of its decision of rejection to the contractors that admittedly has been given by the company to the parties and in that scenario the company was not required to give a detailed justification for making such decision. The company has here decided to go for a fresh start, it, in our view, prejudices none, the parties are at liberty to compete in the fresh process without being prejudiced to the earlier results. We, however, feel that the company in its discretion keeping in view the facts and circumstance and time constraints may independently decide either to go ahead with the procurement process or altogether scrape off the same and start a new one. While observing so we do not want to forget to state that the law does not recognize conferment of any right on the second lowest bidder to the contract in the face of disqualification of lowermost bidder, as even the one having the lowest bid has no absolute title or claim to the award of contract. Efforts to seek enforcement of rights to a contract would be justifiable and could be a strong basis for an action (lis) to be brought in the Court when a contract has come into existence. However if for certain reasons the contract has not been executed and the offer or a proposal has not become a promise against some consideration as provided under Section 2(a) (b) (d) and (e) of the Contract Act, 1872, no contract comes into force creating certain rights in favour of the parties that might be enforced through the Court's intervention.

13. So-far the case of the respondent No.3, that process for bids re-evaluation of the technical offers after opening of the financial bids is illegal and is in violation of statutory rules and the scheme provided under rule 41, it may be observed we have had a thorough examinations of the record and relevant laws, which has led us to confirm that the company is under no legal obligation to continue with the process after the certificate submitted by the respondent to increase its credit value became unverifiable that must have cast serious clouds over the respondent No.3's integrity in the eyes of company. No law requires that the procuring agency in such situation cannot and shall not withdraw from its commitments and, it is not out of place to state that in the present case there is nothing on record to reflect the company had committed itself to the parties in any manner. Fraud vitiates most solemn affirmations. (Expression fraud has not been used herein authoritatively in the context of the certificate). Hence, the company's decision to re-bid the whole process does not appear to be suffering from any illegality warranting interference by this Court but on the contrary, in our view, it is set to improve public confidence over working of the company and is a most befitting step to avoid long litigation. It deserves reiteration here; the lowest bidder cannot claim its right to the contract to be absolute and unquestionable till acceptance of its bid and signing of the contract.....”

7. Learned Counsel for the Plaintiff has also relied upon Rule 33 of the PPRA Rules, 2004, and has contended that the rejection or cancellation of the bid was never communicated to the Plaintiff. Firstly, it may be noted that, and as already observed hereinabove, after the email dated 19.9.2018 sent by the Plaintiff wherein, he had put a condition in his bid, and if not, then return of the bid amount by itself is withdrawal of his bid, and since he was the only bidder left in the procurement process, there was no occasion for the Defendants to formally cancel the tender and intimate the reasons. Notwithstanding this, once the Defendants were left with no bidder in field, in addition to the Plaintiff's withdrawal, the bidding process came to an end. Rule 33 though provides that the Procuring Agency is liable to communicate the rejection of bids to all bidders; but at the same time it is not required to justify the grounds for cancellation or rejection. And this is for the reason that the tender is not being awarded to anyone; but a process of rebidding is being initiated. When all bids are rejected or cancelled, more so in the instant matter, when there are no bids in field, even communicating the same in terms of Rule 33 was not mandatory, or for that matter, no right accrues to the Plaintiff to assail the same on this ground alone. A transparent process has been initiated by rebidding wherein the Plaintiff was also called and permitted hence; no malafide can be attributed to such process. There appears to be no grievance in the given facts, as firstly even if the Plaintiff was the only bidder, there cannot be any competitive bidding amongst one bidder. For such bidding, at least there have to be two bare minimum bidders for such a process to remain transparent. It is also important to note that the discretion given to a Procuring Agency in terms of Rule 33 and 34 of the PPRA Rules, 2004 does not give any undue advantage to the bidders. It is not that if any bids are called the Procuring Agency is always bound to proceed further. It is the discretion of the Procuring Agency to proceed further, or cancel the entire process, and such cancellation does not create any vested right in favour of any of the bidders. In fact invoking Rule 33 & 34 puts an end to a controversy which may arise if instead of cancelling, negotiations are entered into, or even alteration of the bidding amount or other condition is permitted. If the exercise of discretion regarding cancellation or rejection of bids is to be made justifiable, then I am afraid the whole process of procurement would be jeopardized and no Procuring Agency will be in a position to finalize the

bidding process, until the legal battle comes to an end. In fact this is what has happened in this matter, as pursuant to ad-interim order the fresh tenders have been stayed and Defendant No.1 is not in a position to finalize the fresh bids. A bidder cannot come to the Court and seek directions to the Procuring Agency to continue with the bid process once a decision has been taken to cancel the bidding process. It is also noteworthy that the bid of the Plaintiff was yet to be opened and therefore, even otherwise, no vested right was created. In the additional note in the above judgment of ***Pakistan Gas Port Limited (Supra)*** the then Hon'ble Chief Justice was pleased to hold as under in respect of the objection regarding violation of Rule 33 of the PPRA Rules 2004;

7. Once the decision to scrap the bidding process under rule 33 is taken by the procuring agency then at best it is liable to communicate to all bidders the grounds for doing so, but it is not required to justify such grounds for the simple reason that contract is not being awarded to anyone and thus no contest remains in the field. It is only when any bid, in an ongoing bidding process, is to be accepted that the procuring agency is bound to justify grounds for the rejection of the remaining bids. Thus rule 33 does not oblige the procuring agency to justify its grounds of scrapping the entire bidding process. On account of doing so it also incurs no liability. When all bids are rejected under rule 33 the procuring agency is empowered to call for rebidding under rule 34. So once rule 33 is invoked then in such eventuality none of the bidders can insist that the procuring agency should proceed with the unfinished bidding process, announce the result and accept the lowest bid. Insisting on proceeding with the bidding process that has been annulled under rule 33 would come in direct conflict with the procuring agency's right to exercise its options under rules 33 and 34. Therefore, when rules 33 and 34 are invoked by the procuring agency, the bidders cannot make a grievance out of it. It cannot be said that in such eventuality the "duty to act fairly" has not been discharged. The expectations of the participating bidders that once the procuring agency commences the process to award procurement contract then it must finalize the same and not to cancel the process cannot be said to be a vested right of the bidders as rules 33 and 34 fully empower the procuring agency to reject all bids without incurring any liability and call for rebidding.

“8. The exercise of discretion under rules 33 and 34 does not give any undue advantage to any of the participants of the bidding process. Such an occasion would only arise when the procuring agency discloses its intention to grant the contract in favour of any of the bidders. Only in such eventuality the decision of the procuring agency can come under scrutiny. The rules do not envisage that once the bids are invited, the process cannot be annulled by invoking rule 33. The discretion under the said rules having been conferred upon the procuring agency, vires of which have not been called in question in these proceedings, the Court has to give effect to such rules if the occasion so warrants.

9. Where it is decided by the procuring agency to annul the entire bidding process under rule 33 then there is also no occasion for seeking remedy under rule 48. The purpose of rules 33 and 34 can never be achieved if even after the entire bidding process is annulled by the procuring agency, the participating bidders can stall the process of procurement by litigating for years to seek award

of contract under the very same bidding process. One of the reasons for incorporating rules 33 and 34 is to put to an end to a controversy in which bidding process stand submerged. The expectations of unsuccessful bidders cannot take precedent over the purpose for which bidding process was started. It is for such reason that rule 33 puts an end to the bidding process without leaving any room for the participating bidders to seek justification from the procuring agency. If the exercise of discretion under rule 33 is made justiciable then the whole procurement process would remain suspended till the legal battle comes to an end. Additionally, such an interpretation would amount to doing violence to the provisions of rule 33(1) wherein it is stated that procuring agency is not required to justify the grounds for calling for rebidding. Thus, to seek direction from a Court to the procuring agency to continue with the bidding process that has already been scrapped under rule 33 is not warranted in law. In the case reported in 2015 CLC 478 (Crescent Steel and Allied Products Ltd v. Sui Southern Gas Co. Limited) cited by the counsel for the respondent No.3, the decision was rendered on an injunction application and findings on bidding process were given without rules 33 and 34 being referred to the learned Single Judge and hence legal implications of the rules did not come under examination of the Court.”

8. Insofar as the contention that Plaintiff being the only bidder was also the lowest and therefore, the tender should have been awarded is concerned, it is settled law that a mere right to bid does not give any further rights until the bid is confirmed. It does not create any contractual right till such time the bid is opened and confirmed as well as accepted in favour of the bidder. It is always the discretion of the Procuring Agency to accept and or confirm the same or not. This all along has been a settled proposition in respect of bidding process be it under the PPRA Rules of 2004, or conduct of auction proceedings in any other matter, including sales through auction by Courts as well. Reliance in this regard may be placed on the case reported as *Babu Parvez Qureshi V. Settlement Commissioner, Multan & Bahawalpur Divisions, Multan and 2 others (1974 S C M R 337)* and *Messrs Mandokhail Brothers Commercial Trading and Government Contractor V. Chairman Civil Aviation and 4 others (2017 C L C 221)*.

9. It is also an admitted position that the Plaintiff through his email dated 19.09.2018 approached the Defendants and submitted as under:-

“From: Mohammad aw_pak@hotmail.com
 Sent: Wednesday, September 19, 2018 1:30 PM
 To: Sohail M. Khan [C/CO]
 Subject: RE: Request to rectify error in commercial bid
 RFQ_3863 for KDT Vehicles
 Importance: High

Dear Sir,

Subject bid was submitted on Friday 27th July last working day, on Monday 30th July I informed you about my error and to increase 30% rates on all items

I reiterate the point that earlier PPL accepted rectification of my calculation-error in bid number SV-60586, it was rectified after evaluation of technical bid which was "before opening of commercial-bid" by Mr. Afzal Siddique (MC&L) who I still part of PPL.

But if you are not agreeing to rectify my error then kindly return my sealed commercial bid since the commercial bid has not been opened yet therefore no question of forfeiting bid bond arises.

With Regards
Muhammad Irfan [Proprietor]
M/s Ahsan Engineering Works
0300-2287256."

10. Perusal of the aforesaid email of the Plaintiff reflects that the Plaintiff has approached Defendant No.1 for accepting enhancement of 30% in the rates in all items, and he has placed reliance on an earlier precedent and further that his enhancement is before opening of the commercial bid; therefore, it must be accepted. He has further stated that if the same is not acceptable after rectification, then his commercial bid in sealed form may be returned to him and his bid bond may not be forfeited and shall also be returned. The above statement of the Plaintiff is clear and express in terms that firstly his enhanced / conditional bid be accepted, and if not, then the bid be returned along with the bid bond. This within itself is a qualified bid so to say, and in tender bidding is always a disqualification. The bidder has no right to make a bid with any qualifications and then ask the procurement agency to accept it, and if not, then return the same. In fact the overall effect of this email is that the Plaintiff by himself had withdrawn from the bid; hence, no case of any vested right could otherwise be claimed.

11. In view of hereinabove facts and circumstances of this case, insofar as the Plaintiff's case is concerned, he has failed to make out a prima facie case and balance of convenience also does not lie in his favour, whereas, it is the Defendants who would suffer irreparable loss if any injunction in a mandatory form is granted in favour of the Plaintiff. In fact the injunction application is only to the effect that Defendant shall not proceed with the fresh tenders which has already been stayed by this Court through its order dated 22.11.2018 and therefore, since the Plaintiff still continues by plying his vehicles with

Defendants, he himself, at the present moment is an advantageous position and no question of any irreparable loss could be claimed; therefore, the injunction application bearing CMA No.16582/2018 at serial No.3 stands dismissed; however, the application filed by the Defendant under Order 39 Rule 4 CPC is disposed of by continuing with the order dated 28.12.2018 for a further period of two months from today during which the Plaintiff shall continue with the private arrangement already in field since 01.01.2019 and during this period the Defendants shall immediately start the fresh tender proceedings and complete the same in accordance with law. Insofar as contempt application is concerned, the same is deferred for the time being.

12. Accordingly CMA No.16582/2018 is dismissed, whereas, CMA No.18678/2018 filed by defendants under Order 39 Rule 4 CPC is allowed in the above terms.

Dated: 23.05.2019

J U D G E

ARSHAD/