

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

Suit No. 538 of 2021

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DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

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**For hearing of CMA Nos.**

1. 9231/2021
2. 4435/2021
3. 9235/2021
4. 10565/2021
5. For examination of parties / settlement of Issues

**28.02.2023**

Mr. Abdul Ahad, Advocate for the Plaintiff.

Ms. Nazia Hanjrah, Advocate for the Defendants.

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The case in nutshell is that Plaintiff participated in the Tender No.109 of 2020, for hiring Courier Services by the Defendants in respect of delivery of I.D. Cards abroad – **Subject Tender**.

Learned Counsel for the Plaintiff has referred to the Correspondence of Defendants dated 01.01.2021 informing the Plaintiff that latter is technically qualified, *whereas*, second email of 14.01.2021 states that Approval Process is under way. Plaintiff was shocked to receive the Decision of 28.01.2021, when their bid was rejected. Whereafter, the matter was agitated before the Grievance Redressal Committee (“**GRC**”) but without any favourable result. Bid rejection Order of 28.01.2021 and that of GRC dated 26.02.2021, are impugned in the present Proceeding. It is also stated by Plaintiff’s counsel that the Defendants adopted deceptive tactics and entered into an arrangement with DHL, whose bid was also rejected along with that of Plaintiff as evident from the impugned Evaluation Report of 28.01.2021.

The above arguments are rebutted by the learned Counsel for the Defendants by referring of Rule 35 of the Public Procurement Regulatory Authority Ordinance, 2002 (“**PPRA**”). The crux of her arguments is that the subject Tender was not awarded to any entity due to the restraining order passed in this Suit. She has referred to the Interim Arrangement for Courier Services entered into with the Plaintiff vide Correspondence dated 01.01.2021. Subsequently, a new Tender was floated in which representative of Plaintiff also participated. Documents appended with the

Written Statement as Annexure ‘D’ and ‘D/1’ are referred to along with Signing Sheet. It is rebutted that services of DHL have been hired, as alleged by Plaintiff’s counsel; in support of this, learned counsel has referred to the Documents dated 28.04.2021 and 4-6-202 with her Counter Affidavit to the Contempt Application and Letter dated 04.06.2021 (*at pages-299 and 301*), stating that for delivery of National Identity Cards to Overseas Pakistanis, service of Pakistan Post has been taken. Contended that due to the restraining Order, the re-tendering process is inconclusive. She has cited the case law reported in **P L D 2016 Sindh 207** [*Messrs Pakistan Gas Port Ltd. versus Messrs Sui Southern Gas Co. Ltd. and 2 others*] in support of her arguments.

Arguments heard and Record considered.

It is evident from the record that tenure of courier service under the Subject Tender was to be ended on 31.12.2022. Order on the listed Applications is as follows\_

1. As far as Application under Order VII, Rule 11 of CPC is concerned, the documents referred above had initially given the Plaintiff cause of action to file the present Suit, *inter alia*, in view of the technical approval of its bid, therefore, plaint cannot be rejected. Consequently, this application-C.M.A. No.9231 of 2021, is dismissed.
2. This application was not required to be considered at this stage, as the injunction application is still pending, therefore, this application-C.M.A. No.4435 of 2021, is also dismissed.
3. Fact of the matter is that after rejection of financial bid of Plaintiff, its services were engaged on the interim basis [Vide OFFICE ORDER dated January 2021, Annexure ‘B’ of Written Statement] and on a specific question during the Proceeding, it is not denied that those services were fully paid up by the Defendants. The second undisputed fact is that Defendants have re-tendered the services in which everyone is allowed to participate including Plaintiff, wherein, in fact Plaintiff has participated, but Tender Process is at stand still due to the restraining order of this Court.

It is held in the above reported Decision, *inter alia*, that if a procuring agency wants to start a fresh process, it prejudices none, as parties are at liberty to compete, **“without being prejudiced to the earlier results.”** {Underlined for emphasis}.

Since till date a Contract under an earlier Tender was not awarded to any of the competitors of the Plaintiff and the second Tender Process has been initiated, which is still pending, there is no justification to continue the restraining orders. *Prima facie* case even was there at the start of this *Lis*, in favour of Plaintiff together with the other two ingredients; balance of convenience and irreparable loss; these factors with the passage of time have diminished. Conversely, now it is Defendant No. 1 being a Procuring Agency is facing inconvenience and hardship because its Tender Process is incomplete, in which everyone is allowed to participate including Plaintiff. The interim arrangement with Pakistan Post Office cannot continue for an indefinite period as it would question the transparency of the Tender Process itself of the Procuring Agency, besides, over all governance. Consequently, injunction application-C.M.A. No.9235 of 2021 is also dismissed. Restraining order passed earlier is recalled.

4. In view of the above order, this application-C.M.A. No.10565 of 2021 also stands disposed of.

Tender Process will continue which should be transparent and must be concluded in terms of the Statute and Statutory Rules.

5. Deferred.

Adjourned.

Riaz / P.S.

**Judge**