

Government of Pakistan
Federal Board of Revenue
(IT Wing)

F.No. 1(10)S(IT)/Fieldoffices/2017/19485-R

Islamabad, 6th February 2024

To,

Mr. Rizwan Mahmood
Director (MIS), PPRA
Islamabad

SUBJECT: BLACKLISTING ORDER AGAINST M/S MEGAPLUS UNDER RULE 19 (1)(B) OF PP RULES 2004 IN RESPECT OF TENDER NO 1(10)S(IT)/FIELDOFFICES/2017 DESKTOP COMPUTERS (LOT 104)

I am directed to refer to the purchase order issued to M/s Megaplus dated 4th April 2022 for an amount of Rs. 902,892,500 for supply of 4,300 Lenovo Desktop Computers (**Annex-A**) and to letter of even number dated 27th February 2023 in which contract between FBR and M/s Megaplus was terminated for default against tender No. 1(10)S(IT)/Fieldoffices/2017 (Lot 104) (**Annex-B**). Reference is also drawn to earlier correspondence in which M/s Megaplus was reminded multiple times to submit a performance guarantee for Lot 104 (**Annex-C**), which M/s Megaplus failed to provide, and also to blacklisting notice issued for non-performance of contractual obligations dated 14th Dec 2022 (**Annex-D**).

2. In letter dated 21st December 2022, M/s Megaplus reaffirmed its intention to fulfill all its legal obligations under the contract (**Annex-E**). However, neither the equipment was supplied nor a performance guarantee was submitted. Left with no other option, FBR served a notice on M/s Megaplus for blacklisting under Rule 19 (1)(b) of PP Rules 2004 in the event of failure to make supplies against tender No. 1(10)S(IT)/Fieldoffices/2017 (Lot 104: Supply of Desktop Computers) dated 13th February 2023 (**Annex-F**).

3. To avoid blacklisting proceedings, M/s Megaplus filed a civil suit in Court of Honorable Additional Session Judge, Islamabad on 23rd Feb 2023. The court directed FBR in an order dated 10th March 2023 (**Annex-G**):

"Respondents/defendants not to take any adverse action against the complainant."

4. Finally, the Court of Honorable Additional District & Sessions Judge in its order dated 17th January 2024 dismissed the application for grant of temporary injunction filed by M/s Megaplus and observed as under (**Annex-H**):

"The three well celebrated ingredients for grant of temporary injunction i.e., prima facie arguable case, irreparable loss and balance of inconvenience are missing in the instant case. The instant application for grant of temporary injunction stands dismissed"

5. To meet the requirements of natural justice and fair play and in light of judgement of the Honorable Court, M/s Megaplus was issued a final blacklisting notice on 22nd January 2024 (**Annex-I**). Later, two requests by M/s Megaplus for extension in submission of a response were also allowed.

6. M/s Megaplus submitted a response to blacklisting notice on 31st January 2024 in which reasons for default have been delineated. M/s Megaplus blamed adverse economic conditions prevalent in the country, including devaluation of Pakistani Rupee and import ban by the State Bank of Pakistan, that prevented it from fulfilling its contractual obligations. M/s Megaplus further contends that these circumstances fall under the purview of Force Majeure. M/s Megaplus has also requested that the case may be considered emphatically in light of its previous business relationship with FBR and also mentions of its good intentions as in the same tender in which M/s Megaplus has defaulted, two other lots—2100 AIO (All-in-One) desktops and 2100 Laptops—were also awarded to M/s Megaplus, which were supplied by the vendor. M/s Megaplus has offered that it is willing to forfeit the bid security if the contract is cancelled and the issue is closed.

7. For clarity on what events can be construed as "Force Majeure," the clauses 32.2 and 32.3 of General Conditions of the Contract are reproduced as under:

32.2 *"Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.*

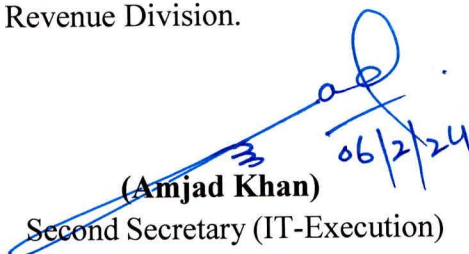
32.3 *If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.*

It is abundantly evident from the above definition that business viability of a financial transaction cannot be construed as a Force Majeure event. M/s Megaplus has itself admitted that it incurred a loss on supply of two other lots in the same tender, which means a force majeure situation, as described in GCC 32.2 & 32.3, did not arise. M/s Megaplus could have very easily hedged risk of currency devaluation by simply participating in fewer lots in the tender. Ostensibly, due to high-risk appetite, M/s Megaplus chose a risky path by participating in, and eventually winning, all three lots advertised by FBR, submitting a commutative bid of Rs. 1,927,755,500 for three lots.

Moreover, in case of Force Majeure, the supplier is required to notify a purchaser in writing as soon as such a condition arises and the cause thereof. Between 4th April 2022, the date of purchase order, and 13th February 2023, the date of blacklisting notice, no Force Majeure notice was served on FBR. On the contrary, in a letter dated 21st December 2022, M/s Megaplus assured FBR that it intended to meet all its contractual obligations under the contract (**Annex-E**). In order to allay FBR's concerns that M/s Megaplus was going to default, Mr. Asim Bukhari, CEO of M/s Megaplus, personally met with Member IT in FBR (HQ) on 26th Dec 2022 and assured delivery of desktop computers despite the fact that it would incur a loss due to currency devaluation. However, instead of furnishing a performance guarantee and supplying the equipment after giving multiple written and verbal assurances, a civil suit was filed in the Court of the Honorable Additional District and Session judge, Islamabad just to avoid blacklisting proceedings. It is obvious that M/s Megaplus had no intention of supplying the equipment for Lot 104 (Desktop Computers) from the very beginning and was just buying time with written and verbal assurances. For this very reason, no performance guarantee for Lot 104 was submitted either. In order to cut business losses, M/s Megaplus chose not to supply Lot 104 and is now attempting to confuse a willful, high-risk choice it made with Force Majeure circumstances.

8. In light of facts highlighted above, the bid security amounting to Rs. 18,058,000 is seized in favor of Government of Pakistan as the contract has already been terminated due to default by FBR on 27th February 2023. In terms of Rule 19 (1)(b) of PP Rules 2004, M/s Megaplus is hereby blacklisted for a period of three years w.e.f. 6th February 2024.

9. The issues with approval of the Chairman, FBR/Secretary Revenue Division.


(Amjad Khan)
Second Secretary (IT-Execution)

Copy to:

- M/s Megaplus, House # 1015, Street 44, Section E 11/3, Islamabad
- The Special Assistant to Chairman, FBR
- Webmaster, for placement on FBR's website

GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE
IT WING

F.NO.1(10)S(IT)/Fieldoffices/2017/pt

Islamabad the 4th April, 2022

To,

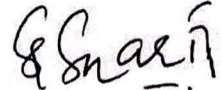
M/S Megaplus
House # 1015, Street 44, Sector E-11/3,
Islamabad.

**SUBJECT: PURCHASE ORDER FOR SUPPLY OF DESKTOP COMPUTERS
(LOT-104), AGAINST TENDER NO.1(10)S(IT)/Fieldoffices/2017/pt**

It is notified that your bid dated 11-03-2022 for supply of following item has been accepted:

S.No	Description	Model	Specifications	Unit Price (Rs.)	Quantity	Total Price (Rs. including all taxes)
1	Desktop Computers	Lenovo Think Centre M70t Gen 3	12 th Gen Intel Core i7, 16GB DDR4 RAM, 512 GB SSD, 23.8 inch QHD Display	209,975	4300	902,892,500

2. Till such time a contract is executed between you and FBR, this purchase order together with terms and conditions stated in the SBD (Standard Bidding Document) shall deemed to be a binding contract.


(Sardar Omer Sharif)
Secretary (IT)

Government of Pakistan
Federal Board of Revenue
(IT Wing)

No. 1(10)S(IT)/Fieldoffices/2017/33233-R

Islamabad, 27th February 2023

M/s Megaplus
House # 1015, Street 44, Section E 11/3
Islamabad

SUBJECT NOTICE FOR TERMINATION FOR DEFAULT AGAINST TENDER NO 1(10)S(IT)/FIELD OFFICES/2017 DESKTOP COMPUTERS (LOT 104)

I am directed to refer to the purchase order issued to M/s Megaplus dated 4th April 2022 (**Annex-A**) and to letters of even number dated 9th June 2022 (**Annex-B**), 27th June 2022 (**Annex-C**), 14th Dec 2022 (**Annex-D**) and 13th Feb 2023 (**Annex-E**).

2. M/s Megaplus vide letter dated 21st Dec 2022 (**Annex-F**) reaffirmed that it intends to fulfill all its legal obligations under the contract and also promised to submit a performance guarantee. Later, Mr. Asim Bukhari, CEO of M/s Megaplus, personally met Member IT in FBR (HQ) on 26th Dec 2022 and assured delivery of desktop computers despite the fact that M/s Megaplus would incur loss due to currency depreciation. It was also informed that Lenovo has already finished production of 4300 desktops for supply to FBR and the equipment is available for pick-up from a distributor's warehouse in UAE.

3. It is noted with grave concern that instead of providing a delivery schedule and furnishing a performance guarantee as agreed vide letter dated 21st Dec 2022, M/s Megaplus has filed a civil suit before the court of District Judge, Islamabad West for cancellation of the contract and issuance of a permanent injunction.

4. To meet the requirements of natural justice and fair play, M/s Megaplus is being provided a last chance to furnish a delivery schedule and submit a performance guarantee latest by 6th March 2023. In case of non-compliance, the contract (Lot 104) shall be deemed to have been terminated for default under clause GCC 35.1.

(Amjad Khan)

Second Secretary (IT-Execution)

Copy for information:

- The Special Assistant to Chairman, FBR
- The Member (IT), FBR (HQ)

Government of Pakistan
Revenue Division
Federal Board of Revenue
(IT Wing)

F.No. 1(10)S(IT)/Fieldoffices/2017/pt

Islamabad, 9th June 2022

To,

M/S Megaplus
House 1015, Street 44, E-11/3
Islamabad

SUBJECT: Purchase Order for Supply of Laptops (Lot 101), Desktops AIO (Lot 102), and Desktops (Lot 104)

I am directed to refer to Purchase Orders issued to M/S Megaplus dated 4th April 2022 for supply of Laptops (Lot 101), Desktops AIO (Lot 102), and Desktops (Lot 104). It is noted with grave concern that despite numerous reminders, M/S Megaplus has still not submitted Performance Security which was supposed to be submitted within 14 days of issuance of PO. In compliance with Rule 39 of Public Procurement Rules, 2004 the Contract submitted by M/S Megaplus on 14th April 2022 cannot be signed by the competent authority unless the Performance Security is submitted.

2. M/s Megaplus is instructed to submit Performance Security in compliance with the Public Procurement Rules 2004 latest by 16.6.2022. Failure to do so may lead to forfeiture of bid security, disqualification and subsequent blacklisting of the said Firm under the above stated Rules.

(Amjad Khan)

Second Secretary (IT Execution)

Copy for information:

Member (IT), FBR (HQ)

1879- 532
Government of Pakistan
Revenue Division
Federal Board of Revenue
(IT Wing)

F.No. 1(10)S(IT)/Fieldoffices/2017/pt

Islamabad, 27th June 2022

To,

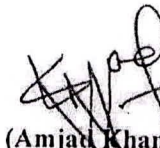
M/S Megaplus
House 1015, Street 44, E-11/3
Islamabad

SUBJECT: Purchase Order for Supply of Laptops (Lot 101), Desktops AIO (Lot 102), and Desktops (Lot 104)

I'm directed to refer to Purchase Orders issued to M/S Megaplus dated 4.4.2022 for supply of Laptops (Lot 101), Desktops AIO (Lot 102), and Desktops (Lot 104) and to letter of even number dated 9.6.2022 on the subject cited above.

2. It is noted with grave concern that M/S Megaplus has neither submitted the Performance Security till date nor submitted a reply to the letter dated 9.6.2022 in which deadline of 16.6.2022 was given to submit the Performance Security.

3. It is suggested that Performance Security may be submitted latest by 30.6.2022. Failure in doing so, FBR shall disqualify M/S Megaplus, forfeit bid security, and start blacklisting proceedings under PPRules 2004.


(Amjad Khan)
27/6/22
Second Secretary (T-Execution)

Copy for information:
Member (IT), FBR (HQ)

Government of Pakistan
Revenue Division
Federal Board of Revenue
(IT Wing)

No. 1(10)S(IT)/Fieldoffices/2017/247498-R

Islamabad, 14th December 2022

To,

M/S Megaplus
House # 1015, Street 44, Section E 11/3
Islamabad

Chief (Systems)
15/12

SUBJECT FAILURE TO SUPPLY DESKTOP COMPUTERS (LOT 104) AGAINST TENDER
NO 1(10)S(IT)/FIELD OFFICES/2017

I'm directed to refer to purchase order issued to M/S Megaplus dated 4th April 2022 on the subject cited above and to state that delivery of equipment was supposed to have been completed within 18-20 weeks after issuance of the PO. However, even after passage of 32 weeks and repeated verbal reminders given from time to time, delivery has still not been made. On multiple occasion representatives of M/S Megaplus have been reminded to provide the tentative delivery date and submit the bank guarantee related to Lot 104 but no response has been received.

2. It is pertinent to mention that in the same tender M/S Megaplus was awarded two other lots: Lot 101 (Laptops) and 102 (Desktops All-in-One). Delivery of All-in-One desktops in Lot 102 has already been completed and FBR has also processed the payment, while delivery of laptops in Lot 101 is underway at the moment.

3. You are hereby intimated to explain reasons why blacklisting proceedings shouldn't be initiated against M/S Megaplus under Rule 18 of PPRA Rules 2004 due to non-performance of the contract (Lot 104). Your response should reach IT Wing latest by 21st December 2022.

(Amjad Khan)
14/12/22
Second Secretary (IT)

Copy for information:

✓ Member (IT), FBR (HQ)

SC (IT)
15.12.22



MEGAPLUS

Ref No. MP / ID / X22 – A0363
December 21, 2022

Sardar Omer Sharif,
Secretary (IT),
FBR, Islamabad.

Megaplus Pakistan
1015, Street 44, Sector, E-11/3
Islamabad - 44000, Pakistan
UAN : (051) 111-00-3355
Tel: (+92-51) 222 8617, 222 8677
222 8695, 222 8492
Fax: (+92-51) 222 8430
Email: islamabad@megaplus.com.pk

Subject: Failure To Supply Desktop Computers (LOT-4) Against Tender No.
1(10)S(IT)/Fieldoffices/2017/pt.

Dear Sir,

With reference to your letter 1(10)S(IT)/Fieldoffices/2017//247498-R dated 14/12/2022, we kindly bring in your notice that the subject order was processed from our side and PC's were manufactured by Lenovo. However due to State Bank of Pakistan restrictions on LC's imposed on Chapter 84 & 85, we have not been able to get necessary approvals till date, from our bank due to higher value of Lot-4.

In view of ongoing financial constraints, we will arrange to deliver the equipment in three to four phases to manage LC opening Bank's financial concerns as well as SBP LC approvals and payment transfer.

Kindly note that OEM has already manufactured the equipment (CPU Only/LOT-4) and Megaplus Pakistan is committed to process your order (LoT-4) with Lenovo on priority.

Further, we would like to inform that we have started the process for 10% Performance Guarantee with our bank, as soon as we get the approvals from bank's authority we will submit Performance Guarantee to FBR.

We would also request to competent authorities at FBR to please allow partial delivery and partial payment against each delivery for smooth completion of the contact.

We again assure you that Megaplus is committed to fulfill the contractual obligations and serve your prestigious organization with best of our abilities.

If you have any query, please feel free to contact us.

Thanking You
Yours truly,

MEGAPLUS

Sheikh Abdul Samad
Senior BDM

MEGAPLUS
PAKISTAN
1015, Street 44, Sector, E-11/3
Islamabad - 44000, Pakistan

put up
SSL IT-
Export
2.1.23

Hewlett Packard
Enterprise

Canon

CISCO

H3C

Microsoft

PC Partner
Platinum
Lenovo

Lahore: 22C, Block M, Gulberg III, Lahore - 54600 UAN : (042) 111-00-3355, Fax: (+92-42) 3591 8116 Email: lahore@megaplus.com.pk
Karachi: M 44, P.E.C.H.S, Block 6, Main Razi Road off Shahra-e-Faisal, Karachi UAN : (021) 111-00-3355, Fax: (+92-21) 3430 0874 Email: karachi@megaplus.com.pk
Peshawar: Megaplus Tower, 35, The Mall, Peshawar - 25000, UAN : (091) 111-00-3355, Fax: (+92-91) 527 9993 Email: peshawar@megaplus.com.pk
Quetta: 76, Phase-3, Shahbaz Town, Quetta. UAN : (081) 111-00-3355, Email: quetta@megaplus.com.pk

Government of Pakistan
Federal Board of Revenue
(IT Wing)

No. 1(10)S(IT)/Fieldoffices/2017/

Islamabad, 13th February 2023

To,

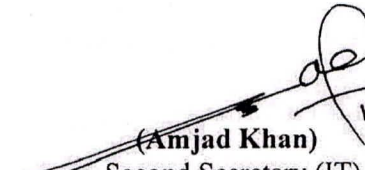
M/s Megaplus
House # 1015, Street 44, Section E 11/3
Islamabad

SUBJECT FAILURE TO SUPPLY DESKTOP COMPUTERS (LOT 104) AGAINST TENDER NO 1(10)S(IT)/FIELDOFFICES/2017

I'm directed to refer to purchase order issued to M/s Megaplus dated 4th April 2022 and to letter of even number dated 14th Dec 2022 on the subject cited above.

2. In a letter dated 21st Dec 2022, M/s Megaplus reaffirmed that it intends to fulfill all its legal obligations under the contract and also promised to submit a performance guarantee. Mr. Asim Bukhari, CEO of M/s Megaplus, personally met with Member IT in FBR (HQ) on 26th Dec 2022 and assured delivery of desktop computers despite the fact that M/s Megaplus would incur a hefty loss due to currency devaluation. It was also informed that Lenovo has already finished production of 4300 desktops for FBR and the equipment is available for pick-up from a distributor warehouse in UAE.

3. It is noted with grave concern that another six weeks have gone by but M/s Megaplus has neither provided a delivery schedule nor submitted a performance guarantee. You are being provided a last chance to furnish a delivery schedule and submit a performance guarantee latest by 21st Feb 2023. In case of non-compliance, blacklisting proceedings shall be initiated against M/s Megaplus under Rule 18 of PPRA Rules 2004.


(Amjad Khan)
Second Secretary (IT)

Copy for information:

- SA to Chairman, FBR
- Member (IT), FBR (HQ)
- All Members of the Bid Evaluation Committee

فدرل بورڈ آف ریونیو
 بعدالت جناب
 فبر
 صیگا پلس پاکستان
 فبر
 Federal Board of Revenue Through
 Chairman FBR House Constitution Avenue
 ISB

1876

10 MAR 2023

M(L)

10 MAR 2023

C(L-II)

مقدمہ مستدرجہ عنوان بالائیں آپ بروئے پیروی و جواب دہی درخواست
 دعویٰ اصالت یا وکالت مقررہ 4 4/23 بوقت صبح 8:30 بجے
 حاضر عدالت ہذا آویں۔ بصورت دیگر کارروائی یک طرفہ عمل میں لائی جائے گی۔

Mega Plus Pakistan.
 ===Versus===
 Federal Board of Revenue Etc.

88 (lit-HC)

Notices to the respondents under Order XXXIX rule 3 CPC were issued on 22.02.2023 when instant application was filed but none has appeared on behalf of them despite of affecting their service. Plaintiff has filed a suit for declaration, rescindment/cancellation of contract and permanent injunction. Relying upon affidavit and other attending documents, defendants/respondents are directed not to take any adverse action against the applicant till the fixed date in the main suit by the learned pairing court. However, this order will have no effect on the proceedings pending before any competent authority. This order shall deem to be vacated if not extended specially on next date of hearing. This file be sent back to learned pairing court immediately.

Announced
 24-03-2023

(ZAFAR IQBAL)
 Additional District Judge,
 Islamabad-West.

37253-4
 FBR eDox Dy.No. _____
 Received in Chairman's Secy
 on 10 MAR 2023

سندھ

23 FEB 2023

M(I.T) ✓

M(h)

طغیر اقبال صاحب ADJ اسلام آباد (ویسٹ)

ایف بی آر

بیتہ صیگا پوسٹ پاکستان

بجالات جناب

Chief (IT)

Secy (IT)

Federal Board of Revenue Through
Chairman FBR House, Constitution
Avenue ISB

FBR eDoc No. 24/2/23
Received in Member (II) 30689

مقدمہ مندرجہ عنوان بالا میں آپ برائے پیرزنی وجواب دیں درخواست
دعویٰ اصالت یا دکا مقررہ 24/2/23 بوقت صبح 8:30 بجے

حاضر عدالت ہذا آویں بصورت دیگر کارروائی یک طرفہ عمل میں لائی جائے گی۔

R

FBR eDoc Dy.No. 30689

Received in Chairman's Secy

23 FEB 2023

منہر عدالت

تحریر

نقل لف ہے

READER TO

ADJ, Federal Board of Revenue, Islamabad

1873

D/C - 1-

BEFORE THE COURT OF DISTRICT JUDGE, ISLAMABAD
WEST

Civil Suit No. ____/2023

MEGA PLUS PAKISTAN, through its Partner Syed Muhammad Arshad Bukhari
having office at 1055, Street # 44, E-11/3, Islamabad.

.....Plaintiff

Versus

1. Federal Board of Revenue *through* Chairman, FBR House, Constitution Avenue, Islamabad.
2. Secretary IT, Federal Board of Revenue Room # 573, FBR House, Constitution Avenue, Islamabad.

...Defendants

SUIT FOR DECLARATION, RESCINDMENT / CANCELLATION
OF CONTRACT AND PERMANENT INJUNCTION

May it Please this Honourable Court

1. That the instant civil suit is being filed by the Plaintiff through its duly authorized representative Mr. Syed Arshad Bukhari, Managing Partner, who is well conversant with the subject matter of the instant Suit.
2. That the plaintiff has been in IT Industry for over 25 years establishing its reputation as one of the most competitive IT solutions provider. Its expertise surpasses the norm of enterprise world, where experts have in-depth knowledge and experience of delivering complex solutions, which have helped different organizations adapt to rapidly evolving industry trends and technology integration. The plaintiff understands the pressures that today's management faces to increase customer service levels while effectively controlling costs and keeping up with the latest technology trends – and we are here to help every step of the way.
3. The plaintiff has a lot of successful IT Projects as success stories, being able to close high value projects, in time for our customers from multiple verticals. Its passion of delivering results for customer as client is the key, where it puts all expertise to exceed expectations.

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4. That the defendant # 1 through defendant # 2 announced tender No. 1(10)S(IT)/Fieldoffices/2017/pt for procurement of Laptops, desktops (all in one), Desktops, LaserJet Printers, Scanners and heavy duty A3 Multi-Function Printers for FRR's Field Formations.
5. That the plaintiff after complying with the requirements, formalities and the mandatories as required by the tender notice and submission documents submitted its bid.
6. That the plaintiff being the lowest bidder with compliance of specification as per the requirement was declared the successful bidder.
7. That the defendant was issued with the financial proposal for supply of Laptops, desktops (all in one), Desktops, LaserJet Printers, Scanners and heavy duty A3 Multi-Function Printers for FRR's Field Formations with Ref No. MP /ID /X22-4347 on March 11th, 2022 which was accepted by the defendant and defendant purchase order F. No. 1(10)S(IT)/Fieldoffices/2017/pt dated 9th June, 2022 for supply of Laptop (Lot-101), Desktop AIO (Lot 102) and Desktop (Lot 104). In addition to this defendant instructed the plaintiff to deposit performance security in compliance with the Public Procurement Rules 2004 and plaintiff submitted his security and plaintiff submitted Bank Guarantee # 1301LBG220134/MCB Bank Limited which was executed 08-12-2022 PKR57,925,350/- for supply of Lot-101 and also deposited bid security PKR 11,586,000/- which was still not reimbursed to the plaintiff.
8. That the plaintiff partially fulfil is obligation as for as Lot-101 and Lot-102 is concern the delivery of equipment is behind schedule due to delayed approval of Letter of Credit by State Bank of Pakistan in our favour of Lenove the principal company who will deliver the equipment/ Laptops etc. The Lot-101 & 102 Purchase Order computers are at Karachi Port for custom clearance and State Bank of Pakistan imposed restrictions on clearance of equipment.
9. That the purchase order for supply of LOT-104 against the tender No. 1(10)S(IT)/Fieldoffices/2017/pt dated 4th April, 2022 was issued by the defendant for supply of 4300 Desktop Computers. It is important to note that due to inflation rate and devaluation of PKR the prices of commodities are enormously increases and bid of Lot-104 was submitted

(87)

- 8 -

control of plaintiff and plaintiff is already bear huge loss but now the USD rate so high. It is needless to mention here that the plaintiff requested the defendant to retender the supply order because the plaintiff already incurred hefty loss in supply order of Lot 101 & 102 but upon the request of plaintiff the defendant issued letter dated 13th Feb 2023 to submit delivery schedule of Lot-104 and submission of performance guarantee till 21st Feb. 2023 and in case of failure blacklisting proceedings shall be initiated against the plaintiff.

10. That the details of goods were to be imported in the country for supply to the defendant # 1 as the goods were not locally made, assembled or manufactured items IT equipment as per the details mentioned in the supply order.
11. That around the same time there was over all a financial and economical decline being noticed and recorded qua economy of the country, which led to a political movement leading to change of the government.
12. That the new government in order to stabilize the economy immediately put a ban on imports of all kinds unless specific permissions were accorded for only in order of prioritise on need basis whereas the IT equipment was never included in any list for the purpose of urgency.
13. That it is pertinent to mention that due to extreme demand of the IT equipment, including computers and related products during and after the global pandemic Covid 19, the demand and dependence on the Information Technology, social media, virtual meetings, working from home surged manifolds both domestically and commercially as a global phenomenon abruptly without having preparation of the suppliers for the purpose of capacity building of the manufacturing thus a global shortage and supply was observed proportionately to demand.
14. That despite the same the plaintiff always being one the leaders in the market of IT related service and solutions made best efforts to accede to its commitments including the instant tender.
15. That as per the agreement and its terms as conditions as well as law of the land read with fundamental principles of contract law any performance, obligation or commitment by a party to contract if is

and supplier cannot be attributed as breach of contract rather comes under the ambit of doctrine of force majeure a well-established concept of administration of justice and law.

16. That the ban on imports were imposed by the federal government as a blanket policy and in order to facilitate and ensure the ban on imports the federal government also requested the State Bank of Pakistan not to open the Letter of Credit facility to importers which is a norm in international sales of goods. That the Government of Pakistan M/o Finance has taken austerity measures for financial year 2022-2023 imposed complete ban on purchase of machinery & equipment etc by office memorandum dated 07th July, 2022.
17. That the bank owing to the notification of the state bank of Pakistan for ban on imports by the Federal Government as a matter of policy showed its inability to open the letter of credit.
18. That the State Bank of Pakistan as well as other government departments as well as ministries from time to time issued various notifications endorsing and re affirming the austerity as well as ban on import due to policy and economical reasons.
19. That it is also pertinent to note that the plaintiff has never encountered such a situation and it was a unique of its kind when as a matter of policy the federal government had put a ban on imports. The plaintiff in its market presence of over 3 decades in various markets and ventures never defaulted or caused any delay which for the reasons attributable to the Plaintiff, as the Plaintiff operates with very high standards of operations and client services.
20. That along with that all the imports and purchases are done in USD by the plaintiff for the purpose of supply order issued by the defendants. Whereas prices quoted and reflecting in the record is in Pakistan Rupees. It is no secret that the Pakistani Rupee has been periodically and consistently losing its value against the USD which has always been a concern specially for importers as fulfilment of supply commitment comes with a heavy loss when the difference of currency exchange widens.

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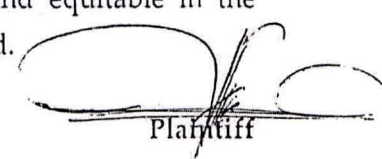
-5-

21. That in the instant matter the decline of rupee though had already started and the plaintiff was all set to effect supply as per the supply order. However due to the policy of the Federal Government and ban on import as well as restriction on opening of Letter of Credit by the state bank of Pakistan all contributed to the delay in supply which was also understood by the defendants and extensions were granted by defendants as the delay in import and supply was for none of the fault of the plaintiff but for the reasons beyond control of the plaintiff.
22. That the plaintiff remained committed to make sure that the supply takes place and the commitment is fulfilled however due to the recent abnormal devaluation of the Pakistan Rupee against dollar, not only that the import is not possible but even if that is at a later stage becomes possible due to special permission or change of policy still the supply fouled neither be practical not viable as the prices have almost doubled coupled with the exchange difference
23. That the Plaintiff has been suffering losses due to such circumstances however due to recent spike in the dollar rate in the last 2 months there is no possibility to procure the goods.
24. That in view of the recent meetings and correspondence as well as the analysis of viability the plaintiff seems in no position to possibly supply the goods., hence this suit for the decree prayed for declaration, rescindment, cancelation and injunction.
25. That the cause of action was firstly accrued to the plaintiff within the territorial jurisdiction of this honourable court on 22nd February, 2022 when proposal of plaintiff was accepted by the defendant and issued letter date 18th April, 2022 and same is continue.
26. That the head offices of the Parties are situated in Islamabad therefore the Honourable Court of Islamabad has jurisdiction to entertain and adjudicate this suit.
27. That valuation for the purpose of court fee and jurisdiction is fixed as Rs. 902,892,500/- and maximum court feel will be affixed.

PRAYER

In view of above, it is humbly prayed that this hon'ble Court may graciously be pleased to issue the following in favour of Plaintiff:

- a. A decree of declaration to the effect that further execution of the contract under the force majeure and circumstances beyond control of the plaintiff and is now impossible to be performed and will result in causing irreparable huge financial losses thus making it commercially impracticable for the Plaintiff for reasons totally beyond its control and policy of the government.
- b. A decree for the termination of the Contract / purchase order "4300 desktop computers as per the details mentioned in the supply order of Lot-104" dated 04th April 2022 may be granted in favour of the Plaintiff.
- c. A decree for permanent injunction by restraining Defendants from taking any adverse action or taking any proceeding in consequence of the tender notice including but not limited to encashment of securities, blacklisting breach etc.
- d. Any further or better relief deemed just and equitable in the circumstances may also be graciously granted.



Plaintiff

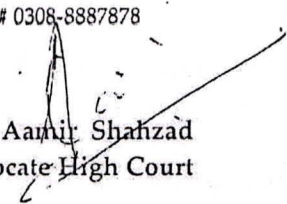
Through

Barrister Adnan Saboor Rohaila

Rohaila, Christina & Kiyani

Associates

Tel # 0308-8887878



Raja Amir Shahzad
Advocate High Court

CERTIFICATE:

It is certified that the subject matter or material issue in the instant suit has not directly or substantially been issue in any other suit, not is there any suit between the same parties or between parties under whom they or any others who claim to be litigating under same title before any other court of competent jurisdiction. The subject matter or the material in issue never came up before the High Court or Supreme Court.

1867

- 7 -

BEFORE THE COURT OF DISTRICT JUDGE, ISLAMABAD
WEST

MEGA PLUS PAKISTAN
Vs
Directorate General of Immigration & Passports and Another

SUIT FOR DECLARATION, RESCINDMENT / CANCELLATION OF
CONTRACT AND PERMANENT INJUNCTION

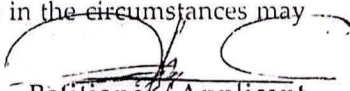
APPLICATION UNDER ORDER 39 RULE 1 AND 2 READ WITH SECTION 151
CPC

1. That the Petitioner has filed the above captioned suit before this Honourable court and the contents of the suit may kindly be read as integral part of this application.
2. That the Petitioner has a good prima-facie case and hopes to succeed in it.
3. That the balance of convenience and inconvenience lies in favour of the Petitioner.
4. That if the ad-interim injunction is not granted the Petitioner will suffer an irreparable loss.

PRAYER:

In the above circumstance, it is, therefore, respectfully prayed that the decree for permanent injunction, restraining the respondents from taking any adverse action, issuance of show cause notice or taking any proceeding in consequence of the tender notice including but not limited to encashment of securities, blacklisting breach etc.

Any further or better relief deemed just and equitable in the circumstances may also be graciously granted.


Petitioner / Applicant

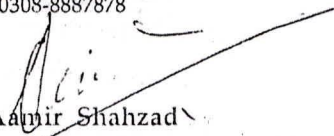
Through

Barrister Adnan Saboor Rohaila

Rohaila, Christina & Kiyani

Associates

Tel # 0308-8887878


Raja Amir Shahzad
Advocate High Court

Civil Misc. Application No. _____
APPLICATION UNDER ORDER XXXIX RULE 1 & 2 CPC
Mega Plus Pakistan Vs Federal Board of Revenue & another

1805

ORDER
17-01-2024

Present: Raja Asim Shahzad Advocate, counsel for the
petitioner.
Counsel for the respondents.

Through this order, I intend to decide the application
under Order XXXIX Rule 1 & 2 CPC filed by the petitioner/plaintiff.

2. Brief facts of the case as per averments of the plaint are
that the respondents announced tender notice for procurement of
Laptops, Desktop Computers, LaserJet Printers, Scanners and A3
Multifunction Printers and the bids were invited. The petitioner after
fulfilling formalities submitted its bid and being the lowest bidder was
declared successful bidder. Financial proposal for supply of Laptops,
Desktop Computers, LaserJet Printers, Scanners and A3 Multifunction
Printers was issued to the respondents on 11-03-2022 which was
accepted. Purchase order Dated 09-06-2022 was also issued. The
respondents instructed the petitioner to deposit performance security
in compliance with Public Procurement Rules 2004 and petitioner
submitted bank guarantee No.1301LBG220134/MCB Bank Limited of
Rs.5,79,25,350/-, which was executed on 08-12-2022 for supply of Lot-
101 and also deposited bid security of Rs.1,15,86,000/-, which was still
not reimbursed to the petitioner. Due to delayed approval of Letter of
Credit by State Bank of Pakistan, and its restrictions on clearance of
equipment, the delivery of equipment was delayed. Due to inflation, the
petitioner sustained huge loss. The petitioner/plaintiff requested for
retendering of supply order as he has already incurred loss on Lot-101
and Lot-102, but instead, the respondents issued letter Dated 13-02-
2023 to submit delivery schedule of Lot-104 and submission of
performance guarantee till 21-02-2023.

APPLICATION UNDER ORDER XXXIX RULE 1 & 2 CPC

Mega Plus Pakistan Vs Federal Board of Revenue & another

3. During that time, the financial and economic decline and political movement caused de-stability and ban on imports. Due to extreme demand of IT equipment, due to pandemic COVID-19, the global shortage of IT equipment also occurred. Due to ban on import by Federal Government, the decline in value of rupee also started and effected the supply order. The delivery of goods/equipment has gone beyond the control of the petitioner. Now it has become impossible for the petitioner to procure the goods due to recent spike in dollar rate. So the petitioner prayed for a decree for declaration, cancellation of contract and permanent injunction. Finally this suit.

4. On the other hand, the respondents filed the written statement wherein they requested the Court for dismissal of instant suit.

5. Along with the suit, an application under Order XXXIX Rule 1 & 2 CPC for grant of temporary injunction has been filed by the petitioner/plaintiff with the contention that petitioner/plaintiff has a strong prima facie case and balance of convenience and inconvenience lies in its favor. So, if temporary injunction is not granted, the petitioner/plaintiff would suffer an irreparable loss. The petitioner/plaintiff requested that respondents/defendants may kindly be restrained from taking any adverse action, issuance of show cause notice or taking any proceeding in consequence of tender notice including but not limited to encashment of securities, blacklisting breach against the petitioner/plaintiff.

6. On the other hand, the respondents contested the application for temporary injunction and prayed for its dismissal.

7. Arguments heard, record perused.

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Civil Misc. Application No. _____

APPLICATION UNDER ORDER XXXIX RULE 1 & 2 CPC

Mega Plus Pakistan Vs Federal Board of Revenue & another

8. Perusal of record reveals that on 12-02-2022, an ad for the supply of Laptops, Desktop Computers, LaserJet Printers, Scanners and A3 Multifunction Printers was issued. The bid was opened on 11-03-2022 and Mega Plus Pakistan/petitioner being the lowest bidder was awarded a contract. On 04-04-2022, purchase order was issued to the petitioner but petitioner failed to deliver the equipment. Number of reminders were issued but the petitioner failed to fulfill his contractual obligations. On 27-02-2023, notice for termination was issued to the petitioner and it was mentioned that in case of non-compliance, the contract shall deem to be terminated, but petitioner submitted no reply. The petitioner failed to perform the contract rather prayed for cancellation of same, therefore, petitioner has prima facie no arguable case. So far as blacklisting is concerned, as per Public Procurement Rules 2004, the procedure is provided for blacklisting but till now, respondent has not initiated the proceedings of blacklisting, therefore, the petitioner has remedies available before the respondent department for his redressal. It is also settled position that performance bond/guarantee stands on a footing similar to an irrevocable letter of credit. No restraint can be imposed in relation to the encashing of bank security/guarantee and only exception in which the Court can interfere is that there is a case of fraud or special equities and in the absence of that, bank has to pay the requisite amount on demand.

9. In PLD 2003 SC 191 "Shipyard K. Damen International Vs Karachi Shipyard and Engineering Works Limited" it was held that no interim injunction restraining the payment under the guarantee can be granted. Petitioner/plaintiff has prima facie no arguable case in his favor. It is also a settled principle of law that monetary loss cannot be

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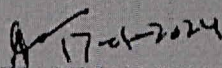
Civil Misc. Application No _____

APPLICATION UNDER ORDER XXXIX RULE 1 & 2 CPCMega Plus Pakistan Vs Federal Board of Revenue & another

considered as irreparable loss. The three well celebrated ingredients for grant of temporary injunction i.e. prima facie arguable case, irreparable loss and balance of inconvenience are missing in the instant case.

10. Accordingly, instant application for grant of temporary injunction stands dismissed. The Assistant Record Keeper is directed to place a copy of this order in the file of suit, while this duplicate set of file be consigned to record room after due completion and compilation.

Announced
17-01-2024


AWAIS MUHAMMAD KHAN
Additional District & Sessions Judge,
West-Islamabad.

AWAIS MUHAMMAD KHAN
Additional District & Sessions Judge
West-Islamabad

Government of Pakistan
Federal Board of Revenue
(IT Wing)

No. 1(10)S(IT)/Fieldoffices/2017/Pi-Vol-VI

Islamabad, 22nd January 2024

M/s Megaplus
House # 1015, Street 44, Section E 11/3
Islamabad

SUBJECT: BLACKLISTING PROCEEDINGS UNDER RULE 19(B) OF PP RULES 2004

I am directed to refer to the purchase order issued to M/s Megaplus dated 4th April 2022 (**Annex-A**) and to letters of even number dated 27th February 2023 in which contract was terminated for default against tender No. 1(10)S(IT)/Fieldoffices/2017 (Lot 104) (**Annex B**). Reference is also drawn to earliest correspondence in which M/s Megaplus was reminded multiple times to submit a performance guarantee for Lot 104 (**Annex-C**), which M/s Megaplus failed to provide and also to blacklisting notices issued for non-performance of contractual obligations dated 14th Dec 2022 (**Annex-D**), and 13th Feb 2023 (**Annex-E**).

2. It is therefore established that M/s Megaplus has failed to fulfil its contractual obligations and has rendered itself liable to be blacklisted in terms of Rule 19 (b) of PP Rules 2004. To meet the requirements of natural justice and fair play, you are hereby given this final opportunity to explain your position and state reasons why blacklisting order against you should not be passed under Rule 19(b) of PP Rules 2004. Your response should reach IT Wing, FBR latest by 25th January 2024.

(Amjad Khan)
Second Secretary (IT-Execution)

Copy for information:

- The SA to Chairman, FBR
- The Member (IT), FBR (HQ)

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