JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No.3911 of 2024

Pinggao-Akay-Transmark Joint Venture

Versus

Public Procurement Regulatory Authority (PPRA) and another

Petitioner by:	Mr. Muhammad Ali Raza and Hamza Siddiqui, Advocates.
Respondent No.1 by:	Mian Faisal Irfan, Deputy Attorney General. Aslam Waseem, DG, Law, PPRA and Abdul Nabi, Director, Legal, PPRA.
Respondent No.2 by:	Syed Hassan Ali Raza, Advocate along with Muhammad Tariq, Chief Engineer (O & M) T4, Power Section Terbela.
Dates of Hearing:	**07.03.2025 & 17.03.2025.**

INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioner has assailed the direction dated 08.04.2024 **("Impugned Direction")** issued by respondent No.1 to the petitioner and respondent No.2 to file a review petition. The petitioner has also assailed the order dated 17.12.2024 **("Impugned Order")** passed by the Review Committee of respondent No.1/PPRA.

2. The facts, in brief, leading to the filing of the instant writ petition are that the petitioner participated in the bidding process in response to Tender No. OP/ITR-763 issued by respondent No.2 for design, manufacturing, supply, erection, testing and commissioning of 500 KV

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SF6 Circuit Breakers, associated with 500 KV Disconnect Switches Current Transformers at 500 KV Switchyard Units (11-14) in connection with Tarbela Power Station. The petitioner's technical and financial bids were duly accepted and it was ultimately declared the lowest bidder. However, during the technical evaluation phase, the consultant representing respondent No.2 i.e. M/s National Transmission and Dispatch Company **("NTDC")** raised an issue regarding the petitioner's debarment by the Asian Development Bank **("ADB")** for a period of four years, effective from 22.12.2022 till 22.12.2026. Subsequently, NTDC on behalf of respondent No.2 sought clarification from ADB regarding the petitioner's debarment, whereupon ADB clarified that the debarment imposed on the petitioner did not constitute a cross-debarment and this fact was conveyed to the petitioner vide a letter dated 11.01.2024. Respondent No.2 wrote a letter to respondent No.1 on 26.01.2024, seeking opinion and clarification regarding his understanding that debarment of the petitioner ADB was not cross-debarment and only limited to projects funded by ADB, hence, did not fall within the ambit of Rule 19(4) of the Public Procurement Rules, 2004 **(PP Rules, 2004)**, whereupon, respondent No.1 vide Impugned Direction directed the petitioner and respondent No.2 to file a review petition under Rule 19(3) of the PP Rules 2004, which direction was initially assailed in the instant writ petition. Later on during pendency of the instant writ petition, the petitioner filed a review petition on 29.04.2024 along with the requisite fee of Rs.5 million, which was dismissed through the Impugned Order, therefore, the petitioner sought amendment in the prayer of the writ petition through C.M No.86/2025,

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which was allowed vide order dated 14.01.2025 and the petitioner filed amended memo of the writ petition challenging the dismissal order of the review petition.

3. The learned counsel for the petitioner contended that the Impugned Direction is patently contrary to law and PP Rules, 2004 as respondent No.1 has no authority or jurisdiction to issue direction for filing a review petition; that the debarment was limited to ADB and its funded projects and did not constitute a cross-debarment under Rule 19(4) of the PP Rules, 2004, thereby not restricting the petitioner's participation in the subject tender; that despite confirmation from ADB and NTDC vide email/letter dated 10.01.2024 & 11.01.2024 that the debarment was not applicable to the subject tender, respondent No.1 refused to issue the requested clarification and instead directed to file a review petition while imposing an excessive fee of Rs.5 million; that respondent No.1 lacks jurisdiction to entertain the review petition, as no blacklisting order was issued by the procuring agency (Respondent No.2), which is a mandatory precondition under Rule 19(3) of the PP Rules, 2004; that the Impugned Direction and the Impugned Order are against the law, based on *mala fide* and void, therefore, liable to be set aside.

4. Conversely, the learned Deputy Attorney General on behalf of respondent No.1 contended that the Impugned Direction and Impugned Order have been passed in accordance with law, while properly appreciating the evidence.

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5. The learned counsel for respondent No. 2 contended that WAPDA issued International Tender No. OP/ITR-763 to upgrade equipment at the 500KV Tarbela Switchyard-II (Units 11-14); that the tender was opened on 19.09.2023 with two bidders (i) PG-AK-AY-TRANSMARK (Joint Venture) – Lowest bid: Rs.4,208.43 million and (ii) CCE-ETERN (Joint Venture) – Bid: Rs.4,942.06 million and after thorough technical, commercial and financial evaluation, the Evaluation Committee recommended awarding the contract to the lowest bidder/petitioner/PG-AK-AY-TRANSMARK (JV); that the recommendation was reviewed and endorsed by the Standing Review Committee (SRC), Central Contract Cell (CCC), and NTDCL's Chief Engineer (Substation Design); that NTDC (Engineer's Representative) raised concerns about Petitioner's (Pinggao Group Co.) alleged debarment by ADB but no such record was found on ADB's website or PPRA's portal; that ADB clarified that the petitioner was not cross-debarred and could participate in non-ADB-funded projects; that the bids were opened on 19.09.2023, while ADB's debarment notice was shared by NTDC with WAPDA on 14.11.2023 after the bid evaluation; that the project was urgent for national grid stability, particularly with the upcoming Tarbela 5th Extension Project. The learned counsel finally prayed for an appropriate order, keeping in view the important and critical nature of the project on the national grid and supply of electricity in Pakistan.

6. I have given anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance.

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7. It is an undisputed fact that the petitioner company has been debarred by the ADB for a period of four years, w.e.f 22.12.2022 till 22.12.2026. It is clear from the record that the petitioner never informed or disclosed his debarment by ADB and remained silent at the time of publication of tender advertisement on 21.07.2023, closing date of submission of bidding documents on 19.09.2023 and at the time of opening of bids at 11:30 a.m on 19.09.2023 and till the time the petitioner was declared lowest bidder. Such non-disclosure by the petitioner is serious violation of standard norms and principles of fairness. Moreover, WAPDA/respondent No.02 failed to adopt a clear and independent stance before this Court, rather indirectly supported the petitioner's contentions. Given that the tender proceedings in question have not yet been finalized, no vested right has accrued in favour of the petitioner that would warrant judicial intervention. It is a well-established legal principle that mere participation in a tender process does not, in itself, create an enforceable right unless and until a legally protected interest materializes through a concluded contract or an adjudicated entitlement. A bid is only an offer and the mere submission of a bid, even if it was the highest or the lowest, as the case may, does not create any vested right in favour of a bidder. This principle was held by the superior Courts in various judgments reported as ***Muhammad Khalil vs. Faisal M.B. Corporation and others,*** **(2019 SCMR 321)**, ***Babu Parvez Qureshi vs. Settlement Commissioner Multan and Bahawalpur Divisions, and others,*** **(1974 SCMR 337)**, ***Mandokhail Brothers Commercial Trading and Government Contractor vs. Chairman Civil Aviation and others,*** **(2017 CLC 221)**

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and ***Ameet Kumar Essarani Versus Pakistan Civil Aviation Authority through Director General and 3 others*** **(2024 CLC 1824).** Relevant paragraph of **1974 SCMR 337** is reproduced as under:-

> *"A mere bid at an auction if the bid is subject to confirmation, does note create any contractual right until the bid is confirmed. It is in the discretion of the auctioneer to confirm or not to confirm it."*

8. The issue of the petitioner's debarment first came to light on 14.11.2023, when respondent No.2's consultant, NTDC, raised concerns regarding the petitioner company's debarment by ADB. In response, the petitioner provided clarification through a letter dated 18.12.2023, asserting that the debarment in question was specific to the ADB project and did not constitute a cross-debarment, thus the debarment does not fall within the scope of Rule 19(4) of the PP Rules, 2004. For convenience Rule 19 of the PP Rules, 2004 is reproduced as under:-

> *"**19. Blacklisting debarment.**--- (1) The procuring agency shall devise a comprehensive mechanism for blacklisting and debarment of bidders for a specified time in accordance with regulations made by the Authority, and the bidder or the bidders shall be declared as-*
>
> *(a) blacklisted and henceforth cross debarred for participation in any public procurement or disposal proceedings for the period of not more than ten years, if corrupt and fraudulent practice as defined in these rules is established against the bidder or the bidders in pursuance of blacklisting proceedings;*
>
> *(b) blacklisted and henceforth cross debarred for participation in respective category of public procurement or disposal proceedings for a period of not more than three years, if the bidder fails to perform his contractual obligations during the execution of contract or breaches the contract due*

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to his capacity and capability to perform or otherwise. However, procuring agency shall initiate such blacklisting or debarment proceedings after exhausting the forum of arbitration, provided that such provision exists in the conditions of contract, and if such failure or breach is covered in the respective dispute settlement clauses of the contract, and

(c) blacklisted and henceforth cross debarred for participation in respective category of public procurement or disposal proceedings for a period of not more than six months, if the bidder fails to abide with a bid securing declaration, however without being indulged in any corrupt and fraudulent practice.

(2) Such blacklisting or barring action shall be communicated by the procuring agency to the Authority and respective bidder or bidders in the form of decision containing the grounds for such action. The same shall be publicized by the Authority after examining the record whether the procedure defined in blacklisting and debarment mechanism has been adhered to by the procuring agency.

(3) The bidder may file the review petition before the Authority within thirty days of communication of such blacklisting or barring action after depositing the prescribed fee and in accordance with procedure issued by the Authority, and the Authority shall evaluate the case and decide within ninety days of filing of review petition. The decision of the Authority shall be considered as final.

(4) A bidder who has been declared blacklisted or debarred by a foreign country, international organization or other foreign institutions shall be treated as blacklisted and debarred from participating in any public procurement proceedings or entering into any public contract for such period as declared by that foreign country, international organizations or other foreign institutions:

Provided that in case of public sector entities, the Board shall have the power to review and examine the case on the basis of evaluations made by the Authority, and decide the case accordingly.

(5) Notwithstanding anything contained in this rule, the blacklisted or debarred bidder shall be bound to

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> *perform its contractual obligations in such on-going public contract or contracts in which such bidder is already engaged. This shall however be at the option of respective procuring agency."*

9. The term **"debarred"** is not explicitly defined in the PP Rules, 2004. However, it is used throughout the Rules in its ordinary legal sense that is, to exclude or disqualify a bidder or contractor from participation in procurement processes due to misconduct, while the term **"cross-debarred"** is defined under Rule 2(1)(f) of the PP Rules, 2004, which refers to the extension of debarment across all procuring agencies, when a bidder is debarred by any one agency. This mechanism ensures that a debarred entity cannot bypass sanctions by approaching another agency. The word **"cross"** has been deliberately employed to extend automatic extension of the effect of debarment across all procuring agencies. It implies that a debarment imposed by one procuring agency is not confined to that agency alone but extends to all others, thereby ensuring uniformity, transparency, and deterrence in the public procurement system. Meanwhile, petitioner's assertion that the debarment is limited to the projects of ADB only is legally untenable. Rule 19 of the PP Rules, 2004, particularly sub-rule (4) clearly states that a bidder debarred by international organization or foreign institution shall be treated debarred from participation in public procurement, hence, once a bidder is debarred under Rule 19(4) of the PP Rules, 2004, it is deemed cross-debarred.

10. Moreover, cross-debarment is based on mutual recognition of sanctions among national and international procurement bodies. The ADB is established under an international multilateral treaty to promote

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social and economic development in Asia and the Pacific, and funds of ADB are considered as public funds, usually used for public development infrastructure, because they originate from contributions of the member countries. Pakistan being founding member of ADB and share-holder of its capital stock is also one of the its contributors. ADB being an international financial institution falls within the ambit of the term foreign institution or organization as mentioned in Rule 19(4) of the PP Rules, 2004. ADB not only operates globally under recognized international legal frameworks but also engages in development projects in Pakistan involving public funds, concessional loans and grants. In doing so, it performs a public function that directly impacts national development and public interest. Therefore, any debarment imposed by the ADB pursuant to its own procurement projects is applicable within Pakistan under Rule 19(4) of the PP Rules, 2004. To hold otherwise would be to undermine both the rule of law and the overarching objective of ensuring transparency, fairness, and accountability in public procurement. When an entity is debarred by recognized international financial institutions like ADB or World Bank, such debarment is automatically recognized and effective within Pakistan's procurement framework for the duration specified by the ADB. Language of Rule 19(4) of the PP Rules, 2004 is both clear and mandatory, establishing a direct and non-negotiable consequence for entities subjected to debarment by recognized foreign institutions. Cross-debarment avoids duplication of inquiries and ensures that unethical entities face consistent consequences regardless of jurisdiction. This rule leaves no room for discretion.

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11. Furthermore, Rule 19(4) of the PP Rules, 2004 reflects a deliberate policy decision to align domestic procurement regulations with international standards and practices, particularly in the context of public procurement integrity. By incorporating this rule, the PPRA ensures that entities found guilty of misconduct, such as fraud, corruption or unethical behaviour are excluded from domestic procurement processes, irrespective of the jurisdiction that imposed the debarment.

12. The rationale behind cross-debarment is to uphold consistent ethical standards in public procurement and prevent entities from exploiting regulatory gaps between jurisdictions. This mutual recognition among national and international agencies ensures that entities found guilty of misconduct cannot evade sanctions by shifting to more lenient jurisdictions. By reinforcing cooperation and consistency across borders, cross-debarment strengthens the global procurement framework, deters unethical behavior and preserves the integrity and fairness of procurement processes worldwide.

13. As far as argument of the learned counsel for the petitioner that no formal debarment order was issued by the procuring agency (Respondent No. 2), making the subsequent proceedings *coram non judice* is concerned, Rule 19(2) of the PP Rules, 2004 only requires that debarment decisions be communicated to the Authority and it does not mandate an independent order by the procuring agency. In the present case, the debarment by the ADB was brought to notice by NTDC and subsequently reaffirmed by the petitioner himself via email dated

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18.12.2023. Therefore, the petitioner was already disqualified under Rule 19(4) of the PP Rules, 2004, making further formal action by respondent No. 2 unnecessary and only remedy of review under Rule 19(3) of the PP Rules, 2004 was available.

14. Moreover, the petitioner was directed by respondent No. 1 to file a review petition under Rule 19(3) of the PP Rules, 2004, which direction was duly complied with while submitting the required fee of Rs.5 million and participating actively in the proceedings. Under the doctrine of *estoppel*, having accepted the forum's jurisdiction and participated without objection, the petitioner cannot now challenge the jurisdiction after an adverse outcome.

15. It is relevant to note that the petitioner failed to challenge the ADB debarment through its designated appellate mechanism within the 90-day limitation period. As outlined in the ADB's sanction notice dated 02.02.2023, failure to appeal within the prescribed timeframe rendered the debarment final and binding. Similarly, the petitioner's omission to pursue the prescribed appellate remedy further reinforces the validity of the debarment, as legal recourse, once time-barred, cannot be revived without express statutory or procedural justification. Accordingly, the debarment stands on solid legal and factual footing. It reflects not only compliance with the express provisions of the PP Rules, 2004 but also a broader commitment to ethical standards and responsible governance in public procurement. Consequently, the petitioner's disqualification continues to be effective under both

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international and domestic legal frameworks, until the expiration date of 22.12.2026.

16. The proceedings initiated by respondent No. 1 on the review petition filed by the petitioner were neither irregular nor without jurisdiction. They stemmed directly from the recognized validity of the ADB debarment under Rule 19(4) of the PP Rules, 2004. The deficiency (i.e., the ADB debarment) was duly pointed out and respondent No.2 appropriately sought clarification/advice from respondent No.1 (PPRA). In response, respondent No. 1 rightly directed the petitioner to file a review petition, given that the debarment was already effective and constituted a valid disqualification under the PPRA framework, thus, the argument that the review proceedings followed by the Impugned Order were without jurisdiction lacks substance, as the debarment's enforceability did not hinge on a separate order by the procuring agency but rather on the pre-existing ADB sanction, which the PP Rules, 2004 duly acknowledge. As such the petitioner's debarment was not arbitrary but grounded firmly in a lawful international sanction recognized under domestic rules. The process adhered to the principles of natural justice, including proper notice, opportunity to respond and procedural fairness. All relevant facts were duly considered in the review proceedings.

17. In public procurement matters, especially where public funds are at stake, public interest must prevail over private grievances. It is the duty of every procuring agency to safeguard and utilize public funds in the best interest of public. It is a well-established legal principle that

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public interest, transparency and the prudent use of taxpayer money are paramount. When a conflict arises between individual interest and public interest, particularly in matters involving public funds, Courts consistently apply the principle that public interest must prevail unless there is a clear violation of fundamental rights. In such cases, the Courts adopt a purposive interpretation of the relevant rules or statutes, ensuring that public money is utilized transparently, efficiently and in accordance with the law. The concept of public trust governs the conduct of public authorities, who act not as owners but as fiduciaries of public funds. Therefore, any interpretation that serves private interest at the expense of collective welfare is discouraged. Procurement agencies are duty-bound to act as stewards of public resources and actions like debarment, when based on substantiated misconduct are crucial for preserving public trust as integrity of companies executing such major infrastructure projects is of utmost importance.

18. In view of the above discussion, this Court reaches to the conclusion that the Impugned Direction and the Impugned Order have been passed in accordance with law and do not call for interference by this Court. Consequently, the instant writ petition is **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 16.04.2025

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Approved for Reporting

R.Anjam.

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