

Form No.HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

ICA No. 10644 of 2023

Newage Cables (Pvt.) Ltd.

Versus.

Lahore Electric Supply Company, etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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16.02.2023 Kh. Ahmed Tariq Rahim, Hissam Tariq Rahim and Hashim Tariq Rahim, Advocates for appellant.

MUZAMIL AKHTAR SHABIR:- Through this Intra Court Appeal filed under Section 3 (2) of the Law Reforms Ordinance, 1972, the appellant has called in question order dated 02.02.2023 passed by learned Single Judge of this Court, whereby constitutional petition filed by the appellant was dismissed.

2. It is contended by learned counsel for the appellant that the learned Single Judge has not taken into consideration that in terms of Letter of Intent dated 25.04.2018 accepted on 15.05.2018 and purchase order dated 18.05.2018, goods were delivered on 12.09.2018 and repeat order was issued on 16.11.2018 beyond the stipulated period of six months which expired on 14.11.2018 i.e., two days prior to the repeat order, therefore, the respondents could not have issued the repeat order, which was liable to be set-aside, whereas the said fact has not been taken into consideration by the learned Single Judge while dismissing the appellants' constitutional petition.

3. It is noticed that admittedly initial purchase order for supply of ACSR Conductor Osprey against tender No. 2080/DIST. opened on 27.12.2018 and Letter of Intent dated 25.04.2018 accepted on 15.05.2018, was

issued on 18.05.2018 wherein provision relating to special conditions B(v) specifically provided as under:-

“LESCO reserves the right to increase or decrease the quantity up to 15% during the currency of the Contract or within 6-months from the date of issue of P.O whichever is later, without any change in the unit price or other terms & conditions.”

The afore-referred provision shows that the repeat order could be placed during the currency of contract or within 6-months from the date of issuance of initial purchase order, whichever is later. The expression ‘whichever is later’ is a rider on the exercise of right to place a purchase order with increase or decrease of quantity by 15%, which could be done even through the initial purchase order and the same could be made during the currency of the contract or through a subsequent purchase order made within 6-months after initial purchase order had been placed, both of which situations could arise in the matter, hence, have been provided for in the afore-referred provision. The argument that order could only be placed within 6 months of the initial contract/Letter of Intent would be against the intention of the expression ‘whichever is later’ provided in the afore-referred provision of the contract/agreement, which expression could not be treated as redundant or unilaterally rescinded, hence, in the given circumstances of this case, the six months are not to be calculated from the date of acceptance of Letter of Intent rather on the basis of initial purchase order issued by the respondents as the same was later in time. It is an admitted position that in terms of tender No. 2080/DIST. and Letter of Intent accepted on 15.05.2018, no purchase order was placed prior to 18.05.2018 and in terms of the said purchase order, six months would expire on 18.11.2018 and not on 14.11.2018 on expiry of six months of acceptance as claimed by the appellant. Even if the last

date is excluded, the expiry date would be 17.11.2018 and could not be treated as 14.11.2018, which calculation apparently has been made on the basis of six months calculated from date of finalization of agreement i.e. 15.05.2018 or in alternate from 1st purchase order with all months comprising of 30-days each i.e., 180-days in total, which interpretation is not permissible under the law as the months comprising of 31-days could not be reduced by 01-day each to make such calculations.

4. Learned counsel for the appellant states that in identical matter the learned Single Judge has already granted relief to the appellant through order dated 25.01.2023 passed in W.P.No. 19629 of 2021, therefore, he is entitled to the same relief. Admittedly, in the said case, the repeat order was issued on 07.01.2021, which was beyond the period of currency of the contract executed between the parties on 03.02.2020 and also beyond six months of initial purchase order, which was issued on 05.03.2020, however, in this case the situation is different as the repeat purchase order was made within six months of initial purchase order and in view of expression 'whichever is later' it would be irrelevant in the circumstances of the case to consider the period of six months from the date of agreement/acceptance of Letter of Intent i.e. 15.05.2018, which was earlier in time. The learned Single Judge of this Court took the said aspect of the matter into consideration while dismissing the constitutional petition filed by the appellant. The operative part of the impugned order dated 02.02.2023 is reproduced below:-

“This constitutional petition challenges the repeat order placed by the respondent-LESCO which is dated 16.11.2018. Learned counsel for the petitioner has relied upon a recent judgment passed by this Court under similar circumstances in W.P.No. 19629/2021 to contend that the repeat order could not be placed by LESCO and which

infringes provisions of not only the Letter of Intent but also PPRA Rules 2004. Suffice to say that the facts of this petition are materially different. Letter of Intent is dated 25.04.2018. Thereafter a purchase order was made on 18.05.2018. The repeat order has been placed on 16.11.2018. This is within contemplation of the special condition B (v) which deals with repeat orders and which may be made during the currency of the contract or within six months from the date of issue of pay order whichever is later. Certainly in this case the repeat order has been placed within six months of the issue of the purchase order and thus it is not caught by the mischief of the special condition B(v) of Letter of Intent. There is no cause for this Court to interfere in the instant petition which is dismissed.”

The facts of the case in W.P.No. 19629 of 2021 are different from the case in hand, where repeat order was placed beyond period of six months of initial purchase order, whereas in the present case, repeat order has been made within six months of the initial purchase order, which the respondents could place during the currency of the contract or within six months from the date of issue of initial purchase order, whichever is later. In view thereof, the afore-referred observation recorded by the learned Single Judge does neither suffer from misreading/non-reading of the relevant record nor any illegality or jurisdictional defect has been pointed out in the impugned order, for this Court to interfere in the same.

5. For the foregoing reasons, the instant I.C.A being devoid of any merit is *dismissed*.

(CH. MUHAMMAD IQBAL) (MUZAMIL AKHTAR SHABIR)
JUDGE JUDGE