Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No.54097 of 2023

M/s Popular International (Pvt.) Ltd. **Versus** Province of Punjab and others

S.No. of order/ proceeding.	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.

26.10.2023 Muhammad Irfan Alvi, Advocate for the petitioner.
Ms. Shehzeen Abdullah, Addl. Advocate General Punjab with Mr. Abdus Salam, Senior Law Officer, Muhammad Awais, Asst. Director for respondent Nos.1 & 2.
M/s Waleed Iqbal & Wasif Majeed, Advocates for respondent No.3.

Aziz Bhatti Shaheed Teaching Hospital, Gujrat, issued tender notice for procurement of surgical/disposable items in bulk for hospital use during Financial Year 2023-24 through a single-stage-two-envelopes bidding process as per rule 38(2)(a) of the Punjab Procurement Rules, 2014. Bids were received consisting of two separate envelopes containing separately the financial and technical proposals. The Technical Proposal was opened first. A Technical Evaluation Committee of the procuring agency scrutinized it without any reference to the price sealed in the Financial Proposal. Bidders that emerged as technically accepted once this process was complete then stood to participate in the process of financial bidding carried out by opening of the Financial Proposals.

2. The facts from which this case stems pertain to the stage of evaluation of the Technical Proposal. The matter has still not reached the stage of opening of the Financial Proposal as yet. This appears to be on account of the path opted to be taken by the petitioner who competed. Sealed bids were submitted and opened.

During the course of evaluation of the Technical Proposal, the Technical Evaluation Committee found both the petitioner as well as respondent No.3 to be responsive. They are mentioned at serial Nos. 28 and 29 of the Bid Evaluation Sheet. Petitioner was held to be responsive with the exception of item Nos.60 and 82 whereas respondent No.3 was found responsive with the exception of item Nos.95, 96, 122, 124 and 125.

3. The petitioner assailed the responsiveness of competitor respondent No.3 by filing a complaint dated 10.7.2023 before the Grievance Redressal Committee of the hospital constituted under of the Rules ibid. demanding review of the decision of the Technical Evaluation Committee declaring respondent No. 3 and one M/s. Global Healthcare to be responsive. The objection qua respondent No.3 as encapsulated at bullet point No.3 of the petitioner's complaint/representation is reproduced as under for facility of reference:

> **"To maintain the highest standards of patient care and safety, we kindly request you to *reexamine the credentials and past experience certificate, DRAP, Certificate, Drug Sale License & Free Sale Certificate of M/s Endoaid Biomedica*."**
>
> (*emphasis supplied*)

4. The Grievance Redressal Committee in its meeting on 22.7.2023 considered the complaint of the petitioner and after hearing representatives from both sides concluded against the responsiveness of respondent No.3 as follows:

> **"DSL has been expired since 2 November 2022 and Receipt is for form 8c (new distributor DSL) so keeping in view the stance of the M/S Endoaid Biomedica and relevant documentary evidences, the Grievance Committee unanimously decided that at the time of submission of tender M/S Endoaid Biomedica *did not possess a valid DSL* hence grievances of M/S. Popular international Accepted and M/S. Endoaid Biomedica declared as Non responsive."**
>
> (*emphasis supplied*)

5. Respondent No.3 aggrieved of the decision of the Grievance Redressal Committee dated 22.7.2023 filed a representation before respondent No.1 taking the stance as under:

> **"…that we are registered as "Importer" of M/s RAYSEN TIANJIN HEALTHCARE, WORLDWIDE MEDIVEST (foreign principal) with the Drug Regulatory Authority of Pakistan (DRAP). The DRAP vide notification No.F.10-1/2020-MD dated 04th June 2021 omitted the requirement of DSL from the "Form-2 Application form for grant of renewal of an establishment license to import medical devices" for importers of medical devices (Annex-D)."**

(*emphasis supplied*)

By order dated 29.8.2023 the stance of the respondent No.3 was accepted and decision of the Grievance Redressal Committee to the extent of its non-responsiveness was set aside and as a result the decision of the Technical Evaluation Committee dated 28.6.2023 declaring said respondent to be responsive in terms recorded in the pertinent document was affirmed. Through the instant constitutional petition this order of respondent No.1 dated 29.8.2023 is now assailed in constitutional jurisdiction.

6. Learned counsel for the petitioner on being asked to distil his stance, after careful thought, states that the objection of the petitioner may be boiled down to the fact that respondent No. 3 did not possess valid Drug Sale License at the material time of bid submission and opening of Technical Proposal which being a mandatory requirement the Technical Evaluation Committee erred in declaring the respondent "responsive" and that Grievance Redressal Committee made the proper corrective by ruling against respondent No.3. He submits that respondent No.1 committed jurisdictional error in revisiting the findings of the Grievance Redressal Committee through the impugned order which is illegal.

In amplification it is submitted that the procuring agency is authorized to stipulate general and special conditions in relation to the procurement and that in the instant case mandatory criteria are given in document provided with the Bidding Documents titled Bids Evaluation Criteria (For Medical Devices/Surgical Disposable Items that clearly states that the parameters given are compulsory and failure to comply shall result in non-responsiveness of the bidders. He refers to stipulation at serial No.4 of the said document which, according to him, encapsulates the case as it makes it mandatory to have a Drug Sale License. Compulsory parameter pin-pointed thus is reproduced below for facility of reference:

Sr. No.	**PARAMETERS**	**DOCUMENT REQUIRED**	**REMARKS**
4	Drug Manufacturing/ **Drug Sale License**/ Import License for Medical Devices	Copy of Drug Manufacturing License/**Valid Drug Sale License**/Import License for Medical Devices (applicable for importers) whichever is applicable	

(*emphasis added*)

7. Learned Law Officer as also learned counsel for respondent No.3 have opposed this stance. Learned counsel for respondent No. 3 submits that the Technical Evaluation Committee held on 28.6.2023 comprised 05 members who were all experts in their field and, as such, brought accurate analysis to bear on the technical suitability of the bids and that the Grievance Redressal Committee's decision whose members are not that qualified was incorrect and was rightly interfered with by respondent No.1 through the impugned order. In rebuttal counsel for the petitioner has controverted this by suggesting that the members of the Grievance Redressal Committee are more qualified. The Technical Evaluation

Committee is supposed to make an overall tentative evaluation and it is only when a specific objection is raised that the matter requires specific technical attention and that for such challenge the Grievance Redressal Committee is more equipped with senior people having better knowhow. This line of exchange may be given a short shift as neither is any specific allegation made at the conduct or capacity of any of the members in pleadings of either party at any of the levels of decision-making nor is any detailed data produced on record by either side so as enable a fair analysis to be made. More importantly still, as will emerge later in this judgment, determination of the objection of the petitioner, as crystallized by submissions of the two sides at the bar, is hinged on contextual understanding and textual interpretation.

8. The legal framework as applicable to the controversy has been surveyed with the assistance of the learned counsel for the respondent No.3 who on preceding date was asked to come prepared to assist on the distinction between “drugs” and “medical devices”, especially, as respondent’s defense against the objection of not having a Drug Sale License is that the same is not required for bulk supply of “medical devices” and, as such, shall not be read as operative as part of the compulsory criteria stipulated in the bidding documents to the case of the respondent. Learned counsel for the petitioner is insistent that the omnibus definition of “drugs” as given in the Drugs Act, 1976 shall apply which does not draw any distinction between “drugs” and “medical devices”, therefore, any such distinction may not be formally inserted into the exegetical process.

9. The Drugs Act, 1976 at section 3(g) stipulated an inclusive definition of the term “drug” that appeared

to cover both drugs as well as medical devices. As illustration reference is made to mention of the term "sutures" in the category of "drugs" as defined which functionally is a medical device with needle for stitching wounds and surgical incisions and incidentally is inter alia also one of the items under objection. The other item is disposable gloves. Section 3(g) of the said Act is reproduced below for facility of reference which includes "sutures" in the list at sub-clause (ii):

> **"(g) "drug" includes-**
>
> **(i) any substance or mixture of substances that is manufactured, sold, stored, offered for sale or represented for internal or external use in the treatment, mitigation, prevention or diagnosis of disease, an abnormal physical state, or the symptoms thereof in human beings or animals or the restoration, correction, or modification of organic functions in human beings or animals, not being a substance exclusively used or prepared for use in accordance with the ayurvedic, unani, homoeopathic or biochemic system of treatment except those substances and in accordance with such conditions as may be prescribed;**
>
> **(ii) abortive and contraceptive substances, agents and devices, surgical ligatures, sutures, bandages, absorbent cotton, disinfectants, bacteriophages, adhesive plasters, gelatin capsules and antiseptic solutions;**
>
> **(iii) such substances intended to be used for the destruction or repulsion of such vermin, insects, rodents and other organism as cause, carry or transmit disease in human beings or animals or for disinfection in residential areas or in premises in which food is manufactured, prepared or kept or stored;**
>
> **(iv) such pesticides as may cause health hazard to the public;**
>
> **(v) any substance mentioned as monograph or as preparation in the Pakistan Pharmacopoeia or the Pakistan National Formulary or the International Pharmacopoeia or the British Pharmacopoeia or the British Pharmaceutical Codex or the United States Pharmacopoeia or the National Formulary of the United States, whether alone or in combination with any substance exclusively used in the unani, ayurvedic, homoeopathic or biochemic system of treatment, and intended to be used for any of the purposes mentioned in sub-clauses (i), (ii) and (iii); and**

> **(vi) any other substance which the Federal Government may, by notification in the official Gazette, declare to be a "drug" for the purposes of this Act;"**

10. Structural changes started when upon passage of the Constitution (Eighteenth Amendment) Act, 2010 on 19.4.2010 the Concurrent Legislative List was omitted from the Fourth Schedule of the Constitution Of Islamic Republic Of Pakistan, 1973 and in consequence the all-encompassing entry of "drugs and medicines" which existed as item No.20 of the Concurrent Legislative List became part of the provincial legislative domain. Later the Provincial Assemblies invoking Article 144 of the Constitution of the Islamic Republic of Pakistan, 1973 passed resolutions to the effect that the Parliament may by law regulate the domain so devolved and, as a result, Drug Regulatory Authority of Pakistan Act, 2012 was enacted and notified on 13.11.2012. This background is embedded in the preamble of the Act of 2012 which shows that a Drug Regulatory Authority of Pakistan was being established to provide for effective coordination and enforcement of the Drugs Act, 1976 and to bring harmony to inter-provincial trade and commerce of therapeutic goods and names the Provinces of Khyber Pakhtunkhwa, Punjab and Sindh who passed such resolutions.

11. Sub-section (1) of section 32 of the Act of 2012 states that the provisions of the said Act shall be in addition to and not in derogation of the provisions made in the Drugs Act, 1976 and any other law for the time being in force to clarify that the Act of 2012 shall not override other laws, however, sub-section (2) of said section 32 provides that in case of inconsistency between the provisions of the said Act and any other law for the time being in force the provisions of the Act of 2012

shall prevail. Respondent's learned counsel in this backdrop submits that conception of "drugs" was given a more focused form under the Act of 2012 by prescribing "drugs" and "medical devices" separate and distinct mechanism of identification. This mechanism is injected through the interpretation clause of the Act of 2012 which has distinct provisions in the form of sub-sections (xii) and (xviii) of section 2 of the Act of 2012 for "drug" and "medical device" respectively. Interestingly against both these provisions instead of stipulating concrete definitions it is inscribed "as defined in Schedule-I" for "drugs" and "as specified in Schedule-I" for "medical device". They as such are given to denote definitions ascribed to them by entries in Schedule-I of the said Act which the Federal Government has been empowered to amend from time to time. Perusal of Schedule-I as modified by notification No.S.R.O.824(I)/2018 dated 26.6.2018 provides the following separate entries for "drug" and "medical device":

> "**2. DRUG includes**
>
> (a) any substance or mixture of substances that is manufactured, sold, stored, offered for sale or represented for internal or external use in the treatment, mitigation, prevention or diagnosis of diseases, an abnormal physical state, or the symptoms thereof in human beings or animals or the restoration, correction, or modification of organic functions in human beings or animals, including substance used or prepared for use in accordance with the Ayurvedic, Unani, Homeopathic, Chinese or biochemic system of treatment except those substances and in accordance with such conditions as may be prescribed;
>
> [(b) abortive and contraceptive substances and agents, disinfectants, bacteriophages, gelatin capsules and antiseptic solution.]
>
> (c) such substances intended to be used for the destruction or repulsion of such vermin, insects, rodents and other organism as cause, carry or transmit disease in human beings or animals or for disinfection in residential areas or in premises

in which food is manufactured, prepared or kept or stored;

(d) such pesticides as may cause health hazard to the public;

(e) any substance mentioned as monograph or as a preparation in the Pakistan Pharmacopoeia or the Pakistan National Formulary or the International Pharmacopoeia or the British Pharmacopoeia or the British Pharmaceutical Codex or the United States Pharmacopoeia or the National Formulary of the United States, whether alone or in combination with any substance exclusively used in the Unani, Ayurvedic, Homeopathic, Chinese or Biochemic system of treatment, and intended to be used for any of the purposes mentioned in sub-Clauses (a), (b) and (c); and

(f) any other substance which the Federal Government may by notification in the official Gazette, declare to be a drug for the purpose of this Act.

3. MEDICAL DEVICES include

(a) instruments, medical equipment, implants, disposables and software, used mainly for the purpose of diagnosis, monitoring and treatment of disease, or

(b) any other item which the Federal Government may, by notification in the official Gazette, declare as medical device;"

Based on this it is submitted that as a matter of fact the definition of "drugs" as given by section (3)(g) of the Drugs Act, 1976 which presented a blended category for "drugs" and "medical devices", by virtue of section 32(2) of the Drug Regulatory Authority of Pakistan Act, 2012 read with section 35 (power to amend the schedule), underwent evolution that made it possible to identify "drugs" and "medical devices" as distinct categories for purposes of formal analysis of rules. It is added that by powers conferred under section 23 of the said Act of 2012, Medical Devices Rules, 2017 were promulgated and notified on 16.1.2018 that exclusively regulate medical devices as distinct from drugs. It is further submitted that rule 21 of the said rules specifies the

conditions necessary for import of medical devices which respondent No.3 duly fulfilled. Learned counsel for the petitioner has attempted to argue that "the authentic and admitted" definition of "drug" is given in the Drugs Act, 1976 however neither has he been able to shed any light on the provisions of the Act of 2012 nor could make any legally persuasive contribution to the interplay between the two enactments i.e. the Drugs Act, 1976 and the Drug Regulatory Authority Of Pakistan Act, 2012 as to give any weight to his contention that consistent reading of the two statutes does not admit of the logical as well as interpretive possibility of analyzing "drugs" and "medical devices" as separate and distinct categories.

12. The items that are the bone of contention between the parties as per learned counsel for the petitioner are item Nos.43 to 49 in the document titled "Rationalized Demand of Surgical/Disposables/Medical Devices For Use in Aziz Bhatti Shaheed Teaching Hospital Gujrat Justified By Demand Justification/ Specification Finalization Committee For The Financial Year 2023-24" which is appended at page 85 of the parawise comments submitted by respondent No.3 whereas according to learned counsel for respondent No. 3 such items are at serial Nos.12, 14 and 47 to 55 thereof. Both sides have been unable to show from any of the documents appended with the petition, however, as to which items of the said documents or for that matter tender process altogether were specifically the bone of contention. This concern at specificity is all the more unsatisfied since the petitioner's own grievance petition before the Grievance Redressal Committee did not make any such itemized reference in raising objection. At ground "vii." of the instant constitutional petition however mention is made of "Poly propylene, silk and

surgical gloves" as being the disputed items. Learned counsel for the respondent No.3, under instructions, states that the items under scrutiny are all encompassed by respondent's Forms-8A under rule 15(5) of the Medical Devices Rules, 2017 titled "Certificate Of Enlistment Or Registration Of A Medical Device Or Accessory Or Component For Import" appended from pages 155 to 167 as annex-F, that may be shown to be either sutures or gloves and that exhaustive annexures "(A)" to these forms carry long lists of various types of these registered devices that may safely be stated to cover the gamut disputed articles. Learned counsel for the petitioner has not seriously disputed this stipulation however reiterates that regardless of the fact that these are medical devices still a Drug Sale License was mandatory as this is a condition given in the compulsory criteria provided in the bidding documents.

13. The main strength of this contention comes from the compulsory parameter at sr. No. 4 of the Bids Evaluation Criteria (For Medical Devices/Surgical Disposable Items reproduced earlier above i.e. "*copy of Drug Manufacturing License/Valid Drug Sale License/ Import License for Medical Devices (applicable for importers) whichever is applicable*" and copy of a Form-2 titled "Application Form For Grant Or Renewal Of An Establishment License To Import Medical Devices". Much stress was laid by learned counsel for the petitioner during initial arguments upon this constitutional petition upon this form as a direct recognition of the necessity for respondent to have a Drug Sales License by stating that amongst the details that are required to be furnished for purposes of procuring initial grant or renewal of license for import of medical devices contains the requirement to have a Drug Sale License. Copy of Form-2 titled

"Application Form For Grant Or Renewal Of An Establishment License To Import Medical Devices" as appended with the constitutional petition at page 18 is reproduced below for facility of reference and as will be discussed shortly below has raised concern about process abuse on part of the petitioner:

> "I/We …….. of M/s. ……. hereby apply for grant of renewal of establishment license to import medical devices or approval of proposed change regarding the particulars provided in relation to establishment license to import medical devices at the premises situated at ……..

Sr. No.	**Description**	**Particular**
1.	**Purpose of application, whether;**	**Please select appropriate column**
(i)	Fresh/New Application	
(ii)	For renewal of establishment license to import medical devices	
	(i) Licence number and date	
	(ii) Validity date:	
	(iii) Last renewal date and its validity:	
	(iv) Attach certificate of licence and last renewal:	
(iii)	Proposed change of any particular of a licensed establishment in case of any proposed change, please mention details of change	
2.	**Establishment details**	**Please provide detail against each, where applicable**
(i)	Establishment name and address:	
(ii)	Type of ownership i.e. partnership, proprietorship, public limited, private limited, etc.	
(iii)	Business registration as issued by the Registrar of Companies or any other authorized body:	
(iv)	**Drug Sale Licence issued by Provincial Govt.**	
(v)	Names of partners/proprietors/directors:	
(vi)	Addresses of partners/proprietors/ directors:	
(vii)	Date of establishment:	
(viii)	**Drug Sale Licence issued by Provincial Governments**	
(ix)	Details of equipments and machinery for Storage and Handling of Medical Devices	

Sr. No.	Name of Equipment	Make	Model	Capacity
(1)	(2)	(3)	(4)	(5)

3.	**Detail Of Qualified technical Person**	

	(Attached copies of CNIC, Photographs, Degrees, Experience Certificate and Certificate of Concerned council)	
(a)	Names of Qualified Technical Person for supervising sale, distribution or wholesale of medical devices	
	Qualifications of Qualified technical person	
(b)	Other technical staff working in these departments:	
4.	**Proof of fee deposited:**	
5.	**Details of medical devices intended to be imported:**	
6.	Any other relevant information that may be required by MDB.	

DECLARATION

Certified that the documents and information provided herein are genuine and correct and if found at a any stage to be misrepresenting or incorrect it shall lead to legal action under the Drug Regulatory Authority of Pakistan Act, 2012 and the rules made there under. This certificate must be on stamp paper duly notarized and signed and stamped by Proprietor, Chief Executive, Managing Director or an authorized officer. In case of an authorized officer authority letter from the owner of the establishment shall be provided.

UNDERTAKING

Affidavit binding of the partners/proprietors/directors and qualified persons, duly verified to the effect that they:-

i. shall comply with the provisions of DRAP Act, 2012 and the rules made there under,
ii. have not been convicted of any offence from any court of law.
iii. Shall inform MDB and the inspector as soon as possible when either of the party ceases to have interest in the licence issued under these rules
iv. Shall not sell or stock any expired, spurious, substandard, unregistered, misbranded, counterfeit or any medical device in violation of the DRAP Act, 2012 and the rules made there under.

Name(s)……
Designations…….
Signature(s)……..
Stamp……
Date……..

Note:

- This form shall also be used if change is proposed regarding the particulars provided in relation to the licensed establishment to import medical devices. For this purpose, provision of relative information is mandatory.

- Provide readable softcopy along with application in USB/CD."

14. As recorded supra much emphasis has been put on item Nos. 2(iv) and 2 (viii) of the form supra to claim that import of medical devices as per application from for

grant and renewal of license presuppose possession of a Drug Sale License and this has been specifically deployed as being illuminative of the compulsory parameters in the bidding documents. In the parawise comments submitted by the respondents the validity of this form has been specifically controverted and it has been stated that by virtue of notification No.F.10-1/2020-MD dated 04.6.2021 these very entries at serial No.2 sub-serial No. (iv) and sub-serial No.(viii) of the said form have been deleted from and are no longer part of the conditions required to obtain the license for import of medical devices that include the devices under objection. It is submitted that the petitioner has practiced deliberate and active suppression and distortion of this material fact as the notification effecting modification in the criteria/requirements given in the application form for import of medical devices was within the notice of the petitioner as it was part of the stance of the respondent No.3 in proceedings before the forum below and was also otherwise known to all concerned. Notification No.F.10-1/2020-MD dated 04.6.2021 is reproduced below for reference:

"Islamabad, the 4th June, 2021

NOTIFICATION

No. F.10-1/2020-MD. – In exercise of the powers conferred by sub-rule (3) of rule 63 of the Medical Devices Rules, 2017, the Drug Regulatory Authority of Pakistan, on recommendation of the Medical Devices Board, is pleased to make the following amendments in Form-2 of the said Rules, namely:-

In the aforesaid Rules, in Form-2, the entries in **column (2) at sub-serial number (iv) and (viii) of serial number 2 shall be omitted** and remaining entries shall be renumbered accordingly."

(emphasis supplied)

The scrutiny of the impugned order dated 29.8.2023 shows that the learned counsel for both sides were heard material portion whereof is reproduced below for facility of reference:

> "7. Parties heard, available record on the file and reply of the Procuring Agency in response to the Complaint lodged by the Complainant perused. Accordingly, In view of the foregoing arguments and counterarguments, following synthesis is derived:
>
> I. Chair asked the representative of the Procuring Agency as to why bid of the Complainant was declared as non-responsive by GRC. The representative of the Procuring Agency apprised that as per compulsory parameters of bidding documents, the Complainant was required to provide a valid DSL whereas the Complainant failed to produce the valid DSL at the time of submission of bids, therefore, GRC declared the bid of the complainant as "non-responsive". Chair further asked the representative of the Procuring Agency under which law/rule/policy the requirement of DSL was a mandatory requirement for the procurement of "medical devices"? The representative of the Procuring Agency failed to quote relevant law/rule/policy which required DSL as a mandatory requirement for the procurement of medical devices. However, the representative of the Procuring Agency referred clause 4 of compulsory parameters provided in the bidding documents as a sole defense. PPRA is of the view that DSL could not be demanded for medical devices merely on the basis of aforementioned clause 4 of compulsory parameter as the clause ibid clearly stated the submission of relevant document/license for the relevant category of procurement. Same question regarding non-submission of valid DSL at the time of submission of bids by the Complainant firm was also asked from the representative of the respondent firm i.e. M/s Popular International (Pvt.) Ltd. The representative of the respondent firm submitted that it was required as a compulsory parameters in the bidding documents, therefore, the Complainant was under an obligation to provide the same. The **representative of the Complainant countered the arguments and submitted that DRAP has omitted the requirement of DSL for the import of medical devices vide Notification No. F.10-1/2020-MD dated 04-06-2021 from "Form-2 of application form for grant or renewal of an establishment license to import medical devices"**. The representative of the Complainant further apprised that the quoted products fall under the category of "medical devices" instead

> of "medicine/drugs", therefore, requirement of DSL was not applicable in the instant case. PPRA is of the view that Procuring Agency and respondent firm failed to substantiate their claim which providing any solid/legal arguments i.e. DSL was a mandatory requirement for medical devices, therefore, stance of Complainant and decision of TEC was justified.
>
> II. Chair further asked representative of the Procuring Agency as to how the quoted products fall under the category of "drugs" and how DSL was demanded for such products? The representative of the Procuring Agency failed to clarify that quoted product fall under the category of drugs. The representative of the Complainant apprised the Chair that the quoted products purely fall under the **category of medical devices instead of drugs/medicine and produced relevant document in this regard (i.e. Notification No. F.10-1/2020-MD dated 04-06-2021 and Form-2) to support his version that DSL was not mandatory for the category of medical devices. PPRA is of the view that the products quoted by the Complainant fall under the category of "medical devices", therefore, requirement of DSL was not mandatory as per the Notification No. F.10-1/2020-MD dated 04-06-2021 issued by DRAP read with clause 4 of the compulsory parameter provided in the bidding document; detail of which has already been discussed at serial No. (I) above**".

The process that began with opening of the Technical Proposals, declaration of both the petitioner and respondent No. 3 as responsive (with the exception, respectively, of item Nos.60 and 82 and item Nos.95, 96, 122, 124 and 125), acceptance of petitioner's objection against respondent No.3's responsive status by the Grievance Redressal Committee through its decision taken in meeting dated 22.7.2023, culminated ultimately in the passage of the impugned order dated 29.8.2023 operative part whereof is recorded supra. Close scrutiny thereof shows that the analysis contained therein treats the items under controversy as "medical devices" rather than "drugs" which appears to be the correct approach in view of the state of the law as discussed earlier above and interprets the compulsory parameter at sr. No. 4 of

the Bids Evaluation Criteria (For Medical Devices/Surgical Disposable Items [i.e. copy of Drug Manufacturing License/Valid Drug Sale License/Import license for Medical Devices (applicable for importers) whichever is applicable] in this context. The term "whichever is applicable" is unpacked in the context of status of respondent No.3 duly established as registered importer of M/s Raysen Tianjin Healthcare Worldwide Medivest (foreign principal) with Drug Regulatory Authority of Pakistan (DRAP). The analysis concludes that by virtue of notification No.10-1/2020-MD dated 04.6.2021 DRAP omitted the requirement to possess drugs sales license for importers of medical devices, therefore, the respondent importer would not need to have a Drug Sale License at the time of bidding to be pass the test of meeting the compulsory criteria. Scrutiny of the structure of the compulsory criterion at sr No. 4 supra shows that it contains the symbol "/" between various documents listed therein with the words "whichever is applicable" at the end. This clearly reveals that within the apparently single criterion stipulated at sr No. 4, multiple situations are envisaged and catered for by use of the symbol "/" which operates as conjunction is the textual construct qualified by the phrase "whichever is applicable" at the end. The decision of the Grievance Redressal Committee as recorded in its minutes dated 22.7.2023 is conspicuously non-speaking predicated with no attempt to reason to conclusion. This decision appears to have been examined in sufficient detail by respondent No.1 representing the statutory body vested with responsibility of regulating procurement of goods, services and works in the public sector and matters connected therewith. The analysis recorded for interfering in the decision of the Grievance Redressal

Committee dated 22.7.2023 vide order 29.8.2023 holds out on close examination and does not warrant interference. As upshot of the above instant petition is **dismissed**. Showing restraint no costs are being imposed, however, petitioner shall be careful qua documentary reliance in the future to avoid facing penal consequences that such action may entail.

(RASAAL HASAN SYED)
JUDGE

Imran*