



**TRANSPARENCY
INTERNATIONAL-PAKISTAN**

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Advisory Committee

June 22, 2012

The Honorable Chief Justice of Pakistan,
Supreme Court of Pakistan,
Islamabad.

Human Right Cell

Sub: Human Rights Case No.7734-G/2009 & 1003-G/2010-Alleged Corruption in Rental Power Plants and Human Rights Case No. 56712/2010 Fraud in payment of Rental Power Plants detected by NEPRA.

Respected Honorable Chief Justice Iftikhar Muhammad Chaudhry,

The Adviser Transparency International Pakistan on 9 April 2012 sent a requests to U.S. Department of Justice Criminal Division Fraud Section, with the Supreme Court's Judgment dated 30 March 2012.


They were informed that M/s Walters Power International and M/s Pakistan Power Resources (PPR) are two firms involved in this famous RPP scandal and supposed to be registered US Firms. In 2006, Walters Power International formed an Oklahoma-based, limited-liability company for the purpose of developing power projects in Pakistan. Walters Power International owns 35 percent of Pakistan Power Resources which is an Oklahoma-based company, with the remaining 65 percent owned by a Pakistan-based partner, Associated Group.

The Chief, Fraud Section U.S. Department of Justice Criminal Division was requested to examine this case and take action against the US firms under the anti-bribery provisions of the FCPA Act 1977, which make it illegal for U.S. persons to bribe a foreign government official for the purpose of obtaining or retaining business.

Mr. John W. Borchert, Trial Attorney, U.S. Department of Justice Criminal Division vide his letters dated 14 June 2012 has informed TIP that the Court's Ruling has been examined carefully. He has asked TIP to provide any additional information relevant to allegations of bribery by rental power plants in Pakistan.

I request the Honorable Chief Justice to kindly examine the request of Chief, Fraud Section U.S. Department of Justice Criminal Division, and if in your opinion it is appropriate, provide TIP any documents available in supreme court records, in connection with the RPP's of the two companies M/s Walters Power International and M/s Pakistan Power Resources (PPR).

Regards,


Syed Adil Gilani
Adviser



U.S. Department of Justice

Criminal Division

John W. Borchert
(202) 616-3108 Direct Dial
John.Borchert@usdoj.gov

Fraud Section
1400 New York Avenue, NW
Washington, D.C. 20005

June 14, 2012

VIA ELECTRONIC MAIL

Syed Adil Gilani
Adviser
Transparency International – Pakistan
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Re: *Bribery Allegations Involving Rental Power Plants*

Dear Sir:

This responds to your letter dated April 9, 2012 (attached), in which you requested that the Department investigate Walters Power and Pakistan Power Resources, two companies registered in the United States, for alleged violations of the Foreign Corrupt Practices Act. Your letter enclosed a copy of the Pakistani Supreme Court's ruling of March 30, 2012, in Human Rights Case Nos. 7734-G/2009, 1003-G/2010, and 56712/2010.

We have reviewed your letter and the court's ruling carefully. Please submit any additional information relevant to allegations of bribery by rental power plants in Pakistan within the next thirty days.

Thank you for your correspondence, and I look forward to hearing from you soon.

Sincerely,



JOHN W. BORCHERT
Trial Attorney

Attachment

cc: Jason Jones, Assistant Chief



TRANSPARENCY INTERNATIONAL-PAKISTAN

9th April 2012

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Denis J. McInerney,
Chief, Fraud Section
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Sub: Walters Power International convicted on corruption charges in Pakistan in Human Rights Case No.7734-G/2009 & 1003-G/2010-Alleged Corruption in Rental Power Plants and Human Rights Case No. 56712/2010 Fraud in payment of Rental Power Plants detected by NEPRA

Dear Sir,

Transparency International Pakistan in the national interest of Pakistan is reporting a case of corrupt practices adjudicated by the Supreme Court of Pakistan on 30th March 2012. Pakistan in Human Rights Case No.7734-G/2009 & 1003-G/2010-Alleged Corruption in Rental Power Plants and Human Rights Case No. 56712/2010 Fraud in payment of Rental Power Plants detected by NEPRA. The Court Order is available at <http://www.supremecourt.gov.pk/web/page.asp?id=1003>.

M/s Walters Power International and M/s Pakistan Power Resources (PPR) are two firms involved in this famous RPP scandal and supposed to be registered US Firms. In 2006, Walters Power International formed an Oklahoma-based, limited-liability company for the purpose of developing power projects in Pakistan. Walters Power International owns 35 percent of Pakistan Power Resources is an Oklahoma-based company, with the remaining 65 percent owned by a Pakistan-based partner, Associated Group. The Court has also said that the illegal RPP Contracts awarded to 2 US firms in 2006 are the cause of derailing the Energy Policy of Pakistan, causing loss of billion of dollars and also causing shortage of electricity ;

*84. Thus, in the light of the above facts and circumstances, we hold as under: -
(i) Prior to the introduction of RPPs, the system of generation of electricity under the control and management of Ministry of Water & Power, WAPDA, PEPCO, GENCOs, etc., had sufficient potential to produce more electricity, but instead of taking curative steps for its improvement, including clearance of circular debt of the IPPs or resorting to other means of generation of electricity, billions of rupees were spent on BHIKKI and SHARAQPUR RPPs, which proved complete failure because the object could not be achieved as the shortage of electricity persistently continued, and yet more RPPs were installed;*

We refer to the following verdict of the alleged corruption cases; which also relates to M/s Walters Power International and M/s Pakistan Power Resources (PPR);

27. Naudero-II was sponsored by Walters Power International, whereas Guddu Rental Power Project was sponsored by Pakistan Power Resources, which had not so far been signed off. During the hearing of the case, it was noticed that the total rental value in respect of Guddu plant was determined at US\$ 72.48 million against which 14% down payment equal to US\$ 10.15 million, 7% on 17.03.2008 and 7% on 12.03.2009 had been made. But, when the plant



was shifted from Guddu to Naudero, again for the second time 14% advance payment was made on 06.04.2010 to M/S Walters Power International. *Prima facie*, it is a criminal act of extracting money from GENCOs on one pretext or the other, otherwise knowing well that Pakistan Power Resources had already obtained 14% advance payment, therefore, in all fairness, the GENCOs' authorities ought to have pointed out in clear terms that as the said plant was not being installed at Guddu, therefore, the advance payment of 14% ought to be returned. Be that as it may, this Court, taking notice of this aspect of the matter, vide order dated 08.12.2010 directed as under: -

"In response to order of this Court dated 07.12.2010 final statements have been made on behalf of Pakistan Resources (P.P.R.) and Walters Power International. The documents being the negotiable instruments have been filed for effecting the recovery of the outstanding amount mentioned in the statements. Learned counsel states that amount mentioned in the above statement has been arranged and shall be returned to Central Power General Company Ltd. During course of the day. It is to be noted that according to learned counsel, the original amounts have been paid by both the companies along with markup upto date i.e. 08.12.2010.

The court orders contained following verdict; which also involves

84. Thus, in the light of the above facts and circumstances, we hold as under

iii) The contracts of all the RPPs – solicited and unsolicited, signed off or operational, right from BHIKKI & SHARAQPUR upto PIRANGHAIB, NAUDERO-I & NAUDERO-II were entered into in contravention of law/PPRA Rules, which, besides suffering from other irregularities, violated the principle of transparency and fair and open competition, therefore, the same are declared to be non-transparent, illegal and void-ab initio. Consequently, the contracts of RPPs are ordered to be rescinded forthwith and all the persons responsible for the same are liable to be dealt with for civil and criminal action in accordance with law;

ix) All the Government functionaries, including the Ministers for Water & Power holding charge in 2006 and onward and from 2008 to onward, during whose tenure the RPPs were approved/set up and Minister as well as Secretary Finance holding the charge when the down payment was increased from 7% to 14%, *prima facie*, violated the principle of transparency under Articles 9 & 24 of the Constitution and section 7 of the Act, 1997, therefore, their involvement in getting financial benefits out of the same by indulging in corruption and corrupt practices cannot be overruled in view of the discussion made hereinabove. Consequently, they are liable to be dealt with under the National Accountability Ordinance, 1999 by the NAB;

(x) All the functionaries of PEPCO, GENCOs, PPIB and NEPRA along with sponsors (successful bidders) who had derived financial benefits from the RPPs contracts are, *prima facie*,

involved in corruption and corrupt practices, therefore, they are also liable both for the civil and criminal action; and

(xi) The Chairman NAB is directed to proceed against all the persons referred to in subparagraphs (iii), (ix) & (x) above forthwith in accordance with law and submit fortnightly progress report to Registrar for our perusal in Chambers. Accountability Ordinance, 1999 by the NAB;

Transparency International Pakistan would like U.S. Department of Justice to specially consider paragraphs 81,82 and 84, from which it may be said that due to 2 illegal RPP Contracts in 2006, (both US firms sponsored), proper energy projects to reduce the electricity shortage could not be taken up, and government of 2008 continued this scheme, and yet more RPPs were installed;




81. Thus, all the Government functionaries, including the Ministers for Water & Power holding charge from 2006 and onward up to 2008 during whose tenure the RPPs were approved/set up, prima facie, violated the principle of transparency, therefore, their involvement in getting financial benefits out of the same by indulging in corruption and corrupt practices cannot be overruled in view of the discussion made hereinabove. Consequently, they are liable to be dealt with under the National Accountability Ordinance, 1999 by the NAB. Similarly, all the functionaries of PEPCO, GENCOs and NEPRA along with sponsors who had derived financial benefits from the RPPs contracts are, prima facie, involved in corruption and corrupt practices, therefore, they are liable both for the civil and criminal action. 82. In conclusion, it may be mentioned that Bhikki RPP was paid Rs.8,698.46 million against 811.605 mkWh electricity whereas Sharaqpur RPP was paid Rs.13,941.82 million against 1520.420 mkWh electricity.

NAB has started anticorruption action against the RPP firms on 4 April 2012. News report is quoted for your reference; <http://www.pakistantoday.com.pk/2012/04/04/news/national/top-brass-of-14-rpps-placed-on-ecl/>

"In pursuance of the Supreme Court's verdict, the federal government has placed the names of 14 senior management officials of rental power companies on the Exit Control List (ECL), including a close aide of President Asif Ali Zardari, Iqbal Z Ahmed. According to an official handout of the National Accountability Bureau (NAB), the names of chief executive officers (CEOs) of rental power projects (RPPs) as well as the owners of power companies have been placed on ECL. These include Muhammad Anwar Khan, CEO Techno-E-Power; Muhammad Rafiq Butt CEO M/s Young Gen; Muhammad Jamil Arain, CEO M/s Karkey; Ghulam Mustafa Tunio, CEO M/s Gulf Rental; Tariq Nazir CEO M/s Walters Power; Gulzar Muhammad CEO M/s Alstome Power Rental; Abid Ali CE M/s Techno-E-Power; Habib Ullah Khan CE M/s Young Gen; Iqbal Z Ahmad Principal Officer M/s Pakistan Power; Orhan Remzi Karadeniz Chairman M/s Karkay; Haseeb Ahmad Khan CEO M/s Gulf Rental; Shah Faisal CEO M/s Reshma Power; Muhamunad Nasarullah Baig Principal Officer M/s Walters Power; and Naeem Shafique Country Manager M/s General Electric Power. Notices under NAO (National Accountability Ordinance) have been issued to four companies which are to refund the down payment along with the mark up. These include Techno-E Power, Walters Power Nauderol, Karkey Rental Power and Gulf Power Project. These companies have been directed to deposit the money within three days."

Transparency International Pakistan request Chief, Fraud Section U.S. Department of Justice Criminal Division to kindly examine this case and take action against the US firms under the anti-bribery provisions of the FCPA Act 1977, which make it illegal for U.S. persons to bribe a foreign government official for the purpose of obtaining or retaining business.

Regards


Syed Adil Gilani
Adviser

Copies forwarded for information of;

1. Chairman, Public Accounts Committee, Islamabad,
2. Secretary of State, US Government, Washington,
3. US Ambassador, Islamabad,
4. Registrar, Supreme Court Pakistan, Islamabad
5. Chairman, NAB, Islamabad
6. Managing Director, PPRA, Islamabad.