JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Execution Application No.09 of 2019
China International Water & Electric Corporation (CWE) P.R. China
Versus
National Highway Authority

Date of Hearing:	13.09.2023
Applicant by:	M/s Javaid Akhtar, Zakir Hussain Baig and Hamid Nawaz, Advocates.
Respondent by:	Mr. Rizwan Faiz Muhammad, Advocate and Barrister Afzal Khan Shinwari.
Assistance by:	Barrister M. Usama Rauf, Law Clerk.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment we propose to decide the following cases:-

(i) Application (numbered and registered as Execution Petition No.09/2019) under Section 6 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 **("the 2011 Act")**, filed by China International Water and Electric Corporation (CWE) P.R. China **("CWE")**, seeking recognition and enforcement of foreign arbitral award dated 30.06.2019 rendered by Mr. Peter H. J. Chapman of Somersby House Chambers **("the Arbitrator")** and approved by the International Court of Arbitration of the International Chamber of Commerce **("ICC")**.

(ii) Appeal (First Appeal against Order **("FAO")** No.94/2021) filed by National Highway Authority **("NHA")** challenging the order dated 21.05.2021 passed by the Court of the learned Additional District Judge, Islamabad **("District Court, Islamabad")** whereby NHA's application under Sections 30 and 33 of the Arbitration Act, 1940 **("the 1940 Act")** for setting aside and remitting the foreign arbitral award dated 30.06.2019 was dismissed with costs.

(iii) Appeal (Regular First Appeal **("RFA")** No.881/2021) filed by CWE challenging the judgment and decree dated 17.11.2021 passed by the District Court, Islamabad whereby CWE's suit for declaration, cancellation and return of guarantee and permanent injunction filed against NHA was dismissed.

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2. The record shows that on 03.12.2009, NHA and CWE entered into a contract for the construction of Four Lane Faisalabad – Khanewal Project (M4), Package-1: Faisalabad – Gojra Section (58 KM) **("the Contract")**. The contract price was Rs.10,305,078,335.09, and the contract period was 36 months from the commencement date i.e. 25.02.2010. The time for the completion of the works was extended on three occasions and the works were completed on 29.01.2015 with the defects liability period expiring on 29.01.2016. The Contract between the parties was based on the Standard Bidding Document – Multilateral Development Banks Version 2006 published by Fédération Internationale Des Ingénieurs-Conseils (**"FIDIC"**) and commonly referred to as the 'Pink Book.' The contract documents included the General Conditions of Contract (**"GCC"**) and Particular Conditions of Contract (**"PCC"**).

3. The dispute resolution mechanism provided in the Contract envisaged a process for disputes arising from and related to the Contract to be amicably settled between the parties, failing which the disputes could be referred to a Dispute Board. The party aggrieved by the decision of the Dispute Board could give notice of dissatisfaction to the other party and thereafter refer the matter to arbitration pursuant to the Rules of Arbitration of the International Chamber of Commerce (**"ICC Rules"**).

4. Clause 8.4 of the GCC entitled a contractor to an extension of the time for completion (**"EOT"**) where the delay is on account of the causes mentioned in the said clause. All these causes are such as are beyond the control of the contractor. If the contractor considers himself entitled to an EOT, he is required to give a notice to the Engineer, who is to determine each EOT. Where the contractor considers himself to be entitled to an EOT and/or any additional payment, clause 20.1 of the GCC requires him to give notice to the Engineer describing the event or circumstance giving rise to the claim. Such notice is to be given as soon as practicable, and not later than 28 days after the contractor became aware, or should have become aware, of the event or circumstance. Within 42 days after the contractor becomes aware or should have become aware of the event, or circumstance giving rise to the claim, he

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is required to send to the Engineer a fully detailed claim which includes full supporting particulars of the grounds of the claim and for the extension of time etc. For the purposes of clarity, clause 20.1 of the GCC reads thus:-

> ***"If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware or should have become aware, of the event or circumstance.***
> ***If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim."***

5. It is an admitted position that by virtue of EOT-1, EOT-2 and EOT-3, the time for completion was extended respectively to 31.12.2013, 15.06.2014 and 31.01.2015. NHA had supported the award of these time extensions to CWE and the Contract was completed within the extended time for completion. NHA however resisted accepting that such time extensions could result in an award of idle time costs and prolongation costs in CWE's favour.

<u>Extension of Time – 1</u>:-

6. With respect to CWE's claim for costs associated with EOT-1, the Dispute Board by a majority of two to one decided on 19.05.2014 to award Rs.744,068,695/- along with interest at the rate of 6% per annum. The minority view was that CWE should only be paid Rs.338,000,000/-. NHA, on 12.06.2014, gave a notice of its dissatisfaction with the Dispute Board's decision. What a notice of dissatisfaction does is to give the party dissatisfied with the Dispute Board's decision the ability to challenge it on merits in arbitration or have it reviewed in the process of an amicable settlement.

7. NHA, vide letter dated 28.11.2014, expressed its intention to partially implement the Dispute Board's said decision by paying Rs.338,000,000/- and required CWE to furnish a bank guarantee to secure re-payment of the said amount. On 31.12.2014, NHA paid Rs.338,000,000/- to CWE and on 06.01.2015 CWE furnished bank guarantee No.IGT087400000315 issued by Habib Bank Limited for the

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amount of Rs.338,000,000/- in favour of NHA. This guarantee is still valid and subsisting.

8. At no material stage was the balance amount of Rs.406,068,695/- under the Dispute Board's decision dated 19.05.2014 paid by NHA to CWE. CWE had submitted a request for arbitration on 13.04.2015 to the Secretariat of the International Court of Arbitration of the ICC. The Arbitrator was appointed on 24.06.2015 pursuant to Article 13(2) of the ICC Rules. One of the pleas taken by CWE in the arbitration was that the guarantee was liable to be discharged since there was no legal infirmity with the Dispute Board's decision to award Rs.744,068,695/- against CWE's claim for costs associated with EOT-1.

9. The Arbitrator, in his final award dated 30.06.2019, concurred with the majority decision of the Dispute Board on CWE's claim for costs associated with EOT-1. As per the said award, after deducting Rs.338,000,000/- (which had already been paid to CWE on 31.12.2014), an amount of Rs.522,285,555.50 inclusive of tax and interest at the rate of 6% per annum from 01.01.2015 to 30.06.2019 was awarded in CWE's favour as its claim for costs associated with EOT-1. The interest calculated by the Arbitrator payable for the period from 01.01.2015 up to the date of the award, i.e. 30.06.2019, was Rs.109,638,547.65. The Arbitrator also declared that the sum of Rs.338,000,000/- paid to CWE on 31.12.2014 was to be treated as the final and unconditional payment. On this basis, the Arbitrator ordered that the bank guarantee was to be returned by NHA to CWE without any condition and the bank furnishing the guarantee was to be released from all obligations thereunder.

10. Since NHA had required CWE to furnish a bank guarantee for an amount of Rs.338,000,000/-, and since CWE had incurred costs in providing the bank guarantee, the Arbitrator took the view that CWE was entitled to such costs along with withholding tax and interest. The costs incurred for furnishing and revalidating the bank guarantee for the period between 01.01.2015 and 30.06.2019 was determined to be US Dollars 7,920 and withholding tax and interest came to US Dollars 475 and US Dollars 2,308, respectively. In this way the total amount payable by NHA for the said period came to US Dollars 10,703.88.

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Extension of Time – 2:-

11. As a result of EOT-2's approval by NHA on 14.03.2014, the time for completion was extended to 15.06.2014. On CWE's claim for costs associated with EOT-2, the Dispute Board on 16.06.2015 decided that CWE was entitled to receive payments in connection with EOT-2 and that such costs were to be determined by the Engineer. NHA did not issue a notice of dissatisfaction with respect to the said decision of the Dispute Board and therefore the said decision became binding on the parties. The Engineer assessed CWE's costs claim associated with EOT-2 at nil. Thereafter, CWE again referred its claim regarding costs associated with EOT-2 to the Dispute Board. The Dispute Board, in its decision dated 02.02.2016, had held that the entitlement of CWE to receive payment of delay cost claim related to EOT-2 had already been established by the Dispute Board in its decision taken on 16.06.2015. The Dispute Board required the Engineer to determine the quantum of the additional costs to which CWE was entitled as a result of EOT-2 by adopting the following methodology:-

> ***"(a) the time extended under EOT #2***
> ***(b) the level of resources (e.g. Local/foreign manpower, plant, equipment etc) deployed by the Contractor at site during the above stated period as already certified by the Engineer in his Monthly Progress Reports to the NHA.***
> ***(c) the unit costs of the above deployed resources as had been adopted by the Engineer in his determination of Additional Costs related to EOT #1 to verify the amounts claimed by the Contractor under the heads of:***
> ***(i) Owning Cost of Contractor's Equipment***
> ***(ii) Salary for Site Expatriate Staff***
> ***(iii) Salary for Local Staff & Labour***
> ***(iv) Management Cost"***

12. The Dispute Board took the view that the Engineer ought to have adopted the same methodology as he had used in assessing CWE's costs claim associated with EOT-1. Apparently, the Engineer once again assessed CWE's costs claim associated with EOT-2 at nil. CWE's claim before the Arbitrator included its claim for costs associated with EOT-2. The Arbitrator placed himself in the position of the Engineer and assessed CWE's costs claim associated with EOT-2. The amount originally claimed by CWE in its pleadings was Rs.979,534,252/- without interest. The period of EOT-2 was 165 days i.e. between 01.01.2014 and 15.06.2014. The Arbitrator assessed CWE's claim under the heads of

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prolonged equipment, expatriate staff salaries, local staff and labour, management costs and insurance and awarded an amount of Rs.951,172,427.50 in CWE's favour. This amount was inclusive of tax and along with interest at the rate of 6% per annum from 01.09.2015 to 30.06.2019 it came to Rs.1,183,068,265.32.

Extension of Time – 3:-

13. As regards EOT-3, which was for a period of 230 days, the Dispute Board in its decision dated 19.12.2015 had decided that CWE was entitled to receive payment of delay costs claim related to EOT-3 and that the amount of such claim was to be determined by the Engineer and be recommended to NHA for payment. NHA had not issued a notice of dissatisfaction with respect to the said decision, and therefore the same was final and binding on the parties. The Engineer had not assessed CWE's claim associated with EOT-3 within 28 days of the Dispute Board's said decision. The Engineer's belief was that the grant of EOT-3 did not entitle CWE to any costs associated with EOT-3.

14. The Arbitrator took the view that the assessment of CWE's claim associated with EOT-3 had to be determined by adopting the same methodology as was used for EOT-1. By adopting this methodology, the Arbitrator awarded a cumulative amount of Rs.1,178,318,536.66 against CWA's claim of Rs.1,406,629,134/- under the heads of prolonged equipment, expatriate staff salaries, local staff and labour, management costs, and insurance. This amount, inclusive of tax along with interest at the rate of 6% per annum from 01.03.2016 to 30.06.2019, came to Rs.1,428,122,066.43.

Retention Money:-

15. CWE had also made a claim for the release of retention money amounting to Rs.237,248,179.30. CWE based this claim on clause 14.9 of the GCC which provides *inter alia* that promptly after the latest of the expiry dates of the defects notification period, the outstanding balance of the retention money shall be certified by the Engineer for payment to the contractor.

16. The defects notification period with respect to the Contract expired in February 2016. Therefore, in terms of clause 14.9, NHA could not have withheld the retention money beyond February 2016. The withholding of the said amount by NHA resulted in the imposition of

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withholding tax. This resulted in the enhancement of the amount payable by NHA to be Rs.251,483,070.06. Not just that, CWE was also to be paid interest at the rate of 6% per annum on the said amount. This is because clause 14.8 of the PCC provides *inter alia* that in the event of the failure of the employer to make payments within the times stated in the Contract, the employer shall pay to the contractor simple interest at the rate of 6% per annum upon all sums unpaid from the date upon which the same should have been paid. The Arbitrator considered the said rate of interest on late payments to be reasonable and acceptable. The Arbitrator accordingly held that the interest due on Rs.251,483,070.06 for the period between 01.03.2016 (when the retention money should have been released) and 30.06.2019 (the date of the final award) to be Rs.50,296,614.01. This makes the total amount of the retention money including withholding tax and interest at the rate of 6% per annum from 01.03.2016 to 30.06.2019 payable to CWE to be Rs.301,779,684.07.

Costs of arbitration:-

17. As CWE's costs for arbitration, the Arbitrator has awarded GB Pounds 657,704.75 (inclusive of interest at the rate of 1.25% from 31.12.2016 to the date of final award). Additionally, the ICC Court had fixed US Dollars 303,500 as the costs of arbitration which was paid in equal shares by the contesting parties. The Arbitrator entitled CWE to be paid its share of US Dollars 151,750 by NHA. The Arbitrator awarded simple interest of US Dollars 9,958.59 on US Dollars 151,750 at the rate of 1.75% per annum from 01.10.2015 to the date of the final award. This made the total amount payable by NHA as the cost of arbitration to be US Dollars 161,708.59. The Arbitrator also awarded Rs.2,160,000/- inclusive of interest at the rate of 5% per annum from 01.12.2016 till the date of the final award on account of CWE's legal costs incurred in Pakistan.

18. The Arbitrator had required that all payments from NHA to CWE would be made not later than 30.06.2019. Now, CWE had also sought post-award interest at the rate of 12% per annum. The Arbitrator held that interest accruing between the date of the final award and any decree of the Court authorizing payment shall be considered as post-award interest and shall run from the date of the final award and

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continue until all payments of the unpaid sum have been paid. The rate of interest was set at 6% per annum so as to encourage prompt payment of the amounts due under the final award.

19. In short, the arbitration proceedings culminated in the award dated 30.06.2019 declaring that NHA was responsible for the delays in the execution of the Contract; CWE was entitled to delay costs claim in respect of EOT-1 in the sum of Rs.522,285,555.50; EOT-2 in the sum of Rs.1,183,068,265.32; and EOT-3 in the sum of Rs.1,428,122,066.43.; the payment of Rs.338,000,000/- that had been made by NHA to CWE on 31.12.2014 was to be treated as the final and unconditional payment; the Dispute Board's decisions requiring the Engineer to determine and assess CWE's claim for costs associated with EOT-2 and EOT-3 by adopting the same methodology as was used for determining and assessing CWE's claim for costs associated with EOT-1 are final and binding; and that the defects liability period expired on 29.01.2016. The Arbitrator turned down CWE's claim for an amended bill of quantity rate for Asphaltic Base Course Plant (ABCP).

20. As mentioned above, the award was rendered on 30.06.2019. Vide letter dated 15.07.2019, CWE provided a copy of the said award to the Chairman, NHA with the request to make payment in accordance with the award and to return the bank guarantee. NHA neither made any payment to CWE nor returned the bank guarantee. Instead, NHA filed an appeal for the annulment of the award before the Cour' D Appel De Paris ("Court of Appeal, Paris"**). This appeal was dismissed on 14.09.2021. Perusal of the English translation of the judgment dismissing NHA's challenge to the said award shows that NHA had sought the annulment of the award on the ground that the Arbitral Tribunal was irregularly constituted. NHA had alleged that the Arbitrator had links with a company called Sinohydro which was an undeclared sub-contractor of CWE. NHA questioned the independence and impartiality of the Arbitrator on the ground of lack of disclosure as to such link. It was also asserted by NHA that Mr. Chapman had been appointed as a member of the Dispute Board on 04.04.2016 in a dispute between Sinohydro and Water and Power Development Authority, and that CWE would have had recourse to Sinohydro as its sub-contractor in the dispute referred to Mr. Chapman as an Arbitrator. The Court of**

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Appeal, Paris held that the grounds taken by NHA in its appeal were insufficient to demonstrate any bias on the part of the Arbitrator.

21. Further perusal of the judgment dated 14.09.2021 passed by the Court of Appeal, Paris shows that under cover of the plea as to the lack of impartiality of the Arbitrator, NHA in fact asked the said Court to review the merits of the final award. NHA was not allowed to do so and its appeal was dismissed with costs of Euros 100,000. There is nothing on the record to show that the said judgment had been assailed any further by NHA.

22. While the proceedings before the Court of Appeal, Paris were pending, NHA filed an application under Sections 30 and 33 of the 1940 Act before the Court of Civil Judge, Islamabad praying for the award dated 30.06.2019 to be set-aside. The primary ground agitated by the NHA for setting aside the award was that the Arbitrator had committed misconduct by not disclosing his association with Sinohydro which had been one of CWE's sub-contractors. NHA alleged bias against the Arbitrator and also took a spate of other grounds in an effort to avoid its obligation to make payment in terms of the award to CWE. It is pertinent to bear in mind that NHA, in its application, did not mention the fact as to the filing of the appeal against the award before the Court of Appeal, Paris.

23. Vide order dated 29.01.2021, the learned Civil Court returned the said application so that it could be filed before the Court of competent jurisdiction. As per the said order the High Court, in terms of the provisions of the 2011 Act, had the exclusive jurisdiction to adjudicate upon the application filed by NHA. Furthermore, it was held that the application could not be entertained as it was beyond the pecuniary jurisdiction of the Civil Court.

24. After the application was returned NHA, on 28.04.2021, filed the very same application before the District Court, Islamabad. Vide order dated 21.05.2021, the District Court, Islamabad dismissed the said application with costs of Rs.1,000,000/-. The said Court also held that in terms of Sections 2(d) and 3(1) of the 2011 Act, the High Court had the exclusive jurisdiction to adjudicate upon NHA's application. The said order dated 21.05.2021 has been assailed by NHA before this Court in an appeal (FAO No.94/2021).

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25. On 21.12.2019, CWE filed execution application No.09/2019 before this Court under Section 6 of the 2011 Act praying for the enforcement of the award dated 30.06.2019. CWE had also sought the attachment and sale of NHA's properties listed in paragraph 10(10) of the said application as well as a direction to the NHA to cancel and return the bank guarantee. CWE had also sought costs under Section 35 of the Code of Civil Procedure, 1908 ("C.P.C.") as amended by the Costs of Litigation Act, 2017.

26. Through application (CM No.408/2021), CWE sought an amendment in the prayer clause of execution application No.09/2019 so as to also seek the recognition of the award dated 30.06.2019. After this Court, vide order dated 29.09.2021, allowed the said application, an amended execution application was filed by CWE. NHA has filed objections to the said execution application. The contesting parties in support of their oral submissions also filed written arguments.

27. Since CWE apprehended that despite the award dated 30.06.2019 NHA would encash the bank guarantee, it filed a suit for declaration and cancellation of the bank guarantee before the Court of the Senior Civil Judge, Islamabad. Vide order dated 11.01.2021, the learned Civil Court returned the plaint in the said suit due to lack of pecuniary jurisdiction. On 19.01.2021, CWE filed the very same suit before the District Court, Islamabad. This suit was dismissed vide judgment and decree dated 17.11.2021 on the same grounds on which NHA's application under Sections 30 and 33 of the 1940 Act had been dismissed. In the said judgment and decree, it was mentioned that CWE had already filed execution application No.09/2019 before this Court in which the cancellation and return of the bank guarantee had also been sought. The said judgment and decree have been assailed by CWE in appeal (RFA No.881/2021) before this Court.

28. Soon after the said judgment and decree was passed by the District Court, Islamabad, CWE filed an application (CM No.1277/2021 in execution petition No.09/2019) before this Court praying for an interim injunction to restrain NHA from encashing the bank guarantee dated 06.01.2015. Vide order dated 21.06.2023, this Court restrained NHA from encashing the said guarantee until a decision in execution petition

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No.09/2019. This order was passed after the learned counsel for CWE submitted that the said guarantee is valid till the end of this year.

29. Learned counsel for CWE, after narrating the relevant background facts, submitted that a Court subordinate to the High Court did not have the jurisdiction to set-aside a foreign arbitral award; that by virtue of Section 3(1) of the 2011 Act, the High Court has the exclusive jurisdiction to adjudicate and settle matters relating to or arising from the said Act; that the Hon'ble Lahore High Court in the case of Orient Power Company (Private) Limited Vs. Sui Northern Gas Pipeline Limited (PLD 2019 Lahore 607) held that the 2011 Act leaves no room for interpretation on the issue of exclusivity of jurisdiction of the High Court; that in the case of Taisei Corporation Vs. A.M. Corporation Company (Private) Limited (2018 MLD 2058), the Hon'ble High Court of Sindh has held that after the enactment of the 2011 Act, all foreign awards have to sail through the waters of the said Act; that the High Court can refuse to recognize and enforce a foreign arbitral award only if the grounds set out in Article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("the NY Convention"**) read with Section 7 of the 2011 Act are satisfied, but does not have the jurisdiction to set-aside such an award; that in terms of Article V(1)(e) of the NY Convention, an award can be set-aside by the Courts of the country where the award was made or under the specifically agreed procedural law of another country; that since the seat of arbitration was Paris, it was the French law which is to be treated as the procedural law governing the conduct of the arbitration proceedings; that it is an admitted position that the contesting parties had agreed for the laws of Pakistan to be the substantive law governing the contract but had not agreed for the laws of Pakistan to be the procedural law of the arbitration; that since the award dated 30.06.2019 was made at Paris under the ICC Rules, NHA had filed an appeal to set-aside the said award before the Court of Appeal, Paris but the appeal was rejected with costs of Euros 100,000, which have till date not been paid by NHA; that the re-agitation by NHA of the grounds for setting aside the award before Courts in Pakistan is barred under the principle of *res judicata*; that the District Court, Islamabad had also dismissed NHA's challenge to the said award with costs of Rs.1,000,000/- which**

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have also not been paid by NHA; and that for NHA to allege bias against the Arbitrator after the award has been rendered is indicative of NHA's lack of good faith.

30. Learned counsel for CWE further submitted that NHA has embroiled CWE in wasteful litigation since the past eight years; that in CWE's favour decisions have been made by the Engineer, Dispute Board as well as the Arbitrator but NHA is refusing to honour any of the said decisions; that the total amount payable under the award dated 30.06.2019 comes to Rs.3,435,255,571.32, US Dollars 10,703.88, and GB Pounds 657,704.75 plus US Dollars 161,708.59 as costs of the arbitration and Rs.2,160,000/- in respect of legal fees incurred in Pakistan; that there is no reason for NHA to continue holding bank guarantee dated 06.01.2015 for an amount of Rs.338,000,000/-; and that with every passing day that NHA withholds the amounts due and payable to CWE under the said award, the fiscal liability of NHA is increasing. Learned counsel prayed for the award dated 30.06.2019 to be recognized and enforced and for FAO No.94/2021 filed by NHA to be dismissed.

31. On the other hand, learned counsel for NHA submitted that the execution petition is not maintainable in its present form since no executable decree has been issued; that CWE does not have the status of a decree holder; that this Court ought to either dismiss the execution petition or adjourn it *sine die* until a decree has been issued; that unless a Court proceeds to pronounce judgment according to the award and upon the judgment so pronounced a decree is issued, enforcement proceedings cannot be initiated; that this procedure is to be followed for domestic as well as foreign awards; that it is only when an award is made a rule of Court that it becomes capable of execution; that Section 6(1) of the 2011 Act requires the Court to recognize and enforce an award in the same manner as a judgment or an order of a Court in Pakistan; that Section 3(3)(a) of the said Act requires the Court to follow the provisions of the Code of Civil Procedure, 1908 (“C.P.C.”); that the provisions of C.P.C. for enforcing a judgment would apply when a decree is issued; that under Section 44(a) of C.P.C., a judgment of a foreign Court based on an arbitration award cannot be enforced; and

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that initially CWE had not even prayed for the award dated 30.06.2019 to be recognized.

32. Learned counsel for NHA further submitted that this Court, while exercising jurisdiction under the 2011 Act, can either recognize and enforce a foreign award or refuse to do so but cannot set-aside an award; that the recognition and enforcement of an award can be refused by a High Court without formally setting aside an award; that this Court will refuse to recognize and enforce an award which has been set-aside by a competent authority of the country or under the law of which the award is made; that the NY Convention permits domestic Courts to apply their own municipal laws when dealing with challenges to foreign awards on the ground of illegalities or errors in the award; that Courts in different jurisdictions have held that the NY Convention does not apply to setting aside of arbitral awards; that admittedly the governing law of the contract between NHA and CWE was the law of Pakistan; that even though the seat of arbitration was Paris, France, the law governing the contract between the parties was the law of Pakistan, and therefore NHA could apply to Courts in Pakistan for the setting aside of the award dated 30.06.2019 in accordance with the municipal laws of Pakistan; that the said award is not enforceable under Section 7 of the 2011 Act read with Article V(1)(d) and (e) of the NY Convention for the reason that the procedure adopted during the arbitration proceedings was not in accordance with the laws of Pakistan which governed the agreement between the parties; that NHA, in addition to opposing CWE's petition seeking recognition and enforcement of the award, can also seek the setting aside of the award in accordance with the provisions of the 1940 Act; that for the setting aside of the award under the provisions of the 1940 Act, NHA correctly invoked the jurisdiction of the District Court, Islamabad by filing an application under Sections 30 and 33 of the 1940 Act; that the District Court, Islamabad ought to have given a finding on the merits of NHA's objections and challenges to the award dated 30.06.2019; that this Court ought to set-aside the order dated 21.05.2021 passed by the District Court, Islamabad and remand the matter with the direction that NHA's objections and challenges to the said award be decided on merits; that until such a decision is made by the District Court,

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Islamabad, this Court ought not to proceed with the execution petition filed by CWE; and that alternatively, this Court ought to decide NHA's objections since it has been vested with the powers of a Civil Court.

33. Learned counsel for NHA had submitted written arguments which are in the nature of an appeal against the award in that NHA has challenged the findings of the Arbitrator on the merits of CWE's monetary claim. Learned counsel for NHA prayed for the execution petition filed by CWE to be dismissed and for FAO No.94/2021 to be allowed.

34. We have heard the contentions of the learned counsel for the contesting parties. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 28 above and need not be recapitulated.

Whether a foreign arbitral award can be challenged before Courts in Pakistan:-

35. We propose, in the first instance, to decide whether a challenge could be thrown by NHA to the award dated 30.06.2019 rendered in arbitration seated in Paris, France before Courts in Pakistan by filing an application under Sections 30 and 33 of the 1940 Act. NHA asserts that since the Contract was governed by Pakistan law, and since Article V(1)(e) of the NY Convention permits a party to seek the setting aside of a foreign arbitral award before the courts of the country under the law of which the award is made, it is the Courts of this country before which NHA could apply for the setting aside of the award.

36. Article V(1)(e) provides that recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that *"the award has not yet become binding on the parties, or has been set-aside or suspended by a competent authority of the country in which, or under the law of which, that award was made."*

37. There is a difference between (i) the proper or substantive law governing a contract; (ii) the proper or substantive law governing the arbitration agreement whether embedded in the underlying contract or not; and (iii) the curial law governing the conduct of the arbitration. Parties have freedom to agree on the substantive law governing the

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contract; the substantive law governing the arbitration agreement; and the curial law applicable to the arbitration proceedings. Recently, the United Kingdom Supreme Court in the case of Enka Insaat Ve Sanayi AS Vs. OOO Insurance Company Chubb [2020] UKSC 38, held as follows:-

> ***"Where an international commercial contract contains an agreement to resolve disputes by arbitration, at least three systems of national law are engaged when a dispute occurs. They are: the law governing the substance of the dispute; the law governing the agreement to arbitrate; and the law governing the arbitration process. The law governing the substance of the dispute is generally the law applicable to the contract from which the dispute has arisen. The law governing the arbitration process (sometimes referred to as the "curial law") is generally the law of the "seat" of the arbitration, which is usually the place chosen for the arbitration in the arbitration agreement. These two systems of law may differ from each other. Each may also differ from the law which governs the validity and scope of the arbitration agreement."***

38. The law governing the contract which creates the substantive rights of the parties in respect of which the dispute has arisen is called the proper law of the contract.

39. It is well settled that an arbitration agreement, which creates rights and obligations of the parties to submit disputes to arbitration and to abide by the award, is an agreement severable from the substantive contract in which it is embedded. It is also capable of surviving the termination, repudiation and frustration of the substantive contract. Since an arbitration agreement is considered to have a distinct life of its own, it can be governed by a proper law of its own which need not be the same as the law governing the substantive contract. Where there is no express choice of law governing the arbitration agreement, the presumption would be that the parties intended for the law chosen to govern the substantive contract to be the law governing the arbitration agreement. The proper law of the arbitration agreement governs the obligation of the parties to submit the disputes to arbitration, and to honour an award. This must be distinguished from the curial law of the arbitration, which governs the conduct of the individual reference.

40. The procedural law of an arbitration which is also called *'lex arbitri'* or *'curial law'* deals with a range of issues including the form and validity of the arbitral award; and the finality of the award, including any right to challenge the award in the Courts of the place of arbitration. In order to determine the curial law in the absence of an

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express choice by the parties, it is first necessary to determine the seat of arbitration. This is because where the parties do not choose the curial law, the law of the seat of arbitration would be the curial law which governs the arbitration proceedings. The seat of arbitration is a location selected by the parties as the legal place of arbitration, which consequently determines the procedural framework of the arbitration. Contracting parties have the freedom to agree on the seat of arbitration. Where parties make no such agreement, the seat may be determined by the arbitral tribunal or the administering arbitral institution in accordance with and subject to the arbitration rules chosen by the parties. Where this is also not done the place where the arbitration is conducted is the seat of arbitration.

41. In the case of Hitachi Limited Vs. Rupali Polyester (1998 SCMR 1618), one of the principles deduced by the Hon'ble Supreme Court from treatises on the subject of international commercial arbitration was that it is for the parties not only to choose the law which is to govern their agreement to arbitrate, but also the law which is to govern the arbitration proceedings, and that if the parties fail to choose the law governing the arbitration proceedings, those proceedings will almost certainly be governed by the law of the country in which the arbitration is held. Another principle deduced was that the procedural law of arbitration will determine what judicial remedies are available to a party who wishes to challenge the award once it has been rendered and before it is sought to be enforced abroad.

42. Clause 1.4 of the GCC provides that the Contract shall be governed by the law of the country or other jurisdiction stated in the Contract Data. Section 8 of the PCC contains the Contract Data according to which the governing law of the Contract is the law of the Islamic Republic of Pakistan ("Pakistan law"). So the substantive law governing the Contract is Pakistan law. But there is no provision either in the GCC or the PCC providing for the law governing the arbitration agreement. Therefore, the law governing the arbitration agreement would be the law governing the Contract which contains the arbitration clause. Since the governing law of the Contract was Pakistan law, this would also be the law governing the arbitration agreement. In the case of Hitachi Limited Vs. Rupali Polyester (1998 SCMR 1618), it was also

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held that *"in the absence of any contrary express agreement, the proper law of arbitration agreement will be the same which is applicable to the main agreement."* One of the principles summarized by the Supreme Court of the United Kingdom in the case of Enka Insaat Ve Sanayi AS Vs. OOO Insurance Company Chubb [2020] UKSC 38 was that *"where the law applicable to the arbitration agreement is not specified, a choice of governing law for the contract will generally apply to an arbitration agreement which forms part of the contract."*

43. As regards the curial law or the procedural law of the arbitration, the parties are at liberty to choose the same. In the case at hand, since the parties did not choose the curial law, the law of the seat of arbitration would be the curial law. This makes it all the more necessary to determine the seat of arbitration. According to Redfern and Hunter on International Arbitration (Sixth Edition), the law of the seat of arbitration is normally the law of the place of arbitration, and that in an international arbitration, the parties usually have no connection with the seat of arbitration. In the case of Naviera Amazonica Peruana S.A. v Compania International de Seguros del Peru [1988] 1 Lloyd's Rep 116, Kerr LJ regarded an agreement for arbitration in London as being a colloquial choice of seat. The case of Enercon GmbH Vs. Enercon India Ltd [2012] 1 Lloyds Rep 519 concerned an arbitration clause which provided that the venue of the arbitration proceedings shall be London and that the provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply. Eder J. held the seat of arbitration to be London. In the case of Shashoua Vs. Sharma [2009] EWHC 957, the England and Wales High Court of Justice (Queen's Bench Division), it has been held *inter alia* that where an arbitration clause provides for arbitration to be conducted in accordance with Rules of the ICC, a provision that the venue of arbitration shall be London, United Kingdom amounts to the designation of a juridical seat. In paragraph 34 of the said report, it has also been held as follows:-

> ***"When therefore there is an express designation of the arbitration venue as London and there is no designation of any alternative place as the seat, combined with a supranational body of rules governing the arbitration and no other significant contrary indicia, the inexorable conclusion is, to my mind, that London is the juridical seat and English law is the curial law"***

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44. Clause 20.6 of the GCC provides that disputes not amicably settled and in respect of which the Dispute Board's decision, if any, has not become final and binding shall be settled by arbitration. Clause 20.6 of the PCC provides that in case of a foreign contractor, arbitration shall be carried out in accordance with the ICC Rules. For the purposes of clarity, the said clause is reproduced herein below:-

> ***"All disputes arising in connection with the Contract shall be finally settled by arbitration. In case of foreign contractor, arbitration shall be carried out in accordance with the Rules of Arbitration of the International Chamber of Commerce, and in the case of domestic contractor, arbitration shall be carried out in accordance with the rules and provision of Arbitration Act, 1940 of Islamic Republic of Pakistan."***

45. As per clause 20.6(b) of the GCC, the place of arbitration shall be the city where the headquarters of the appointed arbitral institution are located. The headquarters of the Court of Arbitration of the ICC are located in Paris, France, and that is indeed where the arbitration was conducted. Article 18(1) of the ICC Rules provides that the place of the arbitration shall be fixed by the Court of Arbitration of the ICC unless agreed upon by the parties. The dispute resolution clauses in the Contract do not contain a stipulation as to the seat of arbitration, but since the venue of the arbitration was Paris, France that would also be seat of arbitration.

46. Although NHA has been selective in placing the procedural orders on the record, Procedural Order No.1 dated 18.10.2015 shows that Paris, France was determined as the place of arbitration. Be that as it may, since NHA, in its comments and written arguments, has stated with clarity that Paris, France was the seat of arbitration, we shall proceed further with the case treating Paris, France as the seat of arbitration. We must however say that in the absence of an express agreement regarding the seat of arbitration, the presumption is that the parties intended the seat of arbitration to be the place where the arbitration was conducted, i.e. Paris, France, and therefore, the curial law or *lex arbitri* applicable to the arbitration proceedings would be French Law. Paris, France has no connection either with CWE (which is a company incorporated under the laws of the People's Republic of China) or NHA (which is a statutory authority in Pakistan). This would

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make Paris, France truly a neutral seat of arbitration for the said parties.

47. The parties do not dispute that a party aggrieved by an award can seek its setting aside in terms of Article V(1)(e) of the NY Convention before the Courts of the country where the arbitration took place. And it is for this very reason that NHA applied to the Court of Appeal, Paris for the setting aside of the said award. Regardless of the fact that NHA's appeal had been rejected by the Court of Appeal, Paris vide judgment dated 14.09.2021 which has not been challenged any further, NHA asserts that Courts in Pakistan have concurrent jurisdiction to entertain a challenge to a foreign arbitral award. Learned counsel for NHA asserted that since the parties had agreed for the Contract, in which the arbitration clause was embedded, to be governed in accordance with the Pakistan law, the Courts in Pakistan would be considered as the *"competent authority"* having jurisdiction to set-aside the award dated 30.06.2019. He takes the position that even though the seat of arbitration was Paris, France, NHA could file an application under Sections 30 and 33 of the 1940 Act before the Courts in Pakistan seeking the setting aside of the award dated 30.06.2019 since under Article V(1)(e), the Courts of the country *"under the law of which"* the award was made had the jurisdiction to adjudicate upon the validity of the award. He justifies filing the said application before the District Court, Islamabad by asserting that there is no provision either in the 2011 Act or the NY Convention vesting jurisdiction in the High Court to set-aside a foreign arbitral award.

48. We cannot bring ourselves to agree with the learned counsel for NHA. Although the proper law of the Contract as well as the arbitration agreement was Pakistan law, the conduct of the arbitration proceedings was not to be governed by the proper law of the Contract or the arbitration agreement but by the *lex arbitri* or the curial law which in this case was French law. This is because the seat of the arbitration between NHA and CWE was Paris, France and therefore a challenge to the validity of the award dated 30.06.2019 lay before the *"competent authority"* of the country under the law of which the award was made. The word *"law"* employed in Article V(1)(e) of the NY Convention refers to the *lex arbitri* or curial law *i.e.* the law of the seat of

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arbitration and not the proper law governing the Contract or the arbitration agreement. Since the seat of arbitration is admittedly Paris, France, it is French law which is to be considered as the law under which the award was made and not Pakistan law, which governs the substantive contract between the parties as well as the arbitration agreement embedded therein.

49. It is pertinent to quote the following extract from the Guide on the Convention on the Recognition and Enforcement of the Foreign Arbitral Awards (“UNCITRAL Guide”) published by the UNCITRAL Secretariat:-

> ***“23. Although the Convention does not provide guidance as to the meaning of the expression “under the law of which”, with very few exceptions, courts have generally rejected arguments that these terms referred to the law applicable to the merits. Courts have decided that it referred instead to the procedural law governing the arbitration, in the rare situation where the parties have selected a law to govern the arbitration that is different from the law of the place of arbitration. In Steel Corporation of the Philippines v. International Steel Services, a United State District Court held that this expression “refers to the theoretical case that on the basis of an agreement of the parties the award is governed by an arbitration law which is different from the arbitration law of the country in which the award was made”. In this case the place of the arbitration was Singapore, but the arbitration clause specified that “[t]he validity, performance and enforcement of this contract shall be governed by Philippine law”. The respondent contended that the award had been made under the law of the Philippines and that, because it had filed a petition to vacate the award in the Philippines courts, the award should not be recognized under article V(1)(e). The court held that “while it would be rare for the parties to choose a procedural law different from the arbitral situs, if they do, the selection must be clear”, which it considered was not the case here. In Karaha Bodas, the High Court of Hong Kong similarly stated that the reference to the law under which the award was made “undoubtedly refers to the law which governed the procedural law of the arbitration, not the substantive law of the contract.”***

50. In the case of Bharat Aluminum Co. Vs. Kaiser Aluminum Technical Service Inc. (AIR 2012 SC (Supp) 44), after referring to a catena of case law and treatises including Redfern and Hunter, the Indian Supreme Court held that the expression *“under the law”* in Article V(1)(e) of the NY Convention refers to the procedural law of the arbitration and not the law governing the arbitration agreement or the substantive contract containing the arbitration agreement. In this regard, paragraphs 147 and 148 of the said report are reproduced herein below:-

> ***“147. The expression “under the law” has also generated a great deal of controversy as to whether it applies to “the law governing the***

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substantive contract" or "the law governing the arbitration agreement" or limited only to the procedural laws of the country in which the award is made.

148. The consistent view of the international commentators seems to be that the "second alternative" refers to the procedural law of the arbitration rather than "law governing the arbitration agreement" or "underlying contract". This is even otherwise evident from the phrase "under the law, that award was made", which refers to the process of making the award (i.e., the arbitration proceeding), rather than to the formation or validity of the arbitration agreement."

51. In paragraph 157 of the said report, it was reiterated that the expression *"under the law"* refers only to the procedural law / curial law of the country in which the award was made and that it has no reference to the substantive law of the contract between the parties. The said conclusion was arrived at on the basis of the law laid down in the cases of (i) Karaha Bodas Co. LLC Vs. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (335 F 3d 357), (ii) Karaha Bodas Co. LLC (Cayman Islands) Vs. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara – Pertamina (Indonesia) (Yearbook Comm. Arb'n Vol.XXVIII (2003) Page 752), (iii) International Electric Corporation Vs. Bridas Sociedad Anonima Petroleva, Industrial Y Commercial (745 F Supp, 178 SDNY 1990), and (iv) International Standard Electric Corp. (US) Vs. Bridas Sociedad Anonima Petrolera (Argentina) ((1992) VII Ybk Comm Arb 639).

52. As mentioned above, the procedural law of the arbitration (as distinguished from the proper law of the Contract or law applicable to the arbitration agreement) is the law of the seat of arbitration unless the parties explicitly agree otherwise. It is very rare for the parties to agree to the curial / procedural law governing the arbitration proceedings to be the law of a country other than the law of the country where the arbitration is seated. But it is permissible for the parties to agree for the curial / procedural law governing the arbitration proceedings to be different from the law of the seat of arbitration. This is because Article V(1)(e) gives a party aggrieved by an award to seek its setting aside before *"a competent authority of the country in which, or under the law of which [the] award was made."* Only in those cases in which the parties agree for the curial / procedural law governing the arbitration proceedings to be different from the law of the seat of arbitration that

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the courts of the country under the law of which the proceedings were conducted will have the jurisdiction to suspend or set aside an award.

53. Had NHA and CWE agreed for the procedural law of the arbitration to be Pakistan law and not the law of the seat of arbitration, only then could it be argued that Courts in Pakistan, being the *"competent authority"* of the country *"under the law of which"* the award was made, have jurisdiction to set-aside or suspend the award. Even in such a situation, a Court other than the High Court would not be vested with the jurisdiction to adjudicate upon an application for the setting aside or suspending of an award. This is because Section 3(1) of the 2011 Act vests the High Court with exclusive jurisdiction to adjudicate and settle matters relating to or arising from the said Act. Since the 2011 Act accords statutory recognition to the provisions of the NY Convention, and since Article V(1)(e) thereof read with Section 7 of the said Act prevents the High Court from recognizing or enforcing an award which has been set-aside or suspended by a *"competent authority,"* an application seeking the setting aside or suspension of an award will *a fortiori* be a matter relating to or arising from the 2011 Act, and therefore within the exclusive jurisdictional domain of the High Court. Proceedings for the setting aside or suspension of a foreign arbitral award before a Court in Pakistan other than the High Court where the parties agree for the procedural law of arbitration to be Pakistan law would be *coram non judice* and a decision to set-aside or suspend such an award by a court other than the High Court would be a nullity.

54. The learned counsel for NHA had requested for these proceedings to be adjourned *sine die* until the decision of the District Court, Islamabad on the application under Sections 30 and 33 of the 1940 Act. The grant of such request would *ipso facto* amount to recognizing that the District Court, Islamabad had the jurisdiction to adjudicate upon the application for the setting aside of the award dated 30.06.2019. We have already held that since the procedural law of the arbitration between NHA and CWE was not Pakistan law, such an application was not maintainable before the District Court, Islamabad. In the case of Louis Dreyfus Commodities Suisse S.A. Vs. Acro Textile Mills Ltd. (PLD 2018 Lahore 597), the Hon'ble Lahore High Court held

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that the 2011 Act and the NY Convention do not countenance a two-tier adjudicative process, and that the policy and purpose of law will suffer grievously if such an interpretation was allowed to be weighed with the Courts. Additionally, in the case of Orient Power Co. (Private) Ltd. Vs. Sui Northern Gas Pipelines Ltd. (*supra*), the Hon'ble Lahore High Court held that it would be totally impractical to allow one party to seek enforcement of a foreign arbitral award before a High Court and the other party to file objections against the same award before a Civil Court. Therefore, there is no reason for the proceedings before this Court to be adjourned.

55. As NHA and CWE had admittedly not agreed for the procedural law of the arbitration to be Pakistan law, Courts in Pakistan, including the High Court, would not have jurisdiction to entertain or decide an application seeking the setting aside or suspension of the award dated 30.06.2019. This does not mean that the party aggrieved by the said award is left without a remedy. The procedural law of the arbitration between NHA and CWE was the law of the seat of arbitration. The law of the seat of arbitration is admittedly French law. Therefore, NHA could only apply for setting aside or suspension of the said award before French Courts, and cognizant of its entitlements under the law and the NY Convention, it did challenge the said award before the Court of Appeal, Paris albeit without success. Having failed before the Court of Appeal, Paris, NHA wanted to take a second shot at challenging the award dated 30.06.2019 before the District Court, Islamabad. Although we agree with the decision of the learned District Judge to dismiss NHA's application filed under Sections 30 and 33 of the 1940 Act on the ground that the High Court had exclusive jurisdiction in the matter pursuant to Section 3(1) of the 2011 Act, we feel the need to observe that in this case where the procedural law of the arbitration between NHA and CWE was to be the law of the seat of arbitration, it was neither the District Court, Islamabad nor this Court which could entertain the application for the setting aside of the said award.

Whether a foreign arbitral award cannot be enforced unless a decree in terms of the award is issued:-

56. An objection taken most vociferously by the learned counsel for NHA to CWE's application for the recognition and enforcement of the

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award dated 30.06.2019 was that the said application could not have been filed unless and until a decree had been issued by a Court of competent jurisdiction in terms of the arbitration award. He submitted that in Pakistan, it is only a decree that is executed and not an award which has not been made a rule of court.

57. There is no requirement under the provisions of either the 2011 Act or the NY Convention for a decree to be issued in terms of the award, either by a Court of the country in which the arbitration was conducted and the award was rendered or the Courts of the country where the award is sought to be enforced, before an application under Section 6 of the 2011 Act is filed.

58. In the realm of arbitration laws in Pakistan, Section 17 of the 1940 Act requires a Court, as defined in Section 2(c) of the said Act, to pronounce a judgment according to the award and upon judgment so pronounced, a decree is to follow. The 2011 Act is a self-contained code in which the provisions of the 1940 Act cannot be read into. The operation of Section 6 of the 2011 Act is not preconditioned on the issuance of a decree in terms of the foreign arbitral award. Although Section 3(3)(a) of the 2011 Act provides that in exercise of its jurisdiction, the Court shall follow the procedure as nearly as may be provided for in the C.P.C., this provision cannot be interpreted such as to thwart proceedings before this Court pursuant to Section 6 of the 2011 Act simply on the ground that a decree in terms of the foreign arbitral award had not been issued. Be that as it may, the Hon'ble Lahore High Court in the case of POSCO International Corporation Vs. Rikans International (PLD 2023 Lahore 116), while recognizing a foreign arbitral award, held that the award shall be executed as a decree of the said Court and ordered for a decree sheet to be drawn accordingly. Additionally, in the case of Louis Dreyfus Commodities Suisse S.A. Vs. Acro Textiles Mills Ltd. (PLD 2018 Lahore 597), the Hon'ble Lahore High Court, while recognizing a foreign arbitral award, granted a judgment in favour of the award holder in the amount represented in the award which was ordered to be executed as a decree of the said Court. We, however, do not think that there is any need to issue an order for the drawing up of a decree in terms of a foreign arbitral award since the provisions of the 2011 Act contain no such requirement. Indeed, the

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order through which recognition is accorded by the High Court to a foreign arbitral award is to be executed just like a decree is executed by a Court of civil causes.

59. The mere fact that in terms of Section 3(3)(a) of the 2011 Act, this Court is to follow the procedure *"as nearly as may be"* provided for in the C.P.C. does not mean that the application under Section 6 is to proceed strictly like a suit or that an order for the recognition of a foreign arbitral award is to be accompanied or followed by a decree. The expression *"as nearly as may be"* makes it permissible for this Court to deviate from the procedural requirements in the C.P.C. In the case of Mehmood-ul-Hassan Babar Khan Vs. Liaqat Ali Kareem (2002 YLR 2227), the Hon'ble Lahore High Court, while interpreting Rule 76(1) of the Punjab Local Government Elections Rules, 2000, which provided *inter alia* that every election petition shall be tried *"as nearly as may be"* in accordance with the procedure for the trial of suits under the C.P.C., held as follows:-

> ***"From bare perusal of the abovesaid rule it is crystal clear that the election petition has to be tried as nearly as may be in accordance with the procedure for the trial of suits under the Code of Civil Procedure, 1908. Therefore, the C.P.C. is not applicable with all four corners and is applicable 'as nearly as may be'. These wording shows that the Election Tribunal can adopt any procedure to conclude the election petition without following the Civil Procedure Code stricto senso. I am in agreement with the arguments of the learned counsel for respondents Nos.1 and 2 that in election petition the Procedure of Civil Code may be used preferably and Supreme Court had held that C.P.C. is not applicable in stricto senso. I am fortified by the view taken by this Court in case Cooperative Bank, Haripur v. Tahir Mehmood (1999 MLD 2074). The learned Counsel for respondents Nos.1 and 2 has referred to Bashir Ahmad v. District Judge, Malakand and others (1985 SCMR 533) to substantiate the said view.***
>
> ***From the perusal of these cases it has become crystal clear that C.P.C. though is applicable but is not strictly applicable and the Election Tribunal can decide the election petition by following C.P.C. as nearly as possible. Therefore, non-framing of issues is not an irregularity and contrary to the procedure to be adopted by the Election Tribunal."***

60. Additionally, in the case of Farooq Ahmed Sheikh Vs. Privatization Commission (2006 CLD 1130), the Hon'ble Lahore High Court held as follows:-

> ***"24. At this point we would like to say a few words about the procedure which we have adopted in deciding this appeal. Section 29 of the Privatization Commission Ordinance, 2000 requires the High Court to "follow the procedure, as nearly as possible as provided in the Code of Civil Procedure". It is important to bear in mind that the C.P.C. itself is not made applicable to suits filed under the Privatization***

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Commission Ordinance. Where the relevant facts are not in dispute, as in the present case, the Court merely has to apply the law to such facts and render its decision. There is no need, in such case, to call for evidence and to embark on a regular trial."

61. Had the Legislature required a decree to be passed in terms of a foreign arbitral award before the initiation of enforcement proceedings, it would have unequivocally provided for this in the 2011 Act. The Arbitration (Protocol and Convention) Act, 1937 ("**the 1937 Act**"**) was enacted to enforce the Protocol on Arbitration Clauses and the Convention on the Execution of Foreign Arbitral Awards commonly known as the Geneva Convention, 1927. The 1937 Act has been repealed by the 2011 Act. Section 6(1) of the 1937 Act provided that where the Court is satisfied that the foreign award is enforceable under the said Act, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award, whereas Section 6(2) of the said Act provided that upon the judgment so pronounced, a decree shall follow, and no appeal shall lie from such decree except insofar as the decree is in excess of or not in accordance with the award. Since unlike Section 6(2) of the 1937 Act, there is no provision in the 2011 Act which requires this Court to issue a decree while recognizing a foreign arbitral award, we find no force in the contention made on behalf of NHA that unless a decree is issued in terms of the award dated 30.06.2019, the same cannot be enforced.**

62. As long as a Court's edict is formally expressed in precise and deliberate language so as to facilitate its execution, it matters not whether it is enunciated through an order, judgment or a decree. An order of the High Court for the recognition of a foreign arbitral award is as good as a judgment in terms of such award. And once this is done, orders for the enforcement of such award would ensue. The long and short of it is that since the provisions of the 2011 Act do not require a decree to be issued in terms of the award but only for recognition to be accorded to the award, the enforcement of the award recognized by the Court cannot be pre-conditioned on a decree.

<u>Whether the foreign arbitral award could be challenged on merits before Courts in PAKISTAN</u>:-

63. Learned counsel for NHA had also submitted that the award dated 30.06.2019 was based on wrong findings of facts; biased appreciation

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of evidence; prejudicial misuse of evidentiary procedure; and unlawful application of law and provisions of the contract. It was also asserted that the arbitration proceedings had been delayed resulting in the imposition of interest due to no fault of NHA. In order to cause this Court to refuse recognition of the award dated 30.06.2019, NHA agitates the said grounds through the avenue of Article V(1)(d) of the NY Convention which provides that recognition and enforcement of the award can be refused where it is shown that the arbitral procedure adopted by the arbitrator was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place.

64. To amplify these grounds, NHA asserts that the Arbitrator had delayed the proceedings which showed his apparent and / or actual bias and which resulted in the enhancement of CWE's claims and the strengthening of its case. NHA is dissatisfied with the manner in which the Arbitrator dealt with the evidence adduced by the parties. In particular, NHA has voiced its grievance against the permission granted by the Arbitrator to CWE to adduce additional evidence; CWE's application for the issuance of a revised timetable for the production of expert witnesses being allowed by the Arbitrator; CWE's application for the amendment of its statement of claim being allowed by the Arbitrator. NHA, in its written arguments, has also re-agitated the grounds that already stand rejected by the Court of Appeal, Paris. NHA, in its written arguments, has also referred to the testimony of its witnesses and how it has been dealt with by the Arbitrator. The transcripts of the witnesses' cross-examination have also been reproduced in NHA's written arguments. NHA has accused the Arbitrator of allowing CWE to ask leading questions during the recording of CWE's witnesses' re-examination and also relying on hearsay evidence. NHA also accused the Arbitrator of misinterpreting clause 20.6 of the GCC. None of these grounds are the ones envisaged by Article V of the NY Convention for refusing to recognize and enforce an award.

65. The UNCITRAL Guide explains that courts allow arbitral tribunals significant discretion to establish procedural rules and control their implementation. In the case of Oberlandesgericht, a German Court

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found no breach of due process when an arbitral tribunal refused applications to submit evidence.[1] In the case of Century Indemnity Company et al. Vs. Axa Belgium (11 Civ. 7263 (JMF)), the United States District Court for the Southern District of New York found no breach of due process when an arbitral tribunal imposed the United States Federal Rules of Civil Procedure on an arbitration at the last minute. It was held that arbitrators have broad discretion to determine arbitral procedure and noted that they had, in that case, referred to the said Rules for guidance.

66. The preamble to the 2011 Act shows that the said Act was enacted because the legislature considered it expedient to provide for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to the NY Convention (to which Pakistan was a signatory) and matters connected therewith. Section 8 of the said Act provides that in the event of any inconsistency between the said Act and the NY Convention, the latter shall prevail to the extent of the inconsistency. This Section, in my view, not just incorporates by reference the provisions of the NY Convention as part of the said Act but also gives it primacy over the provisions of the said Act where there is inconsistency between the two. Where an application is filed before the High Court under Section 6 of the 2011 Act seeking the recognition and enforcement of a foreign arbitral award, such application can be refused only if the Court comes to the conclusion that the conditions for refusing to recognize and enforce an award set out in Article V of the NY Convention are satisfied. We say so because Section 7 of the 2011 Act provides that recognition and enforcement of a foreign arbitral award shall not be refused except in accordance with Article V of the NY Convention.

67. Redfern and Hunter (Sixth Edition) explains that the grounds for refusing recognition and enforcement of arbitral awards should be applied restrictively and the grounds for such refusal have to be construed narrowly. We have read and re-read NHA's reply to CWE's application under Section 6 of the 2011 Act as well as NHA's written arguments and have not found any reference to the terms of reference

[1] **Oberlandesgeriht [OLG], Celle, Germany, 31 May 2007, 8 Sch 06/06**

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(to which the parties had agreed) or any provision of the French law (being the curial law under which the award was made) which had been violated by the Arbitrator while proceeding with the reference.

68. As per the UNCITRAL Guide, Article V(1)(d) expressly affirms the supremacy of the parties' agreement concerning the composition of the Tribunal and arbitral procedure, and that the law of the place of arbitration should apply only failing such agreement; and the application of the law by a Tribunal goes to the actual merits of the dispute and therefore falls outside the scope of review at the recognition and enforcement stage.

69. The NY Convention does not permit any review of the merits of the award to which it applies. The grounds on which recognition and enforcement of a foreign arbitral award can be refused are exhaustively set out in Article V of the NY Convention. Even in cases where any of these grounds are satisfied, the High Court may nevertheless proceed to recognize and enforce the award. This is because the use of the word *"may"* in Articles V(1) and (2) makes the refusal to recognize and enforce an award permissive and not mandatory. It is by now well settled that the grounds on which the recognition and enforcement of an award can be refused under Article V of the NY Convention do not include an erroneous decision in law or in fact by the Arbitral Tribunal. This Court, while deciding an application under Section 6 of the 2011 Act, ought not to review the merits of the Arbitral Tribunal's decision. Reference in this regard may be made to the following case law:-

(i) In the case of Jess Smith and Sons Cotton LCC Vs. DS Industries (2019 CLD 23), the Hon'ble Lahore High Court *inter alia* held as follows:-

> ***"The scope of inquiry before the Court before whom the application for enforcement of the foreign award is pending is circumscribed by the condition for refusal set out in clause (a) to (e) of Article V. It is not open to a party seeking to resist a foreign award to assail the award on merits or because a mistake of fact or law has been committed by the Arbitral Tribunal."***

(ii) In the case of M/s Tradhol International SA Sociedad Unipersonal Vs. M/s Shakarganj Limited (2023 CLD 819), the Hon'ble Lahore High Court held that *"Courts should apply a narrow standard of review when considering applications for*

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recognition and enforcement of foreign arbitral awards," **and that this standard requires Courts to limit their review to procedural matters and to refrain from re-examining the substance of the dispute.**

(iii) In the case of Yusuf Ahmed Alghanim & Sons, W.LL Vs. Toys "R" Us, Inc. (XXIII Y.B. COM. ARB. 1058 (1998)), the Court of Appeals, Second Circuit, United States of America held that *"there is now considerable case law holding that, in an action to confirm an award rendered in, or under the law of, a foreign jurisdiction, the grounds for relief enumerated in Art.V of the Convention are the only grounds available for setting aside an arbitral award."*

70. Section 7(1) of the 1937 Act set out five conditions that had to be satisfied before a foreign award could be enforced, whereas Section 7(2) set out the circumstances where a foreign award could not be enforced. The Hon'ble High Court of Sindh in the case of Noble Chartering Inc. Vs. Awan Trading Co. (Pvt.) Ltd. (PLD 2012 Sindh 114), held that the Court, while deciding an application for the enforcement of a foreign arbitral award, does not sit as an appellate Court with the power to re-examine and re-appraise evidence and other material and would only confine itself to examining the final award within the parameters of the provisions of the 1937 Act. Additionally, the said Court in the case of A. Meredith Jones & Co. Vs. Usman Textile Mills Ltd. (2002 CLD 1121), while deciding an application filed under Section 5 of the 1937 Act for the enforcement of a foreign arbitral award, gave the following view regarding the scope of the proceedings:-

> ***"Once the award is made, it in fact amounts to a foreign judgment and the proceeding before this Court are merely for affirmation of award or otherwise. Only limited objections as to the validity and enforceability of the foreign award are permitted under section 7(2) of the Act of 1937 as discussed above. This Court does not sit over the Foreign Award as a Court of appeal nor will scrutinize or examine the quality of evidence before the Foreign Arbitrator, therefore, entire matter cannot be allowed to be reopened by calling for any additional evidence or documents not required under the law, this Court in fact acts like an executing Court and cannot go beyond the award, save as expressly provided for under section 7(2) of the Act of 1937, that too, for a limited, purpose to enable the defendant to question the award on merits before the competent forum in the country of origin."***

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71. Even under the 2011 Act this Court, while deciding an application under Section 6 of the said Act, does not sit as an appellate Court with the power to re-examine and re-appraise evidence. A foreign award is to be examined within the parameters set out in Article V of the NY Convention read with Section 7 of the 2011 Act.

72. The Arbitrator turned down NHA's counterclaim made on the ground that CWE had not completed the works on time. The Arbitrator did so for the reason that CWE had completed the works within the extended time for completion. It is not disputed that the Engineer had been appointed by NHA and that the Dispute Board was appointed with the consent of the parties. The Dispute Board had been appointed to hear and decide the disputes between the parties. The Arbitrator did not find NHA's effort to impugn the decisions taken by the Dispute Board to be supported by any evidence. The Arbitrator treated NHA's allegation that the Dispute Board incorrectly appraised the evidence or had made a mistake at law to be bare statements aimed at persuading the Arbitrator by words alone that the Dispute Board had acted incorrectly or that its decisions should be set-aside.

73. The allegation of bias made by NHA against the Arbitrator has already been spurned by the Court of Appeal, Paris. Since the judgment dated 14.09.2021 passed by the Court of Appeal, Paris had attained finality, NHA could not re-agitate the very same grounds that it had taken in its appeal before the Court of Appeal, Paris in the objections to CWE's application under Section 6 of the 2011 Act. Recently, the Privy Council in the case of Gol Linhas Aereas SA v Matlin Patterson Global Opportunities Partners (Cayman) II LP and others [2022] UKPC 21 held that where an annulment action at the seat of arbitration involves an independent or *de novo* determination of a question, the decision of a court of competent jurisdiction at the seat of arbitration shall give rise to an issue of estoppel on that question. Since before this Court NHA raised the same question regarding the Arbitrator's bias which it had raised before the Court of Appeal, Paris which had made a decision on the merits after hearing the contesting parties, NHA is estopped from raising the same question before this court in its effort to resist the recognition and enforcement of the final award dated 30.06.2019.

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74. As regards NHA's complaint that the Arbitrator had taken too long to render the award, suffice it to say that in international arbitrations it is commonplace for arbitral tribunals to render awards beyond the period initially fixed for such purpose. In the instant case, the terms of reference were originally framed by the Arbitrator on 06.09.2015, and the final award was rendered on 30.06.2019. It may also be mentioned that on 06.07.2016, the Arbitrator had rendered an interim award. The closing submissions were submitted to the Arbitrator by the contesting parties on 21.08.2018 and extensions in rendering the award had duly been granted by the Court of Arbitration of ICC under Article 30 of the ICC Rules. The period consumed in the arbitration proceedings, in our view, was not unduly long and even otherwise furnishes no ground for refusing to recognize or enforce the award under Article V(1)(d) of the NY Convention.

75. NHA has also expressed its anguish over the pre-award interest imposed on it. NHA has also complained about the accumulation of interest that it has to pay under the award to CWE due to the delay occasioned in the arbitration proceedings. It is not NHA's plea that it was willing to make payment against CWE's claims regarding costs associated with EOT-1 to EOT-3 on time or that it was due to the arbitration proceedings or the proceedings before this Court that it was unable to do so. Other than making a partial payment against CWE's claim regarding costs associated with EOT-1, NHA has at all material times resisted CWE's claims. Had NHA made payment to CWE when the claims were made, it would have averted the burden of the interest imposed on it. NHA knew or ought to have known that delay in making payment against CWE's claims would entail simple interest at the rate of 6% per annum in terms of clause 14.8 of the PCC. In the case of Shipowner Vs. Time Charterer, Oberlandesgericht (6 Sch 3/98, XXV Y.B. COM. ARB. 641 (2000)), the Hamburg Court of Appeal rejected a challenge to enforcement under article V(1)(c) made on the basis that the arbitral tribunal had awarded more interest than had been claimed, considering that an *"arbitral tribunal can in its discretion and on its own initiative award interest and compound interest for the time until the rendition of the award and for the time after the rendition of the award."*

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76. This Court has discerned from the record that NHA had resisted making payment to CWE in terms of the concurrent decisions of the Engineer, the Dispute Board and the Arbitrator regarding CWE's claim for costs associated with EOT-1 and the decision of the Arbitrator regarding CWE's claim for costs associated with EOT-2 and EOT-3. Had these payments been made on time, NHA would not have found itself in the unsavory situation of being burdened with interest at the rate of 6% per annum on the sum that it was liable to pay to CWE. As regards CWE's claims associated with EOT-2 and EOT-3, after the Dispute Board decided that the Engineer ought to determine these claims in the same manner as he had determined CWE's claims with respect to EOT-1, NHA did not issue any notice of dissatisfaction regarding the Dispute Board's said decision. At no material stage did the Engineer award any amount in CWE's favour regarding its claims associated with EOT-2 and EOT-3. This gave the Arbitrator the authority to determine these claims on the same parameters as the Engineer had determined CWE's claims associated with EOT-1. The record does not indicate NHA's inclination to make payments to CWE in accordance with the award. It tried to impeach the award before the Court of Appeal, Paris as well as the District Court, Islamabad but was not successful before either forum. We do recall that on one of the dates of the hearing, i.e., 16.12.2021, learned counsel for the parties had sought an adjournment to explore the avenue of an out of Court settlement but no settlement ever took place. NHA ought to realize that its policy of challenging with impunity before different *fora* every order for payment of money to contractors causes an enhancement in its liability which is ultimately to be met by the taxpayer. This case is one such unfortunate example.

77. Against CWE's claim for costs associated with EOT-1, the Dispute Board had awarded Rs.744,068,695/-. In partial implementation of the Dispute Board's said decision, NHA paid Rs.338,000,000/- to CWE. NHA, in its letter dated 28.11.2014, had required CWE to furnish a bank guarantee to secure the repayment of the said amount. CWE provided bank guarantee No.IGT087400000315, dated 06.01.2015 furnished by Habib Bank Limited for an amount of Rs.338,000,000/- in favour of NHA. It is an admitted position that no agreement had been executed between the parties to the effect that with the payment of

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Rs.338,000,000/- to CWE, NHA's liability to pay Rs.744,068,695/- stood discharged.

78. The Dispute Board's decision on CWE's claim for costs associated with EOT-1 was for a liquidated sum which had to be paid by NHA along with interest. The said decision was not conditional on any guarantee being furnished by CWE in favour of NHA. CWE may well have been driven by commercial considerations and the need to immediately ease its financial difficulties to furnish the bank guarantee required by NHA but this by no means did away with NHA's obligation to promptly give effect to the Dispute Board's decision by paying Rs.744,068,695/- to CWE.

79. On 06.07.2016, the Arbitrator rendered the interim award obligating NHA to pay CWE the difference between the sum paid by NHA in partial compliance with the Dispute Board's majority decision and the amount awarded by the Dispute Board in CWE's favour under that decision. This amount was calculated by the Arbitrator to be Rs.406,068,695/-. Furthermore, NHA was also held liable to pay simple interest at the rate of 6% per annum for the period commencing from 18.08.2012 on any unpaid amounts of the delay costs claim as decided by the Dispute Board in its decision on dispute No.1. In the interim award, the Arbitrator had turned down CWE's request for the release of the bank guarantee. Since the bank guarantee had not been furnished prior to the Dispute Board's decision dated 19.05.2014, the Arbitrator took the view that he would be stepping outside his remit if he were to allow the said request as an interim measure. He, however, expressed his hope that NHA would resist the temptation of encashing the bank guarantee *"as such an action would strike at the root of [the] Interim Award and would be disingenuous and contrary to the spirit of fairness."* Since the validity of the bank guarantee was extended by CWE from time to time, NHA did not feel the need to encash it.

80. CWE had filed a petition (C.S.No.118/2016) before this Court under Section 6 of the 2011 Act seeking the recognition and enforcement of the interim award dated 06.07.2016. Vide judgment dated 27.09.2023, this Court has recognized the said interim award and has initiated proceedings for its execution. Now that the Arbitrator has decided not to interfere with the concurrent decisions of the Engineer

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and the Dispute Board to award Rs.744,068,695/- against CWE's claim for costs associated with EOT-1, and since the award dated 30.06.2019 is being accorded recognition by this Court under Section 6 of the 2011 Act, there is no reason for the said guarantee to subsist.

Whether costs could be imposed on NHA by the District Court, Islamabad:-

81. NHA has taken an exception to the dismissal of its application under Sections 30 and 33 of the 1940 Act with costs by the District Court, Islamabad. On behalf of NHA, it was contended that Section 35-C of C.P.C. had exempted the government and its emanations from the imposition of costs. In the case of National Highway Authority Vs. Lilley International (Pvt.) Ltd. (2020 CLC 608), a similar contention made on behalf of NHA was rejected by the Division Bench of this Court in the following terms:-

> ***28. While dismissing this appeal with costs, we are mindful of Section 35-C C.P.C. as amended by the Costs of Litigation Act, 2017 which provides that the Government shall not be liable to costs under Sections 35, 35-A and 35-B C.P.C. Although by virtue of Rule 3(3) of the Rules of Business, 1973 read with item No.3 in paragraph 6 of Schedule-II thereof, the Communications Division has the administrative control over the National Highway Authority and by virtue of Rule 4(4) read with item No.16 of Schedule-II of the said Rules, the "National Highways and Pakistan Motorways Police Department" is an attached department of the Communications Division, this does not make the National Highway Authority an adjunct or alter ego of the said Division and/or the Government. The term "Government" has not been defined in the Civil Procedure Code, 1908. "Government" has been defined in Section 3(21) of the General Clauses Act, 1897 to include both the Federal Government and any Provincial Government. The National Highway Authority, being a statutory body, cannot be termed as the "Government". Since the appellant is a statutory body established under the provisions of the National Highway Act, 1991 and therefore does not fall within the meaning of "Government" it cannot be insulated from the imposition of costs under Section 35 C.P.C."***

82. The said judgment was upheld by the Hon'ble Supreme Court vide order dated 20.02.2023 passed in civil petition No.599/2020 titled "National Highway Authority Vs. Lilley International (Pvt.) Ltd." Recently, the Hon'ble Supreme Court in the case of National Highway Authority Vs. M/s Sambu Construction Co. Ltd. (2023 SCMR 1103), dismissed with punitive costs civil petition No.3676/2020 filed by NHA against the judgment dated 21.09.2020 passed by this Court in FAO No.16/2014. Therefore, the contention that costs could not have been imposed on NHA has no substance.

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Whether the suit for declaration etc. instituted by CWE before the District Court, Islamabad was maintainable:-

83. The final award was rendered on 30.06.2019 and CWE filed the application under Section 6 of the 2011 Act before this Court on 21.12.2019. In the award dated 30.06.2019, the Arbitrator had ordered *inter alia* that the bank guarantee be returned by NHA to CWE without conditions and that CWE and the bank providing the guarantee are released from all obligations thereunder.

84. On 18.12.2019, CWE filed a suit before the Court of the learned Civil Judge, Islamabad and along with it filed an application seeking an injunction to restrain NHA from encashing the bank guarantee. Vide order dated 11.01.2021, the learned Civil Court returned the plaint on the ground that the matter was beyond its pecuniary jurisdiction. Thereafter, on 19.01.2021, CWE filed the same civil suit before the District Court, Islamabad. CWE, in its suit, had prayed for a declaration that NHA is not entitled to withhold or encash the bank guarantee. CWE had also sought the return and cancellation of the said guarantee. In the suit, CWE had also pleaded as to how the Arbitrator had dealt with the issue of the guarantee.

85. The jurisdiction to grant such reliefs was exclusively with the High Court and not the District Court, Islamabad. The recognition of the award dated 30.06.2019 would have the effect of the order passed by the Arbitrator with respect to the guarantee being made a rule of the Court and enforceable against NHA. CWE could have, along with its application under Section 6 of the 2011 Act, filed an application under Order XXXIX, Rules 1 and 2 of C.P.C. and applied for the same very relief that it had sought in its application for injunction filed along with its civil suit. This is because Section 3(3)(a) of the 2011 Act provides that this Court, in exercise of its jurisdiction, shall have the powers vested in the Civil Court under the C.P.C., which includes the power to grant interim injunctions. Since Section 3(1) of the 2011 Act provides that notwithstanding anything contained in any other law for the time being in force, the Court shall exercise exclusive jurisdiction to adjudicate upon and settle matters related to or arising from the said Act, and since *"Court"* has been defined in Section 2(d) as the High Court and such other superior court in Pakistan as may be notified by the Federal

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Government in the official Gazette, the District Court, Islamabad did not commit any illegality by dismissing CWE's suit on the ground that the matter lay within the jurisdiction of the High Court.

86. As mentioned above, not a single assertion made by NHA in its written arguments for resisting the recognition and enforcement of the award dated 30.06.2019 qualifies as a valid ground under Article V(1)(d) of NY Convention to be termed as a transgression of the arbitral procedure agreed between the parties or provided for in the law of the seat of arbitration.

Relief:-

87. Since we do not find that any of the grounds envisaged by Article V of the NY Convention for refusing to enforce a foreign arbitral award to be satisfied in the instant case, the award dated 30.06.2019 is hereby accorded recognition, and the same shall be executed by this Court as though it is a decree. For the enforcement of the interim award dated 06.07.2016, which was recognized by this Court vide judgment dated 27.09.2023, separate execution proceedings are pending. In the event payment is not made by NHA to CWE in accordance with the said interim award read with the said judgment dated 27.09.2023 NHA, is directed to pay Rs.3,435,255,571.32, US Dollars 10,703.88, and GB Pounds 657,704.75 plus US Dollars 161,708.59 as costs of the arbitration, and Rs.2,160,000/- in respect of legal fees incurred in Pakistan along with interest at the rate of 6% per annum from the date of the award till the date of payment. The said amount shall be paid by the next date of hearing which is fixed for 30.10.2023.

88. Bank guarantee No.IGT087400000315, dated 06.01.2015 furnished by Habib Bank Limited at the instance of CWE for an amount of Rs.338,000,000/- in favour of NHA is hereby cancelled and CWE is discharged from all obligations under the said guarantee. The costs associated with keeping the said guarantee valid after the award dated 30.06.2019 shall also be borne by NHA. The order regarding the cancellation of the guarantee is being passed as a consequence of recognition having been accorded to the award dated 30.06.2019.

89. For the reasons given in paragraphs 53 to 55 above, the Appeal (FAO No.94/2021) filed by NHA is dismissed and so is the appeal (Regular First Appeal No.881/2021) filed by CWE. NHA shall bear CWE's

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costs incurred on Execution Application No.09/2019 and FAO No.94/2021.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 04/10/2023.

(JUDGE) **(JUDGE)**

Qamar Khan*

APPROVED FOR REPORTING

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