JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

FAO No. 07 of 2022

Capital Development Authority

Versus

Habib Rafique (Private) Limited

Appellant by:	M/s Kashif Ali Malik, Amir Latif Gill and Qaisar Abbas Gondal, Advocates. Mashooq Ali Sheikh, Director Works, CDA
Respondent by:	M/s Muhammad Masood Khan, Muhammad Zeeshan Younas and Syed Faisal Hussain Shah, Advocates.
Assisted by:	Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**25.03.2025**

INAAM AMEEN MINHAS, J:- Through the instant appeal, the appellant/Capital Development Authority **("appellant CDA")** impugns the Arbitration Award dated 20.08.2018 and the order and decree dated 18.12.2021 **("Impugned Order")** passed by the learned Civil Judge 1st Class Islamabad (West) **("Trial Court")**, whereby the objections filed by the appellant CDA were dismissed and the arbitration Award was made rule of the Court in terms of the findings of the learned Sole Arbitrator.

2. The facts, in brief, leading to the filing of the instant appeal are that pursuant to a Letter of Acceptance dated 09.05.2011, the respondent/Claimant i.e. M/s Habib Rafiq Pvt Ltd. **("respondent")** was awarded a contract by the appellant CDA for the construction of 104 family suites for members of the Parliament, including 500 servant quarters, at an agreed contract price of Rs.2,728,451,079/-, with a stipulated completion

period of 910 days commencing from 23.05.2011 and ending on 18.11.2013, as formalized by an agreement dated 23.10.2011. Following commencement of the work, various disputes arose between the parties, *inter alia*, withholding of mobilization advance, extension of time, delayed issuance of drawings, belated valuation of variations, unauthorized instructions, imposition of liquidated damages, termination of contract and encashment of guarantees, which culminated in the filing of a civil suit by the respondent and the grant of interim relief by the learned Trial Court. Subsequently, the parties executed a Deed of Settlement dated 22.05.2015, agreeing to refer eight specific disputes, as detailed in paragraphs B and H of the Settlement Deed, to arbitration under Clause 67.3 of the Conditions of Contract, with the appointment of Mr. Justice Nasir Aslam Zahid (Retired) as Sole Arbitrator by mutual consent. The arbitration proceedings were duly conducted, evidence was led and the learned Sole Arbitrator rendered his award on 20.08.2018, which was filed before the learned Trial Court on 11.09.2018. On the same day, notices were issued to the parties. The notice was served upon the appellant CDA on 12.09.2018, however, no objections were filed within the statutory period of 30 days as prescribed by Article 158 of the First Schedule to the Limitation Act, 1908; instead, objections were filed belatedly on 30.10.2018, accompanied by an application for condonation of delay on the ground of non-availability of essential documents. After the filing of the objections, the filling of the award remained the subject of extensive litigation up till the Honorable Supreme Court (it is appropriate to state that the award was initially filed before the learned Trial Court by the respondent's counsel rather than the arbitrator, leading to a series of applications and orders regarding the validity of filing, with the matter ultimately being regularized after the arbitrator's covering letter was placed on record). The Honourable Supreme Court upheld the order of the learned Trial Court dated 22.11.2019 vide order dated 25.03.2021 in Civil Petitions No. 3148 and 3149/2020. Therefore, the matter of filling of award was settled by the Honorable Supreme Court under the facts and circumstances of the case and the relevant law and subsequently

the calculation for limitation from the initial day of filling of Award was also settled.

3. The learned counsel for the appellant CDA contended that the learned sole arbitrator erred in permitting CW-1, Mr. Shahid Rafiq, to introduce a substantial financial cost claim of Rs.1,280,355,958/- at the evidence stage, which was not part of the original statement of claim filed on 01.04.2016 and that the tribunal, without proper verification, computation or establishing contractual entitlement, proceeded to award Rs.640,177,979/- (plus Rs.3 million as costs) on the basis of this unpleaded claim. He further contended that the arbitrator improperly rejected the appellant CDA's counter-claim on technical grounds, holding it had not passed through the requisite contractual stages and failed to address the merits of disputes 7 and 8, despite the existence of engineer's decisions on record. Procedurally, the learned counsel for the appellant **CDA** highlighted that the award was initially filed before the learned Trial Court by the respondent's counsel rather than the arbitrator, leading to a series of applications and orders regarding the validity of filing of the award, with the matter ultimately being regularized after the arbitrator's covering letter was placed on record. The learned counsel maintains that the Civil Court, in its Impugned Order, dismissed the appellant's objections solely on the ground of limitation without examining the award for patent illegality or inconsistency with the contract, contrary to settled law, which requires judicial scrutiny of arbitral awards even in the absence of timely objections. It was further submitted that the sole arbitrator exceeded its jurisdiction by entertaining and awarding a claim not referred to arbitration under the settlement deed, failed to provide adequate reasoning or basis for the quantum awarded and disregarded the engineer's findings and the appellant's evidence, thereby rendering the award unsustainable in law.

4. Conversely, the learned counsel for the respondent contended that the objections filed by the appellant CDA against the arbitral award are not only time-barred under Article 158 of the Limitation Act, 1908 but also lack substantive merit; that the statutory period for filing objections is mandatory

and cannot be extended by the Court, as consistently held in authoritative precedents and that the appellant's application for condonation of delay fails to establish any sufficient cause, particularly as the documents allegedly unavailable were always within the appellant's possession. On the merits, the learned counsel for the respondent maintained that the award was rendered after due consideration of the evidence and in accordance with the contract and the specific reference made pursuant to the settlement deed, which limited the scope of arbitration to eight defined disputes, thereby excluding the appellant's counter-claim, which was neither referred to the engineer nor included in the reference. He further submitted that the enhancement of the financial claim during the evidence stage was permissible, as it was neither objected to during arbitration nor precluded by law and that the arbitrator's assessment of compensation and overheads was based on the evidence and contractual provisions, with the arbitrator acting as the final judge of facts and law. He emphasized that the Court, in reviewing an arbitral award, is not to act as an appellate forum or reappraise evidence but is confined to examining whether there is an error apparent on the face of the award or misconduct, neither of which is present in this case. He also pointed out that the matter of the filling of Award has attained finality up to the Honourable Supreme Court and that the learned Trial Court was correct in making the award rule of the Court, as no patent illegality or jurisdictional error has been demonstrated by the appellant CDA.

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

6. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraph No.2 above and need not be recapitulated.

7. While considering the background of the appeal and the grounds raised by the parties, it reveals that following significant questions need adjudication by this Court:-

(i) Whether the objections filed against the arbitration Award were rightly dismissed as time-barred without a substantive examination of the award itself?

(ii) Whether the grounds raised for setting aside the Award in appeal merit consideration despite the dismissal of objections on the ground of limitation?

8. Therefore, this Court will first examine, whether the objections filed against the arbitral award were rightly dismissed as time-barred without a substantive examination of the award itself. The statutory framework applicable for adjudicating this question is the Arbitration Act, 1940 **("The 1940 Act"),** particularly section 17, which is reproduced hereunder for ease:-

> *"**17. Judgment in terms of award.***
> *Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."*

9. The above referred section 17 imposes a direct and mandatory obligation upon the Court once an Award is submitted for making it a rule of Court. The statutory language does not envisage the Court acting as a mere conduit for converting the Award into a decree rather, the Court is required to perform an active judicial function. It mandates that the Court must examine the Award to determine whether there exists any ground for remitting it back to the arbitrator for reconsideration or for setting it aside. Only if the Court finds no legal flaw or procedural irregularity in the award, and after the expiry of the prescribed period for filing objections or upon lawful rejection of any objections filed, may the Court pronounce judgment in accordance with the award, thereby rendering it executable as a decree of the Court. Importantly, the Court's duty of judicial scrutiny is not contingent upon the filing of objections by either party, nor it is negated by the expiry of the limitation period for such objections. Even in the absence of objections or where objections are barred by time, the court remains under a legal obligation to examine the award on its own motion. The absence of

objections does not absolve the Court from its responsibility to ensure that the award is not tainted by any apparent illegality, procedural irregularity, or violation of law. While deciding the objections filed to the Award, the learned Trial Court failed to appreciate the true import of the statutory mandate under Section 17 of the 1940 Act.

10. In the present case, the record demonstrates that the learned Trial Court failed to fulfill its legal obligation under Section 17 of the 1940 Act. The learned Trial Court made the Award rule of the Court solely on the ground that the objections filed by the appellant CDA were time-barred. The relevant portion of the Impugned Order is reproduced hereunder:-

> "*9. Learned counsel for objector/CDA argued that the court has to judge the matter on legal parameters even if the objections are not taken by the party. This court agrees with the submissions of learned counsel for the CDA but the fact remains that in the case in hand the submission of learned counsel for CDA/objector does not stand in consonance with available record because in this case objections have admittedly been filed by CDA. As such, it was necessary to have filed the objection petition within limitation period because the principle of law says that when a thing is required to be done in a certain way it is to be done in a certain way it is to be done in that way and in none other.*
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> *10. It further evinces from the record that this application for condonation of delay in Para No.2 thereof mentions that delay was caused due to unavailability of certain essential documents which were integral to current objection petition. This application, as such, does not specify which were those documents nor any such document is annexed with the objection petition/application for condonation of delay. Therefore, mere evasive submission in this regard without any specific supporting document cannot come to the rescue of the objector/CDA. The very filing of the application for condonation of delay, as a necessary corollary, contravenes the very argument of learned counsel for CDA that issue of Limitation is to be kept out of consideration. As such, this court cannot delve deep into the merits of the case because this court while taking the matter in the capacity of trial court cannot exercise of the powers of appellate court. Even otherwise, taking up the merits of the case and giving finding thereupon would be like taking the second step before taking the first i.e crossing the threshold of limitation under Article 158 of First*

> *Schedule of Limitation Act 1908. The matter must stop short here because the objector has failed to satisfy this court qua successfully crossing the bar of said Article 158 of First Schedule of Limitation Act 1908."*

11. This approach is manifestly erroneous and contrary to the statutory framework, which confers a judicial, not ministerial, responsibility upon the Court. The Court's role under Section 17 of the 1940 Act is not that of a mere post office, mechanically endorsing the Award upon the expiry of the limitation period for objections rather the Court must exercise its independent judicial mind to ensure that the Award is free from any patent illegality, material irregularity or jurisdictional error. Even where no objections are filed, or objections are barred by limitation, the Court is still obligated to determine whether the award is legally sustainable, valid and free from manifest defects. In the instant matter, the record clearly reveals that the learned Trial Court did not undertake the essential judicial scrutiny required by law. It failed to assess the contents, fairness or legality of the award and did not determine whether the Award was within the bounds of the arbitrator's authority or in violation of any provision of law. Instead, the Court dismissed the objections on the ground of limitation and proceeded to make the Award rule of the Court without applying the standards mandated by law. This failure constitutes a miscarriage of justice and a deviation from the fundamental principles of due process and procedural fairness. For example, had the arbitrator awarded relief exceeding the contractual limits or involving a question beyond the scope of reference, such defect would have remained unaddressed due to the Court's inaction.

12. It is a settled principle in arbitration that while making an Award rule of the Court, in case parties have not filed objections, the Court is not supposed to act in a mechanical manner, like a post office but must subject the award to its judicial scrutiny. This however does not mean that a Court will sit in appeal over the Award and try to fish or dig out the latent errors in the proceedings or the Award. It only means that even in the absence of objections or time barred objections, the Award may be set aside and not made a rule of the Court, if it is a nullity or is *prima facie* illegal or for any

other reason, not fit to be maintained; or suffers from an invalidity, which is self-evident or apparent on the face of the record. The Court's role is thus not purely procedural rather it involves a measure of judicial scrutiny to ensure that the Award does not suffer from any fundamental legal infirmities. This requirement is not merely a matter of judicial prudence but is rooted in statutory mandate. The Court's obligation to examine the legality and enforceability of the Award before making it a rule of the Court is inherent in the statutory scheme governing arbitral proceedings.

13. The grounds / parameters for setting aside of an arbitration Award have been laid down by the Honourable Supreme Court in the case of ***Gerry's International (Pvt.) Ltd vs. Aeroflot Russian International Airline, (2018 SCMR 662),*** which also includes this principle of judicial scrutiny**.** The relevant portion is reproduced hereunder:-

> *"8. The principles which emerge from the analysis of above case-law can be summarized as under:-*
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> *(1) When a claim or matters in dispute are referred to an arbitrator, he is the sole and final Judge of all questions, both of law and of fact.*
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> *(2) The arbitrator alone is the judge of the quality as well as the quantity of evidence.*
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> *(3) The very incorporation of section 26-A of the Arbitration Act requiring the arbitrator to furnish reasons for his finding was to enable the Court to examine that the reasons are not inconsistent and contradictory to the material on the record. Although mere brevity of reasons shall not be ground for interference in the award by the Court.*
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> *(4) A dispute, the determination of which turns on the true construction of the contract, would be a dispute, under or arising out of or concerning the contract. Such dispute would fall within the arbitration clause.*
>
> *(5) The test is whether recourse to the contract, by which the parties are bound, is necessary for the purpose of determining*

the matter in dispute between them. If such recourse to the contract is necessary, then the matter must come within the scope of the arbitrator's jurisdiction.

(6) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract.

(7) The authority of an arbitrator is derived from the contract and is governed by the Arbitration Act. A deliberate departure or conscious disregard of the contract not only manifests a disregard of his authority or misconduct on his part but it may tantamount to mala fide action and vitiate the award.

(8) If no specific question of law is referred, the decision of the arbitrator on that question is not final however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally.

(9) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. An arbitrator acting beyond his jurisdiction is a different ground from an error apparent on the face of the award.

(10) The Court cannot review the award, nor entertain any question as to whether the arbitrators decided properly or not in point of law or otherwise.

(11) It is not open to the Court to re-examine and reappraise the evidence considered by the arbitrator to hold that the conclusion reached by the arbitrator is wrong.

(12) Where two views are possible, the Court cannot interfere with the award by adopting its own interpretation.

(13) Reasonableness of an award is not a matter for the Court to consider unless the award is preposterous or absurd.

(14) An award is not invalid if by a process of reasoning it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion.

(15) The only exceptions to the above rule are those cases where the award is the result of corruption or fraud, and where the question of law necessarily arises on the face of the award, which one can say is erroneous.

(16) It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion.

(17) It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award.

(18) The Court does not sit in appeal over the award and should not try to fish or dig out the latent errors in the proceedings or the award. It can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is incorrect.

(19) The Court can set aside the award if there is any error, factual or legal, which floats on the surface of the award or the record.

(20) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The arbitrator is a tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not do so he can be set right by the Court provided the error committed by him appears on the face of the award.

(21) There are two different and distinct grounds; one is the error apparent on the face of the award, and the other is that the arbitrator exceeded his jurisdiction. In the latter case, the Courts can look into the arbitration agreement but in the former, it cannot, unless the agreement was incorporated or recited in the award.

(22) An error in law on the face of the award means that one can find in the award some legal proposition which is the basis of the award and which you can then say is erroneous.

(23) A contract is not frustrated merely because the circumstances in which the contract was made are altered.

(24) Even in the absence of objections, the Award may be set aside and not made a Rule of the Court if it is a nullity or is prima facie illegal or for any other reason, not fit to be maintained; or suffers from an invalidity which is self-evident or apparent on the face of the record. The adjudicatory process is limited to the aforesaid extent only.

(25) While making an award rule of the Court, in case parties have not filed objections, the Court is not supposed to act in a mechanical manner, like a post office but must subject the award to its judicial scrutiny.

(26) Though it is not possible to give an exhaustive definition as to what may amount to misconduct, it is not misconduct on the part of the arbitrator to come to an erroneous decision, whether his error is one of fact or law and whether or not his findings of fact are supported by evidence.

(27) Misconduct is of two types: "legal misconduct" and "moral misconduct". Legal misconduct means misconduct in the judicial sense of the word, for example, some honest, though erroneous, breach of duty causing miscarriage of justice; failure to perform the essential duties which are cast on an arbitrator; and any irregularity of action which is not consistent with general principles of equity and good conscience. Regarding moral misconduct; it is essential that there must be lack of good faith, and the arbitrator must be shown to be neither disinterested nor impartial, and proved to have acted without scrupulous regard for the ends of justice.

(28) The arbitrator is said to have misconducted himself in not deciding a specific objection raised by a party regarding the legality of extra claim of the other party.

(29) some of the examples of the term "misconduct" are:

(i) if the arbitrator or umpire fails to decide all the matters which were referred to him;

(ii) if by his award the arbitrator or umpire purports to decide matters which have not in fact been included in the agreement or reference;

(iii) if the award is inconsistent, or is uncertain or ambiguous; or even if there is some mistake of fact, although in that case the mistake must be either admitted or at least clear beyond any reasonable doubt; and

(iv) if there has been irregularity in the proceedings.

(30) Misconduct is not akin to fraud, but it means neglect of duties and responsibilities of the Arbitrator."

14. This judicial obligation is further reinforced by the authoritative pronouncement of the Honourable Supreme Court in the case of ***A. Qutubuddin Khan vs. Chec Millwala Dredging Co. (Pvt.) Limited, (2014 SCMR 1268)*** , in which the judgment of the Division Bench of the High Court was upheld, whereby the case was remanded to Single Judge of High Court since the Single Judge, after concluding that objections filed by respondent-company were time barred, without conducting a judicial exercise of examining the Award qua its validity, made the same rule of the Court. The Honorable Supreme Court upheld the Division Bench's direction that the Single Judge in post-remand proceedings should decide whether to make the Award rule of the Court after examining as to whether the said award was a nullity or *prima facie* illegal or was not fit to be maintained or suffered from any other invalidity, which was self-evident or apparent on the face of the record. It is pertinent to reproduce the relevant portions:-

"10. In view of the above, the obvious question that floats to the surface is that in the eventuality that an Award was filed in the Court and objections thereto are either not filed or if filed found to be barred by limitation, whether the Court is to mechanically make such an Award, the Rule of the Court. The powers vested in the Court to make an Award the Rule of the Court are obviously judicial and not ministerial and it is now settled law that the absence of objections to such an Award does not absolve the Court of its responsibility to examine the same. In the instant case, the learned Single Judge, after concluding that the objections filed by the respondent were time

barred, without conducting a judicial exercise of examining the Award qua its validity, made the same the Rule of the Court. Hence, its order in this behalf dated 5-8-2000 was not sustainable in law and was rightly set aside by way of the impugned judgment and the case remanded.

11. However, the real controversy inter se the parties pertains to the scope of the exercise to be undertaken by the learned Single Judge in post-remand proceedings. The scope of such exercise has been determined by the learned Division Bench of the High Court by relying upon the judgment of this Court, reported as Muhammad Tayab (supra), which has been quoted in extenso. However, for ease of reference, the operative part of the said judgment is reproduced herein below:--

> *"(5) It is contended before us on behalf of the appellant that it was duty of the Court to have examined the award regardless of the fact whether objections were filed or not as empowered under sections 17 and 30 of the Arbitration Act to find out whether the award was nullity because of invalidity of arbitration agreement or for any other reason. The Court could also have set aside the award in case of sole arbitrator and particularly when other party had no prior notice. In support of the contentions reliance is placed on the case of Messrs Awan Industries Ltd. v. The Executive Engineer, Lined Channel Division (1992 SCMR 65).*
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> *(6) In the circumstances we are of the view that learned Single Judge in the High Court should not have refused to go into the merits of the case on the ground that objections were filed beyond stipulated time particularly in view of the plea taken by the appellant that he was not served with notice in the arbitration proceedings. We, therefore, set aside the impugned judgment in High Court appeal and also impugned order of the learned Single Judge making award rule of the Court and remand the case to learned Single Judge in the High Court to examine the record of the arbitration proceedings to find out whether the plea taken by the appellant about non-service of notice is justified or not. This seemingly can be done without going into the question of limitation as is observed in the ruling mentioned above. The Appeal is allowed in the terms stated above."*

The aforesaid judgment proceeds on the dictum of the earlier judgment referred to therein i.e. Messrs Awan Industries Ltd. v. The Executive Engineer, Lined Channel Division (1992 SCMR 65), wherein the fact that the claim raised was barred by limitation was taken into account irrespective of the fact that no objection in this behalf had been taken. The Court observed as follows:--

> *"17. But, in his submissions, he ignored the provisions of section 17 of the Arbitration Act, which imposes a duty on Courts to see that there is no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award. This can be done by the Court suo motu, apart from the application which a party may make for either remission of the award or its reversal. Where, therefore, an award is found to be nullity because of the invalidity of the arbitration agreement or, for any other reason, or the award is prima facie illegal and not fit to be maintained, the Court has power under section 17 of the Act to set it aside without waiting for an objection to award being filed or without considering any application for setting it aside, if there be any, and irrespective of the question whether or not any objection to the award was filed or whether the objection, if filed, was not within time. In such cases section 30, clause (c) of the Act is also attracted. ...*
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> *(18) .....*
> *(19) .....*
> *(20) .....*
> *(21) .....*
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> *(22) There is yet another objection which is apparent on the face of the record. ... it is duty of the Court to see that the claim is within limitation period. Accordingly, it was also the duty of the Arbitrator to see that the claim before it was within the period of limitation, notwithstanding whether such a plea was taken or not. ..."*

12. What emerges from the examination of the above quoted two judgments of this Court is that, even in the absence of objections, the Award may be set aside and not made a Rule of the Court if its nullity or is prima facie illegal, or for any other reason not fit to be maintained; or suffers from an invalidity which is self-evident or apparent on the face of the record.

The adjudicatory process is limited to the aforesaid extent only."

15. The same view has been adopted by the Division Bench of this High Court in the case of ***Federal Government Employees Housing Foundation vs. Javaid Iqbal and others, (2020 YLR 2306).*** It is paramount to reproduce the relevant portion:-

"It is well settled that the Court, for the purpose of making the award rule of the Court, was not required to act mechanically as if it had to affix its stamp of approval on the award without applying its mind and determining its legality, maintainability and the question of its executability, even if no objections were filed. Reference in this regard may be made to the law laid down in the cases of Haji Abdul Rashid Arif v. Aziz Rehman (2010 CLC 1014) and National Logistic Cell (NLC) through General Manager Administration (2010 YLR 1448). In the case of Rashida Begum v. Chaudhry Muhammad Anwar (PLD 2003 Lahore 522), it was held that the Court, while considering whether an award should be made a Rule of the Court, is not supposed to remain dormant and play the role of a post office by affixing the judicial stamp on the award."

16. Similarly, this statutory requirement and principle was again adopted by Division Bench of this High Court in the case of ***Capital Development Authority through its Chairman vs. Messrs Signage Security Systems (Pvt.) Ltd. through Accounts and Administrative Manager, (2021 YLR 194).*** The relevant portion is reproduced below:-

"18. There is no cavil with the preposition that a Court while scrutinizing the award while hearing objections against the same does not sit as a Court of appeal. It is nonetheless obligatory upon the Court to examine the award in order to determine whether it suffers from any invalidity or inconsistency with the provisions of the contract.

19. In the case of Pakistan Steel Mills Corporation Limited v. Progressive Engineers Alliance Limited (2009 CLC 100), the Division Bench of the Hon'ble High Court of Sindh held that when an award comes before the Court for making a rule of Court, the Court can do the following things:-

(i) In exercise of powers under section 15 of the Arbitration Act modify or correct an award if a part of the award is upon a matter not referred and can be separated or containing any obvious error, which can be amended without affecting such decision or contains a clerical mistake or an error arising from an accidental slip or omission.

(ii) Remit the award to Arbitrator or umpire for reconsideration upon such terms as it thinks fit.

(iii) In exercise of power under section 17 of Arbitration Act, Court to see that there was no cause to remit award or to set aside the award even if no application to set aside the award is filed or an application to set aside the award is refused, proceed to pronounce the judgment according to the award.

(iv) In exercise of power under section 26(A), for want of reasons for award insufficient, remit the award to the arbitration or umpire to give reasons in sufficient details within time fixed by the Court.

(v) After hearing objections filed under sections 30 and 33 of Arbitration Act, if any, set aside the award if Arbitrator or umpire has misconducted."

17. Since the above said two judgments were authored by the Honourable Judges, who rose to grace the Honourable Supreme Court, hence the same deserves reverence and respect.

18. In the case at hand, the learned Trial Court made the Award rule of Court simply because the appellant CDA had filed time barred objections to the Award. The Impugned Order does not show any application of judicious mind to the contents of the Award so as to determine whether any provision of law was violated or whether there was any reason to remit the Award for reconsideration. This failure on the part of the learned Trial Court renders the Impugned order unlawful and against the law laid down by the Superior Courts in the following cases:-

(i) In case of ***Pakistan Through General Manager, Pakistan Railway v. Messrs Q.M.R. Expert Consultants (PLD 1990 SC 800),*** it was held as follows:-

*"10. It was also urged by Mr.Fazal-i-Hussain that after the passing of the judgment by the High Court, the learned Civil Judge acted in haste inasmuch as he made the award rule of the Court within 10 days and then issued attachment order attaching the Head Office of the Railways at Lahore. As the above point is not in issue 'before us, we would not like to comment upon the same. However, we may observe that under section 17 of the Act, it is the duty of the Court to examine, whether there was any reason for modifying of the award or for setting aside the award notwithstanding that an affected party may have failed to file the objections to the award on account of the expiry of the limitation period or the parties to the arbitration proceedings may be in collusion and because of that, they may not file any objection to a collusive award. If any authority is needed, reference may be made to the case of Union of India v. Pratap Chandra Biswas AIR 1964 Assam and Nagaland 141, in which a Division Bench of the above High Court held that there is nothing in section 39 or any other provision of the Act to show that the Court can refuse to set aside an award only on an application made by a party but from a bare reading of section 17, it is clear that even the Court, can suo motu set aside an award. Reliance was placed on the case of Chhabba Lal v. Kallu Lal and others AIR (33) 1946 PC 72. We are inclined to hold that in a fit case, the Court may on its own under section 17 of the Act modify or set aside the award if the facts and dictates of justice so demand." (**Emphasis added)***

(ii) In the case of ***Ameen General Enterprises v. Azad Jammu and Kashmir Government (PLD 2010 SC (AJ&K) 1),*** it was held as follows:-

"It may also be mentioned here that even if the objections are not filed the Court under the provisions of the Arbitration Act is bound to determine the validity or otherwise of the award on facts and impartial conduct of the Arbitrator subject to the legal obligation to protect the award unless the same suffers from an apparent illegality or any other legal flaw floating upon the very surface of the award."

(iii) In the case of ***National Logistic Cell (NLC) v. Hakas (Pvt.) Ltd. (2010 YLR 1448),*** the Civil Court had made the award a rule of Court only because no objections to the Award had been filed. The Division Bench of this Court set- aside the order and decree passed by the Civil Court. In paragraph 8 of the said judgment it was held as follows:-

> *"8. The learned Civil Judge before making the award rule of the Court, was to apply his mind whether there is no cause to remit the award or any of the matters referred to arbitration for consideration or whether the award is liable to be set aside. Without doing that exercise, the learned Civil Judge made the award rule of the Court on the only ground that no application for setting aside the award has been filed."*

(iv) In the case of ***Rashida Begum v. Ch. Muhammad Anwar (PLD 2003 Lahore 522),*** it was held as follows:-

> *"7. There is another important aspect of the matter, that even if it is assumed that no objections were filed by the appellant; yet the Court below while considering the question, if the award should be made rule of the Court or otherwise, was not supposed to remain dormant and to play the role of a post office, by affixing the judicial stamp on the award. The Court has ample suo motu power and in exercise thereof, is duty bound to see if the award which is to be made rule of the Court, by the Court does not violate any provision of law; the rules of justice and/or exchequer, even if the parties have consented that the award be made rule of the Court."*

18. Section 17 of the 1940 Act, casts a positive duty upon the Court to independently examine whether there exists any cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award. This duty is not contingent upon the filing of objections within limitation but is inherent in the judicial function prescribed by the statute. Whereas in the present case the learned Trial Court while relying on the question of time barred objections failed to discharge its statutory duty and hastily proceeded to make the Award rule of the Court, thereby compromising the sanctity of the judicial process envisaged under Section 17 of the 1940 Act. It is not open to the Court to bypass the scrutiny as established in Section 17 of the 1940 Act on the ground of time-barred objections. No derogation can be made from this duty, as it forms a foundational safeguard within the arbitration process to prevent the enforcement of awards that are patently illegal, unenforceable or contrary to law. The Court's power to scrutinize an arbitral Award is limited to patent illegality or error apparent on the face of the Award and does not extend to

reappraisal of evidence or merits. The arbitrator is the final judge of facts and law and his findings are to be respected unless there is a manifest error or misconduct as held in ***Mian Corporation through Managing Partner vs. Messrs Lever Brothers of Pakistan Ltd, through General Sales Manager (PLD 2006 SC 169),*** and ***Pakistan Steel Mills Corporation Karachi vs. M/s Mustafa Sons (Pvt.) Ltd. (PLD 2003 SC 301).*** Therefore the answer to the first question whether the objections filed against the Award were rightly dismissed as time-barred without a substantive examination of the award itself is in the negative.

19. Given this clear legal defect, there is no need to address the other legal question raised in the instant appeal.

20. In view of the above discussion, the instant appeal is ***disposed of***. The Impugned Order and Decree dated 18.12.2021 is **set-aside** and the matter is remanded to the learned Trial Court, which shall decide the matter afresh in accordance with the law.

21. Due to protracted history of litigation between the parties, the learned Trial Court is directed to decide the matter within a period of two (02) months from the date of receipt of copy of this judgment under intimation to this Court.

(KHADIM HUSSAIN SOOMRO)
JUDGE

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 23.06.2025

(MUHAMMAD AZAM KHAN)
JUDGE

(KHADIM HUSSAIN SOOMRO)
JUDGE

APPROVED FOR REPORTING.

M. YAHYA KHAN NIAZI, L.C