JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

REGULAR FIRST APPEAL NO. 192 OF 2015

NATIONAL HIGHWAY AUTHORITY

VS

M/S KINGCRETE BUILDERS & ANOTHER

Appellant by : Mr. Abid Hussain Ranjha Advocate, for the Appellant.

Respondents by : Mr. Muhammad Arshad Majeed Malik Advocate, for respondent No.1.

Date of hearing : 18.03.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant appeal, National Highway Authority **(appellant)** has assailed the Order and Decree dated 25.07.2015 **("Impugned Order and Decree")** passed by the learned Civil Judge 1st Class, Islamabad-West **("Trial Court")** whereby the petition filed by the respondent No.2 for filing of the Award in the Court and making the same as rule of the Court, was allowed.

2. The brief facts of the case in hand are that **"Brig. (R) Shadab Ali Khan, Sole Arbitrator" (hereinafter referred to "respondent No.2")** filed a petition before the learned Civil Court for filing of the Award in the Court and making the same as Rule of the Court wherein it is contended that the bids for construction of Baba Farid Bridge on river Sutlej at Dhakputun Connecting Pakpatun and Minchanabad were invited by appellant authority i.e. National Highway Authority **(hereinafter referred to "NHA")** on 26.12.2006. M/S Kingcrete Builders **(hereinafter referred to "respondent No.1")** was declared the eligible bidder. The letter of acceptance was issued to the contractor on 07.11.2007 and contract agreement was signed on 11.01.2008 and the date of commencement of work fixed by the engineer was 01.02.2008. On 24.12.2008, respondent No.2 received a request from the appellant authority to conduct arbitration between appellant authority and respondent No.1 in the capacity of sole arbitrator which was accepted on 26.12.2009. After fulfilling the procedure and arbitration hearing, the first and final Award was published on 13th April, 2010 and

the same was communicated to the appellant authority and respondent No.1/parties accordingly. The claimant/respondent No.1 requested the sole arbitrator to file the Award to be made Rule of Court which was done so by the respondent No.2/sole arbitrator before this Court. The appellant authority filed objections as per law whereupon this Court passed judgment dated 28.03.2014 with following observations:-

> *"In view of what has gone above, the objections filed by respondent No.2 are accepted. Resultantly, the award submitted by the sole arbitrator is set-aside and the same is remitted to the arbitrator with the direction that he shall record the oral evidence, if any of the parties is intended to produce the same. He shall also provide opportunity to the parties to produce further documentary evidence and then will announce the award within a period of six months after giving reasons for the award in sufficient detail as required by the Arbitration Act, 1940. Copy of this order be also sent to the arbitrator."*

3. The respondent No.2/arbitrator resumed its proceedings as per the orders of this Court for recording further oral and documentary evidence by both parties. The first sitting took place on 14th July, 2014, wherein both the parties sought time to submit their additional evidence and further documentary evidence. The next sitting took place on 26th August, 2014 and both parties submitted their respective evidence in form of an affidavit along with documents in written form. They also submitted additional arguments in writing and the matter was fixed for final arguments on 05.09.2014. The Award was finally announced on 18.09.2014 and the copies were sent to the appellant authority and respondent No.1 accordingly. The respondent No.1 in pursuance of Section 14(2) of the Arbitration Act, 1940 requested respondent No.2 to file the Award in the Court whereupon he filed the same for making it Rule of Court. Hence, this petition.

4. The learned Civil Court issued notices to the appellant as well as respondent No.1, whereupon the appellant authority filed objections u/s 30 read with Section 33 of the Arbitration Act, 1940 against the second Award within stipulated time praying therein that the objection petition may kindly be accepted, the validity of Award be determined, second Award dated 18.09.2014 may be set-aside and application for making the second Award as Rule of Court be dismissed and parties be directed to commence arbitration afresh through the appointment of

a new arbitrator. The respondent No.1 also submitted a reply to the objections submitted by the appellant and prayed for dismissal of the same and that second Award be made Rule of the Court. The learned Civil Court after hearing the arguments of the parties, accepted the petition of respondent No.2 **"Brig. (R) Shadab Ali Khan, Sole Arbitrator"** and Award submitted by him was made Rule of the Court vide impugned order & decree dated 25.07.2015. Being aggrieved of the same, the appellant authority has filed the instant appeal.

5. The learned counsel for the appellant argued that the impugned order and decree are arbitrary, perverse, and liable to be set aside; that the trial court failed to consider the appellant's objections, decided the application mechanically, and did not provide reasons; that the learned trial court also ignored whether the Arbitrator complied with the High Court's order dated 28-03-2014, which set aside the First Award for lack of details; that the Second Award suffers from the same deficiency, violating Section 26-A of the Arbitration Act, 1940; that the Arbitrator acted with bias, exceeded his jurisdiction, and made improper remarks amounting to contempt; that the trial court failed to appreciate legal and factual objections, including that the agreement's terms could not be altered without mutual consent; that the impugned order was passed hastily, based on misreading and non-reading of records, and lacks issue-wise findings; that the decree and order are unsustainable in law; that the appellant seeks to set aside the order and decree dated 25-07-2015, reject the Second Award, accept the objections, and direct fresh arbitration with a new arbitrator in the interest of justice.

6. On the other hand, the learned counsel for the respondent No.1 argued that the appellant's counsel has failed to point out any illegality in the impugned order and decree and the learned trial Court has rightly accepted the application of respondent No.2, based on correct appreciation of evidence and proper application of judicial mind; that the learned trial Court passed the impugned order and decree keeping in view the facts and evidence available on record. In the last, the learned counsel prayed for the dismissal of the instant appeal.

7. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

8. It reveals from the perusal of the record that the arbitrator initially announced award on 13.04.2010, after conducting the necessary proceedings, and filed award before the court with the findings that: -

> *"Further I award and direct that, in full and final settlement of all claims in this arbitration the respondent shall pay the claimant as under: -*
>
> *a) Within 28 days after either party shall have taken up this award pay the claimant the amount calculated as fuel and labour escalation against work done from March, 2008 to April 2010 as per above given decision. The amount to be paid as fuel and labour cost escalation for the above period shall be the amount in excess of the payment already made to the claimant in various EPCs for fuel cost escalation.*
>
> *b) For the work done from April 2010, onwards up to the completion of work the amount of escalation certified by the Engineer on fuel and labour as determined by me above (fuel 28.55%, labour skilled 10.02% and unskilled 12.88%) shall be paid as per the contract procedure upon submission of EPC from time to time by the claimant".*

But thereafter as per the order of Hon'ble Islamabad High Court, Islamabad dated 28.03.2014, the arbitrator made supplementary award on 18.09.2014 after receiving further evidence. The supplementary Award is having following findings: -

> *"1. In full and final settlement of all claims in this arbitration. The claimant is entitled to receive Rs.75 Million with regard to its claim of enhanced Factor 'C' as one time compensation which was agreed by the highest forum of NHA (the Executive Board) and the same has already been received by the claimant, hence the controversy giving rise to this Arbitration is settled and needs no further order.*
>
> *2. I make no award as to claim of the claimant with regards to interest on late payment of amicably settled amount alongwith interest on delayed IPCs, it is further added that the claimant may amicably*

demand/recover the same from the NHA as per terms and conditions of the agreement if so desired."

When the highest forum of NHA has agreed for Rs.75 million with regard to the claim of enhanced Factor 'C' as one time compensation in favor of the respondent No.1 contractor before the arbitrator then in that case the petitioner cannot raise any objection regarding the Award announced by the Respondent No.2. The petitioner has failed to agitate any of the ground envisaged under section 30 of the Arbitration Act, 1940 before the learned Civil Judge. The Award can be set aside under section 30 of the Arbitration Act, 1940 which is reproduced as under: -

"Section 30. Grounds for setting aside award. *An award shall not be set aside except on one or more of the following grounds, namely:*

a. *that an arbitrator or umpire has misconducted himself or the proceedings;*
b. *that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;*
c. *that an award has been improperly procured or is otherwise invalid."*

This section should be read with Sections 15 and 16 of the Arbitration Act. Section 15 empowers the Court to modify or correct the Award i.e.

a. *where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect decision of the matter referred; or*
b. *where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or*
c. *where the award contains a clerical mistake or an error arising from an accidental slip or omission.*

Section 16 empowers the Court to remit award for reconsideration on the following grounds:-

a. *where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or*
b. *where the award is so indefinite as to be incapable of execution; or*
c. *where an objection to the legality of the award is apparent upon the face of it.*

9. An error or infirmity in the Award that renders it invalid must be apparent on the face of the Award. The Arbitrator is the final authority on both law and facts, and it is not for a party to challenge the Arbitrator's decision if it is

otherwise valid. If the Arbitrator has rendered a decision based on the submissions, no adverse inference can be drawn against him. The Court, under Section 30 of the Arbitration Act, is not meant to function as a Court of Appeal or re-evaluate the award. While examining the validity of an Award, the Court does not act as a Court of Appeal, and a Court hearing objections to an Award cannot undertake reappraisal of evidence recorded by the Arbitrator and the findings of a Sole Arbitrator, which are otherwise legally sound and proper in all respects, cannot be disturbed. The Court, generally speaking, leans in favor of the Award. It does not sit as a Court of Appeal, however, the Award can be set aside if there is an error apparent on the face of Award or that error should be of a jurisdictional nature or some fraud has been practiced in obtaining such Award. The Court cannot travel beyond the Award and make inquiries and investigations in the proceedings and documents, which do not form part of the Award. In order to construe misconduct on part of the Arbitrator, it is essential that the grounds are raised with precision and allegations are pleaded clearly, rather being evasive in nature. It is not for the Court to fish for latent errors in arbitration. These principles and law have been laid down in the light of the object and purpose intended to be achieved by the Arbitration Act. Reliance is placed on the cases titled as: -

i. *Shahin Shah Vs. Government of Khyber Pakhtunkhwa,* **2022 SCMR 1810**;
ii. *Gerry's International Pvt. Limited Vs. Aeroflot Russian International Airlines,* **2018 SCMR 662;**
iii. *A. Qutubuddin Khan Vs. Chec Millwala Dredgging Company (Pvt.) Limited,* **2014 SCMR 1268**;
iv. *Federation of Pakistan Vs. Joint Venture Knocks K.G/RIST*, **PLD 2011 SC 506**;
v. *Mian Corporation Vs. M/s Lever Brothers of Pakistan Limited,* **PLD 2006 SC 169**.
vi. *Pakistan Steel Mills Corporation Vs. M/s Mustafa Sons (Pvt.) Limited*, **PLD 2003 SC 301**.
vii. *M/s Joint Venture K.G/RIST Vs. Federation of Pakistan*, **PLD 1996 SC 108**.
viii. *National Highway Authority Vs. Lilley International (Pvt.) Limited,* **2020 CLC 608 Islamabad**.

10. In cases where a contract includes an arbitration clause, the general approach should be to minimize Court interference, especially when the parties have voluntarily selected their preferred forum for resolving disputes. The Courts

can interfere to the extent as provided in the Arbitration Act. It is emphasized that expeditious and inexpensive Dispute Resolution should be considered vital for a vibrant economy and inevitable for economic growth and progress. The Courts have a crucial role to play in ensuring that the commitments made between the parties are honoured and implemented. It is the duty of the Courts to promote with certainty by enforcing the binding commitments made by the parties.

11. The findings of the Sole Arbitrator/Respondent No. 2 are clear, concise, legal and based on agreed settlement and there is no violation of Section 26-A of the Arbitration Act. The learned Trial Court has rightly dismissed the Application filed by the Appellant for conducting Award afresh as there is no error floating on the face of the Award which has caused grave injustice. The Court while considering the objections to an award keeps in mind the criteria on the basis of which, an award should be set aside. The statutory grounds are mentioned in Sections 30 and 33 of the Arbitration Act and on the basis of judgments of the superior Courts of our country, it is settled by now that an arbitration is a forum, which is chosen by the parties out of their own free will and consent, for resolution of *inter se* disputes, such forum has the sanctity of the confidence of the parties reposed upon it and to all intents and purposes, the Arbitrators are the **Judges of law and fact** and can accordingly decide the dispute. It also cannot be disputed that the Arbitrators have the full authority to appreciate the facts of the case, according to their own perception, expertise, knowledge and such appreciation of facts, if not suffering from the vice of any misreading and non-reading of the record, shall not be interfered with by the Court only on account that another conclusion is possible. There also can be no cavil that the Court while considering the validity of the Award should not sit as a Court of appeal, trying to fish or dig out the latent errors in the proceedings or the Award. It has also been held in *Muhammad Farooq Shah vs Shakirullah* reported in **2006 SCMR 1657** by the august Supreme Court that:-

> *"We are conscious of the fact that duty of the Court is to give every reasonable intendment in favour of award and lean towards upholding rather than vitiating the same..."*

In the case titled *Mian Corporation Vs. Lever Brothers of Pakistan* reported in **PLD 2006 SC 169**, the august Supreme Court has, *inter-alia* held that: -

> *"It is well settled that the arbitrator acts in a quasi-judicial manner and his decision is entitled to utmost respect and weight, unless the misconduct is not only alleged, but also proved against him to the satisfaction of Court."*

12. The august Supreme Court in the case of *Lahore Development Authority versus Khalid Javed Company,* **1983 SCMR 718** held as under: -

> *"it is high time that Government Departments should accept more gracefully the awards made by forums selected by themselves and manned by their own officers. They would be well advised if they took greater pains and more care than they are doing at present in preparing and prosecuting their case before the Arbitrators rather than in subsequently expanding their time, energy and efforts on fruitless objections and appeals against the awards made against by, them, for which they are mostly themselves to blame".*

13. In addition during 194th Executive Board Meeting held on 5th August, 2010, an amicable settlement on the account of revision of Factor (C), it was decided that as full and final compensation, the settlement amount (in addition to actual work cost) shall be offered to the claimant in lieu of Original Compensation Amount, as awarded in the Award dated 13th April, 2010 and the claimant/respondent No.1 accepted the settlement amount under protest in February, 2012.

14. For what has been discussed above, the Appellant has failed to point out any illegality or irregularity in the Impugned Order and Decree and as such there is no force in the Appeal, hence, the same is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of April 2025.

JUDGE

--/Sajid/--