ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O. No.117/2017
Capital Development Authority
Versus.
Rakhshani Builders (Pvt.) Limited

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.01.2019	Mr. Muhammad Sohaib Sheikh, Advocate for the appellant. Barrister Ehsaan Ali Qazi, for the respondent.

Through the instant appeal under Section 39 of the Arbitration Act, 1940 ("the 1940 Act"), the appellant, Capital Development Authority, impugns the order dated 22.05.2017 passed by the Court of the learned Civil Judge, Islamabad, whereby the appellant's objections to the arbitration award dated 27.08.2016 were turned down.

2. Learned counsel for the contesting parties, were briefly heard.

3. I have gone through the impugned order dated 22.05.2017. The said order is reproduced in **"Schedule-A"** hereto. Perusal of the said order shows that it suffers from total non-application of mind by the learned Civil Court. It cannot be gathered from the said order as to whether the learned Civil Court has even read the arbitration award which had been made a rule of Court. The impugned order is bereft of reasons and therefore, not sustainable. An order to make an arbitration award a rule of Court has been made appealable under Section 39 of the 1940 Act. Such an order is required to be a reasoned order. It must show that the Court had applied its mind to the contents of the arbitration award and only after it finds no patent illegality or invalidity on the face of the award or misconduct on the part of the

Arbitrator, can it make such an award a rule of Court. All these essentials are lacking in the impugned order dated 22.05.2017 rendering the same unsustainable.

4. Learned counsel for the contesting respondent submitted that since an appeal is the continuation of the proceedings, this Court in its appellate jurisdiction, may examine the award and pass an order under Sections 14 and 17 of the 1940 Act. If I were to do this, it would deprive the parties of a right of appeal. In this regard, reference is made to the judgment in the case of Oil and Gas Development Corporation Limited Vs. Clough Engineering Limited (1999 MLD 254), wherein a similar request was turned down in the following terms:-

> *"4. The learned counsel for the respondent contended that in order to expedite the proceedings, this Court may itself give findings as to existence or otherwise of the dispute between the parties for resolution through arbitration. Since the order under subsection (4) of section 20 (ibid) is appealable, it would not be expedient to make such finding as it will deprive the parties of the right of appeal against the decision of the trial Court determining the filing of agreement otherwise."*

5. Consequently, the instant appeal is allowed, and the impugned order dated 22.05.2017 is set-aside. The matter is remanded to the learned Civil Court with the direction to decide the pending applications afresh. Since the matter relates to arbitration, it is expected that the learned Civil Court would decide the matter within a period of three weeks from the date of the receipt of this order. The parties before the learned Civil Court shall not seek any adjournment.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

SCHEDULE-A

AWARD DATED 27.08.2016 FOR MAKING RULE OF THE COURT UNDER ARBITRATION ACT

22.05.2017 Present: Learned counsel for parties.

O R D E R

Arguments on objections raised by Capital Development Authority have been heard. Record Perused.

3. Learned counsel for the petitioner has requested that the award has been submitted on 16.11.2016, hence, the same may be made rule of court.

4. Perusal of record shows that on 28.04.2015 the Hon'ble Islamabad High Court, Islamabad has appointed Tariq Mahmud Secretary Communications (Retd) as a sole Arbitrator with the mutual consent of both the parties. The arbitrator after summoning, hearing the respective parties and adopting the prescribed procedure as laid down under Arbitration Act 1940 has filed award. The objections raised by the respondent are not sustainable in the eye of law and same are hereby turned down. This court is satisfied by the above said proceedings and filing the award after due process of law. Moreover, the objection petition has been filed with a delay of three months for which no specific reasoning has been given by the respondent, so, the application for condonation of delay for filing of objections is dismissed. Being so, the award is made rule of court.

Now to come for further proceedings on 12.06.2017.

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