IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 43 of 2026

[Shama-ul-Hassan Jafary v. M/s Zafar Moti Capital Security Pvt. Ltd. and others]

and

IInd Appeal No. 76 of 2026

[Pakistan Stock Exchange (PSX) and others v. M/s Zafar Moti Capital Security Pvt. Ltd. and others]

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Appellant in IInd Appeal No. 43/2026 and Respondent No. 2 in IInd Appeal No. 76/2026	:	Through M/s Dr. Mehmood Ahmed & Wajid Ali Hassan Advocates
Appellants in IInd Appeal No. 76/2026	:	Through M/s Asim Iqbal & Farmanullah Khan Advocates
Respondent No. 1 in IInd Appeal No. 76/2026	:	Through Ms. Zahrah Sehr Vayani, Advocate
Respondent No. 1 in IInd Appeal No. 43/2026	:	Through Mr. Rameez Lalani, Advocate
Respondents No. 2 to 5 in IInd Appeal No. 43/2026	:	Through Mr. Ammad Joyo, Advocate
Federation of Pakistan	:	Through Ms. Rabia Khalid, Assistant Attorney General
Amicus Curiae	:	Mr. Jahanzeb Awan, Advocate along with Ms. Neha Asif, Advocate
Date of Hearing	:	11.11.2026
Date of Announcement	:	18.11.2026

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J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- By this consolidated judgment, I intend to decide IInd Appeal No.43 of 2026 and IInd Appeal No.76 of 2026 filed by the Appellants [Shama-ul-Hassan Jafary] and [Pakistan Stock Exchange (PSX) and its officers] respectively. Both appeals are filed under Section 100 CPC against the same Order dated 20.01.2026 passed by the learned VIIth Additional District Judge, Karachi South allowing Civil Appeal No. 381 of 2025 along with the interim order dated 24.12.2025 filed by the Respondent No. 1 [M/s. Zafar Moti Capital Security (Pvt.) Ltd.], setting aside the Order dated 03.12.2025 passed by the learned Xth Senior Civil Judge, Karachi South rejecting the plaint filed in Civil Suit No. 11106 of 2025 by the Respondent No. 1 for Declaration, Permanent Injunction and Damages on account of arbitration award and appeal order passed in arbitration

proceedings conducted under the Pakistan Stock Exchange Regulations **("PSX Regulations")**.

2. The facts, as stated in the memos of appeals, are that the Appellant in IInd Appeal No. 43 of 2026 (hereinafter referred to as the **"Appellant/Complainant"**) lodged a complaint against Respondent No.1, a brokerage house, before the Securities and Exchange Commission of Pakistan **("SECP")**, Securities Market Division, Islamabad, resulting in an order dated 05.10.2007 imposing a penalty upon Respondent No.1. The said order was challenged by Respondent No.1 through C.P. No.2274 of 2007 before this Court and remained suspended under a stay order until dismissal of the petition for non-prosecution on 02.03.2023. Thereafter, arbitration proceedings were initiated under the PSX Regulations culminating in an Award dated 22.05.2025, which was upheld in appeal on 16.09.2025. Upon failure of Respondent No.1 to comply with the award within the stipulated period, its Trading Right Entitlement (TRE) was suspended on 27.10.2025. Respondent No.1 initially filed C.P. No.5246 of 2025, which was not pressed, and subsequently instituted Civil Suit No.11106 of 2025 before the learned Xth Senior Civil Judge, Karachi South, seeking declaration, permanent injunction and damages against the Appellants, the SECP, National Clearing Company of Pakistan Limited, the Central Depository Company of Pakistan Limited and the Federation of Pakistan for setting aside of the appellate order dated 16.09.2025, the arbitration award dated 22.05.2025 and notices dated 27.10.2025 issued by NCCPL and CDC; declarations that the arbitration proceedings were time-barred and violative of natural justice and due process and that the notices were illegal; restoration of its TRE; damages of Rs.10,000,000; and restraint against the defendants from passing adverse orders.

3. The Appellants/defendants appeared in the suit and raised an objection on its maintainability. Order sheet dated 06.11.2025 of the Trial Court reflects that the while hearing the Respondent No.1's application under Order XXXIX, Rules 1 and 2, CPC read with section 151 CPC the Court put the Respondent No.1 on notice to satisfy the court on the point of maintainability of the suit. After hearing the parties, the learned Trial Court, by order dated 03.12.2025, rejected the plaint under Order VII Rule 11 CPC. The Trial Court, while relying on Sections 7 & 8 of the Companies Ordinance, 1984 and Section 34 of the SECP Act, 1997, treated the dispute as a company matter falling within the jurisdiction of the Company Bench and left Respondent No.1 at liberty to approach this Court.

4. Respondent No.1 filed Civil Appeal No. 381 of 2025 before the learned VIIth Additional District Judge, Karachi South. By Order dated

20.01.2026, the first Appellate Court set aside the order dated 03.12.2025 and remanded the matter to the Trial Court to decide the question of jurisdiction afresh, after considering Section 9 CPC, the repeal of the Companies Ordinance, 1984, the entries in Schedule-V of the Companies Act, 2017 and Regulation 5.21A.5 (erroneously referred to as Rule 5.25.5) of the PSX Regulations. The first Appellate Court held that the Trial Court had relied on a repealed ordinance, that Schedule-V had no entry covering a challenge to such an arbitral award, that Section 34 of the SECP Act, 1997 applies to orders of the Commission only, and that rejection of the plaint at that stage was premature as the plaint does not appear to be barred by any specific law. The interim order was kept operative, and the parties were to maintain status quo till the decision of the trial Court.

5. Aggrieved by the Order dated 20.01.2026 and the interim order dated 24.12.2025, the Appellant/Complainant [Shama-ul-Hassan Jafary] filed IInd Appeal No. 43 of 2026 and Appellant [Pakistan Stock Exchange (PSX) and its officers] filed IInd Appeal No. 76 of 2026, praying that the impugned final order and interim order be set aside, the rejection of the plaint be upheld and restored, and the suit be dismissed for want of jurisdiction.

6. The grounds taken in both appeals are the same in substance. It is mainly contended that the first Appellate Court did not appreciate that the Companies Act, 2017 continues the scheme of the Companies Ordinance, 1984; that the SECP Act, 2015 read with the PSX Rules and the Companies Act, 2017 provides a complete mechanism which impliedly bars the jurisdiction of the Civil Court despite Section 9 CPC; that the Award dated 22.05.2025 and the appellate decision dated 16.09.2025 were passed in accordance with Chapter 18 of the PSX Rule Book; that Respondent No.1 obtained a stay in Constitutional Petition No. 2274 of 2007 and delayed the matter for more than sixteen years; that after taking part in the arbitration and the appeal, Respondent No.1 was estopped from challenging the same through a civil suit; and that the suspension of TRE was a lawful regulatory action taken for non-compliance of the award.

7. Both appeals were fixed together in this Court. On 19.05.2026, after hearing counsel on the background of the case, this Court appointed Mr. Jahanzeb Awan, Advocate, as *amicus curiae*.

8. The learned counsel for the Appellants/PSX relied upon Sections 4 and 5 of the Companies Ordinance 2017 and also Section 34(1) of the SECP Act, 1997 to contend that the Arbitration Award passed by the Appellate Panel of the Pakistan Stock Exchange can be challenged, if at all, only before the Company Bench of this Court.

9. On the other hand, the learned counsel appearing for Respondent No.1 in In II[nd] Appeal No.76 of 2026 submitted the appeal referred under Section 34 of the SECP Act is in respect of the Orders passed by the SECP and as such has no relation whatsoever with the orders passed by the Appellate Bench under the PSX Rules. He relied upon *Trade Smart Securities (Pvt.) Ltd. Through Chief Executive vs. Securities and Exchange Commission of Pakistan through Chairman and 6 others,* 2025 CLD 151 and submits that any order passed by the Pakistan Stock Exchange is only in the administrative capacity and as such there is no law that bars filing of Suit to challenge the same.

10. Essentially, the question raised for determination in the instant appeal is what remedy, if any, lies against an arbitration award passed and upheld under the PSX Regulations which for purposes of implementation, according to the counsels, does not require to be made rule of court under the Arbitration Act 1940 and in the absence of which the opposing side does not have the opportunity to file objections against the award before a judicial forum and avail the remedy of an appeal, if need be, under the said Act.

11. The learned *amicus curiae* submitted that he very respectfully disagrees with the conclusion reached by both the learned Trial Court and the learned first Appellate Court regarding the legal remedy available to the Respondent No.1 in the facts and circumstances of the case as well as their respective reasoning in support of their conclusions. He submitted that insofar as Section 34 of the SECP Act, 1997 is concerned, the same provides for the remedy of appeal to the Company Court in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench. He contended that the arbitration award passed by the Sub Panel of the Appellant / PSX and upheld by the Appellate Panel thereof cannot by any stretch be considered an order of the Commissioners of the SECP or the Appellate Bench and as such he opined that the learned Trial Court erred in relying upon Section 34 while rejecting the plaint filed by the Respondent No. 1. He submitted that similarly the trial Court has referred to Sections 7 and 8 of the Companies Ordinance, 1984, although the said Ordinance stood repealed almost eight years prior to the passing of the order. Nevertheless, he submitted that even Sections 5 and 6 of the Companies Act, 2017, which are *in pari materia* with Sections 7 and 8 of the erstwhile Companies Ordinance, 1984 do not provide a remedy against an arbitration award of the PSX. He submitted that the Company bench has jurisdiction over stipulated matters and in this regard relied upon *Abdul Saeed Vs. Mrs. Naseem Khattak Humayun and others*, 2024 CLD 611.

12. He submitted that the remedy lies in the Arbitration Act, 1940. In this regard he invited the Court's attention to Regulation 18.12 of the PSX Regulations, whereby if the client of a security broker fails or refuses to abide by or carry out an award then not only his name is placed on the website of the SECP but the concerned broker may apply to the Court of competent jurisdiction for making the award a rule of Court and enforce the same through a decree of the Court. The learned *Amicus* submitted that it is not possible that recourse to the provisions of Arbitration Act, 1940 may only be made by the client and not the broker under the same regulations. He contended that that appears not to be the mandate of the law and in this regard refers to Sections 46 and 47 of the Arbitration Act, 1940, whereby the provisions of the Act excluding certain provisions apply to every arbitration under any enactment and all arbitration and all proceedings thereunder. He submitted that the PSX Regulations have been framed under Section 7 of the Securities Act, 2015, and, therefore, would be covered by Section 47.

13. He further submitted that under Section 14(2) of the Arbitration Act, 1940, the arbitrators or the umpire, at the request of any party to the arbitration agreement, are required to file the arbitration award in Court failing which any party may make an application to the Court and Section 14(2) envisages the Court giving direction for the arbitration award to be filed in Court whereupon the remaining provisions would come into effect including Section 33 and Section 30 whereunder the award may be challenged on the stipulated grounds. He submitted that Section 32 of the Arbitration Act contains a bar against suits to challenge the existence, effect or validity of an arbitration agreement or award and as such the relief under Section 9 CPC is not available and, therefore, he disagrees with the decision of the learned first Appellate Court as well.

14. Last but not least, he submitted that nor would a Constitutional Petition lie as it has been held in *Trade Smart Securities (Private) Ltd. Vs. Securities and Exchange Commission of Pakistan and others*, 2025 CLD 620 by a Division Bench of this Court that Pakistan Stock Exchange is not performing functions of the State and as such no writ petition is maintainable against the PSX. He relied upon *West Pakistan through the Executive Engineer Rawalpindi v. Messrs Azhar Brothers*, 1977 PLD Lahore 1013, *Muhammad Yasin v. Muhammad Farooq and others*, 1989 MLD Karachi 2010, *Communication and Workers Department v. Messrs Pavital/Pivato Joint Venture*, 2003 CLC Lahore1798 and *Oil and Gas Development Company Limited v. Messrs Marathon Construction Company and another*, 2013 CLD 1483.

15. The learned counsel for the Appellants/PSX submitted that he agrees with the contentions of the learned *amicus curiae* with respect to Section 9 CPC and also respectfully concedes that the Divisional Bench in *Trade Smart Securities (Private) Ltd. (Supra)* has held that a Constitutional Petition does not lie against PSX but submitted that there are judgments of the Supreme Court according to which when there is no alternate remedy available in law against a statutory authority, a writ does lie and pointed out that in the instant case the statutory authority is the SECP. He also submitted that the Respondent No.1 filed a Constitutional Petition earlier in the proceedings to challenge the imposition of security at the time of consideration of appeal by the appellate panel which was also entertained. While concluding, he contended that this is a second appeal the scope of which is extremely narrow and does not allow for the questions raised by the Respondent No.1 to be entertained.

16. The learned counsel for the Appellant/Complainant also agreed with the contentions of the learned *Amicus Curiae* to the extent of his submissions regarding non maintainability of the remedy under Section 9 CPC but submitted that notwithstanding the repeal of the Companies Ordinance, 1984, the powers and authority of the Company Bench are continued in the Companies Act, 2017, and as such he submitted that the remedy for the Respondent No.1 lies before the Company Bench as per Sections 4 and 5 of the Companies Act.

17. The learned counsel for Respondent No.1 in IInd Appeal No. 43/2026 while placing reliance on the case reported as *MUHAMMAD ATHER HAFEEZ KHAN v. Messrs SSANGYONG AND USMANI JV,* 2011 YLR 317, conceded that Arbitration Act, 1940 applies to all enactments in Pakistan but highlighted that PSX Regulations are not statutory in nature and further that Section 47 of the Arbitration Act, 1940 envisages existence of arbitration between the parties and in this case, there is no arbitration agreement between the Respondent No.1 and the Appellants/ PSX/ Complainant. She further submitted that the provisions of the Arbitration Act, 1940 were never invoked or followed in the arbitration conducted between the parties in the instant case. Lastly, she contended that even otherwise, Respondent No. 1 has claimed damages by way of the civil suit filed in the Trial Court, which therefore is maintainable. The learned counsel for Respondent No. 1 has also submitted written synopsis, whereby *inter alia* she has raised the following additional points: that in pith & substance proceedings were mediation in nature and not arbitration under the Arbitration Act, 1940, owing to the absence of a valid & binding arbitration agreement, seat of arbitration was not agreed upon and; the appointment

of arbitrator was not in accordance with Arbitration Act 1940, and that provisions were not applied since inception; contradictions and inconsistencies b/w Arbitration Act 1940 & PSX Regulations; in the absence of power to cross examine proceedings devoid of a judicial enquiry; award has become infructuous upon expiry of period of time as given in Article 178 of the Limitation Act, 1908 to file award, hence suit is maintainable.

She relied upon *Ch. Muhammad Saleem v. Muhammad Akram & others*, PLD 1971 SC 516, *Muhammad Ather Hafeez Khan v. Messrs Sangyong and Usmani JV*, 2011 YLR (Karachi) 317, *R.P. Corporation (Pvt.) Ltd. v. Syed Zaheer Hussain Naqvi*, 2026 CLC (Islamabad) 1342, *Government of Pakistan, Ministry of Industries v. National Agencies, Karachi*, PLD 1978 KHI 827, *Pakistan Stock Exchange v. Province of Sindh and others*, 2024 CLD 580, *Muhammad Kamil v. Province of Snidh*, 2026 MLD 397, *Mian Iftikhar-ud-Din and another v. Muhammad Sarfaraz and another*, PLD 1961 SC 585, *Forum for People's Collective Efforts (FPCE) v. The State of West Bengal*, 2021 INSC 283, *Management of M.C.D. (Municipal Corporation of Delhi) v. Prem Chand Gupta*, AIR 2000 SC 454, *Sasanka Sekhar Maity v. Union of India*, (1980) 4 SCC 716, *Union Territory of Chandigarh v. Rajesh Kumar Basandhi*, (2003) 11 SCC 549, *Department of Customs v. Sharad Gandhi*, 2019 INSC 282, *Abdul Qayyum Khan v. Govt. of Punjab*, PLD 1995 Lahore 205, *Syed Mushahid Shah v. FIA,* 2017 SCMR 1218, *Abdul Karim v. Bashir Ahmad*, PLD 1974 SC 61, *Messrs Rajby Industries, Karachi and others v. Federation of Pakistan and others*, 2023 SCMR 1407, *M/s Maruti Udyog Ltd. v. Ram Lal & others*, (2005) 2 SCC 638, *Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra Ltd*., 1993 (2) SCC 144, *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.,* (2001) 3 SCC 71, *Trade Smart Securities v. SECP*, 2025 PLD 151, *PIAC v. Tanweer-ur-Rehman*, PLD 2010 SC 676, *Muhammad Khurshid Khan v. Dost Muhammad Khan*, PLD 2026 SC 211, *SNGPL v. Messrs SK Private Limited*, 2005 SCMR 570 and *Trade Smart Securities (Private) Ltd*., 2025 CLD (Sindh) 620.

18. Similarly, the learned counsel for Respondent No. 1 in II[nd] Appeal No. 43/2026 relied upon *Nausher v. Province of Punjab*, PLD 2022 SC 699, *Messrs Mardan Ways CNG Station v. General Manager, SNGPL*, 2022 SCMR 584, and *Hamid Husain v. Government of West Pakistan,* 1974 SCMR 356 to argue that the suit for damages is maintainable.

19. Heard the learned counsel for the parties and perused the entire record with their assistance.

20. According to learned Trial Court Order dated 03.12.2025, the only option available with the Respondent No. 1 company was to approach the Company Bench of this Court by relying upon Sections 7 and 8 of the Companies Ordinance 1984 and Section 34 of the SECP Act, 1997 which provides for an appeal to the court referred to in Part II of Companies Ordinance, 1984 in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench. Whereas, the appeal provided for under Section 34 of the SECP Act, 1997 arises against either an order of the Commission comprising two or more Commissioners or the Appellate Bench. The term "Commission", as per Section 2(g) of the SECP Act, 1997, means the Securities and Exchange Commission of Pakistan established under Section 3 *ibid* whereas the Appellate Bench is constituted under sub-section (2) of Section 33 of the SECP Act, 1997 by the Commission comprising not less than two Commissioners to hear appeals. On the other hand, Suit No. 11106 of 2025 was filed by the Respondent No. 1 to *inter alia* challenge the Award dated 21.05.2025 rendered by the Sub-Panel of the Appellant/PSX and the Appeal Order dated 16.09.2025 passed by the Appellate Panel of the Appellant/PSX pursuant to the Dispute and Arbitration Regulations provided under Chapter 18 of the PSX Regulations. The arbitration award passed by the Sub-Panel or the Appellate Panel of the Pakistan Stock Exchange under the PSX Regulations cannot by any stretch be considered an order passed by the SECP or its Commissioners with the result that such awards do not constitute orders against which an appeal would lie to the company bench of this Court under Section 34 of the SECP Act, 1997. Therefore, the learned Trial Court seriously erred in advising the Respondent No. 1 to approach the Company Bench of this Court.

21. Having said that the learned first Appellate Court vide the Impugned Order dated 20.01.2026 also erred in finding that the rejection of the Plaint filed by the Respondent No. 1 in Suit 11106 of 2025 was premature by holding that the plaint does not conclusively show that the suit was barred by any specific law. Clearly, the first learned Appellate Court failed to consider the provisions of the Arbitration Act 1940.

22. The learned counsels for the Respondent No. 1 argued that the PSX Regulations do not expressly provide for the application of the provisions of the Arbitration Act 1940. Nevertheless, Regulation 18.12 categorically provides that the securities broker may apply to the court of competent jurisdiction to make an award the rule of court and enforce it through a decree of the court in case the client fails or refuses to abide by or carry out

such an award, thereby impliedly applying the provisions of the Arbitration Act, 1940.

23. Even otherwise, Sections 46 and 47 of the Arbitration Act, 1940 provide for its application to all arbitrations. The said provisions are reproduced as under:

> ***46. Application of Act to statutory arbitrations.*** *The provisions of this Act, except sub-section (1) of section 6 and sections 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being enforced, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except insofar as this Act is inconsistent with that other enactment or with any rules made thereunder.*
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> ***47. Act to apply to all arbitrations.*** *Subject to the provisions of section 46, and save insofar as is otherwise provided by any law for the time being in force,* ***the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder****: Provided that an arbitration award otherwise obtained may with the consent of all the parties interested to be taken into consideration as a compromise or adjustment of a suit by any court before which the suit is pending.* [Emphasis added].

24. The learned counsel appearing for the Respondent No. 1 in IInd Appeal No. 43 of 2026 conceded that pursuant to Section 46 of the Arbitration Act, 1940 its provisions except for the ones expressly excluded thereunder apply to every arbitration under any other *enactment* but argued that the PSX Regulations are not statutory in nature and as such do not qualify as an enactment by relying upon the definitions of “enactment” and “regulations” as given in the General Clauses Act.

25. The PSX Regulations have been framed by the Pakistan Stock Exchange Limited in exercise of the powers conferred vide Section 7 of the Securities Act, 2015 and the Futures Market Act, 2016 with the prior approval of the SECP. Nonetheless, Section 47 of the Arbitration Act, 1940 does not contain any caveat such as in Section 46. It categorically provides that the provisions of the Arbitration Act, 1940 shall apply to *all* arbitrations and to *all* proceedings thereunder subject to the provisions of Section 46 and save insofar as is otherwise provided by any law for the time being in force.

26. The expression *“for the time being in force”* was considered by the Supreme Court in *Mian Iftikharuddin and another v. Mohammad Sarfaraz Administrator Progressive Paper Ltd., and another,* PLD 1961 SC 585 wherein it was held that it does not necessarily refer to the past and may well have reference to what is to happen in the future. It was noted that in Stroud’s Judicial Dictionary, Vol IV, it has been recognized that the phrase *“for the time being in force”* may according to its context mean the present or denote a single period of time but its general sense is that of time

indefinite and refers to an indefinite state of facts which will arise in the future and which may (and probably will) vary from time to time. The Supreme Court, therefore, held in *Mian Iftikharuddin* that there is no ground for accepting that the operation of the Martial Law Regulation No. 72 was limited to orders passed under the Security of Pakistan Act, 1952 before the date on which the Regulations came into force merely because of the use of the phrase *"for the time being in force"* in Regulation 1.

27. On the other hand, in the context of whether a different law can be passed subsequently where the previous law contains a non-obstante clause, the Supreme Court in *Mst. Amro Jan and others v. Malik Amir Muhammad Khan*, 1972 SCMR 639 held that Section 4 of the Pakistan Administration of Evacuee Property Ordinance, 1949, which provided that its provisions shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force did not prevent the passing of a future law by a competent authority to make a different provision.

28. The Lahore High Court in *Ghulam Abbas v. Muhammad Mumtaz Khan*, PLD 1980 Lahore 718, after examining all relevant caselaw held that there being no hard and fast rule the legislative intent in each statute has to be discovered.

29. While analysing the intention of the Legislature in *Mian Iftikharuddin (Supra)* the Supreme Court observed that the intention appears to be to protect all action taken by the present regime under the Security of Pakistan Act. Section 1 of the Regulation was also considered and it was held that the words point clearly to the applicability of the Act to orders passed in future. Thus, it was held that the provisions of the Security of Pakistan Act would have effect as if they were incorporated in the Martial Law Regulation No. 72 even in the future.

30. Coming to the Arbitration Act, 1940, its preamble provides that it was considered expedient to consolidate and amend the law relating to arbitration. The laws on arbitration, at the time, existed in a fragmented form under the Indian Arbitration Act, 1899 and the Second Schedule of the Code Civil Procedure, 1908. The provisions of the Arbitration Act, 1940 provide for a framework and procedure for arbitration to be conducted under arbitration agreements, with or without the intervention of the Court; arbitration in suits; and arbitration under any other enactment as well as all other arbitrations. There is nothing contained in its provisions that would suggest that the intention of the Legislature was to restrict its application only to arbitrations conducted under other enactments which were in force

at the time of the promulgation of the Arbitration Act, 1940. In fact, its purpose was to curtail litigation[1], which would be defeated by interpreting the phrase “for the time being in force” in its restrictive sense thereby applying the Arbitration Act, 1940 only to arbitrations conducted under other enactments that were in force at the time of promulgation of the Arbitration Act, 1940. It would therefore appear that the phrase “for the time being in force” as used in Section 46 of the Arbitration Act, 1940 was not intended to necessarily mean that the provisions of the Arbitration Act shall apply only to such arbitrations which are conducted under any other enactment which was in force at the time of the Arbitration Act,1940. In the context of the Arbitration Act, 1940, the phrase has been used to denote an indefinite period of time.

31. In any event, insofar as Section 47 of the Arbitration Act, 1940 is concerned, whereunder the provisions of the Arbitration Act, 1940 apply to *all* arbitrations and to *all* proceedings thereunder (as opposed to merely arbitration under any other enactment), even if the expression “for the time being in force” as used therein is, for the sake of argument, applied in its narrow sense it will merely have the effect of reducing the scope of exclusion rather than the scope of application of the Arbitration Act. In other words, the provisions of the Arbitration Act, 1940 will apply to all arbitrations and all proceedings thereunder except as provided in any other law that was in existence at the time of the Arbitration Act, 1940. No provision in the PSX Regulations has been identified which is inconsistent with the provisions of the Arbitration Act, 1940 that are attracted in the facts and circumstances of this case and which are discussed herein below.

32. The learned counsel appearing for the Respondent No. 1 in IInd Appeal No. 43 of 2026 argued that under PSX Regulations 18.6.4 the decision of the Appellate Panel is final. The Supreme Court in *Brooke Bond (Pakistan) Ltd. v. Conciliator appointed by the Government of Sindh and others*, PLD 1977 SC 237 observed that there is little doubt that according to Section 31(5) of the Industrial Relations Ordinance, 1969, the award made by an arbitrator appointed by the parties in an industrial dispute is final and no appeal shall lie against it. Nevertheless, it was held that since Section 46 of the Arbitration Act, 1940 is made applicable to every arbitration under any other enactment for the time being in force, except the excluded sections, in suitable cases under this section read with Section 30 of the Arbitration Act, 1940 the validity of an arbitration award made under any other enactment can be challenged unless there is something to the contrary in the other enactment. The same, in my opinion, is the effect of

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[1] *Amanullah Khan v. Kohat Cement Co.*, 1997 MLD 2419

Section 47 of the Arbitration Act, 1940, whereby the provisions of the Arbitration Act, 1940 apply to all arbitrations and to all proceedings thereunder subject to the provisions of Section 46 and save insofar as is otherwise provided by any law for the time being in force with the result that notwithstanding that the PSX Regulations make the decision of the Appellate Panel final an arbitration award can be challenged under Section 30 of the Arbitration Act, 1940.

33. The Lahore High Court in *Chand Bagh Foundation v. Messrs Rehman Brothers (Pvt.) Ltd.*, 2007 CLC 751 held that the award cannot be interfered with by the Courts except within the scope provided by sections 30, 33 and 39 of the Act in view of the well settled rule of law that an award is final and that is why it has not been made subject to appeal by the Legislature. The Supreme Court in *Mian Corporation through Managing Partner v. Messrs Lever Brothers of Pakistan Ltd.*, PLD 2006 Supreme Court 169 explained that the arbitrator is final judge on the questions of law and facts and it is not open to a party to challenge the decision if it is otherwise valid and further that the Court while examining the correctness and legality of an award does not act as a court of appeal and cannot undertake reappraisal of evidence recorded by an arbitrator in order to discover the error or infirmity in the award. This Court in *Adamjee Construction Company Ltd. v. Islamic Republic of Pakistan*, 2004 CLC 1977 explained that the well settled rule that while hearing the objections to the award the Court does not act as a court of appeal is based on the logic that *prima facie* the award be treated final except that the same may be modified or corrected when it falls within the scope of Section 15 of the Arbitration Act, 1940 and it can be set aside if it is covered by the provisions of Section 30 of the Act. Similarly, the Islamabad High Court in *National Highway Authority v. Lilley International Pvt. Ltd.*, 2017 CLC 952 held that the award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in sections 30 and 33 of the Arbitration Act, 1940. The plethora of caselaw discussed above makes it abundantly clear that finality of an arbitration award is a well-established principle and rule of law, however, that does not oust the jurisdiction of the Court under Section 15, 30, 33, and 39 of the Arbitration Act, 1940. Therefore, in my opinion the provisions of the Arbitration Act, 1940 squarely apply to the arbitrations conducted under the PSX Regulations and to all proceedings thereunder save insofar as otherwise provided in the said regulations.

34. That settled, there can be no manner of doubt that Section 32 of the Arbitration Act, 2018 contains a bar against filing of suits on any ground whatsoever to obtain a decision upon the existence, effect or validity of an

arbitration agreement or award and also against *inter alia* setting aside of any arbitration agreement or award in any way otherwise than as provided in the Arbitration Act, 1940. Similarly, sub-section (2) of Section 31 categorically provides that notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under the same shall be decided by the court in which the award under the agreement has been, or maybe, filed and by no other court. Thus, even the argument that there was no arbitration agreement between the Respondent No. 1 and the Appellant/Complainant as submitted by the counsel appearing in the IInd No. 43 of 2026 on behalf of the Respondent No. 1 cannot be raised to challenge an arbitration agreement or award by way of a suit. The only way to have an arbitration award set aside is as provided under the Arbitration Act, 1940.

35. The learned counsels appearing for the Respondent No. 1 in both the instant appeals argued that under Section 14(1) of the Arbitration Act, 1940 it is the arbitrator who is required to file the award or the person who would require the award to be made rule of court can make a request to the arbitrator for filing of the award in court. Whereas in the instant case it is the Appellant/Complainant in whose favor the award was passed by the Sub-Panel and the decision of the Appellate Panel of the PSX whereby the Respondent No. 1 was directed to transfer the shares claimed by the Appellant/Complainant based on the net equity position as of April 20, 2007 along with the corporate entitlements specified in the award or the value of shares including all associated corporate benefits totalling PKR. 7,086,013/- within seven days from the date of the award. They contended that given the nature of the award and in view of Regulation 18.6 .2 whereby if an appeal is filed before the Appellate Panel of the Appellant/PSX by a securities broker, he is required to deposit the full amount of the award and to deliver securities or the value thereof at the time of filing an appeal and if the appellant fails in his appeal, he shall satisfy the award within seven days of its announcement failing which the Appellant/PSX has the authority to pay the amount of the award and/or to deliver the securities to the respondent on the appellant's behalf, the Appellant/Complainant did not need for the award to be filed in Court to be made rule of court for the purpose of its enforcement/implementation thus the Respondent No. 1 had no occasion or opportunity to file objections to such award and had no choice but to file a civil suit.

36. However, this interpretation of the Section 14(1) of the Arbitration Act, 1940 does not appear to be correct. Section 14 is reproduced for ease of reference as follows:

> ***14. Awards to be signed and filed.*** *(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.*
> *(2) The arbitrators or umpires shall,* ***at the request of any party to the arbitration agreement*** *or any person claiming under such party* ***or if so directed by the court*** *and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or assigned copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in court, and the court shall thereupon give notice to the parties of the filing of the award.*
>
> *(3) Where the arbitrators or umpire state a special case under clause (b) of section 13, the court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of the award.* [Emphasis added].

37. Subsection (2) of Section 14 unambiguously and unequivocally permits for *any* party to the arbitration agreement to request the arbitrator to cause the award to be filed in court whereupon the court shall give notice to the parties of the filing of the award. Even if the existence of an arbitration agreement is disputed as in the instant case where the Respondent No. 1 denies that there was any arbitration agreement between the Respondent No. 1 and the Appellant/Complainant subsection (2) of Section 14 provides that the arbitrator shall cause the award to be filed in court if so directed by the court which therefore implies that any person or party can approach the court for directions to the arbitrator to file the arbitration award in court where after the Court shall give notice to the parties of the filing of the award[2]. Once the arbitration award is filed in court, it may be contested by filing objections as envisaged in Section 33 on the grounds stipulated in Section 30 of the Arbitration Act, 1940.

38. In view of the foregoing I find that the learned first Appellate Court erred in holding that the plaint filed by the Respondent No. 1 in Suit 11106 of 2025 is not liable for rejection as it has not been conclusively shown that the suit is barred by any specific law when in fact the suit filed by Respondent No. 1 for setting aside of the arbitration award passed by the Sub-Panel and the decision of the Appellate Panel of the PSX is specifically barred under Section 32 of the Arbitration Act 1940. The argument that the plaint is not liable for rejection in view of the prayer for damages is also without merit. The damages claimed by the Respondent No. 1 in Suit 11106 of 2025 are on account of mental torture, agony, and reputational and

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[2] *Syed Ziauddin v. Syed Roze-ud-Din and others*, 1999 YLR 978

financial harm allegedly suffered due to the suspension of the TRE certificate of the Respondent No. 1 founded on an allegedly time barred and legally unsustainable award. The TRE certificate of the Respondent No. 1 was suspended pursuant to Regulation No. 20.1.2 (c), whereby the TRE certificate may be suspended if the Chief Regulatory Officer finds *inter alia* that the holder has failed to submit to or abide by or carry out any award in arbitration passed by the Sub-panel of the Arbitrators or the Appellate Panel. Therefore, the Respondent No. 1 cannot be found entitled to the damages as claimed until and unless the Award is set aside, which can only be done as provided under the provisions of the Arbitration Act, 1940 and not by way of a suit, which is expressly barred under Section 32 *ibid*.

39. Resultantly, the instant second appeals are allowed and the impugned order dated 20.01.2026 passed by the learned VIIth Additional District Judge VII, Karachi (South) is hereby set aside and plaint filed by the Respondent No. 1 in Suit No. 11106 of 2025 is hereby rejected under Order VII, Rule 11, CPC as being barred under Section 32 of the Arbitration Act, 1940. All pending applications are disposed of accordingly.

40. The assistance of all the counsels is acknowledged particularly that of the learned Amicus Curiae and his team.

Announced in open Court on 18th November, 2026.

[SAMAN RAFAT IMTIAZ]
JUDGE

Imran