

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 983 of 2022

[Jiaozuo Creation Heavy Industry Co. Ltd. v. Huaneng Fuyun Port & Shipping (Pvt.) Ltd.]

Plaintiff : Jiaozuo Creation Heavy Industry Co., Ltd., through M/s. Syed Haider Imam Rizvi and Syed Ahsan Imam Rizvi, Advocates.

Defendant : Huaneng Fuyun Port & Shipping (Pvt.) Ltd., through Mr. Farooq H. Naek, Advocate, alongwith Syed Qaim Ali Shah, Advocate.

Date of hearing : 07-11-2023

Date of order : 07-11-2023

## ORDER

**Adnan Iqbal Chaudhry J.** - The proceedings *albeit* registered as a suit, is an application seeking recognition and enforcement of a Foreign Arbitral Award under section 6 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 [**Act of 2011**].

2. The Foreign Arbitral Award, dated 02-11-2021, is rendered by the China International Economic and Trade Arbitration Commission [**Arbitration Tribunal**] in favour of the Plaintiff and against the Defendant. The award is pursuant to an arbitration agreement between the parties under the *Supplementary Agreement to the Contract for Upgrading and Rebuilding of Berth No. 3 and 4 at Port Qasim, Karachi*, which was entered by the parties at Karachi on 03-07-2016.

3. While the main application is coming up for final disposal, learned counsel for the Defendant presses for a decision first on two miscellaneous applications moved by the Defendant being CMA No. 12142/2022 and CMA No. 12143/2022. The first CMA is for summoning the record of the arbitration proceedings. The second

CMA under Order XVIII Rule 18 CPC is for an inspection of the project of the contract at the Coal Terminal at Port Qasim, Karachi.

4. Learned counsel for the Defendant submits that the record of the arbitration proceedings is necessitated as one of the objections taken by the Defendant to the enforcement of the award is that the Arbitration Tribunal was not constituted in accordance with the Rules of the Tribunal, which is a defense recognized under Article V(d) of the Schedule to the Act of 2011, and which defense can only be demonstrated if the arbitration record is before the Court; and secondly, that such record will also show that that the averments in the enforcement application are incorrect. As regards the application for inspection, learned counsel submits that an inspection of the underlying project will reveal that it is still incomplete, and thus the finding to the contrary in the award is erroneous. It is submitted that under section 3(3) of the Act of 2011, the CPC is applicable to these proceedings, which in turn empowers the Court to summon the record and order an inspection for assistance in deciding the enforcement application.

5. Both applications are vociferously opposed by learned counsel for the Plaintiff who submits that the applications are frivolous and aimed at delaying the enforcement of the award; that no objection was ever taken by the Defendant before the arbitrators to the composition of the Arbitration Tribunal; that the Act of 2011 does not require the filing of the entire arbitration record; and that in any case, while enforcing a foreign arbitral award this Court acts only as the executing court and not as a court of appeal.

6. Heard the learned counsel.

7. The Rules of the Arbitration Tribunal have been filed by the Defendant along with its objections, and the composition of the Tribunal is manifest from the award itself. Therefore, I do not see the purpose of summoning any other record for deciding an objection to the composition of the Tribunal. The application is also not specific as

to the document sought to be summoned. On the other hand, learned counsel for the Plaintiff rightly points out that section 5, read with Article IV of the Schedule to the Act of 2011, specifies the record that is required for seeking enforcement of a foreign arbitral award, which record has already been filed. In any case, I do not see why the Defendant, who was party to the arbitration, cannot itself file the record that it seeks to summon. Article V of the Schedule to the Act of 2011 also stipulates that it is for the party opposing the enforcement to furnish proof in support of the defenses listed thereunder. There is nothing to show that the Arbitration Tribunal has denied any record to the Defendant. As for the submission that the averments in the enforcement application are incorrect, again, that can be demonstrated by the Defendant from the award itself while proceeding with the enforcement application.

8. As regards the application for inspection of the project to rebut the award, that is essentially a prayer to bring additional evidence. If that evidence was not placed by the Defendant before the Arbitration Tribunal then I do not see how that can be adduced at this stage. As rightly submitted by learned counsel for the Defendant, this Court is not sitting in appeal over the award. Rather, under section 6 of the Act of 2011, unless the Court refuses the application for enforcement, the award is to be enforced in the same manner as a judgment or order of a court in Pakistan.

9. For the foregoing reasons, both CMA No. 12142/2022 and CMA No. 12143/2022 have no merit and are dismissed. To come up within three weeks for hearing of the enforcement application.

**JUDGE**

*SHABAN\**