

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit 232 of 2024
Suit 249 of 2024
Suit 250 of 2024
Suit 251 of 2024
Suit 252 of 2024
Suit 253 of 2024
Suit 254 of 2024
Suit 255 of 2024
Suit 256 of 2024
Suit 257 of 2024

Date: Order with signature of the Judge

For hearing of CMA No.4083/2024

13.08.2024

Mr. Maaz Waheed advocate for the plaintiff along with Mr. Usman Khan, advocate

Mr. Muhammad Javed, Assistant Advocate General

These suits have been filed under section 20 of the Arbitration Act, 1940 and are between the same parties *inter se*. The pleadings in the lead suit, being 232 of 2024, are jointly stated to be representative of the suits and per request facts pertaining to the lead suit shall be referred to in rendering this order.

It is demonstrated that Contract Agreement dated 05.11.2014 is executed between the parties and clause 67.3 thereof, available at page 213, stipulates that the dispute resolution mechanism shall be through arbitration. The arbitration is to ensue per the Arbitration Act, 1940 and the place of arbitration was also agreed to be Karachi.

The plaintiff's learned counsel submits that there is no cavil to the veracity of the contract agreement nor to any provision thereof. It is observed that notice of these suits was issued, vide order dated 11.03.2024, and it is clearly recorded therein that the requisite notice for arbitration dated 14.02.2024 had already been served prior thereto. Post service, on 02.04.2024 learned Assistant Advocate General had sought time to file counter affidavit. No counter affidavit etc. was ever filed and on 07.08.2024 the following order was passed:

"These suits are for reference of dispute to arbitration pursuant to contract agreement. Despite order dated 02.04.2024, Advocate General office has filed no response yet and even today time is being sought. Such conduct cannot be appreciated.

To come up on 13.08.2024. Interim order passed earlier to continue till the next date of hearing. Office is instructed to place copy of this order in connected matters"

It is demonstrated that despite the aforesaid order, and repeated opportunities being available to the defendants, no written statement etc. has been filed as of date. Learned AAG is present; admits the aforesaid; articulates no opposition whatsoever, however, merely seeks an adjournment. Plaintiffs' counsel submits that the requirements for invocation of arbitration have already been completed, hence, it is just and proper to refer the matter to the arbitration in view of the Section 20 of the Act.

The claim of the plaintiffs appears to be borne from the uncontroverted record and no opposition to the same has been placed on file till date. The veracity of the Contract Agreement and the arbitration provision therein is not denied by the learned AAG.

In view of the foregoing it appears that there exists an arbitration agreement exclusively between the parties herein¹ and proceedings have been commenced by a party to the arbitration agreement²; while there may be a dispute upon the merits of the claim, however, there is no dispute with regard to the existence of an arbitration clause / agreement; there exists a dispute³, *prima facie*, of a nature in respect whereof the arbitration agreement applies; admittedly no proceedings under Chapter II of the Act have been instituted; there is no cavil to the application having been preferred within limitation and / or to the jurisdiction of this court to determine this matter; notice hereof was duly received by the defendant and no sufficient cause has been shown to preclude a reference to arbitration⁴.

Therefore, these suits are allowed and the matter is hereby referred to arbitration. As suggested, Mr. Justice (retired) Faisal Arab is appointed as arbitrator, subject to his concurrence and upon a fee to be settled by the learned arbitrator, to determine the dispute between the parties in accordance with the law.

The interim orders passed herein shall subsist. The office is instructed to place a copy hereof in each connected suit.

Amjad

Judge

¹ Per Saleem Akhtar J. in *Commodities Trading International Corporation vs. Trading Corporation of Pakistan & Another* reported as 1987 CLC 2063.

² Per Shabbir Ahmed J. in *Lithuanian Airlines vs. Bhoja Airlines (Private) Limited* reported as 2004 CLC 544.

³ Per Shaikh Azmat Saeed J. in *Industrial Fabrication Company vs. Pak American Fertilizer Limited* reported as PLD 2015 Supreme Court 154.

⁴ Per Muhammad Ali Mazhar J. in *Sadat Business Group Limited vs. Federation of Pakistan & Another* reported as 2013 CLD 1451.