

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

Suit No. 857 of 2018
Suit No. 858 of 2018
Suit No. 859 of 2018

Date: Order with signature of the Judge

For hearing of main application

15.03.2024

Mr. Muhammad Masood Khan, advocate for the plaintiffs
Mr. Muhammad Shahid, advocate for defendant

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 857 of 2018, 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 there is Contract Agreement dated 19.03.2008 executed between the parties and clause 67.3 thereof stipulates that the dispute resolution mechanism shall be through arbitration. An amendment was brought to the said clause, as available in clause 67.3 of page 93 of Particular Conditions of Contract, whereby reference to I.C.C. for Arbitration was changed to reflect the arbitration under the Arbitration Act, 1940 and the place of arbitration was also agreed to be Pakistan.

The plaintiff's learned counsel submits that there is no cavil to the veracity of the contract agreement nor to any provision thereof, including subsequent amendment. It is further stated that in almost six years that have passed no reply / written statement / opposition to these suits has been filed. Learned counsel draws attention of this court towards order dated 20.05.2019 whereby the following was recorded:

"Learned counsel for the defendant requires time in order to file objections. Learned counsel for the plaintiff states that two other matters bearing Suits No.858 & 859 of 2018 in respect of the same parties having identical issue are also pending before this Court which may be taken up on the next date of hearing along with this case. Order accordingly".

It is demonstrated that despite the aforesaid order, and repeated opportunities being available to the defendants thereafter, no written statement etc. has been filed as of date. Even today learned counsel for the defendant is present; admits the aforesaid, however, merely seeks an adjournment. Plaintiff's counsel articulated 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 plaintiff is borne from the uncontroverted record and no opposition to the same has been placed on file in almost six years. The veracity of the Contract Agreement and the arbitration provision therein is not denied by the defendant's learned counsel.

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. Per accord of the learned counsel, 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 office is instructed to place a copy hereof in each connected suit.

Judge

Amjad

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.