

THE HIGH COURT OF SINDH, KARACHI

Suit No. 1196 of 2022

[Presson Descon Intl. (Pvt.) Ltd. v. Pakistan Petroleum Limited]

Plaintiffs : Presson Descon International (Private) Limited and another through M/s. Musadiq Islam and Shahid Iqbal Rana, Advocates.

Defendant : Pakistan Petroleum Limited through M/s. Maria Ahmed and Alizeh Bashir, Advocates.

Date of hearing : 18-12-2024

Date of decision : 31-01-2025

ORDER

Adnan Iqbal Chaudhry J. - This is an application under section 20 of the Arbitration Act, 1940 to file the arbitration agreement in Court and to refer the dispute between the parties to arbitration.

2. The parties had entered a Works Contract dated 03.10.2014 for Gambat South Gas Processing Facility (GPF-II) whereby the Defendant engaged the Plaintiffs as contractor for 'setting up of gas processing facility (GPF-II) for gas, LPG and condensate production on engineering, procurement, construction and commissioning (EPCC) basis'. The arbitration agreement between the parties was in clause 6.14 of the General Conditions of Contract which stipulated :

"6.14 RESOLUTION OF DISPUTES

6.14.1 If any difference or dispute arises out of or in connection with the CONTRACT the COMPANY and the CONTRACTOR shall make every effort to resolve amicably by direct informal negotiations.

6.14.2 If, after thirty (30) days from the commencement of such informal negotiations, the COMPANY and the CONTRACTOR have been unable to resolve amicably a CONTRACT dispute, either Party may require that the dispute be referred for resolution by arbitration in Karachi of two Arbitrators ("Arbitrators"), one to be appointed by each Party of such difference/dispute, and to an umpire ("Umpire") to be appointed by the Arbitrators. The Umpire shall be a retired judge of a High Court or the Supreme Court of Pakistan. Such Arbitrators and Umpire shall together proceed to adjudicate the dispute in accordance with the Pakistan Arbitration Act, 1940, as amended from time to time. The award shall be final and binding on

the parties. Each Party shall be responsible for its own cost regards the appointment of arbitrators and any other expenditure in connection with the arbitration under this clause."

3. The works under the contract were to be completed in 14 months from the Letter of Award which was dated 27.09.2014. *Albeit* with delay, the project works were completed by the Plaintiffs. However, they submit that claims raised by them under the contract remain unsettled. The Plaintiffs claim from the Defendant the following:

- (a) Retention money deducted by the Defendant from payments made to the Plaintiffs under the contract;
- (b) Cost Claims for costs incurred by the Plaintiffs due to variations/changes to the project works made by or due the Defendant;
- (c) Extension of Time [EoT] Claims for the additional cost incurred by the Plaintiffs due to the Defendant's refusal to extend the completion date of the project when such delay was either due to the events beyond the Plaintiffs' control or due to the Defendant.

4. It is not disputed by the Defendant that the arbitration agreement applies to the dispute raised by the Plaintiffs. However, it is contended by the Defendant that the application under section 20 of the Arbitration Act is time-barred. Learned counsel for the Defendant submitted that the retention money had been set-off by the Defendant to recover liquidated damages payable by the Plaintiffs under clause 7.2.7 of the Special Conditions of Contract for delayed performance; that Cost Claims and the EoT Claims raised by the Plaintiffs from time to time were categorically rejected by the Defendant by letters dated 06.05.2015, 26.05.2017 and 14.12.2017; but the Plaintiffs never invoked the arbitration clause to dispute said set-off and rejection within the period of limitation.

Learned counsel for the Plaintiffs submitted that as per clause 7.8.9 of the Special Conditions of Contract, the retention money was to be released to the Plaintiffs within 45 days from issuance of the Final Acceptance Certificate, which certificate was issued by the Defendant on 07.10.2020. As regards the Cost Claims and the EoT

Claims, he submitted that the parties remained in dialogue over such claims, leading to a consolidated EoT Claim submitted on 27.09.2019 and working of Cost Claims submitted on 08.11.2019, until those were finally rejected by the Defendant *vide* letter dated 11.05.2022; and therefore the application under section 20 of the Arbitration Act filed on 10.08.2022 was within limitation.

5. Heard learned counsel and perused the record.

6. It was held in *M. Imam-Ud-Din Janjua v. The Thal Development Authority* (PLD 1972 SC 123) that limitation for an application under section 20 of the Arbitration Act, 1940 is governed by the residuary Article 181 of the Limitation Act, 1908 which prescribes a period of 3 years from the time when the right to apply accrues. It was also held there that:

“The point of the time at which the right to apply under section 20 accrues is, therefore, the point of time at which ‘a difference has arisen’ and the difference arises when one party does not agree with the other on any particular question covered by the Arbitration agreement.”

7. While it is the case of the Defendant that the retention money had been set-off by it against liquidated damages payable by the Plaintiffs under the contract, it is not mentioned when such set-off was communicated to the Plaintiffs. Nevertheless, as per clause 7.8.9 of the Special Conditions of Contract, the retention money was to be released to the Plaintiffs only after the Defendant issued the Final Acceptance Certificate. In other words, before the Final Acceptance Certificate, the retention money was not due to the Plaintiffs. That Certificate was issued by the Defendant on 07.10.2020 and any difference between the parties over the retention money could only have arisen thereafter. Therefore, for the claim of retention money at least, the application under section 20 of the Arbitration is within the period of 3 years prescribed in Article 181 of the Limitation Act, 1908.

8. As regards the Cost Claims and the EoT Claims made by the Plaintiffs, both sides rely on correspondence to establish the date on

which the difference had arisen. Per the Plaintiffs' counsel, the previous letters of the Defendant had disagreed only with the Plaintiffs' computations and evidence for those claims, whereas the parties remained in dialogue until the Defendant's letter of rejection dated 11.05.2022. On the other hand, the Defendant's counsel submitted that its letters dated 06.05.2015, 26.05.2017 and 14.12.2017 had unequivocally rejected said claims and subsequent correspondence between the parties did not have the effect of extending the period of limitation. After perusing the correspondence between the parties, I am of view that the *terminus a quo* for computing limitation for the Cost Claims and EoT Claims is a mixed question of law and fact, and one which an arbitrator is competent to decide. In that regard, reliance can be placed on *Awan Industries Ltd. v. The Executive Engineer, Lined Channel Division* (1992 SCMR 65) and *Tribal Friends Co. v. Province of Balochistan* (2002 SCMR 1903).

9. For the foregoing reasons, the application under section 20 of the Arbitration Act is allowed. The dispute between the parties arising under the Works Contract dated 03.10.2014 is referred to arbitration under clause 6.14.2 of the General Conditions of Contract with the following terms of reference:

- (a) to determine the Plaintiffs' claim for return of retention money;
- (b) to determine whether the Plaintiffs' Cost Claims and EoT Claims are time-barred as on 10.08.2022, and if not, to determine the Plaintiffs' entitlement to such claims.

The parties are given two weeks to appoint one arbitrator each. Thereafter, the arbitrators shall appoint an Umpire within two weeks. In the event a party fails to appoint an arbitrator within the given time, or the arbitrators cannot agree upon an Umpire within the given time, any party may revert to Court for further orders. Suit disposed of in said terms.

JUDGE

Karachi
Dated: 31-01-2025