

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Irfan Saadat Khan and Aqeel Ahmed Abbasi, JJ**KAUSAR RANA RESOURCES (PRIVATE) LIMITED and others ---Petitioners****Versus****QATAR LUBRICANTS COMPANY W.L.L. (QALCO) and others ---Respondents**

C.P.L.A. No. 4468 of 2024, decided on 2nd December, 2024.

(Against the judgment of the Lahore High Court, Lahore, dated 24.06.2024, passed in C.M. No. 3 of 2023 in C.O. No. 48681 of 2023).

(a) Companies Act (XIX of 2017)---

---Ss. 126, 127 & 278---Arbitration Act (X of 1940), Ss. 18 & 34---Pro-arbitration approach of Courts---Arbitration---Filing of award---Dispute pertaining to transfer of shares was initiated before High Court where proceedings were neither stayed under Arbitration Act, 1940 nor the matter was referred to Arbitrator---Validity---In addition to Supreme Court adopting a pro-arbitration approach, stance of referring for arbitration was also bolstered by the framework of Companies Act, 2017, which, through its Preamble, affirmatively advocated for alternative mechanisms to ensure expeditious resolution of corporate disputes---Companies were explicitly encouraged under section 278 of Companies Act, 2017 to refer any existing or future disputes, whether between companies or involving any other persons, to arbitration---Supreme Court with pro-arbitration approach and with the consensus of parties referred the matter to Arbitrator---Supreme Court set aside order passed by High Court and accepted application under section 34 of Arbitration Act, 1940---Supreme Court stayed proceedings under sections 126 and 127 of Companies Act, 2017 concerning alleged fraudulent transfer of shares and rectification of register of members (shareholders)---Supreme Court directed that award made by Arbitrator would be filed in High Court in accordance with the proceedings under Arbitration Act, 1940, as the matter fell exclusively within the jurisdiction of Court established under the Companies Act, 2017---Appeal was allowed.

Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd [1993] AC 334; Brother Steel Mills v. Ilyas Miraj PLD 1996 SC 543; and Nilmoni Singh v. Taranath ILR 9 Cal 295 rel.

(b) Arbitration Act (X of 1940)---

---S. 2(c)---Companies Act (XIX of 2017), S. 5(4)---Term "Civil Court"---Civil Courts of special jurisdiction---Scope---Courts exercising civil jurisdiction in relation to specific matters, such as the Court established under Companies Act, 2017 cannot be read into the exception clause of section 2(c) of Arbitration Act, 1940---Term "Civil Court" mentioned in section 2(c) of Arbitration Act, 1940 does not refer exclusively to Civil Courts of general jurisdiction but also encompasses Civil Courts of special jurisdiction.

(c) Arbitration---

---Economic benefits---Scope---Significant economic benefits of arbitration are cost-effective, efficient and confidential means of resolving disputes---Arbitration alleviates burden on national Courts, enhances business productivity and provides faster resolution process, thereby minimizing disruptions to businesses---Ability to enforce international arbitration awards strengthens trade and commerce, while arbitration's stable and predictable dispute resolution mechanism promotes investor confidence, making the country an attractive destination for foreign investment---Such factors collectively foster a favourable business environment, drive economic growth and enhance country's competitiveness on the global stage.

Barrister Iftikhar-ud-Din Riaz, Advocate Supreme Court and Muhammad Haroon Mumtaz, Advocate Supreme Court for Petitioners.

Arshad Mohsin Tayebaly, Advocate Supreme Court and Tariq Aziz, Advocate-on-Record for Respondents.

Date of hearing: 2nd December, 2024.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---In enforcing an arbitration agreement, 'the courts' role is not to pre-empt the jurisdiction of the arbitrators but to support the arbitral process and ensure that the parties adhere to their agreement'. By prioritizing arbitration, courts uphold the principle of party autonomy and reinforce the parties'

choice to resolve their disputes outside traditional litigation. This approach not only respects their agreement but also addresses the inefficiencies inherent in conventional judicial proceedings. Courts should adopt a resolute stance of non-interference, encouraging arbitration and other forms of alternative dispute resolution (ADR), such as mediation, as the preferred modes of resolving disputes. This judicial mindset is particularly vital for our country, where an overburdened judicial system and burgeoning case backlogs impose immense economic costs on both the judiciary and society. By respecting arbitration agreements and fostering an environment conducive to swift dispute resolution, courts can play a pivotal role in alleviating this crisis. Courts in Pakistan must therefore embrace this ethos, recognizing that promoting arbitration is not merely a legal necessity but also an economic and commercial imperative for ensuring the country's progress and prosperity. It is with this pro-arbitration approach that we proceed to address and decide the questions raised in the instant case.

2. Briefly, the relevant facts are that Qatar Lubricants Company W.L.L. (QALCO) and Fawad Naeem Rana ("respondents") filed a petition before the Lahore High Court, invoking its jurisdiction as a Company Bench under the Companies Act, 2017 ("Companies Act"). Through the said petition, they sought, inter alia, rectification of the register of sharers under Section 126 of the Companies Act and action against Atif Naeem Rana and Sameen Naeem Rana ("petitioners") under Section 127 of the Companies Act. The respondents alleged that the petitioners had fraudulently secured the transfer of the respondents' shares in Kausar Rana Resources (Pvt.) Ltd. (KRR) in the register of sharers, relying on an illegal and void agreement dated 12.04.2020 ("agreement"). The petitioners appeared before the Company Bench in the said petition and filed an application under Section 34 of the Arbitration Act, 1940 ("Arbitration Act"), seeking a stay of the proceedings on the respondents' petition and for referring the matter to arbitration by any retired Judge of a High Court or the Supreme Court, in accordance with clause (13) of the agreement. The respondents opposed the application by filing a written reply. Through a judgment dated 24.06.2024 ("impugned judgment"), the Company Bench dismissed the petitioners' application. Consequently, the petitioners have filed the present petition for leave to appeal.

3. A perusal of the impugned judgment reveals that the Company Bench dismissed the petitioners' application primarily on the ground that the petitioner Sameen Naeem Rana - one of the beneficiaries of the alleged fraudulent transfer of shares - was not a party to the agreement containing the arbitration clause. The Company Bench concluded that the right to arbitrate could not be enforced by a person who is not a party to the agreement. However, we find this reasoning unsustainable. Clause (1) of the agreement explicitly provides that "QALCO shall relinquish all its rights in KRR and transfer all of its existing shares in Kausar Rana Resources (Pvt.) Ltd. [KRR], including shares of nominee director, to Mr. Atif Naeem Rana - CEO or a nominee of the same". Pursuant to this clause, the shares were transferred to the petitioner Sameen Naeem Rana, who acted as the nominee of the petitioner Atif Naeem Rana - a party and signatory to the agreement containing the arbitration clause. Thus, Sameen Naeem Rana derives his rights and title in the transferred shares under and through Atif Naeem Rana. Accordingly, he is subject to all rights and obligations arising from the agreement signed by Atif Naeem Rana, including the right to enforce the arbitration clause contained therein.

4. In addition to our above finding, both learned counsel for the parties reached a consensus during arguments that the matter of the alleged fraudulent transfer of shares may be referred to an Arbitrator, to be appointed by this Court, with a direction to conclude the arbitral proceedings within a specified timeframe. Furthermore, they requested an order from this Court directing that the Award made by the Arbitrator be filed before the Company Bench, rather than the Civil Court, to ensure the matter is resolved more effectively and expeditiously.

5. In addition to the Court adopting a pro-arbitration approach, this stance is also bolstered by the framework of the Companies Act, which, through its preamble, affirmatively advocates for alternative mechanisms to ensure the expeditious resolution of corporate disputes. Furthermore, under Section 278, the Act explicitly encourages companies to refer any existing or future disputes, whether between companies or involving any other persons, to arbitration. Therefore, on the basis of the above finding, our pro-arbitration approach and the consensus of the learned counsel for the parties, we convert this petition into an appeal and allow the same. The impugned judgment is set aside, and the petitioners' application under Section 34 of the Arbitration Act is

accepted. The dispute concerning the alleged fraudulent transfer of shares is referred to arbitration and meanwhile, the proceedings on the respondents' petition under Sections 126 and 127, etc., of the Companies Act before the Company Bench shall remain stayed.

6. Since the parties themselves could not arrive at a consensus on the name of an Arbitrator, we proposed the name of Mr. Justice (R) Maqbool Baqar as the Arbitrator, to which neither party raised any objection. Therefore, with the consent of the parties, the matter is referred to the said Arbitrator. We expect that the Arbitrator will conduct the arbitral proceedings as expeditiously as possible and endeavour to decide the matter preferably within a period of four months from the date of the submission of claims by the parties before him. In case the said learned Arbitrator declines to accept the assignment, the parties are free to approach the Company Bench through a proper application for the appointment of a new Arbitrator. So far as the seat and venue of the arbitration are concerned, it was suggested by the learned counsel for the petitioners that the seat and venue ought to be Lahore or Islamabad, whereas learned counsel for the respondents suggested that it could be Karachi or Dubai. We leave this question to the discretion and decision of the Arbitrator.

7. As for the request to make an order to file the Award before the Company Bench, rather than the Civil Court, it cannot be answered in the affirmative simply based on the consent of the parties; as it relates to the jurisdiction of the Company Bench, which cannot be conferred by consent of the parties or by an order of this Court. Therefore, we examine the legality of the same considering the relevant provisions of the Arbitration Act and the Companies Act.

8. As per Section 14(2) of the Arbitration Act, the award made by an arbitrator is to be filed in Court and the "Court", as defined in Section 2(c) of the Arbitration Act, means a Civil Court having jurisdiction to decide the question forming the subject-matter of the reference [to arbitration] if the same had been the subject-matter of a suit. The question of law before us, therefore, is: Whether the Court, i.e., a Company Bench of the High Court, established by the Companies Act qualifies as a Civil Court having jurisdiction to decide the question forming the subject matter of the reference to arbitration if the same had been the subject matter of a suit.

9. Generally, a civil court is a court that has jurisdiction to adjudicate disputes between individuals or entities concerning their civil rights and obligations, while a criminal court is a court that has jurisdiction to hear cases involving the commission of offences in order to determine the guilt or innocence of the accused. Although Article 175 of the Constitution, which authorises the establishment of courts and the conferment jurisdiction on them by law, does not explicitly name or label the courts established by law as general or special courts, it is common in legal parlance to distinguish between the two. Courts with general jurisdiction over a broad range of matters are referred to as courts of general jurisdiction or general courts, while courts with jurisdiction limited to specific matters are referred to as courts of special jurisdiction or special courts.

10. Accordingly, the Civil Courts established under the Civil Courts Ordinance, 1962 are referred to as general courts of civil jurisdiction or general civil courts, as they have been conferred jurisdiction under Section 9 of the Code of Civil Procedure 1908 to try all suits of a civil nature except those whose cognizance is expressly or impliedly barred. Similarly, the Criminal Courts established under the Code of Criminal Procedure, 1898 are referred to as general courts of criminal jurisdiction or general criminal courts, as they have been conferred general jurisdiction under Sections 28 and 29 of the said Code to try all offences under the Pakistan Penal Code, 1860 or other criminal laws. Conversely, courts such as Banking Courts, Consumer Courts and Labour Courts, etc., established under different statutes and conferred jurisdiction by those statutes to deal with specific matters, are referred to as civil courts of special jurisdiction or special civil courts. Likewise, Anti-Terrorism Courts, Anti-Corruption Courts and Accountability Courts, etc., established under various criminal laws and conferred jurisdiction limited to specific offences, are referred to as criminal courts of special jurisdiction or special criminal courts.

11. The Court, i.e., a Company Bench of the High Court, established under Section 5 of the Companies Act, has been conferred specific jurisdiction to adjudicate disputes between individuals or entities concerning their civil rights and obligations relating to companies and matters connected therewith. Section 4 gives Companies Act an overriding effect over any other law. The jurisdiction conferred on the Court by the Companies Act is,

therefore, civil in nature. Consequently, the Court established under the Companies Act qualifies as a civil court of special jurisdiction and may appropriately be referred to as a special civil court.

12. Since Section 2(c) of the Arbitration Act itself does not specify, it requires determination whether the term "Civil Court" mentioned therein refers exclusively to civil courts of general jurisdiction or also encompasses civil courts of special jurisdiction. If we hold that the term "Civil Court" refers exclusively to civil courts of general jurisdiction, it will amount to reading into the provisions of Section 2(c) of the Arbitration Act additional words that are not used by the legislature. We are cognizant of the lawful use of the interpretational tool of "reading into" the provisions of a law to give effect to the manifest legislative intent and purpose or to save the provisions from unconstitutionality by giving it a constitutionally compliant meaning, scope and effect. However, in this case, we find no justifiable reason to read anything additional into the provisions of Section 2(c) of the Arbitration Act. In fact, we find the position to be the converse: if we were to adopt such a restrictive interpretation, it would limit the scope of the Arbitration Act and frustrate the legislative intent and purpose, which is to provide an alternative dispute resolution mechanism for civil disputes. Such an interpretation would unnecessarily restrict its application to only those civil disputes that are adjudicable in civil courts of general jurisdiction. However, if it is held that the term "Civil Court" mentioned in Section 2(c) of the Arbitration Act also includes civil courts of special jurisdiction, it would give full effect to the legislative intent and purpose.

13. The latter view also aligns with the provisions of Section 20 of the Arbitration Act, which permits an application to file an arbitration agreement in a court having jurisdiction over the matter to which the arbitration agreement relates. Such a court may either be a civil court of general jurisdiction or a civil court with special jurisdiction over the relevant matter. It is quite common that the legislature, from time to time, carves out specific matters from the general jurisdiction of Civil Courts established under the Civil Courts Ordinance, 1962, either to ensure their expeditious resolution or to address the need for specialised expertise. Jurisdiction over such matters is conferred upon Special Courts established for this purpose. However, the fact that these matters are adjudicated by special civil courts established under special laws, rather than by general civil courts established under the general law, does not alter their classification as civil matters nor does it change the nature of the civil rights or obligations involved.

14. Similarly, the word "suit" used in Section 2(c) of the Arbitration Act cannot be given a narrow and restrictive meaning, as it refers to the usual mode of instituting a civil proceeding to enforce a civil right or obligation, and thus encompasses all such modes provided by law. It means the original proceeding in the court of first instance. While some laws provide for the initiation of proceedings through a suit, others allow for initiation through application, petition, reference or complaint. The name given to the document initiating the proceedings cannot be the determining factor in ascertaining either the nature of the jurisdiction exercised by the court or the classification of the court exercising such jurisdiction.

15. If the term "Civil Court" in Section 2(c) of the Arbitration Act were interpreted to refer exclusively to civil courts of general jurisdiction, all civil matters adjudicable by special courts under specific laws would fall outside the scope of the Arbitration Act. Such an interpretation would preclude applications for filing award or arbitration agreements in courts having special jurisdiction over the relevant matters, thereby frustrating the legislative intent and purpose of the Arbitration Act, which is to provide an alternative dispute resolution mechanism in civil matters. Section 2(c) of the Arbitration Act excludes from the definition of "Court" only one civil court of special jurisdiction, namely, the Small Cause Court, and no other civil court. Courts exercising civil jurisdiction in relation to specific matters, such as the Court established under the Companies Act, cannot be read into the exception clause of Section 2(c) of the Arbitration Act. Therefore, it is our considered view that the term "Civil Court" mentioned in Section 2(c) of the Arbitration Act does not refer exclusively to civil courts of general jurisdiction but also encompasses civil courts of special jurisdiction.

16. This conclusion aligns with the pro-arbitration bias firmly established in the enforcement of international arbitral awards, which, in our considered view, is equally applicable to domestic disputes. Where parties agree to take their disputes to arbitration, they expect the court to hold them to their bargain. It is underlined that the word "bias" used in the work "pro-arbitration bias" is not used in the negative or prejudicial sense. Instead, it reflects a judicial and a policy inclination towards supporting arbitration as a preferred method for resolving

disputes. This tendency arises from recognizing arbitration's benefits, such as efficiency, flexibility and the ability to deliver tailored outcomes. Applying this pro-arbitration bias to domestic arbitration advances the overarching objectives of arbitration law, including efficiency, party autonomy and minimising judicial interference. Requiring a party to an arbitration agreement to first approach a civil court of general jurisdiction for enforcement of the arbitration agreement and then, if the arbitral proceedings fail, to revert to a civil court of special jurisdiction, introduces unnecessary delay, inconvenience and expense. Such a convoluted process undermines the purpose of arbitration as an expeditious and cost-effective mechanism for dispute resolution. Adopting a pro-arbitration bias in domestic disputes is also essential to addressing the challenges posed by the overwhelming backlog of cases in our judicial system, particularly at the level of courts of original jurisdiction (trial courts).

17. The dispute in the present case, as well as the subject matter of the reference to arbitration, pertains to the alleged fraudulent transfer of shares and the rectification of the register of members (shareholders), which falls exclusively within the jurisdiction of the Court established under the Companies Act. Accordingly, we accept the request of learned counsel for the parties and direct that the Award made by the Arbitrator be filed before the Company Bench for further proceedings in accordance with the Arbitration Act.

18. Before parting with this judgment, we wish to underscore the significant economic benefits of arbitration as a cost-effective, efficient and confidential means of resolving disputes. Arbitration alleviates the burden on national courts, enhances business productivity and provides a faster resolution process, thereby minimising disruptions to businesses. Furthermore, the ability to enforce international arbitration awards strengthens trade and commerce, while arbitration's stable and predictable dispute resolution mechanism promotes investor confidence, making the country an attractive destination for foreign investment. These factors collectively foster a favourable business environment, drive economic growth and enhance the country's competitiveness on the global stage. In this context, we are informed that a draft bill for a new Arbitration Act, prepared by the Law and Justice Commission of Pakistan, was submitted to the Federal Government through the Ministry of Law and Justice on 2 May 2024. This draft bill aims to modernise the out dated arbitral dispute resolution framework, which has remained largely unchanged since 1940. We are optimistic that the Federal Government will prioritise the larger economic interest of the nation and ensure the swift enactment of fresh arbitral legislation to provide an effective and contemporary dispute resolution mechanism for the people. The office is directed to dispatch a copy of this judgment to the Attorney-General of Pakistan for onward correspondence and as a reminder to the concerned Ministry.

MH/K-1/SC Order accordingly.