

**ORDER SHEET
HIGH COURT OF SINDH, KARACHI**

**Suit Nos.894, 895, 896, 897,
898, 899 & 900 of 2015**

Date	Order with signature of Judge
-------------	--------------------------------------

Present

Mr. Justice Muhammad Ali Mazhar.

Suit Nos.894 & 895 of 2015

M/s.Zubair Hassan
Enterprises.....v/s.....
Frontier Works
Organization
& another

Suit Nos. 896, 897, 898 & 899 of 2015

Al-Rae Construction
Company(Pvt.) Ltd. (ACCL) ...v/s.....
Frontier Works
Organization
& another

Suit No. 900 of 2015

M/s.Muhammad Rafiq.....v/s.....
& Company
Frontier Works
Organization
& another

Date of hearing 26.05.2017

Mr.Muhammad Masood Khan and Ms.Amna Usmani,
Advocates for the Plaintiffs.

Mr.Usman Tufail Shaikh, Advocate for Defendants

Muhammad Ali Mazhar, J: All these suit have been filed under Section 20 of the Arbitration Act, 1940 with prayer that direction be issued to the defendants to file Arbitration Agreement in the court and to make order of

reference to an Arbitrator to be appointed under the orders of this court.

2. The suits are pending since May, 2015. The basic objection of the learned counsel for the defendants is with regard to non-availing the opportunity of an amicable settlement, which is one of the conditions in all the contracts. The said condition provides that in case of any disagreement on any account during execution of work the matter shall be referred to DG FWO whose decision shall be final and binding on all the parties. Learned counsel for the defendants argued that before availing this remedy the suits are not maintainable, however, learned counsel for the plaintiffs argued that after termination of contract, Clause 17 does not apply here, so he requests that further remedy to deal the matter is provided under Clause 67 of the Military Engineer Services, General Condition for Contracts, which is reproduced as under:-

“67. Arbitration. All disputes between/among the parties to the contract arising out and or relating to the contract or execution of work, other than those for which the decision of GE/CsMES/DW&CEs or of any other person is under the contract expressed to be final shall, after written notice by either party to the other be referred to the sole arbitrator to be appointed by the Secretary, Law, Justice and Human Rights Division. While appointing the sole arbitrator, he may also consider the panel

submitted by Engineer-in-Chief of Pakistan Army. Unless the parties otherwise agree, such reference shall not be made until after completion/alleged completion, abandonment of work of the termination of the contract. The venue of arbitration shall be fixed by the sole arbitrator at his discretion. The award thus made shall be final and binding on the parties to the arbitration”.

However, after arguing at some length both learned counsel have agreed to the following modalities for the disposal of these pending suits:-

- (a) In view of Clause 17 referred to above the parties will try to make an attempt for amicable settlement within 20 days from the date of this order. The plaintiffs will approach in writing to the concerned Department of the defendants, so that they may be allowed access to the persons appointed in the clause for settling the dispute amicably before further proceedings.
- (b) In case the attempt for amicable settlement is failed then the parties shall resolve the dispute in terms of Clause 67 of Military Engineer Service, General Conditions for Contracts.
- (c) The Arbitrator will be appointed in terms of clause 67 who will pass the award in accordance with law.

- (d) The 20 days will start from the date of writing letter by the plaintiffs to the defendants. The letter shall be sent by the plaintiffs to the defendants through courier service and copy will be endorsed to the learned counsel for the defendants for his information.

Judge

ns