

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

BEFORE:  
Mr. Justice Zulfiqar Ahmad Khan

Suit No. 1694 of 2016

Dhanya Agro-Industrial (Pvt.) Ltd.

Versus

Quetta Textile Mills

Date of Hearing: 16.08.2018

Plaintiff: Through Mr. Qazi Iftikhar Ahmad along with  
Mr. Muhammad Nazim Khokhar Advocates.

Defendant: Nemo

**J U D G M E N T**

**Zulfiqar Ahmad Khan, J.**- An application under section 6 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act, 2011 is made via the instant suit to enforce an arbitral award, duly certified, copy of which is attached at page 101.

By way of background, the counsel contended that the parties by a contract dated 22.05.2014 agreed to sell/purchase raw cotton where the plaintiff was the seller and the defendant was the buyer. The said contract envisaged that all disputes relating to the contract would be resolved through arbitration in accordance with bylaws of the International Cotton Association Limited (ICA). Per counsel, a dispute arose between the parties where, as per procedure laid down by ICA, arbitrators were appointed where Mr. Arthur Aldcroft was appointed by and on behalf of the seller and Mr. Nigel Scott was appointed on behalf of buyer and Mr. Derek Tanner was appointed by the ICA to act as Chairman of the Tribunal. After hearing contentions of the parties, which are detailed in the said Award, the arbitrators rendered the following Award:-

**7. WE HEREBY AWARD AND DIRECT AS FOLLOWS:**

*As to the contract dated 22 May 2014 (No.39140074)*

1. *The Buyers shall invoice back to the sellers 200 metric tons, or the equivalent of 440920 lbs, at the unit price of 65.25 US cents lb.*

2. *The buyers shall, in consequence of the foregoing direction, pay to the sellers the sum of U.S \$ 60.758.78 (sixty thousand seven hundred and fifty eight point seven eight US Dollars), being the difference between the contract value of the said 200 metric tons, or the equivalent of 440.920 lbs, and the market value on 17 March 2015.*

3. *The buyers shall also pay to the sellers the sum of US \$ 2,996.32 (two thousand nine hundred and ninety six point three two US Dollars), being interest on U.S \$ 60.758.78 (sixty thousand seven hundred and fifty eight point seven eight US Dollars), the item (2) above, at the rate of 7.5 (Seven point five) percent per annum from 17 March 2015, to 12 November 2015, the date of this our Award.*

4. *The Buyers shall also pay to the sellers interest on the sum of US \$ 63.755.10 U.S \$ (sixty three thousand seven hundred and fifty five point one zero US Dollars), being the cumulative total of the amounts referred to in directions (2) and (3), herein at the rate of 4.25 (Four point two five) percent per annum over the New York Prime Interest Rate or, as appropriate, the calculated average thereof prevailing from 3 December 2015, until the date of payment of that sum to the Sellers.*

**8. AS TO THE COSTS OF THIS AWARD, WE AWARD THAT:-**

1. *The total costs of this award are set as £ 7,770.00 (seven thousand seven hundred and seventy point zero zero Pounds Sterling) including a stamping fee of £800.00 (eight hundred point zero zero Pounds Sterling) and shall be borne by the Buyers.*

2. *At the date of writing this Award only the sellers have paid the requested deposit of £4,000.00 (four thousand point zero zero Pounds Sterling).*

3. *The sellers shall bear and pay £3,200.00 (three thousand two hundred point zero zero Pounds Sterling) together with a stamping fee of £800.00 (eight hundred point zero zero Pounds Sterling) due in accordance with the provisions of Bylaw 359 and shall recover this amount from the buyers.*

4. *At the date of writing this award there is a shortfall in the deposits received against the actual costs amounting to £3,770.00 (three thousand seven hundred and seventy point zero zero Pounds Sterling) and a request has gone to both parties seeking this payment, which is required in order to secure the release of the Award. In the event that the sellers provide the additional amount they shall*

*recover the amount £2,770.00 (three thousand seven hundred and seventy point zero zero Pounds Sterling) from the buyers. If the amount of £2,770.00 (three thousand seven hundred and seventy point zero zero Pounds Sterling) is provided by the buyers, then they shall bear this amount, as they are responsible for all of the costs of this arbitration.*

5. *Each party shall bear and pay its own costs of the reference.*
  
9. *The seat of this arbitration is in Liverpool, England and the Award will be deemed to have been made and perfected, and to become effective and binding, in Liverpool on the 12<sup>th</sup> Day of November 2015, the day on which it is stamped by the International Cotton Association, Limited. As such, it must be treated as having been made in England regardless of where matters were decided, or where the Award was signed, dispatched or delivered to the Firms in dispute. The Law of England and Wales, especially the Arbitration Act 1996 and any amendments to it, govern this arbitration. The courts of England and Wales exercise jurisdiction over this arbitral process; no other court has jurisdiction over any part of the process.*

***NOTICE OF APPEAL*** *against this award must be sent to the Secretary of the International Cotton Association Limited, in accordance with Bylaw 311, to arrive on or before the 10<sup>th</sup> December, 2015.”*

Per counsel the very purpose of the 2011 Act, as embodied in its preamble, was to provide an expeditious mechanism for the recognition and enforcement of arbitral agreements and foreign arbitral awards pursuant to the New York Convention 1958 between parties which are residents of countries who have consented to be bound by the said New York Convention. It is worth mentioning that both the parties are domiciled from countries who are members of the said Convention. Section 3 of the said Act empowers Courts to exercise exclusive jurisdiction to adjudicate and settle matters arising out of this Act. The word Court as having in Section 2(d) means a High Court or any other superior court in Pakistan as notified. Per counsel thus this Court has competent jurisdiction to pass order in this case.

Section 6 of the said Act requires the party applying for recognition and enforcement of foreign arbitral award to make a proper application in a competent Court by filing documents in accordance with Article IV of the New York Convention.

Counsel went through the details of the said Article to satisfy this Court that the necessary documents, as mandated by the said Article, have been provided. Section 6 of the Act is of paramount importance, which is reproduced hereunder: -

*“6. Enforcement of foreign arbitral award.—(1) Unless the Court pursuant to section 7, refuses the application seeking recognition and enforcement of a foreign arbitral award, the Court shall recognize and enforce the award in the same manner as a judgment of order of a court in Pakistan.*

*(2) A foreign arbitral award which is enforceable under this Act, shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, sent off or otherwise in any legal proceeding in Pakistan.”*

As a review of the above provision of law shows that a foreign arbitral award, as long as it is enforceable, is to be treated as binding for all purposes on the persons between whom it was made. Counsel by referring to Section 7 and later on mentioning Article 5 of the New York Convention stated that none of the impediments against enforceability of the instant Award are attracted in the case in hand.

Despite service by all three means including the Bailiff, pasting as well as publication in Daily Nawa-e-Waqt dated May 31, 2018 none has appeared on behalf of defendant and the suit thus declared *exparte* as no defence has come forward from the defendant side who despite all possibilities to appear have failed to do so. Worth mentioning is the fact that very intention of legislating Act XVII of 2011 was to expedite the process. By giving fast-track enforceability to the arbitral award granted between members of the New York Convention, the parties affected by

misadventures of others could seek expeditious disposal of their cases and remedies were made forthcoming in an expeditious manner without any unnecessary loss of time.

In the circumstances at hand the award dated 12.11.2015 is made rule of the Court, the suit is decreed as prayed. Let a decree follow.

Dated: 16.08.2018.

**Judge**