IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 1098 of 2023

Date	Order with signature of Judge

For Hearing of CMA No.9890/2023.

Date of hearing: 12thDecember 2023
Date of order: 26th January 2024.

Mr. Umer Akram Chaudhray advocate for the Plaintiff.
Mr. Khalid Jawed Khan advocate for Defendants.

ORDER

Salahuddin Panhwar, J:- Through instant suit, the **plaintiff** seeks the **recognition** and **enforcement** of the Final **Award** dated **06.10.2022**. By dint of this order, I *intend* to dispose of application under Section **94** read with Order **39 Rule 1 & 2 CPC** and **Order XXXVIII** Rule **5** and Section **151** of CPC filed by the plaintiff.

2. The relevant facts for disposal of listed application are that the Plaintiff is a registered company under the laws of the People's Republic of China and is principally engaged in technology *integration*, *engineering* design, *equipment* and *product manufacturing* and technical services in the *metallurgical* industry. Whereas, the Defendant is a public limited company incorporated under the laws of Pakistan; that the Plaintiff and the Defendant *executed* the **Contract** for **Cold Rolling** Mill Complex for STPL Karachi (*hereinafter referred to as **CRM** Contract and Contract for Acid Regeneration Plant, Karachi*) & (hereinafter referred to as **ARP** Contract). It is further stated that the **CRM** Contract required the Defendant to pay the Plaintiff a total price of **CNY 123,299,385.00** by phased payment in consideration of the Plaintiff's provision of design, engineering, procurement and supply of equipment and essential parts as well as technical documentation and project management consultancy services necessary for a Cold Rolling Strip Plant at the Defendant's site. The **ARP** Contract required the Defendant to *pay* the Plaintiff a total **price** of **CNY 11,410,740.00** by phased payment in *consideration* of the **Plaintiff's** provision of design, engineering, procurement and supply of equipment and essential parts, as well as technical documentation and project management consultancy services necessary for an

Acid Regeneration Plant, which is a *component* of the Cold Rolling Strip Plant. Although the **CRM** Contract and the **ARP** Contract were executed separately, the Parties treated these as part of the arrangement under the **CRM** Contract, in order to save the additional price payable under the **ARP** Contract. It is further submitted that after execution of aforesaid ***contracts***, both the parties also executed the **Understanding Letter** dated 20.09.2018, the **Amendment-I** dated 29.04.2018 and the **Memo of Meeting** dated 30.10.2019, which amended and revised certain provisions of the **CRM** Contract and the **ARP** Contract with mutual agreement. Additionally, under Article **40** of the CRM Contract and under Article **39** of the ARP Contract the parties set out **arbitration agreements** in identical terms. It expressly required the parties to **resolve** any dispute arising between them in relation to or in connection with the Contracts through arbitration in Singapore, being the **seat** of **arbitration**, in accordance with the Arbitration Rules of the **Singapore** International Arbitration Center ("**the SIAC**"). Article **40** of the **CRM** Contract and Article **39** of the **ARP** Contract constituted the parties agreements to submit to arbitration all or any differences which may arise between them in relation to or in connection with the Contracts in terms of Article II of the Convention. It is further submitted that during performance of the Contracts, certain disputes had arisen between the parties; the Defendant breached its obligations under the **Contracts** by failing to complete civil construction works on time. In addition, during **March** to **June 2020**, the Defendant *fundamentally* breached and *wrongfully* repudiated the Contracts by fraudulent **encashment** of the **Bank Guarantees** dated 25.01.2019 and the Bank Guarantee dated **20.05.2019** provided by the Plaintiff under the Contracts. The defendant further made *fraudulent* attempt to **cancel** the **letter of credit** established under the **CRM** Contract and failing to amend and/or reopen the letter of credit under the **CRM** Contract, as such, due to the Defendant's wrongful actions, breaches, and failures, the Plaintiff became entitled to retain the amount of **CNY 19,517,577.00** already made by the Defendant under the **CRM** Contract. The Plaintiff also became *entitled* to receive **compensation** for the loss and damage suffered owing to the **Defendant's breach** of the Contract, which was *assessed* to be **CNY 35,799,296**. Further it is submitted that pursuant to the **arbitration** agreements, the Plaintiff sought the resolution of the disputes by arbitration in **Singapore** under the Arbitration Rules of the Singapore International Arbitration Centre in

accordance with Article **40** of the **CRM** Contract and Article **39** of the **ARP** Contract.

3. That, on **27.08.2020**, the Plaintiff commenced the **arbitration** proceedings by filing the **Notice** of Arbitration under **Rule 3.3 of the SIAC Rules**. The Plaintiff was *deemed* to have **commenced** two **arbitrations**: the **SIAC** Arbitration No 917 of 2020 (ARB917/20/DXC) and the SIAC Arbitration No.918 of 2020 (ARB918/20/DXC). Pursuant to Rules **8.4** and **8.5** of the **SIAC** Rules, the SIAC Court decided to allow the ***consolidation*** of the two **arbitrations** into one arbitration, being the **SIAC** Arbitration No. 917 of 2020 (ARB917/20/DXC); that, pursuant to the arbitration agreements in the Contracts, the Plaintiff and the Defendant each **nominated** an **arbitrator**, and the **two co-arbitrators** then jointly nominated the presiding **arbitrator**, which were all confirmed by the Vice President of the SIAC Court under the SIAC Rules. Thus, the Arbitral Tribunal, comprising of *two party-nominated* arbitrators and the presiding **arbitrator**, was constituted on **11.11.2020**. The Arbitral Tribunal comprised of *renowned* and eminent international arbitration practitioners from Singapore and Hong Kong. It is further submitted that from November **2020** till August **2022**, the Parties, under the directions of the Arbitral Tribunal, *engaged* in the **elaborate** arbitral proceedings. During the arbitral proceedings, the Plaintiff filed its claims against the Defendant in the Statement of Claim and the Defendant raised counter claims against the Plaintiff in the Statement of Defense and **Counterclaim**. In addition to the filing of pleadings, the arbitral proceedings entailed, *inter alia*, disclosure of documents, presentation of witness statements and expert reports, oral evidential hearing conducted from **03** to **07** January **2022**, and legal submissions. The Arbitral Tribunal **closed** the arbitral proceedings on **04.08.2022** pursuant to Rule **32.1** of the **SIAC** Rules. The Arbitral Tribunal, after duly considering all the submissions and evidence and following due process, rendered the Final **Award** dated 06.10.2022, which **included** detailed reasons. The **Final Award** has been registered in the **Award** No.127 of 2022 in SIAC Registry of the **Awards**; that, *subsequently*, on the application of the Parties, the Arbitral Tribunal rendered the **Correction** (*to Final Award dated 6 October 2022*) dated 25.11.2022 under Rule **33.1** of the SIAC Rules. The Correction only *rectified* certain **computational**, *clerical*, and *typographical* errors

in the Final Award. The Correction has been registered in the Award **No.127(a) of 2022** in SIAC Registry of the Award. The Arbitral **Tribunal** held as follows:

> *I.* *The Respondent wrongfully repudiated the **Contracts by**, inter alia, encashing the **Bank Guarantees** and attempting to cancel the **L/C**.*
>
> *II.* *The **Claimant** has the **right** to retain the **payments** in the amount of **CNY 19,517,577.00** already made by the **Respondent** under the **CRM Contract**.*
>
> *III.* *The **Res**pondent shall **pay** to the Claimant the sum of **CNY 35,799,296** in damages as **compensation** for losses **suffered** as a **result** of the Respondent's breaches of the Contracts.*
>
> *IV.* *The **Res**pondent **shall pay** to the Claimant the **Claimant's** legal costs and **disbursements**, being **SGD 40,017.74** and **CNY 3,111,489-CNY 6,111,189**.*
>
> *V.* *The Respondent shall **pay interest** on at the rate of **0.9446%** per annum **compounded** monthly-*
>
> *a. On **CNY 35,799,296** as from **28 August 2020**; and*
> *b. On **SGD 40,017.74** and **CNY 3,111,489-CNY 6,111,189** as from the date of this Award. until the same are fully and finally paid.*
>
> *VI.* *The costs of the arbitration amounting to **SGD 593,704.56** shall be borne by the Parties equally.*
>
> *VIII.* *All other declarations, claims, **counterclaims** and requests are **dismissed**."*

4. On **06.10.2022**, the parties *received* the **Final Award** and the **Correction** on **25.11.2022**; the Arbitration Award and all arbitration-related documents have been duly delivered and served on the Parties in accordance with **Rule 2.1** of the SIAC Rules; the Arbitration Award is the *full* and *final settlement* of all claims and requests for reliefs submitted before the Arbitral Tribunal. The **Plaintiff** has not been *served* with any **notice** of any proceedings initiated by the Defendant seeking to *set aside* or to challenge the Arbitration Award in Singapore, which is the seat of **arbitration**; that the Arbitration Award has *conclusively* determined the matters submitted before the Arbitral Tribunal and is final and binding on the Plaintiff and the Defendant; that the Arbitration Award was made in **Singapore**, being the seat of arbitration. Singapore is a *signatory* to the Convention and is a Contracting State under **Section 2(b)** of the Act. As the Arbitration Award is made in *Singapore*, i.e., a Contracting State, the **Arbitration Award** is a foreign arbitral award under **Section 2(e)** of the Act; that the Arbitration Award is *recognizable* and *enforceable* in Pakistan

u/**Sections 6 & 7 of the Act** read with Articles **IV** and **V** of the Convention and other applicable provisions of the law. That the Defendant has, so far, not made any payment of the amounts to the Plaintiff *awarded* under the Arbitration Award. As such the plaintiff has prayed following relief.

(a) Recognition and enforcement the Final Award dated 6 October 2022, corrected through the Correction (to Final Award dated 6 October 2022) dated 25 November 2022, in the SIAC Arbitration No 917 of 2020 (ARB917/20/DXC), registered as the Award No 127 of 2022 and the Award No 127(a) of 2022, respectively, in SIAC Registry of the Awards, under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitration Awards) Act, 2011, read with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958;

(b) Payment of the following amounts due under the Final Award dated 6 October 2022, as corrected through the Correction (to Final Award dated 6 October 2022) dated 25 November 2022, by the Defendant to the Plaintiff (as set out at Page 116 of the Final Award):

(i) CNY 35,799,296, being damages as compensation of the losses suffered as a result of the Defendant's breaches of the Contracts;

(ii) SGD 40,017.74 and CNY 3,111,489, being the Plaintiff's legal costs and disbursements;

(iii) CNY 976,458.68, being the interest/markup on CNY 35,799,296 from 28 August 2020 till 3 July 2023 (and which shall continue to accumulate in accordance with Para V at Page 116 of the Final Award dated 6 October 2022, as corrected, till full and final payment of due amounts);

(iv) SGD 28229 and CNY 21,874.30, being the interest/markup on SGD 40,017 74 and CNY 1,111,489, respectively, from 6 October 2022 till 3 July 2023 (and which shall continue to accumulate in accordance with Para Vat Page 116 of the Final Award dated 6 October 2022, as corrected, till full and final payment of due amounts),

(v) Interest/markup pendente lite on the amounts due under the Final Award, as corrected, in accordance with the terms of Para V at Page 116 of the Final Award dated 6 October 2022, as corrected, to be calculated for the period till full and final payment of the entire amount due under the Final Award dated 6 October 2022, as corrected.

(c). Enforcement and/or execution of the Final Award dated 6 October 2022, as corrected through the Correction (to Final Award dated 6 October 2022) dated 25 November 2022, by such means as are available under the applicable laws;

(d). Attachment of the properties and bank accounts of the Defendant for enforcement and execution of the Final Award dated 6 October 2022, as

corrected through the Correction (to Final Award dated 6 October 2022) dated 25 November 2022:

(e) Restraining the Defendant from alienating/disposing-off/selling its immovable properties (including building, plant, and machinery) during the pendency of this Suit, including, but are not limited to:

(i) the Tin Mill Black Plates project for manufacturing of Tin Mill Black Plates/ CRC located at Plot No 272 and 273 Hub City, MouzaBerootPeerkas Road, District Lasbella, Hub Balochistan; and

(ii) (ii) the Tin Plate plant located at Plot No 5, Special Industrial 2Zone, Winder, Distt, Lasbella, L.I.E.D.A, Balochistan.

(f) Grant the costs of this Suit/Application to the Plaintiff.

5. Notices were issued to the defendant, who put appearance through counsel, filed written statement, stating therein that the Defendant under *Singapore's* International Arbitration Act 1994, Section **24**, has filed an application before the **High Court of Singapore** for, inter-alia, setting aside the Final Award. As per Article **VI** of the Schedule to the Recognition und Enforcement (*Arbitration Agreements and Foreign Arbitral Awards*) Act 2011, if an application for setting aside or suspension of award has been made to a competent authority, this Court may, if it considers proper **adjourn** the **decision** on the enforcement of **award** and may also on the application of the party claiming **enforcement** of the award, order the other party to give suitable security. It is further submitted that during the course of arguments, the only issue before this Court is the *interpretation* and scope of **Article VI** of the Schedule to the **2011** the Act, and whether the Defendant should require to furnish security for *adjourning* the instant Suit until **decision** on setting aside Application pendin2g before the High Court of **Singapore**. It is further submitted that **Article VI** gives absolute discretion to the Court and such power is a *completely* **discretionary** and there is no *mandatory* requirement for the Defendant to furnish **security**. It is further stated that under **Order 21 Rule 23A of CPC**, in case of money decree, it require the judgment debtor to deposit the **decreetal amount** before the Court considers objections to the decree. However, the Courts in Pakistan have *consistently* held that this rule, which is otherwise mandatory for local decrees, shall not apply in the case of **foreign decrees**. Hence, same principles be also *applied* in this case and the instant Suit may be adjourned without any security until conclusion of the proceedings before the High Court of Singapore. It is further submitted, that the Defendant

is a public listed company operating since the year **1996** and is Pakistan's only **tin-plate** manufacturing company and if the Defendant continues their operation without any hindrance, they have the financial strength to satisfy the **Arbitral Award** if it is not *set aside* and in case the Defendant is ***directed*** to furnish security, it would result in the Defendant's Banks *recalling* their short-term loans/mortgages, which, in turn, would lead to a reduction in available finances and a liquidity crisis which would *irreparably* damage the business. It is further submitted, that passing an interlocutory order at the instant stage in the terms as sought by the Plaintiff would also result in *spreading* panic amongst its **shareholders**, and its share price on the **Pakistan Stock Exchange** will plummet. At present the Defendant's shareholding pattern is such that over **40%** is held by the general public that would also see their *share value* being destroyed. Further it is submitted that the Defendant employs **200 workers** in a small area called Winder, Balochistan, and is the sole industrial employer in the area. Grant of an injunction would *adversely* affect the operations of the Defendant. It is further submitted that Plaintiff will not be *prejudiced* in any manner if the enforcement is adjourned without security, because if the **Final Award** is upheld in the High Court of Singapore, then the Defendant has the capacity and '*sizable assets*' as stated by the Plaintiff to discharge its **liabilities**. There is delay of **09** months in filing of the instant Suit as **Final Award** was announced on **06.10.2022**, while the instant Suit was filed on **04.07.2023**. It is further stated that "*Setting Aside Application*" was submitted on **05.12.22** and after filing of the said application, the service process is regulated by the Treaty on Judicial Assistance in civil and commercial matters between Republic of Singapore and the People's Republic of China ('the Treaty), which stipulates that documents are to be served through the Singapore Supreme Court and on to the Ministry of Justice in **China**. The documents are with the **Ministry** of **Justice** in **China**, therefore, there is no *delay* on the Defendant's part. Furthermore, the Plaintiff, through the instant **Suit**, has obtained notice/knowledge of the *Setting Aside Application* and is free to contest the same at Singapore. **Lastly**, it is submitted that Plaintiff has approached this Court with considerable delay. Therefore, in light of the above facts and circumstances, the discretion vested with this Court under **Article VI** of the Schedule to the **2011** Act, may be *exercised* in favour of the Defendant and the instant Suit may be adjourned without security till ***conclusion*** of the proceedings pending before the High Court of Singapore.

6. Learned counsel for the Plaintiff in support of his *contention* argued that that the Arbitration **Award** was issued in Singapore, pursuant to the arbitration agreements executed between the Parties, set out in **Article 40** of the Contract for Cold Rolling Mill Complex dated 29th April 2018 ("the CRM Contract") and Article **39** of the Contract for Acid Regeneration Plant dated 25th May 2018 ("the ARP Contract"). He further contends that Plaintiff has filed instant suit under Section **6** of the **Recognition** and **Enforcement** (*Arbitration Agreements and Foreign Arbitral Awards*) **Act, 2011** ("the Act")" read with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("the Convention"). He further added, that the Defendant has *apparently* filed the Case No: HC/OA 809/2022 before the High Court of Singapore ("*the Singapore Proceedings*"). In the Singapore Proceedings, the Defendant has sought that the Arbitration Award be **set aside** under the International Arbitration Act 1994 of Singapore; Defendant informed the Plaintiff for the *first time* about the filing of the Singapore Proceedings through the documents appended with the Defendant's Written Statement; Defendant has not **served** the documents in the Singapore Proceedings on the Plaintiff as required under the law up till present. He further added that in case this Court is inclined to grant an adjournment as requested by the Defendant, this Court may adjourn the proceedings on the condition of security and for 2a very limited time only (*for not more than three (3) months*) and direct the Defendant to take all necessary steps for expeditious resolution of the Singapore Proceedings.

7. He further argued that if the Defendant engages in ***mischief*** and ***misconduct*** during the pendency of these proceedings, the Plaintiff's hard-earned rights awarded in an arbitration that spanned from 27th August 2020 to 25th November 2022 would be brought to a naught; that Defendant has sought an adjournment under **Article VI** of the Convention. Although there are no judgments in Pakistan dealing with this provision, this Court may, following the principle of "*uniformity in interpretation*". He further contends that the Plaintiff is not entitled to ***discretionary*** relief because of the purported *delay* in the filing of instant Suit. The Defendant's argument is ironic and *distorted* because it has itself *delayed* in the Singapore Proceedings for around one year and kept the Plaintiff in dark about them for eight months by intentionally withholding delivery of the legal documents of the Singapore Proceedings. In support of his arguments learned counsel for the Plaintiff relied upon the case

law reported in PLD 2014 Sindh 349 [Re. Abdullah v CNAN], 2021 SCMR 1728 [Re. Orient Power Company (Pvt) Ltd. V. Sui Northern Gas Pipelines Limited], PLD 2014 Sindh 349 [Re. Abdullah v. M/s. CNAN Group SPA through Chief Executive/Managing Direct22or and Another], 2023 CLD 819 [Re. Tradhol International SA Sociedad Unipersonal v. Shakarganj Limited], 2019 CLD 160 [Re. Dhanya Agro-Industrial (Pvt) Ltd Quetta Textile Mills Ltd], PLD 1991 Karachi 252 [Re. Glaya Grou Limited y Evron (Pvt) Ltd.], AIR 1919 Sind 67 [Re. Louis Dreyfus & Co. v. Ghandamal & Co.].

8. In contra learned counsel for Defendant contends that Defendant under Singapore's International Arbitration Act **1994**, Section **24**, has filed an application before the High Court of Singapore for, inter alia, setting aside the Final Award. He further adds that as per Article **VI** of the Schedule to the Recognition und Enforcement (*Arbitration Agreements and Foreign Arbitral Awards*) Act 2011, if an application for setting aside or suspension of award has been made to a competent authority, this Court may, if it considers proper adjourn the decision on the enforcement of award and may also on the application of the party claiming enforcement of the award, order the other party to give suitable security; that **Article VI** is a complete discretionary power, and there is no mandatory requirement for the Defendant to furnish security. He further adds, that the Plaintiff himself admitted in Paragraph 30 of the affidavit that the Defendant has "*sizable assets*", which further strengthens the Defendant's case that at this stage there is no need for any security or injunction as the Defendant is a showing concern which will be able to satisfy the Final Award if it is not set aside by the High Court of Singapore; that Plaintiff has filed Final Award which was announced on **06.10.2022**, while the instant Suit was filed on **04.07.2023**, which is in delay of about 09 months; that *Setting Aside Application* was submitted on 05.12.22 and after the filing of the application, the service process is thereafter regulated by the Treaty on Judicial Assistance in civil and commercial matters between Republic of Singapore and the People's Republic of China ('the Treaty), which stipul2ates that documents are to be served through the Singapore Supreme Court and onto the Ministry of Justice in China. In support of his submission he relied upon the case law reported in PLD 2003 Karachi 222, 1993 MLD 1359 Karac2hi, 2002 CLD 120, Yukos Oil v Dardana [2002] EWCA Civ. 543 and AIC Limited v. Federal Airports Authority Nigeria [2019] EWHC 2212 (TCC).

9. Heard and perused the record.

10. In the present case, through a miscellaneous application, the plaintiff seeks an **ad-interim injunction** on the plea that a **foreign award** is *equal* to a foreign **decree** and is to be *executed* by this Court, though an appeal is pending against the same. During this stipulated period, the plaintiff has the right to protection as he apprehends that the defendant may shift liabilities to another company. He has referred to **Article 6** of the **IPO**, wherein the treaty states that during the pendency of an appeal, the matter may be adjourned *sine die* with the rider of surety; according to counsel, the discretion is of the Court, and no harm will be caused if the defendant submits surety. In contra, learned counsel for the defendant contends that if appeal is not provided, the foreign decree shall be presumed final. However, with regard to the Award in the present case, an **appeal** is *admittedly* pending, and the referred clause of the **IPO** itself states the word '**may'**; therefore, this matter may be adjourned ***sine die*** without any stipulation or condition. Further, he contends that *admittedly* the defendant is the only unique company in the whole of Pakistan, having a worth of billions of rupees, and they are not intending to sell out the assets of the company. However, as and when they will require to sell/transfer/encumber any assets of the company, they will inform this Court beforehand. It is germane to mention that the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) was set forth with the Schedule to the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011. **Article VI**, of the Convention deals with the **adjournment** of the decision on the enforcement of the award. Thus it would be conducive to examine and reproduce the **Article VI**, of the Contention to the Schedule of the Act, 2011 as under:-

> ***"If an application for the setting, aside or suspension of the award has been made to a competent authority referred to in Article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security".***

11. Bare reading of the aforesaid Article would show that the word "*may*" is being used in therein for purpose of *rider* of the suitable security. Mere use of word '**may'** or '**shall'** is not conclusive. The question whether a particular

provision of a statute is *directory* or *mandatory* cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue.

12. Several statutes confer power on authorities and officers to be exercised by them at their discretion. The power is in permissive language, such as, '*it may be lawful*', '*it may be permissible*', '***it may be open to do***', etc. In certain circumstances, however, such power is '***coupled with duty***' and must be exercised. It is well-settled that the use of word '**may'** in a statutory provision would not by itself show, that the provision is directory in nature. In some cases, the legislature may use the word '**may'** as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word '**may'**, the court has to consider various factors, namely, the **object** and the scheme of the Act, the *context* and the **background** against which the words have been used. The purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word '**may'** involve a *discretion* coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court **advances** a *remedy* and **suppresses** the *mischief*, or where giving the words directory *significance* would defeat the very object of the Act, the word `**may'** should be interpreted to convey a mandatory force. As a general rule, the word `**may'** is permissive and *operative* to confer *discretion* and especially so, where it is used in **juxtaposition** to the word **'shall'**, which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words '***may'*** '***shall'***, and '***must'*** are used interchangeably. In order to find out whether these words are being used in a **directory** or in a **mandatory** sense, the intent of the legislature should be looked into along with the pertinent circumstances. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the **statute** under consideration and its object, purpose and effect. The distinction reflected in the use of the word `**shall'** or `may' depends on conferment of power. Depending

upon the context, '**may'** does not always mean may. '**May'** is a must for enabling compliance of provision, but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.

13. The ultimate rule in construing auxiliary verbs like '***may'*** and '***shall'*** is to discover the legislative intent; and the use of words '*may'* and '*shall'* is not decisive of its discretion or mandates. The use of the words 'may' and 'shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determining effect. The courts have further to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed. In Case of **Muhammad Sadiq and others v. University of Sindh and another (PLD 1996 Supreme Court 182)**, it was held by the Apex Court that: "*May involves a choice and 'shall' an order. This is the customary usage of these terms of art when they appear in a statute. Even an enabling word like 'may' may become mandatory, when the object of the power is to effectuate a legal right. (See Reg v. Home Secretary (1995) 2 V&R 464, 484 and (1879-80) 5 AC 214, 244)*". It is matter of record that the **Article VI**, of the Convention does not place **stringent** condition to require the Defendant (other party) to give suitable ***security*** if the decision on the enforcement of the award is adjourned. On the contrary, the word 'may' refer to the *hallmark* of discretionary power as per language used in the aforesaid Article.

14. Adverting to the controversy of the lis, the defendant is seeking *sine die* adjournment of the decision on the enforcement of the foreign arbitral award without any *rider* on the ground that they have filed an appeal before the High Court in Singapore, whereas the policy is **engendered** by considerations of party autonomy and the finality of the arbitral process, dictating that the courts should act with a view to "*respecting and preserving the autonomy of the arbitral process*".[1] Thus, curial intervention is warranted only on limited grounds. In Singapore, the grounds on which the seat court can set aside an arbitral award are exhaustively prescribed in sec; **24** of the International Arbitration Act 1994

[1] Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd [2007] 3 SLR(R) 86 ("Soh Beng Tee") at [59].

(2020 Rev Ed) ("IAA") and Article **34** of the **UNCITRAL** Model Law on International Commercial Arbitration, as adopted in Singapore by virtue of sec; **3(1)** read together with the First Schedule of the **IAA** ("the Model Law").[2]

15. Critically, the seat court has no jurisdiction to examine the substantive merits of the arbitration. As this court stated in **AKN** and another Vs **ALC** and others and other appeals [2015] 3 SLR 488 ("AKN") at [37], an integral feature and **consequence** of party autonomy is that parties choose their arbitrators and are bound by the decisions of their chosen arbitrators. In Case of **Riaz K. Haq and others v. Said K. Haq (1970 SCMR 65)**, it was held by the Apex Court that: *"It becomes necessary to adjourn the hearing of this petition, until the final result of the writ petition is known. If the Registrar's order is maintained, the petitioner's could then move for further proceedings in their application before the Civil Judge in respect of the award, once it is registered. It is, therefore, necessary to keep the latter proceedings alive. This petition is adjourned* ***sine die****. Either party may apply to have it heard, if and when a decision is reached in the writ petition before the High Court.* ***In the meantime no final order shall be made in the proceedings for making the award a rule of Court, which are pending in the Court of the Civil Judge****".*

16. Keeping in view of above legal and factual aspects the instant injunction application filed by the Plaintiff is allowed as prayed, accordingly, **Award is adjourned** ***sine die*** until final hearing, after the decision of Case No. HC/OA 809/2022 pending before the High Court of Singapore.

JUDGE

M.Zeeshan

[2] COT v COU, COV and COW, Court of Appeal/Civil Appeal No 12 of 2022 [2023] SGCA 31, the Republic of Singapore.