

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.18 of 2013

Plaintiff: M/s Zahra Communications (Pvt) Ltd
Through Mr. Shah Bakht Pirzada, Advocate

Defendant: M/s National Telecommunication Corporation (NTC)
Through Mr. Ghazain Magsi, Advocate

Dated of hearing: 27.08.2024

Date of decision: 10.09.2024

J U D G M E N T

ARBAB ALI HAKRO, J. This is a suit in respect of an Arbitration Award dated 03.12.2012 ("Award"), for making the same as Rule of the Court in favour of the Plaintiff ("Claimant") against which objections have been raised by the Defendant ("Objector") under Sections 30 and 33 of the Arbitration Act, 1940 ("Act") for setting aside the same. Both these are being decided through this judgment.

2. The brief facts of the case are that the Claimant and the Objector entered into a Contract/Agreement dated 11.4.2002 ("Contract") for the operation and maintenance of Prepaid Calling Cards Service, Pay Phone Service, and International Gateway Exchanges for an initial period of ten (10) years, with an option for renewal for an additional period of five (5) years. Shortly after the execution of the Contract, a dispute arose between the parties, which was amicably settled on 23.7.2004. Certain amendments were made to the Contract, including reducing the Contract duration to five (5) years and reducing the exclusivity period for International Gateway Operations to one (1) year. Pursuant to Clause 17.2 of the Contract, the Claimant agreed to install, test, and commission, at its own expense, the platforms/equipment for the Services. Once tested and commissioned, these platforms/equipment would be deemed licensed to the Objector for the duration of the Contract.

3. In return, the Objector was obligated to provide the Claimant with infrastructural support and interconnectivity for all Services as detailed in Clause 18 of the Contract. According to Clause 32 of the Contract, in the event of a dispute between the Claimant and the Objector, proceedings would be initiated under the Act. The Claimant repudiated the Contract because the Objector failed to fulfil its obligations under the Agreement. Consequently, the Claimant filed a Suit before this Court. By an Order dated 12.10.2006, a Sole

Arbitrator, Mr. Justice ® Nasir Aslam Zahid, was appointed to decide the dispute between the parties.

4. The Claimant filed a claim against the Objector for recovery of damages in the sum of Rs.698,120,259/-, with interest and markup on the said amount at 18% per annum. In response, the Objector submitted a reply denying the allegations and filed a counterclaim amounting to Rs.458.22 Million, with markup at the prevailing bank rate from filing the claim until the passing of the Award. The Claimant contested the counterclaim by filing a Rejoinder. The learned Sole Arbitrator passed the Award in favour of the Claimant for a sum of Rs. 45,000,000/-, granting the Objector two months from the date of the Award to make payment to the Claimant. After the expiry of two months, the Objector would be liable to pay interest at 16% per annum on the awarded amount, whereas the Objector's counterclaim was dismissed.

5. Learned Counsel for the Objector, while objecting to the Award, has contended that the initial question raised before the learned Arbitrator was that the claim had not been filed by a duly authorized Officer, but the same has not been decided by the learned Arbitrator; that the learned Arbitrator himself concluded that the Claimant had not produced any oral or documentary evidence to establish the damages, despite this fact, the learned Arbitrator awarded the damages, thus committed misconduct; that the findings of the learned Arbitrator on Claims No. 2, 4, 7, 11, and 12 of the Claimant constitute judicial misconduct within the meaning of Section 30; that the learned Arbitrator decided the disputed question of fact regarding the quantum of loss arbitrarily, in complete disregard of the conclusive evidence on record, that the default was proved on the part of the Claimant, despite which the counterclaim of the Objector was illegally rejected. Therefore, the Award is without lawful authority and must be set aside by this Court. In support of his contention, he has relied upon the cases reported as **1999 CLC 2047, 2002 CLC 129, 1991 CLC 324, and 1989 CLC 885.**

6. On the other hand, learned counsel for the Claimant has contended that the Award has been passed in accordance with law and that damages were awarded to the Claimant by rule of thumb; therefore, the same may be made as Rule of Court. He relied upon cases reported as **1999 CLC 1777, 2016 CLC 1757, PLD 2006 (S.C) 169 and 2013 SCMR 507.**

7. I have heard both the learned counsel and perused the record. The perusal of the record shows that the Claimant has made thirteen (13) claims, totalling Rs. 698,120,259/-. In the counterclaim, the Objector has claimed an amount of Rs. 458.22 million. The learned Arbitrator framed issues, and the Claimant and Objector were given the fullest opportunity to present their respective cases. The parties presented their versions and evidence, after which the Arbitrator passed an Award. The Arbitrator granted damages for only

five out of the thirteen claims made by the Claimant, while the claims of the Objector were declined.

8. The first contention of the learned counsel for the Objector is that the claim had not been filed by a duly authorized Officer, a matter of utmost importance in legal proceedings, and this question was neither discussed nor decided by the learned Arbitrator. It is pertinent to note that when the learned Arbitrator framed the issues, the Objector did not raise any objection on this point. Furthermore, it is undeniable that the matter was referred to the learned Arbitrator by the consent of both parties. Therefore, raising such a question at this stage is untenable and lacks merit. The Objector's failure to object at the appropriate time constitutes a waiver of this contention and cannot be entertained at this juncture. The learned Arbitrator's decision stands firm and unchallenged on this ground.

9. The second main contention of the learned counsel for the Objector was that the learned Arbitrator himself concluded that the Claimant had not produced any oral or documentary evidence to establish the damages. Despite this fact, the learned Arbitrator awarded extensive damages to the Claimant. The principle of awarding extensive damages generally refers to the legal principle that, in certain cases, substantial compensation may be awarded to a party who has suffered significant harm or loss. This principle is often applied in cases where the harm is severe, and the compensation is intended to cover not only the actual damages but also additional amounts for pain and suffering, emotional distress, and other non-economic losses.

10. The contention of the learned counsel that the above observation of the learned Arbitrator is a finding of fact to the effect that the Claimant was unable to prove the damages is untenable. If the Award is to be read as a whole, it will be apparent that the learned Arbitrator held that there was a breach of the Contract on the part of the Objector since they had failed to discharge their obligation under the Contract. After having found the above question of fact in favour of the Claimant, the learned Arbitrator proceeded with the question of the quantum of damages. The question that requires consideration is whether this Court, while examining the Award under Section 30 of the Act, is competent to set aside the Award on the ground that the learned Arbitrator had adopted a wrong basis for assessing the quantum of damages. Here, I am of the opinion that even if the learned Arbitrator had not awarded damages upon the settled principles, the Award could not be challenged on the grounds of legal misconduct. The wrong basis of assessment of damages could not furnish a ground to attack an Award. In the circumstances, the controversies have finally been settled through the impugned Award, and there is no illegality or irregularity on the face of the record. Further, the Award is not hit by Section 30 of the Act. In the case of

National Highway Authority through Chairman, Islamabad vs Messrs Sambu Construction Co. Ltd. Islamabad and others (2023 S C M R 1103), the Supreme Court of Pakistan, while dealing with the grounds for setting aside the Award, has held as follows:-

“We have also examined the Award with the help of the learned counsel for the parties and find that the contentions of the petitioner are misplaced. The Award clearly deals with all the contentions raised by the petitioner and rightly holds that the pre-bid meeting forms part of the Contract document. Besides, we agree with the interpretation of clauses 19.4 and 14.2 as given by the Arbitrators. We are also mindful of the fact that there is a limited scope of judicial review of the 'Award' announced by an Arbitrator. An arbitration Award is a final determination of the dispute between the parties. The grounds for challenging an Award are very limited. There are three broad areas on which an arbitration Award is likely to be challenged i.e. firstly, jurisdictional grounds (non-existence of a valid and binding arbitration agreement); secondly, procedural grounds (failure to observe principles of natural justice) and thirdly, substantive grounds (Arbitrator made a mistake of law).¹ The review of an arbitration Award cannot constitute a re-assessment or reappraisal of the evidence by the Court. An over-intrusive approach by courts in examination of the arbitral Awards must be avoided.² The Court is not supposed to sit as a court of appeal and must confine itself to the patent illegalities in the Award, if any.³ The jurisdiction of the Court under the Act is supervisory in nature. Where two findings are possible the Court cannot interfere with the Award by adopting its own interpretation. Interference is only possible if there exists any breach of duty or any irregularity of action which is not consistent with general principles of equity and good conscience.⁴ The Arbitrator alone is the judge of the quality as well as the quantity of the evidence. He is the final arbiter of dispute between the parties. He acts in a quasi-judicial manner and his decision is entitled to utmost respect and weight.⁵ By applying the afore-noted principles of law on the subject and considering the petitioner's objections within the limited scope of Court's jurisdiction in testing the validity of Award this Court is not supposed to sit as a court of appeal and make a roving inquiry and look for latent errors of law and facts in the Award.

The arbitration is a forum of the parties' own choice its decision should not be lightly interfered by the Court, until a clear and definite case within the purview of the section 30 of the Act is made out. We do not find any jurisdictional, procedural or substantive error patently floating on the record that could justify interference by this Court.”

11. For the foregoing reasons as discussed above, the objections of the Objector are not sustainable under the law. Therefore, the same are **dismissed**, and the Award is made the rule of the Court. Office to prepare the decree accordingly.

JUDGE