ARBITRATION PROCEDURE AND ARBITRATION AWARDS IN PAKISTAN

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Introduction

Award means decision or determination rendered by Arbitrators upon a controversy submitted by the parties. Enforcement of arbitral award means that the execution of award accordingly[1].Apart from the legal requirements, the execution of an award requires some little care in order to the formalities required by arbitration agreement. It has already been pointed out that any directions contained in the arbitration agreements as to the execution of the award should be carefully followed [2].Unless otherwise agreed by the parties, an award by the tribunal made pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them. This means that, subject to any contrary agreement by the parties and to the right of challenge, once made the award is immediately enforceable. Many awards are implemented without the need for further steps to be taken against the losing party, but if a party refuses to comply with the award, enforcement proceedings will be necessary. [3]

[1] Black's Law Dictionary 5th Ed. p. 474.

[2] Arbitrations & Awards by David M. Lawrence published by The Estate Gazette LTD. London, p. 85.

[3] Russell on Arbitration published by Sweet & Maxwell, Ed. 23rd (2007) p. 450.

Arbitration is a legal procedure to solve disputes, precisely commercial matters, outside court of law. Its functioning is analogous to judicial courts and arbitration awards are equally binding on contesting parties. Arbitration is gaining recognition and emerging businesses, companies are opting arbitration as a mode to resolve disputes. An arbitration award can be described as a formal and legal declaration and recognition of the merits of matter in dispute, by an arbitration tribunal which is equivalent to the judgment of judicial courts.

Although arbitration is a popular mode of commercial dispute resolution around the globe; yet it remains an unattractive substitute for litigation in Pakistan, primarily owing to inconsistent or ambiguous laws. The parties while signing a contract can agree that any dispute relating to the contract would be referred to arbitrators who shall decide the matter in accordance with laws of a particular country (called governing law) at a designated place (called seat of arbitration). The decision of arbitrators (called arbitration award) is usually binding on the parties. In legal language, a contractual clause providing for arbitration is called an arbitration agreement.

Judgment in terms of Award:

Under section 15(1) of the Arbitration Act of 1899, the award was not incorporated into a decree but was enforceable as such, as if it was a decree of a Court. The present section makes a change inasmuch as the Court will now first pronounce a judgment in accordance with the award and upon the judgment the Court pronounces a decree. The English Law is also changed in this respect by the Act of 1934 (vide section 10). Though an award was executable as decree of a Court, the Court had no power under section 15 of the Act of 1899 to pass a decree on the basis of the award. But according to the present section i.e. Section 17 of the Arbitration Act, 1940 where the Court thinks that there is no need to remit the award for reconsideration or to set aside the award, the Court must pronounce judgment according to the terms of award subject to the expiry of limitation in application to set aside the award. An award under the Act has to be followed by a judgment and decree - without this procedure, the award cannot be enforced by the court of law[4].

The provisions of section 17 of the Arbitration Act, 1940 are mandatory and the Court will have no jurisdiction to pass a decree in terms of the award without complying with the provisions of this section. Where there is no valid submission, there could be no award on which the Court could make a decree and if it is so made, it is based on something, which is not an award. Under this section the Court is to wait at least for a period of thirty days from the date of the service of notice of filing of the award before pronouncing judgment on the award. But such a judgment can be passed within the prescribed period if the parties so desired. An objection that there is no valid reference does not come within the scope of section 17 or section 30. Where no appeal has been filed against an order rejecting objection to an award but only against the final judgment and decree the award becomes final and the

[4] The Arbitration Act, 1940.

judgment can only by challenged on the grounds contained in section 17 of the Act. Where the application for filing of award and making it rule of Court has been made, the Court can make award a rule of Court under section 17 after dismissal of objections to the validity of the award. Award not made a rule of the Court would not operate to create any right, title or interest in the property, which is subject matter of the award[5].

The following conditions must be complied with before the Court may pronounce judgment upon the award and before passing a decree:

(1) The Court must have given notice to the parties of the filing of the award.
(2) time for making an application to set aside the award must have expired or if such application has been made it must have been refused.
(3) the Court must have seen that there was no cause to remit or set aside the award. All these conditions are cumulative and must be fully satisfied[6].

Court's judgment, upon the award filed with, does not depend upon the objections filed by the parties to the award. The law provides independent responsibility to the Court to examine the award and satisfy itself about the following aspects before passing a decree in terms of the award. This law confers *suo moto* powers, rather imposes duty, upon the Court to:

(a) Find if there is any cause for remitting or setting aside the award, and,
(b) decide about the competency of reference and the validity of the resulting award.
(c) Correct or modify the award under its limited jurisdiction.

In Pakistan, in case of M/s Awan Industries Ltd. v. Executive Engineer, Lined Channel Division[7],the court held that the provisions of section 17 of the Arbitration Act impose a duty on Courts to see that there is no cause to remit the award or any of the matters referred to arbitration for reconsideration or, set aside the award. This can be done by the Court suo moto, apart from the application, which a party may make for either remission of the award or its reversal. Where, therefore, an award is found to be nullity because of the invalidity of the arbitration agreement or for any other reason or the award is prima facie illegal and not fit to be maintained, the Court has power under section 17 of the Act to set it aside without waiting for objection to award being filed or without considering any application for setting it aside, if there be any, and irrespective of the question whether the objection, if filed, was not within time. In India, in the case of Deo Narain Singh v. Siabar Singh[8]the Court held that the mere fact that an objection is not filed by any of the parties to the award, it does not altogether absolve the Court from its responsibility of deciding that there was a competent reference, and, the award was a valid award on the face of it. These are the matters, the Court observed, which really go to the root of the award

[5] Ibid.

[6] Ibid.

[7] 1992 SCMR 65.
[8] AIR 1952 Patna 46.

itself and irrespective of any objection by the parties, these matters have to be decided by the Court before a decree can be passed on the basis of the award.

Delay or omission on the part of the aggrieved party to file his objections within the statutory period of 30 days does not deprive the Court from exercising its limited jurisdiction to correct, modify or amend the award under limited circumstances. The Supreme Court of Pakistan, in case of Ascon Engineers (Pvt.) Ltd v. Province of Punjab[9],held that there was no cavil with the proposition that objections to the award must be filed within 30 days from the date of notice under Article 158 of the Limitation Act. For instance, there is no objection to award but the Court seized with the matter i.e. Appellate Court exercising jurisdiction under section 30 of the Act or revisional jurisdiction under section 115, CPC has noticed that there is error apparent on the face of record, or award suffered from infirmity or legal defect and an error can be seen without substituting the opinion and in that case, the court can exercise jurisdiction to remove such defect or infirmity. It may also be noted that although the Appellate Court has very limited jurisdiction to interfere in the award but such limited jurisdiction can be exercised primarily with a view to save the award from remitting to the Arbitrator once again so the parties may not suffer rigors of proceedings either before the arbitrators or the Court.

The parties are at liberty to enter upon a compromise between them on matters decided by the award or outside it. Such a compromise can be reached even after the award has been filed in the Court, but before a decree in terms of the award has been passed. The compromise agreement between the parties shall substitute the award. Such a compromise may include matters that are:

(a) Either not separable from the matters upon which the award is given;
(b) or, separable from the matters on which the award is given.

Resultantly, the award to that extent would be modified by the compromise reached between the parties and in that case the Court would pass a decree in terms of the modified award and not in terms of the original award made by the arbitrator(s) or umpire.

The Supreme Court of India, in case of Munshi Ram v. Banwari Lal & another[10],held that if the parties were dissatisfied with the award and wanted to substitute it by a compromise involving matters alien to the original dispute which were inseparable, the court might supersede the submission, and left the parties to work out their agreement in accordance with the law outside the Arbitration Act. In such circumstances, the new compromise itself may furnish a very good ground for superseding the reference and thus revoking the award. Where the parties do not throw the award overboard but modify it in its operation, the award, in so far as it is not altered, still remains operative and continues to bind the parties and cannot be

[9] 2002 SCMR 1662.
[10] AIR 1962 S.C 903.

revoked. In that contingency, the Court may follow one of the two modes indicated by the Privy Council, in Hemanta Kumari's case[11]. As follows:

> *"If the whole of the subject matter of the compromise is within the reference, the Court may include in the operative part of the decree the award as modified; but if it is not so, the Court may confine the operative part of the decree to the award as far as accepted and the other terms of the settlement which form a part thereof, if severable and within the original reference, in a schedule to the decree. The portion included in the operative part would be executable, but the agreement included in the schedule would be enforceable as a contract, of which the evidence would be the decree; the power to record such an agreement and to make it a part of the decree, whether by including it in the operative portion or in the schedule, will follow from the application of the Code of Civil Procedure by section 41 of the Arbitration Act and also section 141 of the Code; In a reference without the intervention of the Court, the Court has no general jurisdiction over the subject-matter as in a reference in a pending suit. If the submission is superseded in the former, there is nothing more the Court can do, but in the latter, the Court must proceed with the suit before it and give effect to the compromise in the suit according to law".*

How an Award is made a Rule of Court?

After filing the award before the Court of competent jurisdiction for purpose of making it a rule of Court, the Court issues the notice to the parties to the effect that the award has been filed before the Court. If any party files any objection against the award before the Court, the court decides these objections accordingly, otherwise pass the decree in terms of award. In Pakistan, Article 178 of the law of Limitation[12]allows a period of 90 days for filing the award in the Court. These 90 days are to be counted from the notice of making the award. In case of Haji Abdullah v. S. Iqbal Naseem, the award was signed on 18.3.1985 and filed by the Arbitrator on 6.8.1985, obviously after 4 months and 22 days. The Court rejects the objection that the award has been filed after the expiry of time limit prescribed by the Limitation Act. Elaborating this issue, the Court held that the period of 90 days allowed under Article 178 of the Limitation Act would be applicable only in such cases where a party to the Arbitration Agreement moved the Court for filing of the award. This article would have no application if the Arbitrator himself filed the award in Court. The Court observed that none of the parties had applied to the Court for a direction to the Arbitrator for filing the Award in Court. The arbitrators filed the Award with a covering letter. This action of the Arbitrator was held to be a ministerial act to which Article 178 of the Limitation Act had no application. Under section 96 of the Court of Civil Procedure all decrees are appealable but Section 17 of the Arbitration Act 1940 makes a decree /rule of Court passed on the basis of an award is non-appealable, unless it is:

(i) in excess of the award, or

[11] AIR 1919 PC 79.
[12] The Limitation Act, 1908

(ii) not in accordance with the award. Before the Court passes a decree under this section, it will have to wait for the period of limitation (thirty days) prescribed for filing objections. If a decree is passed before the period expires, an appeal against the decree might be maintainable[13].

The award rendered by an arbitrator is lifeless and is not capable of being executed till the time when the Court infuses the life in it by passing a decree in accordance with the same[14].Where the award was not presented before any Court for making the same rule of the Court, the award could not operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, in the property in dispute[15].Mere making of an award simplicitor was of no value and did not create, extinguish or pass any right, title or interest and no party could be prejudiced by mere existence of the award. It only becomes effective when it is made rule of the Court. Until the decree is passed, the award has no status in the eyes of law[16].Section 14 (2) of the Arbitration Act, 1940 requires the Arbitrator to file the award in the Court for making it rule of the Court and further requires that the Court give notice to the party after filing of it. The purpose of notice is to enable the parties to file their objections, if any, within the prescribed period of time[17].An award, which has not been made rule of Court, does not require registration but after making the rule of Court, its registration becomes compulsory[18].

Finality of Decree:

It is the right of a party to challenge the award, according to the provisions of the Arbitration Act, 1940, before pronouncing the judgment by the Court but not in any other way. On becoming a decree of the Court, the only remedy opened to the party is to appeal from the decree and that can only appeal on the ground that the decree was in excess of or not in accordance with the award. No suit lies against the award to challenge the validity and effectiveness of the award[19].Where the objections against the award have been over-ruled and a decree has been passed in terms of the award, an appeal will not lie from such a decree and such decree will be final. The decision / award given by the Arbitrator, when it becomes final, put an end to all the controversies between the parties. If the Court passes decree in terms of award without allowing the parties within prescribed time for filing objections against the award it is liable to be set aside.

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[13] Haji Abdullah v. S. Iqbal Naseem PLJ 1987 Kar 455
[14] PLJ 1994 Lah 446.

[15] Haji Muhammad v Syed Manzoor Hussain Shah PLD 2003 Lah 208.
[16] Abdul Karim v. Mirza Bashir Ahmed PLD 1974 SC 61., Rai Batey Khan v. Raja, 1991 MLD 587.

[17] PLD 2002 Kar 434.

[18] PLD 2003 Lah 208.

[19] Ismail Muhammad Bhai v. Yousaf Ali, 1992 SCMR 699.

Execution of Decree in Terms of Award:

Under section 15 of the Arbitration Act, 1899, an award filed in Court was enforceable as it was a decree. The proceedings for enforcement of an award under section 15 were governed by section 47 of Civil Procedure Code, and an appeal was competent from an order rejecting such application. But under the section 17 of the Act, 1940 the Court must pronounce a judgment according to the award and upon the judgment so pronounced a decree shall follow. This decree is to be executed like any other decree passed by a Civil Court. An executing Court can neither refuse to execute an award nor amend it in any way, unless it is apparent on the face of the award that it has been passed without jurisdiction. If the award merely declares the rights of the parties in the property and does not state that possession is to be delivered to the parties, the award is merely declaratory and is not capable of being executed. A party to the award cannot, for the first time, in the execution proceeding raise an objection about valuation in order to oust the jurisdiction of the Court. Nor can it raise in the execution proceedings, the question as to the jurisdiction of the Court to entertain the suit in which the reference was made.

Procedure of Execution:

When the award becomes the rule of the Court and the Court pronounces the judgment in terms of award, such rule of Court or judgment becomes the decree of the Court. The execution process of decree of the court is given in the Code of Civil Procedure. The execution proceedings are very complicated and time gaining. The execution of decree passed in terms of award will be executed according to the Code of Civil Procedure. Part-II i.e. Section 36 to 74, of the Code of Civil Procedure deals with the execution proceedings of the decree and Order 21 of the Code of Civil Procedure provides complete procedure for the execution of decree[20].It is admitted fact that the execution of decree, passed in term of domestic award as well as in terms of foreign award, will be governed under the Code of Civil Procedure. In the enforcement of foreign judgment in any country, there are two principles: first is the principle of comity and second is the principle of reciprocity. Section 13 of the Code of Civil Procedure provides the procedure for the enforcement of foreign judgment and the conditions mentioned in above-noted section 13 are based on the doctrine of comity but the foreign award is not considered equal to the foreign judgment. It is pertinent to note that the Code of Civil Procedure, 1908, governs the procedure of execution of decree passed in terms of domestic award as well as foreign award.

Mostly, decrees passed in terms of award, are money decree. Rule 10 of Order 21 of Code of Civil Procedure provides the procedure for filing an application for the execution of the decrees and rule 23-A of the said Order provides that (a) in the case of a decree for the payment of money, the party either deposit the decretal amount in the Court or furnishes security for its payment; and (b) in the case of any other decree, the objecting party furnishes security for the due performance of the decree. This rule provides discretion to the executing

[20] Code of Civil Procedure Act V of 1908.

Court to take security instead of decretal amount in money decree and in other decrees, this is a main hurdle in smooth and rapid execution of decree. Rule 58 to 103 of Order 21 of the Code of Civil Procedure is very complicated procedure, which deals with the procedure of investigation and objection, sale of the property whether moveable or immovable, and resistance to the delivery of possession to the decree holder or purchaser. These provisions of law provide further remedy to the parties in execution proceedings in the form of appeal, revision and constitutional petitions, which basically start the third round of litigation which commences from executing Court and goes up to the Apex Court. This is the difficulty in the execution of decree.

Remedies against Execution of Award:

The Convention of 1958, on the recognition and enforcement of foreign arbitral award, superseded the Geneva Convention 1927. In Geneva Convention, 1927 the burden of proof lies on the party who wants to enforce the award, while the Convention 1958 shifted the duty of burden of proof to the party who defended to enforce the arbitral award. The Convention 1958 provides seven limited defenses. The five of these are given in defenses Parsons and Whittemore Overseas Co. v. Societe General De L'Industrie Du Papier (Rakta)[21]

(1) When foreign award is contrary to the public policy.
(2) When subject matter of differences is not capable of settlement through arbitration i.e. non arbitrability.
(3) When inadequate opportunity is given to the party to present his defense.
(4) When arbitration proceedings are conducted in excess of the jurisdiction of arbitration.
(5) When award is given manifest disregard of law.

Award Operating as Res-judicata:

The doctrine of res-judicata is the principle of law of procedure which is categorically explained and defined in section 11 of the Code of Civil Procedure, 1908. A judgment and decree based on award is final and it would constitute res-judicata. A judgment by consent is intended to put a stop to litigation between the parties. A judgment and decree passed in terms of award, after solemn investigation by arbitrators, may constitute res-judicata. An award incorporated in a decree operates as res-judicata to bar a subsequent suit in respect of the same cause of action even though the award is not strictly in terms of reference. In case the Court hears and decides the question of validity of the reference as well as award, the party aggrieved cannot be allowed to re-agitate the same question in a subsequent suit[22].
Arbitration is an integral part of the national and religious norms of Pakistani society. As such, it is an effective tool for the resolution of both domestic and international commercial and other disputes. Numerous judicial precedents in Pakistan confirm the acceptance and

[21] U.S. Supreme Court of Appeals, 2nd Circuit, 1974. (508 F.2 d. 969).
[22] Section 11 of the Cod e of Civil Procedure,1908 (Act V of 1908), Commentary by Aamer Raza Khan, 9th ed. 2005 p.59.

viability of the arbitration process, despite controversy generated by the recent judgment[7] of the Supreme Court of Pakistan (SCP) in the WAPDA v. HUBCO[23] arbitration case restraining HUBCO from invoking the arbitration clause on account of allegations of fraud. One cannot overlook the fact that the Karachi High Court[24] recognized and upheld an international (ICC) arbitration clause, which was also supported by a minority of the Supreme Court judges in the above-noted SCP judgment[25]. Hence, Pakistani courts have always been and remain committed to letting the parties to a contract settle their disputes through arbitration, even foreign arbitration. The HUBCO case was an exception based on grounds of public policy, which is also well recognized in English jurisprudence.

Institutional Arrangements

Arbitration is an ad hoc procedure recognized and enforced by law in Pakistan. Unlike some other countries[26], Pakistan does not have a national arbitral institution. The trade and industry sectors in Pakistan have, however, established arbitral mechanisms for a limited purpose. For example, the Federation of Pakistani Chambers of Commerce and Industry (FPCCI) has set up arbitration machinery under section 12 of the 1961 Trade Organisations Ordinance to arbitrate disputes arising between FPCCI and its members[27].

International Investment

As part of the protective investment regime, international investors seek arbitration as a means of settling their disputes [28].International arbitration mechanisms are, therefore, being increasingly applied for the settlement of disputes between foreign investors and host states.

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[23] The Hub Power Company Ltd. (HUBCO) v. Pakistan WAPDA, LII All Pakistan Legal Decisions (PLD) 2000 Supreme Court 841, wherein the majority view was that public policy required a finding about alleged criminality; the matter was, therefore, not referable to arbitration

[24] HUBCO v. WAPDA, 1999 Civil Law Cases 1320

[25] The minority view, given by the acting Chief Justice, was that a valid contract could not become contrary to public policy because of an allegation that a later amendment was the product of an illegal act.

[26] In many countries, central or national arbitration organizations have been established to provide facilities for arbitration of disputes. For example, the Indian Council of Arbitration was established at the national level in India in 1965.

[27] Rules and Regulation of the Arbitration Tribunal (set up under Trade Organisations Ordinance, 1961 S. 12 of the Federation of Pakistan Chambers of Commerce and Industry, approved by the Ministry of Commerce, Government of Pakistan, vide letter no. 1001(2) 1969, dated January 3, 1969.

[28] *See generally* UNCTAD, TRENDS IN *INTERNATIONAL INVESTMENT AGREEMENTS (*IIA): AN *OVERVIEW* (Sales No. E.99.II.D.23).

In the absence of an international or multilateral regime [29],these are generally being included in bilateral investment treaties (BITs) between states.

Bilateral Investments Treaties

Pakistan has so far entered into fifteen BITs with: China (1989), France (1983), Germany (1959), Italy (1997), Republic of Korea (1988), Kuwait (1983), Kyrgyz Republic (1995), Malaysia (1995), Netherlands (1988), Romania (1978), Spain (1994), Sweden (1981), Switzerland (1995), Turkey (1995), and United Kingdom (1994).

Epilogue

There is frequent recourse to international arbitration in foreign trade and investment transactions in Pakistan. Pakistan and Pakistani nationals subscribe to international arbitration institutions and mechanisms such as the ICC, ICSID and UNCITRAL. The arbitration cases are, of necessity (because of governing law and/ or jurisdiction clauses), generally dealt with by Western lawyers in Western capitals. Budgetary constraints and exchange rate disadvantages constantly beset Pakistani parties while defending disputes in international arbitration. Furthermore, the high cost of international arbitration creates an "access" problem and there are resultantly very few arbitrations that are initiated by Pakistani parties. Some international arbitration experts have, therefore, suggested a regional approach as a possible solution to avoid the high cost of international arbitration[30]. For Pakistan, one possibility in this regard could be the development of a regional arbitration institution, such as the Arbitration Council proposed by the South Asian Association for Regional Cooperation (SAARC)[31].

However, what would even be better would be the strengthening and promotion of national laws and procedures and the development and promotion of an institutional framework with a view to providing a fair, expeditious and inexpensive arbitration mechanism in Pakistan. Arbitration is very much part and parcel of the national and cultural landscape of Pakistan. However, the arbitration laws are outdated and there is no institutional support provided to the process of arbitration in Pakistan. Pakistan's 1940 Arbitration Act does not contemplate international arbitration. The subject is partially covered by the 1937 Arbitration (Protocol

[29] There are only guidelines on the subject. *See* World Bank Guidelines on the Treatment of Foreign Direct Investment (1992). The negotiations towards a potential Multilateral Agreement on Investment (the MAI Negotiating Text, dated February 14, 1998) at the Organization for Economic Cooperation and Development have now ceased without any agreement being concluded.

[30] *See, e.g.,* M. Jaffer, Settlement of Investment Disputes: State-State Mechanisms: Investor-State Mechanisms, paper presented at the UNCTAD Sub-Regional Workshop for South Asia on Recent Development in International Investment Agreements, in Colombo, Sri Lanka on December 15–16, 1999.

[31] The Indian Council of Arbitration has prepared the Rules of Arbitration for the proposed SAARC Arbitration Council along the lines of the UNCITRAL Arbitration Rules 1976.

and Convention) Act, which is itself outdated. It is important for the country's arbitration law to be in line with international norms. Pakistan, therefore, needs to revamp its domestic and international arbitration laws and to adopt a nationally oriented policy framework. With modern arbitration laws and procedures in place and a proper institutional framework to support the mechanism, Pakistan may be able to introduce an exhaustion of local remedies rule as a matter of policy and thereby give a boost to the local arbitration industry. The Pakistani Government would be well advised to take the following measures in this regard:

(1) establishment of an effective legislative framework for the resolution of international disputes. Pakistan should adopt a holistic approach to international arbitration legislation. A single statute that includes international arbitration should be promulgated. The 1940 Arbitration Act should be modernized taking into account the UNCITRAL Model Law on International Commercial Arbitration;
(2) ratification of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards with appropriate declarations and reservations; establishment of a Pakistan Council of Arbitration, based on the experience of the Indian Council of Arbitration, to provide facilities for arbitration of both domestic and international commercial disputes;

Arbitrations and awards can be categorised in two types, domestic and foreign. The law tells us that a domestic arbitration and award is regulated by rules set out in the Arbitration Act, 1940 and foreign arbitration agreements and awards are enforceable under the provisions of Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011. The uncertainty on what constitutes a domestic or foreign award, is one of the biggest problems in commercial arbitrations in Pakistan. It is clear that any arbitration taking place in Pakistan where all parties originate from Pakistan and the underlying contract is governed by Pakistani law is a domestic arbitration. Nonetheless, the law is unclear where either governing law or seat of arbitration is a foreign country.

The 2011 Act, applicable to foreign arbitration agreements and awards is an adaptation of the New York Convention, 1958 (the NY Convention). Prior to the 2011 Act, the governing law was Arbitration (Protocol and Convention) Act, 1937 (the 1937 Act). The 2011 Act has repealed the 1937 Act.

While interpreting the 1937 Act, the Supreme Court of Pakistan recognised only those awards as foreign awards where the contract between parties is governed by foreign law and at the same time the seat of arbitration is also a foreign country, every other award was declared a domestic award.

However, the intent of the New York Convention and the 2011 Act negate this proposition. The NY Convention is applicable to a wider range of arbitration awards. In particular, the purpose of the NY Convention was to accord the same treatment and status to all arbitral awards which are made in a country, signatory to the NY Convention.

The benefit of this approach is to bring global certainty to commercial dispute resolution and enforcement of foreign awards. When multinational parties select a seat of arbitration which is a country signatory to the NY Convention, they acknowledge that in case of dispute an arbitration award would be enforceable in all countries signatory to the NY Convention. For example, the United Kingdom ratified the NY Convention. The Arbitration Act, 1996 as enforced in the UK, defines 'New York Convention award' as an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention which means that all awards where the seat of arbitration is a foreign country signatory to the New York Convention are treated as foreign arbitral or convention awards in the UK.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), 1958 was adopted by Pakistan on 14 July 2005 through the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2005. This was re-promulgated in the years 2006, 2007, 2009 and 2010 until it was finally enacted in 2011 ("2011 Act"). The purpose of the 2011 Act was to adopt the Convention by recognising and enforcing: (i) foreign arbitration agreements (under Sections 3 and 4 of the 2011 Act); and (ii) foreign arbitral awards (under Sections 6 and 7 of the 2011 Act). In doing so, the 2011 Act limited the judicial discretion of the Pakistan Courts (by using the word "shall") and repealed the Arbitration (Protocol and Convention) Act, 1937 ("1937 Act").

With the enactment of the 2011 Act, international award creditors filed applications for recognition and enforcement of the foreign awards on the basis that the new law was clearer and had lessor scope of judicial intervention. The 2011 Act, being a special law, was to be strictly construed with the effect that the Courts under Sections 6 and 7 of the 2011 Act "*shall*" not refuse an application for recognition and enforcement of the foreign award unless it was contrary to the grounds enumerated in Article V of the Convention. However, in practice, the Pakistan Courts could not adapt to the radical change in law (since the 1937 Act) and, consequently, the recognition and enforcement of foreign awards was delayed (making such awards redundant) or inconsistent judgments were passed contrary to the established principles of arbitration.

The judgment of the Lahore High Court titled Taisei Corporation versus A.M. Construction Company (Private) Limited[32], is a first example in which the Court, while interpreting Section 14 of the Arbitration Act, 1940 ("1940 Act") and Sections 6 and 7 of the 2011 Act, held that the powers of the Court to recognise and enforce a foreign award under the 2011 Act are limited and thus, the general remedy to seek recognition and enforcement under Section 14 of the 1940 Act would remain available. This appears to be incorrect as the 1940 Act applies to domestic awards and not foreign awards.

[32] PLD 2012 Lahore 455

Another interesting interpretation is the judgment of Abdullah versus CNAN Group Spa[33],which held that an award debtor could not seek to nullify a foreign award through a civil suit filed against such award on the grounds mentioned in Article V of the Convention. The Court held that the grounds mentioned in Article V could only be taken by the award debtor in defence to any proceedings initiated by the award creditor for recognition and enforcement of the foreign award.

A unique perspective was seen in the judgment of Rossmere International Limited versus Sea Lion International Shipping Inc.[34], in which the Quetta High Court recognised a foreign award but rejected its enforceability on the basis that the award debtor did not have any assets or bank accounts in the territorial jurisdiction of the Court. It also created an interesting procedural deviation by holding that: (i) in the case of assets and person (i.e. of the award debtor), a civil suit (which could result in a re-trial) for recognition and enforcement is to be filed by the award creditor in the court of territorial jurisdiction where such assets / person are present; and (ii) in the case of a money award, an application for recognition and enforcement is to be filed by the award creditor in the court of territorial jurisdiction where the bank accounts of the award debtor are maintained.

This procedural issue has led Pakistan Courts astray in the previous century and also defeated the purpose of international arbitrations. The 2011 Act aimed to address it but it does not also specify any procedure for the Courts to recognise and enforce foreign awards. Moreover, the Federal Government has also not framed any rules under Section 9 of the 2011 Act which outlines a procedure for recognition and enforcement of foreign awards. Pakistan Courts have thus remained inconsistent with respect to the procedure for recognition and enforcement of the foreign awards and are unable to decide *inter alia*:

(i) whether an award creditor is required to file a civil suit (which could result in a re-trial) or an application (summary procedure) for recognition and enforcement of the foreign awards; and
(ii) the parameters of the Court's discretion and powers in recognising and enforcing foreign awards. the respective judges have not passed any judgment in the matter – which has thus suffered inordinate delay.

In the my opinion, the answer to Pakistan's problem in recognising and enforcing foreign awards lies in an article authored in the year 2004 by the former Chief Justice of Pakistan namely Justice Mian Saqib Nisar titled; "International Arbitration in the context of Globalization: A Pakistani Perspective", which stated that;

"T*he enforcement of foreign awards has also been much simplified and the legal framework strengthened in favour of the award…The Convention, and hence the Ordinance, can be said*

[33] PLD 2014 Sindh 349
[34] PLD 2017 Baluchistan 29

to have a "pro- enforcement" bias and a strong case can be made out that the grounds under Article V are to be applied restrictively and construed narrowly" (emphasis added).

This simple, yet important, guideline has the capacity to remove major inconsistencies in interpreting the 2011 Act and improve the quality of precedents of the Pakistan Courts at par with its international counterparts.

Unlike the law of UK and many other countries, the 2011 Act of Pakistan fails to define what it means by a NY Convention Award or an award 'made' in a signatory contracting state. Judicial precedents in Pakistan, instead of resolving, have only added to the controversy. At present, the Sindh High Court has recognised an award as convention award or foreign award if the seat of arbitration was in a country signatory to the NY Convention.

However, the Lahore High Court upheld the interpretation of 1937 Act i.e. a foreign award must be governed by foreign law regardless of the seat of arbitration, nature of dispute or parties. The matter of interpretation of foreign arbitral award is pending before the Supreme Court of Pakistan for final resolution.

The distinction between domestic and foreign awards is relevant for commercial parties for several Firstly, the enforcement of a foreign arbitration award is easier and less cumbersome compared to the enforcement of a domestic arbitration award.

A foreign award can be directly filed in a High Court for enforcement, whereas a domestic arbitration award is first filed in a civil court for making it rule of the court. The difference of filing forum presages the number of years it would take to finally dispose of the case i.e. superior the filing forum for the award, sooner the matter would attain finality.

Since a domestic arbitration award has to be filed at a lower forum it potentially allows the losing party to contest the award on more judicial forums and hence drag the matter for years. In contrast, a foreign award can only be challenged before the High Court or the Supreme Court.

To encourage uniformity in the treatment of commercial arbitration awards the principle of pecuniary jurisdiction of the court should be applicable for enforcement of domestic awards. This would allow an award beyond a certain monetary limit to be directly filed by the parties or arbitrator in the High Court.

Secondly, the recognition and enforcement of foreign award under NY Convention can only be refused on limited grounds of a procedural nature compared to a domestic arbitration award which is susceptible to challenge on a wide range of technical and legal objections.

Thirdly, no stamp duty is payable on enforcement of foreign arbitral award whereas a stamp duty of three per cent of the amount of award is payable on a domestic award. The stamp fee alone discourages parties from filing a domestic award in court. The stamp fee is payable by

the party filing the award in court regardless of whether it seeks to set it aside or make it enforceable. As a matter of policy, no stamp fee should be payable on a domestic award as well.

The legal costs should remain consistent between different modes of alternate dispute resolution and at least more advantageous than litigation costs. In comparison, in an ordinary commercial dispute/ suit before a Pakistani court for resolution (not involving arbitration) no such stamp fee is payable. The court may grant damages or other monetary relief to a party but nothing is payable by the winning or losing party to the public exchequer on the amount decreed in a suit.

Nonetheless, even if the stamp remains payable on a domestic award, the law must settle the fact that the stamp duty on the value of the award would only be payable by the winning party when the award is made rule of court and no further challenge lies to the award.

Commercial dispute resolution demands cost effectiveness, time efficiency and legal certainty. Fortunately, the plight of commercial arbitrations can be relieved by amendment in the relevant laws. It is time that Pakistan aligns its law of arbitration with international developments in the area to bring uniformity and certainty in dispute resolution.

Is stamping of domestic arbitration award obligatory for enforcement?

For an arbitration award to be enforceable, there are a number of obligatory and non-obligatory requirements that ought to be fulfilled, for proper execution or setting aside of arbitration award. One of those requirements is stamping and registration of domestic arbitration awards. Insufficiency or any inadequacy in stamping of documents have certain consequences over its validity and enforceability. Some of the major legislations and provisions governing such issues are, Section 30 and 34 (setting aside of arbitration award and enforcement/execution of arbitration award respectively) of Arbitration Act 1908, Section 17 and Section 3 of Stamps Act, 1899.

Issues Pertaining to Unstamped Domestic Arbitration Awards

After completion of the process of arbitration, finality to the merits is given by pronouncing an arbitration award. Consequent to the passage of award, there are two possible outcomes namely, setting aside of arbitration award and enforcement of such award by execution under Sections 30 and 34 of Arbitration Act, 1908 respectively. Some case laws are briefed below, about unstamped or inadequately stamped arbitration awards, their validity and status with regard to the Stamp Act, 1899.

According to Section 33 of the Stamps Act, a public officer is obligated to impound any document which is inadequately stamped or unstamped. It is a mandatory clause and not merely directory. Such public officer while exercising his/her power under Section 33 of the Stamps Act, 1899 cannot force the parties to produce documents and also, has the power to

impound only original instruments and not copy of it. As per Section 31(5) of the Act, after pronouncement of arbitration award each party is to be delivered copy of the award, in case of contesting such award under Section 34 of the Act, i.e. challenging the award passed on the grounds as enumerated under Section 34.

Therefore, to rectify the conflict between Section 33 of Stamps Act, 1899 and Section 34 of the Arbitration Act of 1908, the Superior Courts practice directions are to be followed, whether an unstamped arbitration award challenged under Section 30 of Arbitration and Act can be impounded on the basis of Section 33 of Stamps Act, 1899. The provision under Section 33 of Stamps Act, 1899 is mandatory and thereby, an unstamped arbitration award under Section 30 for setting aside arbitration award is liable to be impounded as per Section 33 of the Stamps Act, 1899.

Remedies for Setting aside an Arbitration Award

Remedies which parties to an arbitration agreement may avail in Pakistan is setting aside an arbitration award. When an aggrieved party feels that he has sufficient grounds to believe that an arbitration award is not valid, he may apply for setting aside an arbitral award before the Court. There are certain grounds mentioned under section 30 of the Arbitration Act 1940 for setting aside an arbitral award. An aggrieved party is required to challenge an arbitral award for setting it aside within 30 days in Pakistan under article 158 of the Limitation Act 1908. An aggrieved party to an arbitral award can challenge an arbitral award for setting it aside on prescribed grounds mentioned in section 30 of the Arbitration Act 1940. Section 30 of the Arbitration Act 1940 states that on request of parties, the Court can annul arbitral award;

(i) if arbitrator misconducts himself.
(ii) if arbitrator misconducts with arbitration proceedings.
(iii) if arbitral award has been improperly procured.
(iv) if arbitral award is made after order of the Court superseding arbitration.
(v) if arbitral award has superseded arbitration.
(vi) if arbitral award is otherwise invalid.

Burden of proof in case of arbitration award annulment is upon applicant who seeks remedy of annulment before the Court. Sindh High Court held in a case between ENGRO Fertilizers Limited v Federation of Pakistan that burden of proof for proving that arbitration award is not based upon findings and upon produced evidence before arbitrator is upon an applicant who seeks remedy of setting aside an arbitration award. Applicant must prove serious irregularity on the face of it about procedure of arbitration tribunal and that irregularity cannot be ignored otherwise it would cause serious injustice.

An arbitration award is also void when arbitrator excesses his powers. An arbitrator has powers determined by parties given in an arbitration agreement but if parties have not decided it, the Arbitration Act 1940 gives certain powers to an arbitrator in Pakistan. When

arbitrator excesses his powers, aggrieved party may apply in the Court for setting aside an arbitration award.

An arbitration award may also become void if it is improperly procured or if subject matter of arbitration proceedings is not allowed to be arbitrated, e.g., arbitration process runs in civil nature cases between contracting parties and not in criminal matters, disputing parties may avail method of mediation and other modes of Alternate Dispute Resolution for resolving their disputes outside the Court in criminal matters.

If findings of an arbitrator are based upon documentary evidence and there is no misreading or non-reading of an evidence, the Court will not disturb arbitration award. The Court would always go in favour of non-interference rather than interference in findings of an arbitrator based upon documentary evidence. The Court can only interfere in arbitration award if there is gross miscarriage of justice.

One more case which is decided by Peshawar High Court between Government of N.W.F.P. v Jan Construction Company, the Court straightaway announced arbitration award rule of the Court without commenting upon validity of an arbitration award. Peshawar High Court held that the Court is duty bound under law of the land to consider all questions of law and fact, the Court is empowered to deny decision of an arbitrator to be made rule of the Court as well as it has jurisdiction under section 16 of the Arbitration Act 1940 to resend arbitration award to an arbitrator if there are certain deficiencies.

If arbitrator holds an inquiry in arbitration proceedings, takes sufficient documentary evidence, hears both sides of an arbitration agreement, decides issue and submits it in the Court with authentication of both parties in accordance with provisions of the Arbitration Act 1940, parties to an arbitration agreement cannot take back their statements made before an arbitrator and cannot state anything different of what they have said earlier before an arbitrator and law of Estoppel would apply upon arbitral award and parties to arbitration agreement.

Similarly, article 52 of ICSID Convention 1965 contains grounds of setting aside an arbitration award as it states that either party of arbitration proceedings may request annulment of an arbitral award by an application in writing within 120 days of its pronouncement;

(i) if arbitral tribunal was nor properly constituted.
(ii) if arbitral tribunal exceeded from its powers.
(iii) if members of arbitral tribunal involved in corruption.
(iv) if there was a serious departure from fundamental rules of procedure (due process, fair trial, right of notice, right of hearing etc.).
(v) if arbitral award has failed to state reasons. These grounds are not imbedded in Pakistani law hence an aggrieved party may not avail these grounds to set aside an arbitral award in Pakistan.

No stamp duty is payable on enforcement of foreign arbitration award whereas a stamp duty of three per cent of the amount of award is payable on a domestic award. The stamp fee alone discourages parties from filing a domestic award in court. The stamp fee is payable by the party filing the award in court regardless of whether it seeks to set it aside or make it enforceable. As a matter of policy, no stamp fee should be payable on a domestic award as well.

For an arbitration award to be enforceable, there are a number of obligatory and non-obligatory requirements that ought to be fulfilled, for proper execution or setting aside of arbitration award. One of those requirements is stamping and registration of domestic arbitration awards. Insufficiency or any inadequacy in stamping of documents have certain consequences over its validity and enforceability Ideally, and in accordance with serial No. 4, Schedule I of the Arbitration Act 1940 (the "Arbitration Act"), the arbitration proceedings are to be concluded within a period of 4 months. However, this is far from what actually happens and this delay is attributable to multiple reasons. A major determining factor in the time consumed for arbitration is the attitude and diligence of counsel representing the parties to the dispute, the parties themselves, and the arbitration tribunal. The spirit of arbitration is for the expeditious resolution of proceedings, as opposed to adjudication from courts, the latter being a laborious process.

The matter of conclusion of arbitration proceedings within four months is obviously not a hard and fast rule and parties can have the proceedings extended either by the consent of both parties during the arbitration proceedings, or through an application before the court for extension of time under section 28 of the Arbitration Act. In the case of an application before the courts under section 28, we find that the courts are quite lenient towards extending the time in the interest of substantive justice and the adjudication of disputes on merits.

The actual time required for conclusion of the proceedings depends greatly on the diligence and efforts put in by the counsel from the claimant side, who has the most to gain from timely completion of the arbitration proceedings and finalization of the arbitration award. A dedicated and diligent effort on part of the counsel ensures that the arbitration tribunal gives shorter dates and also puts pressure on the respondent to be prepared for substantive proceedings on the dates fixed by the arbitration tribunal. On the contrary, a laid-back attitude of the claimant and its counsel only allow for the proceedings to be unduly delayed and extended as the arbitrators are neither under any scrutiny or pressure to make timely awards, nor are they pushed to expedite the proceedings. On the other hand, respondents also prefer to keep the matter in limbo as expeditious resolution of disputes does not necessarily lead to any payment to them.

Considerations for Upholding and Setting Aside of Arbitration Awards by Courts

The matter regarding upholding or setting aside an arbitration award as laid down in the Arbitration Act is not very detailed, however it has been sufficiently elaborated upon though

several decades of jurisprudence of the superior courts of Pakistan. The courts generally uphold and set aside arbitration awards on the following principles and considerations:

The main issue that courts are concerned with is whether the arbitration award provides substantial justice in deciding the dispute between the parties, and if so, the courts tend to be very hesitant in setting aside arbitration awards on procedural technicalities. In any case, it should be noted that procedural technicalities as laid down in the Civil Procedure Code or laws of evidence of Pakistan, such as the Qanoon e Shahadat Order of 1984, clearly state that they do not apply to the arbitration proceedings;

Arbitration is the ultimate adjudication stage regarding all questions of law and fact between the parties, as by ousting the jurisdiction of the ordinary courts, the parties have instead chosen their own forum to settle their dispute. Courts lack jurisdiction to look into merits of the case and therefore are inclined to not set aside the arbitration award, even when the court may arrive at a different conclusion from that arrived at by the arbitration tribunal;

All that the arbitration tribunal is bound to do is to ensure that it upholds rules of natural justice in concluding the arbitration proceedings, meaning thereby, that both parties have got an equal opportunity of producing evidence and presenting their arguments. The courts therefore have a very high threshold for setting aside an arbitration award. The only grounds available to a party contesting the arbitration award and to have it set aside are that the arbitration tribunal had a bias against the objecting party, and/or the arbitration tribunal misconducted itself or the proceedings in any other way;

Courts have also opined that the arbitration awards have more sanctity than the judgments of courts, as even a superior court's judgment can be challenged on merits before different superior courts, through an appeal or review, while the award of an arbitration tribunal cannot be questioned or challenged on merits;

Courts have further laid down that they should have all inclinations towards upholding the arbitration awards as opposed to vitiating it because it is a forum that the parties choose themselves and once this forum gives its verdict the parties are bound to respect it;

On a number of occasions, courts have reprimanded the government authorities for unduly challenging arbitration awards through frivolous objections in courts as a standard procedure. Courts have observed that once parties agree to resolve their disputes through their private arbitration tribunals they lose the right to challenge that adjudication unless there is a serious violation of the principles of natural justice in view of a misconduct by the arbitration tribunal;

While it is the court's duty to apply its mind in reviewing awards and any objections raised against the same before making it a rule of the court, courts also prefer to not dig very deep into factual controversies of the dispute as that is considered to be the domain of the

arbitration tribunal. The courts rarely scrutinize the process chosen by the arbitration tribunal when arriving to its decision, and when they do it is to a very limited extent;

It is crucial to appreciate that there are no specific requirements for the arbitration tribunal to come good on any specific formalities. If the court is satisfied after perusal of the relevant document and records that the arbitration tribunal has decided the matter after giving adequate opportunity of hearing to the parties, it will then proceed to uphold the arbitration award. In similar vein, it may also be mentioned that arbitration tribunals are not required to specifically refer to all the evidence that they have relied upon. However, this does not mean that the award can be based on extraneous considerations. The reason for not creating a strict requirement of recording evidence is that arbitrators do not always have the same understanding of these intricate technicalities as a lawyer or a judge, and therefore they are not expected to write the award as a competent judicial officer would. As the final arbiter of the dispute, the arbitration tribunal is the sole adjudicator of the quality and quantity of evidence and if it decides a matter in favor of one party upon being satisfied with the evidence produced, then courts respect such adjudication;

Arbitration tribunals are also not expected to address each and every issue in their awards to ensure that they make a speaking award. All that the courts require is for the arbitration awards to substantiate and back the conclusions with logical reasoning and that the arbitration awards are not perverse in any way;

Courts always attach a presumption of correctness to the arbitration awards while reviewing the same, and therefore any procedural or technical matters that do not have any material or substantive effect cannot become the basis for setting aside arbitration awards;

One of the grounds for setting aside an arbitration award is that there is perversity in the same and upholding it would make a mockery of justice. However, even for that to occur the party alleging such perversity has to prove the perversity alleged through evidence. Doing so would defeat the crucial requirement of ensuring substantial justice;

In case the court suspects that the arbitration tribunal committed some serious miscarriage of justice through personal misconduct or by misconducting the proceedings, the court then has the discretion of framing an issue for leading evidence for proving such misconduct before setting aside the arbitration award;

Courts have even gone on to hold that an arbitration award can only be set aside where the objecting party can prove that the arbitration tribunal misconducted the proceedings on purpose, and there was a deliberate disregard of the law. Minor mistakes in application of the law would not nullify an arbitration award as long as substantive justice is done;

In order for a party to successfully have an award set aside, the error must be apparent on the face of the arbitration award, meaning thereby that the arbitration award must be bad at the

very outset and the same need not be proved through detailed fishing of records and evidence;

In order to explain the position of the courts in looking at the validity of an arbitration award, courts have time and again reiterated that in rule of court proceedings the courts do not sit as a court of appeal and do not have the same powers as that of an appellate court. The importance of this statement can be understood from the fact that an appellate court generally has the discretion to get into each and every aspect of the controversy which is similar to the authority of the trial court;

Generally, for setting aside an arbitration award the courts examine whether there an error so glaring that it cannot be overlooked, and if it is overlooked it would result in the miscarriage of justice. The reason for this is that the main focus and concern for the courts is to be satisfied that the arbitration award has done substantial justice in resolving the dispute between the parties, and if that is done it is difficult to convince a court to set aside an arbitration award;

However, on occasion the courts have also stressed that they are not supposed to simply "rubber stamp" arbitration awards. That they are supposed to examine the arbitration awards and proceedings to determine whether the dispute has been decided properly. Such judgments have created a vagueness in the law, and even upon examination of the Arbitration Act, we see that a lot of discretion has been left to the courts. This has led to uncertainty in the law, which leads to a negative environment for investors.

Section 16 of the Arbitration Act 1940 states that the Court may resend matter to an arbitrator;

(i) when arbitral award has not determined all matters referred to an arbitrator for resolution.
(ii) when arbitral award consists matter which was not referred to an arbitrator for consideration.
(iii) when the Court cannot modify an arbitral award because it would affect other part of arbitral award.
(iv) when arbitral award is incapable of execution because it is indefinite, (v) when reservation upon legality of an arbitral award is obvious.

Sindh High Court held in a case between Abdullah Contractors v Water and Power Development Authority that the Court has supervisory jurisdiction upon arbitral award and not appellate jurisdiction. The Court in supervisory jurisdiction examines whether parties have given equal opportunities before arbitrator or not and if award is not based upon evidence as no evidence was produced before arbitrator disclosed by examining record, the Court would annul arbitral award and resend same to an arbitrator and ask him to reconsider matter and give equal opportunities to contracting parties again and give decision based upon solid evidence. The Court may also resend award;

(i) if decision of an arbitrator or an umpire is ambiguous and not clear.
(ii) if fundamental issues between parties are not addressed.
(iii) if there are additional things mentioned in an arbitral award which were not referred to an arbitrator for arbitration and that thing cannot be set apart from arbitral award without affecting other part of arbitral award.
(iv) Moreover, when arbitrator does not file arbitral award in the Court within 4 months and an umpire within 2 months in Pakistan, the Court would remit an arbitral award because decision of an arbitrator submitted in the Court after expiration of prescribed time renders an arbitration award invalid.

Sindh High Court held in a case between Falcon Enterprises v National Refinery Limited that the Court acts in supervisory jurisdiction and examines whether arbitration award made by arbitrator is based upon material placed before him and whether parties to arbitration agreement had given equal opportunity to prove their opinion. If arbitrator does not decide case upon solid evidence, the Court would declare an arbitration award void and resend it to an arbitrator for reconsideration.

Similarly, Lahore High Court held in a case between S.M.I Brothers v Municipal Committee Murree that the Court has limited jurisdiction while examining validity of an arbitration award. If there is any clear error or disregard of law during arbitral proceedings, the Court would set aside an arbitration award and resend matter to an arbitrator.

Another similar case is a case between Water and Power Development Authority v MESSRS Ice Pak International Consulting Engineers of Pakistan, Lahore High Court held that arbitrator is bound to act on terms agreed upon by contracting parties, if arbitrator fails to fulfil implementation of arbitration agreement between contracting parties, it would be considered an error on the face of it which will nullify arbitration proceedings.

One more case gives clearer picture is the decision of Sindh High Court in a case between Adamjee Construction Company Limited v Islamic Republic of Pakistan, the Court held that before making award rule of the Court, it is obligation of the Court to see whether there is any cause exists to resend award to an arbitrator and to remove clerical mistake or typographical error. If aggrieved party is not successful to file objection within specified time, it would not be precluded that the Court becomes Functus Officio. It is duty of the Court as a supervisory body to see whether there is any kind of irregularity in arbitral award or whether there is any error or omission. It is also duty of the Court to see whether arbitral tribunal worked under arbitration agreement and under special law related to matter or not and after watching all aspects of arbitral award thoroughly, the Court is required to make an order for making an arbitral award rule of the Court for execution. The Court should thoroughly watch;

(i) whether there is any ground for modification or not.
(ii) whether there is any matter to remit arbitral award left by arbitrator or not.

(iii) whether arbitration agreement is valid and arbitral tribunal acted as per arbitration agreement and law of the land or not.

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