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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Original Suit No.42300 of 2022

Metro Metals Northwest, Inc.

Versus

Mughal Iron & Steel Industries Limited

J U D G M E N T

Date of Hearing.	29-01-2025
APPLICANT BY:	M/s Muhammad Umer Akram Chaudhry, Muhammad Hammad Amin and Muhammad Ali Talib, Advocates.
RESPONDENT BY:	M/s Muhammad Imran Malik, Hassan Ismail, Akif Majeed, Sajid Ikram Siddiqui, Rana M. Afzal Razzaq Khan, Ghulam Abbas Haral and Malik Muhammad Zarif, Advocates

Shahid Karim, J:-. This is a petition under Section 6 of the Recognition and Enforcement (Arbitral Agreement & Foreign Arbitral Award) Act, 2011 (“**the 2011 Act**”). Pursuant to section 5 of the 2011 Act read with Article IV of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“**the Convention**”) Metro Metals Northwest (“**Metro**”) has furnished; a) duly certified copy of the Award; and b) duly certified copy of the contract containing the arbitration agreement, the sales contract dated 24.02.2020 (**the Sales Contract**). Clause 20 of the Sales Contract is the arbitration agreement between the parties and states that:

“Any dispute, controversies and/ or claims arising out of or relating to this agreement or any modification thereto, or any alleged breach or cancellation thereof, which cannot be settled amicable between buyer and Seller, shall be settled by arbitration in the USA, in accordance with the laws/ regulations/ stipulations.”

The Parties' dispute:

2. Metro, incorporated in Oregon, USA, is engaged in the business of selling bulk scrap metal to customers worldwide. Metro and Mughal Iron & Steel Industries Limited ("**Mughal**") executed the Sales Contract on 24 February 2020. According to the Sales Contract, Mughal was to purchase 30,000 MT(+/-5%) of scrap metal from Metro for a total price of US\$ 9,170,000 (+-5%).

3. The Sales Contract was executed on "Cost and Freight" ("CFR") term. CFR is a standard Incoterm used in international trade. Pursuant to CFR term, Metro was required to supply and deliver scrap metal to Mughal by placing the scrap metal on board a vessel at Vancouver, Washington, USA. The Sales Contract specified Karachi, Pakistan as the destination port.

4. Mughal had two main obligations under the Sales Contract: (a) to pay the total price of the scrap metal delivered by Metro; and (b) to receive the scrap metal cargo at Karachi, the destination port.

5. Pursuant to the Sales Contract, Metro loaded 31,500 MT of scrap metal on a vessel berthed at Vancouver, Washington, USA, on 18 March 2020. Metro, it is alleged, complied with its part of the bargain; Mughal, however, breached the terms of the Sales Contract in that:

- 2.
- a) *Mughal failed to pay any amount for the value of the cargo to Metro. Mughal failed to open irrevocable and non-transferable letters of credit in fully workable condition in favor of Metro, required under Clause 12 of the Sales Contract, for 100% of the value of the cargo/ scrap metal for payment of the value of the cargo/ scrap metal.*
 - b) *Mughal refused to accept delivery of the cargo at Karachi, Pakistan as stated in the letter dated 29*

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March 2020, issued when the vessel was nearing Asia across the Pacific Ocean (and was scheduled to arrive at Karachi in late April).

6. After receipt of Mughal's letter dated 29 March 2020, Metro mitigated its losses and sold the scrap metal to a buyer in Bangladesh on or around 6 April 2020 at the total price of US\$ 7,927,500. Due to Mughal's breaches of the Sales Contract, Metro suffered damages of US\$1,941,455.59 (along with interest and ancillary expenses).

The Arbitration proceedings:

7. On 25 August 2020, Metro, in order to seek redressal of its claim against Mughal, filed a petition to Compel Arbitration ("the US Petition") before the United States District Court for the District of Oregon, Portland Division, USA ("the US District Court"). Metro filed this petition with reference to clause 20 of the Sales Contract, under the Federal Arbitration Act, 1925.

8. By the final judgment dated 18 February 2021, the US District Court referred the dispute between the parties under the Sales Contract to binding arbitration before Mr. Thomas J. Brewer ("the Sole Arbitrator") and held that the Arbitration Rules of the International Centre for Dispute Resolution ("ICDR") would govern the arbitration proceedings.

9. The Sole Arbitrator held the hearing on 29 September 2021 and issued the Award on January 2021. The Award, in its operative part, stated:

"For the reasons stated above, I award as follows:

A. Within thirty (3) days from the date of transmittal of this Final Award to the parties, respondent Mughal Iron & Steel Industries Limited, referred to herein as "Mughal Steel"

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2

shall pay to Claimant Metro Metals Northwest, Inc., referred to herein as "Metro Metals", the sum of USD \$ 2,463,377.54.

- B. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling USD \$19,350.00 shall be borne by Respondent Mughal Steel and the compensation and expenses of the arbitrator totaling USD\$25,575.00 shall be borne by respondent Mughal Steel. Therefore, respondent Mughal Steel shall also reimburse Claimant Metro Metals, the sum of USD \$44,925.00, representing that portion of said fees and expenses previously incurred by Claimant Metro Metals Northwest, Inc. (**The Award Amount**)
- C. This award is in full settlement of all claims and requests for relief submitted to this Arbitration.

10. The Sole Arbitrator also awarded pre and post-award interest to Metro along with attorneys' fee and legal expenses: (the Award, Para 62 and 63.)

11. Mughal filed a defence in terms of Article V of Schedule 1 to the 2011 Act. Metro submits that Mughal has failed to meet the burden necessary to resist recognition and enforcement of the Award and has prayed to recognize and enforce the Award under Section 6 of the 2011 Act.

12. The first defence of Mughal is premised on Article V (e). It is contended that the Award is not enforceable since it has not been confirmed by the judgment of the District Court of the USA under Section 207 of the Federal Arbitration Act. This objection has no basis in law. This Court in *Midstar (Singapore) (Pvt.) Ltd v Tahir Omer Industries Ltd*. COS No.12977/ 2022 an unreported judgment, has rejected this objection in the following terms:

"The respondent/ buyer filed a defence in terms of Article V of the 2011 Act. During the course of oral arguments today it was firstly contended that the Final Foreign Award was caught by section 66(1) of the Arbitration Act, 1996 of the united Kingdom and is a domestic award. Thus leave of the Court in England

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2

ought to have been sought. Suffice to say that this contention has no basis and for all intents and purposes the foreign arbitral award is a foreign award in a contracting state notified by the Federal Government and is liable to be enforced under the 2011 Act."

13. Thus, it was held that the only aspect which has to be seen by this Court is whether the Award constitutes a foreign arbitral award which can be recognized and enforced under the 2011 Act. Further argument that this should be brought under challenge in the country where the award has been made is an incorrect view and cannot be sustained.

14. Learned counsel for Mughal next contended that the Award was liable to be set aside on the basis of the defence contained in Article V (c) which provides that:

"V(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration, can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.."

15. The above provision makes an award liable to be set aside if it deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration. The submissions made by learned counsel for Mughal do not convince this Court that the Award is liable to be set aside on this basis. Learned counsel referred to clause 12 of the Sales Contract which obliged Mughal to open irrevocable, non-transferable letter of credit in favour of Metro. It is contended that LCs against shipment were cancelled and the bills of lading were also not available for that shipment. Documents to this effect

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2

have been brought forth through C.M No.1 of 2025. On this basis, learned counsel for Mughal invites this Court to hold that there was no fault on the part of Mughal and the Arbitrator has rendered the Award without such evidence/ documents having been brought on record. For this proposition, learned counsel has referred to paragraph 29 of the Award as well as paragraphs 31 and 33 where it has been stated that although the Sales Contract required Mughal to pay for the scrap using LCs to be opened and in fully workable condition no later than March 6, 2020, however by March 11, 2020 Metro had received only three of the seven promised LCs and all of them were incomplete with significant discrepancies. In the meantime, Metro permitted the cargo to sail for Pakistan pending the removal of discrepancies in the LCs. Therefore, Mughal admits while making these submissions that the condition precedent of the opening of LCs to pay for the scrap was not fulfilled. On this basis, Mughal asserts that the cargo should not have been permitted to sail to Pakistan in the absence of workable LCs by Mughal. Suffice to say that this was precisely the dispute referred to arbitration and this Court cannot enter into this dispute once again and to review the findings of the arbitrator on the issue. It is sufficient to hold that the submissions of Mughal in this regard do not bring its defence within the meaning of Article V (c) of the Schedule to the 2011 Act.

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2.

16. Lastly, learned counsel for Mughal contended on the basis of Article V (b) that there was no proper service on Mughal and the Award is thus liable to be set aside for lack

of proper notice to Mughal on the appointment of arbitrator or of the arbitration proceedings. This is belied from the findings rendered by the arbitrator where on the basis of record it has been held that Mughal was given proper notice of appointment of the arbitrator and of the arbitration proceedings. Metro's counsel, sole arbitrator and ICDR invited Mughal on 18 occasions by courier and email on appointment of the sole arbitrator and the arbitration proceedings, the summary of which have been given. Mughal has offered no evidence to challenge the substantial evidence that it received proper notice of sole arbitrator's appointment and arbitration proceedings. Mughal has also not questioned the correctness of its postal addresses on which notices were sent. It can rightly be inferred that Mughal chose not to engage in the arbitration. At the pre-arbitration negotiations with Metro, Mughal was represented by a reputed law firm and so there is no doubt that Mughal deliberately absented itself to avoid arbitration proceedings. Further the observations of the U.S District Court are also relevant where in its judgment dated 08.02.2021 it held that Metro had properly been effected service of the summons of the petition before the U.S District Court in accordance with rule 4(f) of the Federal Rules of Civil Procedure and the Hague Convention on the service abroad of judicial and extra judicial documents.

17. On the basis of the above, it is held that the defences raised by Mughal do not compel this Court to refuse the recognition and enforcement of the award and that Mughal has failed to furnish proof that the recognition and

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2

enforcement of the Award may be refused on the grounds given in Article V of the Schedule to the 2011 Act. Consequently, the defence raised by Mughal are rejected.

18. As a sequel to the above the Award is hereby recognized and enforced as a judgment of this Court. Accordingly there will be an order as follows:

- 1) *The Award is hereby recognized as a binding and enforceable Award and enforced through this order.*
- 2) *Applicant is granted judgment in The Award Amount which shall be executed as a decree of this Court. Decree-sheet shall be drawn accordingly.*
- 3) *The Applicant shall have costs of this Application.*
- 4) *In terms of Order XXI, Rule 10 of the Code of Civil Procedure, 1908 (CPC) this Application is converted in to execution proceedings.*

19. To come up for further proceedings in execution on 21.04.2025.

(Signature)
(SHAHID KARIM)
JUDGE

Announced in open Court on 26.02.2025

(Signature)
JUDGE

(Signature)
*
Rafaqat Ali

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(HEAD EXAMINER)
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