

**JUDGEMENT SHEET**

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.  
JUDICIAL DEPARTMENT

**ICA No.01/2013**

CDA ETC **VS** RM GULISTAN ENGINEERS & CONTRACTORS PRIVATE LIMITED

Date of Hearing: 22.01.2015

Appellant by: Raja Adnan Aslam, Advocate.

Respondent by: Ch.Mushtaq Ahmed Khan, Advocate.

**Aamer Farooq, J.-** The instant appeal is directed against order dated 13.12.2013 whereby the parties appointed Mr.Justice @ Amir-ul-Mulk Mengal, as sole arbitrator for the resolution of their disputes. The referred order was passed in Civil Suit / Arbitration Petition No.30/2012 filed by respondent against the present appellant under sections 8 & 20 of the Arbitration Act, 1940.

2. The learned counsel for the appellant submitted that order dated 13.12.2012 could not have been passed in light of the Capital Development Authority (Abatement of Arbitration Proceedings Act, 1975). Learned counsel further submitted that the referred Act provides for abatement of the arbitration proceedings pending between the appellant and third parties/contractors.

3. Learned counsel for respondent defended the order impugned.

4. The order impugned in the instant appeal dated 13.12.2012 was passed with the consent of the appellant as well as the respondent. The reliance, by the learned counsel for the appellant on the above mentioned Act is not tenable in light of the wordings of the same. The preamble of the Act makes it abundantly clear that the referred Act pertains to the contracts/arbitration proceedings entered

into by Capital Development Authority prior to the passing of the Act.

**In this behalf for the sake of brevity, the preamble of the Act is reproduced below:-**

**WHEREAS** *the Capital Development Authority has entered into agreements with certain persons for the execution of certain projects and other works required to be undertaken by it under the Capital Development Authority Ordinance, 1960 (XXIII of 1960), and for the supply of goods or labour or the performance of certain obligations;*

**AND WHEREAS** *such agreements provide for reference of disputes arising there from to arbitration;*

**AND WHEREAS** *pursuant to the aforesaid provision of the said agreements, certain disputes between the Capital Development Authority and the said person have been, or may hereafter be, referred to arbitration, either by the parties themselves or by order of a Court;*

**AND WHEREAS** *the references made to arbitration pursuant to such agreements have failed to achieve the objects for which provision for such references was made;*

**AND WHEREAS** *it is necessary that the references to arbitration in which the Capital Development Authority is a party be annulled and the proceedings before the arbitrators be abated, and necessary provisions consequent upon such annulment and abatement be made.*

5. The preamble of an Act strictly speaking is not considered as part of the Statute however, is regarded as an important instrument for the interpretation of the same. In this behalf the House of Lords in *Att.-Gen. Vs H.R.H. Prince Ernest Augustus of Hanover* (1957 A.C.436) observed as under:-

*When there is a preamble it is generally in its recitals that the mischief to be remedied and the*

*scope of the Act are described. It is therefore, clearly permissible to have recourse to it as an aid to construing the enacting provisions.*

6. The scope of preamble as a tool for determining the intention of the legislature was also highlighted in the case of Asif Saigol etc Vs F.O.P (**PLD 2002 Lahore 416**) and it was observed as under:-

*It is well established that preamble is not a part of Statute as such and its scope is only to indicate legislative intention.*

7. The reading of Section 3 of the Act of 1975 makes it clear that the abatement of proceedings before Arbitrators pertain to the contracts and proceedings entered into prior to the passing of the Act and did not apply to future contracts. Section 3 ibid reads as follow:-

***Abatement of proceedings before arbitrators, etc***  
***(1) Notwithstanding anything contained in any law for the time being in force, or any order of a court or any agreement,-***

- a)*** *any provision in an agreement entered into before the coming into force of this Act by or on behalf of the Authority and a contractor relating to the execution of any project or works or to the supply of any goods or labour or to the performance of any obligation, providing for reference to arbitration of any dispute arising out of the agreement or any term or condition thereof shall stand abrogated and annulled and be of no effect;*
- b)*** *all arbitration proceedings in pursuance of any such agreement as is referred to in clause (a), whether the reference to arbitration was made by consent of the parties thereto, by order of a court or otherwise, pending before an arbitrator*

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*or arbitrators or an umpire immediately before the coming into force of this Act shall forthwith abate and, save as hereinafter provided, shall be of no effect;*

- c)** *any award made by an arbitrator, arbitrators, or umpire in pursuance of any such agreement as is referred to in clause (a) shall, unless the award has been made the rule of the court, or partly or wholly implemented or acted upon, stand annulled and be of no effect, and any proceedings in respect of such award, if pending immediately before the coming into force of this Act, shall abate;*
- d)** *all proceedings in relation to any application made to a court for referring a dispute to arbitration pursuant to an agreement referred to in clause (a) shall abate, and any order made by a court on such application referring the dispute to arbitration shall be of no effect; and*
- e)** *any dispute referred to arbitration the proceedings whereof have abated by reasons of the provisions of this section shall be decided in accordance with the provisions of the law for the time being in force.*

8. The plain reading of the section gives leads to the interpretation mentioned above i.e prohibition or abatement pertains to the contracts entered into past and not for future contracts or arbitration proceedings. The Honourable Supreme Court of Pakistan in case ***Shaukat Baig Vs Shahid Jamil (PLD 2005 S.C 530)*** elucidated the basic criteria for interpretation of Statutes and observed that court must deduce the intention of parliament from the words used in the Act, but if the words are ambiguous then the court would be justified in considering the words in a manner which will

make the particular provision purposeful. The scope of section 3 ibid was also considered in the case **Capital Development Authority etc Vs Muhammad Ahsan (2009 MLD 451)** and it was held as under:-

*As far as section 3 of the CDA (Abatement of Arbitration proceedings Act), 1975 is concerned, the provision (a) is very clear in that any provision in any agreement entered into before 1975 shall stand abrogated and annulled regarding the arbitration. Subsection (b) and subsequent Subsections also support this contention hence since the agreement was signed in 1999 section 3 does not abate the proceedings before the arbitrators and section 3 is not attracted in this case.*

9. Since the order impugned was passed with the consent of the appellant and the above mentioned Act has no applicability to the agreements executed after the passing of the Act, therefore, submissions made by learned counsel for the appellant have no force.

10. In view of above, the instant appeal is devoid of merits and is dismissed with no order as to costs.

(ATHAR MINALLAH)  
JUDGE

(AAMER FAROOQ)  
JUDGE

M.S.ZAKI.

Blue slip added

Approved for reporting.