JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Suit No 334 of 2010
&
Arbitration Petition No 20/2010

All Pakistan CNG Association	(C.S NO 334/2010)
Pakistan State Oil Company Ltd.	(Arb. P. No 20/2010)
	Versus
Pakistan State Oil Company Ltd.	(C.S NO 334/2010)
Mr. Masood Ahmad Javaid D.D	(Arb. P. No 20/2010)
(GAS) and Another,	
Date of hearing	13.05.2014, 20.05.2014 & 06.11.2014
Petitioner by	Mr. Babar Ali Khan, Advocate (C.S NO 334/2010)
	Sardar Qasim F. Ali, Advocate (Arb. P. No 20/2010)
Respondents By	Barrister Babar Ali Khan for Respondent No 2 (Arb. P. No 20/2010)
	Syed Javed Akbar Shah, Advocate (C.M Nos 249 & 250/2014)

SHAUKAT AZIZ SIDDIQUI;J Since, common questions of facts and law are involved, therefore both these cases (C.S. No 334/2010 & Arb. P. No 20/2010) shall be disposed of through this common judgment.

2. Through Civil Suit No 334/2010, Petitioner seeks award dated 17.09.2010 to be made rule of the Court, whereas by way of Arbitration Petition No 20/2010, Defendant / Petitioner seeks setting aside of the award dated 17.09.2010, being null and void in the eyes of law.

3. Briefly stated facts of the case are that the parties entered into CNG License Agreements (the Agreements) and as per Clause 17 of the said agreement APCNGA referred the dispute to the Arbitrator, duly appointed with consent of the parties, who after hearing the objections of the parties and affording proper opportunity of adducing their evidence finally announced the award on 17.09.2010, after which petitioner filed C.S No 334/2010 for making the same rule of the Court, whereas, Respondents being aggrieved of the said award filed Arbitration Petition No 20/2010 for setting aside of the same.

4. Learned counsel for the Plaintiff (APCNGA) submitted that it was only after the notification of August 2009, which fixed a maximum profit for CNG Operators, that made the pricing mechanism, i.e. Clause 4.2

under the PSO license unconscionable, as the collective share of OMC and OMC dealer i.e. 10 percent of the Gas Price had become greater than the profit of the CNG Operator. It was to address this unfair and unjust pricing mechanism in light of OGRA notification that both parties entered into the arbitration and appointed Director General, Gas or his representative as the arbitrator under Clause 17 of the arbitration agreement. The position of the arbitrator as per the arbitration agreement was necessarily agreed upon to be an officer from the Director General Gas Office, i.e. Ministry of Petroleum and Natural Resources, as both parties wanted an Arbitrator who not only had the requisite experience in the field but also someone by virtue of being employed in the Ministry at the time of reference of dispute and would be able to give an up to date verdict as per market conditions. Subsequently the nominee of DG Gas after hearing both parties at length proceeded to resolve the dispute by providing a fair, just and reasonable pricing mechanism, which both parties were to follow i.e. OMG Rental / Franchise Fee was to form part of the ultimate consumer price as per the OGRA Notification it was to be capped at the fixed price prescribed by OGRA notification and not charged at 10% of the Gas Price. Learned counsel for the petitioner submitted that the prior to Arbitration both parties started amicable negotiations. Instructions were also given to PSO from Ministry of Petroleum and Natural Resources as well as OGRA to rationalize Clause 4.2 of the Agreement. PSO till to date has never raised the ground that OGRA Notifications are subject to commercial agreements. Had this been the case, they would not have taken part in the negotiations or the Arbitration. No such ground was ever raised in the arbitration proceedings. It is only after the Award, which was partially not in favour of PSO that PSO has disputed the Award on the ground that Arbitrator did not have authority to rationalize Clause 4.2 of the Agreement, Ministry of Petroleum and Natural Resources (MPNR's) letter dated 3-2-2010 to PSO also instructs PSO to rationalize Clause 4.2 in light of the change in circumstances faced by APCNGA. Notice of Dispute dated 07-04-2010 from APCNGA to PSO requests PSO to appoint Arbitrator to rationalize Clause 4.2, Statement of Claim, PSO's reply, APCNGA's rejoinder and PSO's replication all address the merits of rationalization of Clause 4.2.

Nowhere has PSO challenged the Arbitrator on the ground that Arbitrator does not have jurisdiction as OGRA Notification does not apply to commercial agreements executed before regulation of CNG Sector, whereas, award has comprehensively the same issues, which were referred to him by both parties, including rationalization of Clause 4.2 and same was to be done on the basis of change in circumstances. Learned counsel for the APCNG further submitted that change in circumstances (due to maximum consumer price set by OGRA) leading to request for rationalization by both parties to the Arbitrator, gave jurisdiction to the Arbitrator to affix the most appropriate OMC Margin that is stipulated by OGRA has to be followed by both parties. Moreover, the Maximum consumer CNG price stipulated by OGRA is a change in law for CNG Operators which had caused CNG Operators undue hardship and therefore, under Section 56 of the Contract Act read with Clause 18.6 and Clause 4.2 of the PSO Agreement (relating to OMC Margin), PSO Agreement is amended with the concurrence of both parties by the Arbitrator. Furthermore, conversion of the CNG sector from an unregulated activity to an activity which became regulated in 2009 was not in the contemplation of either party at the time of entering into of the contract. Therefore the financial burden as a result of the change in law cannot be imposed on the CNG operators. Learned Counsel contended that it was within PSO's knowledge as per the contract that the OMC Margin was to be paid as a result of the sale of CNG to the CNG consumers. Since the sale price to CNG consumers had been capped in 2008 the performance of the payment obligation by CNG Operators become impractical in view of the fact that the CNG Operators would have to pay OMC Margin from out of their own pocket, given that the CNG Operator Margin was not sufficient to account for OMC Margin. Learned counsel further contended that while making the changes, principle of equitable reformation, which requires, that a change in circumstances which has the effect that is, something short of frustration of contract (i.e. something short of the impossibility), should lead both parties or any authority in a position to amend the Contract, to amend the contract to the extent possible in view of the changing circumstances. Learned counsel while referring to the agreement pointed out that Clause 18.6 of the Agreement between PSO and

members of APCNGA, also allows for equitable reformation, as it is a standard hardship clause in all local and international commercial agreements, therefore, since the primary aim of the commercial agreement, i.e. running of the CNG facility has not been affected by the change in law and it is only the payment schedule which has been affected by OGRA notification, Clause 4.2 of the agreement was amended to read that the amount payable to PSO is capped as is stipulated in the periodic OGRA notifications under the heading of "OMC Margin". The primary purpose of the license agreement is stated in the second recital "DG Gas, MPNR, GOP has granted to the CNG licensee a license for constructing, installing and operating the CNG Facilities for the purpose of storing, compressing, filling, distributing and selling "CNG" and third recital which read "Company (i.e. PSO) shall facilitate the CNG Licensee in the Operation of the CNG Business and, if appropriate, the construction, erection, and installation of the CNG Facilities for the purposes of receiving natural gas and compressing the same into CNG and storing, filling, distributing and selling the said CNG and Clause 2.1 which reads "2.1 Subject to the term and conditions contained in this Agreement, PSO hereby grants to the CNG Licensee permission to enter and remain upon the CNG Outlet Area for the purposes of carrying out the CNG Business for the terms of this Agreement>". CNG Business in the definition clause "means the CNG Licensee's business of (i) operating the CNG Facilities constructed, erected or installed by the CNG Licensee; (ii) compression of natural gas in CNG; and (iii) handling and selling CNG"

Learned counsel argued that if this court holds that the contract cannot be amended by the Arbitrator even then the CNG Operator is not liable to pay anything beyond the stipulated OMC Margin as per OGRA notification 2009 as Clause 15 of the Agreement holds that , no party to this Agreement shall be liable to other party on account of any failure to perform by reason of any event beyond its control such as Act of any government or government authority or government entity. Supporting the decision of learned Arbitrator, learned counsel stated that Arbitrator in its duty to uphold the contract in line with the scope of reference given by both parties, equitably reformed the payment schedule clause of the

agreement as a consequence of undue hardship, impracticability and to maintain equilibrium between the parties. Learned Counsel apprised that Pakistan is a member state to UNIDROIT Principles of International Commercial Contracts 2010. Moreover, the doctrine of hardship which forms the basis of Section 56 of the Contract Act is also a principle which has expressly been recognized in Pakistan as a result of accession to the UNIDROIT Principles of International Commercial Contracts 2010. Article 6.2.1 of the said principles provides that "Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligation subject to following provision on hardship". The "following provisions" referred to in Article 6.2.1 are provided in Article 6.2.2 which provides that "There is hardship where the concurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance party receives has diminished, and (a) the events occur or become know to the disadvantaged party after the conclusion of the contract; (b) the events could not reasonably have been taken into account by disadvantaged party at the time of the conclusion of the contract; (c) the events are beyond the control of the disadvantaged party; and (d) the risk of the events was not assumed by the disadvantaged party." The effects of hardship are given in Article 6.2.3 which provides that (1) In case of hardship the disadvantaged party is entitled to request the renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based. (2) The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance. (3) Upon failure to reach agreement within a reasonable time either party may resort to the court. (4) If the court finds hardship it may, if reasonable, (a) terminate the contract at a date and on terms to be fixed, or (b) adapt the contract with a view to resorting its equilibrium." The concept of hardship, intends primarily for application to long-term contracts recognizing that a fundamental alteration of the contractual equilibrium entitles the disadvantaged party to demand good faith re-negotiation of the contract and to have it adapted or terminated by the courts if the attempt to renegotiate were to fail. Hardship entitles the disadvantaged party to request the other

party to enter into renegotiation of the original terms of the contract with a view to adapting them to the changed circumstances. If the parties fail to reach agreement on the adaptation of the contract to change circumstances within a reasonable time, either party may resort to the court. The court may, when this is reasonable either (a) order the termination of the contract at a date and on terms to be fixed by the court, or may b) adapt the contract with a view to restore its equilibrium. This is exactly what happened in the present circumstances. Learned counsel reiterated that both parties realized that there was undue hardship on the CNG Operator and therefore went to the Arbitrator to rationalize the payment mechanism under Clause 4.2 in view of the OGRA notification of 2008. The Arbitrator disclosed its mind, with which PSO is dissatisfied and therefore PSO has come to this court to set aside the award on the basis of reappraisal of evidence and appeal, under the garb that there was error regarding question of law. In fact there was no question of law, which PSO claimed as "Arbitrator did not have authority to amend the contract". The reason that there was no question of law to be decided, is that PSO did not challenged the Arbitrator's authority to amend or rationalize the payment mechanism' as can be seen from the Reply of PSO to the Statement of Claim. PSO went to Arbitrator to seek rationalization of payment of payment mechanism in its favour in the same manner that the CNG Operator did. The issues referred to the Arbitrator in fact gave the Arbitrator the power and authority to rationalize the payment mechanism i.e. clause 4.2 in view of OGRA notification 2008. Learned counsel added that the governing principle of the contract law i.e. Pacta Sunt Servanda" which means that agreements must be kept provided that clauses of private contracts are the governing law between parties and they should be upheld as far as possible. Every intendment must be made to uphold the sanctity of the contract. Frustration as prescribed by Section 56 of the Contract Act is the last resort, prior to which the court is to make every effort for performance of the contract. Frustration is only possible where the very basis of the contract has become impossible. If the agreement has merely become impracticable, as is the case in the present circumstances, due to undue hardship on one party then it is the duty of the court to give preference to the governing principles and have the contract

specifically performed, whereas, the principle on the basis of which the undue hardship is done away with is "clausula rebus sic stantibus" a legal doctrine allowing for clauses of a contract to become inapplicable because of a fundamental change in circumstances. On the other hand, the major exceptions, which the civil and common law provide to the doctrine "Pacta Sund Servanda" are the doctrines of impossibility of performance, "force majeure, and frustration of the venture. Either if performance is made impossible by force majeure and the contract disappears or the performance is impracticable, contract has to be performed, at whatever cost. Hardship provides an additional ground for the discharge of a contract or for its adaptation to changed circumstances. In the US this doctrine is recognized as the doctrine of impracticability. While referring to the Islami Shariah and principle of intervening contingencies, learned counsel submitted that in Islamic Sharia the concept of equitable reformation is recognized which supports the award of the Arbitrator in the present circumstances. In "Dissolution of Contract in Islamic Law" by Mohammad Wohidul Islam, Arab Law Quarterly, Vol 13 No 4 (1998) parties 336-368 it is sated that "There is yet another doctrine prevailing in modern Arab contract law called "nazariyyal al-hawadith al-tarriyal" or "nazariyyat al-zurruf al-istitnayah" (hereinafter referred to as the doctrine of intervening contingencies), which signifies occurrence which radically disturb the equilibrium of a contractual obligation, making the performance excessively onerous for one of the contracting parties.

5. In furtherance to the above submission learned Counsel contended that OGRA is regulating CNG sector much like it regulates petrol and diesel prices and has fixed OMC Margin, putting a cap on the amount that is payable to PSO e.g currently on every Rs 107/- of sale of petrol OMC Margin is Rs 2. In the same manner since 2008 a maximum share of OMC is stipulated on the sale of CNG and this rate has time and over been reviewed and increased in view of increased costs. Any amount paid to PSO beyond the prescribed OMC Margin will be a violation of law and the CNG Operator shall be held in violation of OGRA license. Therefore, the OMC Margin stipulated in OGRA notification since 2008 overrides any payment schedule in commercial agreements entered between

the CNG Operator and PSO prior to regulation by OGRA. It was further submitted by the learned Counsel that purpose of OGRA under the OGRA Ordinance 2002 is to protect and safeguard the interest of all stakeholders including consumer s and licensees. In addition Natural Gas Tariff Rules 2002 Rule 17 (1) (c) provides that;-

> "Tariffs should include a mechanism to allow licensees a benefit from and penalties for failure to achieve benchmarks set by the Authority through yardstick regulation for, inter alia and without limiting the generality of such regulation, capacity utilization, operation and maintenance costs and unaccounted for natural gas".

Learned Counsel for the Plaintiff while explaining the above said rule urged that the reason for this yardstick regulation is that Gas is a scare resource. The more efficient its use the cheaper its production cost, which means the cheaper its consumer price will be. In this manner a cheaper fuel will be able to benefit a larger section of the population as a larger section will be able to consume it. It is therefore that OGRA protects the interest of the consumer. Rule 20 further provides for strict penalties in the event a licensee contravenes the provision of the Rules. Therefore the yardstick regulation provides for, in the form of price break up in the 2008 tariff not adhered to, shall be unlawful. As a result by regulating this activity OGRA has in fact imposed a cap on the OMC Margin. While placing reliance on the case law reported as PLD 1980 SC 122, learned Counsel stated that regulator has the power to regulate the price of the end products as well as ancillary products. Learned counsel further placed reliance on the case cited as i.e. PLD 2013 Lahore 289 and apprised that in this case a similar issue was raised regarding the price breakup which is stipulated by OGRA in its various notifications. The important question which was determined was, that the multiple heads in the price break up which leads to the evaluation of the Estimated Revenue Requirement by OGRA are means to be followed strictly and are not mere indications, as OGRA has to ensure efficiencies in the regulated sector. In the event such standards are not followed, the licensee is breaching its license and therefore penalties are put in place to force the licensee to achieve efficiencies. The efficiencies include amongst other operating and maintenance costs. In the present case OMC Margin is a recognized

raising the price of CNG. Learned counsel apprised the court that PSO has 60 to 70 percent ownership of CNG retail outlets in Pakistan, therefore, it enjoys the position of a significant market player in Pakistan. Since existing petrol pumps are the only natural choice for installation of CNG facility, PSO enjoys monopolistic control over supply of these locations. PSO is in a position to dictate the OMC Margin, should it not be controlled by OGRA notification? It is to counter exactly this position that OGRA provided price break up in its notification and it is exactly this monopolistic control over the CNG prices that PSO is trying to impose by opposing OGRA notification. While other OMCs admit that they do not provide any service to the CNG Operator in lieu of the OMC Margin and thereby have reduced their OMC Margin significantly below the prescribed by OGRA notification, PSO refers to make operations of CNG facilities difficult at its petrol pumps. PSOs ultimate aim is to indirectly cause the collapse of the CNG sector as under the terms of the commercial agreement as advocated by PSO, CNG Operators will not be able to earn any profit and as a result would close their CNG stations. Moreover, fixing of OMC Margin under OGRA notification is a matter of public importance as opposed to commercial agreement between two licensees of OGRA. Should PSO dispute the OMC Margin as fixed by OGRA, the same is free to petition before relevant authority to have the issue addressed, however, till such an eventuality both licensees are obliged by the notification not to exceed the parameters prescribed by the notification. Operations of CNG facilities is a matter of public importance given that it is a cheaper fuel compared to petrol or diesel and therefore in cace of impossibility of performance of contract by CNG Operator the lesser of the two evil would be for equitable reformation of the contract with the view to allow continuance of CNG facility as opposed to its collapse, should the contract be allowed to be frustrated? This is what the Arbitrator concluded. This issue of public importance of CNG sector versus its collapse becomes all the more important when considering that PSO based CNG facilities account for 60 to 70 percent of the CNG retail facilities in the country which supplies cheap fuel to millions of consumers. Should the contract be allowed to be enforced without taking into account the effect of change in law to the

payment mechanism, the business of CNG Operators will become finically unfeasible and therefore will lead to closure of these CNG facilities. While referring to the clause 10.3 of the agreement learned Counsel added that it makes mandatory for CNG licensee to follow any change in law and accordingly, because of the change in law Clause 4.2 i.e. the pricing mechanism, is accordingly amended for CNG facility to follow.

7. On the other hand, learned Counsel for the PSO, inter alia contended that doctrine of binding precedent has the effect of rendering the impugned award dated 17.09.2010 as infructuous. Moreover, the award states that the component of rental /OMC Margin has been fixed in the price notified by OGRA, therefore, PSO's CNG share will be paid accordingly. It may be seen that OGRA price break up was formulated through an MOU executed between GoP and petitioner APCNGA on 25th August 2008. PSO has been charging its monthly Franchise Fee by applying Clause 4 of the Agreement to the OGRA notified CNG selling price exclusive of GST. Learned Counsel while referring the Zafar Jhagra's Case reported as (PLD 2013 SC 224) submitted that, the Hon'ble Supreme Court, after conducting a detailed survey of the CNG pricing process, held that the pricing formula, which was ironed out through the aforementioned MOU, has been determined arbitrarily. Furthermore the Supreme Court arrived at the conclusion that fixing the CNG sale prices through the process as stipulated in the MOU represents a clear violation of the law. Hence , in the final analysis OGRA was held responsible to fix the CNG sale pricing formula. Learned Counsel further contended that OGRA's notification of Maximum Sale Price of CNG wherein the OMC Margin / Rental component has been slashed away also has the effect of rendering the impugned award infructuous. Moreover, as a consequence of the judgment dated 20.12.2012 in Zafar Iqbal Jhagra's case OGRA announced new CNG pricing formula on January 01, 2013 which excluded the factor of OMC Margin / rentals, therefore, it appears that the effect of Zafar Iqbal Jhagra's Case on the impugned award is that the impugned award stands null and viod after the settling aside of said MOU and its subsequent OGRA price break up. It is reiterated that the effect of the ratio in the Iqbal Zafar Jhagra's case is that the MOU, based on which the impugned Award

was passed, has been set-aside and as a consequence the impugned award has also been rendered infructuous. Moreover, as a consequence thereof OGRA has started notifying the Maximum Sale price of CNG for consumers without including the component of OMC Margin/ Rentals. Thus the impugned award which was based on OGRA's 2008-2009 notification of Maximum Sale Price of CNG for consumers wherein the OMC Margins were fixed has been rendered null and void after 1st January 2013, where after OGRA has commenced issuing the said Notification without fixing the OMC Margin. Learned Counsel apprised that over and above the contractual rights as guaranteed to PSO, as a direct consequence of withdrawal of the OMC Margin / Rentals by OGRA, so wrote letter dated 15.02.2013 to OGRA requested OGRA to reconsider CNG selling price formula by incorporating the factor of OMC Margin/ Land Rental in order to secure the interest of OMCs operating CNG stations throughout Pakistan. Learned Counsel argued that it is a matter of fact that since January 2013, OGRA is fixing the CNG Sale prices and maintaining a Margin for the Petitioner APCNGA. However, in view of the impact of Zafar Iqbal Jhagra's case and also section 6(2) (r) and all other enabling provision of the OGRA Ordinance, as well as fixation of Maximum Sale Price of CNG for Consumer by OGRA commencing with issuance of notification dated 1st January 2013 whereby the OMC Margin / Rental has been slashed away, it may be appropriate that the Impugned Award be remitted for decision afresh since the basis on which the Impugned Award was passed has been uprooted. Reliance is placed on 2006 YLR 589 (a). It is added apart from that, the Learned Arbitrator misunderstood the law with regard to jurisdiction of OGRA to interfere or override contractual arrangements and hence wrongly held that Clause 4 of the Agreement (s) have automatically stood amended being repugnant to the decision of regulation of CNG industry by the Government as approved and notified by OGRA. Moreover, firstly it is not clear if Clause 4 of the Agreement could be construed as being repugnant to OGRA's notified pricing formula. Secondly, under sub section (ii) of Section 6(2)(r) of the OGRA Ordinance, OGRA's power to administer or establish prices has been curtailed and thus OGRA cannot administer and establish prices in any situation where any

existing contract or agreement is specifying prices. Thus the Learned Arbitrator transgressed the jurisdiction and assumed the role of regular OGRA and illegally amended Clause 4 of the Agreement which could not even be done by OGRA itself. Learned Counsel further objecting the award said that the learned Arbitrator could not have read down the contractual provision of the agreement, especially when there was no express provision in the Agreement whereby the parties had agreed to alter the pricing mechanism or Franchise Fee and also in view of Clause 10.3 of the Agreement Furthermore, as aforementioned, in term of sub section (ii) of Section 6(2)(r) of the OGRA Ordinance and also OGRA's own stance as reflected in its letters, it is clear that terms of the Agreement could not be changed, whereas, it is settled law that failure of an Arbitrator to appreciate the law and facts is an error apparent and hence the award passed is liable to be set aside. Reliance in this regard was placed on the case law reported as (2006 YLR 589 (b), (c), (d) & (f), (1987 CLC 2198 (b), & (d)(AIR 1955 Nag 116 (f) & (g)) & 2009 MLD 1399.

8. Learned Counsel apprised that vide order dated 13.10.2010 the learned trial court after notices to the parties, granted ad-interim Status Quo Order in favour of PSO. However, the Petitioner APCNGA still issued written notices to the CNG Licensees that the impugned Award has become Rule of Court. In this regard it is settled law, as reiterated in PLD 1994 L 525, at Para JJ that Award rendered by Arbitrator is lifeless, till such time life is infused into it by the Court by passing a decree. Reliance in this regard was further placed on PLD 2002 K, 420 (c). Further contended that approximately from the date of the Impugned Award till today the Petitioner APCNGA and Licensees have wrongfully withheld an amount of over Rs 4 Billion as payable Franchise Fee due to which PSO is suffering heavy losses on a daily basis. Therefore, in view of the situation PSO's application under Section 41 of the Arbitrator Act for deposit of the disputed Franchise Fee amount with the Nazir of this Hon'ble Court be accepted. In this regard, the following judgments were presented (2012 CLD 619 (b), (PLD 1978 K 152 (b) & (c) (1984 CLC 546 (g), PLD 1976 K 644 (c). Learned Counsel added that Arbitrator has failed to follow the Arbitrator Clause as it contemplates that in case of any dispute between the

parties, the parties shall attempt in good faith to settle such dispute by mutual discussions presided over by the Deputy Managing Director (Marketing) of PSO within 15 days after a party gives a written notice of the dispute. Hence, the learned Arbitrator could not have assumed jurisdiction without first having the said term fulfilled in letter and spirit. Moreover, it has been held in AIR 2000 SC 1005 that Unilateral variation in terms of contract is not allowed and that actions of government may be termed arbitrary. Learned Counsel contended that the provisions of CPC are expressly excluded from being applicable to proceedings under the Arbitration Act, 1940 in presence of specific provision in the latter Act. The Reference and the Award could only be interfered within the manner laid down by section 30, 31, 32 & 33 and to that extent provisions of the Code of Civil Procedure are expressly excluded and no Court other than that mentioned therein could deal with the matter. In support of above said submission reliance was placed on PLD 1988 SC 39 & PLD 1971 SC 516. Regarding application field by the APCNGA, under section 18 read with Section 41 of the Arbitrator Act 1940, learned Counsel stated that the purpose of induction of Section 18 was discussed in detail in AIR 1949 Cal 189 (DB) in which it was held that Section 18 would be applicable in a situation where one of the parties has been trying to defeat or delay or obstruct the execution of the decree passed upon the award. It was further held that the object of passing interim orders is to protect the possible rights of the party seeking protection of the Court, and not to enforce the terms of award as if it were a decree. Hence the said Judgment actually supports the Application for Deposit of Franchise Fee that has been filed by PSO. Moreover, it is settled law that proceedings in a suit subsequent to award would be hit by doctrine of res subjudice enshrined in Section 10 of CPC. This principle was reiterated in 2004 CLD 334. The said judgment also reiterated the principle that continuation of parallel proceedings at the same time respecting same subject matter is neither intended nor contemplated by law. Further held that Award made earlier in time would come in way of pending suit.

9. Learned Counsel for the PSO while objecting the award of the Arbitrator added that the award has not been registered as required by

Registration Act, therefore, is an inadmissible and invalid instrument under the law. Moreover, Arbitrator has come to a wrong conclusion in view of 30.09.2010 OGRA response to PSO's letter which states that OGRA does not have the jurisdiction to interfere in commercial contractual arrangements, therefore, the award has been rendered ineffective, ambiguous and unexecutable. Learned Counsel further submitted that OGRA notification does not talk about OMC share, therefore Arbitrator mis-conducted by stating OGRA notification had an effect on the agreement and interference by the Arbitrator in amending Clause 4.2 was beyond jurisdiction of Arbitrator. It was added that PSO Dealers have not been made a party to the arbitration proceedings despite PSO contentions to that effect and PSO dealers right being adversely affected by the award, whereas, Arbitrator rushed into announcing the award after two short hearings and had made up his mind about applicability of price notified by OGRA without giving PSO enough time to produce evidence to the contrary. In addition to that Arbitrator did not address the issue to the extent that a number of CNG Operators were in breach of the License Agreement therefore could not invoke the arbitration clause. Furthermore, the Arbitrator in finding that certain clauses of the agreement were repugnant to the decision to regulate the CNG Industry, were in violation of sections 6(2) (r) & 6(2) (t, u w) of OGRA Ordinance 2002, therefore, an error of law is apparent on the face of the award. It was further added that Arbitrator exceeded his jurisdiction by interpreting the agreement, whereas the dispute was only to the extent of calculation of PSO's share and PSO never agreed to be bound by the Arbitrators decision on a point of law. Learned Counsel further contended that the Arbitrator misconducted as he did not wait for OGRA's reply to PSO's letter dated 20.09.2013 and assumed the jurisdiction of regulatory authority by clarifying the notification of 2009 as well as substituted his statement for presumption of fact. Learned Counsel reiterated that the learned Arbitrator has failed to consider all the pros and cons of the matter as well as evidence adduced by the PSO and erred in law while making the impugned award which, as such, suffers from misreading and non reading of material evidence on record and is liable to be set aside.

10. Learned Counsel for Plaintiff APCNGA while responding to the objections raised by the learned Counsel for PSO submitted that Section 17 of the Registration Act, 1908 only requires compulsory registration of such instruments which create an interest in immovable property. An award is never such a document which purports to create any right as it is only the decree passed in pursuance of the award which does so. The award dated 17.09.2010 is not in respect of any immovable property, therefore, the question of its registration does not even arise in the circumstances of the case. Reliance was placed on the case law reported as (PLD 1967 Lahore 365, PLD 1980 SC 62, 1988 SCMR 1623, 1999 SCMR 2702, PLD 2003 Lahore 208 & 2013 CLD 604. Moreover, letter being relied upon by PSO is dated 30.09.2010 which upon comparison with the date of the award i.e. 17.09.2010 reveals that same was not in existence at the time of making the award. Therefore, it is an absurd argument that the said award has come to a wrong conclusion in view of the letter. So far as OGRA's response that it does not have jurisdiction to interfere in commercial contractual arrangements is concerned, it is true as PSO through its letter was trying to seek resolution of a disputed issue from OGRA, whereas it is not within OGRA's domain either as per statue or under the Arbitration Agreement. The only jurisdiction that was intended to be given under the Arbitration Agreement for resolution of dispute was to the Arbitrator. The important question whether can OGRA's role of regulating the Gas sector be over looked or ousted by the parties where a public right is involved? Is dealt with by the Hon'ble Supreme Court in its judgment cited as PLD 2013 SC 224 while giving observation on four important points i.e. (a) we may also add that one of the principal raisons d'etre of OGRA as clearly spelled out in its statute is the protection of the consumer who ultimately is to bear the price of CNG" (b) " The petitioners have raised a number of issues about the pricing of petrol and natural gas which have a direct bearing with the enforcement of the fundamental rights of the people of Pakistan who have to bear the brunt of such prices (c) It is clear from a review of the relevant laws that the primary responsibility for determining the sale price of CNG for consumers falls on OGRA and (d) According to figures provided by the Oil and Gas Regulatory Authority (OGRA) no less than 3395 licenses for

CNG marketing have been granted. The number of users of CNG whether direct, or as poor commuters travelling on the roofs of buses, who depend on public transport, is estimated to run into millions, and around 12% of the total gas in the national transmission system is devoted to the CNG sector. The right of the citizen of Pakistan to CNG that OGRA has regulated is not that of any of the contracting parties but in fact the right of the public at large which has been adversely affected due to artificially inflated prices. The parties, being private entities in nature cannot take the place of the regulator and contract out of such obligation which the law has imposed on the regulator as a matter of public policy. The OGRA notification fixes the maximum price of CNG, whereas, should the Franchise Fee not be rationalized accordingly it will go against public policy. An interpretation of the contract as that being adopted by the Respondent PSO is against public policy and, therefore, a void interpretation. It is further averred that even if the Arbitrator arrives at a conclusion on a question of fact which is different from the one that might come to, the court has no jurisdiction to intervene. Learned Counsel in support of this contention placed reliance on the case law reported as 2008 CLC 798 & 1998 CLC 1671. It has further been averred that the Arbitrator has held in his award that the OGRA notification does in fact outline the OMC share in the form of franchise fee and sets a limit on the maximum franchise fee that may be allowed for PSO. Further the document titled 'Consumer Price w.e.f August 1 2009 clearly specifies Rental / OMC Margins and fixes the component at Rs 2.59 per KG. it is contrary to the OGRA's notification to suggest that OGRA has not fixed such a component and thereby suggesting that OGRA does not have the jurisdiction to regulate the CNG sector. Much the same way as in the Power sector where NEPRA regulates and determines tariff for the Operator, OGRA regulates and determines the Consumer price for the Operator to sell CNG. In doing so NEPRA considers each and every aspect of the price breakup, which components ultimately add up to become the final tariff. Components have to be approved by NEPRA and any unreasonable amounts are disallowed by NEPRA as

unconscionable and unfair amounts. The reasoning behind such regulation as detailed in the recent judgment of the Supreme Court in PLD 2013 SC 224 in the Federal Government's overriding duty to provide certain essential basic facilities to the public and to ensure protection of the public interest which may at times be in conflict with the interest of the private entity providing that basic and essential facility. Regarding the interference by the Arbitrator in amending Clause 4.2 it is stated that since, in 2008 the CNG sector was regulated, the notification issued by OGRA is a change in law. The components provided for in the notification titled "Consumer Price w.e.f August 1, 2009 is mandatory for the Operator and OMC to follow and therefore the OMC Margin/ Franchise fee is not to exceed Rs 2.59 per KG, if as the Respondent PSO has argued, the components are not mandatory then there was no point of OGRA notifying the amount of each component and it could merely fix the maximum price of CNG price allowed to the Operators and OMC to arrive at their own OMG Margin / Franchise fee amount. The very fact that a value has been given to the OMC Margin / Franchise fee component goes to show that OGRA has regulated and conclusively fixed such aspect of the Consumer Price. Moreover Clause 4.2 of the Agreement contains the formula as per which the OMC Margin/ Franchise fee amount has to be arrived at. In view of the change in law in 2008, wherein OGRA has fixed the OMC Margins / Franchise fee Clause 4.2 was to be read in conformity with the OGRA Notification. As a natural consequence this required amendment which in turn required interference by the Arbitrator which was within his jurisdiction. It is further stated that Jurisdiction of the Arbitrator unlike the jurisdiction of an ordinary court is based on the parties deciding what the jurisdiction is going to be. Unlike a judge who cannot interfere or amend an agreement between two parties an Arbitrator who is an umpire helps in settling a dispute between two parties. The scope of the Arbitrator's power can be seen from the

reference made to him in the statement of claim and reply thereto. The jurisdiction is determined by looking at the pleadings, i.e. the statement of claim put to the Arbitrator, what it seeks from him and the reply to the statement of claim by the other party can either choose to address the issue on merits, thereby tacitly authorizing the Arbitrator to assume jurisdiction, or in the alternative the opposing party can challenge the very standing of the Arbitrator to address a particular issue. A perusal of the pleadings would show that both parties had in fact authorized the Arbitrator to give its determination regarding rationalization of section 4.2 in light of the OGRA notification, thereby meaning that a just, fair and reasonable conclusion was to be arrived at regarding Clause 4.2. Hence, it was very much within the scope of the Arbitrator to amend the said clause 4.2. Had PSO not wanted to vest the Arbitrator with jurisdiction to amend or rationalize Clause 4.2 it could have an issue framed to such an effect. Alternatively PSO could have opted to file a section 34 application staying the arbitration proceedings to the extent of "rationalization of Clause 4.2. The fact that PSO proceeded to go ahead with the arbitration shows that it did allow the Arbitrator the authority to decid the rationalization of Clause 4.2, therefore now PSO is precluded from raising such an objection. In response to objection regarding PSO Dealers a party to the arbitration proceedings despite PSO, contentions to that effect and PSO dealers rights being adversely affected by the award, it has been submitted that PSO has not brought any material on record which shows that a contention to this affect was ever made before the Arbitrator. This is an afterthought merely taken up at this belated stage to put the award in unnecessary controversy. The fact of the matter, which PSO is fully aware of, is that in the vast majority of cases PSO dealer and CNG Operator are one and the same party. Therefore, this is an unnecessary controversy trying to be created by PSO to delay matters. Moreover, PSO Dealers are not proper party. Dispute raised between the parties to the contract

is regarding interpretation of the Agreement in view of the change in law through OGRA notification. Arbitrator was very much able to pass an effective award in the absence of PSO Dealers. Reliance in support of this contention was placed on the case law reported as (2002 MLD 171), PLD 1975 SC 463), (PLD 198 Karachi 38) & (1985 SCMR 376). Learned counsel added that PSO's reference to two short hearings has not been backed by any proof. Record and arbitration award shows that the Arbitrator granted reasonable, fair and proper time and opportunity to both parties to produce as much evidence as they wanted to. Basic rule of natural justice which requires that parties should be given opportunity to reply was adhered to. Number of hearings has no consequence as it is the Arbitrator's prerogative. Reliance in support of this contention was placed on the case law reported as (1999 CLC 1777) & (PLD 2003 SC 301). Towards the objection that a number of CNG Operators were in breach of the License agreement, therefore, could not invoke the Arbitration Clause it is stated that neither were any CNG Operators in breach of the License Agreement nor was such an issue raised or proposed to be framed before the Arbitrator by PSO at the arbitration. The three issues that were dealt by the Arbitrator in his award arose from divergent pleadings of both parties. PSO in its Reply or Reply to Rejoinder has not raised the issue of breach, therefore, it is barred from pleading such ground. Furthermore, this objection by PSO is contrary to the Arbitration Act, 1940 as it is very much within the scope of the Arbitrator to decide issues of dispute between parties even where any breach of the agreement. In support of this contention reliance has been placed on the case law reported as (2013 CLD 1451 & (PLD 1958 (W.P) Karachi 224). Learned Counsel reiterated that a question of law, regarding jurisdictions of the Arbitrator with respect to the rationalization of Clause 4.2, could only have arisen if PSO had challenged the Arbitrator's authority in its Reply. PSO did not just fail to do so, in fact it deliberately chose not to challenge the Arbitrator's

authority in this regard as at the time of arbitration both CNG Operators and PSO wanted the Arbitrator to decide the rationalization of Clause 4.2 in view of the OGRA notification 2008. It is only as an afterthought that PSO, being dissatisfied with the result of the Award, is trying to appeal the decision in the garb of putting a "question of law" to this court. This court cannot sit in appeal on the award even if it was to hold a view contrary to the one arrived by the Arbitrator. Reliance in this regard was placed on (PLD 2003 SC 301) & (PLD 2006 SC 169). Learned Counsel further added that the wordings in the notification, in pursuance of which certain clauses of the Agreement were found repugnant by the Arbitrator, is very clear and leaves no room for interpretation. The said notification has imposed a maximum OMC Margin / Franchise fee and a maximum profit that the CNG Operator is entitled to. OMC Margin / Franchise Fee or profit of CNG Operator in excess of that imposed in the notification shall be patently illegal as under the licensing rules CNG Operator is liable to penalty. The notification issued by OGRA regulating the OMC Margin / Franchise Fee is very much inline with the competence given to it under section 6(s) of the OGRA Act which reads as under ;-

> "Without prejudice to the generality of the foregoing, the Authority shall;- Prescribe, review, approve and regulate tariffs for regulated activities pertaining to natural gas and operations of the licensee for natural gas and marketing of refined oil products.

Learned Counsel further reiterated that OGRA has an overriding duty of protecting public interest in relation to the CNG Sector, therefore, it is very much in its competence to determine OMC Margin / Franchise Fee, which if artificially kept as high as the demand of the Defendant PSO then two things can happen. Either prices of CNG will be increased to match Petroleum Product prices, as PSO is selling products and it is in its interest to increase petroleum production consumption. Secondly, since profit itself generated by CNG Sector is less than what the Respondent PSO is demanding the

CNG business will not be financially feasible, meaning thereby that it will collapse, meaning thereby that ultimate consumer will have to shift to petrol. In both instances public interest is adversely affected, therefore, OGRA in line with its duty is mandated to pass the notification. Learned counsel read out Section 6(2)(o), (q), (u) of OGRA Act 2002 which reads as follows ;-

> "Without prejudice to the generality of the foregoing, the Authority shall (o) safeguard the public interest, including the national security interest, of Pakistan in relation to regulated activities in accordance with this Ordinance, rules and regulations.
>
> (q) protect the interest of all stakeholders including the consumer and the licensees in accordance with the provision of this Ordinance and the Rules.
>
> (u) oversee the capital expenditure to be made by the licensees of natural gas in connection with any regulated activity pertaining to natural gas."

And submitted that should the Respondent PSO not be satisfied with the notification itself, then the appropriate forum to have its grievances addressed would be OGRA in order to have the notification altered. The Arbitrator, however, is under a duty to decide the matter as per the law as it stands at the time of arbitration i.e. 17.09.2010. As far as specific reference of dispute regarding Section 4.2 of the Arbitrator is concerned, it is once again contended by the learned Counsel for Plaintiff that from the proceedings before the learned Arbitrator it is quite clear that both the parties pressed into provisions of said Section of the agreement in support of their respective stands, therefore, scope of Section 3.01 ibid was the main bone of contention between the parties in the case. Further apart from it, even if it is presumed that the parties had not specifically referred

the question of interpretation of section 4.2 of the agreement to the Arbitrator, the interpretation of section 4.2 fell within the scope of reference, as without interpreting said section of the agreement, the dispute referred to the Arbitrator could not be resolved. Reference has further been made to the case law reported as (PLD 1996 SC 108. learned Counsel lastly submitted that decision of the Arbitrator is binding upon the parties whether they agree to the decision or not and they cannot object the decision either upon law or fact if the award is good on the face of it. Further the arbitration in substance oust jurisdiction of Court except for purpose of controlling Arbitrator and preventing misconduct and for regulating procedure afterwards. It has further been averred that the question of waiting for the OGRA's reply to PSO's letter dated 20.09.2013 does not arise as the same was not in existence at the time of making of award, whereas the learned Arbitrator has based his findings on the available record. Moreover, the Court while examining the validity of an award cannot act as a Court of Appeal and undertake reappraisal of evidence recorded by the Arbitrator in order to discover error or infirmity in the award. Reference in support of said submissions was made to the case law reported as (2005 YLR 2709), (PLD 1987 SC 461), (2008 CLC 798 & PLD 1996 SC 108).

I have heard the learned Counsel for the parties and have also perused the relevant record.

11. Perusal of the pleadings as narrated in the contentions of the learned counsel for the parties reveals that controversy between the parties can be settled without framing any issue and recording of any evidence as predominately the facts are admitted by the parties and the difference is about the interpretation of some clauses of the agreement executed by them in the light of the notification of OGRA. For the better comprehension of the controversy it is observed that respondent Pakistan State Oil Pvt Limited is one of the oil Marketing Company alongwith other Companies incorporated for the purpose of

the marketing of Oil products. The defendant had already granted the licenses to the PSO Dealers for the sale of Oil products such as Petrol, Diesel etc and PSO Dealers established petrol pumps at various points across the country. Prior to the use of the Natural Gas as fuel in motor vehicle in the shape of Compressed Natural Gas the only fuel which was available in the market for vehicles was petrol or diesel. With the gradual increase in the price of Petrol and Diesel the then Government encouraged the use of CNG as fuel and many CNG Stations were established and number of vehicles using CNG outnumbered the vehicles using petrol and diesel which resulted in the depreciation of demand of petrol and diesel. PSO Dealers in collaboration with the CNG Dealers sought permission from the defendant PSO to establish the CNG filling outlets / Station in the already established PSO pumps and this resulted in the execution of CNG Licenses agreements amongst the PSO, CNG licensees and PSO Dealers. Parties inked down and executed detailed agreement which included the grant of permission of opening of CNG outlets in the area of petrol pumps already managed by the PSO Dealers, provision of the CNG facility, fee to be charged by PSO and the PSO Dealers from the CNG Licensee, accounts of financial statements, security deposit, annual certification, inspection and certification fee, supply of gas, electricity charges and other utilities, covenant and undertaking of CNG licensee, covenant and undertaking of PSO Dealers, indemnities, terms of termination, assignment and sub licensee, Force Majeure, confidentiality, arbitration and miscellaneous clauses. Admittedly the parties by virtue of Article 4 of agreement agreed to the following:-

> "4.1 In consideration of, for the license and authority to be carried out the CNG business in terms of this agreement, the CNG Licensee shall pay to PSO and the PSO Dealers percentage of fee on the gross of CNG sale proceed in accordance with the formula, set out in clause 4.2 below

4.2 with effect from the date on which gas first passes through the supply points for the purposes of commencement of CNG facility, the CNG Licensee shall not later then 35 days failing to each month paid to PSO and PSO Dealers filing percentage of gross CNG Sale proceed for that month

PSO 7 % , 6% , 5%

PSO Dealers 3 % , 4% , 5%

Of the gross CNG sale proceed 4.3% of payment under Article 4.2 above to PSO and PSO Dealers shall be made by the CNG licensee by pay order or bank draft in favour of PSO, and above receipt of such payment, the PSO shall pay such amount as are due to the PSO Dealers above payment of fee in the manner herein specify. The CNG licensee shall be excluded from any obligation to make payment of the relevant fee to the PSO Dealers"

12. The agreement executed amongst the PSO and PSO Dealers at the one hand and the members of all Pakistan CNG Associations on the other hand continued to function smoothly till the time the OGRA issued letter No OGRA-10-14(1/09/07.09.2009 and fixed the prices at which the CNG was to be sold by the CNG licensee to the CNG consumers. By virtue of the said letter the OGRA fixed the rental / oil marketing Companies Margin as Rs 2.59. Prior to the fixation of the said commission / Rental Margin for Oil Marketing Companies, the Oil Market Companies including the respondent / PSO was charging their rents / dealership fee as per the terms and conditions of their respective agreements and the Margin at which the respondent was charging has already been enumerated in clause 4.2 of the agreement. At that time the CNG Stations were providing the CNG to the consumer at the price of their choice with which the respondent had no concern and as it has to collect its fee on the basis

of gross sale proceed. The plaintiff being the representative of the CNG licensees through letter dated 09.07.2010 invoked the Arbitration Clause of the agreement as provided in Article 17 of the agreement and applied to Director General Gas to act as a sole Arbitrator or to appoint his nominee to proceed as sole Arbitrator in the dispute. The Director General Gas appointed Masood Ahmed Javed Deputy Director Gas to proceed as sole Arbitrator on the reference of the plaintiff who issued letter to the parties, invited them to file their respective claims and documents. The plaintiff filed their statement of claims on 11.08.2010 and respondents /defendants filed its written statement on 25.08.2010 thereafter the plaintiffs filed their replication to the written statement of PSO on 07.09.2010 and in response the defendant PSO filed its rejoinder on 14.09.2010. After considering the documents and material placed on record the Arbitrator declared as under;-

> (i) In August 2008, the Government decided to regulate the CNG industry and entrusted OGRA, under the OGRA Ordinance 2002 (as amended) to notify CNG consumer sale price. Pursuant to the decision OGRA started notifying CNG retail price for different regions of Pakistan. Components and elements of CNG price break up including Rental / OMC Franchise Fee as requisitely revised and duly provided by OGRA makes basis for issuance of notification in respect of CNG retail price. Change in the government policy and decision of the government regarding regulation of the CNG industry, as consequently bearing on the clause of Franchise Fee as provided in the CNG license agreement (s) between parties.
>
> (ii) I am of the well considered view that the relevant provision of the agreement (s) under discussion above have automatically stood amended, being repugnant to

the decision of regulation of CNG industry by the government as approved and notified by the OGRA, as a consequence whereof, the Dealers and PSO's Rental / Franchise Fee will be as per OGRA notification i.e. Rs 2.59 per KG and CNG sold w.e.f. August 29, 2008 and Rs 2.92 per KG sold w.e.f July 29, 2010. The same rationale will be applicable as and when the change in the Rental / OMC Franchise Fee component is approved by OGRA.

(iii). The Rental / Franchise Fee as explained in above para is calculative share of PSO and the dealers and will apportioned / share amongst PSO and the dealers in the same proportion / ratio/ manner as stipulated in Clause 4.2 of the said agreement or any other relevant clause of the respective agreement (s) between the parties.

(iv) in view of the above, clause 4.2 of the said agreement, warrants necessary clarification and interpretation. The growth percentage mentioned therein i.e. 7percent & 3 percent, 6 percent & 4 percent, 5 percent & 5 percent or any other percent for the PSO and the dealers respectively will now be read as ratio of share between PSO and dealers.

(v) the petitioners / claimants will fully discharge their obligations in respect of Franchise Fee to the respondent / PSO under Section 4.2 of the agreement, on payment of Rental / Franchise Fee in accordance with OGRA notification, as mentioned above. The parties to the agreement are therefore, directed to calculate and reconcile their dues against each other w.e.f. date of decision of Government on CNG regulation i.e. August 29, 2008, as required by PSO, in case of any dispute APCNGA (being the bonafide representative body) and

PSO through their nominees who intervene and resolves according to spirit of this decision. The statement of dues between the parties as a result of implementation of the above decision with effect from August 29, 2008 will be made through adjustment against current / future bills till clearance of the total dues. In case of arrears against the CNG Operators / Dealers the reimbursement will be done on monthly bases at the rate equivalent to current monthly bill till clearance of all arrears.

b **Basis of calculation of the respondent/ PSO Franchise Fee on CNG Sale**

Since the component of Rental / OMC Margin (Franchise Fee) has been fixed in the price notified by OGRA, at Rs 2.92 per KG of CNG sold . The respondent / PSO's share will be paid according to the specified percentage of rate i.e. Rs 2.92 per KG of CNG sold / interest of CNG percentage of the actual price at which the CNG is sold at each CNG station.

C **Allowance wastage / line losses**

The regulation of CNG retail price was enforced w.e.f 29.08.2008. Since all such aspect have been duly covered while evolving consumer price break up, therefore, question of admissibility of wastage / line loses merits no consideration.

13. Perusal of above said portion of the award reveals that as per directions of the Government the OGRA notified CNG retail price for each region of Pakistan and the Components and elements of CNG price break up including Rental / OMC Franchise Fee as requisitely revised and duly provided by OGRA makes basis for issuance of notification in respect of CNG retail price. The Arbitrator further observed that change in the government policy and decision of the government regarding regulation of the CNG industry, has consequent

bearing on the clause of Franchise Fee as provided in the CNG license agreement between parties. The Arbitrator went on declaring that the relevant provision of the agreement automatically stood amended being repugnant to the decision of regulation of CNG industry by the government as approved and notified by the OGRA, therefore the Dealers and PSO's Rental / Franchise Fee will be as per OGRA notification i.e. Rs 2.59 per KG and CNG sold w.e.f. August 29, 2008 and Rs 2.92 per KG sold w.e.f July 29, 2010. These findings of the Arbitrator is not appreciable as the OGRA in its response to letter of the defendant clarified that OGRA has no jurisdiction to interfere in commercial contractual arrangement settled between the parties and furthermore OGRA notification has no recital about PSO dealer fee share, therefore, the Arbitrator misconducted the proceedings by stating that the OGRA notification had no effect on the agreement. Furthermore, with regard to the findings of the Arbitrator that relevant provision i.e. Article 4 of the agreement have automatically stood amended being repugnant to the regulation of the CNG industry by the Government as approved and notified by OGRA, it is further observed that CNG license agreement was executed by three parties i.e. on one hand the member of All Pakistan CNG Association and on the second hand the defendant Pakistan State Oil and third party was the PSO Dealers who neither were made party to the arbitration proceedings nor they were summoned by Arbitrator to give them an opportunity of hearing and though it was within the knowledge of the Arbitrator that his decision / award would also effect the interest of PSO Dealers but even then they have not been associated in the arbitration proceedings. This amounts to misconduct of proceedings during the arbitration as a necessary party who was one of the signatory of the agreement has remained unheard whereas its interests have been determined by the Arbitrator.

14. The Arbitrator further observed that clause 4.2 of the agreement was demanding necessary clarification and interpretation

but this was not within the domain of the Arbitrator as the agreement was signed with the free consent of the parties and if any party was adversely effected after the notification of the CNG prices by the OGRA, it had the option to terminate the agreement. It is further noted that though the award states that component of Rental / OMC Margin has been fixed in the price of CNG notified by the OGRA therefore, PSO and PSO Rental fee would be paid accordingly but it is observed that in the said break up does not provide the ratio at which the PSO Dealers was to be paid and there is no clarification in the award that how the PSO dealers would be compensated who allowed the members of plaintiff to establish their CNG selling outlets in their premises.

It is further noted that a number of CNG Stations were established by the CNG license holders in their own premises without seeking help of PSO or any other Oil Marketing Company therefore, they may pay SNGPL, SSGPL the Rental charges as determined by the OGRA but in the cases of the CNG Stations established with the permission of PSO Dealers in the petrol pumps established by said dealers, these rules and break up of the Rental fee does not apply as with the minimum of efforts these CNG license holders established their links in the running and established petrol pumps and they cannot be equated with those CNG stations which were established in independent premises and they had to start their business at their own without the assistance of any other Oil Marketing Company. U/S 26-A of Arbitration Act 1940 the Arbitrator is to state in the award reasons in sufficient detail to enable the court to consider any question of law arising out of the award and where the award does not state the reasons in sufficient detail, the court shall remit the award to the Arbitrator or umpire fixing the time within which the Arbitrator or umpire shall submit the award back with the reasons in sufficient detail. Perusal of the award reveals that Arbitrator jumped to the conclusion without providing the grounds for the said conclusion and

therefore the award is incomplete in all details and declaration of Arbitrator that clause 4.2 of the agreement warrants necessary clarification and interpretation and gross percentage mentioned therein 7percent & 3 percent, 6 percent & 4 percent, 5 percent & 5 percent or any other percentage for the PSO and the dealers respectively will now be read as ratio of share between PSO and dealers. It has already been observed that Arbitrator does not make the effort to associate the PSO Dealers in the arbitration proceedings but determined the rights of PSO dealers which is a material irregularity.

15. In this view of the matter it is held that the award as rendered by the Arbitrator is liable to be remitted U/S 16 of the Arbitration Act 1940 as award is indefinite and not capable of execution and objection to the illegality of the award is apparent upon the face of it. Award is remitted with the direction to the Arbitrator to reconsider the matter, to provide the opportunity of hearing to the PSO Dealers and also to summon the CNG licensee individually and then declare the award within the period of three months to be in conformity with all the legal formalities including the payment of stamp duty under the Stamp Act.

The Civil Suit No.334 of 2010 and Arbitration Petition No.20 of 2010 are hereby **disposed of** in above terms.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Announced in open Court on 17.04.2015.

JUDGE

Approved for Reporting.

"Waqar Ahmad"
Blue Slip addw