

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No. 24 of 2020

SAIF ENERGY LIMITED

Vs

ZAVER PETROLEUM CORPORATION (PRIVATE) LIMITED

APPELLANTS BY: Mr. Azid Nafees and Syed Ahmed Hassan Shah,
Advocates.

RESPONDENTS BY: Mr. Salman Aslam Butt and Aniq Salman,
Advocates

DATE OF HEARING: 17-02-2020.

ATHAR MINALLAH, CJ.- This Intra Court Appeal is directed against order, dated 22-01-2020, passed by the learned Single Judge in C.S.No.01 of 2019, whereby application filed on behalf of Zaver Petroleum Corporation (Pvt) Limited (hereinafter referred to as the "***respondent Company***") was allowed and consequently the memorandum of petition/suit filed under the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (hereinafter referred to as the "***Act of 2011***") stood amended.

2. The learned counsel for M/s Saif Energy Limited (hereinafter referred to as the "***appellant Company***") has argued that the learned Single Judge failed to appreciate that the insertions allowed to be made in the memorandum of the petition/plaint were not relevant

and instead had changed the nature of the suit; the application was filed merely to avoid the proceedings, which are pending before a competent Court at Kohat; the learned competent Court at Kohat is vested with jurisdiction relating to the subject matter; the impugned order, dated 22.01.2020 has been passed without lawful authority and jurisdiction.

3. Mr Salman Aslam Butt, senior ASC has accepted notice. He has argued that the proceedings before the learned Single Judge are governed under the Act of 2011; the nature of the suit has not been changed; the relief regarding referring the matter for arbitration is yet to be decided by the learned Single Judge.

4. The learned counsels for the parties have been heard and the record perused with their able assistance.

5. It is an admitted position that the documents pertaining to the contractual relationship between the parties contained arbitration clauses, which provides for the disputes to be settled through arbitration at the London Court of International Arbitration, United Kingdom. The respondent Company had filed an application seeking amendment in the memorandum of the petition/suit filed under the Act of 2011. The application was allowed by the learned Single Judge vide the impugned order. We have carefully perused the reasoning recorded by the learned Single Judge vide order, dated 22.01.2020 and we are satisfied that they do not suffer from any legal infirmity. It is not the case of the appellant Company that the relief through the amendment could not have been sought by filing a fresh petition under

the Act of 2011. The learned Single Judge has explicitly observed that whether such a prayer is competent under the Act of 2011 will be adjudicated when the petition/application is finally decided. There is no force in the argument raised by the learned counsel for the appellant Company that the bar under Order II, Rule 2 of the Civil Procedure Code, 1908 (hereinafter referred to as the "**CPC**") is attracted and in this context the reasoning recorded by the learned Single Judge are in conformity with the law particularly the provisions of the Act of 2011. The arguments advanced by the learned counsel for the appellant Company relate to merits of the case, which are yet to be considered by the learned Single Judge.

6. For the above reasons, we are satisfied that the impugned order, dated 22.01.2020 is well reasoned and does not require interference. The appeal is, therefore, accordingly dismissed.

(CHIEF JUSTICE)

(LUBNA SALEEM PERVEZ)
JUDGE

Asif Mughal/*