

Form No.HC.JD/C-121
ORDER SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

W.P. No.12086 of 2021

Performance Automotive (Pvt.) Ltd. **Versus** Porsche Middle East and
Africa FZE, etc.

Sr. No. of Order/ Proceeding	Date of Order/ Proceeding	Order with Signature of Judge, and that of parties or counsel, where necessary
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17.06.2021 Barrister Haroon Dugal, ASC along with Ms. Samia Khalid, M/S Haider Noor Dugal, Fahad Iftikhar Gujjar, Muhammad Hamza, Subeh Nasib and Shahrukh Shaikh, Advocates for the Petitioner.
Mr. Osman Khan, Advocate for the Respondents.
Mr. Jahanzeb Sukhera and Barrister Mehek Zafar Advocates/Amicus Curiae.

Pursuant to the order dated 14.06.2021, Barrister Haroon Dugal, ASC submits that the learned Additional District Judge/Special Court for Commercial cases has wrongly rejected the plaint of the Petitioner under Order VII Rule 11 CPC. Adds that after various efforts, settlements and negotiations, the Petitioner entered into an agreement with the Respondent No.1/ Porsche Middle East on **24.10.2014** at *Dubai* and started its business. Further submits that due to certain issues of the State Bank of Pakistan and Foreign Exchange, a dispute arose between the Parties regarding which various correspondence were made and meetings were held but unfortunately the Respondent No.1 terminated the contract under Clause-14 of the agreement, on 30.01.2020. Further submits that after such termination, the Petitioner tried to resolve the matter in order to carry on the business and of failing which, he filed a suit before the Special Court for Commercial cases at Lahore.

Thereafter, the Respondent No.1 also filed a suit before the Hon'ble High Court of Sindh at Karachi and the Petitioner started arbitration proceedings under Clause-16 of the Agreement before the Dubai International Financial Centre (the "DIFC") which are still pending. The Petitioner also filed another suit on 03.09.2020 in which the Respondents immediately moved two applications i.e. (i) Application under Section 4 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011 ("2011 Act") read with Order VII Rule 11 CPC (Rejection Application) and (ii) Application under Sections 10 and 151 CPC read with Order II Rule 2 and Order VII Rule 11 CPC (Return Application). He adds that the learned trial Court after hearing the parties decided the matter by staying the proceedings but not rejected the suit, as prayed by the Respondents, vide order dated 02.10.2020. Thereafter the Respondents challenged the said order before the Appellate Court which set aside the same, vide judgment dated 03.02.2021 in the following manner:-

"13. Perusal of available record shows that the Hon'ble Sindh High Court at Karachi disposed of suit No.529/2020 vide order dated 31.08.2020 upon the statement of learned counsel for the present Respondent whereby he agreed to strictly abide by the import agreement dated 01.05.2014 entered in between the parties, since the parties submitted to the jurisdiction of DIFC-LCIA in the light of Clause 16.11 to resolve their dispute. After disposal of the said proceedings with the consent of the Parties, cause of action no more existed in favour of the Respondent/Plaintiff but the learned trial Court failed to advert to this aspect, consequently this revision petition is allowed and order dated 02.10.2020 is set aside and plaint stands rejected under Order VII Rule 11 CPC."

2. Conversely, learned counsel for the Respondents, at the outset, objected to the maintainability of this

Petition on the ground that the Petitioner has concealed material facts of the case. He adds that the Arbitration Proceedings at DIFC-LCIA initiated by the Petitioner seeking declaration about termination of the import agreement by the Respondents being unlawful are still pending. He further adds that the Petitioner is not entitled to claim for any relief as regard Taycan, as the Petitioner has already chosen its remedy of filing the suit before learned Civil Court at Lahore. He also submits that the Petitioner has come to this Court with unclean hands and with mala fide. He maintains that the Petitioner has attempted to consolidate two separate causes together in this Petition. Learned counsel lastly submits that the Petitioner has no locus standi to file this Petition.

3. Mr. Jahanzeb Sukhera and Barrister Mehek Zafar Advocates /**Amicus Curiae** unanimously state that on the similar matter, the Hon'ble Islamabad High Court, passed a detailed judgment reported as "*OVEX Technologies (Private) Limited and others v. PCM PK (Private) Limited and others*" (PLD 2020 Islamabad 52), however seeks more time to further prepare their brief in order to assist the Court specially with reference to international jurisprudence developed on the issue in hand.

NUB OF THE MATTER

4. Nub of the matter in this case is, whether the learned Commercial Court and the learned Appellate Court have rightly exercised their powers in handling such matters when the Parties have invoked the foreign arbitration clause as per agreement and arbitration proceedings have also been initiated before challenging the orders of courts below through this Petition.

CONSTITUTIONAL MOOT POINTS

5. After hearing preliminary arguments, with the concurrence of learned counsel for the Parties, following constitutional moot points are framed:-

- (I) Whether the Parties agreed the forum for a Foreign Arbitration as per the agreement pursuant to the enactment of Act can challenge the same orders in the Civil/Commercial Courts in Pakistan?
- (II) What is the international jurisprudence regarding interference in Foreign Award?
- (III) Whether prior to arbitration award any Application under Section 4 of the Act read with Order VII Rules 10 and 11 CPC, can be filed to stay the proceedings?
- (IV) Whether in the Foreign Award, the parties can file Applications under the provisions of CPC?
- (V) What is the sovereignty of Courts in Pakistan?
- (VI) Whether after initiation of arbitration proceedings before the DIFC-LCIA, *Dubai*, the matter can be agitated before the Courts of Pakistan?
- (VII) Whether the Law(s) on Arbitration of Pakistan can be applied to Arbitration Proceedings when the Parties concerned have already recognized and submitted to the DIFC Arbitration Rules which constitute a part of the import agreement (Clause 16.11)?
- (VIII) Whether this Court has jurisdiction to entertain the matter against the foreign Company/Respondents?

6. Re-list on 28.06.2021. Learned counsel for Parties as well as learned Amicus Curiae shall file their written arguments on or before the said date.