IN THE HIGH COURT OF SINDH AT KARACHI

J.M. 13 of 2025	:	Cosco Shipping Project Logistics Co Limited vs. Shanghai Marine Diesel Engine Research Institute & Another
For the Applicant	:	Mr. Muhammad Shaiq Usmani, Advocate Mr. Muhammad Nawaz Mirza, Advocate
For the Respondent/s	:	Mr. Farooq H. Naek, Advocate Mr. Syed Qaim Ali Shah, Advocate
Date/s of hearing	:	05.11.2025
Date of announcement	:	14.11.2025

JUDGMENT

Agha Faisal, **J**. These proceedings have been instituted per section 6 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011 ("Act") seeking for an award ("Award"), dated 21.10.2021 made by the China International Economic and Trade Arbitration Commission ("CIETAC"), to be recognized, made rule of court and decreed against Huaneng Fuyun Port & Shipping (Private) Limited[1].

Factual context

2. Briefly stated, the applicant and the respondent no. 1 entered into a logistics service agency agreement for wharf revamp project of Port Qasim in Pakistan. Thereafter, a tripartite agreement was executed between the parties, now also including the respondent no.2, on 10.10.2016 ("Agreement"). The Agreement contained a dispute resolution provision that stipulated arbitration before CIETAC. A dispute arose between the parties; the matter was referred to arbitration; and the proceedings culminated in the Award.

Respective Arguments

3. Mr. Shaiq Usmani Advocate argued that the claim against the respondent no. 1 had been satisfied, hence, the recognition and enforcement of the Award was sought solely with respect to Huaneng Fuyun Port & Shipping (Private) Limited[2]. It was his case that the prerequisites of the Act were satisfied, therefore, the proceedings may be allowed as prayed.

4. Mr. Farooq H. Naek contested the proceedings and sought dismissal thereof predicated upon his articulation that the claim was barred by limitation; Article 4 of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10th June, 1958 ("Convention") was violated; the arbitrators acted without jurisdiction; arbitration tribunal was constituted contrary to the rules of CIETAC; and proceedings were filed by an incompetent person.

Scope of determination

5. The Act provides for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to the Convention and for matters connected therewith. It applies to arbitration agreements made before,

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[1] Respondent number 2 herein.
[2] Respondent number 2 herein.

on or after the date of commencement of this Act, and awards post the 14th day of July, 2005. The law obliges the court to recognize and enforce an award in the same manner as a judgment or order of a court in Pakistan, unless precluded per section 7 thereof. The relevant provision stipulates that the recognition and enforcement of a foreign arbitral award shall not be refused except in accordance with Article V[3] of the Convention.

6. The seminal edict upon the law in Pakistan is *Taisei Corporation*[4]. The judgment *inter alia* illumines a positive global view on international commercial arbitration; advocates minimum interference; displaces applicability of the Arbitration Act 1940; requires the court to support not supplant the arbitral process; precludes the discretion to interfere in the merits of a case on points of fact or law; and circumscribes opposition within the remit of Article V of the Convention, while recognizing the stipulations as permissive and not mandatory.

Applicability of the law to the facts

7. It is an admitted position that the underlying Agreement and the Award fall within the ambit of the relevant timelines stipulated vide the Act. There is no cavil to the execution of the Agreement and / or the factum that arbitration did in fact take place in the manner advocated, culminating in the Award.

Crucial objection - Limitation

8. Per Mr. Naek, the crucial objection of the respondent was that present proceedings were barred by limitation; in terms of Article 178 of the First Schedule to the Limitation Act 1908. Respectfully, the said objection could not be demonstrated to be in sync with the law.

9. The Act came into force on 19.07.2011. Perusal of section 1 thereof demonstrates that it applied to arbitration agreements made before, on or after the said date and encompassed foreign arbitral awards made after 14.07.2005. Therefore, it would hold that any qualifying arbitration agreement, irrespective of date of execution thereof, culminating in an award made after 14.07.2005 could be recognized and enforced. *Taisei Corporation* expressly recognizes and gives effect to the retrospective nature of the Act[5].

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[3] Article V - 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought. Proof that: (a) (b) (c) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or 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 mailers 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; or (d) (e) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority If the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

[4] Per *Syed Mansoor Ali Shah J* in *Taisei Corporation vs. A.M. Construction Company (Private) Limited* reported as *2024 SCMR 640* ("*Taisei Corp*").

[5] Reference is made to paragraphs 19 till 26 thereof.

10. Notwithstanding the foregoing, the cited article of the Limitation Act 1908 provides a period of limitation for filing of an award per the Arbitration Act 1940 and not with regard to enforcement under the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. Learned counsel did not identify any similar restraint with respect to the Act and / or in the Act itself. Even otherwise *Taisei Corporation* specifically disallows any import of the Arbitration Act 1940 in enforcement of foreign arbitral awards[6].

Subsequent objections

11. It was argued that the proceedings infringed Article IV of the Convention; arbitration was without jurisdiction as only the clause in a supplemental agreement was sought enforcement of; and that the underlying arbitration clause[7] was contrary to the CIETAC rules. While such objections may have been agitated before the forum of first instance seized of enforcement of CIETAC rules under Chinese law, however, it could not be justified as to how the same could be sustained by this Court evaluating recognition and enforcement per the Act.

Non-compliance of Article IV of the New York Convention

12. It was argued that the recognition must be declined since the applicant did not file an earlier agreement between the applicant and the respondent no. 1. The insistence upon non-conformity with Article IV of the Convention is belied by the admitted record. Paragraph 4 of the plaint / memorandum of application explicates that the applicant entered into an earlier agreement with respondent no. 1. Paragraph 5 mentions the tripartite Agreement as being the one to which respondent no. 2 was an executant. Paragraphs 4 and 5 of the written statement filed by respondent no. 2 specifically admit the aforesaid. Since the applicant's privity with the concerned respondent, Huaneng Fuyun Port & Shipping (Private) Limited, arose vide the Agreement, there appears to be no case for pivotal reliance upon any other instrument.

Arbitration without jurisdiction

13. The argument here was that reliance was made on an arbitration clause in a subsequent agreement, while ignoring such a clause in a precursor agreement. While the learned counsel did not draw the court's attention to any specific precursor clause, it would beggar belief that the concerned respondent could be proceeded against vide a clause in an agreement that it was not a party to. In support hereof it is considered expedient to reiterate the discussion in the previous paragraph. Notwithstanding the foregoing, the Award has discussed and upheld the validity of the Agreement and the pertinent arbitration clause in Item IV thereof, page 63 / 110 onwards. Learned counsel made no effort to distinguish and / or displace the said findings.

CIETAC arbitration rules

14. *Prima facie* perusal of the Award demonstrates that the learned arbitration tribunal exhaustively dealt with the aspects of law and jurisdiction in the Award; *inter alia* as discernible from Item IV thereof, page 63 / 110 onwards. Clause 3 thereof expressly states that the Agreement was in consonance with

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[6] "*32. Since, the 1940 Act relates, in pith and substance, to domestic arbitration, its status after the 18th amendment is that of a provincial law. The argument of the learned counsel brings forth a canvas converse to that portrayed by him. It is: Can a provincial law deal with a matter that falls within the scope of the subject of "international arbitration" allocated exclusively to the Federal Legislature after the 18th amendment? Certainly not. The 1940 Act, a provincial law after the 18th amendment that came into force on 19 April 2010, cannot deal with international arbitration and any award made therein*".

[7] Clause 5.2 of the Agreement.

the relevant laws and regulations. It was also exhaustively deliberated and concluded that clause 5.2 of the Agreement did not violate the provisions of the Arbitration Rules. While the said deliberation and conclusion remained within the purview of the tribunal, the learned counsel remained unable to demonstrate any patent infirmity therewith or that it could not be rested upon the rationale relied upon.

Competence

15. The competence of the executants of the present proceedings was called into question before this Court. Suffice to observe that the documentation annexed, power of attorney etc., could not be demonstrated to be afflicted with any infirmity; capable of vitiating the Award or otherwise.

Conclusion

16. This court is of the deliberated opinion that no infirmity with the Agreement and / or the Award could be identified, within the mandate of Article V of the Convention.

17. Therefore, the application filed per Section 6 of the Act is allowed. The foreign arbitral Award made on 21.10.2021 is recognized as binding and enforceable against Huaneng Fuyun Port & Shipping (Private) Limited[8], hence made rule of Court. The Applicant is granted judgment in the amount mentioned in the Award, which shall be executed as a decree of this Court. The Office shall prepare the decree accordingly.

Judge

[8] Respondent number 2 herein.