IN THE HIGH COURT OF SINDH, KARACHI

HCA No.120 of 2025

Huaneng Fuyun Port & Shipping (Pvt.) Limited
vs.
Cosco Shipping Project Logistics Co. Limited and another

PRESENT:
Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

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M/s. Farooq H. Naek, Taimur Ali Mangrio, Muhammad Ammar Nonari and Ali Hamza, Advocates for the Appellant.

M/s. Shaiq Usmani and Muhammad Khalid Akhtar, Advocates for Respondent No.1.

M/s. Barrister Nudrat Bayan Majeed, Khalid Mehmood Siddiqui and Habibur Rehman, Zeeshan Kalwar and Aryan Dawach, Advocates for the respondent No.2.

Date of Hearing: 13.04.2026, 21.04.2026, 05.05.2026 and 11.05.2026
Date of Judgment: 21.05.2026

JUDGMENT

ARSHAD HUSSAIN KHAN J.- Through the instant High Court Appeal, the appellant has assailed the judgment dated 14.11.2025 and decree passed by the learned Single Judge of this Court in J.M. No.13 of 2025, whereby the respondent's application under Section 6 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, ('2011 Act') seeking recognition and enforcement of the foreign arbitral award dated 21.10.2021 rendered by the China International Economic and Trade Arbitration Commission ('CIETAC'), was allowed. Consequently, the said award was recognized as binding and enforceable against the appellant and was made rule of the Court.

2. Briefly stated, the factual background emerging from the record is that respondents No.1 and 2 entered into a Logistics Services Agency Agreement dated 09.10.2016 in connection with the Wharf Revamp Project at Port Qasim, Karachi. Subsequently, on 10.10.2016, a Tripartite 1st Supplemental Agreement was executed amongst respondents No.1 & 2 and the appellant with regard to payment

arrangements and other connected obligations. Clause 5.2 thereof contained an arbitration agreement providing for resolution of disputes through arbitration before CIETAC, Beijing, in accordance with the CIETAC Rules. Disputes thereafter arose amongst the parties concerning alleged defaults in payment, pursuant whereof respondent No.1 initiated arbitration proceedings before CIETAC against the appellant and respondent No.2. The arbitral proceedings culminated in an award dated 21.10.2021 whereby the appellant was directed to pay to respondent No.1 certain amounts in RMB Yuan and US Dollars along with interest, attorney fee and arbitration costs. Thereafter, respondent No.1 instituted proceedings under Section 6 of the 2011 Act, before this Court seeking recognition and enforcement of the aforesaid foreign arbitral award. The appellant contested the said proceedings by filing written statement and counter affidavit raising, inter alia, objections with regard to limitation, legality of constitution of the arbitral tribunal, alleged inconsistency between Clause 5.2 of the Supplemental Agreement and the CIETAC Rules, non-compliance with Article IV of the New York Convention, competency and authorization of the person instituting the proceedings, as well as applicability of the judgment in Taisei Corporation v. A.M. Construction Company (Private) Limited. However, the learned Single Judge, through the impugned judgment dated 14.11.2025, rejected the aforesaid objections and allowed the application for recognition and enforcement of the foreign arbitral award.

3. Learned counsel for the appellant contended that the impugned judgment and decree are contrary to law and facts, suffering from misreading and non-reading of the material available on record, and therefore liable to be set aside. It was submitted that the appellant is a Chinese-owned company incorporated in Pakistan and engaged in the business of general contracting and engineering services, particularly in projects connected with CPEC and the Belt and Road Initiative, including port-related logistics operations at Port Qasim. Learned counsel further submitted that the dispute emanated from a Logistics Services Agency Agreement dated 09.10.2016 executed between respondent Nos.1 and 2, followed by a First Supplemental Agreement dated 10.10.2016 to which the appellant was also a party. Under

Clause 5.2 thereof, all disputes were agreed to be referred to arbitration under the CIETAC Rules, with the seat of arbitration at Beijing and a three-member tribunal to be constituted in the agreed manner. It was contended that respondent No.1 initiated arbitration proceedings before CIETAC alleging defaults in payment, which culminated in an arbitral award dated 21.10.2021 imposing monetary liability upon the appellant. Thereafter, respondent No.1 sought enforcement of the said award in Pakistan through proceedings instituted under Section 6 of the 2011 Act, which proceedings were ultimately allowed by the learned Single Judge through the impugned judgment dated 14.11.2025. Learned counsel argued that the enforcement proceedings were barred by limitation under Article 178 of the Limitation Act, 1908, inasmuch as Article III of the New York Convention, 1958 ('New York Convention') mandates that enforcement proceedings are to be governed by the procedural law of the forum State, and limitation being procedural in nature, the provisions of the Limitation Act were fully attracted. It was submitted that the learned Single Judge erroneously confined the applicability of Article 178 to proceedings under the Arbitration Act, 1940 ('1940 Act') and failed to give effect to Section 3 of the Limitation Act, 1908 in its mandatory terms. It was further contended that the arbitral tribunal had been constituted in violation of the agreed procedure and in derogation of Article 29(3) of the CIETAC Rules, thereby rendering the composition of the tribunal unlawful and attracting refusal of enforcement under Article V(1)(d) of the New York Convention. Learned counsel argued that Clause 5.2 of the First Supplemental Agreement was inconsistent with the CIETAC Rules, which inconsistency vitiated the arbitral process itself, yet the learned Single Judge declined to examine the said objection on the premise that the same ought to have been agitated before the arbitral forum in China. It was also contended that respondent No.1 failed to comply with Article IV of the New York Convention and Section 5 of the Act, 2011 by not placing on record the complete suite of underlying agreements, thereby depriving the Court of the opportunity to properly examine the contractual framework governing the parties. Learned counsel further argued that the enforcement proceedings had been instituted by an incompetent and unauthorized person, as no valid Board Resolution authorizing institution of the proceedings had been produced, and mere reliance upon a Power of Attorney was insufficient in law for a corporate entity. It was further submitted that the learned Single Judge failed to properly consider the authorities cited on behalf of the appellant and instead erroneously relied upon the judgment rendered in *Taisei Corporation v. A.M. Construction Company (Private) Limited* [2024 SCMR 640], despite the fact that the said judgment was factually and legally distinguishable from the present case, as it did not address questions relating to limitation, constitution of the arbitral tribunal, or compliance with the CIETAC Rules. According to the learned counsel, such reliance, to the exclusion of the authorities cited by the appellant, resulted in misapplication of law and non-consideration of material precedents. Lastly, it was contended that maintenance of the impugned judgment would seriously prejudice the appellant's business operations, particularly those connected with CPEC-related infrastructure projects, port logistics at Port Qasim, and associated commercial and energy supply-chain activities within the country, thereby adversely affecting ongoing industrial and national development projects. In support of his contention, learned counsel has relied upon the cases reported as *Muhammad Anwar and others v. Essa and others* [PLD 2022 SC 716], *Lahore Development Authority v. Mst. Sharifan Bibi and another* [PLD 2010 SC 705], *PICIC Commercial Bank Limited v. Spectrum Fisheries Limited* [2006 CLD 440], *Sirajuddin Paracha and 12 others v. Mehboob Elahi and 3 others* [PLD 1997 Karachi 276], *Ch. Gul Muhammad v. Ashraf Industries (Pvt.) Ltd.* [2010 YLR 2974], *Telecard Limited v. Pakistan Telecommunication Authority* [2014 CLD 415], *C. Beepathuma and others v. Velasari Shankaranarayana Kadambolithaya and another* [AIR 1965 SC 241, *Orient Middle East Lines Ltd., Bombay and another v. M/s. Brace Transport Corporation of Monrovia and others* [AIR 1986 Gujarat 62], and Section of the Limitation Act, 1908 as well as a Canadian Case reported as *Yugraneft Corporation v. Rexx Management Corporation* 2010 1 R.C.S 660 [paras 16 & 18].

4. Learned counsel for respondent No.1 while supporting the impugned judgment has contended that the same has been passed strictly in accordance with the 2011 Act, and the New York

Convention. It was submitted that the present proceedings do not arise under Sections 30 and 33 of the 1940 Act, nor under the repealed Arbitration (Protocol and Convention) Act, 1937, but are governed exclusively by the special regime provided under the 2011 Act. Learned counsel argued that in view of the law laid down by the Hon'ble Supreme Court in *Taisei Corporation* the Courts while dealing with foreign arbitral awards are required to adopt a "pro-enforcement bias" and maintain minimal interference with the arbitral process. It was contended that the principal objection regarding limitation is misconceived, as Article 178 of the Limitation Act, 1908 applies only to awards under the 1940 Act, and cannot be extended to foreign arbitral awards enforced under the Act, 2011. It was further argued that Clause 5.2 of the Supplemental Agreement constituted a valid arbitration agreement under Chinese law and that the arbitral tribunal was constituted strictly in accordance with the agreement and CIETAC Rules. Learned counsel submitted that the appellant had already challenged the award before the competent Chinese Appellate Court on substantially the same grounds, which challenge was dismissed, vide order dated 27.10.2022, thereby affirming the validity of the arbitration agreement, arbitral procedure and award. It was further contended that the objections relating to authorization, non-filing of documents and public policy are without substance and fall outside the limited scope of refusal available under Article V of the New York Convention. Learned counsel argued that this Court, while exercising jurisdiction under the Act, 2011, cannot sit in appeal over the findings of the arbitral tribunal or reappraise the merits of the dispute. Lastly, he prayed for dismissal of the appeal. Learned counsel in support of his contention has relied upon the cases of *S.D.O./A.M., Hasht Nagri Sub-Division, PESCO, Peshawar and others v. Khawazan Zad* [PLD 2023 SC 174], *Government of India v. Vedanta Limited and others* [AIR 2020 SC 4550], *Petrocon (Pvt.) Ltd. v. Hyderabad Development Authority* [1990 MLD 1675] and the unreported judgment passed in HCA No.429 of 2023 (*Huaneng Fuyun Port & Shipping (Pvt.) Limited v. Jiaozuo Creation Heavy Industry Company Limited*).

5. Learned counsel for Respondent No.2, who is a proforma party in the present proceedings, has not advanced any independent submissions on facts or law and has simply supported the impugned judgment and decree.

6. We have heard learned counsel for the parties, perused the impugned judgment and the material available on the record, and gone through the case law cited at the Bar.

7. The controversy in the present appeal essentially revolves around the questions: (i) whether the enforcement proceedings initiated under Section 6 of the Act, 2011 are barred by limitation in view of Article 178 of the Limitation Act, 1908 and Section 3 thereof; (ii) whether the constitution of the arbitral tribunal and the conduct of proceedings suffered from illegality or procedural impropriety so as to attract Article V(1)(d) and Article V(1)(a) of the New York Convention, particularly in the context of the alleged deviation from CIETAC Rules; (iii) whether non-filing of the underlying Logistics Services Agreement and supplemental arrangements constitutes a fatal defect under Article IV of the Convention and Section 5 of the Act, 2011; and (iv) whether the proceedings under Section 6 of 2011 Act, were instituted by a duly authorized person in accordance with law.

8. We have carefully examined the objection relating to limitation. The appellant's counsel has contended that the enforcement proceedings are barred under Article 178 of the Limitation Act, 1908, read with Section 3 thereof, as the application under Section 6 of the Act, 2011, was filed beyond time. The submission, though attractively framed, is devoid of merit. A plain reading of Article 178 itself demonstrates that the same applies specifically to filing of an award "under the 1940 Act," The said provision, therefore, operates exclusively in the field of domestic arbitration governed by the 1940 Act, and has no application to a foreign arbitral award sought to be recognized and enforced under the special statutory regime created by the 2011 Act, read with the New York Convention. The attempt made by the appellant to import the limitation contemplated for domestic arbitral awards into proceedings relating to foreign arbitral awards amounts, in substance, to reintroducing the 1940 Act, into a field from

which it stands excluded by virtue of the 2011 Act, as interpreted by the Hon'ble Supreme Court of Pakistan.

9. The legal position is now firmly settled by the Hon'ble Supreme Court in *Taisei Corporation*, wherein it has been categorically held that foreign arbitral awards are governed exclusively by the Act, 2011, and the New York Convention, and not by the 1940 Act. It has further been emphasized that Courts exercising jurisdiction under the 2011 Act, are required to adopt a pro-enforcement approach, with judicial intervention confined strictly to the limited grounds enumerated under Article V of the Convention. The ratio decidendi squarely negates any attempt to import procedural provisions applicable to domestic arbitration into the enforcement regime of foreign awards.

10. In the absence of any specific period of limitation prescribed either under the 2011 Act, or the Limitation Act, 1908, for enforcement of a foreign arbitral award, the matter would be governed by the residuary Article 181 of the Limitation Act, 1908, which provides a limitation period of three years from the date the right to apply accrues. Admittedly, the foreign arbitral award was rendered on 21.10.2021 and the respondent instituted enforcement proceedings on 09.03.2022, well within the prescribed period of three years. By no stretch of imagination can the proceedings instituted by the respondent be regarded as time barred. The learned Single Judge, therefore, rightly concluded that Article 178 of the Limitation Act had no application to the facts and circumstances of the present case and correctly repelled the objection raised by the appellant.

11. The next objection raised by the appellant relates to the alleged violation of the CIETAC Rules, improper constitution of the arbitral tribunal, denial of fair opportunity of hearing and refusal of the tribunal to permit appraisal and expert determination. We have carefully examined the material available on record and find that such objections do not fall within the permissible scope of interference contemplated under Article V of the New York Convention. The record reflects that the arbitration was conducted under the CIETAC Rules pursuant to a valid arbitration agreement between the parties. The constitution of the tribunal and conduct of proceedings fall within the procedural

framework agreed by the parties. No material has been brought on record to demonstrate any fundamental departure from the agreed procedure so as to render the award unenforceable under Article V(1)(d). It is by now a settled principle of law that while dealing with recognition and enforcement of a foreign arbitral award, the enforcing Court cannot sit in appeal over the findings of the arbitral tribunal, reappraise evidence, or substitute its own interpretation for that of the arbitrators. The jurisdiction of the enforcing Court is confined only to determining whether any of the limited grounds specified under Article V have been established. Mere dissatisfaction with the procedural conduct of the arbitration or the manner in which evidence was appreciated by the tribunal does not furnish a valid ground to refuse enforcement of a foreign arbitral award.

12. The record further reflects that the appellant had already challenged the arbitral award before the Beijing Fourth Intermediate People's Court ('Beijing Court') wherein substantially the same objections regarding constitution of tribunal, alleged procedural irregularities, denial of fair hearing and violation of the CIETAC Rules were raised. The said challenge was dismissed vide judgment dated 27.10.2022, whereby the Beijing Court specifically held that the arbitral proceedings had been conducted in accordance with the applicable law and the CIETAC Rules and that the matters complained of by the appellant fell within the procedural discretion of the arbitral tribunal. In such circumstances, the appellant cannot be permitted to reagitate identical objections before this Court under the guise of enforcement proceedings. The principle of transnational issue estoppel, now well recognized in modern international arbitration jurisprudence, squarely applies to the present case.

13. The objection relating to non-compliance with Article IV of the New York Convention and Section 5 of the Act, 2011 is also without substance. The record shows that the respondent duly filed the arbitral award along with the arbitration agreement and supporting documents required for enforcement. Article IV requires substantial compliance and not hyper-technical perfection. No defect of a substantive nature has been shown.

14. As regards authorization and competency of the person instituting proceedings, the same is also without substance. The Hon'ble Supreme Court of Pakistan in *S.D.O./A.M., Hasht Nagri Sub-Division, PESCO, Peshawar and others v. Khawazan Zad* [PLD 2023 SC 174], while dilating upon the scope of curing defects relating to authority to sign, verify and present pleadings, memoranda of appeal or revision petitions, inter alia, held that any defect or omission in signing, verifying or presenting a pleading does not go to the jurisdiction of the Court and is merely an irregularity capable of being cured at any stage of the proceedings. The Hon'ble Supreme Court further held that any defect in the authority of a person to sign and verify pleadings filed by or against a corporation, or to institute or defend proceedings on behalf of such corporation, can likewise be cured at any stage of the proceedings.

Notwithstanding the above legal position, the record in the present case reflects that the respondent had already placed on record the relevant Board Resolution, Special Power of Attorney, and Vakalatnama duly authorizing institution of the proceedings. The learned Single Judge has rightly held that due authorization stood established. We find no illegality or jurisdictional defect in this regard.

15. The contention that Clause 5.2 of the agreement is inconsistent with CIETAC Rules is misconceived. The arbitration clause reflects the clear intention of the parties to submit disputes to CIETAC arbitration seated at Beijing. Any alleged procedural inconsistency does not affect jurisdiction and cannot be used to defeat enforcement at this stage.

16. It is also noteworthy that the appellant had already availed remedies before the competent court at the seat of arbitration in China, where its challenge to the award was dismissed. The supervisory court's findings further reinforce the validity and finality of the arbitral process and militate against reopening settled issues in enforcement proceedings.

17. The case law relied upon by the appellant has been examined. The same is distinguishable on facts and does not advance the appellant's case in view of the binding effect of *Taisei Corporation* (supra) and the settled pro-enforcement framework under the New York Convention, 1958.

18. In view of the foregoing discussion, we are of the considered opinion that the appellant has failed to establish any illegality, jurisdictional defect, or any ground falling within Article V of the New York Convention so as to warrant refusal of enforcement. The learned Single Judge has correctly appreciated the law and facts while passing the impugned judgment and decree, which calls for no interference. Consequently, present High Court Appeal is dismissed along with pending applications, if any. The impugned judgment and decree are maintained.

JUDGE

JUDGE

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