# IN THE HIGH COURT OF SINDH AT KARACHI

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| J.M. 16 of 2025: | Shanghai Marine Diesel Engine Research Institute<br>vs. Huaneng Fuyun Port & Shipping (Pvt.) Limited |
| For the Applicant: | Mr. Khalid Mehmood Siddiqui, Advocate<br>Mr. Zeeshan Kalwar, Advocate |
| For the Respondent: | Mr. Farooq H. Naek, Advocate<br>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 04.11.2021 made by the China International Economic and Trade Arbitration Commission ("CIETAC"), to be recognized, made rule of court and decreed the respondent.

2. Briefly stated, the parties entered into contractual agreements *inter se*, including those dated 09.10.2016 and 02.12.2016. Clause 13.2 of the prior agreement contained a dispute resolution clause and provided for arbitration per CIETAC. A dispute arose between the parties; the matter was referred to arbitration; and the proceedings culminated in the Award. It was brought to notice that the respondent had preferred an application for setting aside of the Award before the Beijing Fourth Intermediate Peoples Court and the same had been dismissed with costs[1].

3. Per Mr. Khalid Mehmood Siddiqui, the requirements of the Act were satisfied, therefore, the proceedings may be allowed as prayed. He argued that the National Judicial Policy 2009 advises a timeline of six months for deciding applications for enforcement of foreign awards and that any delay has adverse consequences for foreign investment and confidence of the international community.

4. Mr. Farooq H. Naek pivoted his defense on the insistence that the enforcement of the Award was barred by limitation. As a corollary, it was articulated that the award was improperly procured, contrary to the CIETAC rules, and that the present proceedings were filed by an incompetent person. Therefore, he sought dismissal of the present proceedings.

5. The Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011 provides for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10th June, 1958 ("Convention") and for matters connected therewith. The law has been exhaustively appreciated and interpreted by the Supreme Court in *Taisei Corporation*[2]. The *lis* before this Court is to be scrutinized upon the anvil so illumined.

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[1] Order dated 13.10.2022.

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

6. There was no cavil articulated to the arbitration agreement and / or award qualifying within the parameters of section 1 of the Act. It was also undenied that the respondent had failed in its challenge to the Award before the Beijing Fourth Intermediate Peoples Court.

7. The crux of the respondent's defense was that the present proceedings were barred by limitation; per Article 178 of the First Schedule to the Limitation Act 1908[3]. The Act came into force on 19.07.2011. Section 1 thereof demonstrates that it is to encompass arbitration agreements made before, on or after the said date and covered foreign arbitral awards made post 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[4].

Even otherwise, the provision under reference prescribes a period of limitation for filing of an award per the Arbitration Act 1940 and has no discernible nexus with enforcement under the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. The Act itself is entirely permissive of entertaining virtually any qualifying arbitration agreement and a consequent award rendered post 14.07.2005. If Mr. Naek's assertion was to be sanctioned then perhaps the specific statutory provisions of the Act would be rendered otiose. Regardless, *Taisei Corporation* specifically disallows any import of the Arbitration Act 1940 in enforcement of foreign arbitral awards[5]. Therefore, the said objection could not be sustained by this court.

8. It was argued that the award was improperly procured, contrary to the CIETAC rules. The assertion was predicated upon allegations that the arbitrator was unfair; did not cede to claims of further inquiry; and did not provide *proper* opportunity of hearing. It appears that the respondent seeks to invoke section 30 of the Arbitration Act 1940.

Such invocation is unmerited as the Supreme Court specifically disallowed implication of the Arbitration Act 1940 in enforcement of foreign arbitral awards; in *Taisei Corporation*. Reference is made *inter alia* to paragraph 29 thereof[6].

*Prima facie* perusal of the Award demonstrates that the learned arbitration tribunal exhaustively dealt with the aspects of law and jurisdiction in the Award. Part I, page 26 onwards, upholds the adherence of the proceedings / tribunal with the prescription of the arbitration rules. Part II, page 32 onwards, deliberates and concludes in favor of the validity of the arbitration agreement. The respondent made no effort to corroborate any contrary assertion from the record and / or from the Award itself. It is the considered view of this Court that the validity of the proceedings have been adequately addressed. Since no reference was made to the relevant record, therefore, no occasion arose to displace and / or distinguish the pertinent deliberations and the findings.

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[3] Prescribing a 90 day limitation period for filing of award in court from the date of service of notice of making the award.

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

[5] "*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*".

[6] "*29. AMC's right to challenge the validity of the Award under Sections 30 and 33 of the 1940 Act accrued with the commencement of the arbitration proceedings has been taken away by the legislature in the exercise of its legislative power by giving effect to the 2011 Act on all foreign arbitral awards irrespective of the fact, whether they have been made in arbitration proceedings commenced either before or after the 2011 Act came into force…*"

9. The documentation demonstrating the power and authority of the person filing the present proceedings, power of attorney etc., could not be impeached before this Court. Irrespective of the internal management rule, maintained by the Supreme Court time and time again, the documentation annexed was found to be adequate for its intended purpose.

10. It is observed that no infirmity with the arbitration agreement and / or the Award could be identified, within the mandate of Article V of the Convention. Therefore, the application filed per Section 6 of the Act is allowed. The foreign arbitral Award made on 04.11.2021 is recognized as binding and enforceable against Huaneng Fuyun Port & Shipping (Private) Limited, 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