IN THE HIGH COURT OF SINDH, KARACHI

HCA No.119 of 2025

Huaneng Fuyun Port & Shipping (Pvt.) Limited
vs.
Shanghai Marine Diesel Engine Research Institute

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 Appellants.

M/s. Barrister Nudrat Bayan Majeed, Khalid Mehmood Siddiqui and Habibur Rehman, Zeeshan Kalwar and Aryan Dawach, Advocates for the respondent.

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

J U D G M E N T

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.16 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 04.11.2021 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 facts of the case are that in the year 2016, the parties entered into an Engineering, Procurement and Construction ('EPC') contract for the upgradation of Berths No. 3 and 4 at Port Qasim, Karachi. Under the said contract, the respondent acted as the general contractor responsible, inter alia, for civil engineering works, construction, and overall project management, whereas the appellant was obliged to arrange project financing and pay the agreed management fee to the respondent. The EPC arrangement comprised a composite set of agreements covering project coordination, onshore and offshore services and supplies, civil works, and other ancillary obligations connected with the execution of the project. Under the terms of the agreement, the parties

agreed that any disputes arising inter se would be resolved through arbitration in accordance with the Rules of the CIETAC. Subsequently, disputes arose between the parties, which were referred to arbitration, culminating in a foreign arbitral award dated 04.11.2021 in favour of the respondent. Thereafter, the respondent instituted proceedings under Section 6 of the 2011 Act, before the learned Single Judge of this Court, seeking recognition and enforcement of the said award. The appellant contested the proceedings, inter alia, on the grounds of limitation, alleged violation of the CIETAC Rules, improper constitution of the arbitral tribunal, denial of fair opportunity of hearing, and incompetency of the person who instituted the proceedings on behalf of the respondent. Upon hearing the parties, the learned Single Judge, vide impugned judgment dated 14.11.2025, rejected the objections raised by the appellant and allowed the application by recognizing the arbitral award as binding and enforceable against the appellant. Hence, the present appeal.

3. Learned counsel for the appellant contended that the impugned judgment and decree are contrary to law and the facts available on record. It was submitted that the appellant is a Chinese-owned company incorporated in Pakistan and engaged in projects connected with the China-Pakistan Economic Corridor (CPEC), whereas the respondent is a Chinese state-owned enterprise. Per learned counsel, the disputes arose out of contractual arrangements relating to the upgradation of Berths No.3 and 4 at Port Qasim, Karachi, including the Supplemental Agreement dated 09.10.2016 and the Civil Construction Memorandum dated 02.12.2016. It was argued that the proceedings instituted by the respondent under Section 6 of the 2011 Act, were hopelessly barred by limitation, inasmuch as the arbitral award was rendered on 04.11.2021, whereas the enforcement proceedings were instituted before this Court on 07.10.2022, allegedly beyond the prescribed period contemplated under Article 178 of the Limitation Act, 1908. Per learned counsel, the learned Single Judge failed to appreciate that limitation constitutes a procedural rule within the contemplation of Article III of the New York Convention, 1958 (‘New York Convention’), and, therefore, the domestic law relating to limitation was fully applicable to the enforcement proceedings in question. It was further contended that the arbitral tribunal was constituted in violation of the CIETAC Rules and that the arbitral proceedings were conducted contrary to the principles of fair trial and due process. Learned

counsel submitted that the Presiding Arbitrator acted in a biased and partial manner against the appellant and that, despite a challenge having been raised during the arbitral proceedings, the same was not properly adjudicated in accordance with Article 32(6) of the CIETAC Rules. It was further argued that the arbitral tribunal unlawfully declined the appellant's request for appraisal and expert determination regarding completion of the project and fulfillment of contractual obligations, thereby violating Article 44 of the CIETAC Rules. Learned counsel also submitted that adequate opportunity of hearing was not afforded to the appellant in terms of Article 35 of the CIETAC Rules, rendering the award unenforceable under Article V(1)(b) of the New York Convention, read with Section 7 of the 2011 Act. Learned counsel next contended that the proceedings before the learned Single Judge had been instituted by an incompetent person, as the alleged attorney was not authorized through a valid Board Resolution of the respondent company. According to the learned counsel, the Special Power of Attorney relied upon by the respondent neither disclosed the identity and designation of the company official authorizing the same nor satisfied the legal requirements necessary for institution of proceedings on behalf of a corporate entity. It was submitted that the learned Single Judge failed to properly appreciate these jurisdictional defects while passing the impugned judgment. Lastly, learned counsel contended that the learned Single Judge misapplied the ratio laid down by the Hon'ble Supreme Court in Taisei Corporation and another v. A.M. Construction Company (Private) Limited and another [2024 SCMR 640], as the issues involved in the present case were distinguishable both on facts and in law. He therefore prayed that the impugned judgment and decree be set aside and the application filed by the respondent under Section 6 of the 2011 Act, be dismissed. 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. Conversely, learned counsel for the respondent submitted that the impugned judgment and decree passed by the learned Single Judge are fully in consonance with the 2011 Act, and the New York Convention, both of which envisage a pro-enforcement regime with minimal judicial interference in matters relating to foreign arbitral awards. It was argued that the foreign arbitral award in question was rendered by the CIETAC at Beijing, China, which is admittedly situated in a contracting State under the New York Convention; therefore, the said award squarely falls within the definition of a "foreign arbitral award" as contemplated under Section 2(e) of the 2011 Act. Learned counsel submitted that the appellant failed to establish any ground falling within Article V of the New York Convention so as to justify refusal of recognition or enforcement of the award.

On the question of limitation, learned counsel contended that Article 178 of the Limitation Act, 1908 applies exclusively to domestic arbitral awards governed by the Arbitration Act, 1940 ('1940 Act') and has no application to foreign arbitral awards enforceable under the 2011 Act. It was submitted that in the absence of any specific limitation period prescribed under the 2011 Act, the residuary Article 181 of the Limitation Act, 1908 would apply, providing a limitation period of three years from the accrual of the cause of action. Since the arbitral award was rendered on 04.11.2021 and the enforcement proceedings were instituted on 07.10.2022, the same were well within limitation. Learned counsel further argued that Article III of the New York Convention prohibits imposition of substantially more onerous conditions for enforcement of foreign arbitral awards than those applicable to domestic remedies. Therefore, importing the restrictive limitation contemplated for domestic awards into proceedings under the 2011 Act, would defeat the very object of the Convention and frustrate the international enforcement mechanism contemplated thereunder.

In response to the objection regarding competency of the person instituting the proceedings, learned counsel submitted that the respondent had already placed on record the Board Resolution, Certificate of Legal

Representation, Special Power of Attorney and Power of Authority (Vakalatnama), duly authorizing institution of the proceedings on behalf of the respondent company. According to the learned counsel, the said documents sufficiently established lawful authorization and, therefore, the objection raised by the appellant was misconceived and devoid of substance. Learned counsel further submitted that the appellant had already challenged the arbitral award before the Beijing Fourth Intermediate People's Court, which challenge was dismissed vide judgment dated 13.10.2022. It was argued that the appellant is now estopped from re-agitating the same objections before this Court, particularly those relating to arbitral procedure, constitution of the tribunal, and alleged denial of fair opportunity of hearing. Lastly, learned counsel urged that no exceptional circumstance had been shown by the appellant warranting interference. As such, the Appeal is liable to be dismissed. Learned counsel for the respondent relied upon the cases reported as *Taisei Corporation and another v. A.M. Construction Company (Pvt.) Ltd. and another* [2024 SCMR 640], *Cogetex S.A. a Company Duly incorporated under the laws of Switzerland vs. Mayfair Spinning Mills Limited, a Public Limited Company Incorporated Under the Pakistan Companies Ordinance, 1984* [2004 CLD 1023], *Hulley Enterprises Ltd and others v. The Russian Federation* [2025 EWCA Civ 108], *Hulley Enterprises Ltd and others v. The Russian Federation* [2025 SGHC(I) 19], *Nagaraj V. Mylandla v. PI Opportunities Fund-I and others, The Republic of India and Deutsche Telekom AG* [2023 SGCA(I) 10], *Government of India v. Vedanta Limited* [AIR 2020 SC 4550], *Dallah Real Estate and Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan* [2010 UKSC 46], *Messrs. Raheem Steel Re-Rolling Mills v. Messrs. Karim Aziz Industries Ltd.* (1989 CLC 32) and *Messrs. Bundial Bus Service v. Mst. Sanjeeda Afzal* (1975 SCMR 203); and Indian Judgment, announced in Civil Appeal No.3185 of 2020 in the case of *Government of India vs. Vedanta Limited* and also an unreported judgment of this Court, passed in the case of *Hunaneng Fuyun Port & Shipping (Pvt.) Limited vs. Jiaozuo Creation Heavy Industry Company Limited* in HCA 429 of 2023.

5. We have heard learned counsel for the parties, perused the impugned judgment as well as the material available on record, and have also examined the case law cited at the Bar.

6. The controversy involved in the present appeal essentially revolves around the following questions: (i) whether the enforcement proceedings are barred by limitation under Article 178 of the Limitation Act, 1908; (ii) whether the foreign arbitral award is liable to be refused recognition or enforcement on account of the alleged violations of the CIETAC Rules within the contemplation of Article V of the New York Convention; and (iii) whether the proceedings instituted under Section 6 of the 2011 Act, suffer from any defect of authorization or competency.

7. The foremost objection raised by the appellant pertains to limitation. According to the appellant, the proceedings instituted by the respondent under Section 6 of the 2011 Act, were barred by time, as the foreign arbitral award was rendered on 04.11.2021 whereas the enforcement proceedings were instituted before this Court on 07.10.2022, beyond the period contemplated under Article 178 of the Limitation Act, 1908. The contention, though attractively canvassed, is legally unsustainable. 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.

8. The controversy stands concluded and is no longer res integra in view of the authoritative pronouncement of the Hon'ble Supreme Court in *Taisei Corporation*, wherein it has categorically been held that recognition and enforcement of foreign arbitral awards in Pakistan are governed exclusively by the 2011 Act, and the New York Convention and not by the 1940 Act. The Supreme Court further held that the definition of "foreign arbitral award" contained in Section 2(e) of the Act, 2011 adopts a pure territorial approach, whereby the seat of arbitration alone determines the character of the award. Once an award falls within the ambit of the Act, 2011, the provisions of the 1940 Act, cease to have any

applicability. The Supreme Court also emphasized that Courts dealing with foreign arbitral awards are required to adopt a "pro-enforcement bias" and exercise minimal judicial interference, as refusal of recognition and enforcement is confined only to the limited grounds enumerated in Article V of the New York Convention. The ratio laid down in *Taisei Corporation* squarely governs the present controversy and leaves little room for importing procedural restrictions derived from the 1940 Act, 1940 into proceedings under the Act, 2011.

9. It is true that Article III of the New York Convention permits enforcement of foreign arbitral awards in accordance with the "rules of procedure" of the territory where enforcement is sought. However, the appellant has selectively relied upon one part of Article III while ignoring its equally important remaining part. Article III not only permits application of procedural law of the enforcing State, but simultaneously mandates that no substantially more onerous conditions shall be imposed upon recognition and enforcement of foreign arbitral awards than those applicable to domestic remedies. Therefore, the phrase "rules of procedure" cannot be interpreted in a manner which defeats the very object and spirit of the Convention. If the restrictive limitation contemplated under Article 178 of the Limitation Act, applicable only to domestic awards under the 1940 Act, is imported into proceedings under the 2011 Act, the result would be imposition of an onerous procedural restriction upon foreign arbitral awards, contrary to the express mandate of Article III of the Convention itself. Such interpretation would not only frustrate Pakistan's international obligations undertaken through the New York Convention, but would also undermine the legislative intent underlying the 2011 Act, enacted specifically to facilitate recognition and enforcement of foreign arbitral awards in Pakistan.

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 04.11.2021 and the respondent instituted enforcement proceedings on 07.10.2022, well within the prescribed period of three years. Even otherwise, the arbitral award itself granted a grace period for payment, therefore the cause of action would

accrue upon expiry of such period. 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. 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 13.10.2022, 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. We are also unable to persuade ourselves to accept the contention that the appellant was denied fair opportunity of hearing. The record demonstrates that the appellant actively participated throughout the arbitral proceedings, filed pleadings, raised objections and contested the claim before the arbitral tribunal. The mere fact that the arbitral tribunal did not accept the appellant's stance or declined certain procedural requests cannot, by itself, constitute denial of due process within the contemplation of Article V(1)(b) of the New York Convention. No material has been placed before us to establish that the appellant was prevented from presenting its case or that the proceedings suffered from such procedural infirmity as would render enforcement contrary to the public policy of Pakistan.

14. So far as the objection regarding competency of the person instituting the proceedings on behalf of the respondent is concerned, the same too is devoid of 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, Certificate of Legal Representation, Special Power of Attorney and Vakalatnama authorizing institution of the proceedings. The learned Single Judge, after examining the said documents, rightly concluded that lawful authorization stood sufficiently established. We have independently examined the material available on record and find no defect of such nature which could invalidate the proceedings. The objection raised by the appellant is merely hypertechnical and does not go to the root of the matter, particularly when the respondent company itself has unequivocally ratified and pursued the proceedings through duly authorized representatives and counsel.

15. It may further be observed that the 2011 Act, was enacted to fulfill Pakistan's international obligations arising under the New York Convention and to ensure certainty, predictability and enforceability in the realm of international commercial arbitration. The superior Courts of the country are therefore obliged to adopt a pro-enforcement approach consistent with the object and spirit of the Convention. Judicial interference in enforcement proceedings must remain minimal and strictly confined to the grounds expressly enumerated under Article V of the Convention. Any expansive interpretation permitting re-examination of merits or procedural reappraisal would defeat the legislative scheme underlying the Act, 2011, and undermine confidence of international commercial entities in Pakistan's arbitral enforcement regime.

16. 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.

17. For the foregoing reasons, we are of the considered view that the appellant has failed to establish any legal infirmity, jurisdictional defect or ground within the contemplation of Article V of the New York Convention so as to justify refusal of recognition and enforcement of the foreign arbitral award in question. The learned Single Judge has correctly appreciated both the law and the facts while passing the impugned judgment and decree and no case for interference by this Court has been made out. Consequently, the instant High Court Appeal is dismissed along with all pending applications, if any.

JUDGE

JUDGE

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