JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

F.A.O No.121 of 2023

BUREAU OF EMIGRATION OVERSEAS EMPLOYMENT

VERSUS

GUARANTEE OF ENGINEERING

Appellant by:	Mr. Fahad Khan Tareen, AAG alongwith M. Arsalan, Deputy Director.
Respondent by:	M/s Babar Ali Khan and Jawad-ur-Rahim Malik, Advocates.
Assisted by:	Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**22.10.2025.**

UNCERTIFIED

INAAM ANEEN MINHAS, J:- Through the instant appeal, the appellant/ Bureau of Emigration and Overseas Employment **("BEOE")**, impugns the judgment and decree dated 15.04.2023 **("Impugned Judgment")** passed by the learned Additional District Judge, Islamabad, West **("Trial Court"),** whereby the arbitration Award dated 28.11.2022 was made rule of the Court.

2. The brief facts of the instant appeal are that the Appellant/BEOE, vide letter of acceptance dated 03.03.2009 accepted the bid of Respondent No. 1 i.e. M/s Guarantee Engineer for construction of the Emigration Tower at Plot No.10, Mauve Area, Sector G-8/1, Islamabad, **("Project Works")**, followed by execution of a formal contract on 17.03.2009. The contractual completion period of 720 days was extended up to 28.02.2013, and a Substantial Completion Certificate was issued 23.09.2013 w.e.f. 28.02.2013. Thereafter, a punch list identifying pending and defective works was issued by the consultant of the Project Works i.e. NESPAK **("Consultant")**, vide letter dated 30.10.2018. Owing to Respondent No.1's failure to rectify the defects and complete outstanding items, the BEOE withheld pending payments in accordance with the

directions of the Project Supervisory Committee and the Consultant, making their release conditional upon completion of the remaining works.

3. As a consequence, the Respondent approached the Engineer/Consultant on 24.01.2019 for resolution of the dispute, which was decided vide decision dated 16.04.2019, the Respondent was directed to complete the outstanding works to the satisfaction of the Engineer and it was held that payments already certified were payable strictly in accordance with the contract, which contained no provision for interest or compensation on delayed payments. Dissatisfied, the Respondent filed an application under section 20 of the Arbitration Act, 1940, which was allowed on 18.12.2021, whereby Justice (Rtd.) Ejaz Nisar was appointed as sole arbitrator. The arbitration culminated in an Award dated 28.11.2022 wherein the BEOE was directed to pay Rs. 48,278,661/- along with compensation at 8% per annum on the specified amounts, and further declared 28.02.2014 as the effective date of the Defects Liability Certificate with directions for its issuance. The Respondent thereafter sought to have the Award made rule of the Court by filing an application under sections 14 and 17 of the Arbitration Act, 1940, while BEOE sought setting aside of the Award to the extent it granted compensation/markup on amounts withheld due to non-completion of the punch list items; however, the learned Trial Court made the Award rule of the Court and declined to set it aside, giving rise to the present appeal.

4. Learned counsel for the Appellant contended that the learned Trial Court failed to appreciate that the Award suffers from patent illegalities and manifest errors of law. He submitted that despite the learned Arbitrator's categorical observations in paragraphs 27, 28 and 30 of the Award that the Respondent remained liable to execute and complete the outstanding works identified in the Punch List even after issuance of the Taking Over Certificate, the Arbitrator, while deciding Issue No.3, paradoxically held that the Respondent had completed the works in accordance with the contract and this self-contradictory approach vitiates the Award. In such circumstances, the Appellant, being a public authority and custodian of public funds, was legally justified, and indeed duty-bound, to withhold the Respondent's outstanding payments and retention money until full completion of the works and rectification of defects, particularly

UNCERTIFIED

in respect of critical systems such as firefighting and fire alarm installations. The findings of the Arbitrator regarding audit objections are equally unsustainable, as audit paras were raised precisely due to non-completion of the project in its entirety, and even in the absence thereof, the appellant could not lawfully release payments contrary to contractual obligations and established public sector financial discipline. The learned trial court, however, failed to meaningfully consider these objections and, in a cursory manner, proceeded to make the Award rule of the Court without addressing the statutory grounds for remission or setting aside under the Arbitration Act, 1940.

5. Learned counsel further contended that both the learned Arbitrator and the learned trial court failed to appreciate that the contract between the parties contains no provision for payment of compensation or markup on delayed payments, a position expressly affirmed by the Engineer in his decision dated 16.04.2019, which remained uncontroverted and unaddressed in the Award. He argued that it is a settled proposition of law that, in the absence of a contractual stipulation, an arbitrator lacks jurisdiction to award interest or compensation, and any such grant is liable to be excluded while making the Award rule of the Court. Even otherwise, under section 29 of the Arbitration Act, 1940, the power to grant post-award interest vests exclusively in the Court, rendering the Arbitrator's direction for future markup wholly without lawful authority. The Award is also demonstrably one-sided, as it directs payment and issuance of the Defects Liability Certificate in favour of the Respondent without any corresponding direction for completion of the outstanding works, despite clear contractual provisions and the Engineer's binding decision requiring such completion. The learned trial court further overlooked that expiry of the Defects Liability Period does not, by itself, entitle a contractor to issuance of a Defects Liability Certificate, particularly where latent and patent defects persist, and that premature issuance thereof would expose the Appellant to serious financial and legal risks. The Impugned Judgment, therefore, having been passed without proper application of mind to the contractual framework, statutory limitations, and settled principles governing arbitration, is unsustainable and warrants interference to the extent the Award grants compensation and markup.

UNCERTIFIED

6. Conversely, the learned counsel for the Respondent vehemently supported the Impugned Judgment and submitted that the instant appeal is not maintainable. Therefore, the present appeal is liable to be dismissed.

7. I have heard the learned counsel for the parties and perused the record with their able assistance.

8. It is manifest from the record that the objections filed by BEOE were submitted beyond the period of limitation prescribed under the law. The learned Trial Court, while correctly taking note of the issue of limitation, exercised its jurisdiction under section 17 of the Arbitration Act, 1940 which is reproduced hereunder for ease:-

> *"**17. Judgment in terms of award.** Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."*

9. The above referred section 17 imposes a direct and mandatory obligation upon the Court once an Award is submitted for making it a rule of Court. The statutory language does not envisage the Court acting as a mere conduit for converting the Award into a decree rather, the Court is required to perform an active judicial function. It mandates that the Court must examine the Award to determine whether there exists any ground for remitting it back to the arbitrator for reconsideration or for setting it aside. Only if the Court finds no legal flaw or procedural irregularity in the award, and after the expiry of the prescribed period for filing objections or upon lawful rejection of any objections filed, may the Court pronounce judgment in accordance with the award, thereby rendering it executable as a decree of the Court. Importantly, the Court's duty of judicial scrutiny is not contingent upon the filing of objections by either party, nor it is negated by the expiry of the limitation period for such objections. Even in the absence of objections or where objections are barred by time, the court remains under a legal obligation to examine the award on its own motion.

UNCERTIFIED

10. In the present case, the record demonstrates that the learned Trial Court discharged its legal obligation under Section 17 of the Arbitration Act, 1940. The learned Trial Court made the Award rule of the Court only after examination of the Award, a scrutiny of the pleadings, documentary material, arbitral proceedings, and the reasoning recorded by the learned Arbitrator. Therefore, the learned counsel for the appellant's contention that the learned Trial Court failed to meaningfully examine the Award and, in a cursory manner, proceeded to make the Award rule of the Court is misconceived and devoid of merit.

11. This Court shall now address the second contention of the learned counsel for the appellant that the learned Trial Court without addressing the statutory grounds for remission or setting aside under the Arbitration Act, 1940 made the Award rule of the Court.The statutory grounds for setting aside an Award are provided in Section 30 of the Arbitration Act, 1940 which is reproduced below:-

> *"**30. Grounds for setting aside award.** An award shall not be set aside except on one or more of the following grounds, namely;—*
>
> *(a) that an arbitrator or umpire has misconducted himself or the proceedings;*
>
> *(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;*
>
> *(c) that an award has been improperly procured or is otherwise invalid."*

12. The learned Trial Court arrived at the conclusion that the Award did not suffer from any material illegality, procedural irregularity, or jurisdictional defect warranting its setting aside or remission. It is evident from the record that no allegation of misconduct on the part of the arbitrator or in the conduct of proceedings was substantiated, nor was it shown that the arbitration had been superseded or had otherwise become invalid. Equally, there was no material before the learned Trial Court to suggest that the Award had been improperly procured or was otherwise invalid in law. Significantly, the objections filed by the BEOE, apart from being *ex facie* barred by limitation, did not raise any plea falling within the ambit of section 30. This Court observed that the attempt to agitate such grounds at the appellate stage cannot be countenanced since it appears to be no more than an afterthought, devised to reopen a matter which

UNCERTIFIED

had attained finality before the Court of first instance. In these circumstances, the learned Trial Court committed no illegality in making the Award rule of the Court, having found no statutory impediment to its enforcement.

13. Apart from the statutory threshold the grounds / parameters for setting aside of an arbitration Award have been interpreted and laid down by the Honourable Supreme Court in the case of ***Gerry's International (Pvt.) Ltd vs. Aeroflot Russian International Airline, (2018 SCMR 662)***. The relevant portion is reproduced hereunder:-

> *"8. The principles which emerge from the analysis of above case-law can be summarized as under:-*
>
> *(1) When a claim or matters in dispute are referred to an arbitrator, he is the sole and final Judge of all questions, both of law and of fact.*
>
> *(2) The arbitrator alone is the judge of the quality as well as the quantity of evidence.*
>
> *(3) The very incorporation of section 26-A of the Arbitration Act requiring the arbitrator to furnish reasons for his finding was to enable the Court to examine that the reasons are not inconsistent and contradictory to the material on the record. Although mere brevity of reasons shall not be ground for interference in the award by the Court.*
>
> *(4) A dispute, the determination of which turns on the true construction of the contract, would be a dispute, under or arising out of or concerning the contract. Such dispute would fall within the arbitration clause.*
>
> *(5) The test is whether recourse to the contract, by which the parties are bound, is necessary for the purpose of determining the matter in dispute between them. If such recourse to the contract is necessary, then the matter must come within the scope of the arbitrator's jurisdiction.*
>
> *(6) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract.*
>
> *(7) The authority of an arbitrator is derived from the contract and is governed by the Arbitration Act. A deliberate departure or conscious disregard of the contract not only manifests a disregard of his authority or misconduct on his part but it may tantamount to mala fide action and vitiate the award.*

UNCERTIFIED

(8) If no specific question of law is referred, the decision of the arbitrator on that question is not final however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally.

(9) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. An arbitrator acting beyond his jurisdiction is a different ground from an error apparent on the face of the award.

(10) The Court cannot review the award, nor entertain any question as to whether the arbitrators decided properly or not in point of law or otherwise.

(11) It is not open to the Court to re-examine and reappraise the evidence considered by the arbitrator to hold that the conclusion reached by the arbitrator is wrong.

(12) Where two views are possible, the Court cannot interfere with the award by adopting its own interpretation.

(13) Reasonableness of an award is not a matter for the Court to consider unless the award is preposterous or absurd.

(14) An award is not invalid if by a process of reasoning it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion.

(15) The only exceptions to the above rule are those cases where the award is the result of corruption or fraud, and where the question of law necessarily arises on the face of the award, which one can say is erroneous.

(16) It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion.

(17) It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award.

(18) The Court does not sit in appeal over the award and should not try to fish or dig out the latent errors in the proceedings or the award. It can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is incorrect.

(19) The Court can set aside the award if there is any error, factual or legal, which floats on the surface of the award or the record.

(20) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable.

UNCERTIFIED

The arbitrator is a tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not do so he can be set right by the Court provided the error committed by him appears on the face of the award.

(21) There are two different and distinct grounds; one is the error apparent on the face of the award, and the other is that the arbitrator exceeded his jurisdiction. In the latter case, the Courts can look into the arbitration agreement but in the former, it cannot, unless the agreement was incorporated or recited in the award.

(22) An error in law on the face of the award means that one can find in the award some legal proposition which is the basis of the award and which you can then say is erroneous.

(23) A contract is not frustrated merely because the circumstances in which the contract was made are altered.

(24) Even in the absence of objections, the Award may be set aside and not made a Rule of the Court if it is a nullity or is prima facie illegal or for any other reason, not fit to be maintained; or suffers from an invalidity which is self-evident or apparent on the face of the record. The adjudicatory process is limited to the aforesaid extent only.

(25) While making an award rule of the Court, in case parties have not filed objections, the Court is not supposed to act in a mechanical manner, like a post office but must subject the award to its judicial scrutiny.

(26) Though it is not possible to give an exhaustive definition as to what may amount to misconduct, it is not misconduct on the part of the arbitrator to come to an erroneous decision, whether his error is one of fact or law and whether or not his findings of fact are supported by evidence.

(27) Misconduct is of two types: "legal misconduct" and "moral misconduct". Legal misconduct means misconduct in the judicial sense of the word, for example, some honest, though erroneous, breach of duty causing miscarriage of justice; failure to perform the essential duties which are cast on an arbitrator; and any irregularity of action which is not consistent with general principles of equity and good conscience. Regarding moral misconduct; it is essential that there must be lack of good faith, and the arbitrator must be shown to be neither disinterested nor impartial, and proved to have acted without scrupulous regard for the ends of justice.

(28) The arbitrator is said to have misconducted himself in not deciding a specific objection raised by a party regarding the legality of extra claim of the other party.

UNCERTIFIED

(29) some of the examples of the term "misconduct" are:

(i) if the arbitrator or umpire fails to decide all the matters which were referred to him;

(ii) if by his award the arbitrator or umpire purports to decide matters which have not in fact been included in the agreement or reference;

(iii) if the award is inconsistent, or is uncertain or ambiguous; or even if there is some mistake of fact, although in that case the mistake must be either admitted or at least clear beyond any reasonable doubt; and

(iv) if there has been irregularity in the proceedings.

(30) Misconduct is not akin to fraud, but it means neglect of duties and responsibilities of the Arbitrator."

14. It is manifest from above that while deciding objections to an arbitral award, the Court may examine the legality and reasoning of the award, but it cannot substitute its own opinion for that of the arbitrator, nor can it reframe the findings or alter the scope and jurisdiction of the arbitral process. A perusal of the Impugned Judgment reveals that BEOE has failed to point out any instance amounting to misconduct, non-performance of duty, excess of jurisdiction, procedural impropriety, error apparent on the face of the record, or omission by the learned Arbitrator to decide any issue referred for determination. No concrete or legally cognizable defect has been demonstrated which could justify interference with the arbitral award.

15. The only instance pointed out by the learned counsel for the appellant which could be tenable to some extent is nevertheless misconceived. The learned counsel submitted that the learned Trial Court failed to appreciate that the contract between the parties contains no provision for payment of compensation or markup on delayed payments and that in the absence of such a stipulation, the learned Arbitrator lacked jurisdiction to award interest or compensation, and the power to grant post-award interest vests exclusively in the Court under section 29 of the Arbitration Act, 1940, rendering the Arbitrator's direction for markup wholly without lawful authority. For ease section 29 is reproduced hereunder:-

*"**29. Interest on awards.** Where and in so far as an award is for the payment of money the Court may in the decree order interest, from*

UNCERTIFIED

> *the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree."*

16. Section 29 of the Arbitration Act, 1940 delineates the exclusive statutory competence of the Court with respect to the grant of interest after an arbitral award has been made rule of the Court. The provision is attracted only *"where and in so far as an award is for the payment of money"*, thereby confining its operation to monetary awards and excluding declaratory or non-pecuniary reliefs. The phrase *"the Court may in the decree order interest"* is of decisive significance: it vests a discretionary power solely in the Court, exercisable at the stage of passing the decree, and not in the arbitrator. Consequently, any direction by an arbitrator awarding interest from the date of the decree or thereafter travels beyond arbitral jurisdiction and is without legal sanction. The statutory scheme envisages this task to the judicial discretion of the Court, to be exercised reasonably and in accordance with the facts of each case. Read as a whole, section 29 reinforces the settled principle that an arbitrator may award interest only if empowered by contract, usage, or law, however, post-decree interest is a matter of judicial prerogative, and cannot be assumed or predetermined by the arbitrator.

17. Thus, it transpires that section 29 of the Arbitration Act, 1940 does not permit the arbitrator to award interest prior to the decree unless there is an express or implied agreement between the parties to the contrary. It is evident from the record that in the instant matter clause 60.10 of the Contract entitled the contractor to the payment of compensation or interest. For ease the afore-referred clause is reproduced below:-

> *"The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other terms of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 28 days after such Interim Payment Certificate has been delivered to the Employer's Project Executing Agency and verified/ recommended for payment by the Employer's Project Executing Agency to the Employer, or, in the case of the Final Certificate referred to in Sub Clause 60.8, within 56 days after such Final Payment Certificate has been delivered to the Employer's Project Executing Agency and verified/ recommended for payment by the Employer's Project Executing Agency to the Employer. In the event of the failure of the Employer*

UNCERTIFIED

> *to make payment within the times stated due to circumstances beyond his control, the Employer shall not pay to the Contractor any interest or compensation of any sort."*

18. A plain, textual, and purposive reading of Clause 60.10, reveals that the wording itself permits and supports the inference that an arbitrator may award mark-up in appropriate cases. First, the clause does not employ language of an absolute or blanket exclusion. It does not state that *"no interest or mark-up shall be payable in any event"* or that *"the arbitrator shall have no power to award interest."* Instead, the exclusion is expressly conditional, operating only *"in the event of the failure of the Employer to make payment within the times stated due to circumstances beyond his control."* By necessary implication, where the delay is not attributable to such circumstances, the exclusion does not apply. This conditional drafting inherently leaves room for the award of interest or compensation where the Employer is in default. Secondly, the structure of Clause 60.10 reinforces this interpretation. The primary obligation is the timely payment of certified amounts within fixed periods. The interest-exclusion proviso is a narrow exception appended to this obligation. As an exception, it must be strictly construed. Reading the clause as an absolute bar on mark-up would invert the contractual scheme by converting a limited proviso into the dominant rule, which is impermissible in law.

19. It is well settled that an award of an arbitrator should be read as a whole. In the case of ***Jajodia (Overseas) (Pvt.) Ltd. vs. Industrial Development Corporation of Orissa Ltd. (1993 (2) SCC 106),*** it was held that "*an award has to be read as a whole and harmoniously"*. Thus, the observations and findings of the learned arbitrator in the award, and in particular on issue No. 10 thereof, have to be read as a whole. When the award dated 28.11.2022 is so read, it becomes clear that the learned Arbitrator awarded interest in accordance with the contractual framework agreed between the parties and set out in clause 60.10 *(ibid)*. The primary obligation in clause 60.10 is the timely payment of certified amounts within fixed periods and the interest-exclusion proviso is a narrow exception appended to this obligation. As an exception, it must be strictly construed.

UNCERTIFIED

20. To interpret Clause 60.10 as an unconditional bar would lead to an unreasonable and commercially untenable result, enabling the BEOE to delay payment without consequence even where the delay is wholly attributable to its own acts or omissions. Such an interpretation would offend the principle that contracts must be construed to give them business efficacy and to avoid outcomes that defeat their commercial purpose. It is well settled that Court while making an award rule of the Court does not partake the character of an appeal or review, and is not empowered to reappraise the evidence or reassess the conclusions reached by the arbitrator on merits. The jurisdiction of the Court is confined to examining whether the award is vitiated by any legal infirmity, and in the absence of such defect, judicial interference is impermissible. Thus, the learned counsel for the appellant's argument is devoid of merit.

21. Upon an overall appraisal of the record and the reasoning adopted by the learned trial court, it is evident that the award was rightly made rule of the Court, as no violation of law, procedural defect, or excess of authority was established. The trial court acted strictly within the bounds of its lawful jurisdiction, applied the correct legal principles, and justifiably declined to refuse confirmation of the award. Since the objections raised by the appellant were devoid of merit and failed to disclose any ground recognized under the Arbitration Act, 1940, the learned trial court was fully justified in dismissing the same.

22. In view of the foregoing discussion, the instant appeal bears no merit, therefore, the same is **dismissed** and the Impugned Judgment is hereby upheld.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 09.12.2025

JUDGE

M. YAHYA KHAN NIAZI, J.L.C

UNCERTIFIED