Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Civil Revision No.209 of 2025

EFU General Insurance Ltd. through its duly authorized Officer

Versus

Secure Logistic Group, Islamabad and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
03.	**24.06.2025.**	**M/s Ali Ibrahim, Ambreen Khalid and Barrister Faiza Asad, Advocates.**

The petitioner is aggrieved by order dated 22.04.2025, pursuant to which an application filed by the petitioner in terms of Section 28 of the Arbitration Act, 1940 **("Arbitration Act")**, for enlargement of time for rendering an award has been dismissed.

2. The learned counsel for the petitioner submitted that the application has been dismissed on the basis that the petitioner does not have *locus standi* and it is for the Arbitrator to file an application for extension of time. He submitted that the order does not prohibit any of the parties to the arbitration agreement to file such application and it is customary that such application is filed by the parties and not by the Arbitrator. He submitted that the exact question came before the Punjab and Haryana High Court, which in the matter of ***Aftab Ahmed Khan v. The Installment Supply, Private Ltd., and others*** ***(1961 ILR 503)*** held that an application in terms of Section 28 of the Arbitration Act, 1940, was to be filed by any party. He further relied on ***Narsing Das Hiralal Limited and another v. Bisandayal Satyanarain Firm (A.I.R. 1954 Ori 29)***, ***Aniruddh***

Asharam Vyas v. Deepak Kantilal Ghiya Lnind ***(1970 GUJ 37)*** and ***J.K. Enterprise v. Win Medicare Limited (1994 (45) DRJ)*** for the proposition that the court had wide discretion in terms of Section 28 of the Arbitration Act to enlarge time for making an award which power was to be liberally exercised to facilitate dispute resolution through arbitration.

3. The Court had issued notices to the respondents. The office report stated that the respondents had been served. Despite such service nobody appeared on behalf of the respondents, who were preceded against ex-parte by order dated 11.06.2025.

4. Through the impugned order the application of the petitioner filed under section 28 of the Arbitration Act, 1940, has been dismissed in summary fashion on the sole basis that such application ought to have been filed by the Arbitrator. Section 28 of the Arbitration Act, which confers on the Court the power to enlarge time for making an Award, provides the following:

> *"28. Power to Court only to enlarge time for making award:-*
>
> *(1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.*
> *(2) Any provisions in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."*

The plain language of section 28 makes it evident that there is no explicit or implicit requirement that an application for enlargement of time be filed by an Arbitrator. The language of section 28(1) does not specify as to who would have

standing to move the Court for enlargement of time for making an award. The role of an Arbitrator in arbitration proceedings is akin to that of a private judge selected by the parties to adjudicate a dispute that has arisen between them. It is the parties who, pursuant to their mutual agreement, decide that their disputes would be resolved through arbitration. And it is by virtue of the consent of the parties that arbitration takes place. It is thus that section 28(2) makes a provision for enlargement of time for making an Award by the Arbitrator with the consent of the parties. But in the scheme of the Arbitration Act it is the parties to the dispute that are in the driving seat in terms of triggering the arbitration process and agreeing to the various modalities and the nature of disputes that would be resolved through arbitration. Within such scheme and in the absence of any statutory language to the contrary, it would be antithetical to assume that it is only an Arbitrator that is qualified to seek enlargement of time for making an Award in terms of section 28 of the Arbitration Act. Concluding so would be reading into the language of section 28 something that is not provided there.

5. In ***Aftab Ahmed Khan v. The Installment Supply, Private Ltd., and others*** ***(1961 ILR 503)*** the matter before the Punjab and Haryana High Court was whether it was only the Arbitrator who could move the Court under section 28 of the Arbitration Act. It was held that, *"a bare reading of this section would indicate that it does not mention as to who should move the Court to enlarge the time for making the Award. Thus, a party to the arbitration agreement*

is not debarred from filing an application under the section … if the award has not yet been made and the time for making the same had expired, then any or both of the parties to the arbitration agreement would be interested in getting the time enlarged, in order to get their disputes settled by the Arbitrator."

6. In ***Corporation Engineering (Pvt.) Limited v. Pak Arab Refinery Limited*** ***(2002 CLC 836 Karachi)*** the Sindh High Court dealt with a matter where a party to the arbitration agreement had filed an application for extension of time acknowledging the right of a party to do so. Similarly the Sindh High Court in ***Sulaiman Ebrahim H. Jaffer v. Karachi Cooperative Housing Societies Union Ltd.*** ***(PLD 1963 (W.P.) Karachi 316)*** also dealt with a matter where a party had filed an application for extension of time. In numerous such cases the entitlement of a party to the arbitration agreement to file an application for extension of time in terms of section 28 of the Arbitration Act has been implicitly acknowledged.

7. This Court has no manner of doubt that in terms of section 28 of the Arbitration Act any party to the arbitration agreement has legal standing to move the Court for enlargement of time. This conclusion is supported by the plain text of section 28 of the Arbitration Act. Such entitlement also makes sense in view of the scheme of the Arbitration Act where the parties to the arbitration agreement must agree to refer their disputes to arbitration and consequently, have an interest in having such dispute resolved through arbitration, and a further interest not have

the arbitration proceedings frustrated due to expiry of the prescribed period within which an award is to be issued ordinarily.

8. The related question that arises is the manner in which the Court is to exercise powers for purposes of section 28 of the Arbitration Act, especially where the request for extension of time is not a joint request made by both parties to the arbitration agreement. It was held by the Lakhnow High Court in ***Narsing Das Hiralal Limited and another v. Bisandayal Satyanarain Firm*** ***(A.I.R. 1954 Ori 29)*** that the Court has wide discretion and jurisdiction to enlarge the time limit for making an award. The same principle was reiterated by Gujrat High Court in ***Aniruddh Asharam Vyas v. Deepak Kantilal Ghiya Lnind*** ***(1970 GUJ 37)*** wherein it was observed that the very fact that the parties to an arbitration agreement did not consent to enlargement of time manifested the existence of a controversy or dispute amongst them, which needed to be resolved by the Court. The Dehli High Court considered the matter in ***J.K. Enterprise Versus Win Medicare Limited*** ***(1994 (45) DRJ)*** and held that, *"the powers of the court under section 28 are vast and wide. It can enlarge the time before or after the time of making the award has expired; and after the award has been made; and even against the intention expressed in the arbitration agreement not to extend the time. Similarly, there is no restriction to grant extension of time even suo moto, but it has to be exercised with judicial discretion. In case the delay has occasioned on account of conduct of the party in seeking adjournments after adjournments the Court would not favour*

enlargement of time for the person should not take advantage of his own wrong."

9. The same principle is reflected in the jurisprudence that has evolved in the context of section 28 of the Arbitration Act in Pakistan. In ***Engro Chemicals Pakistan Ltd. v. Trading Corporation of Pakistan*** ***(1996 CLC 344 Karachi)*** the Sindh High Court clarified that it was not only once that extension of time could be granted by the Court, but such extension could be sought and granted on more than one occasion, *"but such discretion should be exercised judicially and not capriciously."* It was held by the Supreme Court in ***Civil Aviation Authority, Karachi v. Wrist Consultation (Pvt.) Ltd.*** ***(1998 SCMR 2393)*** that unless a party was found liable for delay that was 'material', 'detrimental' or otherwise 'unconscionable' the Court had ample jurisdiction and discretion to grant an extension to extend time under section 28 of the Arbitration Act, which extension ought not be denied merely on the basis of technicalities. In ***Corporation Engineering (Pvt.) Ltd. v. Pak Arab Refinery Ltd.*** ***(2002 CLC 836)*** the Sindh High Court considered the case law that had evolved guiding the exercise of discretion by a Court in granting extension of time. While relying on ***J.W. Oliver v. Mian Dost Muhammad*** ***(AIR 1935 Lahore 191)*** and ***Pakistan v. Gayer & Co., Karachi*** ***(PLD 1964 Karachi 3)*** it was held that the discretion vested in a Court to grant extension of time ought not be exercised in favour of a person who had adopted dilatory tactics.

10. It is not for this Court to determine whether or not extension is to be granted in the present matter as the said question must be determined in the first instance by the Civil Court. Relevant case law has been re-produced above to highlight that while considering an application for grant of extension a Court must not be mired by technicalities and must regulate its discretion judiciously with a view to facilitating the arbitration proceedings, but without enabling any party to derive any benefit from its own wrongful or dilatory conduct.

11. It has already been held above that there is no legal requirement that an application for grant of extension of time in terms of section 28 of the Arbitration Act must be filed by an Arbitrator. Any party to arbitration proceedings is competent to file such application and consequently, the impugned order dated 22.04.2025 is not sustainable in the eyes of law and is therefore ***set aside***. The application filed by the petitioner will be deemed pending before the Civil Court, which will decide the same judiciously, through a reasoned order, in accordance with law, after affording the parties an opportunity to be heard. The instant petition is ***allowed*** in the above terms.

(BABAR SATTAR)
JUDGE

M.A. Raza