JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

WRIT PETITION NO. 2795 OF 2025

M/S REKO DIQ MINING COMPANY

VERSUS

NATIONAL INDUSTRIAL RELATIONS COMMISSION AND OTHERS

Petitioner by:	M/s. Makhdoom Ali Khan and Khwaja Aizaz Ahsan, Advocates.
Respondent No. 2 by:	M/s. Kamran Murtaza and Hassan Kamran, Advocates.
Assisted by:	Muhammad Fahad, Research Intern, and Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**16.09.2025**

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INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioner has assailed the order dated 02.07.2025 **("Impugned Order"),** passed by the learned Full Bench, National Industrial Relations Commission **("NIRC")**, Islamabad, whereby the petitioner's appeal against the order dated 27.01.2025 passed by the learned Single Member, NIRC, Quetta, was dismissed.

2. The facts, in brief, of the instant writ petition are that the petitioner company i.e., Reko Diq Mining Pvt. Ltd., is carrying out mining activities near Reko Diq town in District Chagai, Balochistan, and operates across Pakistan having its offices in Islamabad, Karachi, and Quetta. The petitioner company offered employment to respondent No. 2/Rubina Musa **("respondent")** as a Safety Officer by way of an offer of employment dated 02.10.2023 issued from its registered office at Islamabad, and the same was accepted by her on 04.10.2023. The said employment contract contains a clause stipulating an

exclusive jurisdiction, i.e., clause 14, which states that any dispute arising from the employment would be governed by the laws applicable in the Islamabad Capital Territory and subject to the exclusive jurisdiction of courts in Islamabad. Subsequently, the petitioner company terminated the respondent's employment vide Notice of Termination dated 30.09.2024, against which the respondent filed her grievance petition before learned member, NIRC at Quetta. The petitioner company raised an objection to the jurisdiction of learned member, NIRC, Quetta and filed an application under Order VII Rule 10 of CPC, on the basis of exclusive jurisdiction clause in the employment contract. The learned member dismissed the application filed by the petitioner company vide order dated 27.01.2025, holding that the cause of action had arisen in Balochistan and that clause 14 is in violation of section 28 of the Contract Act, 1872. The petitioner company assailed the order of the learned member at Quetta before the learned Full Bench, NIRC, Islamabad, which was dismissed vide the Impugned Order.

3. The learned counsel for the petitioner company contended that the Impugned Order is illegal, without jurisdiction, and void *ab initio*, as it disregards the binding effect of the exclusive jurisdiction clause contained in the offer of employment, and both the learned member at Quetta, and the learned Full Bench, NIRC at Islamabad failed to appreciate that the parties had expressly agreed to limit the jurisdiction to the courts in Islamabad, and that such a clause is enforceable under settled law. It was argued that the relationship between the parties is governed by the written employment contract, which unequivocally contains an exclusive jurisdiction clause, whereby the parties consciously and voluntarily agreed that any dispute arising out of or in connection with the employment shall be adjudicated by a specifically designated forum i.e., the courts at Islamabad. The learned counsel further submitted that the law is now well-settled that where two or more forums are otherwise competent to entertain a dispute, the parties are legally entitled to select one such forum by mutual agreement, and such a choice neither offends section 28 of the Contract Act, 1872 nor violates any principle of public policy. The learned counsel further contended that the rejection of the petitioner company's application under Order VII Rule 10 CPC, and the subsequent dismissal of its appeal, amounts to proceedings *coram non judice*, as the learned member at Quetta lacked territorial

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jurisdiction in view of the contractual stipulation. The learned counsel also asserted that the learned Full Bench erred in holding that learned member at Quetta possessed jurisdiction and failed to appreciate the binding nature of the exclusive jurisdiction clause. The learned counsel placed reliance on the judgments of superior Courts including *State Life Insurance Corporation vs. Muhammad Saleem, (1987 SCMR 393), Kadir Motors, Rawalpindi vs. National Motors Ltd., (1992 SCMR 1174), and Eden Builders (Pvt.) Ltd. vs. Muhammad Aslam, (2022 SCMR 2044),* wherein it has been held that where two or more courts possess jurisdiction, the parties may by mutual agreement confer exclusive jurisdiction on one of them, and such an arrangement neither offends section 28 of the Contract Act, 1872 nor violates sections 9 or 20 of the Code of Civil Procedure, 1908.

4. In amplification of the above, the learned counsel for the petitioner company submitted that the learned Full Bench failed to apply binding precedents and erred in holding that where multiple forums possess concurrent jurisdiction, the party may choose the convenient one. It was further submitted that considerations of convenience or hardship cannot override a valid contractual stipulation and the learned Full Bench, while recognizing the validity of the employment contract, selectively disregarded its exclusive jurisdiction clause, rendering the Impugned Order inconsistent and unsustainable. Learned counsel also submitted that this Court alone possesses jurisdiction to entertain the present petition, as the exclusive jurisdiction clause designates Islamabad as the proper forum and the Impugned Order was passed by a Federal entity functioning within Islamabad. Reliance was placed on *Taufiq Asif vs. General (Retd.) Pervez Musharraf*, *(PLD 2024 SC 610)*.

5. Conversely, the learned counsel for the respondent supported the Impugned Order by contending that the jurisdiction of NIRC is statutory in nature, conferred by the Industrial Relations Act, 2012, **("IRA 2012")** and cannot be ousted by a private contractual arrangement. He further submitted that the dispute in question arises out of the employer–employee relationship and squarely falls within the definition of industrial disputes and unfair labour practices under the IRA 2012. In such matters, statutory remedies provided for workmen cannot be curtailed or nullified through contractual clauses. The

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learned counsel argued that in view of the concurrent findings recorded by the forums below of competent jurisdiction, this Court should not exercise its supervisory jurisdiction. Lastly it was prayed that the instant petition be dismissed and the proceedings before the learned member, NIRC at Quetta be allowed to continue.

6. I have given anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance and considered the case-laws.

7. Tersely, the petitioner company's application under Order VII Rule 10, CPC was dismissed by the learned member, NIRC at Quetta, holding that the cause of action had arisen in Balochistan and that the clause 14 is in violation of section 28 of the Contract Act, 1872. The petitioner company assailed the order of the learned member, NIRC at Quetta before the learned Full Bench, NIRC, Islamabad, in an appeal, which was dismissed vide the Impugned Order. It is manifest that the petitioner company does not dispute the jurisdiction of the NIRC per se, and the primary contention advanced on behalf of the petitioner company is that, by virtue of clause 14 of the employment contract, the parties had contractually confined themselves to the exclusive jurisdiction of the courts at Islamabad. The gist of the petitioner's case, therefore, rests upon the enforceability and legal effect of the said exclusive jurisdiction clause. While considering this background, the grounds raised by the parties and the plethora of precedents cited, the following questions need adjudication by this Court:-

> *i) Whether, in the presence of Clause 14 of the employment contract conferring exclusive jurisdiction upon the courts at Islamabad, the learned Single Member of NIRC, Quetta is barred from exercising jurisdiction?*
>
> *ii) Whether the existence of an exclusive jurisdiction clause in an employment contract could oust or restrict the statutory jurisdiction of the NIRC, Quetta Bench, especially where the cause of action arose in Balochistan and the Commission otherwise derives jurisdiction under the Industrial Relations Act, 2012?*

8. This Court shall now address the foremost question requiring determination which relates to jurisdiction. It is now well settled that jurisdiction is not a mere technicality but the very foundation upon which the legality of

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judicial or quasi-judicial proceedings rests. It is, therefore, imperative to examine, at the outset, whether the learned Single Member, NIRC at Quetta, possessed lawful authority to entertain the grievance petition of the respondent, in light of clause 14 of the employment contract, which is reproduced as under:-

> *"14. This Agreement and your employment with the Company shall be governed by the laws of Pakistan as in force in the Islamabad Capital Territory. Any disputes arising between the parties in relation to any aspect of your employment shall be subject to the exclusive jurisdiction of the courts in Islamabad."*

9. There is no cavil to the settled proposition of law that where two or more forums are otherwise competent to entertain a dispute, the parties may, by mutual agreement, restrict themselves to one such forum for the adjudication of their disputes. Such clauses, when they merely regulate the choice amongst available forums and do not oust the jurisdiction of all courts, are respected in order to uphold the sanctity of contract and the autonomy of the parties. This legal position has been explicated by the Hon'ble Supreme Court in ***State Life Insurance Corporation vs. Muhammad Saleem, (1987 SCMR 393)*** as:-

> *"... It is evident from a plain reading of these provisions that there is no absolute exclusion of jurisdiction under section 9 or section 20 of the Code of Civil Procedure nor there is any violation of the provisions of section 28 of the Contract Act when two or more Courts have jurisdiction to try a suit and the parties mutually agree to choose or take their dispute to one of them. The civil Courts exercise their jurisdiction under the Code of Civil Procedure. If they do not possess such jurisdiction under the Code it cannot be conferred on them through a mutual agreement of the parties to a dispute. But in a situation where two or more Courts have jurisdiction to try a suit under the Code of Civil Procedure, then an agreement between the parties that any dispute arising between them shall be tried only by one of such Courts could not be considered contrary to public policy as it would neither contravene the provisions laid down in section 28 of the Contract Act nor would it violate in any manner the provisions of section 9 or section 20 of the Code of Civil Procedure."*

The upshot of the above is that an exclusive jurisdiction clause is valid where the parties select one specific forum among available competent forums, and it is invalid if it seeks to vest jurisdiction where it does not exist. Thus, it transpires that a jurisdiction clause is a contractual stipulation, where the parties to the

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contract choose or select one particular forum out of two or more available forums, and the same is permissible.

10. The principle laid down in State Life Insurance Corporation *(ibid.)* has been reaffirmed by the Hon'ble Supreme Court in its several judgments and the choice of the parties regarding jurisdiction clause has been upheld to maintain the sanctity of the contract. In the case of ***Messrs. Kadir Motors (Regd.), Rawalpindi vs. Messrs National Motors Ltd., Karachi***, ***(1992 SCMR 1174)*** the Hon'ble Supreme Court observed:-

> *" ... The main argument regarding clause 27 of the agreement has been sufficiently explained above and in view of the dictum of this court in case of State Life Insurance Corporation of Pakistan v. Rana Mohammed Saleem 1987 SCMR 393 diameter is clinched, the agreement is legal and not hit by section 28 of the Contract Act and the parties are bound to follow it."*

Similarly, in ***Eden Builders (PVT.) Lmited, Lahore vs. Muhammad Aslam and others, (2022 SCMR 2044)*** the Hon'ble Supreme Court held:-

> *" 6. ... We are intentionally not discussing the merits of the case so that it may not prejudice the case of any of the parties as limited question for consideration by this court is whether clause 25 of the agreement which confers exclusive jurisdiction to the civil court Lahore - is binding upon the parties are not. It is settled proposition of law that the parties cannot by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction. No doubt a party cannot be restrained to enforce his legal right in ordinary court of law but if by mutual agreement between the parties a particular court having territorial and pecuniary jurisdiction is selected for the determination of their dispute, there appears to be nothing wrong or illegal in it or opposed to public policy (Reference may be made to the case of Messrs Kadir Motors (Regd). Rwalpindi v. Messrs National Motors Ltd., Karachi and others (1992 SCMR 1174)."*

There are numerous precedents of the superior courts, including ***Redtone Telecommunications Pakistan (Pvt.) Limited and 3 others. vs. Federation of Pakistan and 11 others, (PLD 2014 Sindh 601), Global Quality Foods Pvt. Ltd. vs. Hardee's Food Systems, INC., (Pld 2016 Sindh 169)***, *and* ***Tahir Tariq Textile Mills (Pvt.) Ltd. and 2 others vs. National Development Finance Corporation, (2003 CLD 1546),*** which have taken similar approach on the exclusive jurisdiction clause in a contract. This Court is in agreement that the principle enunciated by the superior Courts on the subject is now well settled. It

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bears emphasis, however, that what the superior Courts have consistently given effect to is to preserve the sanctity of contract, by enforcing the contractual obligations voluntarily undertaken by the parties so as to avoid breach thereof. Nonetheless, in all the aforesaid precedents, the enforcement of exclusive jurisdiction clauses was premised primarily upon the principle of freedom of contract between the contracting parties. The relative bargaining position of the contracting parties and the nature of the contract itself were neither in issue nor examined, as the disputes in those cases were predominantly commercial in character. These distinguishing features assume significance in the present case, where the contractual relationship emanates from an employment arrangement, and considerations of dominance and unequal bargaining power cannot be ignored or brushed aside.

11. The general rule of contract in common law is founded upon the principle of freedom of contract, that parties are ordinarily the best judges of their own interests and that, where they freely and voluntarily enter into a contract, the primary function of the courts is to enforce to what has been agreed. Traditionally, it has been regarded as immaterial that one party may enjoy a stronger economic position than the other, for inequality of bargaining power, by itself, was not considered sufficient to justify judicial intervention. However, over time, the courts of England, Canada, and India have recognized that this principle is not absolute. In particular, where inequality of bargaining power and the presence of oppressive, unfair or unjust contractual terms coexist, for imbalance of power alone is insufficient unless it is itself apparent in contractual stipulations. The imbalance of bargaining power is such that meaningful choice is illusory, the courts have applied the doctrine of unconscionability to prevent enforcement of terms that are oppressive, unfair, or unjust. This does not undermine the sanctity of contract as a general rule; rather, it reflects a measured judicial approach to exceptional circumstances where strict adherence to contractual autonomy would undermine fairness and administration of justice.

12. The freedom of contract and volition exercised by contracting parties, do not operate uniformly across all categories of contracts, but varies with the nature of the contract, the relationship of the parties, and the circumstances attending its construction. For instance, in case of commercial contracts the obligations are

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familiar to the commercial parties, and the principles of construction require the courts to have regard to that commercial background, the context of contract and the circumstances of the parties, and consideration against such background and context would lead to an unfair result, which will eventually defeat the sanctity of contract. Commercial stipulations in a contract are adhered to according to their gist, since the parties are usually in equal position to bargain and set out the terms consciously, thus, their choice of forum is respected and endorsed. In employment contracts the position of one of the party is not always on equal footing, a party to such contract, though consenting to it, may not give a free consent because that party is exposed to such influence from the other party, which may deprive that party to exercise its own judgment. The position of one party to dominate the will of the other party results in an unfair advantage, which directly effects the choice of the parties.

13. The question that, therefore, arises for consideration is the extent to which a court may justifiably intervene to decline enforcement of an exclusive jurisdiction clause invoked by a party. Undoubtedly, the threshold for such intervention must be high, for ordinarily the Courts do not permit a party to resile from its contractual obligations. However, such intervention becomes warranted where refusal to do so is necessary to prevent oppression, to curb misuse of judicial process, or to restrain a dominant party from securing an unfair advantage under the guise of contractual freedom. Jurisprudence, particularly in English law, recognizes that equitable intervention is justified in cases where contractual terms are unconscionable, having been imposed as a result of unequal bargaining power, or where one party exploits its economic dominance over the necessity of the other. In such circumstances, the sanctity of contract yields to the overarching principles of fairness and justice, especially where enforcement of the term would perpetuate inequality, oppression or result in manifest injustice. Lord Denning was the originator of the theory of inequality of bargaining power and expounded upon it in ***Gillespie Brothers and Co. Ltd. vs. Roy Bowles Transport Ltd., (1973) 1 QB 400***, while dealing with the question whether an indemnity clause in a contract on its true construction relieved the indemnified from liability arising to the indemnified from his own negligence, Lord Denning said:-

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> *"The time may come when this process of 'construing' the contract can be pursued no further. The words are too clear to permit of it. Are the courts then powerless? Are they to permit the party to enforce this unreasonable clause, even when it is so unreasonable, or applied so unreasonably, as to be unconscionable? When it gets to this point, I would say, as I said many years ago: there is the vigilance of common law which, while allowing freedom of contract watches to see that it is not abused."*

14. The doctrine of unconscionability was further explained in ***Uber Technologies INC. and others vs. David Heller and others, (2020 SCMR 1279) [Supreme Court of Canada]***, in which the respondent was engaged as a food-delivery driver in Ontario, Canada through Uber's digital platform. As a pre-condition to accessing the application, he was required to accept, without any scope for negotiation, a standard-form services agreement which mandated that all disputes be resolved through mediation and arbitration seated in the Netherlands. When the respondent initiated proceedings alleging violations of statutory employment protections, Uber sought a stay of the action on the basis of the arbitration clause. The Court of Appeal declined to enforce the arbitration clause, holding that the agreement was unconscionable owing to the inequality of bargaining power between the parties and the prohibitive nature of the arbitral process, which hindered access to justice. This Court is mindful of the fact that the aforesaid judgment emanates from a different statutory and jurisdictional framework and does not directly govern the controversy at hand, however, reliance is placed on it to the limited extent that it elucidates the doctrine of unconscionability, particularly in the context of standard-form contracts imposed upon individuals who possess little or no real bargaining power. The majority view of **Abella And Rowe JJ.**, explains that:-

> *"[60] ... Unconscionability, in our view, is meant to protect those who are vulnerable in the contracting process from loss or improvidence to that party in the bargain that was made (citations ...). Although other doctrines can provide relief from specific types of oppressive contractual terms, unconscionability allows courts to fill in gaps between the existing "islands of intervention" so that the "clause that is not quite a penalty clause or not quite an exemption clause or just outside the provisions of a statutory power to relieve will fall under the general power, and anomalous distinctions . . . will disappear" (S. M. Waddams, The Law of Contracts (7th ed. 2017), at p. 378).*

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[61] Openly recognizing a doctrine of unconscionability also promotes fairness and transparency in contract law (citations ...). There is value in recognizing that "judges are and always will be concerned with unfairness, with arrangements that work harshly and with conduct that is oppressive" (Swan, Adamski and Na, at p. 925). The unconscionability doctrine allows courts to "focus expressly on the real grounds for refusing to give force to a contractual term said to have been agreed to by the parties" (Hunter, at p. 462). As Dickson C.J. observed in Hunter:
In my view, there is much to be gained by addressing directly the protection of the weak from over-reaching by the strong. ... There is little value in cloaking the inquiry behind a construct that takes on its own idiosyncratic traits, sometimes at odds with concerns of fairness. [p. 462]

[69] One common example of inequality of bargaining power comes in the "necessity" cases, where the weaker party is so dependent on the stronger that serious consequences would flow from not agreeing to a contract. This imbalance can impair the weaker party's ability to contract freely and autonomously. When the weaker party would accept almost any terms, because the consequences of failing to agree are so dire, equity intervenes to prevent a contracting party from gaining too great an advantage from the weaker party's unfortunate situation. As the Privy Council has said, "as a matter of common fairness, 'it [is] not right that the strong should be allowed to push the weak to the wall'" (citations…).

[87] Respecting the doctrine of unconscionability has implications for boiler-plate or standard form contracts. As Karl N. Llewellyn, the primary drafter of the Uniform Commercial Code, explained: Instead of thinking about "assent" to boiler-plate clauses, we can recognize that so far as concerns the specific, there is no assent at all. What has in fact been assented to, specifically, are the few dickered terms, and the broad type of the transaction, and but one thing more. That one thing more is a blanket assent (not a specific assent) to any not unreasonable or indecent terms the seller may have on his form, which do not alter or eviscerate the reasonable meaning of the dickered terms. The fine print which has not been read has no business to cut under the reasonable meaning of those dickered terms which constitute the dominant and only real expression of agreement, but much of it commonly belongs in."

15. Similarly, in our neighbouring jurisdiction, in ***Central Inland Water Transport Corporation Ltd. and another vs. Brojo Nath Ganguly and another (AIR 1986 Supreme Court 1571)***, a company entered into a scheme of arrangement with a government-owned Corporation. Under the said scheme, an officer of the company was given the option either to accept employment with

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the Corporation or, in the alternative, to leave service upon receipt of a nominal amount by way of compensation. The service rules of the Corporation empowered it to terminate the services of its officers by issuing three months' notice and the services of the petitioner were terminated in exercise of this power. Aggrieved thereby, the petitioner challenged the said rule as being arbitrary and violative of Article 14 of the Constitution of India, contending that a term incorporated in a contract of employment, even when entered into with a private employer, which is unfair, unreasonable or unconscionable, is liable to be declared invalid in law. Since the impugned rule formed part of the contract of employment, its validity was required to be tested on the settled principles of the law of contract. The Supreme Court of India held that:-

> *"**90**. ... This principle is that the courts will not enforce and will; when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. ... the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties...where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where the man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where both parties are businessmen and the contract is a commercial transaction."*

16. In a contract such as employment contract or a clause of the contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or result of an imbalanced position, judicial review cannot be ousted. Similarly, where a choice is made by the parties regarding the jurisdiction, such choice can be subject to the inequality of bargaining power of contracting parties. Employment contracts are often marked by unequal bargaining power because the employer generally occupies a dominant position, while the employee has little or no real opportunity to negotiate the terms of engagement, and only to sign the dotted line of the contract

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in order to secure his livelihood. In such circumstances, courts are not confined to formal reading of contractual clauses but are required to examine the fairness and reasonableness of enforcing such clauses. In ***Snehalkumar Sarabhai vs. Economic Transport Organisation and others, (AIR 1975 Gujrat 72)***, the Court observed:-

> *"The ouster clause can operate as estoppel against the parties to the contract. It cannot tie the hands of the court and denude it of the power to do justice. It is no doubt true that ordinarily courts would respect the agreement between the parties which is borne out of the meeting of their minds and out of considerations of convenience. But the Courts are not obliged to do so in every case. ... a new approach to this question deserves to be made for the ouster clause is calculated to operate as an engine of oppression and as a means to defeat the ends of justice ... In this big drop the question assumes importance whether the stipulation to confine the jurisdiction in one of the courts robs the excluded court of its power to try the suit. Now such a stipulation may be legal and binding to the parties. That, however, does not mean that it divests the Court of its jurisdiction. The plaintiff cannot insist that a Court other than the stipulated Court should try the suit. But the court on its part is not bound by the stipulation. The stipulation can be ignored by the excluded court which otherwise possesses jurisdiction if it is considered to be oppressive having regard to the surrounding circumstances including the stakes involved."*

17. The analysis and discussion so far may be briefly recapitulated. Freedom of contract remains the general rule, founded upon the assumption that parties bargain on an equal footing and with informed consent; however, this presumption weakens where the circumstances demonstrate otherwise. While a contractual term specifying one of several competent courts as the forum for adjudication is ordinarily enforceable, the courts are not precluded from examining the surrounding facts and attending circumstances. Where enforcement of such a clause would operate oppressively, unfairly, or inequitably, courts may justifiably decline to give effect to it. Consequently, an agreement restricting jurisdiction to courts of a particular territory does not, in all cases, operate to oust the jurisdiction of other competent courts conferred by law, especially where adherence to such a clause would result in injustice. Applying the principles discussed above to the facts of the instant matter, it transpires that the parties are at an unequal footing with the petitioner company placed in a clear dominant position and the respondent in a situation essentially

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having no bargaining power to negotiate. Moreover, it is manifest that the standard-form contract furnished by the petitioner company afforded the respondent no real scope for negotiation. The document merely required the respondent to append his signature, name, and date on the dotted lines, leaving no room for modification or meaningful consent to its terms. For reference the relevant part is reproduced:-

> *"**Acknowledgement***
>
> *I acknowledge my receipt and understanding of this contract of employment and accept the terms and conditions outlined which are applicable to my employment with Barrick. I declare that the information I have provided to Barrick is true and accurate and I have no known condition or illness which would prevent me carrying out the inherent requirements of the position.*
>
> *Barrick reserves the right to withdraw this contract of employment if not received signed acceptance of this contract within 7 days after the date on this contract. The signed acceptance must be returned to the HR Department to Richard Barley at nida.yousuf@rekodiqmc.com.*
> *Signature: _____*
> *Name: _____*
> *Date: _____."*

18. It is evident from the above that there exists clear inequality of bargaining power between the petitioner company and the respondent while entering into the contract. Such arrangement reinforces the conclusion that the contract was executed in circumstances indicative of unequal bargaining power. The employment contract formed part of a standard-form agreement, in respect of which the respondent had no meaningful opportunity to negotiate any of its terms. Her only option was to either accept the contract as presented or forgo the employment altogether, as evidenced by the requirement to merely append her signature and return the document to the Human Resource department of the petitioner company. This lack of real choice underscores the inequality of bargaining power between the parties and assumes significance while examining the enforceability of the contractual stipulations contained therein.

19. This Court shall now address the second question framed. At this juncture, it is necessary to examine the statutory and constitutional framework within which the IRA 2012 operates. The Eighteenth Amendment to the Constitution enhanced the legislative authority of the Provinces by deleting the Concurrent

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Legislative List, whereby previously both the Parliament and the Provincial legislatures could legislate on the subjects enumerated therein. Through this amendment the Labour Ministry and subjects related to trade unions and labour disputes were devolved upon the Provinces. However, the Federal Government when confronted with the challenge that there are certain companies or establishments having trans-provincial industrial activities, where many people have been employed as workers or workmen, a single federal and more effective forum was established to address the settlement of industrial disputes. For the reason that class of companies having trans-provincial industrial units and that their employers and employees are not dragged into endless litigation on the question of jurisdiction as to whether the grievance petition in such like cases be taken cognizance of by the Labour Court of the Province or by NIRC, which has been established and constituted under the provision of section 53 of IRA 2012. NIRC has the exclusive jurisdiction to deal and adjudicate the matter of unfair labour practices on the part of the employers or workmen as well as; to redress individual grievances of workman within the meaning of sections 31, 32 and 33 and industrial disputes as provided by section 54 read with section 57 of the IRA 2012. The IRA 2012 is designed to regulate such matters by providing a specialised federal forum for adjudication of industrial disputes, unfair labour practices, and related issues falling within its statutory ambit.

20. The question that now arises is whether the NIRC at Quetta is a distinct forum for purposes of jurisdiction, or merely a seat through which the NIRC exercises its nationwide statutory jurisdiction under the IRA 2012. Therefore, it is necessary to understand the statutory context regarding the jurisdiction of NIRC and its benches for determination of the present controversy. The NIRC is a federal commission constituted to exercise jurisdiction as conferred by the IRA 2012, and relevant regulations regarding the procedure and functions of NIRC are provided under the National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 **"(Regulations 2016)"** which are reproduced hereunder as:-

> ***"3. Head Office.__*** *The Commission shall have its head office at Islamabad.*
>
> ***4. Administrative Powers of Chairman.__***

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(a) The Chairman shall have the power to post a Member of the Commission anywhere in Pakistan.

(b) The Chairman shall, on reasons to be recorded in writing, have the power to withdraw any matter from a bench and transfer to other bench for disposal.

(c) The Chairman shall have the power to create new posts and abolish the old posts, to change nomenclature and upgrade or downgrade any post, provided the expenditure is met from within the allocated budget of the Commission."

21. A bare perusal of Regulation 4(a) of the Regulations 2016 reflects that it empowers the Chairman to post a member of the Commission anywhere in Pakistan, the establishment of benches at various locations across the country is a matter of administrative convenience and access to justice, intended to facilitate the effective discharge of its statutory functions. A careful examination of the statutory framework governing the Commission makes it evident that the Commission being a federal statutory body, designed the sittings of its members at different places is to be flexible and facilitative in nature to adequately address the disputes of trans-provincial establishments. The location where the Commission sits, therefore, is not determinative of the source or extent of its authority, which remains traceable solely to the statute. Any other interpretation would render the functioning of the Commission unduly rigid and would defeat the legislative intent of providing a practical mechanism for the resolution of industrial disputes across the country. A bench does not derive jurisdiction independently, nor does its geographical location alter the source of the jurisdiction exercised, it is the power of Chairman of NIRC to post a member of the commission anywhere in Pakistan. The seat of learned member at Quetta, therefore, does not constitute a separate or distinct forum; it is merely a bench of the NIRC through which the Commission exercises its federally conferred jurisdiction. Proceedings conducted at Quetta remain proceedings of the NIRC itself, and the territorial jurisdiction of IRA 2012 extends to whole of Pakistan. Jurisdiction flows from the statute creating the forum, not from the place where the forum happens to sit. So long as the subject-matter of the dispute falls within the statutory mandate of the NIRC, the exercise of jurisdiction through any of its duly constituted seats/benches cannot be questioned on territorial grounds alone. The contention that the learned member at Quetta lacks jurisdiction on account of its territorial location is, therefore, misconceived.

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22. Even otherwise, if the learned counsel for the petitioner company's argument is accepted, it would lead to a wholly inequitable situation where the respondent's fundamental right of access to justice will be suspended or presumed to be waived. Furthermore, the IRA 2012 is enacted to protect labour rights, regulate industrial relations, and provide specialised and effective remedies for grievances arising in the employment sphere of the trans-provincial establishments. The statutory scheme is effectively structured to this effect. Allowing employers to circumvent the statutory forum by embedding exclusive jurisdiction clauses in standard-form employment contracts would defeat the very purpose of the Act and undermine the legislative intent. Such stipulations must be interpreted in line with the overarching legal framework and any attempt to circumvent the fundamental and statutory rights considerations would render such a contract or stipulation unenforceable. Judicial scrutiny in such matters must, therefore, be informed not only by contractual principles but also by the protective object of labour legislation.

23. In conclusion, while parties may, by agreement, select one among available forums, such a stipulation cannot operate to oust statutory jurisdiction, nor can it be enforced where it is unconscionable and a tool of oppression. In the context of employment contracts particularly standard-form agreements, the Court is under a duty to examine the real nature of consent and may decline to enforce jurisdiction clauses that undermine access to justice or defeat statutory protections. Furthermore, where jurisdiction flows from a federal statute such as the IRA 2012, and is exercised through a duly constituted bench of the NIRC, the place where the bench sits or any contractual stipulation to the contrary cannot curtail or negate such statutory authority. The jurisdiction of the NIRC emanates from the statute itself and not from territorial considerations or private agreements. Although this Court ultimately concurs with the conclusion reached by the forum below, it is clarified that the reasoning and principles adopted therein do not correctly reflect the applicable legal principles, and the present decision rests on the grounds elaborated above.

24. For the foregoing reasons, this Court is satisfied that the NIRC, acting through its Quetta Bench, lawfully exercised jurisdiction in the matter. The objections raised by the petitioner company on the basis of the exclusive

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jurisdiction clause are, therefore, untenable in light of the doctrine of unconscionability and the governing statutory scheme.

25. Accordingly, this petition is hereby **dismissed**. The proceedings before the NIRC shall continue. No order as to costs.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 15.12.2025.

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APPROVED FOR REPORTING.

M. YAHYA KHAN NIAZI, L.C.

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