THE HIGH COURT OF SINDH, KARACHI

J.M. No. 05 of 2025
[The Resources Group International Ltd. v. Muhammad Ziaullah Khan Chishti & others]

J.M. No. 23 of 2025
[The Resources Group International Ltd. v. Muhammad Ziaullah Khan Chishti]

Applicant	:	The Resources Group International Limited through M/s. Arshad M. Tayebaly, Sameer Tayebaly, Aitzaz Manzoor Memon and Ammar Suria, Advocates (in both JMs).
Respondent 1	:	Muhammad Ziaullah Khan Chishti son of Attaullah Khan Chishti through M/s. Barrister Sarfaraz Ali Metlo, Barrister Fayaz Ali Metlo, Faiz Ali Sheeraz Metlo, Athar Hussain, Advocates, along with M/s. Muhammad Yaqoob Mahar, Farooq Ali, Adeela Ansari, Afshan Buriro, Atiya Manzoor, Tahira Narejo, Shakira Tariq, Advocates (in both JMs).
Respondents 2-4	:	Nemo (in JM No. 05/2025).
Respondent 5	:	Pakistan Stock Exchange Limited through Mr. Ahmad Joyo, Advocate. (in JM No. 05/2025).
Dates of hearing	:	07-08-2025, 01-09-2025, 06-10-2025, 13-10-2025, 20-10-2025, 27-10-2025, 03-11-2025 & re-hearing on 19-08-2026.
Date of decision	:	31-08-2026

ORDER

Adnan Iqbal Chaudhry J. - These are applications for recognition and enforcement of a foreign arbitral award under section 6 of The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 **[2011 Act]**, read with the United Nations Convention on the Recognition & Enforcement of Foreign Arbitral Awards, 1958 **[New York Convention]**. The award was given in two stages by the Judicial Arbitration and Mediation Center (JAMS), New York, USA **[arbitrator]**, allowing the claim of The Resource Group

International Ltd. **[TRGIL-Applicant]** against Muhammad Ziaullah Khan Chishti [Respondent No.1 in JM No. 05/2025 and sole Respondent in JM No. 23/2025, hereinafter **'Respondent'**]. The dispute between the parties had arisen from a Preferred Stock Purchase Agreement dated 04.10.2005 **[SPA]** which deals *inter alia* with shares held by Respondent in TRGIL and TRG Pakistan Ltd. **[TRGP]**. Introduction of the parties and gist of the dispute is set out in the recital to the award which may be read as part of this order.

<u>The foreign arbitral award and ensuing proceedings</u>

2. On 27.01.2025, the arbitrator gave an *'Interim Award'* declaring *inter alia* that pledge of TRGP-shares by Respondent in Pakistan was in breach of the share-transfer restriction in clause 8.6(a) of the SPA; enjoining the Respondent from committing such breach, while exempting TRGP-shares purchased by him between 04.10.2005 and 10.10.2022; and requiring him to redeem the pledged shares as and when the injunction operating in Pakistan in respect of those shares is lifted by the Court.[1]

3. On 30.01.2025, the Applicant filed JM No. 05/2025 for recognition and enforcement of the *Interim Award*. An application for temporary injunction was also made to restrain the Respondent in terms of the award. An interim order to that effect was passed by this Court on 31.01.2025.

4. In the meantime, the Applicant moved the arbitrator for corrections in the award, *inter alia* for calling it a *'Partial Final Award'* instead of an *'Interim Award'*. The application was allowed, and on 04.02.2025, the arbitrator reissued the *Interim Award* as *"Partial Final Award"* while observing *"that this Partial Final Award wholly replaces and*

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[1] The injunction operates in Suit No. 19/2023 filed by the Applicant against Respondent and the JS Group to stay transfer of TRGP-shares pledged by Respondent with the JS Group.

renders ineffectual the Interim Award that was issued by the Tribunal on January 27, 2025."

5. The *Partial Final Award* determined as follows:

> *"V. Partial Final Award*
> *Based on the analysis and conclusions set forth above, the Tribunal makes the following Partial Final Award:*
>
> *1) Claimant's affirmative claim that Respondent breached Section 8.6(a) of the SPA has been established and is therefore GRANTED.*
>
> *2) Claimant's request for declaratory relief in relation to Respondent's breach of Section 8.6(a) of the SPA is GRANTED, and the Tribunal accordingly hereby declares that: (1) the Tribunal has adopted Claimant's proffered interpretation of Section 8.6(a) both as a matter of law and in light of the relevant parol and other extrinsic evidence; and (2) Respondent's Transfers of Other Shareholders Shares – for which he neither sought nor received AIG's prior written approval - violate what the Tribunal has concluded are the plain and unambiguous terms of Section 8.6(a) of the SPA.*
>
> *3) Claimant's request for declaratory relief in relation to Respondent's existing pledges of TRG-I and TRG-P shares is GRANTED, to the extent the Tribunal hereby declares that: (1) all of Respondent's existing pledges on his TRG-P and/or TRG-I shares violate the Transfer Restrictions established within Section 8.6(a) of the SPA, because Respondent did not seek or receive AIG's prior written approval for those pledges; and (2) if and when the Pakistani Court lifts or modifies the current injunction, Respondent is affirmatively required to specifically perform his obligations under Section 8.6(a) of the SPA by immediately releasing all existing pledges on his TRG-P and/or TRG-I shares.*
>
> *4) Claimant's request for a permanent injunction against Respondent is GRANTED, to the extent that the Tribunal hereby enjoins Respondent from any future non-compliance with or other violation of the clear and unambiguous Transfer Restrictions established by Section 8.6(a) of the SPA, as they have been interpreted herein. However, the sale restrictions within Section 8.6(a) shall not apply in relation to any TRG-P shares currently owned by Respondent that were purchased between October 4, 2005 and October 10, 2022 – which, the Tribunal clarifies, Respondent may freely sell.*

> *5) To the extent that Claimant has requested that the Tribunal grant any relief or remedy with respect to Ms. Pobereskin or any TRG-I and/or TRG-P shares that she currently owns, or that she acquires in the future, that request is DENIED given the lack of jurisdiction of the Tribunal over Ms. Pobereskin.*
>
> *6) Respondent's affirmative counterclaim/request for declaratory relief in relation to, inter alia, Section 8.6(a) of the SPA is DENIED, as are any and all other affirmative counterclaims, defenses, and/or requests for relief lodged by Respondent in this proceeding.*
>
> *7) The Parties shall proceed in accordance with Section (IV), above, with respect to Claimant's prospective application of an award of attorneys' fees and costs pursuant to Section 10.16 of the SPA.*
>
> *8) All other affirmative claims and/or requests for relief are DENIED.*
>
> *9) Finally, for the avoidance of doubt, the Tribunal clarifies that this Partial Final Award fully resolves all substantive issues in this proceeding other than Claimant's prospective request for an award of attorney's fees and costs pursuant to Section 10.16 of the SPA. Accordingly, to the extent necessary, either Party may submit this Partial Final Award to the Pakistani Court, which the Tribunal understands has issued the current injunction against Respondent in aid of this proceeding."*

6. Since the *'Partial Final Award'* had replaced the *'Interim Award'*, the Applicant moved CMA No. 2382/2025 to amend JM No. 5/2025 accordingly.

7. Before the arbitrator, the Applicant had also made a claim against Respondent under clause 10.16 of the SPA for attorney's fees and legal costs incurred by the Applicant in arbitration. As noted in Part V-7 of the Partial Final Award, such claim had to be put-off by the arbitrator for a separate hearing. After such hearing, the arbitrator issued the *"Final Award"* dated 22.04.2025, which included an award for attorney's fee and legal costs to the Applicant. The *Final Award* also incorporated a clarification to Part V-4 of the *Partial Final Award* made earlier on the Respondent's application.

8. The *Final Award* thus made following additions and changes to Part V of the *Partial Final Award*:

> <u>Following was added to para 4</u>:
>
> *"The term "freely sell" as used with respect to the foregoing equitable "carve out" that is applicable to any TRG-P shares that Respondent acquired between October 4, 2005 and October 10, 2022, is properly understood to mean that Respondent's ability to sell those shares is subject to no contractual restrictions(s) whatsoever, including any otherwise established within Sections 8.6(b) and 8.6(c) of the SPA."*
>
> <u>Para 7 was replaced as follows</u>:
>
> *"Claimant's request for an award of attorney's fees and costs against Respondent pursuant to Section 10.16 of the SPA is GRANTED in the total amount of $ 9,053,606.34. Further, pursuant to JAM Rule 31(c), Respondent is liable to Claimant for the $ 1,798.57 in JAMS fees that Claimant paid on Respondent's behalf in conjunction with the release of this Final Award."*
>
> <u>Para 9 was replaced as follows:</u>
>
> *"Finally, for the avoidance of doubt, the Tribunal clarifies that this Final Award fully resolves all substantive issues in this proceeding. Accordingly, to the extent necessary, either Party may submit this Final Award to the Pakistani Court, which the Tribunal understands has issued the current injunction against Respondent in aid of this proceeding."*

9. For recognition and enforcement of the *Final Award* dated 22.04.2025, insofar as it included an award for attorney's fees and legal costs, the Applicant filed JM No. 23/2025 on 24.04.2025.

10. While these JMs were pending, the Applicant made a petition to the United States District Court, Southern District of New York **[Court of SDNY]** to confirm the *Final Award* as per Article 75 of the New York Civil Practice Law and Rules. The Respondent filed a cross-petition to vacate the *Final Award*. By judgment dated 20.06.2025, the Court of SDNY dismissed the Respondent's cross-petition and confirmed the *Final Award*.

11. The Respondent then filed a motion before the Court of SDNY to stay its judgment dated 20.06.2025 on the ground that the High Court of Sindh had passed judgment in JCM No. 12/2025 (also dated 20.06.2025) under section 286 of the Companies Act, 2017, declaring that TRGP and the Applicant acting in collusion, had used TRGP's money to buy its own shares, thus violating section 86 of the Companies Act. It was submitted before the Court of SDNY that judgment in JCM No. 12/2025 had exposed the Applicant's claim before the arbitrator to be perjurious. The contention was rejected and the Court of SDNY dismissed the Respondent's motion by order dated 11.08.2025. The Applicant then moved the Court of SDNY to enforce/execute its judgment against the Respondent, which application is said to be pending.

12. It appears that on 04.07.2025, the Supreme Court of Bermuda also passed judgment to enforce the *Final Award* in favor of the Applicant.

<u>Submissions by counsel</u>

13. M/s. Sarfaraz Ali Metlo and Fayaz Ali Metlo, learned counsel for Respondent objected to these JMs with the following submissions:

(i) that JM No. 05/2025 is not maintainable against those respondents who were not party to the arbitration;

(ii) that in view of clauses 10.11, 10.14 and 10.16 of the SPA between the parties, only the law of the State of New York and the Courts at New York have jurisdiction to enforce the award (reliance placed on *State Life Insurance Corporation v. Muhammad Saleem*, 1987 SCMR 393); that unless a foreign judgment made in terms of the award is brought to Pakistan for execution under section 44-A CPC, the Courts at Pakistan do not have jurisdiction;

(iii) that even if this Court concludes that Courts at Pakistan have territorial jurisdiction, the JMs could only be filed before the

Lahore High Court because the Respondent has been arrayed in the JMs as a resident of Lahore;

(iv) that as per clause 10.16 of the SPA, only a *'Final Arbitration Award'* could be enforced, whereas JM No. 05/2025 was filed to enforce an *'Interim Award'*;

(v) that both JMs were filed prior to the waiting period of 14 days stipulated in Rule 24(k) of the JAMS Comprehensive Arbitration Rules and Procedures, 2021 **[JAMS Rules]**, therefore not binding in terms of Article V-1(e) of the New York Convention; that the JMs are thus liable to be rejected under Order VII Rule 11 CPC as the cause of action cannot be substituted by an amendment application. Reliance was placed on *Karachi Electric Supply Corporation v. Muhammad Shahnawaz* (PLD 2017 Sindh 23) and *Province of East Pakistan v. Nawab Khawaja Hasan Askary* (PLD 1971 SC 82);

(vi) that since the Applicant had moved the Court of SDNY to confirm and enforce the award at New York, it had elected a judicial forum for enforcement, therefore both JMs for enforcing the award at Karachi were not maintainable;

(vii) that the arbitrator misinterpreted the transfer restriction in clause 8.6(a) of the SPA by failing to appreciate the distinction between "transfer" of shares and "pledge" of shares;

(viii) that Rule 24(g) of the JAMS Rules provided that only a reasonable attorney's fees and legal costs may be awarded by the arbitrator to the prevailing party, but instead, the arbitrator awarded a confiscatory sum against the Respondent;

(ix) that in view of sections 35 and 35-A CPC, enforcement of the award for an exorbitant attorney's fees and legal costs would be contrary to the public policy of Pakistan and ought to be refused under Article V-2(b) of the New York Convention;

(x) that given the judgment passed by this Court in JCM No. 12/2025, recently sustained before the Supreme Court of Pakistan, it is apparent that the Applicant's claim before the arbitrator was actuated with *malafides*; thus, recognition and enforcement of the resulting award would again be contrary to the public policy of Pakistan;

(xi) that insofar as the award restrains the Respondent from transferring TRGP-shares, such restraint operates only against 10,684,034 shares as the remaining shares were purchased by Respondent during the period excluded from the restraint.

14. To the aforesaid objections and submissions, M/s. Arshad Tayebaly and Sameer Tayebaly, learned counsel for the Applicant responded as follows:

(i) that clauses of the SPA whereby the parties agreed to the jurisdiction of Courts at New York, do not, and cannot oust the New York Convention which envisages that a foreign arbitral award can be enforced in any jurisdiction where the award-debtor holds assets; that since the Respondent holds assets in Pakistan, the Courts at Pakistan have jurisdiction under the 2011 Act;

(ii) that the High Court of Sindh has territorial jurisdiction as the direction in the award to redeem pledged shares can be enforced at Karachi where those shares are pledged; and that the award for attorney's fees and costs can also be enforced at Karachi where Respondent holds assets, including shares in TRGP, a company having registered office at Karachi;

(iii) that the award dated 27.01.2025 was titled as *'Interim Award'* only because the Applicant's claim for attorney's fees and costs had yet to be determined by the arbitrator, whereas, for all other issues between the parties it was a final award, and for this reason the arbitrator corrected it to read *'Partial Final Award'*;

therefore, JM No. 05/2025 is very much maintainable; that the application to amend JM No. 05/2025 was necessitated by corrections made by the arbitrator to the *Interim Award*; that in any case, the Respondent's objection that an interim award cannot be enforced, became redundant when the arbitrator issued the *Final Award*;

(iv) that while the JMs were filed prior to the 14-day period envisaged in Rule 24(k) of the JAMS Rules, that period has since gone by and therefore the objection is moot;

(v) that since the New York Convention envisages that a foreign award can be enforced in multiple jurisdictions, the fact that the Applicant has also initiated enforcement proceedings at New York to recover attorney's fees and costs, does not oust the jurisdiction of this Court under the 2011 Act, especially when the awarded amount has yet to be recovered;

(vi) that objections to the arbitrators interpretation of clause 8.6(a) of the SPA and to the quantum of attorney's fees and costs awarded by him, both go to the merits of the award and cannot be considered while exercising jurisdiction under the 2011 Act; rather, as observed by the Supreme Court in *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd.* (2024 SCMR 640), this Court must proceed with a pro-enforcement bias;

(vii) the argument that judgment passed by this Court in JCM No. 12/2025 has a bearing on the award, has already been rejected by the Court of SDNY;

(viii) that the public policy argument taken by Respondent is misconceived; and that it has already been held by the Supreme Court in *Orient Power Company (Pvt.) Ltd v. Suit Northern Gas Pipelines Ltd.* (2021 SCMR 1728) that the ground of public policy under Article V-2(b) of the New York Convention is to be construed narrowly.

Opinion of the Court

Decision on preliminaries:

15. CMA No. 3142/2025 in JM No. 05/2025 is by Respondent under Order VI Rule 17 CPC. The prayer is for correcting the number of TRGP-shares mentioned in his pleadings that are hit by the restraint imposed by the award. It is submitted by Respondent that an incorrect number was inadvertently mentioned. Though the Applicant has filed a counter-affidavit, the fact of the matter is that the correct number of effected shares will have to be deduced from the record. Therefore, without prejudice to the Applicant's contention, I am inclined to allow the application.

16. Learned counsel for Respondent had submitted at the outset that JM No. 05/2025 is not maintainable against other respondents who are not party to the award *i.e.* the Securities & Exchange Commission of Pakistan, the Central Depository Company of Pakistan Ltd., the National Clearing Company of Pakistan Ltd. and the Pakistan Stock Exchange Ltd. With that, I agree. Section 6(2) of the 2011 Act also stipulates that an award shall be treated as binding "on the persons as between whom it was made." Therefore, JM No. 05/2025 is not maintainable against Respondents 2 to 5.

Objections to territorial jurisdiction

17. The first objection by Respondent's counsel to the territorial jurisdiction of the High Court of Sindh was that under clauses 10.11, 10.14 and 10.16 of the SPA, the parties had agreed to submit to the domestic law of the State of New York and to the exclusive jurisdiction of the Courts at New York even for purposes of enforcing an arbitration award between them. It was therefore submitted that the subject award was not a foreign arbitral award and not enforceable under the 2011 Act. The clauses of the SPA referred to read:

> "***10.11 Governing Law.*** *This agreement shall be governed by and construed in accordance with the domestic laws of the State of New York,*

without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

10.14 Submission to Jurisdiction. *Subject to Section 10.16, any and all suits, legal actions or proceedings arising out of this agreement shall be brought in the Courts of the State of New York or the United States District Court for the Southern District of New York and each party hereby submits to and accepts the exclusive jurisdiction of such Courts for the purpose of such suits, legal actions or proceedings ……*

10.16 Arbitration. *All disputes and controversies arising under or in connection with this Agreement shall be settled by arbitration conducted in accordance with the arbitration procedures described in this Section 10.16. Except as otherwise provided in the JAMS' Comprehensive Arbitration Rules and Procedures as in effect from time to time (the "Rules"), the arbitration procedures described in this Section 10.16 and any Final Arbitration Award (as defined below shall be governed by, and shall be enforceable pursuant to, the Uniform Arbitration Act as in effect in the State of New York from time to time. Arbitral proceeding initiated hereunder shall take place in New York, NY or another place agreeable to the parties to the dispute, before a single arbitrator who is agreeable to such parties. If the parties are unable to agree on an arbitrator within a reasonable period of time, an arbitrator shall be selected in accordance with the Rules. The arbitration (including discovery) shall be conducted under the Rules, as the same may be modified by any written agreement between the parties to the dispute. The arbitrator shall conduct the arbitration in a manner so that the final result, determination, finding, judgment or award determined by the arbitrator (each, a "Final Arbitration Award") is made or rendered as soon as practicable, and the parties to the dispute shall use reasonable efforts to cause a Final Arbitration Award to occur within ninety (90) days after the arbitrator is selected. Any Final Arbitration Award shall be final and binding upon each party to this Agreement, and there shall be no appeal from or reexamination of any Final Arbitration Award, except in the case of fraud or perjury or misconduct by the arbitrator prejudicing the rights of any party to the dispute or to correct manifest clerical errors. A Final Arbitration Award may be enforced in any state or federal court having jurisdiction over the subject matter of the dispute. In order to encourage the amicable and rapid resolution of all issues that may arise hereunder without resort to arbitration, and to prevent frivolous and unreasonable claims and actions by any Party, in every case in which a matter is submitted to arbitration pursuant to this Section 10.16, the non-prevailing party in such arbitration shall pay to the prevailing party the full costs of the arbitration, the full and reasonable costs incurred by the prevailing party in preparing for and participating in the arbitration (including reasonable attorney's fees and expert fees)."*

18. As apparent from clause 10.11 of the SPA, the choice of the domestic law of the State of New York is for governing the *"agreement"* between the parties *i.e.* for construing the rights and obligations arising under the SPA. Those rights and obligations have already been determined by the award as per the domestic law of the State of New

York. Therefore, clause 10.11 of the SPA does not figure in the objection to the jurisdiction of this Court.

19. While clause 10.14 of the SPA is an agreement to submit to the exclusive jurisdiction of the Courts at New York, that is *"subject to"* clause 10.16 which is the arbitration clause. In clause 10.16, the part dealing with enforcement of an award reads: *"any Final Arbitration Award …… shall be enforceable pursuant to the Uniform Arbitration Act as in effect in the State of New York from time to time"*, and that *"A Final Arbitration Award may be enforced in any state or federal court having jurisdiction over the subject matter of the dispute"*. Clause 10.16 itself envisages that the award may be enforced in any State of the USA. Therefore, the argument that the award can only be enforced in New York is not even derived from the SPA. Having said that, clauses 10.14 and 10.16 clearly intend to deal only with those award-enforcement proceedings that are filed in the USA. No-where did the parties agree not to invoke jurisdiction of a Court of a Contracting State pursuant to the New York Convention. Therefore, the argument that the parties had contracted out of the Convention or the 2011 Act, does not fly. Reliance on the case of *State Life Insurance Corporation* (1987 SCMR 393) is misplaced here. That said, I do not discuss the effect even if there had been an agreement to forego enforcement proceedings in a Contracting State.

20. The ancillary argument that the subject award is not a foreign award, also has no force. From the standpoint of a Pakistani Court all that needs to be seen is whether the award falls within the definition of 'foreign arbitral award' in section 2(e) of the 2011 Act *i.e.* whether it is an award made in a Contracting State to the New York Convention or such other State as may be notified by the Federal Government in the official Gazette. The USA is a Contracting State to the Convention. As observed by the Supreme Court in *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd.* (2024 SCMR 640): "Nothing more is required to make an award the 'foreign arbitral award' for applicability of the provisions of the 2011 Act." In other words, even

if the subject award is enforceable in the USA as a domestic award, it is nevertheless a foreign arbitral award for purposes of recognition and enforcement in Pakistan under the 2011 Act.

21. The second objection to the territorial jurisdiction of the High Court of Sindh was that the Applicant itself has arrayed the Respondent as a resident of Lahore, and therefore, it was submitted, that even if the award can be enforced in Pakistan, only the Lahore High Court would have territorial jurisdiction in terms of section 20(a) CPC.

22. Though the 2011 Act does not stipulate how territorial jurisdiction of the Court thereunder would be determined, section 3(3)(a) thereof provides:

> "In the exercise of its jurisdiction, the Court shall, follow the procedure <u>as nearly as may be</u> provided for the Code of Civil Procedure, 1908 (Act V of 1908)."

The words "as nearly as may be" in the above provision, in my view, signify that proceedings under the 2011 Act are not to proceed as a suit under the CPC, and the machinery provisions of the CPC are to be employed 'as nearly as may be' to further the pro-enforcement scheme of the 2011 Act and New York Convention rather than to become an impediment to it. A somewhat similar view was taken by a learned Division Bench of the Islamabad High Court in *China International Water & Electric Corp. v. National Highway Authority* (2023 CLD 1400).

23. Under the CPC, territorial jurisdiction of a court is determined by applying sections 16 to 20. Learned counsel for Respondent acknowledged that given the subject matter of the award before us, it is only section 20 CPC that is relevant for present purposes. Clause (c) of section 20 CPC then gives an option to sue in the Court within local limits of whose jurisdiction the cause of action, wholly or in part, arises. Applying section 20 CPC 'as nearly as be' to an application under section 6 of the 2011 Act, the Court need only to look to the award and see whether a cause of action for its recognition and enforcement arises

to the Applicant within the Court's territorial jurisdiction. In my view, it does. The declarations and restraint issued by the award against the Respondent *vis-a-vis* breach of the SPA by pledging TRGP-shares, can be pressed by the Applicant for recognition at Karachi where that pledge exists. For the same reason, the obligation imposed by the award upon Respondent to redeem those shares, can also be pressed at Karachi. Furthermore, to recover the attorney's fees and costs awarded by the arbitrator, it is pleaded by the Applicant that Respondent's shareholding in TRGP at Karachi constitutes a material asset.

<u>Scope of defences under the 2011 Act & New York Convention - the stare decisis</u>

24. The scheme of the New York Convention, which is implemented in Pakistan *via* the 2011 Act, and the scope of defenses to the recognition and enforcement of a foreign arbitral award, had been discussed by the Supreme Court of Pakistan in *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd.* (2024 SCMR 640) **[Taisei]**. The following principles came to be settled.

24.1 For the recognition and enforcement of foreign arbitral awards, the Contracting States of the New York Convention had agreed upon a pro-enforcement approach. Article III of the Convention thus reads:

> "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles."

Such pro-enforcement approach, also referred to as 'pro-enforcement bias', manifests in section 6(1) of the 2011 Act which mandates:

> "6. Enforcement of foreign arbitral award.-- (1) Unless the Court pursuant to section 7, refuses the application seeking recognition and enforcement of a foreign arbitral award, the Court shall recognise and enforce the award in the same manner as a judgment or order of a court in Pakistan."

24.2 Pursuant to the New York Convention, section 7 of the 2011 Act restricts the grounds for refusing recognition and enforcement of a foreign arbitral award to only those specifically listed in Article V of the Convention. These grounds set out a "maximum level of control" a Contracting State may exert over a foreign arbitral award.

24.3 Under Article V of the New York Convention, the ultimate burden of proof remains on the party opposing recognition and enforcement of the award. It is, therefore, only when the party against whom the award is invoked discharges this burden that a challenge may be sustained against the recognition and enforcement of an award.

24.4 Under Article V of the New York Convention, the grounds for refusing recognition and enforcement of an award are permissive, not mandatory. The exceptions therein are exhaustive and construed narrowly in view of the public policy favoring the enforcement of foreign arbitral awards. In other words, the Court may recognize and enforce the award even if some of the exceptions exist.

24.5 The New York Convention eliminated the requirement of "double exequatur" *i.e.* proceedings in a Contracting State for recognition and enforcement of a foreign arbitral award are not dependent upon obtaining a decision for confirmation of the award in the country where the award was issued (the first "exequatur"), neither on a decision for confirmation at the place of enforcement of the award (the second "exequatur").

Whether these JMs are defective:

25. Learned counsel for Respondent raised two objections to submit that these JMs ought to be rejected under Order VII Rule 11 CPC.

The first objection was that as per clause 10.16 of the SPA, only a *"Final Arbitration Award"* could be enforced, whereas JM No. 05/2025 was filed to enforce an *"Interim Award"*. For the second objection, learned counsel invoked Article V(1)(e) of the New York Convention *viz.* that recognition and enforcement of the award may be refused if it "has not yet become binding on the parties". In that regard, reliance was placed on Rule 24(k) of the JAMS Rules, which stipulated that an award will be considered final for purposes of enforcement *"fourteen (14) calendar days after service if not requested for a correction is made, or as of the effective date of service of a corrected Award."* Apparently, both these JMs were filed before the expiry of 14 days. It was thus submitted that such premature filing called for rejection under Order VII Rule 11 CPC.

26. It is manifest that the award dated 27.01.2025 was titled *"Interim Award"* only because the Applicant's claim for attorney's fees and costs had yet to be determined by the arbitrator, whereas, for all other issues between the parties it was in fact a '*Final Arbitration Award*' within the meaning of clause 10.16 of the SPA. This much had been specified in the Part V-9 of the *Interim Award* itself. For this reason, the arbitrator corrected the title '*Interim Award*' to read *"Partial Final Award"*. Therefore, the first ground taken for rejecting JM No. 05/2025, has no force. Resultantly, there is no point in discussing whether an interim award is, or is not otherwise enforceable under the 2011 Act.

27. Regards the second objection, that was raised by the Respondent much after the 14 days of Rule 24(k) of the JAM Rules had already gone by. Even if the JMs were filed prematurely, those had matured soon thereafter. As held by the Supreme Court in *Managing Director, Oil & Gas Development Company Ltd. v. Syed Najmul Hassan Naqvi* (2005 SCMR 890), where legal proceedings instituted prematurely are not rejected at the outset and become mature while pending, then those cannot be dismissed on the ground that those were instituted prematurely. Therefore, the award is 'binding on the parties' within the meaning of Article V(1)(e) of the New York Convention. Resultantly, the second ground taken for rejecting the JMs also fails.

28. With the foregoing, the objection taken to CMA No. 2382/2025, the application to amend JM No. 5/2025 to cater to the *Partial Final Award,* also fails. The amendment is sought due to corrections made to the award by the arbitrator in the intervening period, not to bring in a cause of action already existing at the time or to assert a new right

arising after institution of the *lis*. Therefore, the cases of *Muhammad Shahnawaz* (PLD 2017 Sindh 23) and *Nawab Khawaja Hasan Askary* (PLD 1971 SC 82) cited by Respondent's counsel are distinguishable.

Defense of doctrine of election – effect of confirmation and enforcement proceedings at New York:

29. Learned counsel for Respondent had then invoked the doctrine of election to argue that once the Applicant invoked the jurisdiction of the Court of SDNY for confirmation and then for enforcement of the Final Award, it had 'elected' a remedy and forum, and therefore both JMs for enforcement of the award at Karachi were not maintainable. However, the fact is that confirmation and enforcement proceedings at New York were filed after these JMs. Therefore, for what its worth, the Applicant had elected these JMs before moving the Court of SDNY. But that is beside the point. The very scheme of the New York Convention is that enforcement proceedings may be brought in more than one jurisdiction. That is manifest in Article III of the Convention in the words: "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles." As observed by the US Court of Appeals for the Fifth Circuit in *Karaha Bodas Cp., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357 (5th Cir. 2003): "multiple judicial proceedings on the same legal issues are characteristic of the confirmation and enforcement of international arbitral awards under the Convention."

30. In furtherance of its pro-enforcement policy, the New York Convention does not prevent a party seeking recognition and enforcement of an award from relying on a more favorable domestic law. Article VII-1 of the Convention, also referred to as the 'more-favorable-right' provision thus reads: "The provisions of the present Convention shall not …… deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the

extent allowed by the law or the treaties of the country where such award is sought to be relied upon." It follows that a Contracting State will not be in breach of the Convention by enforcing arbitral awards and arbitration agreements pursuant to more liberal regimes than the Convention itself.[2] *Ergo*, even if the Applicant has initiated enforcement proceedings at New York under a more favorable domestic law, it can nevertheless seek recognition and enforcement of the award at Pakistan under the 2011 Act as long as it has a cause of action at Pakistan for the same.

31. Looking to the objection from another angle, since the requirement of "double exequatur" had been done away by the New York Convention, nothing turns on the fact that the Applicant had approached the Court of SDNY (at the place where the award was issued) for a judgment confirming the award. For the same reasons (*supra*), it is also futile to argue that the subject award could only be enforced in Pakistan under a decree of a foreign court brought under section 44-A CPC. That provision, in any case, applies to execute a decree passed by a court of a reciprocating country, whereas a foreign arbitral award is enforceable on its own under the special provisions of the 2011 Act.

32. Therefore, the doctrine of election, in the sense argued by Respondent's counsel, cannot be invoked against the New York Convention. That is of course not to say that the Applicant may be unjustly enriched by way of multiple enforcement proceedings, for any recovery made under the award in any other jurisdiction will be taken into account while enforcing the award in this jurisdiction. On that score, it is an undisputed fact that the award has not been satisfied in any jurisdiction.

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[2] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 2016 Edition, page 2.

<u>Objections on merits of the award:</u>

33. The submission of Respondent's counsel that the arbitrator misinterpreted the transfer restriction in clause 8.6(a) of the SPA, clearly goes to the merits of the award. As regards the award for attorney's fees and legal costs in favor of the Applicant, that is a determination made by the arbitrator on the Applicant's claim for compensation under clause 10.16 of the SPA where the parties had agreed that *"the non-prevailing party in such arbitration shall pay to the prevailing party the full costs of the arbitration, the full and reasonable costs incurred by the prevailing party in preparing for and participating in the arbitration (including reasonable attorney's fees and expert fees)."* Therefore, the submission that the quantum so awarded is not 'reasonable', also goes to the merits of the award. It is then settled law that objections purely on merits of the award are beyond the pale of Article V of the New York Convention. To quote the Supreme Court in *Taisei*:

> "The New York Convention implemented in Pakistan by the 2011 Act, contains no ground as to the invalidity of a foreign award or its being against the law of the Contracting States to refuse its recognition and enforcement and thus leaves no room for the courts of a Contracting State to enter into the exercise of examining the merits of a foreign award on the points of facts or law.
>
> The ground of defence that the arbitrator's decision is erroneous in law or fact is, therefore, not provided in the Convention; it cannot be read into in any ground of defence provided in the Convention"

<u>Ground of public policy - Article V-2(b) of the New York Convention:</u>

34. In the last resort, learned counsel for Respondent sought to attack the award on the ground of public policy as provided in Article V-2(b) of the New York Convention *viz*:

> "V-2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: --
>
> (a) ………..
>
> (b) The recognition or enforcement of the award would be contrary to the public policy of that country."

35. In that respect, the first submission was that the power of this Court to award costs is circumscribed by sections 35 and 35-A CPC,

and therefore a decree to recognize an exorbitant attorney's fees and legal costs awarded by the arbitrator to the Applicant would be contrary to the domestic law of Pakistan. In my view, the analogy drawn by learned counsel between costs that may be awarded by a Court in Pakistan under sections 35 and 35-A CPC and the cost awarded by the arbitrator to the Applicant, is entirely misconceived. Costs under sections 35 and 35-A CPC are at the discretion of the Court, whereas costs awarded by the arbitrator to the Applicant are under clause 10.16 of the SPA, the contract between the parties.

36. The second submission for invoking the ground of public policy was that the judgment passed by this Court in JCM No. 12/2025 exposes that the Applicant's claim before the arbitrator was actuated with *malafides*; and that, the Applicant's appeal from said judgment having been dismissed by the Supreme Court of Pakistan, it would be contrary to public policy to recognize and enforce the resulting arbitral award. However, neither the judgment of this Court in JCM No. 12/2025, nor the short order passed by the Supreme Court dismissing the Applicant's appeal, make any observation with regards to the merits of the Applicant's claim in arbitration. Absent that, the argument that the Applicant's claim before the arbitrator was actuated with *malafides*, must be confined to a defense available to the Respondent during arbitration, and therefore goes to the merits of the award.

37. The scope of the 'public policy' argument under Article V-2(b) of the New York Convention was deliberated by the Supreme Court in *Orient Power Company (Pvt.) Ltd v. Suit Northern Gas Pipelines Ltd.* (2021 SCMR 1728), where it was observed that "the public policy exception was never meant to be given a wide scope of application", and that, "one must be mindful that the public policy defense is an exceptional one at that, which demands heightened standards of proof that courts would normally require in order to refuse recognition and enforcement of a foreign arbitral award." Again, in *Taisei*, the Supreme Court

cautioned against a liberal reading of the public policy ground to read in a defence on the merits of the award. It was held:

> "An expansive construction of the public policy ground 'would vitiate the Convention's basic effort to remove preexisting obstacles to enforcement'. The recognition and enforcement of a foreign arbitral award may be refused by the courts of Pakistan on the public policy ground only where it would violate the 'most basic notions of morality and justice' prevailing in Pakistan. The public policy ground cannot be used to examine the merits of a foreign arbitral award or to create more grounds of defence that are not provided for in the Convention, such as misapplication of the law of Pakistan by the arbitrator in making the award or the arbitrator's decision being contrary to the law of Pakistan."

The above passage is a complete answer to the public policy argument made by learned counsel for Respondent.

38. For the foregoing reasons, there is no ground to refuse the recognition and enforcement of the subject award under section 7 of the 2011 Act read with Article V of the New York Convention.

39. While concluding submissions, learned counsel for Respondent had referred to Part V-4 of the award whereby shares of TRGP purchased by Respondent between 04.10.2005 and 10.10.2022 were excluded from the restraint placed on the Respondent against share-transfer. Learned counsel submitted that most of the shares held by Respondent in TRGP were purchased during the excluded period. However, since that submission is not a defense to the recognition and enforcement of the award, the actual number of shares to which the restraint applies can be identified later during enforcement proceedings.

<u>Decision of the Court:</u>

40. In view of the foregoing, these JMs are decided as follows:

(i) CMA No. 2382/2025 by the Applicant under Order VI Rule 17 CPC to amend JM No. 5/2025 is allowed to the extent of prayers (i) to (iii). The Applicant shall file the amended memo of the JM in 15 days;

(ii) CMA No. 3142/2025 in JM No. 05/2025 made by Respondent under Order VI Rule 17 CPC is allowed to the extent of the prayer for amending his pleading. The office shall make the amendments in red-ink;

(iii) CMA No. 2406/2025 under Order VII Rules 10 and 11 CPC, moved by Respondent in JM No. 05/2025, is dismissed;

(iv) JM No. 05/2025 is dismissed against Respondents 2 to 5 who are not parties to the award;

(v) JM No. 05/2025 and JM No. 23/2025 are allowed as between the Applicant and Respondent, Muhammad Ziaullah Khan Chishti, as follows. The *Final Award* dated 22.04.2025, inclusive of the *Partial Final Award* dated 04.02.2025, reproduced in para 5 and 8 *supra* (the award), rendered by the Judicial Arbitration and Mediation Center (JAMS), New York, USA, is hereby recognized under section 6 of The Recognition and Enforcement (Arbitration Agreement and Foreign Arbitral Awards) Act, 2011. Consequently, the award shall be treated as judgment of this Court. A decree shall be drawn accordingly;

(vi) CMA No. 1466/2025 in JM No. 05/2025 stands disposed of accordingly;

(vii) To execute the award/decree, the Applicant may make an application under Order XXI Rule 11(2) CPC, as nearly as be, so as to specify the mode in which the assistance of the Court is required. The JMs shall be tagged to the execution application.

JUDGE

Karachi
Dated: 31-08-2026