

# IN THE HIGH COURT OF SINDH AT KARACHI

J.M. No. 15 of 2025

[ M/s Porsche Middle East and Africa FZE V. M/s. Performance Automotive (Pvt.) Ltd. & others ]

Present:

Mr. Justice Muhammad Osman Ali Hadi

Date of hearing	:	<u>19.05.2025</u>
Date of decision	:	<u>19.05.2025</u>
Applicant/Plaintiff	:	Through Mr. Omair Nisar, Advocate
Respondent	:	Mr. Khalid Mehmood Siddiqui, Advocate holds brief for Khawaja Hassan Anwar, Advocate

## JUDGMENT

**Muhammad Osman Ali Hadi, J:** The instant Application has been filed under Section 6 of the *Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011* (“the 2011 Act”). Learned Counsel appeared on behalf of the Applicant, but Mr. Khalid Mehmood Siddiqui, Advocate was holding brief for Khawaja Hassan Anwar, who appeared for the Respondent on the last date, and stated that the Counsel for the Respondent comes from Lahore and is not available. When this matter previously came up on 21.04.2025 both the Counsels for the Applicant and Respondent were present and a mutually agreed date of 19.05.2025 was fixed for hearing, where the parties were directed to come ready to proceed with the matter. On 21.04.2025, Counsel for the Respondent was provided copies of the pleadings and he was directed to file any objection/response by or before 08.05.2025, so that the matter could be heard and concluded today. However, without any valid reason learned Counsel for the Respondent has neither filed any response, nor has appeared before the Court. The matter pertains to enforcement of a Foreign Arbitral Award, and since no objections have been filed by the Respondent, I am of the opinion the matter should be heard and decided, as this Application has been pending for the past two and half years.

2. Learned Counsel for the Applicant has argued that the Applicant is a supplier of Porsche vehicles, and the Respondent was a purchaser of the same in Pakistan. Learned Counsel for the Applicant submits that the

Respondent used to purchase Porsche vehicles from him and then supply them to various customers within Pakistan. Counsel then contended that due to some commercial differences between the parties, the Respondent filed an application invoking arbitral proceedings against the Applicant in Dubai International Financial Centre - London Court of International Arbitration<sup>1</sup> and proceeded with the Arbitration.

3. Both the parties appeared in the Arbitration proceedings, and filed their cross-claims. The matter was tried and heard, and adjudicated accordingly on merits.

4. The Respondent filed claims, which are available at pages 113, 119, 121, 125, 131 and 133 of the File. Against these claims, the Applicant filed cross - claims (at page 135 of the File).

5. The claims put forth by the Respondent were rejected by the Arbitrator, as so was the cross-claim put in by the Applicant. The Award was passed in three main segments. In the first segment, the Arbitrator held that Applicant was owed certain outstanding sums and passed the following partial Award, the relevant portion<sup>2</sup> which is reproduced below:

“XXII Conclusions

215. PAL’s claims are therefore dismissed. In reaching this conclusion, I am conscious that the terms of the Agreement were favourable to PME, and have worked harshly against PAL particularly in view of the restrictions of the Pakistani foreign exchange regime. I can also well understand why it regards PME’s response to its difficulties as unsympathetic and unhelpful. However, I am driven to conclude that PME acted within the terms of the Agreement and the law that governs it.

216. I refuse PAL’s application of 3 December 2021.

217. I dismiss PME’s cross-claim in the respect of the Customers’ Proceedings and its claim in respect of the section 20 proceedings.

218. With regard to (i) PME’s cross-claim relating to PAL’s claims and (ii) the remainder of PME’s cross-claim in respect of litigation in Pakistan, I invite further argument about whether PME should be afforded any, and if so what, relief in light of this Award.

219. PME’s claim for outstanding sums owed by PAL is upheld in the sums of €199,556 and US\$47,389.”

6. The second segment of the Award<sup>3</sup> pertains to interests and other costs awarded to the Applicant. The Arbitrator was pleased to award the Applicant the following sums:-

“49 (e). PME is awarded PME €200,290, US\$189,029 and AED 3,696,653 in respect of its Legal Costs, which sums PAL shall pay to

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<sup>1</sup> Now renamed as Dubai International Arbitration Centre.

<sup>2</sup> Available at page 151 of the File

<sup>3</sup> Available at page 355 of the File

PME together with interest on these sums calculated on a simple basis at a rate of 4% pa from the date of this award until payment.”

7. Learned Counsel then turned to the third part of the Award<sup>4</sup>, in which the Arbitrator summed up and concluded the final Award for any further amounts, which was as follows:-

“22. Having considered all the evidence before me and the Parties’ submission, I, Sir Andrew Smith, hereby make the following Award:

- a. PME is awarded AED 549,000 in respect of its legal expenses incurred in relation to the PAL Pakistan Proceedings, which sums PAL shall pay to PME together with interest thereon calculated on a simple basis at a rate of 4% pa from 4 November 2021 until payment.
- b. PME is awarded AED 243,500 in respect of Arbitration Costs, which sum PAL shall pay to PME together with interest thereon calculated on a simple basis at a rate of 4% pa from the date of this award until payment

All and any other claims or counter-claim are dismissed.”

8. Learned Counsel further referred to provisions of the Act and specifically stated that none of these exceptions available under Article-V in the Schedule of the Act would apply, and therefore there remains no impediment at all for this Award to be made a Rule of the Court and enforced accordingly.

9. I have perused the documents and heard the arguments put forth by the learned Counsel for the Applicant. He has relied upon the following case law: **2021 CLD 1069** [*Orient Power Company (Private) Limited through authorized Officer v. Suit Northern Gas Pipelines Limited through Managing Director*], **2023 CLD 189 [Lahore]** [*Posco International Corporation through Authorized Officer v. Rikas International through Managing Partner/Director and 4 others*] and **PLD 2023 Lahore 621** [*Messrs Tradhol International Sa Sociedad Unipersonal v. Messrs Shakarganj Limited*].

10. I have also had the opportunity of having perused the judgment being **2024 SCMR 640**, in which the Apex Court has exhaustively deliberated about enforcement of foreign arbitral awards, and mandated the general process to be followed.

11. Pakistan being a signatory to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 (“**UN Convention**”), promulgated the *Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011* (“**the 2011 Act**”) on 19<sup>th</sup> July, 2011. The purpose / necessity for the 2011 Act is self-explanatory,

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<sup>4</sup> Available at page 383 of the File (relevant page 391)

i.e. to ensure there was expeditious disposal and no undue delays in giving effect to foreign arbitral awards, in consonance with the UN Convention.

12. In the case of *Messrs Tradhol International v Messrs Shakarganj Ltd.*<sup>5</sup> the learned Single Judge held:

“38. Here, it would also be advantageous to highlight the purpose and policy of the "Act", which is mentioned in its Preamble. The preamble means an introductory statement in a constitution, statute or act, and it explains the basis and objective of such a document. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. Reliance in this regard is placed on "Director General, FIA and others v. Kamran Iqbal and others" (2016 SCMR 447).

39. The Preamble of the Act duly notes that Pakistan is a signatory to the NY Convention. As per its Preamble, the Act has been passed to provide a framework "for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to [NY] Convention and for matters connected therewith". The purpose of the "Act" has further been elaborated in the case of "Orient Power Company v. Sui Northern Gas Pipelines" (PLD 2019 Lahore 607) wherein it has held that "the purpose of the Act is to facilitate recognition and enforcement of foreign arbitral award in order to curtail litigation related to foreign arbitral awards which in turn delays the enforcement of awards and negates the very purpose for using arbitration as a dispute resolution mechanism. The Convention is based on a pro-enforcement policy which sets out to facilitate and safeguard the enforcement of foreign arbitral awards which is the mandate of the Act. The emphasis on pro-enforcement is highlighted by the inclusion of Section 8 of the Act which provides that in the event of any inconsistency between the Act and the Convention, the Convention shall prevail to the extent of the inconsistency".

13. The 2011 Act provides a clear mechanism for the treatment and enforcement of foreign arbitral awards. The only grounds for refusal for enforcement of a foreign arbitral award is provided in Article - V of the Schedule which reads:

#### **“ARTICLE V**

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought. Proof that:-

- (a). The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b). The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of

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<sup>5</sup> PLD 2023 Lahore 621

the arbitration proceedings or was otherwise unable to present his case; or

- (c). The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration, can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (d). The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e). The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority. If the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refined if the competent authority in the country where recognition and enforcement is sought Ends that:-

- (a). The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b). The recognition or enforcement of the award would be contrary to the public policy of that country.”

14. Having carefully perused the pleadings and having heard arguments, none of the above conditions could be claimed by the Respondent. First and foremost, it was the Respondent themselves who initiated the arbitration proceedings. Secondly, the Respondent appeared and contested the arbitration. Finally, the Respondent has not filed any objections to the Award, despite a lapse of over two (2) years.

15. In *Taisei Corporation v A.M. Construction*<sup>6</sup> the Honourable Supreme Court, *inter alia*, held:

“4. This approach of minimal interference and support for the arbitral process is enshrined in the concept of "pro-enforcement bias", which refers to the inclination of legal frameworks, such as the New York Convention and national laws, to facilitate the enforcement of arbitral awards. This bias underscores the commitment to uphold the integrity of arbitration as a means of settling international disputes by limiting the grounds on which enforcement can be refused and placing the burden of proof on the party resisting enforcement. The courts' role is to interpret these provisions narrowly to promote certainty and predictability in international transactions. This bias is not about unjustly favoring one party over another but is aimed at promoting the effectiveness and efficiency of arbitration as a dispute resolution mechanism. The pro-enforcement bias underscores the commitment of the legal system, embodied in international conventions, like the New York Convention, to respect and uphold the parties' agreement to arbitrate and to ensure that the outcome of such arbitrations (the arbitral awards) are recognized and enforced with minimal

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<sup>6</sup> 2024 SCMR 640

interference. This bias is critical in providing parties with the confidence that their decisions to arbitrate disputes will be supported by courts around the world, thus enhancing the attractiveness of arbitration as a method of resolving international commercial disputes. This enforceability is crucial for the fluidity of international trade, providing businesses with the certainty and security needed to engage in cross-border transactions.”

16. As I have also found there remains no impediment under the prescribed law to enforce the same, I remain duty bound to do so. I hereby recognize the Award as binding and enforceable, and make the same a Rule of the Court.

17. The Applicant is granted the amount represented in the Award, which shall be executed as a decree of this Court.

18. In terms of Order XXI Rule 10 Code of Civil Procedure, 1908 (and all other enabling laws) this Application is converted into execution proceedings.

19. Counsel for the Applicant has provided a list of assets belonging to the Respondent in Pakistan, available along with his application being CMA No.11483 of 2022, which states that there are four Porsche vehicles belonging to the Respondent, which are lying at Karachi Port. He submits the said Vehicles should be attached to satisfy the Award and ensure proper enforcement of this Judgment. Accordingly, the Nazir of this Court is hereby appointed to ascertain the status of the said vehicles from the Port and Customs Authorities, and submit his report on the same within three (3) weeks from the date of this Judgement. The Nazir’s fee for this task is fixed at Rs.60,000/- to be paid by the Applicant.

To come up for further proceedings after four (4) weeks.

**JUDGE**