IN THE HIGH COURT OF SINDH, KARACHI

Judicial Miscellaneous Application ("JM") No. 21 of 2025

Date	Order with signature of Judge

APPLICANT	:	**Nunchi Marine Pte Ltd** **Through Mr. Abdallah Azzaam Naqvi,** **& Waqar Ahmed Advocates.**
RESPONDENT	:	**Cnergyico Pk Limited** **(formerly Byco Petroleum) through** **Mr. Abdul Ahad Nadeem Ammar Suria Advocate.**
Dates of Hearing	:	**07.05.2025 & 19.05.2025**
Date of Judgment	:	**12.09.2025**

J U D G M E N T

Muhammad Junaid Ghaffar, Chief Justice:- Through this Judicial Miscellaneous Application, (originally numbered as a Civil Suit till transfer[1] of Original Civil Jurisdiction of this Court to the District Court) the Applicant has prayed to pass appropriate order/judgment for Recognition and Enforcement of the Final Award dated 09.04.2024, rendered by the Singapore International Arbitration Centre (**"SIAC"**) as a Decree of this Court 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 and Enforcement of Foreign Arbitral Awards, 1958 ("**New York Convention**"). Upon issuance of summons, the Respondent (Defendant) has filed its objections opposing the prayer of the Applicant.

2. Learned counsel appearing on behalf of the Applicant has contended that pursuant to an agreement dated 11.05.2021 the Applicant supplied / shipped 55,000 Metric Tons of Senipah Blend Crude Oil for a total value of USD 38,545,469.73 which was discharged at Karachi Port on 11.08.2021, whereas the Respondent was liable to pay USD 38,545,469.73 within 30 days

[1] By Sindh Civil Court (Amendment) Act, 2025 dated 17.02.2025

thereof; however, only an amount of USD 23,464,115 was paid to the Applicant. Per learned Counsel pursuant to an Arbitration clause in the Agreement, the Applicant filed its notice of Arbitration and after commencement of proceedings in Singapore, a final award dated 09.04.2024 has been passed of which the Applicant seeks enforcement in terms of section 6 of the 2011 Act. According to him the Respondent after appearance before the Arbitration Tribunal and seeking various adjournments, did not contested the matter, and therefore, the objections now filed are to be discarded and a decree for enforcement of the award be passed. Learned Counsel has further contended that the award in question reflects that time and again adjournment were sought and the present Counsel / firm, suddenly withdrew from the proceedings on 25.04.2023, and despite further chances no one came forward to attend the Arbitration proceedings and therefore, no case for any lenient view or remand as requested is made out. Per learned Counsel the plea now taken on behalf of the Respondent is beyond the scope of Article V of the New York Convention. In support he has relied upon various reported cases[2].

3. Conversely, learned counsel appearing on behalf of the Respondent has contended that no proper opportunity of contesting the Arbitration proceedings was provided, and therefore the award is liable to be set aside, and at best, the matter must be remanded to the Tribunal for providing opportunity to the respondent and contest the proceedings. According to him, the award cannot be enforced under the 2011 Act read with Articles V(1) and V(2) of the New York Convention. He has contended that

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[2] Taisei Corporation (Pvt.) Ltd. v. A.M. Construction Company (Pvt.) Ltd. and another [*2024 SCMR 640*]; Abdullah v. Messrs CNAN Group SPA through Chief Executive/ Managing Director and another [*PLD 2014 Sindh 349*]; Orient Power Company (Private) Limited v. Sui Southern Gas Pipelines Limited [*2021 SCMR 1728*];POSCO International Corporation v. RIKANS International and 4 others [*2023 C L D 189*]; Messrs TRADHOL International SA Sociedad Unipersonal v. Messrs Shakarganj Limited [*PLD 2023 LAHORE 621*]; Vijay Karia and others v. Prysmian Cavi E Sistemi Srl and others [*AIR 2020 SUPREME COURT 1807*]; M/s. Centrotrade Minerals and Metals Inc. v. Hindustan Copper Ltd. [*AIR 2020 SUPREME COURT 3163*]; LDK SOLAR HI-TECH (SUZUHOU) Co. Ltd. v. Hindustan Cleanenergy Limited (formerly Moser Bear Clean Energy Limited) [*AIR (ONLINE) 2018 DEL 1143*]; Sui Southern Gas Co. Ltd. v. Habibullah Coastal Power Co. (Pte) Ltd. [*2010] SGHC 62*]; Renusagar Power Co. Ltd. v. General Electric Co. [*AIR 1994 SUPREME COURT 860*]; and Shri Lal Mahal Ltd. v. Progetto Grano Spa [*2014 [2] SCC 433*].

the award has been rendered without affording a fair and meaningful opportunity to the respondent and is solely based on the claim of the Applicant, whereas the Respondent was not provided any opportunity to present its case and even cross examine the witnesses. Per learned Counsel the award is violative of the principles of fair trial and natural justice in terms of Article 10A of the Constitution of Pakistan; hence the recognition of such an award for enforcement would be contrary to the public policy of Pakistan and in terms of Article V(2)(b) of the New York Convention, the same cannot be enforced. In support he has relied upon various reported cases[3].

4. Heard learned counsel for the parties and perused the record. Record reflects (which is not in dispute) that pursuant Agreement dated 11.05.2021 the Applicant shipped 55,000 Metric Tons of Senipah Blend Crude Oil for a total value of USD 38,545,469.73 which was discharged at Karachi Port on 11.08.2021; however, the Respondent, after expiry of 30 days thereof; paid only an amount of USD 23,464,115. The Applicant being aggrieved first sought reconciliation and thereafter in terms of clause 12[4] of the Agreement, filed first notice of Arbitration on 14.07.2022, and through an amended notice dated 05.08.2022 nominated its Co-arbitrator to which the Respondent also nominated its Co-

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[3] Vijay Karia and others v. Prysmian Cavi E Sistemi Srl and others [AIR 2020 SUPREME COURT 1807]; Canudilo International Company Limited; Wu Chi Keung; Ji Guanhua; Wu Chi Fong Thomas; and Wang Liuxi [2023] HKCFI 700]; Sohan Lal Gupta (Dead) thr. L.Rs. and others v. Asha Devi Gupta and others [2003 (11) AIC 155]; Gd Midea Air Conditioning Equipment Co Ltd v. Tornado Consumer Goods Ltd and another matter [2017] SGHC 193]; Iran Aircraft Industries v. Avco Corp. [980 F.2d 141 (2d Cir. 1992)]; Virgoz Oils & Fats Pte Limited v. Faisal Exports (Pvt) Limited passed by this Court in Suit No.1500 of 2011 vide Judgment dated 05.08.2024;Federal Government Employees Housing Authority through Director General, Islamabad v. Ednan Syed and others [PLD 2025 SC 11]; Cukurova Holding A.S v. Sonera Holding B.V [2014] UKPC 15]; and M. Adeossi v. Sonapra [Case 1356: NYC V; V(1)(b)] Extract from United Nations Commission on International Trade: Caselaw on UNICITRAL texts.

[4] **LAW AND JURISDICTION** This Contract shall be governed by and construed in accordance with the Singapore law. Any difference, dispute, claim or question between the Parties under this Contract shall be settled by consultation between the Parties. In the event that such amicable settlement cannot be reached within thirty (30) days of written notice by one Party to the other, the matter in difference, dispute, claim or question shall be referred to and finally resolved by arbitration in Singapore in accordance with the rules and procedures of the Arbitration Rules of the Singapore International Arbitration Centre. The number of arbitrators shall be three (3) and the language of the arbitration shall be English. The award entered by the arbitrators shall be final and binding upon both Parties. The arbitration expenses shall be borne as directed by the arbitrators. Notwithstanding the foregoing paragraph, neither Party shall be precluded from pursuing arrest, attachment and/or other conservatory actions in the courts of the any other country or exercising any contractual rights in relations to the Vessel provided for elsewhere in this Contract.

Arbitrator. Thereafter, the President of SIAC pursuant to Rule 9.3 of the SIAC Rules appointed the said nominated Arbitrators to proceed and on 19.12.2022, the President also appointed a presiding Arbitrator completing the Tribunal. The Applicant had filed its claim seeking the following relief(s);

> **V. RELIEF SOUGHT**
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> 112. At page 35 of its Amended Memorial, the Claimant seeks the following relief:
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> (1) Payment of the principal amount of **USD 15.081.354.27** (as clarified in the Claimant's answers to the Tribunal's Questions, para. 1.6);
>
> (ii) Interest on the above amount from the 25 September 2021 until full payment [Transcript, 14:18-15:12];
>
> (iii) Payment of the amount of **USD 755.223.00** for demurrage (as clarified in the Claimant's answers to the Tribunal's Questions, para. 2.1);
>
> (iv) Interest on the above amount from 12 August 2021 until the date of this Final Award;
>
> (v) Costs on an indemnity basis; and
>
> (vi) That the Respondent bear the costs of the arbitration.

5. The Tribunal settled the following issues after preliminary hearings which reads as under;

> **VI. ISSUES TO BE DETERMINED**
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> 113. In view of the relief sought by the Claimant, the Tribunal needs to address the following issues:
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> (i) Whether the Respondent owes the amount of USD 15,081,354.27 to the Claimant.
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> a. *If the answer to Issue (i) is yes* -- Whether the Claimant is entitled to receive interest on the above amount from the 25 September 2021 [Transcript, 14:18-15:12] until full payment, and at what rate.
>
> (ii) Whether the Respondent owes the amount of USD 755,223.00 to the Claimant for demurrage.

a. *If the answer to Issue (ii) is yes* -- Whether the Claimant is entitled to receive interest on the above amount from 12 August 2021 until the date of this Final Award, and at what rate.

(iii) Whether the Respondent should be liable to reimburse the Claimant its legal and other costs on an indemnity basis.

(iv) Whether the Respondent should be liable for the costs of the arbitration.

114. In addition, due to the lack of submissions by the Respondent, the Tribunal finds it appropriate to address any potential objection to the Tribunal's jurisdiction and to the admissibility of the Claimant's claims before turning to the merits of the case.

6. The Tribunal finally passed the award, and admittedly, none has filed any Appeal against the said Award, which is final for all legal and just purposes, except the objections now raised by the Respondent in these proceedings. The award of the Tribunal is as under;

XI AWARD

253. For the reasons set out above, the Tribunal hereby Awards, Orders and Directs that:

I. The Respondent shall pay the Claimant the amount of **USD 15,081,354.27**;

II. The Respondent shall pay the amount of **USD 232,370.01** (for simple interest accrued between 24 September 2021 and 25 January 2022) as well as simple interest on the amount of USD 15,081,354.27 from 26 January 2022 until full payment is made, at the contractual rate equal to 3-month Libor plus 3% per annum, calculated daily;

III. The Respondent shall pay the Claimant for its legal and other costs in the amount of **USD 227,477.26 + SGD 2,140.00**;

IV. The Respondent shall bear the entirety of the costs of the arbitration and shall pay the Claimant the amount of **SGD 467,725.69**;

V. All other claims, defences, and request for relief are dismissed.

7. Insofar as the award in question is concerned, on merits there is nothing to be investigated, if at all, as the Respondent has failed

to contest the same before the Tribunal despite nominating its own Co-arbitrator. The conduct of the Respondent has been that of avoidance and time and again the Respondent sought adjournments on one pretext or the other. As to enforcement of the award under section 6 of the 2011 Act, Respondent has not objected that this Court has the jurisdiction in the matter based on the Agreement and the relevant provisions of the 2011 Act. However, now the only legal objection raised on its behalf is that the award offends "public policy" of this Country in terms of Article V(2)(b) of the New York Convention and therefore, this Court has the jurisdiction to set aside the same. Before proceeding further, it would be advantageous to refer to the relevant provisions of the New York Convention which reads as under;

> **Article V**
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> 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
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> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of 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 of 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 refused if the competent authority in the country where recognition and enforcement is sought finds 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***.

8. From perusal of the above Article and the 2011 Act as a whole, it appears that a court before whom enforcement of a Foreign Arbitral Award is being sought has very limited and restricted jurisdiction to set-aside the award. Here, in this case, the Respondent's entire case is based on Article V(2)(b) of the New York Convention according to which recognition and enforcement of an award may be refused by the Court it is contrary to the public policy of that country where the enforcement is being sought. I may state that the Respondents Counsel was unable to cite any specific provision of law to this effect, except placing reliance on Article 10A[5] of the Constitution of Pakistan. Article 10 A does guarantee a right to fair trial and due process, but that only comes into field if one has been condemned unheard or in absentia. It is not that if a person who is a party to any proceedings is duly served and then backs out or fails to defend itself without any plausible justification can claim any protection under Article 10A. Article 10A is a constitutional provision in Pakistan that guarantees the right to a fair trial and due process for any determination of civil rights, obligations, or criminal charges. It ensures that individuals are entitled to a transparent and just legal process, including rights such as being heard, having legal counsel, and being informed of the accusations against them. This fundamental right, inserted in 2010, aligns with international human rights standards and makes any law inconsistent with it void to that extent. Scope of legal maxim Audi *Alteram Partem* Article read with 10A of the Constitution requires that everyone is entitled to a fair trial and due process, which includes the basic right to be heard. It necessitates the

[5] 10A. Right to fair trial. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process

requirement of being heard so that the judicial order reflects the contention of every party before the court. This requirement is fulfilled when relevant party is *issued first a notice* and then *be allowed a hearing*. These two (*notice and hearing*) are basic pre-requisites, which satisfy the test of being heard as well as fair trial and due process within the ambit of Article 10A of the Constitution[6]. Now the moot question would be that whether the Respondent was denied the right of hearing, or it chose not to avail such right. For this if the finding of the Tribunal is examined, it would suffice to hold that the Respondent intentionally adopted a practice to avoid the Arbitration proceedings and is now pleading that it was condemned unheard. The Tribunal para 61, 65 and 67 has observed as follows;

> 61. On 28 April 2023, Clyde & Co informed the Tribunal and the Claimant that they were no longer representing the Respondent in this arbitration. They stated that all future correspondence should be directly sent to the Respondent's representative, Mr Samay Shams, whose contact details were stated at paragraph 14(a) of the Response to the Amended NOA, and who was also copied to their email.
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> 65. On 22 May 2023, Mr Shams explained that due to the economic and political situation in Pakistan, the Respondent could not remit any funds out of Pakistan and that it had faced difficulties in paying Clyde & Co's legal fees. To the same extent, while the Respondent was in the process of seeking to engage new counsel, it explained that it needed more time and requested a 4-week extension of time to participate in the arbitration and serve its Counter-Memorial.
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> 67. By email of 26 May 2023, the Tribunal explained that, inter alia, the Respondent had been fully notified of the commencement of this arbitration since the filing of the Claimant's NOA on 14 July 2022, and that it had been aware of the date of service of its Counter-Memorial since 6 February 2023. It followed that the Respondent had been aware of the case that was made against it for almost a year, and that it has known that it was to serve its Counter-Memorial for 3.5 months. The Respondent had also been reminded of this deadline several times. Therefore, the Tribunal stated that it was satisfied that the Respondent had been afforded appropriate and reasonable opportunity to present its case. Notwithstanding, the Tribunal weighed the Respondent's situation and the Tribunal's duty to ensure that the arbitration proceeded in an efficient and fair manner and allowed a 4-week extension of time, such that the Respondent was to serve its Counter-

[6] Federal Government Employees Housing Authority v Ednan Syed (PLD 2025 SC 11)

> Memorial by 16 June 2023. The Tribunal however warned the Respondent that no further extensions would be granted.

9. After having examined the observations of the Tribunal and the relevant provision of Article 10A, when the conduct of the Respondent is looked into with respect to the claim of being condemned unheard it reflects that the Respondent by its own conduct has failed to bring its case within the ambit of any violation of Article 10A and to claim that the award is against the public policy of this Country. On record we have an email of the Respondents Counsel before the Tribunal who is also a counsel before this Court for the Respondent which speaks for itself and shows its conduct regarding seriousness in contesting the matter before the Tribunal. This was responded to by the Tribunal and sufficient time was granted to the Respondent to contest the matter, if so desired. These emails read as under;

> E-mail sent by Abdul Ahad Nadeem <ahad.nadeem@mtclaw.com.pk>
> 26 June 2023 10:01 to Christine Artero; Pranav Budihal; Carol Lim
>
> Dear members of the Tribunal,
>
> We are writing on behalf of Cnergyico Pk Limited, the Respondent in the subject arbitration. We have recently been engaged by the Respondent as its local counsel in Pakistan to advise in the matter.
>
> With reference to the email dated 22 May 2023 sent to the Tribunal by the Respondent's head of legal, we can confirm that we are in the process of engaging a Counsel in Singapore to represent the Respondent in this arbitration. This has especially been challenging in view of multiple difficulties being faced by the Respondent, which were highlighted in the aforesaid email. ***The Respondent is still being faced with serious restrictions from the State Bank of Pakistan against the remittance of funds outside Pakistan, which has been one of the reasons for its inability to pay professional fees to foreign counsel and the fees to the Tribunal. This is in addition to the prevailing financial crunch being faced by the Respondent.***
>
> We may also point out that the Respondent was contacted by the Claimant's local counsel (Ms. Nudra Majeed of Four Golf Lane Chambers) in Pakistan to explore a possibility of a settlement. A meeting also took place in this respect where several items were discussed. The local counsel of the Claimant had confirmed that she would be making an offer after discussing the same with the Claimant and the Respondent is waiting to receive the said proposal. We are hopeful that a settlement proposal can be exchanged and finalized between the

parties. In the event the same does not go through, the Respondent will be in a position to confirm the engagement of a Counsel in Singapore and proceed accordingly.

As such, we would humbly request that the proceedings are adjourned by four ***(4) to six (6) weeks for the above purpose.*** This request is also being made in the interests of justice and to ensure that the Respondent is afforded a fair opportunity of being heard and represented.

Kind regards,

Abdul Ahad Nadeem
Advocate High Court - Senior Associate
MOHSIN TAYEBALY & CO.

E-mail sent by Christine Artero <ca@arteroarbitration.com>
10 July 2023 07:26 to Abdul Ahad Nadeem; Arshad M. Tayebaly

Dear Counsel

The Tribunal refers to the parties' emails of 26 and 29 June 2023.

The Tribunal notes that while the Respondent states that it is in the process of engaging legal representatives in Singapore, it has already instructed counsel in Pakistan to represent it in these proceedings, and that Mohsin Tayebaly & Co did not comment on the timetable proposed by the Tribunal in its email dated 19 June 2023.

In the circumstances, and given that the Claimant is not agreeable to a suspension of the arbitration for the purpose of any alleged settlement discussions between the parties, the Tribunal hereby **orders** that the arbitration shall proceed in accordance with the steps described in the Tribunal's email of 19 June 2023, such that:

- The Tribunal will send any specific questions it may have to the parties around **21 July 2023**
- The parties shall respond in writing to any questions sent by the Tribunal by **11 August 2023**
- A remote hearing shall be held on **18 August 2023 from 10am to 1pm, Singapore time (3 hours)** for counsel oral submissions
- The Respondent may serve any final written submissions by **4 September 2023**
- The Claimant may be given an opportunity to reply to the Respondent's final submissions by **15 September 2023**, if allowed by the Tribunal
- The parties will serve their respective costs submissions by **22 September 2023**
- The Tribunal will thereafter proceed to its Final Award

The parties are requested to confirm that they are available on the date/time proposed for the hearing (i.e., 18 August 2023 from 10am to 1pm, Singapore time) by **14 July 2023**.

Regards
Chiristine Artero
Presiding Arbitrator, on behalf of the Tribunal

The Arbitration Chambers Pte Ltd
28 Maxwell Road | #03-18 Maxwell Chambers Suites
SINGAPORE 069120

Fountain Court
Temple
LONDON EC4Y 9DH

10. The above submission of the Respondent (highlighted) reflects that instead of contesting the matter, an attempt was made to prolong the Arbitration proceedings, and the only inference one can draw is that it had no case on merits. The reasons for not attending the matter before the Tribunal are not at all convincing for a Company engaged in such huge business. At the same time the response of the Tribunal in fact grants sufficient time and guideline to contest the matter by the Respondent. When confronted, Respondents Counsel argued that that the Respondent couldn't engage a Counsel in Singapore as the State Bank of Pakistan ("**SBP**") had refused to permit any remittance in US Dollars for lawyer's fee and costs in Singapore. However, this was only a verbal assertion without any supporting documents on record. The objections do not have any such correspondence allegedly made by the Respondent with SBP and as to the restrictions placed upon the Respondent. Moreover, in the above email, the Respondent had pleaded shortage of funds as well. Now if the Respondent was facing a financial crunch as stated, then how could they had approached SBP for remittance. This contradictory response does not entitle the Respondent to claim any protection in terms of Article 10A of the Constitution which otherwise appears to be an afterthought. Lastly, it is a matter of record that the present Counsel and its firm was representing the Respondent before the Tribunal and had sought various adjournments as well and suddenly, when the proceedings were to be formally started, they withdrew their

authority which was also in the knowledge of the Respondent. And finally, again the same law firm has been engaged by the Respondent before this Court. This Clearly reflects that the Respondent had in fact nothing to defend before the Tribunal, and therefore, engaged itself into seeking adjournments, withdrawing counsel and prolonging the matter before the Tribunal so as to thwart finalization of the proceedings by way of a final Award. It is also a matter of record that the Respondent did not file any appeal against the award in question and again no satisfactory material has been placed before this Court as to why the plea now raised could not have been agitated in Appeal.

11. The Hon'ble Supreme Court of Pakistan in ***Taisei Corporation***[7] has been pleased to dilate upon the importance of International Arbitration, the New York Convention and the 2011 Act. It has been held that more significant is the minimal interference in international commercial arbitration that stands as a cornerstone in the resolution of cross-border commercial disputes, offering a preferred alternative to litigation in national courts for businesses worldwide. One of the foundational aspects of international commercial arbitration is its emphasis on neutrality, expeditiousness, efficiency and the ability to provide solutions tailored to the needs of international business transactions. International commercial arbitration plays a crucial role in resolving disputes arising from cross-border trade and commerce, expeditiously and efficiently. The global view on international commercial arbitration is therefore overwhelmingly positive, with businesses and legal professionals alike recognizing its benefits over traditional litigation. It has been further held by the Supreme Court that in accordance with its objective, the New York Convention grants the Courts of the Contracting States the discretion to refuse to recognize and enforce

[7] Taisei Corporation v A.M. Construction Company (Pvt) Ltd (2024 SCMR 640)

a foreign arbitral award *only on the grounds listed in Article V of the Convention and places the burden to prove those grounds on the party* opposing the recognition and enforcement of the award. Article V(1) provides five grounds whereby the recognition and enforcement of an award may be refused at the request of the party against whom it is invoked, and Article V(2) lists two further grounds on which the Court may refuse enforcement on its own motion. *The ultimate burden of proof, however, remains on the party opposing recognition and enforcement*. 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.

12. In ***Orient Power***[8], the Hon'ble Supreme Court of Pakistan while dealing with the issue of public policy and the enforcement of foreign arbitral awards has held that public policy exception was never meant to be given a wide scope of application and an award could only be contrary to public policy if it was contrary to the "principles" of the law of the country in which it was seeking enforcement. The court while placing reliance on the observations of Judge Joseph Smith in ***Parsons***[9] observed that public policy defense ought only to succeed where enforcement of the award would violate the forum State's most basic notions of morality and justice. The Court further held that the "NY Convention" in Article V advocates 'pro-enforcement bias' policy in dealing with applications of recognition and enforcement of international arbitral awards. It sets forth the general principle that each contracting state shall recognize arbitral awards as binding and enforce them. As a result, foreign awards are entitled to a prima facie right to enforcement in the contracting states. Essentially, it means the pro-enforcement attitude of the national

[8] Orient Power Company (Private) Limited v Sui Northern Gas Pipelines Limited (2021 SCMR 1728)
[9] Parsons and Whittermore Overseas Inc v RAKTA (508 F.2d 969 (1974)

courts enforcing foreign award[10]. In practice, a pro-enforcement policy means that courts should apply a narrow standard of review when considering applications for recognition and enforcement of foreign arbitral awards[11].

13. Therefore, where a party despite being put to notice and entering appearance does not present its case, cannot maintain the claim that it falls within the exception to enforcement under the Convention. For a party to prove that it was unable to present its case before an Arbitration Tribunal one must see whether factors outside the party's control have combined to deny the party a fair hearing. Here, it is not so. I have not been assisted with any such proposition except the plea that the Respondent was unable to remit money to Singapore to its lawyer due to some restrictions by the SBP. As stated, no material of whatsoever nature has been placed on record to substantiate this bald assertion. No invoice of the foreign lawyer with its name and address; the amount available with the Respondent in its accounts in local currency, its application to the local Bank and SBP for remitting it to the lawyer abroad etc. is on record with the objections. If at all it were presented, without prejudice to the case of the Applicant, might have led this court to examine that the Respondent was prevented from defending itself before the Tribunal in Singapore and whether this would fall within the exception as provided in Article V(2)(b) of the New York Convention as contended on its behalf. Lastly, it is also of pivotal importance to note that even in the objections nothing has been said as to the merits of the case and the default committed by the Respondent in paying the outstanding amount. This further strengthens the case of the Applicant that all these steps were taken by the Respondent to delay the proceedings before the

[10] Tradhol International SA v Shakarganj Limited (PLD 2023 Lahore 621)
[11] Tradhol International SA v Shakarganj Limited (PLD 2023 Lahore 621)

Tribunal as even otherwise the Respondent had not case on merits.

14. In view of hereinabove facts and circumstances the application filed by the Applicant under Section 6 of the 2011 Act is hereby allowed in the following terms;

a. The foreign award made on 09.04.2024 is hereby recognized as binding; hence, enforced through this order.

b. The Applicant is granted judgment in the amount mentioned in the foreign award in question, which shall be executed as a decree of this Court.

c. Office shall prepare decree accordingly, and in terms of Order XXI Rule 10, Civil Procedure Code 1908, as a consequence thereof, this application stands converted into execution and shall be fixed by the office after (4) four weeks for further proceedings.

15. **Award enforced.**

Dated: 12.09.2025

CHIEF JUSTICE

Farhan/PS