

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Agha Faisal, J.**  
**Muhammad Osman Ali Hadi, J.**

HCA 115 of 2025 : TASCO vs.  
Franzen Landbouw C.V.

For the Appellant : Mr. Muhammad Ali Hakro, Advocate

For the Respondent : Mr. Muhammad Rafiq Lolai, Advocate

Date of hearing : 21.11.2025

Date of announcement : 21.11.2025

## JUDGMENT

**Agha Faisal, J.** This crux of this determination is whether a judgment and decree, recognizing and enforcing an eligible foreign arbitral award, could be vitiated, notwithstanding its synchronicity with the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011 (“Act”) and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 10<sup>th</sup> June 1958 (“Convention”), in exercise of *inherent jurisdiction* of this Court.

### *Pertinent facts*

2. Briefly stated, an award dated 03.08.2016 had been rendered in favor of the respondent and against the applicant by the RUCIP Arbitration Committee in the Netherlands (“Award”). JM 11 of 2023 was determined by a learned Single Bench of this Court, vide judgment dated 08.10.2025 (“Impugned Judgment”), whereby the Award was made rule of court and decreed pursuant to the Act read with Convention. The Impugned judgment has been assailed before us per section 3 of the Law Reforms Ordinance 1972.

### *Legal framework*

3. The Act provides for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to the Convention and for matters connected therewith. It applies to arbitration agreements executed

prior or post commencement of the Act; provided that the consequent award was rendered after the 14<sup>th</sup> July 2005. The courts in Pakistan are obliged to recognize and enforce an eligible award in the same manner as a judgment or order of a court in Pakistan, unless precluded per section 7 thereof. The relevant provision stipulates that the recognition and enforcement of a foreign arbitral award shall not be refused except in accordance with Article V<sup>1</sup> of the Convention.

4. The enforcement of foreign arbitral awards is *no case of first impression* and the seminal edict thereupon is the Supreme Court judgment in *Taisei Corporation*<sup>2</sup>. The judgment *inter alia* illumines a positive global view on international commercial arbitration; advocates minimum interference; displaces applicability of the Arbitration Act 1940; requires the court to support not supplant the arbitral process; precludes the discretion to interfere in the merits of a case on points of fact or law; and circumscribes opposition within the remit of Article V of the Convention, while recognizing the stipulations as permissive and not mandatory.

#### *Respective arguments*

5. The crux of the applicant's case was that the pleadings, memorandum of application etc., filed by the applicant carried forged signatures or were not filed by the executant. The learned counsel insisted that this Court exercise appraisal of signatures per article 84 of the Qanun e Shahadat Order and render the proceedings and Impugned Judgment void. It was next contended that no proceedings ought to have been initiated in the Netherlands against

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<sup>1</sup> 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) (b) (c) 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 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 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) (e) 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 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.

<sup>2</sup> Per *Syed Mansoor Ali Shah J* in *Taisei Corporation vs. A.M. Construction Company (Private) Limited* reported as 2024 SCMR 640 ("*Taisei Corp*").

the respondent and the same had been duly advised to the arbitral forum upon receipt of notice. It was also contended that the respondent had made an application per section 476 of the Criminal Procedure Code before the learned Single Judge, however, the result thereof was dissonant with the expectations of the applicant. Learned counsel for the respondent articulated that the Impugned Judgment warranted no interference and ought to be maintained.

### *Scope of determination*

6. Heard and perused. Section 7<sup>3</sup> of the Act mandates that enforcement of an eligible award *shall* not be refused unless incongruent with Article V of the Convention. Learned counsel was specifically called upon to identify whether the Award and / or underlying agreement offended any constituent of Article V<sup>4</sup> of the Convention. It is imperative to observe that he responded in the negative, however, insisted that the Impugned Judgment be set aside on the strength of his assertions, delineated supra, in exercise of the *inherent jurisdiction* of this Court.

7. Therefore, the points for determination, framed in pursuance of *Order XLI Rule 31* of the *Code of Civil Procedure 1908*, are as follows:

- i. *Whether recognition and enforcement of an eligible award can be refused other than in the manner stipulated vide section 7 of the Act read with Article V of the Convention.*
- ii. *Whether the assertions of the respondent are sufficient to vitiate the Impugned Judgment.*

*Whether recognition and enforcement of an eligible award can be refused other than in the manner stipulated vide section 7 of the Act read with Article V of the Convention.*

8. Section 7 of the Act is very clear in explication that unless an award is hit by a bar contained in Article V of the Convention, the recognition and enforcement thereof should not be denied. While the respondent's counsel was unequivocal in his statement that the objections to the Award did not fall

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<sup>3</sup> 7. Unenforceable foreign arbitral awards. The recognition and enforcement of a foreign arbitral award shall not be refused except in accordance with Article V of the Convention.

<sup>4</sup> Already reproduced supra.

within Article V of the Convention, it was his case that the same must be sanctioned in exercise of the inherent jurisdiction of this Court.

### *Inherent jurisdiction*

9. While the learned counsel predicated the grant of relief upon exercise of inherent jurisdiction, however, he made no attempt to identify the fountainhead thereof. Jurisdiction is not an abstract concept and it is imperative for it to be determined / exercised in accordance with the law. Article 175(2)<sup>5</sup> of the Constitution specifies that no court shall have any jurisdiction save as that conferred by law. The Supreme Court edict in *Hamza Rasheed Khan*<sup>6</sup> illumined that the power to confer jurisdiction is a legislative function and in the absence of exercise thereof no court has any inherent or plenary jurisdiction. The rendering of orders / judgments in apparent indifference to jurisdiction has been deprecated recently by the Supreme Court in *Pervez Musharaf*<sup>7</sup>. It was illumined that such apathy undermines the credibility of the entire judicial system and renders any inconsistent edicts without jurisdiction and unconstitutional. Therefore, the inherent jurisdiction argument fails.

10. The statutory command per section 7 of the Act is clear and any challenge to an eligible award must befall therein. The stipulations in Article V of the Convention have also been interpreted by the Supreme Court in *Taisei Corporation*<sup>8</sup> and it has been held that even the said provisions are merely permissive and not mandatory.

11. Since it was never the case of the respondent that any of its objections to the Award fell within the ambit of Article V of the Convention, therefore, no occasion arises before us to consider otherwise. As the appellate court there was no case before us that the learned Single Judge acted otherwise than in exercise of statutory jurisdiction; conferred vide the Act.

12. It is, therefore, observed that learned counsel failed to demonstrate the existence of any inherent jurisdiction; in exercise whereof this Court could travel beyond the mandate of the Act, as interpreted by the Supreme Court.

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<sup>5</sup> No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

<sup>6</sup> Per Qazi Faez Isa CJ in *Hamza Rasheed Khan vs. Election Appellate Tribunal & Others* reported as PLD 2024 Supreme Court 1028.

<sup>7</sup> Per Syed Mansoor Ali Shah J in *Taufiq Asif vs. General (retired) Pervez Musharaf & Others* (Civil Petition 3797 of 2020) and connected matters; judgment dated 10<sup>th</sup> January 2024.

<sup>8</sup> Per Syed Mansoor Ali Shah J in *Taisei Corporation vs. A.M. Construction Company (Private) Limited* reported as 2024 SCMR 640 (“*Taisei Corp*”).

*Whether the assertions of the respondent are sufficient to vitiate the Impugned Judgment.*

13. The applicant had pivoted its case upon the assertion that the pleadings were unsanctioned / signatures forged. Upon being queried as to why a successful claimant would need to fabricate pleadings / signatures to enforce an award, the counsel remained unable to assist. The pleadings in JM 11 of 2025 were filed before the High Court of Sindh and carry the requisite certifications etc. of the Court itself and no rationale could be articulated before us to question the presumption of regularity attached thereto. The recourse sought to section 84 of the Qanun e Shahadat Order and section 476 of the Criminal Procedure Code was *inter alia* not justified in view of the foregoing. Even otherwise, learned counsel also failed to assist as how same could be entertained in view of section 7 of the Act read with *Taisei Corporation's* findings on the merely permissive nature of Article V of the Convention. The learned Single judge has aptly dealt with these objections *inter alia* in paragraphs 7, 8, 9 and 10 of the Impugned judgment and no case was set forth before us to conclude otherwise.

14. *Admittedly*, the applicant had notice of the arbitration proceedings and had also corresponded in such regard. The notice and correspondence are available on file. Failure to contest thereafter provides no shield to the applicant; especially when the forum and opportunity to state its case had been voluntarily abjured.

15. The Supreme Court has maintained that the Convention, implemented in Pakistan by the 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. Therefore, no case arises to afford any actionable credence to the assertions escalated by the applicant.

*Conclusion*

16. In view of the reasoning and rationale herein, the primary point framed for determination is answered to state that recognition and enforcement of an eligible award cannot be refused other than in the manner stipulated vide section 7 of the Act read with Article V of the Convention. The latter point

framed for determination is answered to state that the assertions articulated on behalf of the applicant were inadequate to warrant any interference in the Impugned Judgment.

17. Therefore, no interference is merited in the Impugned Judgment, which is hereby maintained and upheld. The present High Court appeal is found to be devoid of merit, hence, dismissed along with pending application.

Judge

Judge