IN THE HIGH COURT OF SINDH AT KARACHI

JM 41 of 2010	:	Cargill BV vs. Khalid Javaid & Brothers & Others
JM 42 of 2010	:	Cargill BV vs. General Trading Establishment & Others
For the Applicant/s	:	Mr. Muhammad Ali Akhtar, Advocate
For the Respondent/s	:	Mr. M. Salim Thepdawala, Advocate
Date/s of hearing	:	15.12.2025
Date of announcement	:	19.12.2025

JUDGMENT

Agha Faisal, **J**. These proceedings have been filed seeking for respective awards dated 30.06.2008 ("Awards"), rendered by the Refined Sugar Association of London ("RSA"), to be recognized, made rule of court and decreed; per section 6 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011 ("Act"). The proceedings were filed, listed, argued and heard conjointly and, per joint request, are being determined vide this common judgment.

Factual context

2. Briefly stated, the applicant and the respondents entered into respective contract agreements dated 13.04.2006 ("Agreements"). Per learned counsel, the agreements are similar in form and substance. Admittedly, the Agreements contained a dispute resolution provision that provided for arbitration per English Law and the respective Agreements specifically stipulated that they are made upon the terms, conditions and rules of the RSA[1]. Rule 26 of the applicable RSA's Rules Relating to Contracts specifies that any dispute arising in connection with a contract subject thereto shall be referred to arbitration before the RSA[2]. Disputes arose *inter se* and the same were referred to arbitration; and the proceedings culminated in the Awards.

Respective Arguments

3. Mr. Muhammad Ali Akhtar articulated the case of the applicant and demonstrated that the prerequisites of the Act were satisfied, therefore, the proceedings may be allowed as prayed.

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[1] "This contract is made upon the terms, conditions and rules of the Refined Sugar Association valid at time of contract, of which the parties admit that they have knowledge and notice, whether or not either or both of the parties to it are members or the represented by a member of the association, and the details below given shall be taken as having been written into such contract, form in the appropriate place, any special terms and conditions contained herein and/or attached hereto shall be treated as if written on such contract form and shall prevail in so far as they may be inconsistent with the printed clauses of such contract form."

[2] 26. Any dispute arising out of or in connection with a contract which is subject to these Rules shall be referred to arbitration before The Refined Sugar Association for settlement in accordance with the Rules Relating to Arbitration. Such arbitration shall be conducted in accordance with English Law. The Contract Rules of the Association in force at the time the Contract was made shall apply to any reference to arbitration.

4. Mr. M. Salim Thepdawala advocated the case of the respective respondents and rested his defense upon his assertion that RSA was not competent to act as arbitrator. It was also alluded that the Awards ought not to have been rendered against the respondents on merit.

5. Mr. Muhammad Ali Akhtar illustrated in rebuttal that the respondents' learned counsel had admitted the existence and validity of the Agreements, therefore, no cavil in such regard was before the Court. He demonstrated from the record that the objection as to arbitrator had been raised and decided; the same remained unchallenged by the respective respondents, hence, the findings had attained finality. It was his case that arbitration is intended as an expeditious remedy for commercial disputes, however, in the present instance the respondents unjustifiably abjured the opportunity and forum to state their case and instead have bogged down recognition and enforcement proceedings in Pakistan for over fifteen years.

Scope of determination

6. The Act provides for the recognition and enforcement of arbitration agreements and foreign arbitral awards pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10th June, 1958 ("Convention") and for matters connected therewith. It applies to arbitration agreements made before, on or after the date of commencement of this Act, and awards post the 14.07.2005. The law requires the court to recognize and enforce an 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[3] of the Convention.

7. The seminal edict upon the law in Pakistan is *Taisei Corporation*[4]. 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 emphasizing that the stipulations may be read as permissive and not mandatory.

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[3] 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 mailers 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 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 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.

[4] Per *Syed Mansoor Ali Shah J* in *Taisei Corporation vs. A.M. Construction Company (Private) Limited* reported as *2024 SCMR 640* ("*Taisei Corp*").

Competence of Refined Sugar Association of London

8. The admitted facts before the Court are that the respective disputes were referred to RSA for determination and pursuant thereto requisite notices were issued by RSA to the parties. The respondents replied to the notices and while articulating no cavil to the existence, validity of the Agreement or the presence of the relevant arbitration clause therein, confined their objection to the arbitrator. The respective Awards have duly catalogued the objection in the following terms[5]:

> "Cargill's original Statement of Case was served in November 2007. KJB did not serve any Defence. In fact, they took no part in the arbitration and did not correspond with The Association in any way. Having given KJB every reasonable opportunity to state their position, The Association eventually appointed us as a panel in January 2008 and set the hearing date for 26 February 2008.
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> Prior to the hearing date, on 25 February 2008, Cargill served an amended Statement of Case stating that their original Statement of Case had contained a typographical or clerical error and had incorrectly and mistakenly referred to Cargill International SA as the Claimants instead of Cargill BV. A copy of the amended Statement of Case was forwarded to KJB the same day by The Association, who set a date for receipt of Defence Submissions of Tuesday 25 March 2008.
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> By fax to The Association dated 27 February 2008, KJB objected to our and/or The Association's jurisdiction. Their case was that, at the time of signing the Contract, the arbitration clause had been amended so as to exclude the name of The Association. They expressed the view that Cargill's reference of the matter to The Association for arbitration was, accordingly, a mistake and they asked The Association to "vacate the arbitration".
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> Cargill responded in the form of written Submissions dated 12 March 2008. They provided a copy of the Contract, as signed by them, which contained an arbitration clause in the following terms:-
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> "Any disputes arising out of or in connection with this contract shall be referred to arbitration before The Refined Sugar Association for settlement in accordance with the Rules Relating to Arbitration. Such arbitration shall be conducted in accordance with English law. This contract shall be governed by and construed in accordance with English law."
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> The contract had not been signed by KJB
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> Cargill pointed out that KJB were not disputing the substantive content of the Contract but were merely alleging that, when it had been signed (presumably by KJB since Cargill themselves had signed the Contract with the arbitration clause expressly referring to The Association), the reference to arbitration before The Association was amended and excluded. Cargill disputed that this change had ever been made or, if it had been made, that it was ever communicated to them or accepted by them.
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> Cargill also pointed out that if, as was the case, KJB did not dispute any other terms of the Contract, it followed that they presumably did not deny the first line of the Contract which provided that it was made "UPON THE TERMS, CONDITIONS AND RULES OF THE REFINED SUGAR ASSOCIATION VALID AT TIME OF CONTRACT. Rule 26 of The Association's contract rules, Cargill submitted, provided as follows:

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[5] The Award in JM 41 of 2020 is referenced herein; stated jointly by the learned counsel to be representative and illustrative for the present purpose.

"Any dispute arising out of or in connection with a contract which is subject to these Rules shall be referred to arbitration before The Refined Sugar Association for settlement in accordance with the Rules Relating to Arbitration. Such arbitration shall be conducted in accordance with English Law. The Contract Rules of the Association in force at the time the Contract was made shall apply to any reference to arbitration."

Accordingly, it was Cargill's case that KJB's argument was fundamentally flawed in that, even if the reference to The Refined Sugar Association had been deleted from the arbitration clause, the Contract clearly incorporated The Association's contract rules, including the arbitration clause at Rule 26. It followed, Cargill submitted, that KJB had indisputably agreed and submitted to the jurisdiction of The Refined Sugar Association.

Moreover, Cargill submitted, the Contract had been initially negotiated and agreed between the parties through the broker, International Trading House. Following the broker's confirmation of the main Contract terms on 12 April 2006, Cargill prepared the full Contract form (including the full Refined Sugar Association arbitration clause) and sent it to KJB via the broker.

According to Cargill, there followed a further exchange of messages in which various amendments to the full terms of the Contract were negotiated and agreed. The Contract was then revised as agreed between the parties and the revised Contract (including the full Refined Sugar Association arbitration clause) was then sent to the broker for KJB to sign. No objection either in writing or orally was, Cargill submitted, ever received from KJB in response.

Moreover, Cargill submitted, throughout the e-mail correspondence in question, it was clear that KJB were in contact with the broker and were confirming the existence and validity of the Contract. Furthermore, Cargill submitted, on 19 June 2006, KJB themselves sent a fax requesting an extension of time for opening the Letter of Credit under contract no. NLS0881A/B dated 13 April 2006, which was the contract agreed between the parties and which contained an arbitration clause referring all disputes to The Association.

KJB made their final submissions on the jurisdiction issue in writing on 20 March 2008. They reiterated that the arbitration clause in the Contract had been amended in order to exclude the name of The Refined Sugar Association. Accordingly, they submitted, neither we nor The Association had any jurisdiction in the matter and they made it clear that they would not enter into any further correspondence with The Association and would defend their position in Pakistan in accordance with the terms of the Contract.

The day after the hearing on 12 May 2008, The Association asked Cargill, on our behalf, to provide copies of certain documents that had been referred to in the contemporaneous correspondence between the parties but which had not been provided to us. Cargill provided these documents by letter dated 15 May 2008. On 20 May 2008, The Association asked KJB to make their comments on the further documents provided by Cargill by 6 June 2008 at the latest, but no such comments have been received."

9. The objection was duly deliberated and overruled by the arbitration tribunal in terms delineated herein below:

"We have very carefully considered the parties' submissions on the issue of jurisdiction, and we find as follows.

> We had no doubt that we had the power to determine the jurisdiction issue. Section 30 of the Arbitration Act 1996 gives arbitrators the power to rule on their own substantive jurisdiction, either in a separate Award on jurisdiction or in their main Award on the merits.
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> It was clear to us from the evidence that the negotiation of the Contract had proceeded in a way familiar to all sugar traders. On 12 April 2006, the main terms of the Contract were agreed through the broker including quantity, origin, quality, shipment dates and price. It was clear that at this time there was no agreement on any arbitration or jurisdiction clause.
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> There followed over the next few days a process whereby the parties sought to flesh out the main terms that had already been agreed. The process was initiated by Cargill sending to KJB their proposed version of the full contract terms in draft and continued with a discussion on various amendments to be made to that draft. Two things were apparent to us from the evidence provided to us. First, Cargill's draft included an arbitration clause whereby all disputes arising in connection with the Contract were to be referred to The Association to be resolved by arbitration. Secondly, none of the subsequent amendments to Cargill's draft that were negotiated and eventually agreed related in any way to the arbitration clause.
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> Once this process had been completed and the parties were ad idem as to the full Contract terms, the final version of the Contract was sent by Cargill to KJB for signature on 18 April 2006. This Contract included the arbitration clause which had been included in Cargill's initial draft and which, thereafter, had not featured in the parties' negotiated amendments to that draft.
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> On the face of it, therefore, the Contract had emerged (and had been duly prepared for signature) following a familiar process of negotiation and agreement between the parties and included an arbitration clause providing that The Association was to have jurisdiction over disputes arising out of the Contract. It was KJB's case that, at the time the Contract was actually signed, the arbitration clause was amended so as to remove any reference to The Association. However, this was denied by Cargill and KJB provided no evidence at all to support their allegation that this amendment had been made. They did not, for example, provide a copy of the signed amended contract document or any correspondence dealing with the amendment. Cargill, on the other hand, provided a copy of the Contract signed by them in the same terms as those that had been sent to KJB for signature on 18 April 2006 following the negotiation process over the previous week.
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> We therefore find that the parties agreed the Contract in terms that included an arbitration clause according to which disputes arising in connection with the Contract were to be referred to The Association for arbitration. It follows that we have jurisdiction to determine the claims referred to us by Cargill, and we so further find."

10. *Admittedly*, the Agreements were subject to the RSA Rules and Rule 26 thereof specified that the arbitration shall be conducted by RSA. However, notwithstanding the same and without the same ever having been controverted by the respondent's counsel, it is patently clear that the objection as to arbitrator had been escalated by the respondents and the same had been duly adjudicated per section 30 of the Arbitration Act 1996; that reads as follows:

"30. Competence of tribunal to rule on its own jurisdiction
(1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to
(a) whether there is a valid arbitration agreement,
(b) whether the tribunal is properly constituted, and

(c) what matters have been submitted to arbitration in accordance with the arbitration agreement.
(2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part."
(*underline added for emphasis*)

11. The aforementioned provision of the law duly empowered a tribunal to rule upon its jurisdiction, subject to the right of appeal. The Arbitration Act 1996 provisions for exercise of the right of appeal; as seen in *inter alia* in sections 32 and 70 thereof, however, *admittedly*, no challenge to the tribunal's ruling on its jurisdiction (and / or merit) was preferred by any respondent within the pale of limitation and / or at any time thereafter.

12. Therefore, respectfully, this Court finds the respondents' objection to be dissonant with the law. It is poignant to observe that the respondents' learned counsel has not even attempted to displace and / or distinguish the findings in favor of jurisdiction rendered by the learned tribunal.

Arguments on the merit of the case

13. Respondents' learned counsel made an attempt to argue upon the merits of the case, however, remained unable to cast any of shadow upon the rationale employed by the learned tribunal. Without prejudice to the foregoing, the counsel made no effort to assist as to how such averments could be entertained when settled law required minimum interference; precluded the displacement of the arbitral process; and circumscribed the discretion to interfere in the merits of a case on points of fact or law.

14. It has been observed by a Division Bench judgment[6] of this Court 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. Reliance was placed in such regard on the Supreme Court edict in *Taisei Corporation*[7] and a similar view has been echoed across the fence by the Supreme Court of India in *Shri Lal Mahal Limited vs. Progetto Grano Spa*[8]. Therefore, no case arises to afford any actionable credence to the assertions escalated on behalf of the respondents in such regard.

Conclusion

15. This court is of the deliberated opinion that no infirmity with the Agreements and / or the Awards could be identified, within the mandate of Article V of the Convention.

16. Therefore, the applications filed per Section 6 of the Act are allowed. The respective foreign arbitral Awards made on 30.06.2008 are recognized as binding and enforceable against the respective respondents, hence made rule of Court. The Applicant is granted judgment in the amount mentioned in each of the Awards, which shall be executed as decrees of this Court. The Office shall prepare the individual decrees accordingly.

Judge

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[6] TASCO vs. Franzen Landbouw C.V. (HCA 115 of 2025); judgment dated 21.11.2025.
[7] Per *Syed Mansoor Ali Shah J* in *Taisei Corporation vs. A.M. Construction Company (Private) Limited* reported as *2024 SCMR 640* ("*Taisei Corp*").
[8] Reported as *MANU/SC/0655/2013*; emphasis on paragraph 45 thereof.