IN THE HIGH COURT OF SINDH AT KARACHI

J.M. No.11 of 2025

Franzen Lanbouw C.V. ……..……..…..….. Applicant

Versus

TASCO ……..……..… Respondent

Hearing/Priority

1. For hearing of main application.
2. For hearing of CMA No.20606/2021
3. For hearing of CMA No.4573/2023

Mr. Mobeen Rana, Advocate for the Applicant.
Mr. Muhammad Ali Hakro, Advocate for the Respondent.

Date of hearing: 26.09.2025

Date of announcement of order: 08.10.2025

JUDGMENT

Muhammad Jaffer Raza, J: Through this Judicial Miscellaneous Application (originally numbered as a Civil Suit till transfer of Original Civil Jurisdiction of this Court to the District Court)[1] the Applicant has prayed to pass appropriate order/judgment for Recognition and Enforcement of the Final Award dated 03.08.2016 passed by the RUCIP Arbitration Committee in Netherlands **("Award")** as a decree of this Court under Section 6[2] 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").**

2. It was submitted by the learned counsel appearing for the Applicant, that the Applicant is involved in the business of agriculture, having its office in

[1]By Sindh Civil Court (Amendment) Act, 2025 dated 17.02.2025
[2] Inadvertently noted as Section 20 of the Arbitration Act 1940.

Netherlands[3] and the details of the contractual arrangement between the parties has been aptly recorded in the Award, enforcement of which is sought by the Applicant. He has further argued that the Arbitration Committee repeatedly requested the Respondent to attend the proceedings by various modes, details of which have been mentioned in the memo of the application. He has further invited my attention to the fact that the Respondent did not participate in the above noted proceeding and the Award, according to learned for the Applicant, has attained "finality". He has further stated that there is a "Pro-Enforcement Bias" in respect of Foreign Arbitral Awards and the absence of the Respondent from noted proceeding will not extinguish the said bias. He has further argued that reciprocity between contracting States is the foundation of international commerce. In this respect the learned counsel has relied upon several judgments[4].

3. Conversely, learned counsel for the Respondent has argued that the "Pro-Enforcement Bias" referred to by the learned counsel for the Applicant, is not absolute. In certain situations, like the ones present in the instant case, the learned counsel has argued that the court can refuse enforcement of an Award under Article V[5] of the New York Convention. In this regard, he has

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[3] Contracting state.

[4] M/s Tradehol International SA Sociedad Unipersonal vs. M/s Shakarganj Limited reported at **PLD 2023 Lahore 621**.
POSCO International Corporation through Authorised Officer vs. Rikans International through Managing Partner/Director and 4 others reported at **PLD 2023 Lahore 116.**
Orient Power Company Private Limited vs. Sui Northern Gas Pipelines Limited reported at **2021 SCMR 1728.**
Louis Dreyfus Commodities Suisse Sa vs. Acro Textile Mills Limited reported at **PLD 2018 Lahore 597.**
Dhanya Agro Industrial Private Limited through Attorney vs. Quetta Textile Mills Limited reported at **2019 CLD 160.**
Parsons vs. Whittemore Overseas Inc. vs. Rakta (unreported),
Taisei Corporation and another vs. A.M. Construction Company (Pvt) Ltd and another reported at **2024 SCMR 640.**

[5] **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 orof 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 mailers submitted to arbitration, can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to

further argued that there is no privity of contract between the parties, and his right of fair trial was infringed by the "unilateral" and ex-parte Award. He has further argued that necessary compliances of procedure have not been made at the time of filing of the noted Award and in this respect also he has argued that no enforcement is warranted. He has thereafter invited my attention to the various applications and Affidavits filed by the learned counsel for the Applicant and has stated that the signatures therein do not match and in this regard, he preferred the application at serial. No.3 praying that this Court may take cognizance in accordance with the provisions of Section 476 of Cr.P.C.

4. Learned counsel for the Applicant in rebuttal, has argued that the Respondent is attempting to needlessly complicate the issue at hand, by inviting attention to facts which are, according to him, "immaterial". He has further argued that the only jurisdiction of this Court is to see whether the Award is enforceable or not under scheme of the Act and in this respect, he has reiterated his stance in respect of "Pro-Enforcement Bias".

5. I have heard both the learned counsels and perused the record with their able assistance. The scope, wisdom and scheme of Foreign Arbitral Awards with specific reference to "Pro-Enforcement Bias" was enunciated by the Hon'ble Supreme court in the case of ***Taisei Corporation*** in the following words: -

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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.

> *"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 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."*

6. A learned single judge of the Lahore High Court in the case of ***M/s Tradehol International SA Sociedad Unipersonal***, interpreting the preamble of the Act, highlighted its purpose and policy in the following words: -

> *"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".*

7. Considering the dicta laid down by the Hon'ble Supreme Court, it will now be expedient to examine the merits of the claim, to the extent permissible, by the contesting parties. Perusal of the Award reveals that after initiation of the arbitration proceedings on 17.07.2015 notices were issued to the Respondent. The Respondent vide email dated 12.05.2016, excerpts of which have been reproduced in the Award[6], refused participation in the noted proceedings, on grounds similar to the ones taken before me. Subsequently, after hearing the Applicant the Arbitration Committee held as under: -

> *"The arbitration committee:*
> *-Orders Tasco to pay to Franzen an amount of € 196,753.50, plus 1% interest per month applied to an amount of €196,753.50 as from November 2014 to the day of full payment.*
> *-Declares the aforementioned judgment to be provisionally enforceable.*
> *-Orders Tasco to pay to Franzen an amount of €6,500 with regard tro the arbitration fees.*
> *-Dismisses all further or other claims."*

8. I have specifically probed the learned counsel appearing for the Respondent and sought his assistance in reference to Article V of the New York Convention. The learned counsel in this regard has failed to highlight any ground specifically, as enumerated in the noted article, which would merit refusal to enforce the noted Award. It is apparent and admitted that the Respondent categorically refused to participate in the proceedings, hence his

[6] Page 21 of the file.

plea that the Award was passed "unilaterally" is not sustainable. Further, the question of privity of contract has already been addressed in paragraph number 4.2[7] of the Award. It has been correctly noted, that by virtue of the "Deed Of Assignment"[8] dated 01.06.2015, Terrapoint transferred its claims against the Respondent to the present Applicant. The noted argument ought to have been taken by the Respondent in the arbitration proceedings. The refusal of the Respondent to appear in the noted proceedings disentitles the Respondent to raise the said ground at this stage. It is also noted that the proceedings were commenced by the present Applicant as the Deed of Assignment was executed prior to the said commencement. Therefore, the Respondent, at all material times, was aware of the said assignment, and has even objected to the same in its email dated 12.05.2016.

9. From the perusal of the scheme of the Act, and more specifically Article V of the New York Convention, it is apparent that the court before whom enforcement is sought, has jurisdiction which can only be classified as circumscribed. The grounds for refusal under the noted article are specific and constrained. The Respondent, as noted above, has failed to raise any of the noted grounds convincingly. The Respondent, without highlighting the specifics, has reiterated his stance that the Award is contrary to "public policy" under Article V(2)(b). The Hon'ble Supreme Court of Pakistan in the case of ***Orient Power Company Private Limited*** has already deliberated upon the said exception and has held that a restrictive approach must be adopted in reference to the same, as it requires *"heightened standards of proof"*, which burden, as noted above, has not been discharged by the Respondent. Even otherwise, I am not inclined, and neither is it open for this court, to minutely examine the merits of the case and effectively reopen and re-adjudicate the dispute between the parties.

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[7] Page 29 of the file.
[8] Page 87 of the file.

10. I will now turn to the application preferred by the learned counsel for the Respondent under Section 476 Cr.P.C. In this respect the learned counsel has invited my attention to various applications and affidavits executed by the learned counsel appearing for the Applicant. He has argued, relying on Article 84 of the Qanun-e-Shahadat Order 1984, that this court may compare the signatures and exercise jurisdiction under Section 476 Cr.P.C. I am not inclined to consider the noted application as the same is only an attempt by the learned counsel, by whom the application has been filed, to delay and needlessly convolute the issue at hand. Hence, at application at serial number 3 is hereby dismissed.

11. In view of hereinabove facts and circumstances the application filed by the Applicant is hereby allowed in the following terms: -

a. The Award made on 03.08.2016 is hereby recognized as binding; hence, enforced through this order.

b. The Applicant is granted judgment in the amount mentioned in the 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 for further proceedings.

12. **Award enforced.**

JUDGE

Nadeem