

# Kluwer Arbitration Blog

## Enforcing Interim Awards in Pakistan – Finality or Binding?

Hassan Raza · Thursday, February 29th, 2024

The pro-enforcement presumption is now well-established in Pakistan, where the doctrine continues to be regularly tested before the Pakistani courts. This blog post analyzes the latest developments under the 1958 New York Convention (“**Convention**”), including international precedents, and relevant Pakistani law on the recognition and enforcement of interim, foreign arbitral awards in Pakistan.

### The Convention

The Convention does not define the term “award.” The *travaux preparatoires* of the Convention titled “**Report by the Secretary General**” dated 31 January 1956 indicate that whilst the contracting states considered including a definition of the term ‘arbitral award’ but, later, each Contracting State was given the flexibility to define its respective parameters.

The [UNCITRAL Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) (“**Guide**”) supports the above position and provides that “it is up to the courts of the Contracting States where recognition and enforcement is sought to determine when a decision can be characterized as an ‘arbitral award’ under the New York Convention.” As per the Guide, “in order for a decision to be considered an ‘arbitral award’ under the New York Convention it needs to (i) be made by arbitrators; (ii) resolve a dispute or part thereof in a final manner, and (iii) be binding.” Thus, as per the Guide, both the finality of an award and its binding nature are the guiding principles for enforcing awards, which, as discussed below, includes interim awards.

### International Precedents

Internationally, there are two types of precedents pertaining to the enforcement of interim awards.

The first type involves judgments that have declined enforcement of interim awards due to their interlocutory nature and lack of finality. In *Anand Prakash v. Assistant Registrar* AIR 1968 All 22 and *Raffles Design International v. Educomp Professional Education* IA25949/2015, the Allahabad and Delhi High Courts separately held that interim injunctions and emergency awards were interlocutory in nature and not enforceable as interim awards. In *Resort Condominiums International Inc. v. Ray Bolwell*, Mot No.389 of 1993, the Supreme Court of Queensland,

Australia held that interlocutory orders could not be enforced as interim awards because the issues had not been adjudged with finality. This position is consistent with *Western Technology Services International Inc. (Westech) v. Cauchos Industriales SA (Cainsa)* (Supreme Court of Chile), *Living Consulting Group AB (Sweden) v. OOO Sokotel (Russian Federation)* (Presidium of the Highest Arbitrazh Court, Russian Federation), *Hall Steel Company v. Metaloyd Ltd.* (District Court, Eastern District of Michigan), *Drummond Ltd. v. Instituto Nacional de Concesiones* (Supreme Court of Justice, Colombia) and *Alcatel Space, S. A. v. Alcatel Space Industries* (District Court, Southern Division of New York).

Conversely, the second set of jurisprudence demonstrates that interim awards can be enforced on the basis of finality. In *CE Int'l Res. Holdings LLC v. SA Minerals Ltd*, 12-CV-8087(CM) (SN), 2013 WL 2661037 (S.D.N.Y. June 12, 2013), a U.S. District Court enforced an award of temporary equitable relief as it was separable from the merits of the arbitration. This is consistent with *Sperry Intern. Trade Inc., v. Gov't of Israel*, 532 F. Supp. 901 (S.D.N.Y. 1982) and *Sharp Corp. v. Hisense USA Corp.*, 292 F. Supp. 3d 157 (D.D.C. 2017), in which injunctions (including emergency restraining orders) issued in arbitrations were enforced as interim awards. The same approach is noted in *Jkx Oil & Gas Plc v. Ukraine by the Kyiv City Court of Appeal, Ukraine* and in *Doosan Heavy Industries and Construction v. Damietta International* by the Cairo Court of Appeal (as discussed in a [prior blog post](#)). The judgment of *Ecopetrol S.A. v. Offshore Expl. & Prod. LLC*, 46 F. Supp. 3d 327 (S.D.N.Y. 2014) enforced a supplemental award restraining the respondent to satisfy an interim award with escrowed funds. Another example concerning the deposit of security amount being enforceable as an interim award is *Banco de Seguros del Estado v. Mutual Marine Offices, Inc.*, 230 F. Supp. 2d 362 (S.D.N.Y. 2002).

Thus, consistent with the Guide, the test applied by courts in various jurisdictions pertains to the “finality” of interim awards.

### **The Pakistani Law Approach**

Pakistan ratified the Convention through the [Recognition and Enforcement \(Arbitration Agreements and Foreign Arbitral Awards\) Act, 2011](#) (“**2011 Act**”). Section 2(e) of the 2011 Act defines “foreign arbitral award” to mean an “award made in a Contracting State and such other State as may be notified by the Federal Government, in the official Gazette.” The legislature obviously did not give much thought to the definition except that the award has been made in a Contracting State. The parameters of a foreign arbitral award are thus open to judicial interpretation including whether such definition can extend to an interim award.

The issue of enforceability of interim awards was recently adjudged by Mr. Justice Hassan Aurangzeb of the Islamabad High Court in *China Water & Electric Corporation v. NHA 2023 CLD 1365*. This is an important judgment because it does not rely on “finality”, as envisaged in the Guide or the international precedents. Rather, it explores the concept of the “binding” nature of the award. This is a fresh approach to enforcing interim awards.

The matter pertained to a construction dispute in which CWE sought enforcement of an interim award passed by Mr. Peter H. J. Chapman. The arbitrator held that NHA was in breach of the contract by not complying with the Dispute Adjudication Board’s (“**DAB**”) decision and was obliged to pay to CWE an amount of PKR 406,068,695 plus 6% interest per annum on any unpaid

amounts. In the judgment, Aurangzeb J first held that DAB's decision had a binding effect. Aurangzeb J next held that the Convention does not differentiate between interim or final awards and in the particular case, as per Article 2(v) of the ICC Rules, an award includes interim, partial or final awards. He further held that the finality of the award is not a requirement in the 2011 Act or the Convention. Rather, under Article V(1)(e) of the Convention, enforcement may be refused if the award has not yet become "binding." Therefore, as long as the interim award is binding, it is enforceable in Pakistan. An interim award can be modified at a later stage in the final award but until such a time, the interim award remains binding on the parties. Judge Aurangzeb relied on *PT Perusahaan Gas v. CRW Joint Operation* 2015 SGCA 30 which was factually similar and did not accept the reasoning in *Resort Condominiums'* case.

This new approach is an important development towards establishing Pakistan's pro-enforcement bias. It establishes that interim awards are equally binding as final awards. Since interim awards are binding, an award creditor has the right to enforcement under the Convention. It also establishes that the enforcement of interim awards can only be refused under Article V of the Convention. In fact, in Pakistan, the enforcement of such an award cannot be refused under Section 7 of the 2011 Act unless any grounds of Article V of the Convention are met.

## **Conclusion**

To conclude, both international precedents and Pakistan courts appear to be moving in the right direction as they are establishing pro-enforcement bias. However, the step taken in Pakistan to enforce interim awards based on their binding nature is pragmatic, and also supported by the Convention. It reinforces the doctrine of least intervention. The threshold to challenge an interim award on the basis of its finality is lower in comparison to establishing whether such an interim award is binding or not. As seen from the precedents above, international courts may have a larger room to intervene and decline enforcement of an interim award on the basis of finality. However, in the author's opinion, it would be difficult for international courts (and award debtors) to decline enforcement of interim awards on the pretext that such awards are not binding. It is therefore important that international courts reconsider the concept of finality and explore whether interim awards are enforceable if such awards are binding in nature.

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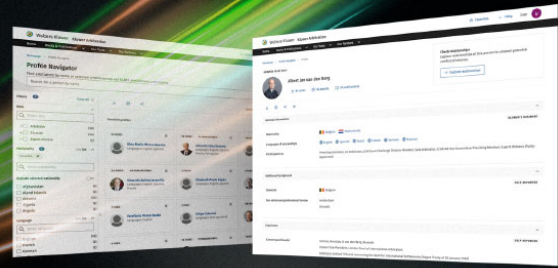
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