Kluwer Arbitration Blog

SpaceCom v Wateen: Towards a Principled Approach to the Pro-Enforcement Policy in Pakistan

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The Lahore High Court's recent judgment in *SpaceCom International, LLC v Wateen Telecom Ltd* 2024 LHC 5494 *("SpaceCom")* is a landmark pronouncement that seeks to establish a balanced and principled interpretation of the New York Convention ("the Convention"). In brief, the Lahore High Court refused recognition and enforcement of a foreign arbitral award on *an enumerated ground*, i.e., Article V(1)(d), stated in the Convention. The judgment has been criticized on this blog—unfairly, in the authors' view—apparently due to its outcome. This criticism seems to place the judgment solely in terms of its result, casting a negative light on any approach that does not lead to enforcement of foreign awards.

SpaceCom raises important questions for everyone interested in international arbitration, at the foundation of which lies the Convention. What is the pro-enforcement policy (or bias) set out in the Convention? What are the limits to the pro-enforcement policy? And, most importantly, does the pro-enforcement policy require the courts to overlook foundational and structural issues in the arbitral process (listed in Article V of the Convention) in favour of efficiency and certainty?

Pakistan's Pro-Enforcement Jurisprudence

Over the last decade, Pakistan's judiciary has fundamentally shifted its approach towards foreign awards. At the heart of this realignment rests the acknowledgment of the pro-enforcement policy of the Convention (see, e.g., *Louis Dreyfus Commodities Suisse S.A. v Acro Textile Mills Ltd* PLD 2018 Lahore 597 ("*Louis Dreyfus*")). In *Louis Dreyfus*, Justice Shahid Karim of the Lahore High Court held that the Convention requires "*shunning a tendency to view the application [for recognition and enforcement of a foreign award] with scepticism and to consider the arbitral award as having sound legal and foundational element*". This principle has been relied upon in many subsequent judgments.

A consistent line of cases in Pakistan has reaffirmed that foreign awards are *prima facie* entitled to enforcement (see *Tradhol International SA Sociedad Unipersonal v Shakarganj Ltd* 2023 CLD 819) and can only be challenged on limited grounds enumerated in Article V of the Convention. The burden of proof under Article V(1) of the Convention lies with the award debtor (see *Louis Dreyfus*). Further, a foreign award can only be reviewed on narrow grounds and not on the substance of the dispute (see *Louis Dreyfus*). The courts have also given a restrictive meaning to

the public policy exception stated in Article V(2)(b) of the Convention (see *Orient Power Company (Pvt) Ltd v Sui Northern Gas Pipelines Ltd* 2021 SCMR 1728).

Like any legal framework, the Convention does not pursue its primary policy—to streamline recognition and enforcement of foreign awards—to the exclusion of all other considerations. Instead, it balances competing policy imperatives: party autonomy, due process, arbitrability, legal standards of the seat of arbitration, and public policy of enforcement forums. The Convention, thus, requires that "*apparently valid arbitration awards*" be given "*limited prima facie credit*"; but "*that is as far as it goes in law… it does not also start fifteen or thirty love up*" (see *Dallah Real Estate and Tourism Holding Company v Pakistan* [2010] UKSC 46 ("*Dallah*")). The Convention limits—and does not obliterate—the grounds to resist recognition and enforcement of foreign arbitral awards.

SpaceCom: The Award against the Bargain

In *SpaceCom*, authored by the same judge who handed down *Louis Dreyfus*, the Lahore High Court had to address a fundamental question: should a court, in its enforcement jurisdiction, recognise and enforce an arbitral award where it is persuaded that the arbitral tribunal wrongly designated the seat of arbitration? The arbitration agreement stated that the disputes between the parties "*shall be resolved through arbitration in Dubai U.A.E*"; it also referred to the non-existent "*Rules of Arbitration of the Dubai International Financial Centre (DIFC)*". The contending parties argued that the arbitration agreement provided for a selection of the seat of arbitration (differing on whether it was Dubai or Dubai International Financial Centre ("DIFC")). The DIFC Court, in the initial phase of the arbitration, held, without setting forth any detailed reasoning (as the award-debtor contended), that the seat of the arbitration was DIFC and the applicable rules were to be the DIFC-LCIA Arbitration Rules. The arbitral tribunal, instead of assessing the issue of seat independently, treated the DIFC Court's decision as *res judicata*.

The Lahore High Court applied *de novo* review standard to determine the seat of arbitration. That was the correct test in the circumstances; the judgment in *Dallah* (and its logic) is instructive (and persuasive for Pakistani courts). *Dallah* continues to be a binding precedent in relation to recognition and enforcement of foreign awards in United Kingdom; the Arbitration Act, 2025 has not altered Section 103 of the Arbitration Act, 1996 (which provides for recognition and enforcement of foreign awards). For "domestic" awards, the Arbitration Act, 2025 limits the arguments and the evidence which can be presented in a challenge to the arbitral award under Section 67 of the Arbitration Act, 1996. This amendment, as noted by a consultee before the UK Law Commission, does not seek to derogate from the court having *the last word* on arbitral tribunal's jurisdiction but "*simply makes the challenge more efficient*". *Dallah* is not outdated (as a recent comment on this blog incorrectly stated) and has been relied upon in leading common law jurisdictions (see, e.g., *PT First Media TBK v Astro Nusantara International BV* [2013] SGCA 57).

The Lahore High Court's reliance on *Dallah* can be confusing for commentators unfamiliar with the nuances of legal procedures in Pakistan. *Dallah* may envisage a full rehearing (in some cases), but this procedural issue was irrelevant for the courts in Pakistan. As held in *Louis Dreyfus*, the courts in Pakistan, in addressing objections to recognition and enforcement of foreign awards, "*dispose of issues by the usual test for summary judgment, and not by regular trial*" (emphasis added). In one case (which is perhaps the only known case), where additional evidence was taken,

it was done in the form of affidavits only and not through a fully-fledged hearing. *De novo* review, in Pakistan, does not entail a rehearing of new/oral evidence. This may be the procedure followed in the United Kingdom; the UK Law Commission's proposal, materialised in the Arbitration Act, 2025, amended that for challenges under Section 67 of the Arbitration Act, 1996.

In *SpaceCom*, the Court, in fact, *reviewed* the arbitral tribunal's award and found that the arbitral tribunal abdicated its (*kompetenz-kompetenz*) authority by holding that it was precluded by the decisions of the DIFC Court from entering the jurisdictional controversy afresh. The decisions of the DIFC Court, the Lahore High Court held, being judgments of a *disputed* seat's court, had no value and led to an argument that presumes its own conclusion. Lastly, the application of the DIFC-LCIA Rules, which came into play only due to the DIFC Court's ruling (as the DIFC-LCIA Arbitration Centre refused to register the request for arbitration before the DIFC Court's ruling), was itself under dispute along with the status of the DIFC as the seat of the arbitration. In reaching its conclusion, the Lahore High Court did not have to entertain new grounds or (re) hear new evidence that was not presented before the arbitral tribunal. At no point was it (or could it ever be) in dispute that Dubai and DIFC are two different jurisdictions (and seats); being two different jurisdictions, these cannot be treated interchangeably.

The Court was, while reviewing the arbitral tribunal's award and the DIFC Court's ruling, not impressed by them (to put it mildly). The unfair criticism that the Court should have deferred to the arbitral tribunal's assessment misses the basic issue: what is meant by "deference"? The UK Law Commission's proposal suggests that deference only means "*respectful acknowledgment*" or "*practical respect*" as opposed to obedience owed to a judgment of the superior courts. If the enforcement court found that the arbitral tribunal and the DIFC Court did not provide any meaningful reasoning, the "obligation" to defer is unconvincing. In conclusion, consistent with the approach in *ST Group Co Ltd v Sanum Investments Ltd* [2019] SGCA 65 ("*ST Group*"), where the Singapore Court of Appeal set aside an arbitral award on grounds of mis-designation of seat of arbitration (despite the arbitral tribunal's independent interpretation of the arbitration agreement), the Lahore High Court refused recognition and enforcement of the foreign award under Article V(1)(d) of Convention.

Pursuit of a Principled Equilibrium

SpaceCom is not at odds with other judgments on the recognition and enforcement of foreign arbitral awards. The Lahore High Court's analysis remained squarely within the bounds of the Convention. In *Taisei Corporation v AM Construction* 2024 SCMR 640, the Supreme Court of Pakistan held that arbitration "*embodies the principles of autonomy and voluntariness, respecting the parties' freedom to design a process that best suits their needs*". Selection of the seat of arbitration is, undoubtedly, a foundational aspect of the arbitration agreement and the parties' design; in *SpaceCom*, the Lahore High Court refused to recognise and enforce a foreign award because it was "*not the result of arbitration that the parties had bargained for which was an arbitration in Dubai as opposed to DIFC*". The Convention regime does not envisage that an arbitral award issued contrary to the parties' agreement merits enforcement; nor does it mention additional requirements, such as a challenge to the foreign award at the seat (a remedy that is unavailable due to mis-designation of the arbitral seat: see *ST Group*), in order to object to the recognition and enforcement of the foreign award (except, obviously, in case of Article V(1)(e) of the Convention). Discretion to enforce a foreign award, despite satisfaction of the grounds under

Article V of the Convention, is not available where there is "*something unsound in the fundamental structural integrity*" of the arbitration award (see *Dallah*).

The Convention's pro-enforcement policy does not mandate that all arbitration awards must be recognised and enforced by enforcement courts. If efficiency was the primary (or sole) concern, Article V of the Convention would not have been conceived or withstood the test of time. The Convention creates a balance—though one in favour of enforcement—by restricting the avenues to resist recognition and enforcement of foreign awards. But, where an arbitral award fails to meet these limited standards, the national courts cannot be expected to recognise and enforce a deficient arbitral award. To suggest otherwise would render the national courts as mere rubber stamps and lower the standards that arbitrators must meet (diminishing the legitimacy of the arbitral process). This approach also betrays a fundamental misunderstanding of the judicial decision-making process, which is, as the Chief Justice Robert French AC of Australia noted, not an unprincipled exercise of "*attracting labels such as 'pro-arbitration' or 'arbitration friendly' and thereby attracting non judicial business to the jurisdiction*".

SpaceCom represents an evolution in the jurisprudence on international arbitration in Pakistan, demonstrating a deeper engagement with the law (i.e., the Convention), the will to apply the standards set forth in the Convention where these are applicable, and to refine the balance settled by the Convention. It is this approach of deep engagement, rather than hollowing out all standards (in the interest of misconceived notions of efficiency), that would lead to more certainty in the law and a robust, principled, and sophisticated arbitration framework in Pakistan.

One of the authors, Umer Akram Chaudhry, acted for Wateen Telecom Limited before the Lahore High Court.

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