



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 No 118

**IN THE MATTER OF SECTION 48 OF THE BERMUDA INTERNATIONAL
CONCILIATION AND ARBITRATION ACT 1986**

**IN THE MATTER OF ORDER 73 RULE 10 OF THE RULES OF THE SUPREME COURT
1985**

**IN THE MATTER OF AN APPLICATION FOR THE ENFORCEMENT OF AN ARBITRAL
AWARD DATED 23 APRIL 2025**

BETWEEN:

THE RESOURCE GROUP INTERNATIONAL LTD.

APPLICANT

-AND-

MUHAMMAD ZIAULLAH CHISHTI

RESPONDENT

*Application to set aside ex parte Order giving leave to enforce Judicial and Mediation Services
(JAMS) New York arbitration award on grounds of fraud under section 42 (3) of the Bermuda
International Conciliation and Arbitration Act 1986*

MARTIN J In Chambers

Date of hearing: 29 September 2025

Date of Judgment: 24 October 2025

Appearances:

Lilla Zuill of Zuill & Co for Mr. Chishti

Judgment of Martin J

Introduction

1. Following an *ex parte* application by The Resource Group International Ltd (“TRG-I”), an Order was made by this Court on 4 July 2025 (“the Order”) giving TRG-I leave to enforce a New York Convention arbitration award dated 22 April 2025 (“the Award”) that TRG-I had obtained against Mr. Chishti in the same manner as TRG-I could enforce a Judgment or Order of the Bermuda Court to the same effect.
2. By summons dated 24 July 2025, Mr. Chishti applied to set aside the Order on the grounds that enforcement of the Award would be contrary to the public policy of Bermuda because to do so would further an allegedly fraudulent scheme by TRG-I to obtain control of TRG-I and deprive Mr. Chishti of his shares in TRG-I, and wrongly oust Mr. Chishti from his ownership of those shares¹. Mr. Chishti alleges that the application by TRG-I to enforce the Award is not made for a *bona fide* purpose but is intended to strip him of his ownership of his TRG-I shares, which he says are now worthless.
3. Mr. Chishti applied to set aside the Order or alternatively stay the Order pending the determination of an appeal in relation to ongoing proceedings between ‘related’ parties in the High Court of Sindh in Pakistan.
4. This is the Court’s decision in relation to Mr. Chishti’s application to set aside the Order.

Summary and Disposition

5. The Court has decided refuse Mr. Chishti’s application to set aside the Order. This is because the ‘public policy exception’ under section 42 (3) of the Bermuda International Conciliation Act 1986 (“BICA”) in relation to the enforcement of arbitration awards which was relied upon by Mr. Chishti does not apply in the circumstances of this case.
6. The full reasons for the Court’s decision are set out below. The short point is that the facts relied upon by Mr. Chishti do not fall within the public policy exception to the enforcement of the Award. The Award has no relevant legal connection to the issues in dispute between Mr. Chishti and the various parties to his minority shareholders’ action in the Sindh High Court, Karachi in Pakistan. The Award relates to the breach of the terms of a separate agreement, and there is no impediment to its enforcement under Bermuda law.
7. Mr. Chishti’s application to set aside the Order is therefore dismissed with costs.

Background

8. The arbitration proceedings which gave rise to the Award concerned the interpretation and enforcement of a Preferred Stock Purchase Agreement dated 4 October 2005 relating to the purchase of Series A Preferred Shares in TRG-I (“the SPA”) which contained restrictions on

¹ See paragraphs 23-29 of Mr. Chishti’s first affidavit dated 22 July 2025 (Chishti 1) and paragraphs 16-22 of Mr Chishti’s second affidavit dated 29 August 2025 (Chishti 2) in support of the application to set aside and/or stay the Order.

certain of the parties' rights to dispose of any of their shares in TRG-I and its parent company The Resource Group Pakistan Ltd ("TRG-P") without AIG's prior written consent.

9. The SPA was entered into when American International Group Inc. ("AIG") made an investment of US\$30 million in TRG-I and wanted to be able to control the ability of the existing shareholders to sell or transfer their shares. TRG-I's parent TRG-P and the senior management ("the management shareholders" which included Mr. Chishti as a founding shareholder and Chairman of TRG-I) were required to agree not to dispose or transfer any of their shares (of any type) in TRG-P or TRG-I without the prior written consent of AIG or the successor holders of the Series A Preferred Shares issued to AIG (subject to limited exceptions)². Mr. Chishti agreed to these terms and was accordingly bound by the restrictions on transfer of his shares in TRG-P and TRG-I.
10. The SPA contained an arbitration agreement³ which required the parties to submit any disputes or controversies arising under the SPA to arbitration under the laws of the state of New York in accordance with the procedural rules of the Judicial and Mediation Service Comprehensive Arbitration Rules and Procedures ("JAMS").
11. TRG-I commenced a JAMS arbitration proceeding against Mr. Chishti in New York in June 2024 as a result of various transfers of TRG-P and TRG-I shares and pledges of TRG-P shares by Mr. Chishti alleged to be in breach of the SPA. TRG-I claimed declaratory and injunctive relief and damages. Mr. Chishti denied that the transfers were in breach of the SPA but cross claimed for declarations that his transfers and pledges were "permitted transfers".
12. The arbitrator conducted a five-day arbitration hearing in September 2024 and issued his Final Award on 22 April 2025. He concluded that Mr Chishti had transferred shares in TRG-I and TRG-P in breach of the SPA, and granted declarations to that effect that the pledges of shares in TRG-I and TRG-P made by Mr. Chishti were made in breach of the SPA and granted injunctive relief against Mr. Chishti requiring Mr. Chishti to perform his obligations under the SPA by releasing all pledges on his TRG-P and TRG-I shares (if and when the Pakistan court modifies its order to enable Mr. Chishti to do so) and granted a permanent injunction requiring Mr. Chishti to comply with his obligations under the SPA. The arbitrator dismissed Mr. Chishti's counterclaims⁴ and awarded TRG-I the costs of the arbitration in the sum of US\$9,053,606.34 and the JAMS fee of US\$ 1798.57⁵.
13. Mr. Chishti appealed against the Award to the US District Court for the State of New York raising various points of law. On 18 June 2025 Rakoff J dismissed Mr. Chishti's appeal and confirmed the Award. Rakoff J delivered his reasoned Opinion and Order on 11 August 2025⁶.

² See paragraph 8.6 (a) of the SPA at page 144 of the first exhibit to the affidavit of Mr. Costello dated 14 May 2025 (Costello 1).

³ See clause 10.16 at page 160 of Costello 1 Ex 1.

⁴ The arbitrator held that while TRG-I and AIG could not complain about certain purchases and sales of shares made by Mr. Chishti during the relevant period on account of their actual or constructive knowledge of them, they could not reasonably be charged with actual or constructive knowledge of the pledges of Mr. Chishti's TRG-I and TRG-P shares: see pages 81-82 of Exhibit 2 to Mr. Costello's second affidavit dated 30 June 2025 (Costello 2).

⁵ See the Award at pages 70-72 of Costello 1 Ex 1.

⁶ See the Opinion and Order at pages 130-142 of Costello 2 Ex 2.

The public policy exception

14. There is no dispute that (i) the Award is binding on Mr. Chishti and (ii) the Award is enforceable in Bermuda pursuant to BICA as a New York Convention Award.
15. The general policy of the Bermuda legislature is firmly in favour of enforcement of New York Convention arbitral awards, as evidenced by BICA's adoption of the UNCITRAL model law on the enforcement of international arbitration awards. It is the duty of the Court to give effect to these public policy objectives so far as it is practicable and lawful to do so.
16. However, Mr. Chishti has sought to invoke the exception in section 42 (3) of BICA which allows the Bermuda court to refuse to allow enforcement of an arbitral award if it would be contrary to the public policy of Bermuda to give effect to it.
17. Section 42 (3)⁷ provides:

"Enforcement of a Convention Award may also be refused if the award is in respect of a matter which is not capable of being settled by arbitration, or if it would be contrary to public policy to enforce the award."

18. The issue in this case is whether there is some reason that it would be contrary to public policy to give effect to the award. In **Huawei Tech investment Co Ltd v Sampoerna Strategic Holdings Ltd**⁸ Kewley CJ applied and approved *dicta* decided in a number of cases to the effect that in order for the court to be justified in a refusal to enforce an award the court would need to be satisfied either (i) that the procedure followed by the arbitration panel was so fundamentally unfair that it breached the basic rules of natural justice or (ii) that the upholding of the award would "*shock the conscience*" or would be "*clearly injurious to the public good*" or "*wholly offensive to the ordinary and fully informed member of the public*" or where enforcement of the award "*violates the forum's most basic notion of morality and justice*"⁹.
19. The usual example of a refusal on grounds of public policy is where the award is tainted by fraud or illegality. In **Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd**¹⁰ the English Court of Appeal held that it would be contrary to public policy to enforce an award gave effect to a contract to pay a bribe. In giving the judgment of the court, Waller LJ said¹¹:

"...the English court is concerned with the integrity of its own system, and concerned that its executive power is not abused. If the agreement represented a contract to pay a bribe, Westacre should not be entitled to enforce the agreement before an English court and should not be entitled to enforce an award based on it."

⁷ The terms of this subsection reflect the provisions of Article 36 (1) (b) (ii) of the UNCITRAL Model Law and Article V 2 (b) of the New York Convention.

⁸ [2014] Bda LR 8 at paragraphs 28-30.

⁹ Citing Chan Sek Keong CJ in **PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA** [2007] 1 SLR 597 including references to **Deutsche Schachbau v Shell International Petroleum Co Ltd** [1987] 2 Lloyd's Rep 246 at 254 per Sir John Donaldson MR and **Parsons & Whittemore Overseas Co Inc v Soc. General De L'Industrie du Papier** [RAKTA] 508f 2d.

¹⁰ [2000] 1 QB 288

¹¹ At pages 315h to 316a.

20. Mr. Chishti relied upon the **Westacre** decision in support of his submission that the enforcement of the Award would be giving effect to a fraudulent scheme to oppress the minority shareholders of TRG-P, and fraudulently to obtain control of TRG-P and that the enforcement of the Award would indirectly silence the objections to that fraudulent scheme by allowing TRG-I to enforce the Award against his TRG-I shares¹².

21. This argument requires a little ‘unpacking’ to be properly understood.

Oppression and fraudulent conduct

22. Mr. Chishti is also involved in concurrent litigation with TRG-I in Pakistan. Mr. Chishti has issued a minority shareholders’ petition against TRG-P and has added TRG-I and a company called Greentree Holdings Limited (“Greentree”) (inter alia) as parties to those proceedings.

23. Greentree is a Bermuda company which is wholly owned by TRG-I, and Greentree owns 29.7% of the shares in TRG-P. Greentree has launched a public offer to acquire an additional 35% of the shares of TRG-P in a bid to acquire control of TRG-P. Mr. Chishti alleges that the bid is funded by TRG-P’s own money, and is in breach of the rules against financial assistance under Pakistan company law (reflecting the old common law rule in **Trevor v Whitworth**¹³). Mr. Chishti alleges that such a “manoeuvre” by the directors of TRG-P is unlawful, fraudulent and oppressive of the members of TRG-P.

24. The essential background relied upon in support of this claim is that in 2021 TRG-I offered to buy back or redeem the shares held in TRG-I by using assets “allocated to its shareholders”¹⁴. TRG-P was a shareholder in TRG-P and decided to ask TRG-I not to pay its share of the repurchase to TRG-P but to “park”¹⁵ TRG-P’s share of the liquid assets in a special purpose vehicle, which was later disclosed as being Greentree.

25. The thrust of the allegation is that Greentree has made the bid to acquire the shares of TRG-P on the open market using (at least in part) funds or assets which it acquired from TRG-I which were funds that were offered to TRG-P as the consideration for TRG-I’s repurchase of TRG-P’s shares, and represent the funds of TRG-P.¹⁶

26. Mr. Chishti alleges that the board of directors of TRG-P have acted unlawfully by using TRG-P’s monies to purchase TRG-P’s shares through Greentree¹⁷. It is further alleged that the majority of the directors of TRG-P are also directors of TRG-I and in their capacities as directors of TRG-P have subordinated TRG-P’s interests on favour of TRG-I.

¹² See paragraphs 24-28 of Chishti 1 and paragraphs 18-25 of Chishti 2.

¹³ (1887) 12 App Cas 409

¹⁴ The precise meaning of this expression is obscure.

¹⁵ The meaning of this expression is also obscure: there is no disclosure of the legal nature of the transaction.

¹⁶ This is a digested summary of the facts recited in the reasons for Order of the High Court of Sindh dated 20 June 2025 which is exhibited to Chishti 2. See paragraphs 1, 3, 4, 5 and 6.1 at pages 6 to 8 of the exhibit. The repurchase of TRG-P’s shares in TRG-I was not taken up by TRG-P.

¹⁷ See paragraph 7 of the decision of the Sindh High Court which records the submissions made on Mr. Chishti’s behalf.

27. On the application of Mr. Chishti, on 24 March 2025 the Sindh High Court issued an Order requiring Greentree, TRG-P and TRG-I to maintain the status quo and not to proceed with the proposed acquisition pending the hearing of the application for an injunction to restrain the transaction. On 2 June 2025 the Sindh High Court issued its Opinion and Order granting the injunction. In its findings the High Court held that the conduct alleged against TRG-P amounted to oppression within the meaning of sections 286 and 287 of the Pakistan Companies Ordinance 1984.
28. The Sindh High Court made an Order (i) declaring that the shares held by Greentree in TRG-P are the property of TRG-P and shall be deemed to have been purchased by TRG-P and held as treasury shares (ii) ordering TRG-P to amend its share register accordingly (iii) abating the offer made by Greentree (iv) directing the shareholders of TRG-P to convene an extra-ordinary general meeting to elect directors and (v) directing the new board of TRG-P to decide whether to retain the treasury shares or to cancel them.
29. In particular, Mr. Chishti relied upon one particular passage of the Sindh High Court at paragraphs 68 to 70 of its Opinion and Order:

*68. It is equally frivolous to argue that when the board of TRG-P violates the statute, diverts the funds/assets of a public-listed company to create the largest shareholder (Greentree), and then manoeuvres its affairs to deliver control to such shareholder then that does not oppress other shareholders who could have been contenders for control on a level playing field. For the same reason there is also no force in the submission that no other shareholder has made a competitive bid under the Takeover Regulations. The lack of confidence here in the board of TRG-P does not spring from a mere apprehension of being outvoted on the business affairs or the domestic policy of the company, but **it is rested on a lack of probity in the conduct of the company's affairs**. In my opinion the aforesaid acts committed by the board of TRG-P in collusion with the largest shareholder i.e. Greentree, do oppress minority shareholders such as the Petitioner who are in the category of 'substantial shareholder' as defined in section 2 (7) (d) of the Companies Act i.e. holding an interest of 10% or more in the company. As already discussed, once oppression of minority shareholders is established, a case for winding up stands made out in view of clause (g) (iii) of section 301 of the Companies Act and the Court may then consider corrective orders instead under subsection (2) of section 286.*

*69. The violation of section 86(2) of the Companies Act to divert the funds/assets of the company for no apparent gain to the company; and the deliberate violation [of section] 158 (2) of the Companies Act to delay election of directors at the behest of the largest shareholder (Greentree) is also mismanagement by the board of TRG-P (separate from oppression) i.e. conducting the affairs of TRG-P **in an unlawful and fraudulent manner within the meaning of section 286**. In my opinion, in the given circumstances, these become grounds for winding up the company under clauses (g) (i) and (g) (iv) of section 301 i.e. **where the company has been carrying on unlawful or fraudulent activities; and is being run and managed by persons who commit fraud**, misfeasance or malfeasance in relation to the company. Here again, the dual test of subsection (2) of section 286 is satisfied.*

*70. Having concluded that the affairs of TRG-P are being conducted **in an unlawful and fraudulent manner** and in a manner oppressive to members such as the Petitioner, the case falls for corrective orders under sub-section (2) of section 286 of the Companies Act.*

(Emphasis added)

The Court's analysis

30. It was submitted by Mr. Chishti that the statements made by the Sindh High Court were findings of (i) illegality and (ii) fraudulent conduct on the part of TRG-I because the board of TRG-P and the board of TRG-I are comprised of the same people.
31. Mr. Chishti also complains that the present action being taken by TRG-I to enforce the Award is in reality part of a wider plan to obtain control over TRG-P and because the shares in TRG-I are now 'worthless' there is no point in seeking to enforce the Award in Bermuda except to use it as a means to extinguish Mr. Chishti's shares in TRG-I. It was suggested that this amounts to an improper collateral purpose. It was submitted that this falls within the category of conduct that would attract the public policy exception to justify this Court in refusing to enforce the Award.
32. The Court is unable to accept those submissions for the reasons set out below.
33. This Court must take the statements made by the Sindh High Court at face value and accord them due deference in accordance with principles of comity. However, on analysis the submissions made on Mr. Chishti's behalf about the relevance of those statements fall far short of demonstrating that this Court would be condoning illegal or fraudulent conduct by allowing enforcement of the Award or that giving effect to the Award would undermine the public confidence in Bermuda's judicial system.
34. The proceedings in Pakistan have no relation to the arbitration proceedings: the issue in the arbitration was whether Mr. Chishti had breached the terms of the SPA; none of the oppressive conduct alleged in the Pakistan proceedings was in issue before the arbitrator. Giving effect to the Award therefore has no relevance to the matters pending before the Sindh High Court.
35. The statements made by the Sindh High Court relate to the conduct of the affairs of TRG-P not TRG-I. It is notable that no findings of dishonest or fraudulent conduct were made against any individuals; it is not permissible (as a matter of Bermuda law) to attribute dishonest conduct to the whole of the board of one company by reference to the conduct of the board of another company. Dishonesty or fraudulent conduct must be distinctly alleged and proved against individuals. There is accordingly no factual basis upon which this Court can impute fraudulent conduct to any member of the board of TRG-I which would justify this Court in refusing to enforce the Award.
36. It is relevant to note that the statements made by the Sindh High Court were not made after a trial of an action, there was no cross examination of witnesses, and the Sindh High Court did

not find that any particular individual acted dishonestly. The tenor of the Opinion is that the corporate actions taken by TRG-P (or its board) amounted oppressive conduct and that the affairs of TRG-P have been conducted in an unlawful and fraudulent manner in the context of the proposed bid by Greentree.

37. The illegality of the financial assistance alleged in the Pakistan proceedings does not arise in relation to the enforcement of the SPA. This Court is not (for example) being asked to enforce a contract which would be illegal under the laws of Pakistan nor is this Court being asked to enforce a bribe that has been disguised as a contractual obligation (or something equivalent).
38. A creditor is entitled to choose which method of enforcement will be most effective to achieve payment of the obligation due. There is nothing improper about seeking to enforce the Award. The fact that Mr. Chishti may not have the ability to pay the debt¹⁸ does not justify the refusal of the enforcement of the Award.
39. This is a routine application for the Court to give effect to a monetary award for the costs incurred in an arbitration proceeding. There is nothing to shock the conscience or undermine public confidence in the judicial system that would justify this Court in refusing to grant leave to enforce the Award in the same manner as a judgment of this Court.
40. Therefore, the Court dismisses the application to set aside the Order and refuses the application for a stay of the Order, and awards the costs of the application to TRG-I.

24 October 2025



THE HON. MR. ANDREW MARTIN
PUISNE JUDGE

¹⁸ As submitted by his counsel.