JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Enforcement Petition No.04 of 2025

Petrosin CNG (Private) Limited

Versus

Mari Energies Limited

Petitioner by:-		Mr. Misbah-ul-Mustafa, Advocate.
Respondent by:		Sardar Taimoor Aslam Khan, Advocate. Mian Haseeb Bukhari, Advocate. Mr Mudassar Abbas, Advocate. Mr Umar Malik, Advocate.
Date of Hearing	:	31.12.2025

Arbab Muhammad Tahir, J.- Through the present enforcement petition filed under Section 3 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (to be referred to as **"the Act of 2011"**), the petitioner seeks recognition and enforcement of the arbitration agreement embodied in Article XIII of the Gas Sale and Purchase Agreement dated 29.04.2022 (to be referred to as **"the GSPA of 2022"**), along with ancillary reliefs in the nature of suspension of the termination notice dated 27.05.2025 (to be referred to as the **"impugned notice"**) and restraint against the creation of third-party interests pending arbitration. The petitioner has averred that it is in the process of filing its claim under the Rules of Arbitration of the International Chamber of Commerce (to be referred to as the **"ICC Rules"**) before an Arbitral Tribunal to be constituted at London, and that the claims intended to be placed before the Arbitral forum emanate from the alleged wrongful termination of the GSPA of 2022 in breach of the respondent's contractual obligations. Notwithstanding the said averment, the reliefs sought in the instant petition, though ostensibly couched as facilitative of

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arbitration, in substance and effect disclose an attempt to obtain substantive and injunctive reliefs from this Court in the absence of any arbitral award and in derogation of the agreed arbitral mechanism, thereby offending the settled principles of party autonomy, arbitral exclusivity, and judicial restraint governing foreign-seated arbitrations.

BACKGROUND AND PROCEDURAL HISTORY

02. The facts in brief, giving rise to the filing of the present petition, are that the contesting parties entered into the GSPA of 2022 for the sale and purchase of Associated Gas from the Halini Production Facilities. The said GSPA was executed and governed in accordance with the Flare Gas Policy, 1998, as well as the Flare Gas Utilization Guidelines, 2016, duly approved by the Council of Common Interests. The agreement was of an indefinite tenure and was stipulated to remain operative for so long as the gas continued to be available, subject to the mutually agreed terms and conditions of the parties.

03. It is an admitted position that instead of invoking the agreed arbitral mechanism under Article XIII of the GSPA of 2022, the petitioner initially elected to challenge the impugned termination notice by instituting Civil Suit No.184 of 2025 before the learned Civil Court at Islamabad, wherein it sought declarations, perpetual injunctions, and other consequential reliefs, and in its pleadings did not express any willingness or consent to arbitration, but on the contrary asserted the jurisdiction of the civil court. During the pendency of the said suit, the respondent filed an application under Section 4 of the Act of 2011 seeking *inter alia* a stay of the civil proceedings and reference of the dispute to arbitration in accordance with the contractual arbitration clause contained in the GSPA of 2022. The petitioner opposed the said application *inter alia* primarily on the ground that the respondent had already waived its right to invoke arbitration by submitting to the jurisdiction of the courts in Pakistan, and, therefore, the matter could not be compulsorily referred to arbitration.

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04. The learned Civil Court, after due consideration of the submissions and the contractual framework agreed between the parties, allowed the respondent's application vide reasoned order dated 21.06.2025, stayed the proceedings in the civil suit, and referred the parties to arbitration. As an interim protective measure, the learned Civil Court also suspended the operation of the impugned notice and restrained the respondent from creating, assigning, or encumbering any third-party interests in respect of the subject matter of the GSPA of 2022 until the rendering of an arbitral award, the grant of interim relief by the arbitral tribunal, or the expiry of six months, whichever occurred earlier. This sequence of events clearly demonstrates that the initial recourse to arbitration was not voluntarily invoked by the petitioner but was triggered solely by the respondent's insistence and judicial intervention. The order was carefully framed to preserve the *status quo*, protect the rights of the parties, and uphold the exclusive contractual mechanism for dispute resolution.

05. The Civil Court's order dated 21.06.2025 was assailed by the petitioner before this Court through writ petition No.2493 of 2025; however, the same was dismissed vide judgment dated 31.10.2025 on the ground of maintainability. The petitioner thereafter challenged the said judgment dated 31.10.2025 by filing I.C.A. No.499 of 2025 before this Court, which too stood dismissed vide judgment dated 10.12.2025 on the same ground. The judgment dated 10.12.2025 was not subjected to any further challenge before the competent higher forum and has, therefore, attained finality. Despite this, the petitioner did not promptly invoke arbitration and instead persisted in adopting different procedural routes to secure interim protection, thereby prolonging the dispute. It may thus be safely observed that the present proceedings constitute a second round of litigation between the parties, the factual and procedural backdrop whereof has already been detailed in the preceding paragraphs.

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ARGUMENTS OF THE PARTIES

Petitioner's Submissions

06. Learned counsel for the petitioner contended that, under Section 3 of the Act of 2011, this Court enjoys exclusive jurisdiction to adjudicate all matters arising from or relating to foreign arbitration agreements and arbitral awards. It was submitted that the legislature deliberately conferred upon this Court the authority to entertain applications for recognition of foreign-seated arbitration agreements and to grant interim, ad-interim, protective, or status-quo measures in aid of arbitration, consistent with Pakistan's obligations under Article II(1) of the New York Convention, 1958. Learned counsel further emphasized that Article 28 of the ICC Rules expressly preserves the jurisdiction of local courts to grant interim and conservatory measures, including orders restraining alienation, assignment, or encumbrance of the subject matter, so as to protect the arbitral process and ensure its efficacy. Recourse to such measures, it was submitted, neither constitutes a waiver of the arbitration agreement nor undermines the autonomy, independence, or binding authority of the arbitral forum, being purely facilitative and protective in nature to safeguard the rights of the parties pending constitution of the arbitral tribunal or rendering of an award.

07. Learned counsel further argued that, in addition to statutory authority, this Court possesses constitutional and inherent powers to grant status-quo, restraining, or anti-encumbrance orders to preserve the subject matter of arbitration and prevent frustration of the proceedings. Reliance was placed on *Zaver Petroleum Corporation (Pvt.) Limited v. Saif Energy Limited* (PLD 2025 Islamabad 219) and *Ovex Technologies (Private) Limited v. PCM (PK) (Private)* Limited (PLD 2020 Islamabad 52), where it was held that interim measures in aid of recognition or enforcement of foreign awards are protective, ancillary, and

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facilitative, and do not amount to final relief or adjudication on the merits. Learned counsel submitted that, consistent with these principles, this Court is fully empowered to pass appropriate ad-interim orders to maintain the status quo and ensure the arbitral process remains effective and unimpaired.

Respondent's Submissions

08. Per contra, learned counsel for the respondent contended that the petition is misconceived and not maintainable, as there exists no arbitral award capable of recognition or enforcement. It was submitted that Section 3 of the Act of 2011 does not confer any substantive right to enforce an arbitration agreement, and that the issue of reference to arbitration has already been conclusively determined under Section 4 of the Act. Learned counsel further argued that the seat of arbitration being London excludes supervisory jurisdiction of Pakistani courts, and that the petition is barred by the doctrine of *res judicata* and constitutes abuse of the process of Court. It was emphasized that Section 3 cannot be invoked to refer matters to arbitration, which is exclusively governed by Section 4, mandating reference where parties have chosen arbitration as their forum.

09. It was further contended that the Act of 2011 repealed the Arbitration (Protocol and Convention) Act, 1937, introducing a materially distinct and mandatory regime. Section 4 employs the term *"shall"* in contrast to the discretionary *"may"* of the repealed statute, thereby requiring compulsory reference to arbitration under a valid agreement, save for the limited exceptions under subsection (2).

10. Learned counsel also submitted that no arbitral award exists for recognition or enforcement, and that the petitioner's prayer for reference under Section 3 is legally untenable, as no proceedings are pending which could be stayed or referred. In any event, the learned Civil Court vide order dated 21.06.2025 has already adjudicated the issue, stayed the civil proceedings, and

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directed the parties to arbitration. Accordingly, the relief now sought by the petitioner under Section 3 of the said Act is barred by *res judicata* and liable to rejection under Order XI of the Code of Civil Procedure, 1908. Reliance was placed on *Fecto Belarus Tractors Limited v. Government of Pakistan through Finance Economic Affairs and others* (PLD 2005 SC 605), *Bank Alfalah Limited v. NEU Multiplex and Entertainment Square Company (Pvt) Ltd* (2015 YLR 2141) *Orient Power company (Private) Limited v. Sui Northern Gas Pipelines Limited* (2021 SCMR 1728), *Taisei Corporation and another v. A. M. Construction Company (Private) Limited and another* (2024 SCMR 640), and *Zaver Petroleum Corporation (Pvt.) Limited v. Saif Energy Limited* (PLD 2025 Islamabad 219).

11. Arguments heard. Record perused.

ISSUES FOR DETERMINATION

12. The foremost issue for determination is whether, in the absence of any arbitral award, this Court can invoke Section 3 of the Act of 2011 to recognize or enforce an arbitration agreement and grant interim reliefs that directly impact the merits of the dispute. In considering this, it is necessary to examine whether the petitioner's conduct disentitles it from equitable relief, the effect of prior judicial orders and the doctrine of *res judicata*, the interplay between the petitioner's election to invoke ICC arbitration and the principles of *kompetenz-kompetenz* and party autonomy, and the relevance of the ICC Emergency Arbitrator (EA) mechanism under Articles 29 and 30, which provides a specialized contractual forum for urgent relief.

LEGAL PRINCIPLES AND ANALYSIS

13. It is an admitted and undisputed fact that the parties entered into the GSPA on 29.04.2022. Article XIII of the GSPA sets out a comprehensive and binding dispute-resolution mechanism,

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providing that any dispute or difference arising out of or in connection with the agreement shall be finally resolved through arbitration under the ICC Rules by one or more arbitrators appointed in accordance with those Rules. For clarity, Article XIII is reproduced in its entirety as follows:-

> *"Article-XIII*
> *Governing Law and Arbitration*
> *13.1* ***All disputes arising out of or in connection with the present agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.***
> *13.2 The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.*
> *13.3* ***The seat of arbitration shall be London.***
> *13.4 The language to be used in the arbitral proceedings shall be English.*
> *13.5 The Agreement shall be construed, interpreted and governed by the laws of the Islamic Republic of Pakistan."*
>
> **(Emphasis supplied)**

14. The Act of 2011 was enacted to give effect to Pakistan's obligations under the New York Convention, 1958, and to establish an arbitration-friendly legal framework grounded in party autonomy, minimal judicial intervention, and respect for the arbitral process. Section 3 vests exclusive jurisdiction in this Court over matters arising under the Act; however, it does not create an independent cause of action nor confer the right to enforce an arbitration agreement in the absence of an arbitral award. As held by the Hon'ble Supreme Court in the case of *Fecto Belarus Tractors Limited,* supra*,* an arbitration agreement alone does not constitute an executable right but is merely a contractual commitment to arbitrate, enforceable only upon the rendering of a final award.

15. The Act clearly distinguishes between pre-award and post-award stages. Section 4 governs the pre-award stage, mandating that courts refer disputes to arbitration and, where

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necessary, stay judicial proceedings in respect of the subject matter of the agreement. Section 3, by contrast, is concerned solely with the recognition and enforcement of final arbitral awards. In the present case, the pre-award mechanism under Section 4 was invoked and conclusively adjudicated by the Civil Court, which stayed the petitioner's civil proceedings and directed the parties to proceed to arbitration. This binding judicial determination establishes that the arbitral tribunal, not this Court, is the proper forum for resolution of the underlying dispute. In the present case, the petitioner, having neither voluntarily initiated arbitration nor complied with the Civil Court's order, cannot circumvent the Section 4 adjudication by invoking Section 3. Any attempt to do so would amount to an indirect re-litigation of a matter already conclusively decided, in contravention of settled principles of law. Accordingly, in the absence of a finalized arbitral award, this Court is not competent to recognize or enforce the arbitration agreement, nor to grant interim relief affecting substantive rights, as such intervention would exceed the scope of judicial authority contemplated by the Act.

DOCTRINE OF FINALITY AND *RES JUDICATA*

16. A careful perusal of the prayer clause of the captioned petition reveals that, under the guise of seeking recognition and enforcement of the arbitration agreement, the petitioner in substance seeks enforcement of the GSPA of 2022 itself, together with an ancillary prayer for referring the parties to arbitration seated in London under the ICC Rules. The petitioner has further sought, pending constitution of the arbitral tribunal and announcement of the final award, suspension of the impugned notice and a restraint against the creation of third-party rights. Though couched as interim and conservatory measures, these prayers effectively seek substantive reliefs that directly impinge upon the merits of the dispute.

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17. As noted earlier, the present proceedings constitute a second round of litigation between the parties. The record clearly reflects that the petitioner, through repetitive and protracted proceedings, has persistently attempted to secure injunctive reliefs in respect of the same termination notice. This conduct demonstrates that the litigation was pursued not for *bona fide* resolution through arbitration, but to delay contractual consequences and frustrate the respondent's lawful rights. It is an admitted position that on 30.05.2025 the petitioner had already invoked the jurisdiction of the learned Civil Court by filing a civil suit seeking reliefs substantially *pari materia* with those claimed herein, namely suspension of the termination notice and restraint against creation of third-party rights. The present petition thus seeks identical reliefs under a different statutory label.

18. In these circumstances, the doctrine of *res judicata*, which is a principle of public policy ensuring finality of litigation, squarely applies. The Hon'ble Supreme Court in the case of *Fecto Belarus Tractors Limited,* supra*,* held that no litigant can be permitted to re-litigate the same cause by adopting different procedural devices. Likewise, in the cases of *Bank Alfalah Limited* & *Orient Power company (Private) Limited*, supra, it was emphasized that a party cannot be allowed to resurrect an issue already finally decided by merely changing the forum or form of proceedings.

19. The petitioner's attempt to invoke Section 3 of the Act of 2011, after having already invoked civil jurisdiction and having suffered a final determination under Section 4 directing recourse to arbitration, is a collateral effort to bypass binding judicial orders. The issues of reference to arbitration and entitlement to interim relief have already been conclusively adjudicated upon, and the principle of finality of litigation does not permit their re-agitation under a different statutory guise.

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20. It is also material that Article XIII of the GSPA of 2022 designates London as the seat of arbitration. The legal consequence of a foreign seat is now well settled. In the case of *Hub Power Company (HUBCO) through Chief Executive and another v. v. Pakistan WAPDA through Chairman and another* (PLD 2000 SC 841) the Hon'ble Supreme Court held that supervisory jurisdiction vests exclusively in the courts of the seat, and Pakistani courts cannot assume merits-based or supervisory jurisdiction over foreign-seated arbitrations, except to the limited extent permitted by statute. Any interim relief determining substantive contractual rights would amount to an impermissible exercise of such jurisdiction.

21. Although the courts may grant interim measures in aid of arbitration, such jurisdiction is purely ancillary and facilitative. It cannot be exercised to grant final or determinative relief. Suspension of the termination notice in the present case would amount to granting the very relief sought in arbitration, thereby undermining the arbitral process itself.

22. The petitioner's conduct further disentitles it from equitable relief. Despite repeated judicial directions, it has failed to meaningfully pursue arbitration and has continued to invoke multiple *fora* for identical reliefs. The Hon'ble Supreme Court in the case of *Taisei Corporation and another*, supra, held that a party which avoids arbitration or acts in defiance of binding orders cannot seek equitable intervention of the Court to perpetuate interim protection. Having already pursued civil proceedings on the same cause and simultaneously claiming to have invoked arbitration, the petitioner cannot be permitted to re-agitate the matter under Section 3 of the Act of 2011. On this ground as well, the doctrine of res judicata fully applies.

ELECTION TO ARBITRATE AND *KOMPETENZ-KOMPETENZ*

23. The petitioner, having filed its Request for Arbitration under the ICC Rules, has unequivocally elected to pursue its

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remedies before the arbitral tribunal. Such election is final and binding. Having consciously invoked the arbitral process, the petitioner is precluded from simultaneously seeking inconsistent, parallel, or duplicative relief from this Court. This position is fortified by the doctrines of election and *kompetenz-kompetenz*. Once a party elects arbitration as its chosen forum, it cannot revert to judicial proceedings to obtain relief inconsistent with that choice. Equally, under the principle of *kompetenz-kompetenz*, the arbitral tribunal is vested with the exclusive authority to rule on its own jurisdiction, including objections relating to the existence, validity, or scope of the arbitration agreement. Entertaining parallel judicial proceedings would thus undermine the arbitral process, erode party autonomy, and render the agreed ICC framework nugatory.

ICC EMERGENCY ARBITRATOR MECHANISM (ARTICLES 29 & 30)

24. The ICC Rules provide a complete, specialized, and self-contained mechanism for urgent interim relief through the Emergency Arbitrator **("EA")**, thereby obviating the need for recourse to national courts at the pre-tribunal stage. For the sake of clarity and completeness, the relevant provisions of the ICC Rules are reproduced herein below:-

> ***Article 29 — Emergency Arbitrator***
>
> *"1. A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal may apply for such measures pursuant to the Emergency Arbitrator Rules.*
>
> *2. The Emergency Arbitrator shall have the power to order any interim or conservatory measure it deems appropriate.*
>
> *3. The Emergency Arbitrator's order shall take the form of an order, stating the reasons upon which it is based."*
>
> ***Article 30 — Effect of the Emergency Arbitrator Provisions***
>
> *"1. The Emergency Arbitrator provisions shall apply only to arbitration agreements concluded after the entry into force of the Rules.*
>
> *2. The parties undertake to comply with any order made by the Emergency Arbitrator.*

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3. The arbitral tribunal, once constituted, may modify, terminate, or annul the order or any modification thereof made by the Emergency Arbitrator."

25. A plain reading of the above provisions leaves no ambiguity that the ICC Rules expressly contemplate and provide for urgent interim and conservatory relief even prior to the constitution of the arbitral tribunal. The Emergency Arbitrator mechanism is not an optional or peripheral arrangement; rather, it is an integral part of the agreed arbitral framework, binding upon the parties by virtue of their arbitration agreement.

26. Despite this comprehensive and contractually agreed mechanism, the petitioner consciously chose not to invoke the Emergency Arbitrator, notwithstanding the fact that it had already filed its Request for Arbitration, acknowledged the availability of concurrent jurisdiction, and accepted the ICC Rules as governing the arbitral process.

27. A party cannot be permitted to ignore the agreed mechanism, manufacture urgency, and thereafter seek relief from a municipal court. Such conduct amounts to an abuse of the arbitral process and directly undermines the principle of party autonomy, which lies at the very heart of modern arbitration law. Courts are duty-bound to respect and give effect to the procedural choices made by the parties. The petitioner's failure to invoke the Emergency Arbitrator, therefore, is fatal to its request for interim relief before this Court.

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NO PRIMA FACIE CASE, IRREPARABLE LOSS, OR BALANCE OF CONVENIENCE

28. The petitioner has failed to establish even a threshold *prima facie* case warranting the grant of interim or conservatory relief. The GSPA 2022 stands lawfully terminated, and the relief of specific performance is neither legally tenable nor practically feasible in view of the termination and the subsequent contractual and commercial arrangements undertaken by the respondent. The petitioner's alleged losses, if any, are clearly capable of being

quantified in monetary terms and may be adequately compensated through damages, thereby negating any claim of irreparable harm. In these circumstances, the balance of convenience unmistakably tilts in favour of the respondent, particularly when viewed in light of the petitioner's deliberate delay, inconsistent conduct, and repeated resort to multiple *fora* seeking identical reliefs.

FOREIGN SEAT OF ARBITRATION

29. Furthermore, it is to be pointed out that Article XIII of the GSPA 2022 unequivocally designates London as the seat of arbitration. The legal consequence of such designation is well-settled: supervisory jurisdiction over the arbitral process vests exclusively in the courts of the seat. The Hon'ble Supreme Court of Pakistan, in the case of *Hub Power Company*, supra has authoritatively held that Pakistani courts cannot exercise supervisory or merits-based jurisdiction over foreign-seated arbitrations, save to the limited extent expressly permitted by statute. Any interim relief that interferes with substantive contractual rights or intrudes upon the arbitral process would, therefore, be impermissible and contrary to the settled principles governing international arbitration.

CONCLUSIONS

30. In view of the foregoing discussion, this Court reaches the irresistible conclusion that the petitioner has failed to make out any case under Section 3 of the Act of 2011. The instant petition is, therefore, **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on .01.2026.

JUDGE

Approved for reporting.

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