

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO.: BVIHC (COM) 2020/0196

Submitted Date:16/12/2020 13:03

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Fees Paid:72.59

BETWEEN:

TETHYAN COPPER COMPANY PTY LIMITED

Claimant/Applicant

v

(1) ISLAMIC REPUBLIC OF PAKISTAN

(2) PAKISTAN INTERNATIONAL AIRWAYS CORPORATION LIMITED

Defendants/First & Second Respondents

(3) PIA INVESTMENTS LIMITED

(4) MINHAL INCORPORATED

(5) PIA HOTELS LIMITED

(6) VIRGIN ISLANDS REGISTRAR OF COMPANIES

(7) CITCO B.V.I. LIMITED

(8) HARNEYS CORPORATE SERVICES LIMITED

Third to Eighth Respondents



ORDER WITHOUT NOTICE

[For (i) permission to register and to recognize and enforce an ICSID arbitration award;
and (ii) Orders relating to service of the Claim Form on the Defendants/First & Second
Respondents]

BEFORE: The Honourable Justice Gerhard Wallbank

DATED: 10 December 2020

ENTERED: [17] December 2020

UPON HEARING Lord Falconer QC, Piers Plumptre, Joshua Folkard, Martin Kenney and Shaun Reardon-John, counsel for the Applicant.

UPON READING the *Ex parte* Application dated 20 November 2020 (the "**Registration Application**"); the First Affidavit of Robert L Weigel sworn on 20 November 2020 in support and the First Affidavit of Hakim Creque dated 3 December 2020 (the "**Affidavits**"); and the written submissions of the Applicant ("**Tethyan**") dated 26 November 2020 (the "**Written Submissions**").

UPON THE COURT NOTING THAT Tethyan filed a Request for Arbitration on 28 November 2011 with the International Centre for Settlement of Investment Disputes ("**ICSID**") against the Islamic Republic of Pakistan ("**Pakistan**"), which Request for Arbitration was registered on 12 January 2012 (ICSID Case No. ARB/12/1).

UPON THE COURT NOTING THAT Tethyan is the Award creditor in respect of an ICSID Award dated 12 July 2019 (the "**Award**").

UPON THE COURT READING the "**DECISION ON STAY OF ENFORCEMENT OF THE AWARD**" dated 17 September 2020 (exhibited to Mr Weigel's First Affidavit) of the *ad hoc* Committee appointed within ICSID to determine Pakistan's application to annul the Award (the "**Committee**").

UPON THE COURT READING the "**DECISION PARTIALLY TERMINATING THE STAY OF ENFORCEMENT OF THE AWARD**" dated 30 October 2020 of the Committee lifting the stay of enforcement as to 50% of the Award, including interest accrued as of 30 October 2020.

UPON THE APPLICANT UNDERTAKING to this Court to comply with the undertakings it gave to the Committee to (i) "*place into an escrow account, under the sole control of an international escrow agent and under the direction of the Committee, any amounts collected through its enforcement of the ICSID Award*"; and (ii) "*if the Committee annuls the Award, [Tethyan] will pay [Pakistan] any amounts that Pakistan cannot recover from the escrow account excluding those amounts due to Pakistan's third-party creditors until that undertaking to the Committee*" (the "**Committee Undertakings**"), unless and until the Committee Undertakings (i) lapse or the Committee otherwise relieves compliance with those undertakings (in which case the Applicant's undertakings to this Court under

this clause will automatically lapse to the same extent); or (ii) are amended (in which case, the Applicant undertakes to this Court to comply with any amended undertaking(s) given to the Committee).

AND UPON THE APPLICANT UNDERTAKING to issue the draft Claim Form (the "Claim Form") found at Hearing Bundle 1, Tab 5 as soon as practicable after this Order is signed.

IT IS HEREBY ORDERED THAT:

Registration Order

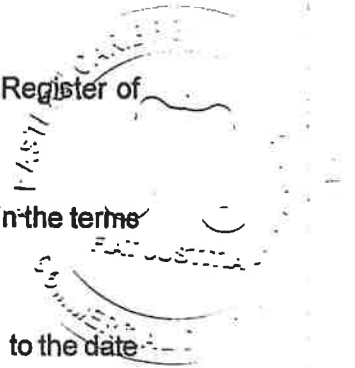
1. Subject to paragraph 6 below, the Award rendered under the auspices of the International Centre for Settlement of Investment Disputes ("ICSID") in ICSID Case No. ARB/12/1 against the First Respondent, the Islamic Republic of Pakistan ("Pakistan"), on 12 July 2019 (the "Award") is:

a. Registered in the Court, effective forthwith upon the making of this Order, recognized and Tethyan is given permission to enforce the Award pursuant to section 1(2) of the United Kingdom's Arbitration (International Investment Disputes) Act 1966 (the "1966 Act"), as extended to the BVI and amended by the United Kingdom's Arbitration (International Investment Disputes) Act 1966 (Application to Colonies etc.) Order 1967 (SI 1967/159) (the "1967 Order"), and

b. Alternatively, subject to paragraph 6 below, the Award is recognized and Tethyan is granted leave of the Court to enforce the Award in the same manner as a judgment or order of the Court that has the same effect pursuant to sections 81 and 82 of the Arbitration Act, 2013 (as amended) (the "2013 Act").

2. The orders granted by paragraphs 1 above shall, subject to paragraph 6 below, include:

- a. US\$ 4,087,000,000 plus pre-Award interest from 15 November 2011 to the date of the Award and post-Award interest until the date of payment, both at the rate of 1% above the US Prime Rate, to be compounded annually.
 - b. Costs of the arbitration in the sum of US\$2,533,277.08 plus post-Award interest at the rate of 1% above the US Prime Rate, to be compounded annually from the date of the Award until the date of payment.
 - c. Legal fees and disbursements of the Claimant in the sum of US\$ 59,447,596.60 plus post-Award interest at the rate of 1% above the US Prime Rate, to be compounded annually from the date of the Award until the date of payment.
 - d. Tethyan's reasonable costs of and incidental to registration.
3. Copies of the Award and associated documents shall be entered into a Register of this Court.
4. Subject to paragraph 6 below, judgment shall be entered against Pakistan in the terms of the Award and comprising the following sums:
 - a. US\$ 4,087,000,000 plus pre-Award interest from 15 November 2011 to the date of the Award and post-Award interest until the date of payment, both at the rate of 1% above the US Prime Rate, to be compounded annually.
 - b. Costs of the arbitration in the sum of US\$ 2,533,277.08 plus post-Award interest at the rate of 1% above the US Prime Rate, to be compounded annually from the date of the Award until the date of payment.
 - c. Legal fees and disbursements of the Claimant in the sum of US\$ 59,447,596.60 plus post-Award interest at the rate of 1% above the US Prime Rate, to be compounded annually from the date of the Award until the date of payment.
5. Interest on the judgment debt shall continue to run at 1% above the US prime rate, compounded annually, as directed by the Award.



6. Tethyan may not, without further permission or Order of this Court, enforce the Judgment given by this Order in the BVI to any extent greater than US\$ 3,114,339,607.

Service

7. Permission is granted to Tethyan to serve the Claim Form on Pakistan and PIA Pakistan out of the jurisdiction but the service of the Claim Form on those parties shall not be required. If Tethyan does serve the Claim Form on Pakistan and/or PIA Pakistan out of the jurisdiction, it shall be permitted to do so by registered mail or courier/delivery service as follows. If Tethyan does not serve the Claim Form, it shall nevertheless provide copies of the Claim Form, the Registration Application, the Written Submissions, the Affidavits and associated documents on Pakistan and PIA Pakistan by registered mail or courier/delivery service set out below:

- a. In respect of Pakistan, by sending the document by registered mail or courier/delivery service in separate packages addressed to each and all of the following persons at the following addresses, provided that delivery of a package to any one of the addresses (whether or not directly or personally to the person named below in connection with that address), which shall be deemed to constitute good service on Pakistan pursuant to CPR 7.8A(3):

- i) Mr Reginald R Goeke of Mayer Brown LLP, 1999 K Street NW, Washington, DC 20006.
- ii) Mr Ignacio L. Torterola of GST LLP, Watergate Building, 2600 Virginia Avenue, NW, Suite 205 Washington, D.C. 20037, U.S.A, Pakistan's counsel in the ICSID proceedings.
- iii) Mr Quinn Smith and Mr. Diego Gosis of GST LLP, 1111 Brickell Ave., Suite 2715, Miami, FL 33131, U.S.A.
- iv) Mr Ali Zahid Rahim of Axis Law Chambers, 5-S, Gulberg II, Lahore 54660.

- v) Mr Usman Raza Jamil of URJ & Co #30, Saeed Anwar Block Gaddafi Stadium Lahore, Pakistan, Pakistan's counsel in the ICSID proceedings.
- vi) Mr Ahmad Irfan Aslam, Head of International Disputes Unit, Office of the Attorney General for Pakistan, Supreme Court Building, Constitution Avenue, Islamabad, Pakistan.
- vii) Mr Makhdoom Shah Mahmood Qureshi, Head of the Ministry of Foreign Affairs of the Islamic Republic of Pakistan, Foreign Office Building, Constitution Avenue, G-5, Islamabad, ICT, Pakistan.
- b. PIA Pakistan by sending the document by registered mail or courier/delivery service to the following person at the following address (whether or not directly or personally to the person named below in connection with that address), which shall be deemed to constitute good service on PIA Pakistan:
- Air Marshal Arshad Malik, CEO of PIA Pakistan, PIA Head Office, PIA Building, Old Terminal, Karachi, Sindh, Pakistan-75200.
8. Pursuant to CPR 7.8A(2), service of the Claim Form and this Order and associated documents shall be deemed to have been effected 5 clear calendar days following:
- (i) receipt by the courier of the courier packages (for courier/delivery service); and/or (ii) the date indicated on the postal service or courier slip (for registered post).
9. Tethyan has permission to serve any application, order or notice subsequently made or given in any proceedings out of the jurisdiction on Pakistan or PIA Pakistan without further permission or order of this Court pursuant to CPR 7.14(1).
10. Any documents to be served pursuant to the permissions above are to be served by Tethyan pursuant to the applicable procedures set out above.

No Statement of Claim

11. Tethyan is not required to file or serve any statement of claim or affidavit or other document (according to CPR 8.1(1)(c)) pursuant to CPR 8.2(1)(a)). Any requirement to serve such a document under CPR 8.2(6) or CPR 8.2(7) is hereby dispensed with.


Variation of Order

12. Anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but the person must serve Tethyan's legal practitioners with not less than 21 days' notice of any hearing of any application to vary or set aside this Order (with copies of all materials to be relied upon at the hearing being required to be served at the same time as any Notice of Application and notice of hearing date).

Costs

13. Pakistan shall pay Tethyan's costs of, and incidental to, the Application, to be assessed if not agreed.

BY THE COURT



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(Ag. Dep) REGISTRAR

COMMUNICATIONS WITH THE COURT

All communications to the court about this Order should be sent to: High Court Registry, P.O. Box 418, Road Town, Tortola, BVI. The telephone number is: +1 284 468 5001/5153; Fax: +1 284 468 4953; and

The offices are open between 8:30 a.m. and 3 p.m. Monday to Friday.

COMMUNICATIONS WITH THE APPLICANT'S COUNSEL:

All communications to the Applicant's counsel about this Order should be sent to: MARTIN KENNEY & CO., SOLICITORS, P. O. Box 4740, Road Town, Tortola, BVI. Tel: +284 494 2444; Fax: +284 494 3313; Email: agilliland@mksolicitors.com and sreardonjohn@mksolicitors.com

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Legal Practitioners for the Applicant