

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

C.S. NO.80/2014

FARRUKH ASLAM, ETC.

VERSUS

RASHID KHAN, ETC.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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28-08-2014 Barrister Faisal Khan & Hadiya Aziz Advocate for
Farrukh Aslam & others.
Sardar Ejaz Ishaq Khan Advocate for Rashid Khan & others.

Through this consolidated order two suits i.e. Civil
Suit No.73 of 2013 and Civil Suit No.80 of 2013 are being
decided.

2. Briefly stated the applicants in both Civil Suits entered
into a Joint Venture and share holder Agreement dated
22-June-2005 (hereinafter referred to as 'JVA') for the
purposes of investment into, and management of the
business of two Private Limited companies, namely, Micronet
Broadband (Pvt) Ltd and Naya Tel (Pvt) Ltd. The JVA was
discharged through notice dated 07-10-2013. The dispute
arising out of and in connection with JVA had arisen
between the applicants and, therefore, the respective suits
were filed invoking Section 20 of Arbitration Act, 1940. The
applicant in Civil Suit No.80 of 2013 is aggrieved by the

discharge notice dated 07-10-2013. The other disputes between the parties are also mentioned in detail in their respective suits.

3. Through Clause-24 of the JVA, it was agreed between the parties that any dispute arising in connection with the JVA shall first be referred for resolution to a mediation committee comprising of three members, to be nominated by the shareholders. In the event the mediation committee is unable to resolve the dispute within the stipulated time, the mediation proceedings shall stand aborted and thereafter the dispute(s) shall be referred for arbitration. The arbitration clause provides for arbitration under Arbitration Act, 1940, to be conducted by two arbitrators, one of whom shall be a retired Judge of the High Court of Punjab and other shall be a Chartered Accountant of atleast 07 (seven) years of practice in a firm of Chartered Accountants. It is further stipulated that the two Arbitrators shall appoint an Umpire.

4. The existence of disputes between the parties is evident from the respective suits. The arbitration clause is admitted and both the applicants have consented that the disputes may be resolved/decided in terms of the arbitration clause. The parties, in pursuance of the arbitration clause, have consented to the appointment of two Arbitrators and have provided the names, which are as follows:-

- i) Mr Justice (R) Sair Ali, and
- ii) Mr Rashid Ibrahim, Chartered Accountant, Partner, A.F. Ferguson & Co., Islamabad.

5. In light of the above, the applicants shall file their respective references before the above named Arbitrators. The Arbitrators shall appoint an Umpire within 15 (fifteen) days from the date of communication of this order. After appointment of the Umpire, the Arbitrators shall commence the proceedings in accordance with the provisions of the Arbitration Act, 1940.

6. Consequently, the Suit No.73 of 2013 and Civil Suit No.80 of 2013 are, therefore, allowed in the above terms.

C.M. No.01/2013 in C.S. No.80/2013

Through this application, the applicant in Civil Suit No.80/2013 seeks interim relief and has prayed as follows:

- a) Suspend the operation of the Discharge Notice dated 7 October 2013 issued by the Respondents to the Applicants;*
- b) Restrain the respondents from convening / holding any board of directors and/or shareholders meetings of the Respondent No.8, except those that may be required by law for carrying out the ordinary business of each company;*
- c) Restrain the respondents from incurring any capital expenditure i.e. other than any expenditure necessary for the ordinary running of the business;*
- d) Grant any other relief deemed fit and appropriate in the circumstances of the case.*

2. After hearing the learned counsels at length, this Court is not persuaded to grant the relief as prayed. The applicant seeks suspension of the notice dated 07-10-2013, which is in the nature of seeking the main relief in Civil Suit

No.80/2013. The very dispute in Civil Suit No.80/2013 relates to the legality of the notice dated 07-10-2013, which has to be resolved/decided by the Arbitrators. The applicants have also not been able to satisfy this Court that an irreparable loss will be suffered or the balance of convenience is in favour of the applicants. Therefore, for the detailed reasons to be recorded later, the application for interim relief is dismissed.

(ATHAR MINALLAH)
JUDGE

*Luqman/