

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ  
Mr. Justice Jawad Akbar Sarwana.

**High Court Appeal No. 465 of 2024**

**M/s. National Telecommunication Corporation  
v. Zahra Communications**

Appellant: M/s. National Telecommunication Corporation, Through Mr. Gazain Z. Magsi, Advocate

*Versus*

Respondents: M/s. Zahra Communications, Nemo

Date of hearing: 01.11.2024

Date of Decision: 16.12.2024

**J U D G M E N T**

**JAWAD AKBAR SARWANA, J.:** National Telecommunication Corporation (hereinafter referred to as “NTC” or as in the context of this appeal and the suit, described as the “Respondent/Objector”) has filed this appeal against Zahra Communications (Pvt.) Ltd. (hereinafter referred to as “Zahra Communications” or as in the context of this appeal and the suit, described as the “Appellant/Claimant”) challenging the learned Single Judge judgment dated 10.09.2024 and decree dated 25.09.2024 passed in Suit No.18/2013 whereby an Arbitral Award dated 03.12.2013 was made a Rule of the Court. NTC and its Counsel claim that the Award is based on mere presumption, assumption, suppositions, conjectures and surmises, and it is unjust and improper under Section 30 of the Arbitration Act, 1940.<sup>1</sup> NTC’s Counsel contended that the findings reached by the learned Arbitrator were judicial misconduct within the meaning of Section 30 of the Arbitration Act of 1940.<sup>2</sup> He argued that the learned Single Judge completely disregarded the cogent reasoning, evidence, and legal principles on the admissibility of evidence or sufficiency of evidence relied upon and identified by NTC

---

<sup>1</sup> Ground (iii) of HCA No.465/2024 on page 13 of the said HCA.

in its objections and incorrectly allowed the Award to be made a rule of the court.<sup>3</sup> Counsel argued that the learned Single Judge failed to appreciate that Zahra Communications had claimed specific damages with specific calculated amounts in the arbitration, which it miserably failed to prove through evidence.<sup>4</sup> Counsel for NTC further argued that the Arbitrator's Zahra Communication's claim concerning ASR was wholly unsubstantiated and no damages could accrue in the facts and circumstances of the case (Claim 2), which claim should have been rejected in its entirety.<sup>5</sup> Further, the Arbitrator's conclusion reached for Claim 4 is/was misreading and non-reading of evidence.<sup>6</sup> No claim for damages under Claim 7 on account of the illegal termination of the International Gateway Exchange operation could be made out, and the Arbitrator misinterpreted and miscalculated the fact.<sup>7</sup> Hence, the Arbitral Award was liable to be set aside on this score, too. Finally, the Arbitrator also drew erroneous conclusions for Claim 11 and Claim 12.<sup>8</sup> In view of the above, Counsel for NTC argued that the impugned judgment and decree are liable to be dismissed.

2. Heard Counsel and perused the appeal file. By way of background, it transpires that NTC and Zahra Communications had entered into an agreement for operating, marketing and maintaining Prepaid Calling Card Service, Pay Phone Service and International Gateway Exchanges for initially a period of ten (10) years, but when a dispute arose the term (duration) of the said Agreement was reduced to five (5) years, and certain other provisions of the said agreement were also amended. Thereafter, once again, a dispute arose, which ultimately led to the dispute's referral to the learned Arbitrator, Mr Justice (Retd.) Nasir Aslam Zahid. In the end, both Zahra Communications and NTC filed claims and counter-claims against

---

<sup>2</sup> Ground (ix) of HCA No.465/2024 on page 15 of the said HCA.

<sup>3</sup> Grounds (iv) and (vi) of HCA No.465/2024 on page 13 of the said HCA.

<sup>4</sup> Grounds (x) and (xi) of HCA No.465/2024 on page 15 of the said HCA.

<sup>5</sup> Grounds (xii), (xiii), and (xiv) of HCA No.465/2024 on pages 15-17 of the said HCA.

<sup>6</sup> Grounds (xv), (xix) and (xx) of HCA No.465/2024 on page 17 of the said HCA.

<sup>7</sup> Grounds (xxi) to (xxiv) of HCA No.465/2024 on page 19 of the said HCA.

each other. The Arbitrator identified thirteen (13) claims in dispute, as shown in Table “A” hereinbelow. Parties led evidence whereafter the Arbitrator accepted five (5) out of twelve (13) claims as shown in Table “B” hereinbelow, namely, Claim 2, Claim 4, Claim 7, Claim 11 and Claim 12. For each claim, the Arbitrator gave his reasons, which selected reasons are reproduced in column “B4” in Table “B”. As is apparent from the two tables, i.e. Table “A” and “B”, Zahra Communications had lodged a claim for Rs.628,120,259 plus interest and markup at 18% p.a., whereas NTC lodged a claim for Rs.458,000,000. The difference between the two claims is/was Rs.169,900,259. The Arbitrator dismissed the entire claim of NTC. Surprisingly, NTC has not challenged this aspect before the learned Single Judge or in this HCA. Meanwhile, the Arbitrator awarded Zahra Communications damages of Rs.45,000,000 as per column “B5” in Table “B”. NTC challenged all the five (5) claims, i.e. Claims #2, 4, 7, 11 and 12 awarded against it by the Arbitrator and accepted those Claims which the Arbitrator rejected were rightly dismissed. Incidentally, the claims arose from the same common data set of evidence discussed by the learned Arbitrator issue-wise.

Table “A”<sup>9</sup>

<b>Claim No.</b>	<b>Description</b>	<b>Claimant’s Claim</b>
1.	Damages-NTC delayed restart	Rs.10,616,835
2.	Damages due to low ASR	Rs.174,933,931
3.	Damages due to no circuit	Rs.17,247,610
4.	Damages due to delayed provision of EIs	Rs.143,503,826
5.	Damages due to Network Failure	Rs.3,817,284
6.	Damages to funds held up by carriers	Rs.30,129,275
7.	Damages due to disconnection	Rs.166,609,432
8.	Damages due to NTC drawing Excess Amount	Rs.27,624,400
9.	Damages due to refusal of NTC to keep profit A/C	Rs.954,006

<sup>88</sup> Grounds (xxv) to (xxvii) of HCA No.465/2024 on page 19-21 of the said HCA.

<sup>9</sup> Table “A” is reproduction of the table on pages 4-5 of the Award as available on page 149-151 of HCA.

10.	Damages on profit not availed on excess amount drawn by NTC	Rs.3,741,030
11.	Damages due to non-operation of Pre-paid Calling Cards	Rs.84,455,036
12.	Damages due to non-operation of Pay-Phone Services	Rs.27,605,000
13.	Damages due to failure to provide outgoing traffic	Rs.6,882,594

**Table "B"**

<b>Claim No.</b>	<b>Claim as described by Arbitrator in Award</b>	<b>Claimant's Claim in Rupees</b>	<b>Reasons (identified by this Court) given by the Arbitrator for allowing/rejecting claims</b>	<b>Amount Awarded by Arbitrator</b>
1.	<u>Claim No.1:</u> Loss as a result of arbitrary closure by the Respondent of the International Service being provided by the Claimant from 1 <sup>st</sup> May, 2004 till 18 <sup>th</sup> August, 2004.	10,616,835	“ . . .the Claimant has failed to provide any proof of the ‘closure’ and as such, has only attached a calculation of damages as evidence. I therefore hold that the Claimant is not entitled to any damages under this heading.”	Nil
2.	<u>Claim No.2:</u> Damages due to low Answer to Seizure Ratio (ASR) for the period August, 2001 till June, 2006	174,933,931	“ . . .None of the evidence provided stipulates as to what 'universally acceptable levels' would mean, however since the License reads that NTC should maintain at-least 55% Inward ASR, I would deem it appropriate that a universally acceptable level for Zahra would be close to this figure. So it appears that the Claimant was meant to maintain some level of ASR. . .”  “ . . .The Claimant, however, has not produced any oral or documentary evidence about the extent of damages suffered on this count. But as it has suffered extensive damages in this regard, I grant damages of Rs. 10 million.”	10 million
3.	<u>Claim No.3:</u> Loss on account of no Circuit being available for the period May, 2005 till May, 2006	17,247,610	“ . . .No claim is made out based on the evidence provided and the problem of non-provision of CDRs as claimed by the Respondent is not insignificant. It is to be noted however that letters were sent to NTC, by the Claimant, alleging this non-availability which were never clearly accepted or denied by them. This claim is, therefore,	Nil

			rejected.	
4.	<u>Claim No.4:</u> Failure to Provide EIs (2mb/30 channel circuit) for the period 9 <sup>th</sup> August, 2004 till 31 <sup>st</sup> August, 2005.	143,503,826	“ . . .the Respondent cannot take advantage under this Claim, because it did not provide any evidence to the contrary. Hence even though the Claimant does not have sufficient proof as to how 8 EIs would have advantaged the Claimant in reaching its 10 million minute target, the fact that the request was ignored by the Respondent (since if there was a valid reply, the same has not been provided) I grant damages to the Claimant, under this claim of Rs.10 million.”	10 million
5.	<u>Claim No.5:</u> Damages on account of interruption of International Bandwidth from 7 <sup>th</sup> April, 2005 till 10 <sup>th</sup> June, 2006.	3,817,284	“ . . .It is to be noted also that there is no correspondence between the two parties attached with regard to this Claim which would further clarify the point. I therefore hold that the Claimant is not entitled to claim damages under this head.”	Nil
6.	<u>Claim No.6:</u> Amount withheld by foreign carriers due to sudden discontinuations of International Gateway Exchange.	30,129,275	“ . . .The Respondent however states that the Claimant has suffered no such loss and is in-fact hiding the international practices of this business. The Respondent also stated that there were no formal agreements between the Claimant and the foreign carriers and therefore the Respondent is not liable to pay anything. Furthermore, the Respondents maintain that the Claimant has not attached any proof of agreements between the foreign carriers and itself and neither have they given proof of the money withheld by the foreign. There is no proof of any shutdown attached to the Claim. Proof of damages is also lacking. This claim is rejected.”	Nil
7.	<u>Claim No.7:</u> Loss due to illegal termination of International Gateway Exchange operations for the period June, 2006 till November, 2009	166,609,432	“ . . .The Respondent insists that the operations were stopped under the orders of PTA, which is the regulatory authority of the Respondent. In view of its contractual commitment and the orders of Sindh High Court, the respondent were legally liable	10 million

			to restart the operations despite orders of PTA. The earlier termination of IGE operations was also illegal. The respondent is liable to pay damages to the claimant i award Rs.10 million in damages under this head for extensive damage caused to the claimant.”	
8.	<u>Claim No.8:</u> Excess withdrawal from joint account on basis of USF, APC and/or MTR.	27,624,400	“ . . .as per the provided evidence it is unclear as to what happened thereafter and as such there is not sufficient evidence to substantiate this Claim. This claim is also rejected.”	Nil
9.	<u>Claim No.9:</u> Damages suffered on account of loss of profit.	954,006	“ . . .There is no evidence that there was an obligation non any party to open a profit-bearing joint account. This claim is rejected.”	Nil
10.	<u>Claim No.10:</u> Damages incurred on account of loss of profit on amount of Claim No.8.	3,741,030	“ . . .There is no evidence that there was an obligation non any party to open a profit-bearing joint account. This claim is rejected.”	Nil
11.	<u>Claim No.11:</u> Loss suffered on account of Respondents failure to allow operation of PCCS.	84,455,036	“ . . .I do concur that there was unjustified delay in the Respondent obtaining the access code from PTA as there are no letters attached whereby the Respondent has explained its delay, The claimant is entitled to damages. The Claimant has not provided any evidence of investments made. Additionally, the basis for calculating of damages is not clear or evidenced by conclusive proof. Extensive damage has been cause to the Claimant who is awarded Rs.10 million as damages under this claim.”	10 million
12.	<u>Claim No.12:</u> Loss suffered on account of Respondents failure to get approvals for Pay Phones Services.	27,605,000	“ . . .I do find a breach of Clause 18.1 of the Agreement as it is clear that plans were submitted but the requisite infrastructural support was not given by the Respondent, Additionally, the basis for calculating of damages is not clear or evidenced by conclusive proof. I will not award the claimed damages, but will award Rs.5 million as damages for delay and	5 million

			reasonable profit that could be made, by the Claimant.”	
13.	<u>Claim No.13</u> : Damages due to failure to provide outgoing traffic from the South Region (Sindh and Baluchistan).	6,882,594	“. . . There is not evidence provided by either side whereby it can be determined who is in breach. Reliance on one letter dated 27.10.2002 by Witness No.1 is not sufficient to suggest Zara was capable of holding outgoing traffic. Claim has not been substantiated and is dismissed.”	Nil
	TOTAL			45 million

3. The learned Single Judge hearing NTC’s objections has expressed his reasoning for making the Award a rule of the Court. Additionally, this bench also examined each claim and, as per the summary we prepared, articulated it in terms of Table “B” above. The Arbitrator has well set out the grounds for rejection and denial of claims. Here, it is pertinent to mention that the learned Arbitrator rejected eight (8) out of thirteen (13) claims filed by the Claimant, Zahra Communications, based on the evidence brought on record.

4. We have perused the HCA and noted that NTC has essentially argued with respect to Claim Nos.2, 4, 7, 11 and 12, that no documentary evidence was produced in the assessment of damages for these claims. The damages awarded by the learned Arbitrator are in the nature of general damages. No hard and fast rule can be laid down in this regard. Broadly, damages are of two kinds: general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her, which Zahra Communications did not do. NTC’s Counsel has not mentioned that the damages awarded by the learned Arbitrator are general and not special. The arbitrator has not awarded Zahra Communications special damages for any of the claims it has filed. Notwithstanding this aspect of the case, the Superior Courts have held in several decisions, Abdul Majeed Khan versus Tawseen Abdul Haleem 2012 CLD 6, being one of the leading cases, that if

circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. Similarly, in the case of Sufi Muhammad Ishaque versus The Metropolitan Corporation, Lahore, PLD 1996 Supreme Court 737, it has been held that there is no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that they satisfy the conscience of the Court, depending on the facts and circumstances of the case. The learned Arbitrator has clearly identified the evidence he has relied on from the record to reach the quantum of general damages of Rs.10 million. The figure has not been generated out of thin air and is anchored in several documents mentioned in the Award. Accordingly, no ground is made out to interfere with Arbitrator's arrival at Rs.10m towards general damages concerning for four (4) claims plus one (1) claim for Rs.5 million.

5. We have not found any "legal misconduct" or "moral misconduct" on the part of the learned Arbitrator.<sup>10</sup> Further, the learned counsel has not made a case for NTC to identify precisely where the arbitrator has travelled beyond his jurisdiction. We could have considered setting aside the award if there was any error, factual or legal, which floats on the surface of the award,<sup>11</sup> but once again, NTC has made none such demonstration before us.

6. Given the above, we do not find any irregularity or perversity in the impugned judgment passed by the learned Single Judge, making the Arbitral Award a rule of the Court. Consequently, this HCA is dismissed with no order as costs.

JUDGE

CHIEF JUSTICE

---

<sup>10</sup> "Legal misconduct" and "Moral misconduct" are defined in the Supreme Court of Pakistan Judgment in Injum Aqeel v. Latif Muhammad Chaudhry and Others, 2023 SCMR 1361, paragraph 6.

<sup>11</sup> Gerry's International (Pvt.) Ltd. v. Aeroflot Russian International Airlines, 2018 SCMR 662.