IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 843 / 2015

Plaintiffs:	**Aroma Travel Services (Pvt.) Limited & others through M/s Khawaja Shamsul Islam, Imran Taj and Khalid Iqbal Advocates.**
Defendants No. 1 & 2:	**Faisal Al Abdullah Al Faisal Al-Saud & Etimad (Pvt.) Limited through M/s. Muhammad Akram Sheikh, Mehmood Ali and Behzad Haider Advocates.**
Defendants No. 3 & 21:	**VFS Tasheel International LLC & Vasco Worldwide through M/s. Mairajuddin and Muhammad Hamza Advocates.**
Defendants No. 5 & 11:	**VFS Global Services (Pvt.) Ltd. & KUONI Group through Mr. Sarfaraz Ali Advocate.**
Defendant No. 19:	**Standard Chartered Bank Ltd. (SCB) through Ms. Sameera Iqbal Advocate.**

1) ***For hearing of CMA No. 8069/2015.***
2) ***For hearing of CMA No. 8070/2015.***
3) ***For hearing of CMA No. 8071/2015.***
4) ***For hearing of CMA No. 9070/2015.***
5) ***For hearing of CMA No. 9071/2015.***
6) ***For hearing of CMA No. 9072/2015.***
7) ***For hearing of CMA No. 12536/2015.***
8) ***For hearing of CMA No. 6345/2017.***
9) ***For hearing of CMA No. 7895/2017.***
10) ***For hearing of CMA No. 7371/2017.***
11) ***For hearing of CMA No. 13415/2017.***

Date of hearing. **24.04.2019, 15.05.2019 & 23.05.2019.**

Date of order. **02.08.2019.**

O R D E R

Muhammad Junaid Ghaffar, J. This is a Suit for Specific Performance, Declaration, Injunction, Rendition of Accounts, Recovery of Money and Damages, and the Declaration being sought is, that exchange of emails, Memorandum of Understanding dated January, 2013, ("**MOU**") and other correspondence between the Plaintiffs and Defendants are binding in nature. Application at Serial No.1 bearing (CMA No.8069/2015) has been filed under Order 39 Rule 1 & 2 CPC for a mandatory

injunction. At Serial No.2 bearing (CMA No.8070/2015) is an application under Section 94 read with Section 151 CPC seeking issuance of a Clearance Certificate and discharge of a Bank Guarantee furnished by the Plaintiffs to Defendants. At Serial No.3 (CMA No. 8071/2015) is an application under Oder 20 Rule 16 and 17 CPC for passing of a preliminary decree. CMA No. 9070/2015 at serial No.4 is a contempt application filed on behalf of Defendant No. 2, whereas, at Serial No.5 (CMA No. 9071/2015) again is an application of Defendant No.2 under Section 94 read with Section 151 CPC seeking clarification of order dated 20.05.2015. Similarly CMA No. 9072/2015 at serial No. 6 has also been filed by the same Defendant under Order 39 Rule 4 CPC for discharge and setting aside of order dated 20.05.2015. Then there are certain applications by some of the Defendants for deletion of their names from the array of Defendants under Order 1 Rule 10 CPC; however, despite being listed none has argued these applications, and therefore, they are not to be decided at this stage of the proceedings. There is another CMA No 6345/2017 at serial No. 8 which is an application under Order 7 Rule 11 CPC filed on behalf of Defendants No.3 & 21 seeking rejection of Plaint to their extent; but again this has also not been argued and therefore need not be discussed. Primarily, the arguments have been addressed on behalf of the parties in respect of the injunction application, application for preliminary decree and for discharge of bank guarantee, as well as modification of order dated 20.5.2015.

2. The precise facts as stated on behalf of the Plaintiffs are that Plaintiffs No.1 & 2 have invested and financed an amount of more than Rs.120 million (One Hundred and Twenty Million Rupees) for establishing business of Defendant No.2 in Pakistan in respect of rendering services of Biometric Verification of Visa applications to Saudi Arabia. In return, Defendants No. 1 to 10 and Defendant No. 21 had agreed to transfer 25% shareholding of Defendant No. 2 in favour of the Plaintiffs. It is the case of the Plaintiffs that despite such investment, the commitment has not been honored; and therefore, they are entitled for a mandatory injunction to act as shareholders and or Directors in Defendant No 2. They have also prayed for appointment of Chartered Accountants to conduct audit of the accounts of Defendant No.2 with a further decree for Rendition of Accounts as well as Recovery of the invested amount and damages.

3. Learned Counsel appearing on behalf of the Plaintiffs has contended that pursuant to the interest and willingness of the Defendants, the Plaintiffs entered into a contractual relationship and after extensive negotiations and exchange of drafts, an MOU was exchanged and entered into by the parties in January, 2013. Per learned Counsel, the Plaintiffs were invited and offered such business relationship by the Defendants, for the reason that the Plaintiffs are well-known and duly established in the field of Travel Related Services in Pakistan, whereas, in view of latest technology, including biometric verification system, Defendants No.4 & 5 wanted to establish the said Company and for such purposes, Plaintiffs were offered 25% shareholding against huge investment which has already been done. According to him pursuant to the MOU and the negotiations between the Plaintiffs and the authorized representative of the Defendants, the amount was invested which is also reflected from letter dated 5.12.2013 written by Defendants No. 2 & 7 to State Bank of Pakistan, wherein, it has been stated that as a consequence of the strategic decision for joining of a local partner, Plaintiff No.2 has been offered 25% shares. Per learned Counsel, notwithstanding the fact that huge investment was made, the Plaintiffs were never taken on board in establishing various offices of Defendant No.2 in Pakistan for rendering and performing biometric services for pilgrims to Saudi Arabia. According to him Plaintiffs had to keep on pursuing the Defendants to transfer 25% shareholding of Defendant No.2 in favour of the Plaintiffs as agreed; but despite several assurances, they failed to do so. Per learned Counsel such investment is admitted and is not denied. He has further contended that on 28.1.2014, a final version of Shareholders Agreement and Sale and Purchase Agreement was discussed, and some percentage of shareholding was also finalized; but despite such negotiations, the Defendants failed to honour their promise and never transferred the shareholding of Defendant No.2 as agreed. He has further argued that subsequently on 21.7.2014 Plaintiff No.2 forwarded an email to Defendant No.6 requesting financial statements of Defendant No.2 followed by a reminder dated 24.7.2014, as by such date an amount of Rs. 121,984,575/- had already been invested and instead of responding positively, an email dated 17.9.2014 was sent to the Plaintiffs which was in fact titled as Final Notice of Termination, whereby, it was stated that negotiations are being wound up as Defendant No.1 has lost trust in the Plaintiffs. According to him,

subsequently, in order to resolve the matter amicably and to settle the issue, the Plaintiff No.2 and his father met Defendant No.1 in Dubai UAE, on 19.3.2015 wherein, suggestions were asked from the Plaintiffs and vide email dated 21.3.2015, Plaintiff No.2 proposed that since they have already undertaken extraordinary efforts, spent time and energy, as well as forgone various other business opportunities of similar nature, they would like to continue their partnership in Defendant No.2; and in the alternative, in case the matter cannot be settled, then Plaintiffs No.1 & 2 expect a fair return on their investment proposed at Rs. 5,000,000,000/-. Per learned Counsel, such proposal was not properly responded; hence, instant Suit has been filed as the action of Defendants is uncalled for, whereas, the Plaintiffs are entitled for transfer of 25% shareholding of Defendant No. 2. Similarly, per learned Counsel, Defendant No. 9 & 9(a) have unlawfully discontinued their already continuing business with some of the Plaintiffs and have also failed to issue a clearance certificate as well as release of their Bank Guarantees. Per learned Counsel, the conduct of Defendants is in violation of the MOU as after the admitted investment of the Plaintiffs, it has in fact matured into an Agreement which stands performed by the Plaintiffs through huge investment and rendering of services and working expertise in establishing the Karachi office of Defendant No. 2, as well as all over Pakistan. Therefore, according to him, the Plaintiffs are entitled for a mandatory injunction for transfer of shares of Defendant No.2 to the extent of 25%; with further directions of audit of the accounts and passing of a preliminary decree for such purposes. In support of his contention he has relied upon ***Aroma Travel Services (Pvt.) Ltd. & 4 others V. Faisal Al Abdullah Al Faisal Al-Saud and 20 others (2017 Y L R 1579), Aroma Travel Services (Pvt.) Ltd. & 4 others V. Faisal Al Abdullah Al Faisal Al-Saud and 20 others (P L D 2018 Sindh 414), Muhammad Sattar and others V. Tariq Javaid and others (2017 S C M R 98), Messrs Pak Brunei Investment Company Limited V. New Allied Electronics Industries (Pvt.) Ltd. (2019 C L D 301), Commissioner of Income Tax, Peshawar Zone, Peshawar V. Messrs Siemen A.G. (P L D 1991 SC 368) and House Building Finance Corporation V. Shahinshah Humayun Cooperative House Building Society and others (1992 S C M R 19).***

4. On the other hand, learned Counsel appearing on behalf of Defendants No.1 & 2 has contended that no case is made out on behalf of

the Plaintiffs inasmuch as the pre-contractual negotiations were taking place under the Non-Disclosure Agreement ("NDA") which contains a "Non-Binding Clause", and therefore, excludes the possibility of any binding contract, including oral or implied, between the parties in the absence of an executed contract. According to him, in the backdrop of the NDA; no negotiations could entail an enforceable contract in the absence of an executed and signed contract giving rise to legal relations. Per learned Counsel, the exchanged draft agreements were manifestly incomplete, unsigned, and materially different from one another and involved different parties; and therefore, keeping in view the trite principle of contract law that "no essential term of a contract should remain unsettled", these cannot be made the basis of pronouncing a concluded contract between the parties. Insofar as payments made on behalf of Defendant No.2 by the Plaintiffs are concerned, according to him, they were under a pre-existing relationship three months prior to the beginning of any negotiations or the signing of the NDA; hence, cannot be construed as performance or acceptance by conduct. According to him no specific relief can be granted as the Plaintiffs have failed not only in establishing prima facie case; but also on the test of irreparable loss and balance of convenience. He has further argued that no accounts can be taken, where liability to account is not established, whereas, it is not a case of any fiduciary relationship so as to impose any legal obligation to render any accounts. Per learned Counsel it is only a case of lending money or an investment in business, without establishing or commitment of any interest in the Company i.e. Defendant No.2, and therefore, no preliminary decree can asked for. In support of his contention he has relied upon ***Aroma Travel Services (Pvt.) Ltd. & 4 others V. Faisal Al Abdullah Al Faisal Al-Saud and 20 others (P L D 2018 Sindh 414), Muhammad Farooq & Company (Pvt.) Limited V. Messrs Pakistan Tobacco Company Limited and another (1997 C L C 520), Messrs Friend Engineering Corporation, The Mall, Lahore V. Government of Punjab and 4 others (1991 S C M R 2324), Abdul Karim V. Iqbal ur Rehman and 5 others (1980 C L C 1283), Province of West Pakistan and 2 others V. Allahditta (P L D 1972 Karachi 8), M. Khurram Muggo V. Mst. Perveen Hameed Muggo and 3 others (P L D 2007 Lahore 518) and Pakistan International Airlines Corporation V. Karachi Municipal Corporation and another (P L D 1994 Karachi 343).***

5. I have heard both the learned Counsel and perused the record. Facts have been briefly discussed herein-above and it appears that there were some negotiations between the parties and pursuant to such negotiations and discussion MOU was also exchanged by the parties somewhere in January, 2013, as apparently no date is mentioned on the same, whereas, again admittedly it has not been signed by the Defendants. Perhaps to this extent there is no dispute. It is also not denied that under the Non-Disclosure Agreement, a non-binding clause was also available, whereas, admittedly the exchanged MOU as well as Agreements were never finally signed by the parties. The Plaintiffs precise case is to the effect that immediately upon negotiations and exchange of MOU, as well as exchange of draft Agreements, they had already started making investments and were also engaged in the establishment of various offices of Defendant No.2, including purchase and rental agreements to that effect. This according to them resulted into an agreement and in lieu of the peculiar facts of this case, such an agreement can be specifically performed. On the contrary, case of Defendants No.1 & 2 is, that no formal agreement was signed, and notwithstanding that Plaintiffs had made investment, the understanding and terms and conditions so discussed cannot be specifically enforced; and therefore, no injunction can be granted. It is their further case that the investment of the Plaintiffs is available with them and can be returned even along with profit if the Plaintiffs agree to such proposal. Their case is further premised on the fact that in the peculiar facts and circumstances, neither any mandatory injunctive order could be passed; nor there is any possibility of a preliminary decree in this matter, as the Plaintiffs are neither partners in the Company; nor Directors or shareholders; and therefore, the only remedy available to them is to seek recovery of their money for which they have already made a specific prayer in the Suit, and therefore, the injunction application including the application for a preliminary decree are liable to be dismissed.

6. After having perused the record and the documents relied upon by the parties, I am of the view that the contention of Defendants No.1 & 2 appears to be correct, inasmuch as the nature of the business involved and lack of a formal agreement to that effect; and considering the peculiarity of the facts involved, it would not be possible for this Court to

pass any mandatory injunction in favour of the Plaintiffs. The first reason being that the Plaintiffs were never taken into Defendant No.2 either as Directors or for that matter as a shareholder or even as partners. The Company i.e. Defendant No.2 is admittedly a Private Limited Company, and for seeking any specific performance against the Company in respect of purported shareholding, there cannot be any specific performance in the form of injunction. Notwithstanding this, even otherwise, the Plaintiffs are admittedly not Directors of the Company in question nor there is any partnership agreement between them and the Company. At the most they may be termed as investors in the Company and to the extent of their investment, there is no denial by the contesting Defendants, except that the investment was not in this Company but was an outcome of an earlier existing relationship between the parties. In these circumstances, it would not be appropriate to pass any mandatory injunction in favour of an investor, by first taking them as Directors in the Company, and then permit them to run and manage the Company to the extent of their shareholding. It is settled law that such type of contracts, otherwise, cannot be specifically enforced in view of the bar contained in Section 21 (a) of the Specific Relief Act, 1877, which provides that *a contract for the non-performance of which compensation in money is an adequate terms* cannot be specifically enforced; and section 21(b) ibid, which provides *that a contract which runs into such minute or numerous details*, or which is so dependent on the personal qualifications or volition of the parties, *or otherwise from its nature is such*, that the Court cannot enforce specific performance of its material terms. Similarly in terms of s.56 (f) ibid, an injunction must not be granted by the Court, to prevent the breach of a contract the performance of which would not be specifically enforced. It is also a matter of record that after entering into some negotiations, the Plaintiffs voluntarily handed over the possession and management affairs of Defendant No.2 to whatever extent it was available with them vide email dated 21.4.2014. Once the Plaintiff's voluntarily, to continue their business relationship in other matters with the Defendants, opted out of their interest in Defendant No.2, cannot now come to the Court and ask for re-possession of their interest in Defendant No. 2, whereas, the conduct of the Plaintiffs, as already discussed, also disentitles them from any injunctive relief in view of s.56(h), to prevent a continuing breach in which the applicant has acquiesced; and lastly, in terms of s.56(j), when the conduct of the

applicant or his agents has been such as to disentitle him to the assistance of the Court At best they have a case for compensation and recovery. It is settled law that when compensation is an adequate remedy, no injunction should be granted. The peculiar facts of this case are fully covered under this settled proposition of law; as firstly, the Plaintiffs are seeking a mandatory injunction which ordinarily in such situations is not to be granted; and secondly, their case is of investment and its return; hence, even otherwise, they cannot seek any injunctive order in their favour; and lastly, they upon being served with termination notice, instead of approaching this Court, chose not to contest the same; rather handed over the control of the office and affairs of Defendant No.2 available in their control. Time and again the Courts have been pleased to hold that even if any investment is made, this does not amount to claim of ownership in the Company. As noted, the investment was made to attract Defendant No.1 to consider the Plaintiffs as prospective partners for their project of biometric verification and visa handling for Saudi Arabia; but in absence of an agreement or a concluded contract, such an investment, if any, cannot be made basis to take over the Company in question. Whatever was done, either by way of investment and spending money for expenditure to establish Defendant No.2, was at the risk of the Plaintiffs, which they voluntarily did in hope to get 25% share / ownership in Defendant No.2; but in absence of assent to that effect by way of a concluded agreement or contract by the Defendants, the Plaintiffs cannot seek a mandatory injunction order in their favor at this stage of the proceedings. It will remain a case of investment and its return which course has already been adopted by the Plaintiffs, by claiming damages and recovery of money.

7. In exercising discretion in respect of grant or otherwise of a mandatory injunction, consideration of comparative advantage and disadvantage has to be given due weightage by the Court. It is settled law that if injury on account of denial is reparable by way of compensation / damages, whereas, grant inflicts serious consequences on the defendant, then the Court is always reluctant to grant any such injunction. Normally the Courts do not order doing a positive act which will change an existing state of things. Such an injunction can be granted to restore status quo only and not to establish a new state of things. It should not be granted or allowed where it would amount to granting a decree without trial. The

power of Court in these situations is to be exercised with care and circumspection, and only in cases where grant of compensation and damages is no proper remedy. A mandatory injunction can therefore be issued in order to compel the performance of certain acts in order to prevent the breach of an obligation which the court is capable of enforcing. It is true that the obligation may flow from a contract. But then, an agreement enforceable at law has to be there between the parties on the basis of which the obligation can be ascertained. In the, instant case, the agreement on which the plaintiff is relying is itself to be established. Notwithstanding these observations, first the Court has to see that whether, is there any obligation on the part of the Defendant to perform any such mandatory act. The obligation i.e. the legal right may arise out of a contract, tort or otherwise. This as noted, is conspicuously lacking in this case. Second, the Courts power to grant a mandatory injunction is discretionary, and for that it is a must that the plaintiff approaches the Court immediately and at the very first instance. This again is not the case in hand, as the Plaintiffs, admittedly on its own volition, to maintain their cordial relations with Defendant No.1, opted out and handed over the possession and control of Defendant No.2, to whatever extent it was with them. The Court in such like cases has to see and weigh the amount of substantial mischief done or threatened to the Plaintiff, and compare it with that to the Defendant in the event of grant of such an injunction. Lastly, it must also be kept in mind that Court must not grant such an injunction unless the Court is capable of enforcing it. In this case the Plaintiffs seek a mandatory injunction by permitting and allowing them to continue as owners (25%) in Defendant No.2, and so also to interfere in its operations. This type of an injunction cannot be enforced by the Court; hence, the Court must not grant the same.

8. In the case reported as ***S. Sundaram Pillai and Ors. vs. P. Govindaswami and Ors*** (**AIR 1985 Madras 199**), it has been observed as under;

> 16. The object of an injunction is prevention (sic) and the maintenance of the status quo ante. Normally this object is achieved by merely making a restrictive order which forbids the carrying out of a threat of injury, or the repetition of an injurious act. In a given case, however, the acts committed by the defendant may leave an abiding injury and it may be difficult to restore the status quo ante unless that which has been done is undone. A mandatory injunction is issued to undo the effect of an injurious act. A very familiar example of such an injury is where the

> defendant erected a building which causes a perpetual obstruction to the access of light to the plaintiff's house, to which amount of light he has a legal right. In such a case, it is obvious that restoration of the parties to their former condition is impossible except by ordering the demolition of the building. Sometimes in order to prevent the breach of the legal right a fid to compel the performance, of certain acts the defendant is ordered to undo that which he has done. A mandatory injunction is granted only in rare cases and normally a mandatory injunction is granted, if at all, only to restore the status quo and not to establish a new state of things differing from the state which existed at the date when the suit was instituted. The effect of a mandatory injunction so far as the defendant is concerned is more serious than in the case of a prohibitory injunction, because, where by a mandatory injunction the defendant is enjoined to do any particular act, he may be put to expenses and trouble which may be very considerable. That is why, though the power to grant injunction has to be exercised with great caution, much greater caution is necessary in the case of making an order of mandatory injunction which is very rarely granted.

9. The Hon'ble Supreme Court in the case reported as ***Bolan Beverages (Pvt.) Limited V. PEPSI Co. Inc. and 4 others*** (**PLD 2004 SC 860**) has been pleased to observe as under;

> "There is no cavil with the proposition that money reliefs like claim of compensation and damages are brought about by the plaintiffs mostly to avoid the mischief of Order II, rule 2 of the C.P.C. yet the calculation of such amount and the claim thereof would automatically give an impression that such loss or, damage is reparable in terms of money. We agree with the learned counsel and believe that, in the circumstances of the present case, the loss cannot be irreparable in case the decree for, compensation and damages etc. as claimed by the plaintiff is ultimately granted."

10. It is by now a settled proposition of law that an MOU is not an enforceable contract per-se, whereas, its weightage and validity can only be examined and touched upon after going through its contents; however, in this case, even this option is not available to the Plaintiffs as admittedly no MOU was ever signed or agreed upon by the Defendants; hence, its enforcement through a mandatory injunction is at least out of question at this stage of the Suit. There have been cases wherein this Court has been pleased to enforce specific performance of the MOU's for the purposes of an injunctive order(s), and one can refer to the cases reported as ***Pak Arab Fertilizers Limited v Dawood Hercules Corporation Limited*** (**PLD 2015 Sindh 142**) and ***Shariq-Ul-Haq and 5 others v Pakistan International Airlines Corporation Limited*** [**2018 PLC (CS) 975**]. However, firstly, a distinction was there in these two cases to the effect that the MOU's were signed and were not denied; but an argument was raised that pursuant to such MOU's, further contracts and

agreements were to be signed, and the Court came to the conclusion that substance of the MOU is also material and cannot be ignored. And secondly, the MOU's in these two cases were in fact admittedly, a contract and agreement by itself; and therefore the Court in both cases came to the conclusion that this cannot be ignored. In the case of ***Pak Arab Fertilizer (Supra)*** it has observed that "*it may have been described as Memorandum of Understanding but then a prescribed form is not a prerequisite in reaching to a conclusion that a valid agreement has been entered into therefore, the argument of the learned Counsel for the defendant that this is an agreement to enter into an agreement is far stretched*" and it was further held that "*it is not always that a Memorandum of Understanding could be considered as a document on the basis of which an agreement is to be reached. It in fact depends upon the contents and the desire of the parties executing such understanding*". Unfortunately, the case of the present Plaintiffs falls far away from these guiding principles as in this case there is not even a signed MOU between the parties; hence, its enforcement cannot be looked into at the injunctive stage of the proceedings. As to the second case of ***Shariq-Ul-Haq (Supra)***, the learned Judge at Para 22 of the opinion has been pleased to observe that "*MOU means a document that expresses mutual accord on an issue between two or more parties. It is generally recognized as binding. Even if no legal claim could be based on the rights and obligations laid down in them. To be legally operative, a memorandum of understanding must* ***(1) identify the contracting parties, (2) spell out the subject matter of the agreement and its objectives, (3) summarize the essential terms of the agreement and (4) must be signed by the contracting parties."*** Again these ingredients are lacking in this case; hence, the Plaintiffs cannot claim any right and its enforcement on the basis of an MOU which has not been executed and signed by the parties.

11. Insofar as the ground for passing of a preliminary decree is concerned, the same also appears to be misconceived inasmuch as the case of the Plaintiffs is premised on some investment in lieu of 25% share in Defendant No.2; but admittedly that share and its grant never materialized in the form of any document like a contract; nor in the form of any partnership or otherwise; hence, the ingredients for passing of a decree in this matter are completely missing. In this case, the investment made by the Plaintiffs is not denied; rather admitted, whereas, an offer has also been made to return the same with profit / interest; hence, even otherwise, the ingredients for passing of a preliminary decree are completely lacking in this case. In the case reported as ***Messrs Friend***

Engineering Corporation, The Mall, Lahore V. Government Of Punjab and 4 others (**1991 S C M R 2324**) it has been held by the Hon'ble Supreme Court that;

> Liability to render accounts is the foundation for maintainability of a suit for rendition of accounts. Such a liability exists when there is fiduciary relationship between the parties as in the case of partners of a firm, guardian and ward, principal and agent, trustee and beneficiary of the trust. These instances are only enumerative and under Order XX, Rule 16, C.P.C., the Court is empowered to pass a preliminary decree where it feels necessary that to ascertain the amount due to one party from the other side, the accounts should be taken. But, in the instant case, the relationship between the parties is undoubtedly contractual. In such a case, the respondents are not under any obligation to render accounts to the appellant. The work done, the material supplied to the department and the payments received from them by the appellant were within his knowledge. It was, therefore, for him to have ascertained the amount due to him and filed a money suit for recovery thereof.

12. In the case reported as ***Abdul Karim V. Iqbalur Rehman and 5 others*** (**1980 CLC 1283**) it has been held as follows;

> 4. A suit for rendition of accounts lies only in specific cases, when a special relationship, such as Principal and Agent, bailor and bailee, guardian and ward, partner or trustee or receiver, subsists between the parties. The existence of fiduciary relationship between a plaintiff and defendant and the latter's obligation to render accounts, are sine qua non for maintainability of such a suit. It must be remembered that mutual confidence and trust, confined in one another by the partners, are the foundation of the partnership and a partner has no right to foist an outsider on the firm by alienation of his share in his favour, without consent of other partners. An assignee is thus, stranger to the other partners and has no footing in the firm file is an agent of the assignor and the latter by transferring his share does not stand absolved of his statutory responsibility as a partner.

13. In the case of ***Province of West Pakistan through The Secretary, Irrigation, Communication & Works Department, Lahore and 2 Others V. Allah Ditta*** (**PLD 1972 Karachi 8**) it has been held by this Court as under;

> "A suit for accounts is an equitable remedy which is available to a plaintiff only if he is entitled to accounts and has not been given accounts. It follows therefore that such relief does not arise out of a mere contractual relationship or because accounts may have to be examined in the course of a suit. Whilst a principal is entitled to accounts from an agent and to sue his agent for accounts if he is not given proper accounts an agent can sue his principal for accounts only in exceptional cases."

14. It has also come on record that the investment made by the Plaintiffs has never been shown as their share in the Company or Defendant No.2, rather in the accounts and financial statements it is always shown as interest free loan and payable on demand to Aroma

Travel Services (Private) Limited (Plaintiff No.1), against the project roll out/ project travel expenses paid on behalf of Etimad (Private) Limited (Defendant No.2), directly to the vendors/suppliers of the company. This is interest free and payable on demand. (See Notes to the Financial Statements for the year ended 30.6.2013 at pg: 2053).

15. In view of herein above facts and circumstances of this case I am of the view that insofar as the injunctive relief is concerned, the Plaintiffs have failed to make out a case of any indulgence as neither they have a prima facie case, nor balance of convenience lies in this favour, whereas, no irreparable loss is going to be caused if such a relief is withheld at the present moment, as apparently, the Plaintiffs have by themselves handed over the control of Defendant No.2, (if any), and then have come to the Court for an injunctive relief which course adopted by them in fact disentitles them from claiming any such relief. Accordingly applications bearing CMA Nos.8069/2015, 8070/2015 and 8071/2015 are hereby dismissed. In view of such order, applications bearing CMA Nos.9070/2015, 9071/2015 and 9072/2015 have served their purposes and are accordingly disposed of as infructuous.

16. Applications at Serial No 1 to 3 are dismissed, whereas, applications at Serial No.4 to 6 have become infructuous. All other applications are adjourned to a date in office.

Dated: 02.08.2019

J U D G E

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