IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 538 of 2020

Plaintiffs:	**Pakistan Airline Pilots' Association & others Through M/s. Muhammad Ali Lakhani & Sohail Mujtaba Raja, Advocates.**
Defendant No.1:	**Federation of Pakistan Through Mr. Kashif Paracha, DAG.**
Defendant No.2:	**PIACL Through Mr. Jawad A. Sarwana alongwith Mr. Anees Ahmed Advocates.**

1. For hearing of CMA No. 4391/2020. (U/O 39 rule 1 & 2 CPC)
2. For hearing of CMA No.4437/2020. (U/S 34 of Arb. Act).

Dates of hearing:	**21.05.2020, 28.05.2020, 01.06.2020, 04.06.2020, 08.06.2020 and 10.06.2020.**
Date of order:	**29.07.2020**

O R D E R

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration and Injunction filed by the Plaintiffs being aggrieved by Notification dated 28.04.2020 issued by Defendant No.1/ Ministry of Interior and Letter/Notice dated 30.04.2020 issued by Defendant No.2 ("**PIA**"). Plaintiff No.1, i.e. Pakistan Airline Pilots' Association **(PALPA)** is a body claiming to be registered under the Societies Registration Act, 1860, whereas, Plaintiff No.2 to 5 are individual Pilots, claiming to be members PALPA. Application at Serial No.1 (**CMA No.4391/2020**) has been filed under Order 39 Rule 1 & 2 CPC seeking suspension of the impugned Notification and Letter/Notice and in addition, other ancillary relief(s). Application at Serial No.2 (**CMA No. 4437/2020**) has been filed by PIA under Section 34 of the Arbitration Act, 1940 ("**Arbitration Act**") to stay the proceedings of this Suit and refer the matter for Arbitration.

2. Learned Counsel for the Plaintiffs has contended that admittedly PALPA had entered into a Working Agreement with PIA lastly in 2011-

2013, which by virtue of clause 1.4 & 1.6 still subsists; that the impugned Letter/Notice dated 30.04.2020 has unilaterally de-recognized PALPA and has terminated the said Agreement without notice; that there is no termination clause in the Agreement as it has been agreed that the Agreement would continue and will remain in force until the terms are revised or a new Agreement is arrived at; that the impugned Letter/Notice has been issued in retaliation to some earlier proceedings initiated against the Chief Executive of PIA through C.P No.D-8198/2019 by one of the employees of PIA; that PIA has no authority to unilaterally terminate the said Agreement; that Pakistan International Airlines Corporation (Conversion) Act of 2016 ("**2016 Act**"), duly recognizes that all existing contracts would continue and PIA will abide by the terms of such contracts; that the impugned Notification dated 28.04.2020 issued under Section 3 of the Pakistan Essential Services (Maintenance) Act, 1952 **("1952 Act")** has been issued without forming a valid opinion by the Federal Government; hence the said Notification is ultra vires; that under Section 3(1), the 1952 Act would only apply to employment under Federal Government, whereas, the Plaintiff No.2 to 5 are not employees of the Federal Government, but have been appointed by the Board of Directors of PIA; that pursuant to the 2016 Act, any discretion, earlier vesting in the Federal Government in respect of the management of PIA, has been taken away and now it is only the Board of Directors who can manage PIA; that Section 6 of the 1952 Act, which provides for regulation of wages and conditions of services is yet to be complied with; hence the impugned Notification, even if it remains in field, cannot be acted upon; that all along PALPA has been recognized as the Collective Bargaining Agent and the true representative of the Pilots working with PIA and such Agreement(s) entered into by PIA has never been denied, rather always acted upon; that all successive managements of PIA have always adhered to such binding Agreement(s); that no breach has been committed by PALPA; hence the Agreement cannot be terminated; that the impugned Letter/Notice dated 30.04.2020 is independent of Notification dated 28.04.2020 issued under the 1952 Act; hence the impugned Letter/Notice is not protected under the said Act; that the Plaintiffs presently as well as in the past have always rendered their services and performed under the 1952 Act as and when such Notifications have been issued; that presently under the current pandemic (COVID-19)

situation, the Plaintiffs have been performing their services in extreme difficult circumstances for the benefit of the people of this country; that PALPA and its working is protected under Article 17 of the Constitution of Islamic Republic of Pakistan; hence no adverse action can be taken without due process of law; that though no termination clause is provided under the Agreement; however, a prior notice was to be given mandatorily; that the Working Agreement still subsists and is protected under the 2016 Act and such protection is statutory in nature, whereas, Section 9 of the 1952 Act would not apply as the 2016 Act is later in time; that the Application under Section 34 of the Arbitration Act is not maintainable inasmuch as Clause 1.8 of the Working Agreement does not cater to the cancellation / termination of the Agreement, whereas, PIA has failed to intimate any dispute which could be referred to Arbitration; that such termination does not pertain to a dispute regarding the Agreement; hence this aspect of the matter cannot be referred for Arbitration; that even otherwise and without prejudice, if this Court comes to a conclusion that the plea raised by the Plaintiffs is Arbitrable pursuant to Clause 1.8 (ibid), then while exercising powers under Section 41 of the Arbitration Act, can always decide the injunction application and suspend the impugned Notification as well as Letter and refer the matter for Arbitration as otherwise it would seriously prejudice the Plaintiffs; that since PIA has failed to identify any breach of the Agreement, the matter cannot be referred to Arbitration. In support of his contention he has relied upon the judgments reported as (**Syed Ali Haider & others V. Pakistan International Airline Corporation Ltd.) Suit No. 1798/2016, Muhammad Rabani & 5 others V. Agha Arshad and another (2013 MLD 1083), Messrs Sunrise Textile Limited v. Messrs Tomen Corporation and 4 others (1994 CLC 2000), Messrs Franklin Credit and Investment Company Ltd. V. Export Processing Zones Authority and another (2016 MLD 952), Shah Muhammad V. Export Processing Zones Authority (2011 YLR 2413), Liaquat Ali Ghanghro V. Province of Sindh and another (2007 CLC 923), Karachi City Cricket Association, Karachi V. Mujeebur Rehman, Chairman, Ad Hoc Committee, Pakistan Cricket Board, Lahore and 2 others (PLD 2003 Karachi 721), Civil Aviation Authority, Islamabad and others (PLD 1997 SC 781), Union of Civil Aviation Employees, Lahore and another (PLD 1993 Lahore 306), Government of NWFP V. I.A.**

Sherwani and another (PLD 1994 SC 72), Zainab Zahid Naseem & Others V. Federation of Pakistan & Others (Suit No. 663/2014), Shariq ul Haq and 5 others V. Pakistan International Airlines Corporation Limited and another (2018 PLC (C.S.) 975), Muhammad Mubeen us Salam and others V. Federation of Pakistan and others (PLD 2006 SC 602), Imran Ahmed Khan V. Pakistan and another (2008 CLC 697), Shahid Khalil V. Pakistan International Airlines Corporation, Karachi (1971 SCMR 568), Shahid Khalil V. Messrs Pakistan International Airlines Corporation, Karachi (PLD 1972 Karachi 477), A. George V. Pakistan International Airlines Corporation (PLD 1971 Lahore 748) and Tarbela Joint Venture and Chief Camp Commandant V. Labour Appellate Tribunal NWFP and 2 others (PLD 1975 Peshawar 240) and an unreported judgment in the case of M/s. Sui Southern Gas Company Limited v. Registrar of Trade Union & others (Civil Petition No.449/2019),

3. Learned Counsel for PIA has contended that Clause 1.8 of the Working Agreement covers the present dispute i.e. whether in absence of a termination clause, can PIA terminate the Agreement or not; and it is for the Arbitrator to decide that whether such act of PIA is lawful; that the word "All disputes" covers termination as it is the case of PIA that they cannot continue with this Working Agreement, which is tilted in favour of the Plaintiffs; hence cannot be performed any further; that it is settled law that post termination of an Agreement, the Arbitration clause survives and the doctrine of separability applies; that PIA has repudiated / modified the Agreement much earlier by conduct as well as through Amin Order No.13/2017 dated 28.7.2017, whereby, revised terms and conditions of service, benefits and facilities for Pilots have been notified; and for the present moment neither can honor; nor is required to continue with the said Agreement; that it is the case of PIA that such termination falls within all disputes as provided in the Arbitration clause; that the contention that in absence of a termination clause, it cannot be terminated is a matter of interpretation of Agreement, which is covered under Clause 1.8; hence PALPA cannot abdicate itself from referral of the matter to Arbitration; that any illegality or an illegal act by any of the parties to an Agreement including the termination falls within a dispute; hence is arbitrable; that the Agreement in question is highly unfavourable to PIA and

cannot remain operative for all times to come, whereas, such termination is valid or not, is to be decided by the Arbitrators, whereas, per settled law, a termination, even if wrongful, is a matter which should be decided by the Arbitrators if there is an Arbitration clause in the Agreement; that insofar as the legality / constitutionality of Notification dated 28.04.2020 is concerned, the same has to be decided by this Court as held in the case reported as **K- Electric Limited and another v. Federation of Pakistan and others (PLD 2014 Sindh 504)**, whereas, the matter of dispute regarding the Agreement and its termination can be referred to Arbitration; that since the Plaintiffs' Counsel in addition to arguing Section 34 application has also pressed upon the injunction application seeking protection under Section 41 (ibid), PIA has, without prejudice, filed its counter affidavit and opposed the grant of an injunction as Plaintiffs have otherwise failed to make out any prima-facie case nor balance of convenience lies in their favor, whereas, irreparable loss, if any, would be caused to PIA; that it is the case of PIA that the impugned Notice / Letter dated 30.04.2020 is independent and has got nothing to do with the Notification dated 28.04.2020 issued under the 1952 Act; that PALPA has been de-recognized through impugned Letter/Notice dated 30.04.2020 and so also the Agreement has been terminated including all past administrative orders issued by PIA through Admin. Order No.5/2020; that PIA is not willing to negotiate with PALPA any further at least to the extent of terms and conditions of service of Pilots; that Notifications under the 1952 Act have been issued regularly in the past as well, and the Plaintiffs cannot deny the issuance and applicability of the 1952 Act on their services; that insofar as the PALPA is concerned, they have no cause of action as the Notification in question only applies to the Pilots and not to PALPA; that the objection regarding non-formation of an opinion by the Federal Government is misconceived as the Notification clearly provides that it has been issued for proper management of Flight Operation, Public Safety and the welfare of the public, which is sufficient enough to satisfy that whether an opinion has been formed or not; that the majority shares are held by the Federal Government and PIA is a Public Sector Organization under the Companies Act 2017; hence the 1952 Act can be invoked and applied on the employees of PIA; that the employment of all within PIA is protected; rather this Notification is beneficial to them as it does not takes away any right of

the employees without due process and notice; nor PIA intends to resort to downsizing or initiating any action without due process; hence no cause of action has accrued; that the Plaintiffs before filing instant Suit had filed Suit No. 536/2020, which was withdrawn even before issuance of summons / notice(s) and in that Suit in Paras-14 and 18 they had pleaded for referring the matter to Arbitration and in the present Suit both these paragraphs have been deleted; hence the conduct of the Plaintiffs while having identical prayers does not warrant exercise of discretion by the Court in their favor; that they cannot be permitted to blow hot and cold at the same time; that insofar as applicability of Section 6 of the 1952 Act is concerned, no further action is required as pursuant to The Pakistan Essential Services (Maintenance) Rules, 1962, the Chairman of the National Industrial Relation Commission already stands notified and copy of the impugned Notification has been sent to him; therefore, any aggrieved person can approach his office; that it has been clarified by the PIA that no terms and conditions of the employment are being altered or varied, whereas, the Plaintiffs have failed to identify in their plaint anything by which they are presently aggrieved so as to invoke jurisdiction of this Court and seek any injunctive relief; that PIA is of the opinion that PALPA has no role to play as to negotiating the terms and conditions of service of its Pilots and any individual Pilot, if aggrieved, can always approach the management for redressal of his grievance; that the impugned Letter/Notice dated 30.04.2020 has been issued by the approval of the Board of Directors of the PIA and he has relied upon the Extract of Minutes of Meeting as well as the Resolution passed thereon; that the Board of Directors, which is the competent authority has taken all such decisions and not the Chief Executive Officer as alleged by the Plaintiffs; that PIA has got nothing to do with the 1952 Act, nor PIA is acting on the directions of the Government or anyone else, except by the decision of the Board of Directors; that PALPA even has no locus standi as its legal status is also disputed by PIA pursuant to the opinion of the Registrars' office in some other legal proceedings; that it is not binding upon PIA to accept PALPA as the representative body or Collective Bargaining Agents of Pilots as there is no law or statute, which could recognize and compel PIA to accept PALPA as such; that even otherwise an Association or a Society has no locus standi to come forward and plead the case of an individual employee; that as per settled law an

Association is not an aggrieved person so as to agitate enforcement of any fundamental right guaranteed under the Constitution; that in the entire Plaint, there is no mention as to the instant Suit being filed under a representative capacity in terms of Order 1 Rule 8 CPC; that no authority or Resolution has been annexed with the Plaint so as to institute the Suit on behalf of PALPA; that the objections of PALPA are not covered within the contemplation of Section 20 of the Societies Act, 1860, that it is the case of PIA that despite issuance of impugned notice, there is no change in the Working Agreement read with Admin Orders from time to time, already in existence; hence it is a case of no cause of action; that neither the salaries nor the benefits are being reduced pursuant to the impugned letter / notice dated 30.4.2020; that none of the Pilots are being laid off on the basis of termination of the Working Agreement, notwithstanding the fact that all International Airlines are doing so; that Plaintiffs No.2 to 5 have not disclosed or mentioned in the entire Plaint whether they are members of PALPA or otherwise holding any office in PALPA; that they have not pleaded their grievance independently and separately as against PALPA; that it only the Pilots, who could be aggrieved; but they have not pleaded so; that after issuance of the impugned Notice dated 30.04.2020, Admin Order No.5/2020 has been issued, which now governs the relationship of PIA and its Pilots which is not under challenge; that appropriate reasons have been provided in the impugned Notice dated 30.04.2020 and all detailed reasons are not required to be incorporated; that PALPA is charging contribution from the Pilots as per their status / category and seniority, failing which they cannot remain its members and in turn it pressurizes to negotiate favorably in favour of the Pilots; that under the Agreement in question, they have, with misrepresentation got incorporated a clause even in respect of training of Pilots, which per the Agreement has to be done by PALPA and not by PIA which is not only strange but absurd as well; that for some reason or the other, majority of the personnel in PIA's management while negotiating the Working Agreement, have been Pilots and members of PALPA; hence the Agreement is a fraud on PIA inasmuch as vested interests on both sides have negotiated and agreed upon the terms, which are heavily favourable and tilted in favour of PALPA causing huge losses to PIA; that Clause 12.2.1 regarding inquiry and investigation, Article 13.1 regarding employment to sons and daughters of Pilots are certain

examples of this assertion; that in 2016, PIA appointed Deloitte to scrutinize the Working Agreement and subsequent events so as to arrive at a fair and better terms and conditions of service of Pilots in PIA and in the report, it has been revealed that since long the terms are being maneuvered as well as manipulated by the Pilots sitting on both sides of the negotiating table; that it is a case of conflict of interest as per Company Act, 2017; that all along in these negotiations, the Pilots in the management of PIA have never consulted the Human Resources Department nor have sought any approval; that pursuant to Deloitte Report, Admin Order No.13/2017 has been issued through which certain amounts are being deducted from the salaries of the Pilots paid in excess, which is under challenge by way of a civil suit; that a contract, even without a termination clause, cannot continue for all times to come and can be terminated in view of Section 39 read with Sections 72 & 73 of the Contract Act, 1872; that no right in law has accrued to PALPA and the Suit is barred under Section 42 of the Specific Relief Act, 1877; that all ingredients for an injunctive order i.e. prima-facie case, balance of convenience and causing of irreparable loss to the Plaintiffs are missing; hence they are not entitled for any injunction and the only remedy is by way of damages, if any; that the entire case is based on service benefits and such a contract, if any, cannot be specifically enforced under Section 21 of the Specific Relief Act, 1877; that without prejudice, PIA in the past has though entered into negotiations with PALPA, but only by way of discretion and consent, which amounts to a License and can be revoked at any moment of time without notice; that any understanding with PALPA and or response filed in previous litigation with PALPA cannot bind PIA so as to always accept the representative capacity of PALPA as presently PIA does not wish to continue with any negotiations with PALPA, being devoid of any legal obligation; however, would deal with Pilots individually; that admission, if any, in a previous matter, does not bar or restraint PIA from taking a fresh and different stance in the present proceedings; that PALPA admittedly has no statutory backing so as to claim rights as a Collective Bargaining Agent of Pilots; that after expiry of the Working Agreement, PIA has never recognized PALPA so as to negotiate the terms and conditions and in this regard Admin Order No.13/2017 is already in field, whereas, after issuance of impugned Notice dated 30.04.2020, the time is running against PALPA as to

termination and new notice; that it is also a settled proposition that the Plaintiffs are not entitled for status-quo ante inasmuch as through impugned notice PALPA already stands derecognized; that in the given facts no mandatory injunction, at this stage of the proceedings, can be granted; that there is no question of violating any Constitutional Rights of PALPA as claimed in terms of Article 17 inasmuch as they may form an Association; but it is only the right to enter into negotiations with PIA, which is being derecognized as it is not backed by any statutory provisions or even in terms of Article 17 of the Constitution of Islamic Republic of Pakistan; that even a Collective Bargaining Agent under the Industrial Relations Ordinance, 1969 or presently Industrial Relations Act, 2012, cannot negotiate outside the very mandate of the Statute as settled by the Hon'ble Supreme Court in a number of cases. In support of his contention he has relied upon the cases of **Federation of Pakistan and others V. Haji Muhammad Saifullah Khan and others (PLD 1989 SC 166), Mohtarma Benazir Bhutto and another V. President of Pakistan and others (PLD 1998 SC 388), Shell Pakistan V. Ashiq Muhammad Malik (2006 PLC 477), Joint Action Committee of PIA Employees V. Federation of Pakistan and others (Writ petition No. 1104/2016), Muhammad Yusuf Shah V. PIAC (PLD 1981 SC 224), Muhammad Zaman V. Government of Pakistan (2017 SCMR 571), Democratic Workers Union CBA V. SBP (2002 PLC (C.S) 614), Pakistan Diploma Engineers Federation V. Federation of Pakistan (1987 CLC 2154), Pakistan Steel Re-Rolling Mills Association V. Province of West Pakistan (PLD 1964 Lahore 138), Nisar Ahmed Khan V. Federation of Pakistan and others (1999 SCMR 1338), Messrs Khas Traders V. Registrar, Trade Union (1990 PLC 351), Union of Civil Aviation Employees Lahore V. Civil Aviation Authority (PLD 1993 Lahore 306), Civil Aviation Authority Islamabad and others V. Union of Civil Aviation Employees & another (1997 PLC 653), Abdul Wahab & Others V. HBL & Others (2013 SCMR 1383), Habib Bank Limited & 2 others V. National Industrial Relation Commission & Others (1998 PLC 674), Husain Ali Chandio V. the Secretary Ministry of Communication Islamabad and 3 others (1992 SCMR 32), The Contract of Employment 1976, The Interpretation of Contracts 1997, Islamic Republic of Pakistan V. M. Zaman Khan (1997 SCMR 1508), The Hub Power Company Limited and another V. Wapda and others (PLD 2000 SC 841), Firm**

Karam Narain Daulat Ram and another V. Messrs Volkart Bros and another (AIR (33) 1946 Lahore 116), Karachi Shipyard and Engineering Works Ltd. Karachi V. Messrs General Iron and Steel Works Ltd. (PLD 1971 Karachi 501), Pakistan Burmah Shell Ltd. V. Tahir Ali (1983 CLC 2745), Island Textile Mills Ltd. Karachi V. V/O Techno expert & another (1979 CLC 307), Lahore Stock Exchange Limited V. Fredrick J. Whyte Group (Pakistan) Ltd. and another (PLD 1990 SC 48), Port Qasim Authority, Karachi V. Al-Ghurair Group of Companies and 3 others (PLD 1997 Karachi 636), Messrs Sadat Business Group Ltd. V. Federation of Pakistan and another (2013 CLD 1451), Pakistan Mobile Communication Ltd. (Mobilink) Islamabad V. Naimatullah Achakzai and 3 others (2012 CLC 12), Hidayatullah and 10 others V. Shamimuddin and 14 others (1993 MLD 993), Messrs Haji Muhammad Ibrahim & Sons and others V. Karachi Municipal Corporation and others (PLD 1960 (W.P.) Karachi 916), Pakistan Television Corporation v. M. Babar Zaman and others (1989 SCMR 1549), Haji Mojakkir Ali v. Regional Transport Authority , Sylhet and others (PLD 1967 Dacca 6), The Punjab Miner's Labour Union v. The West Pakistan Industrial Development Corporation, Jhelum (PLD 1972 Lahore 489), The Marriage Hall Association v. the Chairman, Central Board of Revenue Islamabad and 2 others (1998 CLC 33), Messrs Mutual Funds Association of Pakistan (MUFAP) v. Federation of Pakistan through Secretary, Ministry of Finance, Government of Pakistan and another (2010 PLC 306), Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary M/O Information Technology and Telecommunication and others (2012 SCMR 152), Karachi Pipe Mills Employees Union, Karachi v. Karachi Pipe Mills Ltd., Karachi (1992 SCMR 36).

4. Learned DAG arguing on behalf of Defendant No.1/Federation of Pakistan has contended that the Notification in question already stands gazetted on 11.05.2020, which is within a reasonable time as settled in the cases reported as **Muhammad Ali and 4 others v. Lahore Development Authority through Director-General and 4 others (2002 MLD 607)** and **Pakistan v. Muhammad Ahsan (1991 SCMR 2180)**; that the Notification clearly provides the opinion of the Federal Government; hence any objection to this effect is misconceived and in

support he has relied upon the case reported as **Chief Commissioner, Karachi v. Jamil Ahmad and Municipal Commissioner Karachi** (**PLD 1961 SC 145)**; that the 1952 Act empowers the Federal Government to apply this Act on employees of Federal Government as well as to any other sector, which includes PIA; that in past on many occasions, the 1952 Act had been made applicable on PIA, even after promulgation of the 2016 Act and was never challenged by PALPA; that in Suit No. 536/2020, the Plaintiffs never challenged or impugned the Notification dated 28.04.2020 though a copy was annexed and after withdrawing it, in the instant Suit, the said Notification has also been impugned, which cannot be done due to bar contained in Order II Rule 2 CPC; that it amounts waiving the right to challenge the said Notification by their conduct and appears to be an afterthought; that the bonafides of the Plaintiff in this context is lacking as they have failed to annex copy of the earlier Plaint and the order of withdrawal, hence are not entitled for grant of any discretionary relief; that in the entire pleadings nothing has been mentioned so as to allege malafides, and therefore, no challenge to this Notification can sustain; that the objection regarding issuance of the terms and conditions under Section 6 of the 1952 Act, is also misconceived inasmuch as they are being regulated through working conditions already in field with PIA; that there is nothing in the Notification, which is inconsistent with the 2016 Act; that Plaintiffs No.2 to 5, without prejudice, may be aggrieved; but in the entire plaint, the relief is in the nature of a representative capacity, whereas, without specifically pleading the facts of individual grievance, the Plaintiffs are not entitled for any injunctive relief in such capacity; that PALPA being an Association under the Societies Act, 1860 cannot have recourse to a legal remedy for its members' individual grievance; but is limited to its mandate provided in the Memorandum and Articles of Association; that the right to recognize PALPA is not a statutory right as they are not creation of any law to act as a bargaining agent; hence such recognition is discretionary insofar as PIA is concerned; that no fundamental rights of the Plaintiffs are being violated through impugned Notification under Article 17 of the Constitution of Pakistan as alleged inasmuch as the forming of Association i.e. PALPA has not been cancelled or distributed; that even otherwise a recognized Collective Bargaining Agent or a Trade Union cannot come to the Court and seek enforcement of Article 17 (ibid) in respect of every object in forming such a Union; but is only

confined to the rights granted under a Statute, whereas, in this case PALPA is not even a Collective Bargaining Agent or a registered Trade Union; that the issue regarding benefits to PALPA and its members is already pending before Hon'ble Supreme Court in H.R.C No. 11827-S of 2018; that all ingredients for grant of an injunctive relief including prima facie case, balance of convenience and causing of any irreparable loss are lacking in this matter as it has been stated by PIA that none of the Pilots are being dismissed or terminated from service. In support of his contention he has relied upon the cases reported as **Aurangzeb v. Gool Bani Dr. Burjor Ankalseria** (**2001 SCMR 909**), **All India Bank Employees' Association v. The National Industrial Tribunal (Bank Disputes), Bombay and others** (**AIR 1962 SC 171**), **Dharam Dutt and others v. Union of India and others** (**AIR 2004 SC 1295**), **Democratic Workers Union CBA V. SBP** (**2002 PLC (C.S) 614**), **The Marriage Hall Association v. the Chairman, Central Board of Revenue Islamabad and 2 others** (**1998 CLC 33**), **A. Javaid, President, Pakistan International Airlines Corporation Employees' Union, Karachi v. National Industrial Relations Commission, Government of Pakistan, Islamabad through its Chairman and another** (**PLD 1978 Karachi 64**), **Pakistan Television Corporation v. M. Babar Zaman and others** (**1989 SCMR 1549**) and **Shell Pakistan V. Ashiq Muhammad Malik** (**2006 PLC 477**).

5. While exercising his right of Rebuttal, learned Counsel for the Plaintiffs has argued that in the first Suit bearing No. 536/2020, it was only notice of PIA, which was impugned, whereas, in the second Suit, the Notification under the 1952 Act has also been challenged; hence the objection is misconceived; that this Court has already granted permission to file a fresh Suit, and therefore, in view of the Judgments reported as **Shashi Bhusan Basuri Vs. Moti Bala Dassi and others** (**AIR 1945 Calcutta 317**), **Sukumar Banerjee Vs. Dilip Kumar Sarkar and others** (**AIR 1982 Calcutta 17**), **Mst. Maroof Jan and 2 others v. Yaqoob and 4 others** (**1990 CLC 19**), **Muhammad Iqbal through L.Rs v. Mehmood Hasan and others** (**2016 MLD 1243**) and **Allah Ditta v. Abdul Ghafoor** (**1992 MLD 1301**), the bar contained under Order II Rule 2 CPC does not apply; that even otherwise nothing precluded the Plaintiffs from filing another independent Suit impugning the Notification under the 1952 Act; hence no prejudice is caused to the

Defendants; that without prejudice, it is settled law that a plaint cannot be rejected in piecemeal; hence to the extent of challenge to the notice by PIA; the Suit would still subsist, and therefore, the objection is liable to be discarded; that the objection regarding not challenging the similar notifications under the 1952 Act, in past is also misconceived as there is no estoppel against law, whereas, it is the case of PIA itself that they have not been provided most of the earlier Notifications; that mere publication in a gazette does not suffice and the aggrieved party has to be confronted with such Notification as settled in the cases reported as **Zulfiqar Ali Khan and another v. District Government, Ghotki at Mirpur Mathelo and others (2006 CLC 20)** and **Muhammad Hanif Khan v. Province of Sindh through Secretary, Land Utilization Department, Karachi and 8 others (PLD 2006 Karachi 531)**, that insofar as recognition of PALPA is concerned, the objection of PIA is not tenable in view of the fact that since long they have entered into various Working Agreements; that the Notification under Section 3 of the 1952 Act cannot sustain or survive in absence of compliance of Section 6 (ibid); that admittedly the Arbitration Clause in the Working Agreement only applies to PALPA and not to Plaintiffs No.2 to 5, and therefore, matter cannot be referred for Arbitration; that the objection regarding dictating the management of PIA by the Plaintiffs is also misconceived inasmuch as the report of the Auditors namely Deloitte is of the year 2016 and the discrepancy regarding undue benefits, if any, already stands rectified as such benefits have been withdrawn, whereas, the Pilots are not nominated by PALPA in the management but by the Board of Directors itself, hence Plaintiffs cannot be blamed for any such nomination; that the objection regarding extreme favourable terms and conditions in the Working Agreement in favour of the Plaintiffs is also misconceived as it is advisory in nature and to bring transparency and accountability in the working of the management of PIA; that the objection regarding a representative Suit and its noncompliance is also misconceived inasmuch as there is no penalty provided for such default and at the most, notice could be ordered to all members of PALPA; that the Working Agreement is not a generic commercial contract; but comprises working conditions of the Pilots and therefore, cannot be terminated simpliciter as rights have accrued to the Pilots; that earlier concession in other legal proceedings are always binding *inter se* parties.

6. I have heard both the learned Counsel as well as learned DAG and have perused the record. Instant Suit has been filed for Declaration and Injunction by the Plaintiffs against Federation of Pakistan through Ministry of Interior and PIA, whereby, they are primarily aggrieved by Notification dated 28.04.2020 through which the Defendant No.1 while exercising powers under Section 3(1) of the 1952 Act has been pleased to declare all classes of employment in PIA to be the classes of employment, to which the said Act applies for a period of six months. Additionally, the Plaintiffs are also aggrieved by Notice dated 30.04.2020 issued by PIA, whereby, PALPA has been informed that they stand de-recognized, insofar as their representative capacity with regard to Pilots is concerned, and at the same time the Working Agreement (2011-2013) between PALPA and PIA stands terminated. In this Suit Plaintiff No.1 i.e. PALPA is an Association of persons registered under the Societies Registration Act of 1860, whereas, Plaintiffs No.2 to 5 are purportedly members of PALPA and working as Pilots in PIA. After filing of this Suit and issuance of notices, on the very first date an application has been filed on behalf of PIA under Section 34 of the Arbitration Act, 1940 on the ground that the Working Agreement in question has an Arbitration clause, and therefore, the proceedings in this Suit be stayed and the dispute may be referred to the Arbitrator pursuant to such Arbitration clause. However, after issuance of notice on this application to the Plaintiffs and filing of counter affidavits both by the Plaintiffs' Counsel as well as Defendants' Counsel, the Court has been informed that since in this matter the legality as well as validity of the Notification dated 28.04.2020 under the 1952 Act is also involved and this *per se* is a legal and Constitutional question, therefore, in view of the dicta laid down in the case reported as **K- Electric Limited and another v. Federation of Pakistan and others (PLD 2014 Sindh 504)**, this Court has jurisdiction to decide such issue, whereas, according to the learned Counsel for PIA, the rest of the dispute may be referred to Arbitration. Insofar as the learned Counsel for the Plaintiffs is concerned, he has consented to the first issue regarding validity and legality of the Notification dated 28.04.2020; however, as to referring the matter to Arbitration, he has contended that in that case this Court shall exercise its jurisdiction under Section 41 of the Arbitration Act, 1940 by suspending the impugned Notice dated 30.04.2020 issued by

PIA and then the Plaintiffs would be willing and agreeable to join the Arbitration proceedings.

7. First I would like to deal with the issue regarding Notification dated 28.04.2020 issued by Defendant No.1, as well as the relevant provisions i.e. ss. 3 & 6 of the 1952 Act, which reads as under: -

No.5/47/2008-KP
GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR
***
Islamabad, 28th April, 2020

NOTIFICATION

S.R.O. (i)/2020_ WHEREAS the Federal Government is of the Opinion that employment in the Pakistan International Airlines Company Limited (PIACL) is essential for maintenance of smooth functioning of flight operations of the Airline, public safety and welfare of people;

NOW, THEREOFRE, in exercise of the powers conferred by sub-section (1) of section 3 of the Pakistan Essential Services (Maintenance) Act, 1952 (LIII of 1952), the Federal Government is pleased to declare all classes of employment in the Pakistan International Airlines Company Limited to be the classes of employment to which the said Act shall apply for a period of six months with immediate effect.

[No.F.5/47/2008-KP]

(Falak Sher Virk)
Deputy Secretary (Security)

1. Ministry of Overseas Pakistanis and Human Resource Development, (Section officer-NIRC), Islamabad, for information.

2. The Secretary, Aviation Division, with the request that if further extension is required in application of the said Act, a reference should reach in this Ministry at least two months in advance of the expiry of the current period.

3. The Chairman, National Industrial Relations Commission (NIRC), Islamabad.

Sd/-
(Falak Sher Virk)
Deputy Secretary (Security)

[3. Employment to which the Act applies. ____ (1) This Act shall apply to every employment under the [2][Federal Government], and, subject to the provisions of subsection (2), to any employment or class of employment which the [2][Federal Government] may, by notification in the official Gazette, declare to be an employment or class of employment to which this Act applies.

(2) No declaration under sub-section (1) shall be made in respect of any employment or class of employment unless the [2][Federal Government] is of opinion that such employment or class of employment is essential:

(a) for securing the defence or the security of Pakistan or any part thereof, or

(b) for the maintenance of such supplies or services as relate to any of the matters with respect to which the [3][Central Legislature] has power to make laws and are essential to the life of the community.

(3) A declaration under sub-section (1) shall remain in force for a period of six months which the [2][Federal Government] may, by notification in the official Gazette, extend for further periods not exceeding six months at any time.]"

6. Regulation of wages and conditions of services.___(1) The [2][Federal Government] 3* * *, may make rules[4] regulating or empowering a specified authority to regulate the wages and other conditions of service of persons or of any class of persons engaged in any employment or class of employment declared under section 3 to be an employment or class of employment to which this Act applies.

[5][(1A) Notwithstanding any provision in any such rules or directions regulating wages and other conditions of service, including any rules made or directions given before the commencement of the Pakistan Essential Services (Maintenance) (Amendment) Ordinance, 1978, as to the day on which they shall come into force, the Federal Government may direct that they shall be deemed to have taken effect on such day, not preceding the day on which such rules were made or direction were given, as the Federal Government may specify.

(2) When any such rules have been made or when any directions regulating wages or conditions of service have been given by an authority empowered by such rules to give them, any person failing to comply therewith is guilty of an offence under this Act.

---

8. Perusal of the aforesaid Notification reflects that the Federal Government is of the opinion that employment in PIA is essential for maintenance of smooth functioning of flight operations of the Airline, public safety and welfare of people, therefore, in exercise of the powers conferred under Section 3 of the 1952 Act, all classes of employment in PIA are declared to be classes of employment to which the 1952 Act applies; for a period of six months with immediate effect. Learned Counsel for the Plaintiffs has vehemently argued that in terms of Section 3(2) (ibid), no declaration under Subsection (1) of s.3 can be made in respect of any employment unless the Federal Government is of the opinion that such employment is essential either for securing the defence or the security of Pakistan or for maintenance of such supplies or services as relate to any of the matter with respect to which the Central Legislature has powers to make laws and are essential to the life of the community. According to him before issuing any Notification under Section 3(1) (ibid), there must be an opinion of the Federal Government to issue such a Notification under section 3(2)(b), which according to him in the instant matter is lacking. He has also argued that Plaintiffs No.2 to 5 are not employees of the Federal Government; but of PIA, which is controlled and regulated through an Act of 2016 by

the Board of Directors, and therefore, the 1952 Act is otherwise not applicable. He has also argued that the provisions of Section 6 of the 1952 Act have not been followed, which require the Federal Government to make rules for regulating or empowering a specified authority to regulate the terms and conditions of service, whose employment has been declared as essential service under Section 3 of the 1952 Act. In support regarding forming an opinion before issuing a Notification, he has relied upon a judgment of learned Peshawar High Court in the case of ***Tarbela Joint Venture (Supra)***. This was a case wherein the employment under the Petitioner was declared to be a service under the 1952 Act vide SRO 132(I)/74 dated 30.1.1974, and an employee was reinstated in service of the Petitioner by the Labor Appellate Tribunal and the relevant legal issue was in respect of the Notification which apparently was completely silent as to the opinion and reasoning of the Federal Government to apply the 1952 Act, on the employees of the Petitioner. I have gone through the said judgment and the wordings of the Notification in that case, and I am of the view that the said judgment is not applicable to the present facts as here, the Notification itself is differently worded; hence, distinguishable. Even otherwise insofar as his objection regarding forming of an opinion under Section 3(2) is concerned, I am not impressed with this argument at all. The Notification in the instant matter itself provides that the Federal Government is of the opinion that *employment in PIA is essential for maintenance of smooth functioning of flight operations of the Airline, public safety and welfare of the people*, and therefore, the powers under Section 3 (ibid) have been exercised. It may also be added that presently we are facing pandemic (COVID-19), which itself is a situation of emergency and requires special treatment / status to various functions being assigned and provided by the state authorities. It cannot be doubted that employment in PIA, (a Federal Government owned Airline by Majority) is and must be regulated in this persistent catastrophic situation. Therefore, in my candid view the objection regarding non-forming of an opinion for exercising powers under the 1952 Act, by the Federal Government is completely misconceived. I may also add that it is not that the Notification itself ought to have provided the entire discussion and the details as well as reasoning's on the basis of which the Federal Government has decided to apply the provisions of the 1952 Act on the employees of PIA. This should, at best, rest(s) with internal

communication and summaries moved between the concerned departments for approval. A mere declaration that an opinion has been formed can also suffice in this case. Notwithstanding this, in my view the opinion is very much there in the opening part of the Notification, which is sufficient to fulfill the requirement of Section 3(2)(b) of the 1952 Act; hence the objection to this effect is overruled.

9. As to the argument that Plaintiffs No.2 to 5 are not employees of the Federal Government; but of PIA, which is governed under the 2016 Act, by the Board of Directors is concerned, again this objection is also misconceived inasmuch as PIA is still owned in majority by the Federal Government and the Board of Directors are nominated and appointed by the Federal Government. Notwithstanding this Section 3(1) (ibid) has even otherwise two parts. One relates to the employment under the Federal Government, for which there is no qualification to invoke the provisions of the 1952 Act and can be made applicable to all categories of employees of the Federal Government. And the second part relates to any employment or class of employment, which the Federal Government may declare to be an employment to which the 1952 Act applies; however, this is subject to subsection (2), which requires to form an opinion. I have already held that a proper opinion has been formed for invoking the provisions of 1952 Act, and therefore, even otherwise, if the Plaintiffs No.2 to 5 are not employees of the Federal Government, even then the Federal Government has the authority and power to apply the 1952 Act subject to fulfilling the requirements of subsection (2) of Section 3 (ibid), which in the instant matter has been done, therefore, this objection is also overruled.

10. As to the third objection regarding regulation of wages and conditions of service, which according to the learned Counsel for the Plaintiffs have not yet been done pursuant to section 6 of the 1952 Act, I am of the opinion that this again is misconceived. Learned Counsel for the PIA has placed reliance on the Pakistan Essential Services (Maintenance) Rules, 1962 issued under Section 6 of the 1952 Act, whereby, the Chairman of the National Industrial Relations Commission constituted under the Industrial Relation Ordinance 1969 has been empowered to regulate the wages and other conditions of services of persons or classes of persons engaged in any employment or class of

employment to which the 1952 Act, read with the rules applies; therefore, in view of such already existing rules, whereby, an authority has been nominated, the Plaintiffs ought to have approached the Chairman NIRC, if such procedure or regulations regarding their service structure has not yet been issued. In view of such position, the objections regarding validity of the Notification dated 28.04.2020 being misconceived are hereby repealed and it is held that the Federal Government has the authority to place the services of PIA's employees under the 1952 Act as being essential service. It is notwithstanding the fact that in the past at least on five different occasions (including on 9.7.2018, 5.3.2019, 28.4.2019) such powers have been exercised and the Plaintiffs have never challenged or have been successful against the applicability of the 1952 Act on the employees of PIA, and therefore, the objection is overruled.

11. Insofar as the second issue regarding the validity and justification for issuing Notice dated 30.04.2020 by PIA whereby, PALPA has been derecognized to act as a representative body of the pilots and so also termination of the Working Agreements is concerned, it is of utmost relevance to take note that this is a Suit for Declaration and Injunction under the ordinary civil jurisdiction of this Court and is accompanied by an application under Order 39 Rule 1 & 2 CPC through which the Plaintiffs seek suspension of the operation of the Notice dated 30.04.2020 and so also restraining the Defendants from taking any adverse action particularly as guaranteed under the Working Agreement 2011-2013. The prayer in the Suit in respect of this impugned Notice dated 30.4.2020 is that it is ultra vires to Article 17 of the Constitution; to the 1952 Act; and the Working Agreement 2011-2013. Additionally, mandatory injunction is being sought against PIA to conclude negotiations for renewal of the Working Agreement 2011-2013. This in fact is the entire relief in respect of the Working Agreement and the impugned notice of 30.4.2020. At the same time PIA has immediately filed an application under Section 34 of the Arbitration Act and it has been contended that the Working Agreement provides for an Arbitration clause i.e. clause 1.8 and therefore, the matter be referred for Arbitration. Learned Counsel for the Plaintiffs while confronted, has relied upon Section 41 of the Arbitration Act and has argued that even in these circumstances, this Court is a competent Court having

jurisdiction to suspend the operation of Notice dated 30.04.2020 and then refer the matter to Arbitration. In fact, to this extent, he has conceded to refer the matter for Arbitration; however, with an exception that ad-interim orders be passed in favour of the Plaintiffs pending the Arbitration. Before proceeding further, it would be advantageous to refer to the provisions of Section 34 and Section 41 ibid which reads as under: -

> **"34. Power to stay legal proceedings where there is an Arbitration Agreement.** Where any party to an Arbitration Agreement or any person claiming under him commences any legal proceedings against any other party to the Agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the Arbitration Agreement and that the applicant, was at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the Arbitration, such authority may make an order staying the proceedings.
>
> **41. Procedure and powers of the Court.** Subject to the provisions of this Act and rules made thereunder,
>
> *(a)* the provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings, before the Court, and to all appeals, under this Act, and
>
> *(b)* the Court shall have, for the purpose of, and in relation to, Arbitration proceedings, the same power of making orders in respect of any of the matter set out in the Second Schedule as it has for the purpose of and in relation to any proceedings before the Court:
>
> Provided that nothing in clause *(b)* shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters."

12. Section 34 ibid provides that where any party to an Arbitration Agreement commences any legal proceedings against any other party to the Agreement in respect of any matter agreed to be referred, any party to such legal proceedings may at any time before filing a written statement or taking any other steps in the proceedings apply to the Court before which the proceedings are pending; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the Arbitration Agreement, may stay the proceedings. This is, however, subject to the condition that the applicant i.e. the party filing an application under Section 34 ibid was, at the time the proceedings were commenced, and still remains ready

and willing to do all things necessary to the proper conduct of the Arbitration. On the other hand, Section 41 provides and regulates the procedure and powers of the Court subject to the provisions of the Arbitration Act, and sub-section (b) thereof provides that the Court shall have, *for the purpose of* and *in relation to*, *Arbitration proceedings*, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of and in relation, to any proceedings before the Court provided that nothing in clause *(b)* shall be taken to prejudice any power which may be vested in an Arbitrator or Umpire for making orders with respect to any of such matters. The Second Schedule confers powers on the Court including preservation, interim custody or sale of any goods which are the subject matter of the reference; securing the amount in difference in the reference, interim injunction or appointment of a receiver etc. etc. Insofar as the stance of the Plaintiffs is concerned, according to them, the dispute with PIA i.e. regarding de-recognition of PALPA and termination of the Working Agreement is not covered by the Arbitration clause / Agreement in question. The Arbitration clause in the Working Agreement reads as under: -

> **"1.8 SETTLEMENT OF DISPUTE(S) ON INTERPRETATION OF THE AGREEMENT:**
>
> All disputes pertaining to this Agreement and / or the interpretation of any terms and conditions of this Agreement shall be settled by an Arbitration Board comprising of one representative each, of the Corporation and the Association and one more member to be appointed with mutual Agreement of the representatives of the Association and the Corporation. The Board, must be convened within a period of third (3) days from the date the notice of disagreement is given by either party. The cost of the Arbitration shall be borne by both the parties.
>
> The decision of the Arbitration Board shall be binding on both the parties."

13. Perusal of the aforesaid clause reflects that all disputes pertaining to this Agreement and / or the interpretation of any terms and conditions of this Agreement shall be settled by an Arbitration Board comprising of one representative each, of the Corporation and the Association and one more member to be appointed with mutual Agreement of the representatives of the Association and the Corporation. It further provides that the Board, must be convened within a period of thirty (30) days from the date the notice of

disagreement is given by either party, whereas, the cost of the Arbitration shall be borne by both the parties and the decision so given by the Arbitration Board shall be binding on both the parties. It is the case of the Plaintiffs that insofar as the impugned Notice dated 30.04.2020 is concerned, it is not a dispute pertaining to this Agreement and or of interpretation of any terms and conditions of the Agreement as according to them the Agreement in question does not have a termination clause; hence, it cannot be terminated unilaterally. It is their further case that since 2013 when this Agreement expired; by virtue of Clause 1.4 and 1.6, which provides that the Agreement would continue until a new Agreement is signed, admittedly, various negotiations and meetings have been held between PALPA and PIA and certain clauses have been amended which are now part of the Agreement and therefore, it still continues. On the other hand, the case of PIA is that after 2017 when Admin Order No.13/2017 dated 28.7.2017 was issued, the Agreement itself was terminated for all legal and practical purposes, whereas, pursuant to clause "c" thereof, it has been decided that no negotiations on salary structure with PALPA shall be held in future as due to increase in number of slabs annual progression incremental impact has been built in the structure. It has been jointly informed that this is already under challenge by PALPA in a pending Suit No.704 of 2019 before this Court; hence, arguments of the Plaintiffs' Counsel that the Working Agreement still continues has been denied and controverted on such basis.

14. The other contention of PIA is that PALPA cannot act as a CBA or a representative body of pilots insofar as the terms and conditions of employment of pilots is concerned, as for that purposes they are not supported by any law. According to them mere registration under the Societies Act does not ipso facto confer any power or authority to act as a representative body of pilots, at least for the purpose of terms and conditions of employment of the pilots in PIA. It may also be pertinent to observe that before filing instant Suit the Plaintiffs had earlier filed Suit No.536/2020 and withdrew the same vide order dated 4.5.2020 with permission to file a fresh Suit. However, when the plaint of the earlier Suit is examined and read in juxtaposition to the plaint of the present Suit, it appears that in the earlier Suit in Para 14 reference has been made for resolution of disputes by way of Arbitration. In Para 18

thereof again it has been stated that if a proper notice of termination had been issued it would have enabled PALPA to seek recourse within 30 days thereof as either party can invoke Arbitration clause against any termination or in respect of any other dispute. In the present case the Plaintiffs have deleted these paragraphs from the plaint and while confronted, learned Counsel for the Plaintiffs has argued that in the second Suit there is also a dispute regarding validity of Notification dated 28.04.2020 under the 1952 Act against Defendant No. 1 who is not a party to the Working Agreement or the Arbitration clause, and therefore, the present dispute according to the Plaintiffs could not have been referred for Arbitration; hence, these clauses have been deleted in the second Suit. Though this contention of the Plaintiff's Counsel may be justified to a certain extent; however, at best, in that situation, the Plaintiffs could have separated their impugned cause relating to the Notification under the 1952, Act, which apparently is totally independent of the impugned Notice dated 30.4.2020. Nothing has been brought on record so as to sustain the argument that these two are interlinked. In fact, it has been reiterated by PIA in its counter affidavit as well. It needs to be appreciated that the provisions of Section 41 of the Arbitration Act are available to a party which itself is conceding to and willing to go for Arbitration and not by way of a Suit of Declaration under the ordinary jurisdiction of the Court. It can, at best, be available to a party who has come before the Court under Section 20 of the Arbitration Act showing its willingness and readiness to go for Arbitration and applies to the Court for appointment of an Arbitrator pursuant to the Arbitration clause and at the same time seeks assistance of the Court to exercise its discretion conferred under Section 41 of the Act ibid. It is not that firstly a party to an Arbitration Agreement files an ordinary Suit for Declaration and Injunction and when the Defendant comes up with an application under Section 34 of the Arbitration Act, then a shelter could be sought invoking Section 41 thereof. If this is permitted, then it would defeat the very purpose of the entire scheme of the Arbitration Act. In fact, in this matter even no application for interim injunction as contemplated under Section 41 of the Arbitration Act has been filed and the Plaintiffs' Counsel has proceeded to argue the Order 39 application by seeking relief under Section 41 of the Arbitration Act.

15. It may also be observed that both learned Counsel have argued in detail, the injunction application and the merits of the case and in the given facts and circumstances, if I respond to all such arguments then perhaps, it may have effect if the matter is referred to the Arbitrator to decide upon the merits of the case; hence, I have tried to respond only to the relevant issues and I will confine myself to the Arbitration clause as above and the question raised by the learned Counsel for the Plaintiffs that since there is no termination clause; hence, the impugned notice does not fall within "all disputes" or "interpretation" as provided in the Arbitration clause. According to me, this argument of the Plaintiffs' Counsel is absurd and misconceived. No Agreement can continue for a life time or for indefinite period. If a party is unable to perform its part of the Agreement, then naturally the disability of such party itself results into termination of the Agreement. Reliance in this regard may be placed on sections 39, 72 and 73 of the Contract Act, 1872. This is not a case of Specific Performance of the Agreement which even otherwise, in respect of terms and conditions of service, is barred under the Specific Relief Act, restricting the powers of the Court to grant specific performance. The Agreement in question as contended by the Plaintiffs' Counsel is not a Commercial Agreement, but an Agreement regarding terms and conditions and welfare of the Pilots, and when it is read and understood in my view it is definitely not a commercial Agreement, and I fully agree with the contention of the Plaintiffs Counsel. It is in fact an Agreement settling the terms and conditions of employment of pilots in PIA. It provides for their remuneration, allowances, benefits, non-utilization allowance and even to the extent of reimbursement of washing and dry cleaning of the uniforms of pilots of PIA. This cannot be treated as a commercial Agreement at all. Moreover, PALPA admittedly is not a commercial entity insofar as its relations with PIA is concerned. It is acting as a representative body of pilots before PIA and as a natural consequence thereof, can only enter into an Agreement if any, regarding the service benefits of the pilots and not otherwise. Nonetheless, at most, even if specific performance is being sought, the same regarding enforcement of a service contact is barred under Section 21 of the Specific Relief Act 1877; hence, the Court while exercising any discretion in respect of grant of an interim relief, is always required to be doubly cautious,

while attending to the facts and circumstances prevailing in like matters.

16. The question that since no termination clause is available in the Agreement, hence it cannot be terminated and be referred to Arbitration is also absurd, misconceived and illogical. Arbitration clause provides that all disputes be referred to the Arbitration. The question that whether any of the parties can terminate the Agreement; or show its inability to perform the Agreement, is in my view, a dispute regarding the very Agreement in question and can be referred for Arbitration. At most, a party can claim monetary compensation and damages for an alleged illegal termination of an Agreement. If the Arbitrator holds that it could not have been terminated, or the termination is unlawful / illegal, then the successful party can claim damages and monetary compensation. If the contention of the Plaintiffs' Counsel is sustained, then to my understanding, if the Agreement is ordered to be continued, then what dispute has to be referred to the learned Arbitrator. At the same time as reflected from the prayer clause(s) and Amin. Order No.13/2017, there is a deadlock between the parties regarding any future Agreement, and therefore, at this stage it can be presumed that at least PIA has shown that the Agreement is not valid nor it is being acted upon by them, and impliedly by conduct stands terminated way back in 2017 when Amin. Order No.13/2017 was issued. In that case this Court cannot suspend the termination and revive it, and then send the matter for Arbitration as contended on behalf of the Plaintiffs. It can't be that one seeks opinion of the Arbitrator to decide that whether an Agreement, which does not have a termination clause can be terminated or not? This doesn't sound logical and acceptable to a prudent mind. In fact, then there would be no dispute between the parties as the Agreement would continue and nothing would be referred as a reference for Arbitration.

17. In the Working Agreement clause 1.4 provides for effectivity and duration; clause 1.6 deals with Negotiations for New Agreement and reads as under;

> **1.4 <u>EFFECTIVITY AND DURATION:</u>**
>
> This Agreement shall be effective as of 1st August, 2011 and remain in full force and effect until 31st July, 2013 unless otherwise amended in accordance

within the provisions of this Agreement; and until a new agreement is signed, except for provisions of this Agreement which have specific dates mentioned against them.

1.6 NEGOTIATIONS FOR NEW AGREEMENT:

It is agreed that the present format shall continue, in future Agreements, and that only relevant clauses shall be opened, discussed and if mutually agreed, same shall be incorporated.

The Association shall submit the proposal for negotiating the new Agreement at least three (3) months prior to the date of expiry of this Agreement. The Corporation shall evaluate the said proposal within one month of its receipt, and thereafter commence negotiations, which will be completed within two (2) months.

In the even to of the delay in finalization of the next Working Agreement, it is agreed that the new Working Agreement (inclusive of Article-II of the Working Agreement) shall retroactively be effective from Ist August 2013.

18. As per clause 1.4, the Agreement shall be effective as of 1.8.2011 and shall remain in full force and effect until 31.7.2013, unless otherwise amended in accordance within the provisions of this Agreement; and *until a new Agreement is signed*. From perusal of the Agreement as a whole and the above two clauses, one thing is clear, that the Agreement was never intended to be of an unending term. It has been agreed that it is valid from 1.8.2011 to 31.7.2013. It has a definite term of two years. The clause to continue with the said Agreement in case of delay in further negotiations and arriving at a Working Agreement, is only for the interregnum, and must not be so construed that the Agreement which has a validity till 31.7.2013 would continue for all times to come. If that had been the intention, then perhaps, there wasn't any need for an expiration date. If for some reason, the negotiations have failed, whereas, PIA has already modified the basic and most important clause(s) pertaining to the salary and some other benefits of Pilots by way of Admin. Order No.13/2017, it cannot, for the present purposes, be ruled with certainty that the Agreement still continues as claimed by the Plaintiffs. In fact, Admin. Order No.13/2017 is already under challenge in Suit No.704/2019 and I have not been assisted or informed that whether any ad-interim orders are in field or not.

19. Here in this matter it is not in dispute that presently the Working Agreement stands terminated, be it illegally; hence, what the Plaintiffs

are asking is to restore status quo ante, by way of an injunction and directing PIA to continue performing the Agreement in question. This, as per settled law, is a very rare relief, and Courts have always been reluctant to grant such relief while deciding an injunction application. Though, in addition, in this case there are numerous other obstacles as well in the way of the Plaintiffs, including that PALPA is the party who has signed the Agreement, whereas, the relief being sought is not for PALPA as a representative body; but for its individual members in respect of their service perks and benefits, who, besides Plaintiff No.2 to 5, are not even party to this Suit. These Plaintiffs No.2 to 5 are not even signatories to the said Agreement. Can they come for a declaration or seek specific performance of such an Agreement in their individual capacity? For the present purposes, this seems to be a very remote possibility; but nonetheless, is a question requiring deeper appreciation of the facts and can best be decided at the trial. Even if it is presumed that these Plaintiffs can come for specific performance of this Agreement; the relief in respect of a service Agreement cannot be specifically enforced in view of sections 21(a) *a contract for the non-performance of which compensation in money is an adequate relief*, (b), *a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volitions of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;* (d) *a contract which is in its nature revocable* & (g), *a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date*; read with Section 56(f) *to prevent the breach of a contract the performance of which would not be specifically enforced*; of the Specific Relief Act, 1877. It is trite law that if a final or mandatory injunction cannot be granted in favor of a party, then it would be an illegality and unlawful exercise of discretion in granting a temporary injunction which would stand determined with the determination of the Suit. In the case reported as ***Managing Director, Century Textile Industries Limited v Manju Gupta and Others*** (**AIR 2009 MP 124**) a learned Division Bench of Madhya Pradesh High Court while dealing with a case wherein, the Courts below had granted an injunction in respect of termination of an Agreement, has been pleased to dilate upon the provisions of section 14 and 41 of the Specific Relief Act, 1963, prevailing in India which provisions are almost analogous to our sections 21 and 56 of the Specific Relief Act, 1877, and has observed as under;

> Section 41 of the Specific Relief Act clearly provides that, an injunction cannot be granted, - (e) to prevent the breach of a contract the performance of which would not be specifically enforced and (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. In the present matter if clauses (e) and (h) of Section 41 are read in juxtaposition with Section 14 of the Act then it would become clear that a contract cannot be specifically enforced where for the non-performance of the contract compensation in money is an adequate relief and the contract is in its nature determinable. In the present case if the plaintiffs feel that because of illegal termination of the contract they are losing the business then they would certainly be entitled to sue the defendants for damages. They can also file a suit for settlement of accounts and recovery of their commission etc. and for refund of the security. It is not in dispute before us that the contract between the parties is determinable in nature despite submission of the learned Counsel for the respondents is that the contract was illegally determined. For application of Section 14 the termination whether is legal or illegal is not material, the question is whether the contract in its nature is determinable. If the contract can be determined then in view of Section 14, the contract cannot be specifically enforced and if the contract cannot be specially enforced then under Section 41 an injunction cannot be granted. Section 41 only says that an injunction cannot be granted, therefore, it would be for the Courts to decide that the injunction whether in the nature of temporary injunction, perpetual injunction or mandatory injunction in the circumstances can be granted. It is trite to say that if a final or mandatory injunction cannot be granted in favour of a party then it would be an illegal exercise of the power in grating temporary injunction which would stand determined with the determination of the suit.

20. As already observed, the question that whether in an ordinary Civil Suit for declaration and injunction can the Plaintiff seek shelter under section 41 of the Arbitration Act, after filing of an application under section 34 ibid by a defendant is also very intricate and needs to be dilated upon. Section 41, does confer jurisdiction and discretion upon a Court to pass interim orders; however, it is restrictive and qualified in my opinion. It is only applicable in respect of *arbitration proceedings* before the Court. This is a special law and is a complete code in itself. The use of the word *arbitration proceedings* should not be so stretched to include all proceedings before the Court like an ordinary Civil Suit as well. By this I don't mean to restrict it to proceedings only before an Arbitrator; but at the same time it cannot be said to include any other ordinary proceedings before a Court in between the same parties who have an Arbitration Agreement. The Arbitration Act has already taken care of such proceedings and those proceedings are the one which could be initiated by a party in terms of section 20 thereof. It is only in that situation that a party can come before the Court with a section 20 application and then also pray to pass interim orders as contemplated under section 41 of the Arbitration Act. It can't be

otherwise i.e. first an attempt be made to invoke the ordinary jurisdiction of the Court by pleading that notwithstanding an Arbitration Agreement between the parties, it is not applicable to the facts so pleaded, and when a section 34 application comes, Court may be requested to exercise jurisdiction under section 41 ibid. For that, in my candid view, there has to be a section 20 application by a Plaintiff. In fact, the Court can even consider an oral motion request to convert the plaint into such proceedings under section 20 ibid, by conceding that there is an Arbitration clause and matter should be sent for Arbitration; but not while opposing the application under section 34 of the Arbitration Act. In this matter, there is no such request nor the Plaintiffs have conceded to. A learned judge of Calcutta High Court in the case reported as ***Ranjit Chandra Mitter v Union of India*** (**AIR 1963 Cal 594**) while disagreeing with an earlier opinion reported as *Chedilal v. Brit Over Ltd.*, (**52 CWN 45**) / **MANU/WB/0198/1947** has been pleased to hold as under;

> "It seems to me that, having regard to the pendency of the suit, the point raised by Mr. Chaudhuri lost its importance according to the learned Judge and the learned Judge issued injunction in the pending suit. There is no doubt a criticism of Mr. Chaudhuri's argument in that he was attempting to import the word 'pending' in Section 41 which was not warranted. But the learned Judge did not feel called upon in the view taken by him to give a meaning to the expression 'arbitration proceeding' in Section 41. I am, therefore, unable to hold that the above passage is an authority for the proposition that the Court can issue an injunction even in the absence of any arbitration proceeding provided there is a dispute which can become the subject-matter of an arbitration proceeding under an arbitration agreement subsisting between the parties. An interim relief under Section 41 can only be asked for and granted by the Court in some proceeding or in a pending suit. In the absence of such a proceeding, in my judgment, an application under Section 41 is not maintainable. No case has been cited in which the Court passed an order under Section 41 in which no arbitration proceeding is pending, nor do I know of any. Mr. Bhabra and Mr. Roy Chowdhury submitted that this construction will lead to very great hardship. When there is a dispute which is covered by an arbitration agreement, there is always a time lag between the dispute and the reference. A good deal of mischief would be done in between if it is construed that the Court is debarred from entertaining an application for interim relief provided for in Section 41 of the Arbitration Act. I do not however find any hardship because of the so-called time lag. It is true that if the party proceeds under Chapter II of the Arbitration Act, there may be a time lag between the dispute and the arbitration proceeding. But the parties may well proceed under Section 20 of Chapter 111 of the Arbitration Act and such an application can be filed forthwith. Once an application is filed under Section 20, there is a proceeding -- a pending suit and an application for interim relief can be asked for in that proceeding. For reasons given above, I hold that in the absence of any arbitration proceedings in the instant case, the present application for injunction under Section 41 is not maintainable in law."

21. The Plaintiffs' Counsel has also vehemently argued that since there is no termination clause in the Agreement; hence, it can never be terminated without consent of both the parties. I have already disagreed with this submission. In this case the Agreement in question is not a commercial contract, and PIA has categorically stated in its counter affidavit on oath, that except termination and discontinuance of any further negotiations with PALPA no other coercive measure is being adopted against any of the Pilots i.e. members of PALPA; hence, there is no cause to maintain the present Suit. According to them, the salary structure already stands modified through Admin. Order No.13/2017 which is sub-judice in another Suit, whereas, pursuant to Notice dated 30.4.2020, a fresh Admin Order No.5/2020 has been issued which in fact has not even impugned. If this is the case then perhaps the termination is only to the extent that no further negotiations would be entered into with PALPA and if any of the Pilots have a grievance they can approach PIA individually, which is, otherwise a proper procedure for governing the relationship of an employee and an employer not falling within the exception of Industrial Relations Act, 2012, whereby, said category of employees can form a Union and elect a Collective Bargaining Agent, which admittedly is not applicable in the case of Pilots. In the case reported as ***New Central Book Agency Pvt. Ltd. V Madhusri Konar*** (**MANU/WB/1467/2014**) the learned Calcutta High Court had the occasion to deal with a case wherein the stance of the Appellant was that agreement does not provide for any termination. The learned Division Bench dispelled this impression by holding as under;

> 11. We have considered the submissions advanced by the learned Advocates appearing for the parties. The principal question for determination, according to us, is whether on a construction of the agreement dated 7th November, 1981 it can be held that the right to publish the books was granted to the plaintiff perpetually? The suit is based on the aforesaid assertion. It is on the aforesaid basis that all the claims for declaration and perpetual injunction have been put forward in the plaint.
>
> 12. Mr. Mitra has not disputed that the author continues to be the owner of the copyright. Our attention was not drawn by Mr. Mitra to any clause of the agreement dated 7th November, 1981 on the basis whereof it can even be suggested that the right to publish the books belong absolutely to the plaintiff. On the contrary, the right to publish the books appears to have been given by the author "during the period this agreement shall remain in force". It is a pointer to show that the contract is terminable. Clause 5 of the agreement provides that the

> author is alone entitled to revise the book which is again inconsistent with a grant of a perpetual nature.
>
> 13. Therefore the mere absence of a termination clause cannot lead to the inference that the contract is perpetual. On the contrary the absence of termination clause together with absence of any stipulation as regards duration thereof would lead to the conclusion that the contract is terminable at will by either party.

22. Similarly, in the case reported as ***Resbird Technologies Pvt. Ltd. V R.S. Travel and Tours (India) Pvt. Ltd & Others*** (**MANU/DE/1084/2018**) a learned Judge of the Delhi High Court had the occasion to deal a similar case wherein, firstly if was contended that the Agreement cannot be terminated, and in the alternative even if it can, then a proper notice was a must. The learned Judge was pleased to hold otherwise in the following manner.

> 14. Hence, the term of the contract is four years. Thereafter it automatically gets renewed for a period of four years unless terminated as stated. The contract has been entered into for the purpose of permitting the defendants to use Amadeus GDS which is used for the purpose of carrying out reservation for Airlines. In return for the reservations that are done from the system the defendants are entitled to certain commissions.
>
> 15. Section 14 of the Specific Relief Act enumerates the contracts which cannot be specifically enforced. Section 14 (1)(a) deals with the contract for the non-performance of which compensation in money is an adequate relief. Sub-clause (c) deals with contracts which in nature are determinable. Merely because, the present contract has a fixed term of four years, it would not ipso facto mean that the contract cannot be terminated. Absence of a termination clause in the agreement does not mean that the agreement is not determinable. It is quite clear from the nature of the agreement itself that it cannot be said to be an agreement that can be specifically enforced in terms of section 14 of the Specific Relief Act. In case there is a breach of contract by the defendants on account of wrongful termination the remedy of the plaintiff would be to seek damages. Injunction cannot be passed against the defendants compelling the defendants to continue to perform his business by using only the platform of the plaintiff. Merely because three months' notice was not given by the defendants prior to his intention to start using another platform would be of no consequences thereof other than a claim of damages.

23. In the case reported as ***Rajasthan Breweries Ltd. V The Stroh Brewery Company*** (**AIR 2000 Delhi 450**), a learned Division Bench has been pleased to hold as under;

> 19. Even in the absence of specific clause authorizing and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same.

24. This case has been followed by a learned Single Judge of this Court in the case reported as ***Bank Alfalah Limited v Neu Multiplex and Entertainment Square Company (Pvt) Limited*** (**2015 YLR 2141**).

25. In ***Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and others***, [**(1991)1 SCC 533**], the Indian Supreme Court had an occasion to consider the terms of agreement of distributorship which was though valid for an indefinite period; but could be could be terminated on happenings of certain events in accordance with the terms as per clauses 27 and 28 thereof. It was terminated by the Appellant; however, the learned Arbitrator despite holding that the distributorship agreement was revocable in accordance with clauses 27 and 28 of the agreement, but at the same time held that since it was done unlawfully, it would continue till the time it was terminated in accordance with the terms contained therein. It was the case of the respondent therein that since the contract had not been terminated in accordance with clause 27 thereof, under which termination had been made, the firm was entitled to continuance of distributorship in the special circumstances of the case, which contention was upheld by the Arbitrator. Supreme Court set aside the award of the arbitrator on the ground that there is error of law apparent on the face of the record and grant of relief in the award cannot be sustained. It was held: -

12. "The arbitrator recorded finding on issue No. 1 that termination of distributorship by the appellant Corporation was not validly made under clause 27. Thereafter, he proceeded to record the finding on issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, Therefore, the plain- tiff-respondent 1 was entitled to continuance of the distributor- ship till it was terminated in accordance with the agreed terms. The award further says as under: -

> "This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1,1976, if and when an occasion arises."

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revocable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revocable and the same being admittedly for rendering person al service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is a contract which is in its nature determinable. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the Appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is no error of law apparent on the face of the award which is stated to be made according to the law governing such cases. The grant of this relief in the award cannot, Therefore, be sustained.

26. In fact, in the above case, despite a finding by the Arbitrator that the agreement was not terminated lawfully, the Supreme Court held that even in that case the relief of restoration of the same even on the finding that the breach was committed by the Appellant was not upheld. In the instant case the question that whether termination is wrongful or not; and whether PIA is or is not justified in terminating the Agreement is yet to be decided; hence, asking for an interim relief is too far-fetched in the given facts and circumstances as discussed hereinabove.

27. In ***Classic Motors Ltd. Vs. M/s. Maruti Udyog Ltd***., (**MANU/DE/0586/1996)** relying upon number of decisions, learned Single Judge of the Delhi High Court has observed that: -

> "In view of long catena of decisions and consistent view of the Supreme Court, I hold that in private commercial transaction the parties could terminate a contract even without assigning any reasons with a reasonable period of notice in terms of such a Clause in the agreement. The submission that there could be no termination of an agreement even in the realm of private law without there being a cause or the said cause has to be valid strong cause going to the root of the matter, Therefore, is apparently fallacious and is accordingly, rejected."

28. The Plaintiffs objections that the termination of the Agreement by PIA is not within the scope of the Arbitration clause as it is not a dispute or interpretation of the Agreement; hence, cannot be referred for Arbitration is also not appealing at all. The word *dispute* has a very wide connotation. It has been consistently held by the Courts that use of the word *dispute* in an Arbitration Agreement cannot be construed narrowly to restrict the authority and jurisdiction of the Arbitrator. In the case reported as ***Lahore Stock Exchange Limited (Supra)*** relied upon by the learned Counsel for PIA, the Hon'ble Supreme Court has quoted a passage from Halsbury's Laws of England, 4th Edition, Para 553, with approval that, "*where a party does not agree that there has been frustration, a difference on this issue is within an appropriate arbitration clause*…". It has also cited with approval the observations of Viscount Simon L.C. in the case reported as ***Heyman v. Darwins Ltd***. **[H.L.(E) 1942 AC 350]**, to the effect that *"If the respondents were denying that the contract had ever bound them at all, such an attitude would disentitle them from relying on the arbitration clause which it contains, but that is not the position they take up.* ***They admit the contract ' and deny that they have repudiated it. Whether they have, or have not, is one of the disputes arising out of the agreement. Even if the arbitrator finds that they have, and that on the appellants' acceptance of the repudiation the contract is- at an end, that finding does not oust the arbitrator's jurisdiction****. "The proposition, " said Lord Finlay in Sanderson & Son v. Armour & Co. Ltd. (1922 S.C. (H.L.) 117, 121) "that the mere allegation by one party of repudiation of "the contract by the other deprives the latter of the right to "take advantage of an arbitration clause is unreasonable in "itself, and there is no authority to support it." Moreover, the damages due from the respondents for this breach of the obligations of the agreement, as-well as damages for any other breaches of it, are also disputed matters arising "in respect of' the agreement."*

29. There is an argument on behalf of the Plaintiffs, especially Plaintiff No.1 i.e. PALPA that the impugned Notice dated 30.04.2020, whereby, PIA has derecognized PALPA, is a violation of the fundamental rights provided in Article 17 of the Constitution. According to the Plaintiffs' Counsel this right in respect of forming an Association on behalf of the Pilots is a constitutional right and cannot be taken away or curtailed by PIA in the manner as reflected in the impugned Notice. Article 17(1) of the Constitution provides freedom of association and states that every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. Insofar as this issue is concerned, the Plaintiffs cannot deny that except their registration under the Societies Act, there is no other statutory protection available to PALPA insofar as their representative capacity on behalf of the Pilots is concerned. They are not representing the employees of a grade, which fall within the Industrial Relations Act, 2012 and who have a right to join a trade union and then elect a Collective Bargaining Agent to negotiate on their behalf with PIA. In fact, even the rights guaranteed to a Union or CBA are qualified and circumscribed according to various laws and not all grievance(s) of an individual member / labor can be agitated by CBA [***See, Karachi Pipe Mills Union (Supra)***]. Admittedly, all Pilots are in a higher bracket or class of the employment. PIA has categorically stated that it is only to the extent of the representative capacity of PALPA to negotiate the terms and conditions of service of the Pilots, which is being disputed and not any other activity, which they may enter into for the collective benefits of their members. It is only to the extent that PIA is no more willing to treat PALPA as a body, which can enter into negotiations with regard to the working conditions of PIA's Pilots. They have not disputed or derecognized any other independent and individual activity of PALPA according to their own Charter and the Memorandum of Association. When this aspect of the matter is examined read with Article 17(1) of the Constitution, it appears to me that a mere registration under the Societies Act, does not create any statutory obligations on an employer to enter into negotiations in respect of the terms and conditions of service of the members of such a society. When law i.e. The Industrial Relations Act, 2012 has specifically provided formation of a trade union and election of a Collective Bargaining Agent to a certain category of

employees for which the Pilots stand disqualified, then recourse to the Societies Act cannot be equated or termed parallel for PALPA to act as a representative body or a Collective Bargaining Agent with regard to the terms and conditions of service of the Pilots. It is settled law that what is not provided in law cannot be read into by other means. PALPA may have a legal status as a Society to act for the betterment of its members, but cannot claim as a matter of right to be a representative body or a Collective Bargaining Agent for negotiating the terms and conditions of the service of the Pilots in PIA.

30. In view of hereinabove facts and circumstances of the case I ma of the view that the Plaintiffs have failed to make out a case for indulgence so as to exercise any discretion in their favor. In fact, even if this Court would have been inclined to exercise jurisdiction under section 41 of the Arbitration Act as prayed on behalf of the Plaintiffs, the ingredients for grant of an injunction are lacking in this case. The plaintiffs have no prima facie case nor balance of convenience lies in their favor, whereas, irreparable loss, if any, would be caused to PIA if the impugned notice of termination is suspended. Insofar as the notification dated 28.4.2020 is concerned, the same has been lawfully issued in terms of the 1952 Act, and no exception can be drawn. As to the application under section 34 of the Arbitration Act, I am of the view that there is an Arbitration clause in the Agreement and termination of the Agreement falls within *all disputes* as provided in clause 1.8 of the Agreement and parties must go for Arbitration according to the agreed terms. Accordingly, CMA No.4391/2020 stands dismissed, whereas, CMA No.4437/2020 is allowed, and the proceedings of instant Suit are stayed.

Dated: 29.07.2020

J U D G E

Ayaz P.s.