IN THE HIGH COURT OF SINDH, KARACHI

C. P No. 1513 of 2024

Date	Order with signature of Judge

Present: ***Mr. Justice Muhammad Junaid Ghaffar***
Mr. Justice Jawad Akbar Sarwana

Petitioner:	**Civil Aviation Authority of Pakistan, Through M/s Ammar Athar Saeed & Usman Alam, Advocates.**
Respondents:	**Federation of Pakistan & Others. Through Dr. Shahnawaz Memon, Advocate.** **Mr. Kashif Nazeer, Assistant Attorney General.**
Date of hearing:	**21.05.2024.**
Date of Judgment:	**30.05.2024.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Petition, the Petitioner has sought a declaration that it is exempt from levy of Income Tax pursuant to Section 34 of the Pakistan Civil Aviation Authority Act, 2023 and Section 38 of the Pakistan Airports Authorities Act, 2023 ("**2023 Acts**") read with Article 165A of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") notwithstanding the restriction imposed under Section 54 of the Income Tax Ordinance, 2001 ("**Ordinance**"). On 14.05.2024 Petitioners Counsel was confronted as to the recent amendment in the Ordinance vide Finance Amendment Act, 2024, whereby, Section 134A ibid has been amended requiring State Owned Enterprise ("SOE") to mandatorily go for Alternate Dispute Resolution ("ADR"), whereas, even in terms of Rule 8(2) of the Rules of Business, 1973, ("**1973 Rules**") the matter has to be resolved at the level of Federal Government. After briefly hearing the Petitioner's Counsel we had passed the following order: -

> "The Petitioner claims that pursuant to Section 34 and 38 of the Pakistan Civil Aviation Authority Act, 2023 and Pakistan Airports Authority Act, 2023, respectively, it is exempt from any sort of Tax, including income tax under the Income Tax Ordinance, 2001. The Petitioner also relies upon the opinion of Ministry of Law and Justice dated 24.1.2024. This stance is opposed by the Respondents by relying upon section 54 of the Income Tax Ordinance, 2001.
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> The above position reflects that two different Divisions / Ministries are at loggerheads despite opinion of the Law Division in favor of the Petitioner. This in our view ought to be resolved by the Federal Government at its own level in view of Rule 8(2) of The Rules of Business, 1973.
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> Similarly, Section 134-A of the Income Tax Ordinance 2001, duly amended by Tax Amendment Act, 2024, now makes it mandatory for State Owned Enterprises and the likes of the Petitioner to go for Alternate Dispute Resolution mechanism.
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> Accordingly, Counsel for the Petitioner as well Respondents and learned Assistant Attorney General are directed to assist the Court on the above aspect.
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> Adjourned to **21.05.2024**."

2. Today, it has been contended by him that the Petitioner does not fall within the definition of an SOE and Section 3 of the State-Owned Enterprises (Governance and Operation) Act, 2023 ("**SOE Act**") is not applicable; hence, the provisions of Section 134A of the Ordinance are not relevant. As to the objection regarding Rule 8(2) of the 1973 Rules, he has argued that the 2023 Acts in question have been passed by the Parliament and have an overriding effect. Therefore, Rule 8(2) of the 1973 Rules has no relevance as well. According to him, the matter cannot be referred to ADRC and has to be decided by this Court, by exercising its jurisdiction under Article 199 of the Constitution. He has further contended that FBR has already deducted more than Rs.15 Billion from the Bank Account of the Petitioner as advance tax for the last quarter.

3. Heard and perused the record. Insofar as the status of the Petitioner is concerned, post 2023, it is now a creation of the 2023 Acts, whereas, it is not disputed that it is an authority created by such act of Parliament and is required to manage all Airports in Pakistan and to look after all issues ancillary thereto. It is owned by the Federal Government and comes under the Ministry of Defence. Before proceeding further and to address the issue that as to whether the Petitioner is an SOE falling within the contemplation of the SOE Act, or not, reference may

be made to the relevant Sections i.e. Section 2(d) and (e) of the said Act, which reads as under: -

> "(d) "controlled by the Government" means: -
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> (i) in the case of a company, if the Federal Government directly or indirectly has the right to appoint a majority of directors or control over management or policy decisions, exercisable by a persona individually or through any person acting in concert, directly or indirectly, whether by virtue of Federal Government shareholding, management right, shareholder's agreement, voting agreement or otherwise;
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> (ii) in the case of an entity created by an Act of the Majlis-e-Shoora, if the Federal Government has the power to appoint a majority of the persons who are directors of that entity or otherwise has the power to determine the outcome of decisions about the entity's management or financial and operating policies.
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> (e) "commercial state-owned enterprise" means
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> (i) a state-owned enterprise established under the Companies Act, 2017 (XIX of 2017) other than companies licensed under section 42 thereof; or
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> (ii) a state-owned enterprise that generates the majority of its revenue from the sale of goods or services or a combination of goods and services on a commercial basis.

4. From perusal of the above definitions, it clearly reflects that "controlled by the Government" means an entity created by an Act of the Majlis-e-Shoora, if the Federal Government has the power to appoint a majority of the persons who are directors of that entity or otherwise has the power to determine the outcome of decisions about the entity's management or financial and operating policies. Similarly, Section 2(e)(ii) provides that commercial State-owned Enterprise means a State-owned Enterprise that generates the majority of its revenue from the sale of goods or services or a combination of goods and services on a commercial basis. We are clear in our minds that even if Section 2(d)(ii) is not applicable for any reason as contended, then Section 2(e)(ii) is fully attracted in the case of the Petitioner as admittedly, it is an authority which is generating its revenue from selling services on a commercial basis. To this effect, there appears to be no dispute that the

Petitioner is being run on a commercial basis, whereas, it does not appear to be the case of the Petitioner that is not controlled or managed by the Federal Government. Therefore, for all intent and purposes, in our considered view, the Petitioner is covered by the SOE Act. Lastly, this Act and the relevant provisions as above do not, in any manner, affect the status or interest of the Petitioner, nor prejudice it otherwise, therefore, per settled law, these provisions can be construed liberally so as to include the Petitioner's status as an SOE under the SOE Act.

5. As to the fiscal laws and settlement of such disputes by way of ADR, a brief discussion of ADR in the context of fiscal statutes may be helpful. An ADR mechanism in fiscal laws was introduced for the first time through the Finance Act, 1996 when Section 47A was introduced in the Sales Tax Act, 1990 and an Indirect Taxes Settlement Commission was formed, whereby any aggrieved tax-payer could approach the Commission constituting 3 Members to be appointed by the Government. However, In the year 2000, this section was omitted. Thereafter, ADR was introduced in all Fiscal Laws in the year 2004, including the Customs Act,1969[1], Income Tax Ordinance, 2001[2], Sales Tax Act 1990[3] and the Federal Excise Act, 2005[4]. As of 2005, the new ADR additions to the law provided a window to operate side by side with the existing conventional Appellate system; with simple procedures and lesser technicalities, recommendations of independent experts and an out-of-court settlement with the tax authorities. Initially, when this scheme was launched it had its teething problems for a number of reasons, including, but not limited to, the authority of FBR in terms of Section 134A(2) of the Ordinance not to accept the decision of an ADR committee, if it was in favor of the

[1] S.195C-Customs Act,1969 /Chapter XVII Customs Rules, 2001.
[2] S.134A-Income Tax Ordinance, 2001 / R.231 C Income Tax Rules, 2002.
[3] S.47A-Sales Tax Act 1990 / Chapter X Sales Tax Rules,2004.
[4] S.38-Federal Excise Act, 2005 /Rule 53 Federal Excise Rules,2005

taxpayer; a right of further appeal if the taxpayer was not satisfied with the order of FBR; and composition of ADRC Committees which were headed by officers of FBR. This didn't work well and came under a lot of criticism by the taxpayers requiring corrective measures; hence, finally, from 2018 onwards certain amendments were brought in. These changes to the law included, inter alia, the decision of ADRC was made binding on the parties; the Taxpayer was required to withdraw its pending case from the Court; tax-payer was required to make an offer of settlement before approaching ADRC and he could not retract from the offered amount of tax. Thereafter some further amendments were also made in 2020 and it was provided that only such matters can be referred to ADRC wherein the amount of 100 million or more was in dispute; the decision of ADRC was not to be treated as a precedent in any other case and a further relief in the sense that all pending proceedings were stayed on constitution of ADR Committees. At the same time, there were some other restrictions in the referral of cases to ADRC, such as matters wherein criminal proceedings have been initiated; or where interpretation of question of law is involved could not be referred to ADRC. It was reiterated that the scope of ADR revolves around facts and circumstances; the burden of proof rests on the applicant; the applicant has to state and explain quite clearly: what is already agreed; what is disputed; what evidence is being produced; what are the applicant's contentions and why should, the matter be resolved in his/her favor. The most significant and much-awaited amendments were brought about with the composition of ADR Committees, which were now to be headed by a retired judge, not below the rank of a judge of a High Court as Chairperson; a Chief Commissioner or Chief Collector having jurisdiction over the case; and a person to be nominated by the taxpayer from a panel notified by the Board comprising of (a) chartered accountants, cost and management accountants and

advocates having a minimum of ten years' experience in the field of taxation; or (b) officers of the Inland Revenue Service who stood retired in BS 21 or above; or (c) reputable businessmen as nominated by the Chambers of Commerce and Industry. Finally, on 06.05.2024 Tax Laws (Amendment) Act, 2024 was promulgated, whereby, the newly amended Section 134A of the Ordinance is to apply mutatis mutandis on the Sales Tax Act, 1990 and the Federal Excise Act, 2005; the limit of Rs.100 Million has been reduced to Rs.50 Million. The most significant and relevant amendment made, which in our view is fully applicable to the present Petitioner, is that now it is ***mandatory*** for SOE to go for ADR, whereas, the limit of Rs.50 Million is also not applicable. Earlier, the management of an SOE was reluctant to go for mediation in any business transaction due to fear of prosecution, but through the newly amended provisions, they have been protected from any suit, prosecution or other legal proceedings. Since referral to ADR is now mandatory for SOE, a right to appeal has also been provided to SOE when the matter is not decided by ADRC within the stipulated period.

6. The moot question now and as contended by the Petitioner's Counsel, is whether the newly amended Section 134A ibid is applicable to the present Petitioner, and whether the Petitioner is an SOE within the contemplation of such provision. It would be advantageous to refer to the recent substitution of sub-Sections (1) and (2) of Section 134A of the Ordinance, which reads as under: -

> "(1) Notwithstanding any other provision of this Ordinance, or the rules made thereunder, an aggrieved person in connection with any dispute pertaining to—
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> (a) the liability of tax of fifty million rupees or above against the aggrieved person or admissibility of refund, as the case may be;
> (b) the extent of waiver of default surcharge and penalty; or
> (c) any other specific relief required to resolve the dispute,
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> may apply, except where criminal proceedings have been initiated, to the Board for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application:

Provided that where the aggrieved person is a state-owned enterprise (SOE), the limit of tax liability of fifty million rupees or above mentioned in clause (a) of sub-section (1) shall not apply and it shall be mandatory for such aggrieved SOE to apply to the Board for the appointment of a committee for the resolution of any dispute under this section:

Provided further that no suit, prosecution, or other legal proceedings shall lie against the SOE or the committee in relation to the dispute resolved under this section.

Explanation. —State-owned enterprise shall have the same meaning as assigned thereto in the State-Owned Enterprises (Governance and Operations) Act, 2023 (VII of 2023).

(2) The application for dispute resolution under sub-section (1) shall be accompanied by—

(a) an initial proposition for resolution of the dispute, including an offer of tax payment; and

(b) an undertaking that the applicant shall accept the decision of the Committee which shall be binding on him in all respects and shall on receipt of the decision immediately withdraw any and all pending litigation or cases of any kind in respect of the dispute, mentioning details thereof:

Provided that if the applicant is an SOE, it shall withdraw any and all such pending litigation and cases immediately and mention the details thereof in the undertaking:

Provided further that the SOE may file an appeal to the Appellate Tribunal or a reference to the High Court or a petition for leave to appeal the Supreme Court, as the case may be, where sub-section (11) is applicable."; and

(b) for sub-section (13), the following shall be substituted, namely: —

"(13) On receipt of the order of dissolution, the court of law or the Appellate Tribunal shall decide the appeal within ninety days of the communication of the said order.".

7. The above provision provides (insofar as the petitioner before us is concerned) that notwithstanding any other provision of this Ordinance, or the rules made thereunder, the limit of Rs.50M is not applicable to the case of SOE, and further that it shall be mandatory for such aggrieved SOE to apply for appointment of a Committee for resolution of the dispute. It is further provided that no suit, prosecution, or other legal proceedings shall lie against the SOE or the committee in relation to the dispute resolved under this provision. The explanation to sub-section (1) of Section 134A defines State-

owned Enterprise, which means the one as referred to hereinabove under the SOE Act, 2023. Sub-section (2) further provides that if the applicant is an SOE, it shall withdraw any and all such pending litigation and cases immediately before approaching the Alternate Dispute Resolution Committee. Lastly, the proviso to sub-section (2) of Section 134A further provides that the SOE may file an appeal, if the Committee so constituted fails to decide the matter within the period of 60 days as by efflux of time, the FBR has to notify the dissolution of the committee.

8. After going through the above provisions and gathering the intent of the Federal Government, to us, it clearly reflects that an internal mechanism has been evolved for the quick disposal of tax disputes between SOEs and FBR. The reason being that at the end of the day, in any such disputes, it is, in fact, the Federal Government who is the ultimate loser, by way of litigation costs besides delay in settlement of such disputes from the courts of law. The Petitioner before us is owned by the Government and is being asked to pay a certain amount of tax by FBR which is also under the Revenue Division of the Federal Government and ultimately, even if the Petitioner is required to pay any tax; the cost of such payment of tax is to be borne by the Federal Government. It is just like withdrawing money from one pocket and putting it into the other, and in this entire exercise, it is the litigation cost and delay which must be borne by the Federal Government additionally. Resultantly, it is the Federal Government alone which is the loser and besides incurring costs, the time consumed by the courts in deciding such matters could be reserved and allocated to disputes of private parties before the Court. So in all fairness, we are of the considered view that in terms of Section 134A of the Ordinance, duly amended by the Finance Amendment Act, 2024, the Petitioner is mandatorily required to approach FBR for

resolution of its dispute coupled with the fact that the Petitioner claims that its case has been supported by the Ministry of Law and Justice Division.

9. Notwithstanding the above as to the applicability of Section 134A ibid, there is another aspect of the matter as well. Before us, the Petitioner, which is manned by the Defence Division, has placed reliance upon an opinion of the Law & Justice Division, whereby it has been stated that the Petitioner is exempt from any tax leviable under the Ordinance pursuant to Section 34 and 38 of the 2023 Acts. This assertion and opinion, respectively, are being denied by FBR, which is under the Revenue Division on the ground that in terms of Section 54 of the Ordinance, no such exemption is available till such time the same has been issued and provided for under the Ordinance. For this, in our considered view, even otherwise a mechanism is provided in The 1973 Rules, notified by the Federal Government in terms of Articles 90 and 99 of the Constitution of Pakistan, 1973. It would be advantageous to refer to Rule 8(2) of the 1973 Rules which reads as under: -

> **"8. Inter Division Procedure. —(1) ……..**
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> (2) In the event of a difference of opinion between the Divisions concerned, the Minister primarily concerned shall try to resolve the difference in consultation with the other Ministers concerned. If no agreement is reached and the Minister primarily concerned desires to pass the case, the case shall be submitted to the Prime Minister or, if the Prime Minister so desires, to the Cabinet;
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> Provided that in a matter of urgency the Minister primarily concerned may submit the case to the Prime Minster at any stage;
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> Provided further that the Prime Minister is the Minister-in-Charge, the final views of other Divisions concerned shall be obtained before the case is submitted to the Prime Minister."

10. On a bare perusal of Rule 8(2) as above, it clearly reflects that in the event of a difference of opinion between the Divisions concerned (here the Revenue Division Vs. the Defence Division as well as the Ministry of Law and Justice Division), the Minister primarily concerned, shall try to resolve

the difference in consultation with the other Ministers concerned. It further provides that if no agreement is reached and the Minister primarily concerned, desires to press the case, the case shall be submitted to the Prime Minister or, if the Prime Minister so desires, to the Cabinet. The proviso creates an exception for urgent issues, whereby, the Minister, primarily concerned, may submit the case to the Prime Minister at any stage. Therefore, even if Section 134A of the Ordinance is not applicable, as claimed by the Petitioner's Counsel on the ground that the Petitioner is not a State-owned Enterprise, Rule 8(2) of the 1973 Rules clearly applies and the matter has to be referred to the Prime Minister. Admittedly, there is a dispute between two Divisions of the Government and until the matter is reconciled in terms of Rule 8(2) of the 1973 Rules, as above, the court must not exercise any discretion under Article 199 of the Constitution and indulge itself into adjudication the issue. The above view of ours is supported by the dicta laid down by the Supreme Court in ***Muhammad Akram***[5] and by the Lahore High Court in ***Barrister Sardar Muhammad***[6].

11. It may further be observed that though courts are the creature of law and constitution, whereas, Article 199 of the Constitution also confers ample jurisdiction upon the High Courts; but such jurisdiction otherwise, is to be exercised by way of discretion and circumspection, and while doing so, Court must look into the *locus standi* of the parties coming to the Court. We are mindful of the fact that the Petitioner before us may be an aggrieved person for any other issue, but insofar as the present facts and circumstances are concerned, we are of the view that for such purposes, it is not so, until and unless the ADR mechanism provided under Section 134A of the Ordinance, OR the mechanism as provided for Resolution of Dispute under Rule 8(2) of the 1973 Rules are exhausted. Till

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[5] Per Saeed-uz-zaman Siddiqui, J; (1995 SCMR 1647)
[6] Per Mansoor Ali Shaj, J; as his lordship then was (PLD 2013 Lahore 343)

such time we do not see the Petitioner as an aggrieved person being a Federal Government authority for impugning the action of another authority created and vesting in the same Federal Government. It is not even a case of any Federal Government against a Provincial Government which may have created an exception.

12. Lastly, we are constrained to observe that the Courts are already burdened with excessive litigation as against its total strength and the number of judges, including the infrastructure. Hence, any further unnecessary burden has to be avoided and must be nipped in the bud at the very outset. In this, the Government has to act fairly, sensibly and with a helping hand as the majority of litigation in the High Courts is under Article 199 of the Constitution which is either against the Provincial or the Federal Government. Presently, the Courts are acting robustly to induce out of court settlement as and when possible, to the fullest extent. It is a change in mindset and needs support from all litigants, including the Government. In fact, the Government has already taken a step forward by amending Section 134A of the Ordinance in question, and this is to be appreciated as a timely step forward; but at the same time, it has failed to guide and persuade its Divisions and Authorities to go for such route of settling its disputes with the Tax Departments. If the Petitioner's Counsel, under instructions, had agreed to referral of this matter to ADR under the aforesaid provision of law, this would have definitely saved precious time of this Court in writing this opinion. By fostering a pro-settlement bias, courts can contribute to a more harmonious and efficient dispute resolution landscape, where parties are empowered to resolve conflicts collaboratively and constructively[7]. Encouraging mediation aligns with the broader goals of justice systems worldwide: to resolve disputes in a

[7] Per Mansoor Ali Shah, J, *Province of Punjab v Haroon Construction Company*[7] 2024 SCP 123 (SC Citation)

manner that is fair, efficient, and conducive to the long-term well-being of all involved parties[8]. The Supreme Court has recently adopted a pro-mediation approach, and in ***Province of Punjab***[9] while quoting Justice Sandra Day O'Connor, it is observed that "The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.[10]". The Supreme Court has further stated that we wish to underline that courts must encourage out of court settlements through Alternate Dispute Resolution ("ADR"), in particular mediation. The essence of *mediation* lies in its voluntary and confidential process, where a neutral third party, the mediator, assists disputants in reaching a consensus. Unlike in litigation, where the outcome is often a zero-sum game, mediation thrives on the principle of win-win solutions, preserving relationships and allowing for creative resolutions that legal parameters might not accommodate. The Following detailed observations in that case are of relevance as well and reads as under:

> 11. Mediation, as a form of alternative dispute resolution (ADR), h collaborative approach, encouraging parties to find mutually beneficial solutions. *The courts should not only encourage mediation but also exhibit a pro-settlement bias and a pro-mediation bias. By Pro-mediation bias or pro-settlement, we mean a predisposition or preference within the legal system for resolving disputes through mediation rather than through litigation or other forms of dispute resolution. This bias is not about favoring one party over another but rather about favoring the process of mediation itself as a preferred method of dispute resolution. This bias is grounded in the belief that settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court.*
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> 12. Prominent legal scholars and jurists, including the likes of Ro involved, compared to the often rigid and polarizing verdicts of court proceedings. Their work underscores the importance of interests over positions, encouraging

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[9] Per Mansoor Ali Shah, J, *Province of Punjab v Haroon Construction Company*[9] 2024 SCP 123 (SC Citation)

[10] Justice Sandra Day O'Connor, Speech at the Minnesota Conference for Women in the Law, April 1985

> parties to seek common ground rather than entrenching themselves in adversarial stances. For instance, in "Judging Civil Justice," legal scholar Hazel Genn discusses the encouragement of settlement as a way to reduce court caseloads and promote the efficient use of judicial resources. Courts may exhibit a pro-settlement bias by encouraging parties to settle even before the case goes to trial or during the litigation process.

13. We are also mindful of the fact that any mediation within or by Public Sector Organizations has its shortcomings, but it is high time to get the better of this as well. A step has been taken by FBR by introducing Section 134A ibid, and now it is the onerous responsibility of all, including the Courts to implement the scheme. *David Richbell*[11] while dealing with mediating public sector disputes has correctly observed as under;

> There can be few more challenging areas in which to mediate than the public sector. Often, there is not just a contractual issue to resolve, but a statutory backdrop and political dimension to contend with too. Not surprisingly, the range of disputes that are mediated is far broader than in other sectors, from multi-million-pound procurement contracts to far more localized issues such as the investigation into conduct of employees at a state-run entity.
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> Mediation in the public sector has, in the past, been characterized by a mismatch between the high percentage of public bodies that regard the process as a sensible alternative to litigation, and the considerably lower percentage that actually use mediation as their preferred method of resolving disputes. That mismatch is becoming a little less marked, with mediation being used more and more to resolve the full range of disputes that arise within and concerning public bodies. Indeed, the results of CEDR's fifth mediation audit published in May 2012, noted that mediators who had been asked to identify sectors that would see most growth in mediation usage over the next two years included the public sector in their list.
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> The reasons for increased usage of mediation in the public sector is beyond this short contribution which instead focuses on some of the challenges mediators might face when mediating in this area.
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> Despite the vast array of disputes one mediates in the public sector, there are often certain shared characteristics necessitating considerable versatility and skill on the part of the mediator and, importantly, careful pre-mediation groundwork on the part of all involved.

14. Fostering a pro-mediation drive initiated by the Courts, the learned Lahore High Court in the case of ***Faisal Zafar***[12] and

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[11] In How to Master Commercial Mediation published by Bloomsbury Professional

[12] Faisal Zafar V Siraj-Ud-Din (2024 CLD 1) speaking through Jawad Hasan, J,

Netherlands Financierings[13] has eloquently deliberated upon the role of Courts in promoting mediation in Company matters pursuant to Section 276 & 277 of the Companies Act, 2017. Similarly, in the case of ***Shehzad Arshad***[14], a learned Judge of this Court has also dilated upon the importance and requirements of settlement of a dispute pertaining to a family company.

15. Lastly before parting, we find it apt to refer to the learnings from the Global Pound Conference Series 2016-2017[15], wherein members concluded, inter alia, that dispute resolution may not simply be just about "ADR = alternative dispute resolution". There are certain disputes which may not be appropriate for mediation or conciliation or arbitration or litigation and may well require a combination of approaches. Therefore, the proper nomenclature for "ADR" is "ADR = **appropriate** dispute resolution", which accepts the proposition that litigation, arbitration, conciliation and mediation, are all tools to deepen and widen access to justice to the public. This approach puts the onus on lawyers and their clients to know their case and what options are best suited to settle the dispute. The best solution to any problem is one that the parties themselves create. This is the cornerstone of effective dispute resolution. Therefore, lawyers must understand all available options for dispute resolution, including the costs and consequences of ill-advised litigation to burden the Courts when the dispute is better suited for an alternative approach. Lawyers must be Appropriate Dispute Resolution advisers and not just litigation advisers. To this end, it is vital for the bench also to understand its role (i.e. the role of Judges) in the

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[13] Netherlands Financierings Maatschappij Voor Ontwikkelingslanden N.V. (F.M.O.) V/S Morgah Valley Limited and SECP (Order dated 20.10.2022 Civil Original No.08 of 1989)

[14] Order dated 16.04.2024 in Suit No.1721 of 2022 (Shehzad Arshad v Pervez Arshad)

[15] GPC Series Data and Reports — International Mediation Institute (imimediation.org)

development and facilitation of Appropriate Dispute Resolution.[16]

16. In view of hereinabove facts and circumstances of this case, we do not see any justifiable reason to exercise our discretion under Article 199 of the Constitution so as to adjudicate the matter on merits and while ***disposing*** of this Petition, we direct;

(i) the Petitioner to either avail the Alternate Dispute Resolution mechanism under Section 134A of the Ordinance; or under Rule 8(2) of the 1973 Rules, and if at all the issue is not resolved by way of these two alternate mechanisms and the Petitioner still remains aggrieved, then the Petitioner is at liberty to seek remedy as may be available under the law.

(ii) If the Petitioner opts for ADR in terms of Section 134A of the Ordinance, then FBR shall immediately form a Committee in terms of Section 134A(3) ibid but not later than 10 days of the said request;

(iii) As soon as the Committee is notified, FBR and its Inland Revenue department shall act strictly in accordance with sub-section (7) of Section 134A ibid and halt the recovery proceedings accordingly.

17. Petition stands ***disposed*** of in the above terms. Let copy of this order be issued to Chairman, FBR, as well as Ministry of Law and Justice Division and Ministry of Defence for information and compliance thereunder, if any.

Dated: 30.05.2024

J U D G E

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Arshad/

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[16] Appropriate Dispute Resolution (ADR): The Spectrum of Hybrid Techniques Available to the Parties, Jeremy Lack (2011) — International Mediation Institute (imimediation.org)