IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 407 of 2007

Dates of hearing 8th, 9th and 10th of August, 2007.

Date of Judgment ._____.0._____2007.

Plaintiff : HOLGER HAHN through Mr. Qadir H. Saeed, assisted by Mr. Yousuf Saeed, Advocates

Defendants : Comset Services Limited and Zafar Siddiqui, through Mr. Mohammad Masood Ahmed Khan, Advocate.

J U D G M E N T

MUNIB AHMED KHAN. J, **The instant suit is an outcome of service contract executed between the plaintiff and defendant No.1. The plaintiff has claimed certain benefits, which he has calculated in terms of the said Agreement as well as damages but in the final submission has stated that he is not pressing the damages in this suit, as after some allegation in the written statement he has filed a separate suit for more damages. He has further submitted that all the relevant prayers in respect to temporary relief by way of reinstatement of service etc are no more alive after development in the case nor he is pressing for and his basic claim is, as mentioned in para 14 of the Plaint which may be read as part of the prayer.**

On the other hand, the defendant has challenged the suit on the ground that by virtue of Employment Agreement, the parties have agreed that the said Agreement shall be governed by English Law and parties undertook to submit themselves to the jurisdiction of English Court. It has denied the claim of the plaintiff on merit, as according to it the plaintiff has wrongly calculated his service dues by misinterpreting relevant clauses of the Agreement. Further, the plaintiff's working was not in the interest of the defendant due to his bad faith, appearing from some alleged acts including misuse of his authority, causing financial burden upon the defendant hence after the removal, he was not entitled to any relief.

Injunction application in the suit, was disposed of by order dated 16.02.2007 with the observation that the plaintiff was not entitled for injunction hut the defendant company to deposit six months salary and other benefits of the plaintiff with the Nazir of this Court. The said order was taken into appeal bearing HCA No. 2740 of 2007 and was suspended while appeal was disposed of by consent with the direction that the suit be disposed of within three month after recording

evidence through commission. Pursuant to the order in the High Court Appeal, the matter was again taken up at original side and following issues were framed:

1. Whether suit as filed by the plaintiff is maintainable under the law or in terms of clause 18.3? If not, its effects?

2. What is the agreed applicable law and its effect for the resolution of disputes between the parties under the terms of Employment Agreement?

3. Whether the plaintiff has brought any cause of action against the defendant No.2 under the facts and circumstances of the case? If not, its effect?

4. Whether the plaintiff as COO of defendant No.1 was acting in bad faith and / or against the interest of the defendant No.1 ? If yes, what was the powers available to the employer (defendant No.1) under the Employment Agreement dated 1.1.2005?

5. Was the purported termination of the plaintiff ‘s employment as effectuated, legal ?

6. Was the action taken by the defendants against the plaintiff malafide in the circumstances of the case?

7. Has the Triggering Cash Flow commenced in terms of the Employment Agreement dated 01.01.2005, and if so, since when and what is its effect?

8. To what amount, if any, is the plaintiff contractually entitled upon termination of his employment by the defendant?

9. To what amount of damages, if any, is the plaintiff entitled due to his removal from service as effectuated?

10. What should the decree be?

Evidence was recorded by the Commissioner wherein the plaintiff examined himself while defendant examined three witnesses. The Commissioner has submitted his report alongwith the Commission. The plaintiff has almost repeated the contents of the Plaint by stating that the defendant No. 1 is management Company, incorporated in Jebelali Zone, UAE and its principal business is in Pakistan to implement a Scheme known as Hero Pakistani Collector's Card Services (Hero Pakistani) and principal place of business is at Karachi. That the defendant No.1 was incorporated specifically for above scheme by M/s Frank Rose & Robert Lindermann, who are sponsors and share holders of defendant No.1 and that the plaintiff was appointed as Chief Operating Officer (COO) of defendant No.1 through Employment Agreement dated 01.01.2005 and that the plaintiff created, conceived and pioneered the concept of Hero Pakistani Scheme alongwith above two sponsors of defendant No.1 even prior to defendant No.1 incorporation, which is evinced by electronic mails dated 23rd March 2004, 24th March 2004, 27th March 2004 and 5th April 2004 exhibited as Ex.P-1/1 to Ex.P-1/3. The plaintiff has elaborated that he invested his time in developing Hero Pakistani Scheme and in formation of defendant No.1 alongwith above sponsors on the understanding that he would be compensated after defendant No.1 is incorporated and that according to the Service Agreement his actual salary was US $ 280,000/- with monthly installment of US $ 23,333/- while initial house allowance was US $ 100,000/- with annual house allowance of US $ 100,000/- with monthly installment of US $ 8000.33. He has submitted that since defendant No. 1 was commencing its operation by implementation of Hero Pakistani Scheme, therefore, he agreed to the agreement until such time defendant No.1 achieves the cash flow break even point by accepting reduced amount of US $ 180,000/- p.a. as salary and allowed defendant No.1 to defer the payment of initial house allowance until the defendant clear its loan. That defendant No.1 was to pay entire deferred amount and difference in salary after it pay off the loan while in case of termination of service, the defendant No. 1 was liable to pay entire amount in terms of clause 5.8 of the Agreement, as the termination was an independent trigger and was not subject to any condition. He has stated that in terms of clause 5.1 of the Employment Agreement, he was receiving only following amounts:

	Per annum	**monthly instalment**
Reduced salary	**US $ 180,000**	**US $ 15,000/-**
Annual house allowance	**US $ 100,000**	**US $ 8,333.33**
Total	**US $ 280,000**	**US$23.333.33**

In terms of clause 5.5 of the said Agreement, the defendant was liable to pay difference between actual salary and reduced salary from the date of employment till the date defendant No.1 achieved

trigger cash flow while initial house allowance of US $ 100,000/- will also become payable in terms of clause 5.7 payable in twelve monthly installments and that clause 5.8 of the said agreement is independent clause and to be acted upon when the employment is terminated for any reason then all due current as well as deferred, as promised under clause 5.5 and 5.7 are to be paid within 14 days of termination and since by the date of termination difference in pay has not been received, therefore, defendant has to pay the amount of difference in actual salary for entire period of time commencing from the date of employment till termination as well as initial house allowance and that in the event of termination both the words, "trigger date" and "trigger cash flow" have no relevancy as clause 5.8 is clear while two electronic correspondence Ex.P-1/7 and Ex.P-1/8 are relevant in the matter which supports the contention of the plaintiff. He has further stated that in terms of clause 2.2 of the Employment agreement 12 months notice was required before termination hence salary for 12 months is further to be paid. He has claimed benefits of termination as follows:

		US Dollars
i.	Actual salary for 12 months US $ 23,333 for notice period ….	2,80,000
ii.	Difference between actual salary (US $ 23,333) and reduced salary (US $ 15,000) for the months commencing from January 2005, the date of termination of employment (24 months) US $ 8,333.33 X 24 ….	1,99,999.92 .

iii.	Initial Housing Allowance	….	1,000,000
iv.	Annual Housing Allowance	….	1,000,000
v.	Additional benefits	….	12,000
	Total		6,91,999.92

He has stated that the defendant has terminated service of the plaintiff by letter dated 26.12.2006 without required 12 months notice in following words.

"Dear Holger

Unfortunately, due to the current situation, Comset no longer requires your services and your employment is termination effective immediately. Please accept our best wishes for your future success.

Sincerely yours"

He has stated that defence of defendant that termination was not simplicitor but was for reasons amounting to dismissal in bad faith in relation to company is after thought and said stand has only been taken after filing of the suit nor it could be proved nor any such thing was incorporated in the letter of termination rather the defendant has wished him with good sentiment and Worldwide Chief Operating Officer of defendant No.1, Richard Wrangler, has recognized and appreciated the plaintiff's services. The plaintiff has further stated that the allegation of defendant that he was indulged in some activities at the expenses of defendant No.1 is totally incorrect as all these false stories are imaginary and concocted as prior to the termination, plaintiff was never confronted in respect to the alleged fact nor any action was taken in that respect. The evasion of tax issue on his part is totally misconceived, as it was defendant No.1, who took the task of tax

deduction itself and even any suggestion on the part of the plaintiff towards payment of salary or its bifurcation was subject to approval of the defendant. He has exhibited Ex.P-1/11, P-1/12 and P-1/13 to show that extra amount of tax was deducted from his salary and refund was claimed. It is further stated that the allegation that the rentals of cars utilized by his family, is incorrect. That the plaintiff himself was paying the family tickets and any amount spent by the defendant on behalf of the plaintiff could be deducted by it from the salary. In this respect he has relied Ex.P-1/10 to Ex.P-1/17 showing therein certain payment from the salary of the plaintiff, besides other amount, he also paid to the Chartered Accountant towards service rendered for him and that he never pressed his authority. The expenses towards provided were paid by the plaintiff himself and not by the defendant which are evidence from the pay slips of June Ex. P-1/20 to Ex. P-1/27. He submits that correspondence from defendant itself clarify that insurance of the plaintiff's driver was not confirmed by the defendant and that no official of the defendant was utilized for personal work of the plaintiff which is evident from e-mail dated 26.08.2006. He has further stated that being COO, he was entitled to a new laptop after previous one had broken out. Anyhow, the said laptop was never purchased and that the defendant No. 2 in collusion of defendant No. 1 has acted in a way to benefit himself and on interception by the plaintiff, the defendant No.2 played his part just to benefit himself. He has stated that he has worked on the concept of Hero Pakistani Scheme from the year 2003 till his appointment as COO with the defendant in January 2005 and left his country to accomplish the idea and in that way he sacrificed personal choices and emotions but the result is that defendants Nos. 1 and 2 have acted improperly and illegally to deprive him from his legal dues by terminating his Employment Agreement and after filing of the suit. The defendants further exploited the factual position by adding that the service of the plaintiff was terminated in terms of clause 13.1 of the Employment Agreement and by that way, the plaintiff has suffered extreme losses. The plaintiff has claimed an amount of US $691,999.92, of which detail he has given in para 17 of the affidavit-in-evidence. He has also exhibited letter dated 19.02.2007 as Ex.P-1/29 written by one Robert Lindermann in respect of his contractual dues. The plaintiff was cross-examined.

The defendant in rebuttal have filed affidavit-in-evidence of Mohammad Aftab Alam, Chief Financial Officer of defendant No.1, Zafar Siddiqui defendant No.2, Rashid Hussain, Assistant Manager of defendant No.1 and Shahzad Suleman, the consultant of defendant No. 1 in Pakistan.

The evidence of Aftab Alam and Zafar Siddiqui is almost same. Both these witnesses, after giving the past picture of the working of defendant No.1 have deposed that the service of the plaintiff were terminated in terms of company's decision taken at the senior level while none of them was personally involved and that the plaintiff was not the person who conceived the scheme 'HERO PAKISTANI' as the same was taken over by the defendant No.1 from the organizers of SAF Games in 2001. They have further submitted that the defendant company did not make any profit, therefore, certain payments, as claimed by the plaintiff were subject to "Trigger Cash Flow" which means that the company is earning profit which was never happened, therefore, certain provision of the contract through which some payments were deferred cannot be enforced in the absence of any profit. They submit that the company has sustained losses and it is in the knowledge of the plaintiff, being C.O.O. Both these witnesses have further stated that the allegation of personal biasness by the plaintiff is totally incorrect as they have only acted in terms of the policy of the company. These witnesses have also stated that termination of the services of the plaintiff was not simplicitor, but on account of bad faith on his part and that the termination action was in terms of clause 13.1 of the Employment Agreement. To allege bad faith against the plaintiff they have referred some incidents eg.

1) request by the plaintiff for insurance of his personal driver and his family by the defendant No.1;
2) pressurizing the company for purchase of laptop outside of Pakistan in more than double the price prevailing in Pakistan;
3) exceeding his authority in respect to the working of other employees;
4) requesting for payment of major part of his salary out of Pakistan to save the income tax;
5) non-payment of rental of the cars hired by the plaintiff and his family and;
6) non-payment to the Chartered Accountant for the work it performed in respect to the tax return of the plaintiff etc.

They have further submitted that due to bad faith with the plaintiff, the defendant No.1 was under no obligation to give notice as required under clause 2.2 as the same was applicable only when there is no allegation of bad faith. The witnesses have also challenged the authenticity of e-mail whereby the services of the plaintiff were appreciated, specially the letter of Rick Wagner dated 25.12.2006 Ex. P-1/10. They have further disputed Ex.P-1/8 dated 05.04.2005 whereby certain terms of the Employment Agreement have been explained. The witness Aftab Alam has exhibited several documents from Ex. D-1/1 to D-1/30, while Zafar Siddiqui defendant No.2 has exhibited several documents as Ex.D-2/1 to Ex.D-2/19. Both these witnesses have relied upon same documents to large extent and have tried to prove that certain payments on personal account were not made by the plaintiff and company was either approached in this respect by third parties or it paid on account of the plaintiff. The witness Zafar Siddiqui has also filed copy of a plaint in suit No.249/2007 to show that he has also filed a suit against the plaintiff because of false allegations leveled against him. The third witness Rashid Hussain, an official of the defendant No.1, has stated in his Affidavit-in-Evidence certain factual position stating therein that the plaintiff sometimes mis-used his authority by assigning some work to unconcerned person. He has exhibited some documents as Ex.D-3/1 to D-3/6.

The last witness Shehzad Salman is consultant to the defendant company and he is very brief in his evidence by saying that it was to his knowledge that the action of termination was taken against the plaintiff after a meeting between the high ups of the company and termination was a result of certain allegation which have been mentioned in the Affidavit-in-Evidence of defendant No.1 in para-3(a) to (f). These witnesses were cross-examined.

The defendant's counsel has placed much reliance on clause 18.3 of the contract as according to Mr. Masood Khan the parties under the employment agreement have no right to approach the Court in Pakistan. He has also emphasized on clause 13.1. of the agreement which provides termination by summary notice in writing without compensation if the bad faith is reflected from the conduct of the employee. Besides above clauses, both the counsels have referred other clauses and have given interpretation favourable to them, hence some most referred clauses are reproduced herein below for ready reference.

APPOINTMENT AND TERM

2.2 This agreement is effective from the date of signing and, subject to clauses 2.3, 2.4 and 13 (Terms and termination), shall continue until terminated by either party giving to the other not less than twelve months' notice in writing.

REMUNERATION

5.1 The company shall pay to the Executive a salary at the rate of $180,000 per annum (subject to clauses 5.3 and 5.4). The salary shall accrue from day to day and will be payable by equal monthly installments of

$15,000 in arrears normally on the first day of each calendar month.

5.2 The Executive shall also be entitled to receive a housing allowance of $100,000 per annum payable in equal monthly installments of $8333.33 with salary.

5.3 Subject to clause 5.4, with effect from the month in which the Company achieves a Triggering Cash Flow (the "Trigger Month") the Company will pay to the Executive a salary of $280,000 per annum. The salary shall accrue from day to day and will be payable by equal monthly installments of $23,333 in arrears normally on the first day of each calendar month. The first such payment shall be paid on the first day of the second month following the Trigger month (the "Payment Date"). Any payment made to the Executive on the Payment Date under this clause shall also be in respect of the additional salary owed to the Executive in respect of the Trigger month. The Executive will therefore, receive a payment of $31,666 on the Payment Date subject to clause 5.4 below.

5.4 Notwithstanding the above clause 5.3, no salary payment above $15,000 per month shall be paid to the Executive in respect of any month if;

(a) The notional payment of such additional salary in the month which has given rise to the potential additional salary payment under clause 5.3 above (the "Relevant Salary Month") would cause the Company to no longer be in Positive Cash Flow for the Relevant Salary month; or

(b) the amount of Positive Cash Flow achieved in the Relevant Salary Month by the Company is less than $24,900.

5.5 with effect from the month in which the Company achieves a Triggering Cash Flow the Executive will be entitled to receive a sum equal to the total of the difference between the monthly amount specified in clause 5.1 and the monthly amount specified in clause 5.3 for each month from the date of commencement of the Employment to the month in which the Company achieves a Triggering Cash Flow, subject to a maximum of an equivalent to 30 months difference in salary. Such sum shall be payable monthly in 12 equal installments normally on the first day of each calendar month. Subject to clause 5.6 the first such installment shall be paid on the first day of the second month following the month in which the Company achieves a Triggering Cash Flow.

5.6 No installment payable under clause 5.5 shall be paid to the Executive in respect of any month, if;

(a) The notional payment of such installment in the month which has give rise to the potential installment payment, (the "Relevant Installment Month") would cause the Company to no longer be in Positive Cash Flow in respect of the Relevant Installment Month; or

(b) The installment payable to the Executive exceeds 1/3 of the amount of Positive Cash Flow achieved in the Relevant Installment Month by the Company.

5.7 With effect from the Trigger Date, the Executive will be entitled to receive a further $100,000 from the Company in respect of housing allowance payable monthly in 12 equal installments normally on the first day of each calendar month. The first such installment shall be paid on the first day of the month following the Trigger Date.

5.8 If the Employment is terminated for any reason prior to full receipt by the Executive of the total sums specified in clauses 5.5 and 5.7 above, any outstanding amounts shall be paid by the Company to the Executive in one lump sum payment within 14 days of the date of termination of the Employment.

TERM AND TERMINATION

13.1 This agreement shall be subject to termination by the Company by summary notice in writing without compensation if the Executive shall have:

(a) been guilty of any material failure to perform his obligations under this agreement or committed any serious breach or unremedied and persistent breach of this agreement; or

(b) been guilty of any fraud, serious negligence, gross neglect or gross misconduct in connection with or affecting the Company; or

(c) been guilty of any serious act of bad faith in relation to the Company; or

(d) become a patient under any mental health legislation;

(e) been convicted of an offence under any statutory enactment or regulation relating to fraud, insider dealing, or leading to imprisonment for more than six months; or

(f) been absent through sickness or injury for a consecutive period of more than 90 days or for a total of 90 days in any consecutive period of six months.

Clause 18.3

"This agreement shall be governed by and interpreted in accordance with English law and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts, except that a party may seek an interim injunction in any court of competent jurisdiction."

After summing up the contentions of the learned counsel for the parties pointing out relevant clauses of Employment Agreement, I take up initial issues No.1 & 2, relevant to the jurisdiction of this Court. The learned counsel for the defendant after pointing out clause 18.3, have argued that the parties have consented to refer their dispute to the English Court, therefore, venue can not be changed now and parties must go to the English Court to solve the dispute.

The learned counsel for defendant in this respect has referred:-

1) 1992 SCMR 1174
2) 1987 SCMR 393
3) 2003 CLD 1546
4) 2004 MLD 662
5) 2001 CLC 169

He has further argued that Section 28 of the Contract Act is no bar to enforce clause 18.3 of the Employment Contract as the plaintiff has not been restricted from raising the dispute, but only an specific forum has been chosen. On the other hand Mr. Qadir H. Saeed has argued that clause 18.3 is a void clause and cannot be enforced in view of section 28 of the Contract Act. He has submitted that the "ordinary Courts" mentioned in Section 28 of the Contract Act or the Court where the cause of action has accrued and they can only be termed as ordinary Tribunals, while choosing of specific Court on specific place cannot be termed as ordinary Courts as neither they will be assisted with the circumstantial evidence as well as the evidence available with the persons/department etc. connected with the suit and/or available at the place where the cause of action has accrued. He has

relied upon 2001 CLC Page 479. He has also made submission to distinguish the authorities referred to above by the learned counsel for the defendant. Before assessing the argument of the learned counsel as well as other material forwarded, it will be necessary to reproduce Section 28 of the Contract Act:-

> **SECTION 28**
>
> **Agreement in restraint of legal proceedings void**. Every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual legal proceedings in the ordinary Tribunals, or which limits the time which he may thus enforce his rights is void to that extent."

It is first to be seen that clause 18.3 of the Employment Contract is in two parts, in first part of it, it is restricting the contracting party from approaching local Courts while in second part it is permitting the said party for interim injunction to approach the local Courts, it will be worth mentioning that the suit was filed for damages, recovery of amount as well as for permanent injunction and interim relief were sought in the prayer of the suit, but later on, after a round in appeal the plaintiff has not pressed interim relief as well as damages. For non-claiming of damages the excuse of plaintiff is that he has gone for more damages as after filing of the suit he has come to know that some allegation of bad faith has been leveled against him.

Apparently the said clause 18.3 is not in consonance with the provision of law specially section 16 to 20 of CPC which sections provide guidelines for institution suit on the basis of accrual of cause of action at specific place. The said clause is also not in conformity with section 28 of the Contract Act. This assumption is on the basis that section 28 of the Contract Act does not permit any restriction, while the word restricted has not been defined in that section and in normal terminology if the word restriction is defined, then it will involve various factor imposing or creating restriction on a person to take up his claim to the ordinary Tribunal. These restrictions can be in the form of distance, non-availability of money or creation of difficulties for production of relevant evidence. Secondly the other important factor in Section 28 is word "ordinary Tribunal", which can naturally be the local Courts and cannot be foreign Courts for any person. The gist of the authorities cited by the learned counsel for defendant does not support his contention as in 1992 SCMR 1174 the Hon'ble Court has observed as follows:-

> **"It obviously implied that a party cannot be restrained to enforce his right in ordinary Court of law but if by mutual agreement between the parties a particular Court having territorial and pecuniary jurisdiction is selected for the determination of their dispute, there**

appears to be nothing wrong or illegal in it or opposed to public policy."

In the above authority the Hon'ble Supreme Court has specified on word "Court having territorial and pecuniary jurisdiction", this shows that Court chosen through an agreement must have territorial and pecuniary jurisdiction and contrary to that if an agreement carries a clause providing thereby jurisdiction to Court having no pecuniary or territorial jurisdiction in the dispute then that clause will be void in terms of Section 28. This will also get support by the authority 1987 SCMR 393 relied upon by both the learned counsel as according to said ruling only section 28 of the Contract Act would not come into play when one Court out of two Courts having jurisdiction to try a suit is chosen and similar was the view taken in 2003 CLD 5046, while the other authorities cited by the defendant's counsel are of no importance, keeping in view specific question involved. Hence in this circumstances, it is observed that the legal objection of the defendant has no force and both the issue No.1 & 2 are decided against it by declaring that in the circumstances of the case and keeping in view that the defendant was engaged in Pakistan too, while plaintiff was also employed here at Karachi, hence alleged cause of action have also accrued to the plaintiff at Karachi. Moreover the defendant has also taken action against the plaintiff by terminating his service on the basis of cause of action allegedly accrued to them at Karachi, which cause of action has been forwarded as a defence in the shape of bad faith.

Issue No.3 **has not been specifically argued by either of the learned counsel, may be for the reasons that they are also engaged in an other suit on the similar or related issue.**

Issue No.4. **In respect to this issue, burden lie upon the defendant and to support its contention, learned counsel has submitted that a series of facts has been pointed out and evidence has been brought to support those allegations, therefore, bad faith has apparently been proved. Mr. Qadir H. Saeed on the other hand has argued that bad faith story is a concocted and afterthought as minor issues have been blown out of proportion. He has pointed out that it was the plaintiff who paid premium towards the insurance of his driver and family and paid its amount to the Chartered Accountant for the services provided as well as paid rental of the car. He argued that since the plaintiff was a foreigner to Pakistan, therefore, his absence from the country might have created some doubts in the mind of the person operating rent a car business but even then he simply intimated outstanding and rental for a month or less period only was paid by the plaintiff himself. He has further pointed out that use of laptop was in the benefit of the defendant No.1 for which plaintiff was showing intention to purchase outside of Pakistan when the old laptop broke out and that cannot be counted towards bad faith, he has further submitted that plaintiff never exceed his authority nor he ever tried to evade the tax as under the income tax law, it is the employer to take care of the income tax payment.**

From the contention of the learned counsel as well as perusal of the evidence on the above contention it appears that the incidents cited by the defendant No.1 towards bad faith have no proper backing through evidence as it has not been established through the evidence that the

defendant has suffered on account of alleged mis-deed of the plaintiff. It cannot be denied that the defendant came to know about the above facts when it was approached by concerned person, but these allegations cannot be termed as bad faith. The word bad faith has been defined in AIR 1968 Punjab 406 in the following words:-

> "Bad faith".—"malafides" and "malice" are synonymous terms though not admitting of precise definition. The term "bad faith" is a shade milder than malice, and implies breach of faith or willful failure to respond to one's known obligation or duty. Bad judgment or negligence is not "bad faith", which imports a dishonest purpose, or some moral obliquity and implies conscious doing of wrong. It is much more than a mistake of judgment and is synonymous with dishonesty.—"

While Ballentine's law Dictionary has termed the bad faith as follows:-

> "bad faith. The antithesis of good faith; a state of mind affirmatively operating with a furtive design, with a motive of self interest or ill will, or for an ulterior purpose, Though an indefinite term, it differs from and is stronger than the idea of negligence in that it contemplates a state of mind affirmatively operating with a furtive design or with some motive of self-interest or ill will, or for an ulterior purpose.

The Black's Law Dictionary defined the bad faith as "the dishonesty of belief or purpose".

In the light of above, the minor incident pointed out by the defendant against the plaintiff are not sufficient to prove bad faith nor apparently can be made a basis for the action. This approach is also fortified with the facts for the reasons in the termination letter of the plaintiff is very simple, which has been reproduced supra. In the said termination letter, no bad faith is reflected rather the defendant has wished the plaintiff future success. Had it been any bad faith before the termination then it would have been incorporated in the termination letter in terms of clause 13.1 (c) which too can be invoked only when there is serious act of bad faith in relation to the company.

In these circumstances, I hold that defendant has failed to point out that the services of the plaintiff were terminated on account of bad faith or the series of act alleged by the defendant fall

within the meaning of clause 13.1(c) of the Employment Agreement, while allegation of bad faith against the plaintiff was afterthought and based on malafide.

Issue No.5 **It is not being dispute that the defendant has power to terminate the employment of the plaintiff, but in accordance with the Employment Agreement, the said agreement provides that the termination will be in terms of clause 2.2 and 12 months notice in writing was required from either party. Clause 2.2 shows that it was obligatory upon both the contracting party to intimate and prepare the other party by giving a 12 months notice, which notice has not been restricted by any other clause, but subject to payment of amount for notice period as well as payment in terms of clause 5.8, hence it is observed that although the termination could not be restricted, but it is to be followed with the consequences by paying the required amount as accrued in terms of the agreement.**

Issue No.7 **This issue is not of much relevance as it is admitted position that the defendant No.1 was not earning profit from its business in Pakistan. The said issue can be attracted only when there is demand from the plaintiff for payment of deferred amount of salary and allowance after company start earning the profit, but in case of termination the issue is immaterial and either party has not disputed that there was no profit for the company. Clause 5.8 of the Employment Agreement is very clear and is not dependent on earning of profit rather provide benefit even if the employment is terminated for any reason, which of course include bad faith as well which, as I have held, is not involved in this case.**

Issue No.8 **It is admitted position that the service of the plaint was terminated by the defendant No.1 by letter dated 26.12.2006 without any notice, therefore, after giving my finding on the above issues when the defence of the defendant in respect to the involvement of bad faith with the plaintiff is discarded then I hold that the plaintiff is entitled to the amount in terms of the contract which has specifically been pointed out and calculated in para 17 of the Affidavit-in-Evidence, therefore, I hold that the plaintiff is entitled to the relief which is as follows:-**

		US$
i	**Actual salary for 12 months US$ 23,333/-**	**280,000/-**
ii	**Difference between Actual Salary (US$23,333/-) and reduced salary (US$15,000/-) for the months commencing from January1, 2005, the date of termination of employment (24 Months) US$ 8,333.33x24**	**199,999.92**
iii	**Initial Housing Allowance**	**100,000**

iv	**Annual Housing Allowance**	**100,000**
v	**Additional Benefits**	**12,000**
	Total	**691,999.92**

Issue No.9 **This issue has not been pressed on the ground that the plaintiff has filed another suit for damages, hence dropped.**

Issue No.10 **In the light of my finding on the above issue I decree the suit. Apparently the prayer clause does not contain the specific relief which is being reflected in para-14 of the plaint as well as in para-17 of the Affidavit-in-Evidence, therefore, I observing that absence of specific prayer in respect to any of the relief which is being spelled out in the pleading or evidence, cannot cause restriction as the equity demand that the dispute between the parties is to be adjudicated in toto. In the instant case the claim of the plaintiff is apparent and the defendant has been able to judge and rebut it, while the same is being supported by the clauses of Employment Agreement, therefore, I decree the suit and the defendant to pay the plaintiff as per calculation on issue No.8.**

J U D G E

DATED .09.2007