

IN THE MATTER OF THE ARBITRATION ACT 1996

AND IN THE MATTER OF AN ARBITRATION

CI Arb. Case No. 129120001

BETWEEN:

BROADSHEET LLC

Claimant

- and -

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN  
AND ITS  
NATIONAL ACCOUNTABILITY BUREAU

Respondents

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WITNESS STATEMENT OF FAROUK ADAM KHAN

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I, Farouk Adam Khan, of Amanghar, District Nowshera, Khyber Pakhtunkhwa, Pakistan,  
WILL SAY AS FOLLOWS:

1. I am a lawyer, and was Prosecutor General of the National Accountability Bureau of the Islamic Republic of Pakistan (the "NAB") from November 1999 to November 2000.
2. Except where indicated to the contrary, the facts and matters stated in this witness statement are within my own knowledge. Where the facts and matters stated are not within my own knowledge, they are based upon documents and information supplied to me and are true to the best of my knowledge.

1. Qualifications

3. Having been awarded a Bachelor of Laws (LLB) degree by the University of Peshawar, I was admitted to the Bar as a practicing advocate in 1982. In 1985, I was enrolled as an Advocate of the High Court, and was subsequently admitted to appear and practice before the Supreme Court of Pakistan in 1998. During my career as a lawyer, I conducted a number of cases before the District and Sessions Judges, High



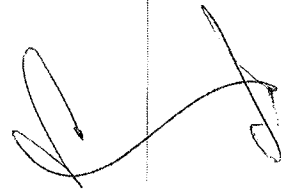
Courts and the Supreme Court of Pakistan. Unfortunately, at present, I am no longer able to practice law because of my cardiovascular health and very limited mobility.

**II. Establishment of the National Accountability Bureau and my Appointment as its first Prosecutor General**

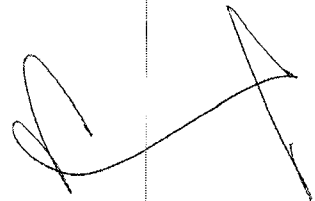
4. After he had seized power in October 1999, General (as he then was) Pervez Musharraf set up the NAB, and asked Lieutenant-General Syed Mohammad Amjad to be its first Chairman. The NAB was intended to be the principal anti-corruption agency of the Government of the Islamic Republic of Pakistan.
5. At that time, I was a lawyer practising in the Supreme Court. Although I had never met General Amjad prior to working with him at the NAB, I knew of him on account of his reputation in the military, which was excellent.
6. As the NAB was an entirely new organisation, one of General Amjad's first tasks as Chairman was to appoint a team to assist him in fulfilling the NAB's mission. I was invited to General Amjad's offices for an introductory meeting. We discussed the formation of the NAB and its purpose, and also talked about the role of Prosecutor General. He asked if I would serve as his Prosecutor General and I accepted. That was in early November 1999.
7. At first, my appointment as Prosecutor General was not for any set period of time. However, when proper contracts were drawn up it was decided that I would serve an initial term of one year, with my appointment being renewable at the Chairman's pleasure.

**III. My responsibilities as Prosecutor General**

8. As Prosecutor General I was responsible primarily for the NAB's prosecutions and provided legal advice to support those efforts when required.
9. I was supported at the NAB's Head Office in Islamabad by three other lawyers and various assistants. In addition, there were four Deputy Prosecutors General who ran the NAB's regional offices in the four provincial capitals: Peshawar, Lahore, Karachi and Quetta. Most of the NAB's investigators were based in these regional offices.



10. The regional offices would refer to me the evidence their investigators had collected and set out the potential prosecutions they wished to pursue. It was my job to review the evidence they had collected and to determine whether the NAB had prosecutable evidence to file a reference against an accused.
11. In my first weeks as Prosecutor General, I was directed to draft a National Accountability Ordinance. To assist with this task, I examined previous anti-corruption Ordinances, considered similar international laws, and also sought external advice from my contacts within the Pakistani legal community. I submitted a draft of the Ordinance to General Amjad for his review, then – after it had been discussed, and various amendments made – General Amjad submitted it to Law Minister, and then General Musharraf for his approval. The finalised Ordinance was promulgated later that same month, in November 1999. During the following years, this Ordinance was amended repeatedly in essential particulars.
12. Although the NAB was not a military organisation, its senior staff was primarily composed of army officers.
13. The NAB's targets were often highly placed government officials, whose affairs were extremely complex and international in scope. The NAB's mission – to investigate and ultimately unravel these networks – was correspondingly difficult. It was therefore decided quite early on that it would be beneficial for the NAB to get help from external companies with expertise in investigations and asset recovery. Indeed, once the NAB's existence and purpose became well known, a number of overseas companies approached us to offer their services and help recover misappropriated assets.
14. General Amjad authorised me to meet with some of these representatives and discuss how they might work with the NAB. General Amjad expressly instructed me that a “red line” in the NAB's negotiating position had to be that the NAB would not pay any of the companies' expenses, nor would it make any advance payments. Rather,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a long horizontal stroke and a vertical line extending upwards from the end of the horizontal stroke.

the companies would have to agree to work with the NAB on a solely contingent basis.<sup>1</sup>

**IV. Meetings with Dr William Pepper and his associates**

15. My first involvement in the negotiations leading up to the agreement the NAB signed with Broadsheet LLC ("**Broadsheet**") on 20 June 2000 (which agreement I shall refer to from now on simply as "**the Agreement**") was in March 2000 as I recall.
16. On 11 March 2000, I received a letter from a company named Trouvons proposing a joint venture with the NAB.<sup>2</sup> I believe I may also have met with Ghazanfar Sadiq Ali, a representative of Trouvons, around this time.
17. At some point in the first half of March 2000 I also travelled to London via Geneva, Switzerland, and Lyon to attend various meetings. In Lyon I met with officers of Interpol, to investigate how the NAB might arrange for certain persons to be placed on Interpol's watch lists, with a view to apprehending and sending them back to Pakistan.
18. In London, I held various meetings at the High Commission for Pakistan, and with the High Commissioner. I also recall meeting with an assistant to the British Home Secretary to discuss extradition arrangements between the Pakistan and the UK. While in London, I also met with Dr William Pepper, whom I understood to be a lawyer representing Trouvons. Following that meeting Dr Pepper wrote to me directly on 22 March 2000 to discuss in summary terms the enforcement of judgments issued in the courts of Pakistan.<sup>3</sup>
19. During the weeks following my trip to London I had a number of meetings with Dr Pepper and Tariq Fawad Malik (whom I understood to be an associate of Dr Pepper and Mr Sadiq Ali) and discussed with them the terms upon which the NAB would be prepared to engage an overseas company's services.

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<sup>1</sup> *Corruption cause of economic crisis*, THE NATION (BRD00210) (C-1).

<sup>2</sup> Letter from Trouvons Co. LLC to Farouk Adam Khan, dated 11 March 2000 (NAB00087) (C-2).

<sup>3</sup> Letter from William Pepper to Farouk Adam Khan, dated 22 March 2000 (BRD00194) (C-3).

20. Following on from those discussions, I helped arrange for General Amjad to travel to Denver to meet with representatives of Trouvons to explore the possibility of an agreement. General Amjad travelled to Denver himself so that he could meet the people the NAB would be working with. On 7 April 2000, I wrote to Trouvons to confirm General Amjad's availability to visit Denver later on that month, and sought to confirm arrangements for the visit to Denver.<sup>4</sup>
21. Although I did not accompany General Amjad to Denver, when he returned to Pakistan he gave to the principal officers of the NAB a brief summary of the discussions he had held with representatives of Trouvons and the discussions they had had. General Amjad reported that he was satisfied with the results of his trip, and that he thought the representatives of Trouvons whom he had met appeared to have the necessary capability to help the NAB with its mission.
22. After General Amjad's trip to Denver, I recall that a draft of the Agreement was prepared and submitted to the NAB for our consideration. As described in my letter to Lieutenant-General Munir Hafiez dated 9 December 2001 (the context of which I explain below at paragraphs 44-45), the NAB then reviewed that draft.<sup>5</sup>
23. I recall that I attended a series of meetings with Dr Pepper and Mr Malik in which we negotiated and finalised every clause of the Agreement. I recall, in particular, Dr Pepper's insistence that – if the NAB were to either breach or terminate the Agreement – his clients must nevertheless retain the right to continue to pursue targets already registered under the Agreement. I understood Dr Pepper's rationale, so I passed his request on to General Amjad and explained the reasoning behind it. General Amjad was initially reluctant to agree to such a term, but after much discussion, he eventually allowed its inclusion in the Agreement.
24. A draft version of the Agreement was also sent to the Attorney General and the Finance Minister of Pakistan for their approval, and to allow their views to be

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<sup>4</sup> Letter from Farouk Adam Khan to Ronald Rudman, dated 7 April 2000 (BRD00202) (C-4).

<sup>5</sup> Letter from Farouk Adam Khan to Lieutenant-General Munir Hafiez, dated 9 December 2001 (BRD01172) (C-5).

considered and any comments they had about the terms of the Agreement incorporated if necessary.

25. Once a draft of the Agreement had been agreed by Dr Pepper on behalf of his clients and General Amjad had given his approval, General Amjad asked a committee of senior officials from the NAB to review its terms. General Amjad formed this committee specifically for this purpose.
26. There followed a series of meetings in which General Amjad and I, together with Dr Pepper, Mr Malik and Mr Sadiq Ali, talked this committee through the Agreement, and explained the meaning and purpose of its terms to them. I believe those meetings began in late May and concluded early in June, at which point the committee gave their approval.
27. Once the committee had given us permission to proceed, I sent the finalised draft of the Agreement to the Ministry of Law, Justice and Human Rights of the Government of Pakistan for their approval. On 19 June 2000, I received a letter from Mr Ghulam Rasool, Joint Secretary of the Ministry, authorising General Amjad to sign and execute the Agreement.<sup>6</sup> The Agreement was concluded on the following day.
28. A few different company names appear in the correspondence prior to the signing of the Agreement. I have seen letters on "*GSA Investment Corporation Limited*" headed paper dated 27 October 1999 and 10 November 1999 sent by Mr Malik to Chairman Amjad.<sup>7</sup> I do not recall that I was given copies of those letters as Prosecutor General NAB.
29. Ultimately, we signed an agreement with Broadsheet. However, although I can recall the individuals involved in the negotiations quite clearly (especially Dr Pepper and Mr Malik), I cannot remember any specific details about the corporate entities. In particular, I do not recall at what point in the negotiations Broadsheet replaced

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<sup>6</sup> Letter from Ghulam Rasool, dated 19 June 2000 (BRD00253) (C-6).

<sup>7</sup> Letter from Tariq Fawad Malik to Lieutenant-General Syed Muhammad Amjad, dated 27 October 1999 (BRD00153) (C-7); Letter from Tariq Fawad Malik to Lieutenant-General Syed Muhammad Amjad, dated 10 November 1999 (BRD00159) (C-8).

Trouvons in drafts of the Agreement we were discussing with Dr Pepper and his associates, nor do I remember why the change was made.

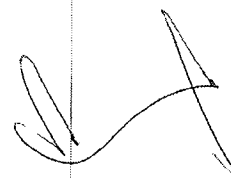
V. **Why we contracted with Broadsheet**

30. The principal reason we signed the Agreement with Broadsheet was due to Dr Pepper. In addition, Mr James and their associates were prepared to negotiate a contingency arrangement, with an entitlement to be paid arising following recovery of assets from targets registered under the Agreement. No other company we spoke to was prepared to give us this concession right from the start of negotiations. As I have mentioned already, General Amjad had stated very early on in the tender process that it was a priority for the NAB to secure the inclusion of this term in any agreement with a foreign company.
31. Indeed, General Amjad gave an interview in May in which he stated that "As a matter of principle, we have decided not to spend foreign exchange in case of the firms which cannot play any role in returning it."<sup>8</sup> I also made reference to this issue in my letter to General Hafiez dated 9 December 2001, in which I wrote that "the Chairman NAB directed that we would only consider those companies who would accept our basic condition that we would NOT invest any money whatsoever by way of expenses or make any advance payments. The basic requirement was that any agreement had to be on a 'contingency basis'.<sup>9</sup>"
32. I remember meeting representatives of another asset recovery company, called Kroll, after they had expressed interest in assisting the NAB with its mission soon after I had started work at the NAB. In contrast to Broadsheet's acceptance of a contingency arrangement, they immediately began to talk about how much money they would wish to be paid in advance. Kroll demanded that the NAB pay their preliminary expenses upfront. This demand for advance payment was rejected.

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<sup>8</sup> *Corruption cause of economic crisis*, THE NATION (BRD00210) (C-1).

<sup>9</sup> Letter from Farouk Adam Khan to Lieutenant-General Munir Hafiez, dated 9 December 2001 (BRD01172) (C-5).



33. It was clearly beneficial to the NAB that payment for Broadsheet's services under the Agreement was to be on a purely contingent basis. Indeed, the only cost to the NAB was providing Broadsheet access to our own intelligence files and also allocating their team some space in our offices in Islamabad.

**VI. Remainder of my time at the NAB after the Agreement had been signed**

34. After the Agreement had been signed, I did not have as much contact with Broadsheet as I had during the negotiation phase, because I was very busy with my other responsibilities as Prosecutor General. I only remained at the NAB for a few months after the Agreement had been signed, so I was not there to see the majority of Broadsheet's performance under the Agreement.

35. In July 2000 I was interviewed by Sairah Irshad Khan of Newsline.<sup>10</sup> Ms Khan asked me about Chairman Amjad's independence to act as head of the NAB, and his relationship with General Musharraf. My response was as follows: "*I've never seen a man as comfortable in his job as General Amjad. There is no interference at all, and this is a reflection of the trust and confidence General Musharraf has reposed in the latter.*"<sup>11</sup> At the time of the interview, I believed those words to be true. As a later statement to the press makes clear, however, I have since taken a different view. In November 2007, I was interviewed by Carlotta Gall and Jane Perlez of the New York Times for an article in which they addressed General Musharraf's resignation from the army.<sup>12</sup> The article correctly records my belief that after his first year in power, during which General Musharraf did attempt to deal with corruption in Pakistan, he was forced to soften his approach to such abuses due to political pressure.

36. In August 2000, General Amjad submitted his resignation, and announced his departure to the staff at the NAB.

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<sup>10</sup> Sairah Irshad Khan, *We are not in the business of negotiating*, NEWSLINE (July 2000) (BRD00271) (C-9).

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Carlotta Gall and Jane Perlez, *For Musharraf, Reduced Power as the President*, N.Y. TIMES (29 November 2007) (C-10).



37. I believe, based on my conversations with him prior to his resignation, that General Amjad became frustrated by the interference of General Musharraf in the matter of investigations and consequential proceedings in Court conducted by the NAB.

**VII. My resignation as Prosecutor General**

38. I decided to resign my position as Prosecutor General of the NAB as soon as General Amjad had announced his departure to the staff.

39. In a letter dated 2 September 2000, I wrote to General Amjad and requested that he accept my resignation. As I explained in that letter, I felt it was appropriate to step aside and allow General Amjad's replacement to form his own team.<sup>13</sup>

40. My resignation request was placed in abeyance, however, and went before the incoming Chairman, General Maqbool, for his determination. I continued working at the NAB, therefore, until the one year term of my contract had expired early in November 2000. At that point General Maqbool informed me that he had decided not to renew my contract, and he accepted my resignation. Raja Muhammad Bashir was appointed as Prosecutor General in due course.

**VIII. Involvement with the NAB and Broadsheet after my departure**

41. After my departure from the NAB, I continued to have some occasional involvement with the NAB and Broadsheet.

42. I met with Mr Malik in December of 2000 and January of 2001 and agreed to act as a consultant for Broadsheet by giving them advice regarding its dealings with the NAB on an *ad hoc* basis.

43. In February 2001 Mr James asked me to provide him with an opinion regarding certain terms of the Agreement.<sup>14</sup> I wrote two letters in response to his request: the first dated 12 February 2001, and then a second dated 1 March 2001.<sup>15</sup> I have re-read

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<sup>13</sup> Letter to the NAB Chairman from Farouk Adam Khan, dated 2 September 2000 (C-11).

<sup>14</sup> Letter from Jerry James to Farouk Adam Khan (BRD02047) (C-12).

<sup>15</sup> Letter from Farouk Adam Khan to Jerry James, dated 12 February 2001 (BRD01162) (C-13); Letter from Farouk Adam Khan to Jerry James, dated 1 March 2001 (BRD00854) (C-14).

those letters and do not have anything to add to what I wrote: the letters speak for themselves.

44. Towards the end of 2001, General Maqbool was replaced as Chairman of the NAB by General Hafiez. Upon taking office, General Hafiez called me in to the NAB for a meeting, as he wanted to understand the history of the Agreement. In particular, he told me that he had become aware of certain allegations that the negotiation and signing of the Agreement might have been the subject of some underhand dealings, and asked me to clarify how the NAB came to sign the Agreement with Broadsheet. I wanted to allay his concerns, so I explained to him the genesis of the Agreement, as I have described above.
45. After my meeting with General Hafiez, however, I was worried that he might have found parts of our conversation unclear, so I considered it prudent to put my thoughts into writing. I therefore wrote to General Hafiez in a letter dated 9 December 2001.<sup>16</sup> Again, I have re-read that letter, which is clear *prima facie*.
46. The only clarification I would offer regarding my letter dated 9 December 2001 is that I do not have direct knowledge of the investigations of and eventual settlement with Admiral Mansoor Ul Haq. My comments in the letter concerning that matter would have been based on information passed to me by officers of the NAB or by representatives of Broadsheet, so I am not in a position either to confirm or deny their truth.

**IX. Affidavit dated 22 August 2010**

47. In 2010, I submitted an opinion regarding the dispute between Broadsheet and the NAB in the form of an affidavit. My health was in an extremely bad state at that time. Indeed, I have struggled with poor health for quite some time. My first serious medical issue came in the late 1980s when I had to undergo open-heart surgery. More recently, not long after my departure from the NAB, I was diagnosed with and treated for prostate cancer. In 2009 I had two stents placed in my heart, and was still

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<sup>16</sup> Letter from Farouk Adam Khan to Lieutenant-General Munir Hafiez, dated 9 December 2001 (BRD01172) (C-5).

recovering from that surgical procedure throughout 2010. In retrospect, I realise that I was not, as a result of my medical condition, in a sufficiently strong state at that time to focus properly on preparing a detailed account both of my time at the NAB and other relevant matters.

48. Although I am still struggling with my health (my mobility is limited, in that I can hobble only very short distances with the aid of a walking stick, and my cardiologist has advised me against travelling too often or too far), I am certainly in much better health now than I was in 2010. Moreover, in preparing this statement, I have been able to refresh my memory of the relevant period of time by reviewing certain relevant and pertinent documents that have been provided to me.
49. Having re-read my prior affidavit, I realise that although I would be happy to reiterate the substance of much of it, certain parts are unclear or speculative. For example, as I have already mentioned above at paragraph 46, I do not have any direct knowledge of the settlement with Admiral Ul Haq. My comments about that matter at paragraph 9 of my affidavit are based upon general pieces of information I heard.
50. In the affidavit I have made references to Mian Nawaz Sharif which such references are either speculative or based on rumours and gossip. I had no direct knowledge of these transactions as I had left the NAB by then.
51. In light of the above, I make this statement with the intention that it should replace my prior affidavit. To the extent that there is any difference between them, this statement should take priority.

**STATEMENT OF TRUTH**

I believe that the contents of this witness statement are true.

Signed:

A handwritten signature in black ink, appearing to be 'C. D. Smith', written over a horizontal line.

Date:

17 July 2015

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