

Justice begins with those seeking accountability being held accountable first: NAB's incompetence and the Broadsheet debacle.

By Akhtar Raja
Quist solicitors
www.quistlaw.com

13 February 2021

In order to understand why Pakistan has ended up bearing another hefty liability to an international party, Broadsheet LLC, we need to understand the genesis of this story. Hitherto little attention has been paid to the serious levels of incompetence on the part of Pakistan's primary antigraft institution set up to fight white-collar crime and corruption related offences.

A history of NAB incompetence

In 1999 NAB was tasked by Gen. Musharraf to recover ill-gotten gains. At the time Lt. Gen. Amjad headed the organisation. He was described by the London Court of International Arbitration (LCIA) as "a senior officer of undoubted integrity". Indeed, he and his two successors were regarded by the arbitrator, Sir Anthony Evans - a seasoned judge and adjudicator - as officers who "have all had distinguished careers in the army and public service of Pakistan. They were truthful and helpful witnesses..."

The widely publicised Asset Recovery Agreement was entered into by NAB with Broadsheet on 20 June 2000. NAB had also signed a further agreement with International Assets Recovery Ltd (IAR) on 15 July 2000. Broadsheet's investigations and recovery of assets were limited to the United States, Europe and Asia and it appears IAR's services were intended to relate to other regions of the world. NAB was seeking the specific services of an organisation which could investigate and take steps to recover property situated abroad.

Before engaging Broadsheet NAB were in discussions with Mr Jimmy James. He was one of the owners of a US-based company called Trouvons LLC which appeared to have the relevant experience. His associates were a Colorado lawyer Mr Ronald Rudman and Dr William Pepper an English barrister with offices in New York. Yet despite whatever relevant experience Trouvons and its representatives held themselves out as having, the LCIA observed that "the suggested and unchallenged reason for the change from Trouvons to Broadsheet as the contracting party under the ARA was that Mr Rudman had been suspended from his membership of the bar of Colorado on grounds of dishonesty by order of the Supreme Court of Colorado for a period of three years from January 1998." It seems

that Mr James wanted to conceal this fact from NAB so as not to lose a potentially lucrative contract.

A failure of due diligence

NAB failed to produce to the LCIA any evidence to demonstrate it had been told that Broadsheet would have the benefit of the experience and expertise that was available to Trouvons. Despite being an investigatory outfit NAB closed its eyes to what were clearly circumstances that demanded further enquiry and answers before engaging the services of a foreign organisation. Such services related to the recovery of potentially billions of dollars, the sharing of sensitive information and high-profile figures at the heart of Pakistan's political, business and military circles.

Moreover, the intended services were a matter of national security and public interest. All such considerations should have been second nature to NAB. However, despite this, no competent level of due diligence was undertaken as a risk management exercise to determine whether services were being procured from a suitable organisation run by credible individuals.

The LCIA found that "...the ARA contains an express representation that Broadsheet was "a company specialising in the recovery of such assets/missing funds"... But that was blatantly incorrect, and known to NAB to be incorrect. NAB agreed to the substitution of Broadsheet as the contracting party knowing that it was newly incorporated in the Isle of Man and with no substantial assets... NAB therefore agreed the ARA on that basis." NAB's prosecutor-general, Mr Farouk Khan, discussed, negotiated and finalised terms with Dr Pepper and his associate. In his evidence, he stated that he did not remember why the corporate entities were changed - from Trouvons to Broadsheet. Perhaps the better explanation was: little was asked about or done in this regard.

Due diligence was imperative to make an informed decision as to whether or not to engage a shell company incorporated in the Isle of Man in May 2000 in place of Trouvons. NAB failed to properly assess the risks that arose. Any semblance of effective legal, commercial and financial due diligence was absent.

The result of such enquiries would almost certainly have given rise to serious concerns as to whether or not NAB should proceed with Broadsheet. At the very least, the outcome of such enquiries would have prompted a renegotiation of the terms of engagement. The latter was a necessity and became manifestly apparent as the story continued to unfold.

Wrongful termination

On 28 October 2003 NAB (through their British lawyers, Kendall Freeman) wrongly terminated the agreement with Broadsheet claiming that it had been guilty of fundamental breaches. Surprisingly, NAB did not claim damages. Broadsheet however maintained that any shortcomings in its own performance was down to NAB's breaches of its own obligations and as a result it claimed damages. As we know, it ultimately won its substantial claim of around \$30 million.

There followed (after October 2003) negotiations with both Broadsheet and IAR. IAR's representatives were Dr Pepper and Kaveh Moussavi. Mr Moussavi had funded IAR and the LCIA found he was also "willing to fund its claims against NAB". LCIA described Mr Moussavi as "Iranian by birth [and having] qualified as a barrister in Iran... His credibility as a witness was severely attacked and effectively, barring corroborative evidence, destroyed by the findings of two High Court Judges in previous (unrelated) proceedings which resulted in him serving a sentence of imprisonment for contempt of court". Admittedly his evidence was largely uncontroversial in the NAB arbitration case but that is not the point.

Mr Moussavi was yet a further character whose emergence should have sounded alarm bells. NAB remained asleep at the wheel. They failed to properly assess his credibility.

The Vitol connection and Moussavi's previous dealings

On 22 July 2001 the Guardian, a British newspaper, reported the purchase of oil from a British firm, Vitol, which apparently caused £100 million pounds worth of damage to Pakistan's main power stations in January 1994. A British politician, Alan Duncan MP, was also implicated in a criminal investigation over the allegedly illegal multi-million-pound oil deal. Dr Pepper and Mr Moussavi featured in the article.

Pakistan's former prosecutor Gen., Raja Bashir, investigated claims that the fuel was contaminated Kuwaiti oil salvaged from the Saudi Arabian desert after the Gulf War. His probe focused on allegations that Vitol had used false documents to conceal the true origin of the oil. The documents described the product as good quality fuel from Iran.

At the time Dr William Pepper provided consultancy services to the Pakistani authorities. He wanted to question Vitol's activities in Pakistan. The Guardian article reported: "Pepper confirmed the Pakistan authorities have taken evidence from Iranian-born British businessman Kaveh Moussavi, who sold the contaminated oil slops from Kuwait to Vitol... Moussavi claims that while working in the Vitol office he was told by a senior company employee that the Pakistan problem was 'sorted out' by Alan Duncan. Duncan denies involvement in settling problems with this shipment.

He believes Moussavi is using his name to put pressure on Vitol whom he is suing for \$122 million over an oil deal in Iran.”

The investigation was “dropped with little explanation” by the Benazir Bhutto government with the prosecutor-general left demanding an explanation for “the illegal suppression” of the investigation.

In another case, on 5 February 2003 the English Court of Appeal gave judgment in an application arising from a case between two claimant companies from the Vitol Group and Mr Moussavi, members of his family and companies controlled by him. Vitol had entered into a joint venture with Mr Moussavi’s nominee company.

Vitol alleged that substantial losses were suffered as a result of, “fraudulent representations” made by Mr Moussavi. Other frauds were also alleged with total losses said to exceed \$20 million. Prior to this hearing the High Court had found that “there was strong evidence of dishonesty against [Mr Moussavi], including evidence that he would use “every stratagem to defeat the claim”. The claimants say that the first defendant used accounts in the name of his mother, the second defendant, and his wife, the third defendant, for the purpose of concealing assets, especially from the claimants.”

On 22 May 2003 the Court of Appeal ruled on a further application. Some of the observations made by the court continued to be highly informative. The court noted that “Mr Moussavi is an Iranian resident in England, who claimed to have powerful contacts in Iran able to facilitate the transit of ... oil... In July 2001 proceedings were commenced by the claimants against Mr Moussavi and five other defendants associated with him...”

The claimants alleged that from May 1996 onwards several cargoes of oil belonging to BTL were misappropriated and sold by Mr Moussavi...[he]... conspired to injure the claimants by unlawful means...A worldwide freezing order, a search order and various ancillary orders were made against Mr Moussavi when proceedings were brought against him. He failed to comply with several orders and in May 2002 he was committed to prison for 12 months for contempt. He has been declared bankrupt on his own petition...”.

NAB and its lawyers nevertheless continued undeterred as the credibility of the main players remained deeply questionable. This was a matter of record.

Dispute with Broadsheet and settlement

After the 28 October 2003 termination letter was served by NAB’s British lawyers, Kendall Freeman, it appears that Mr Moussavi had agreed, or was certainly under

the impression, that if he and Dr Pepper funded Broadsheet's claim against NAB they would share proceeds equally with Mr James.

On 2 April 2007 Broadsheet was dissolved. However, the company was subsequently restored on 27 November 2009 through a series of legal manoeuvres made by Mr Moussavi. Also, from November 2009 he controlled the company and Mr Moussavi, Dr Pepper and his son, Liam Pepper ended up jointly owning Broadsheet.

In April 2007 Mr Ahmer Soofi, a well-known Pakistani lawyer, commenced negotiations on behalf of NAB with Mr James. A settlement was reached on 20 May 2008, however, this compromise was entered into with a Colorado company also named Broadsheet LLC. This was a different entity from the original contracting party which was incorporated in the Isle of Man - also the claimant in the subsequent arbitration proceedings.

LCIA made a finding that "NAB and Mr Soofi knew that the company was or had been in liquidation and that no liquidator was involved in the negotiation of the Settlement Agreement; and Mr James did not claim that he had authority to act on a liquidator's behalf."

Mysteriously, however, a high-level executive decision which included the then Pakistani President, authorised this payment. In short therefore the payment of \$1,500,000 was made recklessly NAB having turned a "blind eye" to "the known risk of economic harm" to the true claimant – the Broadsheet company incorporated in the Isle of Man and not Colorado. A simple phone call made to the liquidator would have averted this disaster. NAB failed again.

Following settlement discussions between Mr Moussavi, Dr Pepper, his son Liam Pepper and Ahmer Soofi, on 3 January 2008 the Pakistani government paid IRA US\$2,250,000 by way of a settlement. IRA was also claiming that NAB had wrongly terminated its services in October 2003.

The serious errors created by NAB's omissions in the pre-contractual stages of the relationship with Broadsheet were further aggravated by poor or inadequate negotiations of the terms of the ARA. The LCIA described the position as follows: "It became apparent during the currency of the ARA that its effect was not clear in a number of situations that arose in practice. Increasingly, these became sources of friction and unresolved disagreements between the parties."

Observations were also made about it not being "easy to work with the NAB representatives". There was evidence that "...officials' response[s] [were] muted, even disinterested... questions [were not asked] about either the process or the results of the investigations" conducted on behalf of Broadsheet by London-based asset recovery specialists.

Moreover, there were “institutional factors that prevented or restricted the flow of information from... NAB [and Broadsheet and its agents] also encountered difficulties in relation to certain NAB personnel and despite efforts being made “close working relationships with key personnel within NAB” could not be established.

When LCIA set about determining the size of the award to grant against NAB in December 2018 numerous other inexplicable anomalies arose in the way in which NAB settled claims against substantial targets.

For example, it was revealed that an agreement was entered into on 25 October 2005 with the Schon Group and the Hussein family to repay Rs 1.225 billion. NAB stood to earn 8% commission on the recovery amounting Rs 98 million. Broadsheet claimed a share of that. Ultimately, NAB only received Rs 16,858,860.

Mr Talat Ghumman who was working for NAB at the time of the negotiations switched sides to act as a consultant for the Hussain family and attended the signing of the settlement agreement. On the face of it there was a stark conflict of interest – one which appears to have been of little importance to NAB.

Pursuing Sherpao

Similarly, in November 2000 NAB’s Chairman, Gen. Maqbool filed an Accountability Reference against, the Pakistani politician, Aftad Sherpao. Assets worth \$5 million were frozen. In July 2002 Broadsheet informed NAB that it located assets belonging to Mr Sherpao in Jersey worth \$3,500,000.

The authorities in Jersey were offering full cooperation and support. The Executive Board of NAB closed the investigation on 15 August 2015 against the recommendation of its own Prosecution Division. The LCIA made a finding “that there was a significant chance [that] NAB would have recovered the amount that was held in the bank account in Jersey” against Mr. Sherpao.

The incompetence continues

Despite the existing evidence, serious omissions and the unfolding story of profound incompetence the current Prime Minister and his advisors continued to sleepwalk through the carnage – entertaining discussions and meetings with Mr Moussavi. Why? The Government’s conduct has been inexplicable. One wonders whether establishing a judge led inquiry – which by its nature must be truly independent, impartial and competent – will offer, amongst other things, meaningful and practical recommendations. Serious structural reforms of NAB are necessary. NAB’s activities need to be overseen by an independent commission to create and maintain public confidence.

Its remit should include investigating serious complaints and allegations of misconduct against NAB and handling appeals arising.

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