
IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL (FMT)

Case: FMT 19006

B E T W E E N:

Dr Mubashir Ahmed Sheikh

Applicant

- and -

The Dubai Financial Services Authority (DFSA)

Respondent

- before -

His Honour Mr David Mackie CBE QC (President)

Mr Ali Al Hashimi

Mr Ali Al Aidarous

Day 5

Thursday, 30 April 2020

Dr Mubashir Ahmed Sheikh appeared in person

Mr Farhaz Khan (of 3 Verulam Buildings) appeared on behalf
of the Respondent

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1 PROCEEDINGS

2 (11.00 am)

3 MR PRESIDENT: I believe that we are ready to start.

4 Before Dr Sheikh resumes his evidence, Dr Sheikh,
5 you did send us a couple of emails. Is there anything
6 you wanted to say about either of them before we resume
7 the evidence?

8 DR SHEIKH: Yes, your Honour. Thank you for that.

9 Yesterday, Mr Khan had, towards the tail end of the
10 questioning, had asked specific questions and I was able
11 to have a better recollection, because I was able to do
12 a few things. So I wanted to ask whether your Honour
13 would prefer I briefly comment on those couple of
14 questions that your Honours had asked now or later, your
15 Honour?

16 MR PRESIDENT: I think later.

17 The other email you sent to us was just to confirm
18 that your witness would not be coming?

19 DR SHEIKH: So my witness, Mr Yer, God willing, indeed will
20 be here, your Honour, two hours or two and a half hours
21 after I conclude, as kindly alluded by Mr Khan.

22 Mr Akbar, unfortunately, is not going to join,
23 because he has taken ill, your Honour.

24 MR PRESIDENT: Okay, thank you very much. In which case
25 we'll continue where we left off yesterday.

1 11:01

DR MUBASHIR SHEIKH

2 Cross-examination by MR KHAN (continued)

3 MR KHAN: Dr Sheikh, we're going to now move on to discuss
4 the Akbar and Yer agreements. You mentioned yesterday
5 during questioning that you had template documents or
6 old agreements that you based the Akbar and Yer
7 agreements upon; is that correct?

8 A. That's right, sir.

9 Q. Just to be clear, was that a template which set out the
10 terms on which a party may take a share in the business?

11 A. So to answer your question, it was an old agreement that
12 I took parts and pieces, and then I added a handful of
13 comments or clauses, which were more commercial driven.
14 So it was not a template, but it was an old document,
15 which I took, as I deemed appropriate, copy/pasted few
16 elements, sir.

17 Q. Can we please go to -- morning, Fatima -- document C89,
18 page 892.

19 If we can just go back to page 891, just so we see
20 the cover page, so this is an MAS ClearSight logo and
21 then it says, "Investment agreement". Just pausing
22 there, the templates that you're referring to, would it
23 be a MAS ClearSight investment agreement template that
24 you base this agreement on?

25 A. Yes, I suppose, yes, sir.

1 11:04 Q. What do you mean "suppose"?

2 A. I don't follow your question. You mean that this is an
3 old template which I had and then I used that
4 template --

5 MR PRESIDENT: Just one second. Mr Khan, I think what
6 Dr Sheikh told us -- and correct me if I'm wrong,
7 Dr Sheikh -- is that he did not take the agreement from
8 the template itself, he took an old agreement --
9 existing agreement, rather than the template and made
10 changes from that.

11 Did I understand that correctly or incorrectly?

12 A. You understood very well, your Honour. And thank you
13 for this clarification for Mr Khan.

14 MR KHAN: Thank you, sir. That's helpful, but I think my
15 question still applies.

16 Whatever the agreement that you based this agreement
17 upon, was it an investment agreement or some other type
18 of agreement?

19 A. No, it was an investment agreement, to best of my
20 memory, Mr Khan.

21 Q. If we can turn to page 892, and we just stay at the top
22 there for a moment, we see that the agreement is defined
23 and it's dated 20 April 2015; correct?

24 A. That's right, sir.

25 Q. I think it's uncontroversial that the Akbar agreement

1 11:05 was signed by the parties on 20 April; is that correct?

2 A. I cannot recall, sir, I can't testify to that precise
3 date, sir.

4 Q. Then can we agree that this was signed by the parties
5 and executed prior to 26 April, which is when the board
6 meeting took place?

7 A. That's right. We certainly can agree to that, sir.

8 Q. We see there that Mr Akbar is the investor and MAS
9 ClearSight is the other party to the agreement and
10 they're the only parties; correct?

11 A. That's right, sir.

12 Q. If we scroll down to the recital or terms, just pausing
13 there, ordinarily, you'd have Mr Awais and/or external
14 lawyers assist you in drafting such agreements; is that
15 right?

16 A. Ordinarily, yes, sir.

17 Q. Is there any other occasion on which you unilaterally,
18 on your own, drafted an agreement?

19 A. Very difficult to recall, but I can assure you that at
20 least in connection with this, Mr Yer's agreement was
21 also drafted in the same way that I did here Mr Akbar's.
22 But if you ask me the question, if I've ever done that,
23 it's extremely difficult for me to recollect, sir.

24 Q. Would it be fair to say that it would be very rare
25 indeed for you to yourself draft such an agreement?

1 11:07 A. Indeed, it is a fair assessment, sir.

2 Q. Just looking at the recitals or terms, (A) to (F).

3 (A) states:

4 "MAS wishes to restructure and invite a financial
5 investor who could invest in the company and become
6 a co-owner."

7 That is reciting what MAS wishes to occur; correct?

8 A. This is -- like I keep highlighting, that there are few
9 things that I just pick from a boiler template and
10 indeed the way it reads, it is to be read in that
11 spirit, sir.

12 Q. Then it says:

13 "The Investor [Mr Akbar] is a Company ..."

14 So that's a mistake, is it?

15 A. Yes, and you would notice going through this document,
16 there are several mistakes, which are more alluded
17 towards my inability to do this job, sir, of drafting
18 legal agreements.

19 Q. "The Investor is a Company which has business interests
20 to take a long-term strategic ownership stake in the
21 financial services company."

22 You drafted that as well, did you?

23 A. Forgive me, you're reading from which section, please
24 remind me?

25 Q. (B).

1 11:09 A. (B)?

2 Q. Yes.

3 A. Look, sir, the section (A), (B), (C), (D) essentially --
4 no, (A), (B), (C) are taken directly as is was from the
5 old contracts. The (D) and (E) were my inserts, if
6 I can highlight that, sir, for purpose of clarity.

7 Q. Because I know Mr Akbar is not going to be joining us,
8 but his statement makes no reference to him having an
9 interest, whether long-term or otherwise, in the
10 ownership of a financial services company; do you accept
11 that?

12 A. You're right, sir.

13 Q. D refers to MAS Holders, which effectively holds your
14 shares in MAS. That's correct, isn't it?

15 A. That's correct, sir.

16 Q. Shouldn't MAS Holders have been a party to this
17 agreement?

18 A. Like I said, that I am not a professional expert in
19 legal matters and this legal English. I did the best
20 I could and so it's just that, sir.

21 Q. I think you're accepting that, on reflection, in this
22 sort of an agreement, the party giving up the shares is
23 sometimes a party to the agreement?

24 A. Sir, the way I would choose to answer this is the
25 following, that the agreement, which was executed

1 11:10 between, in this example, Mr Akbar was with MAS
2 ClearSight, because it was entity MAS ClearSight, which
3 is what Mr Akbar was planning to come.

4 Now, the element of shares which indeed were
5 majority held by me through MAS Holders was indeed under
6 100 per cent my control and the part of the transaction
7 was that I, as the owner/chairman of this company, was
8 willing to dilute my personal equity through MAS
9 Holders, which is what made it holds, to facilitate the
10 execution of this agreement.

11 I think that's how I would like to characterise
12 that, sir.

13 Q. But neither you nor MAS Holders had any legal obligation
14 under this agreement. That's right, isn't it?

15 A. Well, I think it's a very legal specific question and
16 I don't have the competence to answer your question,
17 sir.

18 Q. Can we take it that Mr Akbar either was comfortable
19 agreeing this without you or MAS Holders owing him any
20 legal obligation --

21 A. Once again, I can't --

22 Q. -- or you didn't realise that this agreement provides
23 for that?

24 A. Sir, I can't speak on behalf of Mr Akbar.

25 Q. Do you recall any lawyers being involved on his side of

1 11:12 the deal?

2 A. Do I recall any lawyers? No, when this agreement was
3 presented, I presented to him. And, at that time, when
4 the agreement was presented and was signed, there was no
5 physical lawyer present at that time, sir.

6 Q. We know Mr Akbar has access to lawyers, don't we,
7 because they have spoken for him in the course of these
8 proceedings. That's correct, isn't it?

9 A. That's correct, sir.

10 Q. So it seems that -- and we have to speculate, because
11 he's not here, but it seems that when he needs a lawyer,
12 he can get one. That would seem to be a sensible
13 conclusion to draw, wouldn't it?

14 A. I cannot comment or reflect on Mr Akbar's behalf, sir.

15 Q. You can certainly speak on your behalf and you have
16 access to very experienced expert lawyers in such
17 agreement, don't you?

18 A. Indeed, sir.

19 Q. Yet, it seems neither party decided to call upon its
20 lawyers to assist in drafting a \$2 million agreement.
21 Is that the case?

22 A. I can speak for myself, that I did not involve any
23 lawyer to draft this contract for a very specific
24 reason, which I'm happy to quickly highlight, that when
25 this agreement was being put together, I had an oral

1 11:14 gentlemen's negotiated discussions with Mr Akbar. And
2 he and I point blank agreed that we will keep this
3 transaction confidential between the two of us, sir.

4 Q. Confidential from lawyers as well?

5 A. No, confidential thing with us. So when he and I spoke,
6 he and I, we agreed. And in that spirit, I didn't
7 see -- I speak for myself, I didn't see the need to
8 employ or to direct this agreement towards a lawyer,
9 sir.

10 Q. Moving on to the part of the agreement that you
11 inserted, which I believe you say was recital (E)
12 onwards; correct?

13 A. Not onwards, just the element of recital (E) and the
14 elements of recital (D), at least what I can see on the
15 screen. But once we scroll down, I can elaborate
16 further, sir.

17 Q. Thank you. At (E)(1), this is, if you like, the meat of
18 the deal -- certainly on the side of Mr Akbar:

19 "The Investor is prepared to invest [\$2 million] for
20 a period of 3 years at an interest rate of 10 per cent
21 [per annum] paid in full at the time of executing of
22 this Investment Contract to a company directed by the
23 Investor."

24 So whilst this states that it's an investment
25 agreement, it's principally a loan, isn't it? That's

1 11:15 the purpose of the agreement?

2 A. Sir, I once again reiterate that the reasons I took upon
3 myself to highlight the subsection (E) specifically was
4 because this was all negotiated and it was predominantly
5 driven by Mr Akbar's ability, because he was on the
6 driving seat, because he was the man with the cash and
7 the chequebook, as a figure of speech, sir.

8 Q. But what this provision provides for is that he will pay
9 you \$2 million on certain terms. And what I'm putting
10 to you is that I can see your interest in receiving that
11 money, but as investor, who's seeking an equity stake in
12 your company, I would have expected this agreement to be
13 focused upon the shares and his right to those shares?

14 A. Once again, with a lot of respect, sir, that I am not
15 a legal person and the agreement was highlighted by
16 me -- sorry, I beg your pardon, written, this clause by
17 me, in the spirit of the best of my understanding. And
18 so, I do not think that the sections probably may not be
19 astute as a professional lawyer, like your goodself
20 would do, sir.

21 Q. The part of this provision which requires interest at
22 10 per cent per annum to be paid in full, effectively
23 upfront, that struck me as a very unusual provision.
24 Did it strike you as a very unusual request?

25 A. Yes and no, and I'm happy to qualify real quickly. Yes,

1 11:17 because it is indeed -- I find it a little bit unusual,
2 yes and no, because I know that I've had a couple of
3 interactions with Mr Akbar and I got the sense in terms
4 of his thinking, which is essentially a fortunate man
5 with a lot of focus on real estate. And in Pakistan,
6 this kind of advance demands is very common, sir.

7 But in the same spirit, the reason I said "yes" and
8 "no" also, that at the time of signing this agreement,
9 I was -- sorry to use a poor expression, a cliché, that
10 beggars can't be choosers, in spirit, so I did not push
11 back whatever was -- to a certain extent, I did not push
12 back to a certain extent and I swallowed it, because my
13 anxiousness and desperation to do the deal.

14 But it's also prudent for me to mention at this
15 point, sir, that on hindsight -- and I use the word
16 "hindsight" -- that several years down the road, I came
17 to a better, deeper understanding for which it makes
18 complete sense to me why Mr Akbar would have insisted
19 that and that was that his true intention was to
20 eventually flip his acquisition for a higher profit,
21 sir.

22 Q. Moving on to the second clause at (E) (2), here we have
23 the first reference in the document to India Focus
24 Cardinal, which appears to be a free zone entity.

25 I presume on the face of this agreement that that's

1 11:19 a vehicle for Mr Akbar, some sort of corporate vehicle?

2 A. I can't speak for that, but this was the name which was
3 given to me by Mr Akbar, as an entity where he would
4 like to receive his payments, sir.

5 Q. Had you heard of India Focus Cardinal before you met
6 Mr Akbar?

7 A. I have heard the expression of India Cardinal Focus Fund
8 in my life before, but I have not heard the India Focus
9 Cardinal FZE, sir.

10 Q. The India Cardinal Focus Fund that you just referred to,
11 can you tell us what that is, in your understanding?

12 A. To best of my understanding, it is an offshore Mauritius
13 based fund, to best of my recollection, currently, sir.

14 Q. Do you know who the individual is behind that fund? Do
15 you know what his name is?

16 A. I can't say who's behind the fund, but I certainly knew
17 a gentleman who was at -- not was, for a long time was
18 also directly, through his legal structure, was
19 a shareholder and this gentleman's name is Mr Arun
20 Pancharia(?). He's an Indian gentleman that I have
21 known during my life when I used to run Fortis Bank for
22 Middle East and South Asia.

23 Q. Is he a gentleman who's based in Dubai?

24 A. Well, this is a gentleman I think to best of my
25 recollection, back then, was based between Mumbai,

1 11:21 Dubai, UK. And that's what I knew, sir.

2 Q. When did you first meet that gentleman? Do you recall?

3 A. I can't recall that, sir. It's been too long.

4 Q. Did you do any business with him?

5 A. Of course, as I said, that he became a shareholder, if
6 my memory serves me well, and I don't want to speculate,
7 was -- but, yes, to make the long story short, that he
8 directly or indirectly had a very small percentage of
9 equity in MAS ClearSight, sir.

10 Q. Just let's get this clear. There is an entity called
11 India Cardinal Focus. It's a fund. A gentleman who's
12 related to that fund in some way, possibly the principal
13 of the fund, is a gentleman that used to have a stake in
14 MAS ClearSight; is that correct?

15 A. That's correct, sir.

16 Q. So it's an incredible coincidence that a company called
17 India Focus Cardinal happens to be a vehicle for
18 Mr Akbar, who you had never met before he was introduced
19 to you?

20 A. I cannot say that, but what I can say to you is that on
21 hindsight, when I found out a lot more later, that this
22 is what Mr Akbar intended to do, that he alluded to that
23 he has a business partner in India and I imagine that he
24 may have heard or he may have some contacts, which
25 I can't speak intelligently on behalf of Mr Akbar.

1 11:23 Q. Tell us what you know about that?

2 A. I don't know anything, other than just the fact that
3 when Mr Akbar was agreeing to do the transaction, he had
4 given me this name and said that this is where he would
5 like to receive the funds. And, on hindsight, few years
6 down the road, when I learned that he intended to flip,
7 he said that he has a partner, based in India, and
8 that's about it, sir.

9 Q. When did he tell you about the partner in India?

10 A. I beg your pardon?

11 Q. When did he tell you about the partner in India?

12 A. I can't specifically recollect that date or how long
13 back, sir.

14 Q. But did he tell you about that at the time you were
15 negotiating and entering into this agreement or later?

16 A. No, absolutely at the time of negotiations, when we had
17 agreed and I asked him where he would like to receive
18 his upfront interest and that's when he gave me this
19 name, sir.

20 Q. I'm going to put to you that it's an incredible
21 coincidence that this company, India Focus Cardinal, has
22 a very similar name to a company called India or a fund
23 called India Cardinal Focus, which I understand is run
24 by a gentleman that had a stake in MAS, Mr Pancharia,
25 is it?

1 11:24 A. Sir, I heard a comment, I didn't hear a question.

2 What's your question, sir?

3 Q. I'm telling you that it's an incredible coincidence. Do
4 you agree with that?

5 A. I cannot reflect on that, sir, because you're asking me
6 to speculate on something which I have no knowledge of.

7 Q. I'm just going to pause there, we'll come back to the
8 agreement, if we may. I'm going to pause there.

9 No, actually, let's continue with this agreement and
10 then I'm going to come back to India Focus Cardinal in
11 a moment. Let's just complete looking at this agreement
12 while we're here. It will be quicker.

13 Then under (E) (3), MAS and Mr Akbar agree that
14 Mr Akbar has an option to convert his loan to MAS into
15 a majority share in MAS during the three-year period;
16 correct?

17 A. That's right, sir.

18 Q. I appreciate what you say about not being a lawyer, but
19 isn't it commonsense that if you give an option to this
20 man to take -- buy 51 per cent of the company, that the
21 person who owns 51 per cent of the company ought to at
22 least be -- well, either be a party to the agreement or
23 there ought to be some other related agreement that
24 reflects that?

25 A. I'm not sure I follow your question, sir.

1 11:26 Q. How can MAS and Mr Akbar agree that MAS Holders will
2 give up 51 per cent of its stake in MAS? That's what
3 I don't understand.

4 A. Would you repeat your question, because I'm still
5 struggling to understand your question, sir.

6 Q. MAS Holders owns something like 80 per cent of MAS
7 ClearSight; is that right?

8 A. That's right, sir.

9 Q. So how come Mr Akbar and MAS are agreeing that MAS
10 Holders will give up 51 per cent of its equity if
11 Mr Akbar exercises this option?

12 A. Because I own MAS Holders completely and I am signing on
13 behalf of MAS in my capacity as a chairman and majority
14 shareholder, based on the fact that I am prepared to
15 render a large portion of my personal equity, which
16 I control and own through MAS Holders.

17 And I really still don't understand your question,
18 and please forgive me for saying that, because I don't
19 have the legal mind or the competence to address the
20 question that you're asking, sir.

21 Q. Dr Sheikh, you have been, according to your CV and
22 everything you said, you're a seasoned banker, aren't
23 you? You have been a banker for some 30 years; is that
24 right?

25 A. By the grace of God, yes, sir.

- 1 11:27 Q. You have been very successful, given what you have told
2 us in your witness statement. That's right, isn't it?
- 3 A. Historically, by the grace of God, until things turn for
4 me totally in summer of 2015, sir.
- 5 Q. You must have seen hundreds of these types of investment
6 agreements; correct?
- 7 A. I can't claim hundreds, but a few, yes.
- 8 Q. Well, more than a few, I'd suggest. It's just
9 incredible, I say, that if this was a real agreement,
10 that it would include a clause such as (E) (3). It just
11 makes no sense.
- 12 A. Like I said, my position is clear that, I'm not
13 a lawyer, I can't comment on this, sir.
- 14 Q. You have to comment on it, I'm afraid, Dr Sheikh,
15 because you drafted it.
- 16 A. Of course. May I -- you're referring to point (3)?
17 I'd like to take the liberty, since you mention, that
18 there is an element of this point (3), which is my
19 recommendation to Mr Akbar. May I quickly reflect on
20 that, sir?
- 21 Q. Yes, of course.
- 22 A. I knew in my mind, sir, at the time, that if, God
23 willing, that this agreement goes through, that there is
24 a professional and a formal process of change of
25 control. And in that spirit, the only reason --

1 11:29 I repeat, sir, the only reason that I introduced, and
2 that is me who has introduced the expression, with
3 consent and agreement with Mr Akbar, was to put the
4 option of 51 per cent.

5 And the sole purpose was that this would facilitate
6 and fast-track the ability for MAS in a regulated
7 environment to accept the capital and then the process
8 can trigger in terms of the change of control. And once
9 that process has been successfully executed, the new
10 owner, in this example Mr Akbar, would have certainly
11 exercised his right.

12 Therefore, this was my recommendation to Mr Akbar,
13 purely driven for the need to ensure that neither the
14 regulatory environment, change of control, important
15 aspect is overlooked. And, at the same time, the
16 company would have access to liquidity immediately for
17 lack of better expression, sir.

18 Q. Who gave Mr Akbar the option?

19 A. I did, sir. I introduced the idea and I more or less
20 convinced, based on the same logic, the one I just
21 presented to you, sir.

22 Q. But you're not a party to the agreement.

23 A. Like I said, that I was discussing and it was me who
24 have suggested, sir.

25 Q. Equally, you don't personally own the shares, do you?

1 11:30 A. Like I said, sir, that I am not a lawyer and I'm unable
2 to comment intelligently. I'm unable to comment
3 intelligently on the legal aspects that you're kindly
4 highlighting, sir.

5 Q. If I was advising Mr Akbar, I might say, "Mr Akbar,
6 looking at this agreement, you don't have a right to
7 exercise an option."

8 A. Like I keep saying, sir, I'm helpless here, because
9 I don't have the legal ability or the intelligence to
10 address this.

11 Q. We'll move on.

12 One looks at (E) (4) and it seems that Mr Akbar
13 wanted the right to appoint three board members, subject
14 to approval by the authority. And at (E) (5), he wanted
15 to be consulted in hiring the CEO or SEO of the company
16 going forward; do you see that?

17 A. Yes, sir.

18 Q. At recital (F), it states that you will step down upon
19 approval of change of control and:

20 "... will nominate the investors directed director
21 as the Chairman of the Board."

22 So I think that you will nominate someone directed
23 by the investors to be the next chairman. Is that how
24 that's meant to work?

25 A. Sir, give me a second to read this, if you will, please.

1 11:32 Thank you, sir. So I have read this and I can see
2 now that this clause (F) is flawed from a perspective
3 that I would not have the authority, because if the
4 change of control has taken place, then the new owner
5 would have the authority to do it based on the control
6 of the company.

7 So indeed, once again, like I alluded to you, sir,
8 that this was an old contract and the section of (F) --
9 I'm not saying that it was a copy/paste from all that,
10 but it was in that spirit, so needless to say that there
11 are ample, probably from a legal and English point of
12 view, mistakes in it. And that's just that, sir.

13 Q. I'm not worried too much about the mistakes on this
14 clause. But it can't be the case that there's
15 a template agreement or clause which involves you
16 stepping down as chairman of the company, can it?

17 A. That's why, sir, I suggested that I have altered some of
18 these clauses, based on what I intended to achieve and
19 based on the discussions and mutually agreed
20 negotiations, sir.

21 Q. So my question is, if you can confirm or not, that
22 Mr Akbar wanted this as part of the deal, to be able to
23 control the board and to remove you as chairman?

24 A. Sir, I can't speak on behalf of Mr Akbar.

25 Q. Why are these clauses in here? Did Mr Akbar ask for

1 11:34 them?

2 A. Sir, based on that, I knew that I was sacrificing -- use
3 the word "sacrificing" with a lot of caution -- my
4 majority ownership in the company. I made certain
5 intelligent, or whatever it is word, assumptions on my
6 part, thinking that the new owner will have the right to
7 appoint the chairman. The new owner would like to
8 appoint or consult for the CEO position, while albeit
9 that I have been within the negotiations, lobbying to
10 see that if there was an opportunity for me to directly
11 or indirectly stay in touch with the business, sir.

12 Q. I'm sure it's my fault. I haven't been very direct this
13 morning. I'll try and improve.

14 Clause (E) (4) and (E) (5) that I just took you to and
15 (F), all reflect, it appears, the right for Mr Akbar to
16 take control of the board and replace the chairman.
17 You'd agree with that, wouldn't you?

18 A. Just bear with me, so that I want to make sure that
19 I comment correctly. I'm going to take a second with
20 your permission or a few seconds to read this. Is that
21 okay, sir?

22 Q. Take all the time you need, Dr Sheikh.

23 A. Thank you.

24 Point (4), it is indeed correct that the investor
25 will have the ability to appoint three directors, yes.

1 11:36 It reads as is, that, yes, the investor wants to be
2 consulted for the new CEO. You're referring to (4)
3 and (5)?

4 Q. Yes, and (F). We have just been looking at it.

5 A. Okay.

6 Okay, sir. Go ahead, I'm ready.

7 Q. Am I right to assume that Mr Akbar asked that these
8 clauses be included in the agreement?

9 A. Not totally, sir, because, like I said, that it was
10 a collegial discussion and he highlighted some of the
11 things that he wanted and a couple of the things that
12 I proposed, considering extending, the respect in my
13 heart for someone who's going to be the controlling
14 shareholder of the company. So it wasn't his --

15 Q. What did he request? Of those three clauses, which ones
16 did he request?

17 A. Just bear with me for one second again.

18 Indeed, he requested that he would want to have the
19 number of directors, which will represent the majority
20 of the directors in the company. That was one of the
21 broad request, if I can say that, sir.

22 Q. Okay.

23 A. Then he did not request it, but I extended this as
24 a respect to someone who would take the control of the
25 company, that of course he would be consulted. So that

1 11:37 was not his request, but it was my submission out of
2 respect for him, sir.

3 Q. How did he respond to that suggestion?

4 A. He seemed very agreeable, sir, because I think that --

5 Q. Then finally, (F), removal of you -- you stepping down
6 as chairman?

7 A. Once again, this (F) is in the same spirit, that
8 I volunteered and offered out of respect for the new
9 shareholder, without having the new shareholder to look
10 me in the eye and say that, "Dr Sheikh, you'll be
11 stripped from your responsibility". And I, out of using
12 my limited emotional intelligence, suggested that, and
13 I don't remember the details of his face expression or
14 him saying "yea" or "nay", but that is what it is, sir.

15 Q. But he agreed to that; correct?

16 A. Well, like I said, that few things which I was
17 suggesting, he was kind to be agreeable.

18 Q. Before we leave this agreement, just to refer you to
19 something which we discussed yesterday, this agreement
20 is stated in terms of US dollars; correct? We see that
21 at (E) (1)?

22 A. That's right, sir.

23 Q. Can I take you now to Mr Akbar's statement. That starts
24 at C89-885.

25 Before we look at this in a little detail, you

1 11:39 recall Mr Ul-Hayee's evidence from a couple of days ago;
2 correct?

3 A. That's right, sir.

4 Q. He was quite clear in his evidence that Mr Akbar wanted
5 to be a silent partner. Do you remember him using those
6 terms?

7 A. I do remember using those -- him using those terms, sir.

8 Q. Mr Ul-Hayee presumably was mistaken, because Mr Akbar
9 didn't want to be a silent partner, he wanted to control
10 the board. That's right, isn't it?

11 A. I can't speak on behalf of Mr Ul-Hayee, sir.

12 Q. I'm just saying, in your opinion, Mr Ul-Hayee's
13 impression that Mr Akbar wanted to be a silent partner
14 is incorrect?

15 A. Sir, in my opinion, it's not in my opinion, it's a fact
16 that I did overhear Mr Ul-Hayee speaking about the
17 silent partner part or the silent, what you just alluded
18 to. And, in my opinion, the word "silent" has multiple
19 interpretations.

20 Since you asked for my opinion and I'm rendering it
21 to you, but to principally, I can't speak on behalf of
22 Mr Akbar nor I can speak on behalf of Mr Ul-Hayee, but
23 since you asked for my opinion, that silent partner can
24 mean a number of things, sir.

25 Q. You recall that Mr Ul-Hayee accepted that he had

1 11:41 described Mr Akbar, and I think to an extent, Mr Yer,
2 who he said he's known for many years, as "uneducated"
3 and "simple". Do you recall that?

4 A. You know, to answer your question, I want to highlight
5 the fact that I am an unfortunate individual who
6 struggles with memory and I struggle with memory
7 tremendously when under pressure. So though it was
8 probably yesterday or day before either, but this very
9 specific notion, if you're asking me to confirm, I'm
10 struggling, because I don't want to confirm anything
11 which I don't totally recall. And so my apologies for
12 that, sir.

13 Q. Just looking at this witness statement, if we can please
14 go to page 887, Fatima, two pages on, first go to
15 paragraph 18, so this is his section of meeting you.
16 Just pausing there, it seems he met you on several
17 occasions, paragraph 17.

18 A. Paragraph 17 --

19 Q. At paragraph 18, he says:

20 "Having listened to Dr Mubashir's investment pitch
21 in March 2015 and following our subsequent
22 conversations, I decided to invest in MAS because of his
23 achievements and his honesty regarding MAS."

24 So it seems that he invested principally or
25 exclusively because of his impression of you. That's

1 11:43 correct, isn't it? That appears to be what he's saying.

2 A. Sir, I can't comment on Mr Akbar's thinking or his
3 decision making process.

4 Q. Why would he agree to you stepping down as chairman of
5 the company if you're the man he wants to invest in?

6 A. Sir, I can't speak intelligently on behalf of the
7 chairman -- sorry, not chairman, on behalf of Mr Akbar.
8 But I draw your kind attention to my comment just
9 a minute ago or few minutes ago, that it was me out of
10 respect considering the elements of human -- emotional
11 intelligence, that I proposed to him that I would be --
12 I would step down, so that -- and that's me tendering my
13 respect or extending my respect to a person who's going
14 to control the company that I once controlled, in that
15 spirit, sir.

16 Q. While we're here, during your discussions with Mr Akbar,
17 this is your case, you met for two days in March; is
18 that correct? The first meeting was over two days,
19 wasn't it?

20 A. I don't know what you mean by "first meeting", but we
21 met couple of times, yes, sir, in March.

22 Q. The first time you met, it was over two days, the
23 meeting?

24 A. Let me restate, with your permission, sir.

25 Q. Sure.

1 11:45 A. That in the month of March, I had the pleasure of
2 meeting Mr Akbar, when I use the word "couple of times",
3 it's a figure of speech, but few times, and it's just
4 that. Now, when you use the word "first meeting", I'm
5 not sure I understand that expression, sir. Because for
6 me, first meeting is first interaction.

7 Q. Yes, the first time you met him was in March, wasn't it?

8 A. That's right.

9 Q. The first time you met him, that was a meeting that
10 lasted two days?

11 A. No, when I met him for the first time, we had
12 a pleasantry, we discussed, then we had a couple of
13 other meetings. And when you say the word "first
14 meeting lasted couple of days", I still struggle.
15 I don't understand that expression, with a lot of
16 respect to you, sir.

17 Q. But you met him on a number of occasions, so you must
18 have discussed a lot of things about the MAS business?

19 A. Not at all, sir. Like I said, the characterisation that
20 I would like to present from my witness is that I met
21 few times or couple of times, as a figure of speech.
22 And then when you say that I must have explained a whole
23 lot, the answer is absolutely not, sir. I just explain
24 bare minimum, sensing once again from an element of
25 emotional intelligence, that my audience forming certain

1 11:46 opinions. And based on that, I just did what I do for
2 whatever it is, whether it's for a sales pitch, which is
3 directed to a person based on my impression of him, sir.

4 Q. If we can go to page 888, paragraph 21, Mr Akbar states
5 that it was clear to him that you were desperate to
6 secure investment?

7 A. May I take the moment to read 21, sir?

8 Q. Of course.

9 A. Thank you.

10 Thank you, sir. I have read paragraph 21. How can
11 I answer your question?

12 Q. Thank you, and if we can just go back to page 887,
13 I apologise, I missed a reference. Paragraph 16, if you
14 can just read that.

15 A. Would you want me to read paragraph 16, sir?

16 Q. 16, yes, on page 887.

17 A. Unfortunately, I don't see -- you mean 16.1? Because
18 I think there's --

19 Q. No, sorry, paragraph 16. Fatima, can you scroll back up
20 the page. The paragraph starting, "At this time ..."

21 A. Right, sir. I have read. Thank you.

22 Q. That's accurate, isn't it, from your recollection, that
23 you explained that MAS was in financial crisis?

24 A. I given him the reasons why I was trying to find an
25 external investor. That's right, sir.

1 11:49 Q. If you can please go to page 889, under the heading,
2 "Disclosures regarding MAS' Financial Position",
3 starting at paragraph 34, if you read 34 and 35.

4 A. Yes, sir.

5 Very well, sir. I have read paragraphs 34 and 35.

6 Q. I'm going to ask your opinion on this, because
7 I appreciate you say it's not your evidence, it's
8 Mr Akbar's. But isn't it inconsistent for Mr Akbar to
9 say that he was deeply concerned about what he heard
10 from his friend about the experience of another
11 investor, given you had explained to him that the reason
12 you wanted his investment is because MAS was in
13 financial crisis?

14 MR PRESIDENT: Mr Khan, I understand what you're doing, but
15 I'm not sure that it's right that Dr Sheikh should be
16 cross-examined about the truth or untruth of particular
17 paragraphs of the statement, unless you're suggesting
18 that they're matters within his knowledge? I mean, the
19 point is you have been denied the opportunity to put
20 questions to this gentleman, because he's not here, but
21 I'm not sure that gives you licence to, as it were, put
22 them through another witness instead.

23 MR KHAN: Sir, our case -- and perhaps I should have said
24 this before -- is that either Dr Sheikh drafted this
25 statement himself or it was drafted at his direction.

1 11:52 May I put that to Dr Sheikh and then --

2 MR PRESIDENT: Well, you can certainly put that. I just
3 wonder where you get with putting suggested
4 inconsistencies between paragraphs.

5 MR KHAN: I see that.

6 MR PRESIDENT: That is as a general rather than a particular
7 steer.

8 MR KHAN: Yes, I appreciate that.

9 Dr Sheikh, I'm going to put it to you that you
10 drafted this statement or directed its contents.

11 A. That's not correct at all, sir.

12 Q. It's riddled with inconsistencies and it's because it's
13 been made up rather than a true recollection of events.

14 A. With due respect, you're wrong, sir.

15 MR PRESIDENT: Just one second. I'm making a meal out of
16 this.

17 Having got to the stage where you are, I think it's
18 all right to put inconsistencies or alleged
19 inconsistencies, if you wish to do so.

20 MR KHAN: Thank you, sir, and it's my fault. I should have
21 done it in that order.

22 So I just repeat the question I put to you earlier,
23 Dr Sheikh.

24 Paragraph 16 shows that you allegedly told Mr Akbar
25 that you needed his investment because you're in

1 11:54 financial crisis?

2 A. Forgive me, I --

3 Q. The reason why Mr Akbar says he had doubts about
4 carrying through with the investment agreement, is
5 because he heard that an investor was having some
6 difficulties being repaid. And that struck me as
7 entirely inconsistent.

8 A. Would you kindly request Fatima to bring to section 16,
9 the one that you alluded to, so I can kindly quickly
10 refresh my memory. As I mentioned that I struggle
11 memorising things, especially when I'm in a lot of
12 stress, sir.

13 Q. Of course.

14 Fatima, that's at page 887.

15 A. Point 16, you're referring to, sir?

16 Q. Yes, we just looked at it. It's where Mr Akbar says
17 that you explained why you needed his investment.

18 A. That's right, sir. Please go ahead, sir.

19 Q. Why would Mr Akbar want to pull out of the deal, given
20 he went into it knowing that MAS was in financial
21 crisis?

22 A. Once again, I can't reflect or represent Mr Akbar's
23 thinking and the reasoning why he wanted to pull out in
24 the time that -- so, I'm speechless. I don't know how
25 to respond to this, sir.

1 11:55 Q. That's fine. I think I've made my point.

2 One other curiosity in this witness statement is
3 Mr Akbar said he had this conversation with a friend,
4 who relayed the problems of another investor being
5 repaid in or around May 2015, some stage in May. But
6 both his witness statement and on your own case, he
7 didn't speak to you until June 2015?

8 A. Sorry, I'm trying -- struggle to follow your question.
9 May I request you to please repeat your question?

10 Q. Fatima, can we go back to page 889, please,
11 paragraph 34.

12 You have just read it, Dr Sheikh.

13 A. Yeah, just real quickly, I'm reminding myself.

14 Yeah. Very well, sir. Please.

15 Q. It seems Mr Akbar had a conversation in or
16 around May 2015, which led him to pause and reflect on
17 whether he wanted to go through with the investment?

18 A. So it appears, but I can't comment on that, sir.

19 Q. On your case, he didn't speak to you until June 2015.
20 That's correct, isn't it?

21 A. That's absolutely correct, sir.

22 Q. What I'm wanting to understand is why he would wait
23 until June to talk to you, when he could just have
24 called you up and asked you about this rumour that he
25 had heard?

1 11:57 A. Sir, once again, I don't think I'm qualified to answer
2 this question in terms of why and what Mr Akbar wanted
3 or said or did, sir.

4 Q. Thank you, Dr Sheikh.

5 Fatima, can we please go to document A13-292.

6 This relates to cheque details for cheque number 64,
7 issued from the Emirates NBD Bank account of MAS
8 ClearSight, for 2.2 million dirhams, in favour of India
9 Focus Cardinal and that was signed by you; correct?

10 A. That's right, sir.

11 Q. The date is 3 May 2015?

12 A. That's right, sir.

13 Q. On 3 May, it seems, you raised a cheque for effectively
14 all of MAS' money in its bank account, virtually all of
15 it, in favour of India Focus Cardinal, and purportedly
16 this was to honour the agreement with Mr Akbar. Is that
17 your case?

18 A. That's right, sir.

19 Q. If we go to the next page, 293, we see a cheque return
20 memo. It's in English on the left, Arabic on the right.
21 I presume it says the same thing. It relates to cheque
22 number 64, the same cheque, and it's been returned, it
23 says, because of:

24 "Signatory not authorised or second signature
25 required."

1 12:01 If we just scroll down to confirm it's the same
2 cheque that's been returned. Thank you.

3 I think that's all uncontroversial.

4 If you just go back up to the top of this page, do
5 you recall when this cheque was returned?

6 A. I imagine maybe a day or two later, sir.

7 Q. The next cheque I'd like to take you to is A13-297.

8 This is cheque details. This is a cheque that went
9 through. Cheque details, cheque number 83, in the
10 amount of 170,000 dirhams.

11 There's the cheque, if we just pause there. Again,
12 it's a MAS ClearSight cheque issued from its
13 Emirates NBD dirham bank account, dated 6 May 2015.

14 It is your case, isn't it, that this honours the
15 Akbar agreement where you agreed to pay 2.3 per cent of
16 the loan amount to him, again as an upfront payment?
17 That's right, isn't it?

18 A. I don't know when you say "upfront payment", but, yes,
19 this is the cheque which was written. So, I'm sorry,
20 what is your question again? I don't understand.
21 You're saying it's upfront payment?

22 Q. Well, let me ask you, why were you paying India Focus
23 Cardinal 170,000 dirhams?

24 A. Because it was mentioned and it was agreed as per the
25 contract, sir.

1 12:04 Q. Yes, it's the 2.3 per cent that you agreed to pay him?

2 A. That's right, sir.

3 Q. On that, before we look at the cheque a bit further,
4 I put to you that it was unusual that there would be
5 interest paid upfront, the 10 per cent per annum, but
6 isn't it further unusual to have a 2.3 per cent fee, for
7 want of a better term, in addition to that?

8 A. These are the terms which was literally highlighted and
9 negotiated, and the word I'm looking for is dictated
10 maybe is the most appropriate, not even negotiated,
11 dictated. And it's that, sir. I'm not capable or smart
12 enough to speak on behalf of Mr Akbar or his thinking or
13 his planning or his rationale. So I present you once
14 again that I'm not able to speak intelligently or
15 comment on behalf of Mr Akbar, sir.

16 Q. When he thought to dictate those terms to you in your
17 negotiations, do you recall how you responded?

18 A. Sir, the part when we were negotiating where his initial
19 expectations, to best of my memory, was a much larger
20 equity demand. I certainly pushed back, because of the
21 fact that I owned, give or take, 80 per cent and if it
22 was 75 per cent, to best of my recollection, that would
23 have totally diluted me and removed any and all
24 incentive for me to professionally engage. So that's
25 why I pushed back. So that I remember very well, sir.

1 12:06 Outside that, I say this to you once again, sir,
2 that this conversation or event that you're referring to
3 happened four or five years ago and, like I reiterated
4 again, that I'm unfortunately that individual who has
5 a poor memory in principle and that goes into a deep
6 difficulty, especially when I'm stressed.

7 Now what I want to also say to you is this, sir,
8 that I don't remember that far back to the degree of
9 extent of precise things that you're asking, because I'm
10 guilty of not even remembering something 10, 15 days
11 ago, let alone maybe 15 minutes ago. And that is just
12 because of the amount of stress. So, I apologise, but
13 I'm not able to answer your question, because of the
14 reasons I've just explained to you, sir.

15 Q. You agree that this cheque went through, so Mr Akbar
16 received this money; correct, isn't it?

17 A. That's right, sir.

18 Q. When he pulled out of the deal, did you ask him to
19 return the money?

20 A. If my memory serves me well, and I say this with a lot
21 of caution, sir, that my vague recollection is that he
22 voluntarily gave this money to Atta in cash, if my
23 memory serves me well. So I ask you to take this with
24 caution, but this is a vague recollection of what
25 I think that happened.

1 12:08 Q. I'm afraid I do take it with caution, because there's no
2 reference in any of the evidence presented by you or on
3 your behalf, that explains whether or not this money was
4 paid back, if indeed it was paid to Mr Akbar. That's
5 correct, isn't it?

6 A. No, it is my recollection, as I said, that there is
7 a notion in the back of my mind that this money was
8 returned back to Atta and I didn't even ask for it, sir.

9 Q. Why didn't you ask for it? It's MAS' money.

10 A. Like I said, sir, that it is my understanding that this
11 was returned and I had to ask for it, sir.

12 Q. What did Mr Ul-Hayee do with the money? Did he give it
13 back to you?

14 A. Okay, sir. Mr Ul-Hayee, as you have heard from him,
15 that had a lot of money that I had entrusted with him.
16 And this specific detail that you're asking for, once
17 again, I submit this to you, that I don't have a precise
18 recollection, sir.

19 Q. At this time, the very beginning of May, you were one of
20 the authorised signatories, weren't you, for issuing
21 cheques on behalf of MAS ClearSight?

22 A. That's right, sir.

23 Q. But there was a limit at this stage to how much you
24 could -- what amount you were authorised to write
25 a cheque for. That's right, isn't it?

1 12:10 A. That's right, sir.

2 Q. What was the limit at this stage?

3 A. If my memory serves me well, it was more than \$100,000,
4 but I have to confirm to the documents, which I'm sure
5 I have it, but I want to be sure and I don't want to
6 misquote myself, sir.

7 Q. If we can go back to page 293.

8 The reason the cheque was returned, for one of two
9 reasons. The first is "signatory not authorised".
10 That's not right, is it? Because you were, in
11 principle, authorised to write a cheque on behalf of MAS
12 ClearSight; correct?

13 A. That's right, sir.

14 Q. So it must be the second reason, which is that a second
15 signature was required; correct?

16 A. I take the liberty to answer this question in a way that
17 when I wrote this cheque, I did not have any
18 recollection or I did not pay attention that I had
19 limitations. And once this cheque was returned, that is
20 when it came to my realisation that, oh, I have certain
21 limitations per cheque, per transaction, for example.
22 And so, when I was writing this cheque, I present this
23 to you, sir, that I had no recollection of any limits of
24 my signatory authority, sir.

25 Q. By this stage, on your case, you'd unilaterally agreed

1 12:12 to sell half of the company, without involving, for
2 example, a lawyer, such as Mr Awais, to help you draft
3 the agreement. That's correct, isn't it?

4 A. I explained to you the reason that I intentionally did
5 not involve Mr Awais, Mr Ali Awais, simply because I was
6 honouring in my mind, and I think in my humble opinion,
7 as a gentleman, rightly so, for a request of Mr Akbar to
8 keep this transaction confidential.

9 On hindsight, I understand that very well, sir,
10 because hindsight, as I explained to you recently, that
11 his intentions were to flip and I could understand that
12 why he would have insisted.

13 Naturally, at the time when he's requested, it did
14 not occur to me, because I didn't know that information,
15 but I still felt as -- well, I shouldn't say about
16 myself as a gentleman, but as a human being, that
17 I wanted to honour his wishes, sir.

18 Q. The reason you didn't get a second signature on this
19 cheque, which would have been very straightforward for
20 you to do, for example, Mr Awais is a second signatory,
21 is because you were on a frolic of your own, weren't
22 you?

23 A. I didn't understand that expression. Could you
24 kindly --

25 Q. You were acting in a way which you wanted to keep secret

1 12:13 from everyone else at MAS, weren't you?

2 A. I'm not comfortable you using the word "secret", but
3 I will say this to you, because you asked the question,
4 that, sir, may I kindly remind you that on 26 April,
5 I was indeed given the unilateral authority by the board
6 of directors to be able to engage in activities, which
7 enables me to perform my task, which the board has
8 entrusted upon me, sir.

9 Q. You may have the authority to take steps, but what I'm
10 getting at is why have you not involved other people in
11 this groundbreaking deal for the company?

12 A. Can you elaborate the expression when you say that why I
13 have not involved in the groundbreaking deal of the
14 company? Can you elaborate, what do you exactly mean by
15 that, sir?

16 Q. Why have you excluded other people from being involved
17 in the steps you have taken so far?

18 A. As I explained to your goodself, sir, just a minute ago,
19 that I am respecting the wishes of the new owner, as
20 I would call it, at that point in time, and --

21 MR PRESIDENT: Dr Sheikh, I think what you're being asked is
22 this. You've explained to us that you were given very
23 wide-ranging powers by the board resolution. But what
24 you were asked is why did you have to exercise those
25 powers, which the board resolution gave to you, in

1 12:15 secret without your colleagues?

2 A. Sir, I say this. Thank you, first of all, your Honour,
3 to answer that.

4 But Mr Khan, I resent the expression of "secret" and
5 I tell you the reason why. Because at the end of the
6 day, I had disclosed categorically -- and I repeat the
7 word "categorically" to the two relevant people in the
8 company, which is Mr Hassan Salahuddin, who was helping
9 the finance work, and also Mr Anish Bhatia, who was the
10 SEO of the company.

11 So I don't understand the word "secret", because
12 there was no secret. I had disclosed my intention that
13 I will withdraw large sums of money. On the back of
14 that, I had requested Mr Attia to give me the
15 chequebook.

16 On the back of that, sir, I have requested Mr Ali
17 Awais to prepare a board resolution to give me the wide
18 authority to withdraw the capital and albeit that he
19 executed it something around mid-month or something like
20 that, if my memory serves me well.

21 The point I want to make is this, that I resent this
22 implication of secretness, because there was no secret.
23 However, I must accept the fact that the element of
24 conversation of the transaction was indeed
25 a confidential -- and I choose to represent the word

1 12:16 "confidential" and not "secret", because "secret"
2 involves a cunning behaviour and "confidential" involves
3 a respectable business term, sir. And that's my answer
4 to you, sir.

5 MR KHAN: We'll come on to confidentiality and perhaps we'll
6 pick up this theme. I understand your answer,
7 Dr Sheikh.

8 A. Thank you, sir.

9 Q. Given the cheque was returned, the 2.2 million dirham
10 cheque was returned, MAS was immediately in breach of
11 the agreement, wasn't it?

12 A. Like I said, that I don't have that recollection,
13 because I was operating under the assumption that there
14 is already \$600,000 that Mr Yer would have deposited on
15 MAS dollar account, sir.

16 Q. You say that shortly after the agreement was signed, the
17 cheque having been returned, the parties abandoned the
18 anticipated payment by wire transfer and you commenced
19 making cash withdrawals. That's correct, isn't it?

20 A. Sir, the way I would characterise is the following, that
21 I had picked up the phone and spoke to Mr Akbar and
22 I said that the payment that I told you that I was
23 transferring, because I don't have -- I have limited
24 powers to write the cheque in terms of the size of the
25 cheque. And then the discussion led to a point where he

1 12:18 said that, "Dr Sheikh, I'm fine with cash as well."

2 I don't remember, to be very precise, who said what and
3 who started the conversation, but that was the gist of
4 it, sir.

5 Q. Do you recall when that conversation took place?

6 A. Certainly it took place after 3 May, sir. I don't
7 remember the exact date.

8 Q. Again, just to be clear, there's no written record of
9 any communication, is there?

10 A. Sir, I say this with a lot of humility, that different
11 people have different working styles and I can't comment
12 and intelligently speak on behalf of Mr Akbar. What
13 I can reflect and speak on my behalf is this, that
14 I have also a certain working style and in that working
15 style, you must have seen over the course of this, that
16 I'm not unfortunately a very detail oriented person and
17 sometimes I make careless mistakes, as is evident that
18 in my witness statement that I have submitted, in the
19 first -- one page, two paragraphs up and down, there is
20 an error of a date that I just draw the kind attention
21 of your Honour and your goodself at the beginning.

22 So those are my limitations, if I will, and that's
23 my feedback to you, sir.

24 Q. Before we leave the issue of the agreement with

25 Mr Akbar, I'd like to ask you about Mr Sheharyar Ali.

1 12:19 You know who I'm talking about?

2 A. Yes, sir.

3 Q. He's a gentleman who took a stake in MAS in 2015 as
4 well, isn't he?

5 A. 2015?

6 Q. Yes, or was it a different date?

7 A. Sir, it was a different date.

8 Q. But he took an equity stake in MAS, didn't he?

9 A. Sir, yes and no. With your permission, can I answer
10 this question a little bit of background for you
11 quickly?

12 Q. No, not just yet. Let's go to the agreement and perhaps
13 that's a quicker way to do it.

14 Can we go to --

15 MR AL AIDAROUS: Mr Khan, I understand that you move from
16 the story for the cheque and authority.

17 MR KHAN: Yes, sir.

18 MR AL AIDAROUS: If you're moving, I have one or two
19 questions, if you permit me, before moving the second
20 part.

21 MR KHAN: Of course.

22 MR AL AIDAROUS: I just would like to ask, Dr Sheikh, you
23 have mentioned that you can't remember exactly how much
24 your limit as a signatory of the bank account of the
25 MAS, but definitely it's more than \$100,000; yes?

1 12:20 A. Your Honour, forgive me, but your question is that my --

2 MR AL AIDAROUS: The question, you have mentioned that you
3 can't remember exactly what is your limit for signing
4 the cheque on behalf of the company, but definitely more
5 than \$100,000?

6 A. That's right, sir.

7 MR AL AIDAROUS: Also, my question is, and definitely less
8 than \$600,000 as well, based on your recollection?

9 A. Sir, thank you for asking the question. I say this to
10 you with a lot of respect and humility, that when
11 I wrote this cheque of 2.2 million dirhams, I had no
12 idea or I had no recollection or memory of the
13 limitations of any limitations whatsoever, sir.

14 MR AL AIDAROUS: Understood. So you can't remember what is
15 the ceiling, what your limitation is. I understand that
16 one. That's why you have, when you issued the cheque,
17 when you signed the cheque for 2.2 million, for the
18 Indian -- what's the name of the company, Indian Focus
19 Cardinal, which is ultimately decided to go or intended
20 to go to Mr Akbar.

21 A. That's right, sir.

22 MR AL AIDAROUS: When you have realised the cheque is
23 returned, why don't you go back to the second signatory
24 to assist you to sign with you the cheque one more time
25 and re-present the cheque? Who is the other signatory

1 12:22 for the bank account of MAS, apart from you?

2 A. Okay, sir. Thank you for your question. The other
3 signatories are Anish Bhatia, the SEO of the company,
4 another signatory is Mr Ali Awais, the gentleman who
5 gave a witness, I think yesterday or day before, sir.

6 MR AL AIDAROUS: So you can sign jointly with them any
7 amount? What is the banking arrangement? I'm an
8 ex-banker as well, so I understand what's banking
9 arrangement.

10 Can you tell me what is the signatory arrangement?
11 You can't remember your limit, but jointly with whom you
12 can sign for unlimited amount of cheque for unlimited
13 amount?

14 A. Yes, sir. So we need two signatures for unlimited
15 amount and that two signatures have to be between, if my
16 memory serves me well, there is a pool A and pool B --

17 MR AL AIDAROUS: You are falling under pool A?

18 A. I fall in pool A and Mr Anish --

19 MR AL AIDAROUS: Mr Bhatia and Mr Awais also falling under

20 B. So anyone, A can sign from the pool B, this is
21 unlimited, for unlimited amount. Am I right?

22 A. No, sir, with a lot of respect, sir. The pool A
23 included, to best of my recollection, myself and
24 Mr Anish Bhatia. Pool B represented Mr Ali Awais,
25 Ms Adela Mokra and -- I'm trying to --

1 12:24 MR AL AIDAROUS: I will make my question maybe more simple
2 like this. You are falling in class A, in the pool A.
3 If you want to sign for unlimited amount, you have to
4 use one of the signatories in pool B. This my
5 assumption is correct?

6 A. Yes, either pool A or pool B. That's right, sir.

7 MR AL AIDAROUS: So either you have to join your signature
8 with anyone in pool A or anyone in pool B?

9 A. That's right.

10 MR AL AIDAROUS: There are many people available for you.

11 So my question is, when the cheque is returned, why you
12 don't go back to use -- to follow up now you -- when you
13 signed the cheque, you don't remember, which
14 I understand, but when you realise the cheque is
15 returned, because lacking for second signature, why you
16 don't go to approach one of the members of pool A or
17 pool B, at that time, to sign with you the cheque
18 instead to go to for single cheques and cash cheques?
19 This is my question.

20 A. Thank you for asking that question. Sir, I submit to
21 you with a lot of respect, that in my mind, when
22 I engaged in the activity of not going to another
23 counterparty, as you said, from pool A and B, and took
24 upon me the -- if I can use the word, the efforts to
25 start writing cheques and withdrawing money in small

1 12:25 tranches, was to respect the oral and the agreement that
2 I had with Mr Akbar to keep the transaction confidential
3 until it is executed, sir.

4 MR AL AIDAROUS: Perfect, but when -- I understand your aim
5 is to maintain the confidentiality of the agreement with
6 Akbar and you want to honour this obligation, but when
7 you are going to sign the cheque on behalf of the
8 company's account, draw a cheque on the company's
9 account, so no one will be -- your transaction will be
10 confidential. How can you explain that? Because when
11 you issue the cheque of 2.2 million, that means it will
12 come in the company's account, which will be reflected
13 in the company's account, so you're not maintaining any
14 more the confidentiality.

15 A. Yes, sir. I respect your point of view, and indeed,
16 there is a limitation to confidentiality that I could
17 have exercised within my reasonable limits. And you're
18 absolutely right, your Honour.

19 MR AL AIDAROUS: Right for what? I didn't get you.

20 A. Right that any given person, who has the authority for
21 online access, any person who has the ability to access
22 the account can, not only easily, but has the right to
23 see and can identify --

24 MR AL AIDAROUS: I'm not talking about the access to the
25 account. My question is very simple. You just keep

1 12:26 telling that you haven't informed one of your colleague
2 in answer to Mr Khan's question, that you don't -- you
3 didn't involve any one of the company's officers in this
4 transaction, because your intention to maintain the
5 confidentiality obligation toward Mr Akbar.

6 But my question to you, this is what you said. So
7 when you signed the cheque, this cheque is again, it is
8 a company cheque, so this will be reflect in the
9 account. So therefore, you're not maintaining any more
10 the confidentiality?

11 A. Yes, your honour. And I say this once again, like I
12 just address a minute ago, that I have before engaging,
13 before even writing this cheque, I had advised, what you
14 call, Hassan Salahuddin, and I have informed and advised
15 Anish Bhatia. And I say this to you, sir, that before
16 writing this, I had advised both Mr Hassan and both
17 Mr Bhatia. And therefore, it was not --

18 MR AL AIDAROUS: You advised them about the deal or advise
19 them about your intention to issue the cheque?

20 A. God bless you, sir. I advised them that my intention to
21 withdraw a significant amount of money from the account,
22 sir.

23 MR AL AIDAROUS: And they haven't asked you why?

24 A. Like I said, sir, so when I told this to Hassan, he
25 categorically said that, "Sir, if you're going to remove

1 12:28 the capital or if you're going to write this big cheque,
2 I am going to distance myself, I'm not going to access
3 the online banking." And that's when I, if my memory
4 serves me well, I was little bit angry and saying that,
5 "Please, you go and do your job." When I said the same
6 thing, to inform the same thing to Mr Bhatia, I was
7 completely surprised. But anyway, it is what it is --

8 MR AL AIDAROUS: Your colleague, in other words, have warned
9 you, alert you that you can't withdraw this significant
10 amount?

11 A. Who, sir?

12 MR AL AIDAROUS: You haven't listened to their warning?

13 A. Sorry, listened to whose wording, sir?

14 MR AL AIDAROUS: Their warning.

15 A. The warning, no --

16 MR AL AIDAROUS: Mr Bhatia said, "I'm not going to be
17 involved in this transaction." You don't take this
18 serious warning to you, that, "We require to --

19 A. I present this to you, sir. That, for me, it was not a
20 warning, because I was operating and working under the
21 assumption that there is additional \$600,000. To me,
22 this was not a warning. When Mr Hassan Salahuddin made
23 that comment, in my mind, I felt that he was actually --
24 the word I'm looking for is that he was being
25 insubordinate, where I asked him to continue doing his

1 12:29 job and he flat out refused --

2 MR AL AIDAROUS: No, if I understand, Dr Sheikh, sorry for
3 interruption. He said that if you withdraw this cheque
4 for 2.2 million dirham, that will going to eat up the
5 total capital of the company. So when he's talking this
6 way, that he is aware or at least assume that he's not
7 aware that there is \$600,000 is arrived from Yer. Why
8 don't you tell him that you never received this 600,000
9 from Yer?

10 A. That's right. To answer your question, when Hassan made
11 that comment, so it appears that he's not aware that
12 600,000 is there. And when I was giving these
13 instructions, to write this cheque and to submit this,
14 I was under the impression that there is \$600,000 on the
15 account, sir.

16 MR AL AIDAROUS: Thank you very much. And I'm sorry,
17 Mr Khan, you can carry on. Thank you.

18 MR KHAN: Thank you, sir.

19 Can we please go to document A11-1800.

20 MR PRESIDENT: While we're waiting for Mr -- since I started
21 speaking, I'll continue. Sorry to interrupt the
22 questioning, but we'll be due a break at about
23 10 o'clock, which would normally be for about 20 minutes
24 or so.

25 It would seem sensible to interrupt the evidence of

1 12:31 Dr Sheikh, subject to what Dr Sheikh feels and subject
2 to what the DFSA feels, in order to have the evidence of
3 the other witness, since if we don't finish today and
4 have to have some further hearing, it will be
5 straightforward for Dr Sheikh to continue to give
6 evidence, but not straightforward for this other witness
7 to be made available.

8 So what I'm proposing to do is to suggest that after
9 the break, Mr Yer give his evidence and that Dr Sheikh's
10 evidence resumes after that.

11 I just thought I better make that clear now, rather
12 than leave it until 10 o'clock.

13 Do you both understand that?

14 MR KHAN: That seems entirely sensible to me and may I add
15 that I believe that for health and safety reasons, we
16 ought to stop possibly now, because it's been an hour
17 and a half, since we started.

18 MR PRESIDENT: I'm not sure -- I think what it is, it's the
19 usual shorthand writer reasons. You and I are much used
20 to dealing with in a live way.

21 Dr Sheikh, would you like a break at this point?

22 A. I would certainly appreciate it, your Honour, but it's
23 up to you all.

24 MR PRESIDENT: You also need to sort of -- I suggest that we
25 break now, then, for a bit.

1 12:33 How long is it going to take you to get Mr Yer
2 available?

3 A. As per the guidance presented by Mr Khan to me, I had
4 requested Mr Yer to be available at 11 am Swiss time,
5 which would be 10 am UK time and that is the time that
6 I had anticipated and that's what I had requested for
7 Mr Yer to be available.

8 MR PRESIDENT: If we break now, there's a 25-minute break
9 until 10 o'clock, which isn't too long. It will give
10 you some time to get Mr Yer available.

11 And as your evidence is going to resume, perhaps
12 just remember what my colleague Mr Al Hashimi said
13 yesterday, which is that you shouldn't be discussing
14 your evidence with anybody else during the break.

15 So we'll break now and with any luck, we will start
16 with Mr Yer at 10 o'clock UK time, which is I believe
17 1 o'clock Dubai time.

18 WITNESS: May I briefly ask a small question with your
19 permission or it's maybe not appropriate?

20 MR PRESIDENT: Yes, of course.

21 WITNESS: Your Honour, last night, when Mr Khan and the
22 tribunal, we concluded the session, I was troubled in my
23 mind for some of the questions that I was not able to
24 answer. So in the spirit of trying to get clarity,
25 I did contact yesterday in the evening Mr Ul-Hayee to

1 12:34 understand and now I understand very well. I just

2 wanted to --

3 MR PRESIDENT: But the position is that while you're giving
4 evidence, you shouldn't be doing that.

5 WITNESS: I do apologise for that, because I didn't know --

6 MR PRESIDENT: That's all right. Dr Sheikh, that's
7 a counsel of perfection. You had the advice, I think
8 you may have misunderstood it, but you understand it
9 now.

10 WITNESS: Yes, sir.

11 MR PRESIDENT: Please make sure, just have good regard to
12 Mr Al Hashimi's advice. Okay.

13 WITNESS: Absolutely.

14 MR PRESIDENT: Let's break now and we'll start with any good
15 luck at 10 o'clock with Mr Yer. But you are still under
16 oath and evidence and you will be coming back later.
17 Thank you.

18 WITNESS: Yes, sir.

19 (Witness stood down)

20 (12.35 pm)

21 (Short break)

22 (1.00 pm)

23 MR PRESIDENT: Dr Sheikh, this is your witness, Mr Yer; is
24 that right?

25 DR SHEIKH: Yes, this is indeed Mr Yer.

1 13:01 MR MUHAMMAD YER

2 MR PRESIDENT: Mr Yer, welcome.

3 WITNESS: Thank you very much.

4 MR PRESIDENT: It's difficult to hear your -- can you hear

5 me?

6 WITNESS: Tell me.

7 DR SHEIKH: Mr Yer, it's difficult to hear you. Can you

8 speak properly, very difficult to hear you, Mr Yer.

9 WITNESS: One minute, please.

10 MR SAEED: Sorry to interrupt. This is Muhammad from Lloyd

11 Michaux. It's his mic. If I will speak in Urdu.

12 (Urdu spoken)

13 MR SAEED: It will take five minutes only. Very sorry for

14 that.

15 MR PRESIDENT: We'll break for five minutes and resume then.

16 Thank you.

17 (1.03 pm)

18 (Short break)

19 (1.06 pm)

20 MR PRESIDENT: Mr Yer, you're going to give evidence. Thank

21 you for coming. We're very grateful. Thank you.

22 WITNESS: Thank you very much, sir. Nice to meet you.

23 MR PRESIDENT: Would you like to take an oath or would you

24 like to affirm that the evidence is true? Which would

25 you like to do?

1 13:06 WITNESS: Sorry?

2 MR PRESIDENT: You have to swear an oath that what you are
3 going to tell us is true. Are you happy to swear an
4 oath for us?

5 WITNESS: Yeah, sure.

6 MR PRESIDENT: Would you please repeat --

7 WITNESS: Any one, no problem.

8 MR PRESIDENT: Okay, repeat after me, please. I swear by
9 almighty God.

10 WITNESS: I swear by almighty God.

11 DR SHEIKH: Mr Yer, can you repeat? Please repeat after
12 your Honour.

13 MR PRESIDENT: I swear by almighty God.

14 WITNESS: I swear by almighty God.

15 MR PRESIDENT: That the evidence I shall give.

16 WITNESS: That the evidence I shall give.

17 MR PRESIDENT: Shall be the truth.

18 WITNESS: Shall be the truth.

19 MR PRESIDENT: The whole truth.

20 WITNESS: The whole truth.

21 MR PRESIDENT: And nothing but the truth.

22 WITNESS: Yeah, nothing but the truth.

23 MR PRESIDENT: Thank you, Mr Yer. Just wait there. There
24 will be some questions for you.

25 Dr Sheikh, do you want to start, please?

1 13:08 Examination-in-chief by DR SHEIKH

2 DR SHEIKH: Yes, your Honour. Fatima, can I request you to
3 bring Mr Yer's witness statement on the screen kindly
4 and slowly scroll down, please, to the place of the
5 signatures, Fatima.

6 Mr Yer, thank you for coming. Can you please
7 confirm that this is your statement, sir?

8 A. Yeah, yeah, this is my statement.

9 Q. Can you please confirm the signatures are yours, sir?

10 A. Yeah, this is my signature.

11 Q. Can you please confirm that you have the statement to
12 the best of your recollection, sir?

13 A. Yeah, yeah. I am confirm.

14 DR SHEIKH: Thank you, Mr Yer. I'm going to tender your
15 witness to the lawyer of DFSA, Mr Khan.

16 Mr Khan, Mr Yer is yours.

17 Cross-examination by MR KHAN

18 MR KHAN: Thank you, Dr Sheikh.

19 Good afternoon, Mr Yer. Thank you for joining us.

20 A. Very good afternoon.

21 Q. Fatima, can you please take us back to page 895, the
22 beginning of the witness statement. It should be on
23 your screen, Mr Yer. You may have it in front of you
24 also.

25 A. Okay.

1 13:09 Q. Can you please scroll down to paragraph 1.

2 A. Mr Khan, can you please speak Urdu? Better for me. You
3 know, I give good answer. Something -- I give you
4 wrong, you know, for the mistaken. Can you give me --
5 I give you only 15 minutes.

6 DR SHEIKH: Mr Yer, I'm sorry, but you have to try to speak
7 in English. I would be much obliged. Thank you, sir.

8 A. Okay, but better little, little speak to English, not
9 too much, you know. I have only little, little English.
10 Not too much.

11 MR KHAN: I understand, Mr Yer, and I'll try and keep it
12 very simple.

13 A. Yeah, very -- you know, very easy English.

14 Q. Yes. In paragraph 1 of your witness statement, you say:

15 "I am self-employed."

16 What is your business, please?

17 A. My business?

18 Q. Yes.

19 A. Yeah, my business is also I have the land in the
20 Pakistan. Also, I have the real estate. I have the
21 dairy farm in Pakistan. This is my business.

22 Q. Mr Akbar was your business partner; is that correct?

23 A. Yeah, yeah, Mr Akbar also I have the business partner
24 and I have the very best friend. Both of I do it.

25 Q. Was it a legal partnership with Mr Akbar?

1 13:11 A. No, no, I don't have any legal partnership. Actually,
2 you know, in the Pakistan, only talking and do it, some
3 business. And selling, and ...

4 Q. Fatima, can we go to page 896, paragraph 6.

5 Are all of your businesses in Pakistan?

6 A. Mm-hmm.

7 Q. Is that correct?

8 Mr Yer, could you just answer my question. Is all
9 of your business --

10 A. Sorry?

11 Q. -- in Pakistan?

12 A. Okay.

13 Q. Is that correct?

14 A. No, no, actually, Mr Akbar have business in also Dubai.

15 Q. Yes, but I'm asking you, Mr Yer, do you have --

16 A. Yeah, yeah, I don't have business in other country.

17 I have business only Pakistan.

18 Q. Understood. Thank you.

19 In paragraph 6, you say:

20 "We [that's Mr Yer and Mr Akbar] regularly discuss
21 investment opportunities and often attend client
22 meetings together."

23 Do you see that?

24 A. Yeah.

25 Q. Can you tell me what investment opportunities you and

1 13:13 Mr Akbar would discuss?

2 A. But this is opportunity Akbar told me, "I have the very
3 best friend, Dr Mubashir in Dubai." I told, "Okay, I do
4 it, no problem."

5 Q. Sorry. So Mr Akbar said that he had a very best friend
6 in Dubai?

7 A. Yeah.

8 Q. And that's Dr Sheikh?

9 A. Yeah, Dr Sheikh.

10 Q. Did Mr Akbar know Dr Sheikh from before the investment
11 deal?

12 A. No, before, I not meet Mr Dr, I meet with Mr Akbar, meet
13 with Sheikh in Dubai, first time.

14 Q. Did Mr Akbar and Dr Sheikh, do they know each other
15 a long time?

16 A. Sorry, again, again? Sorry, again?

17 Q. Did Mr Akbar and Dr Sheikh know each other? Were they
18 friends a long time?

19 A. But this is Mr Akbar knows Dr Sheikh.

20 Q. For how long?

21 A. Every time he -- I don't know, Mr Akbar I know. But
22 Dr Sheikh and Mr Akbar, I don't know. Maybe six, seven
23 years. Old friend, and he's working also, he's in
24 Dubai. Maybe six years, seven years working in Dubai,
25 Mr Akbar. Akbar told me. Mr Akbar meet to Dr Sheikh.

1 13:15 Q. Yes, I understand. So Mr Akbar and Dr Sheikh were
2 friends in Dubai for a long time?

3 A. Yeah, yeah, long time, long time. But, okay, this is
4 long time, Dr Sheikh and Mr Akbar.

5 Q. Do you remember when Mr Akbar first told you about
6 Dr Sheikh, his friend?

7 A. Sorry, again, repeat me? Which paragraph?

8 Q. No paragraph. When did Mr Akbar tell you, tell Mr Yer,
9 that he has a friend in Dubai called Dr Sheikh?

10 A. Maybe in March 15, but you know this is long time, five
11 years old, this is question for me. Maybe five years
12 old. I forget anything.

13 Q. But just to be clear, you say that Mr Akbar and
14 Dr Sheikh knew each other from before 2015? They were
15 friends?

16 A. Yeah, yeah, this is friends.

17 Q. Sorry, paragraph 6, what type of investment did you,
18 Mr Yer, and Mr Akbar discuss?

19 A. Can you repeat me again, please?

20 Q. Yes, Mr Yer. In paragraph 6, you say you discuss
21 investment opportunities with Mr Akbar; correct?

22 A. Yeah, paragraph 6. Yeah, this is Mr Akbar told me,
23 "I have one friend in Dubai, also you need the
24 investment." I told, "Okay, if he big margin, okay,
25 I do it."

1 13:18 Q. Did you talk about other types of investments with
2 Mr Akbar, different investments?

3 A. With Akbar?

4 Q. Yes.

5 A. Yeah. Actually --

6 Q. Can you tell me what type --

7 A. With Akbar, take, you know, take the house and sale and
8 purchasing and land and property. This is business with
9 me, me and Akbar. You know, and account also in the
10 bank and everything. Actually, you know, I do it with
11 Akbar.

12 Q. Mr Akbar, do you know what his job was in Dubai?

13 A. Mr Akbar, sorry, again told me?

14 Q. Mr Akbar, when he was working in Dubai, what was his
15 job?

16 A. No, no, if you have any question for Mr Akbar, just you
17 ask to Akbar. Mr Akbar is businessman in also Dubai.

18 Q. Yes. Do you know what his business in Dubai is? Do you
19 know? He's your friend.

20 A. Yeah, I know. I know his business in Dubai. He's
21 working in -- all car bring from America and Germany and
22 some like this. This is I know.

23 MR KHAN: Mr Mackie, sir, if I may ask you a question. It
24 does appear that someone is speaking to Mr Yer while
25 he's providing answers.

1 13:19 MR PRESIDENT: Well, why don't you ask him who that is?

2 MR KHAN: Mr Yer, who is talking to you now?

3 A. This business?

4 Q. Who is in the room with you?

5 A. Sorry?

6 Q. Who is in the room with you?

7 A. No, I cannot understand. Please you told me slowly,
8 slowly.

9 Q. Mr Yer, somebody is talking to you other than me. Who
10 is it?

11 A. With me?

12 Q. Yes, now, in that room.

13 A. No, no. No, no.

14 Q. Okay, let's carry on, but you should only --

15 A. No, I'm not. No, no, no, nobody talk to me.

16 MR PRESIDENT: Mr Yer, what room are you in? Are you in
17 your home? Are you in your office or where?

18 A. I'm in the office, in Lahore.

19 MR PRESIDENT: Who is with you in the office?

20 A. Sorry?

21 MR PRESIDENT: Who is with you in the office?

22 A. With me?

23 MR PRESIDENT: Are you on your own?

24 A. I am only single here, nobody here. Everybody sitting
25 outside.

1 13:21 MR PRESIDENT: Right. It's just that on the sound system,
2 it sounds as though there is more than one person
3 speaking in your room. That's why we ask the question.
4 Thank you for your help.

5 Back to you, Mr Khan.

6 MR KHAN: Thank you, sir.

7 Mr Yer, it seems you have no business in financial
8 services?

9 A. Mm-hmm.

10 Q. Is that correct?

11 A. Yeah, yeah.

12 Q. You have no business in Dubai or DIFC?

13 A. Yeah, I don't have business in Dubai.

14 Q. If I can take you to paragraph 8, you say, in early
15 2015, Mr Akbar contacted you to discuss an investment
16 opportunity and he explained that a contact of his,
17 Mr Atta Ul-Hayee, called him to tell him that he was
18 working for a company called MAS, who were looking for
19 investors. Can you just confirm that --

20 A. Okay. Now I read it.

21 Excuse me, again told me?

22 Q. Mr Ul-Hayee, Mr Atta Ul-Hayee, is a friend or contact of
23 Mr Akbar; yes?

24 A. Yeah.

25 Q. You don't know Mr Ul-Hayee from before?

1 13:23 A. Yeah, I meet to Mr Ul-Hayee in Dubai.

2 Q. Yes, you met him in relation to this investment deal;
3 correct?

4 A. Yeah, yeah, yeah, yeah.

5 Q. But before, you don't know Mr Ul-Hayee, do you?

6 A. No, no. Before, I don't know. Akbar knows. You know,
7 I know Akbar knows.

8 Q. Do you know how Akbar knows Mr Ul-Hayee?

9 A. But every time he's calling to Mr Atta Ul-Hayee. You
10 know, Akbar and me, he's come in Pakistan and also he's,
11 you know, travel with me. And also, I'm looking the
12 land in my area and I ask to Akbar, "Please, this is
13 land and you see, just you make the confirmation." So
14 also, he's talking to Mr -- this is what his name?
15 Ul-Hayee, he talk to him every time.

16 Q. Can we scroll down to paragraph 10.

17 A. Okay.

18 Q. If you just read paragraph 10.

19 Have you read that, Mr Yer?

20 A. Yeah, yeah, please.

21 Q. Do you know what MAS' business is?

22 A. Mm-hmm.

23 Q. What is MAS business?

24 A. Mr Akbar and me in Dubai, Akbar told me, "I have the one
25 best friend. If you invest some money." I told,

1 13:26 "Okay". This is --

2 Q. Do you know what --

3 A. -- you know, investment for the -- one minute, please.

4 Yeah.

5 Q. What is MAS' business? What do you understand is MAS'
6 business?

7 A. Investment for the consultant.

8 Q. Consultant in what?

9 A. Sorry?

10 Q. I'm asking you, Mr Yer -- Mr Yer, please look at me.

11 Don't look at anyone else in the room --

12 A. You know, for the advice.

13 Q. I'm asking you if you understand what MAS' business is,
14 please.

15 A. Sorry?

16 Q. Do you understand --

17 A. Yeah, yeah, I with you.

18 Q. -- what MAS' business is?

19 A. No, which business, I cannot understand which business.

20 Your sound is not clear, which business?

21 Q. The business that you agreed to invest in, MAS.

22 A. Okay.

23 Q. MAS in Dubai, what was its business?

24 A. This is I gave for the loan. You know, Akbar told me,

25 "I have the one good friend, and I gave, you know, good

1 13:28 profit and you invest." I told, "Okay, I will invest
2 him. He give good profit. I will agree. Okay. No
3 problem."

4 Q. Did you ask what type of business it was?

5 A. Sorry?

6 Q. Did you ask what type of business it was?

7 A. No, this is, I don't know.

8 Q. Did Mr Akbar tell you what his investment agreement
9 involved?

10 A. Mm-hmm.

11 Q. Did he tell you that he was investing to buy 51 per cent
12 share in the company?

13 A. Yeah, yeah, yes.

14 Q. Did he tell you that he would receive 10 per cent
15 profit, 10 per cent interest every year?

16 A. No, no, not 10 per cent.

17 Q. Mr Akbar's agreement was --

18 A. Akbar agreement, I don't know. You check with Mr Akbar.
19 I'm responsibility only for Muhammad Yer. I am the
20 Muhammad Yer. Any question for Muhammad Yer, I am
21 available. Any question for Mr Akbar, this is the
22 responsibility for Akbar. Please don't tell to
23 confusion for me. If you are question for Mr Muhammad
24 Yer, I am available. Okay? Any question for Mr Akbar,
25 you tell to Mr Akbar. Akbar, now he has, you know,

1 13:30 virus in the hospital.

2 Q. Yes, I appreciate that. I'm asking my question to you,
3 not to Mr Akbar, and my question is: did you know that
4 Mr Akbar, under his agreement, would receive 10 per cent
5 interest per year?

6 A. No, actually, I don't know. Mr Akbar, he make the
7 agreement, not agreement. This is my agreement, you
8 tell me.

9 Q. But you say in your witness statement that you only
10 invested in MAS because Mr Akbar was investing; correct?

11 A. No, before he's investing, not -- you know, this is
12 somebody give to invest to any company, how much he have
13 the money in the pocket, he told me, he not told me. He
14 just only asking me, "I'm also invest with Mr Dr."
15 Okay, he told me, "Muhammad, you are also invest."
16 "Okay, yeah, this is good. Give me profit." Okay, I
17 pay. No problem. Very nice guy. No problem. I will
18 also invest. But Akbar, how much invest, I don't know.

19 Q. But, Mr Yer, you say that Mr Akbar was your very best
20 friend and business partner; yes?

21 A. Yeah.

22 Q. So did he tell you what his agreement was with
23 Dr Sheikh?

24 A. My dear, why you not understand? Mr Akbar with the
25 partner, my best friend in Pakistan. If we have any

- 1 13:32 other profit out of the country in Dubai business,
2 I cannot -- with partner. He ask me, he not ask me. If
3 you need some information for Pakistan, any investment,
4 Akbar and me, I give to you.
- 5 Q. You went to Dubai in April; yes? To meet --
6 A. Yeah, I come in '15 with Mr Akbar.
- 7 Q. What date --
8 A. Only one time.
- 9 Q. Just one time?
10 A. Yeah, one, two, three time and going next country.
- 11 Q. When did you first go to Dubai to meet Dr Sheikh? What
12 date?
13 A. Maybe 2015, some like this. This is long time, five
14 years. And now, he's asking me how many old you are
15 going to Dubai?
- 16 Q. No, I'm just asking you, Mr Yer, if you remember when
17 in April you went to Dubai?
18 A. Maybe 2015. I know 2015. I'm stay in Jumeirah.
19 I know. I know. Akbar, his best friend in Jumeirah.
20 His name is Sheikh Aubaid Saeed Bin Manana(?).
- 21 Q. Where did you meet Dr Sheikh in Dubai?
22 A. Dr Sheikh, I meet in his office.
- 23 Q. In his office. How long did you stay in Dubai?
24 A. Also, I'm there. I stay only 15 days.
- 25 Q. You mentioned you stayed at the Jumeirah Hotel?

1 13:34 A. Yeah, I'm stay Jumeirah with Mr Akbar. And this is
2 Atta, his friend.

3 Q. Did you stay in an apartment or in a hotel?

4 A. No, no, in Jumeirah, in the villa.

5 Q. Whose villa was it?

6 A. Yeah, Akbar's very close friend. This is a local guy.

7 Q. So it's Mr Akbar friend's villa?

8 A. Yeah.

9 Q. I'm going to ask you about the meeting with Dr Sheikh.

10 Do you understand?

11 A. Okay.

12 Q. If I can take you to paragraph 12 -- Fatima, it's at the
13 top of the next page.

14 A. Okay, paragraph 11, okay.

15 Q. 12, please.

16 A. Yeah. Paragraph 12, okay.

17 Q. Can you just read that, please.

18 A. This is okay.

19 Q. Thank you. You say that in the meeting, Dr Sheikh used
20 his best efforts to promote MAS?

21 A. Sorry, again, told me?

22 Q. If you look at paragraph 12, you say -- Mr Yer, please
23 look at me and the screen, not at whoever is in the
24 room.

25 In the witness statement, you say, Dr Mubashir used

1 13:36 his best efforts to promote MAS; yes?

2 A. Yeah, yeah.

3 Q. What did he tell you about MAS to promote it?

4 A. But he -- I ask something. He said, "Okay, I'm agree."

5 I put in my statement. He gave me some promise --

6 Q. What did he say?

7 A. He needed some -- he told me some funding. I said,

8 "Okay".

9 Q. Sorry. I'll ask you one more time, Mr Yer. Please look
10 at me. What did he say to you? What did Dr Sheikh say
11 to you to promote MAS?

12 A. But now last, you know, last six, seven years, now you
13 told me, I forget now.

14 Q. You've forgotten?

15 A. What is this time meeting, discuss with Mr Dr and Mr Ali
16 and Mr Akbar, now you told me. Now asking me.

17 Q. I apologise, Mr Yer, if my questions are frustrating.
18 But I have to ask you --

19 A. Maybe now, after discuss, on the table, on the table,
20 I'm not writing anything. But I believe to Mr Dr,
21 I said, "Okay, I do it." But now, last six years, now
22 also my time is wasting. This is good guy, I'm coming
23 from my home.

24 Q. Did Dr Sheikh give you any financial information about
25 the business?

1 13:38 A. Sorry?

2 Q. Did Dr Sheikh give you any financial information at the
3 meeting?

4 A. Which information?

5 Q. Financial information. Please look at me, Mr Yer --

6 A. Financial, from my -- for my side, Mr Dr's side?

7 Q. Did Dr Sheikh give you any financial --

8 A. Yeah, Dr Sheikh -- financially need the loan from me,
9 for the three years. I told, "You give me advance for
10 my percentage." He said, "Okay".

11 Q. Let's just pause there for a moment.

12 Mr Yer, your own business, real estate, dairy farm
13 and land, yes? Your business?

14 A. Yeah. Me and -- yeah, me and Akbar.

15 Q. You and Mr Akbar. Sometimes you make a profit and some
16 year you make a loss; yes?

17 A. Yeah, this is business. Sometimes loss, sometimes
18 profit.

19 Q. Do you have an accountant?

20 A. Sorry?

21 Q. Do you have an accountant?

22 A. No, no.

23 Q. Do you write down information about profit and loss?

24 A. No, you know why I give to profit and loss in Dubai, I'm
25 not going to Dubai. If I am there, okay, profit and

1 13:40 loss, okay. I'm not going to Dubai. Mr Dr every time
2 showing me the loss, what can I do? I need the profit.

3 Q. Mr Yer, I'm asking you about your business. Your
4 business, you confirm sometimes you make a profit and
5 sometimes you make a loss; yes?

6 A. Yeah, yeah.

7 Q. That's business, isn't it?

8 A. Yeah, yeah, yes, sir.

9 Q. Do you keep a record of your profit and loss?

10 A. My dear, in Pakistan, I don't keep the profit and loss.
11 I don't have any records.

12 Q. You keep a record, you write it down in an account?

13 A. No, I don't have record. If I'm purchasing some land,
14 today, I'm purchasing maybe \$5,000. Tomorrow, one
15 customer saying, "Okay, I give you \$16,000." I'm not
16 for the record. "Okay, you give me \$16,000", and take
17 it. And I transfer to his name.

18 Q. So what about your dairy farm? Do you sell dairy
19 product?

20 A. Yeah, dairy product.

21 Q. You sell it in a market?

22 A. No, no, I'm selling only for milk.

23 Q. You're selling milk?

24 A. Yeah.

25 Q. Do you sell to companies or do you sell to individual

1 13:41 people?

2 A. No, I'm selling local guy, maybe 10 guys coming and take
3 my milk. And take the, you know, in the city.

4 Q. How do you record how much milk you sold? Do you write
5 it down with a pen? You write down how much milk you've
6 sold?

7 A. No, no, no. I'm very sorry. Don't ask me further any
8 my background. Just you -- any questions you have
9 further this statement and Mr Dr, okay, I give you
10 answer. Otherwise, I will not give you an answer.

11 MR PRESIDENT: I think that's a fair objection. I don't see
12 why the witness should give details about how he deals
13 with quite separate businesses. That's okay, Mr Yer.

14 A. Okay.

15 MR KHAN: Mr Yer, my point is that if you're going to lend
16 money to a business, someone else's business, you would
17 want to see if they've made a profit or loss, wouldn't
18 you?

19 A. Yes, loss and profit, if there's loss in the business.
20 This is business.

21 Q. You would ask for financial information about the
22 business?

23 A. Okay.

24 Q. Did Dr Sheikh give you any financial information about
25 profit and loss, for example?

1 13:43 A. Yeah, yeah. I have.

2 Q. So Dr Sheikh gave you that?

3 A. No, no, I not give to Dr Sheikh. This is my -- you
4 know, this is my security. I gave only for the, you
5 know, talking with Dr Sheikh.

6 Q. So he didn't give you any documents?

7 A. No, no, I don't give. Only give for the guarantee
8 cheque.

9 Q. At paragraph 13, you say:

10 "Dr Mubashir explained in detail the investment
11 opportunity and its potential."

12 A. Okay.

13 Q. Do you remember any of the information that he provided
14 you with?

15 A. Who any information provided me? Mr Dr?

16 Q. Yes, you say in paragraph 13 --

17 A. Yeah, Mr Dr already provide all the documents.

18 Q. What document did he provide? Do you remember?

19 A. Gave to Akbar maybe. I don't know if this is -- for me,
20 he gave to back, for me.

21 Q. Sorry, I don't understand. What did he give you?

22 A. Mr Mubashir, he gave me some documents. You know, print
23 up him, I threw in for the bucket.

24 Q. So he gave you some documents, but you threw them away?

25 A. Yeah, I believe him. I don't need any documents

1 13:45 further.

2 Q. Did you read the documents?

3 A. No, no. I cannot read any document.

4 Q. You didn't read the documents. We can ask Dr Sheikh
5 about that.

6 A. Yeah, Mr Khan --

7 Q. You don't remember very much about the meeting, do you,
8 Mr Yer?

9 A. Yeah.

10 Q. You don't remember what happened at the meeting, do you?

11 A. Which paragraph told me?

12 Q. Paragraph 13.

13 A. Paragraph 13. Okay.

14 Hello?

15 Q. In paragraph 13, you say that he explained in detail the
16 investment opportunity and its potential. Do you see
17 that?

18 A. Now, I don't know. Now, I forget this one. I'm not
19 remember.

20 Q. In your statement, when you say "investment banking
21 marketplace", do you see that? What does that mean?

22 A. Sorry, repeat me?

23 Q. What does "investment banking marketplace" mean?

24 A. This is only for the advice.

25 Q. What advice?

1 13:47 A. Consultancy and some ...

2 Q. You don't know what "investment banking marketplace"
3 means, do you?

4 A. No.

5 Q. Then why is it in your witness statement?

6 A. Which one?

7 Q. Paragraph 13.

8 A. No, now I forget. For six, seven years, you told me.

9 Now, I know this one. After five, six, seven years, I'm
10 remember, I meet with Mr Dr, which place, I take the
11 tea, and some like this.

12 Q. You wrote this witness statement --

13 A. This is I'm coming, I gave the statement for the clear.

14 Q. You wrote this witness statement in September 2018;
15 correct?

16 A. 2018, I give to him. You know, which is the real,
17 I give him statement 2018.

18 Q. Yes. So what does -- you've just said you don't know
19 what "investment banking marketplace" means, so why did
20 you write it in your witness statement in 2018?

21 A. No, I cannot understand. Can you -- anybody you have
22 for the translation for the Urdu?

23 Q. No, this is in English, so we're going to ask --

24 A. Okay, I cannot understand this one. This is paragraph,
25 I cannot understand.

1 13:49 Q. I think we understand. Can we go to paragraph 15,
2 please.

3 A. Okay.

4 Q. Can you just read the paragraph to yourself again and
5 remind yourself what you say you wrote.

6 A. Mm-hmm.

7 Okay, tell me.

8 Q. Do you understand what "the company's liquidity
9 requirements are interim met" means?

10 A. Yeah, company requirement for the investment. Okay. He
11 told me he need requirement, and he give me profit.

12 Q. I understand about the profit. What does "company's
13 liquidity requirements" mean?

14 A. I cannot. Sorry, I cannot understand this one.

15 Q. I'm going to tell you that one way of understanding it
16 is that it means MAS has very little cash. It has very
17 little money. Do you understand that?

18 A. Mm-hmm.

19 Q. Sometimes it means that a business might be in trouble,
20 Mr Yer, do you understand that?

21 A. Yeah, actually, I'm not understand.

22 Q. No. Did you know -- Mr Yer, just if you look at me for
23 a moment. Don't worry about the document. Let me just
24 ask you a question. Mr Yer?

25 A. Yeah, yeah, tell me. Actually, I was --

1 13:51 Q. Did Dr Sheikh tell you that the business was in trouble?

2 A. No, no, which business is trouble? I cannot understand.

3 Q. MAS. Please look at me. Don't look at the person in
4 the room. Please look at me. Did Dr Sheikh tell you
5 that his business was in trouble?

6 A. Yeah, yeah, he told me. Dr told me. Okay. But you --

7 Q. But --

8 A. Excuse me, you speak a little English not too much, you
9 know.

10 Q. I apologise. Yeah, I'll try. I'm sorry.

11 If we look at paragraph 15, you say that he was
12 offering a good deal.

13 A. Mm-hmm.

14 Q. But if the company was in trouble, why was it a good
15 deal?

16 A. Yeah, he told me, "I give you 5 per cent."

17 Q. I'll ask you one more time. You know the company is in
18 trouble because he's told you it's in trouble. So how
19 come it's a good deal for you?

20 I'm terribly sorry, Mr Yer, someone is speaking to
21 you in the room. We can pick it up on the mic.

22 A. Yeah, nobody speak to me. I cannot understand your
23 English. You know, I'm looking for this paragraph 15.

24 MR PRESIDENT: Mr Yer, what is -- there is someone else
25 whose voice keeps coming from your microphone. Who is

1 13:53 that?

2 A. Okay.

3 MR PRESIDENT: I think, Mr Khan, just carry on.

4 MR KHAN: I'll ask you one more time. In paragraph 15, it
5 says he, Dr Sheikh, was offering a good deal?

6 A. Yeah. Excuse me. Better --

7 Q. I have made my point. I'm going to move on.

8 Mr Yer, I'm going to tell you what the authority's
9 case is, so that you can respond, if you want to. Do
10 you understand?

11 MR PRESIDENT: Is it necessary for you to do that, Mr Khan?

12 MR KHAN: I'd like to avoid it, if I can try.

13 A. Again, told me --

14 MR PRESIDENT: I think to be fair to Mr Yer, could you
15 please put it as simply as possible.

16 MR KHAN: I will.

17 Mr Yer, you had no interest in MAS' business, did
18 you?

19 A. Mm-hmm.

20 Q. Do you accept that?

21 A. Okay.

22 Q. You had no knowledge about MAS' business, did you?

23 A. No, no, no.

24 Q. You had no interest in Dubai, did you?

25 A. No, why not interest in Dubai?

1 13:56 Q. MAS wanted to borrow money from you because it had very
2 little money. You knew that, didn't you?

3 A. Yeah, yeah, this is my little money. If I have little
4 money, he gave me little profit.

5 Q. So it's unlikely, we say, that you would invest in such
6 a business. Why would you invest in this business?

7 A. But my friend told me, "This is Mr -- Dr is very good
8 man and he's very -- too much give you profit, and me,
9 and just you invest." So I told, "Okay". "Also you are
10 invest the money", he told, "Look, I'm invest". "Okay,
11 my money also invest." He told, "Okay".

12 Q. That's not true, is it, Mr Yer?

13 A. Sorry?

14 Q. It's not true what you have just said.

15 A. No, I cannot understand, if you have not somebody for
16 the -- you know --

17 Q. It's not true.

18 A. You told me something, you know, I'm not in too much
19 study. You ask me some question, I give you wrong, this
20 is not good. One guy is there, this is Mr Khan, his
21 translation, I give you good answer. I'm not
22 understand. Why he not give me opportunity for the
23 translation guy?

24 Q. Can I take you, please, to document C90-901. If you
25 just wait for the document, Mr Yer.

1 13:58 A. Which one?

2 Q. If you just wait. It's being brought up on the screen.

3 A. I'm sorry, if you give me translation guy, okay, I give
4 you good answer. Otherwise, I not understand, maybe
5 I give you wrong answer. This is not fair. I told you,
6 I'm not understand the English. You know, everybody
7 give me the translation. Why you not give me
8 translation guy? Already guy is there, his translation
9 and I speak to Urdu and I give you good answer.

10 Somebody is not speak to English. What can I do?

11 Q. Can you scroll down, Fatima, to where it says "loan
12 agreement".

13 A. Yeah, agreement this company, for the agreement, this is
14 Dr Sheikh company.

15 Q. Yes. This is --

16 A. No, actually, I'm not well. You know, I'm coming from
17 the hospital. This is my mask is there. I'm very also
18 busy. I'm not -- it take two, three hours. I'm very
19 sorry. I give you statement. Just you write and you
20 take the action. This is my statement. Now, I confirm
21 you, this is my statement. I don't have the time for --
22 four, five-hour drive I'm coming from my farmhouse --

23 MR PRESIDENT: Mr Khan.

24 MR KHAN: Yes, sir.

25 MR PRESIDENT: Mr Yer, I understand your concern. Who

1 13:59 prepared your statement in English?

2 A. In my lawyer.

3 MR PRESIDENT: Your lawyer prepared it in English, did he?

4 A. Yeah, my lawyer, he make this statement. I told him
5 lawyer is not available. Also, now you give me further
6 translation, this is not fair. This is wrong. Somebody
7 is no speak English. You not give to translation guy?

8 MR PRESIDENT: Would you just wait a moment.

9 I'll hear both Mr Khan and Dr Sheikh.

10 We have a witness who says that he does not
11 understand the English of his statement and that he's
12 not able to give the truth and nothing but the truth
13 about his statement, because of his limited knowledge of
14 English.

15 Now, there are all sorts of things that may arise in
16 the case from that, but it doesn't seem to me fair,
17 unless my colleagues disagree, to cross-examine Mr Yer
18 about a statement he doesn't really understand.

19 A. Yeah, yeah. I cannot too much speak the English. I'm
20 asking --

21 MR PRESIDENT: Please just wait. Dr Sheikh.

22 DR SHEIKH: Yes, your Honour.

23 MR PRESIDENT: You heard what I said, and if you or Mr Khan
24 persuade me otherwise, then I will permit this
25 cross-examination to go on. But in circumstances where

1 14:01 a witness openly says that he does not understand.

2 DR SHEIKH: Yes. Your Honour, like I requested and I should
3 stand corrected, that I should have thought of --

4 MR PRESIDENT: I'm not interested in you, for the moment,
5 Dr Sheikh, I'm interested in Mr Yer.

6 Now, please just give me a simple answer. Do you
7 propose, do you think, that further questions should be
8 asked about this statement in English, from someone
9 who's testified he doesn't understand it?

10 DR SHEIKH: Your Honour, I believe that Mr Yer does not
11 understand at all English and he's trying to make an
12 effort. I think if he continues to give the statement,
13 he's going to give wrong information, which he doesn't
14 understand. I think it is unfair. I think that you
15 should, in my humble opinion -- please kindly wait,
16 Mr Yer. Please wait. Let me try to answer questions
17 from his Honour.

18 I respect your opinion. I don't think that Mr Yer
19 is able to understand and I don't think that this
20 witness, if it is in English, it will be extremely
21 difficult. So I respect your opinion, your Honour.

22 MR PRESIDENT: Mr Khan, I suggest you ask no more questions
23 about the agreement.

24 Mr Yer, there will be no more questions about the
25 agreement.

1 14:02 A. Okay.

2 MR KHAN: I'd like to take you to the cheque that you
3 signed, Mr Yer. It's at C70-512.

4 A. Yeah, this is my cheque.

5 Q. I just have one question. Your name is spelt "Muhammad
6 Yar", "Y-A-R", do you see that?

7 A. Sorry?

8 Q. You see your name?

9 A. This cheque?

10 Q. Yes, is it your cheque?

11 A. This is my signature, but this is my lawyer make.

12 Q. Your lawyer wrote the cheque?

13 A. Yeah, also lawyer with me in Dubai.

14 Q. Your lawyer came to Dubai with you?

15 A. Yeah, also he's with me in Dubai.

16 Q. When you're in Dubai, did your lawyer help you
17 understand the agreement, the loan agreement?

18 A. Yeah.

19 Q. Your name there is spelt "Muhammad Yar" on the cheque,
20 "Y-A-R". Do you see?

21 A. Yeah.

22 Q. Is that correct?

23 A. Yes.

24 Q. From your memory, Mr Yer, in May 2015, you decided not
25 to go through with the deal?

1 14:05 A. Sorry?

2 Q. You decided no deal in May 2015?

3 A. Yeah, yeah, after I decided I not do this deal.

4 Q. Why did you decide that?

5 A. Mr Akbar told me, "This is Mr Dr. He have a defaulter
6 in Dubai. He gave some loan to other guy." Why I give
7 to money him? Just I stop. I call bank and he told I'm
8 lucky guy. Same time bank not transfer my money. He
9 told me, "Sorry, I forget." Now, I'm lucky man.

10 Q. That was in -- if you can remember, when in May did you
11 decide no deal? At the beginning, in the middle or at
12 the end? Do you remember?

13 A. No, maybe May now, boss, actually I forget this
14 question. I forget this deal also.

15 Q. I understand. I understand.

16 Did you call Dr Sheikh to tell him?

17 A. No, no, no. Actually, you know, now is finished the
18 deal, after I'm not facing to Mr Dr, I gave him to
19 promise, I gave you money and after I broke the deal,
20 why I face to him? I'm not facing.

21 Q. You didn't speak to him at all?

22 Mr Akbar --

23 A. Yes, boss.

24 Q. -- has told us in a statement that he did some due
25 diligence on the company and that he told you. He did

1 14:07 some investigation into MAS and then he told you. Do
2 you remember that?

3 A. Please, I cannot understand. Please tell me again
4 slowly.

5 Q. I think we'll leave that, Mr Yer.

6 Mr Yer, there was no agreement in April 2015, was
7 there?

8 A. Yes, yes, I made the agreement.

9 Q. The meetings in April 2015, with Dr Sheikh, they didn't
10 take place, did they?

11 A. In his office.

12 Q. Your witness statement, which you don't understand --

13 A. This one?

14 Q. The one that we have been looking at, you didn't write
15 that witness statement, did you?

16 A. This is I gave statement to him, from my side.

17 Q. You have agreed to give evidence to help Dr Sheikh and
18 in so doing, you have agreed to lie for him, haven't
19 you?

20 A. Repeat me again, please.

21 Q. Dr Sheikh has asked you to say things which are not
22 true, hasn't he?

23 A. No, no.

24 Q. If I can just take a moment, Mr Yer, and sir. I just
25 want to check my instructions.

1 14:10 Thank you, Mr Yer. I'm sorry if this has been
2 frustrating and for my part in that.

3 Sir, Mr Mackie, I have no further questions.

4 MR PRESIDENT: Dr Sheikh, do you have any further questions?

5 DR SHEIKH: No, I don't think that Mr Yer will be able to
6 understand. I have no further questions for
7 Mr Yer, sir.

8 MR PRESIDENT: Thank you very much. Thank you, Mr Yer --

9 MR AL AIDAROUS: Sir, I have a question.

10 WITNESS: Thank you very much. Sorry, you know, not talk to
11 you. I'm very sorry.

12 MR AL AIDAROUS: I have a question, please.

13 Questions by the TRIBUNAL

14 MR AL AIDAROUS: Very quick. Mr Yer, Salam Alaykum.

15 Do you hear, Mr Yer?

16 A. Yeah, yeah, I hear.

17 MR AL AIDAROUS: I will ask you very simple question, the
18 cheque you see here in front of you, the cheque, the
19 date is 27 April 2015?

20 A. Yeah.

21 MR AL AIDAROUS: When this cheque has been stopped by your
22 bank? Your bank stopped this cheque? You give him
23 instruction to stop this cheque?

24 A. No, I'm sorry. This cheque was for security, not for
25 the presenting my (unclear ...).

1 14:11 MR AL AIDAROUS: Okay, this is for security.

2 Now, my question is --

3 A. Mr Dr told me in his office, means I cannot believe
4 anybody. "You have any cheque?" I asked, "Okay, I will
5 check in my -- you know, in my bag." "I have the
6 chequebook." I told, "I have the Pakistani chequebook."
7 He told me, "Okay, give me for the guarantee." This is
8 my guarantee cheque, not for the (unclear ...).

9 MR AL AIDAROUS: This is not for payment of \$600,000? This
10 was guarantee cheque you offer, you give it to
11 Dr Mubashir?

12 A. Yes, yes, sir. Yes, sir. Now I understand.

13 MR AL AIDAROUS: Thank you very much. I'll ask another very
14 simple question. Did you call Dr Mubashir to say that,
15 "I cancelled the deal"?

16 A. No, Mr Akbar call. I cannot call Mr Mubashir.

17 MR AL AIDAROUS: When you can remember -- I know it's very
18 old. Can you remember when you inform, when Mr Akbar
19 told that, "We cancelled", you cancelled the deal? Can
20 you remember? If you can.

21 A. No, I don't know. This is Akbar. Akbar bring the
22 cheque, bring the cheque, my cheque also. And he told,
23 "Now deal is cancelled", to Mr Mubashir. Lots of give
24 to money in Dubai. I told (Arabic spoken). This is,
25 you know, I save my side.

1 14:13 MR AL AIDAROUS: Thank you very much, Mr Yer. Sorry,

2 Mr Chairman. That's all I have.

3 MR PRESIDENT: Thank you and goodbye.

4 WITNESS: I'm sorry, again.

5 MR PRESIDENT: No problem. We're very grateful to you for
6 your help. Thank you, goodbye.

7 WITNESS: Thank you very much.

8 (Witness withdrew)

9 MR PRESIDENT: I think we now move back to Dr Sheikh giving
10 evidence. Shall we take a brief break before we do
11 that? What do my colleagues think?

12 MR AL AIDAROUS: Yes.

13 MR PRESIDENT: Would you like your 20-minute break now?

14 MR AL AIDAROUS: Perfect.

15 MR PRESIDENT: I think there are religious reasons as well.

16 I think we will break now for 20 minutes. So, as it
17 were, Mr Khan can resume his thoughts about Dr Sheikh
18 and Dr Sheikh can move from being party to being witness
19 again.

20 So, it is now 11.15 and we will start again at

21 11.35. Thank you.

22 (2.14 pm)

23 (Short break)

24 (2.34 pm)

25

1 14:34

DR MUBASHIR SHEIKH

2 Cross-examination by MR KHAN (continued)

3 MR KHAN: Dr Sheikh, as at March 2015, how long had you
4 known Mr Akbar?

5 A. Mr Akbar, I've only met him for the first time when Atta
6 brought him to my office, sir.

7 Q. That's not what Mr Yer said, is it?

8 A. I know, but --

9 Q. You've known him for six or seven years?

10 A. I know what he said and I think he's wrong or maybe
11 I think that he's referring to Mr Atta Ul-Hayee.

12 I don't speak on his behalf, but it is clear that most
13 of the conversation, he didn't understand.

14 And one more thing I'd like to say is this, that it
15 is unfortunate, but this is our -- I should use the word
16 maybe Pakistani culture, that if you meet someone for
17 the first time and people like to brag and they say,
18 "This person, he is my brother, I've known him for long
19 years." That is just a figure of speech, but this is
20 not true.

21 So, I will say this to you, for the record, that
22 I have met Mr Akbar for the first time in my life when
23 Atta brought him to my office, sir.

24 Q. This morning, or this afternoon, where you are, we
25 discussed the signature authority for the cheque. And

1 14:36 I'd like to take you and the tribunal to those, just to
2 confirm for the record what the relevant authorities
3 were and who were in the various pools as signatories.

4 Can I take you to A73-992. Just slowly scroll down
5 to the middle of the page.

6 The resolution passed by the directors in the summer
7 of 2014 -- can we just pause there.

8 One sees you, Dr Sheikh, and Mr Bhatia, in pool 1;
9 correct?

10 A. That's right, sir.

11 Q. Then in pool 2, we see three people, including Mr Awais;
12 correct?

13 A. That's right, sir.

14 Q. Were all three of those people in pool 2 working for MAS
15 in April and May 2015?

16 A. Sorry, in April or May 2015, so I was working, Anish was
17 working, Ali was working, Adela was working, and to best
18 of my recollection, Melanie Bond was not working, sir.

19 Q. Can we go to page 993.

20 The resolution further provides for the signing
21 authority limits; do you see that?

22 A. Yes, sir, I do.

23 Q. If you scroll down, you see that you are one of the
24 signatories; correct?

25 A. I am indeed, sir.

1 14:38 Q. Do you remember this resolution and signing it?

2 A. Yes, of course.

3 Q. If we go back up to the top of the screen, that shows,
4 does it not, that acting alone, as a pool 1 signatory,
5 you could only write a cheque up to and including
6 183,500 dirhams or foreign currency equivalent. That's
7 correct, isn't it?

8 A. Indeed, it is.

9 Q. For completeness, if we can please go to A74-998. This
10 is a further resolution, which corrects an error in the
11 resolution dated August 2014 that we have just seen.

12 If we just scroll down, this identifies and corrects
13 a clerical error; do you see that?

14 A. Where are you referring to, sir?

15 Q. Where it says:

16 "It was resolved ..."

17 A. Go ahead. Should I read it? Just bear with me for
18 a second, please.

19 Q. Of course.?

20 A. Just bear with me, because I'm little bit ...

21 Okay, go ahead, sir.

22 Q. Just confirming that this September resolution corrected
23 the August resolution, due to a clerical error. That's
24 right, isn't it?

25 A. So it appears, that's right, sir.

1 14:42 Q. Is it your recollection that the August resolution,
2 subject to the September amendment, is the one that was
3 in force at the time you issued the cheques to India
4 Focus Cardinal?

5 A. Okay, you have to ask me the question again, because
6 I have to make -- be sure that I not only understand it,
7 but I understand the context. So may I request you to
8 kindly ask the question again, please.

9 Q. When you wrote the cheques to India Focus Cardinal on
10 3 May and 6 May 2015 --

11 A. Right.

12 Q. -- you did so subject to the authorities provided for in
13 those resolutions; correct?

14 A. Let me answer that question. I have just highlighted to
15 you earlier part of my witness hearing part, that at the
16 time when I wrote the 2.2 million dirham cheque, I had
17 no recollection of any limit whatsoever. I just wrote
18 the cheque and then when it got bounced, that's when
19 I was informed that there were limitations.

20 So at the time when I wrote the cheque of
21 2.2 million dirhams, for India Focus Cardinal, I had
22 zero -- and I repeat, sir, I had zero recollection of
23 any limitations whatsoever.

24 Q. Can we pull up document A118-1800.

25 If we slowly scroll down, so Dr Sheikh can remind

1 14:44 himself of what this document is.

2 A. Go ahead, please.

3 Q. Can we then go to page 1802, the same document. If you
4 slowly scroll down, you see Mr Ali, MAS and you are
5 parties to this investment agreement?

6 A. Yes.

7 Q. If you can please, Fatima, kindly scroll down to the
8 recitals.

9 Have you read that, Dr Sheikh?

10 A. Forgive me, did you want me to read something? I'm
11 sorry. Please, what would you like me to read, sir?

12 Q. The recitals, please.

13 A. All of them? Just bear with me.

14 Fatima, can you zoom this? I'm finding it a bit
15 challenging to read, if you don't mind.

16 Fatima, if you can scroll down kindly.

17 Go ahead, Fatima, if you can kindly scroll down,
18 please.

19 Q. That's all I want you to read for the moment.

20 A. Okay. Yes, sir. I have read it.

21 Q. Can you confirm that this is an investment agreement
22 whereby Mr Ali, as the investor, has been issued what's
23 defined as the share?

24 That's in the recital, the second recital, if you
25 just scroll back up a little bit, Fatima, please.

1 14:48 Just a moment, Dr Sheikh. I'll ask you again when
2 you can see it.

3 Under "Recital", it says "whereas" a number of
4 times. The second occasion it says that, it says in
5 consideration of various matters, MAS has issued
6 something defined as the debenture and the share. Do
7 you see that, "the share"?

8 A. That's right. May I request one thing, Mr Khan? Could
9 I request, if you would be so kind, to request Fatima to
10 bring this document right at the very first page, like
11 that, because -- if you don't mind, sir. The very
12 beginning of the page, which means the cover page, if
13 you would be so kind, sir.

14 Q. I think the cover for this particular agreement is at
15 1800 that we have just seen.

16 A. I would like to request you that I would like to see it
17 again, because you keep referring to this as investment
18 agreement, but ...

19 Q. Just pause where it says "investment agreement".

20 A. Okay. Go ahead. That's fine. Thank you, Fatima.
21 Please continue, sir.

22 Q. If we go back to 1802, you see there that a share has
23 been issued to the investor.

24 A. Just bear with me for a second. Are you referring to
25 the recital number 2?

1 14:50 Q. Yes, it's not number 2, it's the second recital.

2 A. Bear with me for a second, sir.

3 You know, I have read it, but I'm struggling to
4 understand it. So would you bear with me, so that I'm
5 trying to make some sense out of this for me, if you
6 don't mind, sir.

7 Q. Of course.

8 A. Okay, go ahead, please ask the question.

9 Q. This recital acknowledges that MAS has issued the share
10 to Mr Ali; correct?

11 A. May I draw your attention to one fact and then, of
12 course, I will be happy to continue answering, as per
13 your right. That, sir, the agreement that you are
14 presenting to you, representing, is a non-valid
15 unexecuted agreement. Just to let you know, sir.

16 But please go ahead and ask whatever you want to
17 ask.

18 Q. I'll repeat my question.

19 MR PRESIDENT: Yes, go ahead. When you're asked a question,
20 please answer the question. If you want to add
21 something, you do it at the end of the question.
22 Because otherwise, it wastes all our time, because it's
23 then necessary for the question to be asked all over
24 again. So please just answer the question. Thank you.

25 A. My apologies, your Honour.

1 14:52 MR KHAN: MAS had issued the share to Mr Ali. That's right,
2 isn't it?

3 A. That's right, sir.

4 Q. If you scroll down, Fatima, to the very last "whereas",
5 which is the very last recital, under this investment
6 agreement, previous or different investment facilities
7 are referred to, aren't they?

8 A. That's right, sir.

9 Q. There are loans in the amount of \$1 million; correct?

10 A. That's right, sir.

11 Q. Of which 150,000, according to this recital, has been
12 repaid or remitted by MAS to the investor; correct?

13 A. Just bear with me, sir. I'm just reading that part.

14 That's right, sir.

15 Q. If we can now please go to page 1805, this is in the
16 definitions of this agreement. Go to the middle, where
17 it says "shares".

18 A. Fatima, may I request if you can zoom this a little bit,
19 please. I'm finding it a bit challenging to read.

20 Yes, sir. Forgive the interruption, sir.

21 Q. Just read that to yourself, please.

22 A. Which section, sir?

23 Q. Definition of "shares".

24 A. Yes, sir.

25 Q. This defines, I believe, the share that MAS gave Mr Ali

1 14:55 under this agreement; is that correct?

2 A. So it appears, but I must admit that I don't really
3 understand the details, but so it appears, sir.

4 Q. It appears to be for 1.25 per cent of the shares in MAS?

5 A. So it appears, sir.

6 Q. It's a long agreement. We can scroll down, if we may,
7 to 1816, but Fatima, if you can just scroll down,
8 because I want to illustrate the length of this
9 agreement without necessarily going to any of the
10 clauses.

11 If you go to the bottom of 1816, the bottom half,
12 where it says, "In witness thereof ...", you see there
13 there's a place for Mr Ali to sign, but it's unsigned?

14 A. That's right.

15 Q. It's due to be signed by Mr Ali, who is the investor,
16 who was anticipated would receive the shares,
17 1.25 per cent, I believe, share of MAS, in January 2015,
18 but, as you said, this document appears unsigned by him.

19 But if we scroll down to the bottom of this page, it
20 is signed by Mr Bhatia on behalf of MAS.

21 If we go to the next page at the top, scroll
22 a little bit up, so we can see a complete illustration
23 of Dr Mubashir's signature. We see there that this is
24 signed also by Mr Awais, as the chief operating officer,
25 and it's also signed by you, Dr Sheikh. You're the

1 14:58 guarantor?

2 A. That's right, sir.

3 Q. Presumably, you're the guarantor because you control the
4 company which is giving up the shares; is that right?

5 A. That's not the reason for me being the guarantor, sir.

6 Q. Why are you the guarantor?

7 A. Sir, in this month, Mr Sheharyar Ali had threatened MAS
8 ClearSight that he will bounce MAS ClearSight cheques,
9 which had signatories at the time, who were Mr Anish
10 Bhatia, Mr Ali Awais, and I think Adela Mokra, the
11 operations manager. And with that threat, he made it so
12 serious that my three colleagues came to my office and
13 said that, "Dr Sheikh, Mr Sheharyar is threatening to
14 bounce the cheque and that means that since we are
15 signatures on the cheque, we will run into legal
16 difficulties." And they had requested me that,
17 "Dr Sheikh, this is your company, and we hope that you
18 can resolve this issue for us, but we don't want to be
19 exposed to this threat."

20 So following that, I had a conversation with
21 Mr Sheharyar Ali, and then Mr Sheharyar Ali and I came
22 to an agreement that under the conditions that if he
23 returns the cheques of MAS ClearSight, so that my
24 colleagues can be protected, I proposed to him that
25 I will be able to offer my personal guarantee cheques

1 15:00 with the sole intention to protect my colleagues. And
2 secondly, that whatever shares that are issued to him at
3 the time of the investment, he will return those shares
4 to the company, based on the pro rata -- the word I'm
5 looking for is pro rata repayment of his loans, sir.

6 With that telephone conversation, Mr Sheharyar Ali
7 had commissioned his lawyer in Pakistan and then he had
8 sent this exhaustive extremely complicated legal
9 document, which I had requested Mr Awais to help me
10 review this to whatever it is extent.

11 Then the sole purpose -- and I repeat, sir, that my
12 sole purpose to engage in this agreement, as
13 a guarantor, was to try with the sole objective to
14 protect my colleagues against the threat that they were
15 fearing.

16 With this -- then this document was sent, I think in
17 DHL, along with my postdated cheques, without even have
18 received or without even have received the confirmation
19 from Mr Sheharyar Ali, that he intends to carry this
20 agreement.

21 Then this next day, the following day -- and I don't
22 remember if it was next day, following day or few days
23 later, Mr Sheharyar Ali sent me an email saying,
24 "Dr Sheikh, thank you very much. We have received the
25 agreement. Thank you very much that you send your

1 15:01 postdated cheque, but my lawyers", which means lawyers
2 of Mr Sheharyar Ali, are telling him, "Do not send the
3 cheques of MAS ClearSight. Do not return those
4 cheques."

5 This is on record on the email, and by way of that,
6 Mr Sheharyar Ali writes me an email saying, "Dr Sheikh,
7 please believe me. Please trust me --

8 MR KHAN: Dr Sheikh, I'm going to stop you there, if I may,
9 I think you've gone beyond the bounds of my question.

10 A. My apologies.

11 Q. Thanks for the detail, but I'd like to get some of this
12 done today.

13 A. Forgive me.

14 Q. I'm going to put it to you that this is what a real
15 agreement looks like whereby a party is giving up shares
16 in a business?

17 A. Well, I'm not sure that if I'm qualified to answer this,
18 but this is the agreement, which his lawyers prepared.
19 So I don't know what else would you like me to say here,
20 sir.

21 Q. In contradistinction to the agreement that you say you
22 prepared to give up 51 per cent of your company to
23 Mr Akbar --

24 A. That's right.

25 Q. -- that's a false agreement, and this is a real

1 15:03 agreement.

2 A. Absolutely wrong, sir. Your characterisation is totally
3 unacceptable.

4 Q. Can I take you now to document A54-925.

5 This is the guarantee cheque that Mr Akbar provided
6 to you, to MAS ClearSight, in the amount of
7 approximately \$2 million. That's correct, isn't it?

8 A. That's right, sir.

9 Q. I believe it's uncontroversial that it turns out that
10 the bank account to which this cheque relates had been
11 closed down two years previously?

12 A. I learned that once DFSA had briefed or given this
13 information to me several years down the road, sir.

14 Q. But it's true, isn't it?

15 A. I cannot comment on that, sir, because I have no
16 knowledge of that.

17 Q. Can I please now go to document A76, number 1020.

18 Fatima, if you can please scroll down in a moment,
19 but this is an email dated 4 May 2015, from Mr Ali to
20 you and other people at MAS. Do you see that?

21 A. Yes, sir.

22 Q. Fatima, if you can scroll down, at Dr Sheikh's behest,
23 so he can read that document, please.

24 A. Yes, sir, go ahead.

25 Q. What he's saying here is:

1 15:07 "The cheque which you [Dr Sheikh] have sent me a
2 copy of is from an account which was closed years back.
3 This account does not exist anymore so the cheque is
4 useless."

5 That's what it says there, doesn't it?

6 A. It says that, but this cheque does not belong to me,
7 sir. So you should know that.

8 Q. If you go to page 1021, if you just pause there, go back
9 up, Fatima, so we can see the top of the email. This is
10 from you, the previous day, this is from you to Mr Ali.
11 You say:

12 "I hope and pray my email finds you in best of
13 health and spirit. I am pleased to advice you that I
14 have secured an investor who has invested PAK [rupees].
15 50.000,000 approximately USD 500K with me. I take the
16 liberty to attach the copy of the check which I have
17 received and is dated 6th of May 2015."

18 A. Yes, sir. Would you like me to read the whole email?

19 Q. No. Then if we can please go to document A75-1013.

20 This is the cheque, isn't it, for 50 million rupees
21 that you refer to in your email of 3 May; correct?

22 A. That's right, sir.

23 Q. As we have seen on 4 May, Mr Ali accuses you of having
24 sent him this cheque from a bank account that does not
25 exist. That's right, isn't it?

1 15:09 A. That's right, sir.

2 Q. The cheque is purportedly from an investor in MAS.

3 That's correct, isn't it?

4 A. When you say "in MAS", say that again? I didn't follow.

5 The cheque is purportedly in MAS?

6 Q. The cheque is purportedly from an investor in MAS.

7 A. Not in MAS or I don't remember the part with MAS. I had

8 a consultant in Pakistan, who had approached an

9 investor, and then he had sent me a WhatsApp text saying

10 that, "Dr Sheikh, I have secured an investor", and he

11 had sent this to me on a WhatsApp screen.

12 So, yes, you're right, that I had taken this

13 information from an external consultant of MAS in

14 Pakistan, that this is a cheque which he had sent to

15 give me a sense of comfort that he has secured an

16 investor.

17 So, yes, please continue.

18 Q. You were presenting that to Mr Ali to reassure him that

19 in your dealings with Mr Ali, you would be able to come

20 up with the money you owed him?

21 A. That's absolutely right. Once I have received this

22 WhatsApp cheque picture, I had taken the liberty to

23 forward it to him to inspire him, saying that I have

24 received this cheque, so hopefully soon, the money will

25 come in. And I was trying to give him a sense of

1 15:11 comfort, so that he does not take legal action against
2 the postdated cheques of the company, sir. That's
3 right.

4 Q. I'm going to put it to you that that shows a pattern of
5 behaviour by you of making up investors and to try and
6 prove those investors exist, presenting cheques from
7 defunct bank accounts.

8 A. Sir, I understand why you're saying that, but I say
9 this, that your characterisation is absolutely wrong.

10 Q. It's no coincidence, is it, that on 3 May, you are being
11 required to try and stop Mr Ali from presenting your
12 cheques to the authorities in Dubai, that you are also
13 trying to -- your first attempt to withdraw all the
14 money from the MAS ClearSight bank account by writing
15 the cheque to India Focus Cardinal. It's no
16 coincidence, is it?

17 A. Your assessment is absolutely and utterly wrong, sir.

18 Q. You're making preparations, aren't you, to take flight
19 from Dubai, with as much money as you can muster,
20 because you're afraid Mr Ali is going to present your
21 cheques, which you cannot honour, to the authorities in
22 Dubai?

23 A. Absolutely not, sir.

24 Q. You can take that down now, Fatima.

25 Now, just going back to the Akbar and Yer cheques,

1 15:13 you had executed agreements with both Mr Akbar and
2 Mr Yer on your own case; correct?

3 A. That's right, sir.

4 Q. You had fully enforceable contracts. That's correct,
5 isn't it?

6 A. That's right, sir.

7 Q. You had in your hand two guarantee cheques which you
8 believed to be capable of being cashed. That's correct,
9 isn't it?

10 A. That's right, sir.

11 Q. When, in June, as you say, you found out that they had
12 gone back on the deal and no longer wished to carry
13 through with it, why didn't you just cash the cheques?

14 A. That choice certainly was available to me and I had
15 discussed that with Atta and, at the end of the day,
16 I realised that the investors have decided not to move
17 forward, because of their assessment of the risk of the
18 company.

19 So to put things in perspective, I did not want to
20 enforce either Mr Akbar or Mr Yer against their will to
21 make an investment in my company and become a majority
22 shareholder.

23 So, in my humble opinion, I took the morally high
24 road and respectfully returned the cheques, as I had
25 been requested by Atta that the investors are requesting

1 15:14 their cheques back.

2 So, yes, I made a conscious effort and a conscious
3 decision, and I should say a morally correct decision,
4 in my opinion, not to enforce by putting those cheques
5 for enforcing the contracts, sir.

6 Q. When the 2.2 million cheque to India Focus Cardinal was
7 returned, you then proceeded to withdraw all of the cash
8 in the AED bank account, didn't you?

9 A. That's right, sir.

10 Q. You took most of the money out in May, as we have seen.
11 That's right, isn't it?

12 A. That's right, sir.

13 Q. Then you went back for more when you realised that
14 payments had been received in June. That's right, isn't
15 it?

16 A. Yes, and if you like, I'm happy to make a small
17 addition, if you deem appropriate, because this was
18 a question that you had also asked me towards the tail
19 end of our --

20 Q. No, thank you, Dr Sheikh. I'm trying to make progress.
21 We've gone over that ground.

22 I'm going to put it to you that the agreements with
23 Mr Akbar and Mr Yer, and all the surrounding
24 circumstances, the whole story that you have developed
25 through these proceedings, are fabricated and they have

1 15:16 been reverse engineered to fit the events that actually
2 happened. That's right, isn't it?

3 A. I understand what you're saying, sir, but it is
4 absolutely and utterly wrong, sir.

5 Q. I just have a few questions about the meetings and
6 negotiations with Mr Akbar and Mr Yer that I'd like to
7 clear up, if I may.

8 A. With pleasure.

9 Q. Who do you say was in the meeting that took place
10 in April involving you and Mr Yer?

11 A. Meeting that took place with Mr Yer in April? Are you
12 referring to the first meeting or the second meeting,
13 sir?

14 Q. Take each of them in turn, please.

15 A. For the first meeting, it was myself, Mr Atta Ul-Hayee,
16 Mr Akbar and Mr Yer, sir.

17 Q. According to Mr Yer, he said his lawyer was at that
18 meeting.

19 A. No, absolutely not, sir.

20 Q. I have taken you to the 25 August email from you to
21 Mr Jensen.

22 A. Right.

23 Q. Where you explain why MAS had breached its capital
24 requirements. Do you recall that?

25 A. Yes.

1 15:18 Q. There's absolutely no reference to Mr Akbar, Mr Yer or
2 the need to withdraw money to honour those agreements,
3 is there, in that email?

4 A. That's correct, sir.

5 Q. The first time you refer to Mr Akbar and Mr Yer in these
6 agreements is on 26 July 2016; correct?

7 A. Indeed, as a result of the first time being asked by
8 DFSA, the specific questions to the event, that's
9 correct, sir.

10 Forgive me, just so you know, the DFSA had reached
11 out to me in May and June in 2016 for the first time
12 asking for this information, sir.

13 Q. Can we go to C62-425. I'm going to go to the August
14 email again, I'm afraid, because this is important.

15 A. Sure, sir.

16 Q. If we go down to the bottom part of the email, we have
17 seen this many times. I apologise that we have to
18 return to it. Just pause there.

19 You keep saying that you provided information in
20 2016 about Mr Akbar and Mr Yer --

21 A. That's right.

22 Q. -- because you were specifically asked questions about
23 it.

24 A. That's right, sir.

25 Q. That is true, I think we agree with that, but in this

1 15:19 email, you have volunteered an explanation for why there
2 was a capital breach. You say:

3 "The company had capital breach due to the fact that
4 payment had to be made for salaries for some staff and
5 the company loans installments installment was to be
6 made."

7 Do you see that?

8 A. I certainly see that, but that's not what I had intended
9 to communicate, sir.

10 Q. If the real reason you withdrew the cash was because you
11 were under the apprehension that you had to pay Mr Akbar
12 under the agreement, you would have explained it in this
13 email?

14 A. And I will answer this question, since you asked.

15 Sir, this email, when I wrote, it was an absolutely,
16 a catastrophic emotional trauma, because less than few
17 days ago or couple of weeks ago or one week ago, I had
18 learned that DFSA has sanctioned MAS with a fine of
19 \$3.2 million and that had killed any and all hope for me
20 to raise capital for MAS. So that was one.

21 Secondly, while I was writing this email, I can
22 assure you that this is also an incorrect assessment,
23 because in the month of May, I have paid money from my
24 personal account towards the employees' salaries.

25 And then I want to also state that the email of

1 15:21 2 July, which is what it's referred to, because this
2 is -- of that, that I had made again an error in that
3 email, because the money which I asserted to, that the
4 capital has been used towards paying the salaries and
5 the repayment of Mr Sheharyar's loan.

6 I want to highlight to you that the money was -- the
7 money, which was loaned by Mr Khalil, was used to pay
8 the salaries, just as I've highlighted earlier, and the
9 part of that money was used towards paying
10 Mr Sheharyar's loan in May. And the salaries of the
11 people in the month of May was paid by myself from my
12 own resources.

13 And I say this, sir, just to answer completely and
14 thoroughly your question, that in the month of May, if
15 I was taking the money and running away, I have said
16 that to you yesterday as well, sir, that I have paid
17 from my personal resources, in the month of May,
18 salaries for the employees.

19 I have also paid, in the month of June, in the
20 beginning, by way of junior staff payments and I have
21 also paid from my personal account, in the month
22 of June, the interest payment from Mr Khalil.

23 So I put this to you, that this email that you rely
24 heavily upon is an email written by a man, who has just
25 learned few days ago that his entire life has

1 15:22 permanently changed and has lost any and all hope for
2 revival and it was an emotionally very traumatic
3 experience.

4 In order for you to be able to reconcile your
5 thinking and your position, that I had written my
6 personal cheques and I have provided the proof, which is
7 part of --

8 MR PRESIDENT: Dr Sheikh, Dr Sheikh, I'm not sure this is an
9 answer to the question any more.

10 A. I beg your pardon, your Honour.

11 MR PRESIDENT: You were asked about the particular sentence
12 in the email.

13 A. I beg you pardon.

14 MR PRESIDENT: As I understood it, you said the reason that
15 you had not given an accurate description was because of
16 your emotional turbulence at the time. That being the
17 case, let's move on to the next question.

18 A. Thank you. I apologise, your Honour.

19 MR KHAN: Can we go to document C98-1323. This is part of
20 your latest witness statement.

21 Five lines down, it says:

22 "In early May, Mr Yar assured me that he had made
23 the request at his bank to make the transfer of
24 USD 600,000 into the MAS account and that it would
25 arrive shortly."

- 1 15:24 A. You said early May, sir? Just bear with me for
2 a second. Can I read it, if you don't mind, sir?
3 Q. Five lines down, it starts, "In early May ..."
4 A. Would you allow me to read this for a second, sir?
5 Q. Of course.
6 A. Thank you.
7 Very well, sir. Please continue.
8 Q. This suggests that you had a conversation with Mr Yer;
9 is that correct?
10 A. Absolutely right, sir.
11 Q. Is there any written communication, an email or
12 a message or was this over the phone?
13 A. It was over the phone, sir.
14 Q. You heard Mr Yer's evidence. He said that his lawyer
15 wrote the cheque out for him and gave it to you on
16 27 April. That's right, isn't it?
17 A. What I heard, sir, is that Mr Yer said that his lawyer
18 has written the cheque and what I heard was that he has
19 given the cheque to me on the date when we signed the
20 agreement on 27th. And if your insinuation is that his
21 lawyer was physically in the meeting to write the
22 cheque, that is not correct, sir.
23 Q. No, my point is that he said he didn't speak to you
24 after that.
25 A. No, that's not what he said, sir. To best of my

1 15:27 recollection, from Mr Yer's testimony, as awkward as it
2 may have been, that he said that he did not speak to me
3 in the month of June, when he had reneged his agreement
4 of making an investment. And I think the reason he said
5 was that he didn't want --

6 MR PRESIDENT: Let's just deal with your recollection,
7 Dr Sheikh, because we can all go back and look at the
8 transcript of what Mr Yer said. So don't worry about
9 remembering what he said.

10 A. I beg your pardon, sir. May I request if you can ask
11 the question again, sir?

12 MR KHAN: Dr Sheikh, it's not necessary. Let's move on.

13 If we can go to page 1324, paragraph 49.

14 If you just read the first sentence, please.

15 A. Very well, sir. I have read it.

16 Q. Am I right in inferring that this was again another
17 telephone conversation that you had?

18 A. That's right, sir.

19 Q. Did you send any text messages to Mr Akbar or Mr Yer
20 throughout the period that you were speaking to them?

21 A. No, sir.

22 Q. Everything was either done in an alleged meeting or on
23 an alleged telephone call; is that right?

24 A. That's right, sir.

25 Q. That's your explanation as to why there is not a shred

1 15:29 of documentary evidence in support of your case, other
2 than the agreement itself?

3 A. That's right, sir.

4 Q. It's true, isn't it, that's all consistent with it never
5 having happened?

6 A. Forgive me, say that again, sir?

7 Q. That is entirely consistent with those meetings and
8 those telephone conversations never having occurred?

9 A. So you're saying that those meetings never happened and
10 if that's what you're saying, I say this to you, sir,
11 that it is an absolute wrong characterisation of your
12 assessment, sir.

13 Q. Your case is that a number of people knew about the deal
14 that had been agreed; correct?

15 A. I'm not sure what you mean by that, sir.

16 Q. It's your case that a number of individuals, who I'm
17 about to identify, knew about, had knowledge of, the
18 agreements that you'd entered into with Mr Yer and
19 Mr Akbar on behalf of MAS; is that correct?

20 A. I can only answer to that is subject to if you identify
21 the timeframe of your question, sir.

22 Q. Mr Ul-Hayee knew about the agreements, didn't he?

23 A. That's right, sir.

24 Q. This is around the time the agreements were entered
25 into. Mr Salahuddin knew about the agreements,

1 15:30 according to you, didn't he?

2 A. No, sir. Would you allow me to finish my answer, with
3 due respect, Mr Khan?

4 When you said that Mr Atta Ul-Hayee knew the
5 agreement, Mr Atta Ul-Hayee knew that there is going to
6 be an agreement. Mr Atta Ul-Hayee have witnessed the
7 agreement with Mr Yer, but Mr Atta Ul-Hayee did not
8 witness the signed agreement with Mr Akbar. Please
9 continue, sir.

10 Q. Did he know about the signed agreement with Mr Akbar?

11 A. Yes, sir.

12 Q. You say Mr Salahuddin knew about the investment deal?

13 A. No, no. Not at all, sir. Mr Salahuddin, I told
14 Mr Salahuddin that I am doing an investment transaction
15 for which I'm going to withdraw a lot of money and
16 that's the extent of the knowledge of Mr Salahuddin,
17 sir.

18 Q. Mr Bhatia, you say, knew about the investment deal,
19 don't you?

20 A. Once again, sir, Mr Bhatia knew exactly what I told him,
21 that I'm about to do a large investment transaction --
22 sorry, I'm about to do an investment transaction, where
23 I would require a lot of cash. And that is the extent
24 of the information that he knew as well, sir.

25 Q. Your driver, Mr Shahzad, overheard you talking about the

1 15:32 investment deal, didn't he?

2 A. My driver overheard about the investment deal? No, my
3 driver overheard that I spoke to Mr Salahuddin about an
4 investor, who is demanding a very large amount of money
5 upfront. To the extent of that information, yes, he
6 overheard that conversation, sir.

7 Q. And Mr Khalil Ahmed says in his witness statement, at
8 paragraph 15, that you told him about a
9 \$2 million investment deal. That's correct, isn't it?

10 A. Indeed. To the extent that I have highlighted that I am
11 about to close, or I don't remember the exact wordings,
12 that there is an investment deal of \$2 million. To that
13 extent, that's correct as well, sir.

14 Q. Mr Awais says in his evidence that you briefed him about
15 the deal with Mr Akbar and Mr Yer, didn't you?

16 A. My recollection of that conversation is that
17 I highlighted to him, or a note, by saying that I am
18 doing a large transaction and which may -- sorry, I have
19 to choose my words carefully.

20 Let me state that, your Honours and Mr Khan, that
21 this is a conversation, once again, a long time back
22 ago. I have just highlighted time and time again that
23 I have personally, as an individual, difficulty in
24 recollection and by virtue of my poor memory --

25 Q. Dr Sheikh, just do the best you can. If you can't

1 15:33 answer, say you cannot answer.

2 A. God bless you, sir. I can't answer to the precision
3 that you probably would require, sir.

4 Q. Mr Awais says in his witness statement, paragraph 17:

5 "I am aware that he [Dr Sheikh] had two meetings
6 with Mr Akbar and Mr Yer as briefed by him to me back
7 then."

8 So you briefed him, according to Mr Awais?

9 A. Like I said, that I'm unable to recollect that
10 information, sir.

11 Q. Yet, you kept the information about the deal from your
12 own board. That's right, isn't it?

13 A. That's right. And when you say I hold the information
14 back from my own board, during the meeting of 26 April,
15 I did not speak specifically about the investment
16 agreements or specific investor. That's right, sir.

17 Q. On your own case, six days before that board meeting,
18 you had agreed for MAS Holders to sell a majority share
19 in the company to Mr Akbar; correct?

20 A. That's right, sir.

21 Q. MAS has agreed that the new investor and majority
22 shareholder, Mr Akbar, could change the composition of
23 the board; correct?

24 A. That's right, sir.

25 Q. You had volunteered, and Mr Akbar had accepted and

1 15:35 acquiesced to your voluntary act of stepping down as
2 chairman of the board. That's correct, isn't it?

3 A. Let me say that Mr Akbar did not accept, but Mr Akbar
4 appreciated, which is what I said to him, sir.

5 Q. So there's no doubt about it, you were entering MAS
6 ClearSight into this fundamental agreement with
7 Mr Akbar. That's correct, isn't it?

8 A. That's right, sir.

9 Q. I'm going to put it to you that the notion that you
10 could justifiably keep that agreement confidential from
11 the board of MAS is utterly absurd and unbelievable.

12 A. I respond to your question by saying that, sir, it is
13 not only reasonable, but it is prudent for me to do what
14 I did. And I will give you an explanation, if you wish,
15 sir.

16 Q. Of course.

17 A. The agreement that I had signed with Mr Akbar is subject
18 to a condition and that condition, as we've all heard,
19 is that I have to be able to provide him \$600,000 in
20 order to execute that agreement. At that time --

21 Q. Dr Sheikh, we haven't heard that from him, because he
22 hasn't given evidence.

23 A. I say this to you, that it is very clearly written in
24 the investment agreement, sir. So would you allow me to
25 complete my response to your goodself?

1 15:36 Q. Yes, of course.

2 A. Thank you, sir.

3 So in that agreement that I had signed with
4 Mr Akbar, on behalf of MAS, it states very clearly that
5 there is a precondition of being able to produce or give
6 \$600,000.

7 Now, at the point in time, I had -- I don't have
8 \$600,000 personally or neither does MAS had \$600,000,
9 which would not put the company in risk.

10 So I decided for two reasons. I repeat, sir,
11 I decided for two reasons to not talk about this
12 investment agreement in the board meeting held on
13 26 April 2015.

14 The first reason is this, that I did not have
15 a complete solution for execution. And the second
16 reason was this, that this agreement was under
17 confidentiality, as I have alluded to.

18 Finally, there is another reason, which is I shared
19 with my historical submissions, that there was
20 a personal selfish -- I use the word "selfish" with a
21 lot of caution and carefulness, that I wanted to explore
22 in parallel other investors, if I was able to secure
23 with a better economic deal for myself.

24 And for the reasons, more importantly for first and
25 second, which is to do with I've just alluded to, no

1 15:38 visibility -- sorry, I should not use the word
2 "visibility". No reality of having \$600,000 in my hand
3 to execute the agreement. And second, under the
4 obligation of confidentiality, which I had undertaken
5 with Mr Akbar, I did not speak about this agreement in
6 the board meeting.

7 And this is my explanation to your answer. And
8 based on that, I say this with a lot of humility and
9 respect to you, that it is very reasonable and prudent
10 for me and your characterisation, I disagree with, sir.

11 Q. Can we go to document A39-723.

12 This is a written resolution passed by the directors
13 on 7 May 2015, instigated by you, to change the level of
14 authority for authorisation to write cheques.

15 If we scroll down, we look at the resolution itself.
16 If we go back up, we see pool 1 and pool 2. Pool 1 is
17 just you now, isn't it?

18 A. That's right, sir.

19 Q. I'll segue-way for a moment, if I may. Your case is
20 that Mr Bhatia was the SEO acting and de facto SEO until
21 27 May. That's right, isn't it?

22 A. Absolutely right, sir.

23 Q. Why are you tabling a resolution to remove him as a pool
24 1 signatory?

25 A. This resolution -- sorry.

1 15:41 Can I answer that question, sir?

2 Q. Yes.

3 A. I did not instigate this resolution. I want to say on
4 record that this resolution was instigated by Mr Ali
5 Awais, who was the head of legal and chief operating
6 officer. Number 1.

7 Number 2, indeed, that Mr Bhatia is no longer
8 visible on this, because this is in the anticipation of
9 him stepping down as a preparatory action, which
10 Mr Awais had initiated, of course in consultation with
11 me. And this document does not refute the fact that
12 Mr Bhatia was not the SEO of the company, sir.

13 Q. If we just scroll down to the further resolution about
14 the bank signing powers, it shows that any amount in
15 excess of 183,501 dirhams or foreign currency equivalent
16 can be authorised by you acting alone?

17 A. Sorry, just bear with me for a second, if you don't
18 mind. I like to read it little bit carefully, sir.

19 Yes, please continue. Thank you.

20 Q. The effect of this resolution is that it allowed you,
21 acting alone, to authorise a cheque in any amount?

22 A. With due respect, sir, I'm not sure I understand this,
23 because the way I would -- if you allow me to, is the
24 following. That any amount in excess of 183,501 dirhams
25 or equivalent, any one signatory from pool 1, indeed so

1 15:43 that just will happen to be me in this scenario, and one
2 signatory from pool 2, signing in both --

3 Q. I stand corrected, thank you.

4 A. No problem, sir.

5 Q. Do you understand why Mr Awais tabled this resolution?

6 A. This is a period where Mr Awais, I imagine, for lack of
7 better expression, was doing the necessary work, which
8 is requiring or getting ready for the day that Mr Bhatia
9 would step down, I imagine. But really, I cannot speak
10 intelligently on behalf of Mr Awais, sir.

11 Q. Can I take you to your skeleton. Can we go to G2-107.

12 Sorry, before we go, can we just go to page A39-724.

13 This is a written resolution passed by the directors
14 on 14 May. If you just read that to yourself.

15 A. Sure. Thank you, sir.

16 Yes, sir, thank you.

17 Q. Why did you instigate this resolution?

18 A. Why did I instigate this resolution? Oh, I instigated
19 this resolution in the thought process that I had when
20 I had learned that I was unable to -- let me rephrase
21 myself. Just give me a quick second, sir.

22 I initiated this discussion with Mr Awais proposing
23 him that we should prepare the resolution, whereby in
24 order for me to fulfil the duties awarded to me, or
25 entrusted to me is a better expression, by the board of

1 15:46 directors on 26 April 2015, to be able to have the
2 authority to sign unilaterally the cheque of the account
3 and to be able to do my job. And for that, Mr Awais had
4 produced this resolution and this resolution was
5 presented to me on 14 May, sir.

6 Q. Just to be clear, you asked to have authority to sign
7 cheques in any amount on your own?

8 A. That's right, under the direction of the board, which is
9 the privilege that they had entrusted me on
10 26 April 2015. That's correct, sir.

11 Q. Fatima, can we now go to the skeleton at G2-106, the
12 last paragraph.

13 This is your explanation of this written resolution?

14 A. Sir, would you allow me to -- Fatima, may I request you
15 to enhance this picture? It's a bit easier for me to
16 read, if you don't mind.

17 Yes, sir, thank you.

18 Q. You say:

19 "Naturally all Board members inquired as to why I
20 need this authorisation. I explained to them that in
21 order for me to do my job and attempt to save the
22 company I needed this authority."

23 That's right, isn't it?

24 A. Right, sir.

25 Q. You didn't tell them about the deal with Mr Akbar and

1 15:49 Mr Yer or that you were withdrawing money, did you?

2 A. I say that once again to you, sir, that at this point in
3 time --

4 Q. Dr Sheikh, just answer this question. I'll let you
5 elaborate afterwards, but it's true that given this
6 opportunity to explain yourself, you did not tell any
7 board member about the deals or the withdrawal of money?

8 A. That's right, sir.

9 Q. Sorry, you were going to then elaborate on why that's
10 the case.

11 A. Oh, thank you. So, in order for me to be able to
12 explain and to bring the board into the agreement for
13 the board to sign, I had highlighted to them that the
14 authority that the board has entrusted me in order for
15 me to exercise my judgment, in order to be able to do
16 the job that the board has entrusted in me, by way of
17 executing, I require a signatory authority, which gives
18 me a unilateral authority to transfer or to access or to
19 withdraw the money from the MAS bank account.

20 And with that explanation, the board members, who as
21 you can appreciate are all highly educated and
22 well-informed people, have, what you call, unanimously
23 entrusted me with this responsibility, sir.

24 Q. But that's because you have misled them by not telling
25 them the true reason why you wanted this resolution?

1 15:50 A. No, absolutely not. I disagree with your
2 characterisation. Because, like I just mentioned to
3 you, sir, that the members of the board of MAS at the
4 time were not only just highly experienced and educated
5 people, and when someone brings in front of them
6 a resolution giving them the unilateral authority to
7 withdraw the money, knowing very well that this
8 gentleman, ie in my case myself, already had 183,500, if
9 my memory serves me well, have the signatory authority
10 and putting something, a piece of paper like this, it is
11 by way of logical -- and I repeat reasonable
12 expectation, that they know what they're signing, that
13 they're giving me a carte blanche -- a French expression
14 which says that I can do as I please -- based on this
15 authority, sir.

16 Q. I'm putting it to you that you have misled the board by
17 omitting to tell them that there's an agreement with
18 Mr Akbar and Mr Yer, and that you started to withdraw
19 money to honour that agreement. You've misled them if
20 those agreements existed?

21 A. I say this to your question, sir, that I disagree
22 totally with your characterisation. And equally
23 importantly, I'd like to highlight one more additional
24 fact that I have been saying couple of times, I suppose
25 maybe more than that, that I am or was still under the

1 15:52 obligation of confidentiality, sir.

2 Q. Can we go to document A28-692 --

3 MR PRESIDENT: Before we do, could we identify -- it's now
4 nearly 1 o'clock in the UK. How long is this going to
5 go on? Because we have almost run out of time for the
6 entire day.

7 MR KHAN: Yes. I have half an hour to 45 minutes.

8 MR PRESIDENT: Okay. I think at this point, just to save
9 time, I'm going to ask my colleagues, as it were, over
10 the screen now, whether they would like to take a break
11 now or whether they would like to carry on for the 30 or
12 40 minutes. And then I'll ask Dr Sheikh how he is.

13 Would my colleagues tell me what they would prefer?

14 MR AL AIDAROUS: I believe now is good, because convenient
15 for us.

16 MR AL HASHIMI: Yes, I'm fine with this, sir.

17 MR PRESIDENT: How long would you like to break for?

18 MR AL AIDAROUS: 10, 15 minutes maximum.

19 MR PRESIDENT: Okay. What we'll do is we'll take a break of
20 15 minutes, at this point, and then we will continue and
21 obviously, we need to leave a little bit of time after
22 this cross-examination is finished to consider where we
23 go from here.

24 So you may want to review your cross-examination to
25 shave it of anything which, in the light of what's

1 15:54 happened this morning, may seem now superfluous.

2 So we will break now and resume at 10 past 1,

3 English time, which is 10 past 4, Dubai time.

4 Thank you.

5 (3.54 pm)

6 (Short break)

7 (4.09 pm)

8 MR KHAN: Fatima, can you please pull up document A28-692.

9 If you scroll down to the email dated 26 May, just
10 after halfway down the page.

11 Just to flag this up for you, Dr Sheikh, and the
12 tribunal, I'm now moving on to deal with the part of the
13 case relating to the 26 May email by which we, as the
14 authority, say you made misrepresentations to
15 Mr Pritchard and other members of MAS.

16 It's an email from you, 26 May 2015, sent at
17 10 minutes past 6. And if we then scroll down, we see
18 that this email contains questions provided by
19 Mr Pritchard in a previous email and your responses are
20 in green. That's correct, isn't it?

21 A. That's right, sir.

22 Q. We know, I think it's common ground, that you accept you
23 dictated the answers to Mr Salahuddin, who then provided
24 you with the text, which you then forwarded onto
25 Mr Pritchard; correct?

1 16:11 A. That's absolutely wrong, sir.

2 Q. We see there at answer 2, how much has been received,
3 provides monetary amount only relating to receivables
4 from MAS Pakistan. The answer you provide
5 is US\$425,500. That's correct, isn't it?

6 A. Sir, 425,500 figure is absolutely correct. The only
7 misunderstanding or miscommunication -- or sorry, my
8 misunderstanding is that when Hassan Salahuddin asked me
9 the question, he did not mention a date and I alluded to
10 the board meeting that happened in December 2014. So
11 between December 2014 till the time that this email was,
12 there was an absolute 425,500 reduction of accounts
13 receivable from Pakistan, sir.

14 Q. I think it's common ground that this figure is incorrect
15 and misleading?

16 A. I disagree with your assessment. The only thing that
17 I would allude to is that when I heard the question,
18 I jumped to the assumption that the question was asked
19 from the board meeting in December and not the board
20 meeting two weeks or three weeks ago or something like
21 that, sir.

22 Q. These are questions that you were asked in May. Why
23 would it relate back to December and not April?

24 A. Because when Mr Salahuddin asked me the question, that's
25 what I understood, sir.

1 16:13 Q. If it relates to the April board meeting, that's
2 a relevant date, then this figure is wrong, isn't it?

3 A. If the figure -- if it was related to the board meeting
4 of 26 April 2015, which is not what I understood, then,
5 yes, I agree with you, sir.

6 Q. In your skeleton, you tried to blame Mr Salahuddin for
7 this, which is a constant theme in your evidence, but
8 you're ultimately responsible for ensuring that you
9 answer these questions accurately, aren't you?

10 A. Sir, I have just displayed the facts of the ground and
11 at the end of the day, this email was indeed addressed
12 to me and I relied upon one of the persons who was doing
13 this job, and I had given him instructions to confirm
14 before sending this information to me.

15 And when he sent that information, after having
16 received some feedback from me on some of the questions,
17 I took the liberty to take the information, copy/pasted
18 it, giving the -- the word I'm looking for is that when
19 I was given this information, I took that this
20 information has been validated. And that's why I took
21 the -- did the copy/paste of this information and sent
22 it to Mr Greg and the other members.

23 That's the fact, sir, and that's the truth, sir.

24 MR PRESIDENT: Dr Sheikh, I think you were asked a slightly
25 different question, which is whether you took

1 16:14 responsibility for something done in your name?

2 A. I beg your pardon. Indeed, it is clear that this email
3 was sent to me. So, yes, yes, I take responsibility,
4 because I had sent this email, irrespective of the
5 background or supporting information, yes, sir.

6 MR KHAN: It was reckless of you not to check that MAS
7 Pakistan had paid that money before you answered that
8 question?

9 A. Sorry, forgive me, I'm not sure I understood your
10 comment or question. Would you kindly repeat that for
11 me, please?

12 Q. It was reckless of you to send this email without
13 checking that that figure was correct?

14 A. No, absolutely, I disagree, for the simple reason that
15 this information, which I recollected was an accurate
16 information, and when I sent this information, based on
17 the questions that I understood, it was 100 per cent,
18 and I repeat, sir, 100 per cent accurate information.

19 Q. If we can go to page 693, which is the next page and
20 it's a continuation of this email. Just stop at point
21 4, Mr Pritchard, when he asked these questions:

22 "In the event receipt from MAS Pakistan remain
23 doubtful, has DFSA been advised of a likely regulatory
24 capital deficiency."

25 You answered, "Receivables are not doubtful."

1 16:16 Then you go on to explain:

2 "This is to advise you that DFSA is not required to
3 be notified because we have earned revenue of
4 USD 576,000 in the current month."

5 Just pausing there, is that accurate or inaccurate,
6 that statement?

7 A. That statement, at the time when I wrote that email, was
8 100 per cent accurate, sir.

9 Q. Do you believe it now to be accurate or inaccurate?

10 A. It is not a matter of me to believe, it is a matter of
11 the external finance officer had decided not to
12 entertain this revenue based on his professional opinion
13 and that decision he took on, I don't know 5 or
14 6 June 2015, sir. But on the books of MAS ClearSight,
15 as and around 25 or 26 May, this revenue was
16 a recognised revenue on the books of MAS, sir.

17 Q. You go on to say:

18 "Hence our capital resources for May end reporting
19 will stand at approximately US\$1.2 million against the
20 regulatory minimum requirement of USD 720,000."

21 I'm putting it to you that you ought to have
22 explained that you understood Mr Yer had made a payment
23 of \$600,000 as well, if that existed.

24 A. I'm not sure I follow your question, sir. Would you
25 kindly repeat that, because I'm slightly lost with

1 16:17 words.

2 Q. It's 26 May, correct?

3 A. Why.

4 Q. You understood, on your case, you understand Mr Yer has
5 paid \$600,000 into the MAS bank account; correct?

6 A. That's right, sir.

7 Q. So why didn't you mention that in this email?

8 A. I just didn't, because I just thought that I had given
9 the answer. But, at the end of the day, I wrote this
10 and the information that I have written based on the
11 knowledge that I had and the knowledge that I had was
12 substantiated with the belief, specially with this
13 revenue and specially with the recollection, the fact
14 that Mr Yer had paid the money on the account. I stood
15 by this and that's why I wrote this email, sir.

16 This email was not written, to answer your question,
17 to deceive or to conceal or to give wrong information
18 and that is a fact and I stand behind that, sir.

19 Q. You didn't mention Mr Yer's \$600,000 because it didn't
20 exist, did it?

21 A. I disagree with your characterisation, but I certainly
22 can understand why you would make that statement, sir.

23 Q. I'm going to move on to ask you about the events of
24 7 June.

25 Before I do that, it's Mr Akbar's evidence in his

1 16:19 witness statement that you called him in the first week
2 of June and he told you that he's pulling out of the
3 deal. Is that true or not?

4 A. I cannot recollect that specific detail, so I apologise
5 for that.

6 Q. Your case is that you didn't find out until 11 June that
7 the deal was finished. That's right, isn't it?

8 A. That's indeed --

9 Q. So there's an inconsistency there between your evidence
10 and Mr Akbar's, isn't there?

11 A. Like I said, sir, I can only speak intelligently based
12 on what I know and that's what I know.

13 Q. On 7 June, I'm going to deal with, without going to
14 witness statements, if I can. If I can't, we'll quickly
15 look at them. But you cross-examined Mr Salahuddin and
16 Mr Kamath in relation to conversations that were had on
17 7 June; do you recall that?

18 A. Forgive me, are you referring to 7 June 2015, sir?

19 Q. Yes.

20 A. What is your question? Forgive me. Can you ask the
21 question again, kindly.

22 Q. You asked questions of Mr Salahuddin and Mr Kamath
23 earlier this week about this conversation, didn't you?

24 A. When you're saying "those conversations", which
25 conversations, if I may ask, sir?

1 16:20 Q. The conversations you had on 7 June with Mr Salahuddin
2 and Mr Kamath.

3 A. I never had any considerations on -- oh, I beg your
4 pardon. Forgive me. Sorry, I stand corrected. So
5 7 June. Okay. I see where you're going. 7 June --

6 Q. They both say, don't they, that you told them
7 independently that there had been no transactions on the
8 MAS bank account in May 2015? That's correct, isn't it?

9 A. Absolutely wrong, sir. And I say this to you, that not
10 only it is wrong, but it is a mischaracterisation of the
11 facts.

12 Q. They both independently say the same thing, don't they?

13 A. Yes.

14 Q. Your case is that you said the balance was more or less
15 the same as in April?

16 A. That is indeed correct, sir.

17 Q. Our primary case is that Mr Salahuddin and Mr Kamath's
18 evidence is to be preferred and you concealed the fact
19 that you had made the cash withdrawals in May from
20 Mr Kamath, didn't you?

21 A. Absolutely wrong, sir.

22 Q. You knew that that was likely to mislead the DFSA,
23 because he was going to report capital adequacy figures
24 that day, wasn't he?

25 A. Absolutely wrong, sir.

1 16:22 Q. But even on your own case, Dr Sheikh, it was reckless of
2 you to say that the balance was more or less the same
3 in April, because you didn't bother to check the bank
4 account?

5 A. I totally disagree with the characterisation of
6 reckless. And equally importantly, I would like to draw
7 your kind attention to the fact that people in MAS
8 office had total access and flexibility to achieve what
9 they wanted to achieve to ensure that Mr Kamath would
10 perform his task correctly, sir. I remind you that
11 I was on holidays outside the country. Thank you.

12 Q. Again, it's been a constant theme of your case that you
13 were in London and it was Mr Kamath or someone else's
14 responsibility to ensure that the DFSA received the
15 correct information. That's always been part of your
16 case, hasn't it?

17 A. It's absolutely true, sir.

18 Q. Can we go to A21-527, please. We have seen this email
19 I think once or twice before.

20 This is the first email in time to be sent, which is
21 recorded on this page.

22 A. May I interrupt you for a quick second, if you don't
23 mind, sir.

24 Fatima, may I request you to please enlarge this
25 picture, so I can see a little bit.

1 16:24 I apologise for the interruption, sir.

2 Q. That's fine. We're nearly done.

3 We see there Mr Kamath is asking Mr Awais and
4 Mr Salahuddin for the bank statements. It's the first
5 line. Do you see that?

6 A. Just bear with me for a second, sir. Let me read.

7 Yes, sir. Please continue.

8 Q. If we scroll up to the next email from Mr Awais, he
9 responds to Mr Kamath and copies you. If you read the
10 last sentence:

11 "I am also copying Mubashir to this email in order
12 for him to update you on the financial matters of the
13 company as soon as he is able to."

14 A. Yes, sir.

15 Q. You received this email, didn't you?

16 A. This email was sitting in my inbox at the time, yes,
17 sir.

18 Q. But you didn't respond, did you?

19 A. Because I didn't read this email for few days later,
20 sir.

21 Q. We scroll to the top. Mr Salahuddin, we heard his
22 evidence, instructed by you, on the phone, he then sent
23 this email saying:

24 "I have been advised by Dr Mubashir that there is no
25 bank transaction in our company's bank account in the

1 16:27 month of May 2015."

2 You're copied to the email. You see that?

3 A. Yes, I do see that, sir.

4 Q. If that's inaccurate, what he states in that email, why
5 would he be copying you in so that you can see what he
6 said?

7 A. This is an inaccurate information and he copied me in
8 and if I had seen this email appropriately at the right
9 time, I would have responded very aggressively. I say
10 this to you, that the content of this email is wrong and
11 Mr Hassan has taken upon him, for what reason only God
12 knows best, and I did not see this email in time or else
13 I would have responded very aggressively, sir.

14 Q. In my opening, Dr Sheikh, you may recall that it's on
15 the transcript, if you need to go back to it later,
16 I described what is meant by a lack of integrity. It
17 obviously includes dishonesty and that's a universal
18 concept, which you understand, don't you?

19 A. I know the meaning of integrity, yes, sir.

20 Q. Dishonesty?

21 A. Also I know the meaning of dishonesty, sir.

22 Q. Integrity, what we mean by that, is that even though
23 a person might not have been dishonest, if they either
24 lack an ethical compass or their ethical compass to
25 a material extent points them in the wrong direction,

1 16:29 that person will lack integrity.

2 We say your conduct throughout the material events
3 that I have taken you over the last two days, exhibits
4 a clear case of someone with a lack of ethical, a lack
5 of an ethical compass at the very least.

6 That's our case and you can respond to that,
7 Dr Sheikh, if you wish to.

8 A. I'd certainly like to respond to that. And I say that
9 I understand, once again, why you're saying that. And
10 my response to you is that if I have acted, I have only
11 acted totally ethically with the absolute right moral
12 compass and I totally uphold and at the same time in
13 disagreement with your assessment, sir.

14 MR KHAN: Dr Sheikh, may I just take a moment, tribunal, may
15 I just take a moment to take some instructions, please.

16 MR PRESIDENT: Yes.

17 MR KHAN: Thank you very much, Dr Sheikh. Thank you,
18 tribunal. I have no further questions.

19 MR PRESIDENT: Dr Sheikh, at this point, if you had
20 a lawyer, he might want to ask you one or two more
21 questions at this point, so what I think we should do is
22 just give you -- is there anything you want to say
23 arising out of your evidence that you feel you haven't
24 been able to say?

25 A. Yes, your Honour.

1 16:31 MR PRESIDENT: Okay.

2 A. If you kindly permit me precisely five to six minutes,
3 I would request for that latitude from your goodselves,
4 your Honours.

5 MR PRESIDENT: Okay, but only five minutes, because time is
6 running short and you will have a chance to put things
7 into writing and we'll talk about that after the five
8 minutes.

9 Okay, we will resume at just after 25 to, so I'll
10 stop for five minutes.

11 A. No, forgive me, your Honour, my apologies. What I meant
12 to say was that I'm ready to make my couple of remarks.
13 I requested your permission, if I can have five minutes
14 to --

15 MR PRESIDENT: Please let me finish. I understand, if
16 you're willing to speak now, that is fine. But before
17 you do, it's instead of something called re-examination,
18 which would generally be quite short, it would just be
19 a few questions and answers. So if you could be quite
20 short, and begin to talk to us whenever you like.

21 A. One point of clarification I seek, just because of my
22 inability to understand the procedure. I have written
23 few comments, but may I read those few comments in less
24 than five minutes? Is that --

25 MR PRESIDENT: Yes, you may.

1 16:32 A. Thank you, your Honours. I knew before going into these
2 proceedings that specific things would be picked apart
3 by Mr Khan, but I also know that my memory is very poor,
4 as I keep mentioning. This has been putting a lot of
5 stress on me.

6 I know that main points of what happened five years
7 ago, because those are very difficult to forget.
8 Whenever it comes to the smaller details of things,
9 I have long since forgotten those. I have spent the
10 last four years trying to piece back my memory of a time
11 when I was very emotionally devastated and I made a lot
12 of decisions in that state of mind.

13 That means that when Mr Khan asked me specific
14 reasons why I did something, I don't remember a lot of
15 my reasoning. By the time that the DFSA asked for the
16 specifics of the breach, one year had already passed in
17 2016.

18 I had forgotten a lot of things by then. I was
19 relying on my very poor memory for the small details,
20 but the truth be told, I was corrected when I would find
21 emails or documents.

22 When I gave my statements, I gave them to the best
23 of my recollections. Unfortunately, my recollections of
24 the past events or details is weak, as you saw a few
25 days ago, Mr Ul-Hayee has sharper memory than me and was

1 16:34 able to recall things even I couldn't.

2 I don't even remember if the signing -- I don't even
3 remember if the signing of the contract with Mr Yer
4 happened in MAS office or in the hotel. I just knew it
5 was there. Mr Khan asked about the \$44,000 and how
6 I knew about those if I did not have access.

7 I know that I did not have access or have someone
8 log-in details. So I was confused. Because I did not
9 remember how US dollar transfer happened to AED account.
10 I kept thinking about this.

11 So I called Mr Atta Ul-Hayee because this was
12 bothering me deeply. He told me, "Don't you remember,
13 Dr Sheikh, you gave me pre-signed transfer documents as
14 well as pre-signed cheques?" Truth be told, I still
15 don't remember this, but I believe that this is what has
16 happened because I never had access to MAS accounts.

17 Mr Khan also asked how I knew the money of MAS US
18 dollar account was there, but I went back to the
19 statement, because I could not see them clearly on the
20 screen yesterday when Mr Khan showed me. I realise that
21 \$14,000 came into MAS every month from a Nuveen(?) asset
22 management company, and it is a retailer that comes
23 every month. This was the case for more than two years.

24 I also saw that there was a client who had credited
25 the amount of -- which was Menka's(?) client -- one of

1 16:35 my relationship managers back then -- for \$30,000.

2 When I read the names of the company, it triggered
3 my memory that Menka had told me that revenue was coming
4 in May for her client. This would have been big deal
5 back then, because the company did not see any revenue
6 or very less frequency and MAS was troubling deeply.

7 In June, when I asked Mr Atta Ul-Hayee to withdraw
8 the money, this information would have been a few weeks
9 old in my mind.

10 This is how I knew that there was money in the MAS
11 account and not because I had access to the online
12 accounts.

13 I would like to real quickly highlight the timeline,
14 your Honours, for quick second, that on 10 May --
15 I stand corrected, on 10 June, I received a call from
16 Mr Khalil. On 11th, there was a breach and soon after
17 the breach, when Peter heard, he called me. And then
18 sometimes later in the month of June, there was some
19 liquidation papers that had initiated, which your
20 Honour, as you remember, that you have highlighted
21 during that conversation when you asked few questions.

22 I say this, your Honours, that your Honours asked me
23 about why I did not tell MAS employees about the capital
24 in my email to staff in July? I told the panel that
25 I had mentally spent the money, because I had committed

1 16:36 to Mr Khalil and Mr Zeman, the email I wrote in July
2 alluded to the salaries, and Mr Sheharyar Ali's payment.
3 When I was writing this email, as I have said, I was
4 devastated. I thought I communicated well, but nothing
5 I wanted to say came out correctly.

6 When I told MAS employees I used the capital on
7 salaries and creditor's payment, I meant that I used
8 Mr Khalil's loan in this way, which I have highlighted
9 in my witness statement.

10 I completely forgot one step in this communication.
11 I did not mention that the salaries and the creditor's
12 loan were paid earlier in 2015. Thanks to Mr Khalil's
13 loan and that now that MAS capital was being deployed to
14 pay back Mr Khalil for the loan which ensured these
15 payments.

16 Also while filing for liquidation, your Honour asked
17 why did I not disclose about the capital? But then --
18 but even though it was with Mr Ul-Hayee, in my mind, it
19 had been spent as and committed, it was just waiting for
20 the collection after negotiations by Mr Khalil and
21 Mr Peter.

22 Finally, I would like to state the fact that, your
23 Honours, I am a victim of poor memory and
24 miscommunication under tremendous stress. I did not
25 steal nor conceal. I did not knowingly contravene

1 16:38 DFSA's laws nor did I do whatever the DFSA is putting
2 allegations against me.

3 I thank you for your time for letting me speak, your
4 Honours.

5 MR PRESIDENT: Thank you very much. I wonder whether the
6 next thing is to ask my colleagues whether they have any
7 questions for the witness before he ceases giving
8 evidence.

9 MR AL AIDAROUS: None from my side.

10 MR AL HASHIMI: No, I don't have any questions.

11 Questions by the TRIBUNAL

12 MR PRESIDENT: Thank you very much.

13 Dr Sheikh, can I just ask you this. I want you to
14 take your mind back to the time when you put in that
15 statement to the court about the assets and liabilities
16 of the company at a time when, as I understand it, there
17 was an insolvency. Do you remember that?

18 A. Your Honour, I remember the action, but I'm struggling
19 to identify or remember the date, your Honour.

20 MR PRESIDENT: For the moment, we don't need the date. I'm
21 talking about the statement that you were asked
22 questions about.

23 A. Yes, your Honour.

24 MR PRESIDENT: My question is really just some general ones.
25 There came a time in the summer of 2015 when the company

1 16:39 was insolvent. Am I right?

2 A. That's right, sir.

3 MR PRESIDENT: That meant I think you're familiar with --
4 you'll be familiar with the process of insolvency. What
5 happens is the assets have to be got in and distributed
6 fairly amongst the creditors. You are familiar with
7 that process?

8 A. Your Honour, I am, but would you allow me to respond to
9 this comment, with your permission, for just --

10 MR PRESIDENT: No, not until I have asked you a question.
11 The question I have asked you so far is whether you're
12 familiar with the process of insolvency and I think your
13 answer was "yes"?

14 A. Yes, your Honour.

15 MR PRESIDENT: You're familiar, as I say, with the process
16 of fairness, requiring that the creditors be paid fairly
17 from whatever assets can be recovered. Am I right?

18 A. I am familiar with that, your Honour, sir.

19 MR PRESIDENT: There came a time in the summer of 2015,
20 when, as I understand your evidence, you took out money
21 which you used, amongst other things, to pay salaries
22 for May, for your staff?

23 A. Forgive me, your Honour. May I trouble you to ask the
24 question again. I'm not sure I understood your
25 question, your Honour.

1 16:41 MR PRESIDENT: I understood your evidence to be that a time
2 came in the summer of 2015, when you used money that had
3 been taken from the company for paying debts of the
4 company, most obviously you paid staff for the month
5 of May; is that right?

6 A. No, your Honour. That's not correct, with respect, your
7 Honour.

8 MR PRESIDENT: Would you correct me, please.

9 A. With pleasure. Your Honour, the month of May, the
10 salaries that were paid, were paid from my personal
11 account from my personal resources.

12 Your kind self, your Honour, is alluding to the fact
13 that the salaries, which were highlighted in the email
14 of 2 July, I imagine, those were the salaries, but the
15 salaries were paid in March and April and the
16 Sheharyar's loan of 150,000.

17 Mr Khalil's loan that we received from 15 March
18 onwards, which I had, and which paid multiple things,
19 including the salaries in March and April, and just the
20 loan part of Sheharyar, but the salaries of the month
21 of May, your Honour, was paid personally by me with my
22 personal resources, your Honour.

23 MR PRESIDENT: By the time the -- as I understand it, as
24 a result of the insolvency, some of the staff who had
25 worked for your company were left still owed salary

1 16:42 which they had not received?

2 A. May I ask, may I answer this question by saying that
3 your Honour, the insolvency, to what all limited
4 knowledge that I have, was not in effect
5 until September, October, as far as November.

6 The process of us discussing about the insolvency,
7 the process of us about applying towards insolvency,
8 indeed had initiated.

9 And it is my understanding that at any point during
10 the time until the judge in the courts confirm that the
11 insolvency application has been accepted, the people who
12 had launched the application can withdraw the
13 application. Under that assumption, I had exercised my
14 judgment --

15 MR PRESIDENT: I think you're trying to explain something
16 which I haven't asked.

17 A. I beg your pardon. My apologies. Your Honour. Forgive
18 me.

19 MR PRESIDENT: We heard from one witness who gave evidence
20 that as a result of insolvency, he had not, in the end,
21 been paid his salary and his bonus in full. Isn't that
22 right?

23 A. Forgive me, your Honour, would you kindly remind me,
24 because I'm trying to understand which person has made
25 that statement.

1 16:44 MR PRESIDENT: I don't know if someone -- there was one of
2 the witnesses who gave evidence earlier in the week,
3 gave evidence --

4 MR KHAN: I believe it was Mr Salahuddin.

5 MR PRESIDENT: Yes, Mr Salahuddin said that he had not been
6 paid his salary.

7 A. Your Honour, I present you by the fact that
8 Mr Salahuddin has misrepresented those facts, sir.

9 MR PRESIDENT: He wasn't challenged about it. The position
10 is that all your employees got paid in full as a result
11 of --

12 A. Not at all, your Honour --

13 MR PRESIDENT: -- the insolvency?

14 A. Not at all. Your Honour, what I wanted to say,
15 specifically since you asked about Hassan Salahuddin's
16 allegations, that I find them inaccurate --

17 MR PRESIDENT: Dr Sheikh, will you please just listen to my
18 questions.

19 A. Yes, sir.

20 MR PRESIDENT: I'm trying to assist and you are repeatedly
21 answering different questions, thinking that I'm making
22 a criticism of you which I'm not making.

23 Is it correct that all the employees of your company
24 were paid in full, notwithstanding the insolvency of the
25 company?

1 16:45 A. Sir, it is correct that people were not paid salaries.

2 MR PRESIDENT: The only question I wanted to ask was
3 a relatively simple one, which is why it was that you
4 chose to pay what you tell us was the company's money to
5 pay a debt due to Mr Zeman, when there is no written
6 evidence that he was pressing for payment? Why it would
7 be that you would want Mr Zeman to be paid even though
8 a consequence of that or as part of that some of your
9 own staff would not be paid?

10 A. Sir, I think I understand the question. I maintain my
11 position that I chose, I prioritised Mr Zeman to be paid
12 over the employees for the following reason, your
13 Honours, that I believed that Mr Zeman would have the
14 ability to help me raise capital rapidly, if he was
15 further incentivised that his fees was not at stake.

16 So I made a conceded decision, knowing very well the
17 network Mr Zeman had, to honour him with the intention
18 that through him, I would be able to raise capital, so
19 in turn, I can pay the salaries of the employees and
20 save the company from going into liquidation.

21 So, your Honour, the thought process in my mind was
22 that I was fulfilling my duty as a member of the board
23 for which they have entrusted me, to focus on trying to
24 raise capital. And the probability for me to raise
25 capital by entertaining Mr Zeman and exploiting his

1 16:46 network was far higher and far important for the
2 survival of the company, for bringing a new investor and
3 for able to honour and pay these salaries of the
4 employees.

5 So I opted to use that money towards creating an
6 option for living another day, to fight another day,
7 instead of just paying people off and calling it a day.
8 And I use that judgment and that is the reason that
9 I did what I did, sir. And this is my answer.

10 MR PRESIDENT: The only other question I had also arising,
11 I had a couple of questions also on the Zeman matter.
12 You referred at length in your evidence to various work
13 that he had done on your behalf in Georgia?

14 A. Not on my behalf, but he made the introductions where we
15 did the work, sir.

16 MR PRESIDENT: Do I understand from that that there are
17 records to show that he produced business from which
18 your company benefited?

19 A. Sir, there are lots of records for that and when it
20 comes to benefiting it, that if the introductions which
21 was the reason for him to get paid, there are lots of
22 efforts and they're documented in my submission
23 documents, throughout this bundles. But when it came to
24 the actual performance of successful execution, I'm
25 afraid that we were not able to get the success, but

1 16:48 Mr Zeman's contract was simply to open the doors and
2 make the introductions, sir.

3 So answer to your --

4 MR PRESIDENT: Thank you very much. That's the end of your
5 questions.

6 (Witness withdrew)

7 MR PRESIDENT: We now need to review where we go from here.

8 First of all, we have now, as I understand it, completed
9 all the evidence and there isn't going to be any more.

10 So my colleagues and I assume that the next step in
11 the process will be that this will be closing
12 submissions from the DFSA and from Dr Sheikh.

13 Can I just check that the parties are also of the
14 view that that is the position we have reached?

15 DR SHEIKH: Forgive me, your Honour, I do apologise, the
16 question was that we have -- my sincerely apology.

17 MR PRESIDENT: Dr Sheikh, just listen first to Mr Khan and
18 what his position is and then it will be easier for you,
19 I think, to tell us about your position.

20 MR KHAN: Yes, sir, the answer to your question is yes, we
21 have reached closing submissions.

22 Our view and preference is that written closings,
23 perhaps with a limit as to the page numbers, is
24 a proportionate way to dispose of written closings,
25 rather than a further hearing.

1 16:49 MR PRESIDENT: Dr Sheikh, what do you have in mind?

2 DR SHEIKH: My sincere apologies and I do apologise to put
3 your Honours, would you kindly help me understand,
4 because I'm sorry, I still don't understand the
5 question, your Honour.

6 MR PRESIDENT: Righto. What's happened is this. We have
7 now heard all the evidence in this case. It's finished.

8 DR SHEIKH: Yes, your Honour.

9 MR PRESIDENT: We go on to the next stage, which is to give
10 each side the chance to explain to the tribunal, in the
11 case of the DFSA, to explain why they say that you are
12 in breach of the regulations in the way that they allege
13 and it's also for you, a chance for you to say why you
14 dispute that.

15 We have a lot of evidence and we have the skeleton
16 argument of Mr Khan and we have also got your skeleton
17 argument, which though it's called a skeleton argument,
18 is a very detailed exposition running to over 100 pages.

19 However, what each party now has the opportunity to
20 do is to make some closing remarks, probably in writing,
21 saying why it is that the evidence that has been given
22 supports their case and the conclusions they wish the
23 tribunal to draw.

24 Do you understand?

25 DR SHEIKH: Yes, your Honour. I do. God bless. Thank you

1 16:51 for that, your Honour.

2 MR PRESIDENT: It seems to me that it's in your interests,
3 particularly that you should have some time to think
4 about what you want to say and then put it into writing.

5 DR SHEIKH: I totally agree with that, your Honour. Thank
6 you.

7 MR PRESIDENT: So we're agreed that there will be written
8 closing submissions and when those submissions arrive,
9 then we can consider whether or not we, the tribunal,
10 feel that there is a need for any further hearing or
11 meeting.

12 I would invite the parties to therefore provide
13 written submissions. They don't need to be very long.
14 Certainly, they should be no longer than I would think
15 20 or 30 pages at the most. But Mr Khan, what did you
16 have in mind to do?

17 MR KHAN: I had in mind 25 pages, sir.

18 MR PRESIDENT: Well, what I suggest we do is have a maximum
19 of 25 pages. Is that all right with you, Dr Sheikh?

20 DR SHEIKH: I don't mean to sound a stickler, but may
21 I request for your Honours to consider making the number
22 to at least 35, because I feel that there is a whole lot
23 that I'd like to be able to put together, sir.

24 MR PRESIDENT: Well, okay, since you're on your own, as it
25 were, the DFSA put in 25 pages, you can put in 35 pages.

1 16:52 I say that because it's often more helpful to have
2 a shorter document than a longer document. Do you
3 understand that?

4 DR SHEIKH: I respect your guidance.

5 MR PRESIDENT: There is a lot to be said for putting things
6 briefly and concisely, so that the person you're
7 addressing can understand them.

8 DR SHEIKH: I value and I appreciate your guidance, your
9 Honour.

10 MR PRESIDENT: We'll have 25 pages for the DFSA, 35 pages
11 for you. And we will then decide at the end of that
12 period what, if anything, further we need before
13 producing a written decision. Okay?

14 MR AL HASHIMI: Mr Chairman, maybe one more comment here.

15 MR PRESIDENT: Of course, please.

16 MR AL HASHIMI: These submissions are without, you know,
17 further documents or further evidence, so these will be
18 only written submissions.

19 MR PRESIDENT: Yes. The time for evidence is over and we
20 don't need copies of documents, because you can simply
21 give the document number, the reference number and then
22 we can look it up for ourselves. Because like you, we
23 have all the documents.

24 DR SHEIKH: Yes, your Honour.

25 MR AL AIDAROUS: From my side, just to make sure that the

1 16:54 submissions of both party's closing will be
2 simultaneous. I mean, same time.

3 MR PRESIDENT: Yes. You're quite right. That then raises
4 the time. How long do you want, both of you, within
5 which to put in your written submissions? Mr Khan?

6 MR KHAN: Sir, I discussed this with those instructing me
7 and we were hoping to have until 28 May to produce that,
8 please. I should say that's partly to account for my
9 professional difficulty, because I have a tribunal
10 hearing in the UK in the middle of May.

11 MR PRESIDENT: Okay. That would be in effect 28 days from
12 today, wouldn't it?

13 MR KHAN: Yes, sir, there or thereabouts.

14 MR PRESIDENT: Dr Sheikh, is that all right with you? Can
15 you do yours within 28 days?

16 DR SHEIKH: Yes, your Honour.

17 MR PRESIDENT: You can do it sooner, if you like, but you
18 don't have to. What we'll say is that the written
19 submissions must be in within 28 days. If you send them
20 in, in advance, that's fine. But obviously, if
21 Dr Sheikh sends his in first, they should not be sent to
22 the DFSA until Dr Sheikh has a chance to see the DFSA's.

23 So we'll say, it's 28 days from today. Is that all
24 right with my colleagues?

25 MR AL AIDAROUS: Yes, sir.

1 16:55 MR AL HASHIMI: Yes, certainly.

2 MR KHAN: Sir, can I just clarify that that will be for both
3 liability and penalty?

4 MR PRESIDENT: The position is this. In a sense, you don't
5 know what to say about penalty until you know that
6 there's going to be one and if there is, on what basis.

7 MR KHAN: Yes.

8 MR PRESIDENT: What were you proposing to say about penalty?

9 I known, if it's 28 days, you can say what you want
10 about penalty, but obviously, if we get to the stage of
11 penalty, it may be fair to ask the parties to make
12 additional submissions about that later on. But, yes,
13 if you have 28 days, you can deal with penalty.

14 Did you understand that, Dr Sheikh?

15 DR SHEIKH: No, I beg your pardon. May I ask the difference
16 between, and if you can please help me understand, with
17 respect, your Honour.

18 MR PRESIDENT: The case has two parts. The first claim is
19 that you are liable for all these breaches. You say
20 you're not. And the second part is that they have said
21 that you should pay a financial penalty and that there
22 be various orders made against you. Do you remember?

23 DR SHEIKH: Yes, your Honour.

24 MR PRESIDENT: I have asked Mr Khan to deal with both sides
25 of those -- both those questions, but I have pointed out

1 16:57 to him that, in a sense, the question of penalty is
2 irrelevant unless and until we find that you have been
3 in breach.

4 Similarly, if we find that you have been in breach,
5 we may not find that you have been in breach in the same
6 way that the DFSA allege.

7 So I want you to deal both with the question of --
8 both to explain what aspects of the evidence, so that
9 you should not be liable, but you should also respond to
10 what they say the penalty should be. That is the
11 penalty imposed by the DMC. Do you understand?

12 DR SHEIKH: Yes. Can I ask a follow-up question with your
13 permission, your Honour, quickly?

14 MR PRESIDENT: Yes.

15 DR SHEIKH: As you kindly alluded to, and I understand that
16 DFSA has a right to put their case and to put the
17 penalty, do I also have the right to put my case and put
18 the penalty upon DFSA for the pain and suffering that
19 they have caused me the last five years, your Honour?

20 MR PRESIDENT: No, but if you were successful in the -- if
21 all these allegations were thrown out, and you were
22 successful, then you might be able to apply for costs,
23 but that comes -- I think you don't have to deal with
24 that at this point. At this point, you just deal with
25 the question of why you say, in the light of the

1 16:58 evidence, you are not liable and why you say that if you
2 are liable, the penalty being imposed is not a fair one.

3 DR SHEIKH: Thank you for your clarification. I'm most
4 grateful, your Honours.

5 MR PRESIDENT: If in the course of writing your closing
6 submissions, you get other questions, not of a detailed
7 kind, but of a general kind, then of course you can
8 always send us an email.

9 DR SHEIKH: Yes, your Honour.

10 MR PRESIDENT: It only remains for me, therefore, to do the
11 following things. First of all, is the lady as
12 everybody describes as Fatima on the line? Is she
13 available?

14 MS MOHYEDDIN: Yes.

15 MR PRESIDENT: Would you like to open up your screen
16 a moment?

17 MS MOHYEDDIN: Sure.

18 MR PRESIDENT: May I, on behalf of the tribunal, thank you
19 very much indeed for your wonderful work over the last
20 few days, because it has been truly remarkable how
21 quickly you have been able to produce all the documents.
22 I cannot recall in about 200 years of legal practice,
23 anyone who has done it better. So on behalf of the
24 tribunal, thank you very much indeed.

25 MR KHAN: Thank you, Fatima.

1 17:00 DR SHEIKH: Thank you, Fatima. God bless you.

2 MS MOHYEDDIN: Most welcome.

3 MR PRESIDENT: Could I also say that the technology has been
4 absolutely outstandingly good.

5 I don't know if everybody else agrees with that, but
6 it really has been remarkably good and my colleagues and
7 I are extremely grateful.

8 MR AL AIDAROUS: Thanks to Mr Muhammad Saeed. He prepared
9 all this. Muhammad Saeed, he did a good job. Thank
10 you, Muhammad.

11 MR PRESIDENT: Thank you. We are very grateful. It's
12 really remarkably good.

13 I have tried many systems over many years and I have
14 never found a better one. Thank you very much.

15 MR SAEED: Welcome.

16 MR PRESIDENT: So on that happy note, we will break off and
17 await written submissions within 28 days.

18 My colleagues and I will now speak on our private
19 system and thank you all very much indeed.

20 I'm most grateful also to counsel for the DFSA and
21 whatever conclusions we reach, Dr Sheikh, may I say that
22 you have conducted yourself with extreme politeness and
23 with great dignity throughout these proceedings. It's
24 an enormous difficulty to deal with cases on your own
25 without legal assistance and you have done that duty, as

1 17:01 I say, with considerable grace and with great dignity.

2 Thank you very much.

3 DR SHEIKH: Thank you, your Honour.

4 MR KHAN: Thank you, sir. Thank you, tribunal. Thank you,

5 Dr Sheikh.

6 DR SHEIKH: Thank you, Mr Khan. Thank you, your Honour.

7 MR PRESIDENT: Thank you.

8 (5.02 pm)

9 (The hearing was concluded)

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