THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2021/0014

BETWEEN:

TETHYAN COPPER COMPANY PTY LIMITED

Applicant

and

[1] ISLAMIC REPUBLIC OF PAKISTAN
[2] PAKISTAN INTERNATIONAL AIRWAYS CORPORATION LIMITED
[3] PIA INVESTMENTS LIMITED
[4] MINHAL INCORPORATED
[5] PIA HOTELS LIMITED
[6] VIRGIN ISLANDS REGISTRAR OF COMPANIES
[7] CITCO B.V.I. LIMITED
[8] HARNEYS CORPORATE SERVICES LIMITED

Respondents

Before:

The Hon. Dame Janice M. Pereira, DBE	Chief Justice
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore	Justice of Appeal [Ag.]

Appearances:

Lord Charles Falconer, QC with him, Mr. Piers Plumptre and Mr. Andrew Gilliland for the Applicant

Mr. Vernon Flynn, QC with him, Ms. Angeline Welsh, Mr. Lucas Bastin, Mr. Cameron Miles, Mr. Mubarak Waseem, Mr. Grant Carroll and Mr. Daniel Mitchell for the First Respondent

Mr. Andrew Willins for the Second Respondent

Mr. Stephen Moverley Smith, QC with him, Mr. Tim Wright and Mr. Paul Griffiths for the Third to Fifth Respondents

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2021: June 4.

Application for stay pending determination of intended appeal — Decision of court below discharging injunctions against respondents — Inherent jurisdiction of Court of Appeal to

grant stay where notice of appeal not yet filed — Finding by court below that Pakistan enjoyed immunity from jurisdiction of the BVI court under UK State Immunity Act 1987 — Whether Court of Appeal has jurisdiction to grant interim stay pending determination of intended appeal where finding of court below that Pakistan enjoyed state immunity has not been set aside

REASONS FOR DECISION

[1] **PEREIRA CJ:** On 4th June 2021 we heard an application by the applicant, Tethyan Copper Company Pty Limited ("TCC"), brought pursuant to rule 62.16 of the **Civil Procedure Rules 2000** for orders staying the discharge of the injunctive relief granted on a without notice basis on 10th December 2020 by the court below ("the without notice orders") or, alternately, for the grant of injunction orders in similar terms as the without notice orders, pending the hearing and determination of an intended appeal against the judgment of the court below delivered on 25th May, 2021. We dismissed the application and ordered TCC to pay the costs of the first to fifth respondents.

Background

[2] The matter arose in this way:

(a) TCC obtained from the International Centre for Settlement of Investment Disputes ("ICSID") an award ("the Award") in its favour against the first respondent, Islamic Republic of Pakistan ("Pakistan") in the sum of US$6 billion in Case No. ARB/12/1. We were informed in TCC's written submissions and at the hearing that enforcement of the Award has been stayed provisionally under article 51 of the ICSID Convention as from 16th March 2021.

(b) TCC applied without notice to the BVI court to register and enforce the Award against Pakistan as well as for injunctive and other relief against the various other respondents. Additionally, TCC applied for charging orders over shares held directly or indirectly by the second respondent, Pakistan

International Airways Corporation Ltd. ("PIAC") in the third to fifth respondents ("the BVI Companies").

(c) It is common ground that neither PIAC nor the BVI Companies are or were ever parties to the ICSID arbitral proceedings and are not parties to the Award. It is also not in dispute that PIAC is a listed public limited company operating the national airline of Pakistan.

(d) TCC's primary case is that PIAC is to be treated as being assimilated into the State of Pakistan in the sense that there is unity of identity as respects Pakistan and PIAC thereby rendering PIAC liable for the debts of the State of Pakistan applying the principles, or what is now considered to be the test, as formulated by the Judicial Committee of the Privy Council in the decision in **La Générale des Carrières et des Mines v F.G. Hemisphere Associates LLC**[1] (*"Gécamines")*. TCC relied on other bases but it is not necessary to refer to them for the purposes of these reasons on the application for interim relief.

(e) On 10th December 2020, the court below granted to TCC, among other relief, and of relevance to this application:

(i) an order registering the Award;

(ii) permission to enforce the Award in the BVI against Pakistan to the extent of over US$3 billion;[2]

(iii) a provision charging order, in aid of enforcement, over the shares of the BVI Companies held directly or indirectly by PIAC; and

(iv) injunctions including freezing orders against the BVI Companies.

[1] [2012] UKPC 27.
[2] At that time the amount allowed to be enforced by the Arbitral Tribunal.

(f) Eventually, the without notice applications in which the without notice orders were granted came on before the learned judge below (Wallbank J) on a full *inter partes* hearing between 27th to 29th April 2021.

(g) Pakistan sought the discharge of the *ex parte* orders asserting its state immunity from the jurisdiction of the BVI Court pursuant to the State Immunity Act 1978 of the United Kingdom as extended to the Territory of the Virgin Islands by UK Order in Council ("the SIA").

(h) PIAC and the BVI Companies also sought the discharge of the *ex parte* orders on a number of other bases ranging from failure of full and frank disclosure to lack of cogent evidence showing a risk of dissipation, but it is not necessary to address these bases in these reasons given the narrow compass within which the application for interim relief was considered by this Court.

(i) On 25th May 2021, the learned judge delivered his judgment in which, among other things, he concluded that Pakistan enjoyed immunity from the jurisdiction of the BVI Court pursuant to the SIA. He set aside the registration of the Award and discharged all the without notice orders. He allowed a short stay of his judgment as requested by TCC to 4 p.m. on 4th June 2021 to allow TCC to make an application to the Court of Appeal.

[3] TCC applied to this Court on an urgent basis on 28th May 2021 for a stay of the judge's order discharging the injunctions or alternately for the grant of injunctions pending the hearing of its appeal which has not yet been filed.[3]

[4] The application was opposed by Pakistan, PIAC and the BVI Companies on various grounds. Suffice it to say that Pakistan which continues to assert and rely on its full immunity, by its counsel took the position, relying on three English

[3] The judge below extended time for filing the appeal to 25th June 2021.

authorities, that the court had no power to grant such interim relief, unless and until a final determination is made by the Court that Pakistan is excepted from immunity under the SIA, or put another way, unless and until the finding of state immunity has been set aside. This was on the basis that as matters stood at the hearing of the application before this Court on 4th June 2021, Pakistan was immune from the jurisdiction of the BVI courts and since the interim relief sought was parasitical on an assumption of jurisdiction over Pakistan by the BVI court, no power existed in the court to grant such interim relief until a final determination on an appeal that Pakistan is excepted from immunity under the SIA – in essence reversing the finding of state immunity as determined by the court below.

[5] Before turning to the crux of the stay application, we dealt with another preliminary objection raised by Queen's Counsel for the third to fifth respondents, Mr. Stephen Moverley Smith, and adopted by learned counsel for the other respondents. Mr. Moverley Smith, in essence, asserted that under CPR 62.16 and rule 27(1) of the **Court of Appeal Rules**, the Court does not have jurisdiction to grant a stay of the orders of the court below discharging injunctive relief in circumstances where TCC has not yet filed a notice of appeal. In support of his submission, Mr. Moverley Smith referred to paragraph 42 of the judgment of Edwards JA in **Cage St. Lucia Limited v Treasure Bay (St. Lucia) Limited et al**,[4] which states:

> "In the absence of a timely Notice of Appeal filed subsequent to the Order granting leave to appeal there was no appeal pending before this Court when the Order staying the judicial review proceedings was made…Consequently, it would seem that this Court had no jurisdiction to make that order, which would be a nullity. I would set aside this order granting stay."

[6] Lord Falconer, QC, in response, argued that the decision in **Cage St. Lucia** does not suggest that the Court does not have an 'implied power' to grant a stay under CPR 62.16 in urgent cases where the Court is satisfied on the material before it that an appeal would be pending. He also stated that paragraph 42 of **Cage St.**

[4] Saint Lucia HCVAP 2011/045 (23rd January 2012, unreported).

Lucia specifically addresses circumstances where the time for filing a notice of appeal has elapsed, in which case an appeal could not be properly filed unless the Court extended time for so doing – circumstances which do not obtain in this case. On these bases, Lord Falconer urged the Court to dismiss the preliminary objection.

[7] Having considered the submissions made by learned Queen's Counsel, we were satisfied that the Court of Appeal has the inherent jurisdiction to hear and grant a stay pending an appeal against orders made in the court below in circumstances where the appeal had not yet been filed but the time for appealing had not yet expired. It is generally accepted that the Court's inherent jurisdiction is inoperable where there are statutory provisions or procedural rules which occupy the same territory.[5] However, the Court's inherent jurisdiction to grant a stay is distinct from the power to grant a stay under CPR 62.16 or rule 27(1) of the **Court of Appeal Rules**, since the rules and the Court's inherent jurisdiction exist individually and may be invoked cumulatively or alternatively. As the learned authors of **Halsbury's Laws of England** explain: "The court's power to [stay] may be exercised under particular statutory provisions, or under the Civil Procedure Rules or under the court's inherent jurisdiction, or under one or all of these powers, since they are cumulative, not exclusive, in their operation."[6] This was confirmed by the Privy Council in **Texan Management Limited and Others v Pacific Electric Wire & Cable Company Limited**[7] where Lord Collins at paragraph 56 of the decision stated:

> "…there is no doubt that there is an inherent jurisdiction to stay proceedings. But that does not in itself answer the question whether the inherent jurisdiction may be exercised to the extent that the CPR themselves contain provisions for applications for stays which are subject to procedural conditions and time-limits. The authorities strongly suggest that the inherent jurisdiction to stay proceedings is such a fundamental one that it will not normally be displaced by express powers to grant a stay. It was so held by the BVI Court of Appeal in Addari v Addari

[5] See: The Attorney General v Universal Projects Limited [2011] UKPC 37 at para. 27.
[6] Cap. 80, Revised Laws of Virgin Islands.
[7] [2009] UKPC 46.

[Territory of the Virgin Islands High Court Civil Appeal No. 2 of 2005 (delivered 27th June 2005, unreported)], a decision on a leave application."

[8] The Court's inherent jurisdiction to stay pending an appeal which is due to be filed is preserved by the **Eastern Caribbean Supreme Court (Virgin Islands) Act**[8] (the "Supreme Court Act"). Section 18 of the Supreme Court Act provides:

> "No cause or proceeding at any time pending in the High Court or in the Court of Appeal shall be restrained by prohibition or injunction but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might formerly have been obtained whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto:
>
> Provided that—
>
> (a) **nothing in this Ordinance shall disable the High Court or the Court of Appeal, if it thinks fit so to do, from directing a stay of proceedings in any cause or matter pending before it**; and
>
> (b) any person, whether a party or not to any such cause or matter who would formerly have been entitled to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the cause or matter have been taken, **may apply to the High Court or to the Court of Appeal, as the case may be, by motion in a summary way, for a stay of proceedings in the cause or matter, either generally, or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as shall be just**." (Emphasis added)

[9] Section 27 of the Supreme Court Act, in so far as is relevant, provides:

> "27. Subject to the provisions of this Ordinance, there shall be vested in the Court of Appeal —
>
> (a) the jurisdiction and powers which at the prescribed date were vested in the former Court of Appeal;
> (b) the jurisdiction and powers which at the prescribed date were vested in the British Caribbean Court of Appeal;
> (c) such other jurisdiction and powers as may be conferred upon it by this Ordinance or any other law."

[8] Halsbury's Laws of England, Vol. 12A, 5th Edn. (LexisNexis:2020) at para. 1028.

[10] Section 28 of the Supreme Court Act states that:

> "The jurisdiction of the Court Appeal so far as it concerns practice and procedure in relation to appeals from the High Court shall be exercised in accordance with the provisions of this Ordinance and rules of court and where no special provisions are contained in this Ordinance or rules of court such jurisdiction so far as concerns practice and procedure in relation to appeals from the High Court shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in England- (a) ... (b) in relation to civil matters in the Court of Appeal (Civil Division)."

[11] Section 18 of the Supreme Court Act confirms that the Court of Appeal and the High Court have [inherent] jurisdiction to grant a stay of proceedings in any matter before it, if it thinks fit to do so. Further, it is clear from the provisions of the Supreme Court Act that the Court of Appeal may exercise all such jurisdiction, including jurisdiction not expressly conferred on it by the Supreme Court Act, as was exercisable by it immediately before the commencement of the Supreme Court Act, which would include the inherent jurisdiction to grant a stay. In our view, this jurisdiction must of necessity include the power to stay a decision of the court below where there is a real risk that the intended appeal would be rendered nugatory, notwithstanding that the notice of appeal remains to be filed and once the time for filing the notice of appeal has not yet expired. The position is the same in England, where it is accepted that the inherent jurisdiction of the Court to grant a stay is preserved by section 49(3) of the Senior Courts Act 1981 and its forerunner, section 41 of the UK Supreme Court of Judicature (Consolidation) Act 1925.[9] In **The Contractor General of Jamaica v Cenitech Engineering Solutions Limited**[10] the Court of Appeal of Jamaica adopted a similar interpretation to section 48(e) of the Judicature (Supreme Court) Act of Jamaica, which is in *pari materia* to section 18 of the Supreme Court Act.

[12] In any event, we were also satisfied that the decision of **Cage St. Lucia** concerned materially different circumstances and therefore should be distinguished. In **Cage**

[9] Halsbury's Laws of England, Vol. 12A, 5th Edn. (LexisNexis:2020) at para. 1032.
[10] [2015] JMCA App 47 at para. 55.

St. Lucia, the period for filing the notice of appeal had expired, whereas, here, at the time the application for a stay had come on for hearing before this Court, the time for filing the notice of appeal had not yet expired. The pronouncements of Edwards JA at paragraph 42 of **Cage St. Lucia** could not therefore apply in this case. **Cage St. Lucia** must be understood within its proper context and that reference to the Court having no jurisdiction could only be a reference to the Court's jurisdiction in the narrower sense within the context of the facts of that particular case. It is beyond doubt that the Court has and has always had the jurisdiction in the wider sense or the power to grant a stay. In essence, the real question is the exercise, as distinct from the existence, of the power and that will depend on the circumstances of a particular case. Furthermore, it would be anomalous for a judge of the High Court to have the power, before a notice of appeal is filed, to grant a stay under rules 26.1 (2)(q) and 62.19 of the CPR pending the determination of an intended appeal, without the Court of Appeal possessing a similar power. It is for these reasons we dismissed Mr. Moverley Smith's preliminary objection.

State Immunity – Jurisdiction to Grant Interim Relief

[13] The issue of the Court's power to grant interim relief pending the filing and hearing of an appeal by TCC against the judge's ruling, in which he determined state immunity in favour of Pakistan, was raised frontally by learned Queen's Counsel Mr. Flynn on behalf of Pakistan, making clear that Pakistan has and continues to assert state immunity and its challenge to the jurisdiction of the BVI courts. The parties accepted that this issue ought properly to be considered by the court as a threshold issue since, if Pakistan was right, then this was dispositive of the application for interim relief without further consideration of the application on the merits and the opposing arguments presented by PIAC and the BVI Companies.

[14] The court adopted this approach and accordingly considered only the question of jurisdiction or power to grant interim relief pending the bringing and hearing of an appeal against the learned judge's decision. Accordingly, the court heard no arguments (although written submissions were put forward by PIAC and the BVI

Companies) and made no findings in respect of the merits of the application for interim relief as raised by PIAC and the BVI Companies in opposing the application.

[15] We refused to grant the interim relief sought by TCC on the basis that until the court first determined the question as to whether the learned judge erred in concluding that Pakistan had immunity from the jurisdiction of the BVI court which would occur later on the bringing of an appeal and TCC being successful on appeal in setting aside the learned judge's determination of Pakistan's state immunity as provided under the SIA, the court had no power to grant interim relief whether in the nature of a stay of the judge's injunction orders which in effect would amount to a continuation of the injunctions, or to grant injunctive relief pending a review of the judge's determination of state immunity on appeal to this Court.

[16] The Court's decision to dismiss the application rested solely on the view taken by the Court as it relates to its power to grant interim relief in circumstances where Pakistan asserts that its immunity has been established by the court below which immunity though likely to be challenged on an appeal is to all intents and purposes in existence.

[17] At the conclusion of the hearing on 4th June 2021, having dismissed the application for interim relief we promised to provide our written reasons for so doing later. We now do so.

[18] We now go on to consider the law and judicial authorities to which we were referred on this singular issue.

The SIA

[19] Section 1 of the SIA states as follows:

> "(1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.
>
> (2) A court shall give effect to the immunity conferred by this section even

though the State does not appear in the proceedings in question."

[20] The Supreme Court of the United Kingdom in the case of **Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs**[11] in the judgment of Lord Sumption described Part 1 of the SIA "as a matter of domestic law…as a complete code". If "the case does not fall within one of the exceptions to section 1, the state is immune". It is not disputed that these state protections derive from states' international law obligations. They are international obligation of the United Kingdom and by extension the Virgin Islands, owed in this case to a friendly state, Pakistan.

[21] Counsel for Pakistan, Mr. Flynn, QC, contended that once a state asserts its immunity, as is the case here, a BVI court cannot grant interim relief against that state unless and until the Court has determined that it falls within one of the exceptions under the SIA. If the court grants relief without first satisfying itself that it has such jurisdiction, then it exercises a power it does not have.

The English Authorities

[22] The first decision relied on by Pakistan is the 1990 decision of Saville J in **A Co. Ltd. v Republic of X**[12] in which he stated:

> "It is clear that when a State seeks to rely on the general immunity conferred by section 1 of the [SIA] the Court must finally decide at the outset whether or not such immunity exists. […] Thus, when a State seeks to discharge a Mareva injunction on the grounds that it is immune from the jurisdiction of the Courts of the United Kingdom, **the Court cannot allow the injunction to continue on the basis that the plaintiff has a good arguable case that immunity does not exist, for if in trust immunity does exist then the Court simply has no power to continue the injunction**…
>
> **It follows from the foregoing that where such a challenge to the jurisdiction is made, the parties must be given an opportunity…to prepare themselves properly to fight to finality on the issue at the**

[11] [2017] UKSC 62.
[12] [1990] 2 Lloyd's Rep. 520 at 525.

> **outset, rather than to deal with the matter on an interlocutory basis**. This may mean (other things being equal) a delay between the granting of ex parte Mareva relief and such final determination by the Court; but to my mind this is inescapable, since it could hardly be suggested (and was not suggested) that the mere raising of the jurisdiction point by a State (or other entity) would oblige the Court without more to discharge any Mareva relief previously granted, before finally determining whether or not jurisdiction in fact existed. If the challenge to jurisdiction were upheld, then an interesting question would arise as to whether the ex parte order should be treated as a complete nullity, or as effective up to the date of such determination. That question does not fall to be decided at this state of those proceedings." (Emphasis added)

[23] The emphasised portion of this dictum was heavily relied upon by Queen's Counsel for Pakistan, while Lord Falconer on behalf of TCC stressed the remainder of that passage to emphasise that Saville J was not there suggesting that *ex parte* mareva relief could not be granted at all pending the hearing and final determination of the immunity question, and that accordingly, this Court had jurisdiction to grant the interim injunctions sought whether by way of a stay of the orders below discharging the injunctions or the grant of new injunctions in the interim until an appeal, intended to be brought by TCC is heard and finally determined and in respect of which TCC says it has arguable grounds that Pakistan is excepted from immunity.

[24] The second authority which it is said crystallises what is now the standard practice under the SIA is the decision of Teare J is **Gold Reserve Inc. v Bolivarian Republic of Venezuela**[13] in which he opined that where a judge is faced with an application to enforce an award against a state as if it were a judgment and the issue of state immunity is raised, relief should not be granted but rather, the judge should proceed, upon giving the appropriate directions, to an *inter partes* hearing to consider the question of state immunity. Although speaking in the context of the requirement of full and frank disclosure at the ex parte stage he stated: "Indeed, since the court is required by section 1(2) of the [SIA] to give effect to state

[13] [2016] EWHC 153 (Comm) at para. 71.

immunity even though the state does not appear, it is important that the court be informed of the available arguments with regard to state immunity".

[25] The third is the very recent decision of Henshaw J in **Hulley Enterprises Ltd. and Others v Russian Federation**[14] where he referred to the view expressed by Saville J in **A Co. Ltd. v Republic of X** by stating in more trenchant terms at paragraph 227 that "until questions of state immunity have been determined the court has no power to determine other questions whether of jurisdiction or otherwise over and above the court's 'jurisdiction' to decide the immunity issue". At paragraph 228, he went on to state as follows:

> "[t]he same principle also appears from the cases holding that where a defendant claims state immunity, the court has no jurisdiction to make a freezing order against it without first deciding the question of immunity. See A Co. Ltd. v Republic of X… ETC Euro Telecom International NV & Anor v Republic of Bolivia [2008] EWHC 1689…"

[26] Lord Falconer took the view that Henshaw J in paragraph 228 got it wrong as to what Saville J said in **A Co. Ltd. v Republic of X** and that Saville J was in fact saying that a mareva injunction could be maintained while the court decides the question of immunity. He accordingly urged that for as long as it takes the court to resolve the question of sovereign/state immunity the court could grant protective orders.

[27] Mr. Flynn, QC, on the other hand, made two succinct and in our view persuasive points:

(a) state immunity had already been decided at the *inter partes* hearing against TCC resulting in the freezing and other injunctions being discharged following the judge's ruling on 25th May 2021. This was therefore not a case where the issue was simply being raised but one where it had been raised, ventilated and determined by the court below in keeping with the view expressed by Saville J, Teare J and more recently

[14] [2021] EWHC 894.

by Henshaw J. Queen's Counsel argued that the finality as referenced in the English decisions above referred is in the first instance judgment delivered below on 25th May 2021 in which the court found that immunity applies to Pakistan. Accordingly, even if TCC, as it has suggested, has an arguable case on an appeal in respect of state immunity, that is not sufficient a basis on which this Court could assume jurisdiction and grant the interim relief sought; and

(b) TCC has been unable to refer the Court to single decision where interim relief has been granted in such circumstances.

Discussion

[28] The Court, in the absence of any local or regional authorities dealing with the issue of state immunity, having arisen for the first time before the BVI court in this matter, considered the English authorities above referred. It appeared to us that Saville J in **A Co. Ltd. v Republic of X** was making his remarks in circumstances where a freezing order had been obtained *ex parte* and the State, as was the case here, sought to discharge the injunctions on the grounds that it was immune from the jurisdiction of the English [BVI] court. Indeed, in the present case the *ex parte* injunctions were not immediately discharged and it was not until after the *inter partes* hearing at which there was full ventilation of the issue of state immunity, that the learned judge determined that Pakistan was immune from its jurisdiction. That was a final determination at the interlocutory stage on this issue.

[29] The application for interim relief comes before this Court after the court below has made a final determination on the issue en route to the filing of an appeal against the judge's finding, among others, of state immunity. It appeared to us that the circumstances of this case may be said to be past the stage as referenced by those English decisions cited. Here, there has been a ventilation of the issue of immunity and a finding that state immunity exists in respect of Pakistan. It is

therefore not a situation where state immunity has been raised and not yet determined after a full ventilation of the issue before the court below.

[30] It seems to us that at this level, one starts off at a different position than what appertained at the ex parte stage in the court below. Here, there is a determination of state immunity as distinct from a mere assertion. TCC will have the task of seeking to set aside that finding of state immunity. Having an arguable case on appeal does not to our mind suffice for assuming this important jurisdiction over a sovereign friendly state in the face of a finding of state immunity, such as to grant interim relief in the nature of injunctions until that finding is possibly reversed on an appeal to be brought, and further ventilated at some later date. Indeed, we have not been referred to any authority which suggests that interim relief may be granted in such circumstances, although cases dealing with state immunity have been before the English courts for some time. It may be that the position would be different if the finding was that state immunity did not exist but nonetheless the injunction orders were discharged for other reasons. The starting point for an appellate court considering whether to grant interim relief pending an appeal in such circumstances would more likely than not be that state immunity does not exist and therefore the court has power to grant interim relief.

[31] We were also not persuaded that Henshaw J was making any different statement in substance to the views expressed by Saville J or Teare J. Though stated in more robust terms, the essence of the imperative provided by the SIA in respect of state immunity is clear and the protections provided must at this stage of the matter be respected by the Court. As the matter currently stands before this Court, state immunity exists and continues to so exist until such time as TCC brings an appeal and is successful thereon. Accordingly, the Court was of the view that in the circumstances, immunity having been determined, the court is not empowered, given the clear wording of sections 1(1) and 1(2) of the SIA, to assume jurisdiction over Pakistan at this stage and grant the interim relief sought. This means that TCC will have to await the hearing of its appeal (when it is

brought) against the learned judge's finding of state immunity and for obtaining any other orders in aid of enforcement of the Award.

Disposition

[32] For the above reasons, the application for an interim stay of the injunction orders discharged by the court below on 25th May 2021 and/or the grant of injunctions on similar terms pending appeal was dismissed. The Court also ordered that the applicant, TCC, bears the costs of the first to fifth respondents to be assessed unless agreed within 21 days.

[33] The Court is grateful for the considerable and commendable assistance provided by all counsel notwithstanding the short time frame for preparation of written submissions and oral arguments.

I concur.
Paul Webster
Justice of Appeal [Ag.]

I concur.
Dexter Theodore
Justice of Appeal [Ag.]

By the Court

EASTERN CARIBBEAN SUPREME COURT
SEAL
COURT OF APPEAL

Chief Registrar [Ag.]