
IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL
Case: FMT 19007

B E T W E E N:

Al Masah Capital Limited
Al Masah Capital Management Limited
Shailesh Kumar Dash
Nrupaditya Singhdeo
Don Lim Jung Chiat

Applicants

- and -

The Dubai Financial Services Authority

Respondent

- before -

His Honour Mr David Mackie CBE QC (President)
Mr Ali Malek, QC
Mr Patrick Storey

Day 7

Monday, 18 May 2020

Mr Richard Hill, QC, and Mr Gregory Denton-Cox
(of 4 Stone Buildings), Mr DK Singh, Ms Bushra Ahmed and
Ms Tina Asgarian (of KBH Kaanuun) appeared on behalf of the
Applicants

Ms Sarah Clarke, QC, (of Serjeants' Inn) and Mr Adam Temple
(of 4 Pump Court) appeared on behalf of the Respondent

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1 P R O C E E D I N G S

2 (1.00 pm)

3 PRESIDENT: Good morning, everybody. Welcome back. I think
4 we're ready to continue, when you're ready, Ms Clarke.

5 MR NRUPADITYA SINGHDEO

6 Cross-examination by MS CLARKE (continued)

7 MS CLARKE: I'm now going to ask you questions about the
8 information provided to Distributor B, which is Noor
9 Bank. All right?

10 Could we have exhibit 723 up on the screen, page 6.

11 Mr Singhdeo, to set the scene, as we can see from
12 this email, Distributor B requested some information in
13 respect of ANEL and Avivo, and it included the
14 information that we can see in this list:

15 "Financial highlights and any audited statement of
16 the funds."

17 Do you see that? It's the second item in the list.

18 A. Yes.

19 Q. Then if we can go up the page to the email that is
20 halfway down page 5. That request gets forwarded on to
21 you and cc'd to Mr Dash, but the email is clearly
22 addressed to you, because it starts, "Dear Nrupa":

23 "I had a few discussions with Noor Bank for
24 distributing our products and in principle, they want to
25 go ahead starting with Healthcare and Education

1 13:01 platforms which they are looking to onboard in next 7-10
2 days."

3 Then it talks about requirements for obtaining
4 Sharia approval and refers you to the list of documents
5 that they've requested, which are in the email that we
6 looked at to start with. All right?

7 A. Okay.

8 Q. That's what was forwarded to you.

9 Then what happens -- and if we go up the page to the
10 email from Mr Dash, which is the next one in the chain,
11 so we can see that's from Mr Dash. And then if you
12 could go down a bit so that we can see the content of
13 the email, he says:

14 "Eyad/Don,

15 Have your team send the info by tomorrow morning.
16 Exit dates will be the new ones from 2018 onwards."

17 That's an email that's sent to Mr Lim, Mr Huwaij and
18 cc'd to you and Mr Ghosal.

19 What then happens is that there's some emails
20 between Mr Lim and various other individuals that you're
21 not involved in, but the upshot in the end is what can
22 be seen in exhibit 764.

23 If you could scroll down so that we could see the
24 email at the bottom of page 1, from Mr Lim.

25 Mr Lim, on 24 November 2014, sends an email to

1 13:03 Mr Dash and you, and Mr Huwaij, for Noor Bank:

2 "They are asking for copies of audited financial
3 statements -- I will like to send the copy of the annual
4 report instead of the signed audited statements. If
5 they want to sight signed financial statements, will ask
6 them to do it in our office.

7 Agreeable?"

8 To which Mr Huwaij responds:

9 "Send them the annual report as it includes the
10 financial statement."

11 That's cc'd to you, Mr Lim and Mr Dash. Then the
12 final email at the top, Mr Dash replies to you, Lim and
13 Mr Huwaij, "That's right".

14 Mr Singhdeo, I suggest that what that email chain
15 was all about was the fact that those of you who were
16 involved in it, which, of course, included you, Mr Dash
17 and Mr Lim, knew perfectly well that the financial
18 statements contained in the annual report did not
19 contain references to placement fees. And that's why it
20 was decided that the annual report would be sent, rather
21 than genuine audited financial statements.

22 A. No, I disagree with your statement. There is -- if we
23 go to the first email, there was a request to share
24 a financial highlight or audited financials. So if
25 I recollect, the request first came from Noor Bank and

1 13:05 then Mr Huwaij, he is kind of proposing that, "Let's
2 share the annual report".

3 So within the team, there was always a distinction
4 made that the annual report will have the summarised
5 financial statements. Eyad used to handle the
6 Healthcare group at that point of time. So we had
7 discussed at length yesterday as to the Al Najah annual
8 report, it was -- the preparation, it was more of
9 a coordination issue, rather than any issue of intent,
10 as to what went in and what didn't go in. So I will not
11 go into detail of that particular discussion.

12 So just to conclude or just to say, we had no such
13 intention, as the way you are putting, at this point of
14 time.

15 Q. Can we go, then, to the final topic, which is the
16 alteration of the Royal Bank of Canada (Suisse) bank
17 statement.

18 To set the scene, the position is that
19 between December 2011 and May 2014, ANEL operated a bank
20 account with Royal Bank of Canada (Suisse), didn't they?

21 A. December 2011 to?

22 Q. 21 May 2014.

23 A. I won't recollect the dates, but I remember the RBC,
24 they did close the account at some point and when the
25 company, it started, that was probably the first account

1 13:07 which got opened, if I recollect well.

2 Q. What happened, as you say, is that the account was
3 closed in May 2014 and then another account with
4 First Gulf Bank was opened?

5 A. Yeah, around that time, yes.

6 Q. The First Gulf Bank account, once that was open, was the
7 account that investor funds were paid into from that
8 point on?

9 A. I remember that was one of the reasons, just so that
10 there is adequate kind of understanding of how the
11 investors or the shareholders have put in money. That
12 was also one of the reasons why it was set up.

13 Q. Because prior to the First Gulf Bank account coming into
14 being, and at the time, therefore, when it was the Royal
15 Bank of Canada (Suisse) account that was being used, the
16 Royal Bank of Canada account was the main account into
17 which investor funds were initially received, wasn't it?

18 A. I don't recollect, but that was one of the main
19 accounts, yes. There may have been other accounts, but
20 I don't have a list of accounts which were operating.

21 Q. In addition, do you remember that it was the Royal Bank
22 of Canada account from which distributions or dividends
23 were paid?

24 A. I don't recollect that.

25 Q. In addition, Al Masah Cayman extracted placement fees

1 13:08 and management fees, et cetera, from that account as
2 well. Do you remember that?

3 A. The operational part, I will not recollect, because,
4 fine, that is Al Najah Education account, what we are
5 discussing. So it will be very difficult for me to
6 comment the particular things what you are asking, but
7 I certainly remember that that was one of the main
8 accounts which Al Najah had at that point of time.

9 Q. In your witness statement, if we could have your third
10 witness statement, which is C011, paragraph 81.

11 This is what you described about the task that you
12 say that was assigned to Mr Agarwalla by Mr Lim in
13 relation to this bank account; yes? What you say is
14 that --

15 A. You see, I --

16 Q. Sorry? Do you want to -- let's read the statement and
17 then you can give us a comment on it or an explanation.

18 A. No, I'd like to listen to the question.

19 Q. "... the task assigned to Mr Agarwalla by Mr Lim was to
20 effect a reconciliation which meant that the placement
21 fees in the running ledger be separated from the other
22 credit and debit entries. The separation was to ensure
23 we had a clear understanding of the payments that were
24 to be made to AMCL ..."

25 That's Al Masah Cayman, isn't it?

1 13:11 A. That's correct.

2 Q. "... in respect of the placement fee agreements and
3 correctly assigned them against every investment made.
4 The objective was also to ensure that this RBC bank
5 account was being maintained for the purpose of receipts
6 of investor monies and it was not intended that any
7 debit entries from this account in relation to the
8 repurchase of shares should be reflected here. In fact
9 the intention was to ensure that any payment to
10 shareholders in respect of buyback of shares should come
11 from the general operating account."

12 Is that an accurate reflection of what you
13 understand Mr Agarwalla was told to do?

14 A. It should be general subscription account. I'm just
15 noting it out. It should be general subscription
16 account, from the company subscription account. Any
17 buyback should have happened from the company's
18 subscription account.

19 Q. Right, but is that what you understood Mr Lim had told
20 Mr Agarwalla to do?

21 A. No, see, after -- obviously after the investigation
22 report was out, I tried to understand what exactly,
23 where the sequence of things, which had happened around
24 that time. And I did see from my emails also that there
25 was work, which was going on by Raj Kumar, to do the

1 13:12 share reconciliation, to kind of work on the placement
2 fees which have to be paid to Al Masah. And that whole
3 reconciliation exercise was getting coordinated between
4 him, with investor relations of Al Masah, as to what all
5 investors' money came in.

6 So broadly, this was my understanding, which I had
7 around which had taken place during the period which we
8 are discussing.

9 Q. That was the reason I asked the question, because this
10 paragraph begins:

11 "It appears to me that the task assigned ..."

12 Then you describe it. What I want to know is: was
13 that your understanding, at the time, ie December 2014,
14 that that was what he had been asked to do?

15 A. In December 2014, I remember there was a reconciliation
16 happening, but it is still a long time, because now
17 I have the privilege to have looked into the emails, so
18 that is the reason I'm giving you that answer. But
19 I can't recollect, in 2014, whether this was the task
20 given, but I have seen Mr Agarwalla's statement also and
21 he himself has said that he was working on
22 a reconciliation, what has been told by Mr Lim to him to
23 work on.

24 Q. Because what we can see from the emails -- and perhaps
25 we'll bring up the first email. It's exhibit 750.

1 13:14 Email from Mr Agarwalla, 9 December 2014, to you and
2 Mr Lim. And then we're going to come to the content and
3 the attachments in a moment. But clearly, he's sending
4 this email to both of you, Mr Lim and you.

5 That means, doesn't it, that you had involvement in
6 whatever task it was that Mr Agarwalla was being asked
7 to do. It was you and Mr Lim that had tasked
8 Mr Agarwalla with whatever it was?

9 A. I disagree with your statement.

10 Q. Can you explain, therefore, why you're being included in
11 this email at all, then, if it's nothing to do with you?

12 A. I had explained my position earlier also and I had kind
13 of no reason to understand why I was included in this
14 email. But it is, as I said, since Raj Kumar was
15 working on a reconciliation of separating the share
16 capital and identifying what the placement fees were for
17 a particular period, so I would have assumed maybe that
18 would have been one of the reasons why he would have
19 given.

20 But there was no kind of reason for me to believe
21 why he would be sending this particular email with the
22 contents what it had. Or if there is any query he had,
23 that would have been the reason.

24 But when I saw this email, it was the next day
25 morning, and I had explained my position to DFSA, why

1 13:16 and what were the reasons when I had looked into this
2 particular email.

3 Q. But as far as you're concerned, what you've said to us
4 just now is that there was no particular reason for
5 Mr Agarwalla to have sent this email to you at all?

6 A. I do say that, yeah. I see no reason why Mr Agarwalla
7 should have sent this particular email to me.

8 Q. You then, no doubt, at the time you received it, would
9 not have understood why he was sending you the email?

10 A. He's sending the email at the middle of the night, so
11 obviously, I did kind of look into certain conversations
12 which, by that time, had happened between Raj Kumar and
13 Don. But obviously, I had no reasons to kind of have an
14 explanation that why this particular email exchange is
15 happening between both of them and why I'm copied into
16 this particular email chain.

17 Q. What we can see, if we look at the body of the email, is
18 that it contains some attachments, which we'll look at
19 in a moment. And then it says --

20 PRESIDENT: The witness said he had been copied into the
21 email. Could we just remind him that actually he's the
22 subject of it. It's addressed to him. I'm not sure he
23 picked that up.

24 MS CLARKE: I thought I had done that. But, yes,
25 absolutely.

1 13:18 You're not copied in, Mr Singhdeo. It's actually to
2 you and Mr Lim. Do you see that? It's been sent to
3 you.

4 A. I see that, yes.

5 Q. Does that make any difference to the answer that you've
6 just given?

7 A. No, no, no. I wouldn't have understood why in this
8 particular email, I'm included. Whether it is addressed
9 to me or as a copy.

10 Q. The email reads:

11 "Dear NS/Don,

12 Please find attached RBC statement both for same
13 period 15 August 13 to 29 October 13. It is taking lot
14 of time to adjust the alignment, font etc. But I will
15 finish this by tomorrow and meantime Al Najah Dubai
16 entity we are starting from tomorrow morning. More than
17 this bringing perfection in PDF modification and mainly
18 in alignment/font is not possible I feel, unless we give
19 it to a professional person.

20 Kindly see both the attachment RBC1 and RBC --

21 15 Aug 13 - 29 Oct 13 final and compare it with original
22 and check if it is ok."

23 So, Mr Singhdeo, that's the email that was sent.

24 If we can look at the documents that were attached to
25 the email, there were three documents.

1 13:20 First of all, exhibit 752, which is that one. We'll
2 come back to the detail in a minute, but I just want to
3 get the three documents up. That is the first one.

4 That is the original version, so the genuine version
5 of a bank statement, the Royal Bank of Canada bank
6 statement. All right?

7 A. Okay.

8 Q. That's exhibit 752.

9 Then there's exhibit 751, which is an edited version
10 of the genuine bank statement, where a number of entries
11 have been removed and numbers have been changed.

12 All right?

13 A. Okay.

14 Q. Then the final one is exhibit 753, which is a version
15 where, again, a number of entries have been removed and
16 some numbers have been changed.

17 Just for the purposes of the tribunal, in the
18 investigation report, in the extract that deals with
19 this, this document here, exhibit 753, is what's
20 referred to as copy B. And obviously, the main exhibit,
21 the original, is what's referred to as the original.
22 Then 751 is what's referred to as copy A. But it's
23 really copy B and the original, that I'm going to be
24 focusing on, Mr Singhdeo, with you from now on.

25 If we can look at copy B, which is the exhibit 753

1 13:22 that we have got on the screen, what I'm going to do is
2 explain to you the ways in which this copy B is
3 different from the original unedited bank statement.

4 The changes are these. First of all, nine deposits
5 from named shareholders have been removed. The transfer
6 to Zent International, which is the very last entry in
7 the original version, there's a transfer to Zent
8 International of \$250,000, that has also been removed.

9 Then in relation to the first entry, where it says
10 here "02/09/13, Deposit/Payment received Al Masah
11 Capital", the words "Zent International Ltd" has been
12 removed and \$500,000 has been added to the amount of the
13 deposit, so that instead of it being \$2.5 million, it is
14 in fact now \$3 million. You understand?

15 A. I have listened to what you have said.

16 Q. You're following what I'm saying.

17 Then in addition to that, the words "placement fee"
18 have been removed from the line 2, which is the item
19 that's dated 18 September '13. So the words "placement
20 fee for investment" have been removed, and the figure
21 438,166 has been reduced by \$250,000.

22 At item 5, which is dated 9 October 2013, again the
23 words "placement fee for investment" has been removed
24 and what has been added is "internal funds transfer for
25 closure".

1 13:25 All right? You're following what I'm saying?

2 A. I've listened, but I haven't fully followed, but
3 I understand we are discussing about certain deletions
4 or alterations, what you have been trying to explain me.

5 Q. For completeness, the total figures, the balance figures
6 at the bottom, in the original version, the balance was
7 given at 731,882. But in copy B, if we could just go
8 down to see the balance figure at the bottom of the
9 page, it's now gone up to 955,911. All right?

10 Those are the changes that have happened between the
11 original version and copy B. You will know, won't you,
12 from the investigation report, that a deleted exact
13 duplicate of copy B was recovered from the laptop
14 computer that had been issued to Mr Kishore Dash, who
15 was the CFO of Al Masah DIFC. You're aware that that's
16 where copy B was recovered, aren't you?

17 A. No, you are incorrect. Kishore Dash was never the CFO
18 of Al Masah DIFC.

19 Q. Sorry, Al Masah Cayman, you're right.

20 A. No, he was not --

21 Q. Sorry, carry on.

22 A. He was not CFO of Al Masah Cayman also.

23 Q. What was Mr Kishore Dash's role?

24 A. Mr Kishore Dash was the boss of Raj Kumar, who
25 eventually replaced -- he was the financial controller

1 13:27 of Al Najah when Raj Kumar was fired from his job.

2 Q. Fine, ANEL. I'm sorry. I got that wrong.

3 But Mr Kishore Dash was not employed by ANEL at the
4 time that we are concerned with, ie December 2014, was
5 he?

6 A. No, I had explained it in my witness statement also,
7 that --

8 Q. Mr Singhdeo, Mr Kishore Dash was not employed by ANEL at
9 the time we are concerned with, which is December 2014,
10 was he?

11 A. He was employed around 2015, if I'm not wrong, in
12 Al Najah.

13 Q. The document, copy B, was contained within a folder,
14 which was named, "All Al Najah files 2014/all audit
15 workings/Raj files/Al Najah audit 2013 to 2014."

16 And the rest can be found in the investigation
17 report.

18 This is where copy B was found, on Mr Dash's laptop,
19 and with the file path, "Al Najah audit 2013 to 2014".

20 Did this document have anything to do with the
21 Al Najah audit?

22 A. I have no answer to that. And I am absolutely clear
23 that I have never given any instructions, either to
24 Mr Raj Kumar or even to Mr Don Lim, to do any alteration
25 of bank statements or use it for any audit purpose.

1 13:29 Q. Can we look, then, at the chain of emails that proceeded
2 after Mr Agarwalla sent the documents to you and the
3 email that we looked at. Could we go to exhibit 754,
4 bottom of page 1, we can see that that's the email that
5 we just looked at. And then if we could go up to the
6 reply from Mr Lim, so Mr Lim replies to you and
7 Mr Agarwalla:

8 "I will look at it tomorrow and I feel as long as we
9 convert all and back so it all looks similar its ok."

10 Did you receive that email? You clearly received
11 it. Did you read it?

12 A. I can see I'm copied on that email. These whole
13 discussions, I can see are happening in the midnight.

14 Q. Did you read that email from Mr Lim at the time?

15 A. I don't recollect whether I did read this particular
16 email with a lot of attention or not, on or around
17 9 December.

18 Q. You weren't just copied in on the email. It was, of
19 course, sent to you and Mr Agarwalla, wasn't it?

20 A. Yes, that is correct. But what I'm saying is I have
21 given no instructions, either to Raj Kumar or to Don, to
22 do any such work, and forward or send me emails of what
23 has currently been shown to me and to the tribunal.

24 Q. Can we go to the next email that's relevant, which is
25 exhibit 767. This is a second response from Mr Lim sent

1 13:31 to you and Mr Agarwalla:

2 "Only thing I see is that some alphabets are
3 slightly larger than the other alphabets. Is that the
4 case when you convert from pdf to word back to pdf?

5 But it should be ok."

6 To which Mr Agarwalla replies, again to Mr Lim and
7 you, "Yes".

8 Did you read that exchange?

9 A. Yeah, like just to be clear, and to make my position,
10 because I can see that two of the emails, the first
11 email, it was written around midnight, it was addressed
12 to me and Mr Lim, with NS and Don. And then these are
13 some of the exchanges which are happening in the
14 morning.

15 So it is quite possible that I would have looked
16 into these emails where -- because when you look into
17 the emails on the BlackBerry, you look into the last
18 version, which is there on the top. So I can see that
19 there are already certain exchanges which has happened
20 between Mr Lim and Agarwalla on this particular subject.
21 And I did find that, fine, what exactly they're trying
22 to discuss, this conversion.

23 And I had mentioned to, when I was interviewed by
24 DFSA, that I did find the whole conversation unusual.
25 But at the same time, I did try to understand that what

1 13:33 exactly they are doing, because I was, as I said, at the
2 background, I was aware that they're working on
3 a reconciliation around the period on which this
4 conversation is happening.

5 Q. It's a bit more than unusual, though, isn't it?

6 References to different alphabets and different fonts:

7 "Is that the case when you convert from pdf to word
8 back to pdf?"

9 Did that not raise any questions in your mind?

10 A. I have no comment on that.

11 Q. Did that raise any questions in your mind at the time?

12 A. No, I did find the email unusual and that was the reason
13 why in the morning, when I went to office, because
14 obviously on a BlackBerry, you can't follow or
15 understand or comment on attachments unless you open and
16 kind of look through them carefully, so I did find the
17 email chain unusual. And I have explained my position
18 earlier also, when I was interviewed by DFSA on this
19 particular topic.

20 Q. By the time you went into the office, you were able to
21 open up your computer, you would then have read the
22 emails from Mr Agarwalla to you and Mr Lim, more
23 carefully, would you? And also, of course, the response
24 is from Mr Lim. Then you would have been able also to
25 look at the attachments, wouldn't you?

1 13:34 A. Yeah, I did open the attachments once I reached office
2 and tried to understand that what exactly is it,
3 something that it is they are having issues in terms of
4 the narrations not being correct or what exactly is the
5 issue he's finding difficulty in terms of doing the bank
6 reconciliation.

7 So that would have been one of the thoughts in terms
8 of when I would have read the body of the email without
9 having read the attachment. What exactly they are
10 trying to do, what difficulty they are facing. So maybe
11 these would have been some of the things which would
12 have crossed my mind, I would say.

13 Q. Then by the time you're in the office and you're able to
14 open the attachments as well as read the emails, you
15 did, in fact, open all of the attachments, didn't you?

16 A. I did open one of the attachments, that's what I had
17 said. I still feel probably that was the correct
18 position, because I can see that, fine, there is already
19 a conversation happening between Raj Kumar and Don on
20 certain emails on this particular topic.

21 At the background, I was of the view that, fine,
22 they're working on a reconciliation and I tried to see
23 that what exactly is the issue they are trying to figure
24 out. Because when I opened, I didn't find anything
25 unusual in the document, the fonts or alphabets or the

1 13:36 size. I did find that there is no kind of issue, what
2 they're trying to discuss on this particular email
3 conversation.

4 Q. You would have opened all of the attachments, though,
5 wouldn't you, in order to try and understand the
6 conversation, because if you had only opened one, would
7 the conversation make sense?

8 A. No, I don't recollect. Maybe I would have opened all or
9 I would have opened one. I don't recollect what would
10 have been the sequence of things at that particular
11 date.

12 Q. Can we go to exhibit 767A. If you could scroll down to
13 the bottom, page 2. Mr Singhdeo, this email is sent at
14 11.26 in the morning, so that's about three-quarters of
15 an hour after the email from Mr Lim that we had looked
16 at before. Actually, it's a bit more than that, it's
17 about an hour and 15 minutes after Mr Lim's last email
18 on the topic.

19 By this time, as you say, you're in the office, you
20 have been able to open up your computer, you can look at
21 the attachments, you can read the email chain. And this
22 is your response:

23 "Raj -- Please review the yellow highlighted number
24 from the statement. In the attached document, I also
25 note that, there is a transfer to Zent International of

1 13:38 USD 250,000. Why this is getting reflected in the
2 statement. This is one of the repurchase carried out.
3 Hope, you have adequately reviewed the entire bank
4 statement of RBC, and have gone through each debit and
5 credit item."

6 Mr Singhdeo, what were you referring to in that?
7 What does that tell us, that response?

8 A. I have looked into the statement, the statement which
9 had -- which was shown in exhibit 752. And on review of
10 that statement, because, at the back of the mind,
11 I remembered that this is a discussion which is
12 happening around December 2014. Because I remember that
13 around a couple of months earlier or around the same
14 time, there was another email exchange, which went
15 around for understanding where the Zent repurchase has
16 happened. And that was probably one of the things I had
17 in mind.

18 I also kind of remembered that we had set up or
19 Al Najah had set up a subscription account, where the
20 repurchase transactions should have got routed.

21 So with that in mind, I did put the query. And
22 plus, I wanted to understand that, fine, for the
23 placement fee thing, how the calculation is there. So
24 probably those were some of the things with which
25 I would have put the email to Raj.

1 13:40 Q. Can we look at exhibit 752, which is the one you have
2 referred to. There appears to be a highlight in
3 relation to an entry, 21 October '13, to do with
4 placement fees?

5 A. Yes, I can see that.

6 Q. That's the highlight. Can we just scroll down to the
7 bottom. I just want to see the balance figure. That
8 appears to be the only highlight on the page, relates to
9 a placement fee figure. Your email that we have just
10 looked at, at exhibit 767A, only talks about a transfer
11 to Zent International of 250,000, which is the bottom
12 item that we can see on the exhibit you have on the
13 screen.

14 A. Yeah.

15 Q. Your email doesn't refer to the issue of placement fees
16 and yet the yellow highlight that you've applied or
17 appears to have been applied, relates to placement fees?

18 A. I can see that. Because this was the statement which
19 came in the email, so I did say that, "Please check the
20 highlighted portion and on the Zent repurchase."

21 Q. Yes:

22 "Please review the yellow highlighted number ..."

23 That is true, but there's no specific reference in
24 the body of the email to placement fees or the issue of
25 placement fees. Therefore, why is it that the only

1 13:42 highlight is in relation to a placement fee number?

2 A. No, I remember they were doing a reconciliation for the
3 purpose of how much capital has got raised, what is the
4 placement fee which has got paid. So whether it is in
5 relation to that particular email, in that particular
6 subject or what exactly was the discussion, because
7 I also kind of recollect when I saw the emails, that
8 there was a reconciliation exercise which was happening.

9 So I can't go back to the time or the date of that
10 particular day, but given my understanding of what was
11 happening, this would have been the query I would have
12 put in the email.

13 Q. Can we go back to exhibit 767A. We have looked at what
14 you had to say. Then let's look at what is the
15 response. Mr Lim replies to you and Mr Agarwalla:

16 "Raj I think the attachment below is the original
17 one before changes?"

18 Then if we could look at the final email in the
19 chain at the top of the page, Mr Agarwalla replies to
20 you and Mr Lim:

21 "Yes I just spoke to NS and clarified."

22 Mr Agarwalla, therefore, spoke to you, didn't he?

23 A. I had explained my position earlier also, that when
24 I put that email to Raj and Don, both copied out there,
25 I had put a query on the Zent repurchase. And I did --

1 13:44 he did clarify to me, which I had mentioned, that why
2 this particular transaction has not been routed through
3 the subscription account. Because, at that point of
4 time, the subscription account had not been set up. As
5 you explained, and as I'm also aware, the FGB account
6 got set up around May 2014.

7 So the explanations had already come from Raj to me
8 on the query, what I had. I may or may not have looked
9 into the separate chain of discussion, I would say,
10 which is happening between Don and Raj Kumar on the
11 subject on which I'm also copied.

12 Q. What I suggest in fact happened during that conversation
13 with Mr Agarwalla, is that he explained to you that you
14 were looking at the original version of the bank
15 statement and not the one that had been edited.

16 A. No, I disagree with your statement.

17 Q. The reason why he reminded you of that, I suggest, and
18 the reason why these emails are worded in the way that
19 they are, is because you and Mr Lim and Mr Agarwalla
20 knew perfectly well what you were all talking about,
21 which was that the intention was, and what was in fact
22 done, was to edit a bank statement so that the edited
23 version looks like it is an original version.

24 A. No, I disagree with you. Had I been kind of interested
25 in whatever Raj Kumar, or for that matter, let's say,

1 13:46 Don, they have been discussing or Raj Kumar has been
2 producing, and I have looked at the original version and
3 the edited version, because I remember having now later
4 on seen both the documents and tried to understand that
5 what exactly would have been my query, if I would have
6 been a participant to the chain of discussion, what is
7 happening.

8 Because my first query would have been that why the
9 closing balance in the original statement and the
10 altered statement, they are not same? Not the query
11 what I did put to Raj. I did put to Raj a query which
12 was very much relevant for accounting purposes and it
13 had got nothing to do with trying to get an
14 understanding on the fonts or the PDF conversion or how
15 the statements are looking, the altered version and the
16 original version.

17 So the logical query would have been if I would have
18 been a party and would have been understanding of what
19 exactly is happening, that why he is still not kind of
20 tallied the closing balance in the original statement
21 with the altered statement, whatever he has produced?

22 Q. This was a blatant attempt to alter a bank statement to
23 remove references to placement fees and other entries,
24 wasn't it?

25 A. No, I can't comment and I disagree with you, because

1 13:48 I am fully aware that, personally, I have given no
2 instructions either to Raj Kumar or to Mr Lim to edit or
3 alter any bank statement for the purpose to be used in
4 audit.

5 In fact, when you look into what Raj Kumar has
6 himself kind of said, he was the one who used to look
7 after the accounts and audit of Al Najah. If he's the
8 one who's responsible for the audit of Al Najah, I don't
9 have a control of what goes to the auditor, what is
10 shown to the auditor, what gets discussed with the
11 auditor of Al Najah. Why I should be interested in kind
12 of receiving altered statement, which he has prepared
13 for usage in the audit?

14 Q. The reason why these emails and attachments are being
15 sent to you is because you are involved in what is going
16 on and you knew what was going on, I suggest.

17 A. No, I disagree with your statement.

18 Q. That is also why, in the chains of emails that we have
19 looked at, you do not raise any question marks about
20 what is happening, why it is that different attachments
21 are being made to look as if they are genuine bank
22 statements. That's why you don't ask any questions
23 about that?

24 A. No, I have explained my position, as to my understanding
25 of that particular day and of that time. I had got my

1 13:49 explanations from Raj as to why the Zent repurchase has
2 not been routed through the subscription account,
3 because that was the account which was set up later on.
4 And since I had got my clarification, I had moved on and
5 there was no other questions to be asked for.

6 The font and alphabet, which was the initial kind of
7 concern, when I opened the bank account, I didn't see
8 any such small/large alphabets or any font, the kind of
9 query what probably Mr Lim had put to Raj. I opened the
10 statement. I did feel that a reconciliation work is
11 being carried out and I did put the right question,
12 which were relevant to me when I reviewed the statement.

13 MS CLARKE: Thank you very much. That's all the questions
14 I have for you, Mr Singhdeo.

15 MR HILL: No questions from me.

16 PRESIDENT: As I understand it, therefore, Mr Hill, you have
17 no more witnesses to call?

18 MR HILL: That's correct.

19 PRESIDENT: Before we proceed any further, I'm just going to
20 ask -- I forgot to ask my colleagues whether they would
21 like to ask the witness some questions. Mr Malek,
22 Mr Storey?

23 MR MALEK: Nothing from me, thank you.

24 MR STOREY: And nothing from me either, thank you very much.

25 PRESIDENT: Mr Singhdeo, thank you very much. That's all.

1 13:52 Thank you very much for your help and for coming to give
2 evidence before us. You can either stay on or leave as
3 you please, but you might as well put off your camera
4 now. Thank you very much.

5 (Witness withdrew)

6 PRESIDENT: Before we move on, I suppose the question of
7 Mr Lim's statement and its standing is in a sense
8 a matter for closing submissions. On the other hand,
9 it's sort of part of the evidence. So I wonder if you
10 could just explain to us briefly what you see the
11 standing of that witness statement to be, Mr Hill.

12 MR HILL: Yes. Unless my learned friend disagrees, our
13 position is that the statement is in, such that it's
14 material the tribunal can take into account. But
15 obviously, it's a matter of weight. One also has to
16 take into account that Mr Lim has not been prepared to
17 come and be cross-examined on that statement.
18 Obviously, my learned friend can make submissions as to
19 whether any weight is to be attached to it.

20 PRESIDENT: Do you agree, Ms Clarke?

21 MS CLARKE: I agree.

22 PRESIDENT: So we can now move on to the question of closing
23 submissions.

24 I think the position is that we're all agreed that
25 we come back on the 28th. I don't think that's changed.

1 13:54 You're going to produce some written closing
2 submissions. Personally, I'm very happy just to leave
3 that to you, subject to the following, which is first
4 Mr Malek has again had to remind us, we still don't know
5 what the status of the transcripts are. We asked to
6 know whether they were sort of approved, because if one
7 is marking them up, one needs to know what their status
8 is.

9 So could someone let us know quite soon what the
10 status is?

11 MS CLARKE: Can I deal with that? I've asked Mr Temple to
12 take charge of that issue and he's ready to address you
13 on that and bring you up to date with what the position
14 is. So perhaps we could ask Mr Temple to deal with
15 that.

16 PRESIDENT: Yes, thank you. I should say, I personally am
17 not going to read them until I see some closing
18 submissions, but my two colleagues are more diligent and
19 I think they will want to see it before then.

20 Mr Temple, yes.

21 MR TEMPLE: Yes, sir. The position is that both sides have
22 been commenting on them, so we're at the position now
23 where we've commented on days 1 to 6 and the applicants
24 have commented on days 1 to 3. Where both sides have
25 commented, that's been sent back to Lloyd Michaux for

1 13:55 checking and finalisation.

2 So hopefully, the first three days will be finalised
3 quite soon. The other three will come as soon as all
4 comments are in and they have been checked. I'm afraid
5 I haven't got a timeline for when that's likely to be.

6 MR HILL: From our side, we're obviously commenting as soon
7 as we can after receiving them. We have got days 4, 5
8 and 6 yesterday and today, with comments from the DFSA,
9 which we're now working on turning around.

10 PRESIDENT: People now have had more time to do that, so we
11 look forward to receiving that.

12 Two other matters, which I mentioned on behalf of us
13 all, were encouraging, perhaps, a bit more brevity than
14 was seen in the skeleton arguments and the fact that we
15 will have those with us anyway. We also mentioned the
16 question of relating your closing submissions to the
17 agreed terms of reference. It may be that my colleagues
18 have got some other things that they want to ask in
19 relation to closing submissions, so I'll give them
20 a chance to do that now.

21 MR MALEK: Nothing from me, thank you.

22 MR STOREY: No, that covers it for me as well. Thank you
23 very much.

24 MS CLARKE: Sir, can I respond in relation to those and the
25 issue of closing submissions? We, from Mr Malek,

1 13:57 understood a few days ago that what the tribunal are
2 proposing is that we address the list of issues that was
3 provided and that both sides focus on the list of
4 issues. Have I understood correctly that that's what
5 the tribunal are wanting us to do?

6 PRESIDENT: I'll get Mr Malek to enlarge on it, but
7 essentially, yes, it did seem to him and -- the list of
8 issues actually does, in this case, seem actually to
9 reflect what the real issues are.

10 I spent 10 years in the Commercial Court baffled
11 about lists of issues that came up before trial and were
12 never looked at again. But, in this case, it looks as
13 though they do reflect the real issues.

14 Mr Malek, would you like to comment?

15 MR MALEK: Yes, that's right. It just that it seems easier
16 to follow the argument if it's done by reference to the
17 list of issues. It doesn't necessarily have to be in
18 the order of the list of issues, if there's a better
19 order, and similarly, there may be general points that
20 you want to make before you get into the list of issues
21 to the extent that you want to focus on themes about
22 motive, for example.

23 But I think it's just to assist us in having
24 a structure that we tick all the boxes and the list of
25 issues seems to us to be a good place to start.

1 13:58 But speaking for myself, I wouldn't want to be too
2 prescriptive, if you feel another approach is going to
3 work. And, of course, what we're looking for is
4 references to the transcript, in particular, that we
5 need to look at. And, of course, any documents upon
6 which you rely.

7 But that's what I'm looking for any way.

8 PRESIDENT: Mr Storey, do you want to add to that?

9 MR STOREY: No, that's fine for me, thank you.

10 MS CLARKE: Noted, sir.

11 Then in relation to --

12 PRESIDENT: They are your closing submissions and to some
13 extent, I mean, speaking personally, I just always
14 tended to leave it. But I also misspoke, I was thinking
15 of another case, I used the expression "terms of
16 reference" instead of "list of issues" and I apologise.

17 MS CLARKE: Sir, we note what has been said about that.

18 Then if I could just pick up the issue of brevity.
19 I think both sides obviously understand what that means,
20 but of course given that there was a page limit that the
21 tribunal requested in relation to the opening
22 submissions, and given that there was
23 a misunderstanding, if I can put it in that way, as
24 regards that limit, certainly on the side of the
25 applicants, were you proposing to impose a page limit in

1 14:00 relation to these submissions of the order of 50 pages,
2 which was the limit imposed in relation to the opening
3 submissions?

4 PRESIDENT: I'll just have a word with my colleagues about
5 that. I think the 50-page limit was clearly a genuine
6 mistake by a very young lawyer, which we're happy to
7 overlook.

8 MS CLARKE: We're not suggesting --

9 PRESIDENT: But also before the case started, you were in
10 a sense unknown quantities and I know we felt that some
11 sort of limit would be useful.

12 Personally, I think you've heard what we have to say
13 and I'm not sure we need a limit, but I may yet be
14 outvoted. So if you'll pause for a moment, there will
15 be an exchange of WhatsApp messages between the three of
16 us.

17 No limit.

18 MS CLARKE: Thank you. Then, sir, in terms of --

19 PRESIDENT: No limit, subject to the constraints that we've
20 already indicated.

21 MS CLARKE: Understood. In terms of exchange, we were going
22 to suggest exchange on the 25th in advance of the
23 hearing on the 28th, if that's acceptable to you and to
24 the applicants?

25 MR HILL: We're content with that.

1 14:02 PRESIDENT: I'll just ask the others. Hold on.

2 We're agreed on that.

3 MS CLARKE: Thank you, sir. That's all I've got in relation
4 to preparation for the 28th hearing, written
5 submissions.

6 I do have one more matter of housekeeping, which
7 relates to your request some time ago for a bundle of
8 core documents and exhibit references of documents
9 referred to during the course of the hearing. I'm happy
10 to take that item now, unless there are any other
11 matters on the earlier items that my learned friend
12 wanted to raise.

13 MR HILL: I've just got one point to pick up, which is again
14 on timing and brevity.

15 In light of what happened in opening, in particular,
16 it is, in my submission, very important that time for
17 oral closings is divided equally. We will be writing to
18 my learned friend suggesting how the time might pan out,
19 but when we get to the day, it really is important that
20 there isn't any overlap at all in the time.

21 PRESIDENT: That seems fair enough. I think you can split
22 it up in time terms, can't you?

23 MS CLARKE: Certainly.

24 PRESIDENT: Yes, clearly. You agree, Ms Clarke, I take it?

25 MS CLARKE: Yes, we don't have a difficulty with ensuring

1 14:04 that the time on the 28th is divided up fairly.

2 PRESIDENT: Fairly, "fairly" means fairly to us, which in
3 a sense means equally.

4 MS CLARKE: I understand that.

5 The final matter is the list of core documents which
6 you requested, ie documents that were referred to during
7 the course of the hearing. We just wanted to clarify
8 whether you just simply want a list of the exhibits or
9 whether you also want us to create a sub-folder with the
10 exhibits actually in.

11 PRESIDENT: What we want, subject to being corrected, is to
12 have, as you say, a folder, so that all the documents
13 that are referred to in the course of the hearing are
14 available in that folder, because the number of
15 documents referred to in the course of the hearing, in
16 the context of the number of documents in the bundles,
17 is minuscule.

18 So we want those, please, in one sub-folder, so we
19 can just go to G or whatever it is, and that's perhaps
20 a bad description, because they've already got their
21 numbers, but we want them all in one folder, sub-folder,
22 so that it's possible to refer more readily when, for
23 example, reading transcripts.

24 If I've not got that ...

25 MS CLARKE: Sir, your microphone is switched off.

1 14:06 PRESIDENT: Yes, I switched it off in case they wanted to
2 butt in, but they don't.

3 MR MALEK: Just one point. As far as I'm concerned, in
4 relation to this folder, I don't think we need witness
5 statements or submissions or decision notices. It's
6 really the chronological documents that are important
7 and being in one place.

8 MS CLARKE: The exhibits, therefore.

9 MR HILL: I wonder whether that means exhibits that are
10 referred to in the opening should also be included
11 rather than just the transcripts, the written openings?

12 PRESIDENT: Yes. So that we -- in effect, all documents you
13 have referred to and the witnesses have referred to, are
14 in some one folder, which actually once you've got it,
15 you might find quite useful yourselves.

16 MS CLARKE: Yes. So the exhibits then from bundle D and
17 then obviously some applicant --

18 PRESIDENT: Not all the exhibits, please, just those
19 exhibits, the specific emails, letters, documents that
20 have been referred to from the mouths of counsel and of
21 witnesses. We don't want everything.

22 MS CLARKE: I understand. Thank you, then. I think that
23 deals with that item.

24 I have been sent a WhatsApp message by my team to
25 raise one further matter as regards oral submissions on

1 14:07 the 28th. It was this. Which party was the tribunal
2 expecting would go first, given that it is, of course,
3 the applicants' reference?

4 MR HILL: Can I volunteer my submission on that? As has
5 been practised for the rest of the hearing, reflecting
6 the fact it's the DFSA's burden, we would submit that
7 DFSA should go first, I should respond and then if
8 there's only small points which are genuine matters of
9 reply, my learned friend could have a little bit of time
10 at the end.

11 PRESIDENT: What do we think? Can my colleagues just send
12 me a WhatsApp?

13 Yes, that's fine.

14 Anything else?

15 MS CLARKE: No, sir, no other matters.

16 MR HILL: No.

17 PRESIDENT: Mr Malek or Mr Storey, anything to raise?

18 MR STOREY: Nothing from me, thank you.

19 MR MALEK: Nor me, thank you.

20 PRESIDENT: So we'll meet again on the 28th.

21 Can I just, before we break off for a while, thank
22 everybody, but in particular, Mohammed and his team for
23 their outstanding delivery of this form of
24 communication.

25 And also again, Fatima, for dealing so amazingly

1 14:10 quickly with the documents. We're all very grateful to
2 you for that. Thank you very much.

3 (2.10 pm)

4 (The hearing is adjourned until 1 pm
5 on Thursday, 28 May 2020)

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I N D E X

MR NRUPADITYA SINGHDEO	3
Cross-examination by MS CLARKE (continued)	3
(Witness withdrew)	30