

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

**M.A No.17 of 2023**

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Order with signature of Judge(s)

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1. For orders on CMA No.965/2023 (Urgent Application)
2. For office objection and reply of the counsel
3. For orders on CMA No.666/2023 (Exemption Application)
4. For orders on CMA No.667/2023 (Stay Application)
5. For hearing of main case

**10.02.2023**

M/s. Abid S. Zuberi, Ayan Mustafa Memon and Ali Abid Zuberi,  
Advocates for the applicant

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1. Urgency granted.
  2. Deferred.
  3. Exemption granted subject to all just exceptions.
- 4&5. Learned counsel for the applicant submits that the applicant is one of the leading national channels namely ARY Communications Limited (“ARY”), who has acquired rights for running A-Sports, where in respect of Pakistan Super League (“PSL”) cricket event the applicant entered into a tri-partite agreement with Pakistan Television Corporation (“PTVC”) and Group-M Pakistan Limited on 16.09.2021 and titled such an arrangement as Business Partnership Agreement (“BPA”), where PTVC in terms of clause 6.11 mutually agreed to formulate the rates/rate cards for PTV Sports, Ten-Sports and A-Sports channels for airing content of the PSL events in Pakistan. Counsel also states that to bring a binding effect to the said understanding, a separate Memorandum of Understanding (“MOU”) was signed on 21.12.2021 between ARY and PTVC, where it was established that Ten-Sports would also be recognized as Carrier (clause 4 page 115) in order to maximize the revenue generated through advertisement, and proceeds arising out of such a mutually beneficial arrangement were chosen to be shared between PTVC and ARY, while having PSL event being shown to be a new

set of audience through a win-win-win business plan. However, a chain of litigation ensued on account of recent political changes, where not only that the managements of PCB as well as PTVC have been revamped, which resulted in the issuance of number of communications to the applicant as well as Ten-Sports with regard to the relationship created by the BPA and the MOU, which resulted in a number of suits. In one suit bearing No.1274 of 2022, an order was passed on 31.08.2022, when a threat was posed by PTVC to the BPA, where the intruding letter was suspended, and another suit was also filed in similar controversy being Suit No.1066 of 2022, which was ordered to be tagged alongwith the former suit. Later on, through Suit No.175 of 2023, grievance was posed by the present applicant that despite the understanding of issuing a sub-license in terms of clause 24, PTVC issued letter dated 30.01.2023 (page 433), whereby the latter even refused to recognize Ten-Sports as a Carrier, which letter was suspended by this Court's order dated 06.02.2023 in Suit No.175 of 2023 (page 489). Incidentally, per learned counsel, when PTVC chose to issue the said (there impugned) letter to the applicant, it also sent a copy thereof to PEMRA (Respondent No.1). While the applicant was able to have the said letter suspended through the abovementioned order, however the matter was taken up by PEMRA as there no stay was granted against later to follow such a pursuit, whereupon PEMRA eventually issued the impugned notice (page 27) to Tower Sports Private Limited/Ten-Sports (referred to as "Tower/Ten-Sports") on the given complaint of PTVC. A perusal of the said letter shows that it hinges its foundation on clause 2.7 of the Terms and Conditions of Landing Rights Permission granted to Tower/Ten-Sports fearing that the latter was attempting to up-link certain transmissions of PSL for which permission had to be sought from PEMRA, and in the absence thereof, such up-linking was illegal and violative of the PEMRA laws. It was also alleged that no rights have been granted by the PCB to

Tower/Ten-Sports for such up-lifting. Per learned counsel, the said letter was responded by the applicant vide a detailed reply (available at page 493), where an attempt was made to clarify that the role of Tower/Ten-Sports is not of up-linking rather it is a declared Carrier through the agreement entered into between PTVG and ARY (page 115) and it was also pointed out that the High Court of Sindh in Suit No.175 of 2023 has already suspended operation of the said PTVG's letter dated 30.01.2023, which became foundation to PEMRA's action, hence such acts were *void ab initio*. It was also stated that such charge of "up-linking" is a novel one, as in past PEMRA never objected to such mirroring of content by Ten-Sports, hence motivated, per learned counsel.

It appears that Respondent No.1 was not satisfied with such an explanation and thereafter through a second letter dated 08.02.2023 (page 29), which not only reiterated provisions of clause 2.1 (*supra*), but also alleged that the channel was not granted any permission for live coverage of the PSL event. Furthermore, PEMRA also raised objection to the effect that no permission has been sought from PCB for such an "up-linking" thus such a use of PSL contents amounts to violation of Intellectual Property Rights of PCB, which rights, the Respondent No.1 is mandated to safeguard under Rule 3(1)(g) of the Electronic Media (Programmes and Advertisements) Code of Conduct, 2015.

Mr. Haider Waheed, learned counsel has shown appearance and has filed Vakalatnama on behalf of Respondent No.1, which is taken on record and has vehemently supported both the impugned letters as well as has drawn Court's attention to Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 discussed above and states that the Misc. Appeal is not maintainable because it is not against any final order.

It appears that a wave of litigation ensued with regards to the relationship of PTVC, ARY and Ten-Sports over the last one year and numerous cases have been filed, where ironically it is observed that all such interventions arise out of some kind of communication originating from PTVC, whose earlier management entered into agreements and MOUs with ARY and other conceding parties. Not only so, the over-zealous attitude of the regulator PEMRA in these highly commercial and revenue fetching ventures for a starving economy, also raises eyebrows, particularly with regard to programmes pertaining to sports, and amidst of this legal haze, it is ironical that the right holder, who is the main creator of the contents i.e. PCB, has never challenged such arrangements and has not shown any grievance at all. As in the media industry it is said that “Content is the King”, and when the Crown has no objection, one wonders whose interest PTVC and PEMRA are protecting, thus assertions of upholding copyrights of PCB’s work by PEMRA falls flat to start with.

I in the given circumstances chose to issue notice to Respondent No.2 as well as DAG for **16.02.2023**, when the matter be taken up at **10:00 a.m.** In the meanwhile, no action be taken by PEMRA against the applicants and their business partners [including Tower Sports (Pvt.) Ltd. aka Ten-Sports] as an outcome of the impugned letters dated 06.02.2023 (page 27) and 08.02.2023 (page 29), in furtherance of the complaint of PTVC dated 04.02.2023 (page 491) *which letter has already been suspended by this Court in Suit No. 175 of 2023 vide order dated 06.02.2023 till the next date of hearing.*

To be tagged along with Suit No.175 of 2023, to come up together.

JUDGE