
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2019/003

! "g#e\$% No.: UNDT/2020/21&

Introduction

1. T-e A88,(a\$ (o\$es% -e "(+s+o\$ \$o% %o *e\$e9 -+s f+:e"4%e* # a88o+\$% #e\$%)e;o\$" +%s e:8+*a%+o\$ "a%e of 30 !Se 201&.

acts and procedural !istory

2. O\$ ' 1 a; 2009% -e A88,(a\$ <o+\$e" %-e I\$e*\$a%+o\$a, T*a"e Ce\$%*e =>ITC?@ !"\$e* a\$ 114#o\$%- s-o*%4e*# a88o+\$% #e\$% as P*og*a# #e Co*"+"\$a%o* =L4A ,e/e,@ of %-e E\$-a\$(+\$g A*a) Ca8a(+%; fo* T*a"e 8*og*a# #e =>E\$ACT?@. Effe(%+/e 1 !,; 2009% -+s a88o+\$% #e\$% 9as (o\$/e*\$e" %o f+:e"4%e*# as P*og*a# #e Co*"+"\$a%o* =P4A ,e/e,@ E\$ACT.

3. As of 1 De(e#)e* 2012% -e A88,(a\$ 9as ,a%e*a,; %*a\$fe**e" %o %-e 8os%+o\$ of Se\$o* A"/+se* =P4A@ T*a"e .+\$a\$(e fo* s#a,, a\$" #e"!#4s+Be" e\$%e*8+ses =>S 1 Es?@ D+/+s+o\$ of B!s+ess a\$" I\$s%+!%+o\$ S!88o*% =>DBIS?@ ITC.

'. Effe(%+/e 1 a\$!a*; 201A% -e A88,(a\$ 9as a88o+\$%e" %o a ,o9e*4,e/e, 8os% =P4'@ as Se\$o* P*og*a# #e A"/+se*% Co#e\$ a\$" T*a"e P*og*a# #e DBIS ITC fo,,o9+\$g %-e a)o,+%+o\$ of %-e 8os% %-a% -e e\$(!#)e*e" " !e %o ,a(D of f!\$" +\$g. T-e A88,(a\$ 9as inter alia *es8o\$s+),e fo* a\$ ITC 8*o<e(% %+,e" >E(oSo#+(e#8o9e*#e\$% of Co#e\$ +\$ %-e Pa(+f+(? =>Pa(+f+(P*o<e(%?@ f!\$"e" e\$%+e,;); %-e go/e*\$%#e\$% of a Do\$o* Co!\$%*; =>Do\$o* Co!\$%*; ?@.

A. O\$ 1 !,; 201E% -e A88,(a\$ %oge%-e* 9+%- %-e Pa(+f+(P*o<e(% 9as ,a%e*a,; %*a\$fe**e" %o %-e D+/+s+o\$ of 1 a*De De/e,o8#e\$% =>D 1 D?@ ITC.

E. O\$ 1 a\$!a*; 201&% -e A88,(a\$ F\$ f+:e"4%e*# a88o+\$% #e\$% 9as *e\$e9e" !\$%+, 30 !Se 201&.

&. D!*\$g %-e #o\$%- of .e)!a*; 201&% -e Do\$o* Co!\$%*; +\$(a%e" %o %-e A88,(a\$ a\$" o%-e* ITC Off+(+a,s +%s +\$e\$%+o\$ %o s%o8 f!\$" +\$g %-e 8*o<e(% +\$!Se 201&. I\$ %-+s (o\$%e:% o\$e of %-e A88,(a\$ F\$ s!8e*/+so*s% \$a#e,; %-e C-+ef% S!%a+\$a),e a\$" I\$(,!s+/e Va,!e C-a+\$s =>SIVC?@ D+/+s+o\$ of E\$%e*8+ses a\$" I\$s%+!%+o\$ =>DEI?@ ITC *eG!es%e" -+ # %o *ef*a+\$ f*o# (o\$a(%+\$g %-e Do\$o*

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13. O\$ 30 Se8%e#)e* 201H6 %-e A88,(a\$ se8a*a%e" f*o# %-e se*/+(e of %-e O*ga\$+Ba%+o\$ fo,,o9+\$g se/e*a, e:%e\$s-o\$s of -+s a88o+\$%#e\$% %o a,,o9 -+# %o e: -a!s% -+s s+(D ,ea/e e\$%+%,e#e\$%s.

1'. O\$ 1E No/e#)e* 201H6 fo,,o9+\$g a *e/+e9 of %-e T*+) !\$,Fs "o(De%6 %-e (ase 9as %*a\$sfe**e" %o %-e T*+) !\$,Fs Ne9 3o*D Reg+s%*; a\$ " *eg+s%e*e" !\$"e* Case No. UNDT/N3/201H/OE&.

1A. O\$ 29 a\$!a*; 20196 +\$,+g-% of %-e Ge\$e*a, Asse#),;Fs 22 De(e#)e* 201H "e(+s-o\$ \$o% %o e:%e\$" %-e a" ,+e# !"ge +\$ Ne9 3o*D =see 8a*a. 3H of A/RES/&3/2&E@ a\$ " %-e A88,(a\$Fs f+,+\$g of a\$o%-e* a88,(a%+o\$ 9+%- %-e Ge\$e/a Reg+s%*; o\$ 21 a\$!a*; 20196 %-e (ase 9as %*a\$sfe**e")a(D %o %-e ,a%e* a\$ " *eg+s%e*e" !\$"e* Case No. UNDT/GVA/2019/003.

1E. O\$ 1 O(%o)e* 20206 %-e (ase 9as ass+g\$e" %o %-e !\$"e*s+g\$e" !"ge.

Consideration

Applicable law

1&. S%aff *eg!,a%+o\$ '.A=(@ a\$ " s%aff *!,e '.13=(@)o%- 8*o/+ "e %-a% a f+:e"4%e*# a88o+\$%#e\$% "oes \$o% (a**; a\$; e:8e(%a\$(;6 ,ega, o* o%-e*9+se6 of *e\$e9a,.

1H. I\$ Agha 20194UNAT491E6 a% 8a*as. 1E41&6 %-e A88ea,s T*+) !\$, *e(a8+%!,a%e" +%s ,o\$g4s%a\$"+\$g (ase ,a9 (o\$(e*\$+\$g (-a,,e\$ges of "e(+s+o\$s \$o% %o *e\$e9 f+:e"4%e*# a88o+\$%#e\$%s s%a%+\$g %-a% +% +s a 9e,,4es%a),+s-e" 8*+\$(+8,e %-a% f+:e"4%e*# a88o+\$%#e\$%s "o \$o% (a**; a\$ e:8e(%a%+o\$ of *e\$e9a,. I% slae" %-a% se8a*a%+o\$ as a *es!,% of e:8*a%+o\$ of a f+:e"4%e*# a88o+\$%#e\$% %aDes 8,a(e a!%o#a%+(a,,;6 9+%-o!% 8*o* \$o%+(e6 o\$ %-e e:8*a%+o\$ "a%e s8e(+f+e" +\$ %-e ,e%e* of a88o+\$%#e\$%.

19. I% *e(a,,e"6 -o9e/e*6 %-a% a "e(+s+o\$ \$o% %o *e\$e9 a f+:e"4%e*# a88o+\$%#e\$% (a\$)e (-a,,e\$ge" o\$ %-e g*o!\$"s %-a% %-e A" #+s%+a%+o\$ -as \$o% a(%e fa*;,;6<!s%,;6 o* %*a\$s8a*e\$%,; 9+%- %-e s%aff #e#)e* o* 9as #o%+/a%e");)+as6 8*e<!"+(e o* +#8*o8e* #o%+/e. T-e A88ea,s T*+) !\$, f+\$a,,; *e(a,,e" %-a% +% +s a\$ a88,(a\$Fs

Merits of the case

20. T-e A88,(a\$% (-a,,e\$ges %-e (o\$%es%e" "e(+s+o\$ a*g!+\$g %-a% +% +s \$o% s!88o*%e"); %-e fa(%s6+s #o%+/a%e");)+as aga+\$s% -+# a\$" + #8*o8e* #o%+/es6 a\$" +s /+%a%e" " !e %o #+sa88*o8*+a%+o\$ of f!\$"s6 (+*(!#/e\$%+o\$ of %-e *!,es o\$ %e*#+\$a%+o\$6 ITCFs fa+,*e %o a(% fa+*,;6 <!s%,; a\$" %*a\$s8a*e\$,; a\$" a)!se of a!%-o*+%;. T-e T*+)!\$a, 9+,, e:a#+\$e)e,o9 %-ese a*g!#e\$%s +\$ %!*\$.

C -e%-e* %-e \$o\$4*e\$e9a, "e(+s+o\$ +s s!88o*%e"); %-e fa(%s

21. T-e A88,(a\$% a,,eges %-a% %-e)!"ge%a*; (o\$s%+"e*a%+o\$6 \$a#e,; ,a(D of f!\$"s fo* %-e Pa(+f+(P*o<e(%6 +s \$o% s!88o*%e"); %-e fa(%s as %-e e/+ "e\$(e "oes \$o% es%a),+s- %-e a)se\$(e of f!\$"s fo* %-+s 8*o<e(%)e;o\$" !\$e 201&.

22. T-e T*+)!\$a,Fs <!"+(+a, *e/+e9 fo(!ses o\$ -o9 %-e "e(+s+o\$4#aDe* *ea(-e" %-e + #8!g\$e" "e(+s+o\$ a\$"6 %o %-+s e\$"6 +% e:a#+\$es 9 -e%-e* a *a%+o\$a, (o\$%e(%+o\$ +s s!ff+(+e\$%,; "e#o\$s%*a%e")e%9ee\$ %-e +\$fo*#a%+o\$ a/a+,a),e %o %-e "e(+s+o\$4#aDe* a\$" %-e *easo\$=s@ g+/e\$ fo* %-e (o\$%es%e" "e(+s+o\$.

23. A,%-o!g-6 as %-e A88,(a\$%Fs a"/a\$(es6 %-e*e +s \$o "o(!#e\$%a*; e/+ "e\$(e e:8,(+%,; s-o9+\$g %-a% f!\$"+\$g fo* %-e Pa(+f+(P*o<e(% 9as %o e\$" +\$!\$e 201&6 o%-e* %-a\$ %-e Res8o\$"e\$%Fs asse*%+o\$ %-a% %-e Pa(+f+(P*o<e(% *e(e/+e" \$o f!\$"+\$g)e;o\$" 30 !\$e 201&6 %-e T*+)!\$a, f+\$"s %-a% %-e*e a*e e\$So!g- e,e#e\$%s %-a% %aDe\$ %oge%-e* s!88o*% %-e)!"ge%a*; *easo\$)e-+\$" %-e \$o\$4*e\$e9a, of %-e A88,(a\$%Fs a88o+\$%#e\$%.

2A. Se(o\$"6 %-e A88,(a\$ a\$" o%-e* ITC Off+(+a,s 9e*e f!.,; a9a*e +\$.e)*!a*; 201& %-a\$ %-e Do\$* Co!\$%; 9as (o\$s+"e*+\$g \$o% (o\$%+\$!+\$g %o f!\$" %-e 8*o<e(%)e;o\$" !Se 201&. A,s o6 %-e*s +s "o(!#e\$a*; e/+ "e\$(e s-o9+\$g a)a,a\$(e of USD2H6000 fo* %-e 8*o<e(% o\$ 22 !Se 201&6 9-+(- 9as +s!ff+(+e\$% %o 8a; sa,a*+es fo* A8*+,6 1 a; a\$" !Se 201&.

2E. T-e A88,(a\$ -as \$o% 8*o/+ "e" e/+ "e\$(e %o %-e (o\$%*a*; a\$"6 (o\$seG!e\$,;6 -+s (-a.,e\$ge %o %-e (,a+# of ,a(D of f!\$"s fo* %-e 8*o<e(% (a\$ \$o%)!% fa+,.

C -e%-e* %-e \$o\$4e\$e9a, +s #o%+/a%");)+as a\$"/o* +#8*o8e* #o%+/e

2&. As s!a%" a)o/e6 %-e A88,(a\$)e*a*s %-e)!* "e\$ of 8*o/+ \$g %-e e:+s!e\$(e of)+as a\$"/o* +#8*o8e* #o%+/e. T-e A88,(a\$ a.,eges %-a\$ a(%o\$s6 "e(+s+o\$s a\$" %-e ge\$e*a,)e-a/+o!* of %-e "e(+s+o\$4#aDe* e: -+)+% (,ea* s+g\$s of)+as %o9a*"s -+#. I\$ %-+s (o\$Se(%+o\$6 %-e A88,(a\$ *efe*s %o)e+\$g fo*#a.,; *e#o/e" f*o# " +ffe*e\$% 8*o<e(%s.

2H. T-e T*+)!\$a, *e(a.,s %-a\$ +% 9+,, \$o% ,+g-%; +\$e*fe*e 9+%- #a\$age*+a, "+s(*e%+o\$. I% 9+,, o\$,; "o so +f #a\$age*sF a(%+o\$s a*e !\$*easo\$a),e6 !\$,a9f!, o* %a+\$e"); !,%e*+o* #o%+/es. I\$ %-e (ase a\$ -a\$"6 %-e T*+)!\$a, f+\$"s %-a\$ %-e*e +s \$o e/+ "e\$(e s-o9+\$g %-a\$ (-a\$ges +\$ %-e A88,(a\$Fs fP28 .D00262(e)0.874345(370117(R283T6602621(35

1 +sa88*o8*a%+o\$ of f!\$"s

30. T-e A88,(a\$ a*g!es %-a% %-e 8os% -e e\$(!#)e*e" 9as f!.,; f!\$"e"); %-e Do\$* Co!\$%; %-*o!g- f!\$"s ea*#a*De" fo* %-e Pa(+f+(P*o<e(% Po+\$%+\$g o!% %o %-e fa(% %-a% -e 9as (a,,e" %o ass+s% +\$ o%-e* 8*o<e(%s6 *e8*ese\$%+\$g a88*o:+#a%e,; 'O J of -+s f!\$(%+o\$s6 -e %-e\$ asse*%s %-a% ITC !se" 8a*% of %-e Pa(+f+(P*o<e(% f!\$"s fo* o%-e* 8*o<e(%s 9+%-o!% %-e "o\$*Fs a88*o/a. 2e %-e\$ (o\$(,! "es %-a% g+/e\$ %-+s s+% !a%+o\$6 ITC 9as !\$"e* a\$ o),+ga%+o\$ %o (o\$%+\$!e %-e f!\$"+\$g of -+s 8os% *ega*",ess of f!%-e* f!\$"+\$g f*o# %-e Do\$* Co!\$%;.

31. T-e A88,(a\$Fs (o\$%e\$%+o\$ +s \$o% o\$,; !\$(o\$/+\$(+\$g) !%6 a,so6 +f +9e*e %o)e e\$%e%+a\$e" 9o!, " a#o!\$% %o a se*+o!s a((!sa%+o\$ +\$ 9-+(- -e 9as (o#8,+(% I\$"ee"6 as -e 9as *es8o\$s+),e fo* #a\$ag+\$g %-e Pa(+f+(P*o<e(%6 +% fe,, !8o\$ -+ #*a+s+\$g a\$; #+s-a\$",+\$g of f!\$"s.

32. T-e T*+)!\$a, f+\$"s %-a%6 ;e% aga+\$6 %-e A88,(a\$Fs a,,ega%+o\$ +s !\$s!)s%a\$%+a%e".

>D0%o!*\$e#e\$% "e 8*o(0"!*e?6 (+*(!# /e\$%+o\$ of %e*#+\$a%+o\$ *!,es a\$" fa+,!*e %o a(% fa+*,;6 <!s%,; a\$" %*a\$s8a*e\$%,;

33. T-e A88,(a\$ a*g!es %-a% as f!\$"s fo* %-e 8a; #e\$% of -+s A8*+,6 1 a; a\$" !\$e 201& sa,a*es -a")ee\$ e:-a!s%e"6 ITC s-o!," -a/e %e*#+\$a%e" -+s (o\$%a(% +\$s%ea" of *eso*%+\$g %o +%s P*og*a# #e S!88o*% Cos%=>PSC?@ f!\$" %o (o/e* 8a; #e\$% of -+s sa,a*es !8 %o %-e e:8+*a%+o\$ of -+s a88o+\$% #e\$%. I\$ s! # #a*;6 -e (a+#s %-a% -+s f+:e"4%e*# a88o+\$% #e\$% s-o!," -a/e)ee\$ %e*#+\$a%e" a\$" %-a% ITC "+" \$o% "o so %o a/o+" 8a;+\$g a %e*#+\$a%+o\$ +\$"e# \$+%;6 9-+(- (o\$s%+% !%es6 +\$ -+s /+e96 a détournement de procédure a\$" a (+*(!# /e\$%+o\$ of >%e*#+\$a%+o\$ *!,es?. I\$ 8a*a,,e,6 %-e A88,(a\$ a,,eges %-a% ITC "+" \$o% a(% fa+*,;6 <!s%,; a\$" %*a\$s8a*e\$%,;.

3'. T-e T*+)!\$a, f+\$"s %-a% %-e A88,(a\$Fs a*g! #e\$%s a*e \$o% 8e*s!as+/e. T-e *e(o*" s-o9s %-a% s+\$(e <o+\$%g ITC6 "+ffe*e\$% a" #+\$s%*a%+/e/#a\$age*+a, a(%+o\$s -a/e)ee\$!\$"e*aDe\$ %o Dee8 -+ # e#8,o;e"6 e.g.6 ,a%e*a, %*a\$sfe*s6 8,(e#e\$% aga+\$s% a ,o9e*4g*a"e" 8os%. A ""+%+o\$a,,;6 %-e 2H A8*+, 201& ,e%%e*6 +fo*#+\$g %-e A88,(a\$ of %-e \$o\$4*e\$e9a, of -+s a88o+\$% #e\$%6 (,ea*,; s-a*e" 9+%- -+ # -o9 ITC

+e\$ "e" %o f!\$" %-e 8os% -e e\$(!#)e*e" %o -o\$o!* +%s (o\$%*a(!a, o),+ga%+o\$s
%o9a*"s -+#.

3A.

