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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 "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\*%4%e\*# 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+sess a\$" I\$%+%!%+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\*s6 \$a#e,; %-e C-+ef6 S!%a+\$a),e a\$" I\$(,!s+/e Va,!e C-a+\$s =>SIVC?@ D+/+s+o\$ of E\$%e\*8\*+ses a\$" I\$%+%!%+o\$ =>DEI?@ ITC@ \*eG!es%e" -+ # %o \*ef\*a+\$ f\*o# (o\$a(%+\$g %-e Do\$o\*

Case No. UNDT/GVA/2019/003

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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\*+) !\$,a, 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,so6 %-e\*e +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%e" ); )+as a\$"/o\* + #8\*o8e\* #o%+/e

2&. As s!a%e" a)o/e6 %-e A88,(a\$ )eas %-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\$%e(%+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,; '0 J of -+s f!\$(%+o\$%6 -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\*%+e" 9o!," a#o!.\$% %o a se\*+o!s a((!sa%+o\$ +\$ 9-+(- -e 9as (o#8,+(+%. l\$"ee"6 as -e 9as \*es8o\$%+),e fo\* #a\$ag+\$g %-e Pa(+f+( P\*o<e(%6 +% fe,, !8o\$ -+ #

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

3A.



