Case No.: UNDT/GVA/2019/003

UNITED NATIONS DISPUTE TRIBUNAL

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

### Introduction

1. T-e A88,+(a\$% (o\$\text{\text{mes}}\text{\text{\text{mes}}}\text{\text{\text{\text{\text{\text{mes}}}}} = \text{\te}\text{\t

## acts and procedural !istory

- 2. O\$ ' 1 a; 20096 \( \text{N-e A88,+} \) (a\( \text{N-e I} \) \( \text{N-e III.} \) \( \text{N
- 3. As of 1 De(e#)e\* 20126 \( \text{N} \text{e A88}, \text{(a\structure 9 as ,a\text{\text{a}\structure a}, \text{; \text{\text{\text{a}\structure 6}}} \) \( \text{N} \text{e 80s+\text{\text{\text{\text{b}\text{\text{\text{a}\structure 6}}}} \) \( \text{A} \text{V} \text{A} \t
- '. Effe(%+/e 1 a\$!a\*; 201A6 %-e A88,+(a\$% 9as a880+\$%e" %o a ,09e\*4,e/e, 8os% =P4'@ as Se\$+o\* P\*og\*a##e A"/+se\*6 Co#e\$ a\$" T\*a"e P\*og\*a##e6 DBIS6 ITC6 fo,,09+\$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(o\$o#+(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 !,; 201E6 \( \text{N-e A88,+} (a\)\( \text{N6 \text{Noge}} \)e\* 9+\( \text{N-} \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N\*a} + \)e\* \( \text{N-e D+} + \)e\* \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \); \( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \) = (\)\( \text{N-e Pa}(+f+( P\*o<e(\) 6 9 as ,a\)\( e^\*a, \) = (\) \)
- E. O\$ 1 a\$!a\*; 201&6 %-e A88,+(a\$%Fs f+:e"4%e\*# a88o+\$%#e\$% 9as \*e\$e9e" !\$%+, 30 !\$e 201&.
- &. D!\*+\$g %-e #o\$%- of .e)\*!a\*; 201&6 %-e Do\$o\* Co!\$%\*; +\$"+(a%e" %o %-e A88,+(a\$% a\$" o%-e\* ITC Off+(+a,s +%s +\$%e\$%+o\$ %o sho8 f!\$"+\$g %-e 8\*o<e(% +\$ !\$e 201&. I\$ %-+s (o\$%e:%6 o\$e of %-e A88,+(a\$%Fs s!8e\*/+so\*s6 \$a#e,; %-e C-+ef6 S!s%a+\$a),e a\$" I\$(,!s+/e Va,!e C-a+\$s =>SIVC?%6 D+/+s+o\$ of E\$%e\*8\*+ses a\$" I\$\$%+%!%+o\$s =>DEI?%6 ITC6 \*eG!es%e" -+# %o \*ef\*a+\$ f\*o# (o\$%a(%+\$g %-e Do\$o\*)

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- 13. O\$ 30 Se8\(\text{M}e\) e\* 201\(\text{H6}\) \(\text{N}-e\) A88\(\text{A}\) \(\text{Se8a\*a}\) e" \(\frac{1}{6}\) \(\text{N}-e\) \(\text{Se8a\*a}\) e" \(\frac{1}{6}\) \(\text{N}-e\) \(\text{Se8a\*a}\) e" \(\frac{1}{6}\) \(\text{N}-e\) \(\text{Se8a\*a}\) \(\text{N}e\) \(\text{Se8a\*a}\) \(\text{N}e\) \(\text{N}e\
- 1'. O\$ 1E No/e#)e\* 201H6 fo,,o9+\$g a \*e/+e9 of %-e T\*+)!\$a,Fs "o(De% %-e (ase 9as %\*a\$sfe\*\*e" %o %-e T\*+)!\$a,Fs Ne9 3o\*D Reg+s%\*; a\$" \*eg+s%e\*e" !\$"e\* Case No. UNDT/N3/201H/0E&.
- 1A. O\$ 29 a\$!a\*; 20196 +\$ ,+g-\( of \( \) -e Ge\( \)e\*a, Asse\( \) ,; Fs 22 De(e\( \) e\* 201H "e(+s+o\( \) \\$ \)o\( \) \( \) e:\( \)e\( \)" \( \) -e a" ,+\( \)e\( \)e\* !"ge +\( \) Ne9 3 o\*D =see 8a\*a. 3H of A/RES/&3/2&E@ a\( \)" \( \) -e A88,+(a\( \)hFs f+,+\( \)g of a\( \)o\( \)-e\* a88,+(a\( \)h-o\( \) 9+\( \)-\( \)h-e Ge\( \)e/a Reg+s\( \)\*; \( \)o\( \) 21 a\( \)!a\*; 20196 \( \)h-e (ase 9 as \( \)\*a\( \)sfe\*\*e" )a(D \( \)o\( \)h-e ,a\( \)he\* a\( \)" \*eg+s\( \)e\*e" !\( \)"e\* Case No. UNDT/GVA/2019/003.
- 1E. O\$ 1 O(%0)e\* 20206 %-e (ase 9 as ass+g\$e" %0 %-e !\$"e\*s+g\$e" !"ge.

#### Consideration

#### Applicable law

- 1&. Shaff \*eg!,ah+o\$ '.A=(@ a\$" shaff \*!,e '.13=(@ )oh- 8\*o/+"e h-ah a f+:e"4he\*# a88o+\$h# e\$h "oes \$oh (a\*\*; a\$; e:8e(ha\$(;6,ega, o\* oh-e\*9+se6 of \*e\$e9a,.
- 19. In \*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\* 9 as #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 +\$ %!\*\$.

# $C - e\% - e^*\% - e \$0\$4*e\$e9a$ , "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\\$o!g- e,e#e\%\\$ \%-a\% \%aDe\\$ \%oge\%-e\* s!88o\*\% \%-e )!"ge\%a\*; \*easo\\$ )e-+\\$" \%-e \\$o\$4\*e\\$e 9a, of \%-e A88,+(a\%Fs a88o+\%\#e\%).

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

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2&. As shake" a) o/e6 %-e A88,+(a\$%) ea\*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 %o 9 a\*"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+,, \$0% ,+g-%,; +\$%e\*fe\*e 9+%- #a\$age\*+a, "+s(\*e%+0\$. I% 9+,, 0\$,; "o so +f #a\$age\*sF a(%+0\$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 \$0 e/+"e\$(e s-09+\$g %-a% (-a\$ges +\$ %-e A88,+(a\$%Fs fP\2\8.79\60\026262\6\906.874\34\37\03\frac{3}7\03\frac{4}7-\67\2\83\76\6\92\67\2\67\2\83\76\69\92\67\2\67\2\83\76\69\92\67\67\2\83\76\69\92\67\67\2\83\76\69\92\67\67\2\83\76\69\92\67\67\67\83\76\69\92\67\67\67\83\76\69\92\67\67\67\83\76\69\92\67\67\67\83\76\69\92\67\67\67\83\76\67\67\83\76\67\67\83\76\83\76\67\83\76

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31. T-e A88,+(a\$\text{NFs} (o\$\text{Ne\$\text{N+o\$} +s \$o\text{No\$},; !\$(o\$\text{/+\$\$(+\$\$g)} !\text{\text{No}} a,so6 +f +\text{\text{N}} 9 e^\*e \text{\text{No}}) e e \text{\text{Ne\*}\text{\text{No}} +\text{\text{N}} = 0!,\text{\text{\text{N}}} a \text{\text{No}} e^\*\text{\text{\text{No}}} a s e^\*+o !s a((!\text{sa}\text{\text{No}} +\text{\text{\text{\text{No}}} +(--e 9as (o\text{\text{\text{\text{\text{N}}}} +\text{\tex}\text{\t

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

3A.