



**KIRIT P. MEHTA
SCHOOL OF LAW**



SVKM'S NMIMS KIRIT P. MEHTA SCHOOL OF LAW, MUMBAI
5TH INTERNATIONAL

MOOT COURT COMPETITION

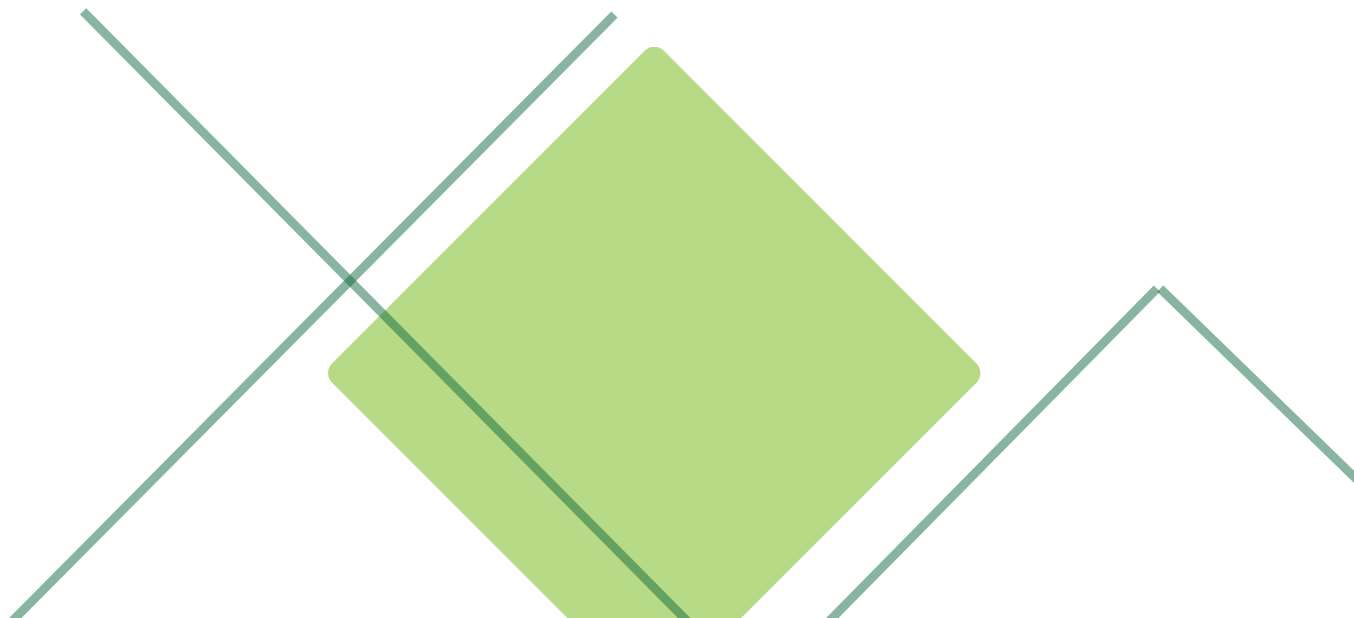
MOOT PROPOSITION

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1. The Democratic Republic of North Nigen (“**Nigen**”) is a developing country with large dessert areas in its north-western regions, coastal areas and river plains in the south. Nigen is located in the Kalban region which comprises few other countries with similar geography. Having attained independence around 65 years ago, most of Nigen’s population continues to live in towns or major cities.
2. After gaining independence, Nigen was ruled by a dictator, Parichau Kashitya for 10 years. Pursuant to a widespread and inter-class people led movement, Kashitya was overthrown in September 1968. The country gradually transitioned into a parliamentary democracy wherein Nigen’s government is elected by direct general elections which take place every 5 years.
3. Nigen is known globally as a biodiversity hub and attracts significant tourists. Historically, Nigen has had a rich history of environmental protection and conservation movements spearheaded by indigenous communities. In the years after the fall of the dictatorial regime, environmental preservation became integrated with the overall development of the nation. In fact, Nigen became the first country in the world to ban single-use plastic. Nigen is a signatory to various international multilateral environment treaties such Vienna Convention for the Protection of the Ozone Layer, 1985, United Nations Framework Convention on Climate Change, 1992 and Paris Agreement, 2015.
4. Over the last three decades, post-liberalization reforms, Nigen’s economy has steadily grown and has attracted global interest. Its oil and gas industry has played a significant role in this growth. Neighbouring countries in the region of Kalban have consistently been dependent on conventional modes of energy production. In general, Nigen expected further growth in both its domestic economy and intended to remain independent from electricity imports and support its local oil-fired energy industry. In addition, crude oil has become a significant export commodity of Nigen.
5. On December 12, 2005, large oil deposits were discovered in the north-western region of Ravka, a relatively unexplored region of Nigen due to its large area spanning over 100,000 square kilometres. The deposits in Ravka dominated the news for months.
6. Mr. Ricbo Sinmal, the Finance Minister of the Nigen government made a public statement at a global intergovernmental forum, inviting multinational corporations to invest in a state of the art, new-age oil and gas fields for exploration of oil in a sustainable and environmental-friendly manner, calling it the ‘*lynchpin of Nigen’s economy*’. Nigen shares its borders with Ketterdam Federation (“**Ketterdam**”), a developed nation and a former

colonial power. Following the statement of Mr. Sinmal, on February 19, 2006, Nigen and Ketterdam signed a Bilateral Investment Treaty (“**Nigen-Ketterdam BIT**”) (see Annexure A) to encourage investment in the oil and gas sector of Nigen.

7. Notably, both Nigen and Ketterdam are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“**New York Convention**”) and have adopted the UNCITRAL Model Law on International Commercial Arbitration, 1985 (with the 2006 amendments) while enacting their domestic statutes governing arbitration. The enforcement of foreign awards is governed strictly in accordance with the New York Convention.
8. Kushkan Corporation (Holdings) Limited (“**Kushkan**”), a promoter-run company incorporated in Ketterdam, showed interest in investing into the oil and gas sector of Nigen. While a majority of Kushkan’s board are citizens of Ketterdam, one promoter-director and owner of 15% shares of Kushkan, Mr. Malin Kzkya, is a citizen of the Union of Molov Socialist Republic (“**Molov**”), a country that has consistently been in territorial conflict with its neighbouring nations but also sharing close diplomatic relations with Ketterdam. Mr. Kzkya is a very influential person in Ketterdam, notoriously known to be a corporate raider and suspected of bribing judges and government officials to make unlawful gains.
9. Kushkan specializes in long-term investments in oil and gas industry, power generation, and operates offshore and onshore oil rigs across the globe and owns several oil-fired power plants. On November 18, 2006, Mr. Gerald Strauss, the CEO of Kushkan, along with Mr. Kzkya, met with the Government of Nigen to propose an investment to develop and operationalise oil fields in Ravka region (“**Ravka Oil Fields**”), in cooperation with Nigen’s oil and gas energy-based state entity, Crude Oil and Energy Corporation Limited (“**COEC**”). Subsequently, Kushkan conducted an exhaustive due diligence exercise before deciding to invest in Nigen. On June 29, 2008, following multiple rounds of discussions, Kushkan entered into a Joint Venture Agreement with COEC (“**JV Agreement**”) to operationalise Ravka Oil Fields. The JV Agreement contemplated use of Kushkan’s infrastructure, technical expertise and connections, and COEC’s local know-how.
10. On August 28, 2008, Edoras Power Limited (“**Edoras**”), a special-purpose vehicle was incorporated in Nigen in pursuance of the JV Agreement. Kushkan owned 49.99% shares of Edoras and also bore most of the risk, while COEC owned the remaining 50.01% shares. The said 49.99% shareholding was pursuant to an equity investment of USD 300,000,000 by Kushkan. Alongside, a shareholders’ agreement dated August 28, 2008 (“**SHA**”)

governing *inter alia* the rights of the parties with respect to the management/governance of Edoras was executed between Kushkan, Edoras and COEC. Several rounds of discussions and planning with the authorities of Nigen followed, where Mr. Kzkya, and Mr. Kimjo Kashitya, the CEO of COEC and formerly the leader of the then-ruling party called the Workers' Party of Nigen (“WPN”), played a significant role in dealing with the Government officials of Nigen. On December 10, 2008, Edoras entered into a Production Sharing Agreement (“PSA”) with the Government of Nigen for exploration, extraction, development and production of oil and gas in the Ravka Oil Fields.

11. At the time of the investment, Mr. Malin Kazkya had close relations with Mr. Kashitya. On December 13, 2008, Mr. Kzka and Mr. Kashitya released a joint statement highlighting the significance of corporation between Kushkan and COEC to the Nigerian economy.
12. On January 11, 2009, Kushkan, Edoras and COEC entered into a loan agreement by which Kushkan agreed to grant a loan of USD 200,000,000 to Edoras (“**Loan Agreement**”). Under the Loan Agreement, Edoras was obliged to repay the loan in multiple instalments by July 2020. To secure the loan, Kushkan, Edoras and COEC executed a Share Charge Agreement on February 9, 2010 (“**SCA**”) for creating a charge in favour of Kushkan over the 25.01% shares of Edoras owned by COEC. Between 2010 and 2014, Kushkan disbursed the loan to Edoras in four tranches. By 2016, Edoras constructed fifteen state-of-the-art oil rigs for onshore drilling (“**Edoras Oil Rigs**”) in Ravka Oil Fields for a total cost of USD 500,000,000 and commenced operations. The Edoras oil rigs operated at full capacity, producing 5,000 barrels per day on an average. By the end of 2018, Edoras Oil Rigs generated an aggregate net income of USD 725,625,000.
13. On November 29, 2017, two major fires broke out in the oil fields of Ravka. While the first fire broke out inside Edoras' refinery, the other resultant fire broke out in a residential area of Ravka. A handful of workers lost their lives, and more than a dozen suffered injuries. Thick plumes of smoke enveloped the town and its surrounding districts. Local media outlets published videos showing dark clouds of smoke rising from the oil fields.
14. Edoras released a statement claiming that there was no negligence or lapse in security. However, family members of the victims, in their statements to the media, reported that the accident was caused to inadequate security systems at the Edoras Oil Rigs. A high-level governmental committee was constituted to enquire into the cause of the fire. Finding no evidence of negligence, the investigation was closed in two months. As a gesture of goodwill, Edoras compensated the victims and their families with an aggregate amount of USD 300,000.

15. In January 2019, the northern regions of Nigen and the adjoining states in Kalban saw record rainfall and catastrophic flash floods. Nigenian citizens were reported to have died or disappeared in the flash floods. The disaster prompted the announcement of a state of emergency and the closure of rail lines and the airports in the major cities in northern Nigen and the neighbouring countries in the Kalban region. Climate experts claimed that the flash floods may have been a side-effect of the growing number of oil and gas fields in the north-western regions of Nigen. The flash floods in Northern Nigen stimulated a massive social media movement against use of non-renewable energy sources and the oil and gas fields. Soon the Nigenian citizens took to the streets. There were large protests where the Nigenian citizens called the government to take immediate measures to curb the carbon emissions. One of the main demands of the citizens was to phase out the oil and gas fields in Nigen.
16. On February 02, 2019, a meeting of the top officials of the states in the Kalban region was convened. Owing to the concerns pertaining to the environmental degradation and the impact of large-scale oil and gas projects in Nigen, Kalban countries entered into Kalban Treaty on the Promotion of Renewable Energy ("**Kalban Treaty**"). The Kalban Treaty contemplated systematic phasing out of non-renewable energy sources by the signatory countries. The contracting states to the Kalban Treaty also undertook to make the necessary policy changes to discourage the use and promotion of conventional sources of energy which contribute to an increase in carbon emissions.
17. While Nigen signed the Kalban Treaty, it took no steps toward its implementation. This rejuvenated the apprehensions of certain citizens of Nigen with a particular political inclination. Nigen's opposition party, the National Socialist Party of Nigen ("**NSP**"), organized demonstrations to pressurize the government to take immediate steps towards implementing the Kalban Treaty. The Government of Nigen stated that it would take steps only after taking into consideration the impact that the measures under the Kalban Treaty may have on Nigen and its economy.
18. The inaction of the Government of Nigen and the incitement by the leaders of NSP fuelled the discontent among the pro-NSP Nigenian citizens. Soon, the country witnessed large demonstrations near the major oil and gas fields where the pro-NSP Nigenian citizens demanded immediate closure of the oil rigs. A section of media reported close relationship between the WPN and Kushkan (through Mr. Kzkya) and even hinted at potential corruption. These reports first emerged from Satellite News Network ("**SNN**") which has a large viewership by pro-NSP Nigenian citizens. Following these reports, protestors organized mass sit-downs in front of the Edoras Oil Rigs.

19. Notably, while there were other companies operating for the purpose of extraction of oil and gas by onshore drilling in the Ravkaa region, albeit on smaller scale, Edoras was the only one in public view due to the media attention and faced the majority of the backlash.
20. In view of these events, Kushkan and Edoras wrote to the Government of Nigen raising security concerns at the Edoras Oil Rigs. The Government of Nigen deployed paramilitary troops to secure the oil rigs being operated by all major companies in the Ravkaa region, including Edoras, and reassured that it would take immediate steps to curb the protest. However, since the government was not meeting the demands of the protestors, the protests turned violent. There were reports of groups of protestors allegedly linked to NSP attempting to break-in into the Edoras Oil Rigs.
21. On January 15, 2020, there were explosions in five of the Edoras Oil Rigs. About a dozen workers lost their lives in the fire. It was reported that the Edoras suffered loss of over USD 100,000,000 due to the irreversible damage caused to the oil rigs. Many managers and workers at the other Edoras Oil Rigs resigned fearing their safety. Upon investigation, certain individuals reportedly had links with NSP were arrested in connection with their role in the explosions. The operations at the remaining Edoras Oil Rigs continued albeit at a significantly reduced capacity.
22. In February 2020, parliamentary elections took place in Nigen where the NSP won with overwhelming majority. Soon after forming government, as promised to the citizens of Nigen, steps were taken to implement the Kalban Treaty. The President of Nigen immediately replaced a majority of the Government officials in positions of leadership.
23. On January 04, 2021, the Government of Nigen enacted the Promotion of Renewable Energy Act, 2022 (“Act”) to enforce the terms of the Kalban Treaty. On February 4, 2022, the Government of Nigen used its powers under the Act to issue a notification requiring all oil and gas fields in the territory of Nigen to be phased out in a progressive manner by 2026. The Act required all companies operating oil and gas fields to deposit 5% of their annual net profit to the Nigen Climate Change Mitigation Fund and to immediately comply with the minimum health, safety and environment standards prescribed under Nigen laws.
24. In the meanwhile, Edoras committed several defaults under the Loan Agreement and failed to repay the loan by July 2020. Between July 2020 and January 2021, Kushkan made several requests and issued multiple notices to Edoras and COEC for repayment of the loan. Since repayments were not forthcoming, Kushkan sought to enforce the share charge under

the SCA before Nigen Companies' House. COEC objected to enforcement of the share charge before the High Court of Justice of the Republic of Nigen (“**Nigen Court**”).

25. On April 20, 2021, the Nigen Court categorically held that Edoras was in breach of the terms of the Loan Agreement by failing to repay the loan and the enforcement of the charge over the 25.01% shares of Edoras owned by COEC was valid (“**SCA Judgment**”).

26. On May 1, 2021, owing to building tensions in their border regions, Molov and Pentos Republic (“**Pentos**”) (a developing nation sharing its borders with Molov) declared war against each other. It was widely reported that during the hostilities, Molov had employed chemical weapons in the border regions of Pentos and launched missiles on the residential areas in a Pentos-occupied region which Pentos which claimed as its own. Molov sternly opposed these allegations stating that there was no evidence in support of the alleged humanitarian concerns and human rights violations except a widespread and coordinated media propaganda against Molov to defeat its territorial sovereignty and cripple its economy. Due to the alleged humanitarian concerns and human right violations by Molov, the Nigen imposed unilateral economic sanctions on Molov (“**Nigen-Molov Sanctions**”). The Nigen-Moloy Sanctions, *inter alia*, placed the following restrictions:

- (a) barring any legal or natural person from trading or dealing with Molov nationals or entities significantly owned or controlled by Molov nationals;
- (b) Molov nationals or entities significantly owned or controlled by Molov nationals from entering into new contracts or enforcing existing contracts in Nigen; and
- (c) Molov nationals or entities significantly owned or controlled by Molov nationals from owning any form of movable, immovable, tangible or intangible property in Nigen.

Provided that Nigen Office of Financial Sanctions Implementation (“**NOFSI**”) may, on an application made by any legal or natural person of Nigen, grant an exemption on a case-to-case basis.

27. Simultaneously, reports from SNN and state-run media emerged alleging bribery against the officials of the erstwhile government of Nigen in connection with the Edoras Oil Rigs. These media reports alleged that Edoras Oil Rigs did not meet the minimum environmental and safety standards prescribed under Nigen laws and the officials of Edoras Oil Rigs had bribed several senior officials of the erstwhile government to procure the clearances for the project. Based on the media reports, Nigenian police launched a criminal investigation into

the arrayed several high-level officials of the erstwhile government as accused. While several officials associated with Kushkan were frequently questioned by the police, neither Kushkan nor any of its officials were arrayed as accused.

28. On June 15, 2021, despite the Nigen Court ruling in favour of Kushkan recognising that the share charge under the SCA was valid by way of the SCA Judgment, the Nigen Companies' House, which is the executive agency of the Nigen Government that maintains the register of companies, refused to enforce the share charge in favour of Kushkan. It reasoned that since Kushkan was significantly controlled by a Molov national (i.e. Mr. Malin Kzkya), the Kushkan was barred from enforcing the share charge in view of the Nigen-Molov Sanctions.
29. On June 21, 2021, while the investigation was underway, the COEC, citing the allegations of fraud and corruption by Edoras and claiming that Kushkan was covered by the Nigen-Moloy Sanctions, terminated the JV Agreement, and sought to buy-back Edoras's 49.99% shares owned by Kushkan at a valuation of USD 150,000,000. Under the JV Agreement, upon termination for breach, the COEC had a right to purchase the shares of Kushkan in Edoras for an amount determine by a valuation done as on the dated of the termination notice, and the transaction had to be concluded within one month from the date of termination. Edoras disputed the termination. However, on account of termination of the JV Agreement, the sub-contracts of Edoras got terminated and the operations in the Edoras Oil Rigs were suspended until further notice.
30. On June 30, 2021, Edoras Power initiated a documents-only arbitration proceedings before a sole arbitrator under the JV Agreement, seated in Ketterdam. COEC objected to the arbitration proceedings on jurisdictional grounds. Among other things, COEC argued that the dispute was non-arbitrable as the contract vitiated by fraud and corruption, and the dispute was covered by the Nigen-Moloy Sanctions. The tribunal passed a jurisdictional award overruling the objections ofex COEC and further passed an interim award staying the termination notice dated March 21, 2021. On December 19, 2021, the arbitrator passed an award ("**Award**") stating that the termination notice is invalid as fraud is not proven under the applicable law and mere allegations of fraud would not accord COEC the right to terminate and appropriate the shares of Kushkan in Edoras. Furthermore, the arbitrator observed that COEC failed to establish that Mr. Malin Kzkya, whose shareholding (both direct and indirect) in Kushkan was 15%, was in control of Kushkan.
31. However, on January 15, 2022, the Supreme Court of Nigen refused to enforce the Award, stating that the arbitrator could not decide on the issue of Nigen-Molov Sanctions and the

Award was arbitrary, perverse and opposed to the public policy of Nigen (“**SC Judgment**”). It explained that matters of applicability of the Nigen-Molov Sanctions, even if limited to merely determining ownership or control over a company, involved a larger public interest, and could only be adjudicated before the courts of Nigen. Notably, three months prior to the SC Judgment, the Supreme Court of Nigen had ruled that sanctions did not form a part of Nigen’s public policy, albeit it also held that the same must be determined on a case-to-case basis.

32. Many legal scholars from Ketterdam following these developments were of the view that the refusal of enforcement of the Award was not consistent with the New York Convention or the accepted international jurisprudence governing the enforcement of foreign awards, which had been followed by the Supreme Court of Nigen. The SC Judgment was also criticized by some foreign scholars for being politically motivated and influenced by public sentiment.
33. On June 30, 2022, following multiple rounds of negotiation with COEC, Kushkan upon incurring heavy costs decided to accept the termination by COEC under protest. COEC, upon receiving an exemption from the NOFSI, bought the 49.99% shares of Edoras for an amount of USD 150,000,000. The charge over 25.01% shares, however, wasn’t recognised.
34. On January 31, 2023, while invoking Clause 10 of the Nigen-Ketterdam BIT, Kushkan sent a notice of arbitration to Nigen (“**Notice**”), who jointly nominated Mr. Pisarsky Vladimir KC as the arbitrator. Mr. Vladimir KC is a world-renowned arbitrator, an expert on investment treaty arbitration, and is experienced in complex oil and gas disputes. In the Notice, Kushkan made the following claims against Nigen:
 - (a) Nigen had breached full protection and security clause and fair and equitable treatment standard under the Nigen-Ketterdam BIT
 - (b) Nigen had unlawfully expropriated Kushkan’s investment
 - (c) In view of the SC Judgment, Nigen had violated the Most-Favoured Nation clause of the Nigen-Ketterdam BIT by failing to accord Kushkan the minimum standard of protection as provided under Clauses 5(4) and 5(5) of the Nigen-Volantis BIT (see Annexure B).
35. On February 20, 2023, Nigen sent a response to the notice of arbitration (“**Response**”) and nominated Alder Snow as the arbitrator. While Ms. Snow has served as an arbitrator in oil and gas arbitrations involving small claims in Nigen, her personal account on Bitter, a social media platform, was recently suspended due to her anti-Molov rhetoric. In particular,

she had strong opinions about nationals of Molov being allowed to do business as the profits would be funding the war.

1. Kushkan managed to enter into the SHA and the JV Agreement by way of bribery and corruption with the erstwhile government officials. Accordingly, Kushkan's investment was not covered by the Nigen-Ketterdam BIT.
 2. Kushkan's claims, to the extent, they arose from the alleged breach of the JV Agreement by COEC, did not qualify to breach of the Nigen-Ketterdam BIT.
 3. Kushkan having already initiated arbitration proceedings against COEC, was not entitled to raise the claims under the Nigen-Ketterdam BIT.
 4. Nigen afforded the adequate standard of full protection and security under the Nigen-Ketterdam BIT. Nigen cannot be held liable to the damage caused to the Edoras Oil Rigs due to any damage or loss caused to the Edoras Oil Rigs or Kushkan.
 5. The purported acts of COEC are reasonable, fair and transparent and thus, do not qualify as a breach of the fair and equitable treatment or unlawful expropriation under the Nigen-Ketterdam BIT.
 6. The termination of the JV Agreement was in pursuance of the Nigen- Molov Sanctions, Accordingly, Kushkan was barred from raising claims under the Nigen-Ketterdam BIT for the termination of the JV Agreement.
36. On February 23, 2023, Mr. Vladimir KC and Ms. Snow appointed Dr. Morbi Casi KC as the presiding arbitrator. Dr. Casi KC is a world-renowned arbitrator with over four decades of experience in commercial and investment arbitrations. He has significant experience in arbitrations in the oil and gas sector and was named the most sought-after arbitrator in the World View Rankings 2023. With this appointment, a tribunal comprising Dr. Casi KC, Mr. Valdimir KC, and Ms. Snow ("**Tribunal**") was constituted. On February 27, 2023, the Tribunal held a case management conference, and upon discussing with the parties, passed the Procedural Order no. 1 ("**PO1**") setting out the issues.
37. Herme Yevgnye Private Limited ("**HYPL**"), a third-party funder, entered into a Funding Agreement dated January 28, 2023 ("**Funding Agreement**") with Khushkan. On March 2, 2023, Nigen obtained knowledge of a prior funding agreement dated November 14, 2009 ("**TAPL Funding Agreement**") between HYPL and a company named Teriki Akomich

Private Limited (“**TAPL**”) with respect to an arbitration where Dr. Casi KC had appeared as a counsel on behalf of TAPL. The final arguments in the said arbitration have been concluded and a final award is awaited from the arbitral tribunal. Clause 23 of the TAPL Funding Agreement required complete confidentiality of the funding and its existence.

38. TAPL had to ensure the confidentiality with any third-parties from whom it availed any services, including legal representation. Dr. Casi KC has been suspected of being involved in significant strategy discussions with HYPL in the said arbitration and was required to enter into confidentiality covenants with TAPL. In view of the above, Nigen sent a letter to the Tribunal on March 5, 2023, seeking the removal of Dr. Casi KC from the Tribunal.
39. Dr. Casi KC became aware of HYPL’s involvement in the present arbitration as a third-party funder only by Nigen’s letter dated March 5, 2023. By a letter dated March 7, 2023, Dr. Casi KC informed parties that he has been involved in three more arbitrations in the past as a counsel where HYPL was a third-party funder of the companies he represented. However, he is of the opinion that the same does not raise a conflict of interest under the applicable law chosen by the parties.
40. On March 10, 2023, the Tribunal passed Procedural Order No. 2 (“**PO2**”) (see Annexure C) in order to add the issue of whether Dr. Casi KC would be disqualified as conflicted to the list of issues in PO1.

ANNEXURE A
Relevant Clauses of the Nigen-Ketterdam BIT

[...]

3. Definitions

[...]

(j) 'investment' means an enterprise constituted, organised and operated in good faith by an investor in accordance with the law of the Party in whose territory the investment is made, taken together with the assets of the enterprise, has the characteristics of an investment such as the commitment of capital or other resources, certain duration, the expectation of gain or profit, the assumption of risk and a significance for the development of the Party in whose territory the investment is made."

[...]

4. Most Favoured Nation

Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

This treatment does not extend, however, to the privileges that one Contracting Party grants to the nationals or companies of a third State, by virtue of its participation in or association with a free trade area, customs union, common market or any other form of regional economic organization.

Treatment granted under this article is not applied to taxes and fiscal deductions and exemptions granted by one of the Contracting Parties to the investors of a third State under a double taxation or other tax-related agreement.

5. Fair and Equitable Treatment & Full Protection and Security

Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors.

Each Contracting Party shall accord to such investments full security and protection. Full protection and security requires each Contracting Party to provide the level of police protection required under customary international law

[...]

8. Expropriation

Investments of investors of either Contracting Party or any of its natural or juridical persons shall not be directly or indirectly nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation, in the territory of either Contracting Party except for a public purpose, and against payment of compensation. Such compensation shall be adequate, effectively realizable, made without delay and freely transferable in freely convertible currencies. Such measures are taken on a non-discriminatory basis and subject to review by due process of law.

Such compensation shall amount to the market value of the investment expropriated on the date the measure was taken.

9. Sanctity of the contract:

Each Party shall at all times ensure the observance of any undertakings which it may have given or obligations which it may have entered into in relation to investments made by nationals of any other party.

10. Dispute resolution

Any dispute in relation to investments under this Treaty, which concern an alleged breach of an obligation of a Contracting Party shall be referred to ad hoc arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as in force at the commencement of the proceedings.

The law governing the arbitration shall be UNCITRAL Model Law on International Commercial Arbitration (2006 version).

The arbitral tribunal shall comprise of 3 arbitrators. Each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

ANNEXURE B
RELEVANT CLAUSE OF THE NIGEN-VOLANTIS BIT

5. Protection of Investments

[...]

4. Each Contracting State shall maintain a favourable environment for investments in its territory by investors of the other Contracting State. Each Contracting State shall, in accordance with its applicable laws and regulations provide effective means of asserting claims and enforcing rights with respect to investments.

5. Each Contracting State shall apply international best practices and adhere to its obligations under the relevant international conventions for enforcement of awards while dealing with awards passed in the disputes with respect to the investments.

[...]

ANNEXURE C
Procedural Order No. 2

1. The Arbitral Tribunal hereby directs the Parties that in their next submissions and at the hearing, the Parties shall address the following issues:
 - a. Whether the claims raised by Kushkan are maintainable in view of the commercial arbitration proceedings between Kushkan and COEC?
 - b. Whether Kushkan's investment is covered by the Nigen-Ketterdam BIT?
 - c. Whether Nigen afforded the adequate standard of full protection and security under the Nigen-Ketterdam BIT?
 - d. Whether the purported acts of COEC or Nigen qualify as a breach of the fair and equitable treatment under the Nigen-Ketterdam BIT?
 - e. Whether the following acts amount to unlawful expropriation under the Nigen-Ketterdam BIT?
 - (i) the termination of the JV Agreement by COEC
 - (ii) the SC Judgment refusing the enforcement of the Award
 - (iii) refusal by Nigen Companies' House to enforce the share charge as per the terms of the SCA and the SCA Judgment
 - f. Whether the SC Judgment violates the Most Favoured Nation clause of the Nigen-Ketterdam BIT?
 - g. Whether Dr. Morbi Casi KC is fit to continue as the presiding arbitrator due to the alleged conflict of interest?
2. The Tribunal is aware that the various questions are closely connected to each other. Thus, the Parties are free to decide in which order they address the various issues. No further questions going to the merits of the claims should be addressed at this stage of the proceedings, in particular no questions relating to further issues.