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KIRIT P. MEHTA
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SVKM'S KIRIT P. MEHTA SCHOOL OF
LAW

5TH INTERNATIONAL
MOOT COURT COMPETITION

CLARIFICATIONS

Clarifications- 5th International Moot Court Competition 2023

1. Pertaining to issue (a) that states ‘Whether the claims raised by Kushkan are maintainable in view of the commercial arbitration proceedings between Kushkan and COEC?’, is the question on maintainability for all claims or just against COEC? Given the maintainability aspect, what interpretation is needed to ensure the correct procedural approach?

Response: The issue of maintainability under paragraph 1(a) of Procedural Order No. 2 pertains to the relevant claims raised by Kushkan against Nigen under the Nigen-Ketterdam BIT. No further clarification is required.

2. Paragraph 35, point 6 states that ‘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’. What would be the interpretation of claims of Kushkan with respect to being barred and maintainability?

Response: Nigen’s contention is that Kushkan’s claims that result from the termination of the JV Agreement, brought under the Nigen-Ketterdam BIT as a breach of the protections provided therein, are barred. This is in view of the Nigen-Molov Sanctions. This issue pertains to a conflict between Nigen’s obligations under Nigen-Ketterdam BIT and its imposition of unilateral economic sanctions against Molov. No further clarification is required.

3. Is the substantive law to the agreement - BIT or is there any other law?

Response: No clarification is required.

4. Laws of Kettardam are pari materia to which country?

Response: The general contract law of all three states is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts, 2010.

5. Laws of Nigen are pari materia to which country?

Response: The general contract law of all three states is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts, 2010.

6. Is the treatment of protection of investment under Nigen-Volantis BIT, provided by the virtue of participation in or association with a free trade area, custom union, common market or any other form of regional economic organisation?

Response: No clarification is required.

7. Does the government of Molov via Kzyka has any sort of influence on the functioning of Kushkan?

Response: No clarification is required.

8. Does the 15% shareholding of a Molov national- Kzkya, a major share holding in Kushkan Pvt. Ltd.

Response: He is one of the five major shareholders in Kushkan.

9. Was there a dispute resolution clause under JV Agreement, if any could that be provided as annexure.

Response: The JV Agreement contained an arbitration agreement which, in its relevant part, stated: *“Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration...”* No further clarification is required.

10. As in para 33, the share charge wasn't recognised by whom or by which authority? Was there any application made for the enforcement of SCA?

Response: Nigen Companies' House is the executive agency of the Government of Nigen that maintains the register of companies. Refer to paragraph 21 of the proposition.

11. The countries both, Nigen and Kettardam, have they ratified the New York Convention?

Response: No clarification is required. Refer to paragraph 7 of the proposition.

12. Is the SNN (Satellite News Network) a government based network?

Response: SNN is controlled by a public limited company with 40% of its shares publicly traded in the Nigen Stock Exchange and the remaining shareholding divided between primarily major shareholders, which includes a government company.

13. Was the Nigen Volantis BIT also related to oil and gas?

Response: The definition of *‘investment’* in Nigen Volantis BIT and Nigen-Ketterdam BIT is the same. No further clarification is required.

14. Was there any other company from Kettardam, under NIGEN-KETTERDAM BIT which invested in the country of NIGEN?

Response: Nigen has received foreign direct investment from investors based in Ketterdam over the period of years. No further clarification is required.

15. The current market value of the 49.99% shares of EDORAS amount to be?

Response: Shares of Edoras Power are not publicly traded.

16. What is the standard of the FPS clause.

Response: No clarification is required.

17. Can we equate and compare the standards of the Nigen Volantis BIT?

Response: No clarification is required.

18. Does the phrase “international Best practices” in the Nigen Volantis BIT set a limitation or a floor?

Response: No clarification is required.

19. Is USD 150,000,000 compensation adequate for the buy back of shares?

Response: No clarification is required.

20. Can some light be thrown on who are the parties being referred to, apart from Kushkan, through the sentence "jointly nominated" in Para 34?

Response: Mr. Pisarsky Vladimir and Ms. Alder Snow were nominated by Kushkan and Nigen respectively. Dr. Morbi Casi KC was chosen to be the presiding arbitrator.

21. Paragraph 34 mentions that the termination notice was dated 21st March, 2021, however in the preceding paragraph itself, it states that the JV Agreement was terminated on June 21st 2021. 21st March 2021 cannot be the date when the interim order was passed as the arbitration commenced on June 30th. Therefore, what is the relevance of the date of 21st March?

Response: The termination notice referred to in paragraphs 29 and 30 is dated June 21, 2021 by which COEC terminated the JV Agreement.

22. Issue 1 states, in view of the commercial arbitration proceedings between Kushkan and COEC. Is this with regards to the claims of Nigen that there was an arbitration proceeding already initiated, though it was between Edoras and COEC according to paragraph 30 of the moot proposition. Would be grateful for the elucidation of the same.

Response: The arbitration referred to in paragraph 30 of the proposition was initiated by Kushkan against COEC.

23. In the para 30 of Moot proposition, it is said that Edoras initiated arbitration proceedings against COEC although the award of the same proceeding is given in favour of kushkan. The same proceeding is referred to as between COEC and Kushkan in 1(b) of Annexure C. Now, Who were the parties in the said commercial arbitration?

Response: The arbitration referred to in paragraph 30 of the proposition was initiated by Kushkan against COEC.

24. And the way 1(b) of Annex 3 has raised its issue makes it look like the commercial arbitration is still ongoing. So, Is the said commercial arbitration still ongoing?

Response: No clarification is required. Refer to paragraph 30 of the proposition.