TIMCCE-206

TILA INTERNATIONAL MOOT COURT COMPETITION ON ENERGY (TIMCCE-II)

2019

INTERNATIONAL COURT OF JUSTICE

IN THE PROCEEDING BETWEEN

REPUBLIC OF KASANA …….……APPLICANT

V.

UNION OF IKRAR ……..…….. RESPONDENT

MOST RESPECTFULLY SUBMITTED

AGENT APPEARING ON BEHALF OF THE APPLICANT

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

¶	Paragraph
§	Section
&	And
Art.	Article
CEPA	Comprehensive Economic Partnership Agreement
ERC	Electricity Regulatory Commission
GATT	General Agreement on Trade and Tariff
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Dispute
MFN	Most Favoured Nation
PPA	Power Purchase Agreement
Rep.	Report
RPO	Renewable Purchase Obligation
UNICTRAL	United Nation Commission on International Trade Law
v.	Versus
VCLT	Vienna Convention on the Law of Treaties

INDEX OF AUTHORITIES

Cases

Statutes

Other Authorities

Treatises

STATEMENT OF JURISDICTION

The Republic of Kasana (Applicant) humbly submits the present dispute before this Hon'ble International Court of Justice in pursuit of legal justice. The application is brought under Art.36(1) of the ICJ Statute. All the parties at dispute have mutually agreed to invoke the jurisdiction of International court of Justice.

STATEMENT OF FACT

The material case is regarding the breach of the PPA, the MANAR and the CEPA between Union of Ikrar and Republic of Kasana. Kasana has approached the ICJ to seek compensation from Ikrar.

The PPA between Union of Ikrar and Republic of Kasana, representing TT power Ltd.

Union of IKRAR government and Republic of KASANA representing TT power Ltd. (A state owned company) inked a Power Purchase agreement (PPA) for the purchase of solar power to setup a project in district Halva, IKRAR. One of the term of agreement said that Ikrar government will supply water for the working of solar power generation to TT Power Company and also TT Power Company agreed to the terms of Ikrar government.

The MANAR Agreement

MANAR agreement was also signed between Ikrar government and TT power company that if the company does not establish its plant in Ikrar within six months then it will have to pay USD 400-million as a compensation for loss.

Alliance between TT Power Company and DK power Company

Meanwhile TT Power company formed alliance with DK power company (registered in IKRAR) to setup the solar plant in Ikrar. TT Power Company agreed to invest around 40% for the joint venture which summed up to USD 240 Million along with technical support to the project.

The project was divided into two phases: one was to invest the money and second was to setup the power plant) and was supposed to get completed by 2016, but it got delayed due to differences between the Joint Venture partners.

The Dispute

PPA was signed to fulfill Renewable purchase obligation (RPO) by following the transparent process of bidding. After the bidding was completed TT power Ltd. was awarded the project for 600 MW. In due course the electricity rates/tariff quoted in the above bids was substantially reduced in subsequent bids, raising the concern of electricity regulatory commission (ERC)

Keeping in view the interest of the Consumers the Electricity regulatory commission did not adopt the tariff quoted. The proposal was refereed back to IKRAR thrice for reduction of tariff keeping in the view the gap between the market price and solar tariff.

At the time of implementing the project Ikrar government did not supply water to TT Power Company Ganga Kishan River whose water was supposed to be supplied by Ikrar government to TT Power Company for working of solar power plant was in a dispute redressal between Ikrar government and Pamaiya government (Neighbor of IKRAR) dispute being Right to use waters of the Ganga Kishan River. Nearly four years after inking of the Treaty; KASANA approached ICJ to seek compensation from IKRAR.

DK Power Company started to work towards the project but the company had to suffer greater financial loss because of TT Power Company's inability to bring more funds as per the promise.

TT Power Company invested only USD 7.5 million and failed to invest adequate amount due to which the local company had to bear the total project cost of around USD 600 million. Meanwhile, the TT Power Company alleges breach of contract to start the project as per schedule.

The CEPA

Comprehensive economic Partnership Agreement (CEPA) was also signed between Union of Ikrar and Republic of Kasana on 7th August 2009. This agreement commits both countries to lower or eliminate import tariffs on a wide range of goods, over the next 20 years and expand opportunities for investments and exchanging services, Kasana is phasing out or reducing tariff on 90 percent of Ikrar goods over the next decade, while Ikrar will do so on 85 percent of Kasana goods.

CEPA has been registered under Article 102 of the United Nations Charter in 1945.

Ikrar government has imposed Anti-dumping duty of 25% which led to increase in cost of project.

All the countries present in the scenario have mutually agreed to invoke the jurisdiction of International court of Justice.

MEASURES AT ISSUE

1. **WHETHER THE PARTIES CAN CLAIM COMPENSATION? IF SO THEN AGAINST WHOM AND UP TO WHAT EXTENT.**
2. **WHETHER GANGA KISHAN RIVER DISPUTE IS JUSTIFIED FOR FAILURE OF JOINT VENTURE AGREEMENT BETWEEN UNION OF IKRAR AND REPUBLIC OF KASANA.**
3. **WHETHER THE ELECTRICITY REGULATORY COMMISSION IS JUSTIFIED IN REFUSAL TO ACCEPT THE PPA TARIFF WHICH IN TURN HAS LED TO FURTHER DELAY.**

SUMMARY OF PLEADINGS

1. WHETHER THE PARTIES CAN CLAIM COMPENSATION? IF YES, THEN AGAINST WHOM AND UPTO WHAT EXTENT?

It is humbly submitted before the Hon'ble court that in the present case Kasana can claim compensation against Ikrar as Ikrar has breached the international obligations by non-supply of water as promised. Also, Ikrar imposed anti-dumping duty of 25% that violated the terms of CEPA. The act of Ikrar is attributable to the state of Kasana as that was against their international responsibility.

2. WHETHER THE GANGA-KISHAN RIVER DISPUTE IS JUSTIFIED FOR THE FAILURE OF THE JOINT-VENTURE AGREEMENT BETWEEN UNION OF IKRAR AND REPUBLIC OF KASANA

It is humbly submitted before the Hon'ble court that the Ganga-Kishan river dispute is not justified for the failure of the supply of water which led to the failure of joint-venture agreement as Ikrar owed a duty of abide by the terms of the PPA. The Ganga-Kishan River whose water was supposed to be supplied by the Ikrar government to TT Power Company for the working of solar power plant was not supplied on time for the implementation of the project which in turn led to the failure of the joint venture agreement. Also, Pamaiya government has no interest in the share of Ikrar's right over the water of Ganga-Kishan River.

3. WHETHER THE ELECTRICITY REGULATORY COMMISSION IS JUSTIFIED IN REFUSAL TO ACCEPT THE PPA TARIFF WHICH IN TURN HAS LED TO FURTHER DELAY.

It is humbly submitted that the ERC is justified in refusing to accept the PPA tariff in order to protect the consumer interest. Also the PPA tariff was not in accordance with the National tariff policy also it was in violation of the international customary principle of national treatment, most favoured nation treatment and anti-dumping policy. It was also against the CEPA entered between the Ikrar and Kasana

LEGAL PLEADINGS

1. WHETHER THE PARTIES CAN CLAIM COMPENSATION? IF SO, THEN AGAINST WHOM AND UPTO WHAT EXTENT?

It is humbly submitted before the Hon'ble court that in the present case Kasana can claim compensation against Ikrar as Ikrar has breached the international obligations (1.1). Ikrar has violated the principle of '*pacta sunt servanda (1.2).* And it characterises the act of Ikrar done in an internationally wrongful manner (1.3).

1. THAT IKRAR HAS BREACHED THE INTERNATIONAL OBLIGATION.

It is submitted that acts done by Ikrar has breached the international obligation. *There is an internationally wrongful act of a State when conduct consisting of an action or omission*[1]*:*

(a) is attributable to the State under international law(1.1.1); and

(b) Constitutes a breach of an international obligation of the State (1.1.2).

1.1.1 THAT THE CONDUCT OF IKRAR CONSTITUES A BREACH OF INTERNATIONAL OBLIGATION

One of the conditions for the existence of an internationally wrongful act of the State is that the conduct is attributable to the State should constitute a breach of an international obligation of that State. The terminology of breach of an international obligation of the State is long established and is used to cover both treaty and non-treaty obligations.

In its judgment on jurisdiction in the *Factory at Chorzów* case, PCIJ used the words "breach of an engagement".[2]

ICJ referred explicitly to these words in the *Reparation for Injuries* case.[3] The arbitral tribunal in the *"Rainbow Warrior"* affair referred to "any violation by a State of any obligation".[4] In practice, terms such as "non-execution of international obligations", "acts incompatible with international

[1] Art. 2 of Draft articles on Responsibility of States for Internationally Wrongful Acts.
[2] Factory at Chorzów, Jurisdiction, Judgment No. 8, P.C.I.J., Series A, No. 9, pg. 21 (1927).
[3] Reparation for Injuries, I.C.J. Rep. 174, (1949).
[4] New Zealand v. France, France-New Zealand Arbitration Tribunal, 82 I.L.R. 500 (1990).

obligations", "violation of an international obligation" or "breach of an engagement" are also used.[5]

In the present case there is a "breach of an engagement" by Ikrar as the engagement was to supply water and due to its breach Kasana can claim compensation from Ikrar.

1.1.2. THAT THE CONDUCT OF IKRAR IS ATTRIBUTABLE TO THE STATE OF KASANA

It is submitted that the conduct of Ikrar is Attributable to the state of Ikrar.

In the *Phosphates in Morocco* case. The Court explicitly linked the creation of international responsibility with the existence of an *"act being attributable to the State and described as contrary to the treaty rights of another State*".[6]

Similarly in the *Dickson Car Wheel Company* case, the Mexico-United States General Claims Commission noted that the condition required for a State to incur international responsibility is "*that an unlawful international act be imputed to it, that is, that there exist a violation of a duty imposed by an international juridical standard*".[7]

As per one of the terms of the PPA:

"Ikrar Government will supply water for the working of solar power generation to TT Power Company"[8]

"*Except as otherwise provided for in this agreement, the parties retain their rights and obligations under Article VI of GATT 1994 and Anti-dumping Agreement*[9]*."*

[5] Conference for the Codification of International Law, held at The Hague in 1930, the term "any failure ... to carry out the international obligations of the State" was adopted (see *Yearbook ... 1956*, vol. II, p. 225, document A/CN.4/96, annex 3, Art. 1).
[6] *Id.*.
[7] Dickson Car Wheel Company (U.S.A.) v. United Mexican States, UNRIAA, vol. IV (Sales No. 1951.V.1), ¶ 669, at pg. 678 (1931).
[8] ¶ 1 of the Proposition.
[9] § B Trade Remedies, Section B-A: Anti-Dumping and Countervailing Duties Article 2.1.3 General Provisions of India-Korea CEPA, 2009 (The Laws of IKRAR are in Pari-Materia with the Laws of India; and The Laws of KASANA are in Pari-Materia with the Laws of South-Korea).

This agreement commits both countries to lower or eliminate import tariffs on a wide range of goods[10]. Also, Ikrar Government imposed Anti-Dumping Duty of 25%[11].

Thus, by imposing the Anti-Dumping Duty of 25% which in itself violated the terms of CEPA.

1.2. THAT IKRAR HAS VIOLATED THE PRINCIPLE OF '*PACTA SUNT SERVANDA'*

It is contented that Ikrar has violated the principle of '*pacta sunt servanda'*.

"*Every treaty in force is binding upon the parties to it and must be performed by them in good faith".*[12]

One of the crucial general principle of international law is that of *pacta sunt servenda, or the idea that international agreements are binding. The law of treaties rest inexorably upon this principle since the whole concept of binding international agreements can only rest upon the presupposition that such instruments are commonly accepted as possessing that quality."*[13]

Trust and confidence are inherent in international cooperation[14].

In the present case as per the PPA one of the terms stated that Ikrar Government will supply water for the working of the solar power generation to the TT Power Company[15]. Kasana trusted that Ikrar Government will abide by the terms of PPA and supply water for the working of solar power plant. But, the Ikrar Government failed to do so. And thus, '*pacta sunt servanda*' was breached by the Ikrar Government.

1.3. THAT THE STATE RESPONSIBILITY ON THE PART OF IKRAR WAS BREACHED

It is submitted that Ikrar has breached the state responsibility it owed towards Kasana.

"Every internationally wrongful act of a State entails the international responsibility of that State".[16]

[10] ¶ 1, Moot proposition.
[11] ¶ 3, Moot proposition.
[12] Art. 26, Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969.
[13] Vol I, MC. NAIR, LAW OF TREATIES, 591 chapter 30. See also art. 26 of the Vienna Convention on the Law of Treaties, 1969, and AMCO v. Republic of Indonesia 89 ILR, 366.
[14] MALCOLM N. SHAW, INTERNATIONAL LAW, 105, (Cambridge university press, 6th Ed.)
[15] ¶ 1, Moot proposition.
[16] Art. 1 of Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries.

In the *Phosphates in Morocco* case, PCIJ affirmed that when a State commits an internationally wrongful act against another State international responsibility is established "immediately as between the two States"[17]. ICJ has applied the principle on several occasions, for example in the *Corfu Channel* case,[18] in the *Military and Paramilitary Activities in and against Nicaragua* case[19]

That every internationally wrongful act of a State entails the international responsibility of that State, and thus gives rise to new international legal relations additional to those which existed before the act took place, has been widely recognized, both before and since article 1 was first formulated by the Commission.

The international legal relation was breached by Ikrar that makes them liable to pay compensation up to the extent till which Kasana suffered loss.

Thus the term "international responsibility" in article 1 covers the relations which arise under international law from the internationally wrongful act of a State, whether such relations are limited to the wrong doing State and one injured State or whether they extend also to other.

The non-supply of water by Ikrar and imposition of the anti-dumping duty not only led to the delay of the project but also injured Kasana and it also had to bear for the losses.

2. WHETHER THE GANGA-KISHAN RIVER DISPUTE IS JUSTIFIED FOR THE FAILURE OF THE JOINT-VENTURE AGREEMENT BETWEEN UNION OF IKRAR AND REPUBLIC OF KASANA.

It is humbly submitted before the Hon'ble court that the Ganga-Kishan river dispute is not justified for the failure of the supply of water which led to the failure of joint-venture agreement as Ikrar owed a duty of abide by the terms of the PPA (2.1). Also, Pamaiya Government has no interest in the share of Ikrar's right over the water of Ganga-Kishan River (2.2).

[17] Phosphates in Morocco, Judgment, P.C.I.J., Series A/B,No.74, pg. 10 (1938).
[18] Corfu Channel, Merits, Judgment, I.C.J. Reports, 4, at ¶. 23, (1949).
[19] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14, at pg. 142, ¶ 283, & pg. 149, ¶. 292.

2.1. THAT THE GANGA-KISHAN RIVER DISPUTE IS NOT JUSTIFIED FOR THE FAILURE OF NON SUPPLY OF WATER WHICH LED TO THE DELAY IN IMPLEMENTATION OF THE PROJECT

It is submitted that the Ganga-Kishan River whose water was supposed to be supplied by the Ikrar government to TT Power Company for the working of solar power plant was not supplied on time for the implementation of the project. This delay in term led to the failure of the joint venture agreement.

The solar power project was divided into two phases:

(a)To invest the money

(b) To set up the power plant

2.1.1. THAT THE FAILURE TO INVEST THE MONEY IS ATTRIBUTABLE TO IKRAR

TT Power Company had agreed to invest around 40% for the joint venture which summed upto USD 240 Million along with technical support to the project.[20] But it failed to invest the adequate amount because of the *anti-dumping duty* which led to unreasonable increase in the cost of the project. This increase in the cost indeed led TT Power Company powerless to invest the money.

2.1.2. THAT THE FAILURE TO SET UP THE POWER PLANT WAS DELAYED DUE TO THE NON-SUPPLY OF WATER

At the time of implementing the project Ikrar government did not supply water to TT Power Company[21]. Ultimately this made Kasana helpless for its fulfilment of another object that was to set up the power plant.

2.2 THAT PAMAIYA GOVERNMENT HAS NO INTEREST IN THE SHARE OF IKRAR'S RIGHT OVER THE WATER OF GANGA-KISHAN RIVER

It is submitted that in the present case Pamaiya Government had no interest in the part of share that Ikrar had over the 'right to use water' over the water of Ganga-Kishan River as it is most

[20] ¶ 3 of the Moot proposition.
[21] ¶ 7 of the Moot proposition.

probable interpretation that the only thing that is of material significance to Pamaiya will remain the same and there would be an un-interrupted flow of water to the Pamaiya .

"There can be no ground for the specification of interim measures, India submits, given the categorical assertion—made by India in its counsel's March 17, 2011 correspondence—that there will be no such diversion until 2015.[22] In India's view, "the un-interrupted flow, the only thing that is of material consequence to Pakistan … will remain the same …"[23]

"Under Paragraph 28, the Court is empowered and indeed appears to be obliged in three instances to specify interim measures if it concludes that those measures are necessary:
(i) to safeguard the interests of the requesting Party with respect"[24]
To the matter in dispute; (ii) to avoid prejudice to the final solution of the dispute; or
(iii) To avoid aggravation or extension of the dispute.
In specifying the three grounds on which interim measures may be granted, the framers of the Treaty chose to use a disjunctive "or" rather than the conjunctive "and," thus indicating that the measures required need only meet one of these criteria in order that interim measures may be ordered."[25]

[22] Award in the Arbitration regarding the Indus Waters Kishenganga between Pakistan and India, 20 December 2013, VOLUME XXXI pp.1-358, United Nations; India's Response, para. 8; Interim Measures Hearing Transcript, 124:7–9, 132:24 to133:8, 182:17–20.
[23] Award in the Arbitration regarding the Indus Waters Kishenganga between Pakistan and India, 20 December 2013, VOLUME XXXI pp.1-358, United Nations; India's Rejoinder, para. 30.
[24] *Id*.
[25] The use of the disjunctive word "or" has a logical meaning, creating alternative elements which can each satisfy a given condition. *In Plama v. Bulgaria*, the question before the tribunal was whether the Claimant was a legal entity owned or controlled by citizens or nationals of a third state under Article 17(1) of the Energy Charter Treaty. The Tribunal determined that the word "or" in that provision must signify that "ownership and control are alternatives: in other words, only one need be met for the first limb to be satisfied …" *Plama Consortium Ltd. (Cyprus) v. Bulgaria*, Decision on Jurisdiction, ICSID ARB/03/24, ¶ 170, February 8, 2005. In the *Anglo-Iranian Oil Co.* case, ICJ Judge John Read observed that a plain reading of the disjunctive word "or" in the clause "with regard to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia" had an "unequivocal meaning." He reasoned that the use of that word had been "deliberate" and had the effect of broadening the scope of the declaration in question beyond those instruments which were "directly" accepted by Persia, to those having an indirect relationship to the treaties or conventions in question. *Anglo-Iranian Oil. Co. Case* (United Kingdom *v.* Iran), I.C.J. Reports, 142 at ¶ 146 (1952) (dissenting opinion of Judge Read).

3. WHETHER THE ELECTRICITY REGULATORY COMMISSION IS JUSTIFIED IN REFUSAL TO ACCEPT THE PPA TARIFF WHICH IN TURN HAS LED TO FURTHER DELAY.

It is humbly submitted that the Electricity Regulatory Commission is justified in refusal to accept the PPA tariff as (3.1) tariff was not in accordance with the Municipal Law of the land, (3.2) it was against the international customary principle (3.3) It was also in violation of CEPA between Ikrar and Kasana.

3.1 THAT THE TARIFF WAS NOT IN ACCORDANCE WITH THE MUNICIPAL LAW OF THE LAND

It is submitted that the refusal to accept the tariff by ERC was justified as the tariff quoted was not in accordance with the Municipal law of the land i.e. the Electricity Act, 2003 and National Tariff Policy.

3.1.1 THAT THE ERC IS JUSTIFIED IN REFUSING THE TARIFF TO PROTECT CONSUMER INTEREST

The Regulatory Commission has the power to regulate the tariff of generating companies.[26] The modalities of the RPO will be determined by the electricity regulators.[27] Thus the commission acting in its intra-virus jurisdiction has rejected the quoted tariff. The Commission has the power to determine the tariff.[28]

Moreover, the Electricity Regulatory Commission is justified in refusing the PPA tariff in order to safeguard the consumer interest.[29] As there was a gap between the market price and solar tariff so the consumers are the ones who shall ultimately bear the cost by paying high charges. In this case, greater public interest is put at stake so as to ensure that the Respondent earns considerable amount of profits, the PPA in its present form clearly displays unprofitable tendencies for the consumers.

The Electricity Act, 2003 provides that if generating company recovers a price exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid

[26] § 79(a), and §79(b),The Electricity Act, 2003.
[27] National Tariff Policy, 2016.
[28] § 62, The Electricity Act, 2003.
[29] § 61(d), the Electricity act, 2003.

such price.[30] Thus the consumer has the right to recover such amount. Therefore the tariff rate must be reduced in the interest of the consumer.

3.1.2 THAT THE TARIFF RATE IS NOT IN ACCORDANCE WITH NATIONAL ELECTRICITY POLICY

It is most humbly submitted before the Hon'ble Court that the tariff rate quoted in PPA was not in concurrence with the National Electricity Policy. The relevant aims and objectives of the Policy include "Supply of reliable and Quality power of specified standards in an efficient manner and at reasonable rates;"[31]

The gap between the market price and sola tariff is *res ipsa loquitor* that the electricity was not provided at reasonable rate, thus violating the national electricity policy.

3.1.3 THAT THE MUNICIPAL LAW CAN BE PLEADED IN THE ICJ

An international Tribunal may be faced with the task of deciding issues solely on the basis of the municipal law of a particular state.[32] The Municipal law can be pleaded in ICJ as stated in Serbian Loans[33]. It was stated that the basis of such finding was the wide terms of Article 36(1) of the Statute which refers specifically to cases brought by special agreement, and all the duty of the Court to exercise jurisdiction when the two states have agreed to have recourse to the Court**.**

The dispute in this case is based on special agreement between Ikrar and Kasana, thus giving way to the municipal law as a weighty evidence in the ICJ.

In *Barcelona Traction, Light and Power Co. Ltd.*,[34] if there are no corresponding institutions of international law to which court would resort, thus it has to take cognizance as well as refer it.

The Statutes of the ICJ also recognizes the municipal law and its functions is applicable on it.[35]

Thus it is submitted that Municipal law can be pleaded in ICJ.

[30]Consultation Paper on Additional Surcharge, *Available at* https://powermin.nic.in/sites/default/files/webform/notices/Seeking_Comments_on_Consultation_paper_on_issues_pertaining_to_Open_Access.pdf.
[31] ¶ 2(c), The National Electricity Policy.
[32] A. GHAFUR, PUBLIC INTERNATIONAL LAW: A PRACTICAL APPROACH, 59 (2006).
[33] Serbian Loans PCIJ A, No. 20 (1929).
[34] Belgium v. Spain, ICJ Rep. 3 (1970).
[35] Art. 38(c) and (d), Statutes of the International Court of Justice.

3.2 THAT THE QUOTED PRICE WAS IN VIOLATION OF INTERNATIONAL CUSTOMARY PRINCIPLE

It is humbly submitted that the PPA quoted tariff was in violation of International customary principle of National Treatment, Most Favoured Nation and anti-dumping rule. Therefore ERC was justified in not accepting the tariff.

3.2.1 THAT THE PPA QUOTED PRICE WAS IN VIOLATION OF NATIONAL TREATMENT PRINCIPLE

It is humbly submitted that there is a violation of National Treatment principle provided under Article III of the GATT. The basis of National Treatment is non-discrimination between the foreign goods/services and local goods/services of same nature.

In *SD Meyers v. Canada*,[36] the two factors were laid down in particular that need to be evaluated in determining differential treatment: (1) whether the practical effect is to create disproportionate benefits to national over non-nationals; and (2) whether on its face the contested measure appears to favour the host country's national over non-nationals.

There has been infringement of national treatment as there was large gap between the market price and solar-tariff.[37]

3.2.2 THAT THE MOST FAVOURED NATION PRINCIPLE HAS BEEN VIOLATED

It is submitted that there is violation of MFN clause stated under Article 1 of GATT. MFN prevents the discrimination and establishes equality of opportunity on the highest possible plane; the minimum of discrimination and the maximum of favors conceded to any third state. The MFN treatment requires that the host state should not discriminate de jure or de facto- on the basis of the nationality. In *Parkerings v. Lithuania*,[38] the tribunal established that, to violate international law, discrimination had to be unreasonable or lacking proportionality. The gap between the market price and the solar tariff is evident that there was no proportionality in tariff. Thus there is violation of most favoured nation treatment.

[36] SD Meyers Inc. v. Government of Canada, UNCITRAL 1976, First Partial Award, (Nov 13, 2000).
[37] ¶ 6, Moot Proposition.
[38] Parkerings-Compagniet AS v. Republic of Lithuania, ICSID Case No. ARB/05/8.

3.2.3 THAT THERE IS A VIOLATION OF ANTI-DUMPING PRINCIPLE

It is humbly submitted that there has been violation of Anti-Dumping Principle stated under Article VI of the GATT.

Article VI states that The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.[39] It also states that "In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of ¶ 1."[40]

The rate of the project was increased due to imposition of anti-dumping duty of 25% by the Ikrar Government.[41] Thus it can be understood that the imposition of the duty was greater in amount than the margin dumping, thus bringing it in violation of the Anti-dumping principle. The imposition of anti-dumping duty was arbitrary as Kasana has already reduced the tariff on 90% of Ikrar's good whereas Ikrar has reduced tariff only on 85% of Kasana's goods.

3.3 THAT THERE WAS FAILURE TO FULFILL OBLIGATION UNDER CEPA

It is humbly submitted on the behalf of applicant that there is violation of obligations under the CEPA to which both the parties are signatories. The objectives and Principles of Trade Facilitation and Custom cooperation states *to ensure the free flow of trade and to meet the needs of governments for revenue.*[42]

The CEPA also states that if a Party takes a decision to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, it shall apply a duty less than the margin of dumping where such lesser duty would be adequate to remove the injury to the domestic industry.[43] The

[39] ¶ 1 of Article VI, GATT, 1994.
[40] ¶ 2 of Article VI, GATT, 1944.
[41] ¶ 3, Moot Proposition.
[42] Art.5.1, CEPA, 2009.
[43] Art. 2.17, CEPA, 2009.

imposition of 25% of anti-dumping duty has increased the cost of the project. Thus imposition of anti-dumping duty is in violation of CEPA.

The clause of National Treatment[44] and Most Favoured Nation[45] commitment stated under CEPA has also been violated. Thus there is non-fulfilment of obligation stated under CEPA.

Therefore, it is submitted that ERC is justified in not accepting the quoted tariff.

[44] Art. 6.5, CEPA, 2009.
[45] Art. 6.3, CEPA, 2009.

PRAYERS

In the light of the issues raised, arguments advanced and authorities cited, the Agent for the Applicant humbly prays before this Hon'ble International Court of Justice to kindly adjudge and declare:

1. That Union of Ikrar is liable to pay compensation to Republic of Kasana.
2. That Ganga-Kishan river dispute is not justified for the failure of non-supply of water which led to the delay in implementation of the project.
3. ERC is justified in refusal of PPA quoted tariff.

And pass any other appropriate order as the tribunal may deem fit.

And for this act of Kindness, the Applicant as in duty bound, shall forever pray.

Respectfully Submitted

Sd/-

Agent for Applicant