
THE 19TH LAWASIA INTERNATIONAL MOOT COMPETITION

ASIAN INTERNATIONAL ARBITRATION CENTRE

2024

BETWEEN:

THE GOVERNMENT OF PALMENNA

(CLAIMANT)

AND

CANSTONE

(RESPONDENT)

MEMORIAL FOR RESPONDENT

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BIT	Bilateral Investment Treaty
PK-BIT	Palmenna-Kenweed Bilateral Investment Treaty
AIAC	Asian International Arbitration Centre
EIA	Environmental Impact Assessment
SZN	SZN Company Limited
MTI	Ministry of Trade and Investment
KLT	KLT Company Limited
Mehstone Ltd	Mehstone Star Limited
MOU	Memorandum of Understanding
UNFCCC	United Nations Framework Convention on Climate Change
Canstone	Canstone Fly Limited

STATEMENT OF JURISDICTION

The parties, PALMENNA, the **CLAIMANT**, and CANSTONE, the **RESPONDENT**, have agreed to the following: (1) to submit any dispute arising from or in connection with the PK-BIT before an arbitral forum [‘arbitral tribunal’], a panel which was constituted at the AIAC, (2) in accordance with the rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and its Covered Agreements, and other multilateral, regional and bilateral agreements to which they are both parties.

QUESTIONS PRESENTED

- I. Whether the pre-arbitration steps must be complied before arbitration proceedings may be commenced by the Government of Palmenna against Canstone;

- II. Whether the Government of Palmenna is precluded from initiating an arbitration against Canstone;

- III. Whether Canstone had breached its obligations under the PK-BIT; and

- IV. If the answer to issue III is in the affirmative, whether Palmenna is entitled to an award of declaration and damages.

STATEMENT OF FACTS

- ◆ The Government of Palmenna [hereinafter “**CLAIMANT**”] and Canstone [hereinafter “**RESPONDENT**”] are the ‘**PARTIES**’ to this arbitration.

- ◆ CLAIMANT is located in Southeast Asia. They are a Commonwealth of Nations member state. Their varied landscapes, which includes coastal plains, mountain ranges, and tropical rainforests, are what they are recognized for.

- ◆ RESPONDENT is a company created following the successful signing of the PK-BIT, owned by both Mehstone Ltd and SZN. Mehstone owns 70% of the company while SZN owns 30%. They obtained two biodiesel plants, one in Appam, Palmenna’s capital city and the other one in a city nearer to the border of Kenweed named Karhies.

- ◆ The purpose of the Palmenna – Kenweed Memorandum of Understanding [“**PK-BIT**”] is to develop the economy of both Palmenna and Kenweed. The MOU was proposed by the CLAIMANT to secure potential future investments between both countries followed along by Kenweed with a proposal of establishing business collaborations.

January 2018	Gan Ridhimajoo was appointed as the Prime Minister of Kenweed. He assured to take immediate measures to sustain the country more and establish a more stable revenue stream	The Independent State of Kenweed
After the appointment of Minister Gan	Creation of Ministry of Trade and Investment (“MTI”) by Prime Minister Gan to explore several ways to bring in money for both in and out of the country.	The Neoteric
Within 1 year of MTI’s creation	Two fully owned subordinates named Quick Tech Solutions Corporation and BRC Rubber Corp were created by Prime Minister Gan under MTI	The Neoteric
2 February 2021	Prime Minister Gan held a meeting with several major companies: KS Group (a leading multinational company specializing in agribusiness and food processing), Ken Cement Group (a successful company focusing in cement, building materials and packaging), Pengko Bank (one of Kenweed’s and Southeast Asia’s largest banks), Makel Group (a diversified multination company with interests in retail, real estate and hospitality), KLT Company Limited (largest energy company in Kenweed involved in oil and gas exploration and distribution) and SZN Company Limited (a startup aiming to venture into the sustainable energy sector) where Prime Minister Gan expressed his hopes that these companies would be able to come together and unite such that the Ministry of Trade and Industry (MTI) and them can collaborate in securing a stable income for the government, ultimately benefiting the residents of Kenweed	The Neoteric

Two weeks after the Meeting	Tara Sharma, CEO of KLT arranged a lunch meeting to deliberate about possible collaboration for the oil and gas sector with Prime Minister Gan	The Neoteric
16 May 2021	The establishment of Mehstone Star Limited (“Mehstone Ltd”) with the aim of harvesting, extracting and refining palm oil for the production of biofuel	The Neoteric
3 June 2021	Appointment of M Akbar as the new Prime Minister of Palmenna	The Narcissist
June & July 2021	Prime Minister Akbar was noticed making two visits to Prime Minister Gan in Kenweed where he had proposed for Palmenna and Kenweed to enter into a Memorandum of Understanding to secure potential future investments for Palmenna	The Narcissist
Late July 2021	Prime Minister Gan was paid another visit by Prime Minister Akbar where the meeting was in presence of CEO Tara Sharma who has been appointed to explore potential collaborations with Palmenna. CEO Tara Sharma proposed the possibility of Mehstone Ltd establishing a subsidiary in Appam which will stabilize the costs and revenue for the production of the biofuel	The Narcissist
27 August 2021	The signing of a Memorandum of Understanding by Prime Minister Akbar and Prime Minister Gan in Palmenna’s capital city, which emphasizes the 5 key principles and commitments agreed by both countries	The Narcissist
6 September 2021	Prime Minister Akbar was compelled to disclose all the details leading up to the signing of the MOU at a parliament discussion which was conducted after the mixed reviews and criticisms of	The PK-BIT

	the residents of Palmenna. The former Prime Minister Elsie had also shared relevant opinions pertaining to this issue	
29 September 2021	Proposal of a draft bilateral investment treaty to Prime Minister Akbar's Cabinet	The PK-BIT
3 October 2021	The Palmenna-Kenweed BIT (PK-BIT) signing ceremony held in Appam, with Prime Minister Gan in audience	The PK-BIT
26 October 2021	Establishment of Canstone Fly Limited (Canstone) in Palmenna where 70% of Canstone was owned by Mehstone Ltd and SZN owns the rest 30%	The Creation of Canstone
November 2021	Canstone Fly Limited (Canstone) officially started their operations	The Creation of Canstone
Mid-February 2023	Canstone encountered their initial challenge at its Karheis facility when an anonymous note had surfaced, reportedly from a nearby factory. This note had mentioned details of a possible leak in one of the tanks for holding refined palm oil, once the oil had undergone transesterification	The Palm before the Storm
Two weeks after the anonymous note	News outlets reports the hospitalization of nearby farmers due to suspected contamination. Following this incident, an employee informed Jakey that an undisclosed amount of compensation had been paid to the families of the victims, in exchange for the retraction of their reports	The Palm before the Storm
6 September 2023	A meeting was held by the Board of Directors with the senior management of Canstone with the presence of Luke Nathan and Tara Sharma where the board members were updated on the current status of the facilities by Alan	The One That Got Away

23 November 2023	News reports warned of a flooding risk in the rural areas of Karheis. The facilities in Appam however continued as normal as Lee did not get a response from Alan, even though the nearby facilities had shut down and evacuated	The Disaster
26 November 2023	As the weather in Karheis improved, conditions had deteriorated in Appam. Intense rainfall in the urban area led the water to accumulate on streets and other low-lying areas. Shortly after this disaster, nearby residents and some employees were hospitalized due to respiratory tract injuries	The Disaster
15 December 2023	Initiation of legal actions by the Palmennian activists against the Government of Palmenna & SZN on the basis of negligence	The Legal Battle
14 February 2024	Decision of the High Court of Palmenna made in favor of the activists	The Ruling
1 March 2024	M Akbar arranged a conference call with Tara Sharma, Alan and Luke Nathan seeking a solution to the issue which had then escalated and concluded with the matter yet unresolved	The Walk Away
3 March 2024	The convention of a secretive meeting by the former Prime Minister Elsie at the Majestic Seasons Hotel in the presence of numerous members of political parties in Palmenna with the intention of discussing to overthrow the government led by M Akbar	The Walk Away
5 March 2024	M. Akbar addressed his cabinet ministers and political members, emphasizing that any actions considered detrimental to parliamentary democracy would be regarded as offences	The Walk Away

6 March 2024	Initiation of the arbitration proceedings by the Government of Palmenna against Canstone, under Article 12 of the PK-BIT	Initiation of AIAC Proceedings
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SUMMARY OF PLEADINGS

1. The respondent is not to be liable for the damages, the respondent being Canstone, however instead it is to be found that the claimant, Palmenna were found to be negligent and thus liable for the damages incurred
 - a. this is as the claimant Palmenna had not properly managed and supervised the infrastructure required for the protection against monsoons
 - b. they were negligent in making sure that the factories of Canstone, the respondent, were properly being run and there were no proper investigations by Palmenna into this matter
 - c. various accounts of corruption and changing of reports and a lack of transparency by Palmenna, the claimant

2. Any damages that can be claimed against Canstone, the respondent, are not to be taken at face value because of the negligence of the claimant, Palmenna, and thus it is not expected for Canstone to have been able to handle the issues faced
 - a. for example in the situation where the farmers got ill due to monsoon, this cannot be attributed to Canstone

PLEADINGS

ISSUE ONE AND TWO: THE PRE-ARBITRATION STEPS MUST NOT BE COMPLIED BEFORE ARBITRATION PROCEEDINGS MAY BE COMMENCED BY THE GOVERNMENT OF PALMENNA AGAINST CANSTONE

The pre-arbitration steps

1. Negotiation

Direct Negotiation: parties are often required to engage in direct negotiations to try and resolve their disputes amicably

Palmenna had failed to negotiate properly with Canstone as they had believed that this was an act of god, wherein the rain had damaged the factory.

2. Mediation/Conciliation

mediation: engaging a neutral third party to facilitate discussions and help the parties reach a mutually acceptable solution

3. Expert Determination

expert determination: utilizing an independent expert to determine specific issues (often technical) before moving to arbitration

there was an investigation launched by the activists but this cannot be founded or backed up as this was in the monsoon season, so due to the rain there would have been adverse effects on the systems. The same was found to be true when an independent investigation was launched by Canstone.

4. Dispute Resolution Boards (DRBs)

Dispute Resolution Boards: panels of experts set up to provide decisions on disputes as they arise, commonly used in construction contracts

there was the draft bilateral investment treaty signed, the Palmenna-Kenweed BIT (PK BIT),

5. Escalation Causes

Escalation Clauses: provisions that require disputes to escalate through various levels of management before arbitration

6. Pre-arbitral Referee Procedures

Pre-arbitral Referee: appointing a referee to make interim decisions or

Recommendations before arbitration

7. Adjudication

Adjudication: particularly common in construction contracts, where an adjudicator is appointed to make a binding decision on an interim basis

8. Cooling-off periods

cooling-off periods: contractual provisions that require a specified period to elapse after a dispute arises before arbitration can commence

9. Internal Dispute Resolution Mechanisms

Internal Mechanisms: utilizing internal procedures within an organization for resolving disputes before arbitration

a foreign expert from the republic of Sokiyasu was hired as a second layer of protection, hired by Canstone, so that the findings of the in-house experts are confirmed and validated, and the expert is empowered to conduct any investigation on

the procedures, machinery and safety operations should there be reasonable suspicion that warrants investigation

The reasons that the pre arbitration steps may not be followed by the Government against Canstone are as follows

- - When there was the flash flood and many people got sick, Canstone's internal doctor had stated that it was inconclusive that the sickness was caused by the broken relief valve, and should it have been caused by the broken relief valve this is as the Government of Palmenna had been negligent in trying to deal with the various weather problems
- - This was especially explored when the high spirited activists had initiated legal actions against the government of Palmenna and SZN, where they had stated that the drain systems were not up to par, and that despite previous instances of failure in terms of the drain systems and warnings from experts, that the authorities failed to mitigate these risks
- - Corruption on the part of the government of Palmenna when they had enlisted the support of Jakey, someone who had worked for Canstone, whereby it was alleged that Jakey was enlisted under a deal, and the history of Jakey's corruption is further extended when highlighting the allegations that he had previously accepted bribes from Alan to maintain silence on unethical practices

ISSUE THREE AND FOUR: CANSTONE HAS NOT BREACHED ITS OBLIGATIONS UNDER PK-BIT, AND PALMENNA IS NOT ENTITLED TO AN AWARD OF DECLARATION AND DAMAGES

I. Claimant has breached Article 1 (1.e) of the PK-BIT

Article 1(1.e) of the BIT sets out that one of the objectives of the BIT are to promote closer integration between the two economies of the parties through upholding the need to protect against climate change and safeguard the environment.

1. The Claimant, Palmenna has failed in upholding the need to protect against climate change and to safeguard the environment, this is as despite numerous warnings and prior incidents pertaining to the monsoons, they have not taken the adequate measures to make sure that the monsoons will not bring harm.

II. Claimant has breached Article 2 (1, 2) of the PK-BIT

Article 2 (1) states that each party will disclose and make public their laws, regulations, judicial decisions, policies, procedures, and administrative rulings of general application that pertains to matters covered in the BIT. Article 2 (2) states that each party will implement its laws, regulations, judicial decisions, policies, procedures and administrative rulings of generation application in a transparent and just manner.

1. The Claimant, Palmenna, has failed to make public various documents pertaining to the regulations, and pertaining to the functioning of the factory of Canstone, the Respondent.
2. The Caimant, Palmenna, have been involved in various instances of corruption and changing reports.

III. Claimant has breached Article 3 (3) and Article 5 (1) of the PK-BIT

Article 3 (3) states that the parties are responsible for taking the appropriate steps in business related human rights abuse, to remedy and to be proactive in preventing such issues, through the proper judicial, administrative, legislative or other appropriate means. Article 5 (1) states that the rivers are not to be polluted.

1. The Claimant, Palmenna has failed in protecting the human rights of the nearby farmers and also the workers of the Respondent, Canstone, as due to their negligence in dealing with the monsoons, the factory equipment of the Respondent, Canstone has been negatively affected causing gas leaks, causing health problems.
2. The Claimant, Palmenna has compromised on the condition of the river by not upgrading the infrastructure prepared for monsoons, thus polluting it.

IV. Claimant has breached Article 13 of the PK-BIT

Article 13 states that there are to be experts appointed where applicable, for the sake of environmental, health, safety or other scientific matters, according to the applicable arbitration rules.

1. The Claimant, Palmenna, have failed to conduct proper third-party reports by experts. This is true both when considering that they have not done a proper internal investigation of the running of the respondent, Canstone.
2. The claimant, Palmenna, have been negligent in using experts to supervise and manage the infrastructure required for dealing with monsoons

V. Claimant is not to be awarded declaration and damages

Due to the breaches of the articles mentioned above, it is to be determined that Palmenna is not to be award declaration and damages, and that this is the decision to be made.