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Representation Plan on Behalf of Real Quik Convenience Stores Ltd.

Facts and Nature of the Matter

On 14th December, 2010 Conglomerated Nanyu Tobacco, Ltd. (herein referred to as 'Conglomerated Ltd.') entered into a 10-year long Distribution Agreement (hereinafter referred to as 'DA') with Real Quik Convenience Stores Ltd. (hereinafter referred to as 'Real Quik') for the purpose of distribution of Tobacco Products and provision of Branded Merchandise. The relevant clauses from the DA, for this matter, include Clause 2 (Branded Merchandise), Clause 60 (Termination). Further, Real Quik pays a 20% premium owing to the dominant position of Conglomerated Ltd. in the tobacco market in Gondwana. In 2013, Bill 275/2013 (hereinafter referred to as Bill 275) which imposed strict plain packaging restrictions on tobacco product manufacturers, bans sale of Branded Merchandise and restricts prints on cigarette packets except the manufacturer's name. Real Quik tried to negotiate the DA, through one meeting in April 2013, to suit the requirements of Bill 275 however Conglomerated Ltd. did not wish to do so at that time which led to Real Quik terminating the DA before the 10 year duration. It also refuses to pay the Termination Penalty stipulated in the DA as "the termination was due to factors beyond its control". Conglomerated Ltd. has brought this matter for payment of Termination Penalty of $75million before this Arbitral Tribunal.

The nature of this matter seems to be both legal and commercial. Both parties seem to have suffered monetary and contractual loss. The difference of opinion is in the issue of Termination Penalty; whether Real Quik is bound by the DA to compensate Conglomerated Ltd. for terminating a contract, which may have been beyond its control?

Interest of the Parties

Real Quik

1. Real Quik is and was always willing to renegotiate the DA to suit the requirement of Bill 275 better while performing its obligations to the satisfaction of Conglomerated Ltd. and looks forward to amicable future relations.
2. If negotiations fail, Real Quik wishes to be exempted from the Termination Penalty as it terminated the DA due to supervening factors. It also wishes to be compensated for storage costs it has incurred.

Conglomerated Ltd.

1. Conglomerated Ltd. is willing to renegotiate the DA to an extent so as to continue this relationship with Real Quik. Conglomerated Ltd. is open to any solution that may benefit both parties as it values Real Quik as an important distributor in Gondwana.
2. Conglomerated Ltd. wishes to get compensated for loss incurred by its manufacturing units in changing the packaging or Tobacco Products in Gondwana to comply with Bill 275, if renegotiations fail.

Negotiation Strategy and Responsibility Sharing

Real Quik would like to initiate the mediation by proposing changes in two clauses of the DA- Branded Merchandise and Termination Clause. We fill that the Termination Clause was unfair to begin with so it would be proposed to be made more balanced so as to benefit both parties in the future, which also indicates that we are keen to find an amicable solution so that our business relations remain intact. Further, we are intent on improving communication with Conglomerated Ltd. as we feel that a better mutual understanding could have avoided this entire dispute altogether. Real Quik would also like to discuss about the storage costs it is incurring for storage of possibly illegal Branded Merchandise. Our CEO, Mr Charles Mancuso would discuss options regarding the now disputable 20% premium being paid by Real Quik without any exclusivity in the product practically. Keeping all these strategies in mind, Real Quik is nonetheless open to solution that would prolong the DA.