

To: House Speakership of the Somaliland House of Representatives
Cc: General-Secretary of the Somaliland House of Representatives

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Ref: Report of the Ad Hoc Committee Tasked to Report on the legal basis and authenticity of a dispute between the National Flour Mill Company and the Port (of Berbera) Management of DP World

Honourable Speaker, Deputy Speakers,

This ad hoc committee was appointed by the First Deputy Speaker and the then Acting Speaker, the Rt Hon. Saeed Mire Farah (Girre) on 30/07/2023, to evaluate a dispute between the National Flour Mill Company (herein to be referred as "NFMC) and DP World, on which date the parameters of the duties tasked it was laid forth in a separate memo, following a complaint submitted to the House by NFMC in accordance with Article 39 of the General Provisions of the House of the Constitution of the Republic of Somaliland.

The Committee:

Thoroughly studying :-

The legal nature and potency of the dispute between the NFMC and DP World and the different stages it passed through.

Studiously Noting:-

The essence/basis of the NFMC complaint and the specific particulars which is at the bottom of the dispute

Considering:-

The importance of securing further information and facts relating to the conflict by meeting with all appropriate ministries, agencies and institutions relevant to the dispute or who could shed further light on concerns raised, met with:

1. Somaliland Chamber of Commerce, Industry and Agriculture
2. Minister for finance Development
3. Minister of Employment, Social Affairs, and Family Welfare (who was the General-Manager of Berbera Port at the incidence of the dispute)
4. The Solicitor-General
5. Port and Free Economic Zone BoD, and
6. General-Manager of the Port of Berbera (incumbent)

Taking into Account:-

How critical it was to closely study the nature and stages

disembarkation of NFMC bulk went through and the core role(s) which the DP World had in the process, the House Committee toured the port of Berbera on _____ during which it closely inspected the whole offloading and portage operation

Scrutinizing: -

And closely studying operational processes pertinent to the tariffs laid forth by Article 12 (under 'currency indemnity') and Article 15.2 of (Part 2 of *Articles of Association* of the Shareholders' Agreement of 2018) detailing the stages and processes to be followed once a dispute arose between the two principals of the agreement or which involved a third party (outside the government and the DP World)

Having (objectively) evaluated: - All the facts gathered and arguments submitted by parties involved in the dispute;

The Committee, on this date of _____, presents to the House its report and conclusions drawn as below.

Nomination of the Committee

- Multiple complaints from the business community (local investors) reached the Speakership of the House of Representatives at a time the First Deputy Speaker was acting as the Speaker, and, especially, from NFMC, which related to DP World Berbera, which manages the port of Berbera under a concession agreement it entered with the government of the Republic of Somaliland and approved by the House of Representatives, charging it undue tariffs
- The Acting Speaker, wishing to listen to the other side of the dispute, sent a formal invitation to Mr. Supachai Wattanaveerachai, the Chief Executive Officer of DP World, Horn of Africa, to a meeting at the Speaker's office (on 11th June 2023), The CEO declined the Speaker's invitation citing an absence from the country on the proposed date (and on pre-assigned meetings), In lieu, the CEO suggested a meeting with the Acting Speaker at his own office which was viewed as a calculated, disrespectful rebuff to the office of the Honorable Speaker, in particular, and contemptuous to the prestige and standing of the House of Representatives itself.
- The Acting Speaker, setting aside the obvious discourtesy on the part of the CEO, again called Mr. Wattanaveerachai to another meeting at the Speaker's office on 25 July 2023 - the date the CEO himself set for the proposed Berbera meeting. Mr Wattanaveerachai again lightly brushed aside the second call neither acknowledging the call nor suggesting other alternatives.
- Due to the sequence of events above, the Acting Speaker decided to appoint a House Committee to expeditiously and fairly get to the bottom of the whole issue and report back to the House.

Parties to the Dispute

The two parties in the dispute are, respectively, the National Flour Mill Company (NFMC) and DP World Berbera who manages Berbera Port and, for this purpose, advocating for the Geelle stevedores at the port.

The committee prudently decided that was appropriate to meet with the disputing parties and all pertinent institutions that were directly or indirectly involved or touched by the issue at hand to fully understand the situation and compile relevant facts surrounding the disputed views or contributing to it.

Dispute Background

The dispute, the committee found out, started right with the first NFMC wheat shipment docking at the port.

NFMC and DP World discussed the discharge of the shipment before its arrival since the shipment was bulk and not packed in bags as was the case with the rest of the cargo shipments arriving at the port. The two sides decided, as is noted on DP World memo dated 17/03/2020, that:

- a) No Geelle portorage service was required and thus had no due payment to be awarded except for spillages on the quayside that was to be collected and loaded on to the trucks
- b) Charges levied on the bulk wheat shipment were set as :
 - i. Port handling charges. USD 3.5 per ton
 - ii. Stevedoring charges. USD 3.5 per ton

Contrary to the parameters of the agreement, DP World slapped another US\$3.5 per ton charge on NFMC when the first shipment arrived arguing it was for a third party (the Geelle portorage that was clearly ruled out of the line of operations in the agreement). DP World insisted that this extra charge be paid or no discharge will be permitted. Contrary to all arguments and evidence, DP World refused to budge and NFMC was compelled to pay the extra charges or continue to pay demurrage to the shippers which up to that point chalked up to US\$48,000.

NFMC submitted its complaint/protestation to the General-Manager of the Port, the Somaliland Chamber of Commerce, and the Port Board of Directors who all wrote to DP World on, respectively, 08/02/2020, 22/03/2020 and 14/05/2020, expressing their view of the core issue of the unfolding dispute.

All of the institutions, to sum it up, were of the view that:

- a. NFMC was not liable to pay portorage charges since no Geelle porters partook in the loading and offloading operations of the NFMC shipment with the exception of collected spillages on the quayside that was loaded up on the trucks. NFMC used grabbers and hoppers for discharge and for loading trucks.
- b. Geelle had no right to be rewarded for work they did not do on the 'no work, no pay' basis

DP World responded in writing on 24/03/2020 that it had every right to set tariffs and collect charges on all importers using the port as it deemed fit per the concession agreement reached with the government of Somaliland and that the charges were to be used as compensation for the Geelle porters to offset the diminished livelihood earnings imposed by the onset of the COVID-19 pandemic – an argument that was a blatant violation of the letter and spirit of the law.

Presidency Intervention

At this stage, the NFMC appealed to the Office of the President of the Republic of Somaliland, attaching official references that included:

- a. DP World clarification declaring Geelle services was not required for bulk discharge operation of the NFMC wheat shipments
- b. The General-Manager communication also pointing out that no Geelle services was used during discharge
- c. Testimony of the Port BoD who also declared that Geelle portage was not used at any stage of the discharge operations (except for the spillages).

Perusing and drawing on the evidence submitted, the President gave directives on the implementation of two measures:

- That the government reimburse NFMC the portage charges levied until the dispute with the DP World is resolved.
- The nomination of successive committees to investigate the nature and factors of the dispute, the first of which comprising the Chairman of the Somaliland Chamber of Commerce and the CEO of the Port and Free Economic Zone who on 14/05/2020 submitted their report (to the President). Next came another high-powered committee including:
 1. Mohamoud Hassan Sa'ad "Sajin", Minister for Trade, Industry and Tourism
 2. Dr. Sa'ad Ali Shire, Minister for Finance Development
 3. Saeed Hassan Abdullahi, Port General Manager
 4. Jamal Aidid Ibrahim, Chairman of the Chamber of Commerce, and
 5. Hassan Ali Awale, member of the Port Management Board

The committee clearly arrived at the fact that no Geelle service has partaken in the bulk shipment discharge of the NFMC, as was laid forth on its official report dated 27/08/2020, which all the members duly signed. The Committee was of the view that:

- a. Geelle was only entitled to what they rightfully earned such as collecting, packing and loading quayside spillage
- b. The tariff set by the DP World for portage services was to be applied to the spillage as well

Yet another committee was appointed on same assignment comprising of the Ministers of telecommunication and Technology, Minerals and Energy, Planning and National Development, Water Resources Development, and Transportation and Roads, and the General-Manager of the Port,

This committee almost exactly arrived at the same conclusions as the preceding committees indicating that no rewardable Geele services was evident in the operational process of the NFMC wheat discharge chain of operations.

Satisfied on the authority and conclusions of the different high-caliber committees, the President, on 07/12/2021, assigned the Minister for Trade, Industry and Tourism and the Chairman of the Port and Free Economic Zone to advise the DP World Berbera port operator to comply with the findings and conclusions of the committees, and that follow-up implementation was to be overseen by the Minister for Trade, Tourism and Industry.

DP WORLD Reaction

It is clearly evident that DP World completely ignored the decisions and conclusions of the various government committees and that it did not budge its position at all by not complying with the changes and adjustments suggested.

Conclusion

Having carefully studies, examined and deliberated upon all the documents, correspondence, and facts compiled directly or indirectly related to the outstanding issue (all of which are attached to this report);

Having assiduously listened to the arguments of all concerned parties presented in relation to the dispute;

Having ascertained beyond doubt that the management of DP World has deliberately ignored two formal invitations the First Deputy Speaker of the Somaliland House of Representatives, the then Acting House Speaker, the Rt Hon. Saeed Mire Farah (Giirre) sent them on 04//06/2023 Ref. GW/G/08/205/2023, and on 12/06/2023 Ref. GW/G/08/230/2023, respectively, followed by two more invitations sent them by the House ad hoc committee on 01/11/2023 Ref. GW/11/512/2023 and on 19/11/2023 Ref. GW/G/540/2023 , again, followed up with a final invitation sent them on 08/01/2024 - all of which the management of DP World Berbera declined to honor without acknowledgement;

The Committee satisfactorily and unequivocally concludes that NFMC employs equipment (grabbers and hoppers) that does not involve portorage services on discharging its bulk cargo and loading on to trucks except for spillages that account for 0.2% of operations

Therefore, the Committee:

Having ascertained:- That DP World Berbera itself corroborates the fact that Geelle portorage has no place in the NFMC discharge

operations as is shown by the documents the Committee has compiled and studied.

Having ensured:-

That the Geelle Porterage is not an active party to this dispute and is neither presenting a case against NFMC or demanding compensation except for quayside spillages.

Noting:-

That all the official correspondence and documents relating to this issue attest to the fact that no Geelle porterage was employed in NFMC discharge and loading operations.

Studying:-

A communication on this matter that the General Manager of Berbera port authority wrote on 08/02/20220

Perusing:-

The Chairman of the Somaliland Chamber of Commerce's communication on this issue dated 14/05/2020

Studying and noting:-

The report of the government committee the president appointed to report back on the NFMC-DP World dispute dated 03/02/2020

Duly noting:

The legal counsel of the HoR Legal Advisor Att. Abdirahman Hirad Jama,

Which is line with

THE COMMITTEE:

1. Endorses the conclusions reached by the different committees that the President assigned to investigate the dispute
2. Corroborates the argument the Geelle porters can only be paid for services rendered on behalf of DP World which is in line with Article 20(3) of the Constitution of the Republic of Somaliland stating 'All employees have a right to payment appropriate to the work they undertake and are free to enter into agreements with their employers on an individual or collective basis. Forced labour is prohibited' which eliminates compensation for services not rendered and on pressuring an employer to pay more than that is due to an employee/worker/service provider
3. Concludes that NFMC is not bound to pay porterage charges since it has not used them
4. Resolves that DP World refund NFMC the porterage charges it previously levied it and those the government compensated NFMC in full
5. Sees sense in awarding Geelle porters a compensation commensurate with work load clocked in collecting, packing and loading quayside spillages in accordance with the (DP World) set charges of US\$3.5 per ton

6. Recommends that DP World respect Article 12 of its agreement with the government relating to tariffs
7. Finally, the Committee advises DP World to comply with the conclusions of the different government institutions and committees relating to this dispute and that, if it is not satisfied with them, appear before the London Court of International Arbitration where NFMC has filed its complaint as set forth by Article 28(1 and 2) of the Constitution of the Republic of Somaliland which is concurred by Article 15.2 of the (Shareholders') Agreement which obliges DP World to acknowledge and sign the formal notice submitted it by the attorneys of the NFMC which the Solicitor General formally forwarded to DP World within 30 days from delivery at which failure on the part of DP World NFMC will have the right to initiate/file suit a case against DP World in the appropriate/competent national courts.
8. The Committee, in relation to the disrespectful behavior (of the CEO of DP World Berbera) Mr Supachai Wattanaveerachai, proposes that DP World top management be formally informed since this official has deliberately and repeatedly spurned repeated calls and proposals of the host government institutions advising a replacement who abides by the laws of the host, partner country
9. The Committee advises the House Committee on Justice and Legal Affairs to follow up on the due implementation/execution of the conclusions/decision reached here and to report back to the House in due time.

Committee members

S/N	NAME	STATUS	SIGNATURE
1	Hon. Hussein Ismail Jama	Chairperson	
2	Hon. Abiibakar Saeed Ali (Gaboobe)	Deputy Chairperson	
3	Hon. Ahmed Dayib Adan (Ku-addeeye)	Member	
4	Hon. Ahmed Abdi Ibrahim (Timo-jili)	Member	
5	Hon. Mustafe Ahmed Abdillahi	Member	
6	Hon. Amina Elmi Fariid	Member	
7	Hon. Saeed Mohamed Ismail (Sokeeye)		
8	Attorney Abdirahman Hiram Jama	House Legal Advisor	
9	Mahad Omar Saeed	Secretary	