Mediation Case Study

Axiom Aggregates and Genesis Traders

General Instructions

Genesis Traders and Axiom Aggregates entered into a joint venture some five years ago. The arrangement was recorded in a joint venture agreement in which the rights, duties and responsibilities of the parties were set out. Essentially, each company agreed to take a 50% shareholding in a newly established corporate entity known as Blue Sky Inc. Blue Sky Inc was the vehicle by which the joint venture was to design, build and operate a fish processing plant on ground specially acquired adjacent to the major port of Badenmouth.

Genesis was already well established as a trading entity in the country in which Badenmouth is located and was confident that significant profits could be generated using the facility for processing and export. Genesis however, lacked the skills to design and construct the fish processing plant. Axiom was a world leader in the development of such facilities. Thus, the joint venture seemed to both parties be an attractive marriage.

Axiom had little experience operating in the country in which the plant was to be located. It is, however, one of the world's largest design and build contractors of specialist processing plants and had considerable experience of projects such as these elsewhere. Axiom is a large multi-national company which operates through various divisions. It set up a division especially to conduct operations in Badenmouth.

Genesis is wholly owned by Walter/Wilma Collins (WC), a self-made millionaire who has extensive experience in trading in food commodities. WC has very exacting standards and tends to be personally involved in the projects in which his/her companies are engaged.

The joint venture agreement provided that each company would invest a specified amount in the project and that the remaining capital expenditure would be generated through lending. It was agreed that profits derived from the business of the fish processing plant would be shared equally after deduction of costs. It was anticipated that the plant would be up and running within 18 months of the joint venture agreement being signed.

However, after five years, the plant is still not fully functional. It has only begun production within the last six months. There are many reasons for the delays, including difficulties with local contractors, difficulty in securing appropriate materials, changes in essential staff and communication breakdown.

W Collins has sought to work with a number of the project managers installed by Axiom and is growing increasingly frustrated at the lack of progress which s/he attributes to Axiom's incompetence. In turn, Axiom feel that W has interfered in such a way as to de-motivate

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Axiom's staff, create difficulties with local contractors and generally create a negative atmosphere around the project.

The parties have come to realise that things cannot go on as they are. It was always anticipated that Axiom might buy out Genesis' share when the plant was up and running and making good profits. This would give them a foothold in the local commodities market. Essentially, WC, as a trader, seeks to maximise profit and moves from project to project. However, matters have reached the stage where WC and Genesis have prepared a statement of claim setting out various losses which they claim Genesis has suffered because of Axiom's mishandling of the project to date. These include loss of profit over 4.5 years, additional costs and other losses. The claim amounts to 58 million Euros. In turn, Axiom have intimated that they will counter claim for their own unspecified losses attributed, they allege, to WC's conduct during the design and build stage. These claims will go to arbitration in a few weeks if not resolved before then.

After several failed attempts to negotiate a resolution, the parties have agreed to engage in mediation. They have indicated that they do not believe that they can continue to work together and that a divorce, hopefully on an agreed basis, should be their objective. This entails a valuation of the shareholding with a view to Axiom buying out Genesis. WC claims that s/he was made an offer for his/her shares of 18 million Euros nine months ago by the International Sales Director for Axiom. S/he also says that he intimated that s/he would take nothing less than 30 million Euros. There is a significant amount of distrust between the parties.

In mediation, WC is leading negotiations on behalf of Genesis, supported by his/her legal adviser, Anthony/Antonia Banks, and his/her close friend and personal adviser, Andrea/w Gabriel. Axiom is represented by Wendy/Wendell Holberg, the recently appointed Area Director for Axiom, with whom WC has developed a friendly and respectful relationship. S/he is accompanied by Axiom's in-house lawyer, Pat Edberg.

The parties have exchanged summaries which follow the outline above, supplemented by some further commentary on events in the past. It has been agreed that the principals will conduct negotiations with the advisers in a support role.

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