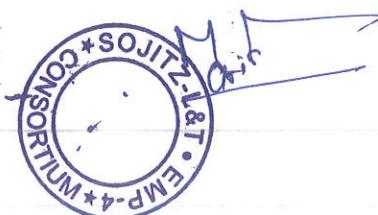


**BEFORE THE DISPUTE ADJUDICATION BOARD**  
**CONSISTING OF SH. D. K. SAINI, CHAIRMAN, SH. A. K. GARG,**  
**MEMBER AND SH. ACHAL KHARE, MEMBER**

**Dispute-09 (CD-09)** – Dispute pursuant to the Engineer's determination of Interim Extension of Time for completion of the Project Milestones (MS1, MS2, MS3, MS4 & MS5) duly considering the impact of delay events accrued up to 30.06.2021

**LIST OF DOCUMENTS**

| S. No. | Document Particulars  |
|--------|---|
| 1      | <b>Request for Decision (RFD)</b> on behalf of the Contractor.  |
| 2      | <b>Schedule-A</b> [Relevant Provisions of the Contract]   |
| 3      | <b>Exhibit-CD9.01</b> [Relevant Contract provisions extracted from the Contract]  |
| 4      | <b>Exhibit-CD9.02</b> [Copy of the Final Order passed by DAB in Dispute No. CD-05]  |
| 5      | <b>Exhibit-CD9.03</b> [Contractor June 2021 Claims]   |
| 6      | <b>Exhibit-CD9.04</b> [Communications regarding Engineer request for more time beyond the prescribed period of 42 days under Clause 20.1 of the GCC for making its determination]   |
| 7      | <b>Exhibit-CD9.05</b> [Engineer June 2021 Assessment]   |
| 8      | <b>Exhibit-CD9.06</b> [Contractor's Disagreement to Engineer June 2021 Assessment]  |
| 9      | <b>Exhibit-CD9.07</b> [Engineer's letter seeking consent from the Contractor to the Engineer June 2021 Assessment within 3 weeks' time, failing which the Engineer will proceed in accordance with Clause 3.5 of the GCC] |
| 10     | <b>Exhibit-CD9.08</b> [Contractor's intention to commence DAB]  |



**BEFORE THE DISPUTE ADJUDICATION BOARD  
CONSISTING OF SH. D. K. SAINI, CHAIRMAN, SH. A. K. GARG,  
MEMBER AND SH. ACHAL KHARE, MEMBER**

In the matter of Dispute between:

**SOJITZ-L&T CONSORTIUM**

Local Office Address:

L&T Business Park, Tower-2, 10th Floor,  
12/4 Delhi Mathura Road,  
Faridabad – 121003 (Haryana), India

Main Site Office:

WDFC EMP-4 Project,  
40, Riviera Greens, Gokuldham,  
Sanathal, Ahmedabad, 382210  
Gujarat, India

...Contractor

**VERSUS**

**DEDICATED FREIGHT CORRIDOR CORPORATION  
OF INDIA LIMITED (DFCCIL)**

Corporate Office Address:

5<sup>th</sup> Floor, Supreme Court  
Metro Station Building Complex,  
New Delhi-110001, India

... Employer

**REQUEST FOR DECISION ON BEHALF OF  
SOJITZ-L&T CONSORTIUM (CONTRACTOR)**

**I. EXECUTIVE SUMMARY**

1. The Contractor is constrained to prefer the present Request for Decision before this Ld. Board under Clause 20.4 of the General Conditions of the Contract ("GCC") as the Engineer has failed to determine the Contractor's legitimate claims for interim extension of time ("EOT") and additional cost for delay events till 30.06.2021.



*[Handwritten signature]*

2. The Contractor had filed a claim for interim EOT and for additional costs on account of delay events till 30.06.2021 by way of a letter to the Engineer dated 11.03.2022. Thereafter, on 25.08.2022, the Engineer had provided its assessment on the said claims (both for interim EOT and for additional costs) for delay events till 30.06.2021, and sought the Contractor's unconditional consent to the erroneous assessments.
3. The Contractor informed the Engineer on 16.01.2023 that it disagrees with the Engineer's erroneous assessment of both the claims for interim EOT and for additional costs and requested the Engineer to provide its determination on the same in terms of the Contract. The Contractor has provided detailed reasons as to why the Engineer's assessment of Contractor's interim EOT claims, and rejection of cost claims is incorrect for being in teeth of the contractual provisions and the applicable laws. The Engineer has not made any determination on the same till date, which is also contrary to the requirement under the Contract, which specifically provides that such determination *shall not be unreasonably withheld or delayed.*
4. Till date, the Engineer, in complete derogation of the agreed terms and conditions of the Contract, has not provided any determination under Clause 20.1 read with Clause 3.5 of GCC on the claims of the Contractor on account of delay events till 30.06.2021.
5. In terms of Clause 20.1 of the GCC, once a claim for Extension of Time for completion and/ or any additional payments is notified by the Contractor to the Engineer, the Engineer is under an obligation to respond within 42 days with either approval, or disapproval (with detailed comments). The said period of 42 days may only be extended if proposed by the Engineer to that effect and if such proposal is approved by the Engineer.
6. Further, in each such instances where the Contractor raises a claim for EOT and/or additional payments, the Engineer is required, under Clause 20.1 read with Clause 3.5 of the GCC, to consult each party i.e., the Employer and the Contractor, to either reach an agreement, or (failing



such agreement) to make a *fair* determination, taking due regard to all relevant circumstances. Moreover, in terms of Clause 1.3 of the GCC, such “determination” shall not be unreasonably withheld or delayed.

7. Therefore, under the Contract, the Engineer cannot decline or unreasonably withhold its determination on the Contractor's claims. It is submitted that merely because the Contractor may have acceded to such a request in the past, the same neither amounts to any waiver of its contractual rights, nor does it absolve the Engineer of its obligations to make determinations in a timely manner.
8. In this case, there exists a very significant dispute on several key issues regarding the manner and methodology of determination of interim EOT and additional payments due on account of delay not attributable to the Contractor. The Contractor's position is that resolution of the said dispute is critical as it has a direct bearing on the completion of the work under the Contract, which is already severely delayed due to delays beyond the control of and not attributable to the Contractor. The Contractor has already incurred significant additional costs on account of such delays, which are still continuing to affect the work under the Contract. The Contractor's ability to plan the remaining work is also severely affected on account of the above dispute.
9. Hence, it is critical that the claims made by the Contractor by way of the present Request for Decision is decided in terms of Clause 20.4 of the General Conditions.

## **II. KEY PARTICULARS RELEVANT TO THIS DISPUTE<sup>1</sup>**

10. Before elaborating upon the facts and circumstances leading to the present dispute, at the outset, certain key particulars are presented in the following table for assistance of the Ld. DAB:

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<sup>1</sup> The Capitalized Terms not defined in the present Request shall have meaning associated to them in the GCC/PC of the Contract and shall be construed accordingly.



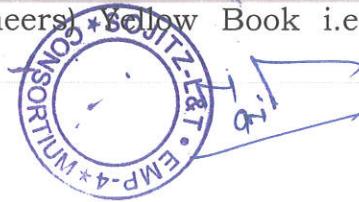
**Table-01: Key Facts**

| <b>Sn</b> | <b>Description</b>                   | <b>Details</b>   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
|-----------|--------------------------------------|--|------------------|---------------|----------------------|--------------|---|-----------|-------|------------------|---|-----------|-------|------------------|
| 01        | Name of Project                      | Design, Supply, Installation, Testing and Commissioning of 2X25 kV Traction Power Supply System, Traction Sub-Stations, Auxiliary Stations, Switching Stations, Auto Transformer Stations and SCADA System on Design-Build-Lump-Sum Price Basis for Rewari-Makarpura (Vadodara) Section of Western Dedicated Freight Corridor – Phase 1.   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 02        | Contract price                       | Rs. 3097 Crore (in four currencies)  |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 03        | Employer                             | Dedicated Freight Corridor Corporation of India Limited (DFCCIL)   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 04        | Engineer                             | M/s. NK Consortium (NKC)   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 05        | Contractor                           | Sojitz – L&T Consortium JV (a joint venture consortium between a Japanese and an Indian entity)  |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 06        | Contract Agreement date              | 04.03.2015   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 07        | Commencement Date                    | 15.05.2015   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 08        | Type of Contract                     | Contractor's Design Build Lump Sum   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 09        | GCC                                  | FIDIC Plant & Design Build (Yellow Book), 1999 edition   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 10        | Project Milestones                   | 05 (Five) Intermediate Milestones  |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 11        | Scheduled date of completion         | 14.03.2019   |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 12        | Brief of the dispute                 | As stated in the Executive Summary above.  |                  |               |                      |              |   |           |       |                  |   |           |       |                  |
| 13        | Entitlements involved in the Dispute | <p>a. Extension of Time for Completion for Employer liable delay events accrued up to 30.06.2021 as tabulated below:-</p> <table border="1"> <thead> <tr> <th>Milestone</th> <th>Contract Date</th> <th>EOT Required in days</th> <th>Revised Date</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>09-Mar-17</td> <td>1,467</td> <td><b>15-Mar-21</b></td> </tr> <tr> <td>2</td> <td>10-May-18</td> <td>1,399</td> <td><b>09-Mar-22</b></td> </tr> </tbody> </table> | Milestone        | Contract Date | EOT Required in days | Revised Date | 1 | 09-Mar-17 | 1,467 | <b>15-Mar-21</b> | 2 | 10-May-18 | 1,399 | <b>09-Mar-22</b> |
| Milestone | Contract Date                        | EOT Required in days   | Revised Date     |               |                      |              |   |           |       |                  |   |           |       |                  |
| 1         | 09-Mar-17                            | 1,467  | <b>15-Mar-21</b> |               |                      |              |   |           |       |                  |   |           |       |                  |
| 2         | 10-May-18                            | 1,399  | <b>09-Mar-22</b> |               |                      |              |   |           |       |                  |   |           |       |                  |

| Sn | Description                      | Details   |                  |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |
|----|----------------------------------|---|------------------|-----------|-------|------------------|---|-----------|-------|------------------|---|-----------|-------|------------------|--|--|--|
|    |                                  | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">3</td><td style="padding: 2px;">20-Dec-18</td><td style="padding: 2px;">1,633</td><td style="padding: 2px;"><b>10-Jun-23</b></td></tr> <tr> <td style="padding: 2px;">4</td><td style="padding: 2px;">02-Aug-18</td><td style="padding: 2px;">1,399</td><td style="padding: 2px;"><b>01-Jun-22</b></td></tr> <tr> <td style="padding: 2px;">5</td><td style="padding: 2px;">14-Mar-19</td><td style="padding: 2px;">1,633</td><td style="padding: 2px;"><b>02-Sep-23</b></td></tr> </table> | 3                | 20-Dec-18 | 1,633 | <b>10-Jun-23</b> | 4 | 02-Aug-18 | 1,399 | <b>01-Jun-22</b> | 5 | 14-Mar-19 | 1,633 | <b>02-Sep-23</b> |  |  |  |
| 3  | 20-Dec-18                        | 1,633   | <b>10-Jun-23</b> |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |
| 4  | 02-Aug-18                        | 1,399   | <b>01-Jun-22</b> |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |
| 5  | 14-Mar-19                        | 1,633   | <b>02-Sep-23</b> |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |
|    |                                  | <p>b. Prolongation and Disruption Costs along with interest accrued till 15.10.2023 pursuant to above extension of Time for Completion, amounting to <b>INR 6,613,970,113.43/-</b> as on 15.10.2023.</p>  |                  |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |
| 14 | Date of claim                    | SLT4/NKC/EMP-4/CONT/EOT/2022/0434 dated<br>11.03.2022   |                  |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |
| 15 | Date of Engineer's determination | <p>No determination has been made by the Engineer till date. The Engineer had provided its assessment on the Contractor's claims for interim EOT and additional payments by way of a letter L-NKC-SLT4-PMC-2208-24 dated 25.08.2022.</p> <p>The Contractor had informed its disagreement to the Engineer's assessment by way of a letter SLT4/NKC/EMP-4/CONT/EOT/2023/0052 dated 16.01.2023, and had requested the Engineer to provide its determination on the matter in accordance with Clause 3.5 of the GCC within a reasonable time as per Clause 1.3 of the GCC.</p>                    |                  |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |
| 16 | Notice to commence DAB           | SLT4/NKC/EMP-4/CONT/EOT/2023/0958 dated<br>07.10.2023   |                  |           |       |                  |   |           |       |                  |   |           |       |                  |  |  |  |

11. The Contractor and the Employer entered into a Contract Agreement dated 04.03.2015. The contract was for 'Design, Supply, Installation, Testing and Commissioning of 2X25 kV Traction Power Supply System, Traction Sub-Stations, Auxiliary Stations, Switching Stations, Auto Transformer Stations and SCADA System on Design-Build-Lump-Sum Price Basis for Rewari-Makarpura (Vadodara) Section of Western Dedicated Freight Corridor – Phase 1'.

12. The contract is a 'Design Build' contract governed by FIDIC (International Federation of Consulting Engineers) Yellow Book i.e. 'Conditions of

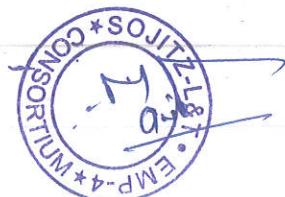


Contract for Plant and Design Build for Electrical and Mechanical Works and for Building and Engineering Works Designed by the Contractor'. This forms the General Conditions of Contract, which has been suitably amended and modified by 'Particular Conditions' ("PC") agreed between the Parties. In addition, Clause 2 of the Contract Agreement dated 04.03.2015 specifies the documents that form part of the Contract, apart from the Contract Agreement dated 04.03.2015 itself. The contract documents are collectively referred to as the '**Contract**' hereafter. Relevant parts of the Contract are enclosed as **Exhibit-CD9.01**.

13. In terms of Clause 8.3 GCC/PC read with Clause 1.8 of the Employer's Requirements General Specifications ("ER General"), the Contractor is obligated to submit the Contractual Construction Programme ("CCP") within 28 days from the Commencement Date. Upon consent by the Engineer, the CCP becomes an integral part of the Contract. Further, Clause 1.8.6 of ER General stipulates that CCP shall supersede all other programmes and will serve as the basis for execution of the Works under the Contract.
14. Certain relevant provisions of the Contract illustrating the general framework of interactions among the parties are contained in "**Schedule-A**" to the present RFD.
15. The specific substantive provisions relevant to the present dispute are referred by the Contractor in the subsequent elaboration of the dispute. The Contractor reserves its right to add further references to and rely upon other provisions of the Contract to substantiate its claim, as and when required. The Contractor also reserves its right to further substantiate the relevance of these clauses to this Dispute to the Ld. DAB, in the hearing(s), if any, to follow.

### **III. STATEMENT OF CLAIM ON BEHALF OF THE CONTRACTOR**

16. In terms of Clause 8.2 of PC, the Works were to be originally completed in the following timelines:



| Milestone | Particulars   | Weeks                     |
|-----------|---|---------------------------|
| MS1       | <i>Completion of all OHE, TSS and Switching Station works in Rewari - Dabla section for commencement of testing of Proto type Loco.</i>   | 95<br><i>(665 Days)</i>   |
| MS2       | <i>Completion of all OHE, TSS, SCADA and Switching Station works in Dabla - Iqbalgarh section for commencement of integrated testing.</i>                                       | 156<br><i>(1092 Days)</i> |
| MS3       | <i>Completion of all OHE, TSS, SCADA and Switching Station works in Iqbalgarh - Makarpura section including SCADA works in OCC for commencement of integrated testing.</i>      | 188<br><i>(1316 Days)</i> |
| MS4       | <i>Completion of all works as per the scope of works including integrated testing and commissioning and taking over the works by employer on Rewari - Iqbalgarh section.</i>    | 168<br><i>(1176 Days)</i> |
| MS5       | <i>Completion of all works as per the scope of works including integrated testing and commissioning and taking over the works by employer on Iqbalgarh - Makarpura section.</i> | 200<br><i>(1400 Days)</i> |

17. The Contractor, despite its best efforts, could not commence and progress the subject work under the Contract as per the duly approved CCP due to various delay events not attributable to the Contractor. One of the impacts of such delay events was that the time for completion of Milestones under the Contract required an extension beyond the scheduled date for completion.

18. Accordingly, from time to time, the Contractor claimed interim Extension of Time ("EOT") for completion of Project Milestones against the delay events accrued up to 31.08.2016, 30.04.2017, 30.11.2017, 30.04.2018, 31.08.2019, and 31.08.2020. The Engineer has determined the revised

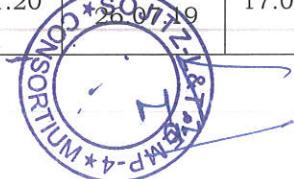


completion dates of all the Milestones for delay events accrued up to 31.08.2020.

19. The details of Contractor's submission and the Engineer's determination of interim EOT for MS1, MS2, MS3, MS4 and MS5 for delay events accrued till 31.08.2020 are as follows:

**Table-02: Status of EOT Claims till 31.08.2020**

| S.<br>No. | Mile<br>stone | Delay<br>events<br>accrued<br>up to | Contractor's<br>Substantiation          |                          | Engineer's<br>Assessment          |                          | Remarks   |
|-----------|---------------|-------------------------------------|---|--------------------------|-----------------------------------|--------------------------|---|
|           |               |                                     | Letter no.                              | Submissio<br>n           | Letter no.                        | Approva<br>l             |   |
| 1         | MS1           | 31.08.16                            | SLT4/201<br>7/0043<br>dated<br>16.01.17 | 390 days<br><br>02.04.18 | NKC/1710-<br>02 dated<br>03.10.17 | 195 days<br><br>20.09.17 | Cl. 3.5 notification<br>received vide<br>NKC/1903-21 dated<br>21.03.19. |
|           |               |                                     | SLT4/201<br>8/0101<br>dated<br>18.01.18 | 386 days<br><br>30.05.19 |                                   | 142 days<br><br>28.09.18 |   |
| 2         | MS2           | 31.08.16                            | SLT4/201<br>8/0525<br>dated<br>29.03.18 | 386 days<br><br>09.01.20 | NKC/1811-<br>31 dated<br>13.11.18 | NIL<br><br>20.12.18      | Cl. 3.5 notification<br>received vide<br>NKC/1909-18 dated<br>12.09.19. |
|           |               |                                     | SLT4/201<br>8/0526<br>dated<br>29.03.18 | 386 days<br><br>22.08.19 |                                   | 142 days<br><br>20.12.18 |   |
| 3         | MS3           | 31.08.16                            | SLT4/201<br>8/1616<br>dated<br>10.09.18 | 386 days<br><br>02.04.20 | NKC/1901-<br>62 dated<br>30.01.19 | NIL<br><br>14.03.19      | Cl. 3.5 notification<br>received vide<br>NKC/1909-18 dated<br>12.09.19. |
|           |               |                                     | SLT4/201<br>7/1380<br>dated<br>21.11.17 | 628 days<br><br>26.11.18 |                                   | 296 days<br><br>29.12.17 |   |
| 4         | MS4           | 31.08.16                            | SLT4/201<br>8/1615<br>dated             | 628 days<br><br>27.01.20 | NKC/1907-<br>75 dated<br>26.07.19 | 283 days<br><br>17.02.19 | Cl. 3.5 notification<br>received vide<br>NKC/2006-04 dated<br>02.06.20. |
|           |               |                                     | SLT4/201<br>8/1615<br>dated             | 628 days<br><br>27.01.20 |                                   | 283 days<br><br>17.02.19 |   |
| 5         | MS5           | 31.08.16                            | SLT4/201<br>8/1616<br>dated<br>10.09.18 | 386 days<br><br>02.04.20 | NKC/1901-<br>62 dated<br>30.01.19 | NIL<br><br>14.03.19      | Cl. 3.5 notification<br>received vide<br>NKC/1909-18 dated<br>12.09.19. |
|           |               |                                     | SLT4/201<br>7/1380<br>dated<br>21.11.17 | 628 days<br><br>26.11.18 |                                   | 296 days<br><br>29.12.17 |   |
| 6         | MS1           | 30.04.17                            | SLT4/201<br>8/1615<br>dated             | 628 days<br><br>27.01.20 | NKC/1907-<br>75 dated<br>26.07.19 | 283 days<br><br>17.02.19 | Cl. 3.5 notification<br>received vide<br>NKC/2006-04 dated<br>02.06.20. |
|           |               |                                     | SLT4/201<br>8/1615<br>dated             | 628 days<br><br>27.01.20 |                                   | 283 days<br><br>17.02.19 |   |
| 7         | MS2           | 30.04.17                            | SLT4/201<br>8/1615<br>dated             | 628 days<br><br>27.01.20 | NKC/1907-<br>75 dated<br>26.07.19 | 283 days<br><br>17.02.19 | Cl. 3.5 notification<br>received vide<br>NKC/2006-04 dated<br>02.06.20. |
|           |               |                                     | SLT4/201<br>8/1615<br>dated             | 628 days<br><br>27.01.20 |                                   | 283 days<br><br>17.02.19 |   |



|    |     |          |   |                           |                                     |                          |   |
|----|-----|----------|---|---------------------------|-------------------------------------|--------------------------|---|
|    |     |          | 10.09.18                                |                           |                                     |                          | 02.06.20.   |
| 8  | MS3 | 30.04.17 | SLT4/201<br>9/0192<br>dated<br>24.01.19 | 628 days<br><br>07.09.20  | NKC/2001-<br>26 dated<br>08.01.20   | 157 days<br><br>26.05.19 | Cl. 3.5 notification received vide NKC/2010-06 dated 05.10.20.  |
| 9  | MS4 | 30.04.17 | SLT4/201<br>8/1650<br>dated<br>14.09.18 | 628 days<br><br>20.04.20  | NKC/1907-<br>75 dated<br>26.07.19   | 283 days<br><br>12.05.19 | Cl. 3.5 notification received vide NKC/2006-04 dated 02.06.20.  |
| 10 | MS5 | 30.04.17 | SLT4/201<br>9/0194<br>dated<br>24.01.19 | 628 days<br><br>30.11.20  | NKC/2001-<br>26 dated<br>08.01.20   | 157 days<br><br>18.08.19 | Cl. 3.5 notification received vide NKC/2010-06 dated 05.10.20.  |
| 11 | MS1 | 30.11.17 | SLT4/201<br>9/0555<br>dated<br>08.03.19 | 788 days<br><br>05.05.19  |                                     |                          |   |
| 12 | MS2 | 30.11.17 | SLT4/201<br>9/1085<br>dated<br>13.05.19 | 837 days<br><br>23.08.20  |                                     |                          |   |
| 13 | MS3 | 30.11.17 | SLT4/201<br>9/1300<br>dated<br>08.06.19 | 837 days<br><br>04.04.21  |                                     |                          | The Engineer vide letters NKC/1908-39 dated 20.08.2019 & NKC/1909-46 dated 25.09.2019, instructed the Contractor to consolidate its EOT claim up to 31.08.2019 by combining its previous claims after 30.04.2017 and up to 30.11.2017 and beyond. |
| 14 | MS4 | 30.11.17 | SLT4/201<br>9/1086<br>dated<br>13.05.19 | 837 days<br><br>15.11.20  |                                     |                          |   |
| 15 | MS5 | 30.11.17 | SLT4/201<br>9/1301<br>dated<br>10.06.19 | 837 days<br><br>27.06.21  |                                     |                          |   |
| 16 | MS1 | 30.04.18 | SLT4/201<br>9/2080<br>dated<br>16.09.19 | 931 days<br><br>25.09.19  |                                     |                          |   |
| 17 | MS1 | 31.08.19 | SLT4/202<br>0/0200<br>dated             | 1156 days<br><br>07.05.20 | NKC/200<br>5-03<br>dated 01-07-2019 | 965 days<br><br>30.10.19 | Contractor consented vide SLT4/2020/1384 dated 31.08.20. Cl 3.5   |



|    |     |          |   |                           |                                      |                           |   |
|----|-----|----------|---|---------------------------|--------------------------------------|---------------------------|---|
|    |     |          | 24.01.20                                |                           | 01.05.20                             |                           | notification is awaited.  |
| 18 | MS2 | 31.08.19 | SLT4/202<br>0/0499<br>dated<br>06.03.20 | 1427 days<br><br>05.04.22 | NKC/200<br>8-18<br>dated<br>11.08.20 | 686 days<br><br>26.03.20  | Contractor consented<br>vide SLT4/2021/560<br>dated 18.03.21. Cl 3.5<br>notification is awaited.  |
|    |     |          |   |                           |                                      |                           |   |
| 19 | MS3 | 31.08.19 | SLT4/202<br>0/0501<br>dated<br>06.03.20 | 1331 days<br><br>11.08.22 | NKC/200<br>8-37<br>dated<br>31.08.20 | 996 days<br><br>11.09.21  | Contractor consented<br>vide SLT4/2021/0561<br>dated 18.03.21. Cl 3.5<br>notification is awaited. |
|    |     |          |   |                           |                                      |                           |   |
| 20 | MS4 | 31.08.19 | SLT4/202<br>0/0500<br>dated<br>06.03.20 | 1427 days<br><br>28.06.22 | NKC/200<br>8-18<br>dated<br>11.08.20 | 686 days<br><br>18.06.20  | Contractor consented<br>vide SLT4/2021/0560<br>dated 18.03.21. Cl 3.5<br>notification is awaited. |
|    |     |          |   |                           |                                      |                           |   |
| 21 | MS5 | 31.08.19 | SLT4/202<br>0/0502<br>dated<br>06.03.20 | 1331 days<br><br>03.11.22 | NKC/200<br>8-37<br>dated<br>31.08.20 | 996 days<br><br>04.12.21  | Contractor consented<br>vide SLT4/2021/0561<br>dated 18.03.21. Cl 3.5<br>notification is awaited. |
|    |     |          |   |                           |                                      |                           |   |
| 22 | MS1 | 31.08.20 | SLT4/202<br>0/1500<br>dated<br>14.09.20 | 1449 days<br><br>24.02.21 | NKC/210<br>1-45<br>dated<br>28.01.21 | 1275 days<br><br>04.09.20 |   |
|    |     |          |   |                           |                                      |                           |   |
| 23 | MS2 | 31.08.20 | SLT4/202<br>0/1750<br>dated<br>23.10.20 | 1514 days<br><br>01.07.22 | NKC/210<br>7-25<br>dated<br>12.07.21 | 856 days<br><br>12.09.20  |   |
|    |     |          |   |                           |                                      |                           |   |
| 24 | MS3 | 31.08.20 | SLT4/202<br>0/1969<br>dated<br>24.11.20 | 1659 days<br><br>05.07.23 | NKC/210<br>8-24<br>dated<br>16.08.21 | 1283 days<br><br>25.06.22 |   |
|    |     |          |   |                           |                                      |                           |   |
| 25 | MS4 | 31.08.20 | SLT4/202<br>0/1751<br>dated<br>23.10.20 | 1514 days<br><br>23.09.22 | NKC/210<br>7-25<br>dated<br>12.07.21 | 856 days<br><br>05.12.20  |   |
|    |     |          |   |                           |                                      |                           |   |
| 26 | MS5 | 31.08.20 | SLT4/202<br>0/1970<br>dated<br>24.11.20 | 1659 days<br><br>27.09.23 | NKC/210<br>8-24<br>dated<br>16.08.21 | 1283 days<br><br>17.09.22 |   |
|    |     |          |   |                           |                                      |                           |   |

20. At this stage, it is relevant to mention that the Contractor vide its Request for Decision by DAB dated 30.10.2020 inter alia claimed interim costs of

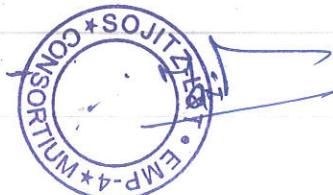


INR 333,01,11,154/- (Indian Rupees Three Hundred and Thirty Three Crores One Lakh Eleven Thousand One Hundred and Fifty Four) under Clause 2.1(b) of the GCC/PC as against non-handing over of unencumbered possession of land/track accrued up to 31.08.2019 for CTP-1 & 2, and 31.03.2020 for CTP-3. The said dispute was registered / numbered as "**CD-5**". Subsequently, the concerned DAB by the Final Order received on 26.07.2021, was pleased to allow withdrawal of claim by the Contractor without prejudice to the merits of the claim and while expressly granting liberty to the Contractor to submit revised claim in accordance with the Contract. A copy of the Final Order passed by DAB in Dispute No. CD-5 is enclosed as **Exhibit-CD9.02**.

21. It is stated that several delay events not attributable to the Contractor had been continuing beyond 31.08.2020 resulting in delay to the execution of the Works. Since these delay events were not attributable to the Contractor, it is entitled to appropriate EOT for Completion of all the Project Milestones in terms of Clause 8.4 of the GCC/PC.
22. Accordingly, the updated particulars for delays accrued as on 30.06.2021 were submitted by Contractor vide letter SLT4/2022/0434 dated 11.03.2022 for the determination of the Engineer, wherein the Contractor made claims for both interim EOT, and also for additional payments in the nature of prolongations costs and disruption costs ("**Contractor June 2021 Claims**"). The said submission is enclosed as **Exhibit-CD9.03**.
23. The Contractor identified Delay Events which directly impacted Milestone 1, 2 and 3, and had a corresponding knock on effect on Milestone 4 and 5. The Delay Events identified in Contractor June 2021 Claims are enumerated below:

***Milestone 1 – Completion of all OHE, TSS and Switching Station works in Rewari-Dabla section for commencement of testing of Prototype Loco***

- Late access in handover of SCP sites relevant to MS1 (**DE1**).



- Delay in the finalisation of Earth Filling Drawings relevant to MS1 (**DE2**).
- Increase in rating of Auto Transformers (**DE3**).
- Diamond Crossing for MS1 (**DE4**).
- Variation for Connecting Lines related to MS1 (**DE5**).

**Milestone 2 – Completion of all OHE, TSS, SCADA and Switching Station works in Dabla-Iqbalgarh section for commencement of integrated testing**

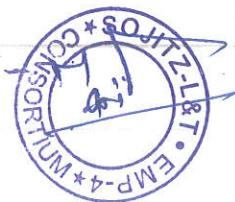
- Delay in handover of SCP sites for MS2 (**DE6**).
- Delay in the finalisation of Earth Filling Drawings for MS2 (**DE7**).
- Failure to provide an encumbrance-free handover of land for Sirohi Road TSS (**DE8**).
- Progressive Access to Track for Installation of OHE Equipment relevant to MS2 (**DE9**).
- COVID-19 Pandemic (**DE10**).
- Diamond Crossing for MS2 (**DE11**).
- Variation for Connecting Lines related to MS2 (**DE12**).

**Milestone 3 – Completion of all OHE, TSS, SCADA and Switching Station works in Iqbalgarh-Makarpura section including SCADA works in OCC for commencement of integrated testing.**

- Non-availability of Track for OHE Installation relevant to MS3 (**DE13**).
- COVID-19 Pandemic (**DE14**).

24. A perusal of Contractor June 2021 Claims would reveal the following aspects:-

- i) The Contractor utilised the “As-Planned v As-Built” (‘APAB’) delay analysis methodology, to identify the entitlement to extensions of time for completion of the Milestones.



- ii) The APAB delay analysis is a retrospective delay analysis technique which identifies the events which caused the *critical delay* to the Works and demonstrates the impact these events have on the Contractor's ability to achieve the Milestones.
- iii) Using the APAB method, the Contractor identified the as-built critical path for each Milestone based on the review of contemporaneous records and documents.
- iv) The extent of critical delays along the as-built critical path is determined by comparing progress achieved against the planned durations in the baseline programme (CCP).
- v) Thereafter, the Contractor investigated available records to determine what delay events caused the identified critical delays.
- vi) Based on the review of the delay events which caused the identified critical delay, the Contractor was then able to establish which Party was responsible for the critical delay.
- vii) Several Employer-liable events under the Contract caused delay to the progress of the Works. These events impacted the Works and prevented the Contractor from achieving the scheduled time for Completion for each of the Milestones stated in the Contract and caused the Contractor to incur additional Cost.
- viii) The costs claimed are the additional costs incurred as a direct consequence of the delay events, which *inter alia* required the Contractor to retain its resources (personnel and equipment) on Site for a period longer than the scheduled time for Completion of the Milestones stated in the Contract.
- ix) The Costs claimed relate to the periods during which the Events impacted the progress of the Works in such a way that they delayed the achievement of the Milestones. The relevant periods against which costs have been assessed were identified using a recognised retrospective delay analysis method.
- x) It is evident from the Contractor's delay analysis that there were no periods of concurrent delay identified, and therefore, the full period of culpable critical delay on the part of the Employer, is compensable.



25. Summary of extension of Time for Completion, and Prolongation and associated Costs for delays as on 30.06.2021 computed above are extracted from the Contractor June 2021 Claims and tabulated below for ease of reference:

**Table-03: Contractor's entitlement of Extension of Time for Completion**

| <b>Milestone</b> | <b>Contract Completion Date</b> | <b>Contractor's Assessment</b> |                     |
|------------------|---------------------------------|--------------------------------|---------------------|
|                  |                                 | <b>Days</b>                    | <b>Revised Date</b> |
| 1                | 09-Mar-17                       | 1,467                          | <b>15-Mar-21</b>    |
| 2                | 10-May-18                       | 1,399                          | <b>09-Mar-22</b>    |
| 3                | 20-Dec-18                       | 1,633                          | <b>10-Jun-23</b>    |
| 4                | 02-Aug-18                       | 1,399                          | <b>01-Jun-22</b>    |
| 5                | 14-Mar-19                       | 1,633                          | <b>02-Sep-23</b>    |

*[For the Contractor's Milestone wise Delay Analysis, kindly see para.4.9 to 4.33 of Volume 1 - Main Claim Document (Summary), and Volume 2.1 of the Appendix B of the Appendices to the claim - **Exhibit-CD9.03**]*

**Table-04: Contractor's entitlement to Prolongation and associated Costs**

| <b>SI</b>   | <b>Description</b>                       | <b>Total Amount [in INR]</b> |
|---|--|------------------------------|
| 1   | Prolongation Cost Claim                  | 514,04,68,726.37             |
| 2   | Change of Sequence/Disruption Cost Claim | 33,72,97,379.28              |
| <b>Total excluding applicable Taxes, Cess, etc.</b> |  | <b>547,77,66,105.65</b>      |

26. The Contractor's claim for prolongation costs which are time related costs and reflects the types of costs that have been additionally incurred by the Contractor as a result of the prolonged project duration due to the critical delays.

27. The specific time related heads of cost covered in the Contractor June 2021 Claims are as follows:

- (i) Sojitz Corporation ("Sojitz") heads of cost account for –
  - (a) Sojitz On-Site Costs; and
  - (b) Sojitz Head Office Overheads.



- (ii) Larsen and Toubro Limited ("L&T") heads of cost account for –
- (a) L&T Staff Salaries & Related Costs;
  - (b) L&T Lease / Rental Costs;
  - (c) L&T Transportation Expenses;
  - (d) L&T Bank & Financial Costs;
  - (e) L&T Insurance Costs;
  - (f) L&T Diesel Costs;
  - (g) L&T Admin and Other Costs;
  - (h) L&T Legal & Professional Fees;
  - (i) Employer Expenses;
  - (j) L&T Third Party Engaged Staff;
  - (k) Security Services;
  - (l) L&T Design Costs; and
  - (m) L&T Head Office Overheads.

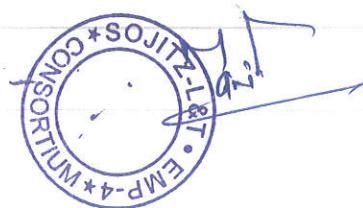
28. The following table provides a summary of the claim for prolongation cost plus reasonable profit under the Contractor June 2021 Claims:

**Table-05: Summary of Contractor's Prolongation Cost Claim**

| [A]  | [B]    | [C] | [D]   | [E]       | [F]       | [G]                   | [H]                 | [I]          |
|------|--------|-----|---|-----------|-----------|-----------------------|---------------------|--------------|
| Item | DE Ref | MS  | Description   | From      | To        | Critical Delay (Days) | Cost Incurred (INR) | Profit (INR) |
| 1    | DE1    | 1   | Delay in handover of SCP sites                      | 1-Jul-15  | 14-Oct-15 | 106                   | 35,637,930.15       | 1,781,896.51 |
| 2    | DE6    | 2   | Delay in handover of SCP sites                      | 15-Oct-15 | 18-Oct-15 | 4                     | 1,435,964.37        | 71,798.22    |
| 3    | DE7    | 2   | Delay in confirmation of TPS input data and initial | 31-Jan-16 | 15-May-16 | 106                   | 49,119,033.30       | 2,455,951.66 |



|    |           |   |   |           |           |     |                  |               |
|----|-----------|---|---|-----------|-----------|-----|------------------|---------------|
|    |           |   | approval of Earth filling Drawing   |           |           |     |                  |               |
| 4  | DE2       | 1 | Delay in finalisation of Earth Filling Drawings and Starting Construction works | 16-May-16 | 24-Nov-16 | 193 | 85,996,958.24    | 4,299,847.91  |
| 5  | DE13      | 3 | Non-Availability of Track Access  | 25-Nov-16 | 5-Mar-19  | 831 | 1,372,850,187.95 | 68,642,509.40 |
| 6  | DE8       | 2 | Encumbrance-free Handover of Land for Sirohi Road TSS                           | 6-Mar-19  | 6-Apr-19  | 32  | 79,501,266.76    | 3,975,063.34  |
| 7  | DE13      | 3 | Non-handing over of track in continuous stretches                               | 7-Apr-19  | 21-Mar-20 | 350 | 653,211,818.61   | 32,660,590.93 |
| 8  | DE10 & 14 | 3 | Covid-19 Pandemic   | 22-Mar-20 | 25-Apr-20 | 35  | 54,736,937.15    | N/A           |
| 9  | DE13      | 3 | Non-handing over of track in continuous stretches                               | 26-Apr-20 | 31-Aug-20 | 128 | 164,474,518.36   | 8,223,725.92  |
| 10 | DE3       | 1 | Change in rating of the ATs   | 1-Sep-20  | 11-Jun-21 | 284 | 425,407,951.93   | 21,270,397.60 |

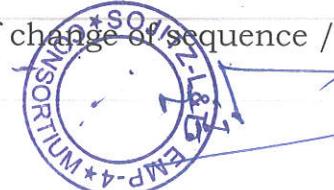


|    |                 |   |  |           |           |       |                  |                |
|----|-----------------|---|--|-----------|-----------|-------|------------------|----------------|
| 11 | DE4<br>&<br>DE5 | 1 | Delay in removal of Diamond Crossing and variation work related to 'Connecting Lines'. | 12-Jun-21 | 30-Jun-21 | 19    | 65,574,333.11    | 3,278,716.66   |
| 13 |                 |   | Total  |           |           | 2,088 | 2,987,946,899.94 | 146,660,498.14 |

29. In terms of Clause 14.8 of GCC / PC, the Contractor is entitled to recover INR 637,618,274/- as interest at 8% per annum compounded monthly from 01.07.2021 to 15.10.2023 on INR 3,134,607,398.08/- on the additional payment calculated as prolongation cost plus reasonable profit above i.e., INR 3,134,607,398.08/-. The Contractor has also incurred additional cost as against the inflation on key raw materials i.e., cement and steel because of the delays beyond the Completion Date, equalling to a sum of INR 427,998,724.95/-. The Contractor is entitled to recover the said sum and additionally, a sum of INR 87,060,283.48/- as interest at 8% per annum compounded monthly from 01.07.2021 to 15.10.2023 on INR 427,998,724.95/-. Further, the Contractor is entitled to payment of loss of opportunity and profits calculated to the tune of INR 927,993,928.57/- till 30.06.2021 and Rs 924,675,714.28/- for the period between 30.06.2021 to 15.10.2023.

30. The Contractor is therefore cumulatively entitled to the total claim amount of **INR 6,139,954,324.33/-** [INR 3,134,607,398.08/- + INR 637,618,274/- + INR 427,998,724.95/- + INR 87,060,283.48/- + INR 927,993,928.57/- + INR 924,675,714.28/-] **plus applicable taxes, cess, etc.** as additional payments as on 15.10.2023 against time related costs for delay events (i.e., prolongation) accrued up to 30.06.2021.

31. The Contractor has further incurred additional expenditure due to the disruption of Works on account of change of sequence / standdown Costs



("**Disruption Claim**"). The Costs incurred in respect of disruption to the Works and loss of productivity in performing the Works are separate and distinct from the prolongation costs discussed in the preceding paragraphs. The Contractor submits that it is entitled to claim disruption costs pursuant to Clause 20.1 of GCC read with Clause 2.1, Clause 13.1 and Clause 13.7 of GCC / PC.

32. The Contractor has undertaken the "measured mile analysis" to quantify its "Disruption Measured Mile costs". In the measured mile analysis, the Contractor has compared tasks in impacted and non-impacted periods (or less impacted periods) of the project to estimate the productivity loss caused by the impact of a known series of events (in this case, the Disruptive Events). It is based on an extrapolation of actual working (labour and equipment) hours spent. The Contractor's Disruption Measured Mile costs are divided as per the following construction events:

- (a) Foundations and Masts;
- (b) Brackets;
- (c) OHE Wiring; and
- (d) Dropper

33. The quantification of the Contractor's Disruption Measured Mile costs is summarised in the below table:

**Table-06: Summary of Contractor's Claim Disruption Costs – Measured Mile**

| [A]  | [B]                 | [C]                  | [D]                   | [E] = [C] + [D]        | [F]                 | [G] = [E] + [F]       |
|------|---------------------|----------------------|-----------------------|------------------------|---------------------|-----------------------|
| Item | Description         | Labour<br>(INR)      | Plant<br>(INR)        | Cost Incurred<br>(INR) | Profit<br>(INR)     | Total<br>(INR)        |
| 1    | Foundations & Masts | 24,447,418.88        | 110,661,648.20        | 135,109,067.08         | 6,755,453.35        | 141,864,520.43        |
| 2    | Brackets            | 2,994,696.43         | 1,698,404.84          | 4,643,101.27           | 232,155.06          | 4,875,256.34          |
| 3    | OHE Wiring          | 2,895,712.18         | 34,971,994.69         | 37,867,706.87          | 1,893,385.34        | 39,761,092.21         |
| 4    | Dropper             | 384,576.24           | 2,737,616.26          | 3,122,192.51           | 156,109.63          | 3,278,302.13          |
| 5    | <b>Total</b>        | <b>30,672,403.73</b> | <b>150,069,664.00</b> | <b>180,742,067.72</b>  | <b>9,037,103.39</b> | <b>189,779,171.11</b> |

34. Further, the Contractor has also analysed the additional costs incurred due to its resources remaining stood down / idle as a result of the following two main events (“**Disruption Stand Down costs**”):

- (a) Non sequential track access, which addresses the stand down of rail equipment; and
- (b) COVID, which addresses the stand down of equipment and labour resources throughout the Project.

35. The quantification of the Contractor’s Disruption Stand Down costs is summarised in the below table:

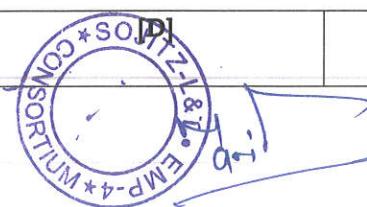
**Table-07: Summary of Contractor’s Claim Disruption Costs – Stand Down**

| [A]  | [B]  | [C]                  | [D]                  | [E] = [C] + [D]        | [F]                 | [G] = [E] + [F]          |
|------|--|----------------------|----------------------|------------------------|---------------------|--------------------------|
| Item | Description                                  | Labour<br>(INR)      | Plant<br>(INR)       | Cost Incurred<br>(INR) | Profit<br>(INR)     | Total<br>Amount<br>(INR) |
| 1    | Stand Down<br>- Non-<br>Sequential<br>Access | -                    | 41,399,002.78        | 41,399,002.78          | 2,069,950.14        | 43,468,952.92            |
| 2    | COVID-<br>Stand Down                         | 19,312,117.25        | 37,890,438.88        | 57,202,556.13          | N/A                 | 57,202,556.13            |
| 3    | <b>Total</b>                                 | <b>19,312,117.25</b> | <b>79,289,441.66</b> | <b>98,601,558.91</b>   | <b>2,069,950.14</b> | <b>100,671,509.05</b>    |

36. Further, the Contractor has also claimed interest for payments that have been delayed on account of the disruptions, in terms of Clause 14.8 of the GCC/ PC. The claim for interest on the Disruption Claim of INR **183,565,108.97/-** is as follows:

**Table-08: Accrued Interest on Disruption Claim as on 15.10.2023**

| [A] | [B] | [C] | [D] | [E] |
|-----|-----|-----|-----|-----|
|     |     |     |     |     |

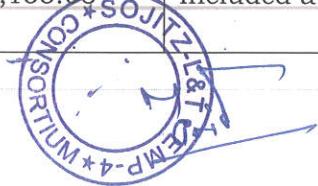


| Item | Element   | Start Date      | Financial Entitlement<br>as Disruption Claim<br>(INR) | Interest<br>(INR)     |
|------|---|-----------------|---|-----------------------|
| 1    | Productivity Lost based on Measured Mile                | 1 December 2016 | 189,779,171.11  | 141,038,173.78        |
| 2    | Stand Down Equipment Due to Non-Sequential Track Access | 18 June 2018    | 43,468,952.92   | 23,406,689.42         |
| 3    | Contractor's Stand Down Resources Due to Covid-19       | 22 March 2020   | 57,202,556.13   | 19,120,245.77         |
| 4    | <b>Total</b>  |                 |   | <b>183,565,108.97</b> |

37. The summary of the total Disruption Claim of INR **474,015,789.13/-** plus applicable Taxes, Cess, etc. is as follows:

**Table-09: Summary of Disruption Claim (accrued as of 15.10.2023)**

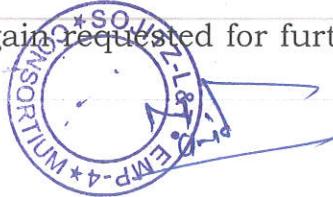
| [A]  | [B]                   | [C]                    | [D]             | [E]  | [F]            |
|------|-----------------------|------------------------|-----------------|--|----------------|
| Item | Description           | Cost Incurred<br>(INR) | Profit<br>(INR) | Interest<br>(INR) as on<br><b>15.10.2023</b> | Total<br>(INR) |
| 1    | Foundations and Masts | 135,109,067.08         | 6,755,453.35    | 141,038,173.78                               | 282,902,694.21 |
| 2    | Brackets              | 4,643,101.27           | 232,155.06      | Included above                               | 4,875,256.34   |



|   |   |                       |                      |                       |                       |
|---|---|-----------------------|----------------------|-----------------------|-----------------------|
| 3 | OHE Wiring                                  | 37,867,706.87         | 1,893,385.34         | Included above        | 39,761,092.21         |
| 4 | Droppering                                  | 3,122,192.51          | 156,109.63           | Included above        | 3,278,302.13          |
| 5 | Stand Down<br>-Non-<br>Sequential<br>Access | 41,399,002.78         | 2,069,950.14         | 23,406,689.42         | 66,875,642.34         |
| 6 | Covid –<br>Stand Down                       | 57,202,556.13         | N.A.                 | 19,120,245.77         | 76,322,801.90         |
| 7 | <b>Total</b>                                | <b>279,343,626.63</b> | <b>11,107,053.53</b> | <b>183,565,108.97</b> | <b>474,015,789.13</b> |

38. The Prolongation Cost Claims are detailed with all supporting documents in Volume 2.2 of the Appendices to the claim submission letter SLT4/NKC/EMP-4//CONT/EOT/2022/0434 dated 11.03.2022 (*i.e.*, the Contractor June 2021 Claims). Similarly, Disruption Cost Claims have been detailed with all supporting documents in Volume 2.3 of the Appendices to the claim submission letter SLT4/NKC/EMP-4//CONT/EOT/2022/0434 dated 11.03.2022 (*i.e.*, the Contractor June 2021 Claims). Accordingly, the same are not being repeated here again and may be read as an integral part of this Request for Decision. The Claimant seeks leave to further elaborate and vividly explain the same as and when called upon to do so by the Board.

39. Following the submission of the Contractor June 2021 Claims by the Contractor to the Engineer, the Engineer had requested for more time beyond the prescribed period of 42 days under Clause 20.1 of the GCC for making its determination on the said claims, by way of its letters dated 22.04.2022 and 02.06.2022. The Contractor had agreed to such extensions as requested by the Engineer for the purpose of determination of the Contractor June 2021 Claims by way of its letters dated 23.04.2022 and 10.06.2022, permitting the Engineer to provide its determination by 03.07.2022. As the Engineer had failed to provide its determination within 03.07.2022, the Engineer had again requested for further extension of 2



months by way of its letter dated 05.07.2022. The Engineer's letters dated 22.04.2022, 02.06.2022, 05.07.2022, and the Contractor's letters dated 23.04.2022 and 10.06.2022 are enclosed as **Exhibit-CD9.04 (colly.).**

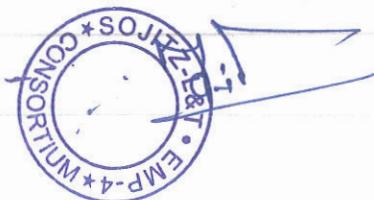
40. Clause 20.1 of GCC is set out below for ease of reference:

*If Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after Contractor became aware, or should have become aware, of the event or circumstance.*

*If Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.*

*Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.*

*Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct Contractor to keep further contemporary records. Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.*

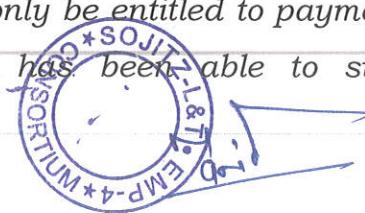


Within 42 days after Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by Contractor and approved by the Engineer, Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.



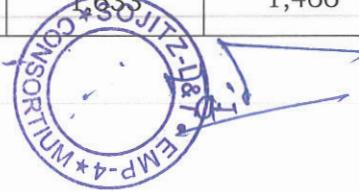
The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which Contractor is entitled under the Contract.

*The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause. (emphasis added)*

41. Subsequently, by way of the letter no. NKC/2208-24 dated 25.08.2022, the Engineer provided its erroneous assessment on the Contractor June 2021 Claims and further, sought consent of the Contractor in terms of Clause 3.5 of Conditions of the Contract (**“Engineer June 2021 Assessment”**). The Engineer June 2021 Assessment is enclosed as **Exhibit-CD9.05**.
42. Summary of Engineer’s flawed assessment of interim EOT for delay events till 30.06.2021 is tabulated below for ease of reference:

**Table-10: Engineer’s assessment of Extension of Time for Completion**

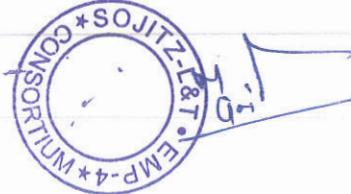
| <b>Milestone</b> | <b>Contract Completion Date</b> | <b>Number of Days of Delay</b> |                              | <b>Engineer’s Assessment</b> |
|------------------|---------------------------------|--------------------------------|------------------------------|------------------------------|
|                  |                                 | <b>As per Claimant</b>         | <b>Engineer’s Assessment</b> | <b>Revised Date</b>          |
| 1                | 09-Mar-17                       | 1,467                          | 1,467                        | 15-Mar-21                    |
| 2                | 10-May-18                       | 1,399                          | 1,134                        | 17-June-21                   |
| 3                | 20-Dec-18                       | 1,633                          | 1,466                        | 25-Dec-22                    |



|   |           |       |       |           |
|---|-----------|-------|-------|-----------|
| 4 | 02-Aug-18 | 1,399 | 1,134 | 09-Sep-21 |
| 5 | 14-Mar-19 | 1,633 | 1,466 | 19-Mar-23 |

Further, the Engineer has unreasonably and erroneously rejected the Prolongation Cost Claim and Change of Sequence/Disruption Cost Claim raised by the Contractor for delay events accrued till 30.06.2021, purportedly citing so-called “concurrent” delays, without carrying out any independent assessment for the same using the Critical Path Method.

43. The Engineer's determination was based upon improper understanding of the requirements under the Contract and did not take into account relevant facts and circumstances in accordance with the Contract.
44. The Contractor had, therefore, by way of a letter SLT4/2023/0052 dated 16.01.2023 notified the Engineer that it disagreed with the Engineer's assessment and provided detailed reasons for its disagreement (**“Contractor's Disagreement”**) both on the aspect of EOT as well as cost claims for delay events accrued up to 30.06.2021. The Contractor also requested the Engineer to make a determination of the same pursuant to Clauses 3.5 read with 1.3 of the General Conditions. Refer enclosed to this submission. The Contractor's Disagreement is enclosed as **Exhibit-CD9.06.**
45. Thereafter, in response to the Contractor's Disagreement, the Engineer by way of its letter NKC-2302-27 dated 23.02.2023 sought consent from the Contractor to the Engineer June 2021 Assessment within 3 weeks' time, failing which it was stated that the Engineer will proceed in accordance with Clause 3.5 of the GCC. The Engineer's letter NKC-2302-27 dated 23.02.2023 is enclosed as **Exhibit-CD9.07.**
46. The Contractor has not consented to the Engineer June 2021 Assessment and is aggrieved by the said assessment. The Contractor had notified its intention to commence DAB, vide letter SLT4/NKC/EMP-4/CONT/EOT/2023/0958 dated 07.10.2023. The letter is enclosed as **Exhibit-CD9.08.**

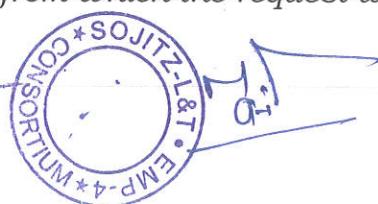


47. There has been no determination by the Engineer, as contractually stipulated in terms of Clause 3.5 of the GC for the Contractor June 2021 Claims. Further, most of the delay events as on 30.06.2021 were continuing, such delay events had a significant effect on the progress of the Contractor's planned work. It is also relevant to note that on account of the continuing delays and the pending determination of the same by the Engineer, the Contractor has been facing severe disability with respect to effectively planning the remaining work under the Contract.
48. It is submitted that withholding the determination of the Contractor June 2021 Claims is in clear violation of Clauses 20.1 read with Clauses 3.5 and 1.3 of the GCC. Clauses 1.3 and 3.5 of the GCC are set out hereunder:

**Clause 1.3 of GCC : -**

*Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:*

- (a) *in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Appendix to Tender; and*
- (b) *delivered, sent or transmitted to the address for the recipient's communications as stated in the Appendix to Tender. However:*
  - (i) *if the recipient gives notice of another address, communications shall thereafter be delivered; accordingly, and*
  - (ii) *if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.*



*Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.*

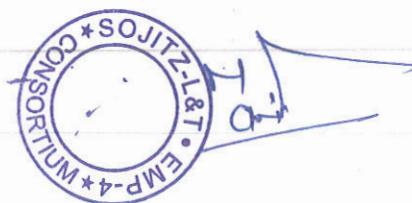
**Clause 3.5 of GCC: -**

*Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.*

*The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].”*

49. Now, Contractor invites the attention of the Ld. DAB to the following facts emerging out of the above, and perusal of the various exhibits enclosed with this submission: -

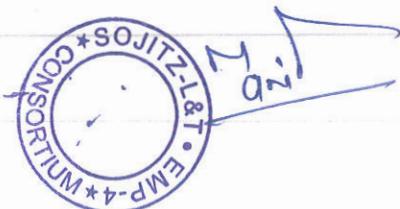
- (a) Despite the clear and unambiguous substantiation of Contractor regarding its entitlement of EOT for completion and Prolongation, Disruption and associated Costs for delays as on 30.06.2021 (*Exhibit-CD9.03*) as per a well-recognized method, the Engineer did not consider these in its determination.
- (b) The Engineer exhibited an erroneous and flawed understanding of the concept of ‘concurrent delay’ in railway construction and wrongly applied this flawed understanding to the Contractor’s claims.



- (c) Without prejudice to the Contractor's stand that no delay event is attributable to it, it is submitted that mere overlapping or parallel delay, in which one event does not impact the critical path to completion, cannot be termed as concurrent delay. In other words, the mere occurrence of a delay event attributable to the counter party will not *ipso facto* constitute concurrent delay if that event does not impact the critical path to completion.
- (d) The Engineer failed to analyse delays using the critical path/longest path method and thereby failed to establish whether the Contractor's delay, if any, fall on the critical path or caused critical delay to the construction schedule as per the CCP. Whereas, the Contractor had duly identified the as-built critical path and analysed the effective cause of delay to the critical path while submitting its claim for delay events up to 30.06.2021. Therefore, the Engineer has incorrectly rejected the Prolongation Cost Claim and Change of Sequence/Disruption Cost Claim of the Contractor (*Exhibit-9.03*).
- (e) Further, it is well settled under the applicable principles of Indian law that where, due to the failure to perform contractual obligations on the part of one party, loss is caused to the other party, that other party is entitled to claim damages to compensate for the additional costs and losses incurred. These would include the extra costs in performance of the work including additional expenditure on extra cost of labour, staff, overhead expenses, plant and machinery, opportunity being lost to move to some other projects in hand and earn revenue, additional cost of materials which may not be compensated by the Contract mechanism, etc. Further, claims for escalation on account of increase in prices beyond the original contract period apart from claims for idling are maintainable.
- (f) Due to the above action / inaction of the Engineer, the EOT for Completion and payments towards prolongation and disruption Costs which are legitimately due to Contractor remain withheld/unpaid at the relevant time for no fault of Contractor.



50. It is reiterated that Contractor is entitled to EOT and payment of Prolongation Cost and Change of Sequence/Disruption Cost Claim as claimed by Contractor in Exhibit-CD9.03 and as summarized in Table-03 and Table-04 above, being based upon well-recognized method of delay analysis.
51. The Contractor submits that it has been deprived of the due amounts in the Interim Payment Certificates (IPC) due to the misconstruction of applicable provisions of Contract and inappropriate decisions/ opinion / determination of the Engineer. The Contractor is accordingly entitled to interest on the above sum from the date on which such payments became due and payable. In this connection the learned DAB's attention is invited to Clause 14.8 of Conditions of Contract, which when read with ATB which provides payment of interest on such unpaid amounts @ 8% per annum for the INR portion and at an annual rate of LIBOR +2% for the JPY portion to be compounded monthly, from the date on which such payments became due and payable.
52. Further to the above, the Contractor submits that as the payments were denied/unpaid/withheld by the Employer based on a wrong interpretation of the Contract and without any lawful basis. Accordingly, the Contractor is entitled to interest on payments due to it at the abovementioned rates, from the respective dates on which such payments fell due.
53. The Contractor also submits that, it has annexed relevant exhibits in support of its claim and craves leave of the Board to amend and/ or to add, to delete or to correct any of the omissions which might have inadvertently been incorporated. Contractor also seeks leave of the learned Board to produce/ modify / alter the pleading prayer of the claim. Contractor also carves the leave of the Ld. DAB to produce any further documents/ correspondences/ evidence/ statements etc. in support of the claim, and also to provide any clarification on any points which may be raised / brought out by Employer and may be relevant to substantiate the claim.



## PRAYERS

54. In view of the facts and circumstances stated above and records placed before the learned DAB, Contractor, humbly prays to the learned DAB to decide the following in Contractor's favour and render justice: -

- a. Declare that the Employer liable events in terms of the provisions of the Contract, as provided in detail in the Contractor June 2021 Claims, including Clauses 2.1, 8.4, 8.5 and 13.7 of the GCC read with PC, and Clause 17.3.14 of ER/PS of the Contract, delayed the completion of various Milestones (MS 1 to MS 5) as on 30.06.2021, for no fault of the Contractor.
- b. Declare that pursuant to above declaration, Contractor is entitled to additional Costs such as Prolongation and associated Costs in terms of the Contract and applicable law.
- c. Declare that the Employer is liable to extend the Time for Completion of Milestones for delays accrued as on 30.06.2021 as tabulated below:

| <b>Milestone</b> | <b>Extension of Time for Completion for Employer liable delays accrued<br/>as on 30.06.2021</b> |                     |
|------------------|---|---------------------|
|                  | <b>Days</b>   | <b>Revised Date</b> |
| 1                | 1,467   | <b>15-Mar-21</b>    |
| 2                | 1,399   | <b>09-Mar-22</b>    |
| 3                | 1,633   | <b>10-Jun-23</b>    |
| 4                | 1,399   | <b>01-Jun-22</b>    |
| 5                | 1,633   | <b>02-Sep-23</b>    |

- d. Declare that the Employer is liable to pay the Contractor Prolongation and associated Cost along with interest compounded monthly @ 8% per annum for the INR portion and at an annual rate of LIBOR +2% for JPY/USD/EURO portion computed as per sub-Clause 14.8 'Delayed Payment' of the GC read with PC of the Contract, amounting to **INR 6,613,970,113.43/-** as on 15.10.2023, for delays caused by Employer liable events as on 30.06.2021.



- e. Direct the Employer to pay *pendente lite* and future interest on the sum stated in above para @ 8% per annum compounded monthly for the INR and at an annual rate of LIBOR +2% for JPY/USD/EURO portion computed as per sub-Clause 14.8 'Delayed Payment' of the GC read with PC of the Contract, from the date of the Contractor's letter stating its intention to initiate the present proceedings before DAB.
- f. Direct the Employer to admit and release Payments as per above declaration in the Contractor's Interim Payment Certificates.
- g. Decide and grant any other relief as deemed fit under the given circumstances.



**Authorised Signatory**

Encl: - 1. Schedule-A

2. Exhibit-CD9.01 to Exhibit-CD9.08

**SCHEDULE - A:****RELEVANT PROVISIONS OF THE CONTRACT**

**Clause 8.2 of PC provide the following: -**

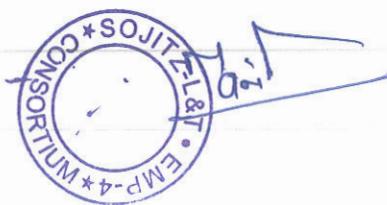
As stated in ATB, the Permanent E & M Works of entire contract shall be completed in five stages shown against each milestone as indicated in the following table: -

| MS  | MS Brief   | Weeks              |
|-----|--|--------------------|
| MS1 | Completion of all OHE, TSS and Switching Station works in Rewari - Dabla section for commencement of testing of Proto type Loco.   | 95<br>(665 Days)   |
| MS2 | Completion of all OHE, TSS, SCADA and Switching Station works in Dabla - Iqbalgarh section for commencement of integrated testing.                                       | 156<br>(1092 Days) |
| MS3 | Completion of all OHE, TSS, SCADA and Switching Station works in Iqbalgarh - Makarpura section including SCADA works in OCC for commencement of integrated testing.      | 188<br>(1316 Days) |
| MS4 | Completion of all works as per the scope of works including integrated testing and commissioning and taking over the works by employer on Rewari - Iqbalgarh section.    | 168<br>(1176 Days) |
| MS5 | Completion of all works as per the scope of works including integrated testing and commissioning and taking over the works by employer on Iqbalgarh - Makarpura section. | 200<br>(1400 Days) |

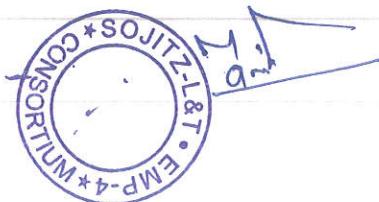
**Table: Coordination Events and Key Milestones (ATB – 8.2 of Contract/Page 192/Part-1(General) of the Contract read along with Addendum to Bid Documents provide the following: -**

**No. of Week (days) refer to commencement date for this particular Contract**

| Coordination event** of |        |      |      | Description | Coordination date*              |
|-------------------------|--------|------|------|-------------|---------------------------------|
|                         |        |      |      |             | No of weeks (from commencement) |
| EMP4                    | CTP1&2 | CTP3 | STP5 |             |                                 |



| Coordination event** of |         |         |      | Description   | Coordination date*<br>No of weeks (from commencement) |
|-------------------------|---------|---------|------|---|---|
| EM-1                    |         |         |      | Inception Report, Validation of Survey, Site Plans of Supply Control Posts  | 14 W (98D)  |
| EM-2                    |         |         |      | Complete System Design based on traction power simulation, for horizon year traffic. Complete Basic Designs                                   | 20 W (140 D)  |
| EM-3                    | CT-4    | CT-4    |      | Commence OHE Designs based on final alignment drawings for CTP-1 & 2 and CTP-3  | 20 W (140 D)  |
| EM-4                    |         |         | ST-6 | Finalize Location of Neutral Section, OHE, Auxiliary Transformers for S&T power supply - Rewari & Makarpura                                   | 40 W (280 D)  |
| EM-5                    | EM 1(1) |         |      | Commence OHE construction work based upon tracks being made available for use of construction work for OHE for Rewari - Iqbalgarh Section     | 40 W (280 D)  |
| EM-6                    |         | EM 1(1) |      | Commence OHE construction work based upon tracks being made available for use of construction work for OHE for Iqbalgarh - Makarpura Section. | 80 W (560 D)  |
| EM-7                    |         |         |      | Commence Construction of Supply Control Posts.  | 40 W (280 D)  |
| EM-8                    | CT-8    |         |      | Completion of all OHE, TSS and Switching Station works in Rewari - Dabla Section for commencement of testing of Proto type Loco.              | 95 W (665 D)  |
| EM-09                   | CT-7    |         |      | Completion of all OHE, TSS, SCADA and Switching Station works in Dabla - Iqbalgarh Section for  | 156 W (1092 D)  |



| Coordination event** of |      | Description   | Coordination date* |
|-------------------------|------|---|--------------------|
|                         |      | No of weeks (from commencement)   |                    |
|                         |      | commencement of integrated testing.   |                    |
| EM-10                   | CT-8 | Completion of all OHE, TSS, SCADA and Switching Station works in Iqbalgarh - Makarpura Section including SCADA works in OCC for commencement of integrated testing.     | 188 W (1316 D)     |
| EM-11                   | CT-8 | Completion of all works as per the scope of works including integrated testing and commissioning and taking over the works by employer on Rewari - Iqbalgarh section    | 168 W (1176 D)     |
| EM-12                   | CT-9 | Completion of all works as per the scope of works including integrated testing and commissioning and taking over the works by employer on Iqbalgarh - Makarpura section | 200 W (1400 D)     |

Notes: -

(1) W-weeks

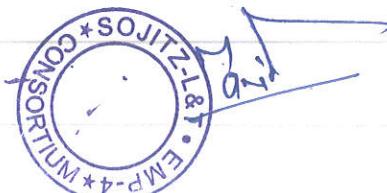
D-days

(2) \* Coordination date" means the date specified in the Contract for the handing over / back of a working area from the other Contractor for a smooth implementation of the overall construction work. The Coordination Date shall not cause a taking-over of any section or part of the works.

(3) \*\* Coordination Event" means the event having interface with other Contractors during the execution of the Works at Site.

(4) As soon as the track structure in skeleton form is complete in continuous stretch of 10/20/30 km of tracks, as decided in interface coordination meeting, the Civil Contractors shall permit the aforesaid track stretch to be used for temporary use by the Employer or by Other Employer's Contractors for construction and/or for running of material trains, tower wagons, rail cum road vehicles etc."

**Clause 8.4 of GCC/PC reads as under: -**



The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]),
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- (c) Deleted
- (d) Unforeseeable shortages in the availability of Goods caused due to changes in laws in accordance with the provisions of Sub-Clause 13.7
- (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.
- (f) A cause of delay in handing over possession of Site in accordance with the provisions of Sub-clause 2.1.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

#### **Clause 8.5 of GC reads as under: -**

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].



**Clause 2.1 of GC/PC reads as under: -**

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Appendix to Tender. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Employer's Requirements. However, the Employer may withhold any such right or possession until the Performance Security has been received.

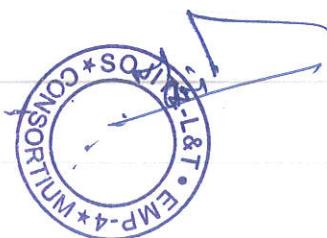
If no such time is stated in the Appendix to Tender, the Employer shall give the Contractor right of access to, and possession of, the Site within such times as may be required to enable the Contractor to proceed in accordance with the programme submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/ or incurs Cost as a result of the failure by the Employer to give any such right or possession within such time the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-clause 20.1 [Contractors claims] to:

- a) An extension of time for any such delay if completion is or will be delayed under Sub Clause 8.4 [Extension of Time for Completion] and
- b) Payment of any such cost plus reasonable profit subject to a maximum of Rs 2000 per day for every Km. For the length less than a Kilometre pro-rata amount shall be calculated. Provided further that if such delay in handing over does not affect the execution of erection of OHE works provisions under Para 2.1(b) of this sub clause shall not apply.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.



**Clause 2.1 of Appendix to Bid under the head "Time for access to the Site" provides the following: -**

Two weeks (Fourteen (14) days) after commencement of date for first areas covering the Traction Substation sites followed by site availability from the other Contractor for Civil and track works as stated in the Table of Coordination events.

**Clause 9.2.2 of Part 2: General Specification states that: -**

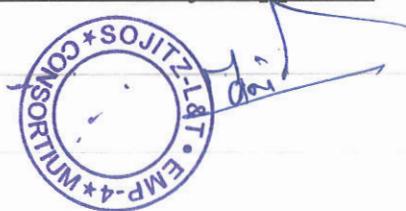
*The Employer will hand over the Site to the Contractor free of encumbrances as per the agreed schedule. Once the Site is handed over to the Contractor, its integrity, safety and security etc. shall be the responsibility of the Contractor until the issue of Taking Over Certificate.*

**Clause 5.2 of GC reads as under: -**

*The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.6 [As-Built Documents] and Sub-Clause 5.7 [Operation and Maintenance Manuals]. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language].*

*The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel. The Employer's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.*

*If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Engineer for review and/or for approval, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Engineer for review and (if so specified) for approval, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review and/or for approval.*

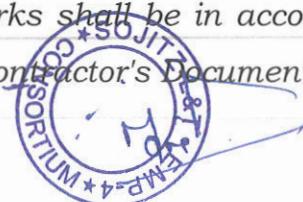


Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 21 days, calculated from the date on which the Engineer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.

The Engineer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Contractor's cost.

For each part of the Works, and except to the extent that the prior approval or consent of the Engineer shall have been obtained:

- (a) in the case of a Contractor's Document which has (as specified) been submitted for the Engineer's approval:
  - (i) the Engineer shall give notice to the Contractor that the Contractor's Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Contract;
  - (ii) execution of such part of the Works shall not commence until the Engineer has approved the Contractor's Document; and
  - (iii) the Engineer shall be deemed to have approved the Contractor's Document upon the expiry of the review periods for all the Contractor's Documents which are relevant to the design and execution of such part, unless the Engineer has previously notified otherwise in accordance with sub-paragraph (i);
- (b) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;
- (c) execution of such part of the Works shall be in accordance with these reviewed (and, if specified, approved) Contractor's Documents; and



(d) if the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give notice to the Engineer. Thereafter, the Contractor shall submit revised documents to the Engineer in accordance with the above procedure.

*If the Engineer instructs that further Contractor's Documents are required, the Contractor shall prepare them promptly.*

*Any such approval or consent, or any review (under this Sub-Clause or otherwise), shall not relieve the Contractor from any obligation or responsibility.*

**Clause 13.7 of GC/PC reads as under: -**

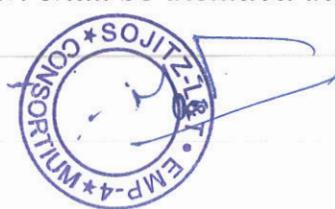
*The Contract Price shall be adjusted to take account of any increase or decrease in Cost after the Base Date resulting from:*

- a. change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws); or
- b. in the judicial or official governmental interpretation of such Laws, or
- c. the commencement of any Indian law which has not entered into effect until the Base Date; or
- d. any change in the rates of any of the Taxes or royalties on Materials that have a direct effect on the Project

*which affect the Contractor in the performance of obligations under the Contract*

*If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:*

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.



After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

If as a result of change in law, interpretation, or rates of taxes or royalties, the Contractor benefits from any reduction in costs for the execution of this Contract, save and except as expressly provided for in this Sub-Clause or in accordance with the provisions of this Contract, the Contractor shall, within [28] days from the date he becomes reasonably aware of such reduction in cost, notify the Employer with a copy to the Engineer of such reduction in cost.

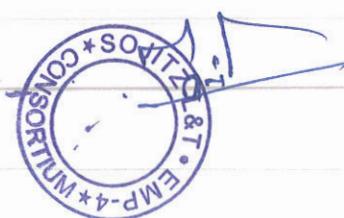
**Clause 17.3.14 of Employer's requirement (Particular specification) reads as under: -**

If the Contractor suffers delay by reason of failure caused by any Other Contractor/ Interfacing Parties to meet the specified installation interfacing, co-ordination, and / or completion dates resulting in delay beyond the extent which could be reasonably foreseen by an experienced contractor at the time when the Coordinated Construction Programme is formulated and consented by the Engineer, then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under the Contract.

**Clause 3.5 of GC reads as under: -**

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances. The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration]."

**Clause 1.3 of GC reads as under: -**



Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

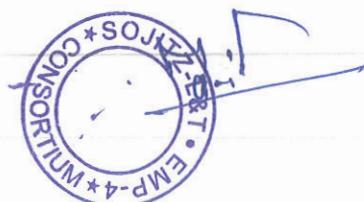
- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Appendix to Tender; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Appendix to Tender. However:
  - (i) if the recipient gives notice of another address, communications shall thereafter be delivered; accordingly, and
  - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

**Clause 20.1 of GC reads as under: -**

If Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after Contractor became aware, or should have become aware, of the event or circumstance.

If Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.



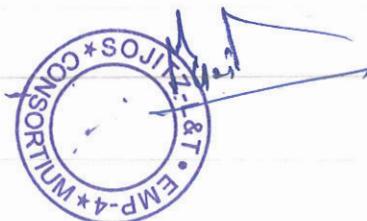
Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct Contractor to keep further contemporary records. Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by Contractor and approved by the Engineer, Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.



Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which Contractor is entitled under the Contract.

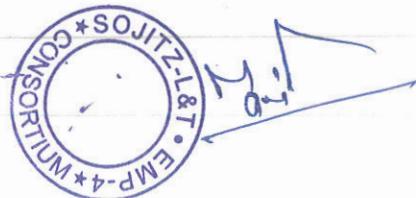
The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

#### **Clause 20.4 of GC reads as under: -**

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, then after a DAB has been appointed pursuant to Sub-Clause 20.2 [Appointment of the Dispute Adjudication Board] and 20.3 [Failure to Agree Dispute Adjudication Board], either Party may refer the dispute in writing to the DAB for its decision, with a copy to the other Party. Such reference shall state that it is given under this Sub-Clause.

For a DAB of three persons, the DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).



Within 84 days after receiving such reference or the advance payment referred to in Clause 6 of Appendix – General Conditions of Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each Member pursuant to Clause 6 of the Appendix – General Conditions of Dispute Adjudication Agreement, the DAB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction. In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

