

IN THE MATTER OF ARBITRATION UNDER THE RULES OF ARBITRATION OF  
THE INTERNATIONAL CHAMBER OF COMMERCE

**ICC CASE NO. 26834/HTG**

BETWEEN

**SOJITZ-L&T CONSORTIUM**

*Claimant*

-AND-

**DEDICATED  
FREIGHT CORRIDOR CORPORATION OF INDIA LIMITED**

*Respondent*

---

**WITNESS STATEMENT OF MR. SANJAY GUPTA  
(RESPONDENT'S WITNESS NO. RW-2)  
30 JUNE 2023**

---



**Advocates for the Respondent  
AKS Partners**

---

## **A. INTRODUCTION**

1. I, **Sanjay Gupta**, an Indian citizen aged 58 years, R/o 87A, Girnar Colony, Gandhi Path, Vaishali Nagar Jaipur, Rajasthan, India 302021, presently working as Deputy Chief Project Manager/ Civil with Dedicated Freight Corridor Corporation of India Limited (“DFCCIL” or the “Respondent”) for CTP 1&2, make this witness statement on behalf of the Respondent in relation to ICC Case No. 26834/HTG commenced by Sojitz-L&T Consortium (the “Claimant”) against the Respondent.
2. I make this statement based on my knowledge and the documents I have referred to, except where otherwise indicated. Matters referred to herein which are within my direct knowledge are true. Matters referred to herein which are not within my direct knowledge are true to the best of my knowledge and belief. References to "we", "us" and "our" are with regards to DFCC. The reference “Parties” is to DFCCIL and Sojitz-L&T Consortium.
3. In my witness statement, I refer to the documentation that has been filed by the Parties along with their pleadings and these shall be footnoted with specific reference therein. In addition, I will also be referring to other relevant documents from DFCCIL’s records.
4. I have also provided several documents relevant to this witness statement. Where the document has been exhibited in the arbitral pleadings, it is referred to by the same exhibit number and where the document has not been exhibited before in the arbitration, it is referenced by a new exhibit number in the format “R-.”
5. The counsel for the Respondent has assisted me in drafting this statement based on interviews conducted with me. I have reviewed the text and can confirm that this written statement accurately reflects my testimony based on my own experience and recollections.
6. My witness statement addresses various matters concerning:
  - i. My Experience and Role in the various stages of the Project
  - ii. The background of the Project, and how CTP-2 was more challenging in respect of achievement of MS-3.
  - iii. The delays in the commencement and progress of many activities in the Project works in CTP-2.
7. I have been asked to give evidence through this witness statement regarding DFCCIL’s position in the arbitration between the Parties. I am able and willing to attend a hearing in this matter if required to do so.

## **B. MY PROFESSIONAL BACKGROUND AND EXPERIENCE**

8. I am an engineer by qualification with a specialization in Civil Engineering.

9. I have experience of over 35 years in the construction industry with exposure to railway projects in India. I started my professional career in 1987 working with Indian Railways. Later in 2008, I joined DFCCIL as an Assistant Project Manager/Civil and have been working here for about 15 years in various capacities. My experience and past designations in DFCCIL are listed below:

Organization	Project	Location	Designation	From	To
DFCCIL	CTP-1 & CTP-2	Jaipur	Dy. Chief Project Manager/Civil	1 November 2021	Till Date
DFCCIL	CTP-1 & CTP-2	Ajmer	Dy. Chief Project Manager/Civil	16 March 2021	30 October 2021
DFCCIL	CTP-1 & CTP-2	Ajmer	Project Manager/Civil	31 May 2017	15 March 2021
DFCCIL	CTP-1 & CTP-2	Ajmer	Dy. Project Manager/Civil	1 January 2013	31 May 2017
DFCCIL	CTP-1 & CTP-2	Ajmer	Assistant Project Manager/Civil	9 August 2008	31 December 2012

10. Overall, I have varied exposure in all stages of implementation of railway projects in India i.e., feasibility study, site execution, commissioning, and operation & maintenance. My CV is attached to this witness statement as **Exhibit R-295**.

### **C. MY ROLE IN THE PROJECT**

11. This Project of Rewari-Iqbalgarh section of WDFC was announced in 2005 and the job of DPR preparation was given to Rail India Technical and Economic Service (RITES) in 2006. Later RITES submitted the Detailed Project Report (DPR) in 2007.
12. My involvement with this Project started in 2008 when I joined DFCCIL as Assistant Project Manager - Civil when the scrutiny of DPR of this Project was in progress. In the process of DPR scrutiny, I was involved in the finalization of track alignment which includes undertaking feasibility study, survey works, Geotech investigations, preparation/ revision of bill of quantities/ estimates, checking of General Arrangement Drawings (GAD) and preparation of layout plan etc.
13. Once the finalization of track alignment was completed in 2008, the process of land acquisition started. I got involved in the land acquisition activities such as joint measurement, mutation of government/ private land and dealing with the technical matters. The land acquisition for this Project started in August 2008 and got completed in December 2012, with most of the land being acquired by April 2011.
14. When the bidding stage for the Project commenced in 2012, I assisted DFCCIL's bidding team by giving technical inputs for the formation and assessment of the bid. I was involved in confirming/ scrutiny of field-related details i.e., verification of existing utilities/ bridges and survey of the Site.

15. Once the Project execution commenced in August 2013, I worked as Deputy Project Manager/Civil and was posted at DFCCIL's Ajmer unit. This office, headed by Chief Project Manager, was supervising unit for the execution of CTP-2. In this role, I was primarily supervising the site execution of CTP-2 and also, was directly aware of ongoing contractual matters.
- a. In the pre-construction phase, I was involved in the allotment of Govt. land & mutation of land, protection of acquired land, getting permission for tree cutting in acquired land, dismantling of acquired structures, arrangement of utility shifting which caused infringements with track alignment.
  - b. In the construction phase, I supervised the construction activities being executed at CTP-2 site i.e., formation works, structure works, staff quarters & station buildings etc. I also got involved into certain contract management activities including checking and processing IPCs for stage payment and attending quality inspections/ RFIs.
16. Since the commencement of the Project, I have been in regular interaction with the Claimant/ Engineer and was involved in the communication with them on various execution issues of CTP-2, and I understand from speaking to Mr. Naveen Kumar that many of them were common with CTP-1. I participated in the Claimant's progress review meetings at Ajmer office along with the Engineer.
17. I say that as such I am aware of the facts of the present case as I have been involved in this Project since 2008 till date, both in the pre-execution, during the execution, and the post-execution stages and therefore, I am competent to swear the present statement.

#### **D. OVERVIEW OF THE PROJECT**

18. The Dedicated Freight Corridor (DFC) is indeed an important public infrastructure project in India. Its purpose is to establish high-speed rail dedicated to the movement of freight and cargo, aiming to reduce transportation costs, boost the Indian economy, and uplift millions of people out of poverty.
19. The DFC is comprised of two parts: The Eastern Dedicated Freight Corridor (EDFC), which stretches from Ludhiana in Punjab to Dankuni in West Bengal, India, and the Western Dedicated Freight Corridor (WDFC), which runs from Dadri in Uttar Pradesh to Navi Mumbai in Maharashtra, India.
20. This witness statement pertains to one of the contract packages of WDFC, which starts from Rewari in the state of Haryana, passes through the state of Rajasthan, and ends at Iqbalgarh in the state of Gujarat, with the length of approximately 648.575<sup>1</sup> kilometres is the largest civil package of DFCCIL.

---

<sup>1</sup> Original scope as per bid document was 626 km which was later revised as per site conditions.

21. The Project is bifurcated into two stretches, i.e., CTP-1 & CTP-2, which is further divided into 4 packages (A, B, C, and D), wherein CTP-1 constitutes of Packages A, and B and CTP-2 constitutes of Packages C, and D. These packages are further subdivided into 21 sections. The MS-3 (less MS-1) as defined in the Contract Agreement, covers a distance of 569.716 kilometres from Dabla to Iqbalgarh.

**E. MY INVOLVEMENT IN BIDDING PROCESS**

22. The bidding process for the Project consisted of two-stage process, the first stage is Prequalification of bidders, and the second stage is Technical/Price proposal.
- a. On 18 November 2011, the Respondent issued a Notice Inviting Prequalification<sup>2</sup> for this Project covering CTP-1 and CTP-2.
- b. Further, on 30 June 2012, the Respondent issued Notice Inviting Tender<sup>3</sup> and Instructions to the qualified bidders. The Claimant being one of the bidders, submitted the Technical Bid on 21 January 2013<sup>4</sup>.
23. This period of more than six months between issuance of NIT and bid submission (from 30 June 2012 to 21 January 2013) was provisioned so that the bidders could evaluate the bid conditions, circumstances, and risks involved, and this is also confirmed by the Claimant in this arbitration<sup>5</sup>.
24. I presume that like any prudent bidder, the Claimant must have conducted a proper study of the tender document and evaluated the site conditions, before pricing its bid. As I was involved in the field studies of this Project, I say that a prudent bidder should have utilized these 6 to 7 months to identify potential borrow areas, sub-contractors/ vendors, locations for setting up of plants/ camps, and planning for the resources which could be required for mobilization/ execution of the Project if the bidder is successful.
25. I recall that the Respondent raised 83 queries over the Technical Bid submitted to the Claimant on 5 March 2013 to seek confirmation from the Claimant over the Project requirements as per contractual provisions. These discussions were held at the corporate level, but wherever field assistance was required, was provided by me. The response of the Claimant on 8 March 2013<sup>6</sup>, which was also shared with me later, confirms that the Claimant agreed to make all necessary compliances against each query.

---

<sup>2</sup> Notice No. 2011/WC/Ph. I/PQ

<sup>3</sup> Exhibit C-1

<sup>4</sup> Exhibit R-1, Page 120

<sup>5</sup> Para 47 of SOC where the Claimant accepts that – “Keeping in mind the Employers Requirements (“ER”), the layout of the Project spanning across three states, quantum of various activities, cycle time of activities, the timelines for completion of whole work including achievement of the intermediate Milestones (viz. MS-3) and the conditions prevalent on the Base date, the Claimant formulated and submitted its Bid on 19 February 2013”.

<sup>6</sup> Part 4 of the Contract Agreement (Exhibit R-1), Page 1335 to 1352

26. The Claimant had submitted a bid amount of INR 6,699.50 Crores in response to the Notice Inviting Tender<sup>7</sup>. I can say that the Claimant as a successful (L1) Bidder, quoted an abnormally lower price as it was 190% lower than the L2 Bid Price. The details of the Price Bid quoted by the bidders could be referred to from attached **Exhibit R-296**.
27. Overall, I say that the Claimant shall be deemed to have inspected/ examined and got satisfied with the Project site conditions before agreeing to Accepted Contract Amount, and therefore its claim on the basis of any deviation or differing site conditions would not be justified.
- F. CTP-1 & CTP-2 could be executed in parallel, and the execution of CTP-2 was more challenging than CTP-1**
28. The Project was divided into 2 packages i.e., CTP-1 which covers the section from Rewari to Madar, and CTP-2 which covers the section from Madar to Iqbalgarh.
29. DFCCIL set up offices at Jaipur and Ajmer for monitoring the CTP-1 and CTP-2 packages, respectively. The Claimant also set up separate site offices at Jaipur and Ajmer and deployed the Project teams/ resources<sup>8</sup> to take up both packages in parallel. In the approved CCP, there are separate activities for CTP-1 and CTP-2 except for some common preliminary activities. The interim payment invoices submitted by the Claimant had a clear bifurcation of the amounts claimed for CTP-1 and CTP-2 respectively and were verified/ approved by the concerned offices of the Respondent.
30. The comparison of the scope of works<sup>9</sup> for CTP-1 and CTP-2 was as follows<sup>10</sup>:

S. No.	Item	Unit	CTP-1 (Rewari-Madar)	CTP-2 (Madar-Iqbalgarh)	CTP-2 Exceeding CTP-1 (in %)
1	States Covered		Haryana & Rajasthan	Rajasthan & Gujarat	
2	Estimated Cost <sup>11</sup>	INR (in Crores)	2800.391	3899.109	39.23 %
3	Route Length	RKM	306.44	342.135	11.65 %
4	Track Length	TKM	633	739.358	16.80%
5	Major/ Important Bridges & Viaduct	Nos	16	94	487.5%
6	Minor Bridges & RUBs	Nos	438	663	51.37%
7	Stations	Nos	9	11	22.22%

It is evident from the above table that the CTP-2 is a relatively longer stretch and has a significantly larger quantum of work to be executed in comparison to the CTP-1. I say

<sup>7</sup> Refer to Exhibit C-1

<sup>8</sup> As per the organization chart mentioned in MPRs

<sup>9</sup> Details are extracted from IPCs and MPRs

<sup>10</sup> In the comparative table, details of CTP-1 include MS-1 scope as well. If the scope of MS-1 is excluded from MS-3, then the scope of works in CTP-2 would become much greater in comparison to CTP-1.

<sup>11</sup> As per IPCs

that the number of major & important bridges to be constructed in the CTP-2 stretch was almost 6 times as compared to CTP-1, and each of these structures required between 1.5 to 2 years to complete based on the Claimant's own CCP.

31. Furthermore, I would like to highlight the fact that the CTP-2 comprised of tough hilly terrain in most of its stretches (only 100 Km of plain terrain out of 342 Km), presenting unique geotechnical challenges for undertaking construction activities. There are two major ridge points – Keshavganj & Bar-Sendra in CTP-2. The formation height in CTP-1 was hardly 6-8 meters, while in CTP-2 it was up to 32 meters, showing that the quantum of embankment work was much more than in CTP-1.
32. Since the achievement of MS-3 involves the track skeleton installation/linking for the entire stretch of CTP-1 and 2, hence it is obvious that the simultaneous deployment of sufficient resources in CTP-2 was essential for timely achievement of MS-3. The Claimant's CCP appeared to recognise this as it had planned to execute the works simultaneously.
33. The Claimant was aware of the topography of the stretch and should have envisaged the criticality of the larger quantum of Works under CTP-2 stretch having a weightage of 58.20% of the total Project cost as mentioned by the Claimant in its MPRs.
34. I affirm that works under CTP-1 and CTP-2 were to be carried out on a parallel and independent basis till track linking (which was planned in sequence for each package) i.e., there was no interdependency between the two packages. I state that there were no common resources to be shared between CTP-1 & CTP-2 and the Claimant could have worked in both packages simultaneously, including the section of Dabla to Rewari (MS-1) having a stretch of only 81.9 Km in CTP-1.

#### **G. CLAIMANT'S MISMANAGEMENT OF THE PROJECT – CTP-2**

35. The Project required the Claimant to take up the works in a planned & defined manner, with following timelines for CTP-1 and CTP-2:
  - a) *Design* – The design and engineering phase of the Project to be commenced on 01 October 2013 for CTP-1 and on 11 October 2013 for CTP-2 and was scheduled to be completed on 16 April 2014 and 31 May 2014, respectively.
  - b) *Formation works/ Structure works*– Commencement from December 2013 onwards till completion.
  - c) *Track Linking works*– For CTP-1, track linking was to be commenced from 02 January 2015 to 22 February 2016 and subsequently the track linking was to be commenced from 23 February 2016 to 24 January 2017 for CTP-2.

36. As on 31 August 2016, the Claimant could achieve physical progress of 30.7% only against the planned progress of 90.9%<sup>12</sup>, while for CTP-1 stretch, it had achieved physical progress of 54.9% against the planned progress of 98.1%<sup>13</sup>. Similarly, the financial progress for both CTP-1 and CTP-2 achieved is 38.53% against the planned financial progress of 88.75% as inferred from the MPR for August 2016<sup>14</sup>.
37. I say that the Claimant was required to plan and deploy its resources as per the scope and the nature of works in the section, but the Claimant concentrated and mobilized its major resources in CTP-1, and works under CTP-2 were started after a significant lag/delay with respect to the planned timelines as shown below:

S. No.	Activity	CTP-1		CTP-2	
		Planned <sup>15</sup>	Actual <sup>16</sup>	Planned <sup>17</sup>	Actual <sup>18</sup>
1	Casting Yards	29-Nov-13	Apr-14	01-Jan-14	Jun-14
2	Crushers	24-Oct-13	Mar-14	03-Dec-13	May-14
3	Batching Plants	02-Nov-13	Sep-14	27-Nov-13	May-14
4	Commencement of Earthwork	23-Dec-13	Feb-14	06-Feb-14	Feb-14
5	Commencement of Major / Important Bridges	24-Feb-14	Mar-15	13-Mar-14	Jun-15
6	Commencement of Minor Bridges / RUBs	24-Feb-14	Jul-14	13-Mar-14	Dec-14
7	Production of Sleepers	02-Jun 14	May-15	02-Sep-14	Aug-16
8	Welding of Rails	05-Sep-14		04-Nov-15	

38. Being at the ground level, I can say that CTP-2 was more challenging than CTP-1 and the Claimant's non-performance in CTP-2 has further aggravated the situation. I say that the various delays attributable to the Claimant for the deficient progress in CTP-2 can be broadly categorized under the following heads:

**a. Claimant's Delay in Preliminary Works and Site-establishment**

39. I was shown Para No. 69 of the SOD and Exhibit R-245, where the Respondent has demonstrated that certain resources such as Crushers, Batching Plants, Yards were deficiently deployed, and I confirm the same for CTP-2. Additionally, I was also shown Exhibit C-134, wherein the Claimant has acknowledged the deficiency in the mentioned resources but claimed that their unavailability did not hinder the progress of the work, which I find to be unreasonable and unsound.

<sup>12</sup> Exhibit C-96, MPR for August 2016

<sup>13</sup> Exhibit C-96, MPR for August 2016

<sup>14</sup> Exhibit C-96 Part-7, Pg. 97274

<sup>15</sup> Approved CCP

<sup>16</sup> Exhibit C-96, MPRs of the

<sup>17</sup> Approved CCP

<sup>18</sup> Exhibit C-96, MPRs



40. I refer to a detailed comparison of the actual mobilization and commissioning dates of all 6 Crushers with the planned dates, which is attached with this statement as **Exhibit R-297**. It clearly demonstrates significant delays in the mobilization process, contradicting the Claimant's assertion that there were no delays in the Project execution as a result of the delayed mobilization of Crushers. I say that the first crusher was installed in CTP-2 at Salaria crusher in May 2014. Also, crusher at Sangwara was not in initial planning but it was taken later from another highway project being executed by L&T.
41. I refer to a detailed comparison indicating the actual mobilization and commissioning dates of all the 9 Batching Plants and 4 Casting Yards, respectively, compared to the planned dates, which is attached with this statement as **Exhibit R-298**. I confirm that there were significant delays attributable to the Claimant. These exhibits clearly demonstrate that the Claimant failed to meet the planned dates for mobilization and commissioning, further indicating their responsibility for the delays in the Project.
42. I affirm that even after the establishment of batching plant, the Claimant took a considerable time to get Mix Design of concrete approved as there were multiple failed trials while seeking the “most economical design” by the Claimant. This trial & error method by the Claimant took almost 8 months and the first mix design was approved on 27 September 2014 for CTP-2 without which concrete production could not be started and last mix design was approved on 06 August 2020 as referred from the RFIs attached and marked herewith as **Exhibit R-299**.

**b. Claimant's delays in execution of Earthwork**

43. I say that, due to lack of adequate resources at the site and improper planning and mobilization, the Claimant was unable to take possession of the land and commence the earthwork activities.
44. Further, in the CCP submitted by the Claimant on 05 December 2013 it was projected by the Claimant that earthwork was to commence on the following dates in the following sections of CTP-2 wherein earthwork in the last section of CTP-2 stretch was to be commenced by 19 May 2014 as shown below:

Sections	Planned dates for commencement of Earthwork	Actual dates for commencement of Earthwork	RFI Reference No.
Marwar to Chandawal	06-Feb-14	30-Jan-15	CTP2/C/WS100/CC4.4/1999
Chandawal to Haripur	11-Mar-14	19-Dec-14	CTP2/C/WS93/CC4.4/1202
Haripur to Bangurgram	17-Mar-14	18-Dec-14	CTP2/C/WS78/CC4.4/1177
Bangurgram to Sardhana	02-Apr-14	13-Jul-15	CTP2/C/WS74(1)/CC4.4/9287
Sardhana to Madar	15-Apr-14	28-Jan-16	CTP2/C/WS70(2)/CC4.4/22835
Marwar to Bhinwalia	02-May-14	29-Aug-14	CTP2/C/WS106/CC4.4/441
Bhinwalia to Jawali	22-Feb-14	20-Sep-14	142
Jawali to Biroliya	06-Mar-14	08-Nov-14	328
Biroliya to Keshavganj	20-Mar-14	17-Jul-14	36

Sections	Planned dates for commencement of Earthwork	Actual dates for commencement of Earthwork	RFI Reference No.
Keshavganj to Banas	07-Apr-14	20-Jan-14	111/EV2 OGL
Banas to Swarupganj	17-Apr-14	21-Feb-15	1182/EV2 OGL
Swarupganj to Shriamirgarh	06-May-14	18-Mar-15	1534/ EV2 OGL
Shriamirgarh to Iqbalgarh	19-May-14	26-Dec-14	659/EV2 OGL

45. From the table, it is evident that there was substantial delay in taking up earthwork in all the sections except one (Keshavganj to Banas). Further, the major reasons for the delay in taking up the Earthwork and the formation works which are the pre-requisites to the completion of track works are:

- i. Deficient Deployment and Engagement of Sub Contractors
- ii. Delay in blanketing works over completed embankment/subgrade

**i. Delay in Engagement/ Deployment of Subcontractors**

46. The Claimant failed in the timely deployment of sub-contractors. As per the LOIs issued by the Claimant, it is highlighted that the First LOI was issued on 24 March 2014. I recall that as on May 2014, no earthwork subcontractor was active at the site, whereas the scheduled commencement date for earthwork at CTP-2 was 6 February 2014<sup>19</sup>. The same could be inferred from the engagement letters/ LOI of the subcontractors for subletting the earthwork, which shows that the first LOI for CTP-2 was issued on 3 April 2014. A detailed log of LOIs<sup>20</sup> issued to sub-contractors is attached as **Exhibit R-300**.

47. Also, there were frequent stoppages of work due to untimely/ delayed payments to these subcontractors which severely impacted the progress of works. I also noticed that sub-contractors were quitting after 3-4 months leading to discontinuity/ lack of resources at the site.

**ii. Delay in blanketing works over completed embankment/subgrade**

48. Even after the Claimant completed sufficient quantity of embankment in many sections, however, the blanketing work was either not started or minimal progress was achieved. This was due to inadequate resources mobilized at the Site. The Claimant was supposed to commence blanketing work immediately upon completion of the subgrade. However, as seen from the attachment of Exhibit R-160, there are 8 sections wherein subgrade had been completed by xxx date but the blanketing work was not even started by the Claimant as on 31 August 2016. This ultimately delayed Track Laying works.

49. The progress of earthwork in Packages C and D as of the month of September 2015, i.e., during the commencement of track works is summarised below:

<sup>19</sup> As per approved CCP

<sup>20</sup> Documents produced by the Claimant under the Document Production Request No. 12

Package-C (Km 286-458) - The progress of top layer i.e., blanket is -NIL, and in

Package-D (Km 459- 631) - The progress of blanket is NIL, further, even the lower layer of Subgrade is completed only in 5 Km.

Sections	Actual Start Dates for commencement of Blanket works	RFI Reference No.	Actual Finish Dates for completion of Blanket works	RFI Reference No. attached as Exhibit R-301 (Colly).
Marwar to Chandawal	14-Sep-16	CTP2/C/WS95/CC4.4/43131	28-Nov-20	CTP2/C/WS102/CC/4.4/265450
Chandawal to Haripur	3-Nov-15	CTP2/C/WS93/CC4.4/29007	31-Aug-20	CTP2/C/WS91/1/CC4.4/150377
Haripur to Bangurgram	22-Apr-17	CTP2/C/WS90/CC4.4/74418	31-Oct-20	CTP2/C/WS80/1/3/4.4/263454
Bangurgram to Sardhana	2-Jan-17	CTP2/C/WS73/CC4.4/54444	31-Oct-20	CTP2/C/WS70/1/4/CC4.4/263334
Sardhana to Madar	22-Dec-16	CTP2/C/WS65/CC4.4/52884	30-Nov-21	CTP2/C/WS103/CC/4.4/277948
Marwar to Bhinwalia	26-Nov-15	CTP2/C/WS103/CC4.4/17426	28-Feb-18	CTP2/D/WS109/4.4/70836
Bhinwalia to Jawali	28-Oct-16	CTP2/D/WS109/CC4.4/26688	1-Mar-21	
Jawali to Biroliya	8-Sep-17	CTP2/C/WS106/2CC4.4/91372	29-Feb-20	CTP2/D/WS124/4/4.4/201501
Biroliya to Keshavganj	6-Oct-17		1-Mar-21	
Keshavganj to Banas	13-Dec-16	CTP2/D/WS125/1/4.4/29565	20-Mar-20	CTP2/D/WS125/1/3/2/4.4/204100
Banas to Swarupganj	31-Jul-19	CTP2/D/WS128/3/1/4.4/156095	30-Sep-21	
Swarupganj to Shriamirgarh	13-Aug-18	CTP2/D/WS131/1/2/4.4/93696	30-Sep-21	CTP2/D/WS135/4/1/4.4/253682
Shriamirgarh to Iqbalgarh	27-Dec-18	CTP2/D/WS139/2/2/4.4/112050	30-Sep-21	CTP-2/D/WS141/3/24.4/253690

### c. Claimant's delays in execution of Major Structures

50. According to the Claimant's baseline plan, the Claimant had represented that the works of Major & Important Bridges were to be taken up simultaneously and would be completed, independent of formation works, before the commencement of track works in the stretch. However, despite there being no hindrances in the execution of the structure works, the Claimant still delayed their execution.
51. I say that because of non-completion of works of major & important bridges the track laying activities could not be undertaken. The Claimant has attempted to link its delay to the alleged non-handing over of site by the Respondent. However, as per the plan and undertaking of the Claimant the works towards major & important bridges works

were to run independently of the formation works, there was no linkage between handing over of land with the execution of works at the locations of major & important bridges as these were under the direct control of State Government and did not require land acquisition.

52. Furthermore, it is evident that there was no progress made in any of the bridges until December 2014, and this lack of progress continued to January 2015 as per page. 2 of Exhibit R-41, Sl. No. 2.2, where it is indicated that the progress of all the bridges up to December 2014 and during the month of January 2015 is reported as NIL. It is pertinent to mention here that the Engineer has expressed concern in his report regarding the lack of progress in the bridges, stating "No progress is of concern." In the baseline programme, the work of the bridges is planned to be started by 24 February 2014.
53. For Major Structures, the progress as shown in MPRs constitutes the production of aggregates for concrete and ballast and other various activities, which are not to be accounted for considering the progress of track works.
54. Thus, the actual status of major activities of the Major Structures under MS-3 can be inferred from the below table where it is evident that there was minimal/ significantly low progress of major & important bridges was achieved in CTP-2 along with no/ zero progress in RFOs and ROB:

Sl. No.	Activity	Planned %	Completed %
4.2.a	Important Bridges/ Viaducts	98.10%	30%
4.2.b	Major Bridges	98.10%	33%
4.2.c	RFO	100.00%	0%
4.2.d	ROB	99.00%	0%

**d. Claimant's delays in execution of Minor Structures**

55. I say that the responsibility for taking approvals for RUB from IR was with the Claimant's, but the Claimant was unable to seek such approvals, However, the Claimant kept raising such frivolous issues to justify delay in the Project works. The Respondent issued necessary token approvals to initiate the works for the remaining RUBs as mentioned in Exhibit R-250.
56. I say that such approval was given in the interest of the work and to reduce additional time which would have been consumed for the said work. Despite such cooperation by the Engineer and the Respondent, the Claimant failed to make timely progress with the work. This can be attributed to a lack of planning, inadequate allocation of resources, and shortage of technical staff at the Project site to carry out execution work in a planned manner by the Claimant.

57. For Minor Structures, the progress as shown in MPRs constitutes the production of aggregates for concrete and ballast, which are not to be accounted for considering the progress of minor structures.
58. Thus, the actual status of major activities of the Minor Structures under MS-3 as on 31 August 2016, can be inferred from the below table where it is evident that minimal/ significantly low progress was achieved in CTP-2:

Sl. No.	Activity	Planned %	Completed %
4.3.1	On completion	97.71%	31.61%
	Excavation	100%	36%
	PCC	99%	33%
	Foundation & Wall / Precast Box	98%	38%
	Slab Casting / Precast Erection	96%	31%
	Backfilling	94%	2%
	Miscellaneous	93%	17%

59. A letter of slow progress dated 29 January 2016 was issued to the Claimant attached herewith and marked as **Exhibit R-302**, wherein it was clearly highlighted that the Claimant was not able to take up the bridge works in Package D as required, mainly due to shortage of resources. A snippet of Appendix C describing the status of work in those bridges as attached below:

STATUS OF WORK		APPENDIX -C
Bridge	Status of work	Remarks
MUB 614	Last concreting activity done - pier p1 raft : 21/10/2015 , All pier foundations completed	Pier shutter not available
MUB 615	Box cell completed dated : 4 Nov 15 . Return wall yet to be taken up	No workers
MUB 616	Box cell completed dated : 3 Nov 15 . Return wall yet to be taken up	No workers
MUB 617	Last Concreting activity done - pier p3 raft : 30/11/2015 , All pier foundations completed	Workers shifted other locations Pier shutter not available
MUB 619	Raft and wall work in progress 04/12/2015	
MUB 621	Raft and wall work in progress	
MUB 622	Raft and wall work in progress	
MUB 623	Deck slab and wall work in progress	
MUB 624	Deck slab and wall work in progress	
MUB 630	Last Pier lift casting date : 10 Oct 15	Labour shifted other location
MUB 635	Foundation work in progress , substructure yet to be commenced	Pier shutter not available
MUB 644	Work in progress	
MUB 645	Abt and pier foundation completed	Labour shifted other location
MUB 646	Abt and pier foundation completed	Labour shifted other location
MUB 666A	Slab casting done 19/05/2015	No labour available
MUB 711	Slab casting done 10/04/2015	No labour available
MUB 675	Abt and raft work in progress	
MUB 803	Abt and raft work in progress	
MUB 809	Raft work in progress	
MUB 829	Piling work in progress	

**e. Claimant's delays in execution of Track works**

60. I assert that the execution of track works primarily requires procurement/ production and laying of ballast, sleepers, and welded rails and subsequently, linking of tracks by NTC machine.
61. It is notable that the track works constitute 38.6% of the Accepted Contract Price, i.e., forms the major constituent of the Project as defined under Schedule 4 of the Contract<sup>21</sup>. The Claimant's progress in this critically important component of works was very dismal in CTP-2.
62. For Track works, the progress as shown in MPRs constitutes production of aggregates for concrete and ballast and other various activities such as order of rails, set up & commissioning of sleeper plant at Marwar, which are not to be accounted for considering the progress of track works.
63. Thus, the actual status of major activities of the Track works under MS-3 as on 31 August 2016 can be inferred from the below table where it is evident that there was no/ nil progress of ballast spreading and track linking was achieved in CTP-2:

<sup>21</sup> Executive Summary - Price Schedule Breakup of Contract Price for Payment

Sl. No.	Activity	Planned %	Completed %
<b>Supply of Rails</b>			
2	Delivery - HH Rails	97%	50%
4	Delivery - 60 Kg UIC Rails	97.80%	0%
6	Delivery - Points & Crossings	95.00%	0%
8	Delivery - Track Fittings (GRSP, Metal Liner,	89.30%	0%
<b>Supply of Sleepers for Main Line</b>			
3	Production of Sleepers at Marwar	86.20%	0%
<b>Laying initial Ballast Layer and Track for Main Line</b>			
1	Production of Welded Rail Panels	70.60%	0%
2	Initial Ballast Spreading and Rolling	60.30%	0%
3	Skeleton track laying	48.40%	0%
<b>Laying initial Ballast Layer and Track for Loop Line</b>			
1	Production of Rail Panels	70.60%	0%
2	Ballast Spreading and Rolling	60.90%	0%
3	Skeleton track laying, Welding & Tamping	52.60%	0%

64. From the above table it is evident that the progress of track works was negligible, and no progress was achieved for the certain activities such as delivery of rails, crossings, track fittings, sleepers, rail panels, etc. which are unrelated to alleged events such as delay in site access and design approvals. Also, as on 31 August 2016, no track-linking activity had been undertaken in CTP-2.
65. I affirm that the Claimant's failure to comply with these essential factors significantly impacted the progress of the track works and subsequently led to delays in the overall project timeline.

#### **e(1)- Delay in Production/Procurement of Track Materials: Sleeper and Rails**

66. The Claimant in its Narrative to the CCP had represented that the manufacturing and procurement phase shall be commenced prior to the commencement of the works. The Claimant had also represented that it shall commence the Sleeper and Rail Welding Plants at Marwar Depot<sup>22</sup> for production of rail panels and sleepers as detailed in the table attached herewith as **Exhibit R-303**.
67. In terms of the CCP submitted along with the letter dated 05 December 2013 (C-6), the Claimant had planned to procure and/ or produce materials for both CTP-1 and CTP-2 stretches, respectively as follows:
- The sleepers were planned to be produced between August 2014 to December 2016 for CTP-2.

<sup>22</sup> Narrative to the Approved CCP

- b. The Rails were to be procured between May 2014 to September 2016. Further, the Rails were planned to be welded between September 2015 to December 2016 for CTP-2.
  - c. The P-way fittings were to be procured between December 2014 to November 2016.
68. As per the planned production rate of the sleepers, it was envisaged that for CTP-2 stretch, it was to be commenced on 26 August 2014 at Marwar Depot, i.e., 17 months prior to the commissioning of track works. However, I state that there was considerable delay in the commissioning of the Sleeper Plants at the Marwar depot. The Marwar sleeper plant was commissioned and validated by RDSO on 21 October 2016. I say that this period was significantly later than that provided under the CCP. Furthermore, it is worth noting that as of 31 August 2016, the sleeper plant in CTP-2 had not yet commenced its operations.
69. Furthermore, the rails were to be procured and welded at the Flash Butt welding plants which were to be set up at Marwar Depot as per the timeline specified in the Narrative to CCP. However, there was a significant delay in the setup of the FBW plants, as indicated in the Monthly Progress Reports (MPRs), and MPR meetings which resulted in a delay of nearly a year in the commissioning of both plants compared to the planned dates.
70. As shown in Para No. 328 of the Rejoinder, the Claimant has acknowledged the delayed commissioning of the plant, but has stated that it did not cause any delay in the progress of works without providing any justification for this claim.
71. I say that the procurement and production of track materials were independent activities that were planned to be taken up prior to commencement of track installation. The laying of tracks is a dependent process, which necessitates the presence of sleepers and welded rails to be positioned on the prepared ballast formation in continuous stretches of at least 1.5 km/day.
72. The actual progress of Sleepers, Ballast Rail supply and Track Linking is provided in each Weekly Progress Report (“WPR”). Weekly progress reports as maintained by Engineer for last week of each month from Apr-2015 to August 2016 are attached as S. No. 19 of Exhibit R-269.
73. The correspondences, progress reports, and documented discussions between the parties clearly highlight the Claimant's slow progress and resource deployment issues. It is evident that the Claimant's failure to adhere to the planned procurement and production timelines for track materials, specifically sleepers and welded rails, has had a significant impact on the progress of the Project. These deficiencies and delays in the procurement and production of track materials are solely attributable to the Claimant.



74. The availability of an adequate sleeper plant was a significant issue during the Project which was not commissioned until 21 October 2016. However, it is clear that the Contractor was not adequately prepared for track linking, even when a continuous stretch was available for installation by NTC machine. These factors further contributed to delays in the Project timeline and hindered the smooth progress of track installation activities.

**e(2) Delay in Production & Spreading of Ballast**

75. I affirm that the Claimant delayed the procurement of ballast (which is a long-lead item) as the Claimant was unable to identify quarry timely and even the approved quarries could not meet the requirement. I affirm that no ballast laying was done for CTP-2 till 31 August 2016.
76. As part of the Project's Scope of Work, the Claimant was responsible for constructing numerous bridges and viaducts, as well as carrying out the necessary earthwork and spreading of ballast throughout the entire Project Stretch. These activities were essential in preparing the formation works which was a pre-requisite to facilitate the subsequent track works.
77. However, the Claimant repetitively mentioned the obstructions and discontinuities in the stretch. As per my knowledge most of these discontinuities were due to incomplete/deficient works in Minor Bridges, Major Bridges, RUBs, shifting of utilities, etc. Continuity with respect to the laying of ballast is dependent on the bridge gaps as well. An average MJB or IMB in CTP-2 required 1.5 to 2 years to complete and there were 94 Major + Important Bridges (83+11) respectively in CTP-2.
78. I say that as of 31 August 2016, the track-linking works could not be taken up as there were discontinuities/gaps in the sections of the Project due to incomplete structures or approach works. The major cause of this delay can be mainly attributed to the initial delays on the Claimant's part in design submissions of these structures & insufficient resources while execution. The same could be referred to from the table attached in **Exhibit R-304**.
79. I also affirm that total time taken to execute activities till laying of ballast in a stretch is envisaged to be much higher than time required to lay tracks by a NTC machine. CCP shows a comparison of period required to complete works till ballast laying after handover of land against time required by NTC machine to lay the tracks.
80. Ballast is a long lead item the procurement of which has to be progressed simultaneously to the earthwork and is not achievable if waited till the commencement of track linking works. The Claimant was time and again reminded to put ballast as soon as possible to protect the blanketing done.

81. The Engineer also noted that the progress for the ballast supply, being long lead and critical item for laying of the track, was severely falling short against the target/ asking rate of production as could be referred from Exhibits R-72 & R-81.
82. Thus, if the Claimant has completed ballast spreading in advance before the NTC movement, it would rather facilitate the NTC movement as more stretches would be available to NTC machine.

**e(3) Deficient mobilization of NTC & other Track Machines**

83. As per the Technical Proposal submitted by the Claimant<sup>23</sup>, the Claimant had suggested two NTCs to be facilitated from the two planned depots, i.e., Bhagega & Marwar Depots for CTP-1 and CTP-2, respectively.
84. As per my experience, keeping in mind the output of NTC machine in other similar projects, a single NTC machine could not have completed the track works within the stipulated timelines as envisaged in the CCP. Accordingly, the Claimant's proposal for two NTC machines in Technical Bid was reasonable and the Contract was awarded considering two NTC machines.
85. However, once the Contract was awarded to the Claimant, it changed its position and planned its works on the basis of a single NTC machine with an assumed output/productivity per day. In this regard, it is important to highlight that in the post-bid queries submitted by the Respondent on 05 March 2013, and clarified by the Claimant on 08 March 2013<sup>24</sup>, the Claimant had confirmed (in response to the query addressed in Sr. No. 53 of the said letter by the Respondent who had highlighted the fact that the no. of equipment is only suggested with an assumed rate of production and was required to be revised if the assumed rate or lead was not achievable due to any reason) that it would mobilize adequate resources, as extracted below:

53	Pg. 275-282 of Volume C, Part 1/4	Total nos. of equipment proposed are based on certain assumed rate of production output, with certain assumed lead without giving supporting calculations	In case, the said assumed production rate/lead is not achievable due to any reason, the proposed equipment shall be supplemented suitably to achieve various specified Milestones/ Coordinating Events/ Completion Time.  Bidder to confirm.	We confirm our commitment to mobilize adequate Resources including Plants and Equipment to achieve the specified Milestones/ Co-ordinating events/ Completion Time.
----	-----------------------------------	---	--	---

<sup>23</sup> Methodology of Track Works, Part – 5 of the Contract Agreement

<sup>24</sup> Page 1335 to 1352, Part – 4 of the Contract Agreement

86. I say that the assumed output mentioned by the Claimant to progress the track linking works with a single NTC machine was unrealistic and the Claimant was far from achieving the desired progress. I affirm that the NTC was not even able to achieve the desired output rate of 1.5 km/day as per the brochure of the NTC machine produced by Harsco Rail. It is also clear from the NTC movement register attached as Exhibit R-251, wherein the average progress of track linking done from 24 September 2015 to 31 August 2016 is only 0.24 km per day attached herewith and marked as **Exhibit R-305**.
87. There is only one instance as on 31 July 2017, wherein the Claimant was able to lay track of a length of 3.25 TKM in CTP-1 stretch, i.e., in Pacharmalikpur to Phulera section, which is beyond the cut-off date of the current analysis. However, even there, it is pertinent to mention that after achieving 3.25 TKM on 31 July 2017, the NTC went under maintenance, and no track was laid till 13 August 2017 as can be seen from Exhibit R-251.
88. Given the slow rate of progress achieved, the Respondent issued various letters and/ or notices to the Claimant from January 2015<sup>25</sup> for the deployment of the 2<sup>nd</sup> NTC machine. However, deployment of the 2<sup>nd</sup> NTC machine was also delayed by the Claimant until May 2017, after the planned completion of MS-3, attached as **Exhibit R-306**.

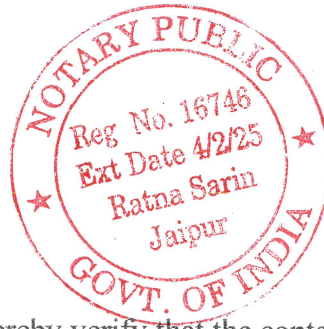
#### **e(4)-Poor Planning of NTC Operations**

89. According to CCP, in CTP-2 commencement of track installation was planned from 23 February 2016 from Marwar to Chandawal.
90. In order to meet the Project's specified timelines for CTP-2, the Claimant was required to simultaneously undertake work on the entire project stretch and complete the pre-track linking tasks. However, upon observing the actual site conditions and the progress of work, it became apparent that the Claimant has deployed resources in CTP-1 package only and then only its additional resources, if any, have been allocated for carrying out works in CTP-2 package.
91. I say that the Claimant failed miserably in planning of predecessor activities (such as blanket laying over completed subgrade, filling of bridge gaps along with construction of approach slabs & laying of ballast) which resulted in incomplete patches of formation. These incomplete patches by the Claimant resulted in "discontinuous stretches". I have attached relevant photographs of a few such instances as **Exhibit R-307** where NTC machine's movement was restricted, and it was idle due to incomplete patches in between.

---

<sup>25</sup> Exhibit R-38

I affirm that the contents of this witness statement are true and correct to the best of my knowledge and belief. I affirm that the statements made hereinabove are based upon my own knowledge, including my review of documents and records maintained by the Respondent and the Engineer in regular course of the Project. Although I have been assisted by counsel of the Respondent in preparing this witness statement, I confirm that it contains my true testimony as to the matters addressed herein. I am able and willing to testify to the matters stated in this witness statement if required to do so.



  
30.06.23  
DEPONENT

#### VERIFICATION

I, the Deponent above named, do hereby verify that the contents of the foregoing affidavit are true and correct. Paragraphs 1 to \_\_\_ of the affidavit are based on my personal knowledge and knowledge as derived from the records of the Project. No part of the present affidavit is false and nothing material has been concealed.

Verified at Jaipur on this 30 day of June 2023.



  
30.06.23  
DEPONENT