

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

REPLY WITNESS STATEMENT BY MR. ANURAG SHARMA

(RESPONDENT'S WITNESS NO. RW-1)

3 AUGUST 2023



Advocates for the Respondent

AKS Partners

1. I, **Anurag Sharma**, an Indian citizen aged 54 years, R/o B-1001, Mahima Elanza, Patrakar Colony, Mansarovar, Jaipur-302020, presently working as Chief General Manager with Dedicated Freight Corridor Corporation of India Limited (“DFCCIL” or the “Respondent”) in CTP-1 & CTP-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, on 30 June 2023¹ gave a witness statement on behalf of the Respondent, in connection with the claim that Sojitz-L&T Consortium (Claimant) is bringing in arbitration against Dedicated Freight Corridor Corporation of India Limited (DFCCIL or Respondent).
3. Pursuant to Procedural Order, I hereby make this second witness statement in connection with the same arbitration. In this statement, I will respond to a number of matters raised by the Claimant’s witnesses in its statements served on 07 July 2023², in particular, a detailed reply to the witness statement of Mr. Krishna Kumar R. (CW-1), in support of the Respondent.
4. I have also provided a reply to the portions relevant to my domain for other Claimant’s witnesses namely, Mr. Dhaval Dekivadiya (CW-2), Mr. Ashish Kumar (CW-3), and Mr. Naoki Kazama (CW-4). I will also provide evidence connected to my response to these witness statement.
5. Where facts and matters in this supplementary witness statement are known personally to me, they are true and where they are not known personally to me, they are to the best of my knowledge, information, and belief, including my review of documents and records maintained by the Respondent (DFCCIL) in the regular course of business, including information obtained from third parties.
6. I say that the contents of my Witness Statement dated 30 June 2023 (RW-1), should be read with this reply statement and I am not repeating matters stated there for the sake of brevity.

¹ Respondent’s Witness Statement of RW-1

² Claimant’s Witness Statements of CW-1 to CW-4

SECTION -1

REPLY TO MR. KRISHNA KUMAR R.'S WITNESS
STATEMENT (CW-1)

My overall comments on Mr.Kumar's witness statement

7. While reviewing Mr. Kumar's witness statement, it seems to me that there are various aspects of it that require no response as they express certain matters of fact and opinions of the Claimant and/or relate to matters that are not of relevance to the proceedings. Accordingly, I do not respond to these statements. The fact that I have not done so does not mean I accept Claimant's position or Mr. Kumar's— which, in large part, I do not.
8. My overall comments on Mr. Kumar's statement are:
 - i. At places, Mr. Kumar has presented his interpretation of the Agreement. I have not responded to those matters as I understand that contractual provisions should be interpreted by the legal counsel and the Tribunal and is not something that I should comment on as a factual witness.
 - ii. Mr. Kumar discusses his past experiences in the industry and his affiliation with the Claimant. I note that Mr. Kumar's expertise has predominantly been in Contract Management, both during this Project and prior to it.
 - iii. Mr. Kumar only occasionally attended the Monthly Project Review Meetings where various Project-related matters were discussed. However, he was not involved in technical, administrative & execution-related matters.
 - iv. I say that Mr. Kumar was not marked in all the correspondence to which he makes reference in his statement. Also, he was not a signatory for any communications.
 - v. I do not believe that Mr. Krishna Kumar has any personal knowledge of the facts and circumstances of the present case because he was not present on the site throughout the period. I am therefore surprised to find statements from Mr. Krishna Kumar regarding aspects such as Project Execution, and technical specifications of CTP-1 & CTP-2, which cannot be within Mr. Kumar's knowledge given that he was primarily involved in contractual aspects of the Project.

I have given paragraph wise response to Mr.Kumar's witness statement in following paragraphs:

Response to paragraphs 1 to 21

9. The contents of **paragraphs 1, 2, 5, and 7** of the CW-1 do not require any reply.
10. The contents of **paragraph 6** of the CW-1 are a matter of record and require no reply. However, whether the Claimant is entitled to Adjustment for Changes in cost will depend on whether the EOT grant was based on events for there is an entitlement to cost; and/or whether the Claimant was in concurrent delay during all or part of the same period.

11. The contents of **paragraphs 8 to 11** of the CW-1 provide the background and qualifications of Mr. Krishna Kumar R. and require no reply.
12. The contents of **paragraphs 12 to 17** of the CW-1 are denied for the want of knowledge.
13. In addition to the contents of **paragraph 18** of the CW-1, it is clarified that the present arbitration proceedings are in relation to the civil & track works between Rewari (Haryana) and Iqbalgarh (Gujarat) on the Western Corridor of approximately 648.575 kilometres, not 626 kilometres.

Response to paragraphs 22 to 25

14. The contents of **paragraph 22** of the CW-1 are a matter of record and do not require any reply.
15. Regarding **paragraph 23** of Mr. Kumar's statement, I would like to clarify that the Claimant planned its works for the 21 sections³ to be executed in parallel, regardless of the sequence in which Milestones were to be achieved.
16. As per the Contract, the Milestones were to be achieved within specified timelines⁴, and the achievement of any Milestone was subject to various prerequisites and contractual obligations that needed to be fulfilled. Thus, while the achievement of Milestone 3 was to occur prior to the achievement of Milestone 4, the commencement of the works that were part of Milestone 4 did not require the achievement of Milestone 3 completely and such works could have commenced in parallel wherever the front or a section was available to the Respondent or the Interfacing Contractors for the succeeding activities post track linking.
17. I must emphasize that it is evident from the timelines that the milestones were not intended to be taken up sequentially but simultaneously. This does not imply that all works could be executed simultaneously; certain elements of the work would logically precede others. This, however, would depend on the specific activity and would be restricted to the location where the activity was being carried out.
18. Based on my knowledge and experience, I can assert that the additional time between any two Milestones is not adequate to enable sequential commencement and achievement of Milestones. In light of this, I have carefully examined Exhibit C-125, which Mr. Kumar referred to, and I have included my comments on the same attached herewith and marked as **Exhibit R-319**.
19. In response to **paragraph 24** of Mr. Kumar's statement and based on the provided observations, I do not agree that the Claimant is entitled to any additional cost. There

³ Para 242 of the Rejoinder

⁴ Para No. 11 of the SOD

was delay by the Claimant due to non-conformance with requirements⁵ under the Contract and non-deployment of sufficient resources⁶ in both CTP-1 and CTP-2 as required.

Response to paragraphs 26 to 29

20. In reference to **paragraph 27** of Mr. Kumar's statement, I assert that the Contract in question is an EPC Contract, and the volumetric quantities mentioned by the Claimant are not included in the Contract Agreement. It seems that the Claimant has presented these quantities based on its own calculations, but I am unable to verify the accuracy of this information without the given references or supporting calculations.
21. In response to **paragraph 29** of Mr. Kumar's statement, I say that the linearity of the physical alignment, or indeed that the NTC machine "*operates in forward linear direction*", did not dictate the manner in which the execution of the Works is to be carried out, much of the work in which was to be "progressed concurrently". The Project's linearity pertains to its geographical stretch and does not impose a strict requirement for functional linearity, allowing for flexible and efficient execution of works progressed concurrently in both the packages, CTP-1(9 sections) & CTP-2(11 sections).
22. Furthermore, the need for NTC operation to be taken up in sequence was due to the Claimant deploying only one NTC at the site. If two NTCs had been deployed in a timely manner, the work could have been executed simultaneously in both the packages from the two depots respectively⁷. This would have potentially expedited the Project and mitigated the current constraint of operating in only one direction.

Response to paragraphs 30 to 33

23. In **paragraphs 30 to 33** of Mr. Kumar's statement, Mr. Kumar highlights details of the submission and approval of the CCP⁸. However, these paragraphs do not show the complete picture pertaining to the CCP. In reference to this, I make the following points below.
24. I say that NONOC to the CCP for both the packages CTP-2 and CTP-1 was provided on 06 February 2014⁹ and 23 May 2014¹⁰ respectively with comments to update the CCP as per the actual progress of the works which was observed to be slow.

⁵ Detailed in Section IV of the SOD

⁶ Section IV (C) of the SOD

⁷ Para 23 of the SOD

⁸ Para No. 63 to 72 of the SOC

⁹ Refer to Exhibit R-275 (Colly)

¹⁰ Refer to Exhibit R-275 (Colly)

25. I have compiled correspondences exchanged between the Parties related to CCP in this regard¹¹. In addition to this, I have also highlighted several shortcomings and issues in the Claimant's CCP along with updated and revised submissions. These issues include:
- a) Delayed submission of the revised CCP (that too only in hard copy) on 5 December 2013¹².
 - b) Delay in providing required Primavera Software as per the Contract¹³.
 - c) Discrepancies between planned dates and actual progress pointed out by Respondent and Engineer as on 06 February 2014¹⁴.
 - d) Failure to provide resource-loaded programme¹⁵ or financial S-curves despite request on 24 May 2014¹⁶.
 - e) Non-compliance with monthly submission of updated programmes as required¹⁷.
 - f) Neglecting to submit revised programme as and when requested by the Engineer and the Respondent¹⁸.
26. The CCP is an initial programme¹⁹ to plan the entire work within the given timeframe. It is subject to updates and revisions based on actual conditions and progress of the works²⁰.
27. The CCP can be revised based on actual progress and site conditions²¹. If there were any changes in the envisaged methodology as per the submitted CCP, the Claimant should have modified it accordingly to have projected/ target dates of completion and to mitigate the delays²². However, no such modifications were undertaken by the Claimant, and despite such issues and deviation in the progress of works, the CCP is the only programme for the Project.
28. The responsibility for planning and executing the Project in accordance with the contractual completion dates and milestones lies solely with the Claimant. It should be noted that the Engineer's approval of the CCP does not imply approval of the specific sequence of works between CTP 1 and CTP 2; this aspect is entirely the Claimant's prerogative and within their own plan and strategy.
29. I say that the reasons for the approval of CCP have been well-explained by the Respondent²³. The onus of envisaging every requirement for resources, planning,

¹¹ RW-1 of Witness Statement, Exhibit R-275 (Colly)

¹² Refer to Exhibit R-6 of the SOD

¹³ In accordance with Clause 12 [Software Support, Management and Control] of the Employer's Requirements [General] Volume II

¹⁴ Letter dated 06 February 2014, Exhibit R-275 (Colly).

¹⁵ Clause 6.2 of Appendix 5 [Project Programme Requirements] of the ER

¹⁶ Refer to Exhibit R-275 (Colly)

¹⁷ As specified in Clause 12.6 (3) of Appendix 5 to the Employer's Requirements

¹⁸ Paragraphs 5.3 and 5.4 of Appendix 5, Volume II, ER

¹⁹ Refer to Para Nos. 24 to 26 of the SOD

²⁰ Clause 5 of Appendix 5 (Employer's Requirements)

²¹ as specified in Para Nos. 246 and 247 of the SOD

²² Paragraphs 5.3 and 5.4 of Appendix 5, Volume II, ER

²³ Para No.24 (b) of the SOD

designing, and executing the Project was on the Claimant. The Claimant had to submit the CCP based on its prior experience, including risks, productivity, and quantity of resources assumed. Despite changes in the bid proposal and CCP, the Respondent approved it in the best interest of the Project, considering it as a lump-sum contract and trusting that a prudent contractor like the Claimant would be able to execute it.

Response to paragraphs 45 to 111

30. In **paragraphs 45 to 111** of Mr. Kumar's statement, Mr. Kumar extensively quotes from the SOC and Rejoinder, reiterating the delay events alleged by the Claimant as pleaded in the SOC. However, I am avoiding reiteration of paragraphs from the various submissions of this Arbitration. Instead, I will provide a summary of my opinion on the major issues surrounding these delay events which are in relate to my domain.
- i. **Response to alleged delay in the Engineer's consent/ Notice of No objection to the Contractor's design documents**
31. In response to **paragraphs 48 to 59** of Mr. Kumar's statement and in reference to design-related issues, I submit the following observations. The Respondent has already elaborated on these issues in the SOD²⁴, providing a detailed assessment of delays caused by the Claimant.
32. I say that the Respondent acted as the Engineer from the start of the Project until the Engineer was appointed²⁵. So, the Employer or the Engineer was available at the Project Site from the commencement of the Project to discharge the duties obligated to the Engineer as per the Contract Agreement and there was no delay due to alleged non-availability²⁶ of the Engineer.
33. I note that the Survey and Design being the preliminary/ initial works as per the Contract²⁷ and even as planned in the CCP were required to be executed by the Claimant. However, the Claimant had not timely deployed the Design Organization or team on the main site as and when required as highlighted in Exhibit R-277 (Colly).
34. I have provided a detailed response to the Claimant's allegations pertaining to delay in the appointment of the Engineer²⁸ and is evident that there was no delay on the part of the Respondent and neither there was any impact on the progress of the works.
35. The Claimant asserts delays in approval by the Engineer and delays in response to design submissions, but these claims overlook the Claimant's own delays²⁹. As per the

²⁴ Para Nos. 74 to 79, 177 to 184, and 304 to 307 of the SOD

²⁵ Clauses 1.1.2.4, 1.3 and 3.1 of Conditions of the Contract

²⁶ in Para Nos. 177, 178, and 291 of the SOD

²⁷ Schedule 4.1 of the Price Schedule under the Contract

²⁸ Para Nos. 36 to 41 of Witness Statement of RW-1

²⁹ Attachments 1 to 6 of the Engineer's Assessment filed under Exhibit R-160 and further detailed in Para Nos. 74 to 70 of the SOD along with the analyses filed under Exhibits R-247 and R-248 of the SOD.

Engineer's EOT assessment³⁰, no GAD was submitted by the Claimant complying with all requirements as per ER till April 2014³¹ and even beyond that.

36. I refer to Exhibit R-282 (Colly) which highlights issues in the design submittals by the Claimant through various correspondences prior to the appointment of the Engineer.
37. In response to **paragraph 50** of Mr. Kumar's statement, it is denied that the Respondent did not have the suitably qualified personnel and resources to the extent required for the performance of the duties of the Engineer as per the provisions of the Contract including for the time-bound review of the Claimant's Documents, which in turn delayed the approval of Technical Design.
38. I say that I have already provided comprehensive details of the qualifications and expertise possessed by the representatives of the Respondent/Engineer in my Witness Statement³². These details demonstrate that the Respondent's team was well-equipped with the necessary expertise to thoroughly review and assess the design submissions.
39. In response to **paragraph 51** of Mr. Kumar's statement, I say that though almost 90% of the design phase had elapsed by 23 April 2014, however, none of the drawings were ready for review and approval resulting in a severe delay in execution of the subsequent construction activities.
40. Though, I state that the Claimant's averment relating to purported delay on the part of the Respondent to appoint the Engineer, and the purportedly unilateral decision of the Respondent to function as Engineer, is of no consequence or relevance to the matters in dispute. The averments of the Claimant with regard to the delay in Technical Design is also incorrect. It is clarified that the submission of the Technical Design was conditional upon completion of the Survey, Validation, and Geotechnical Investigation which the Claimant failed to perform in accordance with the CCP.
41. Further, the Engineer could not give its NONO or even NONOC timely because the drawing and designs submitted by the Claimant were found to be deficient and not in accordance with the ER. The same has been detailed in my witness statement of RW-1³³ along with Exhibit R-282 (Colly)³⁴.
42. I say that the Claimant itself admitted³⁵ that it did not follow the procedures outlined in the ER, which resulted in delays in the review of the designs submitted by the Claimant. I would refer to a few important correspondences issued by the Engineer³⁶ which shows

³⁰ Exhibit R-160

³¹ S. No. 2 of Exhibit R-269 (Colly). of Reply to Rejoinder

³² Para No. 36 to 41 of Witness Statement of RW-1 and Exhibit R-280 of Witness Statement of RW-1

³³ Para 31 to 35 of Witness Statement of RW-1

³⁴ Para 39 of Witness Statement of RW-1

³⁵ Para No. 388 of the Rejoinder

³⁶ S. No. 2 of Exhibit R-269 (Colly). of Reply to Rejoinder

that the Engineer was prompt in issuing approvals despite the Claimant's procedural shortcomings.

43. I also assert that despite the availability of 80% of the land by 28 September 2013³⁷, and 95% of the land as on 31 January 2013³⁸, there was no/ nil progress in earthwork by the Claimant until June 2014. This delay (against the alleged delay in handing over of unencumbered land) was primarily due to the poor submissions of designs & drawings by the Claimant, leading to the non-approval of the P&P Drawings within the stipulated timelines³⁹.
44. The Engineer's instruction was in line with the Contract provisions. I say that it was the Contractor's responsibility⁴⁰ to ensure that its design submissions were accurate and compliant with the Employer's Requirements and Technical Specifications and ready to use. The Contractor had the obligation to adhere to these requirements to avoid any delays or issues in the approval process.
45. In response to **paragraph 56** of Mr. Kumar's statement, I say that Mr. Kumar's assertions are wrongful and denied, wherein the Claimant had showcased the delays in approval of various designs/ reports, i.e., the over-review period without highlighting its own delays in submissions and resubmissions (more than one cycle due to poor design quality and/ or lack of standards/ specifications required) of these documents resulting in subsequent delays in finalization of the designs/ reports highlighted vide various correspondences⁴¹.
46. In response to **paragraph 57** of Mr. Kumar's statement I say that in my first witness statement⁴², I have already detailed the shortcomings and issues during the execution of design-related activities, including piecemeal submissions, deficient design submissions, and poor-quality designs causing delays. These observations address the various issues related to design submissions, delays, and the respective responsibilities of the Claimant and the Engineer in the design process.

ii. Response to alleged delay due to change in Law requiring prior EC by the State

47. In **paragraphs 60 to 69** of Mr. Kumar's statement, Mr. Kumar revisits and emphasizes previous excerpts from the SOC, where the Claimant had set out the concerns raised by it with the Respondent regarding Environment Clearances (EC)⁴³.

³⁷ From Rewari to Madar, CTP-1

³⁸ From Madar to Iqbalgarh, CTP-2

³⁹ Para 67 and 68 of Witness Statement of RW-4

⁴⁰ As per Cl. 1.2 & 5.2 of ER-Design-Part-2 of the Contract

⁴¹ S. No. 2 of Exhibit R-269 (Colly), Exhibit R-282 (Colly), Exhibit R-318

⁴² Section E (b) of Witness Statement of RW-1

⁴³ Para Nos. 90 to 98 of the SOC

48. I note that in response to these allegations, the Respondent has provided a detailed reply in the SOD⁴⁴. Further, I presented facts and correspondences pertaining to the said issue in my witness statement⁴⁵. Here I submit my further observations on the matter.
49. I say that the contents of **paragraphs 61 to 64** of the CW-1 are incorrect. As far as I am aware⁴⁶, the restriction imposed in the State of Rajasthan on the grant of mining leases for minor minerals for areas of less than 5 ha. and the subsequent stay granted by the NGT cannot amount to a change in legislation as per clause 13.7 of the GCC read with the PC.
50. I say that the contents of **paragraphs 65 to 68** of the CW-1 are also incorrect. It is not correct that the Claimant could not commence work till the approval for the mining of earth and stones was obtained. On the contrary, the Claimant neglected in obtaining the EC as mandated by law before the commencement of the project works. This is what led to the delays in the Project. These delays were to the Claimant's account.
51. It should be noted that the requirement for prior Environmental Clearance for mines and minerals was there even before base date of the Contract. The amendment of 9 September 2013 was a reiteration of earlier requirement obtain prior environmental clearance for mining activities in areas of less than 5 hectares attached herewith and marked as **Exhibit R-320**.
52. It is worth mentioning that the Project had only commenced 10 days prior to this amendment made on 9 September 2013, and was still in its initial stage. This means that the Claimant had sufficient time to anticipate and plan for the necessary clearances, leading to the preparation and submission of the CCP on 26 September 2013⁴⁷, and its subsequent revision on 5 December 2013⁴⁸.
53. Also, as mentioned in my first witness statement⁴⁹, the delayed submission of a soft copy of the programme and multiple improvisations done by the Claimant delayed the approval of CCP. It was approved with NONOC for CTP-2 on 6 February 2014⁵⁰ & with NONOC for CTP-1 on 23 May 2014⁵¹. The Claimant had enough time to incorporate the effect of Environmental Clearance in its programme if that had made any significant change to its planning as alleged by the Claimant itself.
54. This timeline clearly demonstrates the Claimant's lack of proactive planning and action in obtaining the necessary permissions. They should have submitted Environmental Clearance applications immediately rather than waiting until the commencement of

⁴⁴ Para Nos. 185 to 209, and 308 to 314 of the SOD

⁴⁵ Section G of Witness Statement of RW-1

⁴⁶ Section V (B) of the SOD

⁴⁷ Exhibit C-4 of the SOC

⁴⁸ Exhibit R-6 of the SOD

⁴⁹ Section E(A) of Witness Statement of RW-1

⁵⁰ Exhibit R-275 (Colly).

⁵¹ Exhibit R-15 of the SOD

earthwork, especially considering that earthwork was scheduled to begin simultaneously in all 21 sections of the Project.

55. In **paragraph 69** of Mr. Kumar's statement, he alleges that 87% of the land had earth filling which was delayed due to NGT issues. Mr. Kumar conveniently fails to address that blanketing work was delayed irrespective of filling or cutting and not all of the area under filling was affected due to NGT. 13% of the land was for embankment cutting, wherein these works could have been executed along with using this earth material in the filling areas.

56. Additionally, I draw attention to my witness statement RW-1⁵², where various points are highlighted, enumerating the shortcomings and issues that arose during the execution of earthwork even in the period unaffected by the requirement of prior EC by the state.

iii. Response to alleged delay caused due to Non-Hand Over of unencumbered possession of Land

57. In **paragraphs 86 to 90** of Mr. Kumar's statement, Mr. Kumar has presented the Claimant's reliance on certain paragraphs of the SOC⁵³ for the alleged delay in handing over of unencumbered land. The Respondent has countered the Claimant's claim in the SOD⁵⁴ which provides a detailed response setting out the significant delay on the part of the Claimant despite the availability of hindrance-free land. To have a complete picture, I have noted the following points below.

58. According to the Contract's Clause 2.2.3 in Appendix 1 of the ER, the land required for executing works within the Right of Way (ROW) must be handed over to the Claimant without any encumbrances. This provision distinguishes between the land that needs to be handed over for actual execution and the land which comprises the ROW.

59. According to the Contract's Clause 2.2.3 in Appendix 1 of the ER, the land required for executing works within the Right of Way (ROW) must be handed over to the Claimant without any encumbrances. This provision distinguishes between the land that needs to be handed over and the land required for actual execution.

60. The Engineer's EOT assessment includes a summary and findings⁵⁵ of the delay assessment related to the land. The Claimant had unconditionally accepted the Engineer's assessment for delay events accrued up to 31 August 2016⁵⁶.

⁵² Section G of Witness Statement of RW-1

⁵³ Para Nos. 105 to 111 of the SOC

⁵⁴ Para Nos. 217 to 224 and 318 to 321

⁵⁵ Para No. 220 of the SOD

⁵⁶ Exhibit R-165 of the SOD

61. It is asserted that the minor unavailability of land did not hinder the progress of the Formation works as mentioned under Clause 2.1 of ATB.
62. I say that the alleged delay event related to the land handover has been included again in the third interim Extension of Time (EOT) granted to the Claimant, even though the Claimant had already received sufficient extensions for the delay in land handover.
63. The extension previously granted for the delay in land handover was not utilized properly by the Claimant to expedite the works in the Project's best interest. The delay in land handover is no longer a major delay event as of 31 August 2016, with no impact on the progress of the works. Instead, the Claimant has not completed the requisite works on the available land, i.e., 99.15%⁵⁷.
64. The Engineer's EOT assessment indicates that only 2.472 km of land was not handed over to the Claimant as of 31 August 2016. However, the documents attached by the Claimant in support of the claimed obstruction of 40.4 km lack proper Engineer's authentication or verification as they are not jointly verified by the Engineer⁵⁸.
65. I say that, as of 31 August 2016, 99.15%⁵⁹ of the land had been made available to the Claimant, while the percentage progress achieved was only 38.53%⁶⁰. This indicates that the alleged lack of site availability was not the driving factor for this delay.
66. The sufficiency of available land to carry out the works has been described in detail in my witness statement (RW-1)⁶¹. Certified Copies of Handover letters signed by representatives of both Parties confirm that more than 80% of the land was made available to the Claimant as of 28 September 2013⁶² in CTP-1, and more than 95% of the land was handed over in CTP-2⁶³. The Claimant's own narrative of the updated program submitted on 30 June 2014 states that around 95% "encumbrance-free land" was available in most sections of the Project, with 100% land availability in Package D⁶⁴.
67. Despite the adequate availability of land, the Claimant was not able to progress the works in the required sections due to insufficient resources to handle the requirements of all 21 sections concurrently as planned in the CCP.

⁵⁷ Exhibit R-160 of the SOD

⁵⁸ Detailed in Para 3.7 of Exhibit R-160 of the SOD

⁵⁹ Exhibit R-160 of the SOD

⁶⁰ MPR for August 2016. Vol CD 187, Exhibit C-96, Part 7, Page no.8

⁶¹ Para Nos. 42 to 47 of Witness Statement of RW-1

⁶² S. No. 3 of Exhibit R-269 of Reply to Rejoinder

⁶³ Exhibit R-283 of the RW-1

⁶⁴ Para 43 of Witness Statement of RW-1

iv. Response to alleged delay caused due to shifting of Charted & Uncharted Utilities

68. In **paragraphs 91 to 98** of Mr. Kumar's statement, Mr. Kumar has stated the alleged delay⁶⁵ by the Claimant pertaining to various charted and uncharted utilities present within the ROW. The matter has been thoroughly responded⁶⁶ to by the Respondent with a detailed analysis, showing significant delay on the part of the Claimant. In response to the same, I note the following points below.
69. I say that the contents of **paragraphs 91 to 98** of the CW-1 are incorrect. The Claimant has a responsibility⁶⁷ to identify and remove any encumbrances, including uncharted utilities as instructed by the Respondent, and for this, it is compensated in the form of a variation. However, such identification and removal must be carried out timeously. Any delays resulting from the failure to identify and remove such encumbrances cannot be attributed to the Respondent, and even the Claimant has acknowledged this⁶⁸.
70. The Engineer has identified the detailed list of charted and uncharted utilities in Para Nos. 3.8.2 and 3.8.3 of the Extension of Time (EOT) Assessment. The alleged delays in the shifting of utilities on the part of the Respondent were denied in the EOT assessment due to various reasons, as explained in Para No. 3.8.4 of the Engineer's Assessment, and therefore were not considered as a basis for EOT⁶⁹.
71. I say that the detailed analysis for utility shifting has been presented by the Respondent in Exhibit R-246 of the SOD.
72. The Claimant was obligated to shift/divert uncharted utilities (if any) encountered during the execution of work as a variation to the Contract. The Claimant was required to report the identification of uncharted utilities by 06 February 2014 as per the Contract, within 23 weeks from the Commencement Date. However, the Claimant did not report these utilities until 2021⁷⁰.
73. I say that the Contract required the Claimant to provide a detailed report/proposal for the removal/relocation of uncharted utilities as per the procedure outlined in "Employer's Requirement, Vol. II" of the Bid Documents which was not followed by the Claimant.
74. The Claimant alleges that the Respondent's delay in providing an unencumbered ROW caused delays in the Project execution but it does not explain whether the Claimant had

⁶⁵ Para Nos. 112 to 117 of the SOD along with Para Nos. 205 of the Rejoinder

⁶⁶ Para Nos. 225 to 233 and 322 to 324 of the SOD

⁶⁷ Para No. 228 of the SOD

⁶⁸ Para No. 487 of the Rejoinder.

⁶⁹ Exhibit R-160 of the SOD

⁷⁰ Exhibit R-17; Exhibit R-19; Exhibit R-24; Exhibit R-31; Exhibit R-78, etc.

complied with its own contractual obligation to identify uncharted utilities under various clauses⁷¹ of the Contract.

v. Response to alleged delay caused due to paucity of cash flow

75. In **paragraphs 99 to 103** of Mr. Kumar's statement, Mr. Kumar reiterates the alleged facts⁷² presented by the Claimant regarding disruption to the planned/anticipated cash flow submitted with the Bid Documents. The Respondent has already provided a detailed response to these claims⁷³.
76. I say that these claims were not considered tenable in the Extension of Time (EOT) Assessment dated 24 August 2017⁷⁴ and the Claimant had provided consent to the same as on 10 October 2017⁷⁵ for the alleged delay events determined by the Engineer up to 31 August 2016. In response to these claims, my observations are presented below.
77. I say that the contents of **paragraphs 99 to 103** of the CW-1 are incorrect. Mr. Kumar's contention that payment was required to be made on the basis of the actual progress of work executed up to the billing month and not when the work is completed to the extent stated under 'stage payment' in the Contract is contrary to the position agreed under the Contract.
78. The DBLS Contract's Price Schedules under Schedule-4⁷⁶ predefine the different work items and their respective payment stages in terms of cost centres and sub-cost centres. The Respondent ensured that payments were made in accordance with Clause 14.4 [Schedule of Payments] of the Conditions of the Contract for both CTP-1 & CTP-2.
79. The Claimant has been provided with Mobilization Advance. i.e., 10% of the Contract Price to have smooth mobilization and commencement of the works.
80. As per the Contract, the Claimant is entitled to payment only upon achievement of the specified work stages, as indicated in the Engineer's letter dated 28 October 2016⁷⁷.

⁷¹ Clause 13 of ER [General], Sub-clause 1.3 of ER [Construction] , Clause 2.2 of Appendix 1 [Contractor's Possession of the Site] and Clause 2.2 of Appendix 15 [Contractor's Possession of the Site]

⁷² Para Nos. 118 to 122 of the Statement of Claim (SOC)

⁷³ Para Nos. 234 to 243 and 325 to 331 of the Statement of Defence (SOD)

⁷⁴ Exhibit R-160 of the SOD

⁷⁵ Exhibit R-165 of the SOD

⁷⁶ Clause 14.4 (a) The Price Schedules 4.1 to 4.9 lay down the frame work for estimating the value of stages of work completed. The Price Schedules specify the Contract Price for the Works offered by the Contractor and accepted by the Employer, along with the estimated value of work of different cost centres. The description of items of work in the Schedules does not limit in any way the Contractor's obligations under the Contract to provide all the Works described in the Employer's Requirements.

(b) The entire Works have been divided into Nine (9) cost centres along with their respective weightage percentages of the Contract Price in Schedule 4 of section 6. Each of the cost centres has been broken into items of works with percentage weightage of the Contract Price to items of the works/stages as indicated in Schedules 4.1 to 4.9.

⁷⁷ Exhibit R-118 of the SOD

Payment is not based on the actual work completed but on the achievement of the specified stages.

81. I assert that the Engineer timely certified the payment invoices as and when ready, and the Respondent made all the payments due to the Claimant with reference to the completed work stages. No payment was pending as of 31 August 2016, contrary to the Claimant's assertion.
82. In response to **paragraph 101** of Mr. Kumar's statement, I say that Mr. Kumar's reference to the award in ICC Case No. 23923/HTG is misplaced as it related to an entirely different milestone and different facts and circumstances. With regard to the contents of paragraph 101, I assert that the arbitral award passed in ICC Case No. 23923/HTG has been challenged by the Respondent before the Hon'ble High Court of Delhi. The matter is sub-judice before the Hon'ble Court and is currently under challenge in the High Court⁷⁸.
83. In response to **paragraph 102** of Mr. Kumar's statement, I say that the quoted difference in Financial and Physical progress is attributed to the fact that the Claimant either did not claim as per Schedule 4 of the Contract or failed to highlight that the amount in a few Interim Payment Certificates (IPCs) was withheld by the Respondent due to the Claimant's delayed submission of relevant clarifications/documents requested by the Respondent for the execution of the works.
84. In response to the contents of **paragraphs 112 to 115** of the CW-1, I state the following points below.
85. Regarding Mr. Kumar's statement concerning the Extension of Time (EOT) Claim Submission, I would like to draw attention to the Claimant's own position, as stated in paragraph 5 of their Letter dated 28 November 2016:
- 5) Delay events stated in Appendix - CE10.a was not concluded on 31.08.2016, therefore, EOT of MS3, MS4 and MS5 sought in this submission is also 'interim'. Contractor reserve its right to submit particulars seeking further EOT of MS3, MS4 and MS5 at regular intervals, till all delay events are concluded.*
86. As evident from the aforementioned statement, it is clear that, at least in regard to the Claimant's claim for EOT, it was limited to delay events up to 31 August 2016 and did not encompass any events occurring after that date. Furthermore, in the same letter, the Claimant did not seek additional or prolongation costs, nor did they request compensation for the same delay events that formed the basis for their EOT claim.

⁷⁸ Paragraph 327 & 328 of the SOD

87. In response to **paragraphs 116 to 117** of Mr. Kumar's statement, I maintain that the contents of these paragraphs are a matter of record and do not require any specific response. However, I must deny any claims or statements that contradict the record.
88. It is worth noting that the Claimant unconditionally consented⁷⁹ on 10 October 2017 to the Engineer's assessment dated 24 August 2017⁸⁰ regarding the Extension of Time (EOT) of 608 days for MS-3. The said EOT was granted for the alleged delay events that accrued up to 31 August 2016. Consequently, the revised completion date for MS-3 was recommended as 11 October 2018.
89. It is important to emphasize that the delay events analysed in paragraphs 3.4 to 3.9 of the mentioned letter⁸¹ were all events that took place before 31 August 2016⁸², aligning with the claim made by the Claimant.
90. In response to **paragraph 118** of Mr. Kumar's statement, I say that the Engineer in its EOT assessment made an independent detailed analysis in relation to each delay alleged by the Claimant and granted an EOT after taking into account the actual site conditions that were existing at the contemporaneous time. I further submit that:
- a) In the Claimant's application for an Extension of Time (EOT) dated 2 March 2017⁸³, only excusable delays were presented, and no mention was made of any delays caused by the Claimant itself.
 - b) During the EOT assessment process, the Engineer only considered delay events that were deemed reasonable out of the delays claimed by the Claimant. The Claimant accepted this assessment on 10 October 2017⁸⁴.
 - c) The Engineer's inclusion of "concurrent" delays in the EOT assessment referred to other delays caused by the Respondent that were considered to have no significant impact on the Project's critical timeline when compared to the dominant excusable delays. However, there was no analysis conducted to determine whether any of the Claimant's delays were concurrent with the excusable delays.
 - d) A separate concurrency analysis, which took into account the delays caused by the Claimant, was carried out by the Engineer at a later date and then shared with the Claimant on 5 May 2020⁸⁵.
91. I say that Mr. Kumar's claims regarding all the delays attributed to the Respondent are vague, except for those that are a matter of record and considered in the EOT Assessment. Moreover, the Respondent has provided detailed justifications,

⁷⁹ Exhibit R-165 of the SOD

⁸⁰ Exhibit R-160 of the SOD

⁸¹ Exhibit C-16, CD 15–17, @ pp. 8572–8590 of the SOC.

⁸² Exhibit C-16, CD 15–17, paragraph no. 7.3 @ p. 8672 of the SOC.

⁸³ Exhibit C-15 of the SOC

⁸⁴ Exhibit R-165 of the SOD

⁸⁵ Exhibit C-27 of the SOC

substantiation, and remarks for all delay events that are attributable to the Claimant as well as those that occurred due to other Authorities, including the IR but not limited to⁸⁶.

92. I say that the contents of **paragraphs 122 to 128** of Mr. Kumar's statement are incorrect. I say that it was the Claimant's own delays (concurrent delays) that led to slow progress and delay in the completion of MS-3 within the period envisaged in the CCP. The Claimant has failed to update and revise the CCP contemporaneously.
93. I reiterate that the Claimant cannot claim costs for the extended period i.e., from 10 February 2017 to 30 June 2018 because the relevant period for the assessment of prolongation cost is during the period prior to 31 August 2016.
94. I also assert that the Claimant did not raise any objections or challenge the variation orders and their compensation during the contemporaneous period. "Contemporaneous period" refers to the time when the variation orders were issued, and the Claimant received compensation for them. Since the Claimant did not dispute these variations at that time, it is implied that they had accepted the compensation as adequate.
95. Further, Mr. Kumar's allegation that the costs incurred, and losses sustained by it up to 11 October 2018 are a 'direct effect' of the alleged Delay Events is wrong⁸⁷. The Respondent's position is that the extension in MS-3 was granted by the Engineer but it does not imply that the slow progress in MS-3 works was not also attributable to the Claimant. The Respondent has already demonstrated⁸⁸ that the Claimant's own delays /deficiencies at the available work fronts were the driving factors for the delay in MS-3 completion. Therefore, the Claimant would have incurred additional cost / loss due to its own delays/ deficiencies.
96. Mr. Kumar in **paragraph 130** of Mr. Kumar's statement, has referred to the Claimant's claim for the additional costs incurred/damages sustained due to the execution of work of MS-3 in the extended period up to 30 June 2018 being rejected but Mr. Kumar conveniently skips the fact that EOT has been granted on the basis of Clause 8.4 as well as 8.5 where Clause 8.5 is not compensable. A summary of delay events determined as per EOT⁸⁹ is produced below:

Sr. No.	Delay Events Alleged by the Claimant	Accepted / Denied by the Engineer	Remarks	Respondent's stand on compensability
1	Engineer's consent / 'Notice of No Objection' to the Claimant's design documents was delayed	Accepted	Partial EOT determined under Clause 5.2 & 8.4 but overshadowed by EOT given for delay due to IR under Clause 8.5	Excusable but Non-Compensable under Clause 8.5

⁸⁶ Section IV of SOD

⁸⁷ Paragraph no. 274 of the SOC

⁸⁸ para nos. 177 to 249 of the SOD

⁸⁹ Exhibit R-160 of the SOD

Sr. No.	Delay Events Alleged by the Claimant	Accepted / Denied by the Engineer	Remarks	Respondent's stand on compensability
	beyond the review periods stated in the Contract			
2	Change in law requiring prior environmental clearance for the state of Rajasthan ,to issue lease for mining of minerals having area less than 5ha , delay in granting EC due to various Authority delays and stay to the process of EC by NGT	Accepted	Specific EOT determined in each of the 18 sections (under State of Rajasthan) under Clause 13.7 & 8.4	Excusable but not compensable ⁹⁰
3	Delay caused to commencement of RUB, due to variation in the Employer's requirement and reason attributable to the Contractor	Accepted	Major delay - EOT determined under Clause 8.5 with no reasons attributable to the Respondent	Excusable but Non-Compensable under Clause 8.5
4	Non handing over of encumbered possession of land/right of way within such period stated in Contract	Denied	No EOT determined due to isolated & temporary obstructions	NA
5	Delay in shifting of Chartered and Uncharted Utilities due to various authorities delays	Denied	No EOT determined due to Lack of substantiation & scope of the Claimant	NA
6	Delay due to paucity of Cash Flow	Denied	Not Tenable	NA
7	Delay in completion of track skeleton work due to (1) the delayed completion of formation pursuant to clause 8.4 delay events and (2) delay /disruption to the track skeleton work as per the planned sequence	Accepted	This is not a delay event rather this is the delay accrued due to impact of other delay events. Accordingly, the extension of MS-3 was calculated with respect to other delay events and track sequence as per CCP.	NA

As per above table, many of the delay events claimed by the Claimant and accepted by the Engineer in the EOT assessment fall under Clause 8.5 of the GCC (Authority Delays), which are not compensable.

97. In this regard, I say that the Engineer rejected the Claimant's claims on 25 January 2019⁹¹ because the Claimant had failed to furnish any detail of the additional cost incurred by it up to 31 August 2016 i.e., the cut-off date for the period during which the delay events claimed formed the basis of the EOT assessed by the Engineer. However,

⁹⁰ Para 185 to 208 of SOD

⁹¹ Exhibit R-221 of the SOD

instead of providing the requisite details as sought by the Engineer, the Claimant elected to approach the DAB when in fact no dispute had yet arisen between the Parties.

98. In response to Mr. Kumar's assertions in **paragraphs 131 to 133** regarding proceedings before DAB, it is stated that the DAB in its decision noted that the dispute came before DAB in a half-baked condition when it really had not turned into dispute. The DAB further agreed that the Contractor is entitled to only the actual extra cost and not notional cost as claimed by him for the period far exceeding the period for which delay is analysed and agreed by the parties. The DAB further agreed that the Engineer did intend to discuss about concurrent delays while determining costs under 3.5. In the absence of any analysis and consultations between the Engineer and the Claimant, as was required under Clause 3.5, the DAB could not quantify the number of days for which the Contractor would be entitled for cost for delay events up to 31 August 2016 in respect of MS 3.
99. The DAB, too, noted that the Claimant would be entitled to cost only for delay events up to 31 August 2016 and not thereafter, also noting that the Claimant had not given any supporting details of costs for the said period⁹².
100. I say that the contents of **paragraphs 134 to 138** of the CW-1 are a matter of record and do not require a reply. I say that the Claimant did not provide any documents to substantiate its claims for additional costs before the Engineer as directed by the DAB. It is stated that the Respondent had waited for the response from the Claimant but did not get any response even after 17 months, therefore, a reminder was issued to the Claimant⁹³. It was only subsequently that the Claimant criticized the Engineer's impact analysis dated 16 March 2020 and issued letter of dissatisfaction attached herewith and marked as **Exhibit R-321**.
101. I say that the contents of **paragraphs 139 to 144** of CW-1 are denied for being incorrect. Mr. Kumar in these paragraphs alleges that if the Claimant was truly in the concurrent delays, then no EOT would have been awarded is incorrect in as much as the Claimant has proceeded on the assumption that only one party can be responsible for delays for a given time period.
102. I understand that the Claimant is entitled to EOT against the excusable delays regardless of whether the Claimant was responsible for concurrent delay. The Claimant's concurrent delays comes into the picture at the time of assessment of cost compensation, and not at the time of assessment of EOT.

⁹² Para No.345 of the SOD

⁹³ Exhibit C-28 of the SOC

103. It is a fact that the Respondent has granted 608 days of EOT for MS-3 (with cutoff date of 31 August 2016). However, it does not state that this EOT period covers the entire period of delay in achieving MS-3 as on 31 August 2016⁹⁴.
104. I say that on 16 March 2020, the Engineer shared the impact analysis of the Claimant's delay with the Respondent amounting to 911 days. Even at that stage, the Claimant delayed in providing its comments to the Engineer's assessment of concurrent delays as requested in the Respondent's letter dated 05 May 2020⁹⁵.
105. The Engineer's assessment was communicated to the Claimant by the Respondent *vide* letter and e-mail, both dated 05 May 2020. Over one year passed without any substantive response from the Claimant. Neither did the Claimant provide its comments on the Engineer's assessment of concurrent delays, nor did it provide any documents to substantiate its claims for additional costs before the Engineer. The Claimant, instead of submitting itself to the Contractual regime has chosen to walk away from the same and is now seeking to project the Engineer in poor light.
106. Further, I reiterate that as per decision of the DAB, analysis of concurrent delays was worked out based on the data used for assessing the excusable delays already accepted by both the Claimant and the Employer and EOT of 608 days notified under Cl. 3.5 of GCC/ FIDIC.
107. Figures in the columns 1 to 10 of the chart are described in the Engineer's letter dated 16 March 2020 enclosed with the Respondent's letter referred above⁹⁶. Col. 1 to 6 are directly picked from the Attachment-02 to 07 (Pg. A-2-A333) of the EOT Assessment⁹⁷.

The attachments referred are as below:

Attachment 02	Alignment design (Delays up to 31.08.2016)	A-2
Attachment 03	Major structures Design Delays up to 31.08.2016)	A-25
Attachment 04	RFO Design Delays up to 31.08.2016)	A-145
Attachment 05	RUB/ IGAD Design Delays up to 31.08.2016)	A-309
Attachment 06	ROB Design Delays up to 31.08.2016)	A-320
Attachment 07	Status of EW in progress	A-333

108. I say that the Engineer's assessment of the Claimant's concurrent delay was based on the data provided by the Claimant itself, as discussed in the meeting held on 12 February 2020⁹⁸. An agreement as well as a timeline was agreed on regarding a course of action for determining concurrent delay. Despite the methodology recorded in the minutes of meeting dated 12 February 2020, the Claimant has challenged the reliability of the findings of the Engineer.

⁹⁴ Exhibit R-160 of the SOD

⁹⁵ Exhibit C-27 of the SOC

⁹⁶ Exhibit C-27 of the SOC

⁹⁷ Exhibit R-160 of the SOD

⁹⁸ Exhibit R-262 of the Reply to Rejoinder

109. I assert that the Claimant offered no comments for more than one and half years and on 06 November 2021⁹⁹, submitted a terse reply that the analysis was crude, not on critical path analysis, and not acceptable to him but did not suggest any constructive views/comments. Further, without waiting for any reaction from the Respondent, the Claimant rushed to raise the dispute before the Arbitration Tribunal on 24 January 2022¹⁰⁰.
110. In response to Mr. Kumar's assertions in **paragraphs 146 to 205**, I say that the Claimant is dealing with multiple cut-off dates for delay and costs. In my opinion the cut-off date for delay and costs should be same and should match with the cut-off date of the dispute¹⁰¹.
111. In this regard, the Claimant's position is contradictory insofar as the matter of cut-off date and the cost claims are concerned. The following points may be noted:
- a) The 608-day EOT (i.e., EOT-3), which was granted to the Claimant became the basis of the Claimant's demand for delay costs, with cut-off date of 31 August 2016. This means that the delay events considered in this EOT were till 31 August 2016.
 - b) Accordingly, the EOT for MS-3 was granted till 11 October 2018.
 - c) However, the Claimant has incorrectly calculated the delay costs for the extended period with cut-off date of 30 June 2018.
 - d) In its SOC, the Claimant has claimed costs for delay events post 31 August 2016, even though the Claimant accepted that there were further EOTs in which such delay events (i.e., delay events occurring post 31 August 2016) were considered. Hence, the costs being claimed in this arbitration are resultant of these alleged delay events which are outside the purview of the present Arbitration¹⁰².

Response to Execution of part of earthwork (alleged portion delayed due to encumbrances in the handed over section) in the period beyond the revised date for the completion of earthwork as determined by the Engineer.

112. In response to **paragraph 166** of Mr. Kumar's statement, I say that that the Handing over of land was to be as per the relevant Term stated in the ATB under Clause 2.1 of the Contract. There is no contractual basis for creating liabilities on the Employer on the basis of timelines provided in the CCP.
113. Mr. Kumar has referred to alleged obstructions in the land handed over by the Respondent and has relied on various documents to support his claim such as Exhibit **C-48 (Colly)**, which contains various notices issued by the Claimant to the Engineer.

⁹⁹ Exhibit R-321 of this Reply Witness Statement

¹⁰⁰ Request for Arbitration (RFA) dated 24 January 2022

¹⁰¹ Para nos. 351 to 387 of the SOD

¹⁰² Section III of the SOD & para no. 353 to 359 of the SOD

Out of the said notices, many notices¹⁰³ pertain to New Delay Events or delay events that occurred after 31 August 2016.

114. Even otherwise, the Engineer in its EOT assessment dated 12 September 2019¹⁰⁴ made various observations¹⁰⁵, establishing the Claimant's failures for all sections except Sakun to Kishangarh and Saradhana to Madar where EOT had been granted.
115. I say that considering the delay up to 30 November 2017¹⁰⁶ (which falls within the extended period granted for delay period up to 31 August 2016), it is clear that the impact on earthwork was only in relation to limited stretch of only around approximately 7.5 kms in the two Sections i.e., Sakun to Kishangarh and Saradhana to Madar. It is reasonable to assume that the resources retained, if any, would have been considerably less compared to the required resources for the earthwork of the entire MS-3 stretch. However, the Claimant has not provided specific details of the cost incurred against the retention of the relevant resources along with necessary particulars linked to this delay event.

Response to Execution of Variation ordered in the extended period for which separate time for completion is not agreed upon.

116. The contents of the **paragraphs 179 to 183** of Mr. Kumar's statement are incorrect and denied. It is Mr. Kumar's assertion that several Variations were ordered by the Engineer as per the requirement of the Respondent. This resulted in a delay in the completion of the works. However, these assertions are incorrect for the following reasons presented below.
117. The Claimant has relied on Variations ordered by the Engineer which can be divided into three chronological periods:
- a. Variations ordered up to 31 August 2016¹⁰⁷,
 - b. Variations ordered from 01 September 2016 to 09 February 2017¹⁰⁸
 - c. Variations ordered from 10 February 2017 to 30 June 2018¹⁰⁹,
118. The allegations in respect of (b) and (c) above pertain to the New Delay Events, which I understand cannot be the subject matter of the present arbitration proceedings. As regards (a), it is also a fact that the Claimant never claimed any additional time for

¹⁰³ Para no. 362 of the SOD

¹⁰⁴ Exhibit R-232 of the SOD

¹⁰⁵ Para no. 364 & 365 of the SOD

¹⁰⁶ Exhibit R-213 of the SOD

¹⁰⁷ tabulated at Exhibit C-49

¹⁰⁸ tabulated at Exhibit C-50.

¹⁰⁹ tabulated at Exhibit C-51.

execution of the varied work up to 31 August 2016, which indicates that the same did not cause any significant delay.

119. I say that during the execution of work the Claimant is under the obligation to revise the CCP to account for mitigation measures for timely completion of work, which Claimant never submitted. Further, for the varied works, separate input resources including overhead and profit as per GC/PC Cl. 13.3 have been allowed. The varied works are to be executed in parallel with the main works using the additional resources approved and it should not impact the performance of the main works for which the Claimant had already priced for its resources.
120. Further I say that the Claimant had subsequently claimed for and was granted EOT for this delay event by the Engineer. Observations¹¹⁰ of the Engineer contained in Appendix-1 to the letter dated 14 September 2020, whereby EOT for delay events up to 30 September 2019 was granted can be referred for the same. Thus, the Claimant has raised this very delay event as a ground for claiming EOT for the period beyond 11 October 2018.

Response to alleged delays due to Instruction for Change in Sequence and Priority of Construction and Completion, Fixing revised target dates for commissioning dates and Pre-Fixing Dates prior to EOT Completion Dates

121. I say that none of these **paragraphs 184 to 205** of Mr. Kumar's statement, pertain to any delay event up to 31 August 2016. The allegations made pertain entirely to the New Delay Events as denied by the Respondent in the SOD¹¹¹.
122. The various dates stated for certain stretches with respect to the orders from the Ministry of Railways (it is however to be noted that there are no sections mentioned in the Contract) are beyond the extended dates granted to the Claimant in the EOT granted for MS-3. As per the EOT assessment, the Engineer had assessed the completion of Marwar-Iqbalgarh section to be completed as on 12 January 2019 (i.e., completion of MS-4). As such, the targets dates for commissioning of the sections were beyond the extended/ revised completion of the Project as on 31 August 2016.
123. I say that the targets fixed were derived from revised completion date for MS-3 was 11 October 2018 which was agreed by the Claimant. The revised date for achievement of MS-4 (Completion of all Civil & Track Works for commencement of integrated testing & commissioning) was 12 January 2019. The Ministry of Railways instructed the Respondent to achieve this milestone by February 2019 which was beyond the revised completion date for MS-4. Thus, Claimant's statement is incorrect and denied.
124. Further, I say that instructions by the Engineer to prioritize and expedite the Project works were issued in terms of clause 8.6 of the GCC/ PC on account of the slow rate of

¹¹⁰ Para no. 376 of the SOD

¹¹¹ Para Nos. 51 to 54 of the SOD

progress by the Claimant. A perusal of the Minutes of Monthly Progress meetings from August 2014¹¹² onwards as well as other documents highlights the continuous slow progress of work and the Claimant's failure to take corrective actions.

125. I say that the events narrated under this heading pertain not only to the periods beyond 31 August 2016 and up to 30 June 2018¹¹³ but even beyond 30 June 2018¹¹⁴. Hence, the allegations made under this head pertain entirely to the New Delay Events and I understand that these cannot be the subject matter of the present arbitration proceedings.

Response to paragraph 206 to 224

126. I say that there is no reference provided to the progress status provided by Mr. Kumar in **paragraph 207** of Mr. Kumar's statement, therefore I am unable to authenticate this data and hence is denied.
127. Further, I say that the works in MS-1 and MS-3 were to be executed in parallel and not in a linear manner. The Claimant was required to progress MS-3 works independent of MS-1. Accordingly, the alleged delays in MS-1 would not necessarily impact MS-3, particularly the Bhagega-Iqbalgarh segment of MS-3. It is pertinent to note that scope under MS-1 (i.e., the 79.18-km stretch) was much less than the scope under MS-3 (being a 648.57-km stretch)¹¹⁵. Therefore, the delays to MS-1 would not have had any impact on delays to MS-3 works falling outside the scope of works under the MS-1 stretch.
128. Mr. Kumar's allegation that there were non-compliances/ breaches by the Respondent which led to a deviation in the scheme approved in the CCP has no base. The following points are to be noted in this regard:
- a) The Claimant failed to submit a revised CCP even after several requests by the Engineer.
 - b) There were various events/factors which resulted in the deviation in the timelines approved in the CCP. The Engineer granted EOT for MS-3 against the accepted excusable delay events. This, however, did not imply that there were no other delay events (attributable to the Claimant), which were concurrently impacting the progress of the project works.
 - c) The Engineer, in its concurrency analysis, demonstrated that the delay attributable to the Contractor was greater than the EOT granted in its favour. Thus, the current delays overshadowed the accepted excusable delays. Thus, I say that the Claimant was not prevented from commencing or completing any of the MS-3 activities.

¹¹² Exhibit R-17 of the SOD

¹¹³ Paragraph no. 259 of the SOC.

¹¹⁴ Paragraph nos. 261 & 263 of the SOC.

¹¹⁵ Paragraph no. 244 of the SOD

- d) The Respondent has already demonstrated in the SOD¹¹⁶ that the Claimant's own delays / deficiencies in carrying out works at the available work fronts were delaying the progress of the project. The Respondent has set out graphs and tables to demonstrate that the Claimant's progress in executing parts of the Project works (earthwork, major structures, minor structures, track works) was lagging far behind the actual land availability.
 - e) The Claimant failed to mobilize sufficient resources¹¹⁷ and this shortcoming was contemporaneously recorded by the Engineer at various occasions.
129. Further, I say that the Respondent had fulfilled its obligations and had taken all necessary efforts to ensure the timely completion of the Project works. In this regard, reliance may be placed on the letters relied upon by the Respondent advising the Claimant to take mitigating measures by deploying additional resources, revising the CCP etc. It is submitted that neither did the Respondent disrupt any work, nor did it prevent the Claimant from executing any work. Instead, the delays are on the Claimant's part inasmuch as it did not deploy sufficient additional resources and did not mitigate the slow progress of work. A detailed analysis to establish delay and slow progress has been provided by the Respondent¹¹⁸ in SOD. It is further denied that the Respondent has showed disregard to the CCP. It is reiterated the Claimant was asked on several occasions¹¹⁹ to revise the CCP and take mitigating measures which it never followed.
130. The Respondent has already submitted that the Engineer in its EOT Assessment has considered all tenable delays alleged by the Claimant. The resources were retained by the Claimant due to its own delays/deficiencies though it has already been submitted by the Respondent in earlier paragraphs that there were deficiencies and delays in deployment of resources even in extended period.
131. I deny Mr. Kumar's allegation that the cost of resources (manpower, machinery, overheads) is a result of extension granted to the Claimant.
- a) The Respondent has responded to the resource cost claim (being idling/underutilization)¹²⁰, and clarified that how the Claimant incorrectly calculated these costs which are direct cost to the project, and hence, are not properly part of a claim for prolongation costs.
 - b) The Respondent also responded that these claims are in the nature of a 'global claim' which has been presented without identifying the actual cause and effect of events of delay that are said to have resulted in prolongation costs. In any event, the

¹¹⁶ Section IV of the SOD

¹¹⁷ Section IV (C) of the SOD

¹¹⁸ Para nos. 67 to 201 of the SOD

¹¹⁹ Para 26 of the SOD

¹²⁰ Para no. 401,415,428,431,437 and 441 of the SOD

Claimant has not identified or particularized the specific ‘additional’ resources that were deployed by it in respect of the alleged delay events.

- c) The Claimant would have incurred additional cost/ loss due to its own delays / deficiencies. It cannot claim for cost incurred as a result of its own delays.
- d) I say that the Claimant’s argument that the retention of resources during the extended period is the direct outcome of grant of EOT is not sustainable. While the EOT was granted because of the non-availability of certain parts of the site and delay/ disruption on the affected part of works, it did not affect the parts of works which were already available to the Claimant.

Response to paragraph 225 to 228

- 132. I say that the contents of **paragraphs 225 to 228** of the CW-1 are incorrect and therefore denied. The Claimant has not demonstrated that no concurrent delays were caused by it, the Engineer, pursuant to the direction by the DAB in its decision, performed a concurrent delay analysis which clearly shows that the projected completion date for MS-3 was 10 August 2019¹²¹ which is 911 days from its scheduled completion date of 07 February 2017. Thus, the total delay which had already occurred in achieving MS-3 as on 31 August 2016 was 911 days. This was rejected by the Claimant, but it did not explain why.
- 133. Therefore, it is clear that as on 31 August 2016, the Claimant was expected to achieve MS-3 in 303 more days beyond the EOT entitlement of 608 days granted to it. In other words, the EOT granted to the Claimant does not cover the entire projected delay that had already occurred.
- 134. It is a fact that the Respondent has granted 608 days of EOT for MS-3 (with cutoff date of 31 August 2016) and it is agreed by the Claimant. However, it does not certify that this EOT period covers the entire period of delay in achieving MS-3 as on 31 August 2016. EOT was allowed only to ensure that the contract stayed alive so that the work could be completed. This, in no manner, absolved the Claimant of the financial consequences of its breaches, which remained alive.
- 135. Thus, I say that the non-imposition of delay damages at the time of granting EOT is not conclusive evidence that the Claimant was not at delay. The reason behind not imposing delay damages at that time was that the execution of MS-3 works was still under progress and because the Claimant’s delays would vary (depending upon the acceleration/slow down by the Claimant) till the actual achievement of MS-3. It was only when the matter went into arbitration with a specific cut-off date (*i.e.*, 31 August

¹²¹ Exhibit C-27 of the SOC

2016) was the Respondent in the position to precisely calculate the Claimant's delay and, accordingly, the amount of LD levied on the Claimant as on the cut-off date.

Response to paragraph 267 to 268

136. I say that the contents of **paragraphs 267 and 268** of Mr. Kumar's statement, do not seek a response as they are a matter of record, however beyond the purview of the present Arbitration.
137. Mr. Kumar has introduced Exhibit CW-1/12 (Colly) which contains copies of the EOT Assessments dated 18 October 2021 and 5 December 2022 which are not relevant to the matter of dispute.

Response to paragraph 269 to 363

138. In **paragraphs 269 to 363** of Mr. Krishna Kumar's statement¹²², the detailed description and analysis of the Claimant's cost claims related to onsite overheads, offsite overheads, plant and equipment, labour costs, fuel costs, interest on additional funds and loss of profit are stated. I note that Mr. Krishna Kumar's analysis of the Claimant's cost claims is a replica of the arguments/ analysis provided in the SOC¹²³.
139. I note that the Respondent has already provided specific and detailed replies¹²⁴ to each of the heads of the cost claims presented in the Claimant's SOC. The same are not replied/ repeated here for the sake of brevity as the Parties' positions/ analysis on the Claimant's cost claims are already submitted to the Tribunal.
140. Mr. Krishna Kumar provides a detailed description of the documents¹²⁵ such as computation of valuation of MS-3, IPCs, computation of onsite and offsite costs incurred, computation and supporting documents of P&M cost, MPRs, IS 11590, muster rolls, cost calculation of Labour, copy of MRNs, month wise fuel consumed chart, computation and supporting document for interest on funds arranged by the Claimant, list of major projects for which an agreement is entered into by the Claimant during the alleged extended period of MS-3 , etc., as pleaded by the Claimant in the SOC, in support of its cost claim.
141. Mr. Krishna Kumar also provides a description of the documents such as an extract of the NWR Indian Railway Bridge Manual, a list of projects not secured by the Claimant in the alleged extended period of MS-3, and the statements of profit and loss of the Claimant for the period 2013-2019¹²⁶.

¹²² CW-1, Pages 109-142, Paragraphs 269-363

¹²³ SOC, Pages 92-133, Paragraphs 300-417

¹²⁴ SOD, Pages 171-186, Paragraphs 404-452

¹²⁵ SOC, Exhibits C-61 to C-116

¹²⁶ Rejoinder, Exhibits C-186, C-188 and C-189

142. I note that the documents referred by Mr. Krishna Kumar are already pleaded with the SOC/ Rejoinder and he has not provided any additional documents to support his understanding of the cost claims. The document submitted in the pleading is a matter of record and has already been submitted to the Tribunal.
143. The specific replies to the documents related to the Claimant's cost claims exhibited with the SOC are already replied to an extent in the SOD. Further, the authenticity/ credibility of the documents exhibited with the Claimant's SOC as well as the Rejoinder will be dealt with by way of expert opinion.
144. In his Witness Statement, Mr. Krishna Kumar provides his analysis of the net valuation of the claims after deductions¹²⁷. I note that Mr. Kumar's analysis of the net valuation of the Claimant's claims after deduction is a replica of the arguments/ analysis provided in the SOC¹²⁸.
145. The Respondent has denied¹²⁹ the valuation of the Claimant's claims after deduction stating it to be a summarization of the Claimant's position. I also object to Mr. Krishna Kumar's analysis of the net valuation of the Claimant's claim after deductions depending on my opinion¹³⁰ related to the delays in commencement and progress in preliminary/design works and execution at the site which are attributable to the Claimant.
146. In his Witness Statement, Mr. Krishna Kumar provides his analysis¹³¹ of the Claimant's claim for interest considering the interest on unpaid sums as 8% per annum¹³². I note that Mr. Krishna Kumar's analysis of the Claimant's claim for interest on unpaid sums is a replica of the arguments/analysis¹³³ provided in the SOC. The Respondent has denied¹³⁴ the same in its SOD&CC. Based on the reasons stated above, I also state that there no principal amount due and payable on part of the Respondent.
147. I also note that Mr. Krishna Kumar has stated the post-award interest as 18% per annum¹³⁵ until the Respondent's full and final satisfaction of the award. I am of the opinion that the post-award interest percentage is a legal matter and is to be decided by the Tribunal.
148. Earlier in my witness statement¹³⁶, I had stated that:

¹²⁷ CW-1, Pages 142-143, Paragraphs 364-366

¹²⁸ SOC, Pages 133-135, Paragraphs 418-421

¹²⁹ SOD&CC, Page 186, Paragraph 453

¹³⁰ RW-1 of Witness Statement, Pages 3-18, Paragraphs 23-92

¹³¹ CW-1, Pages 143-145, Paragraphs 367-372

¹³² CW-1, Page 144, Paragraph 368

¹³³ The Claimant's SOC, Pages 135-136, Paragraphs 422-427

¹³⁴ The Respondent's SOD&CC, Page 186, Paragraph 454

¹³⁵ CW-1, Page 145, Paragraph 372

¹³⁶ Para 103 of RW-1 of Witness Statement

*“b. DFCC Annual financial reports for the period 2012-2017 attached as **Exhibit R-293**.*

*c. The certified invoices for the work executed for CTP 1&2, for the duration from May 2013 to August 2016 for the purpose of calculating the total expenses during the same period attached as **Exhibit R-294**”.*

I have corrected the typographical error in the above paragraphs and the same will be read as presented below:

*“b. DFCC Annual financial reports for the period 2012-2017 attached as **Exhibit R-294**.*

*c. The certified invoices for the work executed for CTP 1&2, for the duration from May 2013 to August 2016 for the purpose of calculating the total expenses during the same period attached as **Exhibit R-293**”.*

149. In furtherance to above, I also attach DFCC Annual financial reports for the period 2020-2021 which captures the valuation of TAC as 289.89 Cr. attached herewith and marked as **Exhibit R-322**.

SECTION - 2

**REPLY TO MR. DHAVAL DEKIVADIYA'S WITNESS
STATEMENT (CW-2)**

150. While reviewing Mr. Dekivadiya's witness statement, it seems to me that there are various aspects of it that require no response as they express certain matters of fact and opinions of the Claimant and/or relate to matters that are not of relevance to the proceedings. Accordingly, I do not respond to these statements. The fact that I have not done so does not mean I accept Claimant's position or Mr. Dekivadiya's— which, in large part, I do not.
151. In his Witness Statement, Mr. Dekivadiya provides the description¹³⁷ of Enterprise Resource Planning (ERP) and Enterprise Information Portal (EIP) used by the Claimant to record the financial transaction in each of the projects and explained the entire process of booking the expenses in the EIP as well its working for CTP 1&2. Mr. Dekivadiya talks about EIP working methodology which includes cash bank module flow chart, different levels of documenting the costs incurred, extract of EIP system in order to support the authenticity of the EIP system.
152. I understand that EIP is an internal portal used by the Claimant to record its expenses, I don't have an exposure to the EIP portal used by the Claimant for CTP 1&2. Accordingly, I am not providing any observations/comments on the procedure of EIP working and its implication to record the data/expenses related to CTP 1&2.
153. Mr. Dekivadiya also provides description of the certificates¹³⁸ certifying the Claimant's information security management system, description of ledger entries, EIP extract of payment vouchers, etc.
154. I note that the documents¹³⁹ referred by Mr. Dekivadiya are already pleaded with the SOC/Rejoinder. The statutory auditors' certificates, relevant extracts of the Claimant's accounting ledger, etc. are matter of record and already submitted to the tribunal. The authenticity/credibility of the Claimant's accounting ledger will be dealt by the way of expert opinion.
155. In his Witness Statement, Mr. Dekivadiya provides the detailed description¹⁴⁰ and his analysis of the Claimant's cost claims related to onsite overheads, offsite overheads, plant and equipment, costs, interest on additional funds and loss of profit. The same are not replied here for the sake of brevity as the Parties positions/analysis on the Claimant's cost claims are already submitted to the tribunal.
156. In its SOD&CC, the Respondent has provided the specific and detailed replies¹⁴¹ to each of the heads of the cost claims presented in the Claimant's. The same are not replied/repeated here for the sake of brevity as the Parties positions/analysis on the Claimant's cost claims are already submitted to the tribunal.

¹³⁷ CW-2, Pages 4-11, Paragraphs 13-37

¹³⁸ CW-2, Page 8, Paragraph 27

¹³⁹ The Claimant's SOC, Exhibit C-63 to C-65, C-68 to C-81, C-87 to C-91, C-99, C-137 and C-187

¹⁴⁰ CW-2, Pages 12-24, Paragraphs 41-60

¹⁴¹ The Respondent's SOD&CC, Pages 171-186, Paragraphs 404-452

157. Mr. Dekivadiya also provides the detailed description of the documents pleaded by the Claimant in support of its cost claim and their linkage with the Claimant's accounting system such as ledger entries related to the salaries, staff travel, lease rental, insurance, professional fee, and other alleged onsite overheads, auditor's certificate to support the HOO percentage, payment made for hired plant and equipment, additional funds, financial statements, etc.
158. I note that the documents referred by Mr. Dekivadiya are already pleaded with the SOC/Rejoinder and he has not provided any additional document to support his understanding of the cost claims. The document submitted in the pleading are matter of record and already submitted to the tribunal.
159. The specific replies to the documents related to the Claimant's cost claims exhibited with the SOC are already replied¹⁴² to an extent in the SOD&CC.

¹⁴² The Respondent's SOD&CC, Pages 171-186, Paragraphs 404-452

SECTION - 3

REPLY TO MR. ASHISH KUMAR'S WITNESS
STATEMENT (CW-3)

160. While reviewing Mr. Ashish's witness statement, it seems to me that there are various aspects of it that require no response as they express certain matters of fact and opinions of the Claimant and/or relate to matters that are not of relevance to the proceedings. Accordingly, I do not respond to these statements. The fact that I have not done so does not mean I accept Claimant's position or Mr. Ashish's— which, in large part, I do not.
161. In his Witness Statement, Mr. Ashish Kumar provides description¹⁴³ of Enterprise Information Portal (EIP) and categories of the P&M. I understand that EIP is an internal portal used by the Claimant to record its expenses, I don't have an exposure to the EIP portal used by the Claimant for CTP 1 & 2. Accordingly, I am not providing any observations/comments on the procedure of EIP working and its implication to record the data/expenses related to CTP 1&2.
162. In his Witness Statement, Mr. Ashish Kumar provides description¹⁴⁴ of the about documents submitted by the Claimant with its SOC/Rejoinder and types of documents maintained like DCRN, Assets movement details, Asset Performance report, policies, etc. to support its cost claim of Plant and Machinery.
163. Mr. Ashish Kumar also provides description¹⁴⁵ about the documents submitted by the Claimant which are related to deployment of resources regarding completion of works, RFIs, IPAs and variation which are already pleaded with the SOC/Rejoinder and he has not provided any additional document.
164. The specific replies to the documents related to the Claimant's cost claims exhibited with the SOC are already replied¹⁴⁶ to an extent in the SOD&CC.

¹⁴³ CW-3, Pages 4-6, Paragraphs 14-21

¹⁴⁴ CW-3, Pages 6-10, Paragraphs 22-39

¹⁴⁵ CW-3, Pages 10-12, Paragraphs 40-45

¹⁴⁶ The Respondent's SOD&CC, Pages 180-186, Paragraphs 428-453

SECTION - 4

**REPLY TO MR. NAOKI KAZAMA'S WITNESS
STATEMENT (CW-4)**

165. While reviewing Mr. Kazama's witness statement, it seems to me that there are various aspects of it that require no response as they express certain matters of fact and opinions of the Claimant and/or relate to matters that are not of relevance to the proceedings. Accordingly, I do not respond to these statements. The fact that I have not done so does not mean I accept Claimant's position or Mr. Kazama's— which, in large part, I do not.
166. In his Witness Statement, Mr. Kazama provides the detailed description¹⁴⁷ of the Claimant's cost claims related to Onsite overheads. I note that Mr. Kazama's description of the Claimant's onsite cost claims are replica of the arguments/analysis¹⁴⁸ provided in the SOC.
167. In its SOD&CC, the Respondent has provided the specific and detailed replies¹⁴⁹ to the Claimant's onsite overhead costs claimed in the SOC. The same are not replied/repeated here for the sake of brevity as the Parties positions/analysis on the Claimant's cost claim are already submitted to the tribunal.
168. Mr. Kazama also provides the detailed description of the documents¹⁵⁰ pleaded by the Claimant in support of its onsite cost claim such as, certified public account certificates and summary of computation of offsite overheads, etc. I note that the documents referred by Mr. Kazama are already pleaded with the SOC and he has not provided any additional document to support his understanding of the cost claim. The documents submitted in the pleading are matter of record and already submitted to the tribunal.
169. The specific replies to the documents related to the Claimant's claim for onsite overheads exhibited with the SOC are already replied¹⁵¹ to an extent in the SOD&CC.
170. In his Witness Statement, Mr. Kazama provides the detailed description¹⁵² of the Claimant's cost claims related to Offsite overheads. I note that Mr. Kazama's description of the Claimant's offsite cost claims are replica of the arguments/analysis¹⁵³ provided in the SOC.
171. In its SOD&CC, the Respondent has provided the specific and detailed replies¹⁵⁴ to the Claimant's offsite overhead costs claimed in the SOC. The same are not replied/repeated here for the sake of brevity as the Parties positions/analysis on the Claimant's cost claim are already submitted to the tribunal.

¹⁴⁷ CW-4, Pages 4-5, Paragraphs 13-14

¹⁴⁸ The Claimant's SOC, Pages 98-99, Paragraphs 326-328

¹⁴⁹ The Respondent's SOD&CC, Pages 176-177, Paragraphs 420-421

¹⁵⁰ The Claimant's SOC, Exhibit C-65 and C-66

¹⁵¹ The Respondent's SOD&CC, Pages 176-177, Paragraph 420-421

¹⁵² CW-4, Pages 5-6, Paragraphs 15-16

¹⁵³ The Claimant's SOC, Pages 102-103, Paragraphs 339-342

¹⁵⁴ The Respondent's SOD&CC, Pages 177-179, Paragraphs 422-426

172. Mr. Kazama also provides the detailed description of the documents¹⁵⁵ pleaded by the Claimant in support of its offsite cost claim such as, certified public account certificates and summary of computation of offsite overheads, etc. I note that the documents referred by Mr. Kazama are already pleaded with the SOC and he has not provided any additional document to support his understanding of the cost claim. The documents submitted in the pleading are matter of record and already submitted to the tribunal.
173. The specific replies to the documents related to the Claimant's claim for offsite overheads exhibited with the SOC are already replied¹⁵⁶ to an extent in the SOD&CC. Further, the authenticity/credibility of the documents exhibited with the Claimant's SOC as well as the Rejoinder will be dealt by the way of expert opinion.
174. In his Witness Statement, Mr. Kazama provides the detailed description¹⁵⁷ of the Claimant's cost claims related to interest on additional funds. I note that Mr. Kazama's description of the Claimant's claim are replica of the arguments/analysis¹⁵⁸ provided in the SOC.
175. In its SOD&CC, the Respondent has provided the specific and detailed replies¹⁵⁹ to the Claimant's interest on additional funds claimed in the SOC. The same are not replied/repeated here for the sake of brevity as the Parties positions/analysis on the Claimant's cost claim on account of interest on additional funds are already submitted to the tribunal.
176. Mr. Kazama also provides description of the documents¹⁶⁰ pleaded by the Claimant in support of its cost claim on account of interest on additional funds such as i.e., CA certificates. I note that the documents referred by Mr. Kazama are already pleaded with the SOC and he has not provided any additional document to support his understanding of the cost claim. The documents submitted in the pleading are matter of record and already submitted to the tribunal.
177. The specific replies to the CA certificates Claimant's claim for offsite overheads exhibited with the SOC are already replied¹⁶¹ to an extent in the SOD&CC.

¹⁵⁵ The Claimant's SOC, Exhibits C-83 to C-85

¹⁵⁶ The Respondent's SOD&CC, Pages 177-179, Paragraphs 422-426

¹⁵⁷ CW-4, Page 6, Paragraphs 17-18

¹⁵⁸ The Claimant's SOC, Page 127, Paragraph 408

¹⁵⁹ The Respondent's SOD&CC, Pages 184-185, Paragraphs 444-447

¹⁶⁰ The Claimant's SOC, Exhibit C-116

¹⁶¹ The Respondent's SOD&CC, Pages 184-185, Paragraphs 444-447

I affirm that the statements I make in this witness statement are based upon my own knowledge, including my review of documents and records maintained by Respondent in regular course of business, except where I state that my statements are based on information and belief, including information obtained from third parties. All the statements I make are true to the best of my knowledge and belief. Although I have been assisted by counsel to 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.



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 it the present affidavit false and nothing material has been concealed.

Verified at Jaipur on this 03rd day of August 2023.



ATTESTED



NOTARY
RAJASTHAN, JAIPUR



DEPONENT

3 AUG 2023