

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. ANURAG SHARMA
(RESPONDENT'S WITNESS NO. RW-1)**

30 JUNE 2023



Advocates for the Respondent

AKS Partners

A. INTRODUCTION

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 make this statement based on my personal knowledge and the documents that 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 regard to DFCCIL. 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 a number of 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 the drafting of this statement based on interviews/ meetings 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 with respect to:
 - i. My Experience and Role in the Project
 - ii. The delays in commencement and progress in preliminary/ design works and execution at the Site
 - iii. The Claimant’s claims and the Respondent’s counterclaims
7. I have been asked to give evidence through this witness statement, in respect of 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 having specialization in Civil Engineering.
9. I have experience of over 27 years in the construction industry with varied exposure to railway and building projects in India. I started my professional career with BSNL (Bharat Sanchar Nigam Limited)¹ in 1996. Later in 2013, I joined DFCCIL as Additional General Manager/Deputy Chief Project Manager (CPM)/Engineering and

¹ BSNL is a Govt. of India owned Public Sector

have been working here for about 10 years now in different capacities. My experience and past designations in DFCCIL are listed below:

Organization	Project	Designation	From	To
DFCCIL		CPM, Jaipur	May 2019	Till date
DFCCIL	CTP-1 & CTP-2	Deputy CPM, Ajmer	September 2015	May 2019
DFCCIL	CTP-1 & CTP-2	Acting CPM ² , Ajmer	1 April 2015	September 2015
DFCCIL	CTP-1 & CTP-2	Deputy CPM, Ajmer	September 2013	31 March 2015

10. Overall, I have varied exposure in all stages of railway projects i.e., planning, designing, contract management, site execution, and operation & maintenance. My CV is attached to this witness statement as **Exhibit R-274**.

C. MY ROLE IN THE PROJECT

11. I joined DFCCIL as Deputy CPM/Engineering in September 2013 when the Project had just commenced. I was posted at the Ajmer office which was the supervising office for CTP-2 and was reporting to Mr. R. K. Jain, CPM.
12. I was mainly involved in procurement, contract management, coordination with IR/ authorities, utility shifting, land acquisition, and court/ arbitration cases in CTP-2. I was also involved in liaisons with the local/ government authorities whenever required for the interest of the Project, many of which were common in both CTP-1 & CTP-2.
13. The CPM/Jaipur and CPM/Ajmer were involved in supervising CTP-1 and CTP-2 respectively, wherein the approval/ processing of execution-related issues was being taken care of by the respective CPM in their jurisdiction. However, the contractual issues which were common to both packages were consented to by both CPM/Jaipur and CPM/Ajmer.
14. I was assisting CPM Ajmer in drafting contractual correspondences exchanged with the Claimant/ Engineer for CTP-2 at the Ajmer office. I was also marked in most of the correspondences exchanged for CTP-1. Further, I was also involved in the process of reviewing/ assessment of the Claimant's EOT and cost claim applications on behalf of the Respondent.
15. I was also involved in the detailed review of the design/ drawings of alignment and related submissions from September 2013 until the mobilization of the Engineer in April 2014.
16. I was also interacting with the Claimant and Engineer on a regular basis and was attending the monthly review meetings. I was also co-ordinating with Engineer on the approvals, interim payments, and other issues.
17. As such I am aware of the facts of the present case and therefore am competent to swear the present statement.

² Respondent's Office Order No. HQ/HR/P.File/204, dated 31 March 2015

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 freight and cargo movement, 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, 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 a length of approximately 648.575³ kilometres is the largest civil package of DFCCIL.
21. The Project was awarded as a Combined Package, i.e., CTP-1 & CTP-2, which is further divided by the Claimant into 4 packages (A, B, C, and D), wherein CTP-1 constitutes Packages A, and B and CTP-2 constitutes of Packages C, and D. These packages are further sub-divided 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.
22. To my knowledge, this Project was the first mega railway project executed by L&T in India.

E. CLAIMANT'S DEFICIENT PERFORMANCE IN THE PRELIMINARY/ DESIGN STAGE

a. Non-Compliance in the Claimant's Obligations under CCP

23. I say that the Claimant was under an obligation⁴ to provide full information to the Respondent and the Engineer in relation to the Works programmes provided by the Claimant under the Contract.
24. Initially, only a hard copy of the revised CCP was submitted by the Claimant on 5 December 2013⁵. After repeated follow-ups, including on 14 January 2014⁶ and 11 March 2014⁷, the Claimant finally provided and installed a few including Primavera software required to review the same on 23 April 2014, as intimated by the Claimant itself on 05 May 2014⁸, nearly a year into the Project. However, the soft copy of the CCP along with other programmes were still pending to be provided by the Claimant

³ Original scope as per Bid Documents was 626 km which was later revised as per site conditions

⁴ In accordance with Clause 12 [Software Support, Management and Control] of the Employer's Requirements [General] Volume II

⁵ Exhibit R-6 of SOD

⁶ Respondent's Letter No. All/EN/SLT/CTP-2/DGN/02/21, dated 14 January 2014

⁷ Respondent's Letter No. JP/EN/SLT/Software/21, dated 11 March 2014

⁸ Claimant's Letter No. SL T/NKC/CTP1&2/PROC/GEN/2014/446, dated 23 April 2014

as sought by the Engineer on 28 April 2014⁹ for review/ approval of the CCP required to be submitted with full resource loading¹⁰.

25. Even a few dates planned/ envisaged in the revised CCP were already lapsed and the works were not progressing as planned. Therefore, while the CCP for CTP-2 was approved with certain comments to be complied with by the Claimant (NONOC) on 6 February 2014¹¹, for CTP-1 the delay in the provision of the soft copies and the number of revisions required led to approval with comments (NONOC) of the CCP for CTP-1 on 23 May 2014¹². The Engineer on 24 May 2014¹³ again requested a resource-loaded schedule. However, the resource-loaded programme or planned physical and financial S-curves were never submitted by the Claimant even after repeated follow-ups by the Engineer.
26. A summary and log of all the relevant letters related to the aforesaid matter are attached as **Exhibit R-275 (Colly)**.
27. The lack of submission by the Claimant of its planned deployment of resources at the time the Engineer was requesting this information is important as the Claimant has taken the position in this arbitration that, by 9 February 2017, it had already incurred its entire planned cost of overheads (SOC paragraph 316), direct labour (SOC paragraph 386), plant and machinery (SOC paragraphs 351 and 352) and fuel (SOC paragraph 396) and, therefore, all the costs under these categories incurred post 9 February 2017 are additional and therefore claimed. However, the Claimant is not in any position to verify this as the Claimant did not produce any information of what its planned or budgeted costs for these categories were, through CCP or in any other document, at the time where – if this information was provided – the Claimant could have checked and verified it.
28. In addition, throughout the stages of the Project, the Claimant also failed to provide Updated Programmes¹⁴ required on a monthly basis as per Appendix 5 of ER under the Contract¹⁵ to track the progress of the works. Moreover, they did not comply with the requirements of the Revised Programmes¹⁶ as and when instructed by the Engineer as highlighted in the SOD. Further, the Engineer provided comments & rejection vide letters dated 28 December 2017, and 17 February 2018, and other rejection letters¹⁷ are also attached as exhibits to Reply to Rejoinder

⁹ Engineer's Letter No. L-NKC-SLT-PMC-1404-20, dated 28 April 2014

¹⁰ As per Clause 6.2 (6) of Appendix 5 to the Employers Requirements.

¹¹ Respondent's Letter No. AII/EN/SLT/CTP-2/PLNG/01/34, dated 6 February 2014

¹² Exhibit R-15 of SOD

¹³ Engineer's Letter No. L-NKC-SLT-PMC-1405-43, dated 24 May 2014

¹⁴ Only 12 Updated programmes are submitted by the Claimant until 31 August 2016

¹⁵ As specified in Clause 12.6 (3) of Appendix 5 to the Employer's Requirements

¹⁶ In this regard, the Parties' communications may be referred to, including communications marked as Exhibit R-16, Exhibit R-69, Exhibit R-74, Exhibit R-174, Exhibit R-176, Exhibit R-182, Exhibit R-206, and Exhibit R-214, etc.

¹⁷ S. No. 22 & 23 of R-269 (Colly)

29. I say that the Claimant also ignored various instructions of the Respondent/ the Engineer to provide a Recovery Programme¹⁸. A few such correspondences are attached herewith and marked as **Exhibit R-276 (Colly)**.

30. Based on my experience, I observed that there were no recovery programmes in place to address the growing delays and mitigation of their impact. It became evident to me that the Claimant consistently lacked the necessary resources to meet the required rate of progress at any given time, indicating its inability to complete the works within the specified timelines.

b. Claimant's delay in design works due to delayed and poor design submissions.

31. I say that in terms of the Conditions of the Contract for Design-Build Lump Sum contract, the Claimant was under an obligation to scrutinize the Employer's requirements with reference to purpose, scope, design, and/ or other technical criteria for the works and perform the design work accordingly.

32. Further, the Claimant was to integrate and coordinate the design and construction of the Works with various entities including Indian Railways, Railway Board, RDSO, designated contractors/consultants/service providers, statutory authorities, public utility agencies, and adjacent contractors working in proximity to the Site. This obligation was essential for seamless collaboration and efficient progress of the Project.

33. I say that there was an acute failure on the part of the Claimant in compliance with the above-mentioned obligations.

34. In reference to the arbitral pleadings filed by the Parties, I reviewed Para 85- 88 of SOC. Based on my understanding, I state as follows:

- i. There were delays attributable to the Claimant wherein it did not deploy its design team in the main office. I recall that the Respondent raised concerns vide various letters, highlighting the shortcomings and issues in design related to that Design Organization/ team was yet to be set up at the main site office leading to delays and wasteful discussions with the Design Engineers coming from Chennai & Faridabad and not submitting the compliance and/or the revised drawings in time.
- ii. The Designated Engineer/ Respondent time and again intimated the same issue and asked for the Claimant's Design Organization setup along with details/ credentials. A specific log and summary of such letters are attached as **Exhibit R-277 (Colly)**.
- iii. There are many instances wherein the designs submitted by the Claimant were not according to the ER and were returned back for necessary correction¹⁹. The

¹⁸ as specified in Clause 12.8 of Appendix 5 to the Employer's Requirements

¹⁹ As per Clause 9.3 of Appendix 7 of ER, the Claimant had to follow the Internal Authorization Process to ensure the quality of design submissions

summary of remarks submitted by the Employer/ Engineer over the submissions and resubmissions of the designs can be referred to in Attachments to the EOT Determination²⁰.

35. The Claimant also failed to submit Design Submission Programme despite being instructed on several occasions (Monthly Progress Review Meetings, Weekly review meetings) and via letters such as dated 28 July 2014²¹ by the Engineer/Employer. The Claimant finally submitted the revised Design Submission Programme on 16 August 2014²². Accordingly, the Engineer provided approval (NONO) to the revised Design Submission Programme on 18 September 2014²³. Such correspondences are attached herewith and marked as **Exhibit R-278 (Colly)**.

c. Respondent acting as the Designated Engineer till Appointment of the Engineer

36. I say that CPM/Jaipur and CPM/Ajmer were acting as the Designated Engineers for CTP-1 and CTP-2 respectively, till 11 April 2014²⁴ when the external Engineer got appointed²⁵. The process of nomination of the Engineer has already been communicated on 1 October 2013 as inferred from the letter dated 30 December 2013 attached as **Exhibit R-279**.
37. I am aware that the Designated Engineer was accompanied by a highly qualified and experienced team to ascertain proper supervision of the Project in accordance with the Employer's Requirements. The list of officers at DFCCIL Ajmer & Jaipur offices is enclosed as **Exhibit R-280**.
38. Also, a three-member committee was nominated by the Designated Engineer for scrutinizing and submitting the documents for approval vide Office Order dated 21 October 2013²⁶ attached as **Exhibit R-281**. A snippet from mentioned office order is produced below for reference:

²⁰ Exhibit R-160, Page No. 108 to 450

²¹ Engineer's Letter No. L/NKC/SLT/PMC/1407/140, dated 28 July 2014

²² Claimant's Letter No. SLT/NKC/CTP1 &2/PLNG/CSCH/2014/775, dated 16 August 2014

²³ Engineer's Letter No. L/NKC/SLT/PMC/1409/157, dated 18 September 2014

²⁴ Exhibit R-2, R-13, S. No. 20 of Exhibit R-269

²⁵ The Respondent has the authority to designate an individual to act as the Engineer as per Clauses 1.1.2.4 and 1.1.2.2 of the GCC, requiring the Contractor to be duly informed of this appointment. Additionally, Clause 3.2 of the GCC allows for the Engineer to assign tasks and delegate authority to qualified and competent assistants who are capable of fulfilling their assigned responsibilities.

²⁶ Office Order No. 11/2013 via Respondent's Letter No. All/AD/Office Order/32, dated 21 October 2013

- A. Committee for initial checking: The following members should check and submit the report to forwarding committee within a week time from receiving the documents.

SN	Description	Engg.	S&T	Elect.
1.	Preliminary Structural Drawings for building works with finish schedule. (22 items)	APM/ABR-II	APM/S&T	APM/EL/AII
2.	Preliminary Station Layout including Yards (11 items)	DPM/ABR	APM/S&T	APM/EL/ABR
3.	Preliminary Depot Layouts (19 items)	APM/ABR-II	APM/S&T	APM/EL/AII
4.	Preliminary MEP Drawings and CSD drawings for the Buildings for the Building Works. (99 items)	APM/ABR-II	APM/S&T	APM/EL/AII

- B. Committee for forwarding for approval: The following members should comments on scrutiny report and submit for approval to CPM within a week time from receiving the comments.

SN	Description	Engg.	S&T	Elect.
1.	Preliminary Structural Drawings for building works with finish schedule. (22 items)	Dy.CPM/EN	Dy.CPM/S&T	Dy.CPM/EL
2.	Preliminary Station Layout including Yards (11 items)	Dy.CPM/EN	Dy.CPM/S&T	Dy.CPM/EL
3.	Preliminary Depot Layouts (19 items)	Dy.CPM/EN	Dy.CPM/S&T	Dy.CPM/EL
4.	Preliminary MEP Drawings and CSD drawings for the Buildings for the Building Works. (99 items)	Dy.CPM/EN	Dy.CPM/S&T	Dy.CPM/EL

39. I say that the Designated Engineers and their team deployed at both Jaipur and Ajmer offices for CTP-1 and CTP-2 respectively had acted diligently and provided the necessary comments, approvals, and sanctions as required during the period from the commencement of the Project till April 2014. The same is evident from the log and a summary of such letters is attached as **Exhibit R-282 (Colly)**.
40. As inferred from the said exhibit, I say that reviewing/ issuing NONO or NONOC to various submissions made by the Claimant was not delayed on account of the Engineer not having been appointed as the Respondent. The CPMs acting as the Designated Engineer were properly resourced to carry out the design review and approvals. It was instead the Claimant that was delaying its design submissions because the Claimant's design team was not mobilized at the main site office²⁷ as already highlighted in Exhibit R-277 (Colly).
41. I confirm that when the Respondent was acting as the Designated Engineer, it gave timely instructions/ comments/ approvals relating to design, hydrological, technical reports, Plan & Profile drawings, span arrangement & GADs of major and minor bridges, etc. and the same can be inferred from the relevant letters attached under Exhibit R-282.

²⁷ Clause 1.3 of Employer's Requirement [Design]

F. CLAIMANT’S DEFICIENT PERFORMANCE IN EXECUTION OF THE WORKS ON SITE

Sufficient land was available to the Claimant but the Claimant did not have adequate resources to execute the Works as per its CCP

42. At the time of signing of the Contract, the Respondent had acquired possession of 90% of the land specified in the Contract. There exist handover letters signed by representatives of both Parties, confirming the handing over of the land to the Claimant. These letters make it clear that more than 80% of the land was made available to the Claimant as on 28 September 2013²⁸ in CTP-1, and more than 95% land was handed over in CTP-2 attached as **Exhibit R-283**.
43. I say that the above status has been duly admitted by the Claimant. As per the narrative of updated programme submitted by the Claimant dated 30 June 2014²⁹, around 95 % “encumbrance free land” was available in most of the sections of the Project and with 100% land availability in Section D. A snippet from the same programme is produced below (see last column of snippet below):

²⁸ S. No. 3 of Exhibit R-269 of Reply to Rejoinder

²⁹ Refer to Exhibit C-128 (Colly.), Page No. 183

3. Summary of Land handing over as on 30.06.2014-						
Sr. No.	Activity	Baseline Start	Baseline Finish	Actual Start Date	Actual/ Exp. Finish Date	% of Encumbrance Free Land Handed Over
Section A (Rewari - Reengus)						
1	Bhagega IR to Bhagega DFCC Connecting Line	19-Nov-13	2-Dec-13	28-Sep-13	30-Jun-14	95%
2	Bhagega to Dabla	18-Nov-13	02-Dec-13	28-Sep-13	30-Jun-14	96.93%
3	Dabla to Ateli	25-Nov-13	09-Dec-13	30-Nov-13	30-Jun-14	99.48%
4	Ateli to Rewari	02-Dec-13	16-Dec-13	30-Nov-13	30-Jun-14	94.05%
5	Bhagega to Shrimodhpur	16-Dec-13	16-Dec-13	03-Feb-14	30-Jun-14	96.37%
6	Shrimodhpur to End of Section A	09-Dec-13	23-Dec-13	21-Dec-13	30-Jun-14	97.12%
Section B (Reengus-Madar)						
1	End of Package A to Pachar Malikpur	09-Dec-13	09-Dec-13	21-Dec-13	30-Jun-14	90%
2	Pachar Malikpur to Phulera	02-Dec-13	16-Dec-13	21-Dec-13	01-Jul-14	90%
3	Phulera to Sakun	30-Dec-13	30-Dec-13	30-Dec-13	30-Jun-14	90%
4	Sakun to Kishangarh	06-Jan-14	06-Jan-14	27-Feb-14	27-Feb-14	100%
5	Kishangarh to End of Section B	13-Feb-14	13-Feb-14	27-Feb-14	27-Feb-14	100%
Section C (Madar-Bhinwalia)						
1	Marwar to Chandawal	09-Dec-13	09-Dec-13	18-Nov-13	29-Jan-14	100%
2	Chandawal to Haripur	16-Dec-13	16-Dec-13	18-Nov-13	31-Jan-14	100%
3	Haripur to Bangur	23-Dec-13	23-Dec-13	22-Nov-13	31-Jan-14	100%
4	Bangur to Sardhana	06-Jan-14	06-Jan-14	22-Nov-13	14-Feb-14	100%
5	Sardhana to End of Section B	13-Jan-14	13-Jan-14	14-Feb-14	30-Jun-14	98%
6	Marwar to End of Section C	27-Jan-14	27-Jan-14	18-Nov-13	29-Jan-14	100%
Section D (Bhinwalia-Ikbalgarh)						
1	End of Section C to Jawali	16-Dec-13	16-Dec-13	21-Jan-14	21-Jan-14	100%
2	Jawali to Birolia	06-Jan-14	06-Jan-14	21-Jan-14	21-Jan-14	100%
3	Birolia to Keshavganj	20-Jan-14	20-Jan-14	21-Jan-14	21-Jan-14	100%
4	Keshavganj to Banas	27-Jan-14	27-Jan-14	15-Jan-14	21-Jan-14	100%
5	Banas to Swarupganj	03-Feb-14	03-Feb-14	15-Jan-14	15-Jan-14	100%
6	Swarupganj to Shriamirgarh	12-Feb-14	12-Feb-14	15-Jan-14	15-Jan-14	100%
7	Shriamirgarh to Iqbalgarh	24-Feb-14	24-Feb-14	15-Jan-14	15-Jan-14	100%

44. I say that even after acknowledging the availability of encumbrance-free land in earlier submissions, the Claimant issued many letters related to obstructions at the site in order to cover its own delays. These claimed obstructions in most of the cases were away from ROW or had no effect on the ongoing execution. A few of such assertions of obstructions by the Claimant and its reply by the Respondent are tabulated below:

Claimant's letter date	Locations of alleged obstruction	Respondent's letter date	Actual site condition as per Respondent
15 Feb 2014 ³⁰	IR Km 285/6 to Km 293/6 IR Km 300/4 to Km 3'27 /4	10 Mar 2014 ³¹	Encumbrance-free land handed over by the Respondent on 31 January 2014. Most of the obstructions were of small chabutaras partially dismantled, abandoned quarters, etc, which were away from proposed DFC formation

³⁰ Claimant's Letter No. SLT/DFCC/CTP2/TECH/GEN/2014/275, dated 15 February 2014

³¹ Respondent's Letter No. AII/EN/SLT/CTP-2/ CONT/09/64, dated 10 March 2014

Claimant's letter date	Locations of alleged obstruction	Respondent's letter date	Actual site condition as per Respondent
			& not likely to obstruct the work of formation.
25 Mar 2014 ³²	IR Km 285.77 - 377.1	29 Apr 2014 ³³	Most of the structures had already been removed from the ROW. Though there were certain structures remaining, most of them were beyond the formation area under the process of removal.

45. The Respondent's letters are attached herewith and marked as **Exhibit R-284 (Colly)**.
46. The Contractor in their CCP, proposed to simultaneously commence work in all 21 sections³⁴ without resource interdependency. However, the Claimant faced delays in initiating the works due to insufficient resources to handle the requirements of all 21 sections concurrently.
47. I say that it was the Claimant's obligation³⁵ to ensure that the land in possession of the Claimant is to be protected from encroachments and is not used for any purpose not connected to the works. But due to the Claimant not carrying out its obligation to protect the site from encroachment once the land had been handed over to it, many of the areas were encroached on by the locals³⁶ as highlighted by the Engineer on 06 December 2014 attached herewith and marked as **Exhibit R-285**.
- a. Insignificant presence of Lead partner Sojitz in Project execution**
48. I understand that Sojitz was responsible for executing 51% of the Accepted Contract Price works as the Lead Partner of the Claimant Consortium. Its scope of work included the construction of a portion of Minor Structures and Track works. The other partner L&T was tasked with executing the balance 49% works of the Accepted Contract Price.
49. Since the present Project is one of the most significant railway projects, requiring the deployment of New Track Construction ("NTC") machine for the first time in India; Sojitz, as the Consortium's lead partner, was expected to provide its technical expertise/ experience to the Project.
50. This issue of presence of Sojitz in the Project execution is important as:
- a. To my knowledge, this project is the first mega railway project undertaken by L&T in India, and hence the technical competence of L&T was not yet tested.

³² Claimant's Letter No. SLT/DFCC/CTP2/CONT/LAND/2014/385, dated 25 March 2014

³³ Respondent's Letter No. AII/EN/SLT/CTP-2/CONT/09/64/85, dated 29 April 2014

³⁴ Also refer to Para No. 293 of the Claimant's Rejoinder

³⁵ Refer Clause 2.2.3(3) of Appendix -1 of CA (Vol.-11) on Page No.639

³⁶ Engineer's Letter No. L-NKC-SLT-PMC-1412-84 dated 6 December 2014

- b. Therefore, in the assessment of the Claimant's technical qualification at the bidding stage, the role proposed in the Claimant's bidding for Sojitz played an important part in the Respondent's decision to award the Works to the Claimant.
 - c. The Claimant has claimed onsite and offsite overhead costs for Sojitz as part of its delay cost claim in its pleadings³⁷.
51. However, throughout the Project duration, I observed that the presence of Sojitz at the Project site was negligible. In fact, only two individuals from Sojitz were claimed to be deployed at site, also can be inferred from MPRs³⁸.
52. The same concern was observed and raised by the Respondent vide letter dated 12 December 2016³⁹, seeking documentary evidence for involvement of Lead Partner in fulfilling its obligations. However, the Claimant could not give a satisfactory response to that.
- b. Claimant's lack of Coordination with the Authorities/Agencies**
53. I say that the Claimant bears the responsibility for interface management and coordination with relevant parties involved in the Project. During the design phase, the Claimant had to follow a certain set of steps for finalization of designs/ drawings required for the construction phase:
- a. Submission of drawings by the Claimant to Engineer/ Employer
 - b. The Engineer forwards the same to the Employer and then to concerned authority i.e., IR/ NHAI/ PWD, etc., as per the requirements.
 - c. Resubmission of the Drawings if comments are received from concerned authority
 - d. Forwarding to the authorities for approval
54. It is customary for any prudent contractor to establish an experienced team for liaison with above government authorities and other statutory bodies. However, I state that the Claimant failed to deploy a dedicated and experienced team for liaison purpose, rather it was the Respondent who had assisted the Claimant as and when they were unable to obtain necessary approvals from IR, NHAI or any other government bodies.
55. Based on my recollection, I can recall several instances where the Respondent assisted the Claimant in coordination with various authorities and agencies such as PWD, Revenue Department, Forest Department, Industries Department, DMIC, PHED, Environment Department, local administration across the states of Haryana, Rajasthan and Gujarat. The same is evident from the log and a summary of such letters is attached as **Exhibit R-286 (Colly)**.

³⁷ Para 326-328, Para 339 to 342 of SOC

³⁸ Refer Exhibit C-96, Page 97387 of SOC

³⁹ Exhibit R-273 (Replies to Responses for Document Production)

56. I say that the Respondent facilitated obtaining these approvals for the Claimant in the best interest of the Project. The Respondent formed monitoring/ coordinating committees engaging all interfacing stakeholders and coordinated it through review meetings for expedited approvals.

G. CLAIMANT'S DELAYS IN FORMATION WORKS DURING ENVIRONMENTAL CLEARANCE/ NGT BAN IN RAJASTHAN

57. One of the major reasons alleged by the Claimant for its delay in taking up the formation works (especially the earthwork) was the additional requirement of Environmental Clearance (EC) on 09 September 2013, and subsequent National Green Tribunal (NGT) ban in the state of Rajasthan, which allegedly prevailed from June 2014 to December 2014.

58. I do not agree with the Claimant's reasons as I will explain below:

a. Status as on 22 January 2013 i.e., Base-Date of the Contact

59. I assert that at the time of submission of bid offer, the Environmental Impact Assessment (EIA) Notification dated 14 September 2006, the Supreme Court order dated 27 February 2012 and Office Memorandum (OM) dated 18 May 2012 of the Ministry of Environment and Forests (MoEF) were all in force. These regulations mandated prior EC for all projects related to minor minerals.
60. The Claimant's bid proposal ought to have accounted for the time required for meeting these statutory obligations. The same was also conveyed to the Claimant via letter dated 28 March 2014⁴⁰.
61. I say that the Claimant was well-aware or ought to have been aware of the requirement of obtaining prior EC for extraction of minor minerals in areas of less than 5 ha. as it was prevailing from at least 27 February 2012.

b. Claimant's Failure in Procurement of Borrow Areas till June 2014

62. I can state that no efforts were observed from the Claimant's side regarding the identification/ approval of borrow areas during the initial stages of the Project. Furthermore, no documented agreements between the owner of the borrow areas and the Claimant are on record. These indicate a failure on the part of the Claimant to fulfil their obligations in procuring necessary borrow areas for the Project.
63. The process of finalization of borrow area involves identification of borrow area by the Claimant, submission of details to the Engineer and getting STP approved by the State Government I affirm that the Contractor failed to get any STP before the alleged NGT ban in June 2014.

⁴⁰ Respondent's Letter No. All/EN/SL T /CTP-2/CONT /09/71 dated 28 March 2014

64. I observed that had the Claimant procured the required borrow areas and obtained STP timely before the alleged NGT ban was imposed in June 2014, which was almost 10 months from the date of commencement the progress of the Project would have been far better. Thus, effect of NGT ban on embankment works could have been avoided. The same is evident from the summary of such EC letters⁴¹ attached as **Exhibit R-287**.
65. I could recall that the Respondent replied to the Claimant's letter dated 17 December 2013⁴², wherein the Rajasthan State Pollution Control Board ("RSPCB") directed the Claimant to seek the necessary approval from them only after acquiring an EC from the Ministry of Environment and Forest ("MoEF"). The Respondent mentioned⁴³ that the Claimant had sufficient time to apply for a permit from the State Government and further suggested the possibility of having the mine area as more than 5 hectares.
66. However, instead of applying for the EC, the Claimant claimed that there had been a change in legislation. I say that the Claimant kept hiding its failure by taking shelter from alleged change in legislation as also intimated via letter dated 5 February 2014⁴⁴.
67. I say that the Claimant raised this issue of stay order to MoEF's OM dated 24 December 2013 vide its order dated 28 March 2014 and notified the Engineer after 81 days whereas according to Clause 20.1, it was required to notify within 28 days after the Contractor should have become aware of the event.
68. I affirm that this matter of EC for mining of minor minerals has been explained to the Claimant in sufficient detail vide Engineer's letter dated 21 May 2014⁴⁵, 3 July 2014⁴⁶ and through several other letters by the Respondent. Such correspondences are attached herewith and marked as **Exhibit R-288 (Colly)**.

c. Claimant's Delay in getting design approvals affecting start of Formation work

69. There was a delay in the submission of GFC drawings by the Claimant which subsequently led to a delay in the earthwork. Pertinently, the stay order was issued by NGT only on 06 June 2014 i.e., about 6 months after the scheduled date of commencement of earthwork as per the accepted CCP.
70. The below table from MPR for June 2016⁴⁷ clearly shows that NONOC for Plan & Profile (P&P) was obtained for only 72 km of stretch in CTP-1 & 194 kms for CTP-2

⁴¹ Exhibit B (Colly.) – Request No. 5 (Document Produced by the Claimant on Tribunal's order for Discovery of Documents)

⁴² Claimant's Letter No. SLT/DFCC/CTP1&2/CONT/OTH/2013/162, dated 17 December 2013

⁴³ Respondent's Letter No. All/EN/SLT /CTP-2/CONT /09/09, dated 21 December 2013 & Respondent's Letter No. 2013/HQ/EN/PWC/PKG 1&2/Post Contractual Matters, dated 3 January 2014

⁴⁴ Respondent's Letter No. All/EN/SLT/CTP-2/CONT/09/33, dated 5 February 2014

⁴⁵ Engineer's letter No. L-NKC-SLT-PMC-1405 Dt. 21 May 2014

⁴⁶ Engineer's letter No. L-NKC-SLT-PMC-1407-14 dated 3 July 2014

⁴⁷ Exhibit C-96, Page 94212 of SOC

as on 6 June 2014. As per the approved CCP, Embankment Design should have been completed by 24 February 2014 for CTP-1 and 10 March 2014 for CTP-2.

➤ NONOC for the following 9 stretches have been obtained:-

S.No	Station	UOM	Length of Section	NONOC Date	NONO Date
1	Dabla to Bhagega	Km	36	29-Jan-14	
2	Bhagega to Shrimadhopur	Km	36	15-May-14	
3	Haripur to Chandawal	Km	19	05- May-14	
4	Marwar to Chandawal	Km	35.6	13-Jun-14	
5	Jawali to Marwar	Km	35.0	13-Jun-14	
6	Biroliya to Jawali	Km	28.6	06-Jun-14	
7	Keshavganj to Biroliya	Km	45.6	06-Jun-14	
8	Banas to Keshavganj	Km	19.4	06-Jun-14	
9	Swarupganj to Banas	Km	10.8	06-Jun-14	
Total Length		Km	266		

71. I affirm that NONO for method statement for Earthwork was also not obtained until June 2014⁴⁸.
72. Below snippet from MPR for June 2014 further details the delayed submission by the Claimant

⁴⁸ Exhibit C-96, Page 94212 of SOC

ALIGNMENT DESIGN							
Sl.	STATIONS	Scope	Submitted	Rev. no.	First submission date	Last Submission Date	Status
1	Ateli to Rewari (0- 29.9)	29.9	29.9	A	12-Feb-14	12-Feb-14	
2	Dabla to Ateli (29.9- 70.1)	40.2	40.2	D	16-Jan-14	23-May-14	Approval awaited
3	Bhagega to Dabla (70.1- 106.1)	36.0	36.0	1	6-Nov-13	18-Mar-14	NONOC received on Rev-1 on 10/06/2014; GFC issued
4	Shri Madhopur to Bhagega (106.1- 142.1)	36.0	36.0	1	24-Dec-13	10-Jun-14	NONOC received on Rev-1 on 19/06/2014; GFC issued
5	Pachar to Shri Madhopur (142.1- 171.2)	29.1	29.1	B	23-Jan-14	15-May-14	Approval awaited
6	Phulera to Pachar Malikpur (171.2- 219.2)	48.0					
7	Sakhun to Phulera (219.2- 239)	19.7	19.7	0	28-Feb-14	26-Jun-14	NONOC Awaited
8	Kishangarh to Sakhun (239- 272.8)	33.9	33.9	C	18-Feb-14	17-May-14	
9	Kishangarh to Saradhana (272.8- 303.7)	30.9	30.9	C	20-Jan-14	20-Jun-14	Under review
10	Bangurgram to Saradhana (303.7- 339.1)	35.4	35.4	A	14-Jun-14	14-Jun-14	
11	Haripur to Bangurgram (339.1- 381)	41.9	41.9	A	27-May-14	27-May-14	
12	Chandawal to Haripur (381- 400)	19.0	19.0	0	4-Apr-14	31-May-14	NONOC received on 05/05/2014 NONO is pending
13	Marwar to Chandawal (400- 435.6)	35.6	35.6	C	27-Feb-14	2-Jun-14	NONOC received on 13/06/2014 NONO is pending
14	Jawali to Marwar (435.6- 470.6)	35.0	35.0	E	23-Dec-13	27-Jun-14	NONOC received on 13/06/2014 NONO is pending
15	Biroliya to Jawali (470.6- 499.2)	28.6	28.6	0	18-Jan-14	24-Jun-14	NONOC received on 06/06/2014 NONO is pending
16	Keshavganj to Biroliya (499.2- 544.8)	45.6	45.6	0	13-Feb-14	20-Jun-14	NONOC received on 06/06/2014 NONO is pending
17	Banas to Keshavganj (544.8- 564.2)	19.4	19.4	0	3-Mar-14	12-Jun-14	NONOC received on 06/06/2014 NONO is pending
18	Swarupganj to Banas (564.2- 575)	10.8	10.8	0	3-Mar-14	11-Jun-14	NONOC received on 06/06/2014 NONO is pending
19	Shri Amirgadh to Swarupganj (575- 614.7)	39.7	39.7	B	15-Apr-14	30-May-14	
20	Iqbalgarh to Shri Amirgadh (614.7- 631.1)	16.4	16.4	A	5-Jun-14	5-Jun-14	
		631.1	583.1				

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73. Similarly, for CTP-2, the Claimant did not commence submission of alignment before 23 December 2013 and could not obtain first NONOC before 31 May 2014 whereas the entire alignment design for CTP-1 along with NONO for cross-section drawings should have been completed by 12 February 2014 as per CCP.
74. In view of non-availability of above approved GFC Drawings, the Claimant was not in the position to commence the physical execution at Site by 18 March 2014 and 31 May 2014 for CTP-1 and CTP-2 respectively.
75. If the Contractor had not delayed the submission of GFC drawings for P&P and had initiated the earthwork on time, it is reasonable to assume that more than 23.34%⁴⁹ of

⁴⁹ Exhibit C-96 part 7, Page 94257 of SOC

the earthwork⁵⁰ (30.55% filling, 34.36 % cutting, 8.10% subgrade) could have been completed before the NGT order in June 2014. However, “zero” physical progress has been recorded in Claimant’s MPR for June 2014 (snippet is produced below)

	Item	Weightage	UOM	Scope	Planned %	Completed	Completed %
A	Mobilisation	10.00%	LS	100%	100.00%		93%
B	Production of Aggregate for Concrete of Retaining Wall	0.50%	LS	100%	20.33%		
C	Production of Aggregate for Blanketing	5.50%	LS	100%	20.33%		
4.4.1	Earthwork in filling	21.43%	Km	306	30.85%	0	0%
1	Achieving 50% of desired height	50.00%	km	306	32.47%	0	0%
2	Achieving the balance 50% of desired height	50.00%	km	306	28.62%	0	0%
4.4.2	EW in Cutting (including blasting, if any)	6.00%	Km	306	34.36%		0%
1	Achieving 50% of desired height	50.00%	Km	306	42.78%	0	0%
2	Achieving the balance 50% of desired height	50.00%	Km	306	25.93%	0	0%
4.4.3	Sub-grade	8.57%	Km	306	8.10%	0	0%
1	Achieving 50% of desired height	50.00%	km	306	8.10%	0	0%
2	Achieving the balance 50% of desired height	50.00%	km	306	8.10%	0	0%
4.4.4	Blanket	23.14%	Km	306	0.00%	0	0%
1	Achieving 50% of desired height	50.00%	km	306	0.00%	0	0%
2	Achieving the balance 50% of desired height	50.00%	km	306	0.00%	0	0%
4.4.5	Clearing and Grubbing	4.97%	Km	306	39.48%	44	14%

76. Similarly, it is reasonable to assume that more than 10.12%⁵¹ of the earthwork (12.51% filling, 17.13 % cutting) could have been completed before the NGT order was issued. However, “zero” physical progress has been recorded in Claimant’s MPR for June 2014 (snippet is produced below)

	Item	Weightage	UOM	Scope	Planned %	Completed	Completed %
A	Mobilisation	10.00%	LS	100%	100.00%		93%
B	Production of Aggregate for Concrete of Retaining Wall	0.50%	LS	100%	11.82%		
C	Production of Aggregate for Blanketing	5.50%	LS	100%	11.82%		
4.4.1	Earthwork in filling	21.43%	Km	342	12.51%	0	0%
1	Achieving 50% of desired height	50.00%	km	342	16.23%	0	0%
2	Achieving the balance 50% of desired height	50.00%	km	342	8.79%	0	0%
4.4.2	EW in Cutting (including blasting, if any)	6.00%	Km	342	17.13%		0%
1	Achieving 50% of desired height	50.00%	Km	342	18.13%	0	0%
2	Achieving the balance 50% of desired height	50.00%	Km	342	16.12%	0	0%
4.4.3	Sub-grade	8.57%	Km	342	0.00%	0	0%
1	Achieving 50% of desired height	50.00%	km	342	0.00%	0	0%
2	Achieving the balance 50% of desired height	50.00%	km	342	0.00%	0	0%
4.4.4	Blanket	23.14%	Km	342	2.05%	0	0%
1	Achieving 50% of desired height	50.00%	km	342	4.09%	0	0%
2	Achieving the balance 50% of desired height	50.00%	km	342	0.00%	0	0%
4.4.5	Clearing and Grubbing	4.97%	Km	342	19.74%	17	5%

d. Non-performance of the Claimant prior to 06 June 2014 i.e., date of alleged ban by NGT

77. I would clarify that the aforesaid MOEF Notification dated 09 September 2013 (S.O.2731 (E)) pertains to new mining leases being established or existing ones seeking renewals. This means that all the existing quarries within their licensed period of operation could continue to function. As a result, this notification did not lead to any unforeseeable shortages in the availability of materials. I affirm that the Claimant failed to obtain the necessary environmental clearance as mandated by MoEF.
78. The commencement date of the Project is 30 August 2013. Thus, the Claimant had sufficient time to apply for obtaining EC approvals, however the Claimant continued to seek STP from the Rajasthan State Government which were then returned by the Government of Rajasthan stating that EC approval is required prior to obtaining STP. Thus, the Claimant delayed the process inordinately and accordingly as also highlighted in Exhibit R-287

⁵⁰ Weighted sum of cutting, embankment, subgrade & blanketing as per MPR

⁵¹ Exhibit C-96 part 7, Page 94257 of SOC

79. It is indeed noteworthy that the Project had only begun 10 days prior to 09 September 2013 and was still in its initial stage. During this time, the Claimant had the opportunity to envision and plan the CCP. The initial CCP was submitted on 26 September 2013, followed by a revised version on 05 December 2013. This demonstrates that the Claimant had the enough opportunities to consider and incorporate the requirements related to EC approvals in its planning and execution of the Project.
80. It would have been prudent for the Claimant to submit EC applications immediately, rather than waiting until the actual commencement of the earthwork, especially considering that the earthwork was planned to be taken up simultaneously in all 21 sections of the Project. This delay in addressing the necessary permissions further emphasizes the lack of foresight and planning on the part of the Claimant.
81. I understand that the earthwork activity was scheduled to begin in December 2013 for CTP-1 and in February 2014 for CTP-2. However, it was the Claimant's responsibility to obtain prior EC from the concerned authorities before commencing these activities.

e. Non-performance of the Claimant during the alleged NGT Ban

82. The Claimant divided the entire stretch of CTP-1 and CTP-2 into 141 stretches. Considering that the EC/ NGT order affected the works only in the state of Rajasthan, it could have potentially posed an issue specifically for work segments WS-20 to WS-136, which primarily involved embankment work.
83. The Claimant still failed to carry on the work in the remaining portions of the Project, specifically the Project works in Haryana (WS-1 to WS-19) and Gujarat (WS-137 to WS-141), which were not affected by the order. I affirm that there was a stretch of around 18.93 kms in Gujarat which was unaffected by NGT, but the Claimant did not take up the earthwork in these stretches until March 2015 as evident from Exhibit R-160.
84. The planning in the CCP was based on the Respondent complying with its prior obligation of handing over unencumbered land / ROW, even after availability of 80% land as on 28 September 2013⁵², there was no progress by the Claimant till June 2014 as the P&P Design was still not approved due to poor submissions of the designs by the Claimant.
85. I was shown Para 228 of the Rejoinder where the Claimant alleges that 87% of the land had filling which was delayed due to orders/directions of NGT. I affirm that the blanketing work was delayed by the Claimant irrespective of filling or cutting and not all of the area under filling was affected due to NGT. I say that embankment cutting contributes to 13% of earthwork, wherein these works could have been executed along with using this earth in the filling areas leaving behind less area for filling due to impact of NGT order.
86. I affirm that there is no correspondence on record to show that the Claimant did necessary coordination for EC during the NGT ban or before the NGT ban. I was shown Exhibit C-14 of the Rejoinder where the Claimant has shared some correspondences

⁵² S. No. 3 of Exhibit R-269

related to EC, but they are related to a different mining issue related to stone quarry products.

f. Non-performance of the Claimant after lifting of restriction in December 2014.

87. It is evident that as of 31 August 2016, the Claimant had significantly low progress of 10% in 4 out of 21 sections. This low level of achievement is despite the fact that the Claimant had all the approved designs and drawings in place, and the issue of NGT had been resolved more than 1½ years prior, by December 2014. The Claimant struggled to make substantial progress even after the removal of the NGT ban.

g. Claimant's Failure to take up Cutting

88. I state that EC/ NGT order had no restrictions on performing earth-cutting in any work segment. In fact, I state with my experience that the cut & fill section had the advantage of utilizing the earth obtained from the cutting process, and therefore, lesser dependence upon the external sources of earth material.
89. I affirm that majority of the cutting area was in Rajasthan, which could have been executed by the Claimant irrespective of NGT ban but this cutting work was not executed completely even as on 31 August 2016⁵³:

WDFC CTP 1&2			Cumulative Progress upto July'16	Progress FTM Aug'16	
Description	Unit	Scope	Achieved	Planned	Achieved
Cutting	Cum	4,745,877	3,400,001	40,570	19,250
Embankment	Cum	23,665,895	16,058,820	160,559	82,093
Subgrade	Cum	7,816,488	5,042,880	100,797	42,231
Blanket	Cum	5,807,631	1,603,997	81,252	65,201

90. Even in embankment works no substantial progress was achieved which has been elaborated section-wise in EOT Determination dated 24 August 2017⁵⁴
91. The Claimant 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.
92. Overall, I observed that the Claimant was failing to effectively manage/ control the works because of the Claimant's improper/inadequate planning and lack of liasoning/ management required for the efficient execution of the Project.

H. RESPONDENT'S COUNTERCLAIMS

a. Counter Claim 1: Delay Damages under Clause 8.7

93. I state that in SoDC, the Respondent has put delay damages against the delay of 303 days for MS-3⁵⁵. As I was involved from the Respondent's side in matter of grant of

⁵³ Exhibit C-96 Part-7, Pg. 97274 of SOC

⁵⁴ Refer Exhibit R-160

⁵⁵ Exhibit R-256 of SOD

EOT for MS-3, I can state that the Respondent did not impose LD on the Claimant at the time of granting EOT because of the following reasons:

- a. The cut-off date of EOT under review was 31 August 2016, which was earlier to the schedule completion date of MS-3 i.e., 09 February 2017. Further, the actual achievement of MS-3 was not within sight as on 31 August 2016.
- b. As MS-3 execution was still under progress and the Claimant's delays would vary (depending upon the acceleration/slow down by the Claimant) till the actual achievement of MS-3.
- c. I refer to part of PC 8.7 which says the LD levied can be reimbursed if the delay is made good in completion of further Milestones. Therefore, the Respondent did not impose LD while assessing EOT for the matter in dispute, as the execution of milestone MS-3 was under progress and further milestones i.e., MS-4 and MS-5 were far away from achievement.

b. Counter Claim 2: Engineer's Costs

94. I was handling the consultancy contract signed with M/s NKC Consortium for this Project and the related monthly invoices/ payment being made by the Respondent.
95. The Engineer, who was engaged for supervising CTP-1 and CTP-2, was also tasked with overseeing the Civil and track works for other packages such as CTP 3R, CTP 3AR, EMP4, and STP 5.
96. In order to show that these projects were also under execution and were being supervised by M/s NKC Consortium, I attach the certified invoices, package-wise for the works executed for CTP 1&2, CTP 3R, CTP 3AR, EMP4, and STP 5 for the duration from May 2013 to August 2016 attached herewith and marked as **Exhibit R-289**.

c. Counter Claim 3: Loss of Track Access Charges

97. The Track Access Charges (TAC) are also known as infrastructure charges or access fees, which are levied on train operators for the use of railway tracks and related infrastructure. The purpose of TAC is to recover the costs associated with maintaining, upgrading, and operating the railway infrastructure.
98. Indian Railways on utilizing the rail infrastructure developed and maintained by Respondent will pay TACs to Respondent as per the Track Access Agreement annexed in the Concession Agreement, signed between the Ministry of Railways (MoR) and DFCCIL dated 28 February 2014, and subsequently amended on 31 March 2014⁵⁶. I state that these charges are an important source of revenue for the Respondent, helping to fund the maintenance and improvement of railway tracks and facilities.
99. Furthermore, I state that as a consequence of the delay in MS-3 achievement, the commencement of the DFC track operation delayed which resulted in the Respondent's loss of TAC.

⁵⁶ Exhibit R-271 (Response to Request for Document Production)

100. The TAC has been computed as INR 114.16 crore⁵⁷, considering the depreciation based on a 30-year useful life of the assets.

Track Access Charges	2020-21 (INR in Cr)
Operation & Maintenance	14.35
Higher of loan principal (repayment) or Depreciation on assets:	
Loan Principal:	-
Depreciation – (30 years asset life)	70.37
Interest:	
JICA	59.53
Total	144.16

101. With this witness statement, I attach the following supporting documents in relation to cost heads of TAC claimed:

- a. One of the cost heads of TAC is Operations and Maintenance Expenses, which has been divided into 99 cost heads⁵⁸. With this statement, I submit the supporting documents (invoices, material receipt notes, payment remittance- Journal Voucher, Payment Voucher, etc.) for 37 out of 99 cost heads to support the actual expenses incurred attached as **Exhibit R-290**.
- b. The supporting details of depreciation and JICA interest are attached as **Exhibit R-291**.

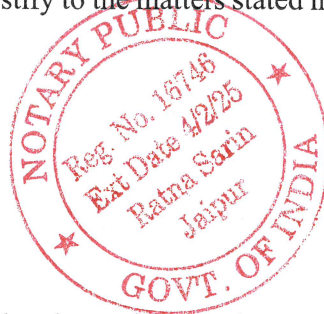
d. Counter Claim 4: DFCC Staff Costs

102. I state that the Respondent has claimed retention cost towards DFCC's staff costs (salary and benefits) for 303 days of delays, which was calculated @ 7% of the Project Cost.
103. With this witness statement, I attach the following documents which are related to the actual costs incurred at DFCC's corporate office and Ajmer/ Jaipur office:
- a. DFCC Staff salary breakdown along with CA audited Certificate for corporate office, Ajmer Office and Jaipur Office for the period August 2013 to August 2016 attached as **Exhibit R-292**.
 - 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**.
104. The above documents demonstrate that the Respondent did incur expenses against the Counter Claim 4.

⁵⁷ Exhibit R-272, Page 7, paragraph 10 (Response to Request for Document Production)

⁵⁸ Exhibit R-258, Page 2-4

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.

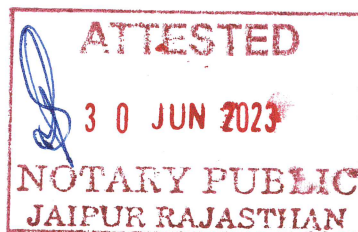



DEPONENT

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 30th day of June 2023.




DEPONENT