

TEST CASE WITH LONG TEXT NAME THE INTERNATIONAL COURT OF ARBITRATION VS THE INT

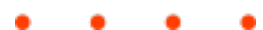
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1		<p>The present dispute before the Hon'ble Arbitral Tribunal pertains to a contract bearing Nos. DSP/PROJ-PUR/EXPN/MSM-01/014 dated 11 May 2010 ("Contract"), for 1 MTPA Medium Structural Mill of Durgapur Steel Plan</p> <div> Fact Sheet</div>	[N10 N 1-50]	Exhibit No.
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BEFORE THE INTERNATIONAL COURT OF ARBITRATION
INTERNATIONAL CHAMBER OF COMMERCE

CASE NO. 27146/HTG

IN THE MATTER OF

PRIMETALS TECHNOLOGIES INDIA PRIVATE LIMITED

5th Floor, Tower C, DLF IT Park – 1,
08 Major Arterial Road,
New Town (Rajarhat), Kolkata 700 156.

... Claimant

Versus

1. STEEL AUTHORITY OF INDIA LIMITED

Projects' Department, Projects' Building,
Durgapur Steel Plant, Durgapur 713 203,
District Paschim Bardhaman, West Bengal, India.

... Respondent No. 1

2. POMINI LONG ROLLING MILLS SRL (POMINI LRM)

Via San Domenico 1,
20025, Legnano (MI), Italy.

... Respondent No. 2

3. SEPC Limited

(Formerly known as Shriram EPC Limited)
4th Floor, Futura Bascon SV IT Park,
Venkatanarayana Road, T. Nagar,
Chennai 600 017, India.

... Respondent No. 3

SKELETON ARGUMENTS ON BEHALF OF RESPONDENT NO. 3, SEPC LIMITED

The following are respectfully submitted on behalf of Respondent No. 3, SEPC Limited, as Skeleton Arguments:-

1. The present dispute before the Hon'ble Arbitral Tribunal pertains to a contract bearing Nos. DSP/PROJ-PUR/EXP/MSM-01/014 dated 11 May 2010 ("Contract"), for 1 MTPA Medium Structural Mill of Durgapur Steel Plant ("Project") owned by Steel Authority of India Limited, being the Respondent No. 1 herein and which Contract was executed by a consortium consisting of the Claimant, M/s. Primetals Technologies India Private Limited, the Respondent No. 2 M/s. Pomini Long Rolling Mills SRL (POMINI LRM) and the Respondent No. 3, SEPC Limited (collectively "Consortium"). The parties

in relation to the present arbitration proceedings are referred to as follows in these Skeleton Arguments

- Primetals Technologies India Private Limited, as Claimant;
 - Steel Authority of India as Respondent No. 1; and
 - SEPC Limited as Counter Claimant.
2. The Contract was for setting up of a 1 MTPA Medium structural Mill of Durgapur Steel Plant (“**Project**”) owned by Steel Authority of India Limited, being the Respondent No. 1 herein and the Consortium executed the said Project in accordance with the stipulations of the Contract.
3. Although as per Recital f) of the Contract Agreement (Page 67 of the Volume I of documents submitted along with Section 17 application by the Counter Claimant) it was stipulated that “*The consortium leader shall be overall responsible for execution of the Contract. The leader and other members of the Consortium shall be jointly responsible for the execution of the Contract, but will be liable for damages in proportion to respective scope of Facilities*”, in effect the Contract was a divisible contract. This should be fully evident from the fact that
- 3.1. As per the above stipulations itself the Consortium members “*will be liable for damages in proportion to respective scope of Facilities*”;
- 3.2. Even Article 4.1 of the Contract (**at Page 70 of the said Volume I of Counter Claimant’s documents**) clearly mentions the Contract to be a divisible by stipulating
- Quote:
- “4.1 Scope of Facilities (Reference GCC Clause 7 & Contract Technical Specifications)
- The Contract is for the execution of Scope of Facilities as specified in the GCC Clause 7 and Contract Technical Specifications, on **divisible** turnkey basis.”
- [emphasis supplied]**
- Unquote:

- 3.3. The scope of works of the Consortium members were fully divided and distinctly identified in the scope matrix of the Contract (**Pages 1189 to 1202 – part of Exhibit C-52 of Volume III of Claimant’s documents**). In this regard it is pertinent to note that the scope of work of the Counter Claimant in relation to the Contract was erection of the Plant including certain limited supply and services which were to be made and provided prior to such erection. In other words, the entire scope of work of the Counter Claimant was complete once the erection of the Plant was done. In this regard the issuance of PAC by the Respondent No. 1 would fully prove that not only the Plant along with its Balance of Plant (BOP) was fully erected and provided, the trial runs in relation to the entire Plant was conducted successfully which in fact was done in the year 2015 itself.
- 3.4. The Contract Price for the scope of works of the Consortium members were separately provided and distinctly identified in relation to each such Consortium members under Summary price Schedule of the Contract (Page 77 of the said Volume I of the Counter Claimant’s documents), as below:-
- | | | |
|------|--------------------------|--|
| (i) | For the Claimant | Euro 44,041,619
INR 1,527,216,169 (excluding taxes) |
| (ii) | For the Counter Claimant | INR 988,867,831 (excluding taxes) |
- 3.5. Even in respect of the stipulations of Liquidated Damages under the Contract it has been clearly stipulated that “However, each member of consortium shall be liable to pay the liquidated damages in proportion to their respective contract price” (Article 9.1.1. of the Contract – at Pages 71 of the said Volume I of the Counter Claimant’s documents).
4. Apart from the above divisible nature of the Contract in relation to the distinct, divided and identified scope of works of each consortium members, even by conduct as well as by its own acts and deeds, the Respondent No. 1 fully modified and novated the said joint responsibility stipulations provided under the Contract and accordingly the Contract stood fully divided due to such change, modification and novation made and practiced by the Respondent No. 1 itself. This would be evident from the fact that only those matters which are relevant to the Counter Claimant were communicated, coordinated or addressed by the

Respondent No. 1 to the Counter Claimant. The above will be apparent from the following factual matrix:-

- 4.1. Until the installation of the plant which was within the scope of Respondent No. 3 inclusive of supply and service in relation to the said installation, the communications of the Respondent No. 1 were even it addressed to the Claimant, a copy of the same was always marked to Respondent No. 3. In this regard, by way of an illustration, a copy of the letter of the Respondent No. 1 dated 17 July 2013 has been produced by the Counter Claimant as **Annexure R3-20**.
- 4.2. It is also pertinent to note that once the fully divisible and distinct scope of works of Respondent No. 3 under the Contract, i.e., erection of the plant including supply and services prior and in relation to the said erection, was fully and successfully completed by Respondent No. 3 and the 'Preliminary Acceptance Certificate' ("PAC") dated 17 March 2016 (**Annexure R3-2 – at Page 26 of Counter Claimant documents**) was issued by the Respondent No. 1 after taking over the erected plant simultaneously at the time of issuing PAC and started using, running, operating and commercial exploiting the plant immediately from the day one after issuance of the PAC. Subsequently, as the plant was being fully used and operated by Respondent No. 1 for making commercial productions and gains from the date of PAC and the punch points of the PAC were duly taken care of and resolved, the Respondent No. 1 took hand over of the Plant and in this regard several formal handover protocols were established directly between Respondent No. 1 and the Counter Claimant for the said handover of the various components of the Plant, which were duly accepted by the Respondent No. 1 signifying full completion of the entire scope of work of Counter Claimant . Such formal handover protocols were conducted and established on one-to-one basis between Respondent No. 1 and Counter Claimant. Copies of such formal handover protocols have been produced by the Counter Claimant at **Pages 41 to 51 and Pages 53 to 74 (part of Annexure R3-3)** and the same would clearly reveal and establish that all such formal handover protocols in relation to various aspects of the scope of work of the Counter Claimant were undertaken and conducted independently between Respondent No. 1 and the Counter Claimant only and the same also fully prove that unless the punch points in relation to the PAC were not duly taken care of and

resolved, the Respondent No. 1 would not have taken the formal handover of the Plant although as stated the Respondent No. 1 started using, operating and commercially exploiting the Plant from the date of PAC itself. Therefore, while the Respondent No. 1 pursuant to such formal handover protocols fully accepted the entire scope of works of the Counter Claimant in relation to the total erection of the Plant and the same being totally in order, this also fully established that the Respondent No. 1 fully treated and confirmed the Counter Claimant to be an independent and distinct party in relation to the separately identified scope of work of the Counter Claimant under the divisible Contract. In this regard, it is once again reiterated that although the formal handing over protocols were established from time to time after issuance of PAC dated 17 March 2016, the Respondent No. 1 was continuously running, using, utilizing and commercially exploiting the Plant when the day when the PAC was issued and achieved regular commercial production for its own commercial gains.

- 4.3. Further, at no relevant point of time the Respondent No. 1 ever had any objection, claim, grievance, etc., of whatsoever nature for the scope of work of the Counter Claimant in relation to the said erection of various aspects of the Plant by the Counter Claimant to the entire satisfaction of Respondent No.1 and takeover of the Plant by Respondent No. 1 simultaneously at the time of issuance of PAC, except certain alleged minor defects subsequently alleged by Respondent No. 1 in its letter dated 27 October 2016 (**Exhibit R1/2**) at **Pages 2 to 4 of the Respondent No. 1 documents**, which minor defects / punch points were also duly and immediately rectified by the Counter Claimant to the extent the same related to the scope of work of the Counter Claimant, otherwise the Respondent No. 1 would not have subsequently taken the handover of the various works of the Counter Claimant through various handover protocols. This in turn also fully proved and clearly established that the Respondent No. 1 had fully accepted and confirmed the due completion of the said distinct and separately identified scope of work of the Counter Claimant under the divisible Contract and that the PAC mentioned punch points / minor defects have already been fully and adequately addressed, resolved and attended to by the Counter Claimant.

4.4. It is also pertinent to note that the alleged documents produced by the Respondent No. 1 along with its impugned Statement of Defence and Counter Claims dated 3 August 2023, being alleged communications exchanged inter se between the Respondent No. 1 and the Claimant, under alleged **Exhibit R1/1 to Exhibit R1/21**, would clearly reveal that the said alleged communications are after the plant was duly erected and handed over to the Respondent No. 1 and in no such alleged communication the Counter Claimant was a party, whether as an addressee or as being marked in carbon copy, except in the alleged letter of the Respondent No. 1 dated 27 October 2016 (**Exhibit R1/2**) at **Pages 2 to 4 of the Respondent No. 1 documents** which has been marked in carbon copy to the Counter Claimant specifically because the same pertained to liquidation of defects in relation to the installed plant prior to commissioning and wherein the Counter Claimant could have had some interface in relation to its scope of work under the Contract. This also would clearly prove that the Counter Claimant had no role or responsibility in relation to the divisible Contract once the Counter Claimant fully and successfully completed its separately identified and distinct scope of work leading to issuance of PAC, the Respondent No. 1 starting using, operating and commercially exploiting the plant for its commercial productions and gains from the date of the PAC and subsequently the Respondent No. 1 duly taking the handover of the Plant through various handover protocols established between the Respondent No. 1 and the Counter Claimant. That is why even the formal handover protocols in respect of the said distinct and separately identified scope of work of the Counter Claimant under the divisible Contract were established between Respondent No. 1 and the Counter Claimant only (**Pages 41 to 74** of Counter Claimant SOCC documents - **part of Annexure R3-3**). Even certain pre-commissioning and testing protocols were also established after issuance of the PAC in respect of certain aspects of the Plant which were within the scope of the Counter Claimant and evidence in this regard have already been submitted by the Counter Claimant at Pages 27 to 31 and Page 40 of Counter Claimant's SOCC documents - part of Annexure R3-3. In this regard, it is also important to note that unless the main Plant was taken over and operated by the Respondent No. 1, the handover protocols in relation to the scope of work of the Respondent No. 3 would not have arisen at all. This also proves that after issuance of the PAC on 17 March 2016 the Respondent No. 1 was using and operating the Plant for its own benefits including commercial production and

that the PAC punch points were duly taken care of, otherwise the said handover protocol would not have been established.

- 4.5. It is therefore respectfully submitted that while the above being the conduct of Respondent No. 1 in relation to total modification and novation of the divisible Contract and the scope of work of the Respondent No. 3 having been treated by the Respondent No.1 as being a distinct divisible and separate work in relation to the said divisible Contract, it is now absolutely untenable and frivolous on the part of the Respondent No. 1 to claim such alleged joint responsibility of the consortium members for execution of the Contract.
5. With the above background of the divisible nature of the Contract and the Respondent No. 1 having treated the Counter Claimant as an independent party in relation to its scope of work and in total novation and departure from the alleged joint responsibility of the Consortium members for execution of the Contract, the Counter Claimant would submit that following in relation to the merits of the matter and the dispute under arbitration: -
 - 5.1. This Statement of Counter Claim has been filed by the Counter Claimant against the Respondent No. 1 in the present arbitration proceedings and no statement of defence has been filed in relation to the Statement of Claim of the Claimant, since the Claimant did not have any claim against this Counter Claimant in the present arbitration proceedings through the Claimant's Statement of Claim or otherwise. At the same time, being a member of the Consortium of which the Claimant was the leader and since the Claimant as well as this Counter Claimant has their respective claims and counter claims against Respondent No. 1, various details and documents provided by the Claimant in relation to its Statement of Claim and other pleadings are also relevant for the purpose of the counter claims of the Counter Claimant and accordingly the Counter Claimant craved the leave of this Hon'ble Arbitral Tribunal to refer to and rely upon the said pleadings, details and documents of the Claimant. Copy of commercial part of the above Contract has already been produced by the Claimant in relation to the present arbitration proceedings as Exhibit C-5 and copy of the technical specification of Contract has been produced by the Claimant as Exhibit C-52. In addition, this Counter Claimant has produced

copy of the Contract dated 11 May 2010 along with its Special Conditions and General Conditions of Contract as Annexure R3-10.

- 5.2. As stated above, the Counter Claimant is one of the consortium members in relation to the above Contract of the Respondent No. 1 for execution of the Project, wherein the Respondent No.2 was the consortium leader and Claimant was another member of the consortium, besides the Counter Claimant herein being the other member. In this regard, it is clarified that when the Contract Agreement dated 11 May 2010 in relation to the Project, was entered into, the consortium originally comprised of M/s. Siemens VAI Metals Technologies S.R. L., Italy (subsequently renamed as Primetals Technologies Italy SRL), M/s. Siemens VAI Metals Technologies Private Limited, India (subsequently renamed as Primetals Technologies India Private Limited) and the Counter Claimant i.e. Shriram EPC Limited (subsequently renamed as SEPC Limited) and the said M/s. Siemens VAI Metals Technologies S.R.L., Italy (subsequently renamed as M/s. Primetals Technologies Italy SRL) was the consortium leader. Thereafter, M/s. Primetals Technologies Italy SRL purportedly transferred its role, responsibilities, entitlements, etc., under the Contract in relation to the Project to M/s. Primetals Technologies India Private Limited. Subsequent to the said transfer, it seems that M/s. Primetals Technologies Italy SRL was taken over by M/s. Callista Private Equity GmbH, Germany and renamed as M/s. Pomini Long Rolling Mills Srl (Pomini LRM), being the Respondent No. 2 herein. Thus, the said M/s. Primetal Technologies India Private Limited is the Claimant in the present arbitration proceedings, while M/s. Pomini Long Rolling Mills Srl (Pomini LRM) and the Counter Claimant are the Respondent No. 2 and Respondent No. 3, respectively, alongside the Steel Authority of India Limited being the Respondent No.1.
- 5.3. It is submitted that as stated above although it was a consortium Contract, it was a divisible Contract and the role and responsibilities of the respective consortium members were clearly outlined and distinctly identified in relation to the Project, in the Contract. Similarly, the financial / pecuniary entitlements of the consortium members were also separately determined, bifurcated and specified, from out of the total initial Contract value of INR 2,780.59 million and Euro 44.04 million, which was payable by the Respondent No. 1 at stages, based on certain milestones

specified in the Contract. The scope matrix of the consortium members defining their respective role and responsibilities in relation to the Project implementation under the Contract is available at Pages 1189 to 1202 (being part of Exhibit C-52) of Volume III.

- 5.4. According to the said bifurcated and distinctly identified roles and responsibilities of this Counter Claimant in relation to the Project under the Contract through the scope matrix, were broadly towards-

5.4.1. supply of

- Water Treatment Plant
- Air-conditioning and ventilation system
- Fire fighting system
- In plant piping
- Yard piping
- Simple parts – working platforms, foundation bolts, handrails, embedded parts, crossovers, gratings, and

- 5.4.2. erection of MSM plant, except electrical equipment's which were to be supplied by the Claimant herein.

- 5.5. The financial entitlements of this Counter Claimant for the above scope of work was INR 988 million, excluding GST and taxes, as could be seen at Page 75 of Volume I submitted by the Claimant, being part of Exhibit C-5.
- 5.6. As per the milestone based payment schedule for the entitlements of this Counter Claimant, the Counter Claimant was to receive 90% of its contractual entitlements at various stages on issuance of the 'Preliminary Acceptance Certificate' ("PAC") of the Plant by Respondent No. 1 and the balance 10% was receivable by the Counter Claimant as follows:-

S. No.	Milestone / Project Progress	Percentage of amount receivable by Counter Claimant

1.	Issuance of Commissioning Certificate	2.5% of the Counter Claimant's financial entitlement
2.	Issuance of Performance Guarantee Certificate	5% of the Counter Claimant's financial entitlement
3.	Issuance of Final Acceptance Certificate	2.5% of the Counter Claimant's financial entitlement

The above milestone based payment terms are stipulated under the Contract as could be seen from Pages 97 to 103 of Volume I of the Claimant's documents, being part of Annexure C-5.

5.7. While matters being so and although the Contract was entered into between the parties on 11 May 2010 with a completion period of 28 months, the Respondent No. 1 exhibited various delays, lapses, latches, etc., from the very inception, which resulted in the delay in Project execution work by the consortium including this Counter Claimant. One such major delay fully attributable to the Respondent No. 1 was that while contractually it was obligated to hand over the entire Project site including the civil front to the consortium by 10 August 2011 as per the L-2 Schedule of the Contract, the civil front in the Project site were progressively handed over by the Respondent No. 1 to the consortium from February 2014 to December 2014. This itself resulted in a delay of 3 years, fully attributable to the Respondent No.1 and stood fully admitted by the Respondent No. 1. In this regard, this Counter Claimant has produced necessary delay analysis and documentary evidence as **Annexure R3-1 (colly)**.

5.8. It is submitted that in spite of such delay, etc., on the part of Respondent No. 1, the Project execution was done in an expeditious manner and the Plant was duly erected and completed in the year 2016 itself when the Plant was handed over to the Respondent No. 1 and the PAC dated 17 March 2016 was issued by the Respondent No. 1 as per the requirements of Clause 24 of the General Conditions

of Contract (“GCC”) to the Contract. A copy of the above PAC dated 17 March 2016 in relation to the entire Plant as issued by the Respondent No. 1 has been produced by the Counter Claimant as **Annexure R3-2**.

- 5.9. It is submitted that the scope of work of this Counter Claimant by its very nature got fully completed with the erection of the Plant and issuance of the PAC by the Respondent No. 1. This is because, unless the above detailed scope of work of this Counter Claimant as per the contractual scope matrix was completed, the Plant would not have been erected and installed and the PAC would not have been issued by Respondent No. 1 on handover of the Plant to it. Further, in respect of the said scope of work of this Counter Claimant, even the handing over protocols were duly undertaken and confirmed by the Respondent No. 1 at various points of time including on total satisfaction of the punch points that remained to be attended at the time of handing over the Plant to the Respondent No. 1 and issuance of the PAC by it. In this regard, it is also important to note that some such works of the Counter Claimant in the Plant which were being used by the Respondent No. 1 for commercial production purposes since the issuance of PAC were also subsequently inspected from time to time and found to be working satisfactorily. Appropriate documents in this regard including handing over protocols have been produced by the Counter Claimant as **Annexure R3-3 (colly)**.
6. In this regard, it is clarified that the further stipulated milestones for the receipt of balance 10% of the contractual entitlements of the Counter Claimant in a sum of INR 98.8 million (10% of the total contractual entitlements of the Counter Claimant in a sum of INR 988 million) plus GST as detailed in Para 5.6 herein above were not within the scope of this Counter Claimant. Therefore, the Counter Claimant became entitled to its entire contractual entitlements as soon as the said PAC was issued by Respondent No. 1 on taking over of the concerned Plant along with the works of the Counter Claimant by the Respondent No. 1, although further milestones which were not at all within the responsibility, obligation or control of whatsoever nature of this Counter Claimant, and no further works of the Counter Claimant were pending as on the said PAC issuance date of 17 March 2016, except certain minor punch points pertaining to the scope of work of the Counter Claimant, which punch points were also duly resolved, taken care of and closed subsequently. This would be fully evident from the fact that the formal handover protocols

in relation to the works of the Counter Claimant were also established subsequently and if such punch points in relation to the scope of work of the Counter Claimant were not resolved and closed, the said formal handover protocol would not have been established between the Counter Claimant and the Respondent No. 1.

7. Apart from the above factual position, the Respondent No. 1 admittedly having caused inordinate delay of almost 3 years (while the entire Project completion period was 28 months only), in relation to the handing over of the entire Project site including the civil front to the consortium, the Respondent No. 1 was contractually duty bound to pay the entire entitlements of the Counter Claimant along with agreed price escalation for such delay as per contractual term itself. In this regard the following stipulations of the Contract are relevant:-

- **Article 3 - Effective Date (Part of Annexure R3-10 at Page 69 of Volume I of the Counter Claimant's documents submitted along with application under Section 17 of the Arbitration and Conciliation Act)**

“3.1 Effective Date (Reference GCC Clause 1)

The Effective Date of Contract shall be the date of signing of contract i.e., 11th May 2010.”

- **Article 5 Time for Completion (Part of Annexure R3-10 at Page 70 of Volume I of the Counter Claimant's documents submitted along with application under Section 17 of the Arbitration and Conciliation Act)**

“5.1 Time for Completion (Reference GCC Clause 8 & Appendix-2)

Time is an important feature of the Contract. Completion period shall be considered as date of Commissioning mentioned in Commissioning Certificate.

The Facilities will be completed in 28 (Twenty eight) months from the Effective Date of the Contract. The Facilities shall be considered as completed on date of commissioning. Performance guarantee parameters will be established by the Contractor within a period of six (6) months from the date of commissioning.”

- **Appendix-2 to the Contract Agreement (Part of Annexure R3-10 at Page 96 of Volume I of the Counter Claimant’s documents submitted along with application under Section 17 of the Arbitration and Conciliation Act)**

“Time Schedule

1.0 Time Schedule for Completion of the Facilities.

1.1 The Facilities will be commissioned within 28 (Twenty eight) months from the effective date of the Contract as per Article-5 of the Contract Agreement and guaranteed performance parameters will be established by the Contractor within six (6) months from the date of commissioning. The overall time schedule for completion of the Facilities is indicated in the ‘Bar Chart’ attached at Attachment-1 to Appendix-2.”

Note: The effective date as per Article 3 and Article 5 of the Contract Agreement is 11th May 2010 and therefore the scheduled date of completion was 10th September 2012 considering the time schedule of 28 months.”

- **GCC Clause 25.4 (Part of Annexure R3-10 at Page 187 of Volume I of the Counter Claimant’s documents submitted along with application under Section 17 of the Arbitration and Conciliation Act)**

“25.4 In the event of delay in conducting the commissioning test for reasons attributable to the Employer for more than 60 (sixty) days beyond contractual completion period specified in the Appendix-2, the Contractor shall receive payment as per Sub-Clause 2.1.5 of Appnendix-3, against Bank Guarantee of equal value.

In cases of delay beyond six months for conducting the commissioning test for reasons attributable to the Employer, the conducting of commissioning test and its commercial implication, if any, shall be mutually finalized between the parties.”

On joint reading of the above stipulations of the Contract, on the background of the admitted delay of almost 3 years by the Respondent No. 1 in even handing over of the entire Project site including the civil front to the consortium, would clearly establish that by causing a delay of 36 months at the very inception, both the above “*more than 60 (sixty) days beyond contractual completion period contract*” and “*delay beyond six months for conducting the commissioning test for reasons attributable to the Employer*” were over

by 34th month of the delay itself, which was admittedly caused solely and exclusively by the Respondent No. 1.

Although the Counter Claimant had no role or responsibility in relation to the commissioning of the Plant, the above stipulations would also fully establish that the admittedly delay caused by Respondent No. 1, the commissioning of the entire Plant would be deemed to have been completed by issuance of PAC itself as per the contractual terms, so far as the Counter Claimant is concerned to entitle the Counter Claimant to receive its milestone based dues from Respondent No. 1. As a matter of fact, the Respondent No. 1 has been fully using, running, operating and commercially exploiting the Plant immediately from the day one after issuance of the PAC and openly admitted in statutory documents and reports about the commissioning, using, operating and commercially exploiting the subject Plant being the **Medium Structural Mill of Durgapur Steel Plant** in the following manner:-

- **Board's report for FY 2019-20 (1 April 2019 to 31 March 2020):**

1. "A large number of new initiatives were undertaken across all the Plants for process improvements, with special emphasis on productivity & quality improvement, product development & commercialization, energy conservation and automation. **The continuous activities in respect of product development have led to development of 18 new Steel Products during FY 2019-20. Some of these products have been developed from the newly commissioned production facilities viz., Cold Rolling Mill- III at Bokaro Steel Plant, New Plate Mill at Rourkela Steel Plant, Medium Structural Mill at Durgapur Steel Plant and Wire Rod Mill, Bar Mill & Universal Section Mill at IISCO Steel Plant.**"

(at Page 1289 of Claimant's documents submitted along with SoC – forming part of Exhibit C-53)

2. **"Durgapur Steel Plant (DSP) gave exemplary support for Odisha Cyclone (FANI) relief work by rolling and supplying ~ 27,500 pcs. (7,300 T) of WPB 160 structurals from Medium Structural Mill in May, 2019. Further, 449 nos. of LHB (Linke Hofmann Busch) wheels were supplied to Indian Railways during 2019-20. LHB wheels, an import substitution product, are safer, light weight and enable high speed movement on broad gauge. DSP recorded highest ever exports of Saleable Steel at 345206 T, registering a growth of 22% over CPLY. Besides this, the Plant also**

recorded the best ever despatch of 12,994 numbers of WAG9 Wheels (an import substitution product) for electric locomotives.”

(at Page 1290 of Claimant’s documents submitted along with SoC – forming part of Exhibit C-53)

- **Board’s report for FY 2020-21 (1 April 2020 to 31 March 2021):**

1. “Some of these products have been developed using the **newly commissioned production facilities** viz., Bar & Rod Mill and Universal Rail Mill at Bhilai Steel Plant; **Medium Structural Mill at Durgapur Steel Plant**; New Plate Mill at Rourkela Steel Plant; Cold Rolling Mill-III at Bokaro Steel Plant; Wire Rod Mill, Bar Mill and Universal Section Mill at IISCO Steel Plant.”

(at Page 1298 of Claimant’s documents submitted along with SoC – forming part of Exhibit C-53)

2. “Durgapur Steel Plant (DSP) recorded highest ever production from its new Medium Structural Mill (MSM) at 2.94 lakh tonnes in FY 2020-21 against 2.17 lakh tonnes during 2019-20.”

(at Page 1298 of Claimant’s documents submitted along with SoC – forming part of Exhibit C-53)

- **Board’s report for FY 2021-22 (1 April 2021 to 31 March 2022):**

1. “Some of these products have been developed using the **newly commissioned production facilities** viz., Bar & rod Mill and universal rail Mill at Bhilai Steel plant; **Medium Structural Mill at Durgapur Steel plant**; new plate Mill at Rourkela Steel plant; cold rolling Mill-iii at Bokaro Steel plant; Wire rod Mill at IISCO Steel Plant”

(at Page 1303 of Claimant’s documents submitted along with SoC – forming part of Exhibit C-53)

2. “**Durgapur Steel plant (DSP) recorded highest ever production from its new Medium Structural Mill (MSM)** at 4.37 lakh tonnes in fY 2021-22 against 2.94 lakh tonnes during 2020-21.”

(at Page 1304 of Claimant’s documents submitted along with SoC – forming part of Exhibit C-53)

The above claims and admissions of the Respondent No. 1 through its highest management body being the Board of Directors in statutory documents and reports clearly proves that the Respondent No. 1 not only fully commissioned the subject Plant being the Medium Structural Mill at Durgapur Steel Plant, it had used, operated and fully commercially exploited the said Plant for a period much earlier to 1 April 2019. In this regard it is important to note that while in the report of the Board of Directors of Respondent No. 1 for the Financial Year 2019-2020 the Respondent No. 1 claims the said Medium Structural Mill at Durgapur Steel Plant to be a ‘newly commissioned production’ facility, it continued to claim the same in relation to the said Plant in the subsequent years also. This in turn makes it apparent that the Respondent No.1 claims an already commissioned and operated plant as “newly commissioned production” facility, although such commissioning and operation had happened years before.

8. Another important contractual stipulation which further entitles the Counter Claimant to receive all its contractual amounts and entitlements with the issuance of PAC itself is GCC clause 27.5:

GCC Clause 27.5 (Part of Annexure R3-10 at Page 188 of Volume I of the Counter Claimant’s documents submitted along with application under Section 17 of the Arbitration and Conciliation Act)

“27.5 In case, the performance guarantee test has not been carried out for reasons attributable to the Employer within a period of six months from the date of commissioning mentioned in Commissioning Certificate, the Contractor shall receive payment towards Performance Guarantee as per Sub-Clause 2.1.6 of Appendix-3, against Bank Guarantee of equal value to be valid for a period of 12 (twelve) months beyond aforesaid six (6) months period and conducting of the Performance Guarantee Tests and its commercial implications, if any, shall be mutually finalized between the parties.”

In respect of the above it is submitted that as fully detailed herein above and the delays and reasons are fully attributable to Respondent No.1, the commissioning of the entire Plant ought to have already taken place on the 34th month from the effective date of the Contract. Even otherwise, as per the own admissions of Respondent No. 1 in its statutory documents and reports through the highest management body being the Board of Directors

of Respondent No. 1, Respondent No. 1 commissioned, used, operated and fully commercially exploited the Plant from a period much earlier to 1 April 2019, as revealed from the above quoted statements, claims, etc., of the Respondent No. 1 itself in its Report of the Board of Directors to the shareholders and others concerned, which included Government of India having majority stake in the Respondent No. 1.

9. It is also important to point out that the said commissioning, use, operation and commercial exploitation of the Plant from a period much earlier than 1 April 2019 also obligates Respondent No. 1 in relation to the following contractual stipulations:-

Article 42 of Special Conditions of Contract (Part of Annexure R3-10 at Page 126 of Volume I of the Counter Claimant's documents submitted along with application under Section 17 of the Arbitration and Conciliation Act)

“42. GCC Sub-Clause 26.2 shall be read as

The Employer shall have the right to take possession or use any completed or partially completed work. Such possession or use shall not be deemed to be an acceptance of any work done not in accordance with the Contract. **However, any damage to such work solely due to such provision or use shall be to the Employer's account.**

The employer and contractor shall prepare mutually agreed and signed protocol before taking over the plant for commercial operation pursuant to provisions of this clause.”

The above would fully establish that as per contractual terms while the Respondent No. 1 alone is responsible for “**any damage to such work solely due to such provision or use shall be to the Employer's account**”, Respondent No. 1 has been using, operating and commercially exploiting the Plant fully in total breach of the contractual terms i.e., without having any “*mutually agreed and signed protocol*”.

10. Without in any manner admitting that the Respondent No. 1 is at all entitled to make or assert any alleged counter claim against the Consortium or the Counter Claimant under any head or under any account including the liquidated damages stipulations under the Contract, it is pertinent to point out and note that the Respondent No. 1 has conveniently overlooked that the Contract provides for liquidated damages, although the Respondent No. 1 is not entitled to the same at all under the facts and circumstances of the matter

through Clause 9.1 of the Contract Agreement dated 11 May 2010 and also through Clause 29.2 of the GCC clause (Pages 189 to 190 of Volume I). In this regard, the following stipulations of Clause 29.2 of GCC are relevant, apart from the stipulations of said Clause 9.1 of the Contract Agreement.

- Clause 29.2 – Liquidated Damages due to delay in completion of the Facilities (Pages 189 and 190 of Volume I)

Stipulations of Clause 29.2.5:

“29.2.5 Save for Liquidated Damages payable under this Sub-Clause 29.2 hereof, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in Appendix-2 (Time Schedule) to the Contract Agreement and/or other programme of work prepared pursuant to clause 18 (Program of Performance) hereof, shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.”

Stipulations of Clause 29.2.6:

“29.2.6 The aggregate ceiling on Liquidated damages due to delay in completion of facilities and for non-fulfillment of Performance Guarantee parameters in accordance with the Contract shall be limited to 10% (ten percent) of the Contract Price plus escalation, if any, excluding taxes & duties.”

11. Without prejudice to what is stated herein above and (i) without in any manner admitting that the Counter Claim has got any role or responsibility in relation to the subsequent developments after the issuance of PAC and establishment of handover protocols in relation to the scope of work of the Counter Claimant; and (ii) without in any manner derogating or waiving the contractual rights and entitlements of the Counter Claimant as detailed herein above by quoting various contractual provisions, the Counter Claimant would submit that

- 11.1. in spite of taking over of the Plant and issuance of PAC, the Respondent No. 1 deliberately and with self-serving interest deferred and delayed the further

milestones to be achieved by the other consortium member i.e., the Claimant herein, while the Respondent No. 1 started commercially using the Plant for production purposes and deriving its business interest therefrom. In this regard, all attempts and efforts of the concerned consortium member, being the Claimant herein, to undertake the completion of the next milestone i.e., commissioning formalities of the Plant and resultant issuance of the commissioning certificate by the Respondent No. 1 were unreasonably and arbitrarily avoided, delayed and frustrated by the Respondent No. 1 for its own self-serving reasons, more so when in spite of the alleged non-completion of the said commissioning formalities, the Respondent No. 1 was able to use and enjoy the benefits of the Plant by operating it and getting commercial production from it. It is only in the year 2019 i.e., after a lapse of more than 3 years from the handing over of the Plant and issuance of PAC by the Respondent No. 1, the Respondent No. 1 permitted the Claimant herein to undertake the commissioning test of the Plant during the period between 14 June 2019 and 25 June 2019 (fact remained that the Respondent No. 1 already claimed commissioning as well as fully use, operation and commercial exploitation of the Plant from a period much earlier than 1 April 2019) and to the understanding and information of this Counter Claimant the said commissioning test was successful even though there have been natural wear and tear, loss of efficiency, etc., in relation to the Plant due to prior usage of it for commercial production purposes for a period of more than 3 years after the handover and issuance of PAC. In respect of the said commissioning test of the year 2019 by the Claimant, the Respondent No. 1's arbitrary and unreasonable rejection of the commissioning test results and the subsequent development including the other acts of omission and commission of the Respondent No. 1, fully frustrated the efforts of the Claimant towards the said commissioning test and thereafter undertaking the test in respect of other two subsequent milestones being conduct of performance guarantee tests and resultant issuance of performance guarantee certificate by the Respondent No. 1 have been fully detailed by the Claimant with appropriate documentary evidence in its Statement of Claim as well as earlier in the Request for Arbitration submitted by it to the Hon'ble International Chamber of Commerce, International Court of Arbitration, Hong Kong. Since the said activities were to the scope of work of the Claimant and this Counter Claimant had no say, role or responsibility in relation thereto, apart from not having appropriate insight in respect of the said milestone

matters, this Counter Claimant is relying upon the said submissions, pleadings, details and documents of the Claimant in relation to the commissioning test and the frustration of the further efforts of the Claimant caused by the Respondent No.1 to achieve balance two milestones through the unreasonable and arbitrary acts and deeds of the Respondent No. 1.

- 11.2. From the above, it is apparent that the Respondent No. 1 for its own self-serving reasons acted unreasonably and arbitrarily and thereby thwarted and frustrated the efforts of the said consortium member of this Counter Claimant, i.e., Claimant herein by first delaying the conduct of the commissioning tests and thereafter unreasonably and arbitrarily rejected the results of the commissioning test, while simultaneously the Respondent No. 1 continued to use and commercially exploit the Plant and get production from it since the handed over of the Plant and issuance of PAC dated 17 March 2016.
- 11.3. From the above, it is also transpired that by delaying, thwarting and frustrating the efforts of the said consortium member of this Counter Claimant, i.e., the Claimant herein, in respect of the commissioning tests, the Respondent No. 1 had also effectively prevented the said consortium member to achieve the further two milestones being conduct of performance guarantee tests and issuance of performance guarantee certificate, obviously to subserve the said self-serving objects of the Respondent No. 1.
- 11.4. It is therefore apparent that considering the arbitrary and unreasonable acts and deeds of the Respondent No. 1 including inordinate delays exhibited by it, in the humble submission of the Counter Claimant, it will be a foregone conclusion that the said milestones of conduct of commissioning certificate leading to issuance of commissioning certificate, conduct of performance guarantee tests and issuance of performance guarantee certificate would be deemed to have been achieved and satisfied, which in turn fully entitle this Counter Claimant to receive its balance contractual entitlements from the Respondent No. 1 in a sum of INR 98.8 million plus GST (being 10% of the total contractual entitlement of INR 988 million plus GST), along with appropriate interest from 1 January 2017 i.e., after providing reasonable timeframe for achieving the said milestones after the PAC was issued on 17 March 2016. Looking from another angle, even if the milestones are not

deemed to have been achieved for argument sake, in such a situation also the Respondent No. 1 is fully liable to pay the above amount of INR 98.8 million plus GST, along with appropriate interest, since it is the Respondent No. 1 who had through its unreasonable and arbitrary acts and deeds and for its own self-serving reasons, delayed, thwarted and frustrated the efforts of the said consortium member, being the Claimant herein, to achieve the said milestones and most importantly as per the above detailed contractual stipulations including breach of contractual terms by Respondent No. 1. In this regard, it is also important to note that since the Plant was handed over and PAC was issued on 17 March 2016, the Respondent No.1 had been continuously using and exploiting the Plant for its own business and commercial purposes for a period of more than 7 years and also publicly claimed through most important statutory documents and reports from the highest management body of the Respondent No. 1 about the commissioning, using, operating and commercially exploiting the Plant being Medium Structural Mill for a period prior to 1 April 2019 and accordingly any such alleged milestones like commissioning, test, performance guarantee test, etc., have now become absolutely meaningless and infructuous. This position is also established and fully borne out through the above quoted contractual stipulations.

- 11.5. It is submitted that as if the above conduct of the Respondent No. 1 was not enough, when the said consortium member of this Counter Claimant had already raised dispute with the Respondent No. 1 and initiated these arbitration proceedings, the Respondent No. 1 in crude exhibition of unreasonable and arbitrary conduct had even issued unlawful letter of termination dated 26 November 2022 in relation to the Contract in the sidelines of the present arbitration proceedings initiated by the Claimant through Request for Arbitration dated 28 July 2022, obviously with mala fide intentions and ulterior motives. As a matter of fact, the impugned purported termination of the Contract pursuant to the said unlawful letter of termination dated 26 November 2022 by the Respondent No. 1 was nothing but a self-serving ploy on its part to somehow take benefit out of its own faults, being the oblique ulterior motive of the Respondent No. 1. Under the circumstances the Counter Claimant duly recorded its protest and objection to the said unlawful letter of termination dated 26 November 2022 received from the Respondent No. 1, by sending the Counter Claimant's letter bearing No. SEPC/DSP-/MSM/2022-23/031222 dated 3

December 2022. This Counter Claimant has fully impugned and rejected the said purported termination of the Contract by Respondent No. 1. Copies of the impugned letter of termination dated 26 November 2022 issued by the Respondent No. 1 and Counter Claimant's letter dated 3 December 2022 along with an earlier letter of this Counter Claimant dated 11 October 2022 have been produced by the Counter Claimant as **Annexure R3-4 (colly)** at Pages 75 to 80 of the Counter Claimant's SOCC documents.

- 11.6. It is further submitted that the Counter Claimant was required to provide and maintain Performance Bank Guarantee in a sum of INR 54 million in favour of the Respondent No. 1 and accordingly apart from the above contractual entitlement of this Counter Claimant in a sum of INR 98.8 million plus GST, along with appropriate interest, as stated above, the Respondent No. 1 is also currently holding a Performance Bank Guarantee of INR 54 million as provided by this Counter Claimant, bearing No. 0734716BG1000024 issued on 3 March 2016 by State Bank of India, Commercial Branch, Chennai with all its subsequent extensions from time to time [Annexure Re-5 (colly)]. As stated above, now that the alleged performance guarantee of the Plant has become meaningless and infructuous considering the delays caused by and the arbitrary and unreasonable acts and deeds of, the Respondent No. 1 coupled with openly confirmed and claimed continuous use of the Plant by Respondent No. 1 for more than 7 years, the Respondent No. 1 has no right or entitlement to retain the said Performance Bank Guarantee of this Counter Claimant. Accordingly, the Respondent No. 1 is duty bound to return the said Performance Bank Guarantee for INR 54 million and in the meantime the Respondent No. 1 cannot derive or extract any benefit therefrom, as a measure of undue enrichment or otherwise.
- 11.7. It is further submitted that due to inordinate delay that has been caused by the Respondent No.1, the Counter Claimant has suffered enormous price escalation and overruns in respect of its inputs, materials, labour, overheads, etc., and in this regard the Respondent No. 1 is liable to compensate the Counter Claimant in a sum of INR 125,615,497/- as per the basis provided in the Contract itself. The details of the said entitlements of the Counter Claimant as per the contractual terms have been submitted by the Counter Claimant under **Annexure R3-6 (colly)**.

- 11.8. It is submitted that the transactions of the Counter Claimant with the Respondent No. 1 is commercial in nature and therefore the Counter Claimant is entitled to commercial rate of interest @ 18% per annum in respect of all its counter claims against the Respondent No. 1 for the period during which the said claims remained unsettled including pre-arbitration interest, lis pendence interest as well as post-award interest.
- 11.9. It is also submitted that due to arbitrary and unreasonable acts and deeds of the Respondent No.1, the present arbitration proceedings was required to be initiated and thereby this Counter Claimant was made to incur arbitration costs, legal costs, etc. Therefore, the Respondent No. 1 is also liable to reimburse the said legal costs of the Counter Claimant including attorney's fees as provisionally estimated as of now in a sum of INR 10 million.
- 11.10. It is pertinent to note that no part of the above detailed counter claims of the Counter Claimant in the present arbitration proceedings against the Respondent No. 1 were barred by the law of limitation when the same were asserted in the present arbitration proceedings, more so when the subject Contract from out of the counter claims of the Counter Claimant had arisen was alive and subsisting and only through a unlawful and highlighted letter of termination dated 26 November 2022 the Respondent No. 1 purportedly terminated the said Contract at the sidelines of the present arbitration proceedings initiated by the Claimant through Request for Arbitration dated 28 July 2022.
- 11.11. It is submitted that along with the above Statement of Counter Claim of the Counter Claimant, the Counter Claimant submitted various documents marked as Annexure R3-1 to Annexure R3-6.
- 11.12. It is submitted that the under the above facts, circumstances, contractual stipulations, etc., the Counter Claimant made the following prayers for its counter claims against Respondent No. 1 in the Counter Claimant's Statement of Counter Claim dated 6 June 2023:-

Prayers for the Hon'ble Arbitral Tribunal to kindly

- (A) pass an order declaring that the termination of the Contract bearing no.DSP/PROJ-PUR/EXPN/MSM-01/014 dated 11 May 2020 by the Respondent No.1 through its Termination Letter dated 26 November 2022 is malafide, untenable and arbitrary and thus liable to be set-aside;
- (B) pass an order / award in favour of this Counter Claimant directing the Respondent No. 1 to pay a sum of INR 98.8 million plus GST in terms of Paragraph 1.4.3, Paragraph 5 and Paragraph 9 of the Statement of Counter Claim;
- (C) pass an order / award in favour of this Counter Claimant directing the Respondent No. 1 to pay a sum of INR 125.62 million in terms of Paragraph 12 of the Statement of Counter Claim of the Counter Claimant;
- (D) pass an order directing the Respondent No. 1 to release and return the original Performance Bank Guarantee of INR 54 million as provided by this Counter Claimant, bearing No. 0734716BG1000024 issued on 3 March 2016 by State Bank of India, Commercial Branch, Chennai with all its subsequent extensions to the Counter Claimant and pending such return the Respondent No. 1 may kindly be prevented from deriving any benefit out of the said Performance Bank Guarantee; and
- (E) pass an order / award in favour of this Counter Claimant directing the Respondent No. 1 to pay
 - (i) interest @ 18% per annum on INR 98.8 million from 1 January 2017 till the date of the Statement of Counter Claim;
 - (ii) lis pendence interest @ 18% per annum on all awarded amounts from the date of the Statement of Counter Claim till the date of the Award;
 - (iii) post-award interest @ 18% per annum on all awarded amounts from the date of the Award until the date of realization; and
- (F) pass an order / award in favour of this Counter Claimant directing the Respondent No. 1 to pay cost of arbitration in a sum of INR 10 million in terms of Paragraph 14 of the Statement of Counter Claim

and pass such other further order(s), award(s) or direction(s) as this Hon'ble Arbitral Tribunal may deem fit in the facts and circumstances of the case and thus render justice.

- 12. It is submitted that subsequently, the Respondent No. 1 filed its "Statement of Defence and Counter Claim on behalf of the Respondent No. 1" dated 3 August 2023 in relation to

the claims of the Claimant and the counter claims of this Counter Claimant and simultaneously the Respondent No. 1 made certain alleged counter claims therein against the consortium itself. In relation to the said “Statement of Defence and Counter Claim on behalf of the Respondent No. 1” dated 3 August 2023, the Counter Claimant filed its Memorial dated 27 February 2024 (“Memorial”), inter alia containing this Counter Claimant’s defence submissions to the alleged Counter Claims of the Respondent No. 1 as well as the Rejoinder submissions of the Counter Claimant in relation to its Statement of Counter Claim dated 6 June 2023.

13. It is submitted that in the intervening period the Counter Claimant filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 dated 13 February 2024 for obtaining certain interim orders against Respondent No. 1 as a measure of interim protection in relation to the bank guarantee provided by it to Respondent No. 1 in a sum of INR 54 million. In relation to said Section 17 application, the Counter Claimant submitted various documents termed as Annexure R3-7 to Annexure R3-19. In relation to the subsequent Memorial dated 27 February 2024 the Counter Claimant filed further documents termed as Annexure R3-20 to Annexure R3-24.
14. Before traversing the allegations and claims of the Respondent No. 1 as contained in the said “Statement of Defence and Counter Claim on behalf of the Respondent No. 1” dated 3 August 2023, it is submitted that the Respondent No. 1 considering the facts, circumstances and contractual stipulations of the Contract was not at all legally entitled to either deny the counter claims of the Counter Claimant or assert any alleged counter claims which are as such false, inter alia for the following reasons:-
15. As stated above it is the Respondent No. 1 who caused inordinate delay of almost 3 years for even handing over the the entire Project site including the civil front to the consortium in relation to the Contract execution time schedule of 28 months from the Effective Date of 11 May 2010.
16. In view of such admitted delay on the part of the Respondent No. 1 alone, Respondent No. 1 is not entitled to in any manner deny or refuse to pay the lawful claim of the Counter Claimant as per the very stipulations of the Contract including the above quoted GCC Clause 25.4, Clause 27.5, etc.

17. Respondent No. 1 itself fully admitted the commissioning, use, operation and full commercial exploitation of the Medium Structural Mill of Durgapur Steel Plant from a period much earlier to 1 April 2019 in its statutory documents and reports from the highest management body of the Respondent No. 1, being its Board of Directors and the admissions, claims, etc., made in such statutory documents are not only meant for the shareholders of the Respondent No. 1 (which included Government of India as the majority shareholder), the said admissions, claims, etc., are meant for various other statutory authorities including the Registrar of Companies. Further, since the shares of the Respondent No. 1 are quoted in both the Bombay Stock Exchange and National Stock Exchange, such admissions, claims, etc., of the Respondent No. 1 as contained in the report of its Board of Directors are of utmost importance to the entire investing public at large and of course, are price sensitive in relation to the price of the shares of Respondent No. 1 in stock exchanges.
18. As fully detailed herein above considering the facts and circumstances of the matter including the inordinate delay of almost 3 years caused by Respondent No. 1 even for handing over the entire Project site including the civil front to the consortium in relation to the Contract execution and continuous operation, use and commercial exploitation of the subject Medium Structural Mill for more than 7 years after issuance of the PAC, the significance of the alleged commissioning, performance guarantee test, etc., had fully lost their significance and would be deemed to have been successfully completed by the Consortium in terms of the stipulations of the Contract including the above quoted GCC clauses 25.4 and 27.5.
19. The Respondent No. 1 is using, operating and fully commercially exploiting the Medium Structural Mill since the issuance of the PAC in total breach and violation of the contractual terms including the stipulations of GCC sub-clause 26.2 as stood amended through Article 42 of Special Conditions of Contract (at Page 126 of Volume I).

20. As if the above was not enough, the oblique conduct of the Respondent No. 1 is fully revealed from the fact that while in one hand it is untenably and frivolously denying the lawful counter claims of the Counter Claimant, on the other hand the Respondent No. 1 is mischievously trying to assert its totally untenable and unsustainable counter claims against the Consortium. Such conduct of the Respondent No. 1 is also fully revealed from the fact that after using, operating and fully commercially exploiting the Medium Structural Mill for more than 7 years, it is now trying to somehow build an altogether new plant by falsely alleging lack of installed capacity, as an alleged risk purchase measure to which, for reasons fully detailed herein above, the Respondent No. 1 is not at all entitled to.
21. Without prejudice to what is stated herein above and without in any manner admitting that the Respondent No. 1 is in any manner entitled to make any alleged counter claim against the consortium, it is submitted that even if for argument sake the inordinate delay on almost 3 years caused by the Respondent No. 1 in handing over the the entire Project site including the civil front to the consortium in relation to the Contract is ignored, which of course can never be ignored, even the contractually stipulated defect liability period has been over long back to somehow entitle the Respondent No. 1 to make any alleged counter claim, as per the following stipulations of the Contract:-

Article 46 of Special Conditions of Contract (at Page 127 of Volume I)

“46. GCC Sub-Clause 30.2 shall be read as

The Defect Liability Period shall be twelve (12) months from the date of commissioning mentioned in the Commissioning Certificate as per Clause 25 hereof or eighteen (18) months from the date of Preliminary Acceptance Certificate (PAC) as per Clause 24 hereof, whichever is earlier, provided the delay in commissioning after PAC is not due to reasons attributable to the Contractor.

However, in the event of delay in PAT due to reasons not attributable to the Contractor, the Defect Liability Period shall not exceed 30 (thirty) months from the date of delivery of the last major shipment by the Contractor to site.

If during the Defect Liability Period any defect be found in the design, engineering, materials and workmanship of the Plant & Equipment structures or of the work executed

by the Contractor, the Contractor shall promptly, and at its cost, repair, replace or otherwise make good such defect as well as any damage to the Facilities caused by such defect.”

22. Without prejudice to the above submissions and without in any manner admitting any alleged right, entitlement, etc., of the Respondent No. 1 to make any alleged counter claim against the Consortium, it is submitted that even such untenable, frivolous, unsustainable and self-serving counter claims of the Respondent No. 1 fully and grossly defy and violate the contractual stipulations.
23. Over and above as has been fully detailed the Counter Claimant has fully and duly completed its entire scope of work and established necessary protocol directly with the Respondent No. 1 on one-to-one basis and therefore the Counter Claimant is not at all responsible or liable for any such alleged counter claims of Respondent No. 1, while Respondent No. 1 is fully liable to pay the contractual entitlements of the Counter Claimant as asserts by it through its Statement of Counter Claim against the Respondent No. 1.
24. In respect of the alleged counter claims of the Respondent No. 1, which are as such untenable, unsustainable, unsubstantiated and non-est in law, the Counter Claimant once again reiterates and reaffirms that the Respondent No. 1 is not entitled to make any alleged counter claim against the Consortium or the Counter Claimant and also that the Counter Claimant does not have such alleged joint responsibility in relation to such false, untenable, unsustainable and self-serving counter claims of Respondent No. 1 as has been fully detailed herein above as well as in the Counter Claimant's Pleadings.
25. In relation to the counter claims of the Counter Claimant made by it under its Statement of Counter Claim dated 6 June 2023, the Respondent No. 1 has provided its untenable and unsustainable responses / objections to the said lawful and tenable counter claims of the Counter Claimant against Respondent No. 1 under "Chapter IV – Responses / Objections to Claims submitted by Shriram EPC" at Page 50 onwards by way of Points 109 onwards in the Statement of Defence of Respondent No. 1.

26. Before traversing the specific allegations and claims made by Respondent No. 1 under the Chapter IV of its Statement of Defence in relation to the counter claims of the Counter Claimant and without prejudice to the above contentions of the Counter Claimant that under the changed and novated divisible Contract the Counter Claimant had role or responsibility only in relation to its identified, distinct and exclusive scope of work, the Counter Claimant would respectfully submit that the matters / allegations of the Respondent No. 1 which do not pertain to the scope of work of the Counter Claimant, the Counter Claimant would rely upon the contentions and submissions of the Claimant and Respondent No. 2 as being the rebuttals, responses, etc., of the Counter Claimant. This is because and as a matter of fact, the Counter Claimant neither has any role or responsibility in relation to such matters and allegations which do not pertain to or form part of the Counter Claimant's distinct, separate and exclusive scope of work under the divisible Contract, nor the Counter Claimant has any say or insight of whatsoever nature in relation thereto.
27. As fully detailed in the Counter Claimant 's Pleadings, the Counter Claimant reiterates that the impugned termination notice dated 26 November 2022 as issued by the Respondent No. 1 in the sidelines of the present arbitration proceedings is mala fide and non-est in law and the Counter Claimant is not aware as to which "*termination notice dated 22.11.2022*" the Respondent No. 1 is referring to under Point 109 of its Statement of Defence.

28. The extraction of the stipulations of Clause 44.2 of the GCC under Point 110 of its Statement of Defence by the Respondent No. 1 is absolutely untenable and frivolous, since as fully detailed herein above as well as in the Counter Claimant's Pleadings, the Counter Claimant had completed its distinct, separate and exclusive scope of work under the divisible Contract successfully and to the entire satisfaction of Respondent No. 1, albeit various delays, lapses, latches, etc., exhibited by Respondent No. 1. Therefore, so far as the Counter Claimant is concerned, the said Clause 44.2 of the GCC is not at all applicable. Further, as fully detailed in the Counter Claimant's Pleadings, it is the Respondent No. 1 who for its own selfish and self-serving commercial reasons, while continued to use, operate and commercial exploit the plant from the date of issuance of PAC, did not respect or adhere to the contractual stipulations in one hand and on the other hand did not permit the alleged commissioning of the Plant to be conducted by the Claimant and also how the Respondent No. 1 indulged in various delays, lapses, latches, etc., as fully revealed through various documents submitted by the Counter Claimant and the Claimant including delay analysis documents submitted by Counter Claimant as part Annexure R3-1.

29. Under Point 111 to Point 113 of its Statement of Defence the Respondent No. 1 made certain false and self-serving allegations and extracted certain contractual stipulations in an untenable and self-serving manner. It is false on the part of the Respondent No. 1 to allege that the Counter Claimant failed to rectify the PAC defects. The Respondent No. 1 for its own selfish and self-serving reasons delayed almost 3 years even to hand over the entire Project site including the civil front and subsequently delayed the alleged commissioning of the plant after issuance of PAC for years together, while the Respondent No. 1 continued to fully use, operate and make commercial exploitation of the said plant since the date of PAC. The other alleged delays in “*execution of engineering activities and civil works*”, is absolutely false on the part of the Respondent No. 1 and the Claimant had already rebutted and rejected such false allegations under Para 6.1 (at Pages 2 to 5) of its Reply dated 29 January 2024 to the alleged Counter Claims of Respondent No. 1 (“Reply”). It is also absolutely false on the part of the Respondent No. 1 to allege “*Notably, the consortium partner responsible for the erection and supply of erection accessories, Shriram EPC, was also failing to meet targets*”. In this regard, as fully detailed herein above, the Counter Claimant fully completed its distinct, separate and exclusive scope of work in a most efficient manner even after and in spite of the initial delay of 3 year caused by the Respondent No. 1 and to the entire satisfaction of the Respondent No. 1. The Respondent No. 1 had no objection, grievance, etc., in this regard at any relevant point of time. Further, while making such false allegation, the Respondent No. 1 is also conveniently overlooking the fact that the Project of 1 MTPA Medium Structural Mill of Durgapur Steel Plant being the subject matter of the Contract was indeed a greenfield project. As per the Contract scope matrix (**Pages 1189 to 1202 – being part of Exhibit C-52 of Volume III of Claimant’s documents**), the civil works fell fully within the scope of Respondent No. 1 only. Further, the contractual timeline, specifically outlined in the L-2 Schedule (**part of Annexure R3-1**), required the Respondent No. 1 to hand over the entire project’s civil fronts to the consortium by 10 August 2011. However, as fully detailed herein above the Respondent No. 1 grossly failed and fully neglected to comply with this contractual requirement and in fact the Respondent No. 1 indeed progressively provided the necessary civil fronts to the consortium only between February 2014 and December 2014. This delay, amounting to three (3) years was clearly, solely and exclusively attributable to the Respondent No. 1. The said delay and lapse on the part of Respondent No. 1 have been fully established through documents produced by Counter Claimant under Annexure R3-1 (colly). The Respondent No. 1 is also conveniently

overlooking the fact that despite the aforementioned inordinate delays and lapses fully attributable to Respondent No. 1, the execution of the Project progressed expeditiously and the installation and completion of the plant leading to issuance of PAC occurred on 17 March 2016 itself. To further expose the Respondent No.1 in respect of its falsehood for such inordinate delays and lapses on the part of the Respondent No. 1, the Counter Claimant had submitted and brought on record of this arbitration proceedings copies of letter dated 17 July 2013 from the Respondent No. 1 to the Claimant with carbon copy to the Counter Claimant and others and letter dated 21 October 2013 from the Claimant to the Respondent No. 1 with carbon copy to Counter Claimant and others, as **Annexure R3-21 (colly)**. In this regard it is also important to note that only because of the said successful and timely execution and completion of the said distinct, separate and exclusive scope of work on the part of Counter Claimant under a divisible Contract led to the issuance of PAC in the month of March 2016 alongside handover of the Plant to the Respondent No. 1, while provision of the work front was inordinately delayed by the Respondent No.1 for more than 3 years. As a consequence of such efficient and successful completion and erection of the Plant, the Respondent No. 1 was able to continuously use, operate and commercially exploit the Plant fully for its own benefits and commercial gains from the said PAC date itself.

For further delays, latches, lapses, breaches, etc., on the part of Respondent No. 1 which affected the performance of the Plant after the PAC was issued, the Claimant has already made its averments and submissions under Para 6.2 to Para 6.4 at Pages 5 to 14 of its Reply and the Counter Claimant has nothing more to add since the said matters are within the scope of work of the Claimant.

30. The allegations and claims made under Point 114 and Point 115 by the Respondent No. 1 in its SOD have been duly responded Claimant in its Reply under Para 6.5 to 6.12 at Page 14 to Page 16 of its Reply and the Counter Claimant has nothing more to add, more so when the said matters concern the Claimant and the Respondent No. 2.
31. The allegations and claims made under Point 116 and Point 117 of the Statement of Defence and the counter claim by the Respondent No. 1, are absolutely false, frivolous and self-serving. As fully detailed herein above as well as in the Counter Claimant's Pleadings, it is the Respondent No. 1 who indulged in inordinate delays, lapses, latches, breaches, etc., and on the other hand continued to make its self-serving commercial gains by using, operating and commercially exploiting the Plant since the issuance of the PAC. Further, the allegations in respect of entering into the alleged supplementary agreement, the Respondent No. 1 having allegedly offered "Olive branch", etc., are frivolous on the part of Respondent No. 1 as fully detailed in the Counter Claimant's Pleadings and the same has also been additionally responded by the Claimant under Para 6.31 to Para 6.36 at Pages 24 and 25 of its Reply. Accordingly, the Counter Claimant once again reiterate that the impugned termination of the Contract by the Respondent No. 1 vide the alleged termination letter dated 26 November 2022 is unlawful and non-est in law.

32. The allegations and claims made by the Respondent No. 1 under Point 118 to Point 140 of its Statement of Defence and the counter claim, are untenable, frivolous and self-serving and the same are as such beyond the separate, distinct and exclusive scope of the work of the Counter Claimant. The Counter Claimant reiterates that in view of the delays, lapses, latches, etc., exhibited and committed by Respondent No. 1 in total defiance of the contractual stipulations including inordinately delaying and denying the opportunity of conducting commissioning of the Plant by the Claimant for more than 3 years after taken over the plant, while continuing to use, operate and commercially exploit the Plant from the date of PAC for its own self-serving benefits, it would be deemed that the Counter Claimant have completed its scope of work fully and successfully and as per the contractual terms of the Counter Claimant, is fully entitled to receive its dues towards the balance contractual payments as the stipulated milestone for the same being commissioning and performance guarantee test in relation to the Plant would be deemed to have been achieved and completed by the Claimant. The same also stood fully admitted by Respondent No. 1 through its Board of Directors' report for various financial years and accordingly, the Respondent No.1 was legally bound to issue the Final Acceptance Certificate (FAC). Further, in respect of the said allegations and claims of the Respondent No. 1 under Point 118 to Point 140 of the Statement of Defence and counter claim, the Claimant had provided its detailed response and rebuttals under Para 6.18 to Para 6.36 of its Reply at Pages 19 to 25, since the said matters squarely falls within the purview and scope of the Claimant, for being matters after the erection and handover of the Plant to Respondent No. 1 successfully completed by the Counter Claimant, which led to issuance of PAC by Respondent No. 1 and the minor punch point defects pertaining to the scope of work of the Counter Claimant were also fully rectified by the Counter Claimant. Still however, the Counter Claimant will add that the allegation of the Respondent No. 1 in respect of the Recital (f) of the Contract read with Clause 17 SCC for alleged joint responsibility of the consortium members for the execution of the Contract, is absolutely untenable and unsustainable, in view of the change in novation of the contractual requirements by the Respondent No. 1 on treating and considering the Counter Claimant to have separate, distinct and exclusive scope of work under a divisible Contract coupled with the delays committed by Respondent No. 1 affecting the specific stipulations of the Contract, as fully detailed herein above.

33. Respondent No. 1 had made false and self-serving allegations under Point 141 to Point 143 of its Statement of Defence and counter claim. It is dishonest on the part of the Respondent No. 1 to allege that under Clause 11.5.1.2 of the GCC the Respondent No. 1 is not liable to pay any price adjustment in the Contract price for upward revision, when delay of 3 years stood fully admitted by Respondent No. 1. Such allegation fully exposes the Respondent No. 1 in respect of its improper conduct, since it has been fully proved that it is the Respondent No. 1 who had caused inordinate delay in even handing over the work fronts for a period of more than 3 years, apart from indulging in subsequent delays, lapses, latches, etc., in relation to permitting the Claimant to carry out the commissioning and performance guarantee test, all for meeting the self-serving and selfish aims and objects of the Respondent No. 1 of continuing with commercially use and exploit the Plant for making commercial gains for itself. Therefore, by virtue of the said very admitted delay on the part of Respondent No. 1, the Counter Claimant is fully entitled to upward price adjustment through price variation claim under Appendix 4 of Contract documents (**Page 132 of Annexure R3-6 of Counter Claimant Documents and also Exhibit C-5 at Page 73 of Volume I of Claimant's documents**) read with the said Clause 11.5.1.2 of GCC, since it is fully evident that it is the Respondent No. 1 who indulged in delays, lapses, latches, etc., as detailed herein above as well as in Counter Claimant's Pleadings, and therefore it is fully liable to pay the price variation claim of the Counter Claimant in a sum of INR 125,620,000 against Respondent No. 1 in accordance with the details and calculations submitted by the Counter Claimant along with its Statement of Counter Claim.

34. Under Point 144 of the Statement of Defence and counter claim, the Respondent No. 1 made false and tainted allegations and claims. It is absolutely false on the part of the Respondent No. 1 to allege that an alleged amount of INR 988,000,000 has been paid by the Respondent No.1 to the Counter Claimant and as if the said amount is allegedly admitted by Counter Claimant, which is not a fact. As against the said false allegation, the Counter Claimant has put Respondent No. 1 to strict proof of the above alleged amount of INR 988,000,000/- allegedly having been paid by the Respondent No. 1 to Counter Claimant and in this regard the Respondent No. 1 fully failed to bring on record any evidence in support of its said false allegation and claim. It is respectfully submitted that the fact of the matter is that the Respondent No. 1 has only paid 90% of the said contractual amount of INR 988,000,000 i.e., the said payment amount is INR 889,200,000 and the balance 10% of the contractual amount in a sum of INR 98,800,000 is still due and payable by the Respondent No. 1 to the Counter Claimant which has not been paid by Respondent No. 1 to the Counter Claimant by alleging non-fulfilment of the required milestone for such payments. Which allegations of Respondent No. 1 are also absolutely untenable and unsustainable, since as fully detailed the said milestone of commissioning and performance guarantee test would be deemed to have already taken place and Respondent No. 1 is using, operating and commercially exploiting the Plant for its own commercial gain from a period much earlier to 1 April 2019. Therefore, the counter claim of the Counter Claimant in respect of the said balance amount of INR 98,800,000 (10% of the total Contract value of the scope of work of the Counter Claimant) plus GST due and payable by Respondent No. 1 to Counter Claimant is not at all “*mala fide, wrongful and merely an attempt to receive make unlawful gains through the present arbitration proceedings*”, as against what has been falsely alleged by the Respondent No. 1. In this regard, the Counter Claimant would clarify that in respect of the said counter claim of the Counter Claimant against the Respondent No. 1 in a sum of INR 98,800,000, an inadvertent clerical / typographical error earlier crept in, in the Statement of Counter Claim of Counter Claimant and the said inadvertent clerical / typographical error was corrected by the Counter Claimant by filing an application dated 25 October 2023. Accordingly, it is reiterated that the Respondent No. 1 is fully liable to pay the said balance contractual amount of INR 98,800,000 to Counter Claimant, as being one of the counter claims of the Counter Claimant against the Respondent No. 1 and all allegations of the Respondent No. 1 in this regard are false and tainted with mala fide. It is also reiterated that in respect of the said counter claim of the Counter Claimant against the Respondent No. 1 is also fully

justified from out of the fact that while the Counter Claimant has completed its entire divisible, separate, independent and exclusive scope of work under the divisible Contract to the entire satisfaction of the Respondent No. 1, the Respondent No. 1 cannot take any advantage from out of its own fault of delaying the entire execution process and simultaneously preventing and frustrating the Claimant and Respondent No. 2 from completing the so-called commissioning and performance guarantee test in relation to the Plant which the Respondent No. 1 was running, operating and commercially exploiting continuously from the year 2016 after issuance of PAC and taking over the Medium Structural Mill Plant and operating the same for full commercial exploitation as per the admission and claim made by Respondent No. 1 itself through statutory and public documents originating from the highest management body of Respondent No. 1, being its Board of Directors. Thus, as fully detailed herein above as well as submitted by the Counter Claimant in its pleadings, the alleged commissioning and performance guarantee test leading to issuance of the FAC by Respondent No. 1 would be deemed to have already been taken place and the Respondent No. 1 was duty bound to pay the said contractual balance amount of INR 98,800,000/- to Counter Claimant along with the Counter Claimant's other entitlements as has been claimed by the Counter Claimant as one of its counter claims in the present arbitration proceedings.

35. Under Point 145 to Point 149 of the Statement of Defence and counter claim of the Respondent No. 1, the Respondent No. 1 made certain untenable and frivolous allegations and claims in respect of the counter claim of the Counter Claimant for release of the performance bank guarantee provided by it in a sum of INR 54,000,000/- by the Respondent No. 1 and the said allegations and claims of Respondent No. 1 are untenable, frivolous, unsustainable and self-serving. The matter of the release of the said performance bank guarantee has been dealt by Counter Claimant in detail in its Application under Section 17 of the Arbitration and Conciliation Act, 1996 dated 13 February 2024 and the same are not once again repeated herein for the sake of brevity. As fully detailed herein above Respondent No. 1 while using, operating and commercially exploiting the Plant for years together, has no right or entitlement of whatsoever nature now to withhold the said performance guarantee provided by the Counter Claimant in a sum of INR 54,000,000. In this regard, the Counter Claimant would respectfully submit that it is absolutely untenable and frivolous on the part of Respondent No. 1 to self-servingly extract the stipulations of Clause 13.2 and Clause 28.4 of GCC and linking the same to the alleged conducting of the alleged commissioning and performance guarantee test by Claimant and the Respondent No. 2, which are as such would be deemed to have already been taken place and that apart the same are as such totally beyond the scope of the work of the Counter Claimant. The Counter Claimant would once again reiterate that as fully detailed in the Counter Claimant's pleadings as well as herein above, such alleged commissioning and performance guarantee test and the consequent issuance of alleged FAC by the Respondent No. 1 would be deemed to have already occurred in the facts and circumstances of the matter due to the own faults, lapses, latches, breaches, delays, etc., on the part of the Respondent No. 1 itself including in accordance with the relevant stipulations of the Contract as quoted herein above. Therefore, Respondent No. 1 cannot be allowed to take benefit out of its own faults, delays, lapses, etc. The Counter Claimant would also submit that the contentions and submissions of the Claimant under Para 6.37 at Page 25 of its Reply of the Claimant are also relevant in respect of these aspects, although for the said subject matter of commissioning, performance guarantee test and FAC, the Counter Claimant has no role, responsibility and obligation under the divisible Contract as was novated and modified by the Respondent No. 1 to its own conduct of treating and considering the Counter Claimant to be a separate, distinct and exclusive party in relation to the scope of work of Counter Claimant. Even otherwise, the entire scope of work of the Counter Claimant under the said divisible Contract has been fully and duly completed and

even the formal handover protocols have been recorded and established for such scope of work of the Counter Claimant, directly with Respondent No. 1, on one-to-one basis between the Counter Claimant and Respondent No. 1.

36. The allegations and claims made by the Respondent No. 1 (under Point 150 to Point 152 of the Statement of Defence and counter claim of the Respondent No. 1), in respect of the counter claim of interest as made by Counter Claimant on various counter claimed amounts that would be awarded by the Hon'ble Arbitral Tribunal in favour of Counter Claimant and against Respondent No. 1, pursuant to the Statement of Counter Claim of the Counter Claimant, are untenable, frivolous, unsustainable and self-serving. The extraction of the Section 31 of the Arbitration and Conciliation Act, 1996 by the Respondent No. 1 in a self-serving manner, would be of no avail to the Respondent No. 1 in relation to its untenable plea against the counter claim of interest of the Counter Claimant as made in its Statement of Counter Claim. This is because, while making such frivolous allegations and extractions, the Respondent No. 1 is conveniently overlooking the fact that the transactions between the parties under the divisible Contract were purely commercial in nature and accordingly the Hon'ble Arbitral Tribunal is fully competent to award interest on awarded amounts (for pre, lis-pendente and post-award, periods) at commercial rates and the said authority and competence of the Hon'ble Arbitral Tribunal has been confirmed by the Hon'ble Supreme Court of India in its various decisions. In this regard, the Respondent No. 1's self-serving reliance upon the judgement of Hon'ble High Court of Delhi, New Delhi in *V4 Infrastructure Pvt. Ltd Vs. Jindal Biochem Pvt. Ltd.* (2020 Scc OnLine Del 2366) is absolutely untenable and the said decision is not applicable in the present case. This is because, the benchmark prime lending rate of State Bank of India at the relevant point of time when the Counter Claimant made its counter claims was 14.85% and as per the very stipulations of the said Section 31(7) (b) of the Arbitration and Conciliation Act, 1996, another 2% additional interest is to be allowed. Over and above the Hon'ble Arbitral Tribunal has competence to even award higher interest, since the said Section 31(7)(b) clearly inter alia stipulates "*unless the award is otherwise direct*". Therefore, the claim of interest at the commercial rate of 18% per annum by the Counter Claimant made in its Statement of Counter Claim is fully justifiable. In this regard the data of Benchmark Prime Lending Rate at the relevant point of time of June 2023 when the Statement of Counter Claim was filed by the Counter Claimant, as extracted from the website of State Bank of India has been submitted by the Counter Claimant as **Annexure R3-22**.

37. The allegations and claims made under Point 153 and Point 154 by the Respondent No. 1 in its Statement of Defence and counter claim are untenable, frivolous and self-serving. While making such untenable, frivolous and self-serving allegations the Respondent No. 1 conveniently overlooking the fact that it is the Respondent No. 1 who
- (a) had indulged in various delays, lapses, latches, breaches, etc.;
 - (b) fully ignored and overlooked the consequences for such delays, lapses, latches, breaches, etc., of Respondent No. 1 arising out of the contractual stipulations including the stipulations of GCC sub-clause 26.2 as quoted herein above;
 - (c) for its own self-serving aims and objects of making substantial commercial gains, continuously used, operated and commercially exploited the plant since the year 2016 on issuance of the PAC, that too as stated in total breach and violation of the contractual terms;
 - (d) fully admitted the commissioning, using, operating and commercially exploiting the plant being the Medium Structural Mill much earlier than a period prior to 1 April 2019 in statutory and public documents originating from the highest level of management of Respondent No. 1, being its Board of Directors;
 - (e) in view of its such self-serving aims and objects of making commercial gains, delayed, fully prevented and sabotaged the efforts of the Claimant and the Respondent No. 2 in relation to such alleged commissioning, performance guarantee test and issuance of FAC;
 - (f) made enormous commercial gains in the intervening period at the cost and to the total detriment of the Claimant and the Counter Claimant under the said divisible Contract by giving a total go-bye to the contractual stipulations and obligations of Respondent No. 1 under the Contract;
 - (g) highhandedly and arbitrarily deprived the Claimant and the Counter Claimant from its legitimate entitlements and dues to be received from the Respondent No. 1;
 - (h) highhandedly and arbitrarily terminated the divisible Contract, just to somehow meet its self-serving selfish ends; and
 - (i) is trying to take and derive undue benefits from out of its own faults, lapses, delays, latches, breaches, etc., by in one hand highhandedly denying the lawful entitlements of the Counter Claimant in one hand and making frivolous, untenable, unsustainable and undue alleged counter claims against the Consortium.

It is submitted that while for such oblique acts and deeds of the Respondent No. 1, the Claimant was constrained to initiate the present arbitration proceedings, to which the Counter Claimant was constrained to join because of such mala fide and self-serving acts and deeds of Respondent No. 1, the Respondent No. 1 is now untenably and self-servingly pleading that “*Respondent No. 3’s claim for costs of the present arbitration proceedings ought to be rejected outright*”. On the contrary, it is respectfully submitted that while such untenable, frivolous and self-serving objections and denials of the Respondent No. 1 in relation to the award of cost of arbitration in favour of Counter Claimant and against Respondent No. 1 as made by the Counter Claimant in its Statement of Counter Claim against Respondent No. 1, are liable to be rejected in limine and accordingly, the said bona fide counter claim of the Counter Claimant against Respondent No. 1 for award of cost of arbitration of the Counter Claimant is fully valid and sustainable, as is the case for all other counter claims of the Counter Claimant against Respondent No. 1 as made by the Counter Claimant in the present arbitration proceedings.

38. Under Point 155 to Point 194 of the Statement of Defence and counter claim the Respondent No. 1 made certain alleged counter claims of Respondent No. 1 and it is submitted that the said alleged counter claims of Respondent No. 1 are untenable, unsustainable and self-serving, apart from being against the specific relevant stipulations of the Contract. While the Counter Claimant had already denied all such alleged counter claims of the Respondent No. 1 in its pleadings, the Counter Claimant would further submit that:

38.1. The Counter Claimant has no role or responsibility in relation to all such false, untenable and unsustainable counter claims of the Respondent No. 1, for reasons fully detailed and substantiated by the Counter Claimant in its Pleadings as well as herein above. Even otherwise, all such false and frivolous counter claims of the Respondent No. 1 pertain to alleged commissioning and performance guarantee test in relation to the Plant which as have been fully detailed herein above as well as in the pleadings of the Counter Claimant would be deemed to have already been taken place and additionally for which the Counter Claimant had no role or responsibility in relation to its separate, distinct and exclusive scope of work under the divisible Contract.

- 38.2. Without prejudice to what is stated herein above and without in any manner admitting that the Counter Claimant has any role or responsibility in respect of the said false and frivolous alleged counter claims of Respondent No. 1, the Counter Claimant would once again reiterate what have been stated herein above under Para 2.2.1 and the same are once again reaffirmed herein in relation to the said false, untenable and unsustainable alleged counter claims of Respondent No. 1.
- 38.3. Additionally, the Counter Claimant would also respectfully submit that due to such mala fide acts and deeds on the part of the Respondent No. 1, the Claimant and the Counter Claimant were restrained to put forth their claims and counter claims before the Hon'ble Arbitral Tribunal, the Respondent No. 1 has now come forward to put forth its false, fictitious, fabricated and self-serving alleged counter claims purely as a counter blast measure, that too in a totally untenable and frivolous basis.
- 38.4. As if the above was not enough, the mala fide and concocted conduct of the Respondent No. 1 would be further revealed from the fact that in spite of all delays, lapses, latches, faults, etc., being on Respondent No. 1's part leading to adverse consequences to the Respondent No. 1 under the contractual stipulations, it now wants to fully renovate and refurbish the plant by making it a totally new plant under the garb and false pretext of alleged shortfall in the installed capital of the Plant, at the cost and to the total detriment of the Consortium partners of a divisible Contract through false, fabricated and unsubstantiated alleged counter claims, that too after using, operating and commercially exploiting the Plant fully for more than 7 years and thereby making enormous commercial gains and benefits! As if the same was not enough, in support of its such false, fabricated and unsubstantiated alleged counter claims, the Respondent No. 1 had even invented, engineered, concocted, fabricated and self-serving alleged reports being (a) 'Techno Commercial Assessment Report, July 2023' prepared by IDBI Capital Markets & Securities Limited (**Exhibit R-1/22 at Page 44 to 140 Respondent No. 1's documents**); and (b) Technical Report conducted by LSI Financial Services Pvt. Ltd. on behalf of IDBI Capital Markets & Securities Limited (**Exhibit R-1/23 at Page 141 to 183 Respondent No. 1's documents**), purely for the purpose of the present arbitration proceedings only. The extremely doubtful nature, veracity, relevance and authenticity of the said engineered, fabricated, motivated and self-serving impugned Reports would be to anybody's guess, since

- (a) The present arbitration proceedings were initiated by the Claimant through its Request for Arbitration dated 28 July 2022 to the International Court of Arbitration, International Chamber of Commerce, Paris and the said alleged Reports were engineered, fabricated and invented by the Respondent No. 1 during July 2023 i.e., after one year of initiation of the present arbitration proceedings, obviously for the purpose of present arbitration proceedings only. This fact speaks volumes about the conduct of the Respondent No. 1.
- (b) Further, it is also very interesting to note that such engineered, fabricated and invented Reports were obtained from IDBI Capital Markets & Securities Limited and the said IDBI Capital Markets & Securities Limited nominated agency, LSI Financial Services Pvt. Ltd., both of which agencies are engaged in financial services sector and therefore cannot be considered to be competent to provide such alleged Reports. The evidence in respect of the said IDBI Capital Markets & Securities Limited and LSI Financial Services Pvt. Ltd., being the players in the financial services sector has been produced by the Counter Claimant as **Annexure R3-23 (colly)**.
- (c) Most interestingly, IDBI Capital Markets & Securities Limited, whom the Respondent No. 1 had engaged for inventing, engineering, and fabricating the concocted and self-serving Reports solely for the purpose of the present arbitration proceedings is a wholly owned subsidiary of IDBI Bank Limited. The said IDBI Bank Limited in one of the main bankers of and a major lender to, the Respondent No. 1 and therefore a closely related party to Respondent No. 1 having vested interest in profits and gains of the Respondent No. 1, even if such profits and gains are to be achieved by Respondent No. 1 by way of undue and unjust enrichment. One can therefore easily understand the nature and genuineness of dealings and matters between closely related parties having common vested interest, which in turn fully vitiates the said invented, engineered, concocted, fabricated and self-serving Reports, on this count of being a colourable transaction between 'closely related parties' having common vested interest. The Counter Claimant has produced appropriate evidence, being relevant pages of the Annual Report of Respondent No.

1 for the FY 2022-23, in respect of the above related party connection of the Respondent No. 1 with IDBI Bank Limited and resultantly with the wholly owned subsidiary of IDBI Bank, IDBI Capital Markets & Securities Limited, as **Annexure R3-24**.

38.5. Additionally, the Respondent No. 1 has also self-servingly brought on record certain impugned document under **Exhibit R-24 (Pages 184 to 203 of Respondent No. 1's documents)** by the alleged title "Summary of MSM Hot Commissioning Test Report". The said impugned document as alleged Exhibit R-24 contains several mere piece of unauthenticated printed papers being (a) alleged "Comments on Hot Trial Report of MSM submitted by Primetals Italy on 17.07.19" (**Pages 184 to 190**); (b) alleged "Major issues at MSM to be resolved by PT / SEPC" (**Pages 191 to 197**); (c) alleged "Shift-wise Production and Delay Report (From 05:15 AM of 15.06.2019 to 05:15 AM 26.05.2019)" (**Pages 198 to 202**) and (d) alleged "Annexure III Major Contributors to Delays" (**Page 203**). A mere look of the said mere piece of unauthenticated printed papers in Exhibit R-24 from pages 184 to 203 would reveal that the said alleged documents have been fabricated, invented and engineered by the Respondent No. 1 solely for the purpose of this arbitration proceedings. This is because,

38.5.1. The alleged "*Comments on Hot Trial Report of MSM submitted by Primetals Italy on 17.07.19*" (**Pages 184 to 190**) is an alleged document containing unauthenticated printed piece of papers without having any date or signature, which signifies that the same has been fabricated and invented by the Respondent No. 1 only for the purpose of the present arbitration proceedings. Further, while the said document refers to the '*Hot Trial Report of MSM*' submitted by the Claimant on 17 July 2019, the unauthenticated printed piece of papers at Pages 184 to 190 do not reveal if the said alleged "*Comments*" were sent or provided to the Claimant for the Claimant's necessary response / reply to the same, which of course, must not have been done by the Respondent No. 1. Therefore, the said unauthenticated printed piece of papers are obviously engineered, invented and fabricated by the Respondent No. 1 only for the purpose of present arbitration proceedings and do not have any evidentiary value of whatsoever nature.

38.5.2. The alleged document titled as “*Major issues at MSM to be resolved by PT / SEPC*” (**Pages 191 to 197**) as produced by the Respondent No. 1 is also an alleged document containing unauthenticated printed piece of papers without having any date or signature, which signifies that the same has been fabricated and invented by the Respondent No. 1 only for the purpose of the present arbitration proceedings. Further, while the said document refers to the alleged “*Major Issues at MSM to be resolved by PT/SEPC*”, the said unauthenticated printed piece of papers at Pages 191 to 197 do not reveal at which point of time the said alleged “*Major Issues*” were arisen and when the said alleged “*Major Issues*” were brought to the notice of the Claimant and the Counter Claimant . In this regard, the Counter Claimant denies its having notified about the said alleged “*Major issues at MSM*” by the Respondent No. 1 at any relevant point of time when the separate, distinct and exclusive scope of work of the Counter Claimant was fully completed, the erection of the Plant along with its related facilities was done successfully, the erected plant having taken over by the Respondent No. 1 simultaneously at the time of issuance of PAC and all punch points in relation to the installation of the plant which were within the said separate, distinct and exclusive scope of work under the divisible Contract stood fully resolved and attended successfully by the Counter Claimant. Only then the formal hand over protocol for the scope of works of the Counter Claimant were duly undertaken and established directly between the Counter Claimant and Respondent No. 1 on one-to-one basis. Counter Claimant had already denied that there was any such alleged “*Major issues at MSM*”, which were allegedly to be attended by the Counter Claimant remained unattended and unresolved. Therefore, the said unauthenticated printed piece of papers submitted by Respondent No. 1 at pages 191 to 197 of its documents under the alleged heading “*Major Issues at MSM to be resolved by PT/SEPC*”, are mere piece of printed papers, which have been engineered, invented and fabricated by the Respondent No. 1 only for the purpose of present arbitration proceedings and the same do not have any evidentiary value of whatsoever nature.

38.5.3. The alleged “*Shift-wise Production and Delay Report (From 05:15 AM of 15.06.2019 to 05:15 AM 26.05.2019)*” (**Pages 198 to 202**) is also an alleged

document containing unauthenticated printed piece of papers without having any date or signature, which signifies that the same has been fabricated and invented by the Respondent No. 1 only for the purpose of the present arbitration proceedings. The fact of fabrication and invention of such alleged document would be further fully evident from its alleged starting and ending dates, which the Respondent No. 1 alleges to be “*From 05:15 AM of 15.06.2019 to 05:15 AM 26.05.2019*”, i.e., the time had run backwardly from “15.06.2019” to “26.05.2019”. Further the said fabrication and invention of the document only for the purpose of the present arbitration proceedings by the Respondent No. 1 would be fully revealed from the fact that the said alleged document at Pages 198 to 202 fully contradicts the authenticated and genuine documents produced by the Claimant in respect of the same subject matter as **Exhibit C-9 at Pages 262 to 294 of Volume I of Claimant’s documents**, which Exhibit C-9 is much later in date (18.12.2019 and 19.12.2019) than the alleged latest date of “15.06.2019” contained in the said alleged documents at Pages 198 to 202 of the documents of Respondent No. 1, being the alleged “*Shift-wise Production and Delay Report (From 05:15 AM of 15.06.2019 to 05:15 AM 26.05.2019)*”. Therefore, the said unauthenticated printed piece of papers produced by Respondent No. 1 at pages 198 to 202 under the alleged “*Shift-wise Production and Delay Report (From 05:15 AM of 15.06.2019 to 05:15 AM 26.05.2019)*”, are nothing but mere piece of printed papers, which have been engineered, invented and fabricated by the Respondent No. 1 only for the purpose of present arbitration proceedings and do not have any evidentiary value of whatsoever nature.

38.5.4. The alleged “*Annexure III Major Contributors to Delays*” (**Page 203**) produced by Respondent No. 1 is also an alleged document containing unauthenticated printed piece of papers without having any date or signature, which signifies that the same has been fabricated and invented by the Respondent No. 1 only for the purpose of the present arbitration proceedings. Further, the said alleged Annexure III at Page 203 fully contradicts the above referred authentic and genuine document brought on record by the Claimant as **Exhibit C-9 at Pages 262 to 294 of Volume I of Claimant’s documents**. Over and above, the alleged invented and

fabricated document at Page 203 produced by Respondent No. 1 does not reveal as to which document it is an alleged 'Annexure III'. Therefore, the said unauthenticated printed piece of paper at Page 203 being the alleged "*Annexure III Major Contributors to Delays*", is a mere piece of printed paper, which has been engineered, invented and fabricated by the Respondent No. 1 for the purpose of present arbitration proceedings only and does not have any evidentiary value of whatsoever nature.

39. It is submitted that the entire alleged counter claims of Respondent No. 1 as contained in its impugned Statement of Counter Claim dated 3 August 2023 are based on the above invented, fabricated, engineered and concocted alleged documents being Exhibit R1/21 to Exhibit R1/24. As fully detailed herein above that the Respondent No. 1 is not at all entitled to make any alleged counter claims in the present arbitration proceedings, whether against the Consortium or against the Counter Claimant and thereby take undue benefits from out of Respondent No. 1's own faults, lapses, breaches, latches, etc., and without in any manner admitting that the Counter Claimant has any role or responsibility in relation to such alleged counter claims of Respondent No. 1, it is submitted that each and every such counter claims of the Respondent No. 1 are false, untenable, unsustainable, unsubstantiated and self-serving, apart from being based on invented, fabricated, engineered and concocted alleged documents. Further, the said alleged false, untenable, unsustainable, unsubstantiated and self-serving counter claims are not supported by any alleged document which could have any evidentiary value. Each and every such alleged counter claims also fully defies the relevant well established and mandatory legal principles in relation thereto, as laid down by the Hon'ble Supreme Court of India under its various judgements including in ***Kailash Nath Associates Vs. Delhi Development Authority and another*** [2015 SCC Online SC 19].
40. In addition to the above, the Counter Claimant would, in addition to its submissions above and without admitting any role or responsibility in relation to the alleged counter claims of the Respondent No.1, would submit that in relation to the said alleged counter claims of Respondent No.1, the Claimant had provided its response under the Reply inter alia under Para 20 to Para 22 and the same may kindly be treated as additional submission of the Counter Claimant in relation to the alleged counter claims of the Respondent No. 1.

41. In view of what is stated herein above, it is humbly prayed that the Hon'ble Arbitral Tribunal would be kind enough to reject the allegations and claims of the Respondent No. 1 in relation to the counter claims of Counter Claimant as well as each and every alleged counter claims of the Respondent No. 1, as contained in the impugned "Statement of Defence and Counter Claim on behalf of Respondent No. 1" dated 3 August 2023, as being untenable, unsustainable, unsubstantiated and self-serving, apart from being false and fabricated in several respects. Simultaneously, for the same very reasons as stated herein above and in the interest of equity, justice and fair play, the Hon'ble Arbitral Tribunal may be kind enough to pass appropriate orders and award in relation to each and every counter claims of the Counter Claimant and against the Respondent No. 1 as contained in the Statement of Counter Claim of Counter Claimant dated 6 July 2023.
42. In view of the submissions of the Counter Claimant in its pleadings as well as herein above and also considering the documents available on the records of the present Arbitral Tribunal including the relevant contractual stipulations, it is humbly submitted and respectfully prayed that in the interest justice, equity and fair play, the Hon'ble Arbitral Tribunal may be kind enough to reject all the alleged counter claims of Respondent No. 1 as being untenable, unsustainable and devoid of any merit and simultaneously allow and award the counter claims of the Counter Claimant as contained in its Statement of Counter Claim dated 6 July 2023 and thus render justice.
43. Of course, the above prayers of the Counter Claimant are in conjunction with the Counter Claimant's prayers for fully rejecting the alleged counter claims of Respondent No. 1 as made by it against the Consortium, as being untenable, unsustainable and devoid of any merit.
44. It is respectfully prayed that while the above are only skeleton arguments submitted on behalf of the Counter Claimant (Respondent No. 3), the leave of the Hon'ble Arbitral Tribunal is simultaneously prayed for, for submission of detailed arguments for and on behalf of the Counter Claimant (Respondent No. 3).

Date: 14 March 2025
Place Chennai

Ashok Kumar Anchalia,
Advocate,
Counsel for the Respondent No.3