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

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BEFORE THE INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION
SUITE 2, 12/F, FAIRMONT HOUSE, 8, COTTON TREE DRIVE,
CENTRAL HONG KONG
ICC Case No. 27146/HTG

BETWEEN

PRIMETALS TECHNOLOGIES INDIA PVT. LTD.
5th Floor, Tower C, DLF IT Park – 1,
08 Major Arterial Road,
New Town (Rajarhat), Kolkata – 700156 **…CLAIMANT**

VERSUS

1. **STEEL AUTHORITY OF INDIA LIMITED & ORS.**
   Projects' Dept, Projects' Building
   Durgapur Steel Plant, Durgapur – 713203
   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 Ltd.)
   4th Floor, Futura Bascon SV IT Park,
   Venkatnarayan Road, T. Nagar,
   Chennai 600017, India. **…RESPONDENT NO.3**

SKELETON ARGUMENT NOTE ON BEHALF OF THE CLAIMANT

Date: 14.03.2025

DSK Legal
True Value, True Values

DSK LEGAL, ADVOCATES AND SOLICITORS
Max House, Level 5 - Okhla Industrial Estate, Phase III
New Delhi – 110020

BEFORE THE INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION
ICC Case No. 27146/HTG

IN THE MATTER OF:

PRIMETALS TECHNOLOGIES INDIA PVT. LTD. …CLAIMANT

VERSUS

STEEL AUTHORITY OF INDIA LIMITED & ORS. …RESPONDENTS

SKELETON ARGUMENT NOTE ON BEHALF OF THE CLAIMANT

MOST RESPECTFULLY SHOWETH:

1. The present pre-hearing submissions on behalf of the Claimant are being filed without prejudice to the rights of the Claimant and are subject to further elucidation/modification subsequent to the cross-examination of the witnesses of the Respondents as well as the closing submissions of the Claimant at the time of final arguments. The arguments are scheduled from 27.03.2025 to 03.04.2025, in accordance with PO No.8 dated 27.01.2025 of this Hon'ble Tribunal.

2. The brief facts are that the present arbitration has been initiated by Primetals Technologies India Pvt. Ltd., the Claimant, *inter alia* praying for an award against Steel Authority of India Limited, Respondent No. 1, for an amount of Rs. 51,72,26,677/- (Rupees Fifty-Two Crores Seventy-Two Lakhs Twenty-Six Thousand Six Hundred Seventy-Seven) and for the release of its Performance Bank Guarantees dated 20.10.2021 and 26.06.2015 for €22,02,080.95 (Euros Twenty-Two Lakhs Two Thousand Eighty and Ninety-Five Cents) and Rs. 8,50,37,434/- (Eight Crores Fifty Lakhs Thirty-Seven Thousand Four Hundred Thirty-Four) respectively along with pre-award and post-award interest @ 18% per annum on the above amounts and legal costs. The disputes relate to successful commissioning of the MSM, establishment of 6 performance guarantee parameters, and issuance of the FAC, amongst others.

3. For the sake of brevity, all short forms and abbreviations have been derived from the RFA, SoC, and Reply filed by PT India and may be read as part and parcel of the present Skeleton Submissions.

PARTIES TO THE PRESENT DISPUTE:

4. The **Claimant**, a private limited company, is a premier engineering company specializing in providing metal producers with cutting-edge, tailor-made technologies, solutions, and services. Over the years, PT India has developed a wide spectrum of business sectors in multi-discipline engineering services.

5. **Respondent No. 1** is a Central Public Sector Enterprise, with the Government of India holding approximately 65% of its shares. Respondent No. 1 operates integrated steel plants in Bhilai, Rourkela, Durgapur, Bokaro, and Burnpur, as well as special steel plants in Salem, Durgapur, and Bhadravathi. The company produces and sells a broad range of steel products.

6. **Respondent No. 2** specialized in the design, manufacturing, and supply of rolling mill technology and solutions for the steel industry. The company provided advanced engineering solutions for long rolling mills, catering to metal producers worldwide. Respondent No. 2 is a *pro-forma party* in the present arbitration.

7. **Respondent No. 3**, a private limited company, is engaged in the business of providing turnkey solutions to business segments, such as process and metallurgy, power, water infrastructure, and mining and mineral processing. No claims have been made by the Claimant against Respondent No. 3 and vice versa.

BACKGROUND LEADING TO THE DISPUTE:

8. In the year 2007, Respondent No. 1 was desirous of setting up an MSM with a production capacity of 1 MTPA. Consequently, Respondent No. 1 issued a Tender dated 23.10.2007, bearing no. DSP/PROJ-PUR/EXPN/MSM-01/014 for the installation of a 1.0 MTPA MSM at Durgapur, West Bengal. It is pertinent to mention that the scope of work described in the Tender was focused on the process line of the MSM excluding the Reheating Furnace and also excluding other major portions of the MSM like Civil Works, Steel Structures, Cranes etc., which were separately contracted by Respondent No.1 directly with other suppliers. Nevertheless, the scope of work described in the Tender was defined as a divisible turnkey project.

Accordingly, the Claimant, Respondent No.2, and Respondent No.3 formed a Consortium where Respondent No.2 was the Consortium leader. The Consortium submitted a bid on 28.02.2008, which was accepted by Respondent No.1, who issued a LOA on 01.04.2010.

9. Accordingly on 11.05.2010 a Contract was executed between Respondent No. 1 and the Consortium for establishing the MSM at DSP wherein as per Article 2.1 of the Contract, the total consideration for setting up the MSM was Euro 44,041,619 (Euro Forty-Four Million Forty-One Thousand Six Hundred and Nineteen) and Rs. 278,05,86,000/- (Rupees Two Hundred Seventy-Eight Crores Five Lakhs Eighty-Six Thousand). Further as per Article 5.1 of the Contract, the entire project was to be completed within a period of 28 months from the effective date of the Contract, i.e., 11.05.2010. Additionally, Article 5.1 of the Contract specified that time was an important feature under the present Contract and under the terms of the Contract, specifically mentioned in Appendix-3 of the Contract, Respondent No. 1 was required to make payments to the Claimant upon the completion of various stages/milestones of the Project.

10. The various stages/milestones of payment *qua* the completion of the project are as follows:

S.NO	STAGES OF PROJECT	AMT. PAYABLE
1.	Submission of drawings, documents, data, and approval of general layout drawings of the shop [*Refer to Exb.C-5, Cl. 2.1.1, Pg.98, SOC*]	5% of the total Contract Price
2.	Approval of basic engineering drawings, placement of equipment/items, and submissions of unpriced copies of purchase orders by the Claimant. [*Refer to Exb.C-5, Cl. 2.1.2, Pg.99, SOC*]	5% of the total Contract Price
3.	Payment to be released towards progress payments. [*Refer to Exb.C-5, Cl. 2.1.3, Pg.100, SOC*]	77.5% of the total Contract Price
4.	Issuance of PAC [*Refer to Exb.C-5, Cl. 2.1.4, Pg.100, SOC*]	2.5% of the total Contract Price
5.	Issuance of CC [*Refer to Exb.C-5, Cl. 2.1.5, Pg.101, SOC*]	2.5% of the total Contract Price

6.	Establishment of PGT and Issuance of Performance Guarantee Certificate. [*Refer to Exb.C-5, Cl. 2.1.6, Pg.101, SOC*]	5% of the total Contract Price
7.	Issuance of FAC [*Refer to Exb.C-5, Cl. 2.1.7, Pg.101, SOC*]	2.5% of the total Contract Price

It is not disputed that 90% of the total Contract Price stands paid without any reservation, protest, and/or grievance and admittedly PAC stands issued in terms of Clause 24 of GCC

11. Thereafter on 17.03.2016, Respondent No. 1 issued the PAC to the Consortium according to Clause 24 of the GCC. Admittedly, Respondent No. 1 has paid 90% of the consideration amount to the Consortium as per the Contract, with 10% of the balance consideration remaining to be paid to the Consortium. The instant dispute pertains to the remaining 10% payment of the Contract Price.

12. As per the scheme of the Contract, once the PAC was issued by Respondent No. 1, the MSM Plant was required to be commissioned as per Clause 25 of the GCC read with Clause 41 of the SCC. Respondent No. 1 has averred *(without prejudice)* that they had issued a conditional PAC to the Claimant so as to rectify the defects/deficiencies in the MSM equipment that needed rectification. On the other hand, it is the specific contention of the case of the Claimant that the Contract does not provide for a conditional PAC. It is pertinent to mention that once Respondent No. 1 has issued the PAC, the next step as per the Contract is to proceed with the commissioning of the Plant.

13. It is respectfully submitted that the Plant has been ready for commissioning since 2016, as evidenced by the PAC issued by Respondent No. 1 in the same year. However, Respondent No. 1 prioritized commercial production over commissioning and Performance Guarantee tests, which was in direct conflict with Clause 44 of SCC. From 2016 to 2019, the Claimant made multiple requests to Respondent No. 1 to allow the commissioning of the Plant. Despite these repeated requests, Respondent No. 1 did not permit the Claimant to proceed, as they continued to prioritize commercial production, as mentioned hereinabove.

14. It is submitted that Clause 41 of the SCC, in conjunction with Clause 25 of the GCC, specifies that the commissioning of the MSM will be considered successful once the Mill reaches a production level of at least sixty-six percent (66%) of the guaranteed production capacity, which is 22,000 tonnes in 10 days (3 shifts/day), including beams and channels. The Claimant commissioned the Plant from 14.06.2019 to 25.06.2019. During the net rolling period of 10 (ten) days, the Plant was commissioned for an aggregate of 240 hours and produced products weighing 13,425 metric tonnes (corresponding to 111.32 metric tons per hour). It is further pertinent to mention that out of the 240 hours, admittedly, the Plant carried out production for 90 hours and did not produce for the balance 149.08 hours.

15. On 18.12.2019 and 19.12.2019, officials from both the Claimant and Respondent No. 1 signed a Joint Delay Analysis Report, acknowledging that:

    a) Delay of 29.67 hours was attributable to the Claimant;
    b) Delay of 31.72 hours was attributable to the Respondent; and
    c) Delay of the balance 87.7 hours was disputed and, therefore, not attributed either to the Claimant or Respondent No. 1.

16. While it is the case of the Claimant that commissioning of the Plant had been successfully completed *(explained in the foregoing paragraphs in detail)*, Respondent No. 1 arbitrary rejected both the commissioning results and the contention of the Claimant that commissioning had been achieved. Additionally, Respondent No. 1 has denied the request of the Claimant for the commissioning results to be evaluated by an international expert to determine the cause of the alleged delays in commissioning.

17. It is submitted that the dispute in the current arbitration arises from the refusal of Respondent No. 1 to issue the Commissioning Certificate, thereby failing to acknowledge that the Plant has been commissioned in accordance with the terms and conditions stipulated in the Contract. The Claimant requested Respondent No. 1 to amicably resolve the disputes that had arisen between the parties. However, due to the non-cooperative approach of Respondent No. 1, the Claimant was compelled to issue a letter dated 18.10.2021, wherein it called upon Respondent No. 1 to resolve the disputes through conciliation, in accordance with the terms of the Contract.

18. After 9 months had passed since the Claimant issued the request for conciliation, on which Respondent No. 1 had taken no action, the Claimant issued a letter dated 18.07.2022, thereby cancelling/terminating the conciliation request and resorting to arbitration. Respondent No. 1 did not provide the name of its conciliator, which resulted in the failure of the conciliation procedure between the parties.

19. On 20.07.2022, the Claimant, in accordance with Article 4 of the Rules of Arbitration of the International Chamber of Commerce and Section 21 of the Arbitration and Conciliation Act 1996 as well as Article 10 of the Contract, issued Request for Arbitration (RFA) to the Secretariat of the ICC, ICA. It is imperative to mention that in response to the RFA, Respondent No. 1 issued a notice on 28.09.2022, threatening to terminate the Contract on 20.10.2022 unless the members of the Consortium provided written communication by 19.10.2022 expressing their willingness to discuss and finalize a Supplementary Agreement, as well as the willingness of the Claimant to withdraw or defer the aforementioned arbitration proceedings.

20. On 07.10.2022, Respondent No. 1 filed response to the RFA. Furthermore, Respondent No. 1 terminated the Contract through a letter dated 26.11.2022, citing alleged violations of the contract terms, which are as follows:

    a) Failure on the part of the Consortium to re-conduct a commissioning test under Clauses 37.1 and 44.2.2. of the GCC of the Contract; and

    b) Assignment of rights and liabilities of Respondent No. 2 to the Claimant in violation of Clause 45 of the GCC.

SUMMARY OF RELIEFS & CLAIMS SOUGHT BY THE CLAIMANT

21. In light of the foregoing, the Claimant has sought the following claims and declaratory reliefs in the present arbitration:

Monetary Claims of the Claimant:

S.NO.	PARTICULARS OF CLAIM	CLAIM AMOUNT
I.	**Payment for Successful Commissioning of Plant**	Rs. 12,93,06,669.30

	R1 is liable to pay 2.5% of the Contract Price as per Appendix 3 of the Contract.	
II.	**Payment for Performance Guarantee Test** R1 is liable to pay 5% of the Contract Price for PGT as per Appendix 3 of the Contract	Rs. 25,86,13,338.70
III.	**Payment for Issuance of FAC** R1 is liable to pay 2.5% of the Contract Price as per Appendix 3 of the Contract	Rs. 12,93,06,669.30
IV.	**Release PBG dt. 26.06.2015** bearing no. PEBBOM505064 **(PBG1)**	Rs. 8,50,37,434.00
V.	**Release PBG dt.20.10.2021** bearing no. 0006NDCG00128522, issued by R2 **(PBG2)**	€ 22,02,080.95
VI.	**18% interest per annum on above mentioned claims** from (i) the due date of the amounts until the initiation of arbitration and (ii) from the date of arbitration proceedings up to the date of payment.	TBD
VII.	**Legal Costs**	Will be submitted at the time of final arguments

Declaratory reliefs of the Claimant:

a) Pass an Order declaring that the termination of Contract bearing No. DSP/PROJ-PUR/EXPN/MSM-01/014 dated 11.05.2010 by Respondent No. 1 through the Termination Letter dated 26.11.2022 is malafide and thus *non-est*, void, and liable to be set-aside;

b) Pass an Order declaring that the Claimant has invoked the present arbitration and filed the present Statement of Claim *qua* its Claims, in accordance with the terms and provisions of the Contract dated 11.05.2010;

c) Pass an Order declaring that the assignment of the Contract in favour of the Claimant was valid and in accordance with the Contract and law;

d) Pass an Order declaring that only Respondent No. 1 would be liable to make good any losses/ wear and tear of the Plant occurred since Respondent No. 1 has been using the Plant for commercial production;

e) Pass an Order declaring that the Claimant was not liable for any delay in commissioning the MSM Plant in June 2019 under the Contract; &

f) Pass an Order directing Respondent No. 1 to issue the Commissioning Certificate, Performance Guarantee Certificate and the Final Acceptance Certificate to the Claimant.

ISSUES FOR DECISION BY THIS HON'BLE TRIBUNAL:

22. Although multiple claims and counter claims have been filed by the parties before the Hon'ble Arbitral Tribunal, but, in the respectful submission of the Claimant, the Hon'ble Arbitral Tribunal is primarily required to adjudicate the following three issues *(without prejudice)*:

a) Whether the MSM Plant been commissioned by the Claimant, and is Respondent No. 1 contractually obliged to issue the Commissioning Certificate, Performance Guarantee Certificate, and Final Acceptance Certificate to the Claimant?

b) Whether the assignment of the Contract in favour of the Claimant was valid and in accordance with the Contract and law?

c) Whether the termination of the Contract by Respondent No. 1 through the letter dated 26.11.2022 is in bad faith, thus rendering it invalid, void, and subject to being set aside?

23. Submissions of the Claimant against each issue are as under:

I. WHETHER THE MSM PLANT BEEN COMMISSIONED BY THE CLAIMANT, AND IS RESPONDENT NO.1 CONTRACTUALLY OBLIGATED TO ISSUE THE COMMISSIONING CERTIFICATE, PERFORMANCE GUARANTEE CERTIFICATE, AND FINAL ACCEPTANCE CERTIFICATE TO THE CLAIMANT?

24. A significant aspect of the present dispute centers around the successful commissioning of the MSM in accordance with Clause 25 of the GCC.[1] To effectively demonstrate this, the Claimant has set out hereunder a comprehensive overview of the

[1] Contract dated 11.05.2010. Bundle E, E7-121.

entire MSM setup process, highlighting the contractual lapses and violations committed by Respondent No. 1. The Claimant will also substantiate the quantifiable impact of these hindrances on the commissioning timeline and production capacity of the MSM, which ultimately led to the present dispute.

25. Pursuant to Article 5 of the Contract,[2] the MSM facilities were required to be commissioned within 28 months from the Effective Date of the Contract. Additionally, the Consortium was obligated to establish the guaranteed performance parameters within six (6) months from the date of commissioning.[3] A table outlining the timelines for the completion of the work under the Contract is as follows:

DETAILED PROJECT TIME SCHEDULE (MSM)		
Major Task Description	**Contract Start**	**Contract Finish**
Contract Effectiveness	11.05.2010	11.09.2012
Basic Design	11.05.2010	26.10.2010
Detailed Design	10.08.2010	12.06.2011
Civil Assignment Drawings	24.02.2009	11.01.2011
Civil Works (Foundations, Conduit, Etc.) Including Engineering	10.12.2010	09.03.2012
Building Erection (Architectural work and steel structure)	10.01.2011	09.01.2012
Delivery of Equipment	10.06.2011	08.04.2012
Erection of Equipment	10.08.2011	02.06.2012
Testing, Trial Run and Commissioning Medium Structure Mill	10.03.2012	08.09.2012

26. The initial stages of the project encompassed the completion of basic engineering and documentation within the first 24 weeks, establishing the foundational designs and project documents necessary for subsequent phases. Following this, the process and shop layouts was to be finalized between weeks 24-33, setting a clear blueprint for the construction and installation activities ahead. The next critical phase involved the submission of civil assignment drawings, including vital equipment foundation load data, ensuring readiness for the commencement of civil works.[4]

[2] Contract dated 11.05.2010. Bundle E, E7-5.
[3] Appendix-2, Contract dated 11.05.2010. Bundle E, E7-31.
[4] Attachment 1 of Appendix-2, Contract dated 11.05.2010. Bundle E, E7-33.

27. Before delving into the delays that occurred during the civil works and erection activities, which were under the scope of Respondent No. 1, it is important to highlight that the preliminary phases of the project were completed in accordance with the Project Implementation Schedule.[5] Since Respondent No. 1 has not raised any disputes regarding these preliminary stages, the same are not required to be dealt with in respect of the present dispute. Further, 90% of the payment has been admittedly released by Respondent without any protest/ reservation and the present dispute concerns the release of the remaining 10%. Therefore, for better adjudication and understanding of the issues involved, a complete matrix of the events leading up to the commissioning of the MSM is set out hereunder, along with the delays that delayed the same.

Delay in the Execution of Civil Works by Respondent No. 1

28. As outlined in the Project Implementation Schedule, the tasks slated for completion within the 28-month contractual timeline included execution of civil works for the MSM. This phase, contingent upon the issuance of civil assignment drawings by the Consortium, involved constructing equipment foundations, building other essential premises, and undertaking the fabrication and erection of structures. The responsibility for delivering this crucial scope of work rested squarely with Respondent No. 1.[6]

29. The Contract Project Implementation Schedule outlined that civil works were to begin following sufficient progress in basic design. Timely advancement of site and civil works and building erection by the Employer was crucial to enable the equipment erection, testing, and commissioning within the contractual timeframe. Additionally, the Schedule anticipated that civil and structural works would be significantly progressed before commencement of the delivery of equipments, both local and imported, to be supplied by the Consortium.

[5] Attachment 1 of Appendix-2, Contract dated 11.05.2010. Bundle E, E7-33.
[6] Attachment 1 of Appendix-2 r/w Article 1(1.3) of Contract dated 11.05.2010. Bundle E, E7-33 and E7-3.

30. The Contract Project Implementation Schedule allowed civil works to begin after sufficient progress in the Civil Assignment Drawings. While the Civil Assignment Drawings started slightly ahead of schedule, the first complete set of workable drawings was issued one month later, which were also subject to certain modifications/integrations by the Consortium. However, the same were issued in time i.e., 30.06.2011 and did not affect the completion of the engineering work by MECON or impacting on the foundation construction by Respondent No. 1.[7]

31. Additionally, the second submission of the Civil Assignment Drawings on 27.04.2013 and 22.04.2013 involved only minor modifications that had no impact on foundation-related activities, construction, or engineering work to be carried out by Respondent No. 1/MECON. These revised drawings were rejected by Respondent No. 1/MECON in a meeting dated 15.06.2013, confirming that the second revision did not contribute to any delay in civil work or erection activities by Respondent No. 1.[8]

32. Meanwhile, foundation piling and construction design, which was the responsibility of Respondent No. 1, progressed very slowly and was issued two months late, and the first sets of foundation construction drawings were provided to the Consortium two months after the scheduled start of erection.[9] Therefore, the one-month delay in issuing workable drawings did not at all affect the critical path, as the said delay was obliterated by the slow progress of pile construction and foundation design on the part of Respondent No. 1.

33. Thereafter start of the civil foundation construction Respondent No. 1 was also riddled with significant delays, with the first above-ground foundation visible only 8 months after the scheduled handover of major equipment foundations. Furthermore, Respondent No. 1 failed to progress site construction and building erection sufficiently, thereby preventing the Consortium from commencing equipment erection thereafter.[10]

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[7] Letter of Respondent No. 2 dated 20.02.2018. Bundle E, E59-43.
[8] Letter of Respondent No. 2 dated 20.02.2018. Bundle E, E59-43.
[9] Letter of Respondent No. 2 dated 16.09.2015. Bundle E, E59-3.
[10] Letter of Respondent No.2 dated 16.09.2015. Bundle E, E59-3.

34. In October/November 2012, Respondent No. 1 decided to replace the civil contractor and retender the civil works package, causing a halt in project progress for several months.[11] Throughout the currency of the project, the Consortium repeatedly requested Respondent No. 1 to provide detailed status updates on civil and structural erection work and the foundation handover schedule. However, Respondent No. 1 either failed to provide updates or shared unrealistic plans, preventing an accurate assessment of project progress and completion forecasts.[12]

35. As a result, the Consortium had to rely on internal schedule updates, progress reports, minutes of meetings, site information, and other project documentation to manage the work scope and mitigate the abnormal delays caused by Respondent No. 1.

36. Further, due to the consistent failure of Respondent No. 1 to timely fulfill its obligations, extension of time was granted by Respondent No. 1 to the Consortium in accordance with Clause 42 of GCC[13], which is reproduced hereunder for ease of reference:

> *"**42. Extension of Time for Completion***
>
> ***42.1** The time(s) for completion specified in the Appendix-2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:*
> *…*
>
> *d) The default by the Employer under Clause 10 thereof, if proved to be cause for delay in completion of the Facilities by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor."* [emphasis supplied]

37. The Contract Project Implementation Schedule anticipated the delivery of Consortium-supplied equipment 7 months after the start of civil works and 1 month before the handover of major equipment foundations, with equipment arriving when civil works were 50% complete.[14] Instead, when the first onshore and offshore

[11] Email of Respondent No. 1 dated 07.03.2020. Bundle L, L30.
[12] Letters dated 10.09.2014, 16.09.2015, and 20.02.2018. Bundle E, E59.
[13] Contract dated 11.05.2010. Bundle E, E7-137.
[14] Attachment 1 of Appendix-2 of Contract dated 11.05.2010. Bundle E, E7-33.

deliveries arrived, civil works were far behind schedule, with 85% of equipment delivered while civil progress was at approximately 25%.[15]

38. Due to the delays caused by Respondent No. 1, the materials and equipment supplied by the Consortium remained stored on-site for a period much longer than anticipated. Instead of the intended 1-2 months, storage was extended to 1½ to 2 years, leading to significant losses.

39. While these losses are not the purview of the present claims or counter claims, the factual position narrated hereinabove clearly demonstrates that delay in civil works and erection was solely attributable to Respondent No. 1. It also dispels the allegation that the delays were caused by designs and drawings revisions/modifications submitted by the Consortium, which purportedly led Respondent No. 1 to redo certain civil construction at its own cost. These delays had a cascading effect on the completion of commissioning activities, preventing adherence to the original contractual timelines specified under Article 5 of the Contract.[16]

40. It is, therefore, submitted that there was a total delay of 38 months in the handover of the civil works by Respondent No. 1 to the Consortium. Out of this delay, a period of, at best, 1 month was due to the slightly late issuance of workable civil assignment drawings, while the remaining 37 months were attributable to slow progress in civil works and building erection by Respondent No. 1.[17]

Preliminary Acceptance Test and Preliminary Acceptance Certificate

41. Upon the progressive completion of MSM unit erection, along with utilities and auxiliaries by the Consortium as per approved drawings and detailed documents, the Consortium was required to conduct the Preliminary Acceptance Tests (PAT), or "*cold tests*." This test aimed to verify that the unit was supplied as per the agreement and, after erection, was fit for start-up to achieve commissioning parameters, including necessary adaptations to reach 66% production capacity as per Clause 25 of GCC.[18]

[15] Letters dated 10.09.2014, 16.09.2015, and 20.02.2018. Bundle E, E59.
[16] Contract dated 11.05.2010. Bundle E, E7-5.
[17] Main Package of MSM - Foundation Handover Dates. Bundle E, E58.
[18] Technical Specifications, Part 7(7.1), Bundle E, E54-447.

42. PAT or Cold Tests[19] were to be conducted on individual sub-assemblies of the MSM unit to systematically check the components and their functional operations against a pre-determined checklist. Any major defect or deficiency affecting the operation, safety, or commissioning of the MSM Facilities was to be rectified by the Consortium, followed by Pre-Commissioning, which included integrated trial runs of the MSM Facilities as follows: [20]

a) "No-load tests", where the MSM Unit was to run idle without any load, and
b) "Load trial runs", where the unit operated under load conditions

43. These tests were to be carried out solely by the Consortium, with supervision and witnessing by skilled operator personnel of Respondent No. 1. Liquidation of defects, if any, and/or deficiencies indicated/listed by Respondent No. 1 was to be made during such trial runs.[21]

44. In simple terms, PAT involves testing the MSM Facilities after complete erection to ensure that the Mill Equipment is functioning properly and reliably. The process starts with a "*no-load run*" without production, followed by a "*load trial run*", resulting in the production of the first hot bloom as a commercial steel section.

45. As per record, the first trial runs commenced on (i) 08.06.2015 for rolling stands 1 to 8,[22] (ii) 08.07.2015 for rolling stands 8 to 16, and (iii) 23.08.2015 for all 16 stands[23] and were duly completed on 15.03.2016.[24]

46. Upon successful trial runs, the Consortium, as per Clause 24.4 of the GCC,[25] notified Respondent No. 1 that the MSM Facilities were ready for Commissioning. Under Clause 24.5 of the GCC,[26] Respondent No. 1 was, within 14 days of receiving such notice, required to either:

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[19] Clause 24.3.1 of GCC requires cold tests for individual equipment/units and integrated runs since Facilities involve high-temperature operations. Contract dated 11.05.2010. Bundle E, E7-120.
[20] Roll Shop PAT & Cold Commissioning Report. Bundle E, E60-21.
[21] Technical Specifications, Part 7(7.2) (001) and (002). Bundle E, E54-448.
[22] Email from Respondent No. 2 dated 08.06.2015, Bundle E, E61-101.
[23] Letter from SAIL to PT UK dated 28.11.2015, Bundle L, L106.
[24] PAC dated 17.03.2016, Bundle E, E60.
[25] Contract dated 11.05.2010. Bundle E, E7-121.
[26] Contract dated 11.05.2010. Bundle E, E7-121.

a) Issue a PAC confirming the Facilities are fit for start-up and commissioning, or
b) Notify the Consortium of any defects and/or deficiencies that must be rectified before renotification for PAC issuance.

47. On 17.03.2016, Respondent No. 1 issued the PAC under Clause 24.5 of the GCC, unconditionally confirming that the MSM Facilities were fit for start-up and commissioning, with a directive to complete any outstanding defects and/or deficiencies at the earliest. Notably, Clause 24.5 of the GCC does not envisage a conditional PAC, and when read with Clause 24.1 (sub-part 4),[27] it is clear that the listed defects and deficiencies were minor and did not hinder the commissioning of the MSM under Clause 25 of the GCC.[28]

48. Without prejudice to the foregoing, even if the defects and deficiencies were significant, Respondent No. 1 had the option to withhold the PAC until rectification, in accordance with Clause 24.5 of GCC of the Contract. However, admittedly, no such intimation was provided, thereby leading to the obvious inference that the defects, if any, did not have any material bearing on the running of the system. Needless to add, any arbitrary conditions imposed beyond the terms of the Contract could not be enforced by Respondent No. 1.

Imposition of Unwarranted Pre-Commissioning Conditions by Respondent No. 1 Leading to Delays

49. After the issuance of the PAC, the Consortium was solely responsible for starting up and commissioning the MSM Unit in an integrated manner.[29] In between the start-up and Commissioning in terms of Clause 25 of GCC,[30] the Consortium had to make necessary adaptations, perform adjustments, and conduct hot trials to achieve the production capacity necessary for Commissioning.[31] Throughout this stage,

[27] Contract dated 11.05.2010. Bundle E, E7-121.
[28] Contract dated 11.05.2010. Bundle E, E7-121.
[29] Technical Specifications, Part 7(7.3) (001) and (002), Bundle E, E54-448-9.
[30] Contract dated 11.05.2010. Bundle E, E7-121.
[31] Technical Specifications, Part 7(7.3) (003). Bundle E, E54-449.

Respondent No. 1 was required to provide operating and maintenance personnel, who would work under the guidance of the Consortium.[32]

50. As per Clause 25 of GCC,[33] to successfully commission the MSM, the Consortium needed to achieve a commercially accepted production level of at least 66% of the Guaranteed Production Capacity of 1 MTPA. This meant producing 22,000 tonnes of "*beams & channels*" within 10 days (across 3 shifts per day) and within 2 months of the successful hot rolling of the first hot bloom.[34]

51. Neither Clause 25 of the GCC[35] nor the Technical Specifications of the Contract[36] specify which particular "*beams & channels*" were to be produced during commissioning. The selection was left to the discretion of both parties, with the primary requirement being to achieve a minimum production capacity of 66% of 1 MTPA.

52. After the commencement of hot trials for the MSM Facilities, the Consortium stabilized the following sections within the below mentioned admitted timelines:[37]

S.NO	SECTION	DATE OF STABILISATION
1.	NPB100	12.01.2016
2.	MC100	04.02.2016
3.	MB100	05.03.2016
4.	WPB160	18.04.2016
5.	EA90	11.01.2017

53. However, it admittedly took several tries or campaigns to achieve the MC300 profile, which was admittedly one of the 6 Performance Guarantee parameters.[38] The Consortium, being fully aware of this bottleneck, and in order to prioritize the successful commissioning of the MSM expeditiously, on 19.03.2017,[39] informed and

[32] Technical Specifications, Part 7(7.3) (004), Bundle E, E54-449.
[33] Contract dated 11.05.2010. Bundle E, E7-121.
[34] Technical Specifications, Part 7(7.3) (006), Bundle E, E54-449.
[35] Contract dated 11.05.2010. Bundle E, E7-121.
[36] Technical Specifications, Bundle E, E54.
[37] Email of Respondent No. 1 dated 02.04.2018 to the Consortium. Bundle L, L15.
[38] Technical Specifications, Part 7(7.4) (003), Bundle E, E54-449.
[39] Respondent No. 1 Letter dated 19.03.2017, Bundle L, L14.

proposed to Respondent No. 1 to change over to MC100 section from MC300 for the purposes of the "*channel.*"[40]

54. Despite being expressly offered the option to switch to MC100 to achieve the Commissioning Parameters as per the contractual timelines, Respondent No. 1 arbitrarily insisted on achieving the MC300 profile for commissioning,[41] a decision with no contractual basis and driven solely by the commercial whims of Respondent No. 1.[42] This unilateral and unjustified stance prioritized commercial interests over the commissioning, thereby circumventing agreed upon contractual procedure and timelines, constituting a blatant violation of Clause 53 of the SCC[43] and reflecting a wilful disregard for the terms and conditions of the Contract.

55. Since neither the Technical Specifications nor the Contract specified any particular "*channel*" or "*beam*" as a pre-requisite for achieving commissioning standards under Clause 25 of the GCC,[44] any delay caused by the rejection by Respondent No. 1 of the proposal of the Consortium to switch to MC100 was purely a commercial decision and a matter of preference. This preference could not have been imposed upon the Consortium/Claimant, as achieving the MC300 profile was specifically required only for the Performance Guarantee Tests (PG Tests)—a milestone subsequent to commissioning. The Consortium/Claimant was under no contractual obligation to meet PG Test requirements prior to fulfilling the commissioning requirements.

56. By prioritizing commercial gains over timely commissioning, Respondent No. 1 circumvented the agreed contractual terms, undermining the commissioning process and violating the terms and conditions of the Contract. Therefore, the Claimant cannot be held liable for delays resulting from commercial prioritization by Respondent No. 1, as it contradicts the contractual framework. Consequently, Respondent No. 1 cannot escape the burden of causing unjustified delay on all counts.

[40] Technical Specification of the Contract, Chapter 7, Clause 7.3(006), Bundle E, E54-449.
[41] Email of Respondent No. 1 dated 09.04.2018, Bundle L, L17.
[42] Respondent No. 1's Letter dated 02.01.2019, Bundle L, L19.
[43] Contract dated 11.05.2010. Bundle E, E7-63.
[44] Contract dated 11.05.2010. Bundle E, E7-121.

57. At the cost of repetition, it is emphasised that commercial production was always the priority for Respondent No. 1, who was well aware that till such time Commissioning was achieved under Clause 25 of the GCC,[45] the MSM Facilities would remain under the care, custody, risk, and cost of the Consortium.[46] Exploiting this situation, Respondent No. 1 maximized the use of the MSM Mill while disregarding proper operational and maintenance practices,[47] prioritizing commercial gain over contractual and operational integrity.

58. The conduct of Respondent No. 1 was repeatedly addressed through several correspondences, wherein the Consortium/Claimant explicitly requested that Respondent No. 1 cease using the MSM Plant for commercial production and instead prioritize ramping up the MSM Plant for commissioning purposes.[48] Despite these clear warnings, Respondent No. 1's *mala fide* conduct persisted, resulting in severe wear and tear to the MSM Equipment, with several components even sustaining damage.[49] This reckless exploitation of the MSM Plant for commercial gains directly violated the Contract[50] and significantly hindered the commissioning process, demonstrating a blatant disregard for the rights of the Consortium and the agreed contractual framework.

59. Respondent No. 1, in its relentless pursuit of commercial gains, repeatedly operated the MSM Mill to meet market demand, often running sections not agreed upon for commissioning.[51] To align production with its Annual Business Plan, Respondent No. 1 not only prioritized commercial needs over commissioning but also consistently operated the MSM Mill at a reduced pace,[52] deliberately hindering the ramp-up of production. Despite multiple notices from the Consortium/Claimant highlighting the breakdown of MSM equipment and the urgent need for proper maintenance and

[45] Contract dated 11.05.2010. Bundle E, E7-121.
[46] Preliminary Acceptance Certificate, Bundle E, E60.
[47] Letter dated 31.08.2017, 07.01.2021, 31.01.2021 08.03.2017, Bundle E, E34, E35, E36 & E31.
[48] Letter dated 21.10.2016, 09.11.2016, 08.03.2017, 22.03.2017, and 07.06.2017, Bundle E, E28, 29, 31, 33 and 34.
[49] Letter dated 17.02.2017, 08.03.2017, and 08.06.2017, Bundle E, E42, E31, and E44.
[50] Clause 53 of SCC of Contract dated 11.05.2010. Bundle E, E7-63.
[51] Letter of Respondent No. 1 dated 22.02.2019, Bundle L, L20.
[52] Letter dated 08.06.2017, Bundle E, E45.

operational practices, Respondent No. 1 persisted in disregarding protocols, essentially running the MSM Mill as it pleased.

60. Compounding these issues was the lackadaisical approach of the operating personnel of Respondent No. 1 during hot commissioning trials. Despite extensive and sufficient training provided by the Consortium/Claimant on the operation and maintenance of the MSM Plant,[53] the personnel consistently failed to adhere to instructions and established procedures.

61. Under Clause 10 (10.4) of GCC,[54] Respondent No. 1 was in fact responsible for providing "*sufficient, properly qualified operating and maintenance personnel*". However, Respondent No. 1 negligently failed to fulfil this obligation, deploying incompetent and under-qualified operators who lacked the capability to operate and maintain the MSM despite the training provided by the Claimant, leading to significant deterioration of the condition of the Plant. Due to a lack of regular preventive maintenance, flammable fluid leaks resulted in a fire outbreak in the cold saw area, disrupting commissioning activities and further deteriorating the condition of the MSM. An investigation by the Claimant/Consortium revealed oil buildup caused by leaks from saw pipes, which triggered the fire.[55] Despite repeated warnings from the Claimant/Consortium about the risk of fire due to leaking flammable fluids, the personnel of Respondent No. 1 persistently neglected maintenance protocols, directly contributing to mechanical failures and posing serious safety hazards.

62. The production process at the MSM Mill begins with steel billets—long, square pieces of raw steel—being heated in a hot furnace (outside the Consortium's scope). These heated billets then pass through a descaler, which removes surface impurities, before entering the mill for cutting, shaping, straightening, and final cutting into commercially accepted lengths. For this process to work efficiently, the billets—or "*blooms*"—must be precisely sized within specific tolerances.[56]

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[53] Training Certificate, Bundle E, E63; Roll Shop PAT & Cold Commissioning Report, Bundle E, E60.
[54] Contract dated 11.05.2010. Bundle E, E7-84.
[55] Site Notice 582 dated 31.01.2018. Bundle E, E64-35.
[56] Technical Specifications, Chapter 1(1.5) (1.5.1), Bundle E, E54-17.

63. However, Respondent No. 1 repeatedly supplied out-of-tolerance blooms, meaning thereby that the billets were either too long or too short, or unevenly sized.[57] This negligence had a cascading effect on the production process. When incorrectly sized blooms entered the mill, it disrupted the cutting and shaping stages, causing excessive cropping of the head and tail during the crop shear stage. Instead of producing full-length commercial bars, the mill output consisted of multiple short bars, which were commercially unusable and led to wastage on the cooling bed.

64. In simple terms, the failure of Respondent No. 1to provide proper blooms was akin to feeding the wrong ingredients into a machine and expecting a perfect product. This not only hindered production ramp-up but also wasted resources, damaged equipment, and prolonged the commissioning process. The Consortium was effectively forced to deal with the fallout of poor-quality input supplied by Respondent No. 1, struggling to meet contractual targets while Respondent No. 1 pursued its commercial interests without regard for contractual obligations.

65. As already cited, since the MSM Mill was commercially exploited, routine maintenance of all Mill Equipment was essential. However, the mill operators deployed by Respondent No. 1 failed to adhere to maintenance protocols, leading to significant operational issues. For instance, the PROSCAN, a sensitive laser device used for real-time measurement of steel dimensions during production, is crucial for ensuring products meet required specifications without stopping the mill. However, routine maintenance of the PROSCAN was neglected due to poor coordination between the mechanical and electrical teams of Respondent No. 1, leaving the equipment unattended, leading to malfunctions and non-functionality.[58] Despite numerous site notices from the Consortium/Claimant, Respondent No. 1 failed to respond, forcing manual measurements, frequent mill stoppages, and significant production delays. This reckless disregard for maintenance hindered the commissioning process.

66. Further, Respondent No. 1 engaged in reverse engineering of proprietary equipment and spare parts supplied by the Claimant/Consortium. Instead of procuring genuine

[57] Annexure 4, 11, 39 of Expert Report, Bundle E, E61-204, 333, and 632.
[58]Annexure 16, 18, 23, 34, and 37 of Expert Report, Bundle E, E61- 358, 367, 398, 589, & 624.

spare parts and replacements, Respondent No. 1 illicitly replicated components, thereby compromising the integrity and performance of the MSM Plant. Such unauthorized reverse engineering not only violates contractual obligations but also results in substandard operational conditions that directly contributed to plant inefficiencies and breakdowns. This deliberate misconduct is evident from correspondences exchanged between the parties,[59] wherein the Claimant explicitly warned Respondent No. 1 about the detrimental impact of using non-genuine spare parts and unauthorized modifications to critical equipment. Despite these warnings, Respondent No. 1 continued with such practices, further exacerbating the wear and tear of the MSM Mill and hindering the commissioning process.

67. These operational missteps had a cascading effect on the PAC, which consequently was not a static list but a dynamic document, constantly evolving due to the ongoing wear and tear of the MSM Plant. Throughout the period from 2016 to 2019, Respondent No. 1 continued to exploit the MSM Mill, all the while rejecting repeated requests from the Consortium/Claimant to initiate commissioning.[60] Each request was denied, with Respondent No. 1 consistently citing either the alleged non-achievement of Section MC300 or the outstanding points on the list of defects and deficiencies issued with the PAC, but in the meanwhile continuing to degrade the MSM Mill through prolonged misuse and neglect. This persistent misuse not only prevented the closure of the PAC but also prolonged the Consortium/Claimant exposure to unnecessary risk and cost, as Respondent No. 1 unjustifiably maintained the MSM Plant in a state of commercial usage rather than allowing commissioning as per the contractual framework.

68. It is noteworthy that while it was a precondition that all objections and observations raised by Respondent No. 1 along with the PAC had to be addressed to its satisfaction,[61] Clause 24.6 of the GCC[62] explicitly allowed Respondent No. 1 to undertake the completion of these tasks at the cost of the Claimant/Consortium if they failed to do so promptly. Despite this clear contractual remedy, Respondent No. 1, for

[59]Exhibit C-34, Bundle E, E36.
[60] Exhibit R-1/2, 3, 4, 5, 6, 7 and 9, Bundle L, L12, L13, L14, L15, L16, L17, & L19.
[61] Clause 25.3 of GCC, Contract dated 11.05.2010. Bundle E, E7-121.
[62] Exhibit C-5, SOC. Bundle E, E7-121.

reasons best known to them, persistently delayed commissioning under Clause 25 of the GCC,[63] using the pending list of defects and deficiencies as a pretext. This conduct demonstrates that Respondent No. 1 did not take reasonable steps to mitigate its alleged losses from the due to the inability of the MSM to achieve commissioning parameters, and instead, exploited the situation to continue commercially benefiting from the MSM Mill.

69. It is emphatically submitted that the MSM Mill did not suffer from any design defects or deficiencies that affected its production capacity. As per Chapter 7, Clause 7.3(002) of the Contract's Technical Specifications,[64] the Claimant/Consortium had the contractual right to make adaptations and adjustments to ramp up production as required for Commissioning under Clause 25 of the GCC.[65] The changes made, agreed upon, and suggested by the Claimant/Consortium were well within this right and were not design changes in the literal sense, but rather modifications necessary to achieve the contractual commissioning standards.

70. Moreover, without prejudice, if the MSM Mill had indeed suffered from any defects in design, engineering, materials, or workmanship, Respondent No. 1 had an absolute right under Clause 30 of the GCC to invoke the DLP.[66]

71. Within 18 months from the issuance of the PAC (17.03.2016),[67] Respondent No. 1 could have directed the Claimant/Consortium to promptly repair, replace, or rectify any such defect, including any damage to the MSM Facilities resulting from it, at the cost of the Claimant/Consortium. However, the DLP ended on 17.09.2017, and no such request was ever made by Respondent No. 1.[68] This incontrovertibly affirms that the MSM Plant did not suffer from any alleged design deficiency, and the baseless allegations of design flaws are nothing more than an afterthought aimed at deflecting responsibility for the delays and operational mismanagement solely attributable to Respondent No. 1.

[63] Contract dated 11.05.2010. Bundle E, E7-121.
[64] Technical Specifications of the Contract. Bundle E, E54-449.
[65] Contract dated 11.05.2010. Bundle E, E7-121.
[66] Contract dated 11.05.2010. Bundle E, E7-125.
[67] Exhibit C-56, Bundle E, E58.
[68] Exhibit R-1/4, Bundle L, L14.

Successful Commissioning of MSM

72. As per Clause 1.1 of the GCC,[69] the term "*Commissioning*" means the operation of facilities by the contractor i.e., a level of output, is not less than 66% of the guaranteed production capacity as mentioned in Clause 25 of the GCC of the Contract.[70] Further, as per Clause 7.3. (006) of the Contract Technical Specifications,[71] the MSM is said to have successfully been commissioned when it has achieved a commercially accepted production level of output of not less than 66% of the guaranteed production capacity i.e., 22,000 tonnes in 10 days (3 shifts/day).

73. From April 2016 to May 2019, despite repeated requests by the Claimant to commission the MSM Plant,[72] Respondent No. 1 refused permission,[73] engaging in malafide tactics to delay the process. (*As explained above in detail*)

74. After 3 years of unjustified delays, the Plant was finally commissioned from 14.06.2019 to 25.06.2019, achieving a production capacity of 111.32 metric tons per hour, with a total output of 13,425 metric tons over 240 hours. However, during this 3-year period (2016-2019), despite the Claimant/Consortium's repeated requests to initiate commissioning, Respondent No. 1 refused permission, citing the alleged failure to achieve the MC300 profile and the non-closure of the LOP.[74]

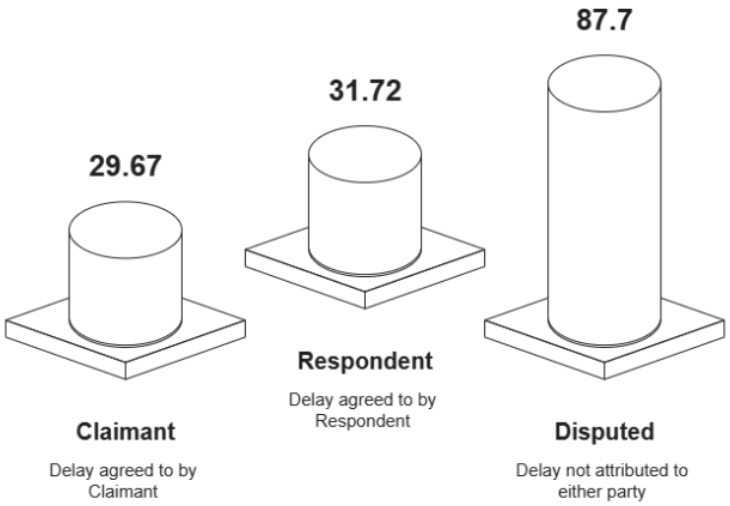
75. Notably, in a meeting dated 17.04.2019,[75] Respondent No. 1 abruptly agreed—without any new developments—that the MC300 profile could be replaced with MC100 and that only the most necessary points related to commissioning in the LOP needed to be addressed immediately, with the remaining items to be completed later. This sudden shift in the stand of Respondent No. 1 unequivocally reveals that its earlier refusals to allow commissioning were completely baseless and manufactured excuses.

[69] Contract dated 11.05.2010. Bundle E, E7-73.
[70] Contract dated 11.05.2010. Bundle E, E7-121.
[71] Technical Specification of the Contract, Chapter 7, Clause 7.3(006), Bundle E, E54-449.
[72] Exhibit C-41, C-42, and C-44-51, Bundle E43, E44, and E46-53.
[73] Exhibit R-1/2, 3, 4, 5, 6, 7 and 9, Bundle L, L11, L12, L13, L14, L15, L16, L17 & L19.
[74] Exhibit R-1/10, Bundle L, L20.
[75] Minutes of Meeting dated 17.04.2019, Exhibit R-1/11, Bundle L, L21.

76. It is pertinent to mention here that the Claimant/Consortium had proposed the switch to MC100 as early as 2017,[76] yet Respondent No. 1 arbitrarily rejected the proposal, thereby intentionally stalling commissioning. Similarly, regarding the LOP, Respondent No. 1 had the contractual right under Clause 24.5[77] to address the persisting defects itself and recover costs from the Claimant/Consortium, but it chose not to exercise this right. Instead, Respondent No. 1 artificially prolonged the LOP's closure, transforming it into a dynamic list, only to conveniently abandon these conditions when it suited its interests.

77. This conduct clearly demonstrates that the excuses handed out by Respondent No. 1 for delaying commissioning were a mere façade, deliberately orchestrated to buy time, maximize commercial exploitation of the MSM Mill, and shift blame unjustly onto the Claimant/Consortium.

78. It was mutually agreed between the parties that 1 (one) day shall be reserved for section change and thus, the net rolling period was 10 (ten) days. It is pertinent to mention that over the period of 10 (ten) days, the Claimant commissioned the Plant for an aggregate of 240 hours, out of which the Plant only produced for 90 hours and did not produce for 149.08 hours. It is further submitted that the delay in commissioning the said Plant was attributable to the parties in the following manner:[78]



[76] Letter of Respondent No.1 dated 19.03.2017, Exhibit R-1/4, Bundle L, L14.
[77] Contract dated 11.05.2010, Bundle E, E7-121.
[78] JDRS, Exhibit C-9, Bundle E, E11.

79. It is submitted that considering the above, the total Assigned Delay (admitted by both parties) on account of the Claimant and Respondent No. 1 is 61.39 hours i.e., 29.67 and 31.72 hours, respectively. Thereafter, the Assigned Delay attributable to each party is calculated in terms of percentage as follows:

S.No.	**Party**	**Total Admitted Delay by the Claimant and Respondent No. 1**	**Admitted Delay by Each Party (in hours)**	**Ratio of Delay (%)**
1.	Claimant	61.39	29.67	48.33%
2.	Respondent No. 1		31.72	51.66%

80. It is submitted that the Unassigned Delay amounting to 87.7 hours, is neither assigned to the Claimant nor Respondent No. 1. However, the majority portion of the Unassigned Delay is attributable to Respondent No. 1 for the following reasons:

a) Inefficiency of the personnel of Respondent No. 1, who failed to properly operate the Plant, causing delays.

b) Poor maintenance of the Plant by Respondent No. 1, leading to wear and tear and operational inefficiencies.

c) Out-of-tolerance blooms supplied by Respondent No. 1, which disrupted the commissioning process.

81. If the Unassigned Delay is proportionally attributed, the Plant could have produced an additional 8,576.04 metric tons, achieving a total production of 22,001.04 metric tons (*13,245 + 8,576.04*). This exceeds the commissioning requirement of 22,000 metric tons, proving that the Claimant met commissioning standards despite the delays caused by Respondent No. 1.

82. The Claimant, by achieving the required production, was entitled to the Commissioning Certificate under Clause 25.3 of the GCC[79] and 2.5% of the Contract Price, amounting to INR 12,93,06,669.30. Additionally, the failure of Respondent No. 1 to conduct commissioning within 60 days due to its own lapses triggers Clause 25.4

[79] Contract dated 11.05.2010. Bundle E, E7-121.

of the GCC,[80] entitling the Claimant to payment as per Sub-Clause 2.1.5 of Appendix-3, against Bank Guarantee of equal value.

83. It is also submitted that when the Claimant shared the commissioning results with Respondent No. 1, the same were arbitrarily rejected through letter dated 03.08.2019.[81] While Respondent No. 1 continues to deny the successful commissioning of the MSM Plant, its own Annual Reports for 2019-2020, 2020-2021, and 2021-2022[82] clearly acknowledge that the Plant stands commissioned, exposing the contradiction in the stand of Respondent No. 1.

84. Following the successful commissioning of the MSM Plant between 14.06.2019 and 25.06.2019, achieving a production rate of 22,001.04 metric tons, the Claimant was entitled to conduct the Performance Guarantee Test as per Clause 27 of the GCC.[83] This test was required to establish the performance guarantee parameters within six months of the Commissioning Certificate.

85. Respondent No. 1 unlawfully prevented the Claimant from conducting this test, thereby breaching the Contract. Under Clause 27.5 of the GCC,[84] when the test is delayed due to the actions of the Employer, the Claimant is entitled to 5% of the Contract Price, equating to Rs. 25,86,13,338.70, against a Bank Guarantee of equal value, along with interest from 26.12.2019 until full payment is received.

86. Since the Performance Guarantee Test was not conducted due to the hindrances created by Respondent No. 1, the FAC, which marks the completion of the obligations of the Claimant under Clause 28 of the GCC,[85] was wrongfully withheld. The refusal of Respondent No. 1 to issue the FAC is a clear violation of contractual terms, and the Claimant is entitled to an additional 2.5% of the Contract Price, totalling Rs. 12,93,06,669.30, along with accrued interest.

[80] Contract dated 11.05.2010. Bundle E, E7-121.
[81] Exhibit C-8, Bundle E, E10.
[82] Exhibit C-53, Bundle E, E55.
[83] Contract dated 11.05.2010. Bundle E, E7-122.
[84] Contract dated 11.05.2010. Bundle E, E7-123.
[85] Contract dated 11.05.2010. Bundle E, E7-123-4.

87. Therefore, it is respectfully submitted that the Hon'ble Arbitral Tribunal direct Respondent No. 1 to issue the Commissioning Certificate, Performance Guarantee Certificate, and Final Acceptance Certificate to the Claimant, and award the financial claims along with applicable interest.

88. Furthermore, The Claimant seeks a direction to Respondent No. 1 for the release of two Performance Bank Guarantees submitted by them.[86]

89. In view of PO No.7 dated 26.09.2024, currently there is an injunction on the encashment of the above mentioned PBGs since no harm or prejudice would be caused as Respondent No. 1 had not invoked the PBGs since the arbitration commenced. It is submitted that in light of the foregoing, Respondent No. 1 is bound to release two Performance Bank Guarantees immediately, as the Claimant has fulfilled all its obligations under the Contract.

90. The Claimant is also entitled to interest @ 18% per annum on due amounts from the date of default until the initiation of arbitration, and continuing interest at the same rate until full payment and realization, as per Appendix 3 of the Contract[87] and Section 31(7) of the Arbitration and Conciliation Act, 1996.

91. Moreover, the Claimant is further entitled to reimbursement of arbitration costs, legal fees, and expenses incurred in connection with the present arbitration including but not limited to PBG extension costs, (*a computation of which will be provided along with the Claimant's closing submissions*) and related court proceedings, with leave to submit detailed costs at an appropriate stage.

II. WHETHER THE ASSIGNMENT OF THE CONTRACT IN FAVOUR OF THE CLAIMANT WAS VALID AND IN ACCORDANCE WITH THE CONTRACT AND LAW

92. Pursuant to Assignment Agreement dated 21.10.2021, Respondent No. 2 transferred and assigned all its rights and liabilities to the Claimant, in accordance with Articles 2 and 3 of the Assignment Agreement.[88] This essentially meant that the Claimant is

[86] Exhibit C-54 and C-55, Bundle E, E56 & E57.
[87] Contract dated 11.05.2010, Bundle E, E7-34.
[88] Exhibit C-2 and Exhibit C-77, Bundle E, E4 & E79.

entitled to receive payments from Respondent No. 1 for the successful execution of the project and has assumed the role of Consortium leader previously held by Respondent No. 2.

93. It is submitted that the assignment of rights of such nature was anticipated by the parties in the Contract and was expressly contemplated and agreed upon in terms of Clause 53 of the SCC.[89] Respondent No. 1 has contended that no such assignment or transfer of rights could occur due to Clause 45.1 of the GCC,[90] which states that without the express consent of the Employer/Respondent No. 1, no assignment of rights is permissible. However, Clause 53 of the SCC explicitly provides that assignments to a Company within the Siemens group were permitted without any approval from Respondent No. 1. It is further pertinent to state that by virtue of letters dated 10.06.2016 and 07.05.2015,[91] Respondent No. 1 agreed that the rights and liabilities as available to the then Siemens group, would be applicable to Primetals group.

94. Therefore, since the assignment was from Respondent No. 2 to the Claimant, both entities within the Primetals Group **(formerly Siemens)**, the Contract did not necessitate any notification or approval. For the ease and convenience of this Hon'ble Arbitral Tribunal, the relevant clauses are reproduced below:

General Conditions of Contract

"45. Assignment

45.1 The Contractor shall not, without the express prior written consent of the Employer assign to any third party the Contact or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign under the Contract.

Special Conditions of Contract

53. GCC Sub-Clause 45.1: Following shall be added as

'Assignments to a company within the Siemens group should be allowed without any approval."

[89] Contract dated 11.05.2010, Bundle E, E7-63.
[90] Contract dated 11.05.2010, Bundle E, E7-140.
[91] Exhibit C-24 and C25, Bundle E, E26 & E27.

95. It is imperative to state that Respondent No. 1's assertion, that the Claimant and Respondent No. 2 required prior permission before transferring or assigning contractual rights, lacks any merit whatsoever. Clauses 1.2 and 1.3 of the Contract[92] clearly state that the SCC takes precedence over the GCC. Furthermore, both the Claimant and Respondent No. 2, being signatories to the Assignment Contract, are part of the same group of companies and therefore do not qualify as *'third parties'*.

96. Furthermore, Respondent No. 1 acknowledges that PT Italy was acquired by M/s Callista Private Equity GmbH, Germany, and subsequently renamed Pomini Rolling Mills Srl (Pomini LRM) on 29.10.2021, which occurred after the assignment/transfer of PT Italy's rights and liabilities via the Assignment Contract. Therefore, it is incorrect for Respondent No. 1 to assert that Respondent No. 2 was not a group company of the Claimant at the time the assignment took place. It is important to note that Respondent No. 1 did not raise any objections or reservations in their email dated 27.04.2022,[93] addressed to the Claimant requesting documents related to the Assignment Contract from Respondent No. 2. Thus, it is clear that the challenge to the validity of the Assignment Contract is a retrospective manoeuvre aimed at mitigating their own shortcomings and avoiding payment obligations under the Contract.

97. In light of the aforementioned, given that the assignment of rights between Respondent No. 2 and the Claimant was valid, the Assignment Agreement is effectively assigned to the Claimant. Therefore, the Claimant is entitled to seek reliefs on behalf of Respondent No. 2. Furthermore, once the Assignment Contract is in accordance with the law and as per the terms of Contract i.e., the SCC, there can be no restriction on the Claimant to initiate the present arbitration proceedings.

III. WHETHER THE TERMINATION OF THE CONTRACT BY RESPONDENT NO.1 THROUGH THE LETTER DATED 26.11.2022 IS IN BAD FAITH, THUS RENDERING IT INVALID, VOID, AND SUBJECT TO BEING SET ASIDE.

[92] Contract dated 11.05.2010, Bundle E, E7-3.
[93] Exhibit C-78, Bundle E, E80.

98. As explained in the preceding paragraphs, the Claimant had completed all its contractual obligations under the terms of the Contract. Consequently, the Claimant was and remains contractually entitled to receive payments according to Appendix 3 of the Contract.[94]

99. It is further submitted that once all work related to MSM was completed—following a two-year period from the commissioning date—the Claimant and Respondent No. 2 entered into an Assignment Agreement,[95] transferring all rights and liabilities of Respondent No. 2 to the Claimant whereby the Claimant assumed the role of the Consortium leader to safeguard the interests of Respondent No. 1 and ensure the seamless and effective performance of the MSM.

100. The Claimant informed Respondent No. 1 about the assignment on 08.12.2021,[96] and only when the Claimant demanded the settlement of its contractual dues did Respondent No. 1, after a four-month period i.e. in March 2022,[97] raised an objection that the assignment of rights and liabilities could not have occurred without their approval.

101. The objection raised by Respondent No. 1 in their letter dated 01.03.2022,[98] stating that no assignment could occur without their prior approval, directly contravenes Clause 53 of the SCC.[99] According to this clause, no permission or approval is required for assignments between the Claimant and Respondent No. 2, as they are part of the same group of companies until it was acquired by M/s Callista Private Equity GmbH, Germany and was renamed as Pomini Rolling Mills Srl. (Pomini LRM) on 29.10.2021, which is after the assignment/transfer of the rights and liabilities of Respondent No. 2 vide the Assignment Contract.

102. It is further submitted that the commissioning of the Plant was completed in June 2019, while the assignment occurred in 2021, two years post-commissioning.

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[94] Contract dated 11.05.2010, Bundle E, E7-34.
[95] Exhibit C-2 and 77, Bundle E, E4 & E79.
[96] Exhibit C-16, Bundle E, E18.
[97] Exhibit R-1/105, Bundle L, L115.
[98] Exhibit R-1/105, Bundle L, L115.
[99] Contract dated 11.05.2010, Bundle E, E7-63.

Accordingly, Respondent No. 1 could not have been prejudiced by this assignment of rights, even concerning the *'Euro component of price,'* as the commissioning had already been successfully concluded.

103. Furthermore, it is submitted that, Article 5 of the Contract[100] specified that time was an essential element of the Contract. Clause 8 of the GCC[101] mandated that the Claimant was required to complete the facilities within the period stipulated in Article 5 or within any extended period granted by Respondent No. 1 in accordance with Clause 42 of the GCC.[102]

104. As per record, Respondent No. 1 has granted multiple extensions to the Claimant for the completion of the Project from 05.0-7.2014 to 14.12.2021 (28 extensions)[103] and that too, without levy of liquidated damages. By doing so, the condition that time was an essential element/essence of the contract had, either been waived or rendered inapplicable by the conduct of the parties.

105. It is settled law that whether time is of the essence in a contract must be determined by reading the contract in its entirety, along with the surrounding circumstances. The mere inclusion of an express clause does not, in itself, render time an essential feature of the contract. In the present dispute, not only has Respondent No. 1 repeatedly granted extensions, but the inclusion of Clause 42 in the GCC, which explicitly provides for extension of time, and Clauses 27 and 29 of the GCC read with Article 9 of the contract relating to levy of liquidated damages,[104] further reinforces the conclusion that time was never intended to be a fundamental or inflexible requirement under the Contract.

[100] Contract dated 11.05.2010, Bundle E7-5.
[101] Contract dated 11.05.2010, Bundle E7-83.
[102] Contract dated 11.05.2010, Bundle E7-137.
[103] Exhibit C-39, Bundle E, E41.
[104] Contract dated 11.05.2010, Bundle E7-122, 124 & 6.

106. In view of the settled law of the land, the termination of the contract by Respondent No. 1 is not only uncontractual (as elucidated hereinabove), but also violative of the law of the land. Therefore, viewed from any angle, termination of the contract by Respondent No. 1 cannot be sustained. Consequently, all actions taken by Respondent No. post the illegal termination of the contract cannot be sustained. Axiomatically, the dues of the Claimant deprived to them due to the malafide approach of Respondent No. 1, are liable to be released in their favour.

107. Since the Claimant and Respondent No. 1 were unable to resolve their disputes amicably and the fact that Respondent No. 1 did not even intimate the Claimant regarding the name of the Conciliator for a period of 9 (nine) months, the Claimant was constrained to unilaterally terminate the conciliation proceedings vide letter dated 18.07.2022[105] and thereafter requested the Secretariat, ICC, ICA for arbitration. In retaliation and as a counterblast for the Claimant's RFA, Respondent No. 1 threatened to terminate the Contract vide letter dated 28.09.2022.[106] It is pertinent to state that in the said letter, Respondent No. 1 called upon the Claimant and Respondent Nos. 2 and 3 to give their written consent to enter into a supplementary agreement before 19.10.2022, failing which the said letter be construed as a termination notice *inter alia* on the following purported grounds:

(a) Failure on the part of the members of the Consortium to re-conduct a commissioning test under Clauses 37.1 and 44.2.2. of the GCC of the Contract;[107]
(b) Assignment of rights and liabilities of Respondent No. 2 to the Claimant in violation of Clause 45 of the GCC of Contract;[108]

The Claimant was called upon to withdraw or defer the proceedings pending before this Hon'ble Arbitral Tribunal.

[105] Exhibit C-13, Bundle E, E15.
[106] Exhibit C-16, Bundle E, E18.
[107] Contract dated 11.05.2010, Bundle E, E7-133 & 139.
[108] Contract dated 11.05.2010, Bundle E, E-140.

108. In response, the Claimant, vide letter dated 17.10.2022,[109] informed Respondent No. 1 that according to Clause 53 of SCC of Contract,[110] prior permission for the assignment of rights and liabilities was not necessary, as the assignment was within the Primetals group of companies. Additionally, since the Plant had already been commissioned in 2019, as evidenced by Annual Reports of Respondent No. 1 for the years 2019-2020, 2020-2021, and 2021-2022,[111] there was no need to recommission the Plant. Furthermore, in the same letter, the Claimant notified Respondent No. 1 that a Technical Services Agreement[112] concerning the Plant existed between the parties (Claimant and Respondent No. 2) and that the Claimant possessed the necessary technical expertise to address any shortcomings in the Plant.

109. Despite the detailed response of the Claimant (*supra*), Respondent No. 1 terminated the Contract in a highhanded and arbitrary manner vide letter dated 26.11.2022,[113] stating that the Claimant was not allowing Respondent No. 2 to enter into a Supplementary Agreement with Respondent No. 1, thereby undermining the purpose of the Supplementary Agreement.

110. It is submitted that the action of Respondent No. 1 to terminate the Contract is malafide, thus *non-est*, void and liable to be set aside for the following reasons:

    (a) The commissioning of the Plant was completed in June 2019, and the assignment occurred in 2021, which was two (2) years after the successful commissioning of the Plant. Therefore, Respondent No. 1 could not have been adversely affected by the said assignment of rights, as the Plant had already been successfully commissioned.

    (b) Respondent No. 1 was informed of the assignment of the Contract as early as 08.12.2021.[114] It was only after the Claimant insisted that Respondent No. 1 promptly settle its contractual dues, that Respondent No. 1, for the first time, raised an objection to the assignment vide letter dated 01.03.2022.

[109] Exhibit C-18, Bundle E, E20.
[110] Contract dated 11.05.2010, Bundle E, E7-63.
[111] Exhibit C-53, Bundle E, E55.
[112] Technical Services Agreement, Bundle E, E84.
[113] Letter dated 26.11.2022, Bundle E, E21.
[114] Letter dated 28.09.2022, Exhibit C-16, Bundle E, E18.

(c) The members of the Consortium had fulfilled all their contractual obligations under the Contract before Respondent No. 2 transferred and assigned all its rights and liabilities to the Claimant. Without prejudice, even if it is assumed that the Consortium did not complete its work regarding the said Plant, the Claimant and Respondent No. 2 entered into an arrangement wherein Respondent No. 2 agreed to provide its technical expertise concerning the Plant to ensure optimal operation. This was duly informed and communicated to Respondent No. 1.

(d) The Claimant, through various correspondences, requested Respondent No. 1 repeatedly to avoid commercial exploitation of the Plant prior to commissioning, as it could lead to wear and tear and affect its operational efficiencies. Despite these correspondences, Respondent No. 1 continued to commercially exploit the MSM Plant, which subsequently led to a decline in its performance guarantee parameters. As a result, Respondent No. 1 terminated the Contract citing the non-achievement of the performance guarantee parameters.

(e) Lastly, in its letter dated 28.09.2022,[115] Respondent No. 1 requested that the Claimant, Respondent No. 2, and Respondent No. 3 enter into a Supplementary Agreement with Respondent No. 1 to resolve all disputes. However, in its termination letter,[116] Respondent No. 1 adopted a completely contradictory position, stating that entering into the Supplementary Agreement was inconsequential and thus, terminated the Contract.

(f) In view of the aforementioned reasons, it is respectfully submitted that this Hon'ble Arbitral Tribunal ought to hold that the termination of the Contract was improper and liable be set aside as bad and arbitrary.

COUNTER CLAIMS OF RESPONDENT NO. 1 AND REPLY OF THE CLAIMANT

[115] Exhibit C-16, Bundle E, E18.
[116] Letter dated 26.11.2022, Exhibit C-19, Bundle E, E21.

111. The counter claims filed by Respondent No. 1 arise from the alleged failure of the Claimant to fulfil its contractual obligations under the Contract i.e., *inter alia* failure to fulfil commissioning criteria, failure to cure defects highlighted by Respondent No. 1, additional cost to complete the facilities, cost of repairs and replacements. Respondent No. 1 further alleges that there were substantial delays in the submission of critical designs and drawings by the Consortium as well as considerable delay in the execution of engineering activities and civil works.

112. Respondent No. 1 further alleges that the designs and drawings, which were submitted by the Consortium, were not in accordance with the Contract Technical Specifications, as a result of which Respondent No. 1 was constrained to dismantle and redo some of the civil construction executed by the Consortium, at its own cost. Respondent No. 1 also alleges that Consortium persisted in its failure to deploy sufficient resources, equipment and manpower resulting in heavy losses to Respondent No. 1. It has been further averred that the hot trials were plagued with constant breakdown of equipment. At the time of issuance of PAC, Respondent No. 1 had requested the Claimant to liquidate all outstanding defects and deficiencies at the earliest so that commissioning work could begin, which the Claimant was unable to rectify resulting in delay of commissioning. Lastly, Respondent No. 1 alleges that the first section of facilities identified for commissioning was found incapable of rolling the requisite type of steel section, *viz.* MC-300 and the same is required to be rectified as of date.[117]

113. Thus, Respondent No. 1 alleges that since the Consortium was unable to achieve the requisite production and satisfy the contractual parameters for commissioning and stabilizing MC-300, it has raised/made the following counter claims against the Claimant:

Declaratory reliefs:

a. Declare the claims of the Claimant are not maintainable as it is not a party to the arbitration agreement in its individual capacity and cannot invoke the arbitration clause independently; &

[117] Statement of Defence of Respondent No.1, Bundle A, A7.

b. Declare the assignment of rights & liabilities by Respondent No. 2 to the Claimant as invalid, non-est and not as per the Contract; &

c. Declare that all members of the Consortium are jointly responsible for the execution of the Contract; &

d. Declare the delay in handing over the project site including the civil front is attributable solely to the Consortium; &

e. Declare that Respondent No. 1 has not been using the Plant unilaterally for commercial production; &

f. Declare that the Consortium failed to commission the facilities and is not entitled to issuance of Commissioning Certificate, performance guarantee certificate and final acceptance certificate, including any correspondence payments whatsoever;

g. Hold that the termination notice issued by Respondent No. 1 dated 22.11.2022 terminating the Contract is valid in law; &

h. Hold that Respondent No.4 is not entitled to any price escalations and over runs; &

i. Declare that the Consortium is not entitled to the release of the Performance Bank Guarantees; &

j. Declare the Consortium is not entitled to any costs *qua* the present arbitration nor is entitled to rate of interest as no amount is due and payable.

Monetary Claims of Respondent No. 1:

S.No.	Particulars Of Counter Claims	Amount (in rupees)
1.	Payment on Account of Failure to Rectify the Defects in PAC.	Rs. 23,85,00,000/-
2.	Payment on Account of Failure to Commission the Facilities and Failure to Fulfil PG Parameters.	Rs. 81,03,10,000/-
3.	Payment on Account of Risk & Cost for Completion of the Facilities. (sought from Consortium Members)	Rs. 266,00,00,000/-
4.	Interest on sums found due and post-award interest at the same/ some other rate as the tribunal may decide.	TBD
5.	Legal Costs	TBD

114. At the outset, it is submitted that the counter claims of Respondent No. 1 are devoid of any merit whatsoever, being based on conjectures and surmises. It is pertinent to mention that these counter claims rely solely on mathematical calculations, devoid of any substantiating proof or evidence as to the methodology behind these calculations.

115. Moreover, it is a well-established legal principle that to claim losses or damages, the actual loss or damage must be quantified and subsequently proven or established. However, in the present case, Respondent No. 1 has failed to substantiate any actual loss or damage suffered. It is reiterated that the absence of concrete proof and the reliance on speculative calculations render the counter claims legally untenable. The Hon'ble Courts in India have consistently held that mere conjectures cannot form the basis for claiming losses or damages. Therefore, it was a *sine qua non* for Respondent No. 1 to have established beyond reasonable doubt the actual loss suffered by them with credible evidence.

116. In the present instance, Respondent No. 1 has not only failed to provide such evidence but has also not established even a causal link between the alleged loss and the actions of the Claimant and, therefore, the counter claims of Respondent No. 1 ought to be dismissed at the very threshold itself.

117. Furthermore, the present arbitration pertains to the achievement of the commissioning in the year 2019, which is evident from the Annual Reports of Respondent No. 1 for the years 2019-20, 2020-21 and 2021-22.[118] Strangely, the counter claims of Respondent No. 1 are calculated based on data available in 2023-24 when the Plant was not under the control and custody of the Claimant and much beyond the period of achieved commissioning.[119]

118. It is also respectfully submitted that Respondent No. 1 is also guilty of *suppressio veri and suggestio falsi* in alleging that the Plant has not been commissioned by the Claimant/Consortium. In reality, Respondent No. 1 has categorically admitted in its

[118] Exhibit C-53, Bundle E, E55.
[119] Termination Letter dated 26.11.2022, Bundle E, E21 read with Bundle L, L32, L33 and L37 Documents and Rejoinder Documents, respectively.

annual reports for the fiscal years 2019-2020, 2020-2021, and 2021-2022[120] that the MSM stands commissioned. Once such an admission has been made by Respondent No. 1 in its official documents, there can be no doubt or question that the MSM Plant had indeed been commissioned by the Claimant.

119. It is imperative to mention that the alleged defects and deficiencies highlighted by Respondent No. 1 at the time of issuance of the PAC are typical issues that arise during the normal operation of a Mill. It is further pertinent to state that the Contract never envisaged for a conditional PAC and such routine matters cannot be used by Respondent No. 1 as a pretext to question the commissioning of the Plant, which it has already acknowledged in its financial reports as having been commissioned. Moreover, the Contract does not permit the issuance of a conditional PAC under any circumstances.

120. It is submitted that the punch list is inherently dynamic, reflecting the routine nature of mill operations. Defects and deficiencies identified at the time of PAC issuance are typical and expected. The assertion of Respondent No.1 that these issues had to be rectified before commissioning is unprecedented and lacks any contractual basis. The contract does not envisage conditional PAC, nor does it require all punch list items to be resolved before commissioning.

121. The assertion of Respondent No. 1 that MC-300 was never commissioned is entirely baseless and contradicts its own records and admissions.

    a. MC-300 was not a crucial component for hot commissioning. As per Clause 25 of the GCC[121] read with Part 7 (7.3) (006) of Technical Specifications,[122] only the beam (MB-250) and channel (MC-100) were required to be tested. This was also explicitly communicated by the Claimant through email dated 19.03.2017,[123] clarifying that MC-300 rolling and stabilization was not a precondition for Hot Commissioning Trials.

[120] Exhibit C-53, Bundle E, E55.
[121] Contract dated 11.05.2010. Bundle E, E7-121.
[122] Exhibit C-52, Bundle E, E54-5.
[123] Respondent No. 1 Letter dated 19.03.2017, Exhibit R-1/4, Bundle L, L14.

b. Contrary to the claims of Respondent No. 1, MC-300 was successfully produced, requiring only minor fine-tuning for consistency. The Daily Inspection Reports of Respondent NO. 1 dated 03.01.2017 and 04.01.2017 confirm that MC-300 met the contractual dimensional standards.[124]

c. The quality reports of Respondent No. 1 confirm that the achieved dimensions were in accordance with contractual requirements.

122. Moreover, any delay in fine-tuning MC-300 was as a result of erroneous interpretation of contractual standards by Respondent No. 1. While 50% of MC-300 rolled was premium and saleable as per Indian Standards, Respondent No. 1 incorrectly classified premium European-standard products as 'scrap' due to the corner radius. This subjective classification was never a contractual requirement.[125]

123. The preference for a sharp corner was communicated to the Claimant much later in the contract execution, and the evaluation criteria devised by Respondent No. 1 lacked clear differentiation between prime product and non-prime product.

124. Despite these discrepancies, after the rolling sessions in March 2018, due analysis confirmed that MC-300 was within tolerance as per Indian Standards and was fully saleable, thereby completing the section profile of MC-300. The attempt of Respondent No. 1 to raise MC-300 as a commissioning issue is, therefore, nothing but a misrepresentation of facts.

125. Furthermore, addressing minor defects and deficiencies is part of standard maintenance and operational procedures, not a precondition for commissioning. The contention of Respondent No.1 that commissioning was required to be delayed until such issues were resolved, contradicts industry standards and the contractual framework governing the Project.

126. It is submitted that Respondent No. 1 failed to invoke the DLP as per Clause 30 of the GCC,[126] which provided the opportunity to address any alleged design deficiencies

[124] Bundle E, E44 and Claimant's Expert Report, E61.
[125] Exhibit C-75, Bundle E, E77.
[126] Contract dated 11.05.2010. Bundle E, E7-125.

within 18 months of the issuance of the PAC. Since the DLP has expired, the counter claims preferred by Respondent No.1 alleging design deficiencies are time-barred and cannot be allowed to be raised in the present proceedings.

127. Further, pursuant to Clause 24.5 of the GCC,[127] Respondent No. 1 failed to invoke its right to close the LOP for a prolonged period of 3 years, all at the cost of the Claimant. During this unjustified delay, Respondent No. 1 also contributed to significant wear and tear of the MSM Plant through misuse and neglect. Therefore, no costs can be awarded to Respondent No. 1.

128. Moreover, it is important to highlight that the counter claims are based entirely on projected future costs that have yet to be incurred. Such claims, lacking concrete evidence and actual financial records, are inherently speculative and do not meet the legal standard for a valid claim. The Courts have consistently held that claims based solely on anticipated expenses, without demonstrable proof of liability or incurred losses, are not legally enforceable. Furthermore, reliance on mathematical projections without a transparent and substantiated methodology renders the claim even more tenuous. In light of established legal precedent, it is evident that the counter claims lack merit and hence, liable to be dismissed.

129. The counter claim towards risk purchase costs related to the completion of the facilities is based on an incorrect and misleading narrative. The claim that the Consortium abandoned the facilities and the Project Site is wholly unsubstantiated. In reality, it was the unlawful termination of the Contract by Respondent No. 1 that led to the prolongation of the LOP and the deterioration of the condition of the Plant. The representatives of the Claimant could not access the site, as they were wrongfully denied the necessary passes. This deliberate obstruction by Respondent No. 1 directly undermines its claim that the Consortium failed to perform its obligations. Moreover, reliance of Respondent No. 1 on Clause 44.2.4 of the GCC is entirely misplaced.[128] A fundamental prerequisite for invoking this clause is the actual incurring of costs in completing the facilities, which Respondent No. 1 has failed to demonstrate. No credible evidence has been provided to establish that the Claimant abandoned the

[127] Bundle E, E7-121.
[128] Bundle E, E7-138.

facilities, or that Respondent No. 1 incurred any actual expenses in their completion. Additionally, the assertion of Respondent No. 1 that it will incur costs to establish a new 0.28 MTPA identical mill should be rejected for the following reasons:

- **Lack of Evidence:** Respondent No. 1 has not presented any documentation, contracts, or concrete steps taken toward establishing such a facility.
- **Unsubstantiated Cost Estimates:** No rationale or supporting data has been provided to justify the alleged costs that would purportedly be incurred.

130. Given the absence of supporting evidence, this claim appears to be an afterthought, raised belatedly and without merit. The burden of proof lies with Respondent No. 1, yet it has failed to substantiate its allegations with any credible documentation. Consequently, the counter claim is liable to be dismissed.

131. The Claimant reserves its right to amend and supplement its response to the counter claims in greater detail after the completion of its cross-examination and the subsequent closing oral submissions. The reserving of right is to ensure that the Claimant can fully address any new facts, evidence, or arguments that may emerge during the proceedings, thereby safeguarding its procedural rights and ensuring a fair adjudication of the dispute.

THROUGH

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