



**5<sup>TH</sup> NLIU JUSTICE R.K. TANKHA MEMORIAL  
INTERNATIONAL ARBITRATION MOOT, 2020**

**CASE RECORD**

**IN THE MATTER OF AN ARBITRATION  
BETWEEN**

*Arcebor Power Private Limited and Renvidora National Power Company Limited*

**UNDER  
Arbitration Rules of the Singapore International Arbitration Centre  
(6<sup>th</sup> Edition, 1 August 2016)**

**FEBRUARY 21, 2020 - FEBRUARY 23, 2020**

**ORGANIZED BY:  
National Law Institute University, Bhopal  
*In association with*  
The Office of Mr. Vivek Tankha  
Senior Advocate, Supreme Court of India  
and  
Member of Parliament, Rajya Sabha**

## INDEX

Sr. No.	Particulars	Page
1.	Index	2
2.	Acknowledgement	3
3.	Notice of Arbitration and Statement of Claim	6
4.	Claimant Exhibit 1 (Parts Supply Agreement).	12
5.	Claimant Exhibit 2 (Addendum to the agreement dated 14.01.2015)	14
6.	Claimant Exhibit 3 (Dispute Resolution Clause in the Agreement).	15
7.	Claimant Exhibit 4 (Concerns regarding Dispute Resolution).	16
8.	Claimant Exhibit 5 (Addendum governing Dispute Resolution).	17
9.	Claimant Exhibit 6 (Changes to Customer Service).	18
10.	Claimant Exhibit 7 (Re: Changes to Customer Service).	19
11.	Claimant Exhibit 8 (Request for Purchase Orders for Quarterly Installment).	20
12.	Claimant Exhibit 9 (Second Quarterly Installment).	21
13.	Claimant Exhibit 10 (Request for Purchase Orders for Quarterly Installment).	22
14.	Claimant Exhibit 11 (Request for Renegotiation and Amendment of the Agreement)	23
15.	Claimant Exhibit 12 (Re: Request for Renegotiation and Amendment of the Agreement)	24
16.	Claimant Exhibit 13 (Third Quarterly Installment)	25
17.	Claimant Exhibit 14 (Re: Request for Renegotiation and Amendment of the Agreement)	26
18.	Claimant Exhibit 15 (Re: Request for Renegotiation and Amendment of the Agreement)	27
19.	Claimant Exhibit 16 (Re: Request for Renegotiation and Amendment of the Agreement)	28
20.	Claimant Exhibit 17 (Re: Request for Renegotiation and Amendment of the Agreement)	29
21.	Claimant Exhibit 18 (Termination Notice)	30
22.	Re: Arbitration between Arcebor Power Private Limited and Renvidora National Power Company Limited.	31
24.	Response to Notice of Arbitration and Statement of Defence	32
25.	Respondent Exhibit 1 (Requisition List, 2018)	35
26.	Respondent Exhibit 2 (Order, In the National Insolvency Tribunal Special Bench, Nedista)	36
27.	Respondent Exhibit 3 (Global Arbitration News)	37
28.	Request for Joinder of Parties	38
29.	Opposition to the Request for Joinder of Parties	39
30.	Procedural Order No. 1	40



### **ABOUT LATE JUSTICE R.K. TANKHA**

Born on 29<sup>th</sup> May 1926, Justice Tankha completed his schooling at Allahabad and graduated in law from Allahabad University. Thereafter, he practiced as a junior counsel to Shri Gopal Swarup Pathak, Senior Advocate, who later became the Vice President of India.

Around 1950-51, Justice Tankha started his legal practice from Rewa, Madhya Pradesh where he received professional acclaim at a very young age. Subsequently, he moved to Jabalpur, the seat of the High Court of the State of Madhya Pradesh, and within a short period of time, gained prominence at the Madhya Pradesh Bar. He also served as the President of the High Court Bar Association. In 1972, he was elevated as a Judge of the Madhya Pradesh High Court. Justice Tankha passed away at the age of 52 on 13<sup>th</sup> December 1978.

His son, Shri Vivek Tankha, joined the Bar in 1979 and is one of the most eminent senior advocates. He was the Advocate General of State of Madhya Pradesh from 1999 to 2003. He was also the Additional Solicitor General of India before the Supreme Court from 2009 to 2012. An avid philanthropist, Mr. Tankha has facilitated the opening of various Rotary Cross Blood Banks in tribal areas and has set up five schools for specially-abled children in five towns in the states of Madhya Pradesh and Chhattisgarh.

This Competition was founded by Shri Vivek Tankha in the memory of his father - Justice Tankha, to motivate young law students to strive for legal excellence and to promote the spirit of academic enquiry.



**ACKNOWLEDGMENT - THE OFFICE OF MR. VIVEK TANKHA**

*We would like to extend our sincere gratitude and thanks to Mr. Vivek Tankha for his constant support towards the successful organisation of this Moot.*

*We would also like to thank Mr. Varun K. Chopra, Mr. Varun Tankha and Mr. Prashant Sivarajan, members of the Office of Mr. Tankha, for their valuable ongoing help in the organisation of the Moot.*



**ACKNOWLEDGMENT - THE DRAFTING COMMITTEE**

*This Case Record has been authored by Mr. Sagnik Das (NLUJ Batch of 2016) and Ms. Aarushi Nargas (NLUJ Batch of 2018).*

*Mr. Kevin Nash, Deputy Registrar and Centre Director, and Mr. Piyush Prasad, Associate Counsel, of the Singapore International Arbitration Centre also reviewed the Case Record and provided their inputs, especially regarding the procedural aspects. Lastly, we also thank Mr. Prashant Mishra, Partner, L&L Partners Law Offices, (NLIU Batch of 2005), for his support and guidance.*

**Note:** *Teams are prohibited from contacting the aforementioned persons in relation to this Competition directly or indirectly. The Administrators reserve the right to take any appropriate action, including disqualification and/or blacklisting the participating institution and/or the members found engaging in such conduct.*



February 15, 2019

The Registrar  
Singapore International Arbitration Centre  
Singapore

**Sub: Notice of Arbitration**

Dear Sir/Madam,

I represent Arcebor Power Private Limited [**“Claimant”**] which, pursuant to Rule 3 of the Arbitration Rules of the Singapore International Arbitration Centre (6<sup>th</sup> Edition, 1 August 2016) [hereinafter referred to as the **“SIAC Rules”**], submits this Notice of Arbitration and Statement of Claim against Renvidora National Power Company Limited [**“Respondent”**]. I enclose a copy of my power of attorney to represent the Claimant in this arbitration.

As described in the attached Notice of Arbitration and Statement of Claim, certain disputes have arisen between the Claimant and the Respondent, which the Claimant demands be referred to arbitration. A copy of the Notice of Arbitration and the Statement of Claim has been sent to the Respondent. A copy of the receipt from the courier service is attached. The total amount claimed is USD 5 million. The case filing fee as mandated by the SIAC Schedule of Fees, has been paid on behalf of the Claimant. Relevant receipts are enclosed herewith.

As per the arbitration clause, the Claimant nominates Ms. Ruth Greene for appointment as the sole arbitrator in this dispute and the place of arbitration is Baratheon City, Stark Province.

Yours sincerely,

Victor Delacour (Counsel for Claimant)  
Freshgrounds Lockhardt Bodinger LLP  
Attorneys at Law & Solicitors  
11, Mungo’s Street, Joeville, Xanier

Encl:  
Notice of Arbitration and Statement of Claim



February 15, 2019

**NOTICE OF ARBITRATION AND STATEMENT OF CLAIM**  
*(In accordance with Rule 3 of the SIAC Rules 2016)*

In the arbitral proceedings  
between

**The Parties**

~Claimant~

Arcebor Power Private Limited  
17<sup>th</sup> Floor, ICI Tower, Joeville, Xanier

Represented by Freshgrounds Lockhardt Bodinger LLP

Renvidora National Power Company Limited  
1403, Sein Avenue, Tridentland, Yevadu.

~Respondent~

**I. Parties to the Arbitration**

**A. Claimant**

1. Arcebor Power Private Limited [hereinafter referred as the “**Claimant**”] is incorporated under the laws of Xanier. It has legal personality and can bring actions in its own name. It has its principal office at 17th Floor, ICI Tower, Joeville, Xanier. The telephone number is +441 5390 and the facsimile number is +441 5468.
2. The Claimant is represented in this arbitration by the law firm, Freshgrounds Lockhardt Bodinger LLP, Attorneys at Law & Solicitors, at the following address:  
  
11, Mungo’s Street, Joeville,  
Xanier,  
Tel: +410 0292,  
Email: [law@flb.com](mailto:law@flb.com).
3. The Claimant is the market energy leader in Xanier and provides approximately 75% of the power utilities in Xanier. The Claimant has a major manufacturing unit in Xanier; however, it sources most of its raw material from Zorastra, a country rich in natural resources.
4. All communications to the Claimant in this arbitration should be made to Freshgrounds Lockhardt Bodinger LLP at the above-referenced address.



## B. Respondent a

5. Renvidora National Power Company Limited [hereinafter referred as the “**Respondent**”], is a company wholly owned by the Government of Yevadu, incorporated in Yevadu.
6. The Respondent has its principal office at the following address:  
  
1403, Sein Avenue  
Tridentland,  
Yevadu.  
Tel: +21 225 9068  
Fax: +21 2259410
7. The Respondent owns and operates thermal power plants in remote areas of Yevadu and provides electricity in the remote and hilly terrains of Tullyland, Lanniport and Asshai in Yevadu. It works under the authority and directions of the Ministry of Power of the Government of Yevadu.
8. The Claimant and the Respondent are collectively referred to as “**Parties**”.

## II. Background

9. One of the thermal power plants owned by the Respondent is located in Tullyland [“**Tullyland Power Plant**”]. The Tullyland Power Plant is a 2 GW thermal power plant and includes 3 Frame 15X turbines procured previously from the Claimant. Construction for the Tullyland Power Plant began in 2012 and it became operational in 2015. Subsequently, in 2015, the Respondent entered into an agreement with the Claimant for supply of parts and components required for the regular repair and maintenance of the Frame 15X turbines of the Tullyland Power Plant for a period of 15 years from the date of commissioning [*Claimant Exhibit C1*, referred to as “**Agreement**”].
10. The Agreement was formulated with the purpose of ensuring that obsolete parts of the Frame 15X turbines are identified by the Claimant and replaced with new parts. For this purpose, the Agreement stipulated in Clause 3, that at the commencement of each year, the Claimant would send a designated official to inspect, test and monitor the Tullyland Power Plant and the turbines [“**Annual Inspection**”]. After the Annual Inspection, the Claimant’s officials along with the site officials at the Tullyland Power Plant would draw up a list of parts required to be supplied by the Claimant throughout the year [“**Requisition List**”]. The terms and conditions of the delivery of the parts and components were provided in Clause 3 of the Agreement. Clause 3 provided that the parts mentioned in the Requisition List would be supplied in installments by the Claimant to the Respondent at the end of each quarter, i.e., on the 31<sup>st</sup> of March, June, September and December. Fifteen days prior to such delivery, the Respondent would issue a formal purchase order in the name of the Claimant for the specified parts requisition for that particular quarter.



11. The consideration for the performance of the Annual Inspection and for the supply of parts and components by the Claimant was fixed in the Agreement to be paid annually by the Respondent.
12. The Agreement in Clause 3 also specified that the Claimant would perform its obligations for supply of parts and components in a manner so as to ensure that the plant availability is above 85%. The Parties developed a healthy and profitable business relationship for three years and the Claimant achieved a plant availability of 94.8%-96% in all three years.
13. However, towards the end of 2017, the Claimant introduced a new restructuring policy globally to improve the technical support and customer service to its clients. In December, 2017, the Claimant notified the Respondent of the new support structure under which the Claimant would be unable to send an official for the annual inspection of the Tullyland Power Plant in January. However, the Claimant would be able to remotely assist the Respondent's team in finalizing the Requisition List. The Respondent acknowledged that a shift in customer policy was a welcome initiative and agreed to undertake the inspection itself. Subsequently, the Respondent issued the Requisition List to the Claimant for the year 2018.
14. The contractual relationship between the Parties continued thereafter. Towards the end of the first quarter, the Claimant waited to receive the formal purchase order from the Respondent. However, since there was no communication from the Respondent, the Claimant dispatched the parts based on the Requisition List in time to ensure smooth business operations. The delivery was acknowledged and accepted by the Respondent. A similar situation arose in the second quarter, when although the Respondent sent no formal purchase order, an email directing the Claimant to make the scheduled delivery was sent and the Claimant made the delivery within the specified time. For the third quarter, the Respondent issued a purchase order fifteen days prior to the scheduled delivery and the Claimant supplied the parts within a week of the scheduled delivery.
15. Sometime around the beginning of the new financial year, Xanier alleged that Zorastra was indulging in unfair trade practices. As negotiations between the two countries lead to an impasse, Xanier imposed high tariffs on raw materials sourced from Zorastra. Despite repeated lobbying by various business groups, the tariffs on Zorastra were not reduced.
16. As a result of this intensifying trade war, there was an increase in the working capital of the Claimant and the cost of the manufactured parts. The Claimant started incurring huge losses in its business operations globally and tried to renegotiate its contracts. In this regard, the Claimant requested the senior management of the Respondent to discuss the terms and conditions of the Agreement, specifically the consideration for the performance of the Claimant's obligations, as it was becoming commercially unviable for the Claimant to continue with the Agreement. The Claimant continued to regularly communicate with the Respondent with the aim of arriving at a reasonable business proposition. However, the Respondent stopped all communication channels with the Claimant. The Respondent, on December 14, 2018, wrote a letter to the Claimant wherein it refused to renegotiate the

Agreement and directed the Claimant to supply the parts for the quarter ending in December, 2018, failing which it would terminate the Agreement.

17. Despite receiving no assistance from the Respondent and incurring huge losses, the Claimant delivered the parts in the second week of January 2019 with an additional claim of USD 100,000. However, the Respondent refused to accept the delivery of the consignment, alleging that the Claimant had failed to perform its obligations within the stipulated timeline. On January 20, 2019, the Claimant received a termination notice from the Respondent.
18. Aggrieved by the termination of the Agreement, the Claimant filed this Notice of Arbitration and Statement of Claim under Rule 3 of the SIAC Rules because the conduct of the Respondent in terminating the Agreement is wrongful, illegal, arbitrary and *mala fide*.

### III. Arbitration clause and the applicable law

19. Both Xanier and Yevadu are parties to the United Nations Convention on Contracts for the International Sale of Goods, 1988 [hereinafter referred as the “**CISG**”].
20. The relevant arbitration clause between the Parties is found in Clause 1.0 of the Addendum to the Agreement. It provides as follows:

*In case of a dispute under the Agreement, the Parties will attempt to negotiate through high level managerial discussions. If these discussions prove unsuccessful, any dispute arising out of the Agreement will be fully and finally resolved in accordance with the 2016 rules of the Singapore Arbitration Centre. The seat of the arbitration shall be Baratheon City, Stark Province.*

21. It is evident from the clause above that the Parties unequivocally intended that their disputes arising out of the Agreement should be resolved by arbitration. As the Addendum to the Agreement was concluded specifically for the purpose of governing dispute resolution, this clause overrides the dispute resolution clause of the Agreement. Further, it is clear that the Claimant’s attempts at negotiating the dispute have been continuously rejected by the Respondent. This is made evident by the exchange of e-mails between the Parties dated August 20, 2018, September 13, 2018, September 27, 2018, October 17, 2018 and November 11, 2018.
22. It is also clear from the arbitration clause that the Parties, despite the negligible error of nomenclature in the Addendum to the Agreement, intended to designate the Singapore International Arbitration Centre as the arbitral institution to administer the disputes arising out of the Agreement.
23. Xanier and Yevadu are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 [hereinafter referred as the “**New York Convention**”] and have adopted the 1985 text of the UNCITRAL Model Law on International Commercial Arbitration without amendment.



#### IV. Legal Conclusions

24. The Respondent has incorrectly invoked Clause 9.0 of the Agreement since it failed to comply with the procedure specified in the Agreement and did not issue the required purchase order for the supply of parts in the last quarter. Nonetheless, the non-performance of the obligations by the Claimant under the Agreement did not amount to a “fundamental breach” of the Agreement as it caused no substantial detriment to the Respondent. Even without the delivery of the final installment, the Tullyland Power Plant still achieved 87.5% plant availability. Additionally, since the Claimant’s non-performance of its contractual obligations was as a result of commercial hardship, it is exempted from contractual liability. Therefore, the Respondent has breached its obligations under Chapter III of the CISG by failing to accept the finished goods and pay the contract price for these goods.
25. Owing to the unjustified termination of the Agreement by the Respondent, the Claimant is entitled to receive damages.

#### V. Nomination of Sole Arbitrator

26. Pursuant to the arbitration agreement, the Claimant nominates the following individual for appointment as the sole arbitrator:

Ms. Ruth Greene  
24, Rue de la Avocat, Baratheon City, Stark Province  
Tel: +372 606 808; Email: [rgreene@greenekauhkohler.com](mailto:rgreene@greenekauhkohler.com)

#### VI. Relief

27. Consequently, the Claimant requests the Tribunal to:
- Declare that the Tribunal has jurisdiction to consider this dispute;
  - Order the Respondent to pay an amount equal to USD 5 million as damages for its wrongful conduct; and
  - Order the Respondent to pay all costs of arbitration, including costs incurred by the Parties.

Victor Delacour (Counsel for Claimant)  
Freshgrounds Lockhardt Bodinger LLP  
Attorneys at Law & Solicitors  
Encl: Claimant Exhibits C1-C18



**Exhibit C1**

PARTS SUPPLY AGREEMENT

BETWEEN

ARCEBOR POWER PRIVATE LIMITED AND RENVIDORA NATIONAL POWER COMPANY LIMITED

This long-term supply agreement [**“Agreement”**] is signed on the 14<sup>th</sup> day of January, 2015 by and between:

Arcebor Power Private Limited, a private limited company incorporated under the laws of Xanier and having its registered office at 17<sup>th</sup> Floor, ICI Tower, Joeville, Xanier [hereinafter referred as **“Contractor”** which expression shall include its successors and permitted assigns];

AND

Renvidora National Power Company Limited, a public company incorporated under the laws of Yevadu, having its registered office at 1403, Sein Avenue, Tridentland, Yevadu [hereinafter referred to as the **“Owner”** which expression shall include its successors and permitted assigns].

The Owner and the Contractor are hereinafter referred to individually as a **“Party”** and collectively as the **“Parties”**.

WHEREAS:

1. The Owner is owning, operating and maintaining a 2 GW thermal power plant at Tullyland, which is about 60 (sixty) km from capital city Sunspear in the State of Dorne, Yevadu [**“Project”**].
2. The Owner has selected the Contractor for supplying the parts and components required for the Project (as defined hereinafter).
3. The Contractor represents that it has the necessary specialized knowledge, expertise and infrastructure for supplying parts and components with respect to the thermal power plant equipment and to perform its obligations under this Agreement.
4. The Owner desires to engage the services of the Contractor to provide the services in accordance with the terms and conditions specified in this Agreement.
5. The Contractor is willing and has agreed to provide the services in accordance with the terms and conditions specified in this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN SET FORTH, THE PARTIES AGREE AS FOLLOWS:

**CLAUSE 1.0: DEFINITIONS AND INTERPRETATION**

[...]

**CLAUSE 2.0: EFFECTIVE DATE OF THE AGREEMENT AND TERM**

The Agreement shall become effective on the date of signing of the Agreement and shall be a valid for a period of 15 years from such date.



**CLAUSE 3.0: OBLIGATIONS OF THE PARTIES**

1. The Contractor shall perform the following obligations:
  - Designate an official to inspect, test and monitor the Project annually in January of each year for identifying the parts to be replaced [**“Annual Inspection”**];
  - Supply the parts and components on the basis of the Requisition List and purchase order issued by the Owner before/on the 31<sup>st</sup> of each quarterly ending;
  - Perform its obligation in a manner so as to achieve 85% plant availability; and
  - Provide any other support services required by the Owner.
  
2. The Owner shall perform the following obligations:
  - Assist the Contractor in performing the Annual Inspection and finalizing the Requisition List on the basis of the Annual Inspection;
  - Issue a purchase order 15 days before the end of each quarterly ending after consulting with the Ministry of Power of the Government of Yevadu; and
  - Pay the Contract Price within the stipulated period of time.

**CLAUSE 4.0: PURCHASE PRICE**

1. The Owner shall, in consideration for the performance of the complete scope of obligations of the Contractor in Clause 3.0, pay to the Contractor the annual fixed fee for each Contract Year of USD 10 million [**“Contract Price”**].
2. The Contract Price shall be inclusive of all taxes, duties, levies as payable by the Owner under the laws of Yevadu.

[...]

**CLAUSE 8.0 PERFORMANCE LIQUIDATED DAMAGES**

[...]

**CLAUSE 9.0: TERMINATION**

A Party reserves the right to terminate the Agreement in the event of a material breach of the Agreement by the other Party, subject to serving a termination notice 15 days prior to such termination.

**CLAUSE 10.0: CHOICE OF LAW**

This Agreement is governed by the UN Convention on International Sale of Goods, 1988.

**CLAUSE 11.0: DISPUTE RESOLUTION**

The courts of Xanier or Yevadu, as the Party initiating arbitration shall decide, shall have jurisdiction over any dispute under the Agreement.

Neils Becker  
CEO, Arcebor Power Private Limited  
Limited

Stephina Beesley  
CEO, Renvidora National Power Company



## **Exhibit C2**

ADDENDUM TO THE AGREEMENT DATED 14.01.2015

BETWEEN

ARCEBOR POWER PRIVATE LIMITED AND RENVIDORA NATIONAL POWER COMPANY LIMITED

This addendum to the Agreement [**“Addendum to the Agreement”**] between Arcebor Power Private Limited and Renvidora National Power Company Limited dated 14.01.2015, is signed on the 14<sup>th</sup> day of January, 2015 by and between:

Arcebor Power Private Limited, a private limited company incorporated under the laws of Xanier and having its registered office at 17<sup>th</sup> Floor, ICI Tower, Joeville, Xanier [hereinafter referred as **“Contractor”** which expression shall include its successors and permitted assigns];  
AND

Renvidora National Power Company Limited, a public company incorporated under the laws of Yevadu, having its registered office at 1403, Sein Avenue, Tridentland, Yevadu [hereinafter referred to as the **“Owner”** which expression shall include its successors and permitted assigns].

The Owner and the Contractor are hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS:

The Parties to the Agreement dated 14.01.2015 agree on the need to have a separate agreement specifically governing the resolution of any disputes arising out of the Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN SET FORTH, THE PARTIES AGREE AS FOLLOWS:

### **CLAUSE 1.0: DISPUTE RESOLUTION**

In case of a dispute under the Agreement, the Parties will attempt to negotiate through high level managerial discussions. If these discussions prove unsuccessful, any dispute arising out of the Agreement will be fully and finally resolved in accordance with the 2016 rules of the Singapore Arbitration Centre. The seat of the arbitration shall be Baratheon City, Stark Province.

### **CLAUSE 2.0: EFFECTIVE DATE OF THE ADDENDUM AND TERM**

The Addendum to the Agreement shall become effective on the date of signing of the Addendum to the Agreement and shall be valid for the duration of the Agreement.

Neils Becker  
CEO, Arcebor Power Private Limited

Stephina Beesley  
CEO, Renvidora National Power Company Limited



**Exhibit C3**

To

Charles Brown  
Renvidora National Power Company Limited

January 8, 2015

**Sub: Dispute Resolution Clause in the Agreement**

Dear Mr. Brown,

Hope you are well. We are very excited to build this relationship with you and are looking forward to the contract being finalized and signed very soon. I was writing in order to discuss certain concerns that we had with respect to the dispute resolution clause in our contract.

At our last joint meeting, we did not have the time to go over the clause in detail and hence my team could not suggest any changes from the draft of the clause that you had provided us. However, it appears to us that the dispute resolution is not really clear – as to whether the mode of resolution is through the courts or through arbitration. I thought as per our shared understanding previously, that arbitration would be the dispute resolution mechanism. Further, the clause in its current state does not lend any clarity on the seat of arbitration or the law governing it.

May we therefore request you to kindly discuss amending the draft dispute resolution clause in the contract to address our concerns?

Looking forward to a positive response from your end and to the beginning of a fruitful business relationship.

Warm regards,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C4**

To

Ryan Wei  
Arcebor Power Private Limited  
January 11, 2015

**Sub: Concerns regarding Dispute Resolution**

Dear Mr. Wei,

Thank you for your email. We too are very excited to be beginning this business association. About your concerns with regard to the dispute resolution clause – we don't foresee our business relationship to run into any troubles at all!

However, we appreciate your concern regarding the text of the clause. We have been using this clause as a template for all our contracts with our domestic contractors and it has proven to be workable and amicable so far. Therefore, I am afraid that in order to change any clause in the contract, we will have to take an approval from the high-level management of the company, including the board, and the ministry. Since we are on a very tight deadline to finalize the contract by the end of the month, any amendments to the main agreement at this stage might be tricky. May we therefore suggest that we conclude a separate agreement at a later stage to address your concerns regarding dispute resolution? Till then, I think the clause in the main contract will suffice.

Looking forward to your quick response.

Warm regards,

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: [charlesb@renvidora.com](mailto:charlesb@renvidora.com).





**Exhibit C5**

To

Charles Brown  
Renvidora National Power Company Limited

January 14, 2015

**Sub: Addendum governing dispute resolution**

Dear Mr. Brown,

Thank you for your response and for sharing our views regarding the unclear nature of the dispute resolution in the main agreement. Since we cannot edit any clause in the contract without delaying its execution, our in-house legal adviser has drawn up an addendum to the main agreement, which will exclusively deal with the dispute resolution aspect of the contract and will prevail over the clause of the main agreement.

We will keep the addendum ready for signature of the Parties along with the main contract. Looking forward to the execution of the two contracts tonight.

Warm regards,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C6**

To

Charles Brown  
Renvidora National Power Company Limited

December 29, 2017

**Sub: Changes to Customer Service**

Dear Mr. Brown,

Season's greetings!

We are pleased to inform you that Arcebor is introducing a new restructuring policy aimed at improving the efficiency of our customer service. The new policy offers increased technical support and availability of remote monitoring of our customer's equipment on a daily basis. Such remote access would allow us to take early corrective action increasing the longevity of the equipment and the outcome of the performance of the Plant. The policy is also in line with global market practice.

Owing to the change in our customer service globally, we would be unable to send an official for the Annual Inspection scheduled in January, 2018. However, we would be offering our support through remote access and aid in the finalization of the Requisition List, 2018.

We hope to continue serving you well in the future.

Warm regards,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C7**

To

Ryan Wei  
Arcebor Power Private Limited

January 05, 2018

**Sub: Re: Changes to Customer Service**

Dear Mr. Wei,

Wishing you and the Arcebor team a very happy new year!

We have taken note of your email and hope that the new customer policy does not in any way hamper the efficient functioning of the Plant. Given the limitation of time and the need to finalize the Requisition List, 2018, we will go ahead with the Annual Inspection ourselves, along with remote access support from Arcebor's technical team. We would also like to bring to your notice that given the location of the Tullyland Power Plant and the lack of network in the region, we are unsure of how effective the remote services would be. In light of the same, we do hope that the services would adhere to the high standards of service provided by Arcebor in the past.

Hoping to hear from you soon.

Warm regards,

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: [charlesb@renvidora.com](mailto:charlesb@renvidora.com).



**Exhibit C8**

To

Charles Brown  
Renvidora National Power Company Limited

April 5, 2018

**Sub: Request for Purchase Orders for Quarterly Installment**

Dear Mr. Brown,

We would like to bring to your attention that we did not receive any purchase order from your end for the First Quarterly Installment. While we have delivered the goods in accordance with the Requisition List, 2018, we would request you to send a formal purchase order for the future installments prior to the delivery of the goods.

Many thanks.

Warm regards,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C9**

To

Ryan Wei  
Arcebor Power Private Limited

June 14, 2018

**Sub: Second Quarterly Installment**

Dear Mr. Wei,

Hope you are doing well. We would request Arcebor to kindly make the delivery of goods for the Second Quarterly Installment.

Many thanks.

Warm regards,

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: [charlesb@renvidora.com](mailto:charlesb@renvidora.com).



**Exhibit C10**

To

Charles Brown  
Renvidora National Power Company Limited

July 5, 2018

**Sub: Request for Purchase Orders for Quarterly Installment**

Dear Mr. Brown,

This is in reference to our letter dated June 5, 2018. Further to the same, we would request you to send a formal purchase order for the future installments prior to the delivery of the goods.

Many thanks.

Warm regards,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C11**

To

Charles Brown  
Renvidora National Power Company Limited

August 20, 2018

**Sub: Request for Renegotiation and Amendment of the Agreement**

Dear Mr. Brown,

Hope you are doing well.

To give you a brief background and the developments so far, we have successfully delivered two quarterly installments of the parts comprising of the Requisition List, 2018. I hope that Renvidora has found our services to be satisfactory and that the Plant is able to function as planned. Having monitored the Plant remotely, we are pleased to note that the plant availability remains high, averaging to about 93% till the end of the second quarter.

I wish to bring to your notice a matter of grave importance that has been emerging for a few months now. As you are aware, our manufacturing unit is based out of Xanier where we assemble all raw materials and produce and assemble the parts required for your equipment. At the same time, we source our raw material from Zorastra as it has rich reserves of cobalt, nickel and lithium required for parts and equipment. Since the beginning of the new financial year, Xanier has leveled allegations on Zorastra that it has been indulging in unfair trade practices, primarily, selling its products at a lower cost and not complying with the quality standards recognized globally. Owing to this, the Government of Xanier has consistently been imposing tariffs on the products imported from Zorastra. In this case, the tariffs imposed on the relevant raw materials used by us are as high as 60%.

Given the peculiar situation, the cost of manufacturing parts has tremendously increased and the very basis on which we finalized the pricing of the Agreement with you has changed. The cost of manufacturing the parts has become prohibitively high in the past couple of months and the Agreement has become commercially unviable for us. In view of the above, we would request a meeting with you, along with your senior management to consider a substantial increment in the pricing of the Agreement so that it becomes sustainable for Arcebor.

We look forward to hearing from you soon and hope that you would consider our proposal favourably so as to continue our mutually profitable business relationship.

Warm regards,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C12**

To

Ryan Wei  
Arcebor Power Private Limited

September 13, 2018

**Sub: Re: Request for Renegotiation and Amendment of the Agreement**

Dear Mr. Wei,

Hope you are doing well. I received your letter and have discussed it with the senior management at Renvidora. We believe that the pricing of the Agreement is in line with the market practice and other companies in the sector seem to be offering services at a similar package. While we understand your predicament, price fluctuations are a usual case in long term contracts such as ours and have to be taken into account during the negotiation of the contract. During the finalization of the Part Supply Agreement as well, both Parties negotiated on the price and arrived at an amount suitable to both. Moreover, it has merely been four years since the Agreement was entered into and an increase in price at this stage is unwarranted. Therefore, on behalf of Renvidora, we believe that the pricing in the Agreement is firm and does not merit any further increment.

We would also like to keep it on record that in the past few months, we have noticed that the services provided by Arcebor, specifically the remote support during the Annual Inspection was not in line with the quality expected of it. We therefore hope that Arcebor continues to provide its exceptional services as in the previous years.

Warm regards,

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: charlesb@renvidora.com.





**Exhibit C13**

To

Ryan Wei  
Arcebor Power Private Limited

September 14, 2018

**Sub: Third Quarterly Installment**

Dear Mr. Wei,

Hope you are doing well. We would request Arcebor to kindly make the delivery of goods for the Third Quarterly Installment. Please find attached the purchase order for the same.

Many thanks.

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: [charlesb@renvidora.com](mailto:charlesb@renvidora.com).



**Exhibit C14**

To

Charles Brown  
Renvidora National Power Company Limited

September 27, 2018

**Sub: Re: Request for Renegotiation and Amendment of the Agreement**

Dear Mr. Brown,

Hope you are doing well.

We are disappointed to hear that Renvidora will not be supporting us during this crucial time. We assure you that we have taken all measures possible to maintain the product pricing at the amount as promised in the Agreement. However, the Agreement is now becoming commercially unviable for us. We request you to arrange a meeting with the senior management as soon as possible.

Sincerely,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: [rwei@arcebor.com](mailto:rwei@arcebor.com)



**Exhibit C15**

To

Charles Brown  
Renvidora National Power Company Limited

October 17, 2018

**Sub: Re: Request for Renegotiation and Amendment of the Agreement**

Dear Mr. Brown,

This is in reference to our emails dated August 20, 2018 and September 27, 2018 vide which we had informed you of the commercial difficulties being faced by Arcebor in delivering the parts at the consideration mentioned in the Agreement. Over the course of the past 2 months, we have repeatedly tried to communicate with the officials at Renvidora via email, telephone and in person. However, we have been unable to successfully interact with your management. We request you to arrange a meeting in person soon.

Sincerely,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C16**

To

Charles Brown  
Renvidora National Power Company Limited

November 11, 2018

**Sub: Re: Request for Renegotiation and Amendment of the Agreement**

Dear Mr. Brown,

This is in reference to our emails dated August 20, 2018, September 27, 2018 and October, 17, 2018. As we have not received any positive response in the last 3 months from Renvidora, we request you to consider our proposal for revision in the pricing of the Agreements once again. It has become extremely onerous for us to continue providing the parts to Renvidora and we are afraid that if no solution is reached, we would be unable to supply the parts for the Final Installment.

We seek your intervention and support in the matter and hope that we receive a favourable response from your end.

Regards,

Ryan Wei  
Head of Business, Arcebor Power Private Limited  
Email: rwei@arcebor.com



**Exhibit C17**

To

Ryan Wei  
Arcebor Power Private Limited

December 14, 2018

**Sub: Re: Request for Renegotiation and Amendment of the Agreement**

Dear Mr. Wei,

Hope you are doing well. On behalf of Renvidora, we would reiterate that the pricing of the Agreement is firm and requires no revision. We would also request you to kindly make the delivery of goods for the Fourth Quarterly Installment. Commercial hardships and price fluctuations cannot be an excuse to suspend one's obligations under a contract. We hope that a company as reputed as Arcebor recognizes this and acts in accordance with the provisions of the Agreement. In the event that the delivery for the Fourth Quarterly Installment is not made, we would be constrained to initiate action under the Agreement.

Sincerely,

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: [charlesb@renvidora.com](mailto:charlesb@renvidora.com).



**Exhibit C18**

To

Ryan Wei  
Arcebor Power Private Limited

January 20, 2019

**Sub: Termination Notice**

Dear Mr. Wei,

In light of the recurring breaches committed by Arcebor throughout the year 2018, we regret to inform you that we will no longer be continuing our association with Arcebor. We note that Arcebor in violation of Clause 3.0 of the Part Supply Agreement, committed the following breaches:

1. Failure to send a designated official for the Annual Inspection, 2018;
2. Delay in delivery of the Third Quarterly Installment; and
3. Failure to deliver the Fourth Quarterly Installment.

In light of the above, we have been instructed by the Ministry of Power to exercise our right of termination under Clause 9.0 of the Agreement. We would like to inform you that with this notice, we have complied with the minimum notice period required by the Agreement.

Sincerely,

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: charlesb@renvidora.com.



February 27, 2019

The Registrar  
Singapore International Arbitration Centre  
Singapore

**Re: Arbitration Between Arcebor Power Private Limited and Renvidora National Power Company Limited**

Dear Sir/Madam,

I am in receipt of the Claimant's letter dated February 15, 2019 enclosing the Notice of Arbitration and Statement of Claim by Arcebor Power Private Limited against my client, Renvidora National Power Company Limited.

Pursuant to Rule 4 of the SIAC Rules, please find enclosed the Respondent's Response to the Notice of Arbitration and Statement of Defence [hereinafter referred as the "**Response and Statement of Defence**"]. Pursuant to Rule 4.3, the Respondent confirms that a copy of the Response and Statement of Defence has been sent to the Claimant by email and courier. We would like to inform you that the Respondent agrees with the nomination of Ms. Ruth Greene as the sole arbitrator to adjudicate the disputes between the Parties. This is without prejudice to any challenge that the Respondent may raise to the jurisdiction of the Tribunal to hear any or all of the claims made by the Claimant.

Yours sincerely,

Harsh Salvador (Counsel for Respondent)  
Five Hats LLP  
216, Atrium House, Pocket A3,  
Tyrellium, Yevadu

Encl:  
Response to Notice of Arbitration and Statement of Defence



February 27, 2019

**RESPONSE TO NOTICE OF ARBITRATION AND STATEMENT OF DEFENCE**

*(Pursuant to Rule 4 of the SIAC Rules 2016)*

*in the arbitration*

*between*

*Arcebor Power Private Limited and Renvidora National Power Company Limited*

*(ARB007/19/XYZ)*

1. As a preliminary matter, the Respondent denies all averments made in the Notice of Arbitration and Statement of Claim, except those specifically admitted.

**I. Background**

2. The Respondent is a government company functioning under the aegis of the Ministry of Power, with an objective to provide energy in the remote and hilly regions of Yevadu. With this mandate, the Respondent identified three regions which required immediate attention due to the lack of infrastructure and development in these areas - Tullyland, Lanniport and Asshai. The Respondent owns and operates three thermal power plants in each of these locations.
3. The thermal power plant in Tullyland [**“Tullyland Power Plant”**] was commissioned in the year 2015. The Respondent entered into various long-term project agreements with different entities, such as power purchase agreements and operations and maintenance agreements. One of these agreements is the agreement for supply of parts and components for the regular maintenance of the Tullyland Power Plant with the Claimant [**“Agreement”**].
4. Under the Agreement, the Claimant had the entire obligation of inspecting, testing and monitoring the Frame15X turbines at the Tullyland Power Plant annually and supplying the parts and components to be replaced in the turbines in installments throughout the year. During the negotiations of the Agreement, the Claimant was made aware of the strategic importance of the Tullyland Power Plant in the region and the Respondent stressed the need for ensuring that the delivery of the parts is made on time, such that the duration for which the Tullyland Power Plant is shut for maintenance is reduced to a minimum number of days.

**II. Objections to Jurisdiction**

5. While filing this Response to the Notice of Arbitration and Statement of Defence, the Respondent also disputes the jurisdiction of this arbitral tribunal to hear this case, since there is no valid arbitration agreement between the Parties. It is clear from Clause 11.0 of the Agreement that there is no manifestation of an unequivocal consent of both Parties to arbitrate; rather it is clear that the Parties had inserted a forum selection clause, indicating that they had contemplated dispute resolution by courts.
6. While the Respondent contends that the Agreement should govern the dispute resolution between the Parties, even if Clause 1.0 of the Addendum to the Agreement is considered as the governing dispute resolution clause, it is clear that the clause is pathological and names





an institution that is not in existence. Therefore, this clause is unworkable and this Tribunal constituted pursuant to such a clause does not have jurisdiction over the dispute.

### **III. Moratorium on Arbitration Proceedings**

7. Additionally, on February 21, 2019, the National Company Law Tribunal of Yevadu [“NCLT”] has imposed a moratorium with respect to the Respondent by virtue of which the initiation or continuation of any legal proceedings, including arbitration proceedings against the Respondent is prohibited. As such the proceedings before this Tribunal should abate in view of NCLT’s order and the Tribunal should declare itself devoid of jurisdiction to hear the Claimant’s claims. A copy of the relevant part of the order is attached to this response as Exhibit R2.
8. Without prejudice to its arguments on jurisdiction, the Respondent asserts that all of the Claimant’s arguments are factually and legally baseless.

### **IV. Ordering Security for Legal Costs**

9. It has come to the Respondent’s notice, through a public news report dated February 11, 2019, Exhibit R3, that it is likely that the Claimant is being funded in these proceedings through a third party – Viability Finance Limited, which has assumed the legal costs of pursuing the claims before this Tribunal. Necessarily, the Claimant has to be mandated to disclose before this Tribunal whether it is being funded by a third party.
10. If the Claimant is being funded by a third party, then this Tribunal should order the Claimant to furnish security for legal costs incurred by the Respondent in defending this baseless claim before the Tribunal, particularly considering that the Respondent is itself in the midst of an insolvency process and as such, appearing in these proceedings is a significant financial obligation for it currently. Therefore, if this Tribunal finds that it has jurisdiction to hear the claim, then it must order the Claimant to disclose its source of funding pursuant to Rule 27(c) and the SIAC Practice Note on Arbitrator Conduct in Cases Involving External Funding (PN – 01/17 (31 March 2017)) and subsequently furnish security for legal costs of defending these arbitration proceedings pursuant to Rule 27(j).

### **V. Respondent has not violated the terms of the Agreement**

11. The Respondent denies all claims of non-performance of the obligations by the Respondent under the Agreement. The non-issuance of the purchase order for the supply of parts and components for the last quarter is not in violation of the terms of the Agreement. In fact, the Respondent had repeatedly directed the Claimant to make all deliveries as per the Requisition List for the year 2018. Previously, on certain occasions as well, the Respondent had not issued the purchase orders. Despite this fact, the Claimant made the delivery of goods and the Respondent acknowledged such deliveries. Thus, the requirement of issuing a formal purchase order was a mere procedural requirement that had been modified by the practice of the Parties.



12. The Respondent denies that it had waived any of the violations committed by the Claimant by its actions. Although it is admitted that upon the Claimant's failure to conduct the Annual Inspection in 2018, the Respondent itself conducted the inspection for smooth business operations, such a violation on the part of the Claimant is not waived by the subsequent actions of the Respondent undertaken in good faith. The Claimant's remote access support provided during the Annual Inspection failed to fulfill the standards of performance required under the Agreement. Further, the Respondent's acceptance of the delayed delivery of goods by the Claimant in the third quarter does not lead to a modification in the terms of the Agreement which specifies a delivery date.
13. Additionally, the Respondent reiterates that its termination of the Agreement was based on the fundamental breaches of the Agreement committed by the Claimant as provided in its termination notice dated January 20, 2019. Thus, the Respondent is justified in terminating the Agreement.

## **VI. Relief**

14. The Respondent requests the Tribunal to:
  - declare that the Tribunal does not have jurisdiction over the dispute owing to the absence of a valid arbitration clause between the Claimant and the Respondent referring the dispute to this Tribunal, or alternatively,
  - declare that the Tribunal is devoid of jurisdiction owing to the order of the NCLT dated February 21, 2019, or alternatively,
  - order the Claimant to furnish security for legal costs for defending the arbitration by the Respondent;
  - declare that the Respondent has not wrongfully avoided the Agreement; and
  - dismiss the Claimant's request for liquidated damages.

Harsh Salvador (Counsel for Respondent)  
Five Hats LLP

Encl: Respondent's Exhibits R1-R3.



**Exhibit R1**

To

Ryan Wei  
Arcebor Power Private Limited

January 17, 2019

**Sub: Requisition List, 2018**

Dear Mr. Wei,

In furtherance of our previous email, we have conducted the Annual Inspection and have finalized the Requisition List, 2018. Please find attached the Requisition List. As opposed to the previous year's list, this year we have specified the parts required for each quarterly installment. Any changes to the same will be notified closer to the delivery date.

Encl: Requisition List, 2018

Warm regards,

Charles Brown  
Chief Operating Officer, Renvidora National Power Company Limited  
Email: charlesb@renvidora.com.



**Exhibit R2**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH, NEDISTA**

IBA/123/2019

*Under Section 7 r/w rule 4 of the Insolvency and Bankruptcy Code, 2016*

**In the matter of Renvidora National Power Company Limited**

*Oriental Bank of Vodora* ..... Financial Creditor

**v.**

*Renvidora National Power Company Limited* .....Corporate Debtor

Order delivered on February 21, 2019

**ORDER**

1. This is an insolvency Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor namely Oriental Bank of Vodora for initiation of the Insolvency Resolution Procedure against the Corporate Debtor on the ground that the latter had defaulted in repayment of YNR 3,50,00,00,00 on November 18, 2018.

[.....]

13. Hence, this Bench is of the view that the Financial Creditor has proved the existence of debt and default as required under Section 6 and 7 of the Insolvency and Bankruptcy Code, 2016. Therefore, the Bench appoints Mr. Daniel Rotem, as Resolution Professional and issues the following directions:

- I. That Moratorium is hereby declared prohibiting the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including in any court of law, tribunal, arbitration panel or other authority.

[.....]

Dethomas

Nedista

/-Sd-/  
Francisco

Judge, NCLT,



### Exhibit R3

#### Global Arbitration News

February 11, 2019

#### *Viability Finance enters into long term arrangement with Freshgrounds Lockhardt Bodinger*

According to unconfirmed news reports, London-based arbitration financier Viability Finance Limited has entered into a long-term arrangement with global law firm Freshgrounds Lockhardt Bodinger LLP. Our sources say that as per the arrangement, Viability will be funding clients of Freshgrounds, who the firm represents as claimants in international arbitration proceedings around the world.

“We're entering a new wave of funding in international arbitration, where capital and legal expertise combine to help solve legal problems on behalf of clients, including law firms like Freshgrounds with whom we partner,” said one of the managing directors of Viability in a news release. “We will ensure that claimants can get justice in some of the biggest international arbitrations currently handled by Freshgrounds.”

Viability heralds a new wave of funding in international arbitration by providing clients with the financial resources needed to ensure complex arbitration proceedings can be pursued. Our reporters tried to contact Freshgrounds for a comment, but were unsuccessful in receiving a response from the firm before publication.



March 6, 2019  
The Registrar, Court of Arbitration  
Singapore International Arbitration Centre  
Singapore

**REQUEST FOR JOINDER OF PARTIES**

***(Pursuant to Rule 7 of the SIAC Rules, 2016)***

*Arcebor Power Private Limited v. Renvidora National Power Company Limited*  
(ARB007/19/XYZ)

**I. Parties**

1. This is in reference to the Notice of Arbitration and Statement of Claimant filed by the Claimant with SIAC on February 15, 2019 which has been enclosed. The Claimant requests that this may be treated as an application under Rule 7.8 of the SIAC Rules 2016, which the Parties have agreed will apply to this arbitration proceeding under Clause 1.0 of the Addendum to the Agreement. The Claimant requests that the Ministry of Power, Government of Yevadu [**“Power Ministry”**] be joined as a Respondent party to this proceeding.
2. The Power Ministry is an organ of the State of Yevadu. It has its principal office at 3, Walk Street, Tyrellium, Yevadu. Its telephone number is +21 222 9000.

**II. Brief statement of facts and legal reasons**

3. This request of joinder is primarily based on sub-clause (2) of Clause 3.0 of the Agreement between the Parties. This Clause makes clear the central role played by the Power Ministry in performance of the Agreement, since the Respondent was obliged to consult with the Power Ministry under this Clause, before issuing purchase orders to the Claimant. Even at the stage of the negotiation of the Agreement, it was clear that the Power Ministry had been involved throughout, as shown through Exhibit C-4, where the Respondent stated that to make any change in the draft of the Agreement, it would have to take prior approval of the Power Ministry.
4. Moreover, the letter sent by the Respondent to the Claimant on January 20, 2019, Exhibit C18 by which the Respondent terminated the Agreement, also made it clear that the termination was being effected on instructions of the Power Ministry. Clearly therefore, the Respondent was throughout acting as an agent of the Power Ministry and the Power Ministry is *prima facie* bound by the Agreement.
5. After the commencement of the insolvency proceedings against the Respondent on February 21, 2019 in the National Company Law Tribunal of Nedista, Yevadu, the Claimant is concerned that unless the Power Ministry is joined in the arbitration proceedings, the Respondent will attempt to frustrate any potential enforcement proceedings in Yevadu, arising out of an award in the Claimant's favour, by citing the insolvency proceedings currently underway in Yevadu. Therefore, for the Claimant to be able to successfully enforce any award in Yevadu, the Power Ministry must be joined as a party to the arbitration proceedings.

Victor Delacour (Counsel for Claimant)  
Freshgrounds Lockhardt Bodinger LLP.  
Attorneys at Law & Solicitors



March 12, 2019  
The Registrar, Court of Arbitration,  
Singapore International Arbitration Centre  
Singapore

**OPPOSITION TO THE REQUEST FOR JOINDER OF PARTIES**

1. This is in reference to the request for joinder of Parties filed by the Claimant on March 6, 2019. We would like to state such a request is impermissible and the Tribunal cannot order the Ministry of Power, Government of Yevadu to be joined to these arbitration proceedings. First and foremost, there is no privity of contract between the Claimant and the Ministry; the Ministry was never intended to be a party to the contract and was not directly involved in the contract negotiations. The Respondent is, under the laws of Yevadu, a distinct legal identity from the Ministry. The Ministry does not control the decision-making of the Respondent in any way. As such therefore, it cannot be made party to the arbitration proceedings instituted by the Claimant against the Respondent.
2. Insofar as sub-clause (2) of Clause 3.0 of the Agreement is concerned, it is clear that this clause was intended only as a procedural requirement that the Respondent had to satisfy, and therefore does not establish that the Parties had intended or that the Ministry had consented for it to become a party in-interest to the Agreement. Further the email dated January 11, 2015, Exhibit C-4 relied on by the Claimant in its request for joinder, also does not establish sufficient connection of the Ministry to the dispute for it to be impleaded as a party in these arbitration proceedings. It is clear that this correspondence only shows that the Respondent would have to consult with the Ministry, in addition to its own high-level management, to effect any change in standard form contracts that the Respondent enters into with its contractors. Therefore, this is an insufficient basis to implead the Ministry as a party to the arbitration proceedings.

Harsh Salvador (Counsel for Respondent)  
Five Hats LLP  
Encl: Respondent Exhibit R4



**PROCEDURAL ORDER NO. 1**

of April 17, 2019

in the arbitral proceedings

between

Arcebor Power Private Limited and Renvidora National Power Company Limited

(ARB007/19/XYZ)

1. The Tribunal takes note of the following facts:
  - a. The President of the Court of Arbitration of the SIAC appointed me as the sole arbitrator on April 2, 2019 pursuant to Rule 9.3 of the SIAC Rules 2016. The Parties were informed of the constitution of the Tribunal on the same day.
  - b. The Respondent challenges the jurisdiction of this Tribunal on the grounds of the absence of a valid agreement to refer the disputes to arbitration under the SIAC Rules and owing to the commencement of insolvency proceedings against the Respondent in Yevadu.
  - c. Both Parties agree that the Agreement dated January 14, 2015 is subject to the CISG.
  - d. Both Parties agree that in light of the issues in the dispute, there is a need to bifurcate the proceedings. The first part of the proceedings will be devoted to adjudicating the Respondent's challenges to the jurisdiction of the Tribunal, the Respondent's request to order the Claimant to disclose its source of funding and order security for legal costs and the Claimant's joinder request. The latter part of the proceedings will examine the merits of the Claimant's allegations that the Respondent is unjustified in terminating the Agreement.
  
2. In light of these considerations, the Parties are required to address the following issues in the oral hearings at Baratheon City, Stark Province:
  - a. Whether there is a valid agreement in existence between the Parties which refers the disputes to arbitration under the aegis of SIAC?
  - b. Whether the insolvency proceedings underway against the Respondent in Yevadu bars the jurisdiction of this Tribunal?
  - c. Whether the Claimant is under an obligation to disclose its source of funding for pursuing these arbitration proceedings and should the Tribunal order security for legal costs?
  - d. Whether the Ministry of Power, Government of Yevadu may be joined as a party to the present arbitral proceedings?
  - e. Whether the Claimant's conduct breached the Agreement and whether the Respondent was justified in terminating the Agreement?

***Note to Parties:*** The law of insolvency in Yevadu is *pari materia* to the law of insolvency in India as contained in the Insolvency and Bankruptcy Code, 2016.