



**1ST ILNU INTERNATIONAL
ARBITRATION COMPETITION**
in association with
**ICC INTERNATIONAL COURT OF
ARBITRATION AND ICC INDIA**

7th May 2021 – 9th May 2021

CASE RECORD

Organized by:

CENTRE FOR ALTERNATE DISPUTE RESOLUTION, ILNU

1st ILNU INTERNATIONAL ARBITRATION COMPETITION
IN ASSOCIATION WITH
ICC INTERNATIONAL COURT OF ARBITRATION AND
ICC INDIA

CASE RECORD

IN THE MATTER OF AN ARBITRATION BETWEEN
ASHI CONSTRUCTIONS PVT. LTD.
V/S
IALOMITA METROPOLITAN REAL ESTATE HOUSING BOARD
(IMREHB) & ORS.

UNDER
ICC RULES OF ARBITRATION 2021

INDEX

DOCUMENT	PAGE
STATEMENT OF UNDISPUTED FACTS	1
EXHIBIT A (The Master Agreement)	14
EXHIBIT B (Procedural Order 1)	16
EXHIBIT C-1 (Design Plan Made by Ashi Constructions Pvt. Ltd.	17
EXHIBIT C-2 (Correspondences between Ashi Constructions Pvt. Ltd. and IMREHB)	20
EXHIBIT C-3 (Invocation of <i>force majeure</i> Clause by Ashi Constructions Pvt. Ltd.)	25
EXHIBIT C-4 (Request for Relaxation of Timeline by Ashi Constructions Pvt. Ltd.)	26
EXHIBIT R-1 (Invocation of Performance Guarantee by IMREHB)	27
EXHIBIT C-5 (Communication between Ashi Constructions Pvt. Ltd. and IMREHB)	29
EXHIBIT R-2 (Communication between IMREHB and Ashi Constructions Pvt. Ltd.)	31
EXHIBIT R-3 (Letter Sent by Raunch Holding Corporation to Ashi Constructions Pvt. Ltd.)	33
EXHIBIT R-4 (Letter Sent by Cord Developments Ltd. to Ashi Constructions Pvt. Ltd.)	35
EXHIBIT R-5 (Expert Witness Report by IMREHB)	37
ACKNOWLEDGEMENT	40
THE DRAFTING COMMITTEE	41

STATEMENT OF UNDISPUTED FACTS

1. The *Republic of Ialomița* is a developing country and has a federal form of Government with a distinct social, cultural, and economic background. URAN Ltd. is a Public Limited Company incorporated in *Ialomița* under the Companies Act, 1956. Its main business is to develop urban housing projects which also include managing and developing (including buying/selling and renting) various real estate projects.
2. Since the 1980s the annual national budgetary allocation for the housing sector has been—on average – approximately INR 75 Crores. In the early 1990s, being a Government undertaking, URAN Ltd. established itself and gained the trust of the public and has marked its presence all over *Ialomița*. It has been instrumental in shaping the outlook of the public at large towards a better standard of living at a much reasonable price as compared to other players in the market coupled with a sense of security of their monies invested in the project(s) of URAN Ltd. However, there was no codified law in the *Republic of Ialomița* for regulation of housing projects and to settle/adjudicate its disputes, except for some guidelines which had attained the stature of ‘Grundnorm’ and was impliedly followed by the market players.
3. It is well known amongst the industry player(s) that URAN Ltd. manages to meet the expectations of the public because it has entered into a ‘Project Management Agreement’ (hereinafter referred to as “**PMA**”) with a company in Itzerland which sources all the raw materials like cement, gravel, equipment etc., at much cheaper rates from Robwalden, a district in the Central Itzerland.

4. At least as of 1990s, the pace of Ialomița's hallmark in the housing sector was dawdling. *Firstly*, URAN Ltd. was not executing contracts with foreign counterparts in *Ialomița* for better, lucrative, and money-spinning projects which ought to have brought many mind-boggling results in the market of *Ialomița*. *Secondly*, there were virtually no private sector actors developing innovative housing projects.
5. Meanwhile, in the last decade of the twentieth century, in response to the 'Liberalization, Privatization and Globalization Model' (hereinafter referred to as "**LPG Model**"), the *Republic of Ialomița* opened its economy, thereby opting to move out of a fragmented administrative structure, by allowing private market players to enter the market and adopting liberalization policies. The aim of the LPG Model, as objectified was:

"To develop a healthy and striving competition by encouraging private sector investment in various sectors, including, but not limited to sectors like trade, housing and construction, space, food and beverages, automobiles, etc. and attracting foreign investments in this area and other specific goals."
6. The natural corollary of this LPG Model was that the Ialomița market started to face increased competition from both, local as well as international players in various sectors, specifically in the real estate sector.
7. A large number of multi-national companies started investing in the *Republic of Ialomița* as the Central Province had removed trade barriers and made the legal regime of the Province more market-friendly for the ease of doing business.

THE PROJECT

8. In November 2001, the ‘Ialomița Metropolitan Real Estate Housing Board’ (hereinafter referred to as “**IMREHB**”) invited proposal from contractors to participate in a tender for a project to design, consult, operate and maintain renewable energy sources powered Desalination Plants (hereinafter referred to as, the “**Project**”) to be built at a remote village named Alore, located in the State of Ajasthan.

ESTABLISHMENT OF SYNCHEM INFRASTRUCTURE PVT. LTD.

9. ‘Synchem Infrastructure Pvt. Ltd.’ (hereinafter referred to as “**Synchem**”) is a commercial company incorporated under the laws of *Ialomița* whose primary business is to invest money in different housing and infrastructure development projects all over the country.
10. Further in order to give effect to the Project, URAN Ltd. and Synchem (hereinafter collectively referred to as, the “**Parties**”) incorporated a ‘Special Purpose Vehicle’ (“**SPV**”) named, Ashi Constructions Pvt. Ltd., a company incorporated under the laws of Singapore, to undertake the Project. The Parties owned equal shareholding in the Ashi Constructions Pvt. Ltd. i.e., 50% each.
11. URAN Ltd. provided detailed plans for the construction of the Project on the basis of prevailing market conditions based on which, Ashi Constructions Pvt. Ltd. had to undertake and complete the Project.

EXECUTION OF SUB-CONTRACTS

12. Pursuant to the award of contract and forming of the joint venture between the Parties, Ashi Constructions Pvt. Ltd. had further entered into an Agreement with the IMREHB, titled 'Joint Development and Performance Agreement' (hereinafter referred to as, the “**JDPA**”) on 15th December 2016 under which it was decided to construct and develop the Project and then to operate the same for a period of 35 years. During this time, the Parties had also agreed that upon completion of the Project, Ashi Constructions Pvt. Ltd. would be entitled to a 20% stake in the Project, in addition to the monetary compensation.
13. Pursuant to the opening of barriers in the *Republic of Ialomița*, due to the advent of LPG, Ashi Constructions Pvt. Ltd. had further entered into various sub-contracts with other companies, in order to implement the objectives of JDPA. The details of the sub-contracts (collectively referred to as, the “**Project Completion Contracts**”) are as follows:
- Contract for Construction, Commissioning and Engineering of Desalination Plant in *Alore*, (the “**CCE Contract**”) dated 20th December 2016 entered between Ashi Constructions Pvt. Ltd. and one, *Raunch Holding Corp.* The total consideration involved in the said CCE Contract was worth €400,000. The following was the understanding under the CCE Contract with respect to the adjudication of disputes/issues:

“Any dispute(s) or issue(s) arising under this Contract shall be referred to the Arbitral Tribunal in accordance with the Arbitration clause under the Master Agreement entered between URAN Ltd. and Synchem”;

- Contract for the supply of Equipment(s) and other Raw Materials for the Desalination Plant (“**Purchase and Supply Contract**”) dated 25th December 2016 entered between Ashi Constructions Pvt. Ltd. and one, *Cord Developments Ltd.* The total consideration involved in the said Purchase and Supply Contract was valued at €500,000. The following was the understanding under the Purchase and Supply Contract with respect to the adjudication of dispute/issues:

“Any dispute(s) or issue(s) arising under this Contract shall be referred to the Arbitral Tribunal in accordance with the Arbitration clause under the Master Agreement entered between URAN Ltd. and Synchem;”

- ‘Master Agreement’ for design, supply, construction, and commissioning of the Project was entered on 19th December 2016 between URAN Ltd. on one part; Synchem on the other part, and Ashi Constructions Pvt. Ltd. and IMREHB as confirming parties. The purpose of this Master Agreement was to coordinate the activities under the two aforementioned contracts. The Master Agreement executed between the Parties had various clauses, including the Arbitration Clause, which stated that:

“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be New Melhi, Ialomița. The parties agree on the application of Lex Mercatoria.”

- Master Agreement also included an ‘Entire Agreement’ Clause, which read as follows:

“This contract contains the final and entire agreement and understanding between the Parties and is the complete and exclusive statement of its terms. This contract supersedes all prior agreement and understandings, whether oral or written, in connection therewith.”

The understanding that Ashi Constructions Pvt. Ltd. would be entitled to a 20% stake in the Plant was not captured in the Master Agreement.

14. Under the Master Agreement, it was agreed that Ashi Constructions Pvt. Ltd. would develop and hand over the Project by December 2020.
15. After the completion of construction of the Plant, a Performance Achievement Test was to be conducted by an Independent Consultant (to be appointed by IMREHB). Upon successful completion of the test, the Performance Achievement Test Certificate was to be procured.

COVID-19 OUTBREAK AND ‘NEGOTIATIONS’

16. The Parties had a very healthy relationship for at least three years after the development of the Project commenced. Ashi Constructions Pvt. Ltd. had developed one wing in the premises which had all the necessary machinery to run a desalination plant. However, the pipeline used during the process was used on temporary basis as it was difficult to locate an already existing water supply transition pipeline. Clause 4.5 of the Master Agreement contained extension of timelines in relation to the relevant events.
17. By the start of 2019, countries across the globe had started reporting COVID-19 cases which were deemed to be a deadly virus by the *Republic of Ialomița* and the World Health

Organization (‘WHO’) soon declared the situation as a ‘Pandemic’. With no vaccine in place, the Government of *Ialomița* had to impose a complete lockdown in the country, due to which, the national economy crippled as large companies found their contractual obligations impossible to meet or economically ruinous, especially the construction sector, which saw the most dreaded phase.

18. As a result of which, Ashi Constructions Pvt. Ltd. was unable to lay down the permanent pipeline within the stipulated timeline. Ashi Constructions Pvt. Ltd. wrote numerous correspondences to its counterpart for revision of the timelines by pleading COVID-19 as one of the *force majeure* events under the Master Agreement.
19. Owing to have received numerous correspondences from Ashi Constructions Pvt. Ltd. for revision of timelines on the ground of COVID-19 as *force majeure* event under the Master Agreement, IMREHB had appointed an Expert named Mr. Monte Nayal, a Forensic Technology Construction (FTC) expert to certify as to whether the Project was being completed as stipulated in the contract signed by the Parties or not.
20. Ashi Constructions Pvt. Ltd. suffered an acute shortage of labour in the remote town of Alore, Ajasthan. As a result of which, on 1st January 2021, the independent contractor appointed by IMREHB issued a Certificate of Non-Completion, certifying that the Contractor had failed to complete the work within the stipulated deadline. The liquidated damages for the party who is responsible for the delay were set at €2000 a week after the deadline had passed.

SUBMISSION OF PERFORMANCE GUARANTEE

21. Under the Project Completion Contract, Ashi Constructions Pvt. Ltd. was obliged to submit a Performance Guarantee in favor of IMREHB towards mobilization advance and performance of contract to the extent of 10% of the agreed value of the contract which was €100,00,000 (INR 88.93 Crores). For the said purpose, a Tri-partite Agreement was executed between IMREHB, Ashi Constructions Pvt. Ltd., and LocaLoca Bank (New Melhi).
22. Since Ashi Constructions Pvt. Ltd. was unable to oblige to the timelines for handing over the Project, the IMREHB sought to enforce the Performance Guarantee by writing to the LocaLoca Bank on 2nd January 2021. A copy of the said Letter was also addressed to Ashi Constructions Pvt. Ltd. Being aggrieved by that, Ashi Constructions Pvt. Ltd. vide its letter dated 3rd January 2021 again reiterated its contention of pleading relaxation under the *force majeure* clause set out in the Master Agreement. Ashi Constructions Pvt. Ltd. further contended this as a wrongful invocation and sought to terminate the Master Agreement. Further, Ashi Constructions Pvt. Ltd. vide the said letter also called upon the IMREHB to again revise the timelines of the Project and confirm whether it would be entitled to the stake in the Project, upon completion, as per the revised timelines.
23. Vide its letter dated 5th January 2021, the IMREHB denied both the claims of the Ashi Constructions Pvt. Ltd. by contending that COVID-19 cannot be pleaded as a *force majeure* event under the said clause and that there is no agreement between the Parties w.r.t. Ashi

Constructions Pvt. Ltd. owning any stake in the Project, upon completion thereof. The IMREHB again expressed its intention of enforcing the Performance Guarantee.

SECOND INITIATIVE

24. Seeing no favorable outcome coming from IMREHB regarding any concession sought in the Project, Ashi Constructions Pvt. Ltd. parallelly started to communicate with its counterparts i.e., Raunch Holding Corp. and Cord Developments Ltd. (hereinafter collectively referred to as “**Private Parties**”) with whom it had entered into the CCE Contract and Purchase and Supply Contract, respectively. *Per contra*, having a sense of the commercial downfall coupled with the general commercial problems arising out of the inability of Ashi Constructions Pvt. Ltd. to make timely payments, the Private Parties, via e-mail, demanded to increase the price substantially before committing to the remaining deliveries which was decided under their respective contracts. The Private Parties made an offer for being paid an upfront additional 37.75% bonus of the total value of the Contract(s) in advance from Ashi Constructions Pvt. Ltd. in the following understanding:

19.5 % advance – within 30 days of the said communication

18.25 % advance – within 15 days of the payment of 19.5% advance amount

25. Ashi Constructions Pvt. Ltd. chose not to raise any counterclaim against the said proposal and had opted to remain silent by not responding to the e-mail. Another plausible reason for not raising an additional claim against the Private Parties was the high costs involved in the commercial arbitration.

26. As a consequence of Private Parties' superfluous and unpredictable expectations flowing out of the already decided terms, as a counter-measure, the Board of Directors of Ashi Constructions Pvt. Ltd. passed a motion such that no further financing, compliance monitoring or any purchase/supply would be given to the Private Parties. The obvious consequence was that seeing no positives from either side(s), Ashi Constructions Pvt. Ltd. invoked the arbitration and filed a Request of Arbitration on 6th January 2021 to all the parties under the Master Agreement.
27. It is further imperative to note that with a view to protect its interest and the Private Parties' demand of an additional amount of 37.5% towards bonus, Ashi Constructions Pvt. Ltd. in its Request for Arbitration dated 6th January 2021 had additionally sought declaratory reliefs against the Private Parties.
28. Parallely, being a Special Purpose Vehicle (SPV) whose entire focus was completion of the Project and expecting a return in the form of 20% stake in the Project was of crucial importance, as was always agreed between the contracting parties. However, due to hardships arising out of the outbreak of COVID-19, limited funding and manpower etc., Ashi Constructions Pvt. Ltd. was not in a position to complete the Project as per the desired timelines. As a result IMREHB invoked the Performance Guarantee by contending that Ashi Constructions Pvt. Ltd. had no stake in the Project and was in clear breach of contract.
29. In view of the said differences among the Parties, Ashi Constructions Pvt. Ltd. vide its letter dated 6th January 2021 invoked the arbitration clause and submitted the Request for

Arbitration under Article 4 of the ICC Rules of Arbitration 2021, thereby claiming specific performance of the terms of the Contract, as were agreed with IMREHB.¹

30. Apprehending that LocaLoca Bank would remit the amount sought by the IMREHB, Ashi Constructions Pvt. Ltd. also applied for Emergency Arbitration on the same day (i.e., 6th January 2021), seeking temporary restraintment against the LocaLoca Bank from remitting the said amount.

EMERGENCY ARBITRAL ORDER

31. On 22nd January 2021, an Emergency Order (“EO”) was passed in favor of Ashi Constructions Pvt. Ltd. thereby granting interim relief by directing parties and LocaLoca Bank to maintain the status quo, till the constitution of the Arbitral Tribunal under the ICC Rules of Arbitration 2021. The Emergency Order was rendered within the time limit under the Rules.
32. Even though the emergency relief was granted in favor of Ashi Constructions Pvt. Ltd., the LocaLoca Bank expressed its intention to go ahead with remitting the amounts under the Performance Guarantee. Aggrieved by the foregoing, Ashi Constructions Pvt. Ltd. filed an application under the Arbitration and Conciliation Act, 1996 before the New Melhi High Court *inter-alia* seeking enforcement of the EO. The New Melhi High Court, considering this as an issue of larger importance (which might settle the legal position for

¹**Note:** *The ICC Court had decided that the arbitration will proceed with respect to all the parties.*

other pending cases of similar nature), referred the said issue to the Supreme Court of *Republic of Ialomița*.

DISPUTES BETWEEN THE PARTIES:

33. Ashi Constructions Pvt. Ltd. has submitted its statement of claims on 2nd February 2021 before the Arbitral Tribunal.
34. Ashi Constructions Pvt. Ltd. has filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the New Melhi High Court *inter-alia* seeking enforcement of the EO. The said issue is currently pending before the Supreme Court of *Republic of Ialomița*.

EXHIBITS

EXHIBIT A

THE MASTER AGREEMENT

2.1. Arbitration Clause

All disputes arising out of or in connection with the present contract shall be finally settled under the International Chamber of Commerce Rules of Arbitration 2021 by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be New Delhi, *Ialomița*. The parties agree on the application of *Lex Mercatoria*.

4.5. Extension of Time

(1) Upon it becoming reasonably apparent that the progress of the Project is delayed, the Ashi Constructions Pvt. Ltd. shall give a written notice of the cause of the delay to the IMREHB, and if in the opinion of the IMREHB [the] Completion of the Project is likely to be or has been delayed beyond the stipulated date or beyond any extended time previously agreed under any of the clause:

.....

(e) or by reason of IMREHB instructions issued under any other clauses of the Agreement, or

(f) by any act of breach or prevention by the IMREHB.

Then the IMREHB shall so soon it is able to estimate the length of the delay beyond the stipulated date or time aforesaid make in writing a fair and reasonable extension of time for completion of the Project. Provided always that, Ashi Constructions Pvt. Ltd. shall constantly use its best endeavors to prevent delay and shall do all that may reasonably be required to the satisfaction of the IMREHB to proceed with the Project.

7. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

EXHIBIT B

PROCEDURAL ORDER NO. 1

1. Any requests for Clarifications arising from the Statement of Undisputed Facts shall be made no later than 11.59 PM IST on 19th April 2021 by emailing to: adr@nirmauni.ac.in.
2. Memorial (Skeleton arguments) on behalf of the Claimant and the Respondent shall be filed by 11.59 PM IST on 30th April 2021 by emailing to: adr@nirmauni.ac.in.
3. The oral hearing shall take place via video- conference from 8th-9th May 2021.
4. The laws of *Republic of Ialomița* are *pari materia* to India.
5. In the Memorial (Skeleton arguments) and at the hearing, the parties shall only address the following issues:
 - [I.] Whether Ashi Constructions Pvt. Ltd. can seek enforcement of the EO under the extant laws of the *Republic of Ialomița*.²
 - [II.] Whether the Arbitral Tribunal has jurisdiction over the Private Parties.
 - [III.] Whether Ashi Constructions Pvt. Ltd. was entitled to a 20% stake in the Project by virtue of the Entire Agreement Clause.
 - [IV.] Whether URAN Ltd. is entitled to liquidated damages due to delay in construction.

²**Note:** For the purposes of the moot and to invite participants to think and argue on the issue of Emergency Orders/ Awards, participants will argue this limited issue before the same tribunal as if it was being argued before the Supreme Court of Republic of Ialomița.

EXHIBIT C-1

DESIGN PLAN MADE BY ASHI CONSTRUCTIONS PVT. LTD.

Objectives

1. Financially successful
2. Increase the use of Thermal Energy
 - Multi Stage Desalination
 - Multi effect Desalination
 - Vapor Compression
3. Optimization of the Microbial process
4. Take advantage of the location
 - Closer to River
 - Closer to Government pipeline
5. Modernize the Desalination Process

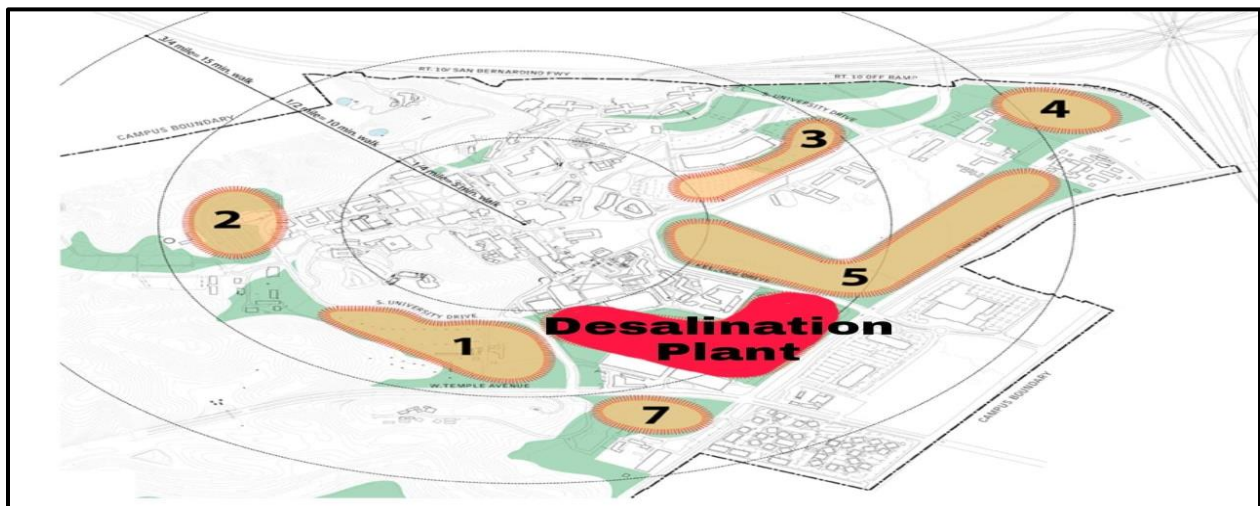


FIGURE 1



FIGURE 2



FIGURE 3

ZONE AREA CALCULATIONS

Zones	Area
1	76,000
2	49,100
3	54,300
4	56,877
5	1,56,000
6	89,900
7	43,000

EXHIBIT C-2

**CORRESPONDENCES BETWEEN ASHI CONSTRUCTIONS PVT. LTD. AND
IMREHB**

From: Eric Bailey (eric.bailey@ialomitaboard.com)

Sent: 10th November 2016 [12:35:29 PM]

To: Lisa Chow (chow_lisa@ashiconstructions.sin)

Subject: Negotiating terms of the 'Joint Development and Performance Agreement'

Dear Ms. Chow,

I hope that this mail finds you well.

Please be informed that following a discussion between the top officials of the Ialomitan Metropolitan Real Estate Housing Board, the Board has decided to offer a 10% stake in the said Project for the construction, design and maintaining of desalination plants to Ashi Constructions Pvt. Ltd. for a period of 35 years in addition to monetary compensation of up to €100,000.

We are looking forward to your confirmation.

Regards,

Eric

Eric Bailey

Chief Executive Officer,

Ialomitan Metropolitan Real Estate Housing Board

Sokyo- 284473, Ialomita

Phone: +221 2385 476 518

From: Lisa chow (chow_lisa@ashiconstructions.sin)

Sent: 25th November 2016 [02:38:35 PM]

To: Eric Bailey (eric.bailey@ialomitaboard.com)

Subject: Re: Negotiating terms of the 'Joint Development and Performance Agreement'

Dear Mr. Bailey,

It was nice to collaborate with you on this Project.

We have been considering your offer over the past two weeks and everything sounds good, although I would like to discuss the stake percentage in the Joint Development and Performance Agreement.

We should add that if things go well, this Project may create jobs for more than 10,000 workers and make several hundreds of millions of euros in profits.

Perhaps, we propose a 25% stake in this project in addition to €500,000 in monetary compensation.

Looking forward to your response in this regard.

Regards,

Lisa

Lisa Chow,

Managing Director,

Ashi Constructions Pvt. Ltd.

Singapore City- 392235, Singapore

Phone: +107 657 423 486

From: Eric Bailey (eric.bailey@ialomitaboard.com)

Sent: 7th December 2016 [04:58:21 PM]

To: Lisa Chow (chow_lisa@ashiconstructions.sin)

Subject: Re: Re: Negotiating terms of the 'Joint Development and Performance Agreement'

Dear Ms. Chow,

Thank you for your prompt response and your thoughts on the proposal. We intend to successfully develop and complete this Project. Although, we are not able to accept your proposal mentioned in the e-mail dated 25th November 2016.

However, considering the association with your company, we would like to propose a 20% stake in the Project in addition to €250,000 as monetary compensation. I am sure that this offer is acceptable to you and our teams can work out the actual figures once we have a draft contract ready.

Let me know the course of action from hereon.

Regards,

Eric

Eric Bailey

Chief Executive Officer,

Ialomitan Metropolitan Real Estate Housing board

Sokyo- 284473, Ialomita

Phone: +221 238 476 5185

From: Lisa Chow (chow_lisa@ashiconstructions.sin)

Sent: 15th December 2016 [11:02:15 AM]

To: Eric Bailey (eric.bailey@ialomitaboard.com)

Subject: Re: Re: Re: Negotiating terms of the 'Joint Development and Performance Agreement'

Dear Mr. Bailey,

I am hereby accepting the revised terms of the contract, i.e. 20% stake in the Project along with €250,000 as monetary compensation.

We are looking forward to continue this successful collaboration between Ashi Constructions and Ialomitan Metropolitan Real Estate Housing Board.

Regards,

Lisa

Lisa Chow,

Managing Director,

Ashi Constructions Pvt. Ltd.

Singapore City- 392235, Singapore

Phone: +107 657 423 486

EXHIBIT C-3

**INVOCATION OF FORCE MAJEURE CLAUSE BY ASHI CONSTRUCTIONS
PVT. LTD.**

From: Lisa Chow (chow_lisa@ashiconstructions.sin)

Sent: 23rd March 2020 [11:02:15 AM]

To: Eric Bailey (eric.bailey@ialomitaboard.com)

Subject: Invocation of *force majeure* Clause during COVID-19 pandemic

Dear Mr. Bailey,

Hope that this mail finds you in good health.

This is to bring to your notice that as a nationwide lockdown has been declared due to COVID-19, we are unable to proceed with the work of the Project at Alore, Ajasthan. Kindly consider this mail as a notice under the *force majeure* clause of the Master agreement and revise the timelines of the Project considering the present situation.

Regards,

Lisa

Lisa Chow,

Managing Director,

Ashi Constructions Pvt. Ltd.

Singapore City- 392235, Singapore

Phone: +107 657 423 486

EXHIBIT C-4

**REQUEST FOR RELAXATION OF TIMELINE BY ASHI CONSTRUCTIONS
PVT. LTD.**

From: Lisa Chow (chow_lisa@ashiconstructions.sin)

Sent: 10th November 2020 [01:22:45 PM]

To: Eric Bailey (eric.bailey@ialomitaboard.com)

Subject: Request to relax the timeline for the completion of Project

Dear Mr. Bailey,

As I have mentioned in the previous emails dated 23rd March, 19th April, 22nd May, and 09th August 2020,³ that due to COVID-19 we are unable to proceed with the work of the Project at Alore, Ajasthan. Kindly consider the same and relax the timelines of the Project as it has got substantially delayed due to the lockdown in the country.

Kind Regards,

Lisa

Lisa Chow,
Managing Director,
Ashi Constructions Pvt. Ltd.
Singapore City- 392235, Singapore

Phone: +107 657 423 486

³ E-mails dated 19th April, 22nd May and 09th August, 2020 were subsequently sent as 'reminder e-mails.'

EXHIBIT R-1

INVOCATION OF PERFORMANCE GUARANTEE BY IMREHB

From: Eric Bailey (eric.bailey@ialomitaboard.com)

Sent: 2nd January 2021 [06:28:41 PM]

To: Edward Mufasa (edward@localoca.au)

CC: Lisa Chow (chow_lisa@ashiconstructions.sin)

Subject: Invocation of Performance guarantee

Dear Mr. Mufasa,

It is to be noted that a substantial amount is to be recovered from Ashi Constructions Pvt. Ltd. on account of the contractual settlement of the Joint Development and Performance Agreement, we hereby instruct you to proceed for encashment of the B.G. No. FG1001/83/108G dated 15th December 2016 for Rs. 88,84,00,000/- and remit the proceeds of encashment to us within 7 (seven) days from the date of receipt of this letter.

Kindly expedite the remittance of encashment proceeds through demand draft to be issued in favor of IMREHB, on S.B.I. Alore, Ajasthan.

Kindly treat the matter as most urgent.

Regards,

Eric

Eric Bailey

Chief Executive Officer,

Ialomitan Metropolitan Real Estate Housing Board

Sokyo- 284473, Ialomita

Phone: +221 2385 476 518

EXHIBIT C-5

**COMMUNICATION BETWEEN ASHI CONSTRUCTIONS PVT. LTD. AND
IMREHB**

From: Lisa Chow (chow_lisa@ashiconstructions.sin)

Sent: 3rd January 2021 [04:42:15 PM]

To: Eric Bailey (eric.bailey@ialomitaboard.com)

Subject: Reply to the e-mail dated 2nd January 2021

Dear Mr. Bailey,

This is in regard to an e-mail dated 2nd January 2021, wherein IMREHB invoke the performance guarantee clause by writing to LocaLoca Bank. Being aggrieved by the said letter, we reiterate our intention to invoke the *force majeure* clause set out in the Master Agreement. We further contend that this invocation of performance guarantee by IMREHB is wrong.

Moreover, we would also like to stress on the revision of timelines for the completion of the Project and seek confirmation whether we would be entitled to a 20% stake in the Project as per the revised timelines.

We are looking forward to continue a successful collaboration.

Regards,

Lisa

Lisa Chow,

Managing Director,

Ashi Constructions Pvt. Ltd.

Singapore City- 392235, Singapore

Phone: +107 657 423 486

EXHIBIT R-2

**COMMUNICATION BETWEEN IMREHB AND ASHI CONSTRUCTIONS
PVT. LTD.**

From: Eric Bailey (eric.bailey@ialomitaboard.com)

Sent: 5th January, 2021 [08:51:45 PM]

To: Lisa Chow (chow_lisa@ashiconstructions.sin)

Subject: For enforcing Performance Guarantee clause

Dear Ms. Chow,

We are in receipt of your letter in which you assert that an event of *force majeure* (COVID-19) has occurred and is preventing you to perform your part of the obligation under the contract. In the aforesaid letter, you have pleaded relaxation in the performance of your contractual obligation and demanded the extension of the *force majeure* clause in the Master Agreement to cover the COVID-19 event as well.

However, we completely deny your claims. We do not consider COVID-19 as a *force majeure* event or that Ashi Constructions Pvt. Ltd. is entitled to any stake in the Project after its completion. Since there is no *force majeure* event occurred, therefore you have breached the terms of the contract by not completing the Project within the stipulated timeline.

Thus, to cover our loss we invoke the Performance Guarantee clause, a part of the tri-partite agreement signed between IMREHB, Ashi Constructions Pvt. Ltd., and LocaLoca Bank.

Kind Regards,

Eric

Eric Bailey

Chief Executive Officer,

Ialomitan Metropolitan Real Estate Housing board

Sokyo- 284473, Ialomita

Phone: +221 2385 476 518

EXHIBIT R-3

**LETTER SENT BY RAUNCH HOLDING CORPORATION TO ASHI
CONSTRUCTIONS PVT. LTD**

Raunch Holding Corporation

485, Kasgar Avenue

Westview-285395, North Icedonia

contact@raunchcorp.com

Dear Ms. Lisa Chow,

This is in with regard to the sub-contract entered between Ashi Constructions Pvt. Ltd. and Raunch Holding Corporation pursuant to agreement dated 20th December 2016 for construction, commissioning and engineering of Desalination plant.

Given the situation of COVID-19, Ashi Constructions Pvt. Ltd. was not able to complete the said project within the prescribed timeline. The liquidated damages were set at €2000 a week after the extended deadline has also passed.

Having sensed the commercial downfall of Ashi Constructions Pvt. Ltd. coupled with general commercial problems arising out of 'Joint Development and Performance Agreement' inability to make timely payments, Raunch Holding demanded to increase 37.75% bonus of the total value of the contract in the following manner –

19.5% advance– within 30 days of the said communication,

18.25% advance – within 15 days of the payment of 19.5 % advance amount.

Looking forward to healthy communication.

Regards,

Kelly

Kelly Brook

Chief Managing Director

Raunch Holding Corporation

485, Kasgar Avenue,

Westview- 285395, North Icedonia

EXHIBIT R-4

**LETTER SENT BY CORD DEVELOPMENTS LTD. TO ASHI
CONSTRUCTIONS PVT. LTD.**

Cord Developments Ltd.

121, Hilton Park

Illaix Down Street, Moriba Town -885693,

Panorama

info@corddevelopments.pan

Dear Ms. Lisa Chow,

This is in with regard to sub-contract entered into between Ashi Constructions Pvt. Ltd. and Cord Developments Ltd. pursuant to an agreement dated 25th December 2016 for the supply of equipment and other raw materials of the desalination plant.

Given the situation of COVID-19, Ashi Constructions Pvt. Ltd. was not able to complete the said Project within the prescribed timeline, liquidated damages were set at €2000 a week after the deadline passed.

Having sensed commercial downfall of Ashi Constructions Pvt. Ltd. coupled with general commercial problems arising out of 'Joint Development and Performance Agreement' inability to make timely payments, Cord Developments demanded to increase 37.75% bonus of the total value of the contract in the following manner –

19.5% advance – within 30 days of the said communication,

18.25% advance – within 15 days of the payment of 19.5 % advance amount.

Looking forward to healthy communication.

Regards,

Elizabeth

Elizabeth Maguire

Chief Managing Director

121, Hilton Park,

Illaix Down Street, Moriba Town- 885693,

Panorama

EXHIBIT R-5

EXPERT WITNESS REPORT BY IMREHB

Final Report of Mr. Monte Nayal for the Arbitral Tribunal Seated New Melhi, *Ialomita*

Report Type: Expert Witness Report

Dated: 1st January 2021

Appointed by: IMREHB

INTRODUCTION

I am Monte Nayal. I am a Forensic Technology Construction (FTC) expert in New Melhi, *Ialomita*. I have extensive knowledge of and expertise in the construction industry including building delays, construction costs, construction defects, building codes, and compliance. I have recently joined the FTC team as a construction expert after pursuing degree of Bachelor of Science (B. Sc.) from Indian Institute of Technology, New Melhi, and have also joined DMS Company, in their dispute resolution team as a construction claim analyst.

SUMMARY BACKGROUND OF THE CASE

The Special Purpose Vehicle, named Ashi Constructions Pvt. Ltd. (a company incorporated under the laws of Singapore, equally owned by URAN Ltd. and Synchem Infrastructure Private Limited) has entered into an agreement with IMREHB to construct and develop the Project to design, consult, operate and maintain a renewable-energy-sources-powered Desalination Plant, in Alore, Ajasthan.

Ashi Constructions Pvt. Ltd. was obliged to develop and handover the said Project by December 2020. However, due to the outbreak of COVID-19 in *Republic of Ialomita*, the said delivery got delayed and Ashi Constructions Pvt. Ltd. sought invocation of the *force majeure* clause (part of the Master Agreement) to excuse its non-performance.

PURPOSE OF THE REPORT

The purpose of my appointment is to certify whether the said Project was completed as stipulated in the contract signed by the parties.

OPINION ALONG WITH REASONS

As per the terms of the agreement and statutory law, I visited the construction site for inspection purposes multiple times since the outbreak of COVID-19. To my utter surprise, I noticed that the construction work was not going the way it was supposed to be. There were laborers at the site but most of them were either working at a very slow pace or demanding a hike of 1.75% in their daily wages as a precondition to work, to cope up with economic challenges posed by COVID-19.

Certainly, COVID-19 has impacted different sectors differently and hampered the world economy. Before the outbreak of COVID-19, the construction industry was booming like never before. However, as a result of mandatory lockdown (as a measure to prevent the spread of COVID-19), tremendous disruptions were caused to the industry. At the same time, it must be noted that the mandatory lockdown was only till 3rd May 2020 (two months), post which most of the services were resumed.

Even owing to this mandatory lockdown, the contractor (Ashi Constructions Pvt. Ltd.) was not granted an extension for completion of the Project. Seeing the construction work going on in a very lethargic manner, I have sent a notice to the concerned contractor and asked them to give reasons for this delayed process and demanded to complete the contractual obligation as soon as possible.

I have not yet received any response to the notice and I firmly believe that the non-completion of the Project, cannot be excused on the ground of COVID-19, as Ashi Constructions Pvt. Ltd. had sufficient time, post lockdown, to complete the Project.

DECLARATION

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signature: -----

Date: -----

--

ACKNOWLEDGEMENT

We would like extend our sincere gratitude to Mr. Abhinav Bhushan, Director, ICC Arbitration and ADR, South Asia, for his constant support and guidance towards successful organization of this Event. We also would like to thank Mr. Abhinav Bhushan for his critical comments on the Case Record.

We would also like to thank Mr. Imran Khan, Executive Director, ICC India and Mr. Ajay Thomas, Independent Arbitrator, for their valuable ongoing help in the organization of this Event.

DRAFTING COMMITTEE

The Case Record has been authored by Mr. Sameer Bindra, Advocate at the Bombay High Court and Mr. Anchit Bhandari, Advocate at the Supreme Court of India.

Sameer Bindra is a practicing Advocate at Bombay High Court. His areas of practice are Foreign and domestic arbitration, commercial & corporate litigation disputes, real estate & testamentary disputes and writ petitions. He has authored numerous international and domestic publications on contemporary issues in Indian & International Arbitration Law. He has adjudicated various moot court competitions at National and International level, across various law colleges in India.

Anchit Bhandari is a practicing Advocate at the Supreme Court of India. He has a keen interest in business and commercial laws (apart from handling wide array of civil, criminal, arbitration, taxation, real estate and matters related to constitutional laws, to name a few), and regularly appears before various judicial *fora* in disputes relating to aforesaid fields. He has the distinction of being recognized for outstanding scholastic performance in *academia* award (at National level) by former Chief Justice of India Hon'ble Mr. Justice R.M. Lodha. He has adjudicated several prestigious National as well as International Moot Court Competitions. Besides this, he has several notable International and National publications, some of them being with IGI Global, USA and Practical Law, United Kingdom.

DISCLAIMER- 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.

Centre for ADR (Organizing)

Institute of Law, Nirma University
Nirma University, S.G. Highway,
Ahmedabad, Gujarat – 382481
India

✉ adr@nirmauni.ac.in

📷 cadr_ilnu

🌐 [linkedIn.com/in/cadr-ilnu](https://www.linkedin.com/in/cadr-ilnu)

Shalini Mishra
Chairperson
74330 15413

Samyak Jain
Co- chairperson
8299462876

Piyush Sengar
Secretary
8340443136

