

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF
THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE**

(6th Edition, 1 August 2016)

BETWEEN

CLEAN HARSTRAD LIMITED

1916 Vernon Road, New Harstrad City, Asgard

Claimant

AND

CLEAN-UP FIRST PRIVATE LIMITED

1200 Major Street, Beijing, Locat

Respondent

Arbitral Tribunal

The Professor (Presiding Arbitrator)

Mr. Berlin (Co-Arbitrator)

Ms. Tokyo (Co-Arbitrator)

Seat of Arbitration: Singapore



Table of Contents

Statement of Undisputed Facts	3
Annex A – Excerpts of the EPC Contract.....	15
Annex B – E-mail Correspondences Between 10 May 2018 and 5 March 2019	18
Annex C – E-mail Correspondences Between 23 March and 24 April 2020	23



Statement of Undisputed Facts

1. The Union of Asgard (“**Asgard**”) is a sovereign State part of the Indian sub-continent, which gained independence from British colonial rule in the year 1947. The economy of Asgard has always been primarily based on agriculture, even though there has been a boom of the industrial sector over the past 20 years. The geography of Asgard is unique because only one river called Harstrad flows through the entire country. The economy of Asgard and the livelihood of approximately 70% of its population is reliant directly on the health and well-being of River Harstrad. Thus, the population of Asgard has a deep-rooted connection to the River Harstrad.
2. The laws of Asgard are identical to the laws of India and the courts of Asgard place significant reliance on judgments of Indian courts.
3. Clean Harstrad Limited (“**Employer**”) is a wholly owned subsidiary of the Government of Asgard. In 2016, the Employer was entrusted by the Government with the responsibility of cleaning River Harstrad and tackling water pollution therein. In pursuance of this goal, the Employer set up a committee of senior bureaucrats, activists and experts in environmental science (“**Committee**”) to formulate a plan of action. The Committee issued its report in November 2017 (“**Report**”) and observed that water pollution levels in the river were critical. Further, the Committee forecasted that if measures for cleaning the river water and preventing water pollution were not taken soon, the aquatic life in the river would be endangered and certain species endemic to the river might even become extinct. The current water pollution levels, if left unaddressed, could also have a severe impact on the livelihood of the population that depended on the river, including for the purposes of obtaining drinking water and irrigating the staple crops that were cultivated in the region. The recommendations in the Report included setting up of sewage treatment plants across the length of the river, constructing projects for river surface cleaning, investing in public outreach programs, and implementing stricter regulations for industries located near the river. Further, the existing sewage treatment infrastructure adjacent to the river was severely criticized as being inadequate by the Committee.



4. The Report was leaked to a news media outlet, which led to a public outcry against the inaction of the Government and the Employer. There were various mass protests in several States across the country of Asgard. The Employer, in reaction to the mass protests, took several steps to address the water pollution problem in the River Harstrad. One of the steps taken by the Employer was the issuance of a request for proposal (“**RFP**”) on 1 February 2018 for selecting a contractor, through a competitive bidding process, to undertake a project for engineering, procurement, and works for upgradation of 10 sewage treatment plants on the River Harstrad (“**Project**”). The term for the Project, as per the RFP, was 55 months from the date of award of the Project. The RFP specified that timely completion of the Project was critical for preventing permanent damage to the ecosystem of the River Harstrad and, in turn, preventing resultant damage to the lives of the population that depended on the river.
5. On 1 May 2018, by way of a letter of award (“**LOA**”), the tender for execution of the Project was awarded to Clean-Up First Private Limited (“**Contractor**”), a company incorporated in People’s Republic of Locat (“**Locat**”). Thereafter, on 3 May 2018, a contract was executed setting out the Parties’ rights and obligations (“**EPC Contract**”). The key provisions of the EPC Contract are reproduced in **Annex A**.
6. The value of the EPC Contract was USD 500,000,000 (“**Contract Price**”) in exchange for which the Contractor was required to implement the Project in the following phases:
 - (i) **Design Phase**: consisting of designing the upgrades for the existing sewage treatment plants as per the so-called “**Design Schedule**”, i.e., within six months from the LOA (by 1 November 2018);
 - (ii) **Procurement Phase**: consisting of procuring the requisite goods and materials as per the so-called “**Procurement Schedule**”, i.e., within 12 months from the LOA (by 1 May 2019); and
 - (iii) **Refurbishment Phase**: consisting of refurbishing the existing components of the sewage treatment plants as per the so-called “**Refurbishment Schedule**”, i.e., within 55 months from the LOA (by 1 December 2022).
7. A portion of the Contract Price was payable on completion of each of these three phases set out in the EPC Contract.



8. On 10 May 2018, Mr. Anil, the Contractor's Vice President based in Asgard, sent an e-mail to Mr. Rajesh, the Employer's Head Engineer. In the said e-mail, Mr. Anil requested various documents and information in relation to the existing sewage treatment plants in order to enable the Contractor to design the specific upgrades for each of the plants. Further, he requested Mr. Rajesh to update him on the availability of the Employer's team to facilitate inspection of the sewage treatment plants by the Contractor's team of engineers.
9. As Mr. Anil did not receive a response from Mr. Rajesh, he sent a follow-up e-mail to Mr. Rajesh on 20 May 2018, wherein he reminded Mr. Rajesh that the inspection of the sewage treatment plants as well as the information sought from the Employer were pre-requisites for the Contractor to begin work on the Design Phase, which would take approximately four months to complete after the inspection.
10. On 15 June 2018, Mr. Rajesh shared the information requested by Mr. Anil and also informed Mr. Anil that the Employer's team would be available to facilitate inspection of the sewage treatment plants from 15 September 2018 to 15 October 2018.
11. In response, Mr. Anil sent an e-mail dated 25 June 2018, confirming that his team was also available for the inspection from 15 September 2018 to 15 October 2018. In the same e-mail, Mr. Anil reminded Mr. Rajesh that the Contractor would require approximately four months from the date on which the final inspection of the sewage treatment plants is carried out in order to complete the Design Phase. Mr. Anil, accordingly, stated that since the date of the final inspection would be 15 October 2018, it was understood that the Employer had agreed to extend the Design Phase of the Project by more than three months, and, in turn, also extend the Procurement Phase and the Refurbishment Phase by, at least, four months each, subject to the results of the inspection of the sewage treatment plants. The Contractor received no response to this e-mail from Mr. Rajesh or any other representative of the Employer.
12. The inspection of the sewage treatment plants by the Contractor's engineering team was completed by 15 October 2018. In turn, the Contractor submitted all the designs of the upgrades for the sewage treatment plants on 15 February 2019, which were accepted by the Employer, as confirmed an e-mail by Mr. Rajesh dated 17 February 2019. The Employer, in turn, paid the Contractor 20% of the Contract Price on 20 February 2019.

13. On 1 March 2019, the Contractor, by way of an e-mail from Mr. Anil, shared revised timelines to implement the Procurement Phase and the Refurbishment Phase, which envisaged that the Procurement Phase would be completed by 1 September 2019 and the Refurbishment Phase would be completed by 1 December 2023. Mr. Anil's e-mail explained that the proposed timelines provided for a greater duration of time to complete the Refurbishment Phase than what was originally envisaged in the EPC Contract since the inspection of the sewage treatment plants had uncovered severe issues in five of the ten plants, which would require a longer time to resolve.
14. Mr. Rajesh sent an e-mail on 3 March 2019, on behalf of the Employer, acknowledging receipt of Mr. Anil's e-mail dated 1 March 2019, lamenting that the completion of the EPC Contract has now been delayed by a year overall and requested the Contractor to complete the Project at the earliest. On 5 March 2019, Mr. Anil responded to this e-mail stating that the Contractor shall attempt to expedite the execution of the Project and requested that to ensure that there are no further delays the Parties' representatives should have meetings every week. Mr. Anil's suggestion was accepted by Mr. Rajesh, in his e-mail dated 7 March 2019.
15. The e-mail correspondences exchanged between 10 May 2018 and 5 March 2019 are reproduced in **Annex B**.
16. The first few lots of goods were supplied by the Contractor. However, the Contractor anticipated that the supply of the remaining lots would be delayed by eight months due to the disruptions caused by the protests raging in Locat against the ruling party. The potential delay in supply of the goods and materials was communicated to the Employer's representative by the Contractor's representative during the weekly meeting held on 16 August 2019. However, after much deliberation, it was agreed during the meeting that the timelines for the Procurement and Refurbishment Phases would be delayed by five months instead of eight months. This decision was recorded in the minutes of the meeting, which were prepared by the Contractor's representative and shared with the Employer's representatives on 18 August 2019 by an e-mail.
17. The Procurement Phase was completed by 1 February 2020. This was acknowledged by the Employer in an e-mail sent by Mr. Rajesh on 2 February 2020. The Employer has not yet



paid the Contractor any part of the Contract Price after the completion of the Procurement Phase.

18. Work on the Refurbishment Phase could not be initiated immediately after 1 February 2020 as the relevant permits from the Asgardian Ministry of Jal Shakti were not in place. Typically, the Ministry of Jal Shakti grants permits applied for within six months from the date on which a request is made. While the Employer had applied for the permits on 30 March 2019, due to certain deficiencies in the applications, the procurement of the permits was delayed.
19. The permits were received by the Employer on 15 March 2020. In light of this, work on the Refurbishment Phase could finally only begin on 15 March 2020, with the bulk of the construction work being undertaken by labourers from several north and east Asgardian states. Prior to initiation of the works, e-mails were exchanged between the parties on 17 February 2020 and 25 February 2020. In these e-mails, the representatives of the Parties had discussed further updating the timelines to take into account the delay in procurement of the permits from the Ministry of Jal Shakti. However, in these e-mails, the Employer's representative emphasised the importance of completing of the Refurbishment Phase on time, especially since the sewage treatment plants are required to be shut down during their upgradation and refurbishment.
20. On 11 March 2020, the World Health Organisation declared the outbreak of the Covid-19 virus a global pandemic. Around this time, Governments across the world imposed severe restrictions on movement of persons to curtail the spread of the virus.
21. On 23 March 2020, Mr. Anil, on behalf of the Contractor, sent an e-mail to Mr. Rajesh, wherein the Contractor invoked the *force majeure* clause in the EPC Contract and requested the suspension of the performance of the Contract until the effects of the Covid-19 pandemic had subsided.
22. On 23 March 2020 at 11:59 p.m., the Asgardian Government imposed a complete nationwide lockdown, even though the Covid-19 virus had not yet been reported in Asgard. The first case of the Covid-19 virus was reported in Asgard on 31 March 2020.

23. For about a month, there was no response from Mr. Rajesh to Mr. Anil's e-mail dated 23 March 2020, except an auto-generated response from the addressee of the e-mail, stating that he was on leave for the coming three weeks since the Employer's offices had been shut as a result of the Asgardian Government's measures responsive to the pandemic.
24. On 20 April 2020, Mr. Suresh, the Vice President of the Employer, responded to Mr. Anil's e-mail dated 23 March 2020, wherein he demanded that the Refurbishment Phase should be completed soon, and in any event, not later than what was envisaged in the Refurbishment Schedule in the EPC Contract. In this correspondence, the Employer also rejected the Contractor's invocation of the *force majeure* clause on the ground that it had not been properly invoked, i.e., via a formal Notice to be served on the Employer's registered address. Further, Mr. Suresh's e-mail mentioned that the Employer did not consider the Covid-19 pandemic to qualify as a *force majeure* event since the *force majeure* clause in the EPC Contract did not include the term "pandemic" in its listed exemplifications.
25. On 24 April 2020, Mr. Anil responded to Mr. Suresh's e-mail dated 20 April 2020, explaining that expeditious completion of the Project had become impossible under the circumstances, since the Asgardian Government's measures responsive to the pandemic had disrupted the Contractor's supply-chain. Moreover, these measures had resulted in all migrant laborers being forced to return to their home states in north and east Asgard. Mr. Anil explained that it was the Contractor that had proactively arranged for the safe return of these laborers from mid-March 2020 onwards, since the Asgardian Government was unlikely to protect their interests. The Contractor had also arranged to provide them some sustenance compensation for a year, on the ground that their services would not be needed for, at least, another year. The Contractor further clarified that it was not invoking only the pandemic as the *force majeure* event, but also the Asgardian Government's measures responsive to it. Mr. Anil, in any event, also confirmed the Contractor's intention to complete the Refurbishment Phase as per the timelines agreed upon by the Parties in their discussions after the execution of the EPC Contract, subject to how the Covid-19 pandemic would evolve. In this regard, he stated that the Contractor was willing to explore any alternative solution to ensure that its relationship with the Employer continues fruitfully without formally resorting to the contractual dispute resolution procedures.



26. The e-mail correspondences exchanged between 23 March and 24 April 2020 are reproduced in **Annex C**.
27. On 27 May 2020, the Employer served upon the Contractor a Notice of Arbitration (“**NoA**”) under Rule 3 of the Arbitration Rules of the Singapore International Arbitration Centre (“**SIAC**”), 6th Edition, 1 August 2016 (“**SIAC Rules**”). Together with the NoA, the Employer also served upon the Contractor an Application to Conduct the Arbitration in accordance with the Expedited Procedure under Rule 5 of the SIAC Rules (“**Expedited Arbitration Application**”). Both the NoA and the Expedited Arbitration Application were also sent to the Registrar of the Court of Arbitration of the SIAC (“**SIAC Court**”) on 27 May 2020.
28. In its NoA, the Employer, *inter alia*:
- (i) nominated Ms. Tokyo as its co-arbitrator, indicating that it preferred a three-membered Tribunal, subject to the discretion of the President of the SIAC Court in this regard;
 - (ii) designated Delhi, Asgard as its preferred seat of the arbitration, since the dispute resolution clause of the EPC Contract did not specify a seat;
 - (iii) requested that the Tribunal ultimately constituted should assume jurisdiction over the Employer’s claims and should declare them to be fully admissible;
 - (iv) contended that although the pre-arbitral dispute escalation process contained in the dispute resolution clause of the EPC Contract was not an enforceable mandatory precondition to arbitration, the correspondences exchanged between the Employer and the Contractor between 23 March 2020 and 24 April 2020 served to satisfy this pre-arbitral dispute escalation process, which, in any event, was futile in a case such as the present one where the Parties had radically different outlooks on timelines;
 - (v) requested specific performance of the EPC Contract, specifically the outstanding Refurbishment Phase of the Project;
 - (vi) alternatively, requested liquidated damages as per Clause 2.2 of the EPC Contract for delays in the completion of the Design and Procurement Phases of the Project,

which constituted a breach of the EPC Contract, and for any further delays that may arise for which the damages would be quantified subsequently; and

- (vii) requested that the dispute between the Parties be resolved expeditiously, but after granting the Parties an opportunity to present their case in an evidentiary hearing to be convened remotely, since time was of the essence.
29. In its Expedited Arbitration Application, the Employer explained why time was of the essence in the present case. In particular, the Employer explained that pressures from the Asgardian Government to complete the Project were mounting, in light of the growing public outcry resulting from the depleting river water condition as well as because the Government had promised the completion of some part of the Project prior to the General Election in January 2021. Further, according to the Employer, it was incumbent to clarify at the earliest that the Contractor's understanding about the revised timelines was incorrect.
30. On 10 June 2020, the Contractor submitted its Response to the NoA ("**Response to NoA**") to the Registrar of the SIAC Court under Rule 4 of the SIAC Rules. Simultaneously, it also submitted its Response to the Expedited Arbitration Application ("**Response to EAA**"). Both these submissions were also served upon the Employer.
31. In its Response to NoA, the Contractor, *inter alia*:
- (i) nominated Mr. Berlin as its co-arbitrator, indicating that it agreed with the Employer that this case was suited for a three-membered Tribunal;
 - (ii) designated Beijing, Locat as its preferred seat of the arbitration, since the dispute resolution clause of the EPC Contract did not specify a seat;
 - (iii) requested that the Tribunal ultimately constituted should not exercise jurisdiction over the Employer's claims since the Parties had not satisfied the enforceable mandatory pre-arbitral dispute escalation process contained in the dispute resolution clause of the EPC Contract;
 - (iv) contended, in any event, that it could not be considered to have breached the EPC Contract, since the originally agreed Schedules in the EPC Contract had been revised pursuant to subsequent discussions between the Parties, which the Contractor was, in principle, amenable to comply with going forward, subject to the changing



circumstances arising out of the Covid-19 pandemic and the Asgardian Government's measures responsive to it, which, at this juncture, constituted a *force majeure* event; and

- (v) requested that the dispute between the Parties be resolved as per due process after granting the Parties an opportunity to present their case in an evidentiary hearing to be convened physically.
32. In its Response to EAA, the Contractor disputed that time was of the essence in the present case. In particular, the Employer explained that time could only be said to be of the essence, if the same was reflected in the terms of the EPC Contract or in the circumstances surrounding its execution. This was not the case here, since, if it were, the Parties would not have revised the Schedules in the EPC Contract.
33. On 17 June 2020, the President of the SIAC Court determined that the present case was fit for the Expedited Procedure under Rule 5 of the SIAC Rules and thus granted the Employer's Expedited Arbitration Application. In the same correspondence, the President of the SIAC Court endorsed the Parties' agreement to constitute a three-membered Tribunal, and invited Ms. Tokyo and Mr. Berlin to nominate, by 25 June 2020, the presiding arbitrator pursuant to the dispute resolution clause of the EPC Contract.
34. On 25 June 2020, Ms. Tokyo and Mr. Berlin nominated The Professor as the presiding arbitrator, whose nomination was confirmed by the Registrar of the SIAC Court on 26 June 2020.
35. On 30 June 2020, the Contractor submitted, pursuant to Rule 5.4 of the SIAC Rules, an Application to the Tribunal requesting a Reconsideration of the SIAC Court's President's Decision to conduct the present proceedings in accordance with the Expedited Procedure ("**Contractor's Reconsideration Application**"). The primary basis for the Contractor's Reconsideration Application was that the present case would involve a fact-intensive examination of documentary evidence and witness testimony on the disputed issues regarding whether or not the originally agreed Schedules had been revised by a subsequent agreement between the Parties and whether or not the Covid-19 pandemic and the Asgardian Government's measures responsive to it constituted a *force majeure* event under the EPC Contract. The Contractor enlisted (non-exhaustively and only as a tentative indication) five

fact witnesses, two expert reports and 300 documents that it wished to present to the Tribunal. Based on this, it submitted that such a fact-intensive examination could not be conducted hastily without granting the Parties an opportunity to be heard at a physical hearing.

36. The Tribunal invited the Employer to provide its comments on the Contractor's Reconsideration Application, and to specifically indicate the number of witnesses, experts and documents that it wished to present to the Tribunal. The Employer objected to the Contractor's Reconsideration Application on the ground that time was of the essence in the present case. The Employer, however, enlisted (non-exhaustively and only as a tentative indication) three fact witnesses, two expert reports and 250 documents that it wished to present to the Tribunal, but reiterated that the fact-intensive nature of the Tribunal's task does not render an Expedited Procedure based on a remote hearing impossible.
37. The Tribunal consulted the Parties on various procedural matters, including the procedural timetable for the proceedings as well as the Contractor's Reconsideration Application, in a Preliminary Meeting, organized by video conference over Macrohard Screens, on 15 July 2020. After that, the Tribunal rendered a Procedural Order No. 1 on 31 July 2020, wherein the Tribunal, *inter alia*, determined that:
 - (i) the Contractor's Reconsideration Application should be granted since the present case was no longer fit for being conducted in accordance with the Expedited Procedure, in light of the newly discovered information about the extensive factual and expert evidence that both sides wished to present to the Tribunal;
 - (ii) the Tribunal nonetheless confirmed its intention to conduct the arbitration as expeditiously as possible, and to this end, determined the procedural timetable as follows:
 - Statement of Claim to be submitted by the Employer on 30 November 2020;
 - Statement of Defense to be submitted by the Contractor on 31 March 2021;
 - A physical hearing to be convened in Asgard between 18-29 May 2021; and
 - (iii) the seat of the arbitration would be Singapore.



38. In Asgard, the nationwide lockdown started to be lifted in a phased manner in July 2020 with the final phase being completed only on 31 October 2020. However, the construction works in the 10 sewage treatment plants remained stalled since 23 March 2020, and did not restart until the beginning of January 2021.
39. In the meantime, the Employer submitted its Statement of Claim on 30 November 2020, wherein it elaborated on the arguments advanced in its NoA and presented four fact witnesses, three expert reports (including two expert reports on delay and disruption and one on the legal interpretation of the relevant contractual clauses under Asgardian law) and 350 documents.
40. Thereafter, the construction works in the 10 sewage treatment plants began on 10 January 2021 and went on without any interruptions until March 2021, albeit at a slower pace because many of the migrant laborers who had been sent back to their home States in north and east Asgard in April 2020 had refused to return. Construction works stopped again on 21 March 2021, when a new variant of the Covid-19 pandemic entered Asgard, resulting in a second nationwide lockdown.
41. The Contractor submitted its Statement of Defense on 31 March 2021, wherein it elaborated on the arguments advanced in its Response to NoA, now also emphasizing the second nationwide lockdown that was instituted in Asgard as a *force majeure* event. With its Statement of Defense, the Contractor presented five fact witnesses, two expert reports (including one expert report on delay and disruption and one on the legal interpretation of the relevant contractual clauses under Asgardian law) and 310 documents.
42. On 20 April 2021, the Employer sent an e-mail to the Tribunal, requesting to conduct the hearing scheduled on 18-29 May 2021 remotely, since travel to and from Asgard and Singapore had become extremely cumbersome and risky in light of the new variant of the Covid-19 pandemic, which had a more devastating impact across the world than the first variant. On 27 April 2021, the Contractor objected to the Employer's request to convene the hearing remotely, on the ground that a case of this magnitude and complexity, involving several witnesses and experts, could not be heard over a video conference.
43. On 1 May 2021, the Tribunal decided to postpone the hearing from 18-29 May 2021 to 18-29 October 2021 and to conduct the hearing in Singapore instead of Asgard, subject to the



prevailing situation on the Covid-19 pandemic, which the Tribunal undertook to monitor. The situation, however, worsened in October 2021 in Singapore, resulting in the Tribunal deciding to postpone the hearing until 18-29 May 2022.

44. In the meantime, the construction works in the 10 sewage treatment plants recommenced in September 2021 and are currently ongoing. However, the progress of the construction works has been significantly retarded. Many migrant laborers have still not returned. The practice of the weekly meetings that had been established between the Employer and the Contractor has also stopped since the dispute between the Parties was referred to arbitration.
45. In January 2022, Ms. Tokyo was infected by the Covid-19 virus. Although she did not have severe symptoms, at her insistence, the Tribunal decided, on 31 January 2022, to convert the hearing scheduled on 18-29 May 2022 from a physical hearing to a remote hearing to be convened by video conference over Macrohard Screams.
46. On 23 February 2022, the Contractor reiterated its objections to the propriety of a remote hearing in the circumstances of the present case citing due process concerns, but nonetheless agreed to participate therein, subject to being allowed to present these objections at the remote hearing as a preliminary matter, for the record and in order to not be considered to have waived these objections pursuant to Rule 41.1 of the SIAC Rules. Only after presenting these objections, would the Contractor proceed to argue the other issues in dispute.
47. The remote hearing is being convened between 18-29 May 2022, wherein the Tribunal will hear the Parties on all issues in dispute between them.



Annex A – Excerpts of the EPC Contract

Clause 2: Contractor’s Obligations and Milestones

- 2.1. The Time for Completion of the Project is 55 months from the date of the LOA. The schedules / milestones for implementation of the Project are below:
- (i) **Design Phase:** designing the upgrades for the sewage treatment plants within six months from the LOA (“**Design Schedule**”);
 - (ii) **Procurement Phase:** procuring the requisite goods and materials within 12 months from the LOA (“**Procurement Schedule**”); and
 - (iii) **Refurbishment Phase:** refurbishing the existing components of the sewage treatment plants within 55 months from the LOA (“**Refurbishment Schedule**”).
- 2.2. If the Contractor fails to achieve the milestones as per the Schedules provided in clause 2.1, the Contractor shall be liable to pay liquidated damages, computed at the rate of 0.005% of the outstanding Contract Price for each week of delay, to the Employer.

....

Clause 3: Contract Price and Employer’s Obligations

- 3.1. The total sums payable by the Employer to the Contractor is USD 500,000,000. The Contract Price shall be paid in tranches on completion of the milestones in clause 2.1. The payment schedule is below:

Milestones	Percentage of Contract Price
Design Phase	20%
Procurement Phase	40%
Refurbishment Phase	40%

- 3.2. The Employer shall release the payment as per the payment schedule provided in clause 3.1 within 30 days from the date of receipt of the Contractor’s invoice in this regard.
- 3.3. Notwithstanding anything contained in this clause, if the Employer considers any work done or supply made or service rendered by the Contractor to be deficient in any manner, the Employer shall be at liberty to withhold the payments due to the Contractor till such work / supply / service is made.

....

Clause 9: Force Majeure

- 9.1. “Force Majeure” shall mean any event, circumstance or combination of events that directly or indirectly prevents or unavoidably delays either Party (an “**Affected Party**”) in the performance of its obligations in this EPC Contract, but only if and to the extent that such events or circumstances are not within the reasonable control of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care. Force Majeure Events can be natural or non-natural, as per the below:
- a. Natural Force Majeure Events: acts of God, being drought, fire and explosion, volcanic eruption, landslide, earthquake, flood, cyclone, typhoon or tornado.
 - b. Non-natural Force Majeure Events: acts of war, riot, insurrection, terrorist or military action, nationalization or expropriation.
- 9.2. The Affected Party shall give notice in writing of any event of Force Majeure to the other Party as soon as reasonably practicable, but not later than seven (7) days after the date on which it knew or should reasonably have known of the commencement of the event of Force Majeure. Such notice shall include full particulars of the event of Force Majeure, its effects on the Affected Party, the concessions required by the Affected Party from the other Party and the remedial measures proposed.

....

Clause 10: Extension of Time

- 10.1. The Contractor can apply to the Employer for an extension of time for completion of the Project by way of a notice (“**EOT Notice**”) if the Contractor is delayed or impeded in the performance of the EPC Contract by reason of any of the following:
- (a) the Employer failing to comply with its obligations under clause 3;
 - (b) an occurrence of Force Majeure as provided in clause 9;
 - (c) the Employer suspending the performance of the EPC Contract under clause 15;
- 10.2. Within 10 days from the date of receipt of the EOT Notice by the Employer, if the Employer agrees to the request for extension of time, the procedure for amendment of the EPC Contract under clause 26.2 shall be followed by the Parties.

Clause 25: Dispute Resolution

- 25.1 Any dispute, based in contract or in law, between the Employer and the Contractor arising out of or in connection with the EPC Contract must be referred to their designated representatives (such as the Chief Executive Officers or Vice Presidents) for friendly discussions. If the dispute is not settled in these friendly discussions, Clause 25.2 shall apply.

- 25.2 Subject to Clause 25.1, the Parties undertake to attempt to resolve any unresolved dispute, based in contract or in law, between them through mediation.
- 25.3 If any dispute, based in contract or in law, is not resolved pursuant to either Clauses 25.1 or 25.2, the dispute may be resolved through arbitration proceedings to be administered by the Singapore International Arbitration Centre, according to its rules then in force; the number of arbitrators shall be one or three (as the Employer and the Contractor might agree) and the language of the arbitration proceedings shall be English.

Clause 26: Miscellaneous

- 26.1. **Applicable Law:** The EPC Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Asgard.
- 26.2. **Amendment:** Any amendment or modification to this EPC Contract shall only be effective by way of a written amendment agreement which is agreed upon by the authorized representatives of the Parties.
- 26.3. **Notices:** Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this EPC Contract shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by reputable, established international or domestic courier service (as the case may be) to the registered office of the other Party.



Annex B – E-mail Correspondences Between 10 May 2018 and 5 March 2019

From: Anil K. <anil@cleanup.lc >
Sent: 10 May 2018, 14:29:37 PM
To: Rajesh R. <rajesh@cleanharstrad.ag>
Subject: Seeking info and date to inspect

Dear Rajesh,

In furtherance of designing specific upgrades, our team would require EN 12566-3 certifications of the plants, as well as blueprints of the secondary clarifiers of all the plants. We would also need specific information as to whether the membrane bioreactors are configured as immersed or suspended.

Additionally, please let me know when your team will be available so that our team of engineers can inspect the sewage treatment plants.

Best,

Anil

Anil Kumaraswamy,
Vice President, Clean-Up First Pvt. Ltd.
1200 Major Street,
Beijing – 670011; Locat
Ph: +92 9087 893 289

From: Anil K. <anil@cleanup.lc >
Sent: 20 May 2018, 14:33:10 PM
To: Rajesh R. <rajesh@cleanharstrad.ag>
Subject: RE: Seeking info and date to inspect

Dear Rajesh,



This is a gentle reminder with regard to my earlier email. The information, documents and inspection of the sewage treatment plants that we are seeking are necessary, without which we may not be able to begin designing the upgrades to the plants.

Further, completion of the Design Phase is likely to take approximately four months after inspection.

Best,

Anil

Anil Kumaraswamy,

Vice President, Clean-Up First Pvt. Ltd.

1200 Major Street,

Beijing – 670011; Locat

Ph: +92 9087 893 289

From: Rajesh R. <rajesh@cleanharstrad.ag>

Sent: 15 June 2018, 14:37:33 PM

To: Anil K. <anil@cleanup.lc >

Subject: RE: Seeking info and date to inspect

Dear Anil,

PFA the EN 12566-3 certificates and secondary clarifier blueprints of the plants. To answer your query, the membrane bioreactors are immersed.

Also, my team will be on the ground from 15 September to 15 October 2018. We can facilitate the inspection then.

Best,

Rajesh

Rajesh Rao,

Head Engineer, Clean Harstrad Ltd.



1916 Vernon Road,
New Harstrad City – 509019; Asgard
Ph: +92 7869 189 098

From: Anil K. < anil@cleanup.lc >
Sent: 25 June 2018, 14:47:03 PM
To: Rajesh R. < rajesh@cleanharstrad.ag>
Subject: RE: Seeking info and date to inspect

Dear Rajesh,

Thank you for the information.

However, I would like to point out that we would require four months from the date on which the last date of inspection is to be carried out to finalize the designs. Since you have suggested 15 October 2018 as the final date of inspection, you have already delayed the first phase of the project by more than three months.

Since this delay has been caused by you, I believe this means that the timeline for completion of the other phases is also to be extended by at least four months each, subject to the results of the inspection.

Best,

Anil

Anil Kumaraswamy,
Vice President, Clean-Up First Pvt. Ltd.
1200 Major Street,
Beijing – 670011; Locat
Ph: +92 9087 893 289



From: Anil K. < anil@cleanup.lc >

Sent: 1 March 2019, 15:15:13 PM

To: Rajesh R. < rajesh@cleanharstrad.ag>

Subject: RE: Revision to timelines

Dear Rajesh,

We have laid out our plans for completion of the EPC contract based on the inspection of the plants we conducted. We would like to point out that severe issues were discovered during the inspection of the sewage treatment plants. These issues include several points of structural failures in five of the ten plants, which require reinforcement before the refurbishment work can begin.

Accordingly, the revised timelines for the Procurement Phase and Refurbishment Phase are below:

1. **Procurement Phase:** Completion by 1 September 2019.
2. **Refurbishment Phase:** Completion by 1 December 2023

Best,

Anil

Anil Kumaraswamy,

Vice President, Clean-Up First Pvt. Ltd.

1200 Major Street,

Beijing – 670011; Locat

Ph: +92 9087 893 289

From: Rajesh R. < rajesh@cleanharstrad.ag>

Sent: 3 March 2019, 12:56:39 PM

To: Anil K. < anil@cleanup.lc >

Subject: RE: Revision to timelines

Dear Anil,

We acknowledge receipt of your e-mail. We appreciate you keeping us in the loop about the progress on the Project. Please continue doing the same.



However, it is disconcerting to note your assessment that the EPC Contract will be delayed by a year overall, since we are constantly under pressure to complete the Project ASAP.

So, we request you to complete the Project ASAP and not delay it any further than indicated.

Best,

Rajesh

Rajesh Rao,

Head Engineer, Clean Harstrad Ltd.

1916 Vernon Road,

New Harstrad City – 509019; Asgard

Ph: +92 7869 189 098

From: Anil K. <anil@cleanup.lc >

Sent: 5 March 2019, 16:20:11 PM

To: Rajesh R. <rajesh@cleanharstrad.ag>

Subject: RE: Revision to timelines

Dear Rajesh,

We shall attempt to expedite the execution of the Project.

Further, to reduce any potential delays, we request that our respective teams have weekly meetings to discuss the possible roadblocks and find appropriate timely solutions.

Best,

Anil

Anil Kumaraswamy,

Vice President, Clean-Up First Pvt. Ltd.

1200 Major Street,

Beijing – 670011; Locat

Ph: +92 9087 893 289



Annex C – E-mail Correspondences Between 23 March and 24 April 2020

From: Anil K. < anil@cleanup.lc >
Sent: 23 March 2020, 9:06:26 AM
To: Rajesh R. < rajesh@cleanharstrad.ag>
Subject: RE: Suspension of Contract

Dear Rajesh,

By this communication dated 23 March 2020, I hereby notify you on behalf of Clean-Up First Pvt. Ltd.'s decision to invoke Cl. 9 of the EPC Contract, on grounds of *force majeure* arising out of disruptions caused by the Covid-19 virus. To this effect, we request suspension of any obligations upon us arising out of this contract until the effects of the pandemic subside considerably. I trust that this proposal is reasonable in light of extenuating circumstances, and your company will give it due regard and consideration.

Please feel free to reach out to me should you have any questions. Kindly revert at the earliest with your position on the suspension of the contract.

Best,

Anil

Anil Kumaraswamy,
Vice President, Clean-Up First Pvt. Ltd.
1200 Major Street,
Beijing – 670011; Locat
Ph: +92 9087 893 289

From: Rajesh R. < rajesh@cleanharstrad.ag>
Sent: 23 March 2020, 9:07:55 AM
To: Anil K. < anil@cleanup.lc >
Subject: RE: Out of Office



Greetings!

I will be on leave for the next three weeks and hence unavailable to respond to emails, due to Clean Harstrad Ltd.'s office premises having closed in compliance with governmental lockdown regulations. I shall attempt to respond to your messages, queries, or requests, at the earliest feasible time. In the interim, I wish you and your family remain well and safe.

Best,

Rajesh

Rajesh Rao,

Head Engineer, Clean Harstrad Ltd.

1916 Vernon Road,

New Harstrad City – 509019; Asgard

Ph: +92 7869 189 098

From: Suresh A. <suresh@cleanharstrad.ag>

Sent: 20 April 2020, 11:14:15 AM

To: Anil K. <anil@cleanup.lc >

Subject: RE: Suspension of Contract

Dear Anil,

Thank you for your email, and for your patience. I hope you and your family are well. Regrettably, Clean Harstrad Ltd. is not in a position to agree with your invocation of Cl. 9 of the EPC Contract. This is for two reasons. First, Cl. 9 may only be invoked by serving a formal notice to our registered address, as opposed to simply by email. Second, by our interpretation of the EPC Contract, a pandemic does not qualify as a *force majeure* event given that Cl. 9 does not list the term 'pandemic' in its exemplifications. For these reasons, we are unable to consent to the suspension of the contract as requested by you. Therefore, all contractual obligations continue to apply in status quo. Please work towards finishing the Refurbishment Phase as per Schedule of the EPC Contract, and preferably even earlier. We want this Project completed on a priority basis.

Please do not treat this message as anything but our willingness to continue our amicable and friendly ties. We are available to help and resolve any issues you may have.



Best,
Suresh

Suresh Anand,
Vice President, Clean Harstrad Ltd.
1916 Vernon Road,
New Harstrad City – 509019; Asgard
Ph: +92 7869 189 098

From: Anil K. <anil@cleanup.lc >
Sent: 24 April 2020, 10:41:36 AM
To: Suresh A. <suresh@cleanharstrad.ag>
Subject: RE: Suspension of Contract

Dear Suresh,

Thank you for your response. As things stand, completing upgradation works on the sewage plant projects is impossible in these circumstances. Governmental orders following the pandemic have both disrupted our supply chain and forced our labor force to travel back to their home states. In fact, we immediately arranged for buses to send our laborers back to their homes when the news of the pandemic reached us and offered them some sustenance compensation for the upcoming year, which will obviously be very difficult for them, especially given the political leanings of the current Asgardian Government. I doubt that we will be able to use their services in the coming year and I have made them aware of this. As a company, we believe in safeguarding our laborers' interests since loyalty and honesty are pillars of team work.

In the absence of these two elements (proper function of supply chain and labor force), construction projects are indefinitely halted. You will appreciate that we cannot construct anything without availability of proper labor, whose lives are currently in hazard as I understand.

Additionally, I must also clarify that we do not intend to invoke only the pandemic itself as a *force majeure* circumstance, but rather the governmental measures arising out of it as well (as described in the above paragraph) that have impeded our work.

Regardless, we are committed to completing our obligations under the contract as per the revised schedules agreed to by us previously. To this end, we are willing to explore alternative solutions.



I hope that this clarifies our position, and urge you to reconsider the same in light of these circumstances.

Let us continue to monitor the situation going forward and continue resolving any minor disagreements in this manner. This way, we can avoid any contentious and formal dispute proceedings.

Best,

Anil

Anil Kumaraswamy,

Vice President, Clean-Up First Pvt. Ltd.

1200 Major Street,

Beijing – 670011; Locat

Ph: +92 9087 893 289

