

3RD RMLNLU



INTERNATIONAL ARBITRATION MOOT COURT COMPETITION, 2025

[21st - 23rd FEBRUARY, 2025]



IN COLLABORATION WITH



THEME
SPONSOR



INSTITUTIONAL
PARTNER

DESAI & DIWANJI

MRP
— Advisory —

ASSOCIATE
SPONSORS

CLARIFICATIONS

**3RD RMLNLU- S&A LAW OFFICES INTERNATIONAL ARBITRATION MOOT
COURT COMPETITION, 2025**

CLARIFICATIONS

1. What was the duration of the Extension of Time (EOT) granted to the claimant to complete the project?
No clarification required.
2. Whether “void ab initio” in page 11 para 9 is a typing error?
No.
3. Is the date '18.09.2024' mentioned on the Demand Drafts (as seen on page 12) accurate, or is it a typographical error requiring clarification?
The date of demand drafts are 18.09.21 for all the purposes.
4. Is it an accepted fact by both the parties that there was a delay in the commissioning of the project?
No clarification required.
5. The entire arbitration agreement has not been produced. Can the same be produced?
No clarification required.
6. Is Ms. Munjya a part of the present legal counsel on behalf of the claimant?
No clarification required.
7. No provisions regarding breach by the respondent has been provided. Please provide the same.
No clarification required.
8. Which edition of the SIAC Rules (2016 or 2025) governs the jurisdiction of the Tribunal, and what is the basis under these rules for deeming the arbitration commencement date as 1 January 2025, as stated in Procedural Order No. 1 (Page 22)?
No clarification required.
9. Is issue 1 "Whether the SIAC Rules 2016 or the SIAC Rules 2025 are the applicable arbitration rules to the dispute?" correct or not as the date of commencement is before 1 Jan, 2025 and the provision explicitly says that if date of commencement is before 1 Jan, 2025 it will not be applicable unless explicitly agreed by the parties
No clarification required.

10. What is the relevance of the first issue (whether SIAC Rules 2016 or SIAC Rules 2025 are applicable) as neither of the parties seem to be in disagreement regarding the rules to be applied. Moreover, wherever a 2016 Rule has been mentioned, the corresponding 2025 Rule has also been mentioned.

No clarification required.

11. Is the 22 MW Devbhumi Power Plant project financed by the World Bank, and does the contract in dispute qualify as an FIDIC contract? If so, which version or type of FIDIC conditions applies? If not, does the contract include a termination clause, and was entering into an FIDIC contract mandatory for this project?

No clarification required.

12. How was the Claimant awarded the contract if all three values given in the Demand Draft are the same? (INR 36, 97, 432/-). What is the distinguishing factor that led to the Claimant being awarded the contract?

No clarification required.

13. In Paragraph 10 of the Notice of Arbitration (Page 8), it says "Unfortunately, as time passed, Mr White realized that Mr Sodi's description of doing business in India was true as the Respondent did not have complete access to the site..." However, in Paragraph 6 of the same (Page 5), it states "Mr Sodi told him about EPC contracts being given by the States.... and how profitable the contracts could be...." Don't these become contradictory statements?

No clarification required.

14. There are 5 main issues, can we combine 2 issues and cut down to total 3-4 issues?

No clarification required.

15. On page no. 24 para 1 of the moot proposition, what is meant by "not-reproduced" for the reasons behind claiming "manifest lack of jurisdiction"?

No clarification required.

16. When did the respondent become aware about the big rigging and collusive practices of the claimant?

Before registration of FIR. In paragraph no. 1, at page 12 of the moot proposition, the date of lodging of the FIR is to be read as 23.12.2024 (for all purposes).

17. Did Mr. Challya and Mr. Sodi reimburse the EMD amount to the claimant?

No clarification required.

18. Did the respondent give notice of termination of contract to the claimant?

Yes. The contract was terminated on 26.12.2024.

19. What was the monetary value of the entire contract?

No clarification required.

20. What is the Respondent's position regarding the Claimant's claim, given that the Respondent has not provided any defence for the delay in handing over the site in their response to the notice?

No clarification required.

21. On what date did the registrar and the respondent receive the notice of arbitration from the claimant, as per Rule 6.2 of the SIAC Rules, 2025?

No clarification required.

22. When did JVNL (Respondent) receive the notice of arbitration by the Claimant dated 19.12.2024?

No clarification required.

23. Are we to use the Redfern schedule format in the memo where applicable?

No clarification required.

24. Issue 3 is dependent on issue 2, and the framing of Issue 3 itself limits one to argue only from one side. Are we to ignore the nuances and argue either way or limit the arguments to a single scenario as specified in the Issue?

No clarification required.

25. The date on which the FIR was lodged seems to be a bit dicey since it was lodged on 27/08/2024 for fraud and cheating but the Direct Bank of Commerce clarified the demand drafts to have been procured from the account of Fly High Pvt. Ltd. on Dec. 21, 2024 i.e. about 4 months after the FIR was lodged. Moreover, the contract was terminated on Dec. 26, 2024 so it appears that the date of FIR should also be around Dec. 27, 2024 as it seems to be in consonance with the chronology of the events and also in the prior Moot Proposition, the date of FIR was 17/08/2024 i.e. one day after the termination of Contract which was on 16/08/2024 and both of these dates occur/come after the clarification issued by the Direct Bank of Commerce which was issued on

11/08/2024. Furthermore, in the Press Release dated 31/12/2024 the wordings “recent allegations” indicate that the FIR might have been lodged a few days ago.

Refer to clarification no. 16.

26. In Point no. 6 at page 13 of the Updated Proposition, it has been stated that the Clause 38 of the contract has been reproduced at Exhibit R4. However, at Page 19, the term Exhibit R4 has not been expressly mentioned. Moreover, a conflict occurs when in Point no. 1 of the Procedural Order 2 at Page 24 even Munjya’s legal opinion has been referred as Exhibit R4 and on page 26 the excerpt of the Redfern Schedule has been referred as Exhibit R4 which should actually have been used to refer to the Clause 38 at page 19. So it seems that the Redfern Schedule should be referred to as Exhibit R5 and Clause 38 at page 19 should be referred to as Exhibit R4.

For the purpose of this moot proposition, Clause 38, from page 19 to 21 is to be referred as Exhibit R4. In Procedural Order No. 2, @ paragraph no. 1, and at the top of page 26, the reference to (Exhibit R4) is to be deleted. This does not mean that the excerpt of the Redfern Schedule has been deleted. Only the indexing as (Exhibit R4) is deleted.

27. In Point no. 10 at page 6, the reference to “Mr. Sodi’s description” seems a bit confusing. The phrase “Unfortunately, as time passed.....not have complete access to the site and approach road...” align with Mr. Sodi’ description in the Prior Moot Proposition at Point 6 of its page 4. However, now in the updated proposition, the essence of the Mr. Sodi’s description in the prior proposition which stated that “the Government usually does not have site access”, has not been reproduced in Point 6 at Page 5 of the updated proposition. Therefore, the reference to Mr. Sodi’s description at Point 10 at page 6 of the updated proposition along with the word ‘unfortunately’ and the phrase ‘not have complete access....approach road’ seems to be confusing. Thereby, it appears that the essence of Mr. Sodi’s description should either be reproduced in toto or removed in toto. In Point 9 of Page 13 and at Point 2 of Page 24, the contract has been referred to as ‘void ab initio’. However, in Point 3 of Page 12 it has been stated that the contract is void (not void ab initio) on account of material misrepresentation amounting to fraud (i.e. was voidable and then rendered void). Also, Point 8 of Page 13 state that contract was obtained by fraud and is void. Thereby, the situation needs to be clarified.

No clarification required.

CLARIFICATIONS

28. In Point 1 of Procedural Order 1 at Page 22 it has been stated “Pursuant to the SIAC Rules” but it has not been mentioned the year of the rules and in pursuance of which rule, the arbitration was deemed to have commenced on 1/1/2025. But in point 1 and 3 of procedural order 2 at page 24, the Rules and the year of Rules have been mentioned. So, please clarify the situation here also.

No clarification required.

29. The non-payment of 16 crore due is authorised by engineer in charge?

No clarification required.

The procedural order No. 1 is passed by tribunal or administrative body of SIAC?

No clarification required.

30. What steps were taken by the respondent to notify the claimant of the alleged default before issuing the termination notice?

No clarification required.

31. Will the question of jurisdiction be decided before addressing the merits or will they be considered concurrently during the oral hearing?

No clarification required.

32. Has the tribunal set specific criteria for determining whether the requested documents meet the threshold for production under the Redfern schedule?

No clarification required.

33. Were there disputes or objections raised by the claimant regarding the measurements recorded in the MB at any stage? If so how were they addressed?

No disputes/objection was raised by the claimant.

34. Is there any history of STR, fly high and diamonds participating in any other bidding process jointly?

No.

35. Were affidavits submitted by STR regarding the lack of financial connections consistent with clause 12 of the ITB?

Yes. In the affidavits it was clearly mentioned that there is no financial connection between the bidders (same is not reproduced).

36. On what specific date did the respondent first become aware that the demand drafts for all three bidders originated from fly high’s account?

Refer to clarification no. 16.

37. Did the respondent attempt to verify the independence of STR, fly high and the diamonds during the tendering process?

No independent verification was done. Respondent relied on the affidavits given by the bidders about their eligibility as per the tender document (same is not reproduced).

38. On what date was the Completion Certificate issued by JVNL, as mentioned in the Notice of Arbitration under Rule 3 of the SIAC Rules, 2016 (Page 2 of 27 of the Moot Proposition), and does it include any details regarding payments made?

No clarification required.

39. Additionally, why was the Completion certificate issued by JVNL if the FIR dated 27.08.2024 had been lodged in the Daryaganj Police station against STR for allegations of “tender pooling”?

Refer to clarification no. 16.

40. Who filed the FIR dated 27.08.2024 lodged in Daryaganj Police Station against JVNL for allegations of tender pooling?

No clarification required.

41. Does the contract stand silent on the situations dictating default/breach on employer’s part or are there provisions for the same?

No clarification required.

42. If the demand draft was procured on 21.12.2024, on what basis was an FIR filed by the respondent on 27.08.2024?

Refer to clarification no. 16.

43. Was there a clause on client - Attorney privilege agreed in the contract?

There is no clause in the contract between the claimant and respondent.

44. What is the exact date of receipt of the notice of arbitration?

No clarification required.

45. Did the claimant sign against the measurements taken?

No protest was registered by the Claimant.

46. Was there a penalty stipulated for breach of contract?

No clarification required.

47. What was the relationship between fly High and Ms. Munjya?

No clarification required.

48. Which manual would apply - goods, services or works?

No clarification required.

49. How much was the exact delay (in no. of days) by JVNL in handing over the site to STR?

No clarification required.

50. What was the length (no. of days) of the “extension of time” granted to the Claimant – as mentioned in Para 10 of the Notice of Arbitration?

No clarification required.

51. Please provide the date(s) on which the SIAC Registrar received the Notice of Arbitration from the Claimant. Please also specify if there are any other relevant dates related to the receipt of this notice by the Registrar or other parties involved (e.g., date of receipt by the Respondent, date of notification by SIAC to the parties)."

No clarification required.

52. "What are Ms. Munjya's professional qualifications, including her eligibility to practice law in India or any other jurisdiction? Does her contract with STR include a confidentiality or secrecy clause, and what are the terms of her employment? Additionally, does she currently possess an advocate's license, and is she qualified to provide legal advice in her capacity as in-house counsel, while maintaining professional independence?"

Ms. Munjya is a graduate of one of the National Law Universities in India and has completed her masters in international arbitration from Zurich. Before joining as an in house counsel, she was an associate at a tier 1 law firm in India.

53. When exactly was JVNL apprised of the facts which led them to make the allegations of collusive practice against STR?

Refer to clarification no. 16.

54. Is there any evidence to establish that the respondent failed to record the work in the measurement book and thereby breached clause 44.3 (Page 9, Exhibit C1)?

No clarification required.

55. Did the Engineer-in-Charge give a notice in writing to the Claimant for default in compliance or breach of the conditions of the contract, as mandated under clause 38.1 (i) of the agreement?

No clarification required.

56. Will case laws of foreign arbitral tribunals like UNCITRAL have binding value? Will High Court and Tribunals' judgments have binding value?

No clarification required.

57. Are the IBA Rules on the Taking of Evidence in International Arbitration binding in the present case, and do they apply to the issue of legal privilege in the moot proposition?

No clarification required.

58. Should damages be assessed using specific methodologies like the Hudson or Eichleay formula? If yes, please provide the breakup of costs to apply the above formula.

No clarification required.

59. What were the bid prices submitted by the three qualifying bidders for the tender?

No clarification required.

60. Did the tender have a provision allowing joint ventures to be made to submit a bid?

Yes.

61. Could you clarify the Respondent's actual claim regarding the contract's validity? Specifically, is the Respondent asserting that the contract is void due to fraudulent misrepresentation (as stated in Page 13, Paragraph 3), or void ab initio due to the alleged fraud involving the submission of a false affidavit (as mentioned in Page 13, Paragraph 9)? Additionally, how does the distinction between 'void' and 'void ab initio' apply in this context?

No clarification required.

62. What are the details/specifications of Ms. Munjya's scope of work/ work performed for STH?

She was an inhouse counsel and use to take care of internal legal compliances and advisory.

63. Did the Registrar clear the notice without objections?

No clarification required.

64. Has the lump-sum amount for Operation and Maintenance been given to the Claimant?

No clarification required.

65. Do the letters about "the lack of adequate manpower and machinery" sent by the Respondent – as mentioned in Para 10 of the Notice of Arbitration – allege a failure on behalf of the Claimant to mobilise adequate manpower and machinery for the site to be

handed over, or did they mean that JVNL lacks adequate manpower and machinery to provide complete access to the site and construct an approach road?

The letters allege a failure on behalf of the claimant.

66. Did the Claimant raise any objections to the measurements recorded by the Respondent in pursuance of Clause 44.7, Measurements, of the Contract?

No.

67. On what basis has the Respondent claimed the Claimant's Notice of Arbitration to be "incorrectly filed" under the SIAC Rules 2016 when the same was filed before the SIAC Rules 2025 came into force?

No clarification required.

68. When did the Respondent first become aware of the possibility of any collusion between the bidders?

Refer to clarification no. 16.

69. Who has determined the arbitration to have commenced on 1 January 2025 as mentioned in Procedural Order No. 1? If such determination has been made by SIAC, kindly specify the authority who has determined it.

No clarification required.

70. What is meant by "arbitration was deemed to have commenced" under these rules?

No clarification required.

71. Whether there is any way to ascertain when the notice invoking arbitration had been received by the respondent/registrar of SIAC by providing -

- SIAC receipt of acknowledgement
- acknowledgment receipt by respondent

No clarification required.