LCIA ARBITRATION NO. 246269 **4 November 2024**

IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE LONDON COURT OF INTERNATIONAL ARBITRATION (2020)

Ores and Minerals UK Ltd.

Claimant

v.

Golden Base Industry Development Limited

Respondent

FINAL AWARD

Sole Arbitrator

Rahul Donde

TABLE OF CONTENTS

TABLE OF ABBREVIATIONS

Act	Late Payment of Commercial Debts (Interest) Act, 1998
Appendix 1	Appendix detailing the Claimant's computation of simple interest of 19 August 2024
Appendix 2	Appendix detailing the Claimant's computation of compound interest of 21 August 2024
CCIC	Certificate of weight/quantity inspection
CIQ	Quality inspection certificate
Claimant	Ores and Minerals U.K. Ltd.
Contract	Sale & Purchase Draft Contract for Iron Ore Pellet Chips and Fines (Contract Number OMUK/GBID/05) of 28 August 2023
DMT	Dry Metric Ton
LCIA	London Court of International Arbitration
LCIA Rules	LCIA Arbitration Rules 2020
LCIA Secretariat	Secretariat of the LCIA
Parties	Claimant and Respondent

Request / Request for Arbitration	Request for Arbitration of 30 May 2024
Respondent	Golden Base Industry Development Limited
Responses to the Sole Arbitrator's Questions	Claimant's "Schedule of Responses to the Tribunal's Questions" of 19 August 2024 modified on 21 August 2024
Schedule of Costs	Claimant's "Schedule of Costs" of 19 August 2024
SoC	Statement of Case i.e. Request for Arbitration of 30 May 2024
Vessel	M/V Smurfette
WMT	Wet Metric Ton

I. INTRODUCTION

A. The Parties

1. The Claimant

1. The Claimant is Ores and Minerals UK Ltd. (the "Claimant") a company incorporated in England, having its address at:

70 Gracechurch Street
London
EC3V 0HR
United Kingdom
Tel: +44 203 637 9176
Email: zak@oresminerals.com

2. The Claimant is represented by:

Javed Gaya
Chambers of Javed Gaya
Advocates & Legal Consultants
Flat 3, Rukiya Manzil
Sophia College Lane
Mumbai 400 026 India
Tel: +91 022 2351 0976
Email: javed.gaya@gmail.com

2. The Respondent

3. The Respondent is Golden Base Industry Development Limited (the "Respondent") a company registered in Hong Kong, having its address at:

Room B3, 19/F
Tung Lee Commercial Building
91-97 Jervois Street
Sheung Wan
Hong Kong
Tel: +86 137 6387 8363 / +86 189 0591 5677
Email: administration@goldenbase.cn / czh@goldenbase.cn

B. The Arbitral Tribunal

4. On 9 July 2024, pursuant to Article 5 of the Arbitration Rules of the London Court of International Arbitration, 2020 (the "LCIA Rules"), the LCIA Court directly appointed Mr. Rahul Donde as Sole Arbitrator in this arbitration. His contact details are as follows:

Rahul Donde
8 Rue Jean-Gutenberg
1201 Geneva
Switzerland
Tel.: +41 79 124 55 76
E-mail: rahuldonde@rddisputes.com

C. The LCIA Secretariat

5. The following team at the Secretariat of the LCIA (the "LCIA Secretariat") was responsible for administering this case:

Eliana Tornese
London Court of International Arbitration (LCIA)
1 Paternoster Lane,
London, EC4M 7BQ
Tel: +44 (0)20 7936 6200
Email: casework@lcia.org

II. PROCEDURAL BACKGROUND

6. On 30 May 2024, the LCIA Secretariat received the Claimant's Request for Arbitration (the "Request" or the "Request for Arbitration") of the same date under Clause 17 of "Sale & Purchase Draft Contract for Iron Ore Pellet Chips and Fines" (Contract Number OMUK/GBID/05) of 28 August 2023 (the "Contract"). Fourteen factual exhibits were appended to its submission (Exh. C-1 to Exh. C-14).

7. Pursuant to Article 2 of the LCIA Rules, the LCIA Secretariat subsequently invited the Respondent to file its Response within 28 days. The Respondent did not respond within this time limit.

8. On 9 July 2024, noting that the Respondent had not participated in the arbitration, and that the arbitration agreement at Clause 17 of the Contract required the LCIA to appoint a sole arbitrator (see below, ¶49), the LCIA Court directly appointed Mr. Rahul Donde as Sole Arbitrator in this case pursuant to Article 5 of the LCIA Rules.

9. Later the same day, the LCIA Secretariat transmitted the case file to the Sole Arbitrator.

10. On 10 July 2024, the Claimant advised the Sole Arbitrator that it elected to treat its Request for Arbitration as its Statement of Case under Article 15.2 of the LCIA Rules (the "Statement of Case" or "SoC"). It also informed the Sole Arbitrator that the Respondent had not replied

to any communications from the LCIA from the outset of the arbitration. It expected the Respondent's non-participation to continue. It reserved its right to make submissions on the most appropriate course of action if the Respondent did not file a Statement of Defence.

11. Later the same day, the Sole Arbitrator confirmed that the Tribunal was duly constituted. He acknowledged receipt of the Claimant's communication just mentioned as well as the Request for Arbitration and accompanying exhibits. Recognizing that the Respondent had not yet participated in this arbitration, he drew the Parties attention to Article 15.8 of the LCIA Rules and stated that the arbitration would continue notwithstanding the absence of the Respondent. He noted that the Respondent's contact details, as supplied by the Claimant, were the same as those provided in the Contract, and the same as those used in past dealings between the Parties.[1] He invited the Respondent to participate. He directed the Parties to comment on the means of communication to be used in this arbitration, for which he proposed that email continue to be the principal mode of communication, with certain communications additionally being sent to the Respondent via courier out of an abundance of caution. Further, he expressed his intention to conduct a procedural hearing with the Parties and invited them to indicate their availability on either 18 or 19 July 2024. He also invited the Parties to convey their proposals on the procedural calendar to be adopted in this arbitration, or, if not possible, to provide separate proposals on including on whether the dispute could be decided solely based on documents submitted. The Parties were to provide all this information by 15 July 2024.

12. On that date, the Claimant responded to the various items requested by the Sole Arbitrator. It pointed out that, following the Sole Arbitrator's directions, it had sought to initiate consultations with the Respondent on 11 July 2024. However, it did not receive any response. Considering this, the high costs of couriering documents to the Respondent's address in Hong Kong, and the fact that the Respondent had agreed to Article 4.2 of the LCIA Rules, the Claimant proposed that it only courier specific communications to the Respondent as directed by the Sole Arbitrator. It further proposed that the Respondent be given until 18 July 2024 to manifest its intention to participate in the arbitration, after which the Claimant would make further proposals on the next steps in the arbitration. It stated that it did not find it necessary to hold a procedural hearing. Finally, the Claimant proposed that

[1] These email addresses for the Respondent were administration@goldenbase.cn and czh@goldenbase.cn.

the Respondent should be granted 28 days from 10 July 2024 to submit its Statement of Defence.

13. On 17 July 2024, the Claimant advised the Sole Arbitrator that it had couriered "all relevant documents connected with this arbitration" to the Respondent's address in Hong Kong. However, delivery could not be effected. It attached the relevant correspondence. The Claimant further stated that it had also instructed a local law firm to deliver the documents to the Respondent, but that too was unsuccessful. It attached a declaration from Mr. Cheng Ka Wai who was tasked with effecting delivery. The Claimant added that under Hong Kong Law, a document could be served on a company by leaving it at, or sending in by post to, the company's registered office. Thus, valid service had been effected on the Respondent.

14. Still on 17 July 2024, the Sole Arbitrator noted that the Respondent had not replied to the Sole Arbitrator's email of 11 July 2024 despite having been served. He confirmed that email would be the principal mode of communication in the arbitration and restated the Parties' respective email addresses. He added that, out of an abundance of caution, he would direct the Claimant to courier certain communications that he felt necessary to the Respondent. He repeated his earlier invitation of 10 July 2024 to the Respondent to participate in the arbitration and to address the issues mentioned in the Sole Arbitrator's email of 10 July 2024 as well as the Claimant's email of 15 July 2024 by 26 July 2024. He would then pass further directions, keeping in mind the need to proceed with this arbitration as expeditiously as possible. He added that, ordinarily, pursuant to Article 15.3 of the LCIA Rules, the Respondent would have 28 days from 10 July 2024 to submit its Statement of Defence.

15. On 1 August 2024, the Sole Arbitrator noted that the Respondent had neither commented on the Sole Arbitrator's emails of 10 and 17 July 2024 nor on the Claimant's email of 15 July 2024. He reiterated that the Respondent had been invited to participate in the proceedings on many occasions. None of the Sole Arbitrator's emails had bounced back. Neither had he received a notification that delivery had failed. Further, the attempts to serve hard copies to the Respondent by the Claimant had been without success. In its email of 15 July 2024, the Claimant had stated that the Respondent should be granted 28 days from the Claimant's election of 10 July 2024 to have its Request for Arbitration treated as its Statement of Case to submit its Statement of Defence, reflecting Article 15.3 of the LCIA Rules. In the circumstances, also considering the Respondent's non-participation and the

Sole Arbitrator's duty to conduct this arbitration expeditiously, the Sole Arbitrator invited the Respondent to file its Statement of Defence by 7 August 2024.

16. On 15 August 2024, the Sole Arbitrator noted that the Respondent had not yet filed its Statement of Defence. He reiterated that he had invited the Respondent to participate in the arbitration on multiple occasions. None of his emails had bounced back. Neither had he received a notification that delivery had failed. However, the Respondent had still not participated. He once again invited the Respondent to participate. The Sole Arbitrator recalled that in its email of 15 July 2024, the Claimant made some proposals on the next procedural steps in the arbitration on which the Respondent had not commented despite having the opportunity to do so. In the circumstances and bearing in mind the Sole Arbitrator's duty to conduct the arbitration in a time and cost-efficient manner, the Sole Arbitrator considered that a hearing was not necessary in this arbitration. However, he raised certain questions in respect of the Claimant's prayers for relief, inviting the Claimant to respond to them on or before the expiry of the 14-day period proposed by the Claimant i.e. by 29 August 2024. The Claimant was to courier its submission to the Respondent and provide proof of delivery. The Respondent would then have 10 days to comment on the submission.

17. On 19 August 2024, the Claimant responded to the queries posed by the Sole Arbitrator in a "Schedule of Responses to the Tribunal's Questions" attaching "Appendix 1", "Appendix 2", one "Schedule of Costs", one factual exhibit (Exh. C-15) and four legal exhibits (Exh. CL-1 to Exh. CL-4). On 21 August 2024, the Claimant corrected its submission on the compound interest calculations (the "Responses to the Sole Arbitrator's Questions") and attached a revised "Appendix 2".

18. On the same day, the Sole Arbitrator directed the Respondent to comment on the submission by 2 September 2024.

19. On 29 August 2024, the Claimant informed the Sole Arbitrator that its submission had been served at the Respondent's address on 26 August 2024. Thus, if the deadline for the Respondent's response was maintained as 2 September 2024, the Respondent would not have 10 days to respond to it.

20. On the same day, noting the Claimant's concern, the Sole Arbitrator advised the Parties that even if the Respondent had been served only on 26 August 2024, it would still have

had 10 days from the date of the Response to the Sole Arbitrator's Questions to reply. In any event, out of abundance of caution, the Sole Arbitrator invited the Respondent to comment by 6 September 2024. The Respondent did not do so.

21. On 11 September 2024, the Sole Arbitrator noted that the Parties had had a full opportunity to participate in the arbitration. As their submissions were complete, he would proceed to prepare the Award.

22. On 11 October 2024, the Claimant enquired about the status of the award, to which the Sole Arbitrator replied that he would send the draft award to the LCIA for review shortly.

23. On 24 October 2024, the Sole Arbitrator sent the draft award to the LCIA for review.

III. FACTUAL BACKGROUND

A. Contract

24. On 28 August 2023, the Parties entered into the Contract pursuant to which the Claimant agreed to sell, and Respondent agreed to purchase, 50,000 metric tons of iron ore pellet chips and fines.[2]

B. Cargo under the Contract

25. Clauses 2, 3 and 4 of the Contract set out the details of the "Ore"[3] to be supplied under the Contract in the following terms:

> "2. Commodity and Quantity:
>
> 2.1 Commodity: Iron Ore Pellet Chips and Fines
>
> 2.2 Packing: Bulk
>
> 2.3 Total Quantity: 50,000 metric tons (+/- 10%) Seller's Option
>
> 3. Shipment:

[2] Exh. C-1, Contract, p.1.

[3] Id., Clause 1(a): ""Ore" means Iron Ore Pellet Chips and Fines."

Port of Loading: Sidor berth and/or Top Up Boca Serpentine Venezuela

Performing Vessel: MV SMURFETTE

Port of Discharge: MAIN PORT IN CHINA

Shipment laycan: Aug - SEP 2023

Latest shipment: 30TH SEP. 2023

Origin of Country: Venezuela

4. Iron Ore Specifications:

Chemical Specifications on Dry Basis:

SPECIFICATION:

IRON (Fe):	BASIS 62.00% min with actual Fe 65%
	(Rejection if Fe content is below Fe 62.00%)
SILICA (SiO2)	3.50% Max
ALUMINA (Al203)	2.00% Max
SULPHUR (S)	0.08%Max
PHOSPHORUS (P)	0.08%Max
MOISTURE:	4.0% (free moisture loss at 105 degrees Centigrade)

PHYSICAL SIZE (ON NATURAL BASIS)

0-10 mm 90% min".

26. Clauses 5, 6, 7 and 8 of the Contract set out the "Unit Price",[4] conditions under which there could be a price adjustment,[5] specifications for determining the weight of the shipment,[6] and the process of sampling and analysis respectively.[7]

C. Payment Terms

27. Clause 9 of the Contract set out the payment terms, first describing the basis on which payments were to be made:

> "9. Terms of Payment:
>
> Provisional payment based on Platt 62% date of B/L
>
> Final payment settlement based on PLATT 62 arrival China port
>
> PLATT 62% means average Price of Platts 62% Fe for the quotation period
>
> Quotation period means: the full calendar month of the date of NOR tendered at discharge port in China."

28. Clause 9 thus provided that while the provisional payment would be based on Platt 62% (Fe) as of the date of the bill of lading, the final payment would be based on Platt 62% (Fe) for the calendar month.

29. The provision then went on to describe the terms for making a provisional payment and the documents required:

> "The Buyer should effect 1st provisional payment in amount of 20% total cargo value loaded on vessel against copy of final Bill of Lading. The payment should be effected within 24 hours after presented from Seller to Buyer scan copy of Final Bill of Lading by email and before vessel sail.

---

4 Id., Clause 5.

5 Id., Clause 6, "Price Adjustment"

6 Id., Clause 7, "Weighment".

7 Id., Clause 8, "Sampling and Analysis"

The Buyer should effect 2nd provisional payment in amount of 75% of cargo value to the Seller within three banking day after vessel sail from Venezuela waterways by T/T transfer against presenting following documents to the Buyer:

75% Provisional Payment shall be made against the following documents presented to Buyer.

a) Signed Commercial Invoice by Email.

b) Full set of original "Clean on Board" Bills of Lading made out to order and blank endorsed marked "Freight Payable as per Charter party"

c) Seller certificate of origin by E-mail

d) Copy or Certificate of Weight as per Weight established at official weighbridge to be issued by international inspection agency

e) Copy of Certificate of Quality issued by international inspection agency at load port.

In case 2nd provisional payment of 75% of cargo value is not effected within time stipulated in the above, the Buyer is guaranteed to return full set of original bill of lading to the Seller.

The original Certificate of Weight and original Certificate of Quality will be sent by courier to the Buyer's office."

30. Final Payment was to be made as follows:[8]

"The balance 5% due shall be settled within 7 banking days after CIQ/CCIC test results

For the good relation and long cooperation between Seller and Buyer, the parties agreed that Seller will compensate to Buyer from this vessel the amount of $50,000.00 USD (Fifty Thousand US Dollars) as a partial compensation of the 3rd contract No. DFZC200095 dd 08.01.2021."

---

[8] Id., Clause 9.

31. The Clause also provided that the "CIQ/CCIC" certificate "shall be as final determination for final payment."

32. Clauses 10 and 11 of the Contract set out the shipping terms and insurance requirements. Clause 12 then provided that the title of cargo would pass to the Buyer i.e. the Respondent when the Seller i.e. the Claimant received full payment of the value of the cargo from the Buyer:

> "The title with respect to each shipment shall pass from seller to buyer when seller receives full payment of cargo value from the Buyer from the Buyer's Bank against the relative shipping documents after completion of loading on board. All risk of loss, damage or destruction respecting the ore delivered shall pass to buyer at the time of loading of the ore from the loading devices into the vessel."[9]

33. The remaining provisions of the Contract addressed licenses,[10] shipment advice,[11] banking information,[12] force majeure[13] and arbitration.[14]

D. Performance of the Contract

34. On or before 18 October 2023, the cargo to be sold under the Contract was loaded onto the vessel M/V Smurfette (the "Vessel") at Point Lisas, Venezuela as contemplated in Clause 3 of the Contract.[15]

35. On 18 October 2023, two bills of lading were issued. The first was for 41,056 wet metric tons ("WMT") of iron ore pellet chips and fines[16] and the second for 8,797 WMT of iron ore pellet chips and fines.[17]

---

[9] Id., Clause 12.

[10] Id., Clause 13, "Export/Import License and Taxes".

[11] Id., Clause 14, "Shipment Advice".

[12] Id., Clause 15, "Banking Information".

[13] Id., Clause 16, "Force Majeure".

[14] Id., Clause 17, "Arbitration".

[15] SoC, ¶13(a).

[16] Exh. C-4, Bill of Lading, 18 October 2023.

[17] Exh. C-5, Bill of Lading, 18 October 2023.

36. Correspondingly, on 19 October 2023, the Claimant issued two provisional invoices (the "First Provisional Invoice" and "Second Provisional Invoice" respectively; collectively the "Provisional Invoices") for USD 4,011,387.25 and USD 920,741.62, respectively, computed on the Platts 62% Fe price for 18 October 2023 being USD 118.35 per dry metric ton[18] ("DMT").[19] The invoices accounted for a prepayment of USD 350,000 by the Respondent, and credited the USD 50,000 mentioned in Clause 12 of the Contract.[20]

37. The Respondent subsequently paid USD 5,272,485.72.[21]

38. On 28 January 2024, the Vessel tendered Notice of Readiness at Dafeng, China.[22] Discharge began on 27 February and concluded on 2 March 2024.[23]

39. Between 27 February and 2 March 2024, quantity inspection was performed ("CCIC").[24] Quality sampling and analysis was performed on 15 March 2024, with the corresponding quality certificates being issued on 19 March 2024 ("CIQ").[25]

40. On 1 April 2024, the Claimant issued final invoices corresponding to each bill of lading (collectively, the "Final Invoices").[26] The final invoice amount in respect of the first bill of lading, computed on Platts 62% Fe (iron ore) rolling monthly average of USD 135.13 per DMT, was USD 5,274,948.52. Deducting the amount received towards the provisional invoice and making other adjustments, the Claimant requested payment of USD 873,204.42. The final invoice value in respect of the second bill of lading, computed on the same basis, i.e. Platts 62% Fe (iron ore) rolling monthly average of USD 135.13 per DMT,

---

[18] Exh. C-6, First Provisional Invoice, 19 August 2023 states that "the Dry Metric Ton (DMT) weight is calculated by deducting the moisture content from the wet metric ton (WMT) weight".

[19] Exh. C-8, SBB Steel Markets Daily, 18 October 2023, p.21.

[20] Exh. C-6, First Provisional Invoice, 19 August 2023; Exh. C-7, Second Provisional Invoice, 19 August 2023.

[21] SoC, ¶13(d). The Claimant explains "[t]he payment made by the Respondent was initially USD 1,000,000 short. The Respondent discharged this shortfall over the course of the voyage by the following payments at the Claimant's instructions: (i) USD 449,190.99 to the owners of the Vessel ("Owners"); (ii) USD 29,028.11 directly to the Claimant; and (iii) USD 521,780.90 into an escrow fund set up to enable release of the cargo by Owners."

[22] Exh. C-9, Notice of Readiness, 28 January 2024.

[23] Exh. C-10, Laytime Statement of Facts, 27 February 2024.

[24] Exh. C-11, Certificate of Weight, 5 March 2024.

[25] Exh. C-12, Quality Certificate, 15 March 2024.

[26] Exh. C-13, Final Invoices, 1 April 2024.

was USD 1,092,507.72. Deducting the amount received towards the provisional invoice, the Claimant requested payment of USD 171,766.10.[27]

41. The Claimant subsequently requested payment of the total outstanding amount of USD 1,044,970.52 (USD 873,204.42 + USD 171,766.10) and offered to "negotiate a without prejudice settlement".[28] On 17 May 2024, it once requested payment through its legal representative, stating that if payment was not made, the Claimant would initiate arbitral proceedings pursuant to Clause 17 of the Contract.[29]

42. On 17 May 2024, the Respondent replied to the Claimant as follows:

> "First of all, we have not avoided this issue and we cannot confirm your identity.
>
> Secondly, the above amount you mentioned is wrong and we do not recognize it.
>
> We only accept Mr. Yan who comes to our company to deliver the bill of lading to coordinate the related matters in the middle."[30]

43. On 30 May 2024, as recorded above, the Claimant initiated the present arbitration.

IV. THE REQUESTS FOR RELIEF

A. Claimant's Request for Relief

44. In its Statement of Case, the Claimant sought the following relief:

> "16. The Claimant will request the tribunal to issue an award:
>
> i. Declaring that the Respondent has breached the Contract by failing to make payment of the sums due and owing thereunder and/or committed the tort of conversion by dealing with the cargo;

---

[27] Id.

[28] Exh. C-3, Exchange of emails between the Respondent and Mr. Javed Gaya, 21 May 2024, p. 2.

[29] Id.

[30] Id. The Respondent's email is in Mandarin. The Sole Arbitrator relies on the Claimant's translation in Exh. C-3.

ii. Ordering the Respondent to pay to the Claimant USD 1,044,970.52 alternatively damages;

iii. Ordering the Respondent to pay to the Claimant interest, a fixed sum and reasonable costs under the Late Payment of Commercial Debts Act 1998, alternatively compound interest, on the sums awarded in (b); and

iv. Ordering the Respondent to pay the Claimant's costs."[31]

45. As mentioned above, on 15 August 2024, the Sole Arbitrator requested the Claimant to clarify the reliefs it requested. In particular:

"i. Prayer clause 16(a): does the Claimant seek a declaration that the Respondent has committed the tort of conversion in addition to a declaration that the Respondent has breached the Contract? If so, the Claimant should provide further explanations on the legal basis on which it seeks that relief in the context of the particular facts and circumstances of this dispute;

ii. Prayer clause 16(b): the Claimant should provide further explanations of what is meant by "alternatively damages";

iii. Prayer clause 16(c): the Claimant should clarify the precise sums claimed as "interest, a fixed sum and reasonable costs", "compound interest", and provide further explanations on the legal basis on which it seeks that relief.

In addition, the Claimant should furnish details of the "Claimant's costs" it seeks in prayer clause 16(d)."[32]

46. In its Response to the Sole Arbitrator's Questions, on item (i), the Claimant confirmed that it sought a declaration that the Respondent had committed a tort of conversion in addition to a declaration that the Respondent had breached the Contract.[33] On item (ii), the Claimant clarified that should the Sole Arbitrator find that the sum of USD 1,044,970.52 was not

---

[31] SoC, ¶16.

[32] Sole Arbitrator's email of 15 August 2024.

[33] Responses to the Sole Arbitrator's Questions, 19 August 2024, ¶2.

payable as a debt under the Clause 9 of the Contract and the Late Payment of Commercial Debts (Interest) Act 1998 (the "Act"), then it claimed the same amount as damages.[34] On item (iii), the Claimant clarified that it sought simple interest under the Act on the principal sum of USD 1,044,970.52 from 1 April 2024 until payment. Up until 19 August 2024, it sought US$ 53,224.31 as interest.[35] Compound interest was claimed in the alternative.[36] It detailed its interest computations in two Appendices.[37] Finally, it submitted a Schedule of Costs.[38]

47. No further modifications were made to the Claimant's request for relief.

B. Respondent's Request for Relief

48. As recounted above, the Respondent chose not to participate in the arbitration. It did not request any relief.

V. PRELIMINARY MATTERS

A. Arbitration Agreement

49. Clause 17 of the Contract provides as follows:

> "If the parties are unable to amicably reach a mutually acceptable solution to any dispute arising from this agreement, the dispute shall be referred to arbitration under the rules of the LCIA, in the English language, in London, with a single arbitrator to be agreed between the buyer and seller, failing which, to be appointed by the LCIA."

B. Language of the Arbitration

50. Pursuant to Clause 17 of the Contract, English is the language of the arbitration.

---

[34] Responses to the Sole Arbitrator's Questions, ¶4.

[35] Id., ¶¶5-8.

[36] Id., ¶¶9-11.

[37] Id., Appendix 1, Appendix 2.

[38] Id., Schedule of Costs.

C. Place of the Arbitration

51. Pursuant to Clause 17 of the Contract, the seat of arbitration is London, England.

D. Applicable Procedural Rules

52. Pursuant to Clause 17 of the Contract, the applicable procedural rules are the LCIA Rules.

E. Applicable Substantive Law

53. The Contract does not expressly state the law governing the Contract.

54. The Claimant submits that, based on the terms of the Contract and the surrounding circumstances, it is evident that the Parties intended for the Contract to be governed by English law. In any event, the outcome would be the same if the Sole Arbitrator were to apply the principles set out in Article 4(1) of Regulation (EC) No. 593/2008 ("Rome I").[39]

55. Under Article 4 of Rome I, where a contract concluded after 17 December 2009 is silent as to the applicable law, the law governing the contract is determined based on objective factors.[40] In contracts for the sale of goods, Article 4(1)(a) stipulates that the governing law is that of the habitual residence of the seller at the time of concluding the contract, unless the contract is manifestly more closely connected with another country under Article 4(3).

56. In this case, the Claimant, who is the seller under the Contract, has its habitual residence and central administration in the UK, as it is incorporated and operates from there. Furthermore, payments for the cargo supplied under the Contract were made to the Claimant's bank account in the UK.[41] Therefore, applying the tests under Article 4 of Rome I, the Sole Arbitrator concludes that the governing law of the Contract is English law.

57. English law thus applies to the Contract.

F. Communications with the Respondent and its Participation in this Arbitration

58. Article 4.1 of the LCIA Rules sets out the following rules for communications:

---

[39] SoC, ¶7.

[40] Rome I continues to apply in the United Kingdom as a result of the European Union (Withdrawal) Act, 2018.

[41] Exh. C-1, Contract, Clause 15.

"Article 4 Written Communications and Periods of Time

4.1 […]

4.2 Save with the prior written approval or direction of the Arbitral Tribunal, or, prior to the constitution of the Arbitral Tribunal, the Registrar acting on behalf of the LCIA Court, any written communication in relation to the arbitration shall be delivered by email or any other electronic means of communication that provides a record of its transmission.

4.3 Delivery by email or other electronic means of communication shall be as agreed or designated by a party for the purpose of receiving any communication in regard to the Arbitration Agreement. Any written communication (including the Request and Response) delivered to such party by that electronic means shall be treated as having been received by such party. In the absence of such agreement or designation or order by the Arbitral Tribunal, if delivery by electronic means has been regularly used in the parties' previous dealings, any written communication (including the Request and Response) may be delivered to a party by that electronic means and shall be treated as having been received by such party, subject to the LCIA Court or the Arbitral Tribunal being informed of any reason why the communication will not actually be received by such party including electronic delivery failure notification. Notwithstanding the above, the LCIA Court or the Arbitral Tribunal may direct that any written communication be delivered to a party at any address and by any means it considers appropriate."

59. In his email of 10 July 2024, the Sole Arbitrator requested the Parties to comment on the means of communication to be used in this arbitration. He proposed that email continue to be the principal mode of communication, with certain communications additionally being sent to the Respondent via courier out of an abundance of caution. The Claimant agreed with this proposal, while the Respondent did not comment. Accordingly, on 17 July 2024, the Sole Arbitrator ruled that email would be the principal mode of communication in the arbitration. He set out the Respondent's email addresses for all communications being administration@goldenbase.cn and czh@goldenbase.cn, noting that these addresses

were mentioned in the Contract[42] and had been used by the Respondent.[43] He added that, out of an abundance of caution, he would direct the Claimant to courier certain communications that he felt necessary to the Respondent.

60. All communications in this arbitration were sent to the Respondent's email addresses just mentioned. None of them bounced back. No notice of failure to deliver was received either.

61. The Sole Arbitrator is thus satisfied that the Respondent was fully advised of the progress of this arbitration. It was given a full opportunity to participate. However, it chose not to do so.

62. This conclusion is strengthened by the fact that certain communications and all of the Claimant's submissions were sent via courier to the Respondent's last known address mentioned at paragraph ¶3 above:

    a. On 26 July 2024, the Claimant advised the Sole Arbitrator that it had sent "all relevant documents connected with this arbitration", including the Statement of Case and exhibits thereto and the Sole Arbitrator's emails of 10 and 17 July 2024[44] to the Respondent's address in Hong Kong. However, delivery could not be effected.[45] The Claimant then instructed a local law firm to deliver the documents to the Respondent. Mr. Cheng Ka Wai, office assistant of Lau, Horton and Wise LLP attempted delivery once on 23 July 2024 and twice on 24 July 2024 but without success. He then left the documents in the Respondent's mailbox.[46]

    b. On 21 August 2024, the Sole Arbitrator directed the Claimant to courier its emails of 19 and 21 August 2024 and the attachments thereto, i.e. the Response to the Sole Arbitrator's Questions to the Respondent and provide proof of service. The

---

[42] Exh. C-1, Contract, p.1 setting out the Respondent's email as "administration@goldenbase.ch".

[43] Exh. C-3, the Respondent replying to the Claimant's email of 17 May 2021 from administration@goldenbase.ch.

[44] Sole Arbitrator's email of 1 August 2021.

[45] Claimant's email of 26 July 2024 and attachments thereto.

[46] Claimant's email of 26 July 2024, attaching the Declaration of Mr. Cheng Ka Wai of 25 July 2024.

Claimant did so, the documentation having been served at the Respondent's address on 26 August 2024.[47]

63. Based on the foregoing, the Sole Arbitrator is satisfied that the Respondent has received, or must be deemed to have received, communications at all stages of this arbitration and has been given a full opportunity to present its case and participate at every stage of this arbitration.

VI. JURISDICTION

64. Clause 17 (reproduced above, ¶49), provides that the Parties shall attempt to reach a "mutually acceptable solution" to any dispute arising from the Contract. If the Parties are unable to resolve the dispute, it must be referred to LCIA arbitration seated in London, with a single arbitrator appointed by the Parties or, failing agreement, by the LCIA. In this case, the dispute concerns the alleged non-payment of the Final Invoices issued under Clause 9 of the Contract. The Claimant sought to settle the dispute amicably, also offering to negotiate a "without prejudice settlement,"[48] but the Respondent did not respond. As the Parties could not agree on the appointment of a sole arbitrator, the LCIA appointed the Sole Arbitrator. In these circumstances, the Sole Arbitrator confirms that he has jurisdiction over the present dispute.

VII. MERITS

A. Claimant's Position

65. The Claimant contends that the Respondent's failure to pay the Final Invoices constitutes a breach of the Contract. It is entitled to the sum of USD 1,044,970.52 being the total amount of the Final Invoices along with interest thereon under the Act.[49] Section 12(1) of the Act does not exclude its application, as there are substantial connections between the Contract and England.[50]

---

[47] Claimant's email of 29 August 2024 and attachment thereto.

[48] Exh. C-3.

[49] Responses to the Sole Arbitrator's Questions, ¶¶6-7.

[50] Id., ¶7(a)(i).

66. According to the Claimant, Clause 9 of the Contract provides that the Final Invoices should have been paid within a period of seven days from the quality and quantity test results. The last of those results came in on 19 March 2024. Thus, the Claimant was entitled to claim interest seven days thereafter. However, it was claiming interest only from 1 April 2024 being the date it issued the Final Invoices.[51] In the alternative, the Claimant seeks compound interest on the principal sum of USD 1,044,970.52, asserting that the Sole Arbitrator has the power to grant compound interest under Article 26.4 of the LCIA Rules and Section 49(3) of the Arbitration Act 1996.[52]

67. The Claimant alternatively submits that the Respondent has "committed the tort of conversion by dealing with the cargo".[53] It argues that conversion is the act of deliberate dealing with a chattel in a manner inconsistent with another's right due to which the other person is deprived of the use and possession of such chattel.[54] In this case, title to the iron ore pellet chips and fines would only transfer to the Respondent after payment of the Final Invoices.[55] Since the Respondent has not made payment, title remains with the Claimant.[56] Nevertheless, the Respondent sold the iron ore pellet chips and fines to Yancheng Lianxin Steel Co.[57]

B. Respondent's Position

68. Despite having several opportunities to do so, the Respondent made no submissions in this arbitration.

C. Analysis

1. Breach of the Contract

69. Clause 9 of the Contract (reproduced above, ¶27), sets out the payment terms of the Contract:

---

[51] Id., ¶7(b).

[52] Id., ¶9.

[53] SoC, ¶16(a).

[54] Responses to the Sole Arbitrator's Questions, ¶3(a).

[55] Id., ¶¶3(b), 3(c).

[56] SoC, ¶13; Responses to the Sole Arbitrator's Questions, ¶¶3(e), 3(f).

[57] Responses to the Sole Arbitrator's Questions, ¶3(f).

a. Provisional payment:
    i. 20% of the total cargo value loaded on the Vessel against a copy of the final bill of lading within 24 hours of the presentation of a scanned copy of the bill of lading before sailing;
    ii. 75% of the total cargo value within three banking days of sailing against the documents listed in Clause 9 of the Contract;
b. Final payment: 5% within seven banking days after the CIQ/CCIC test results.

70. The cargo to be sold under the Contract was loaded on the onto the Vessel at Point Lisas, Venezuela on or before 18 October 2023.[58] On that day, two bills of lading were issued, the gross weight under each being 41,056.00 WMT and 8,797 WMT respectively.[59] On the following day, the Claimant issued Provisional Invoices to the Respondent. The amounts mentioned therein were computed on the Platts 62% Fe price for 18 October 2023 being USD 118.35 per DMT.[60] These amounts were paid. On 28 January 2024, the Vessel tendered Notice of Readiness at Dafeng, China.[61] Discharge commenced on 27 February and concluded on 2 March 2024.[62] Quantity inspection (CCIC) was performed between 27 February and 2 March 2024 recording the same weight of the cargo as mentioned in the two bills of lading.[63] Quality inspection (CIQ) took place on 12 March 2024, with the corresponding quality certificates being issued on 19 March 2024.[64]

71. Pursuant to Clause 9 of the Contract, the final payment under the contract should have been made within seven banking days of 19 March 2024. However, the Claimant issued the Final Invoices on 1 April 2024, seeking immediate payment of USD 873,204.42 corresponding to the first bill of lading and USD 171,766.10 corresponding to the second bill of lading.[65] Unlike the Provisional Invoices which were computed on the Platts 62% Fe price for 18 October 2023 of USD 118.35 per DMT, the Final Invoices were computed on

---

[58] SoC, ¶13(a).

[59] Exh. C-4, Bill of Lading, 18 October 2023; Exh. C-5, Bill of Lading, 18 October 2023.

[60] Exh. C-6, First Provisional Invoice, 19 August 2023; Exh. C-7, Second Provisional Invoice, 19 August 2023.

[61] Exh. C-9, Notice of Readiness, 28 January 2024.

[62] Exh. C-10, Laytime Statement of Facts, 27 February 2024.

[63] Exh. C-11, Certificate of Weight, 5 March 2024.

[64] Exh. C-12, Quality Certificate, 15 March 2024.

[65] Exh. C-13, Final Invoices, 1 April 2024.

the basis of Platts 62% Fe rolling monthly average price of USD 135.13 per DMT, as provided in Clause 9 of the Contract (¶27 et. seq.). The Respondent did not pay these Invoices. Significantly, it never complained that the iron ore pellet and chips supplied by the Claimant did not meet the contractual specifications. It also refused to engage with the Claimant when the latter sought payment of the Invoices and offered to "negotiate a without prejudice settlement".[66] In the circumstances, the Sole Arbitrator concludes that the Respondent breached Clause 9 of the Contract by not paying the Final Invoices. The amount of these Invoices i.e. USD 1,044,970.52 remains due and payable.

72. The Claimant submits that it is entitled to interest under the Act on the principal sum of USD 1,044,970.52 payable to it under the Contract. It claims compound interest in the alternative.[67]

73. Article 26.4 of the LCIA Rules provides discretion to the arbitral tribunal in granting interest:

> "26.4 Unless the parties have agreed otherwise, the Arbitral Tribunal may order that simple or compound interest shall be paid by any party on any sum awarded at such rates as the Arbitral Tribunal decides to be appropriate (without being bound by rates of interest practised by any state court or other legal authority) in respect of any period which the Arbitral Tribunal decides to be appropriate ending not later than the date upon which the award is complied with."

74. As just mentioned, the Claimant seeks interest under the Act. That legislation entitles UK businesses to claim interest on overdue payments for commercial transactions:

> "An Act to make provision with respect to interest on the late payment of certain debts arising under commercial contracts for the supply of goods or services […]".

75. Section 1(1) of the Act sets out the conditions under which statutory interest can be implied into a contract:

---

[66] Exh. C-3.

[67] Responses to the Sole Arbitrator's Questions, ¶5 ("The two interest claims referenced are in the alternative.").

> "It is an implied term in a contract to which this Act applies that any qualifying debt created by the contract carries simple interest subject to and in accordance with this Part."

76. Thus, for statutory interest to be imposed, the Act must apply (i), there must be a contract to which the Act applies (ii), and a "qualifying debt" (iii). If these requirements are met, simple interest as stipulated in the Act is payable (iv).

77. On (i), Section 1(3) provides that Part I of the Act applies subject to Part II of the Act.[68] Section 8 of the Act, which appears in Part II, provides the circumstances where statutory interest may be ousted or varied. Further, Section 12 of the Act provides the rules on which the Act applies in relation to international contracts.

78. Further, in *Martrade Shipping v United Enterprises*,[69] the High Court concluded that the Act would apply to a contract with an "international dimension"[70] if there was a "significant connection"[71] between the contract and England. The Court identified the following factors which could justify the application of the Act: (a) the place of performance of obligations under the contract is in England, especially where "the relevant debt falls to be paid in England"; (b) one of the Parties is English; (c) the parties are carrying on some relevant part of their business in England; and (d) the economic consequences of a delay in payment of debts may be felt in the UK.[72]

79. Here, the Contract does not mention interest. Neither the Provisional Invoices nor the Final Invoices mention interest. There are no circumstances to oust or vary the statutory interest potentially payable under the Act. Further, the Claimant is incorporated in England. Payments under the Contract were to be made to a bank account in England,[73] and were

---

[68] Section 1(3) of the Act: "This Part has effect subject to Part II (which in certain circumstances permits contract terms to oust or vary the right to statutory interest that would otherwise be conferred by virtue of the term implied by subsection (1))".

[69] Exh. CL-4, *Martrade Shipping & Transport GmbH v United Enterprises Corporation* [2015] 1 WLR 1.

[70] Id. §13.

[71] Id. §17.

[72] Id. §18.

[73] Exh. C-1, Clause 15.

made to that account.[74] The economic effect of the Respondent's non-payment would be felt in England.

80. In the circumstances, the Sole Arbitrator concludes that item (i) is satisfied.

81. On (ii), Section 2 of the Act prescribes the contracts to which the Act applies, providing in relevant part:

> "2. Contracts to which Act applies
>
> This Act applies to a contract for the supply of goods or services where the purchaser and the supplier are each acting in the course of a business, other than an excepted contract.
>
> (2) In this Act "contract for the supply of goods or services" means—
>
> a contract of sale of goods;
>
> […]"

82. Here, the Contract is a contract for the supply of goods (iron ore pellet chips and fines) from the Claimant to the Respondent. The Claimant and Respondent each acted in their respective courses of business.

83. The Sole Arbitrator thus concludes that item (ii) is satisfied.

84. On item (iii), Section 3 of the Act elaborates what is meant by a "qualifying debt":

> "Qualifying debts.
>
> A debt created by virtue of an obligation under a contract to which this Act applies to pay the whole or any part of the contract price is a "qualifying debt" for the purposes of this Act […]."

85. Here, Clause 9 of the Contract imposed an obligation on the Respondent to make full payment of the contract price i.e. the iron ore pellets and fines supplied under the Contract

[74] See, for e.g., Exh. C-6.

within seven banking days from the CIQ/CCIC test results. The Respondent failed to do so, creating a qualifying debt in favour of the Claimant. Item (iii) is thus satisfied as well.

86. Having thus determined that items (i)-(iii) are satisfied, the Sole Arbitrator turns to item (iv).

87. On item (iv), Section 4 of the Act first sets out the period for which statutory interest runs:

> "4 Period for which statutory interest runs.
>
> (1) Statutory interest runs in relation to a qualifying debt in accordance with this section […]
>
> (2) Statutory interest starts to run on the day after the relevant day for the debt, at the rate prevailing under section 6 at the end of the relevant day.
>
> […]
>
> The relevant day for a debt is—
>
> (a) where there is an agreed payment day, that day […];
>
> (b) where there is not an agreed payment day, the last day of the relevant 30-day period.
>
> […]
>
> An "agreed payment day" is a date agreed between the supplier and the purchaser for payment of the debt (that is, the day on which the debt is to be created by the contract).
>
> […]
>
> (7) Statutory interest ceases to run when the interest would cease to run if it were carried under an express contract term."

88. Here, pursuant to Clause 9 of the Contract, the Respondent should have made full payment within seven banking days after the CIQ/CCIC test results, the last of which were issued on 19 March 2024. The Claimant however raised the Final Invoices on 1 April 2024 and claims statutory interest from that day forward. The Claimant's commencement date is later than

the commencement date under the Act. The Sole Arbitrator agrees with the Claimant's choice of later date and concludes that statutory interest begins to run from 1 April 2024. Further, interest will run until full payment is made.

89. Section 6 of the Act then sets out the rate of interest:

> "6 Rate of statutory interest.
>
> (1) The Secretary of State shall by order made with the consent of the Treasury set the rate of statutory interest by prescribing—
>
> (a) a formula for calculating the rate of statutory interest; or
>
> (b) the rate of statutory interest."

90. Pursuant to Section 6, The Late Payment of Commercial Debts (Rate of Interest) (No. 2) Order was issued. The Order sets the rate of statutory interest as "8 per cent over the official dealing rate per annum", where "the official dealing rate" is defined as "the rate announced from time to time by [the] Bank of England".

91. As mentioned above, statutory interest begins to run from 1 April 2024. At the time, the official dealing rate was 5.25%. This rate continued until 31 July 2024, after which it was reduced to 5%.[75]

92. The Claimant has supplied the interest calculations until 19 August 2024.[76] It calculates interest from 1 April 2024 until 31 July 2024 at 13.25% p.a. (8%+5.25%) and from 1 August 2024 at 13% (8%+5%).

93. Section 4 (reproduced above, ¶87) provides that the applicable interest rate shall be "the rate prevailing under Section 6 at the end of the relevant day." It does not contemplate a change in the interest rate if the base rate changes while the qualifying debt remains unpaid. This appears reasonable, the alternative being that the rate would have to be recalculated each time the base rate fluctuates. As just seen, the rate under Section 6 at the time of the qualifying debt was 13.25%. One could argue therefore that this rate should be maintained

---

[75] Exh. C-15, Bank Rate History and Data, 15 August 2024.

[76] Responses to the Sole Arbitrator's Questions, Appendix 1.

until the date of payment.[77] The Sole Arbitrator need not address this issue. Indeed, as just mentioned, the Claimant applies a lower rate from 1 August 2024 until the date of its submission of 19 August 2024. The Sole Arbitrator accepts this claim for a lower rate of interest.

94. In the circumstances, the Sole Arbitrator concludes that interest runs from 1 April 2024 until 31 July 2024 at 13.25% p.a. In the Claimant's calculation, this amounts to USD 46,152.86,[78] which the Sole Arbitrator accepts. Thereafter, interest runs on the principal sum of USD 1,044,970.52 at 13% p.a. from 1 August 2024 until the date of payment.

95. Having concluded that the Claimant is entitled to statutory interest under the Act, the Sole Arbitrator need not decide whether the Claimant is entitled to compound interest which is claimed in the alternative.[79]

96. For the foregoing reasons, the Sole Arbitrator determines that the sum of USD 1,044,970.52 is payable as a debt under the Act, with interest accruing as follows: (i) 13.25% p.a. from 1 April 2024 to 31 July 2024, and (ii) 13% p.a. from 1 August 2024 until the date of payment.

97. In its Responses to the Sole Arbitrator's questions, relying on the Act, the Claimant submitted that "[o]nce statutory interest begins to run in relation to a qualifying debt, the supplier shall be entitled to a fixed sum [of GBP 100] in addition to the statutory interest"[80] adding that "[i]f the reasonable costs of the supplier in recovering the debt are not met by the fixed sum, the supplier shall also be entitled to a sum equivalent to the difference between the fixed sum and those costs."[81] It further clarified that "[t]he Claimant's costs in recovering the debt are those incurred in pursuing this arbitration […] and are recoverable under [the Act]".[82] Thus, the Sole Arbitrator thus understands that the reference to "a fixed

---

[77] See, for e.g., *Crema v Cenkos Securities plc* [2011] EWCA Civ 10.

[78] Responses to the Sole Arbitrator's Questions, Appendix 1. The Sole Arbitrator understands the Claimant has adopted the following methodology: [(sum due x rate of annual interest)/number of months in a year] x number of months for which interest is due. This would be (USD 1,044,970.52 x 13.25/100)/12 x 4 = USD 46,152.86.

[79] Responses to the Sole Arbitrator's Questions, ¶5 ("The two interest claims referenced are in the alternative.").

[80] Id. ¶6(f),

[81] Id. ¶6(g).

[82] Id. ¶7(e).

sum and reasonable costs" in the Claimant's request for relief (¶44) is a reference to the Claimant's costs, which are addressed below (¶¶105 et. seq.).

2. Conversion

98. The Claimant asserts that the Respondent has committed the tort of conversion and seeks a declaration to that effect.[83] However, it is not seeking any additional compensation in connection with this wrongdoing.[84]

99. The Sole Arbitrator has determined that the Respondent breached Clause 9 of the Contract, with a sum of USD 1,044,970.52 being payable, along with interest. This decision grants the principal relief sought by the Claimant. Consequently, the Sole Arbitrator does not consider it necessary to separately determine whether the Respondent has committed the tort of conversion, particularly as the Claimant acknowledges it is not seeking additional compensation for such conduct. Nevertheless, for the sake of completeness, the Sole Arbitrator proceeds to examine the Claimant's position below.

100. Clause 17 (reproduced above, ¶49) grants the Sole Arbitrator the authority to resolve disputes "arising from" the Contract. This broad formulation encompasses contractual disputes and related tort claims.[85] Furthermore, the Claimant attempted to settle the dispute amicably, but the Respondent did not respond (above, ¶64). In these circumstances, the Sole Arbitrator confirms that he has jurisdiction over the conversion claim.

101. In *Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)*, Lord Nicholls defined the tort of conversion as follows:

> "Conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it."[86]

---

[83] SoC, ¶16(a).

[84] Responses to the Sole Arbitrator's Questions, ¶3 ("The Claimant seeks damages in the sum of USD 1,044,970.52 in the alternative if the Tribunal considers that for any reason the sum of USD 1,044,970.52 is not payable as a debt […]".).

[85] See for e.g., *Premium Nafta Products Limited v Fili Shipping Company Limited* [2007] UKHL 40, ¶¶13, 27.

[86] Exh. CL-1, *Kuwait Airways Corp v Iraqi Airways Co* (Nos 4 & 5) [2002] 2 AC 883, ¶39.

102. For the tort of conversion to be established, the following elements must thus be satisfied: (i) the claimant must have an immediate right to possess the property; (ii) the respondent must have intentionally dealt with the property; (iii) the respondent's conduct must be inconsistent with the claimant's rights; (iv) the claimant must have been deprived of possession or use of the property; and (v) the respondent's actions must lack lawful justification.[87]

103. These elements are satisfied in this case. Pursuant to Clause 12 of the Contract (reproduced above at ¶32), the Claimant retained title to the cargo until it received full payment from the Respondent. As the Respondent has not made full payment, the Claimant retains title. Additionally, the Respondent retained possession of the cargo and, according to the Claimant, has further deprived the Claimant of it by since selling it to Yancheng Lianxin Steel Co. for use in the latter's steel mill.[88]

104. In these circumstances, the Sole Arbitrator concludes that the Respondent has committed the tort of conversion.

VIII. COSTS

A. Procedural Background

105. On 4 June 2024, the LCIA Secretariat directed the Claimant and the Respondent each to pay GBP 7,500 by way of an advance payment for costs. The Claimant paid its share on 20 June 2024. The Respondent did not pay its share. In light of the Respondents' failure to do so, the Claimant paid the Respondent's share on 12 July 2024. The Claimant has thus borne the full advances of the arbitration costs of GBP 15,000.

B. Claimant's Position

106. As mentioned above (¶17), on 19 August 2024, the Claimant sought recovery of its costs,[89] submitting a "Schedule of Costs" as follows:

"Schedule of Costs

---

[87] Id. ¶¶39, 108.

[88] Responses to the Sole Arbitrator's Questions, ¶3(f).

[89] Responses to the Sole Arbitrator's Questions, ¶7(e).

LCIA Costs thus far	GBP 15,000.00
Sole Arbitrator' Costs @ GBP 350/hour	GBP 7,000.00
Counsel's Costs @GBP 170/hour	GBP 6,800.00
Solicitor's Costs @ GBP 150/hour	GBP 2,250.00
Estimated Costs	GBP 31,050.00"

C. Respondent's Position

107. Despite having the opportunity to do so, the Respondent made no submission on costs.

D. Analysis

108. Article 28 of the LCIA Rules contains the following rules on costs:

> "28.1 The costs of the arbitration other than the legal or other expenses incurred by the parties themselves (the "Arbitration Costs") shall be determined by the LCIA Court in accordance with the Schedule of Costs. The parties shall be jointly and severally liable to the LCIA and the Arbitral Tribunal for such Arbitration Costs.
>
> 28.2 The Arbitral Tribunal shall specify by an order or award the amount of the Arbitration Costs determined by the LCIA Court. The Arbitral Tribunal shall decide the proportions in which the parties shall bear such Arbitration Costs (in the absence of a final settlement of the parties' dispute regarding liability for such costs). If the Arbitral Tribunal has decided that all or any part of the Arbitration Costs shall be borne by a party other than a party which has already covered such costs by way of a payment to the LCIA under Article 24, the latter party shall have the right to recover the appropriate amount of Arbitration Costs from the former party.
>
> 28.3 The Arbitral Tribunal shall also have the power to decide by an order or award that all or part of the legal or other expenses incurred by a party (the "Legal Costs") be paid by another party. The Arbitral Tribunal shall decide the amount of such Legal Costs on such reasonable basis as it thinks appropriate. The Arbitral Tribunal shall not be required to apply the rates or procedures for assessing such costs practised by any state court or other legal authority.

28.4 The Arbitral Tribunal shall make its decisions on both Arbitration Costs and Legal Costs on the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the Arbitration Agreement or otherwise. The Arbitral Tribunal may also take into account the conduct of the parties and that of their authorised representatives in the arbitration, including any cooperation in facilitating the proceedings as to time and cost and any non-cooperation resulting in undue delay and unnecessary expense. Any decision on costs by the Arbitral Tribunal shall be made with reasons in the order or award containing such decision (unless it is a Consent Award)."

109. The Rules thus differentiate between (i) "Arbitration Costs", and (ii) "Legal Costs". Further, ordinarily, tribunals should apply the "costs follow the event" rule in apportioning them, unless relevant circumstances require a different allocation.

110. The net costs of the arbitration (other than the legal or other costs incurred by the parties themselves) have been determined by the LCIA Court, pursuant to Article 28.1 of the LCIA Rules, to be as follows:[90]

Registration fee:	GBP 1,950.00
LCIA's administrative charges:	GBP 2,615.65
Tribunal's fees:	GBP 11,861.33[91]
Total costs of the arbitration:	GBP 16,426.98

111. Towards these costs, the Claimant has paid £17,340.11, which includes the registration fee and advance payments. The Respondent has made no payments towards this arbitration. A total therefore of £17,340.11 has been received from the Claimant (GBP 16,426.98 +

[90] The Claimant's Schedule of Costs reflects an amount of GBP 7,000 towards "Sole Arbitrator' Costs". This amount is not reflected below as neither the Sole Arbitrator nor the LCIA Secretariat have received it.

[91] The Sole Arbitrator has written off some of his fees so as not to ask for additional advances from the Claimant.

VAT of GBP 913.13) which has been used towards the costs of the arbitration, leaving nil balance on the LCIA account.

112. The Claimant has succeeded on all its claims in this arbitration. The Sole Arbitrator sees no reason not to apply the costs follow the event rule. Therefore, these Costs should be borne by the Respondent. The Respondent is directed to pay GBP 17,340.11 to the Claimant.

113. On (ii), the Claimant seeks recovery of its Legal Costs of GBP 9,050.[92] These costs are reasonable and commensurate with the fees charged in disputes of similar complexity. Here again, the Sole Arbitrator sees no reason not to apply the costs follow the event rule. These Costs should thus be borne by the Respondent. The Respondent is directed to pay GBP 9,050 to the Claimant.

IX. DECISION

114. For the foregoing reasons, the Sole Arbitrator:

a. Determines that he has jurisdiction over the present dispute;

b. Declares that the Respondent has breached Clause 9 of the Contract by failing to pay the Final Invoices;

c. Orders the Respondent to pay to the Claimant an amount of USD 1,044,970.52 along with interest thereon accruing as follows:

i. 13.25% p.a. from 1 April 2024 to 31 July 2024 amounting to USD 46,152.86; and

ii. 13% p.a. from 1 August 2024 until the date of payment.

d. Orders the Respondent to pay to the Claimant, GBP 17,340.11 towards the Arbitration Costs;

[92] Claimant's Schedule of Costs, seeking GBP 6,800 towards "Counsel's Costs" and GBP 2,250 towards "Solicitor's Costs".

e. Orders the Respondent to pay to the Claimant, GBP 9,050 towards the Legal Costs incurred in connection with this arbitration; and,

f. Dismisses all other prayers for relief.

Seat of the arbitration: London, United Kingdom

Date: 4 November 2024

The Sole Arbitrator:

Rahul Donde