

**AT THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE**

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION  
RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE  
(6<sup>TH</sup> EDITION, 1 AUGUST 2016)**

**SIAC ARBITRATION NO. 277 OF 2021**

Between

**ORES AND MINERALS UK LTD**  
*(Claimant)*

And

**ANH SON THUY CO., LTD**  
*(Respondent)*

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**FINAL ARBITRATION AWARD**

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Dated this 2<sup>nd</sup> day of May 2023

Registered in SIAC Registry of Awards as:  
**Award No. 062 of 2023**  
on 02 May 2023



IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE  
SINGAPORE INTERNATIONAL ARBITRATION CENTRE  
(6<sup>TH</sup> EDITION, 1 AUGUST 2016)

ARBITRATION NO. 277 OF 2021

Between

**ORES AND MINERALS UK LTD**

..... Claimant

And

**ANH SON THUY CO., LTD**

..... Respondent

**FINAL ARBITRATION AWARD**

Issued by

K. Jaya Prakash (Presiding)

Simon Davidson

Dr. Hop X Dang

At Singapore on 2 May 2023

Seat of arbitration : **SINGAPORE**

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1. **TABLE OF KEY ABBREVIATIONS**

The Tribunal adopts the following definitions of terms in this Award as a matter of convenience.

<b>Addendum No. 1</b>	:	Addendum to the Contract entered into between the Parties and dated 26 March 2021
<b>Cargo</b>	:	50,000 mt (+/- 10% at the seller's option) of iron ore pellet chips and fines more particularly described in the Contract
<b>Claimant</b>	:	Ores and Minerals UK Ltd
<b>Contract</b>	:	the contract dated 24 March 2021 entered into between the Claimant and the Respondent concerning the sale by the Claimant and purchase by the Respondent of the Cargo, and where the context requires, includes Addendum No. 1
<b>IAA</b>	:	International Arbitration Act 1994 (2020 Rev. Ed) of Singapore
<b>L/C</b>	:	the irrevocable, non-transferable letter of credit payable at sight in United States

Dollars in favour of the Claimant for US\$ 6,000,000.00 required to be opened by the Respondent in accordance with the terms of the Contract and Addendum 1

<b>LISCO</b>	:	Libyan Iron and Steel Company
<b>MODEL LAW</b>	:	UNCITRAL Model Law on International Commercial Arbitration (as set out in the First Schedule to the IAA)
<b>NOA</b>	:	the notice of arbitration addressed to the Respondent dated 8 September 2021 issued on behalf of the Claimant by its solicitors
<b>Parties</b>	:	the Claimant and the Respondent and 'Party' refers to either of them
<b>POSCO</b>	:	POSCO International Corporation of Seoul, South Korea
<b>Respondent</b>	:	Anh Son Thuy Co., Ltd
<b>SIAC</b>	:	Singapore International Arbitration Centre

**SIAC Rules**

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

**Vessel**

m.v. Manta Asli

## 2. **INTRODUCTION**

2.1 The dispute relates to the claim by Ores and Minerals UK Ltd (“the Claimant”) against Anh Son Thuy Co., Ltd (“the Respondent”) for US\$1,126,748.49 in respect of damages for detention, US\$426,741.49 for damages relating to deadfreight incurred, interest on the damages claimed for the period from 18 June 2021 to the date of payment at such rate as the Tribunal shall determine, legal and arbitration costs and interest on such legal and arbitration costs as are awarded in respect of the Respondent’s alleged repudiation of a contract (“the Contract”) in which the Claimant as seller sold to the Respondent a cargo of 50,000 mt (+/- 10% at the seller’s option) iron ore pellet chips and fines (“the Cargo”) on terms more fully set out in the Contract.

### 2.2 Parties

2.2.1 The Claimant is a company incorporated under the laws of the United Kingdom and having its corporate office at 70, Gracechurch Street, London EC3V OHR, United Kingdom, telephone numbers being + 44 203 637 9176 / + 34 663 151 840 and Email address being zak@oresminerals.com.

- 2.2.2 The Claimant is represented by Holman Fenwick Willan (Michael Buisset and Caroline West) of Cours de Rive 13-15, 6<sup>th</sup> Floor, 1204, Geneva, Switzerland, telephone numbers being + 41 (0) 22 322 4801 / + 41 (0) 22 322 4809 and Email addresses being michael.buisset@hfw.com and caroline.west@hfw.com.
- 2.2.3 The Respondent is, from the particulars given by the Claimant, a company situated in Vietnam with an address at Hung Vuong Street, Area No. 8, Hai Hoa Ward, Mong Cai City, Quang Ninh, Vietnam, telephone numbers + 84 2033 608881 and Email addresses being alex@atexim.com, thucuc@hoaphat.com.vn and huyenntt@hoaphat.com.vn.
- 2.2.4 The Respondent has not participated or been represented in the arbitration. Notwithstanding that the Respondent has so far not participated in the proceedings, all communication from the Tribunal in relation to the arbitration have been duly addressed to and sent to both Parties. Further, prior to the constitution of the Tribunal, SIAC successfully delivered, among others, the commencement letter of this arbitration with a copy of the Claimant's Notice of Arbitration to the Respondent at the physical and email addresses specified above at paragraph 2.2.3 of this Award: the commencement letter dated 15 September 2021 was delivered at the physical address of the Respondent on 29 September 2021 and at the email address of the Respondent on 15 September 2021. By way of the commencement letter, SIAC notified the Parties of the commencement of this arbitration, requested the Respondent to submit its Response to the Notice of Arbitration pursuant to the SIAC Rules, and invited the Respondent to nominate its party-nominated co-arbitrator pursuant to the arbitration agreement between the Parties.

### 3. PROCEDURAL HISTORY

#### 3.1 Key relevant provisions in the Contract regarding dispute resolution

3.1.1 The Contract provides as follows :

#### ARTICLE 14 – GOVERNING LAW AND INTERPRETATION

“This Contract shall be governed by SINGAPORE law, but without regard to SINGAPORE’s conflicts of law provisions. The parties agree that the Convention on the International Sale of Goods shall not apply.

The ICC International Commercial Terms abbreviated as INCOTERMS 2010 and as amended, shall apply to this Contract. In case of conflict between the law of SINGAPORE and INCOTERMS 2010, the parties must apply INCOTERMS 2010.”

#### ARTICLE 15 – ARBITRATION

“Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the SINGAPORE International Arbitration Center (“SIAC”) in accordance with its Rules (SIAC RULES).

Unless otherwise agreed by the parties, the number of arbitrators shall be three, with each party nominating a single arbitrator and the two arbitrators so nominated consulting and jointly appointing a third arbitrator, who shall serve as chair. In the event both or either of Buyer or Seller fails to choose an arbitrator within the time deadline established by the SIAC Rules, or the two party nominated arbitrators are unable to agree on a third arbitrator within 30 days after their appointment, the SIAC shall have the power, upon the request of a party, to appoint the arbitrator(s) required to complete the tribunal.

The place of the arbitration shall be Singapore, and the arbitration shall be conducted in English. The Arbitrators shall have the power to award the costs of the arbitration, including the fees of the arbitrators and the legal fees incurred by the prevailing party, to the prevailing party. The arbitrators shall not award punitive damages. Any decision or award issued by the arbitrators shall be a reasoned decision setting forth the factual and legal grounds for such decision or award.

The prevailing party shall be free to enforce any award(s) issued by the arbitration panel in any court of competent jurisdiction, but shall not be limited to one such court.

The arbitration award shall be final and binding on both Parties.”

3.2 From the above provisions, it is clear to the Tribunal that the Parties expressly agreed that the arbitration would be administered by SIAC and governed by the SIAC Rules. The Contract is governed by Singapore law and the ICC International



Commercial Terms abbreviated as INCOTERMS 2010 within the limitations set out in Article 14 of the Contract. The International Arbitration Act 1994 (2020 Rev. Ed) of Singapore (“IAA”) applies to this arbitration as the seat of this arbitration is Singapore.

3.3 The Claimant submitted the Notice of Arbitration dated 8 September 2021 (“NOA”) to the SIAC. Pursuant to Rule 3.4 of the SIAC Rules, the Claimant informed that it had sent a copy of the NOA to the Respondent by email and courier.

3.4 Pursuant to Rule 3.3 of the SIAC Rules, this arbitration was deemed to have commenced on 9 September 2021.

3.5 Appointment of the Tribunal

(a) The Claimant in its Notice of Arbitration dated 8 September 2021 nominated Mr Simon Davidson as its party-nominated co-arbitrator pursuant to the arbitration agreement between the Parties. As set out above at paragraph 2.2.4, SIAC invited the Respondent to nominate its party-nominated co-arbitrator pursuant to the arbitration agreement between the Parties. SIAC’s invitation to nominate a co-arbitrator was delivered to the Respondent at its physical address on 29 September 2021 and at its email address on 15 September 2021. The Respondent did not respond to the invitation to nominate its party-nominated co-arbitrator. By way of emails dated 7 April 2022 and 19 April 2022, the Claimant requested that SIAC confirm the appointment of the Claimant’s party-nominated co-arbitrator and appoint the Respondent’s party-nominated co-arbitrator on behalf of the Respondent pursuant to the arbitration agreement between the Parties. On 19 April 2022, SIAC again invited the Respondent to comment on the Claimant’s request.

Despite the multiple opportunities given, the Respondent did not provide any comment on the Claimant's request for SIAC to appoint an arbitrator on behalf of the Respondent.

Consequently, the President of the Court of Arbitration of SIAC ("**President**") appointed Mr Simon Davidson pursuant to Rule 9.3 of the SIAC Rules and Dr Hop X Dang pursuant to Rule 11.2 of the SIAC Rules as co-arbitrators on 13 May 2022. Their contact details are as follows :

**Mr Simon Davidson**

1 Douglas Terrace, Broughty Ferry,  
Tayside, Scotland,  
UK DD5 1EA  
Email : arbitrator@simondavidson.sg

**Dr Hop X Dang**

c/o Hop Dang's Chambers  
91 Nguyen Khuyen Street  
Dong Da District  
Hanoi, Vietnam  
Email: hop@hopdang.com

SIAC notified the Parties of the appointment of the co-arbitrators by letter dated 13 May 2022.

(b) The co-arbitrators jointly nominated Mr Jaya Prakash as the presiding arbitrator pursuant to the arbitration agreement. The President appointed Mr Jaya Prakash as the presiding arbitrator pursuant to Rule 9.3 of the SIAC Rules on 1 June 2022. His contact details are as follows :

**Mr Jaya Prakash**

28 Maxwell Road #02-23  
Maxwell Chambers Suites  
Singapore 069120  
Email : kjp@kjayaprakash.sg

The Tribunal was constituted with the appointment of Mr Jaya Prakash. SIAC notified the Parties of the appointment of the presiding arbitrator and the constitution of the Tribunal by letter dated 1 June 2022.

3.4 Service of proceedings and other procedural and ancillary matters

3.4.1 As soon as the Tribunal was constituted, it had to consider the issue of service of communication on the Respondent.

3.4.2 On 6 June 2022, the Tribunal sent a message to the Parties requesting that by close of business in Singapore on Monday 20 June 2022, the Parties were to let it know :

- (i) whether parties have agreed to timelines for the filing of Claim, Defence and subsequent submissions;
- (ii) alternatively, if they could let the Tribunal know how long they each required for the filing of these submissions;
- (iii) whether there was an issue on the jurisdiction of the Tribunal to be dealt with and if there is, to give details thereof.

3.4.3 The aforesaid message was sent to the Claimant at its solicitors' address. As for the Respondent, it was sent by courier to the Respondent's address set out below:

Anh Son Thuy Co Ltd  
Hung Vuong Street, Area No. 8,  
Hai Hoa Ward  
Mong Cai City, Quang Ninh  
Vietnam

3.4.4 The courier package sent to the Respondent was delivered on 8 June 2022. Confirmation of delivery was obtained from the courier company and a copy of the confirmation of delivery is shown in Annex 1.

3.4.5 The message from the Tribunal dated 6 June 2022 was also sent to the Respondent at the following email addresses :

- a) alex@atexim.com
- b) thucuc@hoaphat.com.vn
- c) huyenntt@hoaphat.com.vn

All these email addresses were found in the correspondence moving from the SIAC to the Respondents dated 1 June 2022, as presented to the Tribunal.

3.4.6 There was no 'bounce-back' from these email addresses or any indication of failure of receipt.

3.4.7 All subsequent messages from the Tribunal to the Parties were sent in the manner set out heretofore i.e. by email and airmail to the Claimant's solicitors and by email and courier to the Respondent. There is confirmation of delivery from the courier company.

3.4.8 In relation to communication with the Parties, the Tribunal has paid due regard to the provisions of Rule 2.1 of the SIAC Rules which reads as follows :

**"2.1 For the purposes of these Rules, any notice, communication or proposal shall be in writing. Any such notice, communication or proposal may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other appropriate means that provides a record of its delivery. Any notice, communication**

or proposal shall be deemed to have been received if it is delivered: (i) to the addressee personally or to its authorised representative; (ii) to the addressee's habitual residence, place of business or designated address; (iii) to any address agreed by the parties; (iv) according to the practice of the parties in prior dealings; or (v) if, after reasonable efforts, none of these can be found, then at the addressee's last-known residence or place of business."

3.4.9 The Tribunal considers its written notification to the Parties to have been delivered pursuant to Rule 2.1 of the SIAC Rules.

3.4.10 The Tribunal also makes reference to Article 3(1) of the Model Law which provides as follows :

**"Article 3. Receipt of written communications**

**(1) Unless otherwise agreed by the parties:**

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;**
- (b) the communication is deemed to have been received on the day it is so delivered."**

3.4.11 The Tribunal has arrived at the determination that the requirements of Article 3(1) of the Model Law aforesaid have been met in relation to its written communication with the Parties.

3.4.12 On the issue of communication, the Tribunal takes note of para 57.4 of the Statement of Claim which reads as follows :

- "(a) On 8 September 2021 the Claimant filed a notice of arbitration. The Respondent was copied into by email to SIAC attaching the notice of arbitration and no bounce back was received from the Respondent's address.**

- (b) **Two copies of the notice of arbitration were sent to the Respondent by courier at its address in Vietnam. Proof of delivery by TNT on 14 September 2021 and by DHL on 24 September 2021 is attached.**
- (c) **A copy of the notice of arbitration was sent by courier to Hoa Phat International Pte Ltd in Singapore and was delivered on 20 September 2021. Proof of Delivery is attached.”**

3.4.13 Proof of delivery of the NOA by the courier companies to the Respondent at its address in Vietnam on two occasions, namely 14 September 2021 and 24 September 2021 was provided by TNT and DHL respectively and these are attached as Annex 2(i) and Annex 2(ii) respectively.

3.4.14 On 29 June 2022, the Tribunal wrote to the Parties to propose that it hold a meeting with them on 13 July 2022 at 1500 hrs Singapore time. The Tribunal stated in this message that if either of the Parties was unable to make this time, it was to inform the Tribunal of its inability by or before close of business in Singapore on 6 July 2022.

3.4.15 The Tribunal received confirmation from the Claimant of its solicitors' ability to attend the proposed meeting. It did not hear from the Respondent within the time specified or at all.

3.4.16 On 7 July 2022, the Tribunal informed the Parties that its meeting with the Parties would take place on Wednesday 13 July 2022 at 1500 hrs Singapore time; details of the Zoom link were given in that message.

3.4.17 The meeting over the Zoom platform was held as scheduled on 13 July 2022. The Claimant was represented by Mr Michael Buisset and Ms Caroline West. The Respondent was not present.

3.4.18 Order for Directions No. 1 dated 15 July 2022 was issued pursuant to the meeting, in the following terms:

“The Tribunal gave notice of a meeting with the Parties by way of a letter dated 7 July 2022. The meeting was held via the Zoom platform on 13 July 2022 at 1500 hrs (Singapore time). Present at the meeting apart from the Tribunal were Mr Michael Buisset and Ms Caroline West representing the Claimant. The Respondent was not present or represented at the meeting. Pursuant to discussions held at the meeting and after giving matters so discussed due and careful consideration, the Tribunal hereby directs as follows:

**1 Parties**

In these proceedings, ORES AND MINERALS UK LTD is the Claimant and ANH SON THUY CO., LTD, is the Respondent.

**2. Law & Procedure**

2.1 The applicable law of the arbitration proceedings shall be the law of Singapore and the International Arbitration Act (CAP 143A) of Singapore.

2.2 The applicable governing rules for the proceedings are the Singapore International Arbitration Centre Rules, 6th Edition, 1 August 2016.

**3. Statements**

3.1 The Claimant shall deliver its Statement of Claim to the Respondent (with a copy to the Tribunal), by or before close of business in Singapore on  
: 20 July 2022

3.2 Should the Respondent have any jurisdictional challenge which is to be dealt with as a preliminary issue, then it is to submit its application, by or before close of business in Singapore on  
: 10 August 2022

3.3 The Respondent shall deliver its Statement of Defence (and Counterclaim if any) to the Claimant (with a copy to the Tribunal), by or before close of business in Singapore on  
: 24 August 2022

3.4 Any statements of witnesses are to be delivered by the Parties to each other and to the Tribunal by or before close of business in Singapore on  
: 28 September 2022

3.5 All Statements (including the statements from witnesses) shall contain in full detail the facts in chronological order which the party concerned (or the witness) relies on, denies or admits and shall be accompanied by copies of all documents which establish the facts or support the contentions.

**4. Service**

4.1 Documents specified in paragraph 3 above shall be deemed to have been served on the other party to the proceedings and to the Tribunal on the date on which they are transmitted by email transmission.

4.2 One (1) hard copy of all statements or documents required to be delivered or served shall be served on each member of the Tribunal and on the Singapore International Arbitration Centre as well as by each party on the other.

5. **Further Conduct**

5.1 **The Tribunal will issue directions for the further conduct of these proceedings after all documents specified in paragraph 3 above have been submitted.**

5.2 **There shall be liberty to apply.**

**Date : 15 July 2022**

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**JAYA PRAKASH  
(on behalf of the Tribunal)"**

3.4.19 The Claimant filed its Statement of Claim on 28 July 2022 after obtaining an extension of time from the Tribunal to do so. The Respondent did not submit any Statement of Defence. Nor did it file any application to challenge the Tribunal's jurisdiction to conduct these proceedings and make its determination on the disputes presented.

3.4.20 The Tribunal makes reference to Rule 20.9 of the SIAC Rules which provides as follows :

**"If the Respondent fails to submit its Statement of Defence, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration."**

3.4.21 The Tribunal took the position that as the Respondent failed to submit its Statement of Defence and also did not avail itself of the opportunity to challenge the Tribunal's jurisdiction if it felt that it could, the Tribunal would proceed with the arbitration.

3.4.22 The Tribunal takes support for its position also from Article 25(b) and (c) of the Model Law, the terms of which are set out below :



**“Article 25. Default of a party**

**Unless otherwise agreed by the parties, if, without showing sufficient cause .....**  
.....

- (b) the respondent fails to communicate his statement of defence in accordance with Article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations;**
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.”**

3.4.23 On 26 September 2022, the Tribunal issued Directions to the effect that it would conduct a meeting with the Parties via the Zoom platform on Wednesday, 19 October 2022 at 4.00 pm Singapore time to discuss the following :

- (a) if any party would wish to make any further submissions (including submissions on the law) or deliver any witness statements and the timelines for the provision of these submissions;
- (b) whether an oral hearing is to be scheduled for evidence to be adduced or alternatively for Closing Submissions to be made and the date for such a hearing;
- (c) any other matter which the Parties or the Tribunal may raise in relation to the progress of this arbitration proceeding.

3.4.24 The meeting was held on 19 October 2022 at the scheduled time. Representing the Claimant were Mr Michael Buisset and Ms Caroline West. The Respondent was not present or represented at the meeting.

3.4.25 Pursuant to discussions held at the meeting and after giving matters so discussed due and careful consideration, the Tribunal communicated the following directions to the Parties:

(1) the hearing of factual and legal arguments and submissions was to be held via the Zoom platform on Thursday, 24 November at 4.00 pm Singapore time.

(2) the Tribunal would receive submissions on :

(a) the queries which the Tribunal had raised or will raise with the Parties including, among others, matters relating to the issue of the damages the Claimant says it sustained, such submissions to be made, by or before close of business in Singapore on 17 November 2022;

(b) costs payable by one party to the other and in relation to these costs, the basis on which they are calculated and all other details relevant and necessary to enable the Tribunal to arrive at a decision on the same, such submissions to be made by or before close of business in Singapore on 17 November 2022;

(c) interest payable if any, by one party to the other, including the rate of interest as well as the period for which interest is payable, such submissions to be made by or before close of business in Singapore on 17 November 2022

3.4.26 The list of queries put forward by the Tribunal on which submissions were required to be made by the Parties is as follows :

1) Demurrage

- (a) there is an email message dated 27 April 2021 (timed : 10:07) from the Claimant to the Respondent by which the Claimant notified the Respondent that the Cargo had been sold to another seller and that :
  - (i) the vessel MANTA ASLI should berth and commence loading on 27 April 2021;
  - (ii) loading was to be completed by 5 to 10 May at the latest
- (b) It is noted from the laytime calculation sheet issued on behalf of the owners of the Vessel that loading commenced on 12 May 2021

The Tribunal would like an explanation on why loading commenced only on 12 May 2021 when by its email message of 27 April 2021, the Claimant said that it would start on that day and end at the latest by 10 May 2021. Was this related to the date the substitute contract was concluded and the date a letter of credit was opened under it? When was that contract concluded and the letter of credit opened? If so can copies of the relevant documents be provided?

Only 46,256MT had been loaded by 27 May (15 days after commencement of loading) yet the fixture note provided for 5,000MT per day. Why was that?

In addition to providing submissions on the reason for the delay in loading, Parties are to address the Tribunal on whether it was reasonable for the

Vessel to stay that long at the port and incur the amount of demurrage that is being claimed.

2) Deadfreight

- (a) the exact amount of deadfreight being claimed and the calculations by which the amount is arrived at.
- (b) evidence that the sellers in the second contract had exercised an option to load 10% more of the contractual amount of 50,000 mt specified in the contract made between the Claimant and the Respondent.
- (c) it is argued that the Vessel was ordered out of the berth before loading of the cargo in respect of the second contract was completed. If this was the case, by whom was the Vessel ordered out of berth, what was the capacity of such person, and when was such an order given.
- (d) what information if any was obtained from the loadport terminal as to when the Vessel would be able to re-berth after it was ordered out.
- (e) why could loading not continue at the anchorage?
- (f) the calculations which the Claimant made on which it based its decision that incurring continuing demurrage would prove to be more costly than making a claim for damages based on short loading.

3.4.27 On 21 November 2022, the Tribunal received from the Claimant :

- a) answers to the Tribunal's aforementioned queries, including submissions on costs and interest;
- b) supporting documents attached to the answers;
- c) a first witness statement from Amjad Zak Imam dated 21 November 2022 together with exhibits; and
- d) a costs schedule detailing claims for legal costs and disbursements.

3.4.28 The Tribunal did not receive any response from the Respondent.

3.4.29 The hearing of the arbitration took place on 24 November 2022 at 4.00 pm Singapore time via the Zoom platform. Representing the Claimant were Ms Caroline West and Ms Lucy Hanson. The Respondent did not appear and was not represented. No transcription services were provided at the hearing.

3.4.30 At the meeting, the Tribunal heard submissions from the Claimant through its solicitors. Queries were raised by the Tribunal in relation to a number of matters including the following:

- (i) the naming of POSCO in the fixture note dated 6 April 2021 relating to the Vessel;
- (ii) the replacement contract entered into between the Claimant and POSCO;

- (iii) the sequence of events relating to the entry into and departure from the berth of the Vessel at the loading port;
- (iv) the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) ("CISG").

3.4.31 Consequently, Order for Directions No. 6 dated 28 November 2022 was issued by the Tribunal in the following terms :

**"Pursuant to Order for Directions No. 5 dated 25 October 2022, the hearing of factual and legal arguments and submissions was held via the Zoom platform on Thursday, 24 November 2022 at 4.00 pm Singapore time. The Claimant was represented by Ms Caroline West assisted by Ms Lucy Hanson. The Respondent was not present or represented at the hearing.**

**The Claimant presented its oral submissions and requested that it provides further submissions to the Tribunal on matters arising from submissions made.**

**Having considered the matter,**

**the Tribunal ORDERS AND DIRECTS that :**

- a) the Claimant shall file its further submissions including as to any additional costs, by or before close of business in Singapore on : 15 December 2022**
- b) the Respondent shall file any response it wishes to make to the further submissions made by the Claimant, by or before close of business in Singapore on : 29 December 2022**

**Dated the 28<sup>th</sup> day of November 2022**

**JAYA PRAKASH**  
**(on behalf of the Tribunal)"**

3.4.32 The Tribunal received the following from the Claimant on 16 December 2022 :

- (i) the Claimant's further submissions dealing with the queries raised by the Tribunal on the submissions made by the Claimant at the hearing;
- (ii) an updated costs schedule submitted by the Claimant; and

(iii) the second witness statement from Amjad Zak Imam dated 15 December 2022 also dealing with the matters raised by the Tribunal set out in (i) above.

3.4.33 The Respondent did not raise any response to the additional submissions and documents presented by the Claimant pursuant to Order for Directions No. 6. In view of the single day's delay and the absence of any objection from the Respondent, the Tribunal admitted and considered these submissions and documents.

3.4.34 Pursuant to Rule 32.1 of the SIAC Rules, these proceedings were closed on 15 February 2023 and the Tribunal proceeded to consider its Award. In this regard, the Tribunal makes reference to Rule 20.9 of the SIAC Rules and Articles 25(b) and (c) of the Model Law<sup>1</sup> and made a determination that in the circumstances, it was appropriate for it to proceed to consider its Award.

#### **4. THE CLAIM**

4.1 As pleaded in the Statement of Claim, the Claimant claims against the Respondent:

- (a) US\$1,126,748.49 for damages for detention;
- (b) US\$426,741.49 in respect of damages relating to the deadfreight incurred;
- (c) interest on US\$1,126,748.49 and US\$426,741.49 from 18 June 2021 to the date of payment at such rate as the Tribunal shall think fit;

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<sup>1</sup> See para 3.4.20 and 3.4.22 of the Award.

(d) legal costs;<sup>2</sup>

(e) interest on the legal costs awarded at such rate and for such period as the Tribunal shall think fit.

4.2 The Tribunal will analyse the various facets of the Claimant's claim in turn. Although the Respondent has not participated in the present proceedings, the Tribunal will, in the course of determining the Claimant's claim, also deal with such defences that reasonably appear to be open on the materials before it. Such an approach is required not only as a matter of fairness to the absent Respondent, it also enables the Tribunal to comprehensively evaluate the validity of the Claimant's claim and to ensure that it is properly proved. The fact that the Respondent is not present does not obviate the necessity on the part of the Claimant to prove its case to the satisfaction of the Tribunal. In terms of the evidence, because the Respondent did not appear to adduce any evidence, the Tribunal only has the benefit of the evidence tendered by the Claimant and will make its determinations based on the evidence given by the Claimant unless the Tribunal considers any of such evidence not admissible or unreliable.

4A **Was there in existence a valid and enforceable contract ("the Contract") between the Parties?**

4.3 The Tribunal has been shown in evidence, a contract dated 24 March 2021 and numbered : 01/AST-OMUK/03.2021. It is made by and between the Buyer named

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<sup>2</sup> It is noted that in its Answers to Outstanding Questions Put Forward By the Tribunal During the Hearing on 24 November 2022 sent by way of an email to the Tribunal and to the Respondent on 16 December 2022, the Claimant also made a claim for arbitration costs.



Anh Son Thuy Co., Ltd with an address at Hung Vuong Street, Area No. 8, Hai Hoa Ward, Mong Cai City, Quang Ninh, Vietnam, represented by Do Van Thang, Director, and the Seller named Ores and Minerals UK Ltd with an address at 70 Gracechurch Street, London EC3V OHR, United Kingdom, represented by Amjad Zak Imam, Director.

4.4 The Contract is for the sale and purchase of iron ore pellet chips and fines packed in bulk, of African origin and of specifications set out in the document. The quantity set out in the Contract was 50,000 mt (+/- 10% at seller's option).

4.5 The following clauses in the Contract are of relevance :

“(i) **ARTICLE 5 – SHIPMENT:**

“Latest shipment date: 30<sup>th</sup> April 2021.

Laycan at Loading Port: from 10-20 April eta 12/13 April

Transshipment: Not allowed;

Partial shipment: Not allowed

The shipment of the Material shall be made in bulk and delivered on a CFR basis under INCOTERMS 2010.

The Goods shall be delivered in one shipment by ocean vessel chartered by Seller at Seller's cost. The Seller undertakes that all costs, freight in respect of the vessel shall be promptly paid by the Seller to avoid any delay in delivery and discharge of the Material.”

(ii) **ARTICLE 7 – PRICE:**

“**7.1 BASE PRICE AND INVOICING**

The Unit Price/DMT for the Goods will be determined as below:

Unit Price = Published Market Price – Discount  
The Discount is USD 10.00 per DMT.

Where:

“PMP” or “Published Market Price” means:

+ for purpose of Provisional Payment and provisional value of shipped cargo: the average of the latest available Market Index, in US\$ per tonne, for all published days in March 2021;

+ for purpose of Final Payment and final value of shipped cargo: the average of the latest available Market Index, in US\$ per tonne, for all published days in Bill of Lading month.

“Market Index” means the Platts “IODEX 62% CFR China” Index as published in Platts Steel Market Daily.

The base price is based on %Fe is 65% and understood that CFR price at Cam Pha Port, Vietnam Incoterms 2010.

Invoicing: Based on actual dry metric ton (DMT), to be calculated as below formula:

$$\text{DMT} = \text{WMT} * (1 - \% \text{ moisture})$$

## 7.2 PRICE ADJUSTMENT

### 7.2.1 PRICE ADJUSTMENT FOR FE:

(i) The Unit Price shall be increased by USD 1.00% DMT for each 1% Fe content in case of Fe total above 65% fractions pro-rata.

(ii) The Unit Price shall be decreased by USD 2.00/DMT for each 1% of Fe content in case of Fe total below 65% down to and including 63.00%, fractions pro-rata.

(iii) In case the Fe total contents are below 63.00%, the Buyer has the right to reject the cargo.

### 7.2.2 PRICE ADJUSTMENT FOR OTHER SPECIFICATIONS

If any chemical specifications. Other than Fe, in the shipment varies from Guaranteed level set forth in Clause 3, the base price shall be decreased as follows:

For FeO total, the base price shall be decreased by USD 2.00 per Dry Metric Ton for each 1% FeO total in excess of the Guaranteed level provided in clause 3 above, fractions pro-rata.

For FeO with magnetic, the base price shall be decreased by USD 2.00 per Dry Metric Ton for each 1.0% FeO with magnetic in excess of the Guaranteed level provided in clause 3 above, fractions pro-rata.

For Al<sub>2</sub>O<sub>3</sub>, the base price shall be decreased by USD 2.00 per Dry Metric Ton for each 0.1% Al<sub>2</sub>O<sub>3</sub> in excess of the Guaranteed level provided in clause 3 above, fractions pro-rata.

For SiO<sub>2</sub>, the base price shall be decreased by USD 2.00 per Dry Metric Ton for each 1.0% SiO<sub>2</sub> in excess of the Guaranteed level provided in clause 3 above, fractions pro-rata.

For P, the base price shall be decreased by USD 2.00 per Dry Metric Ton for each 0.01% P in excess of the Guaranteed level provided in clause 3 above, fractions pro-rata.

For S, the base price shall be decreased by USD 2.00 per Dry Metric Ton for each 0.01% S in excess of the Guaranteed level provided in clause 3 above, fractions pro-rata.

For Na+K, the base price shall be decreased by USD 2.00 per Dry Metric Ton for each 0.01% Na+K in excess of the Guaranteed level provided in clause 3 above, fractions pro-rata.

## 7.3 REJECTION:

a. The Buyer, in its own discretion. Shall have the right to reject the Goods and the Seller shall solely bear all relevant damage/losses including but not limited to delivery costs, storage costs, import costs, if: (i) any of chemical

specifications and/or physical specifications of the Goods belong to Rejection column in the Table 1 above; and (ii) an impurity is found in the shipped Goods.

b. In case the Buyer rejects the Goods, the Seller shall, at its own expenses and risks and without delay, be responsible for re-exporting, re-deliver the cargo from destination country and storage place and indemnifying Buyer all costs, losses, damage related to the Goods including but not limited to LC cost, import cost. Storage cost. Delivery cost and all other costs incurred by Buyer and/or Buyer's affiliate(s). Buyer shall not liable to pay for the rejected Goods, if any amount has been paid by the Buyer under this contract, the Seller shall, at Seller's expense, return the paid amount to Buyer's bank account. The Seller undertakes to indemnify and keep the Buyer harmless from any liabilities, damage and losses relating to the rejection. All risks of damage to and loss of the Goods shall reverse to Seller upon the rejection by the Buyer.

c. If the Goods is rejected, the Seller acknowledges that the Buyer shall entitled, but not be obliged, to dispose of the rejected Goods in such manner as Buyer may deem fit if:

(i) the Seller fails to comply with any provision in this clause 7.3; or

(ii) as requested by any authorities;

and Seller shall indemnify Buyer all costs, losses and damages incurred by Buyer relating to such disposal. For avoidance of doubt, Buyer's disposal of the rejected Goods under this clause shall not prejudice any Buyer's rights under this Contract or release Seller of its obligations hereunder and in laws.

d. All payments under this clause shall be made within 07 working days after the date of relevant debit note."

(iii) **ARTICLE 9 – VESSEL NOMINATION AND SHIPPING TERMS:**

"9.1 The Seller shall charter and nominate the performing vessel for confirmation by the Buyer no later than 10 (ten) days before the first day of Laycan. Buyer shall reply with its acceptance or rejection of the vessel within two (2) working day after receiving Seller's nomination and full information of the nominated vessel. Buyer has no liability to the Seller in relation to the rejection of the nominated vessel." [...]

(iv) **ARTICLE 10 - PAYMENT AND DOCUMENTS:**

"10.1 The total value of the shipped Goods shall be calculated by multiplying the respective base price of the Goods to be calculated in accordance with Clauses 7 by the final weight of the Goods in DMT to be determined pursuant to Clause 11 after deduct the quantity of impurities and foreign object as per Clause 8 above (if any). All payments under this Contract shall be made by US Dollars.

**10.2 Payment method:**

a. Payment by Letter of Credit (L/C):

Buyer shall open an irrevocable, non-transferable L/C payable at sight in USD in favor of the Seller for 90% of total contract value.

The LC shall comply with the following conditions:

- All charges outside Buyer's bank including but not limited to reimbursement charges, confirmation charges shall be on Seller's account. L/C amendment charges shall be for account of the Party orders such amendments;
- Allowance +/- 10% on quantity and amount;
- Third party document acceptable except Invoice and Draft;
- Documents presentation at issuing bank within 21 days after completion of loading operation at the Loading Port but within LC validity;
- L/C validity: 21 days after the Latest Shipment Date.
- To allow any bank who may add confirmation to the Letter of Credit if requested by beneficiary and at beneficiary's expenses;
- T/T Reimbursement not allowed;
- All documents must not be dated earlier than the L/C issuing date;
- All documents called for under the L/C must be issued in English and presented through a bank, titled as L/C required and dated.

[...]

### **10.3 Payment schedule**

#### **a. Provisional payment:**

Payment for 90% of the shipped cargo value shall be made against presentation of a draft drawn and the following documents on the L/C issuing bank:

i. Full Set (3/3) of Original Clean on Board Bill of Lading, marked "Freight Payable as per Charter Party" made out to (as per Buyer's instruction) and notify (as per Buyer's instruction) showing Port of Discharge, Vessel Name, MT.

ii. 3 Original and 3 Photocopies of duly Provisional Commercial Invoice for 90% shipped cargo value issued by the Seller based on DMT indicating Contract Number, L/C Number, Name of Carrying Vessel, CFR Value of Shipment based on DMT at Port of Loading.

The Provisional Commercial Invoice shall base on testing results at the Loading Port issued by SGS appointed by Seller.

iii. 03 Original and 02 Photocopies of Certificate(s) of Origin issued by competent authority.

iv. 01 Original and 02 Photocopies of Quantity in Weight Certificate at Loading Port issued by SGS appointed Seller.

v. 01 Original and 02 Photocopies of Quality Certificate at Loading Port issued by SGS appointed by Seller.

vi. 01 Original Packing List issued by Seller.

vii. Beneficiary's certificate certifying that Shipping Advice showing Total Wet Weight, Port of Loading, Name of Vessel, Bill of Lading Number, Shipment Date, Port of Discharge have been faxed or emailed to the Buyer within 2 (two) working days after Bill of Lading Date.

viii. Beneficiary's Statement certify that one set of non-negotiable or scanned copies of the shipping documents (Commercial Invoice, Packing List, Certificate of Origin, Bill of Lading, Shipping Advice) have been sent to the Buyer by fax or email or courier within 2 (two) working day after issuing date of Bill of Lading Date.

ix. Beneficiary's Certificate confirming that to the best of their knowledge, the material shipped are free from wood, weapons, ammunitions, explosive, radioactive contamination, and hazards of any kind. [...]

10.6 Any issues arising from or in connection to Seller's bank or any routing banks(s) shall be directly settled by Seller and the relevant bank(s) without any expenses, liability of or reference to Buyer".

(v) **ARTICLE 14 – GOVERNING LAW AND INTERPRETATION**

"This Contract shall be governed by SINGAPORE law, but without regard to SINGAPORE's conflicts of law provisions. The parties agree that the Convention on the International Sale of Goods shall not apply.

The ICC International Commercial Terms abbreviated as INCOTERMS 2010 and as amended, shall apply to this Contract. In case of conflict between the law of SINGAPORE and INCOTERMS 2010, the parties must apply INCOTERMS 2010."

(vi) **ARTICLE 15 – ARBITRATION**

"Any controversy or claim arising out of or relating to this contract, or the breach thereof. Shall be determined by arbitration administered by the SINGAPORE International Arbitration Center ("SIAC") in accordance with its Rules (SIAC RULES).

Unless otherwise agreed by the parties. The number of arbitrators shall be three, with each party nominating a single arbitrator and the two arbitrators so nominated consulting and jointly appointing a third arbitrator who shall serve as chair. In the event both or either of Buyer or Seller fails to choose an arbitrator within the time deadline established by the SIAC Rules, or the two party nominated arbitrators are unable to agree on a third arbitrator within 30 days after their appointment, the SIAC shall have the power, upon the request of a party, to appoint the arbitrator(s) required to complete the tribunal.

The place of the arbitration shall be Singapore, and the arbitration shall be conducted in English. The Arbitrators shall have the power to award the costs of the arbitration, including the fees of the arbitrators and the legal fees incurred by the prevailing party, to the prevailing party. The arbitrators shall not award punitive damages. Any decision or award issued by the arbitrators shall be a reasoned decision setting forth the factual and legal grounds for such decision or award.

The prevailing party shall be free to enforce any award(s) issued by the arbitration panel in any court of competent jurisdiction, but shall not be limited to one such court.

The arbitration award shall be final and binding on both Parties."

(vii) **ARTICLE 25 – TERMINATION AND REMEDIES**

25.1 Should the Seller : (a) assign or transfer this Contract or any right or interest herein. except as permitted by this Contract. or (b) disregard applicable laws or ordinances. rules or regulations of any competent governmental authority or written instructions of the Buyer given pursuant to the Contract: or (c) neglect, refuse. foil or be unable at any time during the course of this Contract to perform its obligations hereunder; or (d) otherwise commit a material breach of its obligations under this Contract and in any of the foregoing events: or (e) the Goods is rejected by Buyer, then the Buyer may, without prejudice to any remedies available to the Buyer hereunder or at

law or in equity, terminate this Contract, which termination shall become effective immediately or at the time designated by the Buyer in the written notification. At the same time. Seller shall pay Buyer a liquidated damages equivalent to 10% of the total contract value. The Parties hereby agree that the liquidated damages represent a genuine and reasonable compensation to the Buyer for Seller's breach of the Contract. The Parties hereby acknowledge that this liquidated damages is of compensatory nature and should not be treated as penalty.

**25.2** If one of the parties shall become voluntarily or involuntarily the subject of proceedings under any bankruptcy or insolvency law, or other law or procedure for the relief of financially distressed debtors, or is unable, or admits in writing its inability to pay its debts as they mature, or take any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets and, in the event any act of the aforesaid character is involuntary. the consequences thereof are not cured without a reasonable time, the other party may notify the first in writing of its decision to terminate this Contract, which termination shall become effective immediately.

**25.3** The right to terminate this Contract and each other remedy granted herein is not intended to be exclusive of any other remedy provided or permitted by law, but each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute."

4.6 The Contract was executed by Do Van Thang of the Respondent on 24 March 2021 and by Amjad Zak Imam of the Claimant on 25 March 2021.

4.7 The Contract states that it would come into effect from the date of signing by both parties. In the Tribunal's view, the Contract came into effect on 25 March 2021 when the second of the signatures i.e. that on behalf of the Claimant, was appended.

4.8 On 26 March 2021, the Contract was amended by way of Addendum No. 1 in the following manner :

**"Clause 1. Amendment to Payment and Documents clause:**

**Buyer shall open an irrevocable, non-transferable L/C payable at sight in USD in favor of the Seller with the L/C value of USD 6,000,000 (United States Dollars Six Million).**

**L/C shall not allow overdrawn.**

**Provisional payment: If 90% of the shipped cargo value exceeds L/C value, the balance amount shall be made by TT to the Seller's bank account at the same time the Seller receives payment under the L/C in accordance with the Contract."**

4.9 Addendum No. 1 was also executed by Do Van Thang on behalf of the Respondent and by Amjad Zak Imam on behalf of the Claimant.

4.10 Having considered the Contract and Addendum No. 1 presented before it, the Tribunal has no hesitation in arriving at the determination that the Contract read together with Addendum No. 1 constitutes valid and enforceable obligations under a contract entered into between the Parties in relation to the sale and purchase of the Cargo.

#### **4B Arbitration Agreement and related matters**

4.11 The Tribunal will first consider the seat of the arbitration.

4.12 Rule 21 of the SIAC Rules provides as follows :

**"Rule 21: Seat of the Arbitration**

**21.1 The parties may agree on the seat of the arbitration. Failing such an agreement, the seat of the arbitration shall be determined by the Tribunal, having regard to all the circumstances of the case.**

**21.2 The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate."**

4.13 Article 15 of the Contract states that **"the place of the arbitration shall be Singapore"**. In the Tribunal's view, this embodies the Parties' agreement that the seat of the arbitration is Singapore. Alternatively and in any event, even if the Parties did not arrive at any specific agreement regarding the seat of the arbitration, the Tribunal is empowered by Rule 21.1 of the SIAC Rules to determine the seat, having regard to all the circumstances of the case. Having considered the relevant

documents in evidence and in particular, the matters set out in paras 4.11 and 4.13 the Tribunal is satisfied that the seat of arbitration is Singapore. **IT IS SO HELD.**

4.14 The Tribunal repeats the matters stated in para 3.2.

4.15 The Tribunal has considered the issue of which law governs the arbitration agreement. In this regard, it has considered the documents put in evidence by the Claimant and the circumstances of the case in light of the guidance given by the Court of Appeal in Singapore on how to determine the law governing the arbitration agreement. The three-step approach set out by the Court of Appeal in **Anupam Mittal v Westbridge Ventures II Investment Holdings** [2023] SGCA 1), is as follows :

- (i) whether the parties had expressly chosen the proper law of the arbitration agreement;
- (ii) in the absence of an express choice, whether parties had made an implied choice of the proper law governing the arbitration agreement, with the starting point for that determination being law of the Contract;
- (iii) if neither an express choice nor an implied choice can be discerned, which is the system of law with which the arbitration agreement has its closest and most real connection.

4.16 It would appear clear to the Tribunal that in neither Article 14 nor Article 15 of the Contract is there an express choice of the proper law of the arbitration agreement.



4.17 In the *Anupam Mittal v Westbridge Ventures II Investment Holdings* case, the Court accepted, following the decision on the issue in *Sulamerica Cia Nacional Seguros SA and others v. Enesa Engenharia SA and others* (2013) 1 WLR102, that in the absence of any indication to the contrary, an express choice of law governing the substantive contract is a strong indication of the parties' intention in relation to the agreement to arbitrate.

4.18 On the basis of this principle, the Tribunal accepts that as there is an express choice of Singapore law in the Contract, Singapore law is the implied choice of law to govern the arbitration agreement but with the limitations set out in Article 14 of the Contract.

4.19 Whilst it is therefore strictly not necessary for the Tribunal to do so, it having determined that the implied choice of law governing the arbitration agreement is Singapore law, the Tribunal notes, whilst evaluating the third stage of the enquiry, that under Article 15 of the Contract, the arbitration is to be conducted in Singapore. As the law of the seat of the arbitration, Singapore law governs the procedure of the arbitration including any challenges to the Tribunal's jurisdiction. It is clear to the Tribunal that Singapore law is the system of law with which the arbitration agreement has its closest and most real connection. Accordingly, Singapore law is the law of the arbitration agreement **AND IT IS SO HELD.**

#### **4C Was there a repudiatory breach of the Contract**

4.20 As noted from Article 10.3 of the Contract (read with Addendum No. 1), payment of the total contract value was to be made by an irrevocable, non-transferable letter of credit ("L/C") payable at sight in favour of the Claimant.

- 4.21 Article 5 of the Contract provides that the latest shipment date was 30 April 2021. Laycan was set out to be from 10 to 20 April 2021.
- 4.22 The Claimant asserts that the Respondent had the obligation to open a workable and contractual L/C at the latest by the first possible date for shipment which in this case was 10 April 2021. The Claimant goes on to say that the Respondent failed to open a contractual and workable L/C by 10 April 2021 or at all.
- 4.23 The Claimant argues that failure to open a workable L/C by the contractual deadline is a repudiatory breach of the Contract on the part of the Respondent which would entitle the Claimant to bring the Contract to an end and make a claim for damages which flow as a result of that breach.
- 4.24 As authority for the legal proposition set out, the Claimant relies on *Kvaerner Singapore Pte Ltd vs UDL Shipbuilding (Singapore) Pte Ltd* (1993) 2 SLR(R) 341 where G. P. Selvam J held that “**the letter of credit is a condition precedent to the seller’s obligation to ship or deliver the goods and the time for establishing the credit is of the essence of the contract of sale. The opening of credit is not merely a matter of mode of security which enables the seller to obtain payment before the goods are delivered. If the buyer fails to establish the credit, the seller at his option may treat the contract as discharged and recover damages for breach of contract unless the buyer has waived the requirement for credit. Where the seller waives the original time for the opening of the credit, the credit must be established within the extended time.**”
- 4.25 In the Singapore legal decision in *Valency International Trading Pte Ltd vs Alton International Resources Pte Ltd* (2011) SGHC 50, as relied on by the Claimant

in its Statement of Claim, the Court noted that both of the contending parties accepted that the opening of a letter of credit before the laycan period was a condition precedent to the shipment of the goods.

4.26 As the Claimant notes in its Statement of Claim, the position is succinctly set out in Benjamin on Sale of Goods 11<sup>th</sup> Edn (para 23-059) as follows:

**"Where the seller controls the precise shipment date, the credit must be open no later than the commencement of the shipment period. Although there is some support for a requirement that the credit be open a reasonable time beforehand, the resultant uncertainty recognised by Diplock J., albeit in a different context, militates strongly against such a rule. It is, therefore, suggested that, in the absence of contrary intention, the appropriate inference to be drawn from the provision for shipment on a date controlled by the seller within a prescribed shipment period is that the credit should be open by the commencement of that period."**

4.27 The Tribunal has no hesitation in accepting these principles which have been long established in English law and followed in Singapore law.

4.28 That until a line of credit has been opened in conformity with the Contract, the Claimant was not under any obligation to ship the Cargo, is the legal position in Singapore as enunciated in *Brown Noel Trading Pte Ltd vs Donald & McArthy Pte Ltd* (1996) 3 SLR(R) 760, as relied on by the Claimant in its Statement of Claim, where it was held that if a letter of credit is not opened in conformity to the terms of the contract in material respects, it amounted to a repudiatory breach. However, the repudiatory breach does not automatically terminate the contract. The non-defaulting party had a right to elect whether or not to accept the repudiation and treat the contract as at an end. That right must be exercised. Otherwise, the contract remains in force.

4.29 As stated earlier, the Contract provided for a laycan of 10-20 April 2021. From an examination of the Contract and of the other documents presented in evidence, it

is clear to the Tribunal that no specific date was set out as the deadline for the opening of the L/C. In that circumstance, the Tribunal, on the basis of the legal authorities cited in the earlier paragraphs, has no difficulty in arriving at the conclusion that the L/C was to have been opened no later than on 10 April 2021.

4.30 The Respondent did not open the L/C by 10 April 2021 based on the evidence put forward to the Tribunal.

4.31 Correspondence continued between various parties to the transaction regarding the shipment. The Vessel had arrived at anchorage at the loadport and as seen from an email message dated 16 April 2021 from the Claimant to the Respondent quoting a message from the loadport agent, the Vessel was waiting at the anchorage area for the L/C to be received as well as for completion of customs formalities.

4.32 It was made known to the Respondent by an email message dated 13 April 2021 that delay in the receipt of a workable L/C would result in detention to the Vessel which would cost US\$42,500 per day and be for the Respondent's account.

4.33 There is a reply to this message from the Respondent. In basic terms, the Respondent said that there is no term in the Contract that the L/C must be opened 'before laycan or similar meaning'. Further, the Respondent seemed to suggest that any costs arising from any detention of the Vessel is not its responsibility.

4.34 On 13 April 2021, the Respondent sent to the Claimant an Email stating "**Kindly get LC swift in attachment**". The attachment to this Email was a copy of a SWIFT message stating that a bank in Vietnam (BIDV) had issued an irrevocable L/C for USD 6,000,000 on 13 April 2021, expiring on 30 May 2021. The Respondent is

named as the applicant and the Claimant is named as the beneficiary. It shows the latest date of shipment being 30 April 2021 with other details such as loading port, discharge port and goods specifications as in the Contract. It names Caixbank in Spain as the confirming bank and Aresbank in Spain as the advising bank. Then on 15 and 16 April 2021, the Claimant advised the Respondent that the confirmed L/C had not yet arrived at Aresbank. Then on Saturday 17 April 2021, the Claimant wrote to the Respondent as follows:

**“Firstly we have not received your LC at Aresbank. What we have received is a copy of a draft of swift from your bank. What we need on Monday morning is the actual notification (Transmission) of the original sent to SWIFT (ACK) showing Sender and Receiver.”**

4.35 During the subsequent days, including on 20 and 21 April 2021, the Claimant continued to advise the Respondent that Aresbank had not received the confirmed L/C. On 21 April 2021, the Respondent replied as follows:

**“Firstly, in compliance with the contract, the Buyer has opened a L/C in favour of the Seller that is definitely proved by the L/C swift sent to the Seller on 13 April 2021.**

**Secondly, it is mutually agreed by the Seller and the Buyer in clause 10.6 of the contract that any issues arising from or in connection to Seller’s bank shall be directly settled by Seller and the relevant bank(s) without any expenses, liability of or reference to Buyer.**

**Hence, the Buyer has fulfilled its relevant obligations under the contract and is not liable for any issues in relation to the opened L/C between Seller and Sellers’ bank”.**

4.36 On 27 April 2021,<sup>3</sup> the Claimant says it finally received advice of the L/C through the Swift system which had been apparently been opened on 13 April 2021 as

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<sup>3</sup> The Tribunal notes that the Swift document exhibited in page 80 of the Attachments to the Notice of Arbitration provides the date 23 April 2021 as the date of the output of the message. The Tribunal has not attached any significance to this date as the Claimant has submitted that it received advice of the L/C only on 27 April 2021 and there has been no challenge to this assertion. In any event, the Tribunal takes the view that if there was a discrepancy in the date the Claimant received advice of the L/C, this had no impact on the analysis or the conclusions arrived at by the Tribunal.

previously advised by Respondent. However, this advice also came with an amendment of the L/C made on 19 April 2021 which stated the latest shipment date as 20 April 2021.

4.37 On 27 April 2021,<sup>4</sup> the Claimant gave notice to the Respondent that it was advised of an L/C on 26 April 2021, for a shipment date of 20 April 2021.

4.38 As a workable L/C was not provided to the Claimant, on 27 April 2021, the Claimant wrote to the Respondent as follows :

**“From: Zak Imam <zak@oresminerals.com>  
Date: Tue, 27 Apr 2021 at 10:07  
Subject: CONTRACT NO: 01/ST-OMUK/03.2021  
To: Alex Do <alex@atexim.com>  
Cc: Nana <ops@hoaphat.com.vn>, Stefano Sarkies  
<stef@oresminerals.com>**

**Dear Mr. Do Van Thang,**

**Subject Contract LC was advised to us on 26th April 2021 - for shipment 20th April.**

**Our laycan with you was 10-20 April - due to delay in receipt of your LC and also after receipt of LC the shipment date of 20/04/2021 by amendment 1 is not workable we regret to inform you that we had no choice but to sell our 1st shipment of Iron ore pellet chips and fines to another customer.**

**MV MANTA ASLI should berth and commence loading today and complete by 5-10th May latest.**

**We are negotiating a 2nd vessel for your shipment for laycan 10-15th May - Th4 we request you to amend the latest shipment date for the LC to 25th May and Validity of the LC accordingly.**

**Since your LC is for an amount of USD 6,000,000 and we intend to load approx 53000 dry metric tons of cargo 90% of the cargo value will be approx USD 7,5 million - we have agreed to get paid the difference between the 90% invoice value and USD 6.0 million outside the LC by TT transfer. Please confirm that TT transfer will be effected on completion of loading and not after we have negotiated your Lc - since once we have negotiated the LC the documents will be owned by you.**

**Regards.**

**Amjad Zak Imam / Director  
ORES AND MINERALS UK LTD”**

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<sup>4</sup> The Claimant’s letter of 27 April 2021 to the Respondent gives a date different to the date stated in para 15 of the Statement of Claim in that it states that the Claimant was advised of the L/C on 26 April 2021. The Tribunal has taken the view that this difference of one day does not affect its analysis or the conclusions it has arrived at.

- 4.39 The Claimant's position is that by the terms of its letter set out in the preceding paragraph, it explained to the Respondent that the L/C was unworkable and that the Claimant therefore had no choice but to resell the Cargo to another party. The Claimant asserts that this message was an acceptance of the Respondent's repudiatory breach and notice of termination of the Contract.
- 4.40 An examination of the terms of the letter of the Claimant of 27 April would clearly indicate that the L/C said to have been opened for the transaction was not workable and that the Cargo was then sold to another party. It was unworkable for a number of reasons, not least that the date of shipment was 20 April 2021 which had passed and was inconsistent with the Contract providing for latest shipment 30 April 2021.
- 4.41 Whilst in its letter of 27 April to the Respondent, the Claimant stated that it had no choice but to sell the Cargo to a third party in light of the failure by the Respondent to open an L/C which was workable, the Claimant did not explicitly state that it regarded the conduct of the Respondent as being repudiatory of the Contract.
- 4.42 However, the Tribunal, having carefully considered the correspondence between the Parties including the terms of the 27 April letter, has arrived at the conclusion that the advise of an L/C on 26 April 2021 after the date when it was required to be opened under the Contract and in any event with an amended latest shipment date of 20 April 2021 which was inconsistent with the latest shipment date in the Contract of 30 April 2021, was conduct repudiatory of the Contract. On the basis of the evidence before it, the Tribunal concludes that the Respondent had repudiated the Contract. The act of the Claimant in informing the Respondent that it was selling the Cargo to another customer was an act of acceptance of the repudiation.

- 4.43 The 27 April letter contains two parts. The first part has been examined and dealt with in the preceding paragraphs. The second part refers to a proposal by the Claimant to obtain another vessel to ship a cargo to the Respondent with a laycan of 10 – 15 May. The quantity of cargo proposed was approximately 53,000 mt with the payment terms to be the same as those which were applicable to the Contract with the latest shipment date set at 25 May.
- 4.44 At first sight, the contents of the last two paragraphs of the 27 April letter might appear to suggest that the Claimant was seeking to amend the Contract rather than negotiate the terms of an entirely new contract.
- 4.45 Having considered this possible interpretation carefully, the Tribunal has arrived at the conclusion that whilst the earlier paragraphs of the 27 April letter set out an acceptance of the repudiation of the Contract, the final two paragraphs reflect an offer to ship cargo to the Respondent under a new contract.
- 4.46 The Tribunal's attention has been drawn to an email message sent by the Respondent to the Claimant on 21 May 2021 which is marked 'without prejudice' and dated 18 May 2021.
- 4.47 By this email message, the Respondent seeks to terminate the Contract and claim from the Claimant for loss, damages, liabilities and costs arising from the termination. It states as follows :

**“Dear Ores and Minerals UK Ltd.**

**Without Prejudice  
Date: 18<sup>th</sup> May 2021**

**We are writing in regards to the Sale and Purchase Contract (“Contract”) no.: 01/AST-OMUK/03.2021, dated March 24, 2021 between your company – Ores and Minerals UK Ltd (Seller) and Anh Son Thuy Co., Ltd (Buyer).**



**Pursuant to the Seller's legally binding obligations under the Contract, the Seller irrevocably and unconditionally guarantees that it will deliver the quantity of 50000 Metric Ton of the Commodity to Buyer latest by 30th April 2021. However, until now – three weeks after the agreed latest shipment date, the Seller has not delivered the Commodity to the Buyer.**

**The failure of the Seller to perform its delivery obligation in accordance with the Contract has constituted a material breach of the Seller of the Contract.**

**Thus, pursuant to Clause 4 and Clause 25 of the Contract, the Buyer hereby:**

**(i) Terminates the Contract with all liabilities, costs, losses and damages shall be borne by Seller; and**

**(ii) Requests the Seller to sign the attached Termination Letter; and**

**(iii) Requests the Seller to pay the Buyer, as liquidated damages, 10% of the total contract value.**

**The termination of the Contract and Buyer's requests hereunder shall not prejudice to any rights and remedies available to the Buyer under the Contract or in law and in equity.**

**All rights of the Buyer are expressly reserved."**

4.48 The Tribunal does not understand the purport of the marking 'without prejudice' in this message when it does not comprise any settlement offers for any dispute between the Parties. The letter clearly does not attract legal privilege and may be considered by the tribunal.

4.49 It is also not easy to understand why the Respondent's message was dated 18 May 2021 when it was sent out on 21 May 2021. Absent evidence from the Respondent, its intention in this regard will remain a mystery.

4.50 The 21 May 2021 message from the Respondent was sent much after the latest laycan date. The Respondent did not open the L/C by 10 April 2021 as required by the Contract. It is also clear from the legal authorities referred to the Tribunal that as a matter of law, the Claimant was not obliged to ship the Cargo if the L/C was not opened within the dates set out in the Contract.

4.51 The message of 21 May 2021 from the Respondent was further conduct repudiatory of the Contract.

4.52 The Claimant, once again accepted the repudiation when it sent a message dated 25 May to the Respondent in the following terms (although again, the Tribunal fails to understand why the message was marked “without prejudice”) :

“From: Zak Imam <zak@oresminerals.com>  
Date: Tue, 25 May 2021 at 16: 15  
Subject: Re: Contract 01/AST-OMUK/03.2021  
To: Nguyen Thi Thanh Huyen <huyenntt@hoaphat.com.vn>  
Cc: Stefano Sarkies <stef@oresmineralsssss.com>, Nguyen Thi Thu Cuc <thucuc@hoaphat.com.vn>, Nana <ops@hoaphat.com.vn>

**WITHOUT PREJUDICE**  
=====

Dear Ms. Nguyen Thi Thanh Huyen (Joy)

We refer to the contract 01 /AST-OMUK 03.2021 dated 24 March 2021. Despite our requests that you open a contractual and workable letter of credit, you have failed to do so. The opening of a contractual letter of credit was a condition precedent to our obligation to ship the contractual cargo and you have by your words and/or conduct committed an anticipatory and/or actual repudiatory breach of the contract and/or a breach of condition. In particular, you notified us on 18 May 2021 that you no longer considered yourselves bound by the terms of the contract. Insofar as the contract had not already come to an end on 27 April 2021, we hereby terminate the contract for breach. We will claim damages for any and all losses and liabilities that we have suffered as a result of your breach.

regards,  
ORES AND MINERALS UK LTD”

## 5. DAMAGES

5.1 As the Tribunal has arrived at the determination that the Respondent is in breach of the Contract, it is apposite to consider whether and to what extent damages for breach of the Contract are due and payable to the Claimant.

5.2 The Claimant has made a claim for damages comprising demurrage, detention and deadfreight costs. Each of these will be considered in turn.

**5A Demurrage**

This part of the claim is stated to be for demurrage. It is on true analysis a claim for damages for breach against the Respondent buyer with the damages being the demurrage that the Claimant must pay to the shipowner under the fixture note.

5.3 On 23 March 2021, pursuant to the Contract, the Claimant nominated the Vessel as the performing vessel. On 24 March 2021, the Respondent confirmed the nomination.

5.4 The Claimant has put in evidence, a fixture note dated 6 April 2021 entered into between it and Perfect Bulk Limited for the carriage of the Cargo by the Vessel.<sup>5</sup> It is clear that the fixture note to be considered is the one which was submitted by Anjad Zak Imam with his second witness statement. Although this fixture note names Indonesia (as opposed to Vietnam) as the discharging port, in the totality of the evidence including correspondence between the Parties, the Tribunal is satisfied that a charterparty was entered into between the Claimant and Perfect

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<sup>5</sup> The Tribunal noted that the buyer named in a fixture note which was first submitted is POSCO and queried why this was so when the sale of the Cargo to POSCO took place after the termination of the Contract. Mr Amjad Zak Imam in his 2<sup>nd</sup> witness statement explained that the Claimant had originally entered into a contract (dated 15 February 2021) with POSCO for the sale of 33,000 mt wet iron ore pellet chips and fines. Subsequently, on or around 15 March 2021, POSCO informed the Claimant that it had bought the cargo from a different seller. POSCO recommended that the Claimant approach Hoa Phat to purchase the Cargo. POSCO said that it would purchase a later shipment from the Claimant. The Claimant entered into discussions with Hoa Phat and in the result, the Respondent was nominated as buyer of the Cargo. By an email message dated 1 April 2021, Perfect Bulk Ltd mistakenly named POSCO as the buyer of the Cargo in a draft fixture recap for the Vessel. By an email message of the same date, the Claimant updated the correct information in the draft fixture recap by naming the buyer and consignee as An Son Thuy Co of Quang Ninh, Vietnam. On 2 April 2021, Perfect Bulk Ltd circulated a clean fixture recap which named the Respondent as buyer and consignee and the discharging port of Hon Gai, Vietnam. Notwithstanding that, Perfect Bulk Ltd circulated a fixture note dated 6 April 2021 mistakenly naming POSCO as buyer and consignee. This, Perfect Bulk Ltd corrected in a fixture note also dated 6 April 2021 naming the Respondent as the buyer and consignee of the Cargo.

Bulk Limited for shipping the Cargo to Hon Gai Port in Vietnam with a freight rate of USD 55.50 per MT and a demurrage rate of UD 42,500 per day.

5.5 The demurrage rate agreed to by the Claimant for the Vessel is US\$42,500 per day. This is, in the usual manner, payable from the expiry of the laytime agreed to.

5.6 Laytime is set out in Clause 12 of the fixture note as follows :

**“12. LAYTIME:**

**AT BOTH LOADING AND DISCHARGING PORT 12 HOURS TURN TIME UNLESS USED LAYTIME TO BE NON-REVERSIBLE BETWEEN LOAD / DISCHARGE PORTS. TIME LOST IN WAITING FOR BERTH SHALL COUNT AS LAYTIME. ONCE ON DEMURRAGE ALWAYS ON DEMURAGE TO APPLY.”**

5.7 The fixture note also provides for a loading rate of 5,000 mt per day (PWWDFSSHINC).

5.8 The Vessel, according to the evidence, arrived at the loadport on 16 April 2021 at 1600 hrs local time. Notice of Readiness (“**NOR**”) was tendered on 18 April 2021 at 00.01 hours. From the 2<sup>nd</sup> witness statement of Mr Amjad Zak Imam, it is understood that the Vessel was unable to berth as the letter of credit had not been opened.

5.9 Laytime calculations have been provided by the Claimant as follows :

**MV MANTA ASLI laytime calculation sheet at MISURATA**

Loading Rate	5000		
Demurrage	US\$42,500.00	Dispatch	US\$21,250.00
Cargo quantity	54,350.00		

Activities

Sunday	18/04/2021 00:01	NOR TENDERED
Sunday	18/04/2021 00:01	LAYTIME COMMENCED
Wednesday	12/05/2021 11:30	START LOADING CARGO
Thursday	27/05/2021 18:40	LAYTIME COMPLETED

Deductions

Day	Start Time	End Time	Description/ Remarks	Duration (days)	%	Time deducted
Monday	26/04/2021 00:00	27/04/2021 00:00	BAD WEATHER	1	100.00	1.0000

Time Allowed: 10.8700 days  
 Grace Time: 0.0000 days  
 Total Time: 39.7771 days  
 Time Deducted: 1.0000 days  
 Time Actually Used: 38.7771 days  
 Laytime Dem/Dis: 27.9071 days  
 Vsl On Demurrage: 1186051.04 USD

DEMURRAGE ON: 28/04/2021 20:53

- 5.10 As seen from the chart in para 5.9 above, NOR was tendered by the Vessel and laytime commenced on 18 April 2021 at 00.01 hrs. The Vessel berthed on 4 May 2021 at 1545 hrs (local time). This is shown in the Statement of Facts signed by the Master dated 27 May 2021. Mr Zak Imam states that another vessel was already in berth and so the Vessel was moved into the berth behind that vessel. On 10 May 2021, the Vessel shifted forward in the berth. Loading, which commenced on 12 May 2021, was completed at 1840 hrs on 27 May 2021 at 1840 hrs. The time used was therefore 39.77771 days less one full day's deduction for bad weather.
- 5.11 The allowable laytime was 10.8700 days (54,350/5000). This period was exceeded and the Vessel was on demurrage for 27.9071 days. The total demurrage liability was US\$1,186,051.04.
- 5.12 The Claimant says that it successfully negotiated a 5% deduction with the Vessel's owners on the demurrage due and the negotiated sum, US\$1,126,748.49 was paid in full to the Vessel's owners on 18 June 2021.
- 5.13 It is to be noted that loading on the Vessel commenced on 12 May 2021, after the Contract had come to an end.

5.14 By its message dated 27 April 2021, the Claimant had notified the Respondent that the Cargo had been sold to another seller <sup>6</sup> and that :

(a) the Vessel should berth on 27 April 2021 and loading commenced on that day;

(b) loading was to be completed by 5 to 10 May at the latest.

5.15 The Claimant has provided an explanation on why loading commenced only on 12 May 2021 when in its letter of 27 April 2021, the Claimant said that it would start loading on 27 April 2021 and end by 10 May 2021.

5.16 The Tribunal reminds itself that on 23 March 2021, in compliance with its obligations under the Contract, the Claimant nominated the Vessel as the performing Vessel. It is noted that on 24 March 2021, the Respondent confirmed the nomination. The Vessel having arrived at the loadport as stated in para 5.8, the Claimant awaited the opening of the relevant letter of credit by the Respondent.

5.17 From the chart shown in para 5.9, laytime expired on 28 April 2021 and demurrage started to accrue.

5.18 After a letter of credit was opened by the subsequent purchaser on 30 April 2021, the Vessel was not able to immediately to berth and commence loading because:

a) the back-to-back letter of credit was established by the Claimant to its seller on 6 May 2021, when the berth was occupied by another vessel (it would

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<sup>6</sup> In his 2<sup>nd</sup> witness statement, Mr Amjad Zak Imam clarified that this replacement buyer was POSCO.

appear from the Statement of Facts provided in respect of the Vessel it moved forward in the berth sometime on 10 May 2021);

- b) on 11 and 12 May 2021, there was a truck drivers strike; and
- c) between 13 and 16 May 2021, the Eid holiday was being celebrated in Misurata.

5.19 The Tribunal accepts that despite these delays, demurrage accrued during the period from the time laytime expired on 28 April 2021.

5.20 The Tribunal accepts that when compensating the Claimant for breach of the Contract, the monetary losses directly flowing from that breach would include liability on the part of the Claimant to pay demurrage incurred by the performing vessel nominated by the Claimant and confirmed by the Respondent even if the demurrage was incurred after the termination of the Contract, so long as it can be shown by the Claimant that the length of the Vessel's stay at the loadport was reasonable and the demurrage would qualify as damages that the Respondent should be liable for due to its contractual breach under Singapore law.

5.21 The Tribunal is, on the basis of the matters stated above, satisfied that it was reasonable for the Vessel to stay for the time that it stayed and that the demurrage incurred during that period would have to be paid by the Respondent. This is, however, subject to one exception, which is that the loading was suspended for two days between 12 May 2021 (1145 lt) and 14 May 2021 (0845 lt) due to the use of wrong boxes in the loading process.<sup>7</sup> The Tribunal is not satisfied that the

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<sup>7</sup> Reference is made to the letter of protest issued by the Master of the Vessel to Libya Aman Shipping Co. Ltd and to Ores and Minerals Corporation St Vincent

demurrage incurred for this period would qualify as damages that would naturally flow from the breach or would have been reasonably contemplated by the Parties and hence the Tribunal would deduct the demurrage for this period from the amount for which the Respondent is liable. The total amount deducted would be 45 hours or 1.875 days. 1.875 days multiplied by the demurrage rate of US\$42,500.00 would bring the deduction to US\$79,687.50.

5.22 The amount of the demurrage paid by the Claimant to the owners of the Vessel is US\$1,126,748.49.

5.23 In this regard, the Claimant had successfully negotiated a 5% deduction on the demurrage due, and the amount paid to the owners of the Vessel in the sum of US\$1,126,748.49 reflects this discount. The amount payable by the Respondent to the Claimant would however be the sum representing US\$1,126,748.49 minus the sum representing the amount of time deducted for between 12 May 2021 (1145 It) and 14 May 2021 (0845 It) i.e. US\$79,687.50 which is the sum of US\$1,047,060.99. This sum is **AWARDED** to the Claimant.

**5B Deadfreight**

5.24 The Claimant states that the Vessel was, at some point, ordered to shift from berth to anchorage by the loadport terminal because the Vessel had been at berth for a considerable period of time. The Claimant says that it was informed (presumably by the port authority) that the Vessel could re-berth and load the balance of the cargo after other vessels had loaded and exited the berth. The Claimant assessed that the demurrage which would have been incurred in this additional waiting period would likely exceed deadfreight which might be incurred. Furthermore, the Claimant was concerned about the new buyer's L/C though the Tribunal has not



been appraised on what the concerns were. The Claimant says that it therefore took the decision to sail the Vessel part-loaded.

5.25 The Claimant asserts that as a consequence deadfreight was in fact incurred and this was paid to the Vessel's owners. The Claimant further states that the Vessel had been at berth for that period of time, on account of the Respondent's failure to open a workable L/C by the start of the laycan under the Contract. The deadfreight incurred was therefore a loss which flowed directly from the Respondent's breach of the Contract.

5.26 Deadfreight refers to the damages which the owner of a vessel is entitled to if the charterer or buyer fails to load the full amount of cargo required under the terms of the voyage charter.

5.27 In this case, the claim for deadfreight is not made on the basis that the Respondent had failed to load the full amount of the Cargo pursuant to the terms of the Contract and of the fixture note relating to the Vessel.

5.28 Rather, the Claimant is making a claim on the basis that the Vessel could not load the full amount of the Cargo sold to another seller after the Contract was repudiated.

5.29 In effect it is a further claim for damages flowing from the breach of the Contract by the Respondent. For convenience, the Tribunal shall continue to refer to this head of claim as 'deadfreight'.

5.30 In making a claim for damages, the Claimant has to prove to the satisfaction of the Tribunal that the amount claimed flows directly from the breach of the Contract and

in that process show how there has been a mitigation of the loss and give credit for any savings which may have been made as a result of the short shipment.

5.31 To consider the Claimant's claim in respect of this head of damages, the Tribunal has taken note that the main terms of the fixture note entered into in respect of the Vessel by the Claimant and the Vessel's owners Perfect Bulk Limited, do not contain any contractual provision for deadfreight. Clause 23 of the fixture note states that the other terms relating to the charter of the Vessel are as stated in the charterparty attached to it, with logical revisions. The attached charterparty is that in relation to the charter of a vessel called m.v. AHU C.

5.32 The charterparty relating to the m.v. AHU C has a clause relating to deadfreight which reads as follows :

**"Clause 26**

**For a full cargo of : Min/Max 30-31000mt in Shippers option Hot-briquetted iron (HBI), in case 30000 mts not available then Charterers to be responsible for deadfreight ESTIMATE ABOUT 30950-31000 MTS"**

5.33 The clause set out in the preceding paragraphs cannot on its terms, be applied as a provision for deadfreight in the relevant fixture note.

5.34 The Master states in his 'Dead Freight Letter' dated 27 May 2021 that 54,446 mt was to be loaded on board. From Mr Amjad Zak Imam's witness statement, the Tribunal discerns that the replacement purchaser, POSCO was provided with the pre-stowage plan which stated that 54,446 mt would be loaded. The Tribunal accepts this evidence as to the quantity of the cargo which was to be loaded for the replacement purchaser.

5.35 The Tribunal has considered the invoice for deadfreight provided by the Vessel's owners :

**PERFECT BULK LIMITED**  
**ADDRESS: ROOMS 1318-20 HOLLYWOOD PLAZA, 610 NATHAN ROAD**  
**MONGKOK KL, HONGKONG**

**INVOICE**

**DATE : 31-May-21**  
**INVOICE NO : P2021-531-3**

**MESSR: ORES AND MINERALS UK LTD**

DESCRIPTIONS	AMOUNT
<b>MV MANTA ASLI</b>  <b>PLS REMIT DEAD FREIGHT AS PER DTL ASF:</b> <b>LOADING PORT: LISCO BERTH, MISURATA/LIBYA</b> <b>DISCHARGING PORT: CIGADING/INDONESIA</b> <b>DEADFREIGHT QUANTI: 8,093.722 MTS</b> <b>OCEAN FREIGHT RATE: US\$55.50 PMT</b> <b>DEAD FREIGHT: US\$449,201.57</b> <b>95% DEAD FREIGHT: US\$426.741.49</b>  <b>BENEFICIARY NAME: PERFECT SHIPPING CO., LIMITED</b> <b>BENEFICIARY BANK: STANDARD CHARTERED BANK(HONG KONG) LIMITED</b> <b>BANK ADDRESS: PAYMENT CENTRE, 15/F STANDARD CHARTERED TOWER, 388 KWUN TONG ROAD, HONGKONG</b> <b>SWIFT CODE: SCBLHKHXXX</b> <b>ACCT NO(IN USD): 44716831697</b>  <b>REMINDER: PLS REMIT ABOVE BY SWIFT CODE AND KEEP BLANK IN POSTSCRIPT BOX, TO AVOID ANY DELAY OF PAYMENT(E &amp; O E)</b>	<b>US\$426,741.49</b>
	<b>US\$426,741.49</b>

5.36 The claim for deadfreight seems to be made on the application of the freight rate set out in the fixture note on the amount stated by the Claimant to have been short-delivered.

5.37 The Tribunal has also examined the 'Dead Freight Letter' dated 27 May 2021 from the Master of the Vessel which is set out in the following terms :

**“TO: SAIC “INTERNATIONAL COMPANY OF AFRICA FOR RAW MATERIALS” as shipper  
TO: Libya Anan Shipping Co. LTD (LASCO)  
TO: ORES AND MINERALS CORPORATION ST VINCENT  
CC: PERFECT BULK LTD  
CC: MANTA SHIPPING  
FM: MANTA ASLI  
RE: MA 1192/2021  
DATE: 27<sup>TH</sup> MAY 2021**

**TO WHOM IT MAY CONCERN**

**DEAD FREIGHT LETTER**

**PROTEST LETTER FOR CARGO SHORTAGE**

**Dear Sir(s) or Madam(s),**

**In accordance with the terms and conditions of the Charter Party applicable to this voyage and the sealing instructions the vessel ordered SAIC “INTERNATIONAL COMPANY OF AFRICA FOR RAW MATERIALS” as shipper to provide on board 54446 metric tons of IRON ORE PELLETT CHIPS AND FINES at MISURTA PORT LISCO terminal for carriage to CIGADING/INDONESIA and had provided cargo space on board sufficient to load the quantity as so ordered accordingly.**

**Upon the completion of loading at this port on 25<sup>th</sup> May 2021 the total cargo loaded on board was found to be 46256,278 mt by ships draft survey which is definitely short of the quantity as so ordered.**

**Therefore I Captain SECKIN BILALOGLU, the Master of the MV MANTA ASLI hold all of you fully responsible and liable for loss of freight or other result whatsoever due to and / or in relation to the alleged shortage of 8189,722mt of IRON ORE PELLETT CHIPS AND FINES as above mentioned.**

**Ordered quantity: 54446 MT  
Loaded quantity: 46256.278 MT  
Shortage quantity: 8189,722 MT**

**Attachment – 1 : prestowage plan as required qty**

**Attachment – 2 : Draft survey certificate as loaded qty**

**Yours faithfully,  
Capt. Seckin BILALOGLU  
Master of M/V MANTA ASLI”**

5.38 What appears clear from this letter is that upon completion of loading a draught survey determined that some 46,256.278 mt of the Cargo was loaded as against the ordered quantity of 54,446 mt resulting in a shortage of 8,189,722 mt.

5.39 The Tribunal has examined the evidence presented on the following matters :

- (i) on the Vessel being ordered out of the berth at the loadport terminal and by whom, why and when
- (ii) on what information if any was obtained from the loadport terminal as to when the Vessel would be able to re-berth
- (iii) on why loading could not continue at anchorage
- (iv) on calculations the Claimant made on which it based its decision that incurring continuing demurrage would prove to be more costly than making a claim for damages based on short-loading

5.40 From the evidence, it is clear to the Tribunal that the loadport is operated by LISCO who are also the shippers of the Cargo.

5.41 The Tribunal has received submissions that on 25 May 2021 LISCO instructed the Vessel to shift from berth to anchorage. This step was taken by LISCO, according to the port agents employed by the Claimant because :

- a) LISCO had a capesize vessel which had just arrived at the port and was ready to conduct discharging operations;
- b) 25 May 2021 was the final date of shipment set out in the letter of credit provided to LISCO and LISCO refused to keep the Vessel at berth until the letter of credit was extended to load the remaining quantity.

5.42 There is an email message from the port agents Libya Aman Shipping Co. Ltd to the Claimant which confirms this position. The Claimant was informed that the

Vessel could reberth and load the balance of the Cargo after the capesize vessel had left the berth.

5.43 The Tribunal queried why it was not possible to load the Vessel at the anchorage. The answer given by Mr Amjad Zak Imam was that loading could not be conducted at anchorage since Misurata port did not have the necessary equipment and barges.

5.44 It was the Claimant's burden to prove this fact and this, the Claimant has done by its answer to the Tribunal, to the Tribunal's satisfaction.

5.45 Mr Amjad Zak Imam had calculated that it would take 12 to 15 days for the capesize vessel which replaced the Vessel at the berth, to discharge cargo. On that calculation, the Claimant estimated that the Vessel could be expected to remain at the anchorage for at least twelve days incurring demurrage at the rate of US\$42,500 per day.

5.46 After the Vessel was ordered to proceed again to berth, the Vessel could be expected to take additional time to complete the loading.

5.47 The Claimant anticipated that the additional costs associated with waiting to load the remaining quantity of cargo would be at least US\$560,000 on the following bases :

a)  $12 \text{ days} \times \text{US\$}42,500 + \text{US\$}50,000$  (for additional shifting/port expenses) :  
US\$560,000

b) 15 days x US\$42,500 + US\$50,000 (for additional shifting/port expenses) :  
US\$687,500

5.48 By contrast, deadfreight which would accrue under the fixture note if the Vessel did not load the additional quantity would be US\$55.50 (being the freight rate as per Article 8 of the Fixture Note) x US8,193.722 (being a shortage of the Cargo that was not loaded) = US\$454,751.57.

5.49 The anticipated demurrage and port charges would therefore exceed the amount of deadfreight payable to the shipowner under the fixture note. On that calculation, the Claimant ordered the Vessel to sail with a lower quantity of cargo instead of waiting for the berth to become free.

5.50 The Tribunal accepts the explanation given by the Claimant and **AWARDS** it the sum of US\$426,741.49 as additional damages flowing from the breach of the contract by the Respondent on account of the Claimant not having been able to load the full amount of the cargo under the fixture note and sold to another seller after the Contract was repudiated.

## 6. FINDINGS AND HOLDINGS ON THE SUBSTANTIVE CLAIM

6.1 The Respondent was given proper notice of the arbitration (as explained above). It has not taken part in the arbitration. It put forward no defence and has served no evidence to rebut the Claimant's case. In sum, the Respondent was given a full opportunity to present its case but it did not take advantage of the opportunity.

6.2 The burden of proof lies upon the Claimant to establish its claim under the Contract on the balance of probabilities. To decide whether the claim has been established, the Tribunal has carefully examined the evidence and submissions.

6.3 The Tribunal is satisfied that the Contract and the liabilities arising under it were clearly evidenced. The Tribunal concludes that the Claimant has a right to recover damages under the Contract. On the basis of the evidence provided and the submissions made, the Claimant succeeds in its claim against the Respondent in the amounts of **US\$1,047,060.99** and **US\$426,741.49** in relation to damages arising from demurrage and deadfreight incurred to the shipowner under the fixture note. The Tribunal reiterates that these amounts represent the damages incurred by the Claimant as a consequence of the breach of the Contract and are not to be considered as punitive damages.

## **7. THE RESPONDENT'S COUNTERCLAIM**

7.1 The Respondent has, by way of a letter dated 21 May 2021 to the Claimant, claimed that by not delivering the Cargo to it by 30 April 2021, the Claimant has committed a breach of the Contract. Consequently, the Respondent, by that letter:

- (i) terminated the Contract with all liabilities, costs, losses and damages to be borne by the Claimant;
- (ii) requested the Claimant to sign a letter of termination which was attached;
- (iii) requested the Claimant to pay to it, the sum of 10% of the total contract value as liquidated damages.



7.2 The Respondent has not participated in the arbitration proceedings and has therefore not pursued its counterclaim.

7.3 As the counterclaim has not been pursued in these proceedings, the Tribunal cannot and will not make any order in relation to it.

8. **COSTS**

8.1 The Tribunal received submissions from the Claimant on 21 November 2022. The Tribunal did not receive any submissions from the Respondent.

8.2 **Decision on which Party is liable to pay the costs of the arbitration and legal costs**

8.3 Having considered the submissions, the Tribunal has arrived at the determination that on account of the fact that the Claimant succeeded in its claim, the Claimant would be awarded costs of the arbitration as determined by SIAC as well as legal costs **AND IT IS SO DECIDED.**

8.4 **The basis on which the legal costs payable by the Respondent to the Claimant is to be determined**

8.5 By virtue of Rule 37 of the SIAC Rules, the Tribunal has the authority to order in its Award that all or a part of the legal costs of a party be paid by the other party. The Tribunal also reminds itself of the provisions of Article 15 of the Contract which provides that the Tribunal shall have the power to award the legal fees incurred by the prevailing party i.e. the party which succeeds in the arbitration.

8.6 Having taken due regard of the authority given to it by the SIAC Rules as well as by Article 15 of the Contract as well as the submissions made by Claimant and considered the issue carefully, the Tribunal has arrived at the **DECISION** that legal costs would be awarded on the standard basis.

9. **DECISIONS ON THE SUBMISSIONS MADE ON COSTS**

9.1 Not all of the contentions and submissions made by the Claimant will be detailed in the following paragraphs. However, the Tribunal has given careful and due consideration to all arguments and submissions put forth.

9.2 The factual circumstances resulted in fairly voluminous documentation and correspondence on which the Claimant made submissions. The Tribunal also had to examine in some considerable detail the correspondence and other documentation placed before it.

9.3 **Costs of the Arbitration**

9.4 Pursuant to Rule 35.1 of the SIAC Rules, the term “costs of arbitration” includes the Tribunal’s fees, SIAC’s administration fees, and the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal. The Registrar of SIAC has determined the costs of as follows :

<b><u>Tribunal’s Fees &amp; Expenses</u></b>	<b><u>SGD</u></b>
<b>Mr Jaya Prakash (Presiding Arbitrator)</b>	
Presiding Arbitrator’s Fees	61,228.37
Presiding Arbitrator’s Expenses	796.71
VAT/GST	N/A
<b><i>Subtotal</i></b>	<b>62,025.08</b>

<b>Mr Simon Davidson (Co-arbitrator)</b>	
Co-arbitrator's Fees	45,921.29
Co-arbitrator's Expenses	32.14
VAT/GST	N/A
<b>Subtotal</b>	<b>45,953.43</b>
<b>Dr Hop X Dang (Co-arbitrator)</b>	
Co-arbitrator's Fees	45,921.29
Co-arbitrator's Expenses	364.77
VAT/GST	N/A
<b>Subtotal</b>	<b>46,286.06</b>
<b>TOTAL TRIBUNAL'S FEES &amp; EXPENSES</b>	<b>154,264.57</b>
<b>Estimated Bank Charges</b>	<b>175.80</b>
<b>SIAC Fees &amp; Expenses</b>	
SIAC Administration Fee	20,082.58
SIAC Expenses	430.00
<b>TOTAL SIAC ADMINISTRATION FEES &amp; EXPENSES</b>	<b>20,512.58</b>
<b>TOTAL COSTS OF ARBITRATION</b>	<b>174,952.95</b>

9.5 As the Claimant has succeeded in the arbitration, pursuant to Rule 35.1 of the SIAC Rules, it is the Tribunal's decision that the Respondent should bear the whole of these costs of the arbitration. The Tribunal notes that the Claimant has advanced more than its share of the costs of the arbitration by way of the deposits required by SIAC for the conduct of the arbitration, paying the Respondent's share of the requisite deposits as well as its own. Accordingly, the Tribunal orders that the Respondent is liable to pay to the Claimant the full amount of the said costs of the arbitration of S\$174,952.95.

9.6 **The Claimant's legal costs and disbursements**

9.7 In relation to its own legal costs and disbursements, the Claimant put up a bill of costs for legal costs amounting to CHF52,687.45 and disbursements in the amount of

CHF4,378.79. The Claimant also claimed the sum of CHF1,560 for the preparation of the Schedule of Costs. Pursuant to Rule 37 of the SIAC Rules, the Tribunal determines that as the Claimant has largely succeeded in the present arbitration, costs should follow the event and the Respondent is liable to pay the Claimant's legal costs and disbursements, subject to quantum.

- 9.8 The Claimant has charged CHF650 per hour and thereafter CHF685 per hour for the Principal Partner Mr Michael Buisset; the Principal Senior Associate in this case is Ms Caroline West and her charge-out rate is CHF505 per hour which was increased to CHF550 per hour.
- 9.9 There was one other Partner, another Senior Associate, four other Associates, a Trainee Solicitor and a Costs Lawyer involved in the matter.
- 9.10 From the submissions made by the Claimants, the Tribunal is able to ascertain the amount of legal costs which would reasonably have been incurred by the Claimant.
- 9.11 All of the charge-out rates provided for each of the lawyers concerned appear to be reasonable.
- 9.12 The Tribunal notes from the submissions presented before it that Mr Michael Buisset and Ms Caroline West were the ones who appear to have done most of the work. That is not to say that the other solicitors did not do any substantive work.
- 9.13 Having taken into account all of the submissions which have been made, the way in which the matter has been handled by the Claimant, having recognised that there must have been some amount of duplication in the work done by the various solicitors and taking into account that Mr Buisset did not attend the oral hearing (Ms Caroline

West appeared with Ms Lucy Hanson), the Tribunal takes the view that the Claimant is entitled in terms of legal costs (including in relation to preparing the Schedule of Costs) to the sum of **CHF45,000.00**.

9.14 The Claimant has claimed disbursements amounting to CHF4,378.79 which is detailed below :

a) Arbitrators Fee	CHF1,362.04
b) Fees of Phouc & Partners (US\$2,640)	CHF2,461.27
c) Couriers	CHF384.10
d) Photocopying charges	CHF171.38

9.15 Of these, the Arbitrators Fee of CHF1,362.04 will be subsumed under the costs of arbitration. Therefore, the total amount of disbursements which the Claimant is entitled to would be CHF3,016.75.

9.16 The Tribunal accordingly awards the Claimant the amount of CHF45,000.00 in respect of legal costs and disbursements in the sum of CHF3,016.75.

## **10. INTEREST**

10.1 The Claimant has asked for interest on the amount awarded to it. The Tribunal agrees that the Claimant is entitled to interest.

10.2 The Tribunal has very wide discretion in relation to the award on interest under the IAA. Section 20 of the IAA sets out as follows :

**"(1) Subject to subsection (3), unless otherwise agreed by the parties, an arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the arbitral tribunal considers appropriate, for any period ending not later than the date of payment on the whole or any part of —**

- (a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;**
- (b) any sum which is in issue in the arbitral proceedings but is paid before the date of the award; or**
- (c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.**

**(2) Nothing in subsection (1) affects any other power of an arbitral tribunal to award interest.**

**(3) Where an award directs a sum to be paid, that sum, unless the award otherwise directs, carries interest as from the date of the award and at the same rate as a judgment debt."**

10.3 Additionally, Rule 32.9 of the SIAC Rules provides as follows :

**"The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate."**

10.4 The Tribunal has received a submission from the Claimant that interest should be awarded by the Tribunal at the rate of 5.33% per annum from 18 June 2021 until the date of payment. The Claimant seeks both pre and post Award interest on this basis.

10.5 The date 18 June 2021 is the date on which the Claimant says it made payment to the owners of the Vessel and therefore the point from which losses crystallised. They therefore argue that this is an appropriate date for the commencement of interest.

10.6 The Tribunal has considered the rate proposed by the Claimant. This is the usual rate currently awarded on judgement debts by the Courts in Singapore.

- 10.7 The Tribunal, in light of the current interest rate environment, considers the rate of 5.33% per annum to be reasonable.
- 10.8 The Tribunal also accepts that 18 June 2021 is an appropriate date for interest to be calculated from.
- 10.9 Accordingly, the Tribunal **AWARDS** the Claimant and requires the Respondent to pay simple interest to the Claimant at the rate of 5.33% per annum from 18 June 2021 for up to the time full payment is made, on the sums awarded under this Award in respect of the claims which have been made.
- 10.10 As for the amounts representing costs of the arbitration and legal costs and disbursements awarded under this Award, the Claimant is entitled to simple interest at the rate of 5.33% per annum from the date of this Award until payment is made of all sums due in respect of costs of the arbitration and legal costs and disbursements.

## **11. AUTHORITY AND RESERVATION**

- 11.1 The Tribunal also reserves for itself the jurisdiction to do all acts necessary for the purposes of registering this Award in the appropriate court in Vietnam, including without limitation, the provision of powers of attorney to give effect to such purpose.

## **12. AWARD**

- 12.1 For the reasons given, the Tribunal **AWARDS AND DECLARES** that the Respondent shall pay to the Claimant as follows :

- (i) the sums of US\$1,047,060.99 and US\$426,741.49 totalling **US\$1,473,802.48** being the amount of damages payable flowing from and to pursuant to the breach of the Contract by the Respondent;
- (ii) the costs of the arbitration (other than the Claimant's legal costs and disbursements), in the sum of S\$174,952.95.
- (iii) the Claimant's legal costs : **CHF45,000.00**
- (iv) disbursements payable to the Claimant : **CHF3,016.75**
- (v) simple interest at the rate of 5.33% per annum from 18 June 2021 for up to the time full payment is made on the sum of **US\$1,473,802.48** awarded under this Award in respect of damages.
- (vi) simple interest at the rate of 5.33% per annum from the date of this Award until payment of all sums representing costs of the arbitration and legal costs and disbursements.



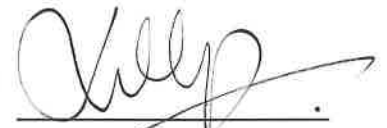
### 13. **FINALITY**

- 13.1 The Tribunal declares this **FINAL ARBITRATION AWARD** to be final as regards issues relating to all substantive matters dealt with in this arbitration save the matters specifically reserved for further determination as set out in para 11.1 above.



This **FINAL ARBITRATION AWARD** is made at the seat of arbitration this *2<sup>nd</sup>* day of *May* 2023

Seat of Arbitration : **SINGAPORE**

**JAYA PRAKASH**  
(Presiding Arbitrator)

**SIMON DAVIDSON**  
(Co-Arbitrator)

**DR HOP X DANG**  
(Co-Arbitrator)

# **ANNEX 1**

**TO THE FINAL  
ARBITRATION AWARD**

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FedEx Tracking

815713102720

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**Delivered**  
Wednesday, 08/06/2022 at 16:30



**DELIVERED**

Signed for by: L.LY NV

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**FROM**  
SIN, SG

**TO**  
MONG CAI CITY, VN

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Travel History

**TIME ZONE**  
Local Scan Time

Wednesday, 8 June 2022

16:30	MONG CAI CITY VN	Delivered
12:24	HAI PHONG VN	At local FedEx facility

Tuesday, 7 June 2022

16:24	HA NOI VN	In transit Tendered to authorized agent for final delivery
08:42	HA NOI VN	International shipment release - Import
08:07	HA NOI VN	In transit Package available for clearance
04:46	GUANGZHOU CN	In transit
04:46	GUANGZHOU CN	Departed FedEx hub
02:15	GUANGZHOU CN	Local Delay Delay beyond our control
01:28	GUANGZHOU CN	Arrived at FedEx hub

(<https://www.fedex.com/en-sg/home.html>)

21:50	SINGAPORE SG	In transit
21:12	SINGAPORE SG	In transit
21:08	SINGAPORE SG	In transit
19:04	SINGAPORE SG	Left FedEx origin facility
17:20	SINGAPORE SG	Picked up

Collapse History 

## Shipment Facts

### TRACKING NUMBER

815713102720

### SERVICE

International Priority

### WEIGHT

1.1 lbs / 0.5 kgs

### DELIVERED TO

Receptionist/Front Desk

### TOTAL PIECES

1

### TOTAL SHIPMENT WEIGHT

1.1 lbs / 0.5 kgs

### TERMS

Shipper


### PACKAGING

FedEx Envelope

### SPECIAL HANDLING SECTION

Deliver Weekday


### SHIP DATE

06/06/2022 

### COD-DETAIL

0.00 US\$

### STANDARD TRANSIT

08/06/2022 before 18:00 

### ACTUAL DELIVERY

08/06/2022 at 16:30

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**ANNEX 2(i)**

**TO THE FINAL  
ARBITRATION AWARD**

**Caroline West**

---

**From:** Dawn Hendry  
**Sent:** 23 September 2021 10:48  
**To:** Caroline West  
**Subject:** Anh Son delivery by TNT [HFWGVA-GVAIMAN.FID1835167]

Hi Caroline,

Further to our discussion, the email below from TNT notes that it was accepted by a Mr or Mrs HINH on 14 September 2021.

Kind regards,  
Dawn

Dawn Hendry  
Admin Assistant

*HFW*

D +41 (0)22 322 4823  
E [dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)

HFW, 13-15 Cours de Rive, 1204 Geneva, Switzerland  
T +41 (0)22 322 4800 | F +41 (0)22 322 4888 | [hfw.com](http://hfw.com)



**From:** Gervil Sanze <[gervil.sanze@fedex.com](mailto:gervil.sanze@fedex.com)>  
**Sent:** 17 September 2021 11:24  
**To:** Dawn Hendry <[dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)>  
**Cc:** Caroline West <[caroline.west@hfw.com](mailto:caroline.west@hfw.com)>  
**Subject:** [EXTERNAL] RE: 508895122 \* \* \* HOLMAN FENWICK \* \* \*

Re-bonjour,

Je viens d'avoir le nom de la personne qui a réceptionné l'envoi :

Mr/s HINH le 14/09/2021

Etant donné que la livraison a été faite par un agent de la poste local, il nous faudra plus de temps pour recevoir la preuve de livraison.

De ce fait, j'ai demandé à nos collègues a destination de faire une vérification auprès du destinataire afin de confirmer la bonne livraison.

Merci de votre compréhension.

Meilleures Salutations/Best Regards

**Gervil Sanze** | Customer Care representative | TNT Swiss Post | TNT Swiss Post Sarl, Aérogare Fret, case postale 1111, 1211 Genève 5, Switzerland | [tnt.com](http://tnt.com)

**From:** Gervil Sanze  
**Sent:** Friday, September 17, 2021 10:03 AM  
**To:** Dawn Hendry <[dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)>  
**Cc:** Caroline West <[caroline.west@hfw.com](mailto:caroline.west@hfw.com)>  
**Subject:** RE: 508895122 \* \* \* HOLMAN FENWICK \* \* \*

Bonjour,

Tout d'abord veuillez m'excuser pour le délais d'attente.

J'ai relancé mes collègues ce matin encore, concernant la preuve de livraison toujours pas reçu.

Dès reception de cette dernière, je vous la transmets de suite.

En vous remerciant de votre patience.

Meilleures Salutations/Best Regards

**Gervil Sanze** | Customer Care representative | TNT Swiss Post | TNT Swiss Post Sarl, Aérogare Fret, case postale 1111, 1211 Genève 5, Switzerland | [tnt.com](http://tnt.com)

**From:** Dawn Hendry <[dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)>  
**Sent:** Friday, September 17, 2021 9:37 AM  
**To:** Gervil Sanze <[gervil.sanze@fedex.com](mailto:gervil.sanze@fedex.com)>  
**Cc:** Caroline West <[caroline.west@hfw.com](mailto:caroline.west@hfw.com)>  
**Subject:** [EXTERNAL] RE: 508895122 \* \* \* HOLMAN FENWICK \* \* \*  
**Importance:** High

Caution! This email originated outside of FedEx. Please do not open attachments or click links from an unknown or suspicious origin.

Bonjour,

Suite à votre email du 14 septembre, il ne me semble pas avoir eu de retour de votre part. Pourriez-vous confirmer si vous avez reçu la preuve de livraison de nos collègues?

Dans l'attente de votre retour, je vous souhaite une belle journée.

Bien à vous,  
Dawn

Dawn Hendry  
Admin Assistant



HFW

D +41 (0)22 322 4823  
E [dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)

HFW, 13-15 Cours de Rive, 1204 Geneva, Switzerland  
T +41 (0)22 322 4800 | F +41 (0)22 322 4888 | [hfw.com](http://hfw.com)



**From:** Gervil Sanze <[gervil.sanze@fedex.com](mailto:gervil.sanze@fedex.com)>  
**Sent:** 14 September 2021 09:19  
**To:** Dawn Hendry <[dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)>  
**Cc:** Caroline West <[caroline.west@hfw.com](mailto:caroline.west@hfw.com)>  
**Subject:** [EXTERNAL] RE: 508895122 \* \* \* HOLMAN FENWICK \* \* \*

Bonjour,

Merci de nous avoir contacté concernant la preuve de livraison de votre envoi en objet .

Veillez noter que, nous avons fait la demande de la preuve de livraison auprès de nos collègues à destination.

Ce dernier devrait prendre quelques jours avant de nous le fournir.

Dès reception de cette dernière, je vous la transmets de suite.

En vous remerciant de votre patience.

Meilleures Salutations/Best Regards

**Gervil Sanze** | Customer Care representative | TNT Swiss Post | TNT Swiss Post Sarl, Aérogare Fret, case postale 1111, 1211 Genève 5, Switzerland | [tnt.com](http://tnt.com)

**From:** Dawn Hendry <[dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)>  
**Sent:** Monday, September 13, 2021 2:32 PM  
**To:** FEI-CH-Info GVA <[info.gva@tnt.com](mailto:info.gva@tnt.com)>  
**Cc:** Caroline West <[caroline.west@hfw.com](mailto:caroline.west@hfw.com)>  
**Subject:** [EXTERNAL] Confirmation de livraison - connote 508895122  
**Importance:** High

Bonjour,

Pourriez-vous me transférer la confirmation de la livraison de connote no. 508895122? C'est noté "Delivery confirmation available on request" (voir capture d'écran ci-dessous).

Code	Description	Date	De
FA	Delivery by mail. Delivery confirmation available on request	13/09/2021 15:20:00	HAN
OD	Shipment is out for delivery.	13/09/2021 13:26:00	HAN
IR	Shipment now at depot nearest to delivery address	13/09/2021 12:58:00	HAN
IS	Shipment arrived at connection point	13/09/2021 03:01:00	HAN
TR	Shipment in transit	12/09/2021 09:18:00	HKG
IC	Held awaiting customs clearance	11/09/2021 11:27:00	HKG
IS	Shipment arrived at connection point	11/09/2021 06:08:00	HKG
TR	Shipment in transit	09/09/2021 09:37:00	AMS
IS	Shipment arrived at connection point	09/09/2021 09:36:00	AMS
AS	Shipment being processed at TNT location	09/09/2021 02:13:00	LGG
TR	Shipment in transit	09/09/2021 00:50:00	LGG
OS	Shipment in transit	08/09/2021 22:00:00	GVA
TR	Shipment in transit	08/09/2021 19:34:00	GVA
FU	Shipment collected from collection address	08/09/2021 17:43:00	GVA

Je vous remercie d'avance.

Bien à vous,

Dawn Hendry  
Admin Assistant

*HFW*

D +41 (0)22 322 4823  
E [dawn.hendry@hfw.com](mailto:dawn.hendry@hfw.com)

HFW, 13-15 Cours de Rive, 1204 Geneva, Switzerland  
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**ANNEX 2(ii)**

**TO THE FINAL  
ARBITRATION AWARD**



24 September 2021

Dear Customer,

This is a proof of delivery / statement of final status for the shipment with waybill number 5064597311.

Thank you for choosing DHL Express.

[www.dhl.com](http://www.dhl.com)

Your shipment 5064597311 was delivered on 24 September 2021 at 09:50

Signed	nguyen ly	Destination Service Area	HA NOI VIETNAM
		Shipment Status	Delivered
		Piece ID(s)	JD014600008986851800

**Additional Shipment Details**

Service	EXPRESS WORLDWIDE doc	Origin Service Area	
Picked Up	17 September 2021 at 17:29	Shipper Reference	5064597311GB20210917135916131 DAWN HENDRY/95163-1