

International Chamber of Commerce (ICC)

International Court of Arbitration

ICC Case No. 23128/GR/PAR

## **Final Award by Consent**

in application of the 2017 ICC Rules of Arbitration

in the arbitration between

**Hunan Valin Xiangtan Iron and Steel Co., Ltd.**, Yuetang District, Xiangtan City, Hunan Province (P.R. China)

**Claimant**

*represented by:*

Yongrui Zhu, and/or Sun Lei, and/or Yining Dong, Beijing Dentons Law Offices LLP, 16-21/F Tower B, ZT International Center, No. 10 Chaoyangmen, Nandajie, Chaoyang District, Beijing 100020, P.R. China

vs

**DIV Grupa d.o.o.**, Bobovica 10/A, 10430, Samobor (Republic of Croatia)

**Respondent**

*represented by:*

Roman Richers, Homburger AG, Prime Tower, Hardstrasse 201, CH-8005 Zurich, Switzerland

(Claimant and Respondent collectively and/or individually referred to as "**Party / Parties**")

**before the Sole Arbitrator:**

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Place of Arbitration: Zurich, Switzerland

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## Considerations

### 1. Procedural History

- 1 On 5 October 2017, Claimant filed its Request for Arbitration (the "**Request**"), together with the exhibits C-1 to C-68, claiming that the place of arbitration is Zurich and requesting the International Court of Arbitration of the ICC (the "**ICC Court**") to appoint a sole arbitrator and that the language of arbitration should be English.
- 2 Claimant based its claim on an Article 15 contained in four contracts, *i.e.*, SW15EU224 dated 3 December 2015, SW15EU240 dated 14 December 2015, SW15EU237 dated 14 December 2015, and SW16EU056 dated 6 April 2016, concluded between the Parties for the purchase and sale of 21,170 metric tons of steel wire for cold heading by Claimant (seller) to Respondent (buyer) for the total purchase price of USD 5,867,375.00 and EUR 4,117,420.00 (the "**Contracts**"). Article 15 of the Contracts provides for an identical arbitration clause and reads as follows ("**Arbitration Clause**"):

*"ARBITRATION: All disputes in connection with this Contract or the execution thereof shall be settled by friendly negotiation. If no settlement can be reached, the case in dispute shall then be submitted for arbitration to the Comercial [recte: Commercial] court in Zagreb, Croatia, and governing law Croatian law of obligations OR International Chamber of Commerce Paris, subplace of arbitration: Zurich, and governing law: Swiss law The decision made by the Commission shall be accepted as final and binding upon on both parties. The fees for arbitration shall be borne by the losing party unless otherwise awarded by the Commission."*

- 3 On 6 October 2017, the Secretariat of the ICC Court (the "**Secretariat**") confirmed receipt of Claimant's Request in electronic version including the documents annexed thereto and indicated that this arbitration commenced on 5 October 2017.
- 4 By letter of 27 October 2017, Respondent was notified by the Secretariat that the Secretariat had received the Request from Claimant on 5 October 2017 and granted a time limit of 30 days to file an Answer to the Request, to comment on Claimant's proposal of one arbitrator and English as the language of the arbitration. Furthermore, the Secretariat acknowledged receipt of the payment of the filing fee in the amount of USD 5,000.
- 5 On 30 November 2017, Respondent requested to be granted an extension to file an Answer to the Request by 30 days. In addition, Respondent indicated that it agreed with English as the language of the arbitration and with the appointment of a sole arbitrator. With respect to the latter, it proposed that the Parties first try to reach an agreement on the name of the sole arbitrator within the same (extended) time limit as Respondent would have for its Answer to the Request.
- 6 By letter of 1 December 2017, the Secretariat granted Respondent until 31 January 2018 to submit its Answer to the Request. In addition, Claimant was invited to comment on Respondent's proposal with respect to the joint nomination of the sole arbitrator until 8 December 2017.
- 7 Upon Claimant's agreement, the Secretariat invited the Parties by e-mail of 13 December 2017 to jointly nominate the sole arbitrator by the same date for the submission of the Answer, *i.e.*, 31 January 2018.
- 8 By letter of 27 December 2017, the Secretariat acknowledged receipt of the payment of the provisional advance by Claimant in the amount of USD 40,000.
- 9 On 31 January 2018, Respondent submitted its Answer to the Request dated 31 January 2018 (the "**Answer**") together with the exhibits R-1 and R-2. In its Answer Respondent held that Article 15 of the Contracts constitutes a combined arbitration and choice of law clause that provides in case of an ICC arbitration that the Parties' claims are governed by Swiss law and in particular the United Nations Convention on the International Sale of Goods ("**CISG**").
- 10 By letter of 5 February 2018, the Secretariat acknowledged receipt of the Answer and, since the Parties had failed to jointly nominate the sole arbitrator within the granted deadline, invited Claimant to submit its comments on Respondent's request to appoint a Swiss-qualified sole arbitrator until 8 February 2018.
- 11 Upon the Secretariat's invitation on 8 February 2018, Claimant submitted its comments on the required qualifications of the sole arbitrator. In addition, it commented on Respondent's Answer and *inter alia* objected to Swiss law being the substantive law governing the Contracts. According to Claimant Chinese law applies to the merits of its claims under the Contracts. This position was in turn contested by Respondent in its submission of 12 February 2018, wherein Respondent reaffirmed its contention of Swiss substantive law applying to the merits of the Contracts.

- 12 By e-mail of 14 February 2018, the Secretariat acknowledged receipt of the Parties' respective correspondence and indicated that its content had been duly noted.
- 13 On 8 March 2018, the Secretariat informed the Parties that the ICC Court had appointed Mrs. Simone Hofbauer as sole arbitrator ("**Sole Arbitrator**") upon the Swiss National Committee's proposal and that the ICC Court had fixed the advance on costs at USD 150'000, subject to later readjustments (Article 37(2)), based on an amount in dispute quantified at USD 5 592 800 and one arbitrator.
- 14 On 9 March 2018, the Sole Arbitrator received the case file transmitted by the Secretariat on 8 and 9 March 2018.
- 15 By e-mail of 16 March 2018, the Sole Arbitrator provided the Parties with the draft of the Terms of Reference ("**ToR**") as well as the drafts of Procedural Orders No. 1 (Supplemental Procedural Rules; "**PO 1**") and No. 2 (Procedural Timetable; "**PO 2**").
- 16 By e-mail of 21 March 2018, Claimant submitted its comments to the draft ToR and therein objected to the Sole Arbitrator's jurisdiction to hear Respondent's set-off claims.
- 17 On 27 March 2018, a Case Management Conference Call between the Parties and the Sole Arbitrator took place ("**CMC I**"). During the CMC I, the draft ToR as well as the drafts of PO 1 and PO 2 were discussed and finalized. During the CMC I, the Parties agreed that the Sole Arbitrator should render a decision on the issue of the law applicable to the merits of the Contracts prior to the Parties' first round of main submissions. Both Parties agreed that – in addition to their submissions of 31 January 2018, 8 February 2018 and 12 February 2018 – no further submission were necessary on the issue of the law applicable to the merits of the Contracts.
- 18 By e-mail of 27 March 2018, Claimant provided the Sole Arbitrator with a power of attorney.
- 19 By e-mail of 27 March 2018, the Sole Arbitrator provided the Parties and the Secretariat with the Summary Minutes of the CMC I, and the finalized ToR, PO 1, PO 2, and the executed Declaration of Independence and Impartiality of the Administrative Secretary.
- 20 The ToR were signed by the Parties and the Sole Arbitrator in counterparts on 28 March 2018 (Respondent), 1 April 2018 (Claimant) and 9 April 2018 (the Sole Arbitrator). Upon receipt of all the signed original counterparts, the Sole Arbitrator sent four original hard copies of the signed ToR to the Secretariat on 9 April 2018. By letter of 5 April 2018, the Secretariat meanwhile informed the Parties and the Sole Arbitrator that the ICC Court had extended the time limit for establishing the ToR from originally 9 April 2018 until 31 May 2018.
- 21 By e-mail of 5 April 2018, the Secretariat further took note of Respondent's change of name from DIV d.o.o. to DIV Grupa d.o.o. and informed the Parties that it would modify the caption of this arbitration accordingly, subject to any objections by Claimant until 12 April 2018. In the absence of any objections by Claimant until the expiry of the time limit, the Secretariat modified the caption of the present arbitration.

- 22 By letter of 10 April 2018, the Secretariat informed the Parties and the Sole Arbitrator on the receipt of both Parties' deposits on the advance on costs and that the advance on costs fixed by the ICC Court at USD 150,000.00, subject to later readjustment, had been entirely paid by the Parties.
- 23 By Procedural Order No. 3 dated 9 May 2018 the Sole Arbitrator closed the proceedings with regard to the phase of the determination of the law applicable to the Contracts.
- 24 On 17 May 2018, the Sole Arbitrator rendered the Partial Award on the Law Applicable to the Contracts wherein she held that Swiss law is the law applicable to the Contracts.
- 25 On 31 May 2018, the Court fixed 31 May 2019 as the time limit for the final award based upon the procedural timetable (Article 31(1)).
- 26 On 22 June 2018, Claimant filed its Statement of Claim dated 22 June 2018 (the "SoC") with the following prayers for relief:

*"The Claimant seeks the following relief:*

- a) *Dismiss the Respondent's set-off claim;*
  - b) *ORDER that the Respondent pay the Claimant US\$ 714,480.07 and EURO 4,147,000 plus an annual interest;*
  - c) *ORDER that the Respondent pay all costs of this arbitration, including the administrative fee of the ICC, all fees and expenses of the Tribunal, and all costs and expenses incurred by the Claimant in prosecuting these proceedings, including legal fees, internal management costs, and all associated expenses;*
  - d) *ORDER any further or other relieves as the Tribunal in its discretion sees fit."*
- 27 Furthermore, Claimant reiterated in the SoC its objections against the Sole Arbitrator's jurisdiction to hear Respondent's set-off claim.
- 28 On 17 August 2018, Respondent submitted its Statement of Defense dated 17 August 2018 (the "SoD") together with the exhibits R-3 to R-49, the legal exhibits RL-1 to RL-26, the witness statements RWS-1 to RWS-6 and the expert reports RER-1 to RER-5 and with the following prayers for relief:
1. *That Claimant's claims be dismissed in the amount of Respondent's set-off claim;*
  2. *That Claimant be ordered to pay all costs of the arbitration proceedings, including the costs of the ICC and the fees and costs of the Arbitral Tribunal;*
  3. *That Claimant be ordered to compensate Respondent for all costs incurred in connection with this arbitration, including but not limited to Respondent's costs for attorney's fees, in-house counsel and witnesses, costs for lost executive time and expert's costs, if any.*

*Respondent expressly reserves the right to amend its Prayers for Relief and/or to submit further claims in this or another proceeding."*

- 29 On 24 August 2018, Claimant filed its submission on jurisdiction and applicable law to Respondent's set-off defense.

- 30 On 31 August 2018, Respondent submitted its comments on Claimant's submission of 24 August 2018 on the issues of jurisdiction and the law applicable to Respondent's set-off defense.
- 31 On 6 September 2018, the Parties and the Sole Arbitrator held the Case Management Conference II (the "**CMC II**") via conference call. During the CMC II (and subsequently formalized by Procedural Order No. 4 of 6 September 2018), the Sole Arbitrator ordered Respondent to provide her with a full translation of Exhibit R-4 and a synopsis on the different company names of the various Croatian entities involved in this arbitration until 13 September 2018. In addition, and also until 13 September 2018, the Sole Arbitrator invited the Parties to directly confer with each other and to submit to her a formalized choice-of-law agreement on the different laws applicable to the set-off and the merits of the set-off claims brought forward by Respondent, provided that such agreement could be concluded. Lastly, the Parties agreed to suspend the deadlines set in the PO 2 for the submission of the reply, the rejoinder the final cut-off date and the pre-hearing conference call for the time being.
- 32 By e-mail of 13 September 2018, Respondent submitted as exhibit R-50 and R-51 a full translation of Exhibit R-4 as well as a synopsis on the different company names of the various Croatian entities involved in this arbitration. Furthermore, Respondent informed the Sole Arbitrator that a formalized (written) choice-of-law agreement could not be concluded. However, since the Parties had presented concurrent views on the laws applicable to the set-off, it was Respondent's view that under the relevant Swiss *lex arbitri* (under whose terms a choice-of-law agreement would not require a specific form) a legally valid consensus on the applicable laws existed.
- 33 Upon the Sole Arbitrator's invitation by e-mail of 20 September 2018, Claimant commented on Respondent's aforementioned views by its e-mail of 26 September 2018. Therein, Claimant confirmed that the understanding of the Parties' views on the applicable laws were in fact congruent.
- 34 By Procedural Order No. 5 dated 1 November 2018, the Sole Arbitrator closed the proceedings with regard to the phase of the determination of her jurisdiction to hear, and the law applicable to, Respondent's set-off defense.
- 35 On 4 February 2019, the Sole Arbitrator rendered the Partial Award No. 2 on Jurisdiction to Hear Respondent's Set-Off Defense and on the Law(s) Applicable to Set-Off Defense holding amongst others that she had jurisdiction to hear Respondent's set-off defense without prejudice to the validity of the assignment and/or the merits of Respondent's set-off defense and that Swiss law applied to the validity of the set-off.
- 36 On 14 March 2019, the Parties and the Sole Arbitrator held the Case Management Conference III ("**CMC III**") via conference call to discuss and finalize the revised PO 2 after the Partial Award No. 2 had been rendered.
- 37 By Procedural Order No. 6 dated 15 March 2019, the Parties were subsequently invited to communicate their confirmation of the dates set forth in the draft revised PO 2 enclosed to the Procedural Order No. 6 or submit a reasoned proposal for any changes requested in writing at their earliest convenience but no later than by 20 March 2019.

- 38 On 20 March 2019, the Sole Arbitrator issued the Revised Procedural Order No. 2 (Procedural Timetable; "**Revised PO 2**").
- 39 On 5 April 2019, Respondent filed a request for interim relief (the "**Request for Interim Relief**") together with the exhibits R-52 to R-55 and the legal exhibits RL-27 to RL-35, requesting amongst others that Claimant be ordered to immediately withdraw its Request for Arbitration filed before the China International Economic Trade and Arbitration Commission (CIETAC) in Beijing.
- 40 On 15 April 2019, Claimant submitted, within an extended deadline, its reply to the Request for Interim Relief together with the legal exhibits CL-1 to CL-3, requesting the dismissal of the Request for Interim Relief.
- 41 On 18 April 2019, Respondent submitted, upon its own request to be granted to leave, its comments on Claimant's reply to the Request for Interim Relief. On 22 April 2019, Claimant filed a response to Respondent's submission of 18 April 2019.
- 42 By Procedural Order No. 7 dated 25 April 2019, the Sole Arbitrator denied Respondent's Request for Interim Relief dated 5 April 2016.
- 43 On 14 June 2019, Claimant filed the Reply together with the exhibit C-69, the legal exhibits CL-4 to CL-5, the witness statement CWS-1 and the expert reports CER-1 to CER-2, and with the following prayers for relief:
- a) *"Dismiss the Respondent's set-off claim;*
  - b) *ORDER that the Respondent pay the Claimant US\$ 714,480.07 and EURO 4,147,000 plus interest amounts up to 31 January 2020 as:*
    - (1) *USD 100,419, in respect of the USD 714,480 that is owed under contracts SW15EU224, SW15EU237 and SW15EU240; and*
    - (2) *EUR 520,364, in respect of the EUR 4,147,004 that is owed under contract SW16EU056.*
  - c) *ORDER that the Respondent pay all costs of this arbitration, including the administrative fee of the ICC, all fees and expenses of the Tribunal, and all costs and expenses incurred by the Claimant in prosecuting these proceedings, including legal fees, internal management costs, and all associated expenses;*
  - d) *ORDER any further or other relieves as the Tribunal in its discretion sees fit."*
- 44 On 31 October 2019, Respondent filed the Rejoinder together with the exhibits R-56 to R-63, the legal exhibits RL-36 to RL-42, the witness statements RWS-6 to RWS-10 and the expert reports RER-6 to RER-8. The prayer for relief remained the same as in the SoD.
- 45 On 21 November 2019, the Sole Arbitrator issued the Procedural Order No. 8, partially granting Claimant's request for an extension of the Final Cut-Off Date until 6 December 2019, to allow Claimant's expert to review the supplementary expert opinion submitted with Respondent's Rejoinder.

- 46 Upon the Sole Arbitrator's request, Respondent submitted by e-mail of 25 November 2019, translations of the requested pages of exhibits submitted with the expert report RER-6, SQ-54, SQ-59 and SQ-60.
- 47 On 26 November 2019, the Sole Arbitrator issued a further Revised PO 2.
- 48 By e-mail of 6 December 2019, Claimant filed the exhibit C-70, the witness statement CWS-2 and the expert report CER-3 and identified the fact and expert witnesses it intended to cross-examine.
- 49 By e-mail of 10 December 2019, Respondent requested that exhibit C-70, the witness statement CWS-2 and the expert report CER-3 be declared inadmissible arguing that Claimant failed to provide any explanation regarding the justification of its additional expert witness statement and that the Procedural Order No 8 did not allow Claimant to submit further factual evidence of this kind, as the extension of the Final Cut-Off Date requested, and partially granted, was based solely on the alleged need to obtain, and submit, further expert testimony, but not factual evidence.
- 50 On 10 December 2019, the Sole Arbitrator and the Parties held a Pre-Hearing Conference Call in order to discuss the procedural modalities of the witness hearing scheduled for 31 March – 3 April 2020. At this Pre-Hearing Conference Call, the Sole Arbitrator further identified a few legal issues the Parties had not yet addressed in their briefs and discussed the time frame and format of such additional legal submissions with the Parties. By e-mail of 12 December 2019, the Parties were provided with a draft Procedural Order No. 9 on the organization of the witness hearing scheduled for 31 March 2020 – 3 April 2020 and invited to comment thereon no later than by 17 December 2019. In addition, the Parties were provided with the Declaration of Independence and Impartiality of the newly appointed Administrative Secretary.
- 51 Upon Claimant's request of 2 January 2020, the Sole Arbitrator issued several visa invitation letters on 6 January 2020 as well as on 14 January 2020 for Claimant's party representatives and witnesses travelling from China in order to be granted a visa to attend the witness hearing in Switzerland. On 14 January 2020, the Sole Arbitrator sent original hard copies of the six invitation letters to Claimant as requested on that day. On 21 January 2020, the Sole Arbitrator sent the hard copy of an amendment to the visa invitation letters to Claimant as requested by Claimant on 17 January 2020. By e-mail of 12 February 2020, Respondent also requested an invitation letter for its witness from China, which was also sent in hard copy by courier mail.
- 52 On 13 January 2020, the Sole Arbitrator issued Procedural Order No. 9 (on the admissibility of additional evidence) after taking the Parties' several exchanges of arguments into consideration on whether or not the additional evidence submitted by Claimant on the extended Final Cut-Off Date of 6 December 2019. In Procedural Order No. 9, the Sole Arbitrator admitted Claimant's second expert report of Ben Johnson (CER-3), exhibit C-70, and CWS-2 (witness statement by Ms. Ding Chingli) and invited Respondent to inform her no later than by 17 January 2020, whether it wished to comment on Claimant's second expert report of Ben Johnson (CER-3), exhibit C-70, and CWS-2 (witness

statement by Ms. Ding Chingli) in writing within a short deadline or orally at the outset of the hearing.

- 53 Also on 13 January 2020, the Sole Arbitrator issued the Procedural Order No. 10 on the organization of the witness hearing scheduled for 31 March 2020 – 3 April 2020 upon consideration of the Parties' comments of 16 and 17 December 2020.
- 54 By e-mail of 17 January 2020, Respondent clarified that it wished to address the witness statement CWS-2 and exhibit C-70 during the direct and/or cross-examination of the concerned witnesses and/or experts during the hearing, respectively in the post-hearing brief. Regarding the second expert report of Ben Johnson (CER-3) Respondent, however, wished to reserve the right to address this report in the opening statement. In addition, Respondent suggested that its expert witness whose expert report had been addressed in the mentioned second expert report be given the opportunity to address Mr. Johnson's report directly as part of his direct examination during the hearing. On 23 January 2020, the Sole Arbitrator confirmed receipt of Respondent's e-mail response of 17 January 2020 and took note of Respondent's reservations to (i) address Mr. Johnson's Second Expert Report (CER-3) in the opening statement, and to (ii) request for more time in the direct examination of Respondent's expert Mr. Quereshi to give him the opportunity to address Mr. Johnson's Second Expert Report directly.
- 55 On 23 January 2020, the Parties filed their respective submissions concerning additional legal issues, in Respondent's case together with the exhibit R-64 and the legal exhibits RL-43 to RL-58.
- 56 By e-mail of 11 February 2020 Claimant informed the Sole Arbitrator on the seriousness of the situation in China due to the Corona virus and inquired whether the payment for the hearing facility could be transferred or refunded, should the hearing date have to be changed. On the same day, Respondent replied to the Sole Arbitrator's invitation and confirmed to inquire this issue with the hearing facility while sharing the hearing facilities' terms and conditions. Upon the exchange of several e-mails with the Parties, the Sole Arbitrator invited the Parties by e-mail of 12 February 2020, to indicate by 14 February 2020 on whether they wished to postpone the hearing considering the uncertainty with the situation in China with respect to the Corona virus, and if so, to make proposals for alternative hearing dates.
- 57 Due to the short cancellation guidelines of the hotel, which had been booked by the Parties as venue for the witness hearing, the Sole Arbitrator invited the Parties by e-mail of 13 February 2020 to communicate by the end of the same day, whether they wished to postpone the hearing due to the uncertainty caused by the Corona virus and to provide her with alternative hearing dates by 20 February 2020. Since both Parties agreed with the postponement, the Sole Arbitrator by another e-mail of 13 February 2020 cancelled the witness hearing scheduled for 31 March – 3 April 2020.
- 58 Having received the Parties' respective proposals for an alternative hearing date, the Sole Arbitrator informed the Parties by e-mail of 25 February 2020 on the new dates for the witness hearing, *i.e.*, 26 – 29 October 2020.

- 59 On 19 March 2020, the Sole Arbitrator issued the revised Procedural Order No. 10 on the organization of the witness hearing scheduled for 26 – 29 October 2020.
- 60 By e-mail of 2 September 2020, the Sole Arbitrator invited the Parties to indicate by 9 September 2020 how they wished to proceed with respect to the witness hearing in light of the pandemic situation and the travelling restrictions possibly being place.
- 61 Since both Parties were in favor of postponing the witness hearing and against conducting the witness hearing via video conference, the Sole Arbitrator cancelled the hearing dates scheduled for 26 – 29 October 2020 by e-mail of 11 September 2020 and invited the Parties to inform her until 30 September 2020 about alternative hearing dates.
- 62 Based on the Parties' proposals, the Sole Arbitrator invited the Parties by e-mail of 11 January 2021 to inform her on their availabilities for a witness hearing on 14 – 17 September 2021 or, alternatively, on 8 -12 November 2021.
- 63 Upon the Parties' respective replies, the Sole Arbitrator informed the Parties by e-mail of 12 January 2021 that the witness hearing was scheduled to take place on 14 – 17 September 2021, alternatively on 13 – 17 December 2021.
- 64 On 20 July 2021, the Sole Arbitrator was informed by the hotel designated by the Parties to host the witness hearing that due to the pandemic situation the hotel could no longer offer the hearing facilities at the original location in Zurich at the designated hearing dates. By e-mail of the same date the Sole Arbitrator invited the Parties to indicate how they wished to proceed under these circumstances.
- 65 Given the Parties' respective replies to her e-mail of 20 July 2021, the Sole Arbitrator, by e-mail of 23 July 2021, cancelled the hearing dates of 14 - 17 September 2021 and, subject to the Parties' instructions in the further course of these proceedings and until further notice, ordered the hearing to take place on the alternative hearing dates previously agreed upon, i.e., 14 - 17 December 2021.
- 66 By e-mail of 13 October 2021, the Sole Arbitrator invited the Parties to indicate until 22 October 2021 whether they wished to hold a physical, remote or hybrid hearing.
- 67 By e-mail of 19 October 2021, the Sole Arbitrator took note of the Parties concurrent requests of 18 October 2021 and agreed to postpone the hearing one more time until spring 2022 in favor of a physical hearing, subject to the following conditions, *i.e.*, that the Parties agree (i) on an alternative hearing schedule in the event of a hybrid or remote hearing; (ii) on a fixed date approximately two months prior to the hearing to communicate the reasons, if a Party considers that a physical meeting is again not possible in spring 2022, and that the hearing will then automatically take place in a hybrid or remote format according to the alternative hearing schedule subject to (i); and finally, (iii) that the Parties agree on a new hearing date in March or April 2022.
- 68 On 28 October 2021, the Sole Arbitrator and the Parties held an organizational video conference in preparation of the witness hearing. The Parties and the Sole Arbitrator agreed that the hearing shall take place in a physical format on 5-8 April 2022, subject to any reasoned objections by either Party until 14 February 2022. In the event a physical meeting would again not be possible, the Parties agreed to conduct the hearing in a

hybrid or even a fully remote format on these new hearing dates in accordance with an adapted alternative hearing schedule. By subsequent e-mail of 9 December 2021, the Sole Arbitrator provided the Parties with a draft of the newly revised Procedural Order No 10, a revised PO 2 (Procedural Timetable), the offer of the ICC Hearing Center, the CV as well as a draft Declaration of Independence and Impartiality by Rachel Chiao, the Neutral Observer, and invited them to provide their comments thereon until 15 December 2021.

- 69 Upon the Parties' respective replies on 15 December 2021, the Sole Arbitrator requested further clarifications from the Parties on the same date regarding the appointment of a neutral third party to attend the witness examinations as well as the determination of a neutral remote hearing venue for the witness examination. She invited the Parties to provide the Sole Arbitrator with a joint list of three neutral third parties as well as of one or two neutral remote venues in each country where witness or expert testimony should take place remotely. In addition, the Sole Arbitrator invited the Parties to agree on the instructions to such neutral third party observing the remote witness examinations. In the event the Parties did not submit such a joint list until 22 December 2021, the Sole Arbitrator already invited each Party to communicate its proposal of three neutral third parties and two neutral remote venues until 24 December 2021 (later extended until 17 January 2022), and at the same time granting each Party the opportunity to comment the proposal of the other party until 28 December 2021 (later extended until 21 January 2022).
- 70 By e-mail of 23 December 2021, the Sole Arbitrator took note of the Parties' concurrent statements on 22 December 2021 that an observer of remote witness testimonies, if any, should observe the testimony of *factual* witnesses only, and that such remote testimonies should take place at *one* "remote venue" for all factual witnesses residing in the same country (provided that travelling within such country is permitted). The Sole Arbitrator further noted that Claimant insisted on not having such an observer of witness testimonies at all, but that Respondent should bear all costs incurred in relation to such observers. By e-mail of 10 January 2022, upon the Sole Arbitrator's invitation to comment, Respondent expressed its willingness to agree to waive the requirement of neutral observers for the fact witnesses as well, however, subject to adequate substitute rules to ensure the proper identification of the fact witnesses and a proper conduct of the witness examination, as well as explicit undertakings by the witnesses and the involved law firms that the rules set out by the Sole Arbitrator for the evidentiary hearing will be fully complied with.
- 71 In addition, also by e-mail of 10 January 2022, Claimant communicated the names of two interpreters, together with their CV and a declaration of independence and impartiality of each interpreter. By e-mail of 13 January 2022, Respondent informed the Sole Arbitrator on the absence of any objections to the nomination of the two interpreters communicated by Claimant.
- 72 Upon the Parties' respective requests of 24 and 25 January 2022, the Sole Arbitrator provided the Parties by e-mail of 25 January 2022 with the updated visa invitation letters

for all participants from China. In the absence of any comments thereto, the Sole Arbitrator dispatched the original hard copies of the respective invitation letters to the Parties on 1 February 2022.

- 73 By respective e-mails of 14, 15 and 21 February 2022, Claimant as well as Respondent indicated that due to pandemic situation, they agreed to conduct the witness hearing fully remotely. Claimant proposed to keep the original hearing schedule, however, requested to start one hour earlier due to the time difference.
- 74 On 23 February 2022, the Sole Arbitrator issued the revised Procedural Order No. 10 on the organization of the witness hearing scheduled for 5 – 8 April 2022.
- 75 By e-mail of 8 March 2022, the Sole Arbitrator indicated to the Parties that the test runs with the ICC Hearing Centre which had been retained by the Parties to organize the remote witness hearing were scheduled for 18 and 21 March 2022. By e-mail of 9 March 2022, the Sole Arbitrator scheduled a further test run for 22 March 2022 to accommodate the schedule of the two interpreters to allow for a technical test run on the translation channel together with the Neutral Observer and the Court Reporter.
- 76 By e-mail of 16 March 2022, the Respondent provided the Sole Arbitrator with a copy of the Settlement Agreement dated 15 March 2022 and signed by both Parties (the “**Settlement Agreement**”) and asked the Sole Arbitrator to stay the proceedings, cancel the evidentiary hearing and to issue an award by consent according to the terms of the attached settlement. By e-mail of 16 March 2022, Claimant confirmed that the Parties had reached a settlement and also requested the Sole Arbitrator to render an award by consent according to the Settlement Agreement.
- 77 By e-mail of 16 March 2022, the Sole Arbitrator took note of the Parties’ Settlement Agreement and stayed the present arbitration proceedings effective immediately pending the drafting of the award by consent.
- 78 In result of the Parties’ Settlement Agreement and in line with Article 27 of the 2017 ICC Rules, the Sole Arbitrator declared these arbitration proceedings closed by Procedural Order No. 11 of 31 March 2022.
- 79 The Sole Arbitrator herewith renders this Final Award by Consent within the time limit granted by the ICC, extended for the last time by the ICC Court on 2 December 2021 until 29 July 2022.

## 2. Settlement Agreement

- 80 The Settlement Agreement dated as of March 15, 2022 reads as follows:

*“Settlement Agreement*

*dated as of March 15, 2022*

*by and among*

**Hunan Valin Xiangtan Iron and Steel Co., Ltd.**  
*Yuetang District, Xiangtan City, Hunan Province,  
P.R. China*

**(Claimant)**

and

**DIV Grupa d.o.o. (formerly DIV d.o.o.)**  
 Bobovica 10IA 10430, Samobor, Republic of  
 Croatia

**(Respondent)**

and

**Brodogađevna Industrija Split d.d.**  
 Put Supavla 21, 21000 Split, Republic of Croatia

**(Brodosplit)**

**(Claimant, Respondent and Brodosplit  
 each a Party, together the Parties)**

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### Whereas

- A. Claimant and Respondent have entered into four contracts, i.e., contract SW15EU224 dated December 3, 2015, contract SW15EU240 dated December 14, 2015, contract SW15EU237 dated December 14, 2015, and contract SW16EU056 dated April 6, 2016, all contracts for the purchase and sale of a total of 21,170 metric tons of steel wire for cold heading by Claimant (seller) to Respondent (buyer) for the total purchase price of USD 5,867,375.00 and EUR 4,117,420.00 (the **Contracts**);
- B. Claimant and Brodosplit Shipyard Ltd. (**Brodosplit Shipyard**) entered into a contract 2013EU066 dated August 6, 2013 for the purchase and sale of 7,500 metric tons of

steel wire for cold heading by Claimant (seller) to Brodosplit Shipyard for a purchase price of USD 5,175,925 (the **Brodosplit Contract**);

- C. Brodosplit Shipyard was merged into Brodograđevna Industrija Split d.d. (Brodosplit) in 2013;
- D. A dispute has arisen between the Parties under the Contracts and the Brodosplit Contract;
- E. Claimant has initiated arbitration proceedings against Respondent under the ICC Rules (ICC Arbitration Case No. 23128/GR; the **ICC Arbitration**);
- F. In the ICC Arbitration, Claimant has demanded in particular that Respondent be ordered to pay to Claimant (i) USD 714,480.07 and EUR 4,147,000 plus interest, and (ii) all costs of the ICC Arbitration (including party compensation);
- G. Respondent has demanded in the ICC Arbitration that Claimant's claims be dismissed in the amount of Respondent's (assigned) set-off claim arising from the Brodosplit Contract, with the set-off claim quantified to date at EUR 2,724,021; and that Claimant be ordered to pay all costs of the arbitration proceedings (including party compensation);
- H. Claimant has demanded that Respondent's set-off claim be dismissed;
- I. A Partial Award No. 1 was rendered in the ICC Arbitration on May 17, 2018, holding that Swiss law applies to the Contracts;
- J. A Partial Award No. 2 was rendered in the ICC Arbitration on February 4, 2019, holding that the Sole Arbitrator in the ICC Arbitration has jurisdiction to hear Respondent's set-off defense; that the law applicable to the validity of the set-off defense is Swiss law; the law applicable to the assignment between Brodosplit Shipyard and Respondent is Croatian law and that the question whether the assignment can be invoked vis-à-vis Claimant is subject to the law of the P.R. China; and that the law applicable to the merits of the claims resulting from the Brodosplit Contract is primarily the CISG, and that questions not governed by the CISG are subsidiarily subject to the law of the P.R. China;
- K. On December 5, 2018, Claimant initiated arbitration proceedings against Brodosplit under the CIETAC Arbitration Rules (Arbitration Case no. R20190401), asserting the invalidity of the Brodosplit Contract (the **CIETAC Arbitration**);
- L. The claims filed by Claimant in the CIETAC Arbitration were fully dismissed with Arbitral Award No. 1861 dated December 11, 2019;
- M. In the ICC Arbitration, an Evidentiary Hearing is set to take place between April 5, 2022 and April 8, 2022;
- N. The Parties have engaged in extra-procedural settlement discussions;
- O. The Parties intend fully and finally to settle all their claims, disputes, rights and obligations in connection with each of the Contracts, the Brodosplit Contract, the ICC

*Arbitration and the CIETAC Arbitration under the terms and conditions of this Settlement Agreement.*

*Now, therefore, the Parties agree to the following binding terms and condition of settlement:*

**1. Settlement payment**

- (a) *Respondent shall pay to Claimant the lump sum amount of USD 3.700.000 (three million seven hundred thousand US dollars) without any interest and VAT (the **Settlement Payment**).*
- (b) *The Settlement Payment shall be effected by bank transfer within thirty (30) days of the Award by Consent (see Section 3 of this Settlement Agreement). Payment of the Settlement Payment shall be made to the following bank account:*

*NAME OF BANK: BANK OF CHINA, XIANGTAN BRANCH*

*ACCOUNT NO.: 597657368223*

*NAME OF PAYEE: HUNAN VALIN XIANGTAN IRON AND STEEL CO., LTD.  
SWIFT BKCHCNBJ98D*

**2. Legal and Arbitration Costs**

- (a) *Each Party is responsible for its own costs, including the costs of legal fees, management time, consultancy fees and any other costs incurred directly or indirectly in relation to the ICC Arbitration, the underlying dispute and this Settlement Agreement.*
- (b) *The costs of the ICC Arbitration, still to be fixed by the ICC Court, are to be paid out of the deposits paid by Claimant and Respondent, with Claimant and Respondent each bearing the costs in equal shares. To the extent the deposits do not suffice to cover the ICC Arbitration's costs, any additional costs of the ICC Arbitration shall be borne by Claimant and Respondent in equal shares.*

**3. Termination of the ICC Arbitration**

- (a) *Upon the execution of this Settlement Agreement, Claimant and Respondent shall jointly request the Sole Arbitrator to stay the ICC Arbitration pending the rendering of an Award by Consent.*
- (b) *Upon the execution of this Settlement Agreement, Claimant and Respondent shall jointly inform the Sole Arbitrator that they have reached an agreement for the full and final resolution of all claims arising in the ICC Arbitration and in relation to the Contracts and the Brodosplit Contract, and that they therefore jointly request the Sole Arbitrator to render an Award by Consent*
  - (i) *holding that the ICC Arbitration is terminated by consent;*
  - (ii) *ordering Respondent to pay to Claimant within thirty (30) days of this Award the amount of USD 3.700.000 (three million seven hundred thousand US dollars) without any interest and VAT;*

- (iii) *dismissing Claimants claims and Respondent's claims (including its set-off claim) with prejudice;*
- (iv) *fixing the costs of the ICC Arbitration and applying the cost deposits paid so far for the ICC Arbitration with each Party bearing the costs in equal shares, and that to the extent the deposits do not suffice, any additional costs shall be borne by Claimant and Respondent in equal shares;*
- (v) *making no award for the payment of one party for the other party's costs in relation to the ICC Arbitration, the underlying dispute or this Settlement Agreement.*

**4. Settlement of all claims and release of any obligations**

*The Parties agree that upon receipt by Claimant of the Settlement Payment, all disputes between the Parties, and all actual or potential, past present or future claims of one Party against another Party arising out of or in connection with the Contracts, the Brodosplit Contract, the ICC Arbitration, the CIETAC Arbitration or any events and circumstances leading to the dispute settled by this Settlement Agreement or otherwise related thereto are deemed fully and finally settled and discharged with the exception of sections 5, 6, 8 and 9 of this Settlement Agreement.*

**5. Confidentiality**

- (a) *Each Party shall keep the fact of the settlement, the existence and the terms of this Settlement Agreement and the negotiations leading to the Settlement Agreement entirely confidential and shall not disclose it to any other person except:*
  - (i) *the auditors and legal advisers of the Parties;*
  - (ii) *where a Party is under a legal or regulatory obligation to make such disclosure, in which case the disclosure shall be limited to the extent of that legal obligation;*
  - (iii) *to the extent that it is already in the public domain (other than as a result of the disclosing Party's breach of this Settlement Agreement);*
  - (iv) *with the prior written consent of the other Parties to this Settlement Agreement; or*
  - (v) *as provided in clause 3 of this Agreement.*
- (b) *The Parties shall take all reasonable steps to make their employees, agents, consultants, suppliers, advisors, representatives, associates, etc. (the **Related Parties**) aware of the terms of this clause 5 and make all appropriate arrangements to extend the terms of this provision to the Related Parties.*
- (c) *For the avoidance of doubt, this Settlement Agreement shall be submitted to the Sole Arbitrator in the ICC Arbitration.*

**6. Miscellaneous****6.1 Waivers**

*No Party to this Settlement Agreement will be deemed to have waived any rights arising out of it or out of any breach of it, unless such Party has executed a waiver in writing and given notice of it. If a Party waives a right in writing, that waiver shall not be construed to constitute a waiver of any other right, however similar, arising out of this Settlement Agreement or out of any breach of it.*

**6.2 Severability**

*If any term in this Settlement Agreement is found to be unenforceable, void or contrary to mandatory law, then that term shall be ineffective only to the extent of such unenforceability or invalidity and shall in no way affect the enforceability or validity of the remainder of that term or the other terms of this Settlement Agreement. In the event that a provision is found to be invalid or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory substitute provision.*

**6.3 Entire agreement**

*This Settlement Agreement constitutes the entire agreement of the Parties in relation to its subject matter and supersedes all prior letters, representations, warranties and agreements relating to the subject matter of this Settlement Agreement.*

**6.4 Assignment**

*No Party may assign all or part of its rights and obligations under this Settlement Agreement to any third party without the prior written consent of the other Parties.*

**6.5 Variation**

*Any variation to this Settlement Agreement is not effective unless it is made in writing and signed by or on behalf of each of the Parties.*

**7. Counterparts**

*This Settlement Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.*

**8. Governing Law**

*This Settlement Agreement, including its construction, validity and performance shall be governed by Swiss substantive Law to the exclusion of any other law that may be imputed in accordance with Choice of Law Rules applicable in any jurisdiction. The United Nations Convention on Contracts for the International*

*Sale of Goods of Vienna, 11 April, 1980 shall not apply to this Settlement Agreement.*

**9. Arbitration**

*All disputes arising out of or in connection with this Settlement Agreement, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a sole arbitrator appointed in accordance with the said Rules. The place of arbitration shall be Zurich, Switzerland. The language of the proceedings shall be English.*

**10. Authorized Signatories**

*Each Party represents that it has obtained all necessary internal approvals and is duly authorised to enter into this Agreement and that the signatory executing this Agreement on its behalf is duly authorised and empowered to represent it for this purpose.*

*[Signatures on next page]*

*Executed as of the date written on the cover page to this Agreement.*

**Hunan Valin Xiangtan Iron and Steel Co.,  
Ltd.**

\_\_\_\_\_  
Name: LIBO WANG

Function: Director of Legal Department

*[signature and date, i.e., 2022.3.16]*

\_\_\_\_\_  
Name:

Function:

**DIV Grupa d.o.o.** *[Stamp of DIV GRUPA d.o.o.]*

\_\_\_\_\_  
*[signature]*

Name: TOMISLAV DEBELJAK

Function: CEO

\_\_\_\_\_  
Name:

Function:

**Brodogađevna Industrija Split d.d.** *[Stamp of Brodogađevna Industrija Split d.d.]*

\_\_\_\_\_  
*[signature]*

Name: TOMISLAV DEBELJAK

Function: CEO

\_\_\_\_\_  
Name:

Function:"

### 3. Costs of Arbitration

81 In view of the Parties' joint request dated 16 March 2022, the Sole Arbitrator shall issue a Final Award by Consent for the termination of the present arbitral proceedings in accordance with Article 33 of the 2017 ICC Rules.

82 At its session of 8 March 2018 the ICC Court fixed the advance on costs at USD 150,000, subject to later readjustments pursuant to Article 37(2) of the 2017 ICC Rules as indicated in the Secretariat's letter of 8 March 2018. Up to date, the advance on costs in the amount of USD 150,000 has been paid by the Parties in equal shares of USD 75,000 each.

83 The ICC Court, at its session of 28 April 2022 fixed the fees and expenses of the Sole Arbitrator and the administrative expenses at USD 150,000. This amount consists of:

• ICC administrative expenses	USD	46,497
• Fees of the Sole Arbitrator	USD	102,600
• Expenses incurred	USD	903
• <b>Total costs:</b>	<b>USD</b>	<b>150,000</b>

84 These costs of arbitration will be set-off against the advances on costs paid by the Parties in equal shares.

85 In accordance with Article 2a of the Settlement Agreement each Party is responsible for its own costs, including the costs of legal fees. In Article 3(v) of the Settlement Agreement the Parties jointly requested the Sole Arbitrator to make "*no award for the payment of one party for the other party's costs in relation to the ICC Arbitration, the underlying dispute or this Settlement Agreement*". Each Party will thus bear its own party's costs and other costs in relation to this ICC arbitration, the underlying dispute or the Settlement Agreement.

In accordance with Article 33 of the 2017 ICC Rules and in view of the foregoing considerations the Sole Arbitrator renders the following

## Final Award by Consent

1. This ICC Arbitration is terminated by consent of the Parties' Settlement Agreement dated 15 March 2022.
2. Respondent is hereby ordered to pay to Claimant within thirty (30) days of this Award the amount of USD 3.700.000 (three million seven hundred thousand US dollars) without any interest and VAT.

The payment shall be effected to the following account:

Name of Bank: BANK OF CHINA, XIANGTAN BRANCH  
Account No.: 597657368223  
Name of Payee: HUNAN VALIN XIANGTAN IRON AND STEEL CO., LTD.  
SWIFT Code: BKCHCNBJ98D

3. Claimant's claims and Respondent's claims (including its set-off claim) in the present arbitration are hereby fully dismissed **with prejudice**.
4. The costs of this arbitration (fees and expenses of the Sole Arbitrator and administrative costs of the ICC) amount to USD 150,000 and are set-off against the advances on costs paid by the Parties in equal shares. Each Party bears the costs of this arbitration in equal shares.
5. Each Party bears its own party's costs and other costs in relation to this ICC arbitration, the underlying dispute or the Settlement Agreement.

Place of arbitration: Zurich, Switzerland

Date: 3 May 2022

The Sole Arbitrator



Simone M. Hofbauer

EUROLANGUAGE

*Sudski tumači i prevoditelji*

Zagreb, Kranjčevićeva 14

Tel./fax: 00385 (0) 1 38 20 122

e-mail: [info@eurolanguage.hr](mailto:info@eurolanguage.hr); Internet: [www.eurolanguage.hr](http://www.eurolanguage.hr)

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Ovaj prijevod sastoji se od  
20 stranica

Br.-OV: 955/2022

Datum: 19. kolovoza 2022.

**OVJERENI PRIJEVOD S ENGLESKOG JEZIKA**



Međunarodna trgovačka komora (ICC)

Međunarodni arbitražni sud

ICC Predmet br. 23128/GR/PAR

## Konačna sporazumna odluka

uz primjenu ICC Pravidnika o arbitraži iz 2017. godine

u arbitražnom postupku između

**Hunan Valin Xiangtan Iron and Steel Co., Ltd.**, Yuetang District, Xiangtan City, Hunan Province (N.R. Kina)

**Tužitelj**

*kojega zastupa:*

Yongrui Zhu, i/ili Sun Lei, i/ili Yining Dong, Beijing Dentons Law Offices LLP, 16-21/F Tower B, ZT International Center, No. 10 Chaoyangmen, Nandajie, Chaoyang District, Beijing 100020, N.R. Kina

protiv

**DIV Grupa d.o.o.**, Bobovica 10/A, 10430, Samobor (Republika Hrvatska )

**Tuženik**

*kojega zastupa:*

Roman Richers, Homburger AG, Prime Tower, Hardstrasse 201, CH-8005 Zürich, Švicarska

(Tužitelj i Tuženik se skupno i/ili pojedinačno nazivaju: „**ugovorna strana/ugovorne strane**“)

**pred arbitrom pojedincem:**

Simone M. Hofbauer, mag.iur.

Barandun AG

Mühlebachstrasse 25, P.O. Box

8024 Zürich

Switzerland

telefon: +41 44 266 56 56

fax: +41 44 266 56 66

e-mail: [simone.hofbauer@barandun-law.ch](mailto:simone.hofbauer@barandun-law.ch)

Mjesto arbitraže: Zürich, Švicarska

## Sadržaj

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## Činjenice uzete u obzir

### 1. Historijat postupka

- 1 Dana 5. listopada 2017. godine Tužitelj je podnio svoj Zahtjev za arbitražu („**Zahtjev**“), zajedno s dokazima C-1 do C-68, u kojem traži da mjesto arbitraže bude Zürich i da Međunarodni arbitražni sud ICC-a („**ICC sud**“) imenuje arbitra pojedinca te da jezik arbitraže bude engleski.
- 2 Tužitelj je svoju tužbu temeljio na članku 15. koji je sadržan u četiri ugovora, SW15EU224 od 3. prosinca 2015., SW15EU240 od 14. prosinca 2015. SW15EU237 od 14. prosinca 2015. i SW16EU056 od 6. travnja 2016., koje su ugovorne strane sklopile vezano uz kupoprodaju 21.170 metričkih tona čelične žice za hladno gnječenje koje Tužitelj (prodavatelj) prodaje Tuženiku (kupcu) za ukupnu kupovnu cijenu od USD 5.867.375,00 i EUR 4.117.420,00 („**Ugovori**“). Članak 15. tih Ugovora predviđa identičnu klauzulu o arbitraži i glasi kako slijedi („**Klauzula o arbitraži**“):

*„ARBITRAŽA: Svi sporovi u vezi s ovim ugovorom ili njegovom provedbom rješavaju se prijateljskim pregovorima. Ukoliko se ne bi moglo postići nikakvo rješenje, predmet spora se zatim predaje na arbitražu Trgovačkom sudu u Zagrebu, Hrvatska, a mjerodavno pravo je hrvatski Zakon o obveznim odnosima ILLI Međunarodnoj trgovačkoj komori u Parizu, sekundarno mjesto arbitraže: Zürich, mjerodavno pravo: švicarsko pravo. Odluka koju donese Komisija mora se prihvatiti kao konačna i obvezujuća za obje ugovorne strane. Troškove arbitraže snosi ugovorna strana koja izgubi spor osim ako Komisija odluči drugačije.“*

- 3 Dana 6. listopada 2017., Tajništvo ICC suda („Tajništvo“) potvrdilo je primitak Tužiteljevog Zahtjeva u elektroničkoj verziji, uključujući uz njega priložene dokumente te navelo da je ova arbitraža započela 5. listopada 2017.
- 4 Dopisom od 27. listopada 2017., Tajništvo je obavijestilo Tuženika da je Tajništvo 5. listopada 2017. primilo od Tužitelja Zahtjev i dalo rok od 30 dana za podnošenje odgovora na zahtjev, stavljanje primjedbi na Tužiteljev prijedlog za jednog arbitra i engleski jezik kao jezik arbitraže. Nadalje, Tajništvo je potvrdilo uplatu naknade za podnošenje zahtjeva u iznosu od USD 5.000.
- 5 Dana 30. studenog 2017. Tuženik je zatražio da mu se odobri produženje roka za podnošenje odgovora na Zahtjev za 30 dana. Pored toga, Tuženik je naveo da prihvaća engleski kao jezik arbitraže i imenovanje arbitra pojedinca. U odnosu na ovo potonje, predložio je da ugovorne strane prvo pokušaju postići sporazum o imenu arbitra pojedinca unutar istog (produženog) roka koji bi Tuženik imao da dostavu svog odgovora na Zahtjev.
- 6 Dopisom od 1. prosinca 2017., Tajništvo je Tuženiku dalo rok do 31. siječnja 2018. da podnese svoj odgovor na Zahtjev. Pored toga, Tužitelj je pozvan da komentira Tuženikov prijedlog u odnosu na zajedničko imenovanje arbitra pojedinca do 8. prosinca 2017.
- 7 Nakon što se Tužitelj s time složio, Tajništvo je e-poštom od 13. prosinca 2017. pozvalo ugovorne strane da zajednički imenuju arbitra pojedinca do istog datuma koji je odobren za podnošenje odgovora, tj. do 31. siječnja 2018.
- 8 Dopisom od 27. prosinca 2017., Tajništvo je potvrdilo primitak uplate privremenog avansa od strane Tužitelja u iznosu od USD 40.000.
- 9 Dana 31. siječnja 2018., Tuženik je podnio svoj odgovor na zahtjev s datumom 31. siječnja 2018. („Odgovor“) zajedno sa svojim dokazima R-1 i R-2. U svom odgovoru Tuženik je naveo da članak 15. Ugovora predstavlja klauzulu o kombiniranoj arbitraži i odabiru prava koja u slučaju ICC arbitraže propisuje da se zahtjevi ugovornih strana reguliraju švicarskim pravom te osobito UN-ovom Konvencijom o međunarodnoj prodaji robe („CISG“).
- 10 Dopisom od 5. veljače 2018., Tajništvo je potvrdilo primitak tog odgovora i, budući da ugovorne strane unutar odobrenog roka nisu uspjele zajednički imenovati arbitra pojedinca, pozvalo je Tužitelja da podnese svoje primjedbe na Tuženikov zahtjev da se do 8. veljače 2018. imenuje za to kvalificirani švicarski arbitar pojedinac.
- 11 Na poziv Tajništva 8. veljače 2018., Tužitelj je podnio svoje primjedbe o potrebnim kvalifikacijama arbitra pojedinca. Pored toga, komentirao je Tuženikov odgovor i, između ostaloga, stavio prigovor na to da švicarsko pravo bude materijalno pravo za reguliranje Ugovora. Prema stavu Tužitelja, kinesko pravo primjenjuje se na meritum njegovih zahtjeva na temelju Ugovora. Tuženik je osporio takav stav u svom podnesku od 12. veljače 2018., u kojem je Tuženik ponovio svoju sklonost tome da se švicarsko materijalno pravo primjenjuje na meritum Ugovora.

- 12 E-poštom od 14. veljače 2018., Tajništvo je potvrdilo primitak korespondencije ugovornih strana i navelo da je primilo na znanje njezin sadržaj.
- 13 Dana 8. ožujka 2018., Tajništvo je obavijestilo ugovorne strane da je ICC sud imenovao gđu Simone Hofbauer arbitrom pojedincem („**Arbitar pojedinac**“) na prijedlog Švicarskog nacionalnog odbora te da je ICC sud odredio predujam za troškove u iznosu od USD 150.000, podložno naknadnim usklađivanjima (članak 37(2)), na temelju vrijednosti spora koja je utvrđena u iznosu od USD 5.592.800 i jednog arbitra.
- 14 Dana 9. ožujka 2018., arbitar pojedinac primio je dokumentaciju spora koju je Tajništvo dostavilo 8. i 9. ožujka 2018.
- 15 E-poštom od 16. ožujka 2018., arbitar pojedinac dostavio je ugovornim stranama nacrt Opisa postupka („**ToR**“ – *prema engleskom „Terms of Reference“*), kao i nacрте Proceduralnih naloga br. 1 (Dopunska proceduralna pravila; „**PO1**“ – *prema engleskom „Procedural Orders“*) i br. 2 (Proceduralni terminski plan; „**PO 2**“).
- 16 E-poštom od 21. ožujka 2018., Tužitelj je podnio svoje primjedbe na nacrt ToR-a i prigovor na nadležnost arbitra pojedinca da sasluša Tuženikove zahtjeve za prijebaj.
- 17 Dana 27. ožujka 2018, između ugovornih strana i arbitra pojedinca održana je telefonska konferencija o vođenju slučaja („**CMC I**“ – *prema engleskom „Case Management Conference Call“*). Tijekom CMC I, prodiskutirani su i finalizirani nacrt ToR-a kao i nacrti PO 1 i PO 2. Tijekom CMC I, ugovorne strane su se usuglasile da arbitar pojedinac treba donijeti odluku o pravu koje će se primjenjivati na meritum Ugovora prije prvog kruga dostave glavnih podnesaka ugovornih strana. Obje ugovorne strane su se usuglasile da – osim njihovih podnesaka od 31. siječnja 2018., 8. veljače 2018. i 12. veljače 2018. nisu potrebni nikakvi daljnji podnesci vezano uz pitanje prava koje se primjenjuje na meritum Ugovora.
- 18 E-poštom od 27. ožujka 2018., Tužitelj je arbitru pojedincu dostavio punomoć.
- 19 E-poštom od 27. ožujka 2018., arbitar pojedinac dostavio je ugovornim stranama i Tajništvu Sažetak zapisnika sa CMC I i finaliziranih ToR, PO 1, PO 2, te potpisanu Izjavu o neovisnosti i nepristranosti administrativnog tajnika.
- 20 ToR su potpisale ugovorne strane i arbitar pojedinac u odvojenim primjercima i to 28. ožujka 2018. (Tuženik), 1. travnja 2018. (Tužitelj) i 9. travnja 2018. (arbitar pojedinac). Po primitku svih potpisanih izvornika, arbitar pojedinac poslao je četiri originalna tiskana primjerka potpisanog ToR-a Tajništvu 9. travnja 2018. U međuvremenu je Tajništvo dopisom od 5. travnja 2018. obavijestilo ugovorne strane i arbitra pojedinca da je ICC sud produžio rok za utvrđivanje ToR-a od prvobitnog datuma 9. travnja 2018. na 31. svibnja 2018.
- 21 E-poštom od 5. travnja 2018., Tajništvo je nadalje konstatiralo promjenu Tuženikovo naziva iz DIV d.o.o. u DIV Grupa d.o.o. i obavijestilo ugovorne strane da će odgovarajuće izmijeniti zaglavlje ove arbitraže, podložno eventualnim prigovorima od strane Tužitelja do 12. travnja 2018. Budući da do isteka tog roka Tužitelj nije uložio nikakve prigovore, Tajništvo je izmijenilo zaglavlje u ovoj arbitraži.

- 22 Dopisom od 10. travnja 2018., Tajništvo je obavijestilo ugovorne strane i arbitra pojedinca da su od obje ugovorne strane primljeni polozi avansa za troškove i da su ugovorne strane uplatile avans za troškove koji je ICC sud odredio u iznosu od USD 150.000,00, podložno naknadnom usklađivanju.
- 23 Proceduralnim nalogom br. 3 od 9. svibnja 2018. arbitar pojedinac je zaključio postupak u odnosu na fazu utvrđivanja mjerodavnog prava za Ugovore.
- 24 Dana 17. svibnja 2018. arbitar pojedinac donio je Djelomičnu odluku o mjerodavnom pravu za Ugovore, kojom je riješeno da će se na te Ugovore primjenjivati švicarsko pravo.
- 25 Dana 31. svibnja 2018., Sud je odredio 31. svibnja 2019. kao krajnji rok za donošenje konačne odluke na temelju proceduralnog terminskog plana (članak 31(1)).
- 26 Dana 22. lipnja 2018., Tužitelj je podnio svoj tužbeni zahtjev datiran 22. lipnja 2018. sa sljedećim zamolbama za mjere pravne zaštite:
- " Tužitelj traži sljedeće mjere pravne zaštite:*
- a) *Odbacivanje Tuženikovog zahtjeva za prijebaj;*
  - b) *NALOG da Tuženik plati Tužitelju USD 714.480,07 i EUR 4.147.000 plus godišnje kamate;*
  - c) *NALOG da Tuženik plati sve troškove arbitraže uključujući administrativnu pristojbu ICC-a, sve naknade i izdatke arbitražnog suda te sve troškove i izdatke koje pretrpi Tužitelj u provođenju ovog postupka, uključujući pravne pristojbe, troškove internog upravljanja i sve uz to vezane troškove;*
  - d) *NALOG za sve dodatne ili druge mjere koje arbitražni sud po vlastitoj odluci smatra prikladnima."*
- 27 Nadalje, Tužitelj je u tužbenom zahtjevu ponovio svoje prigovore na nadležnost arbitra pojedinca da razmotri Tuženikov zahtjev za prijebaj.
- 28 Dana 17. kolovoza 2018., Tuženik je podnio svoj odgovor na tužbu datiran 17. kolovoza 2018., zajedno s dokazima R-3 do R-49, pravnim dokazima RL-1 do RL-26, iskazima svjedoka RWS-1 do RWS-6 i izvještajima vještaka RER-1 do RER-5 te sljedećim zamolbama za mjere pravne zaštite:
1. *Da se tražbine Tužitelja odbace u iznosu Tuženikovog zahtjeva za prijebaj;*
  2. *Da se Tužitelju izda nalog da plati sve troškove arbitražnog postupka, uključujući sve troškove ICC-a te naknade i troškove arbitražnog suda;*
  3. *Da se Tužitelju izda nalog da Tuženiku nadoknadi sve troškove pretrpljene u vezi s ovom arbitražom, uključujući ali bez ograničavanja sve Tuženikove troškove odvjetnika, internog pravnog savjetnika i svjedoka, troškove za izgubljeno vrijeme i troškove vještaka, ako ih bude.*
- Tuženik izričito pridržava pravo izmjene svojih zamolbi za mjere pravne zaštite i/ili da podnese dodatne zahtjeve u ovom ili nekom drugom postupku."*
- 29 Dana 24. kolovoza 2018., Tužitelj je dostavio svoj podnesak o sudskoj nadležnosti i mjerodavnom pravu u odnosu na prijebaj iz Tuženikovog odgovora na tužbu.

- 30 Dana 31. kolovoza 2018., Tuženik je podnio svoje primjedbe na Tužiteljev podnesak od 24. kolovoza 2018. u odnosu na pitanja sudske nadležnosti i mjerodavnog prava primjenjivog na prijeboj iz Tuženikovog odgovora na tužbu.
- 31 Dana 6. rujna 2018., ugovorne strane i arbitar pojedinac održali su telefonsku konferenciju o rješavanju slučaja II („**CMC II**“). Tijekom CMC II (koja je naknadno formalizirana Proceduralnim nalogom br. 4 od 6. rujna 2018.), arbitar pojedinac naredio je Tuženiku da mu do 13. rujna 2018. dostavi cijeli prijevod Dokaza R-4 i pregled naziva raznih hrvatskih subjekata uključenih u ovu arbitražu. Pored toga i također do 13. rujna 2018., arbitar pojedinac pozvao je ugovorne strane da se izravno međusobno posavjetuju i podnesu formalizirani sporazum o odabiru prava u odnosu na različita prava primjenjiva na prijeboj i meritum zahtjeva za prijeboj koji je podnio Tuženik, pod uvjetom da se takav sporazum može sklopiti. Na kraju, ugovorne strane su se dogovorile da za sada obustave rokove zadane u PO 2 za podnošenje odgovora, replike na odgovor, donošenje konačne odluke i za telefonsku konferenciju prije ročišta.
- 32 E-poštom od 13. rujna 2018., Tuženik je kao dokaz R-50 i R-51 dostavio cjeloviti prijevod Dokaza R-4 kao i pregled naziva raznih hrvatskih subjekata uključenih u ovu arbitražu. Nadalje, Tuženik je obavijestio arbitra pojedinca da se formalni (pisani) sporazum o odabiru prava ne može sklopiti. Međutim, budući da su ugovorne strane iznijele podudarne stavove o pravima koja se primjenjuju na prijeboj, Tuženikov je stav bio da se prema relevantnom švicarskom lex arbitri (prema čijim se uvjetima ne bi tražio neki specifični oblik za sporazum o odabiru prava) pa stoga postoji zakonski pravovaljani konsenzus o primjenjivim pravima.
- 33 Na poziv arbitra pojedinca dostavljen e-poštom 20. rujna 2018., Tužitelj je komentirao gore spomenute stavove Tuženika svojim e-dopisom od 26. rujna 2018. U njemu je Tužitelj potvrdio da su stavovi ugovornih strana o primjenjivim mjerodavnim pravima de fakto podudarni.
- 34 Proceduralnim nalogom br. 5 od 1. studenog 2018., arbitar pojedinac zaključio je postupak u odnosu na fazu utvrđivanja njegove nadležnosti za raspravu i mjerodavno pravo u odnosu na Tuženikovu obranu prijebojem.
- 35 Dana 4. veljače 2019. arbitar pojedinac donio je Djelomičnu odluku br. 2 o sudskoj nadležnosti za raspravu o Tuženikovom zahtjevu za prijeboj i o mjerodavnom pravu (pravima) za isto, zaključivši, između ostaloga, da ima sudsku nadležnost za rješavanje Tuženikovog zahtjeva za prijeboj bez dovođenja u pitanje pravovaljanosti dodjele te nadležnosti i/ili meritum Tuženikovog zahtjeva za prijeboj te da se švicarsko pravo primjenjuje na valjanost prijeboja.
- 36 Dana 14. ožujka 2019. ugovorne strane i arbitar pojedinac održali su telefonsku konferenciju o rješavanju slučaja III („**CMC III**“) da bi prodiskutirali i finalizirali PO 2 nakon što je donesena Djelomična odluka br. 2.
- 37 Proceduralnim nalogom br. 6 of 15. ožujka 2019., ugovorne strane su zatim pozvane da priopće svoju potvrdu datuma utvrđenih u nacrtu revidiranog PO 2 koji je priložen uz Proceduralni nalog br. 6 ili da u najkraćem mogućem roku a najkasnije do 20. ožujka 2019. dostave pismeni obrazloženi zahtjev za eventualne izmjene.

- 38 Dana 20. ožujka 2019., arbitar pojedinac izdao je Revidirani proceduralni nalog br. 2 (Proceduralni terminski plan; „**Revidirani PO 2**”).
- 39 Dana 5. travnja 2019., Tuženik je podnio zahtjev za privremenu zaštitnu mjeru („**Zahtjev za privremenu zaštitnu mjeru**“) zajedno s dokazima R-52 do R-55 i pravnim dokazima RL-27 do RL-35, tražeći, između ostaloga, da se Tužitelju naredi da odmah povuče svoj Zahtjev za arbitražu podnesen China International Economic Trade and Arbitration Commission (CIETAC) u Pekingu.
- 40 Dana 15. travnja 2019., Tužitelj je unutar produženog roka podnio svoj odgovor na Zahtjev za privremenu zaštitnu mjeru, zajedno s pravnim dokazima CL-1 do CL-3, u kojem traži odbacivanje Zahtjeva za privremenu zaštitnu mjeru.
- 41 Dana 18. travnja 2019., Tuženik je, nakon vlastitog zahtjeva da mu se to dopusti, podnio svoje primjedbe na odgovor Tužitelja na Zahtjev za privremenu zaštitnu mjeru. Tužitelj je 22. travnja 2019. podnio odgovor na Tuženikov podnesak od 18. travnja 2019.
- 42 Proceduralnim nalogom br. 7 od 25. travnja 2019., arbitar pojedinac odbio je Tuženikov Zahtjev za privremenu zaštitnu mjeru od 5. travnja 2016.
- 43 Dana 14. lipnja 2019., Tužitelj je podnio odgovor zajedno s dokazom C-69, pravnim dokazima CL-4 do CL-5, iskazom svjedoka CWS-1 i izvještajima vještaka CER-1 do CER-2, te sa sljedećim zamolbama za pravnu zaštitu:
- a) *Odbacivanje Tuženikovog zahtjeva za prijeboj;*
  - b) *NALOG da Tuženik plati Tužitelju USD 714.480,07 i EUR 4.147.000 plus iznose kamata do 31. siječnja 2020. i to :*
    - (1) *USD 100.419, u odnosu na iznos od USD 714,480 koji duguje po ugovorima SW15EU224, SW15EU237 i SW15EU240; i*
    - (2) *EUR 520.364, u odnosu na iznos od EUR 4.147.004 koji duguje po ugovoru SW16EU056.*
  - c) *NALOG da Tuženik plati sve troškove ove arbitraže, uključujući administrativnu pristojbu ICC-a, sve naknade i izdatke arbitražnog suda te sve troškove i izdatke koje pretrpi Tužitelj u provođenju ovog postupka, uključujući pravne pristojbe, troškove internog upravljanja i sve uz to vezane troškove;*
  - d) *NALOG za sve dodatne ili druge mjere koje arbitražni sud po vlastitoj odluci smatra prikladnima.“*
- 44 Dana 31. listopada 2019. Tuženik je podnio repliku na odgovor zajedno s dokazima R-56 do R-63, pravnim dokazima RL-36 do RL-42, iskazima svjedoka RWS-6 do RWS-10 i izvještajima vještaka RER-6 do RER-8. Zamolbe za pravnu zaštitu ostale su iste kao u Odgovoru na tužbu.
- 45 Dana 21. studenog 2019., arbitar pojedinac izdao je Proceduralni nalog br. 8 kojim se djelomično odobrava zahtjev Tužitelja za produženje krajnjeg roka za donošenje konačne odluke do 6. prosinca 2019., kako bi se Tužiteljevom stručnjaku omogućilo da prouči dopunsko stručno mišljenje podneseno s Tuženikovom replikom na odgovor.

- 46 Na zahtjev arbitra pojedinca, Tuženik je e-poštom od 25. studenog 2019. dostavio prijewe traženih stranica dokaza koji su podneseni s izvještajem vještaka RER-6, SQ-54, SQ-59 i SQ-60.
- 47 Dana 26. studenog 2019. arbitar pojedinac izdao je dodatno revidirani PO 2
- 48 E-poštom od 6. prosinca 2019. Tužitelj je dostavio dokaz C-70, iskaz vještaka CWS-2 i izvještaj vještaka CER-3 te identificirao činjenicu i vještaka kojega namjerava unakrsno ispitati.
- 49 E-poštom od 10. prosinca 2019. Tuženik je zatražio da se dokaz C-70, iskaz vještaka CWS-2 i izvještaj vještaka CER-3 proglase neprihvatljivima tvrdeći da Tužitelj nije pružio nikakvo objašnjenje o opravdanosti njegovog dodatnog iskaza vještaka i da Proceduralni nalog br. 8 nije Tužitelju omogućavao podnošenje dodatnih činjeničnih dokaza te vrste jer je traženi produženi rok za konačno rješavanje predmeta, koji je djelomično odobren, bio temeljen samo na navodnoj potrebi da se ishodi i podnese dodatno svjedočenje vještaka a ne i činjenični dokazi.
- 50 Dana 10. prosinca 2019., arbitar pojedinac i ugovorne strane održali su telefonsku konferenciju prije ročišta kako bi prodiskutirali proceduru saslušanja svjedoka planiranu za 31. ožujka – 3. travnja 2020. Na toj telefonskoj konferenciji, arbitar pojedinac je dodatno predočio nekoliko pravnih pitanja koje ugovorne strane još nisu dotakle u svojim podnescima te je s ugovornim stranama raspravljao o vremenskom okviru i formatu tih dodatnih podnesaka. E-poštom od 12. prosinca 2019., ugovornim stranama dostavljen je nacrt Proceduralnog naloga br. 9 o organizaciji saslušanja svjedoka predviđenog za 31. ožujka 2020. – 3. travnja 2020. te su pozvane da svoje primjedbe na isti podnesu najkasnije do 17. prosinca 2019. Pored toga, ugovornim stranama dostavljena je Izjava o neovisnosti i nepristranosti novoimenovanog administrativnog tajnika.
- 51 Na Tužiteljev zahtjev od 2. siječnja 2020., arbitar pojedinac izdao je 6. siječnja 2020. kao i 14. siječnja 2020. nekoliko pisama s pozivom radi izdavanja viza predstavnicima i svjedocima Tužitelja koji putuju iz Kine kako bi prisustvovali saslušanju svjedoka u Švicarskoj. Dana 14. siječnja 2020., arbitar pojedinac poslao je Tužitelju tiskane izvorne primjerke šest pisama s pozivima radi izdavanja viza kako je tog dana zatraženo. Dana 21. siječnja 2020., arbitar pojedinac poslao je Tužitelju tiskani primjerak izmjene dopisa s pozivima za izdavanje viza kako je Tužitelj zatražio 17. siječnja 2020. E-poštom od 12. veljače 2020., Tuženik je također zatražio jedno pismo s pozivom za njegovog svjedoka iz Kine, koje je također poslano u tiskanom primjerku kurirskom poštom.
- 52 Dana 13. siječnja 2020., arbitar pojedinac izdao je Proceduralni nalog br. 9 (o prihvatljivosti dodatnih dokaza) nakon što je razmotrio nekoliko razmjena argumenata ugovornih strana o tome da li prihvatiti ili ne dodatne dokaze koje je Tužitelj podnio u produženi krajnji rok 6. prosinca 2019. U Proceduralnom nalogu br. 9, arbitar pojedinac prihvatio je Tužiteljev drugi izvještaj vještaka Bena Johnsona (CER-3), dokaz C-70 i CWS-2 (iskaz svjedokinje gđe Ding Chingli) te pozvao Tuženika da ga najkasnije do 17. siječnja 2020. obavijesti želi li ili ne komentirati Tužiteljev drugi izvještaj vještaka Bena Johnsona (CER-3), dokaz C-70 i CWS-2 (iskaz svjedokinje Ding Chingli) pismeno u kratkom roku ili usmeno na početku saslušanja.

- 53 Također 13. siječnja 2020., arbitar pojedinac izdao je Proceduralni nalog br. 10 o organizaciji saslušanja svjedoka predviđenog za 31. ožujka 2020. – 3. travnja 2020. nakon razmatranja komentara ugovornih strana od 16. i 17. prosinca 2020.
- 54 E-poštom od 17. siječnja 2020., Tuženik se izjasnio da iskaz svjedoka CWS-2 i dokaz C-70 želi komentirati tijekom izravnog i/ili unakrsnog ispitivanja dotičnih svjedoka i/ili vještaka za vrijeme saslušanja odnosno u podnesku nakon saslušanja. Što se tiče drugog izvještaja vještaka Bena Johnsona (CER-3) Tuženik je, međutim, želio pridržati pravo da o tom izvještaju govori u uvodnoj riječi. Pored toga, Tuženik je sugerirao da se njegovom vještaku, čiji je izvještaj komentiran u spomenutom drugom izvještaju vještaka, pruži prigoda da izvještaj g. Johnsona prokomentira izravno kao dio njegovog izravnog ispitivanja tijekom saslušanja. Dana 23. siječnja 2020. arbitar pojedinac potvrdio je primitak Tuženikovog odgovora e-poštom od 17. siječnja 2020. i konstatirao Tuženikove molbe da (i) drugi izvještaj vještaka g. Johnsona (CER-3) prokomentira u uvodnoj riječi i da (ii) zatraži više vremena u izravnom saslušanju Tuženikovog vještaka g. Quereshija, kako bi mu se pružila prigoda da izravno prokomentira drugi izvještaj vještaka g. Johnsona.
- 55 Dana 23. siječnja 2020., ugovorne strane dostavile su svoje podneske u vezi dodatnih pravnih pitanja u Tuženikovom predmetu, zajedno s dokazom R-64 i pravnim dokazima RL-43 do RL-58.
- 56 E-poštom od 11. veljače 2020. Tužitelj je arbitra pojedinca obavijestio o ozbiljnosti stanja u Kini zbog korona virusa i pitao može li se uplata ustanovi za saslušanje prenijeti ili refundirati ukoliko bi se datum saslušanja morao promijeniti. Istoga dana, Tuženik je odgovorio na poziv arbitra pojedinca i potvrdio da će provjeriti to pitanje s ustanovom za saslušanje istovremeno dostavivši uvjete te ustanove. Nakon razmjene nekoliko e-dopisa s ugovornim stranama, arbitar pojedinac je e-dopisom od 12. veljače 2020. pozvao ugovorne strane da do 14. veljače 2020. jave žele li saslušanje odgoditi zbog stanja u Kini s korona virusom i, ako žele, da predlože alternativne datume saslušanja.
- 57 Zbog kratkih uputa o otkazivanju hotela koji su ugovorne strane rezervirale kao mjesto za saslušanje svjedoka, arbitar pojedinac je e-dopisom od 13. veljače 2020. ugovorne strane pozvao da do kraja tog istog dana jave žele li odgoditi saslušanje zbog neizvjesnosti prouzročenih korona virusom te da do 20. veljače 2020. dostave alternativne datume saslušanja. Budući da su se obje ugovorne strane usuglasile s odgodom, arbitar pojedinac je drugim e-dopisom od 13. veljače 2020. otkazao saslušanje svjedoka predviđeno za 31. ožujka – 3. travnja 2020.
- 58 Nakon što je od ugovornih strana primio njihove prijedloge alternativnog datuma saslušanja, arbitar pojedinac je e-dopisom od 25. veljače 2020. ugovorne strane obavijestio o novim datumima saslušanja svjedoka, tj. 26. – 29. listopada 2020.

- 59 Dana 19. ožujka 2020., arbitar pojedinac izdao je revidirani Proceduralni nalog br. 10 o organizaciji saslušanja svjedoka planiranog za 26. – 29. listopada 2020.
- 60 E-dopisom od 2. rujna 2020., arbitar pojedinac pozvao je ugovorne strane da do 9. rujna 2020. jave žele li zadržati rok saslušanja svjedoka s obzirom na situaciju s pandemijom i moguće uvođenje ograničenja putovanja.
- 61 Budući da su obje ugovorne strane bile za to da se saslušanje svjedoka odgodi i protiv provođenja saslušanja svjedoka putem video konferencije, arbitar pojedinac je e-dopisom od 11. rujna 2020. otkazao datume saslušanja planirane za 26. – 29. listopada 2020. i pozvao ugovorne strane da ga do 30. rujna 2020. obavijeste o alternativnim datumima saslušanja.
- 62 Na temelju prijedloga ugovornih strana, arbitar pojedinac je e-dopisom od 11. siječnja 2021. pozvao ugovorne strane da ga obavijeste o njihovoj dostupnosti za saslušanje svjedoka od 14. do 17. rujna 2021. ili, alternativno, od 8. do 12. studenog 2021.
- 63 Nakon odgovora od ugovornih strana, arbitar pojedinac je e-dopisom od 12. siječnja 2021. ugovorne strane obavijestio da je održavanje saslušavanja svjedoka planirano od 14. do 17. rujna 2021, alternativno od 13. do 17. prosinca 2021.
- 64 Dana 20. srpnja 2021., hotel koji su ugovorne strane odabrale kao mjesto održavanja saslušanja svjedoka obavijestio je arbitra pojedinca da zbog situacije s pandemijom hotel više ne može ponuditi prostor za saslušanje na prvobitnoj lokaciji u Zürichu i na određene datume saslušanja. E-dopisom istog datuma, arbitar pojedinac pozvao je ugovorne strane da jave kako žele dalje nastaviti s obzirom na te okolnosti.
- 65 Nakon odgovora ugovornih strana e-poštom od 20. srpnja 2021., arbitar pojedinac je e-poštom od 23. srpnja 2021. otkazao datume saslušanja 14. – 17. rujna 2021 i, ovisno o uputama ugovornih strana tijekom daljnjeg postupka i do nove obavijesti, naredio da se saslušanje održi na prethodno dogovorene alternativne datume saslušanja, tj. 14. – 17. prosinca 2021.
- 66 E-dopisom od 13. listopada 2021., arbitar pojedinac pozvao je ugovorne strane da do 22. listopada 2021. jave žele li održati fizičko, daljinsko ili hibridno saslušanje.
- 67 E-dopisom od 19. listopada 2021., arbitar pojedinac konstatirao je suglasne zahtjeve ugovornih strana od 18. listopada 2021. i složio se s time da se vrijeme saslušanja još jednom odgodi do proljeća 2022. godine u korist fizičkog saslušanja, podložno sljedećim uvjetima, tj. da su ugovorne strane suglasne (i) s alternativnim planom saslušanja u slučaju hibridnog ili daljinskog saslušanja; (ii) s fiksnim datumom otprilike dva mjeseca prije saslušanja za priopćenje razloga ako neka ugovorna strana smatra da fizičko saslušanje ponovno nije moguće u proljeće 2022. i da će to saslušanje automatski biti održano u hibridnom ili daljinskom obliku u skladu s planom alternativnog saslušanja podložno točki (i); i konačno, (iii) da ugovorne strane dogovore novi datum saslušanja u ožujku ili travnju 2022.
- 68 Dana 28. listopada 2021., arbitar pojedinac i ugovorne strane održali su organizacijsku video-konferenciju radi pripreme saslušanja svjedoka. Ugovorne strane i arbitar pojedinac suglasno su utvrdili da saslušanje treba održati u fizičkom obliku od 5. – 8. travnja 2022., podložno eventualnim obrazloženim prigovorima jedne ili druge ugovorne strane do 14. veljače 2022. Ukoliko fizički sastanak ponovno ne bi bio moguć, ugovorne strane suglasne su da se saslušanje provede u nekom hibridnom ili čak potpuno

- daljinskom obliku na te nove datume saslušanja, u skladu s usvojenim alternativnim terminskim planom saslušanja. Naknadnim e-dopisom od 9. prosinca 2021., arbitar pojedinac dostavio je ugovornim stranama nacrt novog revidiranog Proceduralnog naloga br. 10, revidiranog PO 2 (Proceduralni terminski plan), ponudu ICC-ovog Centra za saslušanja, CV kao i nacrt Izjave o neovisnosti i nepristranosti Rachel Chiao, neutralnog promatrača, te ih pozvao da svoje komentare o tome dostave do 15. prosinca 2021.
- 69 Nakon odgovora ugovornih strana od 15. prosinca 2021., arbitar pojedinac je na isti datum od ugovornih strana zatražio dodatna pojašnjenja u pogledu imenovanja neke neutralne treće osobe da prisustvuje ispitivanjima svjedoka kao i određivanje nekog neutralnog mjesta za daljinsko saslušanje radi ispitivanja svjedoka. Ugovorne strane pozvane su da arbitru pojedincu dostave zajednički popis tri neutralne treće strane kao i jedno ili dva neutralna daljinska mjesta u svakoj zemlji gdje bi se trebalo održati daljinsko iznošenje iskaza svjedoka ili vještaka. Pored toga, arbitar pojedinac je pozvao ugovorne strane da dogovore upute za takvu neutralnu treću stranu koja promatra daljinska ispitivanja svjedoka. U slučaju da ugovorne strane tu zajedničku listu ne dostave do 22. prosinca 2021., arbitar pojedinac već je pozvao svaku ugovornu stranu da dostavi svoj prijedlog za tri neutralne treće strane i dva neutralna daljinska mjesta saslušanja do 24. prosinca 2021. (koji je rok kasnije produžen do 17. siječnja 2022.) istovremeno pružajući svakoj ugovornoj strani mogućnost da komentira prijedlog druge ugovorne strane do 28. prosinca 2021. (taj je rok kasnije produžen do 21. siječnja 2022.).
- 70 E-dopisom od 23. prosinca 2021., arbitar pojedinac konstatirao je podudarne izjave ugovornih strana od 22. prosinca 2021. da jedan neutralni promatrač daljanskog svjedočenja svjedoka, ako bude određen, treba promatrati samo svjedočenje činjeničnih svjedoka i da se ta daljinska svjedočenja trebaju održati na jednom „daljinskom mjestu“, za sve činjenične svjedoke s prebivalištem u istoj zemlji (pod uvjetom da putovanje unutar te zemlje bude dopušteno). Arbitar pojedinac nadalje je konstatirao da Tužitelj inzistira na tome da se uopće ne angažira promatrač svjedočenja svjedoka, ali da Tuženik treba snositi sve troškove nastale u vezi s takvim promatračima. E-dopisom od 10. siječnja 2022., na poziv arbitra pojedinca da dostavi primjedbe, Tuženik je izrazio svoju spremnost da se odrekne i zahtjeva za neutralne promatrače za činjenične svjedoke, međutim, podložno odgovarajućim zamjenskim pravilima kako bi se osigurala propisna identifikacija činjeničnih svjedoka i propisno provođenje ispitivanja svjedoka kao i eksplicitnom obvezivanju svjedoka i uključenih odvjetničkih društava da će u potpunosti poštivati pravila koja arbitar pojedinac postavi za saslušanje dokaza.
- 71 Pored toga, također e-dopisom od 10. siječnja 2022., Tužitelj je javio imena dva sudska tumača, zajedno s njihovim CV-ima i izjavom o neovisnosti i neutralnosti svakog tumača. E-dopisom od 13. siječnja 2022., Tuženik je obavijestio arbitra pojedinca da nema nikakvih prigovora na imenovanje dva sudska tumača koje je prijavio Tužitelj.
- 72 Na zahtjeve ugovornih strana od 24. i 25. siječnja 2022., arbitar pojedinac je ugovornim stranama e-dopisom od 25. siječnja 2022. dostavio ažurirana pisma poziva radi izdavanja viza za sve sudionike iz Kine. Budući da na to nije bilo nikakvih primjedbi, arbitar pojedinac je ugovornim stranama poslalo tiskane izvornike tih poziva 1. veljače 2022.

- 73 U svojim e-dopisima od 14., 15. i 21. veljače 2022., Tužitelj a isto tako i Tuženik naveli su da su s obzirom na situaciju s pandemijom suglasni saslušanje svjedoka obaviti u potpunosti na daljinu. Tužitelj je predložio da se zadrži prvobitni terminski plan saslušanja, ali je zatražio da ono započne sat ranije zbog vremenske razlike.
- 74 Dana 23. veljače 2022., arbitar pojedinac izdao je revidirani Proceduralni nalog br. 10 o organizaciji saslušanja svjedoka planiranog za 5. – 8. travnja 2022.
- 75 E-dopisom od 8. ožujka 2022., Arbitar pojedinac obavijestio je ugovorne strane da su pokusi u ICC-ovom Centru za saslušanja, koji su ugovorne strane zadržale kao organizatora daljinskih saslušanja svjedoka, planirani za 18. i 21. ožujka 2022. E-dopisom od 9. ožujka 2022., arbitar pojedinac planirao je dodatni pokus za 22. ožujka 2022. kako bi uključio dva sudska tumača radi tehničkih provjera prevoditeljskog kanala zajedno s neutralnim promatračem i sudskim izvjestiteljem.
- 76 E-dopisom od 16. ožujka 2022., Tuženik je arbitru pojedincu dostavio primjerak Sporazuma o nagodbi od 15. ožujka 2022. koji su potpisale obje ugovorne strane (Ugovor o nagodbi“) i zatražio od arbitra pojedinca da obustavi postupak, otkáže činjenično saslušanje i izda sporazumnu odluku u skladu s uvjetima priložene nagodbe. E-dopisom od 16. ožujka 2022., Tužitelj je potvrdio da su ugovorne strane postigle nagodbu i također od arbitra pojedinca zatražio da donese sporazumnu odluku u skladu s Ugovorom o nagodbi.
- 77 E-dopisom od 16. ožujka 2022., arbitar pojedinac primio je na znanje Ugovor o nagodbi ugovornih strana i odmah obustavio arbitražni postupak do sastavljanja sporazumne odluke.
- 78 Kao rezultat Ugovora o nagodbi između ugovornih strana i u skladu sa člankom 27. ICC Pravidnika iz 2017. godine, arbitar pojedinac je Proceduralnim nalogom br. 11 od 31. ožujka 2022. proglasio arbitražni postupak zaključenim.
- 79 Arbitar pojedinac ovime donosi ovu Konačnu sporazumnu odluku unutar roka koji je odobrio ICC i koji je 2. prosinca 2021. ICC zadnji put produžio do 29. srpnja 2022.

## 2. Ugovor o nagodbi

- 80 *Ugovor o nagodbi od 15. ožujka 2022. glasi kako slijedi:*

*„Ugovor o nagodbi  
od 15 ožujka 2022.*

*između*

**Hunan Valin Xiangtan Iron and Steel Co., Ltd.**  
*Yuetang District, Xiangtan City, Hunan Province,  
N.R. Kina*

**(Tužitelj)**

i

**DIV Grupa d.o.o. (bivši DIV d.o.o.)**  
 Bobovica 10/A, 10430 Samobor  
 Republika Hrvatska

(Tuženik)

i

**Brodograđevna industrija Split d.d.**  
 Put Supavla 21, 21000 Split  
 Republika Hrvatska

(Brodosplit)

(Tužitelj, Tuženik i Brodosplit  
 pojedinačno: **ugovorna strana**,  
 skupno: **ugovorne strane**)

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## Uvodne odredbe

- A.** Tužitelj i Tuženik sklopili su četiri ugovora, tj. ugovor SW15EU224 od 3. prosinca 2015., ugovor SW15EU240 od 14. prosinca 2015., ugovor SW15EU237 od 14. prosinca 2015. i ugovor SW16EU056 od 6. travnja 2016., sve ugovori o kupoprodaji ukupno 21.170 metričkih tona čelične žice za hladno gnječenje koje Tužitelj (prodavatelj) prodaje Tuženiku (kupac) za ukupnu kupovnu cijenu od USD 5.867.375,00 i EUR 4.117.420,00 (**Ugovori**);

- B. Tužitelj i brodogradilište Brodosplit d.o.o. (**brodogradilište Brodosplit**) sklopili su ugovor 2013EU066 od 6. kolovoza 2013. za kupoprodaju 7.500 metričkih tona čelične žice za hladno gnječenje koje Tužitelj (prodavatelj) prodaje brodogradilištu Brodosplit (kupac) za kupovnu cijenu od USD 5.175.925 (**Ugovor Brodosplit**);
- C. Brodogradilište Brodosplit je 2013. godine pripojeno Brodograđevnoj industriji Split d.d. (Brodosplit);
- D. Između ugovornih strana u Ugovorima i Ugovoru Brodosplit došlo je do spora;
- E. Tužitelj je pokrenuo arbitražni postupak protiv Tuženika prema ICC Pravilniku (ICC arbitražni postupak br. 23128/GR; **ICC Arbitraža**);
- F. U ICC Arbitraži, Tužitelj je zahtijevao da se Tuženiku izda nalog da Tužitelju plati (i) USD 714.480,07 i EUR 4.147.000 plus kamate, i (ii) sve troškove ICC Arbitraže (uključujući kompenzaciju drugoj ugovornoj strani);
- G. Tuženik je u ICC Arbitraži zahtijevao da se Tužiteljeve tražbine odbiju u iznosu Tuženikove (ustupljene) tražbine proizašle iz Ugovora Brodosplit putem prijebaja s tom tražbinom koja je sada procijenjena na EUR 2.724.021; i da se Tužitelju izda nalog da plati sve troškove arbitražnog postupka (uključujući kompenzaciju drugoj ugovornoj strani);
- H. Tužitelj je zahtijevao da se odbije Tuženikov zahtjev za prijebaj;
- I. U ICC Arbitraži je 17. svibnja 2018. godine donesena djelomična presuda br. 1, prema kojoj se na Ugovore primjenjuje švicarsko pravo;
- J. U ICC Arbitraži je 4. veljače 2019. godine donesena djelomična presuda br. 2, prema kojoj je jedini arbitražni sudac u ICC Arbitraži nadležan da sasluša Tuženikovu obranu temeljenu na prijebaju; da se na valjanost te obrane primjenjuje švicarsko pravo; da se na ustupanje između brodogradilišta Brodosplit i Tuženika primjenjuje hrvatsko pravo i da pitanje može li se pozivati na to ustupanje u odnosu na Tužitelja podliježe pravu N.R. Kine; i da se na meritum i tražbine koje proizlaze iz Ugovora Brodosplit prvenstveno primjenjuje UN-ova Konvencija CISG te da pitanja koja se ne reguliraju CISG-om supsidijarno podliježu pravu N.R. Kine;
- K. Dana 5. prosinca 2018. godine Tuženik je pokrenuo arbitražni postupak protiv Brodosplita u skladu s CIETAC Arbitražnim pravilnikom (Arbitražni postupak br. R20190401), o utvrđivanju ništetnosti Ugovora Brodosplit (**CIETAC Arbitraža**);
- L. Zahtjevi koje je podnio Tužitelj u CIETAC Arbitraži bili su u cijelosti odbijeni arbitražnom odlukom br. 1861 od 11. prosinca 2019.;
- M. U ICC Arbitraži određeno je da se glavna rasprava s iznošenjem dokaza održi između 5. travnja 2022. i 8. travnja 2022.;
- N. Ugovorne strane su pokrenule razgovore o izvansudskoj nagodbi;
- O. Ugovorne strane namjeravaju sve svoje tražbine, sporove, prava i obveze u vezi sa svakim od Ugovora, Ugovora Brodosplit, ICC Arbitražom i CIETAC Arbitražom konačno riješiti u skladu s uvjetima ovog Ugovora o nagodbi.

Slijedom gore navedenoga, ugovorne strane suglasno utvrđuju sljedeće obvezujuće uvjete nagodbe:

**1. Plaćanje na temelju nagodbe**

- (a) Tuženik treba Tužitelju platiti jednokratni paušalni iznos od USD 3.700.000 (tri milijuna sedamsto tisuća US dolara) bez ikakvih kamata i PDV-a (**Plaćanje na temelju nagodbe**).
- (b) Plaćanje na temelju nagodbe izvršit će se bankovnom doznakom u roku od trideset (30) dana od Sporazumne odluke (vidi članak 3. ovog Ugovora o nagodbi). Plaćanje prema nagodbi treba izvršiti na sljedeći bankovni račun:

NAZIV BANKE: BANK OF CHINA, PODRUŽNICA XIANGTAN

RAČUN BR.: 597657368223

NAZIV PRIMATELJA: HUNAN VALIN XIANGTAN IRON AND STEEL CO., LTD.

SWIFT: BKCHCNBJ98D

**2. Pravni troškovi i troškovi arbitraže**

- (a) Svaka ugovorna strana snosi svoje troškove, uključujući troškove pravnih pristojbi, vremena utrošenog na rješavanje, konzultantske pristojbe i sve druge troškove pretrpljene izravno ili neizravno u vezi s ICC Arbitražom, predmetnim sporom i ovim Ugovorom o nagodbi.
- (b) Troškovi ICC Arbitraže, koje još treba utvrditi ICC Sud, treba platiti iz pologa koje su uplatili Tužitelj i Tuženik, pri čemu Tužitelj i Tuženik snose te troškove u jednakom omjeru. Ukoliko ti polози ne budu dostatni za pokriće troškova ICC arbitraže, sve dodatne troškove ICC arbitraže Tužitelj i Tuženik snose u jednakom omjeru.

**3. Okončanje ICC Arbitraže**

- (a) Nakon potpisivanja ovog Ugovora o nagodbi, Tužitelj i Tuženik će zajedno zatražiti od arbitra pojedinca da obustavi ICC Arbitražu do donošenja sporazumne odluke.
- (b) Nakon potpisivanja ovog Ugovora o nagodbi, Tužitelj i Tuženik će zajedno obavijestiti arbitra pojedinca da su postigli dogovor o cjelokupnom i konačnom rješenju svih zahtjeva koji proizlaze iz ICC Arbitraže i u vezi s Ugovorima i Ugovorom Brodosplit te da stoga od arbitra pojedinca traže da donese Sporazumnu odluku
- (i) da se ICC Arbitraža sporazumno prekine;
- (ii) da se Tuženiku izdaje nalog da u roku od trideset (30) dana od te odluke plati Tužitelju iznos od USD 3.700.000 (tri milijuna sedamsto tisuća US dolara) bez ikakvih kamata i PDV-a;

- (iii) da se odbiju zahtjevi Tužitelja i Tuženika (uključujući zahtjev za prijebom) ne dovodeći u pitanje druga prava;
- (iv) da se utvrde troškovi ICC Arbitraže i namire iz pologa koji su do sada uplaćeni za ICC Arbitražu pri čemu svaka ugovorna strana snosi te troškove u jednakom omjeru i da, ukoliko ti polozi ne budu dostatni, sve dodatne troškove snose Tužitelj i Tuženik u jednakom omjeru;
- (v) da se ne donosi nikakva odluka o tome da jedna ugovorna strana plati troškove druge ugovorne strane vezane uz ICC Arbitražu, predmetni spor ili ovaj Ugovor o nagodbi.

#### **4. Podmirenje svih tražbina i oslobađanje od svih obveza**

Ugovorne strane suglasno utvrđuju da će se, nakon što Tužitelj primi plaćanje prema nagodbi, svi sporovi između ugovornih strana te sve stvarne ili potencijalne, prošle, sadašnje i buduće tražbine jedne ugovorne strane prema drugoj, proizašle iz Ugovora, Brodosplit ugovora, ICC Arbitraže, CIETAC Arbitraže ili bilo kojih događaja i okolnosti koje su dovele do spora koji je riješen ovim Ugovorom o nagodbi, ili koje su inače povezane s tim sporom, smatrati u potpunosti i konačno riješenima uz izuzetak članaka 5., 6., 8. i 9. ovog Ugovora o nagodbi.

#### **5. Povjerljive informacije**

- (a) Svaka ugovorna strana dužna je činjenice o ovoj nagodbi, postojanju i uvjetima ovog Ugovora o nagodbi te pregovorima koji su doveli do Ugovora o nagodbi tretirati kao strogo povjerljive i ne smije ih otkrivati ni jednoj drugoj osobi osim:
  - (i) revizorima i pravnim savjetnicima ugovornih strana;
  - (ii) kad neka ugovorna strana ima zakonsku ili regulatornu obvezu da otkrije takve informacije, u kojem se slučaju to otkrivanje ograničava na opseg te zakonske obveze;
  - (iii) ukoliko su te informacije već poznate javnosti (ali ne kao rezultat kršenja ovog Ugovora o nagodbi od strane ugovorne strane koja ih je otkrila);
  - (iv) uz prethodnu pismenu suglasnost drugih ugovornih strana u ovom Ugovoru o nagodbi; ili
  - (v) u skladu sa člankom 3. ovog Ugovora.
- (b) Ugovorne strane dužne su poduzeti sve razumne korake kako bi svoje radnike, zastupnike, konzultante, dobavljače, savjetnike, predstavnike, vanjske suradnike itd. (**povezane strane**) upoznale s uvjetima ovog članka 5. i sklopiti sve prikladne aranžmane kako bi se uvjeti ovog članka proširili i na te povezane strane.
- (c) Da ne bi bilo dvojbe, ovaj Ugovor o nagodbi treba podnijeti arbitru pojedincu u ICC Arbitraži.

## **6. Razno**

### **6.1 Odricanja**

*Ni za jednu ugovornu stranu u ovom Ugovoru o nagodbi neće se smatrati da se odrekla bilo kojih prava koja proizlaze iz tog Ugovora ili njegovog kršenja, osim ako dotična ugovorna strana potpiše pismeno odricanje od istih i pošalje obavijest od tome. Ako se neka ugovorna strana pismeno odrekne nekog prava, to se odricanje ne tumači kao odricanje od bilo kojeg drugog prava ma kako ono bilo sličnom tom pravu, a koje proizlazi iz ovog Ugovora o nagodbi ili bilo kojeg prekršaja tog Ugovora.*

### **6.2 Salvatorna klauzula**

*Ukoliko se za bilo koji uvjet iz ovog Ugovora o nagodbi utvrdi da je neprovediv, ništetan ili suprotan obveznom pravu, taj će uvjet biti bez pravnog učinka samo u dijelu u kojem je neprovediv ili ništetan i ni na koji način neće utjecati na provedivost ili pravovaljanost preostalog dijela tog uvjeta ili drugih uvjeta ovog Ugovora o nagodbi. U slučaju da se za neku odredbu utvrdi da je ništeta ili neprovediva, ugovorne strane će pregovarati u dobroj vjeri kako bi usuglasile uvjete neke obostrano zadovoljavajuće zamjenske odredbe.*

### **6.3 Cjelokupni sporazum**

*Ovaj Ugovor o nagodbi predstavlja cjelokupni sporazum ugovornih strana u vezi s njegovim predmetom i stavlja izvan snage sva prijašnja pisma, tvrdnje, jamstva i dogovore u vezi s predmetom ovog Ugovora o nagodbi.*

### **6.4 Ustupanje**

*Ni jedna ugovorna strana ne smije ustupiti sva ili dio svojih prava i obveza iz ovog Ugovora o nagodbi bilo kojoj trećoj strani bez prethodne pismene suglasnosti drugih ugovornih strana.*

### **6.5 Izmjene**

*Bilo koja izmjena ovog Ugovora o nagodbi neće biti pravovaljana ukoliko nije napravljena u pismenom obliku i potpisana od strane ili u ime svake od ugovornih strana.*

## **7. Primjerci ugovora**

*Ovaj se Ugovor o nagodbi može potpisati u bilo kojem broju primjeraka i ugovorne strane mogu potpisati zasebne primjerke Ugovora pri čemu će se svaki tako potpisani primjerak smatrati izvornikom a svi oni zajedno sačinjavaju jedan te isti ugovor.*

## **8. Mjerodavno pravo**

*Ovaj Ugovor o nagodbi, uključujući njegovo tumačenje, pravovaljanost i izvršavanje reguliraju se švicarskim materijalnim pravom isključujući bilo koje drugo pravo koje bi bilo nametnuto u skladu s Pravilima o odabiru mjerodavnog prava koja se primjenjuju u bilo kojoj jurisdikciji. Konvencija Ujedinjenih naroda o*

ugovorima za međunarodnu prodaju robe sklopljena u Beču 11. travnja 1980. godine ne primjenjuje se na ovaj Ugovor o nagodbi.

**9. Arbitraža**

Svi sporovi koji proizađu iz ovog Ugovora o nagodbi ili u vezi s njime, uključujući sva pitanja vezana uz njegovo postojanje, pravovaljanost ili raskid, bit će konačno riješena u skladu s Pravilnikom o arbitraži Međunarodne trgovačke komore od strane jednog arbitražnog suca imenovanog u skladu s tim Pravilnikom. Mjesto arbitraže bit će Zürich, Švicarska. Jezik arbitražnog postupka bit će engleski.

**10. Ovlašteni potpisnici**

Svaka ugovorna strana izjavljuje da je ishodila sva potrebna interna odobrenja i da je propisno ovlaštena za sklapanje ovog Ugovora i da su potpisnici koji potpisuju ovaj Ugovor u njeno ime propisno ovlašteni i opunomoćeni da je predstavljaju u ovu svrhu.

*[Potpisi su na sljedećoj stranici]*

Potpisano na datum koji je naveden na prvoj stranici ovog Ugovora.

**Hunan Valin Xiangtan Iron and Steel Co.,  
Ltd.**

\_\_\_\_\_  
Ime: LIBO WANG

Funkcija: Direktor Pravnog odjela

*[potpis i datum, tj. 16.03.2022.]*

\_\_\_\_\_  
Ime:

Funkcija:

**DIV Grupa d.o.o.** *[Pečat društva Div Grupa]*

*[Potpis]*

\_\_\_\_\_  
Ime: TOMISLAV DEBELJAK

Funkcija: Glavni izvršni direktor

\_\_\_\_\_  
Ime:

Funkcija:

**Brodograđevna industrija Split d.d.** *[Pečat društva Brodograđevna industrija Split]*

*[Potpis]*

\_\_\_\_\_  
Ime: TOMISLAV DEBELJAK

Funkcija: Glavni izvršni direktor

\_\_\_\_\_  
Ime:

Funkcija:

### 3. Troškovi arbitraže

- 81 Imajući u vidu zajednički zahtjev ugovornih strana od 16. ožujka 2022., arbitar pojedinac izdaje Konačnu sporazumnu odluku o okončanju ovog arbitražnog postupka u skladu sa člankom 33. ICC Pravidnika iz 2017. godine.
- 82 Na svom zasjedanju 8. ožujka 2018. godine, ICC Sud je utvrdio predujam za troškove u iznosu od USD 150.000, podložno naknadnim usklađivanjima u skladu sa člankom 37(2) ICC Pravidnika iz 2017. godine, kako je navedeno u pismu Tajništva od 8. ožujka 2018. godine. Do danas su ugovorne strane platile predujam za troškove u iznosu od USD 150.000 u jednakim omjerima, svaka po USD 75.000.
- 83 ICC Sud, na svom zasjedanju 28. travnja 2022. godine, utvrdio je naknade i troškove arbitra pojedinca i administrativne troškove uz iznosu od USD 150.000. Taj iznos sastoji se od sljedećeg:
- |                                  |            |                |
|----------------------------------|------------|----------------|
| • Administrativni troškovi ICC-a | USD        | 46.497         |
| • Naknade arbitru pojedincu      | USD        | 102.600        |
| • Pretrpljeni troškovi           | USD        | 903            |
| • <b>Ukupno troškovi</b>         | <b>USD</b> | <b>150.000</b> |
- 84 Ovi će se troškovi arbitraže prebiti s avansnim plaćanjima troškova koje su ugovorne strane platile u jednakim omjerima.
- 85 U skladu sa člankom 2a Ugovora o nagodbi, svaka ugovorna strana odgovorna je za svoje vlastite troškove, uključujući troškove pravnih naknada. U članku 3(v) Ugovora o nagodbi, ugovorne strane zajednički su zahtijevale od arbitra pojedinca "da se ne donosi nikakva odluka o tome da jedna ugovorna strana plati troškove druge ugovorne strane vezane uz ICC Arbitražu, predmetni spor ili ovaj Ugovor o nagodbi." Stoga će svaka ugovorna strana snositi svoje vlastite troškove i druge troškove u vezi s ovom ICC arbitražom, predmetnim sporom ili Ugovorom o nagodbi.

U skladu sa člankom 33. ICC Pravidnika iz 2017. godine i s obzirom na gore iznesene razmotrene činjenice, arbitar pojedinac donosi sljedeću odluku

## Konačna sporazumna odluka

1. Ova ICC Arbitraža završena je sporazumom na temelju Ugovora o nagodbi sklopljenog između ugovornih strana 15. ožujka 2022.
2. Tuženiku se ovime izdaje nalog da Tužitelju u roku od trideset (30) dana od ove Odluke plati iznos od USD 3.700.000 (tri milijuna sedamsto tisuća US dolara) bez ikakvih kamata i PDV-a.

Plaćanje treba izvršiti na sljedeći račun:

Naziv banke: BANK OF CHINA, XIANGTAN BRANCH  
Račun br.: 597657368223  
Naziv primatelja plaćanja: HUNAN VALIN XIANGTAN IRON AND STEEL CO., LTD  
SWIFT: BKCHCNBJ98D

3. Tražbine Tužitelja i tražbine Tuženika (uključujući zahtjev za njihovo prebijanje) u ovoj arbitraži ovime se u cijelosti **trajno** odbacuju.
4. Troškovi ove arbitraže (naknade i troškovi arbitra pojedinca i ICC-ovi administrativni troškovi) iznose USD 150.000 i prebijaju se avansnim uplatama troškova od strane ugovornih strana u jednakim omjerima.
5. Svaka ugovorna strana snosi svoje vlastite troškove i druge troškove vezane uz ovu ICC arbitražu, predmetni spor ili Ugovor o nagodbi.

Mjesto arbitraže: Zürich, Švicarska

Datum: 3. svibnja 2022.

Arbitar pojedinac

(Potpis nečitljiv)

Simone M. Hofbauer

Ovime ja, Olja Frugnoli, stalni sudski tumač za engleski, talijanski i srpski jezik, ponovo imenovana Rješenjem predsjednika Županijskog suda u Zagrebu br. 4 Su-891/2021 od 28. lipnja 2021. potvrđujem i ovjeravam da gornji prijevod u potpunosti odgovara izvorniku sastavljenom na engleskom jeziku.

Zagreb, 19. kolovoza 2022.

Br.-OV.: 955/2022

Olja Frugnoli, dipl. oec.

*Olja Frugnoli*



International Chamber of Commerce (ICC)

International Court of Arbitration

ICC Case No. 23128/GR/PAR

## **Final Award by Consent**

in application of the 2017 ICC Rules of Arbitration

in the arbitration between

**Hunan Valin Xiangtan Iron and Steel Co., Ltd.**, Yuetang District, Xiangtan City, Hunan Province (P.R. China)

**Claimant**

*represented by:*

Yongrui Zhu, and/or Sun Lei, and/or Yining Dong, Beijing Dentons Law Offices LLP, 16-21/F Tower B, ZT International Center, No. 10 Chaoyangmen, Nandajie, Chaoyang District, Beijing 100020, P.R. China

vs

**DIV Grupa d.o.o.**, Bobovica 10/A, 10430, Samobor (Republic of Croatia)

**Respondent**

*represented by:*

Roman Richers, Homburger AG, Prime Tower, Hardstrasse 201, CH-8005 Zurich, Switzerland

(Claimant and Respondent collectively and/or individually referred to as "**Party / Parties**")

**before the Sole Arbitrator:**

Simone M. Hofbauer, LL.M.

Barandun AG

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8024 Zurich

Switzerland

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Place of Arbitration: Zurich, Switzerland

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## Considerations

### 1. Procedural History

- 1 On 5 October 2017, Claimant filed its Request for Arbitration (the "**Request**"), together with the exhibits C-1 to C-68, claiming that the place of arbitration is Zurich and requesting the International Court of Arbitration of the ICC (the "**ICC Court**") to appoint a sole arbitrator and that the language of arbitration should be English.
- 2 Claimant based its claim on an Article 15 contained in four contracts, *i.e.*, SW15EU224 dated 3 December 2015, SW15EU240 dated 14 December 2015, SW15EU237 dated 14 December 2015, and SW16EU056 dated 6 April 2016, concluded between the Parties for the purchase and sale of 21,170 metric tons of steel wire for cold heading by Claimant (seller) to Respondent (buyer) for the total purchase price of USD 5,867,375.00 and EUR 4,117,420.00 (the "**Contracts**"). Article 15 of the Contracts provides for an identical arbitration clause and reads as follows ("**Arbitration Clause**"):

*"ARBITRATION: All disputes in connection with this Contract or the execution thereof shall be settled by friendly negotiation. If no settlement can be reached, the case in dispute shall then be submitted for arbitration to the Comercial [recte: Commercial] court in Zagreb, Croatia, and governing law Croatian law of obligations OR International Chamber of Commerce Paris, subplace of arbitration: Zurich, and governing law: Swiss law The decision made by the Commission shall be accepted as final and binding upon on both parties. The fees for arbitration shall be borne by the losing party unless otherwise awarded by the Commission."*

- 3 On 6 October 2017, the Secretariat of the ICC Court (the "**Secretariat**") confirmed receipt of Claimant's Request in electronic version including the documents annexed thereto and indicated that this arbitration commenced on 5 October 2017.
- 4 By letter of 27 October 2017, Respondent was notified by the Secretariat that the Secretariat had received the Request from Claimant on 5 October 2017 and granted a time limit of 30 days to file an Answer to the Request, to comment on Claimant's proposal of one arbitrator and English as the language of the arbitration. Furthermore, the Secretariat acknowledged receipt of the payment of the filing fee in the amount of USD 5,000.
- 5 On 30 November 2017, Respondent requested to be granted an extension to file an Answer to the Request by 30 days. In addition, Respondent indicated that it agreed with English as the language of the arbitration and with the appointment of a sole arbitrator. With respect to the latter, it proposed that the Parties first try to reach an agreement on the name of the sole arbitrator within the same (extended) time limit as Respondent would have for its Answer to the Request.
- 6 By letter of 1 December 2017, the Secretariat granted Respondent until 31 January 2018 to submit its Answer to the Request. In addition, Claimant was invited to comment on Respondent's proposal with respect to the joint nomination of the sole arbitrator until 8 December 2017.
- 7 Upon Claimant's agreement, the Secretariat invited the Parties by e-mail of 13 December 2017 to jointly nominate the sole arbitrator by the same date for the submission of the Answer, *i.e.*, 31 January 2018.
- 8 By letter of 27 December 2017, the Secretariat acknowledged receipt of the payment of the provisional advance by Claimant in the amount of USD 40,000.
- 9 On 31 January 2018, Respondent submitted its Answer to the Request dated 31 January 2018 (the "**Answer**") together with the exhibits R-1 and R-2. In its Answer Respondent held that Article 15 of the Contracts constitutes a combined arbitration and choice of law clause that provides in case of an ICC arbitration that the Parties' claims are governed by Swiss law and in particular the United Nations Convention on the International Sale of Goods ("**CISG**").
- 10 By letter of 5 February 2018, the Secretariat acknowledged receipt of the Answer and, since the Parties had failed to jointly nominate the sole arbitrator within the granted deadline, invited Claimant to submit its comments on Respondent's request to appoint a Swiss-qualified sole arbitrator until 8 February 2018.
- 11 Upon the Secretariat's invitation on 8 February 2018, Claimant submitted its comments on the required qualifications of the sole arbitrator. In addition, it commented on Respondent's Answer and *inter alia* objected to Swiss law being the substantive law governing the Contracts. According to Claimant Chinese law applies to the merits of its claims under the Contracts. This position was in turn contested by Respondent in its submission of 12 February 2018, wherein Respondent reaffirmed its contention of Swiss substantive law applying to the merits of the Contracts.

- 12 By e-mail of 14 February 2018, the Secretariat acknowledged receipt of the Parties' respective correspondence and indicated that its content had been duly noted.
- 13 On 8 March 2018, the Secretariat informed the Parties that the ICC Court had appointed Mrs. Simone Hofbauer as sole arbitrator ("**Sole Arbitrator**") upon the Swiss National Committee's proposal and that the ICC Court had fixed the advance on costs at USD 150'000, subject to later readjustments (Article 37(2)), based on an amount in dispute quantified at USD 5 592 800 and one arbitrator.
- 14 On 9 March 2018, the Sole Arbitrator received the case file transmitted by the Secretariat on 8 and 9 March 2018.
- 15 By e-mail of 16 March 2018, the Sole Arbitrator provided the Parties with the draft of the Terms of Reference ("**ToR**") as well as the drafts of Procedural Orders No. 1 (Supplemental Procedural Rules; "**PO 1**") and No. 2 (Procedural Timetable; "**PO 2**").
- 16 By e-mail of 21 March 2018, Claimant submitted its comments to the draft ToR and therein objected to the Sole Arbitrator's jurisdiction to hear Respondent's set-off claims.
- 17 On 27 March 2018, a Case Management Conference Call between the Parties and the Sole Arbitrator took place ("**CMC I**"). During the CMC I, the draft ToR as well as the drafts of PO 1 and PO 2 were discussed and finalized. During the CMC I, the Parties agreed that the Sole Arbitrator should render a decision on the issue of the law applicable to the merits of the Contracts prior to the Parties' first round of main submissions. Both Parties agreed that – in addition to their submissions of 31 January 2018, 8 February 2018 and 12 February 2018 – no further submission were necessary on the issue of the law applicable to the merits of the Contracts.
- 18 By e-mail of 27 March 2018, Claimant provided the Sole Arbitrator with a power of attorney.
- 19 By e-mail of 27 March 2018, the Sole Arbitrator provided the Parties and the Secretariat with the Summary Minutes of the CMC I, and the finalized ToR, PO 1, PO 2, and the executed Declaration of Independence and Impartiality of the Administrative Secretary.
- 20 The ToR were signed by the Parties and the Sole Arbitrator in counterparts on 28 March 2018 (Respondent), 1 April 2018 (Claimant) and 9 April 2018 (the Sole Arbitrator). Upon receipt of all the signed original counterparts, the Sole Arbitrator sent four original hard copies of the signed ToR to the Secretariat on 9 April 2018. By letter of 5 April 2018, the Secretariat meanwhile informed the Parties and the Sole Arbitrator that the ICC Court had extended the time limit for establishing the ToR from originally 9 April 2018 until 31 May 2018.
- 21 By e-mail of 5 April 2018, the Secretariat further took note of Respondent's change of name from DIV d.o.o. to DIV Grupa d.o.o. and informed the Parties that it would modify the caption of this arbitration accordingly, subject to any objections by Claimant until 12 April 2018. In the absence of any objections by Claimant until the expiry of the time limit, the Secretariat modified the caption of the present arbitration.

22 By letter of 10 April 2018, the Secretariat informed the Parties and the Sole Arbitrator on the receipt of both Parties' deposits on the advance on costs and that the advance on costs fixed by the ICC Court at USD 150,000.00, subject to later readjustment, had been entirely paid by the Parties.

23 By Procedural Order No. 3 dated 9 May 2018 the Sole Arbitrator closed the proceedings with regard to the phase of the determination of the law applicable to the Contracts.

24 On 17 May 2018, the Sole Arbitrator rendered the Partial Award on the Law Applicable to the Contracts wherein she held that Swiss law is the law applicable to the Contracts.

25 On 31 May 2018, the Court fixed 31 May 2019 as the time limit for the final award based upon the procedural timetable (Article 31(1)).

26 On 22 June 2018, Claimant filed its Statement of Claim dated 22 June 2018 (the "SoC") with the following prayers for relief:

*"The Claimant seeks the following relief:*

- a) *Dismiss the Respondent's set-off claim;*
- b) *ORDER that the Respondent pay the Claimant US\$ 714,480.07 and EURO 4,147,000 plus an annual interest;*
- c) *ORDER that the Respondent pay all costs of this arbitration, including the administrative fee of the ICC, all fees and expenses of the Tribunal, and all costs and expenses incurred by the Claimant in prosecuting these proceedings, including legal fees, internal management costs, and all associated expenses;*
- d) *ORDER any further or other relieves as the Tribunal in its discretion sees fit."*

27 Furthermore, Claimant reiterated in the SoC its objections against the Sole Arbitrator's jurisdiction to hear Respondent's set-off claim.

28 On 17 August 2018, Respondent submitted its Statement of Defense dated 17 August 2018 (the "SoD") together with the exhibits R-3 to R-49, the legal exhibits RL-1 to RL-26, the witness statements RWS-1 to RWS-6 and the expert reports RER-1 to RER-5 and with the following prayers for relief:

1. *That Claimant's claims be dismissed in the amount of Respondent's set-off claim;*
2. *That Claimant be ordered to pay all costs of the arbitration proceedings, including the costs of the ICC and the fees and costs of the Arbitral Tribunal;*
3. *That Claimant be ordered to compensate Respondent for all costs incurred in connection with this arbitration, including but not limited to Respondent's costs for attorney's fees, in-house counsel and witnesses, costs for lost executive time and expert's costs, if any.*

*Respondent expressly reserves the right to amend its Prayers for Relief and/or to submit further claims in this or another proceeding."*

29 On 24 August 2018, Claimant filed its submission on jurisdiction and applicable law to Respondent's set-off defense.

- 30 On 31 August 2018, Respondent submitted its comments on Claimant's submission of 24 August 2018 on the issues of jurisdiction and the law applicable to Respondent's set-off defense.
- 31 On 6 September 2018, the Parties and the Sole Arbitrator held the Case Management Conference II (the "**CMC II**") via conference call. During the CMC II (and subsequently formalized by Procedural Order No. 4 of 6 September 2018), the Sole Arbitrator ordered Respondent to provide her with a full translation of Exhibit R-4 and a synopsis on the different company names of the various Croatian entities involved in this arbitration until 13 September 2018. In addition, and also until 13 September 2018, the Sole Arbitrator invited the Parties to directly confer with each other and to submit to her a formalized choice-of-law agreement on the different laws applicable to the set-off and the merits of the set-off claims brought forward by Respondent, provided that such agreement could be concluded. Lastly, the Parties agreed to suspend the deadlines set in the PO 2 for the submission of the reply, the rejoinder the final cut-off date and the pre-hearing conference call for the time being.
- 32 By e-mail of 13 September 2018, Respondent submitted as exhibit R-50 and R-51 a full translation of Exhibit R-4 as well as a synopsis on the different company names of the various Croatian entities involved in this arbitration. Furthermore, Respondent informed the Sole Arbitrator that a formalized (written) choice-of-law agreement could not be concluded. However, since the Parties had presented concurrent views on the laws applicable to the set-off, it was Respondent's view that under the relevant Swiss *lex arbitri* (under whose terms a choice-of-law agreement would not require a specific form) a legally valid consensus on the applicable laws existed.
- 33 Upon the Sole Arbitrator's invitation by e-mail of 20 September 2018, Claimant commented on Respondent's aforementioned views by its e-mail of 26 September 2018. Therein, Claimant confirmed that the understanding of the Parties' views on the applicable laws were in fact congruent.
- 34 By Procedural Order No. 5 dated 1 November 2018, the Sole Arbitrator closed the proceedings with regard to the phase of the determination of her jurisdiction to hear, and the law applicable to, Respondent's set-off defense.
- 35 On 4 February 2019, the Sole Arbitrator rendered the Partial Award No. 2 on Jurisdiction to Hear Respondent's Set-Off Defense and on the Law(s) Applicable to Set-Off Defense holding amongst others that she had jurisdiction to hear Respondent's set-off defense without prejudice to the validity of the assignment and/or the merits of Respondent's set-off defense and that Swiss law applied to the validity of the set-off.
- 36 On 14 March 2019, the Parties and the Sole Arbitrator held the Case Management Conference III ("**CMC III**") via conference call to discuss and finalize the revised PO 2 after the Partial Award No. 2 had been rendered.
- 37 By Procedural Order No. 6 dated 15 March 2019, the Parties were subsequently invited to communicate their confirmation of the dates set forth in the draft revised PO 2 enclosed to the Procedural Order No. 6 or submit a reasoned proposal for any changes requested in writing at their earliest convenience but no later than by 20 March 2019.

- 38 On 20 March 2019, the Sole Arbitrator issued the Revised Procedural Order No. 2 (Procedural Timetable; "**Revised PO 2**").
- 39 On 5 April 2019, Respondent filed a request for interim relief (the "**Request for Interim Relief**") together with the exhibits R-52 to R-55 and the legal exhibits RL-27 to RL-35, requesting amongst others that Claimant be ordered to immediately withdraw its Request for Arbitration filed before the China International Economic Trade and Arbitration Commission (CIETAC) in Beijing.
- 40 On 15 April 2019, Claimant submitted, within an extended deadline, its reply to the Request for Interim Relief together with the legal exhibits CL-1 to CL-3, requesting the dismissal of the Request for Interim Relief.
- 41 On 18 April 2019, Respondent submitted, upon its own request to be granted to leave, its comments on Claimant's reply to the Request for Interim Relief. On 22 April 2019, Claimant filed a response to Respondent's submission of 18 April 2019.
- 42 By Procedural Order No. 7 dated 25 April 2019, the Sole Arbitrator denied Respondent's Request for Interim Relief dated 5 April 2016.
- 43 On 14 June 2019, Claimant filed the Reply together with the exhibit C-69, the legal exhibits CL-4 to CL-5, the witness statement CWS-1 and the expert reports CER-1 to CER-2, and with the following prayers for relief:
- a) *"Dismiss the Respondent's set-off claim;*
  - b) *ORDER that the Respondent pay the Claimant US\$ 714,480.07 and EURO 4,147,000 plus interest amounts up to 31 January 2020 as:*
    - (1) *USD 100,419, in respect of the USD 714,480 that is owed under contracts SW15EU224, SW15EU237 and SW15EU240; and*
    - (2) *EUR 520,364, in respect of the EUR 4,147,004 that is owed under contract SW16EU056.*
  - c) *ORDER that the Respondent pay all costs of this arbitration, including the administrative fee of the ICC, all fees and expenses of the Tribunal, and all costs and expenses incurred by the Claimant in prosecuting these proceedings, including legal fees, internal management costs, and all associated expenses;*
  - d) *ORDER any further or other relieves as the Tribunal in its discretion sees fit."*
- 44 On 31 October 2019, Respondent filed the Rejoinder together with the exhibits R-56 to R-63, the legal exhibits RL-36 to RL-42, the witness statements RWS-6 to RWS-10 and the expert reports RER-6 to RER-8. The prayer for relief remained the same as in the SoD.
- 45 On 21 November 2019, the Sole Arbitrator issued the Procedural Order No. 8, partially granting Claimant's request for an extension of the Final Cut-Off Date until 6 December 2019, to allow Claimant's expert to review the supplementary expert opinion submitted with Respondent's Rejoinder.

- 46 Upon the Sole Arbitrator's request, Respondent submitted by e-mail of 25 November 2019, translations of the requested pages of exhibits submitted with the expert report RER-6, SQ-54, SQ-59 and SQ-60.
- 47 On 26 November 2019, the Sole Arbitrator issued a further Revised PO 2.
- 48 By e-mail of 6 December 2019, Claimant filed the exhibit C-70, the witness statement CWS-2 and the expert report CER-3 and identified the fact and expert witnesses it intended to cross-examine.
- 49 By e-mail of 10 December 2019, Respondent requested that exhibit C-70, the witness statement CWS-2 and the expert report CER-3 be declared inadmissible arguing that Claimant failed to provide any explanation regarding the justification of its additional expert witness statement and that the Procedural Order No 8 did not allow Claimant to submit further factual evidence of this kind, as the extension of the Final Cut-Off Date requested, and partially granted, was based solely on the alleged need to obtain, and submit, further expert testimony, but not factual evidence.
- 50 On 10 December 2019, the Sole Arbitrator and the Parties held a Pre-Hearing Conference Call in order to discuss the procedural modalities of the witness hearing scheduled for 31 March – 3 April 2020. At this Pre-Hearing Conference Call, the Sole Arbitrator further identified a few legal issues the Parties had not yet addressed in their briefs and discussed the time frame and format of such additional legal submissions with the Parties. By e-mail of 12 December 2019, the Parties were provided with a draft Procedural Order No. 9 on the organization of the witness hearing scheduled for 31 March 2020 – 3 April 2020 and invited to comment thereon no later than by 17 December 2019. In addition, the Parties were provided with the Declaration of Independence and Impartiality of the newly appointed Administrative Secretary.
- 51 Upon Claimant's request of 2 January 2020, the Sole Arbitrator issued several visa invitation letters on 6 January 2020 as well as on 14 January 2020 for Claimant's party representatives and witnesses travelling from China in order to be granted a visa to attend the witness hearing in Switzerland. On 14 January 2020, the Sole Arbitrator sent original hard copies of the six invitation letters to Claimant as requested on that day. On 21 January 2020, the Sole Arbitrator sent the hard copy of an amendment to the visa invitation letters to Claimant as requested by Claimant on 17 January 2020. By e-mail of 12 February 2020, Respondent also requested an invitation letter for its witness from China, which was also sent in hard copy by courier mail.
- 52 On 13 January 2020, the Sole Arbitrator issued Procedural Order No. 9 (on the admissibility of additional evidence) after taking the Parties' several exchanges of arguments into consideration on whether or not the additional evidence submitted by Claimant on the extended Final Cut-Off Date of 6 December 2019. In Procedural Order No. 9, the Sole Arbitrator admitted Claimant's second expert report of Ben Johnson (CER-3), exhibit C-70, and CWS-2 (witness statement by Ms. Ding Chingli) and invited Respondent to inform her no later than by 17 January 2020, whether it wished to comment on Claimant's second expert report of Ben Johnson (CER-3), exhibit C-70, and CWS-2 (witness

- statement by Ms. Ding Chingli) in writing within a short deadline or orally at the outset of the hearing.
- 53 Also on 13 January 2020, the Sole Arbitrator issued the Procedural Order No. 10 on the organization of the witness hearing scheduled for 31 March 2020 – 3 April 2020 upon consideration of the Parties' comments of 16 and 17 December 2020.
- 54 By e-mail of 17 January 2020, Respondent clarified that it wished to address the witness statement CWS-2 and exhibit C-70 during the direct and/or cross-examination of the concerned witnesses and/or experts during the hearing, respectively in the post-hearing brief. Regarding the second expert report of Ben Johnson (CER-3) Respondent, however, wished to reserve the right to address this report in the opening statement. In addition, Respondent suggested that its expert witness whose expert report had been addressed in the mentioned second expert report be given the opportunity to address Mr. Johnson's report directly as part of his direct examination during the hearing. On 23 January 2020, the Sole Arbitrator confirmed receipt of Respondent's e-mail response of 17 January 2020 and took note of Respondent's reservations to (i) address Mr. Johnson's Second Expert Report (CER-3) in the opening statement, and to (ii) request for more time in the direct examination of Respondent's expert Mr. Quereshi to give him the opportunity to address Mr. Johnson's Second Expert Report directly.
- 55 On 23 January 2020, the Parties filed their respective submissions concerning additional legal issues, in Respondent's case together with the exhibit R-64 and the legal exhibits RL-43 to RL-58.
- 56 By e-mail of 11 February 2020 Claimant informed the Sole Arbitrator on the seriousness of the situation in China due to the Corona virus and inquired whether the payment for the hearing facility could be transferred or refunded, should the hearing date have to be changed. On the same day, Respondent replied to the Sole Arbitrator's invitation and confirmed to inquire this issue with the hearing facility while sharing the hearing facilities' terms and conditions. Upon the exchange of several e-mails with the Parties, the Sole Arbitrator invited the Parties by e-mail of 12 February 2020, to indicate by 14 February 2020 on whether they wished to postpone the hearing considering the uncertainty with the situation in China with respect to the Corona virus, and if so, to make proposals for alternative hearing dates.
- 57 Due to the short cancellation guidelines of the hotel, which had been booked by the Parties as venue for the witness hearing, the Sole Arbitrator invited the Parties by e-mail of 13 February 2020 to communicate by the end of the same day, whether they wished to postpone the hearing due to the uncertainty caused by the Corona virus and to provide her with alternative hearing dates by 20 February 2020. Since both Parties agreed with the postponement, the Sole Arbitrator by another e-mail of 13 February 2020 cancelled the witness hearing scheduled for 31 March – 3 April 2020.
- 58 Having received the Parties' respective proposals for an alternative hearing date, the Sole Arbitrator informed the Parties by e-mail of 25 February 2020 on the new dates for the witness hearing, *i.e.*, 26 – 29 October 2020.

- 59 On 19 March 2020, the Sole Arbitrator issued the revised Procedural Order No. 10 on the organization of the witness hearing scheduled for 26 – 29 October 2020.
- 60 By e-mail of 2 September 2020, the Sole Arbitrator invited the Parties to indicate by 9 September 2020 how they wished to proceed with respect to the witness hearing in light of the pandemic situation and the travelling restrictions possibly being place.
- 61 Since both Parties were in favor of postponing the witness hearing and against conducting the witness hearing via video conference, the Sole Arbitrator cancelled the hearing dates scheduled for 26 – 29 October 2020 by e-mail of 11 September 2020 and invited the Parties to inform her until 30 September 2020 about alternative hearing dates.
- 62 Based on the Parties' proposals, the Sole Arbitrator invited the Parties by e-mail of 11 January 2021 to inform her on their availabilities for a witness hearing on 14 – 17 September 2021 or, alternatively, on 8 -12 November 2021.
- 63 Upon the Parties' respective replies, the Sole Arbitrator informed the Parties by e-mail of 12 January 2021 that the witness hearing was scheduled to take place on 14 – 17 September 2021, alternatively on 13 – 17 December 2021.
- 64 On 20 July 2021, the Sole Arbitrator was informed by the hotel designated by the Parties to host the witness hearing that due to the pandemic situation the hotel could no longer offer the hearing facilities at the original location in Zurich at the designated hearing dates. By e-mail of the same date the Sole Arbitrator invited the Parties to indicate how they wished to proceed under these circumstances.
- 65 Given the Parties' respective replies to her e-mail of 20 July 2021, the Sole Arbitrator, by e-mail of 23 July 2021, cancelled the hearing dates of 14 - 17 September 2021 and, subject to the Parties' instructions in the further course of these proceedings and until further notice, ordered the hearing to take place on the alternative hearing dates previously agreed upon, i.e., 14 - 17 December 2021.
- 66 By e-mail of 13 October 2021, the Sole Arbitrator invited the Parties to indicate until 22 October 2021 whether they wished to hold a physical, remote or hybrid hearing.
- 67 By e-mail of 19 October 2021, the Sole Arbitrator took note of the Parties concurrent requests of 18 October 2021 and agreed to postpone the hearing one more time until spring 2022 in favor of a physical hearing, subject to the following conditions, *i.e.*, that the Parties agree (i) on an alternative hearing schedule in the event of a hybrid or remote hearing; (ii) on a fixed date approximately two months prior to the hearing to communicate the reasons, if a Party considers that a physical meeting is again not possible in spring 2022, and that the hearing will then automatically take place in a hybrid or remote format according to the alternative hearing schedule subject to (i); and finally, (iii) that the Parties agree on a new hearing date in March or April 2022.
- 68 On 28 October 2021, the Sole Arbitrator and the Parties held an organizational video conference in preparation of the witness hearing. The Parties and the Sole Arbitrator agreed that the hearing shall take place in a physical format on 5-8 April 2022, subject to any reasoned objections by either Party until 14 February 2022. In the event a physical meeting would again not be possible, the Parties agreed to conduct the hearing in a

hybrid or even a fully remote format on these new hearing dates in accordance with an adapted alternative hearing schedule. By subsequent e-mail of 9 December 2021, the Sole Arbitrator provided the Parties with a draft of the newly revised Procedural Order No 10, a revised PO 2 (Procedural Timetable), the offer of the ICC Hearing Center, the CV as well as a draft Declaration of Independence and Impartiality by Rachel Chiao, the Neutral Observer, and invited them to provide their comments thereon until 15 December 2021.

- 69 Upon the Parties' respective replies on 15 December 2021, the Sole Arbitrator requested further clarifications from the Parties on the same date regarding the appointment of a neutral third party to attend the witness examinations as well as the determination of a neutral remote hearing venue for the witness examination. She invited the Parties to provide the Sole Arbitrator with a joint list of three neutral third parties as well as of one or two neutral remote venues in each country where witness or expert testimony should take place remotely. In addition, the Sole Arbitrator invited the Parties to agree on the instructions to such neutral third party observing the remote witness examinations. In the event the Parties did not submit such a joint list until 22 December 2021, the Sole Arbitrator already invited each Party to communicate its proposal of three neutral third parties and two neutral remote venues until 24 December 2021 (later extended until 17 January 2022), and at the same time granting each Party the opportunity to comment the proposal of the other party until 28 December 2021 (later extended until 21 January 2022).
- 70 By e-mail of 23 December 2021, the Sole Arbitrator took note of the Parties' concurrent statements on 22 December 2021 that an observer of remote witness testimonies, if any, should observe the testimony of *factual* witnesses only, and that such remote testimonies should take place at *one* "remote venue" for all factual witnesses residing in the same country (provided that travelling within such country is permitted). The Sole Arbitrator further noted that Claimant insisted on not having such an observer of witness testimonies at all, but that Respondent should bear all costs incurred in relation to such observers. By e-mail of 10 January 2022, upon the Sole Arbitrator's invitation to comment, Respondent expressed its willingness to agree to waive the requirement of neutral observers for the fact witnesses as well, however, subject to adequate substitute rules to ensure the proper identification of the fact witnesses and a proper conduct of the witness examination, as well as explicit undertakings by the witnesses and the involved law firms that the rules set out by the Sole Arbitrator for the evidentiary hearing will be fully complied with.
- 71 In addition, also by e-mail of 10 January 2022, Claimant communicated the names of two interpreters, together with their CV and a declaration of independence and impartiality of each interpreter. By e-mail of 13 January 2022, Respondent informed the Sole Arbitrator on the absence of any objections to the nomination of the two interpreters communicated by Claimant.
- 72 Upon the Parties' respective requests of 24 and 25 January 2022, the Sole Arbitrator provided the Parties by e-mail of 25 January 2022 with the updated visa invitation letters

for all participants from China. In the absence of any comments thereto, the Sole Arbitrator dispatched the original hard copies of the respective invitation letters to the Parties on 1 February 2022.

- 73 By respective e-mails of 14, 15 and 21 February 2022, Claimant as well as Respondent indicated that due to pandemic situation, they agreed to conduct the witness hearing fully remotely. Claimant proposed to keep the original hearing schedule, however, requested to start one hour earlier due to the time difference.
- 74 On 23 February 2022, the Sole Arbitrator issued the revised Procedural Order No. 10 on the organization of the witness hearing scheduled for 5 – 8 April 2022.
- 75 By e-mail of 8 March 2022, the Sole Arbitrator indicated to the Parties that the test runs with the ICC Hearing Centre which had been retained by the Parties to organize the remote witness hearing were scheduled for 18 and 21 March 2022. By e-mail of 9 March 2022, the Sole Arbitrator scheduled a further test run for 22 March 2022 to accommodate the schedule of the two interpreters to allow for a technical test run on the translation channel together with the Neutral Observer and the Court Reporter.
- 76 By e-mail of 16 March 2022, the Respondent provided the Sole Arbitrator with a copy of the Settlement Agreement dated 15 March 2022 and signed by both Parties (the "**Settlement Agreement**") and asked the Sole Arbitrator to stay the proceedings, cancel the evidentiary hearing and to issue an award by consent according to the terms of the attached settlement. By e-mail of 16 March 2022, Claimant confirmed that the Parties had reached a settlement and also requested the Sole Arbitrator to render an award by consent according to the Settlement Agreement.
- 77 By e-mail of 16 March 2022, the Sole Arbitrator took note of the Parties' Settlement Agreement and stayed the present arbitration proceedings effective immediately pending the drafting of the award by consent.
- 78 In result of the Parties' Settlement Agreement and in line with Article 27 of the 2017 ICC Rules, the Sole Arbitrator declared these arbitration proceedings closed by Procedural Order No. 11 of 31 March 2022.
- 79 The Sole Arbitrator herewith renders this Final Award by Consent within the time limit granted by the ICC, extended for the last time by the ICC Court on 2 December 2021 until 29 July 2022.

## 2. Settlement Agreement

80 The Settlement Agreement dated as of March 15, 2022 reads as follows:

*"Settlement Agreement*

*dated as of March 15, 2022*

*by and among*

**Hunan Valin Xiangtan Iron and Steel Co., Ltd.**  
*Yuetang District, Xiangtan City, Hunan Province,  
P.R. China*

**(Claimant)**

and

**DIV Grupa d.o.o. (formerly DIV d.o.o.)**  
 Bobovica 10IA 10430, Samobor, Republic of  
 Croatia  
 and

**(Respondent)**

**Brodogađevna Industrija Split d.d.**  
 Put Supavla 21, 21000 Split, Republic of Croatia

**(Brodosplit)**

*(Claimant, Respondent and Brodosplit  
 each a Party, together the Parties)*

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### Whereas

- A. Claimant and Respondent have entered into four contracts, i.e., contract SW15EU224 dated December 3, 2015, contract SW15EU240 dated December 14, 2015, contract SW15EU237 dated December 14, 2015, and contract SW16EU056 dated April 6, 2016, all contracts for the purchase and sale of a total of 21,170 metric tons of steel wire for cold heading by Claimant (seller) to Respondent (buyer) for the total purchase price of USD 5,867,375.00 and EUR 4,117,420.00 (the **Contracts**);
- B. Claimant and Brodosplit Shipyard Ltd. (**Brodosplit Shipyard**) entered into a contract 2013EU066 dated August 6, 2013 for the purchase and sale of 7,500 metric tons of

- steel wire for cold heading by Claimant (seller) to Brodosplit Shipyard for a purchase price of USD 5,175,925 (the **Brodosplit Contract**);
- C. Brodosplit Shipyard was merged into Brodograđevna Industrija Split d.d. (Brodosplit) in 2013;
  - D. A dispute has arisen between the Parties under the Contracts and the Brodosplit Contract;
  - E. Claimant has initiated arbitration proceedings against Respondent under the ICC Rules (ICC Arbitration Case No. 23128/GR; the **ICC Arbitration**);
  - F. In the ICC Arbitration, Claimant has demanded in particular that Respondent be ordered to pay to Claimant (i) USD 714,480.07 and EUR 4,147,000 plus interest, and (ii) all costs of the ICC Arbitration (including party compensation);
  - G. Respondent has demanded in the ICC Arbitration that Claimant's claims be dismissed in the amount of Respondent's (assigned) set-off claim arising from the Brodosplit Contract, with the set-off claim quantified to date at EUR 2,724,021; and that Claimant be ordered to pay all costs of the arbitration proceedings (including party compensation);
  - H. Claimant has demanded that Respondent's set-off claim be dismissed;
  - I. A Partial Award No. 1 was rendered in the ICC Arbitration on May 17, 2018, holding that Swiss law applies to the Contracts;
  - J. A Partial Award No. 2 was rendered in the ICC Arbitration on February 4, 2019, holding that the Sole Arbitrator in the ICC Arbitration has jurisdiction to hear Respondent's set-off defense; that the law applicable to the validity of the set-off defense is Swiss law; the law applicable to the assignment between Brodosplit Shipyard and Respondent is Croatian law and that the question whether the assignment can be invoked vis-à-vis Claimant is subject to the law of the P.R. China; and that the law applicable to the merits of the claims resulting from the Brodosplit Contract is primarily the CISG, and that questions not governed by the CISG are subsidiarily subject to the law of the P.R. China;
  - K. On December 5, 2018, Claimant initiated arbitration proceedings against Brodosplit under the CIETAC Arbitration Rules (Arbitration Case no. R20190401), asserting the invalidity of the Brodosplit Contract (the **CIETAC Arbitration**);
  - L. The claims filed by Claimant in the CIETAC Arbitration were fully dismissed with Arbitral Award No. 1861 dated December 11, 2019;
  - M. In the ICC Arbitration, an Evidentiary Hearing is set to take place between April 5, 2022 and April 8, 2022;
  - N. The Parties have engaged in extra-procedural settlement discussions;
  - O. The Parties intend fully and finally to settle all their claims, disputes, rights and obligations in connection with each of the Contracts, the Brodosplit Contract, the ICC

*Arbitration and the CIETAC Arbitration under the terms and conditions of this Settlement Agreement.*

*Now, therefore, the Parties agree to the following binding terms and condition of settlement:*

**1. Settlement payment**

- (a) *Respondent shall pay to Claimant the lump sum amount of USD 3.700.000 (three million seven hundred thousand US dollars) without any interest and VAT (the Settlement Payment).*
- (b) *The Settlement Payment shall be effected by bank transfer within thirty (30) days of the Award by Consent (see Section 3 of this Settlement Agreement). Payment of the Settlement Payment shall be made to the following bank account:*

*NAME OF BANK: BANK OF CHINA, XIANGTAN BRANCH*

*ACCOUNT NO.: 597657368223*

*NAME OF PAYEE: HUNAN VALIN XIANGTAN IRON AND STEEL CO., LTD.*

*SWIFT BKCHCNBJ98D*

**2. Legal and Arbitration Costs**

- (a) *Each Party is responsible for its own costs, including the costs of legal fees, management time, consultancy fees and any other costs incurred directly or indirectly in relation to the ICC Arbitration, the underlying dispute and this Settlement Agreement.*
- (b) *The costs of the ICC Arbitration, still to be fixed by the ICC Court, are to be paid out of the deposits paid by Claimant and Respondent, with Claimant and Respondent each bearing the costs in equal shares. To the extent the deposits do not suffice to cover the ICC Arbitration's costs, any additional costs of the ICC Arbitration shall be borne by Claimant and Respondent in equal shares.*

**3. Termination of the ICC Arbitration**

- (a) *Upon the execution of this Settlement Agreement, Claimant and Respondent shall jointly request the Sole Arbitrator to stay the ICC Arbitration pending the rendering of an Award by Consent.*
- (b) *Upon the execution of this Settlement Agreement, Claimant and Respondent shall jointly inform the Sole Arbitrator that they have reached an agreement for the full and final resolution of all claims arising in the ICC Arbitration and in relation to the Contracts and the Brodosplit Contract, and that they therefore jointly request the Sole Arbitrator to render an Award by Consent*
  - (i) *holding that the ICC Arbitration is terminated by consent;*
  - (ii) *ordering Respondent to pay to Claimant within thirty (30) days of this Award the amount of USD 3.700.000 (three million seven hundred thousand US dollars) without any interest and VAT;*

- (iii) *dismissing Claimants claims and Respondent's claims (including its set-off claim) with prejudice;*
- (iv) *fixing the costs of the ICC Arbitration and applying the cost deposits paid so far for the ICC Arbitration with each Party bearing the costs in equal shares, and that to the extent the deposits do not suffice, any additional costs shall be borne by Claimant and Respondent in equal shares;*
- (v) *making no award for the payment of one party for the other party's costs in relation to the ICC Arbitration, the underlying dispute or this Settlement Agreement.*

**4. Settlement of all claims and release of any obligations**

*The Parties agree that upon receipt by Claimant of the Settlement Payment, all disputes between the Parties, and all actual or potential, past present or future claims of one Party against another Party arising out of or in connection with the Contracts, the Brodosplit Contract, the ICC Arbitration, the CIETAC Arbitration or any events and circumstances leading to the dispute settled by this Settlement Agreement or otherwise related thereto are deemed fully and finally settled and discharged with the exception of sections 5, 6, 8 and 9 of this Settlement Agreement.*

**5. Confidentiality**

- (a) *Each Party shall keep the fact of the settlement, the existence and the terms of this Settlement Agreement and the negotiations leading to the Settlement Agreement entirely confidential and shall not disclose it to any other person except:*
  - (i) *the auditors and legal advisers of the Parties;*
  - (ii) *where a Party is under a legal or regulatory obligation to make such disclosure, in which case the disclosure shall be limited to the extent of that legal obligation;*
  - (iii) *to the extent that it is already in the public domain (other than as a result of the disclosing Party's breach of this Settlement Agreement);*
  - (iv) *with the prior written consent of the other Parties to this Settlement Agreement; or*
  - (v) *as provided in clause 3 of this Agreement.*
- (b) *The Parties shall take all reasonable steps to make their employees, agents, consultants, suppliers, advisors, representatives, associates, etc. (the **Related Parties**) aware of the terms of this clause 5 and make all appropriate arrangements to extend the terms of this provision to the Related Parties.*
- (c) *For the avoidance of doubt, this Settlement Agreement shall be submitted to the Sole Arbitrator in the ICC Arbitration.*

## **6. Miscellaneous**

### **6.1 Waivers**

*No Party to this Settlement Agreement will be deemed to have waived any rights arising out of it or out of any breach of it, unless such Party has executed a waiver in writing and given notice of it. If a Party waives a right in writing, that waiver shall not be construed to constitute a waiver of any other right, however similar, arising out of this Settlement Agreement or out of any breach of it.*

### **6.2 Severability**

*If any term in this Settlement Agreement is found to be unenforceable, void or contrary to mandatory law, then that term shall be ineffective only to the extent of such unenforceability or invalidity and shall in no way affect the enforceability or validity of the remainder of that term or the other terms of this Settlement Agreement. In the event that a provision is found to be invalid or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory substitute provision.*

### **6.3 Entire agreement**

*This Settlement Agreement constitutes the entire agreement of the Parties in relation to its subject matter and supersedes all prior letters, representations, warranties and agreements relating to the subject matter of this Settlement Agreement.*

### **6.4 Assignment**

*No Party may assign all or part of its rights and obligations under this Settlement Agreement to any third party without the prior written consent of the other Parties.*

### **6.5 Variation**

*Any variation to this Settlement Agreement is not effective unless it is made in writing and signed by or on behalf of each of the Parties.*

## **7. Counterparts**

*This Settlement Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.*

## **8. Governing Law**

*This Settlement Agreement, including its construction, validity and performance shall be governed by Swiss substantive Law to the exclusion of any other law that may be imputed in accordance with Choice of Law Rules applicable in any jurisdiction. The United Nations Convention on Contracts for the International*

*Sale of Goods of Vienna, 11 April, 1980 shall not apply to this Settlement Agreement.*

**9. Arbitration**

*All disputes arising out of or in connection with this Settlement Agreement, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a sole arbitrator appointed in accordance with the said Rules. The place of arbitration shall be Zurich, Switzerland. The language of the proceedings shall be English.*

**10. Authorized Signatories**

*Each Party represents that it has obtained all necessary internal approvals and is duly authorised to enter into this Agreement and that the signatory executing this Agreement on its behalf is duly authorised and empowered to represent it for this purpose.*

*[Signatures on next page]*

*Executed as of the date written on the cover page to this Agreement.*

**Hunan Valin Xiangtan Iron and Steel Co.,  
Ltd.**

\_\_\_\_\_  
Name: LIBO WANG

Function: Director of Legal Department

*[signature and date, i.e., 2022.3.16]*

\_\_\_\_\_  
Name:

Function:

**DIV Grupa d.o.o.**      *[Stamp of DIV GRUPA d.o.o.]*

\_\_\_\_\_  
*[signature]*

Name: TOMISLAV DEBELJAK

Function: CEO

\_\_\_\_\_  
Name:

Function:

**Brodogađevna Industrija Split d.d.** *[Stamp of Brodogađevna Industrija Split d.d.]*

\_\_\_\_\_  
*[signature]*

Name: TOMISLAV DEBELJAK

Function: CEO

\_\_\_\_\_  
Name:

Function:"

### 3. Costs of Arbitration

81 In view of the Parties' joint request dated 16 March 2022, the Sole Arbitrator shall issue a Final Award by Consent for the termination of the present arbitral proceedings in accordance with Article 33 of the 2017 ICC Rules.

82 At its session of 8 March 2018 the ICC Court fixed the advance on costs at USD 150,000, subject to later readjustments pursuant to Article 37(2) of the 2017 ICC Rules as indicated in the Secretariat's letter of 8 March 2018. Up to date, the advance on costs in the amount of USD 150,000 has been paid by the Parties in equal shares of USD 75,000 each.

83 The ICC Court, at its session of 28 April 2022 fixed the fees and expenses of the Sole Arbitrator and the administrative expenses at USD 150,000. This amount consists of:

• ICC administrative expenses	USD	46,497
• Fees of the Sole Arbitrator	USD	102,600
• Expenses incurred	USD	903
• <b>Total costs:</b>	<b>USD</b>	<b>150,000</b>

84 These costs of arbitration will be set-off against the advances on costs paid by the Parties in equal shares.

85 In accordance with Article 2a of the Settlement Agreement each Party is responsible for its own costs, including the costs of legal fees. In Article 3(v) of the Settlement Agreement the Parties jointly requested the Sole Arbitrator to make *"no award for the payment of one party for the other party's costs in relation to the ICC Arbitration, the underlying dispute or this Settlement Agreement"*. Each Party will thus bear its own party's costs and other costs in relation to this ICC arbitration, the underlying dispute or the Settlement Agreement.

In accordance with Article 33 of the 2017 ICC Rules and in view of the foregoing considerations the Sole Arbitrator renders the following

## Final Award by Consent

1. This ICC Arbitration is terminated by consent of the Parties' Settlement Agreement dated 15 March 2022.
2. Respondent is hereby ordered to pay to Claimant within thirty (30) days of this Award the amount of USD 3.700.000 (three million seven hundred thousand US dollars) without any interest and VAT.

The payment shall be effected to the following account:

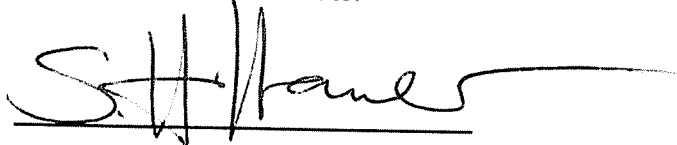
Name of Bank: BANK OF CHINA, XIANGTAN BRANCH  
Account No.: 597657368223  
Name of Payee: HUNAN VALIN XIANGTAN IRON AND STEEL CO., LTD.  
SWIFT Code BKCHCNBJ98D

3. Claimant's claims and Respondent's claims (including its set-off claim) in the present arbitration are hereby fully dismissed **with prejudice**.
4. The costs of this arbitration (fees and expenses of the Sole Arbitrator and administrative costs of the ICC) amount to USD 150,000 and are set-off against the advances on costs paid by the Parties in equal shares. Each Party bears the costs of this arbitration in equal shares.
5. Each Party bears its own party's costs and other costs in relation to this ICC arbitration, the underlying dispute or the Settlement Agreement.

Place of arbitration: Zurich, Switzerland

Date: 3 May 2022

The Sole Arbitrator



Simone M. Hofbauer

