

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 10|A 10430, Samobor, Republic of
Croatia

(Respondent)

and

Brodograđevna 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]



Ugovor o nagodbi

od 15. ožujka 2022.

između:

Hunan Valin Xiangtan Iron and Steel Co., Ltd.
Yuetang District, Xiangtan City, Hunan Provide,
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 prijeboga 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 prijebog;
- 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 prijebogu; 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 pologi 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 jedinog arbitražnog suca da obustavi ICC Arbitražu do donošenja sporazumne odluke.
- (b) Nakon potpisivanja ovog Ugovora o nagodbi, Tužitelj i Tuženik će zajedno obavijestiti jedinog arbitražnog suca 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 jedinog arbitražnog suca 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 prijeboj) 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 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**) upozнала 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 jedinom arbitražnom sucu 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 uz 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.
(Pečat tvrtke)

Ime: (potpis nečitljiv)
Funkcija:

Ime:
Funkcija:

DIV Grupa d.o.o. /Pečat društva Div Grupa/

(Potpis nečitljiv)
Ime: TOMISLAV DEBELJAK
Funkcija: Glavni izvršni direktor

Ime:
Funkcija:

Brodograđevna industrija Split d.d.

/Pečat društva Brodograđevna industrija Split/

(Potpis nečitljiv)
Ime: TOMISLAV DEBELJAK
Funkcija: Glavni izvršni direktor

Ime:
Funkcija:

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, 24. svibnja 2022.
Br.-OV.: 603/2022

Olja Frugnoli, dipl. oec.



Settlement Agreement

dated as of March 15, 2022

by and among

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

(Claimant)

and

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

(Respondent)

and

Brodograđevna Industrija Split d.d.
Put Supava 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:
Function:

Name:
Function:

DIV Grupa d.o.o.

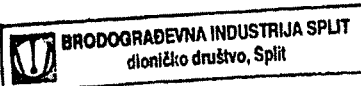
DIV GRUPA d.o.o.

10430 SAMOBOR, Bobovica 10/A
Tel. 01 3377-000, Fax. 01 3376-155
OIB: 33890755814
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Name: TOMISLAV DEBELJAK
Function: CEO

Name:
Function:

Brodograđevna Industrija Split d.d.



Name: TOMISLAV DEBELJAK
Function: CEO

Name:
Function:



