

## **RELEASE OF CLARIFICATIONS**

1. Swedish Motorisk Vagn Group (“SMV”) is registered as a company under which laws of Sweden?

**Swedish Companies Act, 2005.**

2. Ess Kay Industries is which type of company under Companies Act, 1956 (public limited company, private limited company, company limited by share, company limited by guarantee)?

**Ess Kay Industries may be presumed to be a public limited company.**

3. Which type of agreement did Ess Kay and SMV entered into on 15.06.2015?

**Dealership Agreement, the excerpts of which are laid out in the problem.**

4. Does Ess Kay Industries limited incorporated under the Companies Act, 1956 as a joint venture or Wholly-owned subsidiary?

**Ess Kay Industries Ltd. may be presumed to be a public limited company.**

5. Does Ess Kay Industries limited incorporated under the Companies Act, 1956 follows the FEMA Regulation, 2000?

**Yes, the laws governing India shall be applicable to the problem.**

6. What are the Supplier's guidelines as mentioned in Article 18 (mentioned on page 4 of Competition Problem) of Agreement entered between Ess Kay and SMV?

**These are industry standard guidelines (not law). You are free to research on the guidelines and the prevailing industry standards.**

7. Which courts are included in Courts of New Delhi?

**Kindly research law on the same. The arbitration clause is clear and requires no clarification on this point.**

8. MM Finance Private Limited is incorporated under which law of India?

**Companies Act, 1956.**

9. What is PART ONE (mentioned in page 7 of Competition Problem) of the Finance Contract entered between MM Finance and Ess Kay?

**Not relevant to the problem, only the relevant excerpts have been picked from the agreement.**

10. What is Serial number 3 of the Schedule 1 (mentioned in page 7 of Competition Problem) of the Finance Contract entered between MM Finance and Ess Kay?

**Already mentioned in the agreement. It refers to the definition mentioned at roman numeral (iii).**

11. What is serial number [4] of Schedule 1 (mentioned in page 7 of Competition Problem) of the Finance Contract entered between MM Finance and Ess Kay?

**Not relevant to the problem.**

12. What is serial number [4] of Schedule 1 hereto (mentioned in page 9 of Competition Problem) of the Definitions of the Finance Contract entered between MM Finance and Ess Kay?

**Not relevant to the problem.**

13. What is Schedule III hereto (mentioned in page 10 of Competition Problem) of the Terms of Contract?

**Not relevant to the problem.**

14. What is Clause [26] (mentioned in page 13 of Competition Problem) of the governing Law and Jurisdiction?

**That is a typographical error, please read it as clause 6.**

15. The National Company Law Tribunal vide order dated 15.10.2017 allowed the merger and SMV took over MM under which laws and their applicable sections?

**Kindly research on the same.**

16. Finance Agreement

- a) Under "Governing law and Jurisdiction", there is a mention of clause [26] but its language is not provided anywhere in the problem.

**Typographical, please read it as 6.**

- b) Agreement mentions Entry [iv] of Sch 1 at couple of places. What are the entries under Entry [iv]?

**Not relevant to the problem.**

- c) Under Sch 1 Entry (iii) Esa Kay is mentioned as "Lender" however the facts denote that it is acting in the capacity of "borrower" under the said agreement.

**Please read it as "borrower".**

17. What is the **word limit** of the Award (Section Wise or in totality)? If not, then what is the **recommended** word or page limit?

**There is no prescribed or recommended word/page limit of the award.**

18. What name should we put in the "**Name of Institution**" as mentioned in the Draft Award? Should it be hypothetical or real?

**The Draft Award is just a template to assist the author. It is not necessary to base your arbitral award on the Draft Award.**

19. Since the decisions on the Issues can only be reached on the basis of **legal principals and case laws**, in **which section** should they be placed (**ARGUMENTS / DECISION / CONCLUSION**)?

**The Draft Award is just a template to assist the author. It is not necessary to base your arbitral award on the Draft Award.**

20. Since the Problem in para no. 9, pg no. 14 states that the Statements of Claim and Defense "**highlights**" the "**following points**", in the ARGUMENTS Section, are we allowed to **EXPAND the arguments on each side** with case laws and legal provisions or should we simply copy the arguments as cited in the problem?

**Yes, you can expand the arguments.**

21. In light of **conflicting contents** of **para no. 2 and 3**, who is the parties to the Agreement - SMV or SMV India?

**SMV India as stated in the agreement.**

22. With reference to above agreement in pg. no. 2, the manufacturer is given as "Swedish **Motoren** Group" whereas in para no. 1, the full form of SMV is "Swedish **Motorisk Vagn Group**". Kindly clarify.

**Swedish Motorisk Vagn Group also goes by Swedish Motoren Group.**

23. In Schedule 1 of the FINANCE CONTRACT in pg no. 7, Ess Kay is stated to be '**Lender**', whereas, as per Preamble of the Contract, Schedule 1 should contain name of '**Borrower**'? Kindly clarify.

**Refer Q. 16(c).**

24. Clause 5 of the Compromise Agreement in pg no. 14, mentions arbitration by a **SINGLE arbitrator**. Para no. 9 of the Problem further states that the instant arbitration has been initiated by SMV India. However, the Draft Award mentions arbitration by **THREE arbitrators**. Would you please clarify error, if any.

**The Draft Award is just a template to assist the author. It is not necessary to base your arbitral award on the Draft Award.**

25. Could you kindly clarify the use of the term "Audi" in Preamble of the Agreement in pg. no. 2 of the Problem?

**Kindly ignore the same.**

26. Does M M Finance provide facilities to dealers other than MM's dealers?

**No.**

27. Kindly clarify: In para no. 7 in page no. 14, is it a "merger" or a "take over" since both the terms are used in the same paragraph.

**Takeover by way of merger.**

28. What is the status of the contract between SMV India and Ess Kay mentioned in para no. 2? Is it still subsisting?

**Please refer to para 9 of the problem. The agreement expired.**

29. Why SMV India has claimed for Rs. 100,00,00,000 when in the compromise agreement the liability of Ess Kay was totalled to be Rs. 30,00,00,000?

**Included damages and loss of reputation etc. along with litigation and arbitration expenses.**

30. What is the status quo in regard to the arbitration proceedings initiated by Ess Kay Motors against MM Finance?

**Arbitration notice was sent; however the arbitrator has not yet been appointed.**

31. Were SMV India and MM Ltd. the only suppliers to Ess Kay Motors?

**Yes, exclusive dealership.**