



6TH SURANA & SURANA AND RGNUL INTERNATIONAL ARBITRAL AWARD WRITING COMPETITION, 2025

-PROPOSITION-

presented by

**Centre For Alternative
Dispute Resolution, RGNUL**

in collaboration with

**Surana & Surana International
Attorneys, Chennai, India**

6TH SURANA & SURANA AND RGNUL INTERNATIONAL ARBITRAL AWARD WRITING COMPETITION, 2025¹

PARTIES

1. The Claimant, **Alcarez Marine Pvt. Ltd.** (hereafter “AMPL”) is a private limited company registered in Kochi, India. It provides salvage services to oil and chemical tankers globally, and claims to be one of India's leading salvors. It is represented by Mr. Carter Alcarez, the promoter and principal shareholder of AMPL.
2. The first Respondent **William Marine Pvt. Ltd.** (hereafter “WMPL”) is a company registered under the Companies Act, 1956, and provides various services such as barging and shipping in Goa. WMPL is represented by its Managing director Ms. Sirinya Williams. Ms. Williams comes from a long line of shippers. A company incorporated by Ms. William’s family members in Singapore named as **William Marine Singapore Pte Ltd.** (hereafter “WMPL – Singapore”) has been made party in this arbitration as the second Respondent.

FACTUAL BACKGROUND

3. The dispute emanates from an agreement titled the Salvage Services Agreement (“SSA”) dated 29.02.2020 entered into between the Claimant and the first Respondent.
4. The background for this dispute revolves around an Indian vessel tanker MSC Elsa (hereafter “the vessel”) was bound from Paradeep Port in Orissa to Deendayal Port in Kandla, Gujrat. It was, at that time loaded with approximately 3,000 tons of liquid hydrocarbon which was volatile and flammable in nature. On 27.01.2020 (about a month after the ship had set sail from its origin in Paradeep Port), while the vessel was on its course to the destination port, liquid hydrocarbon leaked into the vessel’s engine and pump rooms. The crew discerned this, diverted the vessel from its intended course, and anchored her at 12 miles off the Mormugao Port in Goa. Within a few hours after anchoring the vessel off the Mormugao Port, in a massive explosion, the liquid hydrocarbon leaked and 20 crew members lost their lives.

¹ *This problem has been drafted by Ms. Bhavana Chandak Dhoundiyal, Senior Associate (Dispute Resolution) at Kachwaha & Partners, New Delhi. Any attempt to contact the drafter in consonance with the competition shall be grounds for disqualification from participation.

5. The vessel was owned by a company called 'The Mediterranean Ship Company'. The Director of the Mediterranean Ship Company was close friends with Ms. William's family and after MSC Elsa got involved in an accident of the coast at Goa, he reached out to WMPL - Singapore for its services. WMPL - Singapore then signed a contract with the owner of the ship i.e. Mediterranean Ship Company wherein the former was to provide its salvage services. This is termed as the "Parent Contract".
6. Under the Parent Contract, second Respondent was responsible for removing and cleaning cargo from a vessel, MSC Elsa within a 45-day timeline. WMPL - Singapore reached out to WMPL (based in India) for the purpose of logistical convenience since WMPL was based in Goa where the vessel was stuck. WMPL - Singapore then proposed that an agreement with the AMPL be executed by WMPL as its agent and authorized signatory. AMPL was one of the few Indian companies which specialised in dealing with hydrocarbon leaks and thus its expertise would be absolutely necessary to complete the salvage project.
7. Finally, the Salvage Services Agreement ("SSA") dated 29.02.2020 was entered into between the WMPL and AMPL (i.e. first Respondent and Claimant). Under the SSA, the first Respondent sought to engage the Claimant to provide certain salvage services for executing the Parent Contract. The SSA required the Claimant to provide specific services on board the vessel which have been elaborated under the scope of work of the SSA below.
8. The dispute between the parties is with respect to the claim that the Respondent allegedly failed to meet their obligations, made delayed payments, and terminated the SSA vide an email dated 22.04.2020.
9. In February 2020, the Claimant submitted its proposal for providing salvage services in terms of the Parent Contract which was accepted. Thus, the SSA was signed between the Claimant and the first Respondent.
10. The scope of work under the SSA (Clause 1) was as follows:

"Whereas AMPL has been engaged by WMPL to gas-free the stricken vessel 'MSC Elsa' afloat at Goa including all areas such as tanks, engine room, pump room; thereafter transfer the remaining cargo of the stricken vessel into another tanker or anchorage as provided by WMPL;

Whereas AMPL shall complete its work within a strict timeline of 45 days;

Whereas the WMPL has found it desirable and in the interests of all stakeholders that it deploys a sub- contractors, service-providers and vendors competent and specialized in procurement segments, as also the safety and statutory compliances, to have the respective operational, technical, sourcing aforesaid jobs on the Vessel carried out within the scope and timelines.”

11. As per Clause 2 of the SSA, Claimant was to guarantee, make and ensure timely and adequate provision for supply hire of the following hardware at its cost and responsibility:

- a. “2 DSP Hydraulic Power Pack*
- b. MSP-200 submersible pump*
- c. 5 x 10 metres of 2.5/4 inch discharge hoses for attaching to the pump discharge DHP power pack (as required)*
- d. 10 Nos. of SCBA sets with spare bottles*
- e. Gas masks and chemical suits*
- f. 5 Nos. air-driven blowers with 8 metre chutes*
- g. One high-capacity water pump will be required for tank cleaning or for emergency fire-fighting hoses.*
- h. Intrinsically safe electrical lights for deployment on board and 20-metre discharge hose the Vessel.”*

12. Clause 4 of the SSA spelt out the various stages for performance of work, and the stages for payment, *inter alia*, provided as follows:

“(b) The agreed Base Consideration of Rs. 2,77,70,000/- shall be SUBJECT FURTHER TO the following terms and conditions:

Stage 1: Rs. 1,11, 80,000/- to be paid at the time of signing of this SSA.

Stage 2: Rs. 68,20,000/- 7 days prior departure of the container / truck with all designated materials, equipment and tools loaded from Kochi

Stage 3: Rs. 37,70,000/- after consolidation of the non-contaminated cargo on the Vessel is made in nominated cargo tanks or other carriers, less the

unpumpables left in the cargo tank and cargo in the engine-room and the pump-room is pumped out, the specific locations gas-freed.

Stage 4: Rs. 40,00,000/- upon completion of the Project in all respects, as per the scope of work defined in the SSA limited to the responsibilities of AMPL and disembarking of all the equipment & Personnel provided by AMPL.

...

(c) Any delay beyond the 45 day period, after being adjusted for delays due to 'acts of God' shall be invoiced by WMPL to AMPL or vice versa, at Rs. 15,00,000 + GST per calendar day and such amount shall be treated and honoured within 7 days by the party in default as 'Liquidated Damages' in respect of the SSA."

13. The performance of the SSA became a matter of contention between the parties. The Claimant alleged that it had claims against the Respondent in respect of termination of the SSA and unpaid amounts under the agreement-initiated arbitration as provided for under the SSA by issuing a Notice of Arbitration. Since, mutual settlement between the parties was not successful, the Claimant invoked arbitration as per the SSA:

"5. Interpretation of the SSA and Resolution of Disputes:

- a) As far as possible or reasonably practical, all Clauses of this SSA shall be so interpreted and justify its cause and objectives and not otherwise.*
- b) Time is agreed to be of the essence of this SSA and encompassing all deadlines and timelines, however and wherever stipulated herein.*
- c) In the event any difference or dispute arises between parties to the SSA which do not get resolved by mutual negotiations within 3 days (72 as recorded in writing, hours) from the time of its origin such dispute / difference shall be got resolved by arbitration. There shall be a Sole Arbitrator appointed under the Arbitration & Conciliation 1996 [hereinafter referred to as "the Act"], Act. The seat of arbitration is in New Delhi, India. at The Sole Arbitrator shall conduct the arbitration proceedings in an expedited mode, with sittings on a daily basis as far as practical and shall deliver the Award within 30 days of his / her entering upon reference. The arbitration clause shall have predominance over any action*

*by any of the parties to the any Admiralty action under or in terms of the SSA.
The laws of framed under the Act shall be applicable to the arbitration.”*

14. Since the Parties could not appoint an arbitrator, the Claimant approached the Hon'ble Supreme Court of India under Section 11(6) read with Section 11(12) of the Arbitration and Conciliation Act, 1996 (“the Act”). This petition under S. 11 of the Act was disposed of by an order dated 03.07.2022, referring the dispute to arbitration under the aegis of the Delhi International Arbitration Centre (DIAC). The Claimant made a request for arbitration to the DIAC, on 07.09.2022.

STATEMENT OF CLAIMS

15. The Claimant states that it complied with its obligations under the SSA and successfully moved leaked cargo from the cargo tanks, engine room, and pump room of the vessel, cleaning and gas-freeing the vessel of the available tanks as per the SSA. The Respondent had the responsibility of providing alternate storage of the cargo after cleaning and gas-freeing the vessel. The Claimant complains that it failed to perform this obligation. Nonetheless, Claimant carried out its obligations under the SSA in a timely manner. However, the Respondent acted with oblique motive throughout the term of the SSA, by misrepresenting its obligations under the Parent Contract, and particularly delayed making payments to Claimant for the various stages as set out in Clause 4 of the SSA.
16. Claimant states that it was constrained to stop working for five working days in March 2020 and three days in first week of April 2020. Its workmen and employees however promptly resumed work upon receiving assurance that the stage payments shall be paid promptly. The Claimant claims that the delays in the project (i.e. of eight days) were solely due to the Respondent's delayed payments and relies on Clause 4(c) of the SSA to say that any delay beyond the 45- day period shall be invoiced by Respondent to Claimant or vice-versa, at Rs. 15,00,000 + GST per calendar day, which was to be honoured within 7 days by the party in default.
- a. Invoices AMPL/PI/02 dated 23.03.2020 for Rs. 75,00,000 + GST (**Annexure A**).
 - b. Invoice and AMPL/PI/04 dated 12.04.2020 for Rs. 45,00,000 + GST (**Annexure B**).
17. Claimant further alleges that despite non-payment of invoices for completed work and

the liquidated damages claim, it continued carry out its scope of work under the SSA in good faith, and on the basis of assurances that the payments would be received in due course, in the interest of safeguarding the vessel.

18. The Claimant vide its email dated 20.04.2020 informed the Respondent as follows:

“Dear Sirinya,

The weather reports have been stating that the monsoon this year will hit the shoreline early. If the weather turns foul it will be very difficult to remove all our heavy duty equipment from the vessel and if the equipments are left to stay on the vessel in the open then they may ruin the quality of our world class equipment. We request you to send us a tanker in which we can load the remaining cargo and leave the site ASAP.

Regards,

Carter”

19. Respondent by an email dated 21.04.2020, stated that it was facing some difficulty in arranging for another tanker and the Claimant will have to wait for a few days on the vessel. The Respondent offered its help to unload the Claimant’s equipment from the vessel when the time came. The Claimant the same day responded on email and stated that it cannot wait any longer and needs to leave the stricken vessel.
20. The Respondent on 22.04.2020 eventually terminated the SSA with “...*immediate effect*”. The Claimant issued its stage 4 invoice which the Respondent failed to pay.
21. It is alleged that Respondent, under false pretexts, wrongfully and with *mala fide* intent, terminated the SSA. It was the intention of the Respondents to short-change the Claimant and deny its rightful dues under the SSA in respect of the liquidated damages invoices raised by it.
22. The cost of the legal proceedings and costs borne by it for recovery of its claims under the SSA. The total claim for legal costs is ₹ 13,84,562/-.

STATEMENT OF DEFENCE

23. The Respondent does not dispute the genesis of the dispute. The Respondent entered into a contract with the vessel owner to conduct salvage operations. It had experience in salvage operations.

24. Mr. Alcarez, the promoter and principal shareholder of Claimant, in an introductory email on 03.02.2020 claimed that it had the technical expertise, manpower and equipment, as well as experience of transferring hazardous chemicals in perilous circumstances. The email also stated that Claimant had suitable equipment *including* a world class system power pack, to complete the job. The Claimant stated:
- “The company has procured a new world class system of power pack + submersible pumps from Marflex, Holland...”*
25. Before finally entering into an agreement (i.e. the SSA), the vessel was inspected on behalf of Claimant to ascertain its suitability for the project.
26. Based on Claimant’s assurances, the SSA was signed and that in terms of the contract, Claimant was to be paid consideration in four stages, depending upon the stages of completion of specific tasks under the SSA; the total amount payable during those four stages was ₹2,77,70,000/-.
27. It is stated that Claimant assured and listed the critical equipment needed to complete the tasks under the contract, which were to be provided in a timely manner by it, at its cost. Immediately on signing the SSA, the Stage I proforma invoice (for ₹ 1,11,80,000/-) was issued by Claimant on 04.03.2020, which was paid by Respondent on 07.03.2020.
28. Respondent asserts that Claimant is not a leading salvor in India and that it does not have the fame or reputation that it claims. Respondent alleges that Claimant misrepresented its ability to execute the technical services, to secure a lucrative contract. For the entire duration of the contract, Claimant was focused only on payments, rather than the quality of the equipment supplied on board, and the services it was to supply.
29. Respondent contests and denies withholding timely payments and states that they were duly released to Claimant. Further, the Respondent alleges that the decision by Claimant to stop work in between March and April was a pressure tactic, to arm twist Respondent into making the stage wise payments before the Claimant completes its work. Respondent contests and denies the claim for liquidated damages, and states that the time overrun was entirely due to Claimant’s fault.
30. Respondent states that the Stage 2 invoice can only be issued once all the Claimant’s

equipment had reached the vessel. The Claimant on 10.03.2020 (₹68,20,000/-) issued the invoice. However, even as late as 16.03.2020, in piecemeal and midway during contract operations all of Claimant's equipment had not reached the vessel. Thus the Respondent contended that time is not of essence in the Agreement, therefore, the liquidated damages clause, according to Respondent, is meaningless and unenforceable.

31. Reference is also made to the adverse publicity in the press as to the existence of the vessel containing inflammable materials near the port. At the same time, the authorities were pressing for early completion of cleaning and salvage operations. Having regard to all these circumstances, the second stage payment of ₹68,20,000/- was promptly made to Claimant. Despite this, Claimant failed to fulfil its contractual obligations under Stage 2; it failed to load all designated materials, equipment and tools; these also did not reach Goa or for that matter, on board the vessel. Irrespective, the Respondent made the Stage 2 payment in late March 2020.
32. It is alleged that Claimant's role in the performance of the contract was such that it soon became apparent that it was unable to match its pre-contractual representations. Since the Respondent could not afford a setback, it gathered equipment from its shipyard and other places, and made up for the shortfall in the equipment of Claimant. Some major faults of the Claimant were as follows as mentioned in Respondent's email dated 04.04.2020 were:

"Dear Carter,

Thanks for starting work, however please note the following—

1. *Gas Masks and chemical suits: We understand that the required number of Gas Masks and chemical suits are not being provided, would appreciate if this is addressed. Basis a fresh evaluation, if it is since proposed that additional suits would be required, it would only be reasonable that AMPL procures the same and not allow anybody take the responsibility for and any potential failures of this critical equipment being used by your team.*
2. *MSP 200: The pump which should be used in the project keeps breaking down. Your team has not kept its promise of providing world class equipment. The pump's efficacy is not at full capacity and now the substitute which you have brought in of MSP 80 in its place is very slow. Your actions will unnecessarily delay the salvage process.*

3. *SCBA sets: There are now only 02 no.s of SCBA set in working condition on board now. 08 no.s of BA Sets have been landed ashore so that we can provide the much-needed repair for them. The BA Compressor is also giving trouble and the filter needs replacement, Air in the BA sets stinks, smells foul of burnt oil leading to feeling of suffocation.*

BR,

Sirinya”

33. As per the Respondent, there were operational difficulties faced during this period, and considerable time was lost due to the Claimant's lack of preparation. The Respondent alleges that the Claimant's failure to perform its contractual obligations included: misrepresentation regarding the availability of critical equipment; failure to adequately supply equipment, including ancillaries and consumables; failure to provide suitable or quality equipment, resulting in malfunctioning; failure to make backup arrangements; and failure to arrange for a service technician on board the vessel to carry out repairs and save time. The Respondent, at its own cost and responsibility, had to arrange for such items. It is stated that the Claimant's equipment was either unavailable, unsuitable, or had malfunctioned, thereby slowing down operations. The Claimant had assured the Respondent that payment for such equipment or repairs it had provided would be reimbursed (via emails dated 18.03.2020 and 14.04.2020). It was further stated on 28.04.2020:

“Dear Sirinya,

Kindly forward me the details of all expenses/equipments that may have been incurred/procured by WMPL on behalf of AMPL for executing the job on board the vessel MSC Elsa w.r.t our obligations as per the SSA. AS the project nears completion, will appreciate your early response so that we can start reconciling the expenses in good time.

Have a nice day.

Best regards,

Carter”

34. The Respondent spent Rs. 1,90,03,096/- for equipment it purchased on behalf of Claimant and informed the Claimant this via email on 03.05.2020. It included some crucial safety equipment such as SCBA sets, high pressure air compressors, face masks, gas suits and the hardware such as air driven blowers, high-capacity water

pump were arranged by the Respondent. The Claimant is yet to pay for the same. At the same time during the SSA, the Respondent incurred expenses towards designing, fabricating, repairing and modifying Claimant's equipment or parts thereof, where they were either of poor quality, or had malfunctioned.

35. As per the Respondent's knowledge, the Claimant in its financial statements for F.Y. 2022- 2023 has acknowledged that it is due to pay Rs. 1,90,03,096/- to the Respondent for its services.
36. The Respondent complains that the Stage 3 proforma invoice for ₹37,70,000/- was issued by Claimant, claiming that it had completed that stage on 25.03.2020. However, it had not been completed because the engine room was not completely gas-freed (as gas readings were repeatedly seen in the engine room even after that date) and cargo lines had not been fully flushed as the beaded pipelines and valves system in the cargo tanks was not in a sustained state of being liquid free. Claimant was asked to complete these tasks. However, it refused, stating that these did not fall within the scope of work. Respondent categorically stated that it would not hire another technical team; Claimant was also clearly informed that the delays beyond 45 days were not due to Respondent's shortcomings but its own, caused by the need to mobilise equipment and continuous/repeated malfunctioning of the equipment of Claimant. The Respondent eventually paid the Stage 3 invoice in end of April 2020.
37. Stage 4 of the Agreement provided for discharging the cargo. Claimant was awaiting the arrival of another tanker or anchorage into which the cargo was to be discharged. Since another tanker or anchorage was be provided, it was agreed that Claimant would demobilise and offload its equipment from the vessel. Claimant was concerned that if the equipment remained any longer on board it would be stranded for the entire monsoon season. It needed to disembark the equipment without delay as sea conditions were deteriorating due to the onset of the monsoon, which would have made it more difficult for boats to navigate the rough seas with heavy equipment on board. Even though the work of Stage 4 was not complete, the Claimant was insistent on removing its equipment. Finally, the Respondent succumbed to the Claimant's request and terminated the SSA.
38. The Respondent prays for reimbursement of Rs. 1,90,03,096/- for the equipment it purchased on behalf of the Claimant, and the cost of the legal proceedings borne by it

for the recovery of its claims under the SSA totalling to Rs. 18,92,579/-.

CLAIMANT'S REJOINDER TO RESPONDENT'S SOD

39. The Claimant's Response to the Statement of Defence in brief is as follows:
- a. The Claimant denies that the Respondent had to bear the entire cost of repair of the MSP 200 pump. Further Claimant had agreed to settle any genuine claims/ expenses incurred, pertaining to operations that were to be carried out by it; however, when it received the bill raised by Respondent, the amount raised was an exaggerated one. Many equipment purchases and fabrications were carried out by Respondent for their other ongoing operations, which were also billed on Claimant in a *mala fide* manner, with the intent to escalate costs.
 - b. The Claimant denies that the stoppage of work was due to any fault of its own. It submits that the first work stoppage of five days in March was due to Respondent's failure to pay for the operations, and the three days' stop in April was on the owner's advice for safety reasons. Respondent failed to highlight that Claimant's team had worked continuously from during the term of the SSA without even weekends off. It is submitted that Respondent is put to strict proof of the amount claimed for idling, as payments under the SSA were stage-wise, and not day-wise. The amount claimed was never submitted to Claimant, and has been raised for the first time in the counterclaims.

ISSUES

40. By an order dated 20.01.2024, this Tribunal also recorded the issues for determination, as follows:
1. *Whether the Claimant is entitled to liquidated damages (a total of ₹ 1,20,00,000 + GST) under Clause 4(c) of the SSA) since the Respondent had not honoured its invoices towards liquidated damages within 7 days from the date of each of the two invoices?*
 2. *Whether the Claimant is entitled to damages towards non-payment of stage 4 invoice for Rs. 40,00,000/- along with 18% interest from the date it was due along with damages for wrongful termination of the Agreement by the Respondent.*
 3. *Whether the second Respondent should be a party to the arbitration?*

4. *Whether the Respondent is entitled to payment of expenses of Rs. 1,90,03,096/- for equipment it purchased as well as designed, fabricated and repaired on behalf of Claimant?*
5. *Whether either party is entitled to interest and if so, at what rate and for what period under Section 31A of the Arbitration and Conciliation Act, 1996?*
6. *Whether either party is entitled to costs, in relation to the court proceedings initiated prior to the present arbitration, and the present arbitration?*

INVOICE
Invoice No.: AMPL/PI/02

Date: 23.03.2020

From: Alcaez Marine Pvt. Ltd. Regd. Office: 102, Oceanic Towers, Port Link Road, Kochi. CIN: U61100MH2010PTC204321 GSTIN: 27AALCA1234L1Z8 Email: accounts@alcaezmarine.in Website: www.alcaezmarine.in	To: William Marine Pvt. Ltd. Regd. Office: 45 Dockyard Complex, East Wharf Zone, Goa. CIN: U61200TN2012PTC310987 GSTIN: 33AAACW4321M1Z5 Email: procurement@williammarine.co.in Website: www.williammarine.co.in
---	---

Subject: Charges for Idling of Resources and Work Stoppage
Project: MSC Elsa

Sr. No.	Description	Amount (INR)
1	This invoice is raised towards the idling of personnel, equipment, and support vessels, and project delays experienced by Alcaez Marine Pvt. Ltd. during the project. Due to delayed payments as stipulated under the contract i.e. delay solely attributable to William Marine Pvt. Ltd. our mobilized teams and machinery were rendered idle for 5 days between 02.03.2020 and 20.03.2020, resulting in a loss of operational days, productivity, and overhead costs. Charges for idling of manpower, marine equipment, support vessels, and shore logistics	₹ 75,00,000.00
	Add:	₹ 75,00,000.00
	GST @ 18% (CGST ₹6,75,000 + SGST ₹6,75,000)	₹ 13,50,000.00
	Total Amount Payable	₹ 88,50,000.00

Terms:

- Payment due within **7 days** from date of invoice.
- Delay in payment beyond due date will attract interest @18% per annum on the outstanding amount.



For **Alcaez Marine Pvt. Ltd.**

INVOICE
Invoice No.: AMPL/PI/04

Date: 12.04.2020

From: Alcaez Marine Pvt. Ltd. Regd. Office: 102, Oceanic Towers, Port Link Road, Kochi. CIN: U61100MH2010PTC204321 GSTIN: 27AALCA1234L1Z8 Email: accounts@alcaezmarine.in Website: www.alcaezmarine.in	To: William Marine Pvt. Ltd. Regd. Office: 45 Dockyard Complex, East Wharf Zone, Goa. CIN: U61200TN2012PTC310987 GSTIN: 33AAACW4321M1Z5 Email: procurement@williammarine.co.in Website: www.williammarine.co.in
---	---

Subject: Charges for Idling of Resources and Work Stoppage
Project: MSC Elsa

Sr. No.	Description	Amount (INR)
1	This invoice is raised towards the idling of personnel, equipment, and support vessels, and project delays experienced by Alcaez Marine Pvt. Ltd. during the project. Due to delayed payments as stipulated under the contract i.e. delay solely attributable to William Marine Pvt. Ltd. our mobilized teams and machinery were rendered idle for 3 days between 01.04.2020 and 11.04.2020, resulting in a loss of operational days, productivity, and overhead costs. Charges for idling of manpower, marine equipment, support vessels, and shore logistics	₹ 45,00,000.00
	Add:	₹ 45,00,000.00
	GST @ 18% (CGST ₹4,05,000 + SGST ₹4,05,000)	₹ 8,10,000.00
	Total Amount Payable	₹ 53,10,000.00

Terms:

- Payment due within **7 days** from date of invoice.
- Delay in payment beyond due date will attract interest @18% per annum on the outstanding amount.



For **Alcaez Marine Pvt. Ltd.**