



**2nd SURANA & SURANA & RGNUL
INTERNATIONAL ARBITRAL AWARD WRITING
COMPETITION, 2021**

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THE CASE INVOLVING SUSTAINABLE CONSTRUCTION AND UN-SUSTAINABLE ARBITRATION

THE PARTIES

1. The **Claimant**, Mr. Mansukhlal Rehal is based in the USA since 2000 and acts as the Managing Director of Zeet Global LLC, a successful USA-based company specialising in logistics and supply-chain management for large infrastructural projects. As an ancillary project, the Claimant is also dedicated towards supporting sustainable development in construction projects around the world. His father was an oil magnate with businesses in Saudi Arabia and the UAE. With his brother taking over the oil business, Mansukhlal built his company, Zeet Global and its sister concerns, from scratch. With his business acumen, he appears to be well on his way to becoming a 'philanthropic billionaire'.
2. **Respondent No. 1**, Mr. Mathew Sebastian is a real estate developer, based out of Bangalore, Karnataka. He comes from a large family of entrepreneurs, most of whom also have their businesses in the real estate and financial services sector. Mathew had his start as a broker for his uncle's business, and quickly rose in ranks due to his impeccable work ethic, diligence, and networking skills.
3. **Respondent No. 2**, Mr. Aniket Makhan is an architect, based out of Mumbai, Maharashtra. Having travelled the world and visited many architectural marvels, Aniket dreams of designing structures that are functional and elegant spaces one can thrive in.
4. **Respondent No. 3**, Mr. Francis Marco, also based out of Bangalore, is a civil engineer and a childhood friend of Mr. Mathew Sebastian. His expertise lies in landscaping and sustainable construction; he prides himself on having graduated from IIT Delhi and having obtained an M.Sc. from the Massachusetts Institute of Technology, Boston.
5. **Respondent No. 4**, Green New World Ventures LLP, is a Limited Liability partnership jointly constituted by the aforementioned parties, registered in Bangalore.

BACKGROUND

6. Mansukhlal Rehal and Mathew Sebastian have been acquainted with each other since 2014, as distant associates working in construction-related industries. In November 2015, Rehal flew to New Delhi to attend a government-organised event aiming at inviting investments

pursuant to a newly released scheme propagating housing for all. At the event, Mathew Sebastian introduced him to Aniket Makhan and Francis Marco. All the parties discussed their shared interest in entering the sustainable construction industry and noted the incredible potential for such an endeavour in India.

7. Sebastian mentioned to Rehal that he had been, for many years, running a successful real estate business worth Rs. 278 crores (2780 million). What he neglected to mention, however, was that his business had, in recent years, faced severe liquidity issues and many of his projects were turning into non-performing assets and that without prompt inflow of revenue, his business would suffer greatly.
8. Following the November meeting, the parties had an informal meeting to discuss their shared interests. Makhan talked about his long-harboured dream of building and designing stunning sustainable housing complexes in satellite towns for lower income individuals, with the aim of curbing mass migration to overcrowded cities. Rehal, intrigued by the prospect, suggested that they take the idea forward – they could set up a company specialising in the area; engage in sharing technology with others in the business; and undertake projects in different cities in India. All of them were excited about the idea and talked about how if things went well, they would even look forward to expanding their model to other low-to-middle income countries.
9. In the heat of the moment, it was decided that they would set up a new business together as their first step towards engineering a better future. The name of the enterprise was chosen to be “Green New World Ventures LLP”. Over the next few weeks, Sebastian went about organising the documents required to set up a Limited Liability Partnership, with the four of them being the Partnership’s founding partners. In the meanwhile, Rehal sought to enquire, in his own time, about the business potential and the background of his co-founders-to-be. In completing the formalities, all of them provided their Director Identification Numbers (DINs), completed the required filings, and registered and incorporated the LLP with the Registrar of Companies (ROC), Bangalore, on 23 December 2015. With a view to ensure that no regulatory compliance issues arise later, Rehal decided to submit the documentation for the LLP Agreement that showed him to be a resident of Allahabad, Uttar Pradesh. [**Annexure A – LLP Agreement**]
10. It was decided among the co-founders that Rehal would be the principal investor; he would bring in a share of capital of approximately Rs. 19 crores (190 million) into the LLP and

would be in charge of handling the supply of raw materials for the LLP. Sebastian, by way of his contribution to the LLP, promised to transfer a large flat in a posh commercial locality in Bangalore, worth approximately Rs. 3.5 crores (35 million), to the name of the LLP as its designated office. He also brought in cash to the tune of Rs. 18.5 lakhs (1.85 million); it was decided that he would be responsible for mobilising his network to gain access to government tenders, while also assessing contractors for the LLP to work with. The understanding was that Sebastian would act as the Managing Partner and work for the day-to-day functioning of the LLP.

11. Makhan would handle the designing of projects; he had agreed to invest a sum of Rs. 6.5 lakhs (0.65 million) into the LLP. On the other hand, it was decided that Marco would work with Rehal for processing the use of sustainable raw materials in conjunction with designing and development, and would consequently invest Rs. 5 lakhs (0.5 million). Therefore, the LLP would have a paid-up capital of Rs. 22.75 crores (227.5 million). The profit-sharing table would therefore be:

<i>Mr. Mansukhlal Rehal</i>	<i>30%</i>
<i>Mr. Mathew Sebastian</i>	<i>40%</i>
<i>Mr. Aniket Makhan</i>	<i>15%</i>
<i>Mr. Francis Marco</i>	<i>15%</i>

12. It was also decided internally that any existing similar businesses of any of the Partners, which would potentially be in competition with the LLP, would be diverted and brought into the LLP.
13. After signing the LLP Agreement, Rehal began remitting his designated contribution in dollars on a non-repatriable basis from his US bank account to the LLP's newly created current bank account. The funds were to be remitted in tranches over a period of three months, from January 2016 to the beginning of March 2016. The relevant records of Mansukhlal Rehal's remittance of funds are annexed at **Annexure B — C1**.

14. The LLP hired Sebastian’s family Chartered Accountant to work as the CA for the LLP as well. The LLP also hired a few other individuals to work as staff. Sebastian and Marco, being the only partners in Bangalore, were largely in charge of the technical aspects of the LLP’s functioning. However, after two months, Sebastian took over the management of the LLP’s accounts and administration entirely, since Marco expressed his desire to engage more with the substantive project-related work of the LLP.
15. On 09 January 2016, the Partners of the LLP hosted their first Board Meeting. A Board Resolution was passed, which personified the Partners’ understanding as to the division of work among themselves. Additionally, it was decided that Makhan would also be responsible for all the marketing, advertising and public relations projects of the LLP. In their discussions, the Partners traversed the topic of future fund-raising, and concluded that if funds were required at any time in the future, the Partners would contribute as required on a *pro-rata* basis with a consequent increase in shareholding.
16. Not long after, Sebastian convened a second Board Meeting on 14 February 2016 (Notice annexed at **Annexure B — C2**). The Board Meeting was thereafter, finalised to be held on 22 February 2016. During the meeting, there was much excitement surrounding a potential acquisition of shareholding that Sebastian had suggested; in his words, the potential investment was, *“In a small Mumbai-based firm by the name of Mindvalley Pvt. Ltd., which is now the frontrunner for a new tender issued by the Government of Maharashtra for construction and installation of solar-powered affordable sustainable housing complexes in satellite cities, starting with Kolhapur...”*
17. Sebastian had been informed that Mindvalley needed some additional financial backing and was also looking to have on-board technical experts in sustainable construction in order to win the tender.
18. Since the project was extremely promising, and all but guaranteed windfall profit returns of approximately 60%, the investment was finalised, with the Board members passing a resolution to that effect on 04 March 2016. The LLP would invest approximately Rs. 8 crores (80 million) in Mindvalley, in return for a 25% equity stake in the company. Sebastian remained the main point of contact for the transaction; he, along with Makhan (who would be the technical expert sent from the LLP to Mindvalley), visited the Mindvalley offices in Mumbai to execute a Share Purchase Agreement (“SPA”), dated 29 March 2016, between

Mindvalley and the LLP. The stake acquisition resulted in one seat on Mindvalley's Board of Directors being offered to a member of the LLP. It was later decided via an LLP Board Resolution dated 04 April 2016 that Aniket Makhan would be appointed as Director in Mindvalley, while Marco would act as technical expert.

19. Following the LLP's investment in Mindvalley, the latter managed to secure the tender from the Government of Maharashtra on 30 May 2016. Makhan thereafter travelled back and forth regularly to work with the team at Mindvalley, while Marco moved to Kolhapur for the duration of the project. Within eight months, the team managed to achieve its first set of targets calling for the release of the initial slab of payment from the Government in March 2017.
20. Coupled with other smaller projects that the LLP had undertaken – such as sub-contracts for commercial redevelopment projects, acquisition of valued IP for energy conservation devices and other collaborations – the LLP soon turned cash positive by the end of April, 2017. Resultantly, the Partners of the LLP each took their first share of profits in the percentage agreed.
21. Amidst all the bustle of completing the Mindvalley transaction, it was never brought to light that Sebastian was in fact formerly in a relationship (having parted on amicable terms) with a minority shareholder of Mindvalley, Ms. Arika Banerjee, as a result of which he had come to know about Mindvalley's plans to pitch for the Kolhapur tender.
22. Mindvalley's desperation for investment was evident to anyone who took a closer look, and Mathew Sebastian did just that. Although the company was on the road to recovery, yet despite its best efforts at concealment, it had recently run into huge losses with the rising costs of construction, pending debt, and the exit of investors due to mismanagement of the company. Upon realising this situation, Sebastian sought a personal commission of an additional 1.5% in Mindvalley's net annual profits for two years following the LLP's execution of the Share Purchase Agreement – all this in exchange for the investment from the LLP and the conduct of a superficial due diligence process. This commission was structured in the form of a 2-year term consultancy agreement: Mathew Sebastian's young daughter, Nina Sebastian (who was a chartered accountant) would be hired as a consultant to the company, and would draw a salary of Rs. 3 crores (30 million) per year equaling Rs. 6 crores

(60 million) over two years. None of the other Partners were aware of this simultaneous transaction.

23. A few months later, in July 2016, Sebastian was contacted by some graduates of a top technical university in India to provide Series-A funding to their start-up, which was based on the invention of a negative air ioniser, designed to act in a way that would negatively charge air in the atmosphere, causing neutral particulate matter to drop to the base and be recycled. Sebastian thought it was a brilliant idea, and promised funding from the LLP. However, since it was a project in its fairly early stages, a smaller amount to the tune of Rs. 6.5 lakhs (0.65 million) was invested in the start-up, named “Purefine”.
24. Unfortunately, the start-up was struggling to take off due to various regulatory compliances, obstructions in its patent filings and changes in management. The graduate students approached Sebastian once again seeking help and further investment. Upon discussion with his fellow LLP members, it was decided to turn down the offer to invest further; Rehal believed that it made sense to cut their losses early rather than invest more capital. His logic was: as an LLP, they should focus on *“building our own business rather than becoming venture capitalists”*.
25. All of the Partners signed the minutes of the meeting held on 22 September 2016, which recorded this decision. However, Sebastian saw his younger-self in those enterprising graduate students, and decided to help them out. Since he could not invest his own funds into the start-up, given that all his funds were being diverted to saving his other businesses, he withdrew a sum of Rs. 5 lakhs from the account of the LLP, and transferred the same to the start-up as a loan given in his personal capacity. He set a rate of interest at 7% per annum, which he asked the graduate students to repay him, once their start-up started garnering profits.
26. As luck would have it, the start-up simply needed that extra push in funding to take off. Within weeks, it was signing contracts with different organisations, and scaling up its manufacturing processes. Soon enough, from January 2017, the LLP’s investment in the start-up as well as Sebastian’s loan to the start-up began yielding substantial returns. Sebastian therefore began receiving profits through the LLP for this investment, as well as repayment with interest from the start-up. He had promised himself that he would pay back

the LLP's unauthorised loan, along with the interest it received from the start-up, in due course of time.

27. After a few months, the Partners of the LLP decided to bid for a government tender on a smaller scale by themselves, with the intention of furthering their reputation as reliable solo players in the market. Being a business with capital-intensive requirements, the Partners decided to increase the share capital of the LLP by infusing further funds.

28. Therefore, with Rehal being the principal investor, it was decided that he would remit further capital to the tune of Rs. 11.35 crores (113.5 million) into the LLP. Sebastian also agreed to remit funds, and was due to remit a sum of Rs. 13.5 lakhs (1.35 million) into the LLP. The infusion of capital was jointly decided to be completed by 10 August 2017 so that the LLP's business could proceed. The other two partners, Makhan and Marco, did not invest any further capital, and hence, their shareholdings were consequently reduced. An Addendum was drawn up to this effect on 30 July 2017, and was registered with the Registrar of Companies, showcasing the newly amended shareholding table:

<i>Mr. Mansukhlal Rehal</i>	38%
<i>Mr. Mathew Sebastian</i>	51%
<i>Mr. Aniket Makhan</i>	5%
<i>Mr. Francis Marco</i>	6%

29. Sebastian duly completed his investment. However, despite the decision that Rehal would remit Rs. 11.35 crores (113.5 million) into the LLP, that funding never came. Though on 09 August 2017, Rehal invested a paltry sum of Rs. 4 lakhs (0.4 million), after that, not a single remittance was made in furtherance of the promised Rs. 11.35 crores (113.5 million). As a result, the business of LLP purportedly came to a standstill; it could not proceed with its plans to pitch for other projects, which would potentially have resulted in substantial profits.

30. To this effect, Sebastian and Rehal exchanged a string of emails. All communications and requests for fulfilment of Rehal’s undertakings were met with either deflections, or pleas for extension of the time period for providing the money – as attached at **Annexure C**, marked as **“R2”** and **“R3”**.

INTERNAL DIFFERENCES

31. At the beginning of June 2017, Rehal happened to be in conversation with his old friends in the Ministry of Home Affairs. He found out that if Mathew Sebastian’s businesses were to be valued, it would be found that he owned more than 10% of the entire market share in the booming construction industry in South India. And, if the LLP was successful, the number would grow to a complete monopoly over the construction industry. This unsettled Rehal – he had long wanted to expand into the industry in more ways than just sustainable constructions, and initially his primary intention behind joining the LLP was to re-learn the ropes of doing business in India – while making substantial profits, of course. With this news in the back of his mind, he began to plan what his next steps would be, the first of which was to oust Mathew Sebastian from the LLP and gain complete control. While he knew it would be a lengthy process, he knew he had to start acting fast.

32. Rehal called in an old favour from a friend at the Income Tax Department and asked him to conduct a surprise IT raid at the residences of Mathew Sebastian and his family. The raid took place on 31 July 2017, shortly after signing the new LLP Addendum. Rehal was not entirely sure of what would come up during the raid, but he mainly wanted to harass Mathew Sebastian.

33. What was found during the raid was much better than any harassment Rehal could have caused. The laptop and iPad of Nina Sebastian were seized, in which various emails were found. The emails detailed the terms and remuneration for Nina’s “consulting” at Mindvalley, and were addressed to Nina, Mathew, and the CFO of a company called Gala Arts Constructions Pvt. Ltd. – which, incidentally, was also struggling to repay its growing debt.

34. Mansukhlal Rehal decided not to act immediately on this news. He decided not to invest any further in the LLP, and encouraged his son-in-law, Aniket Sethi, to start setting up the base for new operations in India.

35. In the meanwhile, around mid-September 2017, Makhan happened to peruse the financial statements of the LLP. It appeared that all of the annual financial audits of the LLP had not been filed as per the requirements of the Ministry of Corporate Affairs. Moreover, there appeared to be several unaccounted expenses in the books, sums of money which had been withdrawn and transferred to accounts which the LLP was not in business with, including some which belonged to Sebastian's personal account, and other larger sums to unnamed companies.
36. Unknowingly, Makhan decided to share this information with Rehal. Rehal commissioned a financial audit from his own personal Chartered Accountant, Mr. Naresh Mehta, who returned a financial audit on 29 September 2017 which reflected serious mismanagement of the LLP's funds – and attributed it all to Mathew Sebastian.
37. At the time of this discovery, Mathew Sebastian was enjoying a two week-long trek to Mt. Everest with his young son, who would soon graduate as a Computer Engineer. As a result, Sebastian was unavailable and could not be contacted in any way.

THE DISPUTE

38. In hindsight, Sebastian's counsel, Ms. Tara Prabhakar, argued during the arbitration proceedings that Rehal had secretly decided to take advantage of Sebastian's absence. Instead of waiting for Sebastian's impending return, Rehal called an emergency meeting of the available Board Members on 12 October 2017 – who, by now, were only Aniket Makhan, Francis Marco, and Mansukhlal Rehal himself. In this meeting, Rehal relayed to his present partners that Sebastian had sought to embezzle the funds of the LLP for his own personal gain; was using the LLP to launder his other sources of income; and had also taken advantage of their investment in Mindvalley to take kickbacks from them. He showed them the account statements [**Annexure B — C3**] as well as copies of Nina's emails and questioned them on their involvement. Both denied having any knowledge and were furious.
39. At the meeting, Rehal moved a resolution to expel Sebastian from the LLP with immediate effect on grounds of the kickbacks he had received from Mindvalley, and for all the unaccounted expenses in the LLP. The resolution passed unanimously – Sebastian, the majority shareholder, was expelled from the LLP.

40. They also passed two other resolutions: (a) to freeze the existing bank account of the LLP at Kingston Bank in Bangalore and open a new bank account at Tiwari & Sharma Bank; to induct the Claimant’s son-in-law, Mr. Aniket Sethi and his sister-in-law Ms. Ranjana Malhotra into the LLP as Partners with minority shareholding; and (b) to appoint Mr. Anubhav Sinha as Standing Counsel of the LLP.

41. To this effect, a new LLP Addendum was executed, featuring the following profit-sharing table:

<i>Mr. Mansukhlal Rehal</i>	83%
<i>Mr. Aniket Makhan</i>	4%
<i>Mr. Francis Marco</i>	3%
<i>Mr. Aniket Sethi</i>	7%
<i>Ms. Ranjana Malhotra</i>	3%

42. Sebastian returned from his trekking trip in a relaxed and elated state on 15 October 2017. This elation dissipated within seconds upon hearing what had happened in the LLP in his absence. He called Rehal and the others, but his calls were ignored and messages left undelivered. Therefore, his only option was to contact the Bank and the Registrar of Companies (**ROC**).

43. Consequently, Kingston Bank confirmed to Sebastian that the account of the LLP had been frozen since 14 October, 2017. Further, on 23 October 2017, Rehal received a letter from Kingston Bank seeking clarifications regarding the allegations raised by Sebastian in a letter addressed to the bank. In the letter, Sebastian claimed to be the ‘Managing Designated Partner’ and the sole majority shareholder in the LLP. He threatened to take legal action against the bank. On 27 October, the LLP responded to the bank stating that Sebastian had been expelled from the LLP due to his fraudulent conduct and further provided information regarding the new shareholding pattern of the partnership.

44. On 07 November 2017, the LLP received a letter from the ROC with respect to certain complaints made by Sebastian against the LLP wherein he claimed to be a partner of the LLP. He had further requested the ROC not to take on record any filings from the LLP, including that of the new profit-sharing pattern. On 15 November 2017, LLP's counsel, Anubhav Sinha responded to the ROC, negating Sebastian's allegations and further stating that he had been expelled from the LLP due to breach of the LLP Agreement and for fraudulent conduct.
45. Post the expulsion, Mansukhlal Rehal, Aniket Makhan, and Francis Marco collectively invoked the Arbitration clause of the LLP Agreement, annexed at **Annexure A**, and sent Mathew Sebastian a Notice of Arbitration on 13 November 2017.
46. Interestingly, on 05 December 2017, shortly after the commencement of arbitration, an email intended to be between Rehal and his son-in-law Aniket Sethi was accidentally forwarded to Aniket Makhan (on account of them sharing the same name).
47. The contents of the email revealed that since June 2017, Rehal had been advising his son-in-law to invest in the New Manhattan Health and Housing Consortium – a conglomeration of housing and construction companies in the USA, many of which had been pursuing projects in India. In particular, Mr. Aniket Sethi acquired a substantial stake and control rights in Happy Seasons Builders Pvt. Ltd., a US-based construction company. The email is annexed at **Annexure C — R1**.
48. The CEO of Happy Seasons Builders, Ms. Maxine Williams, in September, accompanied the US Secretary of State as part of their business delegation to India. Ms. Williams attended many high-level meetings consisting of top businessmen from both the United States and India. By virtue of Happy Seasons being affiliated with the Housing Consortium sponsored by the US government, the company was able to bypass several typically cumbersome regulatory compliances in the sector, and was also able to obtain the requisite permits more easily. Shortly after, Happy Seasons Builders secured a number of low-income housing projects, many of which Green New World Ventures LLP had been in direct competition for. Happy Seasons Builders was also awarded the lucrative contract for the improvements and advancements of stadiums prior to the Under-17 Fifa World Cup being hosted in India.

SECTION 9 PROCEEDINGS

49. On 16 November 2017, Sebastian filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 [**Arbitration Act**] before the City Civil Court of New Delhi, seeking an injunction against Green New World Ventures LLP and its partners from acting on the resolution dated 12 October 2017.
50. After Rehal filed his objection to the Section 9 petition, Sebastian attempted to introduce a new document alleging it to be minutes of a meeting dated 26 September 2016 of the partners of Green New World Ventures LLP. The said minutes appeared to ratify Sebastian's actions of issuing a loan to the start-up in the name of the LLP. Rehal and Makhan filed affidavits denying the record of the minutes and alleged that it was a forged document.
51. On 30 November 2017, the Section 9 petition was dismissed. Sebastian preferred an appeal against the judgment which was also dismissed in favour of arbitration.

CLAIMS & COUNTERCLAIMS

52. Makhan's receipt of the accidental email on 05 December 2017 changed their view of Rehal. The two not only verified the authenticity of this email from the Directorate of Forensic Science Laboratories, Karnataka [**Annexure C — R5**], but also, decided to commission an independent audit of the LLP's financial records with Marco; and found that many of the withdrawals attributed to Sebastian were, in fact, withdrawals made and placed in accounts owned by Aniket Sethi.
53. Marco then found out, through his own enquiries with his friends in the IT Department, that the raid on Sebastian had been ordered by Rehal. He finally confronted Sebastian about the kickbacks, and Sebastian informed him that he was simply trying to secure a source of income for Nina, given that she had been recently widowed and needed support. He promised that he was not using the funds to pay off his struggling companies, and in any case, he never intended for the destruction of the LLP.
54. Being convinced by Sebastian's sincerity and by the fact that he was committed to building the LLP, coupled with the revelation of the Claimant's ulterior motives regarding Happy Seasons, which had started winning all the tenders that would normally have gone to the LLP, Marco and Makhan, along with the LLP, decided to align with Sebastian instead.

55. Subsequently, on 07 January 2018, Sebastian and Marco, along with the LLP, filed their counterclaims against Rehal, the Claimant. In addition to their independent claims for loss of income, they brought forth two claims against the Claimant: failure to bring in capital in the second round of funding, leading to destruction of the LLP's business; and violating the forbidden activities clause of the LLP Agreement. The counter claims sought the fulfilment of Rehal's promised investment into the LLP, and repayment by way of lost profits due to Rehal's obstruction of the LLP's business and consistent diversion of business to other companies in which he had vested interests.
56. On the other hand, Rehal sought for Rs. 72 Crores (720 million) with interest at 18% p.a. from the date of accrual as his claim, for loss of return on his investment and loss of profits on behalf of the LLP, owing to the actions of Sebastian.

FIRST ARBITRAL TRIBUNAL

57. Claimant appointed Mr. Saksham Raj, a Partner at a top law firm in India, on 03 December 2017; and Respondent No. 1 appointed Judge Yusuf Khan, former City Civil Court Magistrate, on 05 December 2017 as their arbitrators.
58. On 16 December 2017, Judge Khan, the nominee of Respondent No. 1, recused himself from the Tribunal due to a past association with Respondent No. 2. On the same day, Respondent No. 1 appointed Mr. Pheroze Petit, a renowned lawyer from Mumbai.
59. Mr. Petit and Mr. Raj were unable to agree on the appointment of a Presiding Arbitrator within the stipulated time period of 30 days. The Claimant filed an application under Section 11 of the Act before the Hon'ble Supreme Court of India to appoint the presiding arbitrator. On 24 February 2018, the Supreme Court appointed Hon'ble Retd. Justice Mr. Anup Sachdeva as the Presiding Arbitrator.

SECOND ARBITRAL TRIBUNAL

60. On 11 May 2018, Mr. Sachdeva, the Presiding Arbitrator, communicated to the co-arbitrators and counsels about his inability to continue in the arbitration proceedings on account of personal reasons and his decision to withdraw from the Arbitral Tribunal.
61. After Mr Sachdeva's resignation, since the co-arbitrators were unable to agree upon a new Presiding Arbitrator, the Claimant approached the Supreme Court of India. On 15 June 2018,

the Supreme Court appointed Hon'ble Ms. Justice Rubi Mandal (Retd.) as the Presiding Arbitrator.

62. The Supreme Court in its order also mandated that the Arbitration must be completed within a year of the commencement of proceedings under Justice Mandal in accordance with Section 29A of the Arbitration Act.
63. The first sitting of the Tribunal was on 30 June 2018. The Tribunal provided the Respondents with their first opportunity to file their affidavits of evidence on 2 July 2018, and provided them 6 weeks to do so. However, the Respondents did not file their evidence within the stipulated timeline.
64. In mid-August, the Tribunal issued an extension to the Respondents to file their evidence within 4 weeks. They were unable to do so. Around the same time, Respondent No. 1 suffered from severe typhoid and was extremely unwell for around three weeks (**Annexure C — R4**).
65. On 24 October 2018, Mr. Saksham Raj and Ms. Justice Rubi Mandal (Retd.) resigned from the Tribunal due to serious allegations of bias and incapacity levelled by the Claimant's counsel towards the Tribunal by way of a letter addressed to Justice Mandal. The Claimant's counsel argued that the Tribunal had been too lenient towards the delaying tactics that were being practised by the Respondent No. 1.

THIRD ARBITRAL TRIBUNAL

66. Claimant, thereafter, appointed Ms. Becca Jean, a Senior Counsel from the UK as a co-arbitrator on 26 November 2018. Ms. Jean and Mr. Petit jointly appointed Mr. Hugo Jackman from Australia as the Presiding Arbitrator on 24 December 2018.
67. Mr. Hugo Jackman sent an email communication on 01 January 2019 (**Annexure D — T1**) detailing the terms of his appointment and fee schedule under his Chairmanship. It stated that the Tribunal would only enter upon reference after the aforementioned fees had been paid. Respondents No. 1 and 2 consistently refused to pay, citing the exorbitant fee value to be beyond their financial capacity (**Annexure D — T2**). The Tribunal's fees, under the Chairmanship of Mr. Jackman, was approximately 10-15 times the sum that the previous Arbitrators were requesting. (**Annexure D — T3**)

68. On 02 February 2019, Mr. Jackman sent an email communication to the Parties stating that the Tribunal had entered into reference. However, on 05 April 2019, he sent a second email stating that the Tribunal had not been duly constituted and implored the parties to pay the Tribunal's fees.

69. On 19 July 2019, the Tribunal entered upon reference after the Claimant paid the fees for all the parties. On 07 January 2020, Respondent No. 1 filed a petition under Section 12/13 of the Arbitration Act claiming that the Tribunal had been partial towards the Claimant and was not, according to the Respondents, providing a fair hearing on account of their refusal to pay the fees. This, according to the Respondents, was manifest in the Tribunal's refusal to admit two applications by the Respondents which requested for:

- (i) An adjournment of the proceedings on 10 September 2019 due to existence of family emergency preventing Respondent No. 1's counsel from attending the hearing on the given date after due notice; and
- (ii) Questioning Mr. Mansukhlal Rehal again for a period of 15 minutes owing to exigent circumstances and acquisition of additional technical information by the Respondents' Counsel — communicated to the tribunal on 23 November 2019 along with an application, which was not put on record by the tribunal.

70. The counsel on behalf of Respondent No. 2 had filed an application before the Tribunal, asking the Tribunal regarding its validity in light of Section 29A of the Arbitration Act. The Claimant argued that the 2019 Amendment was retrospectively applicable and the Tribunal was within its jurisdiction to adjudicate on the dispute. Despite hearing the arguments, the Tribunal neglected to pass an order. Upon being reminded several times, the Tribunal finally communicated that it had reserved its decision on the Section 12/13 challenge till the Final tranche of hearing. However, a reasoned decision was not provided even then. Therefore, the tribunal decided to conclusively dispose of the issues of jurisdiction along with the merits through a final award which is notified to be rendered on 20 September 2021.

ISSUES

A. JURISDICTION:

1. Whether this Arbitral Tribunal has the requisite jurisdiction in light of the following:
 - i. Section 29A of the Arbitration and Conciliation Act, 1996;
 - ii. Allegedly exorbitant arbitral fees imposed;
 - iii. Alleged bias against Respondents.
2. Whether alleged issues of fraud are arbitrable.

B. MERITS:

3. Whether Respondent No. 1 is liable for breach of the LLP Agreement and fraud in relation to:
 - i. Actions in respect of the Mindvalley transaction
 - ii. The loan provided to the start-up Purefine
4. Whether the Claimant violated the LLP Agreement by obstructing the business of the LLP and engaging in activities forbidden by the LLP Agreement.
5. Whether Respondent No. 1 is liable to indemnify the claimant for loss of return on investment to the tune of Rs 42 Crores (420 million), with interest at 18% p.a. from the date of accrual.
6. Whether Respondent No. 1 is liable to indemnify the LLP a sum of Rs 30 Crores for loss of opportunity and loss of profits.
7. Whether Claimant is liable to indemnify the LLP for loss of profits to the tune of Rs. 78 Crores (780 million) with interest at 18% from the date of accrual.
8. Whether the Claimant is liable to indemnify Respondent No. 1 for a sum of 35 Crores for loss of income as per the profit-sharing agreement between the parties.
9. Whether the expulsion of Respondent No. 1 from the LLP was valid.

C. COMPENSATION:

10. Whether either party is entitled to costs, with interest, as claimed in Annexure — D7.

ANNEXURE – A: EXCERPTS OF GREEN NEW WORLD VENTURES’ LLP AGREEMENT

LIMITED LIABILITY PARTNERSHIP AGREEMENT

THIS AGREEMENT OF LIMITED LIABILITY PARTNERSHIP made at New Delhi on this the 25th Day of February 2016 by and between:

1. **Mr. Mansukhlal Rehal**, S/O Shri Maninder Rehal, aged about 46 years, a resident of House No. 96, Yogi Saraswat Road, Allahabad, Uttar Pradesh.
2. **Mr. Mathew Sebastian**, S/O Philip Sebastian aged about 42 years residing at 98, Neelam Society, Rajouri Garden, Bangalore.
3. **Mr. Aniket Makhan**, S/O Shobhit Makhan aged about 39 years, residing at 63 D wing, Andheri West, Mumbai.
4. **Mr. Francis Marco**, S/O James Marco aged about 41 years, residing at, 99 Jayanagar, Bangalore.

WITNESSES the mutual agreement of the Parties hereto as follows:

THAT THEY shall become Partners who shall be Designated Partners on incorporation of the LLP to carry on partnership business as a Limited Liability Partnership (“**LLP**”) registered under the Limited Liability Partnership Act, 2008 (**LLP Act**) and in fulfilment of the provisions of the LLP Act with a view to sharing profit upon the following terms:

Mr. Mansukhlal Rehal	30%
Mr. Mathew Sebastian	40%
Mr. Aniket Makhan	15%
Mr. Francis Marco	15%

WHEREFORE the business of this LLP is to act as techno-marketing-financial consultants for clients within the field of real estate and construction, and to enter into arrangements by way of turnkey projects involving the supply of technical, civil, financial, administrative,

marketing, logistical, and plant merchandise and to channel information, knowledge, and experience in order to undertake such projects for respective clients within India.

1. Profits & Losses and Partner's Income Account –

- a. Profits and losses of the Business in each financial year shall be divided between and borne by the Partners in accordance with the aforementioned table in the Preamble.
- b. LLP profits and losses computed as due shall be charged or credited to the separate current account of each Partner. If a Partner has no credit balance in the current account, losses shall be carried forward as amounts due to be adjusted against future receipts / profits.

2. Interest on capital: The funds contributed by the partners as capital and/or loans shall bear simple interest @ 8% p.a. or at other such rates as may be determined by the partners from time to time.

3. Partner's Drawings –The Partners may draw such sums of money lying to the credit of their current accounts excluding capital subject to the approval of the Designated Partners.

4. Giving Credit – No Designated Partner shall lend money or give credit to or have any dealings on behalf of the LLP with any person or company or LLP or other entity whose credit-worth is doubtful and who is forbidden due to formal crisis of confidence confronted by the LLP in dealing with him.

5. Voting rights – Except as may otherwise be provided by this LLP Agreement or the LLP Act, the affirmative vote of a majority in interest on a matter shall constitute the act of the partners. The Partners shall have the right to vote and act on the matters and affairs of the LLP as are expressly provided for herein or are required by the LLP Act to be voted upon by the partners.

6. Obligations of Partners – Each partner shall:

- a. Be just and faithful to other partners in the transactions relating to the LLP/business;
- b. Diligently attend to the business of the LLP and devote his time and attention thereto;
- c. Pay his separate debts and indemnify the other partners and assets of the LLP against the same and all other proceedings, costs, claims, or demands in respect thereof;

- d. Give full information and truthful explanations of all matters relating to the affairs of the LLP to all partners at all times.

7. Acts forbidden – Without the consent given in writing of the other Partners, no Partner while he is a Partner for the time being of the LLP shall –

- a. Transfer, assign or otherwise encumber his share in the assets or profits of the LLP;
- b. Engage or be concerned or interested in any other business, directly or indirectly as competing with the LLP. All profits made by him in that business shall be made over to the LLP by the Partner;
- c. Do any act that may conflict his interest with the interest of the LLP or any of its other Partners;
- d. Lend any money or deliver upon credit of any of the goods of the LLP to any person or persons whom the other Partners shall have previously in writing forbidden to trust;
- e. Give any unauthorized security or promise for the payment of money on account on behalf of the LLP except in the ordinary course of its business;
- f. Secure unauthorized surety or guarantee for anyone encumbering or otherwise charging or pledging the properties of the LLP;
- g. Draw or accept or endorse unauthorizedly any bill of exchange or promissory note on LLP's account;
- h. Draw and sign any Cheque on behalf of the LLP unauthorizedly;
- i. Remit the whole or part of any debt due to the LLP;
- j. Lease, sell, pledge or do other disposition of any of the LLP's property otherwise than in the ordinary course of business;
- k. Commit to buy or buy any immovable property for the LLP without the express authority of the LLP;
- l. Do any act or omission rendering the LLP liable to be wound up by the Tribunal;
- m. Share business secrets of the LLP with outsiders;
- n. Derive profits from any transaction of the LLP or from the use of its name, resources or assets or business connection by carrying on a business of a nature that competes with that of the LLP, and remain without accounting for the same to the LLP;
- o. Submit a dispute relating to the LLP's business to arbitration;

- p. Open a banking account on behalf of the LLP in his own name;
- q. Admit any liability in a suit or proceeding against the LLP;
- r. Enter into any partnership joint venture, float any subsidiary LLP or company with the LLP being the promoter or acquirer of interest or control.

8. Breach of LLP Agreement: A material breach of this LLP Agreement by a Partner (“the breaching partner”) which breach has not, after notice by the other partner (“non-breaching partner) and a reasonable opportunity for cure (the scope of such cure has to be conclusively established by binding arbitration provisions of this LLP Agreement), been cured by such partner within the time provided for by the arbitrator, if is determined by the arbitrator that a material breach did occur and a satisfactory remedy cannot be instituted in the opinion of the non-breaching partner, the non-breaching partner has the right to request dissolution of the LLP.

9. Expulsion of Partner – A Partner may not be expelled by a unanimous decision of the Partners without notice save in extenuating circumstances caused out of serious breach, and out of good faith and in the interest of the Business only, by the other partners.

- a. Expulsion may be done after a show-cause notice in writing is served to that Partner or Designated Partner giving 7 (seven) days’ time for his response, and the other Partners after considering the merits of the reply to the show-cause-notice, take appropriate decision. In the event of the Partner being expelled, he shall be entitled to the benefits of a retiring Partner in accordance with the provisions of this Agreement on that behalf.

10. Limitation of Liability: The liability of partners shall be limited as provided in the LLP Act and as set forth in this LLP Agreement. Partners shall not be obligated to restore by way of capital contribution or otherwise any deficit in its capital account or the capital account of any other partner if such deficit should occur.

11. Arbitration – All the matters not expressly provided in this Agreement shall be decided by the consent of all the Partners in writing. Failing that, all disputes and questions about and in connection with the LLP under this Agreement arising between the Partners or between any one of them and the legal representative of the Partners or with the LLP at any time and from time to time, shall be settled by arbitration as provided under the Indian Arbitration and Conciliation Act, 1996.

- a. The number of arbitrators shall be three (3), of whom each of the Partners may appoint one (1) arbitrator who in turn shall appoint the third arbitrator. Each partner can appoint a person to represent him in case of disputes. The venue for arbitration shall be Bangalore and the language for arbitration shall be English.
- b. This LLP Agreement and relationship between the Parties shall be governed by, interpreted in accordance with law of the Republic of India.
- c. The provisions of this Clause 25 shall also survive even after the termination of the Agreement.

ANNEXURE – B: CLAIMANT’S EXHIBITS

C1 – PROOF OF REMITTANCE OF FUNDS

S.No.	Transferor	Transferee	Date of Transfer	Amount (In Rs.)
1	Mansukhlal Rehal	Green New World Ventures LLP	05 January 2016	1,00,00,000.00 (10 million)
2	Mansukhlal Rehal	Green New World Ventures LLP	16 January 2016	3,00,00,000.00 (30 million)
3	Mansukhlal Rehal	Green New World Ventures LLP	27 January 2016	2,50,00,000.00 (25 million)
4	Mansukhlal Rehal	Green New World Ventures LLP	03 February 2016	2,50,00,000.00 (25 million)
5	Mansukhlal Rehal	Green New World Ventures LLP	23 February 2016	4,00,00,000.00 (40 million)
6	Mansukhlal Rehal	Green New World Ventures LLP	01 March 2016	3,75,00,000.00 (37.5 million)
7	Mansukhlal Rehal	Green New World Ventures LLP	06 March 2016	95,00,000.00 (9.5 million)
8	Mansukhlal Rehal	Green New World Ventures LLP	29 March 2016	1,30,00,000.00 (13 million)

C2 – EMAIL CALLING FOR BOARD MEETING

From: Mathew.sebastian@gmail.com

Date: 14 February 2016 at 3:48 PM

Subject: Board Meeting – new project

*To: Mansukh.lal@gmail.com_aniketmakhannn@yahoo.com,
st.francis.marco.polo@hotmail.com*

Dear Team...

Am happy to share that the work of the LLP has taken off even better than v all had expected. I hv just received news of a possible acquisition for a new project that v can start.... Requesting ur all presence for a board meeting soon... Pl reply with convenient dates and can set calendar and agenda accordingly.... Thx all n take care.

Regards

Mathew

C3 – EXCERPTS OF INDEPENDENT FINANCIAL EXPERT, MS. NAINU SINGHAL’S AFFIDAVIT

Upon examination of the financial accounts and returns of Ms. Nina Sebastian’s active bank accounts, it has been found that a sum of Rs. 3 crores (30 million) has been received from Mindvalley Pvt. Ltd. in the year 2016 in three tranches of Rs. 1 crore (10 million) each, one on 15 May 2016, followed by 15 September 2016, followed by 15 December 2016. In the week between 15-22 December 2016, Rs. 2.75 crores (27.5 million) was transferred out of Ms. Nina Sebastian’s bank account and into Gala Arts Constructions Pvt. Ltd. for “brokerage” towards an apartment “rented” in Colaba, South Bombay. Gala Arts is known to be a sister company in Mr. Mathew Sebastian’s portfolio.

In the following year, the transaction pattern repeated, with Ms. Nina Sebastian receiving Rs. 1 crore (10 million) each on 15 March 2017, followed by 15 July 2017, followed by 15 October 2017. In between, on 22 June 2017, a sum of Rs. 2.25 crores (22.5 million) was transferred from her account to Salvador Real Estate Corporation, as payment for “interior redecoration”. It may be noted that Salvador Real Estate Corporation is a company in which Mr. Mathew Sebastian’s brother Mr. George Sebastian is a majority shareholder. Finally, on 21 October 2017, a sum of Rs. 1 crore (10 million) was withdrawn in total and disbursed as Rs. 60 lakhs (6 million) and Rs. 40 lakhs (4 million) to Gala Arts and Salvador Real Estate respectively.

ANNEXURE – C: RESPONDENT’S EXHIBITS

R1 – ACCIDENTAL EMAIL

----- Forwarded message -----

From: Mansukh.lal@gmail.com

Date: Fri, Dec 4, 2017 at 8:48 PM

Subject: Guidance

To: Aniket121987@gmail.com

My dear Aniket,

Pls refer to my prev. email for reference..... Housing Consortium in the US is doing very well. They are pursuing v profitable ventures in India. I should say it is a vv good time to get into the market as m aware that they r close to definitely securing more contracts in the industry... let me know how much u need for investing n I will arrange it from my business. Maxine from Seasons is a friend... she will sort this out and help us get started!!

Hugs to the kids and Sharmila ☺

Warm regards

Mansukhlal

R2 – FUNDING REQUESTS

From: Mathew.sebastian@gmail.com

Date: Fri, August 01, 2017 at 3:26 PM

Subject: Green New World Ventures Funding

To: Mansukh.lal@gmail.com

Dear Mansukhlalji,

We r awaiting the capital you have promised during the second round of financing. It is urgently required in order for LLP to secure more projects as soon as possible. Only a few days remain till deadline. Pls send ASAP!!!

Rgds

Mathew Sebastian

-- Sent from my iPad

R3 – FUNDING REQUESTS

From: Mathew.sebastian@gmail.com

Date: Fri, August 12, 2017 at 12:05 PM

Subject: Re: Green New World Ventures Funding

To: Mansukh.lal@gmail.com

Dear Manshukhlalji,

As per our last telephone conversation, you told us to remit the remaining funds within this week ... even though the deadline u had initially suggested has passed.... Because it would take you some time to gather the capital for investment. We urge you to invest the funds immediately as without them Green New World cannot even pursue its existing contracts and we will be in ruins

Thanks n rgds,

Mathew

R4 – MEDICAL CERTIFICATE

Clinic of Dr. Murtaza Rahman [M.B.B.S., M.D. *Infectious Diseases (Johns Hopkins)*]

10 A, Ruby Clinics, Cooke Town, Bengaluru – 560005 | M: 9812345678
|murtaz.rah@rubyclinix.in

To whomsoever it may concern

14 August 2018

This is to confirm and certify that my patient Mr. Mathew Marc Sebastian has been diagnosed with infectious typhoid of a severe nature. He was diagnosed on 09 August 2018 and has been hospitalised since. He is recommended bed rest for a minimum period of one month as well as a strict and nutritious diet for recovery. I strongly advise and caution against any stressful activity, whether physical or mental.

R5 – EMAIL AUTHENTICITY REPORT

Office of Dr. Narayan Ramachandran, Head, Digital Forensics

Directorate of Forensic Science Laboratories, Karnataka

To whomsoever it may concern

16 December 2017

In relation to the Email copy dated 04 December 2017 sent at 8:48 PM from the email account of a *mansukh.lal@gmail.com* to *aniket121987@gmail.com*, sent via Gmail servers, as made available to the DDFSLS Team;

And based on the information and tracking systems privy to the DDFSLS Team;

Our findings are as follows:

(Excerpt from Report)

To the best of our knowledge, as verified from universal security standards, and upon analysis of the requisite technicalities between a sender and recipient; this email dated 04 December 2017 is authentic. The email is accordingly addressed from the account *Mansukh.lal@gmail.com* to *Aniket121987@gmail.com* (the latter of which was active and received the email at 8:52 PM on 04 December 2017); and then forwarded on 05 December 2017 at 3:21 PM to the account of *aniketmakhannn@yahoo.com*.

ANNEXURE – D: RECORDS OF ARBITRATION

T1 – TERMS OF APPOINTMENT OF MR. HUGO JACKMAN’S TRIBUNAL

From: hugojackman227@gmail.com

To: Mansukh.lal@gmail.com, Mathew.sebastian@gmail.com, aniketmakhannn@yahoo.com, st.francis.marco.polo@hotmail.com + 4 others

Cc: counselbeccajean@essecourts.uk, pheroze_petit@outlook.com

01 January 2019, 4:21 PM

Dear Parties,

I refer to my appointment as the presiding arbitrator in this arbitration.

- a. The parties are requested to send a copy of the arbitration agreement.
- b. The terms of each member of the Tribunal for agreeing to act as arbitrators are as follows:
 - (1) The Parties are to pay each member of the Tribunal a sum of USD 60,000 prior to the constitution of the Tribunal.
 - (2) In addition, for reading and drafting, the parties are to pay USD 1200 a day to each member of the tribunal.
 - (3) For meetings and hearings which are fixed for the whole day the Parties are to pay USD 6,500 to each member of the Tribunal per day. Travelling cost of the Tribunal is fixed at USD 600 per day.
 - (4) For items (1) and (3) above, the Parties are to pay prior to the constitution of the Tribunal, to each member of the Tribunal, a further sum of USD 50,000 as a deposit to be drawn down against bills to be rendered from time to time. If the sum drawn down reduces the deposit remaining to USD 18,000, the Parties will top up each deposit to USD 50,000 within 10 days of being given notice to do so. This will continue until the arbitration award is delivered.
 - (5) The payments listed above are to be made by each set of Parties by the time stated. Once the time for payment is past, if one Party does not pay its share of the deposit, the other Party may do so, on terms that these become recoverable costs from the non-paying Party in any event. All Parties are notwithstanding these arrangements jointly and severally liable for the Tribunal’s fees and expenses.
 - (6) In the event that any payment is not made on time, the Tribunal may suspend the arbitration in whole or in part or terminate it.

Upon payments in paras b (1) and (4) being made, the Tribunal shall be constituted and will enter into the reference to arbitration and commence work.

The Parties are also, prior to the constitution of the Tribunal, to provide their account of the state of the arbitration so far and further state, with reasons, whether the arbitration should continue from where it left off or whether it should proceed *de novo*.

In relation to the conduct of the arbitration proceedings, we shall have provisions for virtual arbitration proceedings as well. In this regard, please bear in mind the following rules:

1. The hearings must be conducted on the application Loom with a provision for break-out rooms.
2. Live transcription services shall be enlisted by the Parties.
3. In the event of examination of a witness, a camera showing the complete view of the room must be present in addition to the device camera. The Tribunal shall therefore have a 360-degree view of the room.

If the Parties have any queries, please communicate with the Tribunal within 10 days.

Regards,

Hugo Jackman

T2 – OBJECTIONS OF RESPONDENT NO. 1 TO APPOINTMENT OF MR. HUGO JACKMAN

From: Mathew.sebastian@gmail.com

*To: hugojackman227@gmail.com, counselbeccajean@essecourts.uk,
pheroze_petit@outlook.com*

*Cc: st.francis.marco.polo@hotmail.com, aniketmakhannn@yahoo.com,
Mansukh.lal@gmail.com + 4 others*

05 January 2019, 11:32 AM

Dear Respected Arbitrators,

I am constrained to bring to the Hon'ble Tribunal's notice that I am unable to pay anything costing more than Rs. 50,000/- per day to each arbitrator – which was the fees paid by the Parties unto the erstwhile Tribunal. Due to my tenuous financial position, I am also not in a position to bear the travel costs of these arbitrators.

I therefore request you not to accept your appointment as presiding arbitrator in this matter. I do not consent to the same, on account of my inability to pay your fees. Moreover, I believe that as the Hon'ble Supreme Court had appointed the erstwhile Arbitral Tribunal, coupled with the allegations levelled by the Claimant against the erstwhile Tribunal, I am of the humble opinion that the appointment of this present Tribunal must be only done by the Hon'ble Supreme Court itself.

I sincerely hope that my request will be earnestly considered, and that the Arbitrators shall take note that I do not consent to this appointment.

Thank you for your time.

Kind regards,

Mathew Sebastian

T3 – FEE COMPARISON (PER DAY FEE) (1 USD= RS. 74.2)

Purpose	Tribunal – III			Tribunal - II		
	Ms. Becca Jean	Mr. Hugo Jackman	Mr. Pheroze Petit	Mr. Saksham Raj	Justice Mr. Sachdeva	Mr. Pheroze Petit
1. Fees	USD 6500	USD 6500	USD 6500	USD 363.88	USD 363.88	USD 363.88
2. Travel	USD 600	USD 600	USD 600	USD 134.77	USD 134.77	USD 134.77
3. Reading Charges	USD 1200	USD 1200	USD 1200	USD 175.20	USD 175.20	USD 175.20
4. Venue Charges	USD 135			USD 135		
TOTAL	USD 25,035			USD 2,156.55		

T4 – CROSS-EXAMINATION OF MR. FRANCIS MARCO BY COUNSEL FOR CLAIMANT (CC)

CC: Mr. Marco, are you able to clearly see and hear me and the members of this Hon'ble Tribunal?

Witness: Yes. Loud and clear.

CC: Thank you Mr. Marco. Let us begin. Will you please identify this witness statement, dated 15 October, 2019 – is it prepared by you? Do you have a copy of it with you?

Witness: Yes. It is dated 15 October, 2019, right?

CC: Yes.

Witness: Yes, I have it.

CC: And has it been prepared by you?

Witness: No. It has been prepared by my lawyer, Mr. Harishchand Salvi.

CC: Have you verified and provided all the information as true and correct in your witness statement, Mr. Marco?

Witness: Yes. I have verified it.

CC: Can you please identify your signatures at page 32 of the witness statement?

Witness: Sure. Yes, it is my signature.

CC: Please also confirm the supporting affidavit in the document – have you signed this, and initialed each page, confirming that it has been sworn by you?

Witness: Yes. How many times must I confirm this? It is all checked and verified by me.

CC: Of course. I apologise for the long-winding repetitive questions. It's just – well, this might be rather embarrassing for you, I'd wager – the website of IIT Delhi does not list you as an alumnus of the Civil Engineering degree program.

Witness: Well, um – that’s because – um – I’m sorry, I believe it has been clarified in my affidavit of evidence that I did not actually complete my degree from IIT Delhi.

CC: I see. Let us turn to page 21 of your affidavit. It states here that you are a graduate of IIT Delhi. And you have just reiterated that you have checked and verified your affidavit.

Witness: Yes. Oh God. There must be some mistake. I am so sorry. Perhaps there was a mistake in drafting my affidavit. You see, I provided the details over the phone to my previous counsel who then prepared the whole thing and um, he verified to me that everything was correct.

CR3:¹ I would like to object to this line of questioning. I was actually ready with an affidavit produced to the arbitral tribunal in relation to this factuality.

Tribunal: Why did you not produce it beforehand?

CC: Members of the Tribunal, it seems like my learned friend is taking on the traits of his client.

Tribunal: Please file the affidavit as per the procedure mandated by the Tribunal. Do not unnecessarily delay the cross-examination. Otherwise, we will be delayed for lunch.

(Cross-examination continues)

CC: Right. So just to clarify – the statement in your sworn affidavit, that you have graduated from IIT Delhi, is false?

Witness: Uh, well, um – I don’t think I would call it *false*, per se. You see, I did attend IIT Delhi, and I prepared for all of the examinations, and I also had a stellar attendance record. However, I dropped out in my second last semester and did not graduate.

CC: Thank you. You have represented in your witness statement at page 4, paragraph 6 that you worked for many years with Larrseinn&Tewboro as a Consultant. Please elaborate on the work you did there for them.

¹ Counsel for the Respondent No.3.

Witness: Well, I was the point person for their infrastructure projects in South India – I joined them in 2012 and handled their installations of cranes and other heavy machinery equipment, and I also coordinated with their architectural teams to determine the structural load that constructions would take in conjunction with the materials required for supply.

CC: I see. It also says in your witness statement that you have graduated from the Massachusetts Institute of Technology, Boston – the number one university in the world for your area of specialization. You state that because of your respected academic credentials, you were inducted into the LLP as the technical expert.

Witness: Yes. Well. Um, I did not graduate from MIT. Actually, I completed one of their three-month certificate courses in this area.

CC: Where did you complete this certificate course from?

Witness: I did it online. There is a website. Coursera. It provides courses. I paid the registration fee of USD 500, passed the examination, and received the certificate from MIT.

CC: Thank you for your candour. I have no further questions.

T5 – EXCERPTS OF EXAMINATION-IN-CHIEF OF MR. ANIKET SETHI BY COUNSEL FOR CLAIMANT

CC: Hello, Mr. Sethi. Could you please refer to this witness statement and confirm that you have authored it?

Witness: Yes, I have.

CC: Excellent. Could you please tell us more about your association with the Housing Consortium and Happy Seasons Builders?

Witness: Certainly, While studying at the University of Pennsylvania, I became acquainted with the son of Ms. Maxine Williams, who is the CEO of Happy Seasons Builders. We were in our Business Ethics class together. He told me that his mother was planning to take the business into India, and tap into the lucrative market here. I thought it was a very interesting proposition – that an American company would move in to compete with bigger Indian construction companies, so I asked to meet his mother. We had a meeting where I drove down to her offices, where she discussed the business plans for Happy Seasons and asked who my father and my family were. I told her that I was born in Uttar Pradesh but grew up in the US. Dad had a business in India in this same sector. I expressed my interest in joining her endeavour, and contributing my knowledge of the real estate sector. She agreed, saying that she needed all the help she could get, and took me on board. I was to handle the Indian outreach department and liaison with Indian entities to build our network. At times, I would reach out to Dad for some advice.

CC: Could you please identify whether this is your email address and do you identify this conversation on page 21?

Witness: I was on the board of two start-ups in the East Coast. I was doing my MBA and I was a director in two of my father's companies. That brings up the sum to 5 official email addresses that belong to me and three private gmail addresses. On an average, if I receive even three emails on these email addresses in a day, that brings it to 24 emails on a daily basis. It's humanly not possible for me to track back a conversation out of the multiple personal email conversations I might have had with my Dad. In relation to the email address, I have stopped using it since November 2017 as I exhausted the 15 GB free

storage allowed on Gmail. Since then, I have formulated a new personal email address with my own domain name. It is unlikely that I was using this email address.

CC: Thank you. No further questions.

T6 – EXCERPTS FROM CROSS-EXAMINATION OF MR. ANIKET SETHI BY COUNSEL FOR RESPONDENT NO. 1

CR1: Before I begin, just to bring it to the notice of the Tribunal that the procedural requirements for the examination of Mr. Sethi are not fulfilled. It required the presence of two cameras, one being the device used, and the other being a camera showing a 360-degree view of the room.

Tribunal: Is it hindering your cross-examination?

CR1: I just want to place it on the record that the witness' statement is not in compliance with the procedural rules mandated by the Tribunal. It is also my stance that such evidence may not be admitted by the Tribunal as per the Tribunal's first procedural order.

CC²: Members of the Tribunal, this is just a tactic to hinder the progress of this arbitration. Why was this issue not brought up yesterday? If this still is a problem, I can repeat my client's examination in chief within the next one and a half hours to comply with the camera requirements.

CR1: The Tribunal has the schedule fixed for today. It is my stance that we should stick to it. The Claimant had their opportunity yesterday and it was their responsibility to ensure not only a proper examination-in-chief favouring their case, but also, adhere to the procedural requirements. In my opinion, it is extremely ambitious for my learned friend to even request such a thing. It was my aim to bring this procedural irregularity before the Tribunal and proceed with my cross-examination. Oh, I am happy to see that while I was speaking, Mr. Sethi has arranged for a 360-degree camera. I do not know what deterred him from doing the same yesterday. I believe that my learned friend's practice is extremely hectic, and he missed reading the email in detail. I am certainly sure that it is not every day that he makes such simple mistakes. While I think that we should give the benefit of doubt to the Claimant's Counsel, my background also tells me that I should be true to the letters of law and the examination-in-chief conducted yesterday hence should not be considered.

² Counsel for the Claimant.

With this, and along with the permission of the Tribunal, if I may proceed with my cross-examination.

CC: Such personal remarks were not mandated. I think this arbitration is losing the gesture of good will.

CR1: I am just pointing out that you misread the details in the email. I am also giving you the benefit of the doubt. I am sure the following Claimant witnesses will adhere to procedural rules. Members of the Tribunal, if I may continue.

Tribunal: Yes, please do.

(Excerpt from cross-examination)

CR1: Can you please specify when you first met the CEO of Happy Seasons Builders?

Witness: I drove down to the Pennsylvania offices in mid-January 2018, I think, to meet with Ms. Maxine Williams.

CR1: I see. You have mentioned that you often sought advice from your father-in-law in relation to the work you did with Happy Seasons Builders. What was the nature of the advice you sought?

Witness: My father-in-law has a sense of business acumen unlike no other. If I could learn even half of what he knows, I would consider myself a rich man. I would not ask him for advice so much as have conversations with him. Dad is my mentor, more than anything else. So, I would sometimes ask him about the decisions he would have taken if he were in my place, or how he would handle a particular situation.

CR1: Right. Would you often describe to him the work that Happy Seasons Builders was doing, and its plans in India?

Witness: Much of my work at Happy Seasons is confidential. I would only discuss with him anything that I was at liberty to share.

CR1: Did you share with your father that you would be a part of the Delegation to India for the Housing Consortium, and the purpose behind it?

Witness: He was vaguely aware.

CR1: I see. No further questions.

T7- COMPENSATION CLAIMED (EXCLUDING INTEREST)

S. No.	Purpose	Claimant (INR)	Respondent 1 (INR)
CLAIMS			
1	Claim (Including Loss of Profits/Loss of Return on Investment due to LLP)	72 Crore (720 Million)	113 Crores (1,130 Million)
COSTS			
2	Hospitality/ Travel	1.4 Crores (14 Million)	12 lakhs (120 Million)
3	Legal Fee	14 Crores (140 Million)	7.5Crores (75 Million)
4	Expert Witness Fee	2 lakhs (0.2 Million)	4 lakhs (0.4 Million)
5	Arbitrator's Cost	15.39 Crores (153.9 Million)	9 lakhs (0.9 Million)
TOTAL		102.81 Crore (1,028.1 Million)	132.63 Crore (1,326.3 Million)