

Annexure V

E Auction Lot – Particulars and Details of Assets

Lot no.	Description	Details of Assets
Lot 1	<p>1) Arbitration matter filed by CD PPS Enviro Power Pvt Ltd against PAN Time Finance Company P Ltd (SI No 142 of 2013); Claim by CD – Rs. 45.55 cr; Counter claim – Rs. 41.97 cr.</p> <p>2) Arbitration filed by CD PPS Enviro Power Pvt Ltd against Mahavir Ferro Alloys P Ltd (SI No 143 of 2013. Claim by CD is Rs. 32.24 cr; Counter claim – Rs. 38.79 cr.</p>	Appendix below

Appendix

The Not readily Realisable Assets (NRRA) of the CD (2 Nos. of Arbitration Matters) is given below :

1. 142 of 2013 – PAN Time Finance Company P Ltd

Brief Background:

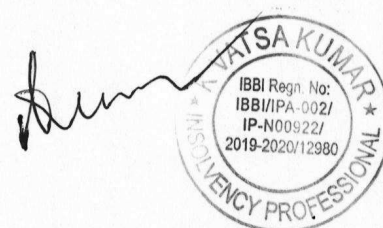
Pan Time wanted to set up Solar Photo Voltaic Plant at Nayagarh , Odisha. EPC agreement executed with CD and Pan Time issued purchase orders in 2011. Despite completing project, CD did not get full payment as per purchase order. CD filed arbitration application with Hon'ble High Court of Telangana in 2013 and High Court on 29.04.2020 appointed Justice Dilip Bhosale, former Chief Justice of Allahabad High Court as Sole Arbitrator.

Other full particulars:

PPS Enviro Pvt Ltd. carried out a 1 MW power project for Pantime Finance Company Pvt. Ltd. which was to be completed by 31.12.2011 as per the documents. The Project cost was estimated at Rs.14.31 crore, break-up details of which are as under:-

	[Rs. Crore]
Labour charges	0.53
Civil work	1.06
EPC components	12.72


PPS Enviro provided a Bank Guarantee for Rs.2.12 crore to Pantime Finance Company Pvt. Ltd. but PPS Enviro received an advance payment of Rs.1.70 crore only. Though a Foreign



Letter of Credit for Rs.7 crore was to be provided by Pantime Finance Company Pvt. Ltd., the same was not provided. Instead, an Inland Letter of Credit for Rs.3 crore was provided, but with an usance period of 1096 days. As the Letter of Credit could not be discounted with the Banks, PPS Enviro advised Pantime Finance to get the usance period reduced to 180 days, but Pantime Finance subsequently got the usance period reduced to 240 days only. The Bills under Letter of Credit sent for discounting were returned by the Bank citing technical reasons viz. Lorry Receipts were issued by Transport Operators not approved by IBA [Indian Banks' Association], Lorry Receipt not drawn on the Discounting Bank [Bank of Baroda] and Applicant's name differs in Invoice and Letter of Credit.

Pantime Finance commenced commercial operation of the Power Plant 16.03.2012 but failed in its payment commitments to PPS Enviro. On the contrary, Pantime Finance invoked the Bank Guarantee of Rs.2.12 crore furnished by PPS Enviro and realized Rs.2.18 crore, citing non fulfilment of PPS Enviro's obligations under the contract. Total claim made by PPS Enviro on Pantime Finance before the Arbitration Tribunal is Rs.45.55 crore as detailed below:-

Sl. No.	Description	Amount (Rs.)
1	Letter of Credit for Rs.7 crore	7.00
2	Letter of Credit for Rs.3 crore	3.00
3	Bank Guarantee of Rs.2.12 crore	2.12
4	Realized amount of Rs.2.18 crore	2.18
5	Total claim	45.55

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[Rs. Crore]

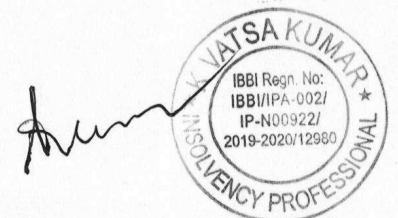
Project value	14.31
Less : Amount received from Pantime Finance	4.62
	9.69
Add : Penalty accrued for non submission of "C" Form	1.58
	11.27
Add : Amount of Bank guarantee encashed	2.18
	13.45
Add : Interest at 18% p.a. for non payment of above amount till 30.04.2021	22.10
	35.55
Add : Liquidated damages	10.00
Total claim	45.55

Counter claim of Pantime Finance on PPS Enviro made to the Arbitrator

Pantime Finance refuted the claim of PPS Enviro and stated that the project was not completed by PPS Enviro and hence the Bank Guarantee provided by PPS Enviro was invoked and encashed by them. More over, the Solar module and panels which are the essential parts of the project were not procured by PPS Enviro and have been procured by Pantime Finance by making payments to vendors. There has been a substantial shortfall in power generation compared to what has been guaranteed and PPS Enviro has to compensate Pantime Finance for shortfall in generation of power as per the contract.

Pantime Finance made a counter claim of Rs.41.97 crore on PPS Enviro as detailed below:

Project value		14.31
Less : Solar Module purchased by Pantime [not provided by PPS Enviro]		6.29
		8.02
Less : Value of work not executed by both the parties		1.18
Less : Cost towards Maintenance [not provided by PPS Enviro]		0.60
		6.24
Less : Amount paid by Pantime to Vendors		2.75
Amount payable by Pantime Finance to PPS Enviro		3.49
Net amount paid by Pantime Finance to PPS Enviro		6.37
Extra amount paid by Pantime Finance to PPS Enviro	[a]	2.88
Add : Loss on account of minimum guaranteed generation of power	[b]	25.33
Add : Loss on account of alteration and non acceptance of LC	[c]	3.56
Add : Damages	[d]	10.00
Add : Litigation expenses	[e]	0.20
Aggregate Counter claim		41.97
<i>Pantime Finance has also claimed 18% interest on above amount, yet to be quantified</i>		



2. 143 of 2013 - Mahavir Ferro Alloys P Ltd

Brief Background:

Mahavir wanted to set up Solar Photo Voltaic Plant at Sundargarh , Odisha
EPC agreement executed with CD and Mahavir issued purchase orders in 2011
Despite completing project, CD did not get full payment as per purchase order
CD filed arbitration application with Honble High Court of Telangana in 2013 and High
Court on 29.04.2020 appointed Justice Dilip Bhosale , former Chief Justice of Allahabad High
Court as Sole Arbitrator

Other full particulars:

PPS Enviro Pvt Ltd. carried out a 1 MW power project for Sri Mahavir Ferro Alloys kPvt. Ltd.
which was to be completed by 31.12.2011 as per the documents. The Project cost was estimated
at Rs.14.31 crore, break-up details of which are as under:-

	[Rs. Crore]
Labour charges	0.53
Civil work	1.06
EPC components	12.72

PPS Enviro provided a Bank Guarantee for Rs.2.12 crore to Sri Mahavir Ferro Alloys Pvt. Ltd.
but Sri Mahavir Ferro did not pay any advance amount, and also the amount to be paid on
pro rata basis [70% of contract value]. Though a Foreign Letter of Credit for Rs.7 crore was to
be provided by Sri Mahavir Ferro, the same was not provided. Instead, an Inland Letter of
Credit for Rs.2.54 crore was provided, but with an usance period of 1096 days. As the Letter of
Credit could not be discounted with the Banks, PPS Enviro advised Sri Mahavir Ferro to get
the usance period reduced to 180 days, but the usance period was reduced to 240 days only.
The Bills under Letter of Credit sent for discounting were returned by the Bank citing
“applicant [i.e. Sri Mahavir Ferro Alloys Pvt Ltd.] refused to accept the documents”.

Sri Mahavir Ferro Alloys made payments of Rs.2.27 crore by 27.01.2012 [which was Rs.15 lakh
higher than the Bank Guarantee furnished by PPS Enviro]. Despite execution of project work
for more than Rs.3.15 crore by PPS Enviro by 27.01.2012, Sri Mahavir Ferro Alloys invoked the
Bank Guarantee furnished by PPS Enviro, citing non fulfilment of contractual obligations, and
realized an amount of Rs.1.12 crore.

PPS Enviro completed almost all works by 29.02.2012, and the Project was commissioned in
March 2012. PPS Enviro received aggregate payment of Rs.8.64 crore from Sri Mahavir Ferro
Alloys, leaving a balance of Rs.5.67 crore. Total claim made by PPS Enviro on Sri Mahavir
Ferro Alloys before the Arbitration Tribunal is Rs.32.24 crore as detailed below:-

	[Rs. Crore]
Project value	14.31
Less : Amount received from Pantime Finance	8.64
	5.67
Add : Penalty accrued for non submission of “C” Form	1.59
	7.26
Add : Amount of Bank guarantee encashed	1.16
	8.42
Add : Interest at 18% p.a. for non payment of above amount till 30.04.2021	13.82


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	22.24
Add : Liquidated damages	10.00
Total claim	32.24

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Counter claim of Sri Mahavir Ferro Alloys on PPS Enviro made to the Arbitrator

Sri Mahavir Ferro Alloys refuted the claim of PPS Enviro and stated that the project was not completed by PPS Enviro and hence the Bank Guarantee provided by PPS Enviro was invoked and encashed by them. Though the Bank Guarantee provided by PPS Enviro was for Rs.2.12 crore only, Sri Mahavir Ferro Alloys made a payment of Rs.4.88 crore as advance even before the first invoice was raised. Total payment made by Sri Mahavir Ferro Alloys to PPS Enviro under the project was Rs.8.64 crore.

Out of Rs.7.00 crore worth of Solar module and invertors to be provided, PPS Enviro supplied Invertors worth Rs.0.71 crore only and the equipment for balance Rs.6.29 crore was to be invested by Sri Mahavir Ferro Alloys. There has been a substantial shortfall in power generation compared to what has been guaranteed and PPS Enviro has to compensate Sri Mahavir Ferro Alloys for shortfall in generation of power as per the contract.

Sri Mahavir Ferro Alloys made a counter claim of Rs.38.79 crore on PPS Enviro as detailed below:

Project value		14.31
Less : Solar Module purchased by Sri Mahavir Ferro Alloys [not provided by PPS Enviro]		6.29
		8.02
Add : Cost of local modules procured by Sri Mahavir Ferro Alloys		3.41
		11.43
Less : Cost towards Maintenance [not provided by PPS Enviro]		0.60
Less : Work not executed by PPS Enviro		1.02
Less : Amount paid by Sri Mahavir Ferro Alloys to Vendors		2.70
Amount payable by Sri Mahavir Ferro Alloys to PPS Enviro		7.11
Net amount paid by Sri Mahavir Ferro Alloys to PPS Enviro		8.64
Extra amount paid by Sri Mahavir Ferro Alloys to PPS Enviro	[a]	1.53
Add : Loss on account of minimum guaranteed generation of power	[b]	24.27
Add : Loss on account of alteration and non acceptance of LC	[c]	2.79
Add : Damages	[d]	10.00
Add : Litigation expenses	[e]	0.20
Aggregate Counter claim		38.79
<i>Sri Mahavir Ferro Alloys has also claimed 18% interest on above amount, yet to be quantified</i>		



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Common Current Status of Arbitration Matters 142 and 143 of 2013:

14 meetings were held by the arbitrator.

The 1st Witness for claimant to file Affidavit of Evidence by August 19 ,2023. and 14th hearing date kept for Sept 25 ,2023 for recording of evidence. On 25.09.2023, the sole arbitrator cited a Bombay high Court Judgement and stated the proceedings can recommence only after the application for Extension of arbitration period is decided by Telangana High Court. The extract of the said proceeding is as under :

"On last occasion when directions were issued, for recording evidence of the Claimant's first witness during pendency of the Application seeking extension of the mandate under Section 29A of the Arbitration & Conciliation Act, 1996. The judgment of Bombay High Court in Arbitration Petition No.125 of 2023 between Mahavir Realties & Ors. Vs. Shirish J. Shah decided on 21st July 2023 was not noticed either by Counsel for the parties or by the Sole Arbitrator. The Tribunal with the assistance of the learned Counsel for the parties has gone through the judgment and it appears that since, no consent was given by the Respondents for extension of time under Section 29A of the Act, it would not be proper for the Tribunal now to proceed with hearing of these arbitral proceedings, in view of the fact that 6 months period under Section 29A(3) of the Act also got over. In the circumstances thereof, I deem it appropriate to wait till the Application seeking extension is finally decided by the High Court. Learned Counsel for the Claimant submits that the Application will be mentioned for its hearing and it is likely to be heard in this week. It is open for Counsel for the parties to appear before the High Court and get the Application finally decided. Counsel for the Claimant is requested to pray before the High Court for one year extension from the date of the order. Counsel for the Claimant is directed to inform the Tribunal about the order that will be passed on the Application. If the Application is allowed, and if the time is extended, the Tribunal will proceed to record evidence of the witnesses in both the arbitration proceedings, in which case, on the next date, that will be fixed only after the Application before High Court is finally decided, the Claimant shall keep their witness present for cross examination. It is made clear that the Tribunal shall fix the matter for hearing and inform the parties / Advocates / Counsel through email in which case, Counsel for the Respondents to get ready to cross examine the witness on the next date."

Application for extension of arbitration period was filed in both matters on 28.02.2023. As the matter was pending, the legal counsel of Liquidator made a mention before the Chief Justices Court after which the matter was taken up on 16.07.2024. The Counsel appearing for the Respondents sought time to file counter on the ground of bias of the arbitrator. which was objected by Liquidators counsel. However, the Bench had granted 2 weeks time to file counter, which was not filed till date. The Legal Counsel has been making efforts for listing the matter. Thus the extension application filed in the Telangana High Court is pending.


21/01/2025

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