



**6TH NLIU JUSTICE R.K. TANKHA MEMORIAL
INTERNATIONAL ARBITRATION MOOT, 2021**

CASE RECORD

**IN THE MATTER OF AN ARBITRATION
BETWEEN**

Instant Beauty & Care Ltd. and Balkan Group Hold Jsc.

**UNDER
The Arbitration Rules of the Singapore International Arbitration
Centre (6th Edition, 1 August 2016)**

5 March 2021 – 7 March 2021

**ORGANISED BY:
National Law Institute University, Bhopal
In association with
The Office of Mr. Vivek Tankha
Senior Advocate, Supreme Court of India
and
Member of Parliament, Rajya Sabha**



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ABOUT LATE JUSTICE R.K. TANKHA

Born on 29 May 1926, Justice Tankha completed his schooling at Allahabad and graduated in law from Allahabad University. Thereafter, he practised as a junior counsel to Shri Gopal Swarup Pathak, Senior Advocate, who later became the Vice President of India.

Around 1950-51, Justice Tankha started his legal practice from Rewa, Madhya Pradesh where he received professional acclaim at a very young age. Subsequently, he moved to Jabalpur, the seat of the High Court of the State of Madhya Pradesh, and within a short period of time, gained prominence at the Madhya Pradesh Bar. He also served as the President of the High Court Bar Association. In 1972, he was elevated as a Judge of the Madhya Pradesh High Court. Justice Tankha passed away at the age of 52 on 13 December 1978.

His son, Shri Vivek Tankha, joined the Bar in 1979 and is one of the most eminent senior advocates. He was the Advocate General of State of Madhya Pradesh from 1999 to 2003. He was also the Additional Solicitor General of India before the Supreme Court from 2009 to 2012. An avid philanthropist, Mr. Tankha has facilitated the opening of various Rotary Cross Blood Banks in tribal areas and has set up five schools for specially-abled children in five towns in the states of Madhya Pradesh and Chhattisgarh.

This Competition was founded by Shri Vivek Tankha in the memory of his father - Justice Tankha, to motivate young law students to strive for legal excellence and to promote the spirit of academic enquiry.



ACKNOWLEDGMENT - THE OFFICE OF MR. VIVEK TANKHA

We would like to extend our sincere gratitude and thanks to Mr. Vivek Tankha for his constant support towards the successful organisation of this Moot.

We would also like to thank Mr. Varun K. Chopra, Mr. Varun Tankha and Mr. Prashant Sivarajan, members of the Office of Mr. Tankha, for their valuable ongoing help in the organisation of the Moot.



ACKNOWLEDGMENT - THE DRAFTING COMMITTEE

This Case Record has been authored by Ms. Velislava Hristova.

Mr. Kevin Nash, Deputy Registrar and Centre Director of the Singapore International Arbitration Centre, Mr. Piyush Prasad, Associate Counsel of the Singapore International Arbitration Centre, Mr. Stanislav Cherkezov, Legal Counsel of Huvepharma nv and Ms. Sadhvi Mohindru, Associate of HFW also reviewed the case and provided their valuable input.

Lastly, we also thank Mr. Prashant Mishra, Partner, L&L Partners Law Offices, (NLIU Batch of 2005), for his support and guidance.

Note: *Teams are prohibited from contacting the aforementioned persons in relation to this Competition directly or indirectly. The Administrators reserve the right to take any appropriate action, including disqualification and/or blacklisting the participating institution and/or the members found engaging in such conduct.*



From rajiv.sandeep@greenandcase.com
To corpcomms@siac.org.sg;
a_gorsky@balkangrouphold.com
Subject Notice of Arbitration and Statement of Claim
Attachments Notice of Arbitration and Statement of Claim with Exhibits.pdf; Power of Attorney.pdf; CV of Ms. Navya Saxena.pdf; Proof of payment of the filing fee.pdf

Sent 30 Jun. 2020 09:30

Dear Mr. Gorsky,
Dear Sir/Madam,

On behalf of my client, Instant Beauty & Care Ltd., I hereby submit the attached Notice of Arbitration and Statement of Claim against Balkan Group Hold Jsc. pursuant to Rule 3 of the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) ("**SIAC Rules**"). The Respondent's CEO, Mr. Gorsky, is also copied to this email, and with this, I deem the obligation of the Claimant to serve the Notice of Arbitration and Statement of Claim to be satisfied. The Claimant also files an application for the arbitral proceedings to be conducted in accordance with the Expedited Procedure provided under Rule 5 of the SIAC Rules.

A copy of the Power of Attorney authorising me to represent Instant Beauty & Care Ltd. in these arbitral proceedings is also attached. Moreover, the respective filing fee in accordance with the Schedule of Fees has been paid, and the confirmation for the payment is attached.

Instant Beauty & Care Ltd. alleges breach of contractual obligations and claims damages in the amount of USD 225,000 plus the costs incurred in the arbitration.

The contract that gives rise to the arbitration provides that the seat of the arbitration shall be City of Lakes, Iliria and that the language of the arbitration shall be English. The arbitration agreement provides that the arbitral tribunal shall consist of one arbitrator. Instant Beauty & Care Ltd. hereby nominates Ms. Navya Saxena to serve as an arbitrator in the present arbitration. The CV of Ms. Saxena is attached to this email.

Yours faithfully,
Rajiv Sandeep
(Counsel for the Claimant)

Green & Case LLP
11, Mango Street,
Velikomoravskoe, Moravia





NOTICE OF ARBITRATION AND STATEMENT OF CLAIM
(In accordance with Rule 3 of the SIAC Rules 2016)

In the arbitral proceedings
between

The Parties

~Claimant~

Instant Beauty & Care Ltd.
58 ABC Street, Velikomoravskoe, Moravia

Represented by Green & Case LLP

~Respondent~

Balkan Group Hold JSC
Independence Avenue, 17-586 Capitolia, Panonia.

I. Parties to the Arbitration

A. Claimant

1. Instant Beauty & Care Ltd. [hereinafter referred to as the "**Claimant**"] is a limited liability company incorporated and duly existing under the laws of Moravia. It has the legal capacity to initiate and participate in actions in its own name. The principal office of the Claimant is at 58 ABC Street, Velikomoravskoe, Moravia. The telephone number is +333 282930.
2. The Claimant is represented in this arbitration by the law firm Green & Case LLP, which has the following address:

11, Mango Street,
1111 Velikomoravskoe,
Moravia
Tel: +333 029278,
Email: arbitration@greenandcase.com.
3. The Claimant is one of the leading manufacturers of cosmetics with a particular focus on skincare. The Claimant is best known for its product "Re/Skin" - a skincare cream based on ceramides, famous for its immediate and long-lasting relief effects. "Re/Skin" accounts for a significant part of the total revenue of the company and is a worldwide bestseller.
4. All communications to the Claimant in this arbitration should be made to Mr. Rajiv Sandeep at the address referenced in the email.

B. Respondent

5. Balkan Group Hold Jsc. [hereinafter referred to as the "**Respondent**"], is a joint-stock company incorporated in Newland, involved in the production and wholesale of active ingredients for the pharmaceutical and cosmetics industries.
6. The Respondent has its principal office at the following address:

Independence Avenue,
17-586 Capitolia, Panonia
Tel: +79 225 9068
Fax: +79 2259410
7. The Respondent owns and operates a recently built chemical plant, equipped with the latest innovations in the field, allowing for the simultaneous production of large amounts of active ingredients for different purposes.
8. The Claimant and the Respondent are collectively referred to as "**Parties**".

II. Factual Background

9. The "Re/Skin" is one of the most significant products in the portfolio of the Claimant. It is widely used for skincare procedures and has an excellent relief effect on smaller skin wounds. The product accounts for a large portion of the revenue generated by the Claimant. It is considered that the "Re/Skin" owes its huge market success to the innovative way of mixing ingredients with supreme quality. One of the main ingredients used in "Re/Skin" is ceramides.
10. Until the end of 2017, the Claimant produced all ingredients for "Re/Skin" in its own production facilities. The huge market success and the pressure to bring the remaining product portfolio to the high standards set by "Re/Skin" required the Claimant to start looking for options to outsource production of some of the ingredients used in "Re/Skin".
11. Since the high quality of "Re/Skin" is one of its main features, the Claimant has implemented a rigorous system for quality control in its own production facilities and expected its potential partners to meet the same standards. After one year of thorough research and preliminary negotiations with manufacturers from all around the world, the Claimant reached to the conclusion that only a few companies can meet the quality and quantity requirements for ceramides. The most appropriate of them appeared to be Balkan Pharmaceutical Ltd. from the neighbouring country of Panonia. The state-of-the-art production facilities with significant capacity and the proximity to the plants were among the main reasons for the Claimant to choose to work with Balkan Pharmaceutical Ltd.
12. Negotiations between Claimant and Balkan Pharmaceutical Ltd. started in early 2018, and a Manufacturing and Supply Agreement was eventually signed on 1 March 2018

- ("Agreement") – **Claimant Exhibit C 1**. It was agreed that Balkan Pharmaceutical Ltd. would undertake to manufacture ceramide in its production facilities, with its own workforce and raw materials and to deliver the ceramide to the Claimant.
13. Under the Agreement, the Claimant would purchase in each year for the duration of the Agreement at least the Product quantities defined in Annex III (referred to as "**Annual Minimum Quantities**") and Balkan Pharmaceutical Ltd. would produce those quantities upon request by the Claimant, within the calendar year (Article 3 (2) of the Agreement).
 14. The Claimant had to send purchase orders ("**Purchase Orders**") to Balkan Pharmaceutical Ltd. with the exact amounts and due date for each shipment (Article 3 (1) of the Agreement). The Purchase Orders had to be confirmed by Balkan Pharmaceutical Ltd. prior to starting the production.
 15. Immediately after the signing of the Agreement, the Claimant started to submit Purchase Orders to Balkan Pharmaceutical Ltd. via email. The production went smoothly for the amounts of ceramides under the first several Purchase Orders.
 16. On 15 November 2018, Balkan Pharmaceutical Ltd. notified the Claimant via email that the group underwent an internal reorganisation and Balkan Pharmaceutical Ltd. became a subsidiary of the Respondent – **Claimant Exhibit C 2**. According to this email, the conditions under the Agreement would remain the same, despite the fact that the CEO of the Respondent undertook the responsibility for the transactions with the Claimant. After the reorganisation, the next Purchase Order was addressed to Balkan Pharmaceutical Ltd. – **Claimant Exhibit C 3**. However, the correspondence was led by the Respondent. Invoices were also issued by the Respondent – **Claimant Exhibit C 4**.
 17. On 3 January 2020, the Claimant sent an email to the Respondent making a new Purchase Order to the Respondent for 100 kgs ceramide III to be delivered on 10 March 2020 – **Claimant Exhibit C 5**. The Purchase Order was an attachment to an email of that date – **Claimant Exhibit C 6**. On the same day, the Respondent confirmed the Purchase Order – **Claimant Exhibit C 7**. Little did the Claimant know that this Purchase Order would lead to severe complications and unnecessary additional costs.
 18. The Respondent informed the Claimant, through an email dated 10 February 2020, on the current COVID-19 situation – **Claimant Exhibit C 8**. The Respondent stated, that due to measures imposed by the neighbouring country of Iliria, where some of its suppliers were located, it would not be able to deliver the quantities under the Purchase Order on the agreed date. Attached to the email was also an excerpt of a governmental decree of the state of Iliria, introducing a ban on non-essential manufacturing and closure of the borders – **Claimant Exhibit C 9**. The decree was issued on 31 January 2020, i.e. ten days prior to the Respondent's email.
 19. The Claimant replied to the Respondent and urged that despite the rather unfortunate development of the situation, it still expected the quantities under the Purchase Order on the confirmed date – **Claimant Exhibit C 10**. The Claimant also highlighted the importance of timely delivery and warned that any potential delays might lead to claims against the Respondent for the difference between the contractual price and any additional

cost, which the Claimant may be forced to make in order to mitigate the negative effects of the delay. Due to the lack of reaction of the Respondent, the Claimant reiterated its position again in its email dated 16 February 2020 – **Claimant Exhibit C 11**.

20. It appears that the pressure on the Respondent gave results. On 18 February 2020, the Respondent sent an email confirming that 10 kgs ceramide III would be shipped by the end of the month and promised more details on the remaining quantity – **Claimant Exhibit C 12**.
21. Despite the numerous phone calls that followed, no further deliveries were made. This forced the Claimant on 7 May 2020 to once again remind that a failure to deliver the remaining 90 kgs ceramide III would result in additional costs for the Claimant, which would be claimed against the Respondent – **Claimant Exhibit C 13**.
22. The lack of reaction from the Respondent and the failure to make new deliveries forced the Claimant to urgently find another supplier for the remaining quantity of ceramide III. Much needed at that point, the remaining 90 kgs were to be manufactured and delivered by a third-party supplier, which was not subject to the rigorous preliminary assessment by the Claimant since time was limited. In addition to the risk such delivery imposed, the price was also much higher than the price agreed with the Respondent. Instead of USD 1,000 per kg, the new price was USD 3,500 per kg. The Respondent was notified of this development by email on 5 June 2020 – **Claimant Exhibit C 14**. With the email, the General Manager of the Claimant also warned that the Respondent would receive an additional email from their legal counsel claiming the difference of USD 225,000 between the contractual price and the price paid for the urgent delivery.
23. The email claiming the amount of USD 225,000 was sent by the Claimant's legal counsel on 9 June 2020 – **Claimant Exhibit C 15**.
24. In response, the Claimant received an email on 10 June 2020 stating that the Agreement was not terminated, the behaviour of the Claimant constituted a contractual breach, and the Respondent did not intend to pay the requested amount – **Claimant Exhibit C 16**.

III. Legal Analysis

1. The Tribunal has jurisdiction over the dispute.
2. The relevant arbitration clause is available at Article 24, paragraph 2 of the Agreement. It provides as follows:

"(2) The PARTIES shall try to resolve any disputes arising out of or in connection with this AGREEMENT amicably through good faith negotiations and deliberations. In the event that such attempts should fail within 30 (thirty) calendar days from the first written request for negotiations and deliberations by either PARTY, either PARTY may refer the dispute to arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force. The tribunal shall consist of one arbitrator who shall be appointed in accordance with the SIAC Rules. The language of the arbitration shall



be English. The seat of the arbitration shall be City of Lakes, Iliria. The decision of the tribunal shall be final and binding upon the PARTIES. The expenses of arbitration shall be borne in accordance with the determination of the arbitration."

3. The Respondent is bound by the said arbitration clause. Although it has not signed it, the Respondent clearly manifested its intention to be bound by it. The Respondent intentionally participated in the performance of the Agreement by issuing invoices in its own name, leading correspondence and arranging the performance of the Agreement and thus, consented to the arbitration clause contained in it.
4. In the present case, the parties agreed on City of Lakes, Iliria as the seat of the arbitration. Thus, the scope of the arbitration clause, the question of its extension to the Respondent and any other issues related to its effectiveness have to be determined under the law of Iliria. Various courts and tribunals when applying the law of Iliria have adopted favorable approach toward the extension of the arbitration clause towards non-signatories.
5. On 3 January 2020, the Claimant sent the Respondent a Purchase Order for the manufacture and supply of 100 kgs ceramide III – **Claimant Exhibit C 5**. The Respondent accepted the order – **Claimant Exhibit C 7**. Despite that, the Respondent then made only partial delivery of 10 kgs ceramide III. Due to the significance of the ordered ceramide III for the Claimant's business, and in particular, for the Claimant's new product line, the Claimant informed the Respondent that if the latter did not provide the remaining quantity as per the Claimant's order, it would soon search for another source of supply – **Claimant Exhibit C 13**. The Respondent neither answered, nor made a delivery. Since the Respondent breached the Agreement, the Claimant was entitled to make a cover purchase as it ultimately did.
6. Owing to the breach of the Agreement by the Respondent, the Claimant is entitled to receive damages.

IV. Nomination of Sole Arbitrator

7. Pursuant to the arbitration agreement and the SIAC Rules, the Claimant nominates the following individual to serve as a sole arbitrator in the present dispute:

Ms. Navya Saxena
78 Boulevard de Arbitration, City of Lakes, Iliria
Tel: +91 789 606 808; Email: navya.saxena@arbitration.com

V. Expedited Procedure

8. The Claimant requests the present arbitral proceedings to be conducted in accordance with the Expedited Procedure under Rule 5 of SIAC Rules.

VI. Request for Relief

9. Consequently, the Claimant requests the Tribunal to:
 - 1) Declare that it has jurisdiction to decide this dispute;



- 2) Order the Respondent to pay an amount of USD 225,000 for breach of the Agreement which amount constitutes the difference between the price for 90 kgs ceramide III of USD 1,000 per kg and the cover price of USD 3,500 per kg; and
- 3) Order the Respondent to pay all the costs of arbitration.

Rajiv Sandeep

Rajiv Sandeep

(Counsel for the Claimant)

Green & Case LLP

11, Mango Street,

Velikomoravskoe, Moravia



Claimant Exhibit C 1

MANUFACTURING AND SUPPLY AGREEMENT

Instant Beauty & Care Ltd.

58 ABC Street
Velikomoravskoe
Moravia

- hereinafter referred to as "**Instant Beauty & Care** "

and

Balkan Pharmaceutical Ltd.

3 Industrial Street,
17-590 Capitolia,
Panonia

- hereinafter referred to as "**Balkan Pharmaceutical** "

PREAMBLE

Whereas,

- (A) Instant Beauty & Care wishes to entrust Balkan Pharmaceutical with the manufacturing and supply of certain ceramides of its current product portfolio, dedicated for further application in cosmetic products.
- (B) Balkan Pharmaceutical is willing to manufacture and supply the said products for Instant Beauty & Care under the terms and conditions set forth in this Manufacture and Supply Agreement ("**Agreement**").

[...]

Article 2. SCOPE OF THE AGREEMENT

- (1) Instant Beauty & Care entrusts and assigns and Balkan Pharmaceutical undertakes to manufacture and supply the products as specified in Annex III to this Agreement ("**Products**").

Article 3. MANUFACTURING OF PRODUCTS

- (1) Instant Beauty & Care will provide to Balkan Pharmaceutical binding Purchase Orders by stating the quantities of Product(s) required, the relevant delivery dates by taking into account the Lead time(s) as well as all other terms and conditions with regard to an individual delivery and purchase of Products. Purchase Orders will be sent at the latest 2 months before the expected due date and after agreement by Balkan Pharmaceutical on the delivery dates. Any Purchase Order shall become binding upon receipt by Balkan Pharmaceutical, provided that Balkan Pharmaceutical confirmed to have received the Purchase Order within 10 (ten) working days as of transmission by Instant Beauty & Care.



- (2) For the contract years 2018, 2019, 2020 and 2021, the Parties agree that:
- (i) Instant Beauty & Care will purchase in each of these years at least the Product quantities defined in Annex 3 (hereinafter referred to as "**Annual Minimum Quantities**"); and
 - (ii) Balkan Pharmaceutical shall manufacture the Products at Instant Beauty & Care's request at least up to the Annual Minimum Quantities. [...]
- (3) Balkan Pharmaceutical shall purchase raw materials in its own name and on its own account from sources at its own preference, being understood that these materials must meet specific requirements, if and to the extent provided by Instant Beauty & Care.
- (4) Upon receipt of such Purchase Orders, Balkan Pharmaceutical shall manufacture the Products in its production facility and in strict accordance with the all details of the relevant product documentation as agreed between the Parties. The manufactured Products must meet the product specifications.

[...]

Article 24. APPLICABLE LAW. DISPUTES

- (1) This Agreement shall be governed by and construed under the substantive law of Panonia.
- (2) The Parties shall try to resolve any disputes arising out of or in connection with this Agreement amicably through good faith negotiations and deliberations. In the event that such attempts should fail within 30 (thirty) calendar days from the first written request for negotiations and deliberations by either Party, either Party may refer the dispute to arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force. The tribunal shall consist of one arbitrator who shall be appointed in accordance with the SIAC Rules. The language of the arbitration shall be English. The seat of the arbitration shall be City of Lakes, Iliria. The decision of the tribunal shall be final and binding upon the Parties. The expenses of arbitration shall be borne in accordance with the determination of the arbitration.

Article 25. MISCELANIOUS

- (1) This Agreement may only be amended or modified by a written document executed by duly authorised representatives of both Parties.

[...]

Signed on: 1 March 2018

For Instant Beauty & Care Ltd.:	For Balkan Pharmaceutical Ltd.:
<i>Melania Knavs</i>	<i>Jean-Paul Agon</i>
_____	_____
Melania Knavs, General Manager	Jean-Paul Agon, Managing Director



Annex 3: ANNUAL MINIMUM QUANTITIES

ANNUAL MINIMUM QUANTITIES:

PARTIES agree that the ANNUAL MINIMUM QUANTITIES are defined as follows:

2018:

	Volume	Price
• Ceramide III	100 kg	1,000 \$/kg
• Ceramide IIIB	100 kg	1,000 \$/kg

2019:

• Ceramide III	1,000 kg	1,000 \$/kg
• Ceramide IIIB	1,000 kg	372 \$/kg

2020:

• Ceramide III	1,000 kg	1,000 \$/kg
• Ceramide IIIB	1,000 kg	372 \$/kg

2021:

• Ceramide III	1,500 kg	230 \$/kg
• Ceramide IIIB	1,000 kg	320 \$/kg



Claimant Exhibit C 2

From jp_agon@balkanpharmaceutical.com
To melania.knavs@ibc.com
CC a_gorsky@balkangrouphold.com
Subject Corporate restructuring

Sent 15 Oct. 2018 15:30

Dear Ms. Knavs,

I hope that this email finds you well.

Please be informed that following a corporate reorganisation, Balkan Pharmaceutical Ltd. became a subsidiary of Balkan Group Hold Jsc. – the new holding company of the entire group. Despite this change, the conditions of the Manufacture and Supply Agreement concluded between Balkan Pharmaceutical Ltd. and Instant Beauty & Care Ltd. and its execution will remain unaffected.

I copy here the CEO of Balkan Group Hold Jsc., Mr. Alex Gorsky, who will also be in charge with the transactions under the Manufacture and Supply Agreement.

We are looking forward to continuing the successful collaboration between Balkan Pharmaceutical Ltd. and Instant Beauty & Care Ltd.

Kind regards,

Jean-Paul Agon

Managing Director

Balkan Pharmaceutical Ltd.

✉ jp_agon@balkanpharmaceutical.com

☎ +79 223 443



Claimant Exhibit C 3

Instant Beauty & Care Ltd.

58 ABC Street,
1111 Velikomoravskoe, Moravia
+333 282930

PURCHASE ORDER

TO:
Mr. Jean-Paul Agon
Balkan Pharmaceutical Ltd.
3 Industrial Street
17-590 Capitolia, Panonia
+79 223 443

SHIP TO:
Ms. Melania Knavs
Instant Beauty & Care Ltd.
58 ABC Street
1111 Velikomoravskoe, Moravia
+333 282930

P.O. NUMBER:
002
[The P.O. number must appear on all related correspondence, shipping papers, and invoices]

P.O DATE	REQUISITIONER	SHIPPED VIA	DELIVERY POINT	TERMS
26/10/2018			58 ABC Street 1111 Velikomoravskoe, Moravia	Delivery on 26/12/2018

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
20	kg	Ceramide III	USD 1,000	USD 20,000

SUBTOTAL		
VAT		10%
SHIPPING AND HANDLING		
OTHER		
TOTAL		USD 22,000

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to:
Melania Knavs
58 ABC Street,
1111 Velikomoravskoe, Moravia
+333 282930
[Fax Number]

Authorised by Melania Knavs

Pick the Date



Claimant Exhibit C 4

Balkan Group Hold Jsc.

Independence Avenue, 17-586, Capitolia, Panonia

Phone +79 225 9068 Fax +79 2259410

Invoice No. 000000789

26.12.2018

BILL TO	SHIP TO	INSTRUCTIONS
Instant Beauty & Care Ltd. 58 ABC Street Velikomoravskoe, Moravia	Same as recipient	No additional instructions]

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
20 kg	Ceramide IIIB	USD 1,000	20,000

SUBTOTAL

SALES TAX

10%

SHIPPING & HANDLING

TOTAL DUE BY DATE

USD 22,000

Thank you for your business!



Claimant Exhibit C 5

From melania.knavs@ibc.com
To jp_agon@balkanpharmaceutical.com
CC a_gorsky@balkangrouphold.com
Subject Purchase Order
Attachment: Purchase Order.pdf

Sent 3 Jan. 2020 11:10

Dear Mr. Gorsky,

I hope my email finds you well. I wish you a happy and successful new 2020!

Please find attached our new Purchase Order. In short, we need 100 kgs ceramide III on 10 March 2020 at the latest.

I am looking forward to your confirmation.

Kind regards,

Melania Knavs

General Manager

Instant Beauty & Care

Email: melania.knavs@ibc.com



Claimant Exhibit C 6

Instant Beauty & Care Ltd.

58 ABC Street,
1111 Velikomoravskoe, Moravia
+333 282930

PURCHASE ORDER

TO:
Mr. Alex Gorsky
Balkan Group Hold Jsc.
Independence Avenue
17-586 Capitolia, Panonia
+79 225 9068

SHIP TO:
Ms. Melania Knavs
Instant Beauty & Care Ltd.
58 ABC Street
1111 Velikomoravskoe, Moravia
+333 282930

P.O. NUMBER:
006
[The P.O. number must appear on all related correspondence, shipping papers, and invoices]

P.O DATE	REQUISITIONER	SHIPPED VIA	DELIVERY POINT	TERMS
03/01/2020			58 ABC Street 1111 Velikomoravskoe, Moravia	Delivery on 10/03/2020

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
100	kg	Ceramide III	USD 1,000	USD 100,000

SUBTOTAL		
VAT		10%
SHIPPING AND HANDLING		
OTHER		
TOTAL		USD 110,000

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to:
Melania Knavs
58 ABC Street,
1111 Velikomoravskoe, Moravia
+333 282930
[Fax Number]

Authorised by Melania Knavs

Pick the Date



Claimant Exhibit C 7

From a_gorsky@balkangrouphold.com
To melania.knavs@ibc.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order
Attachment: Invoice.pdf

Sent 3 Jan. 2020 16:20

Dear Ms. Knavs,

We confirm the receipt of the Purchase Order, as well as the due date for delivery.

Please find attached the respective invoice.

Best regards,

Alex Gorsky
CEO

BALKAN GROUP HOLD JSC.

Independence Avenue,
17-586 Capitolia, Panonia
Tel: +79 225 9068
Fax: +79 2259410



Claimant Exhibit C 8

From a_gorsky@balkangrouphold.com
To melania.knavs@ibc.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order
Attachment: Governmental decree on lockdown.pdf

Sent 10 Feb. 2020 09:10

Dear Ms. Knavs,

I hope my email finds you well.

You may have heard that the Director-General of the World Health Organization declared the novel coronavirus outbreak a public health emergency of international concern (PHEIC) on 30 January 2020. As a result, few countries declared a complete lockdown. Such is the case with Iliria, where the government issued a decree, closing all non-essential manufacturing facilities as of 01.02.2020 (attached hereto).

As our main suppliers of raw materials are located in Iliria, we are currently suffering severe disruptions in the supplies of raw materials, including, among others, such needed for the manufacturing of ceramide. We will attempt to resolve the issue as soon as possible, but at this point, we are not in the position to predict how long this will last. As soon as I have more information, I will be sure to let you know.

Best regards,

Alex Gorsky
CEO

BALKAN GROUP HOLD JSC.

Independence Avenue,
17-586 Capitolia, Panonia
Tel: +79 225 9068
Fax: +79 2259410

Claimant Exhibit C 9

STATE OF ILIRIA

Governmental Decree No. 63/DF of 31 January 2020 on Urgent Measures for limitation of the spread of COVID-19

GOVERNMENT

Pursuant to the Law on the Organization of Government;
Pursuant to the Civil Code of the State of Iliria;
Pursuant to the Law on Public Health

In order to enhance the adequate and effective protection of the citizens in the COVID-19 situation

The Minister of Public Health,

hereby

DECREES:

1. All citizens must stay home except to buy food or drugs, go to hospital, go to work or other emergencies as the case may be.
[...]
6. All non-essential manufacturing facilities must be closed. Workers are not allowed in non-essential manufacturing facilities, except to ensure the safety of the facility and/or the equipment installed. Non-essential are all manufacturing facilities, which are not involved in the production of life-saving medicines, protective gear and food.
7. All sea, land and air entry points in Iliria shall be closed as of the date of entry into force of this decree until further notice. Allowed into the country shall be only Ilirian citizens returning home, scientists and science-related workers, persons with diplomatic passports.

[...]

This decree enters into force as of 00:00 h on 1 February 2020.

City of Lakes, 31.01.2020

Avicenna Hippocrates

Avicenna Hippocrates
Minister of Public Health of
the State of Iliria





Claimant Exhibit C 10

From melania.knavs@ibc.com
To a_gorsky@balkangrouphold.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order

Sent 11 Feb. 2020 17:26

Dear Mr. Gorsky,

Thank you for your email.

This is indeed very worrying information. Nevertheless, we hope you will be able to complete the manufacturing and delivery process as per the Purchase Order on the due date.

Please note that the origin of your raw materials is not relevant for the completion of the Purchase Order. Our agreement does not provide specifically for a source of raw materials, and the source is completely irrelevant to us.

Considering the present situation, it is extremely important for us to have the ordered quantities on the due date, as any delays will have a negative effect on our business. We need to complete the manufacturing of "Re/Skin" so that we can free some capacity of our facilities for manufacturing products of our new series. Considering this, we would have to look elsewhere for urgent manufacturing of the required amounts of ceramide III if your company fails to deliver. If that were to happen, we would look to you for reimbursement of any additional costs that we might incur.

Kind regards,

Melania Knavs

General Manager

Instant Beauty & Care

Email: melania.knavs@ibc.com



Claimant Exhibit C 11

From melania.knavs@ibc.com
To a_gorsky@balkangrouphold.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order

Sent 16 Feb. 2020 11:55

Dear Mr. Gorsky,

I hope my email finds you well.

I once again write to you with regards to the Purchase Order and your email stating that you are experiencing difficulties with the manufacturing process.

So far, all you have been able to tell me is that you expect Iliria to lift some of the COVID-19 measures soon, including the ban on non-essential manufacturing and the closed borders for commercial travel, though you doubt that you would be able to deliver more than a part of the Purchase Order.

It is clear that we will be happy to receive whatever you are able to send us, but we expect you to deliver the entire quantity by 10 March 2020.

I look forward to receiving from you a more specific indication as to when and how much you will be delivering.

Stay safe!

Kind regards,

Melania Knavs

General Manager

Instant Beauty & Care

Email: melania.knavs@ibc.com



Claimant Exhibit C 12

From a_gorsky@balkangrouphold.com
To melania.knavs@ibc.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order

Sent 18 Feb. 2020 14:15

Dear Ms. Knavs,

I hope my email finds you well and in good health.

I am writing to you in order to confirm that we will be able to ship to you a fraction of the quantities under the Purchase Order, namely 10 kgs ceramide III by the end of the month.

As soon as I have more specific details, I will let you know.

I once again apologies for the delay in fulfilling our agreement. You probably have experienced yourself, that the manufacturing process is extremely complicated as the supply chains are disrupted.

Nevertheless, we look forward to shipping you the remaining quantities soon.

Best regards,

Alex Gorsky
CEO

BALKAN GROUP HOLD JSC.

Independence Avenue,
17-586 Capitolia, Panonia
Tel: +79 225 9068
Fax: +79 2259410



Claimant Exhibit C 13

From melania.knavs@ibc.com
To a_gorsky@balkangrouphold.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order

Sent 7 May 2020 10:37

Dear Mr. Gorsky,

It has been four months since you confirmed the Purchase Order and the delivery due date. All we have received within this deadline is merely a fraction of the entire quantity, despite the extensive email and phone correspondence, especially in the last few weeks. Given the complicated situation, we are grateful for the 10 kgs ceramide III you shipped to us, but we still need the remaining quantities of the order.

As already mentioned, your supply chain problems should not transform into a concern for us. We are certain that a company of your size and with your reputation should not have a problem in finding an alternative source of raw materials. There were many reasons to choose to work with your company, but the origin of your raw materials was not considered one of them.

It is obvious that, if we do not receive notification from you soon when you will be shipping the remaining quantity under the Purchase Order, we will have to purchase elsewhere. We are already suffering from the economic effects of the pandemic. If we are forced to purchase elsewhere, we will hold you responsible for our extra costs, which may reach considerable levels.

Kind regards,

Melania Knavs

General Manager

Instant Beauty & Care

Email: melania.knavs@ibc.com



Claimant Exhibit C 14

From melania.knavs@ibc.com
To a_gorsky@balkangrouphold.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order

Sent 5 June 2020 15:45

Dear Mr. Gorsky,

I am writing to you in order to inform you that we managed to arrange a one-off urgent delivery of ceramide III in the amount of the missing 90 kgs ceramide III under the Purchase Order.

We hope you understand that the prices for urgent one-off deliveries differ significantly from the prices arranged in long-term agreements. We agreed with a third-party supplier on USD 3,500 per kg.

As per our previous emails, in due course, you will receive a letter from our legal counsel making a demand on Balkan Group Hold Ltd. for USD 225,000. That is the amount that we had to pay for ceramide III above the contractual price negotiated with you.

I sincerely hope that this situation, serious as it is, does not detract from our desire to continue the business relationship we have had with you in the past.

Best regards,

Melania Knavs

General Manager

Instant Beauty & Care

Email: melania.knavs@ibc.com



Claimant Exhibit C 15

From rajiv.sandeep@greenandcase.com
To a_gorsky@balkangrouphold.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order

Sent 9 Jun. 2020 11:40

Dear Mr. Gorsky,

My name is Rajiv Sandeep, and I am legal counsel of Instant Beauty & Care Ltd.

I am writing to you with regards to your agreement with Instant Beauty & Care Ltd. for manufacturing and supply of ceramide and the latest Purchase Order thereof.

Under the Purchase Order, you had to deliver 100 kgs ceramide III until 10 March 2020 at a price of USD 1,000 per kg. You have only managed to deliver 10 kgs.

Instant Beauty & Care Ltd. arranged the urgent one-off delivery of 90 kgs ceramide III for the price of USD 3,500 per kg of which you have already been informed. Considering the above, on behalf of my client, I hereby make a demand upon Balkan Group Hold Jsc. to pay Instant Beauty & Care Ltd. the sum of USD 225,000 representing the extra expense that it has suffered through your failure to fulfil your obligations under the referenced agreement.

You can transfer the above amount to the bank account of Instant Beauty & Care Ltd. from which you received payments until recently.

Yours faithfully,
Rajiv Sandeep

Green & Case LLP
11, Mango Street,
Velikomoravskoe, Moravia





Claimant Exhibit C 16

From a_gorsky@balkangrouphold.com
To melania.knavs@ibc.com
CC jp_agon@balkanpharmaceutical.com
Subject Re: Purchase Order

Sent 10 Jun. 09:20

Dear Ms. Knavs,

We have received both the email sent by you and your legal counsel.

It will not come as a surprise to you that we deem such unfortunate development as rather frustrating.

You probably heard that the government of Iliria is considering lifting the measures limiting the non-essential manufacturing and the travel ban in the next few days.

Since our agreement had never been terminated by you, we would have been able to ship to you the necessary 90 kgs within the next weeks. You have made no complaint that the delay has caused you any supply problems as yet or any extra expense, except for your action in unnecessarily purchasing ceramide III.

Your actions in purchasing ceramide III elsewhere at a much higher price than the price agreed and demanding from us the difference constituted a breach of the contract on your part. Under the circumstances, I would like to inform you that Balkan Group Hold Jsc. sees no reason why it should pay to Instant Beauty & Care Ltd. the USD 225,000 mentioned in your emails.

Best regards,

Alex Gorsky
CEO

BALKAN GROUP HOLD JSC.

Independence Avenue,
17-586 Capitolia, Panonia
Tel: +79 225 9068
Fax: +79 2259410



From s_sudheer@fivecrowns.net
To corpcomms@siac.org.sg;
rajiv.sandeep@greenandcase.com
Subject Instant Beauty & Care Ltd. v. Balkan Group Hold Jsc.
(ARB007/20/XYZ)
Attachments Response to Notice of Arbitration and Statement of
Defence with Exhibits.pdf; Power of Attorney.pdf

Sent 10 Jul. 2020 11:30

Dear Sirs,

I represent the respondent, Balkan Group Hold Jsc., in the case of Instant Beauty & Care Ltd. v. Balkan Group Hold Jsc. (ARB007/20/XYZ). A Power of Attorney is attached to this email.

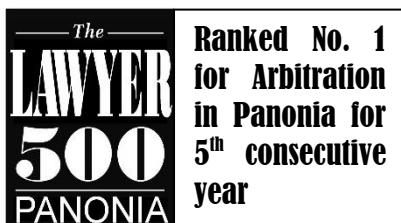
Pursuant to Rule 4 of the Arbitration Rules of the Singapore International Arbitration Centre, please find attached the Response to the Notice of Arbitration and Statement of Defence on behalf of my client. The authorised representative of the Claimant is copied in this email. By this, we assume that the Response to the Notice of Arbitration and Statement of Defence has been duly served to the Claimant.

Please be informed that my client agrees with the nomination of Ms. Navya Saxena as the sole arbitrator to decide the dispute between the parties. This is without prejudice to any challenge that Balkan Group Hold Jsc. may raise to the jurisdiction of the Tribunal.

Best regards,
Sankar Sudheer
(Counsel for the Respondent)

Five Crowns LLP

Expo 2000 Business Park,
building C, 6th fl.
Capitolia, Panonia





RESPONSE TO NOTICE OF ARBITRATION AND STATEMENT OF DEFENCE

(Pursuant to Rule 4 of the SIAC Rules 2016)

in the arbitration

Instant Beauty & Care Ltd. v. Balkan Group Hold Jsc. (ARB007/20/XYZ)

1. As a preliminary matter, the Respondent denies all claims made in the Notice of Arbitration and Statement of Claim.

I. Background

2. The Respondent is a private corporation with its own chemicals manufacturing facilities located in Capitolia, Panonia. The plant owned by the Respondent has state-of-the-art equipment installed 5 years ago. The Respondent is highly regarded as one of the most capable manufacturers of ingredients and raw materials for the pharmaceutical and cosmetics industry.
3. Currently, the Respondent is the sole owner of Balkan Pharmaceutical Ltd. – a group company also established in Capitolia, Panonia ("**Subsidiary**"). The Subsidiary manages and operates the production facility in Capitolia.
4. The group underwent an internal restructuring between September and October 2018 as a result of which the Respondent emerged as the holding company, involved in the management and performance of the agreements of the group, while the Subsidiary remained the plant operator.
5. In late 2017, the Subsidiary was contacted by the Claimant with an offer to conclude a Manufacturing and Supply Agreement for the supply of ceramide III and ceramide III B ("**Agreement**"). The first draft of the Agreement was sent by the Claimant on 5 January 2018 to the Subsidiary – **Respondent Exhibit R 1**.
6. After careful examination by the legal team, the Managing Director of the Subsidiary returned the Agreement with some minor modifications on 23 January 2018 – **Respondent Exhibit R 2**. The modifications included the introduction of a two-tier dispute resolution clause, a neutral seat of arbitration and a *No Oral Modification Clause*. The importance of these clauses was highlighted.
7. The Claimant did not argue on any of those modifications and accepted them, which also concluded the negotiations stage – **Respondent Exhibit R 3**.

II. Jurisdictional Objections

8. The Claimant clearly indicated in the Notice of Arbitration and Statement of Claim that

Balkan Group Hold Jsc. was not a party to the Agreement. Thus, the Respondent is also not a party to the arbitration clause contained in the Agreement. The arbitration clause was concluded solely between the Claimant and Balkan Pharmaceutical Ltd.

9. The arbitration clause and its alleged effect on the Respondent are governed by the law of Panonia and not, as the Claimant alleges, by the law of Iliria. Article 24, paragraph 1 of the Agreement provides that the latter is governed by the law of Panonia. Therefore, the law applicable to the arbitration agreement is the law of Panonia.
10. Moreover, Article 24, paragraph 2 of the Agreement contains a compulsory pre-arbitration procedure. The Claimant has disregarded that step and has therefore commenced these arbitral proceedings prematurely.

III. Expedited Procedure

11. The Respondent does not have any objection to the Claimant's request for the current arbitration to be conducted in accordance with the Expedited Procedure provided under Rule 5 of the Arbitration Rules of the Singapore International Arbitration Centre.

IV. Issues on the Merits of the Dispute

12. The Respondent denies all claims of non-performance of its obligations under the Agreement. The Respondent is neither liable for late, nor for partial delivery, as there is a force majeure event.
13. It was not possible for the Respondent to fulfil its obligations in a timely manner. As noted in the email of the CEO of the Respondent dated 10 February 2020, due to the outbreak of the COVID-19 pandemic, the Government of Panonia declared complete lockdown within the country and closed all the borders with its neighbouring states – **Claimant Exhibit C 8**. As a result, the Respondent could not receive raw materials from its main supplier, who is located in Iliria, but could only rely on the raw materials it already had from previous deliveries. Due to the global pandemic and the complete lockdown in Iliria, the Respondent was released from liability for failing to deliver the remaining 90 kgs ceramide III as required by the Claimant.
14. The Claimant was not justified in avoiding the Agreement. It should have notified the Respondent before making the cover purchase. After the Respondent successfully negotiated to receive raw materials by another supplier, it would have been possible to deliver to the Claimant the remaining 90 kgs ceramide III.

V. Prayer for Relief

15. The Respondent requests the Tribunal to:



- 1) Dismiss the Claimant's claims in their entirety; and
- 2) Order the Claimant to pay the costs of arbitration.

Sankar Sudheer

Sankar Sudheer

(Counsel for Respondent)

Five Crowns LLP

10 July 2020, Capitolia



Respondent Exhibit R 1

From melania.knavs@ibc.com
To jp_agon@balkanpharmaceutical.com
Subject Manufacture and Supply Agreement
Attachment Draft Manufacture and Supply Agreement.pdf

Sent 5 Jan. 2018 09:34

Dear Mr. Agon,

Following our telephone conversation, I would like to reiterate the interest of Instant Beauty & Care Ltd. to establish a business relationship with Balkan Pharmaceutical Ltd. and the latter to become a valuable source of ceramides for our "Re/Skin" products.

As discussed during the phone call, please find attached the standard Manufacture and Supply Agreement ("**Agreement**") we have concluded with our previous contractors.

In case you have any questions or comments, I will be pleased to address them.

I would like to reiterate one more time that making the deliveries on time is of significant essence for Instant Beauty & Care Ltd.

I am looking forward to quick finalisation of the signing of the Agreement and the beginning of fruitful business collaboration.

Kind regards,

Melania Knavs

General Manager

Instant Beauty & Care

Email: melania.knavs@ibc.com



Respondent Exhibit R 2

From jp_agon@balkanpharmaceutical.com
To melania.knavs@ibc.com
Subject Re: Manufacture and Supply Agreement
Attachments Draft Manufacture and Supply Agreement.pdf

Sent 23 Jan. 2018 11:20

Dear Ms. Knavs,

Thank you for your email. Our team is also very excited about the beginning of our business relationship.

Thank you for sending us the draft Manufacture and Supply Agreement. It was reviewed by our Legal Department, and we would like to propose a few minor changes which you can see in track changes in the attached document.

In short, first, we agree with any potential controversy to be referred to arbitration. However, we would like to include the possibility first to be able to try to settle any dispute amicably. In our experience so far since the establishment of Balkan Pharmaceutical Ltd., disputes have arisen with only two of our contractors, and we managed to settle both of them through friendly negotiations in less than 30 days. We always prefer to keep the relationship with our business partners, when possible.

We also insist on selecting a neutral seat of arbitration, instead of Velikomoravskoe, Moravia. We hereby propose the following changes in the arbitration clause:

(2) The Parties shall try to resolve any disputes arising out of or in connection with this Agreement amicably through good faith negotiations and deliberations. In the event that such attempts should fail within 30 (thirty) calendar days from the first written request for negotiations and deliberations by either Party, either Party may refer the dispute to Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force. The tribunal shall consist of one arbitrator who shall be appointed in accordance with the SIAC Rules. The language of the arbitration shall be English. The seat of the arbitration shall be City of Lakes, Iliria. The decision of the tribunal shall be final and binding upon the Parties. The expenses of arbitration shall be borne in accordance with the determination of the arbitration.

Second, it is our company policy to include a *No Oral Modification Clause* in all our agreements. We hereby propose the inclusion of the following provision:

Article 25. MISCELANIOUS

(1) This Agreement may only be amended or modified by a written document executed by duly authorised representatives of both parties.



We are looking forward to a positive response from your side and are looking forward to working with you.

Best,

Jean-Paul Agon

Managing Director

Balkan Pharmaceutical Ltd.

✉ jp_agon@balkanpharmaceutical.com

☎ +79 223 443



Respondent Exhibit R 3

From melania.knavs@ibc.com
To ip_agon@balkanpharmaceutical.com
Subject Re: Manufacture and Supply Agreement
Attachments Draft Manufacture and Supply Agreement.pdf

Sent 7 Feb.2018 13:50

Dear Mr. Agon,

Thank you for your prompt reply.

Our Legal department reviewed the proposed changes. We agree with all of them, including the ones related to the dispute resolution mechanism, although we do not foresee any issues that may arise during our collaboration.

We are looking forward to formalising our business relationship by signing the Manufacture and Supply Agreement.

Kind regards,

Melania Knavs

General Manager

Instant Beauty & Care

Email: melania.knavs@ibc.com



PROCEDURAL ORDER NO. 1

of 21 September 2020

in the arbitral proceedings

between

Instant Beauty & Care Ltd. v. Balkan Group Hold Jsc.

(ARB007/20/XYZ)

- I. The Tribunal held a video conference with both Parties on 18 September 2020 discussing the conduct of the arbitral proceedings. The Tribunal takes note of the following facts:
1. after considering the views of the parties and having regard to the circumstances of the case, on 15 September 2020, the President of the SIAC Court of Arbitration determined that the present arbitral proceedings shall be conducted in accordance with the Expedited Procedure.
 2. the hearing shall be conducted via video conference between 5 March – 7 March 2021. The details concerning the platform and timing will be provided to the Parties a few days before the hearing is scheduled to take place.
 3. the final decision on costs shall be reserved for a separate cost award.
- II. In the light of the foregoing agreements, the Tribunal makes the following orders:
1. In their next written submissions and during the remote oral hearing, the Parties are required to address the following issues:
 - a. Whether the arbitral tribunal has jurisdiction to decide the dispute, which includes, in particular, the following:
 - i. Which law governs the question of whether the Respondent became a party to the arbitration agreement and whether under that law, the Respondent is bound by the arbitration agreement.
 - ii. Whether the arbitral tribunal has jurisdiction in light of the pre-arbitration dispute resolution procedure provided in the Manufacture and Supply Agreement.
 - b. Whether there is a breach of the Manufacture and Supply Agreement.
 - c. Whether the Claimant is entitled to damages.
 2. The Parties should file their written submissions no later than 7 February 2021.
 3. The submissions shall be made in accordance with the Rules of the NLIU-Justice R.K. Tankha Memorial International Moot Court ("Rules") available at: mca.nliu.ac.in.
 4. It is undisputed between the Parties that Moravia, Panonia and Iliria are contracting states of the United Nations Convention on Contracts for the International Sale of Goods. The countries have adopted the UNCITRAL Model Law on International Commercial Arbitration (1985), with the 2006 amendments (Article 7 – Option II).
 5. In the event the Parties need further information, requests for clarification shall be made in accordance with Article 7 of the Rules no later than 25 October 2020 via email to tankhamoot@nliu.ac.in.



City of Lakes, 21 September 2020

Navya Saxena

Navya Saxena, Sole Arbitrator