



9TH

**NLIU - JUSTICE R.K. TANKHA
MEMORIAL INTERNATIONAL
ARBITRATION MOOT**

5 - 7 April 2024

CASE RECORD

**9th NLIU – JUSTICE R.K. TANKHA MEMORIAL INTERNATIONAL
ARBITRATION MOOT, 2024**

CASE RECORD

IN THE MATTER OF ARBITRATION
BETWEEN

Penguin Antarctic Adventures Pvt. Ltd. v. Zeus LLC

UNDER

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

05th April – 07th April 2024

ORGANISED BY:

MOOT COURT ASSOCIATION,

NATIONAL LAW INSTITUTE UNIVERSITY, BHOPAL

In association with

THE OFFICE OF MR. VIVEK K. TANKHA

SENIOR ADVOCATE AND MEMBER OF PARLIAMENT, RAJYA SABHA

Acknowledgement

The Drafting Committee

This case record has been authored by Dr. Ajar Rab, *Partner, ANR LAW LLP*. We express our sincere gratitude to Dr. Rab for drafting this edition's case record.

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October 22, 2023

Notice of Arbitration
(Under Rule 3 of the SIAC Arbitration Rules, 2016)

Penguin Antarctic Adventures Pvt. Ltd. v. Zeus LLC

Dear Registrar

On behalf of my client, *Penguin Antarctic Adventures Pvt. Ltd.*, I submit the enclosed Notice of Arbitration pursuant to Rule 3 of the SIAC Arbitration Rules, 2016. It is clear that the respondent, Zeus LLC, has supplied defective goods to my client and put human lives at grave risk. All investments in my client's company are now on the verge of complete loss, not to mention the repayments to financial institutions and the breach of ESG compliance. Therefore, my client is invoking arbitration in pursuance of the dispute resolution clause.

In line with the arbitration agreement, the Claimant nominates Ms. Hela Odinsdottir as the arbitrator. Her declaration of impartiality and independence and availability is attached to this notice.

Regards,

Bailor Drift

Attachments:

- (a) Notice of Arbitration with Exhibits
- (b) Declaration of impartiality and independence of Ms. Hela Odinsdottir (*not reproduced*)

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Bailor Drift

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Notice of Arbitration
(pursuant to Rule 3 of the SIAC Arbitration Rules, 2016)

in the Arbitral Proceedings between

Penguin Antarctic Adventures Pvt. Ltd. versus Zeus LLC

Penguin Antarctic Adventures Pvt. Ltd.
Baba ka Chauraha,
Bhopal

Claimant

Zeus LLC
16, Biden Street,
Delaware, USA

Respondent

Statement of Facts

1. The Claimant, *Penguin Antarctic Adventures Private Limited* (“**Paap**”), is a private limited company, having its registered office located at Baba ka Chauraha, Bhopal, represented through its Director, Dr. Chandrayan.
2. Dr. Chandrayan is a renowned explorer who retired early from the Bharat Space Research Organisation (BSRO) in 2018 to start the claimant firm and take commercial expeditions to Antarctica. However, investments and funding for her dream project were complicated to procure. Indian investors were cautious of the claimant firm and the CEO and considered the idea too ambitious. Foreign investors doubted the Claimant’s ability to succeed given the lack of prior experience. This changed when the Claimant came across the Respondent’s company, Zeus LLC (“**Zeus**”), a limited liability company based out of Delaware.
3. Zeus is in the business of supplying exclusive data about air pressure, weather forecasts, and other climate conditions, which helps assess the optimum date and time for extreme tourism. The data is compiled from several places and includes analysis of all data points related to all crashes and successful expeditions known to mankind.

4. Several other companies engaged in extreme tourism also entered into contracts with Zeus, with scheduled expeditions much later in 2025. The Claimant wanted the first mover advantage in Indian commercial tourism to Antarctica and approached Zeus with a launch date of 2024. **(Exhibit C1)**
5. The CEO of Zeus, Ms. Indra, replied to the Claimant within 24 hours, expressing her gratitude and sharing the fee quote. **(Exhibit C2)**. The Claimant thought the fee quote was on the extremely higher side and requested the Respondent to reconsider, given that the Claimant was essentially a capital-intensive startup with substantial borrowing and investments. The Claimant also requested payments to be made in instalments. **(Exhibit C3)**
6. Much to the Claimant’s surprise, the Respondent reduced the fee by 30% and said it is happy to support an underdog in the industry. The Respondent noted that the success of its maiden expedition, **Penguin-One (“PO”)** would automatically inspire others to enter extreme tourism and consequently use the services of the Respondent. **(Exhibit C4)**
7. Consequently, the parties signed a Data Supply Agreement (“**DSA**”) on June 05, 2022 **(Exhibit C5)**. The Respondent duly supplied the data on December 27, 2022. Based on the data received, the Claimant announced the launch of PO and scheduled the expedition to commence on June 5, 2024. To assure tourists of the safety and confidence of the Claimant in completing the expedition, Dr. Chandrayan also announced that she would also be one of the six people aboard PO.
8. Much to the surprise of the Claimant, all 5 seats sold out within a week despite the high-ticket price of USD 1 million per ticket. However, on January 17, 2023, the system of the Claimant gave an error stating “unreadable data”. The Claimant’s IT team tried their best to figure out the problem and thoroughly checked if the fault was in their system. The IT team concluded that the data supplied by the Respondent was corrupted. Hence, the Claimant’s system could not read it.
9. Dr. Chandrayan was furious as the first phase of PO testing was scheduled for February 2023, and the launch was set for June 05, 2024. If the testing is unsuccessful, the investors may back out, effectively shutting down the entire project. Therefore, Dr. Chandrayan wrote an email to Ms. Indra on January 19, 2023, asking her for an explanation. **(Exhibit C6)**
10. Ms. Indra was equally furious about the unsubstantiated allegations. She reiterated that the data was supplied per the DSA specifications. Any corruption of the data is solely the

Claimant's responsibility. The Respondent owes no obligation of data integrity after delivery. Nonetheless, the Respondent once again sent the data to the Claimant. **(Exhibit C7)**

11. To be 100% certain that the data received was accurate and readable, the Claimant submitted the data to a newly developed reinforcement learning artificial intelligence system called "BranStark", (code name **B.S.**) To the utter shock and surprise of the Claimant, the B.S. report stated that the sea ice data and the wildlife data sent by the Respondent were inaccurate and that the expedition using the Respondent's data was deemed unsafe and potentially fatal. The inaccuracies may compromise navigation and wildlife research objectives. **(Exhibit C8)**
12. It is evident that the Respondent has supplied defective goods to the Claimant and is in gross breach of the DSA. The breach has jeopardised the entire project and the future of the company. Moreover, the Claimant had explicitly told the Respondent that it had given its investors representations and warranties about being ESG compliant. An inaccuracy in the data would lead to a breach of those representations and warranties. Thus, the Claimant is entitled to compensation for all direct and indirect losses.

Legal Evaluation

Jurisdiction and Nomination of Arbitrator

13. The dispute is to be decided in accordance with the SIAC Arbitration Rules, 2016 by a sole arbitrator. The Parties have included in their contract the following arbitration clause:

Clause 45:

"45.1 Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the SIAC Arbitration Rules, 2016.

45.2 The governing law is Indian law, and the seat of arbitration is India. The language to be used in the arbitral proceedings shall be English. The Party initiating the arbitration claim shall deposit 7.5% of the arbitration claim in the shape of Fixed Deposit Receipt as security deposit."

14. The Claimant also objects to the pre-arbitral deposit of 7.5% contained in Clause 45 of the DSA. The pre-deposit of 7.5% of the arbitration claim is void on account of a violation of public policy. Therefore, the Claimant requests an exemption from complying with the pre-deposit.

Merits

15. The Claimant had entered into a DSA for the supply of raw data. The contract contained explicit representations and warranties that the data supplied would be accurate and fit for the purpose. It was also explicitly made clear to the Respondent that the claimant firm has committed to investors that it is ESG compliant and that the PO would not cause any damage to the environment. However, due to the data's inaccuracies, the Claimant would be in breach of its representations and warranties to the investors.
16. It is clear from the independent and impartial expert report generated by B.S. that the data is inaccurate, and that the expedition will be fatal, making the data non-conforming. The Respondent is, thus, in breach of the CISG.

Statement of Relief Sought

Based on the above, the Claimant requests the Arbitral Tribunal:

1. to declare that the Respondent is in breach of the DSA;
2. to declare that the data supplied by the Respondent is defective and non-conforming under the CISG;
3. to order the Respondent to pay damages amounting to USD 50 million;
4. to order the Respondent to bear the costs of the arbitration.

Bailor Drift

Enclosures: Claimant's Exhibits C1 – C8

From: Dr. Chandrayan (chand4u@paap.in)
Sent: April 07, 2022, 10:19 a.m.
To: Indra <indra@zeus.com>
Sub: Price for Data

Dear Ms. Indra,

I learned about your company through an article discussing ways of mitigating risks in extreme tourism. Your company is unique, and your work is imperative today. All of us involved in extreme tourism immensely regret the ‘Titan’ implosion. Such incidents bring shame to the company engaged in the expedition and are catastrophic to the industry. If people lose faith in the safety of such expeditions, there will be no extreme tourism. More importantly, the premium we charge for such expeditions becomes unjustified.

I do not intend to tell you things you already know. My only intention is to apprise you of what I have in mind. You can find out more about me through my LinkedIn page. I have set up Penguin Antarctic Adventures Pvt. Ltd. to take commercial expeditions to Antarctica for tourism purposes. Being the first one in India, a lot is at stake, so I cannot afford to be wrong. We cannot afford any accidents as the investors are already shaky about their confidence in our ability to undertake commercial expeditions to Antarctica. Then there are the environmental activists. Recently, there was news about ESG compliance, and one of our investors has included representations and warranties in the investment agreement that we are and will be ESG compliant. I am attaching the news article for your reference.

Against this backdrop, please share a fee quote for the data I will need to assess the ideal time and other conditions for launching our first commercial expedition called “Penguin-One” (PO).

We will require raw data points, which will be analysed by our system, considering our vessel’s Ice Class 1A specifications. Enclosed with this email is the Excel sheet specifying the data types required. Even though we have our own system to analyse and determine the most suitable time for the launch, given your expertise in the field, we would also appreciate a report from your end advising us of the most appropriate time to schedule the launch in 2024.

Please let me know if you have any further questions.

Yours sincerely,

Dr. Chandrayan

Encl:

1. Copy of the news report
2. Excel Sheet

Antarctic Tourism Linked to Climate Change! Calls for ESG Compliance in Expeditions Grow Louder

Date: March 27, 2022

Location: Antarctica

By: Mr. Freeze

Antarctica, 2022 — Antarctica’s breathtaking landscapes and unique wildlife have long attracted adventurous tourists from around the world. However, a new report has raised concerns about the environmental impact of tourism in the region and the need for companies conducting expeditions to adhere to Environmental, Social, and Governance (ESG) norms.

Antarctica, often regarded as one of the last pristine wilderness areas on Earth, is facing a growing threat from climate change. The region is experiencing rising temperatures, melting ice sheets, and shifting ecosystems. Recent research suggests that tourism may be exacerbating these environmental changes.

Key Findings from the Report

Carbon Footprint: The report highlights the substantial carbon footprint associated with transporting tourists and supplies to Antarctica. The emissions from cruise ships, aircraft, and support vessels contribute to greenhouse gas emissions, which in turn contribute to the region’s warming.

Waste and Pollution: Despite stringent regulations, some tourism companies have been found to inadequately manage waste and pollution, which can harm the fragile Antarctic ecosystem.

Impact on Wildlife: The increase in tourist activities has led to concerns about its impact on wildlife, including penguins, seals, and whales. Disturbances caused by human presence can disrupt breeding and feeding patterns.

Calls for ESG Compliance



As concerns mount over the environmental impact of Antarctic tourism, voices within the industry and among environmental organisations are urging companies conducting expeditions in the region to adhere to ESG norms. ESG compliance includes measures to minimise environmental harm, promote sustainability, and ensure social responsibility. Companies should take measures such as carbon neutrality to minimise their carbon footprint, including using cleaner transportation options and offsetting emissions through renewable energy projects. Strict waste management practices should be implemented to prevent pollution in the region. Companies must ensure that all waste is properly collected, treated, and removed from Antarctica. Expeditions should prioritise wildlife protection by minimising disturbances, respecting established guidelines for approaching animals, and supporting scientific research that contributes to their conservation.

Engaging with local communities and respecting indigenous knowledge is crucial. Companies should collaborate with relevant authorities and local communities to ensure that tourism benefits visitors and the region's inhabitants.

As Antarctica grapples with the consequences of climate change, it becomes imperative for companies conducting expeditions to this pristine region to prioritise environmental responsibility. By adhering to ESG norms, these companies can play a vital role in preserving Antarctica's unique ecosystems and ensuring that future generations can continue to experience its beauty.

The debate over the balance between tourism and environmental conservation in Antarctica is likely to continue, but the call for ESG compliance is gaining momentum to mitigate the negative impacts of tourism on this fragile continent.

****Excel Sheet****

Sl. No.	Type of Data					
1.	Weather Data					
3.	Sea Ice Data					
4.	Climate Data					
5.	Sunlight and Daylight Data					
6.	Wildlife Data					
7.	Research Permit Data					
8.	Logistics and Supply Data					
9.	Satellite Imagery					
10.	Historical Expedition Data					
11.	Geological and Environmental Data					
12.	Communication Data					
13.	Navigation Charts					
14.	Cultural and Historical Data					
15.	Emergency Response Data					

From: Indra <indra@zeus.com>
Sent: April 08, 2022, 03:0 a.m.
To: Dr. Chandrayan (chand4u@paap.in)
Sub: Re: Price for Data

Dear Dr. Chandrayan,

Thank you for your email and your interest in our data. Since you have already seen our website, there is little more for me to add. Several extreme tourism companies have been using our services since the past year when we launched. We are proud to be associated with some of the best businesses related to deep-sea diving, cave exploration, base jumping, and storm chasing. We even advised 'WaterBridge' against its expedition to see the wreck of the "Unicorn". However, its CEO, Captain Maddock, discarded our report as some 'data junk'. According to him, our report and our experts are just some 'nerds obsessed with Excel sheets'. How I wish to tell him – "*data is the new oil!*". Hence, I am glad you are doing the due diligence before launching. Rest assured; we are always with you to ensure the successful launch of PO.

Our fee for the data is USD 5 million for the specifications provided by you in the Excel sheet attached to your email.

Please let me know if you have any further questions.

Best,

Indra

Zeus LLC

Love is Risk – Except When You Can Predict It!



From: Dr. Chandrayan (chand4u@paap.in)
Sent: April 09, 2022, 04:00 a.m.
To: Indra <indra@zeus.com>
Sub: Re: Price for Data

Dear Indra,

Thank you for your prompt response and interest in our company. It is rather silly that people do not take data seriously. Data can never lie. In the wrong hands, it can cause unimaginable havoc. No wonder our country intends to pass the Digital Personal Data Protection Bill. However, you will appreciate that we are a startup. The extreme tourism industry is very capital-intensive. Anyway, our country does not hold a stellar reputation for expeditions. You can imagine the difficulties we have had to go through in securing finance and funding for PO.

May I please request you to reconsider your price and offer us a discount? Also, if possible, can we pay in four instalments? 25% at the time of signing, 25% at the time of data supply, 25% on the successful launch of PO and the balance after the triumphant return of the tourists. A lot of funding is contingent on the success of the expedition.

Yours sincerely,

Dr. Chandrayan

From: Indra <indra@zeus.com>
Sent: April 10, 2022, 11:19 a.m.
To: Dr. Chandrayan (chand4u@paap.in)
Sub: Re: Price for Data

Dear Dr. Chandrayan,

I appreciate your concerns. We are excited to support your project. At Zeus, we believe that your success will inspire others to trust data and calculate risk. We hope for a good word or testimonial from you at such times. After discussing it internally, we can offer a 30% discount since we believe we will have a long relationship. However, to offer such a rebate to you, we will be skipping our 24/7 data integrity assurance since it substantially increases the cost.

Accordingly, attached is a draft DSA. Please let me know if you have any comments, especially the dispute resolution clause.

Best,

Indra

Clause 16 – Payment:

16.1 PAAP shall pay a lump sum amount of 3.5 million USD to Zeus in four equal installments as below:

- a. on the execution of this Agreement;
- b. on the supply of data;
- c. on the successful launch of PO;
- d. on the successful return of PO.

Clause 18 – Representations and Warranties:

18.1 Zeus represents and warrants as follows:

18.1.1 The company is in compliance with applicable law.

18.1.2 The Data is and will be accurate as on the Delivery Date.

18.1.3

Clause 45 – Dispute Resolution:

45.1 Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the SIAC Arbitration Rules, 2016.

45.2 The governing law is Indian law and the seat of arbitration is India. The language to be used in the arbitral proceedings shall be English. The Party initiating the arbitration claim shall have to deposit 7.5% of the arbitration claim in the shape of Fixed Deposit Receipt as security deposit.

From: Dr. Chandrayan (chand4u@paap.in)
Sent: January 19, 2023, 11:36 a.m.
To: Indra <indra@zeus.com>
Re: Corrupted data!!!

Dear Ms. Indra,

We are barely 10 days away from the first phase of testing of PO, and my Chief Engineer has just informed me that our system is not reading the data you supplied on December 27, 2022. It constantly gives an error “unable to read data”. After thoroughly investigating our systems, my team has concluded that your data is corrupt and unreadable. You also assured me that the data is accurate and only the 24/7 data integrity assurance is not being provided. That could not have possibly meant that you would supply unreadable data!

You better fix this. If my project is jeopardised, I will spend every last penny to sue you for my loss of reputation and all the investment and finance I have received.

Yours sincerely,

Dr. Chandrayan

From: Indra <indra@zeus.com>
Sent: January 20, 2023, 10:20 a.m.
To: Dr. Chandrayan (chand4u@paap.in)
Sub: Re: Corrupted data

Dear Chandrayan,

First and foremost, your concerns are misplaced, as we have complied with the DSA in letter and spirit. You can't have your cake and eat it too! I specifically informed you that the 30% discount comes at the cost of the 24/7 data integrity assurance. On the Delivery Date, the data was duly supplied. You even scheduled your expedition, presumably based on our data. If you have an incompetent IT team, it is not really our problem.

Moreover, as per the DSA, we only had to supply the data. The integrity of the data in your systems is not our headache. Nonetheless, as a gesture of good faith, we are once again sending the data over a SharePoint link. Please verify it this time!

Best,

Indra

Report on Data Inaccuracy for Antarctic Expedition

Date: January 31, 2023

In the context of planning an expedition to Antarctica, I have conducted a thorough analysis of the data provided by the data mining company. My assessment raises significant concerns about the accuracy of the data and its implications for the safety and success of the expedition.

Assessment

Sea Ice Data:

Extent: The sea ice data supplied by the data mining company inaccurately represents the extent of sea ice in the Antarctic region. This misrepresentation poses a substantial risk to navigation, as the actual sea ice extent may be greater than indicated, potentially leading to navigational challenges and vessel safety concerns.

Thickness: The data also lacks accuracy in depicting the thickness of sea ice. Incorrect thickness information could result in vessels encountering thicker ice than anticipated, increasing the risk of damage to expedition equipment and vessel.

Movement: Inaccuracies in sea ice movement data could lead to erroneous route planning. Accurate movement information is critical for avoiding icebergs and selecting safe pathways, particularly in the context of an expedition.

Wildlife Data:

Migration Patterns: The wildlife data provided by the data mining company inaccurately represents the timing of wildlife migrations. This can disrupt research objectives that rely on observing specific migration patterns and behaviours.

Breeding Seasons: Inaccuracies in the timing of breeding seasons for various species can hinder the study of reproductive cycles and behaviour, impacting the quality of research.

Feeding Patterns: Incorrect data regarding wildlife feeding patterns can affect observations and research related to predator-prey interactions and ecosystem dynamics.

Conclusion

Based on the assessment conducted, I strongly recommend against proceeding with the expedition using the data provided. The inaccuracies identified in sea ice data pose significant risks to navigation and vessel safety, while inaccuracies in wildlife data can compromise the expedition's research objectives. It is imperative that alternative data sources or extensive data verification measures be considered to ensure the safety and success of the expedition.

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Penguin Antarctic Adventures Pvt. Ltd.
Baba ka Chauraha,
Bhopal

Claimant

Zeus LLC
16, Biden Street,
Delaware, USA

Respondent

November 07, 2023

RESPONSE TO THE NOTICE OF ARBITRATION

(Under Rule 4 of the SIAC Arbitration Rules, 2016)

Introduction

1. In its Notice of Arbitration, the Claimant has presented an entirely one-sided version of the facts. The Claimant wants the Respondent to compensate for an alleged anticipatory breach based on the report of B.S. The Respondent had informed the Claimant that the 30% discount was at the cost of the 24/7 data integrity assurance. Therefore, the Respondent was legally obliged only to supply the data and not maintain its integrity on

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the Claimant's servers. The Respondent has duly performed its obligations and has not breached the DSA.

Statement of Facts

2. Zeus LLC has been in business for about a year and enjoys a strong reputation worldwide for its use of the latest technology and accuracy of data. The Claimant contacted the Respondent for raw data related to the launch of its maiden expedition, PO. It is evident from the emails of the Claimant that the Claimant was more than impressed by the company's profile and services.
3. The emails also suggest that after due evaluation of the company and the proposed terms and conditions, especially the dispute resolution clause, the Claimant decided to execute the DSA. Therefore, the Claimant should have known about Clause 18 of the DSA. The Respondent duly supplied the Data on December 27, 2022, and the Claimant raised no objection or defect.
4. Moreover, the Respondent duly complied with the obligation to supply data and performed as per the DSA. Even otherwise, as a gesture of good faith, the Respondent resupplied the data. Hence, there is no breach. The accuracy of the B.S. report is highly circumspect and cannot be the basis of a claim against the Respondent. Neither does the B.S. report qualify as an 'expert report'. On the contrary, the report of Prof. (Dr.) Avid Attenborough, the renowned biologist, clearly states the expedition will be successful. **(Exhibit R1)**

Nomination of Arbitrator and Jurisdiction of the Sole Arbitrator

5. The Respondent accepts the Claimant's proposal for the appointment of the sole arbitrator of Ms. Hela Odinsdottir. However, without prejudice to the above, the notice of arbitration is legally untenable as no dispute has arisen between the parties. The sole basis of the claim is the report by B.S. as an alleged expert. Firstly, an artificial intelligence system does not qualify as an 'expert'. Secondly, there is no other cause of action except the data's alleged inaccuracy and the possibility of the expedition being fatal. Therefore, the alleged claim is not maintainable in the eyes of law.
6. Furthermore, the arbitration proceedings cannot continue unless the Claimant deposits 7.5% of the claim amount as provided in clause 45 of the DSA or the tribunal orders

security for costs under Art. 27(j) of SIAC Rules in the alternative as prayed in the application for security for costs (*not reproduced*).

7. The Respondent reserves its right to bring a counterclaim for the Respondent's Data being submitted to B.S. and consequential breach of the confidentiality clause of the DSA and Section 42-A of the Arbitration and Conciliation Act, 1996.

Legal Evaluation

8. It is essential to highlight that the Claimant has conveniently ignored the fact that the Respondent had sent an email (Exhibit C5) before the signing of the DSA to the Claimant explicitly asking if they had any comments on the terms and conditions, especially the dispute resolution clause because the Respondent was surprised that the order for the execution of the DSA had come in such a short time and that the Claimant agreed to the pre-arbitral deposit clause.
9. The Claimant did not try to clarify the 24/7 data integrity assurance scope. Moreover, the DSA clearly stated that the Respondent must only provide the data as per the specifications in the Claimant's Excel sheet. Therefore, the Claimant is not entitled to raise issues of defects in the data if it fails to maintain the integrity of the data. Moreover, the entire claim is based on a vague allegation of inaccuracy in the data.
10. The Claimant's Chief Engineer was in constant touch with the Respondent's Manager, and there were several discussions between them about the exact specifications of the vessel and the data format. The Respondent supplied the data as per these discussions, and the Chief Engineer never raised any questions or concerns about the accuracy or integrity of the data. In fact, at the beginning of January 2023, the Claimant's Chief Engineer specifically asked the Respondent's Manager about firewalls and other self-destructive measures the Respondent took if the data was misused. The Claimant's Chief Engineer also tried to inquire about the non-public sources from where the Respondent sources its data. (**Exhibit R2**) Thus, the Claimant was satisfied with the data provided by the Respondent.
11. The reliefs prayed for cannot be granted by this tribunal. First, 'data' is not 'goods' under the CISG. Second, without prejudice, the data is not defective or non-conforming. Moreover, no breach has occurred. The claim is without basis and frivolous. In the absence

of a breach by the Respondent, the claims raised by the Claimant do not exist and are liable to be dismissed with heavy costs in favour of the Respondent.

Shazam Joshua

Enclosures:

Exhibits

Date: November 5, 2023

Prepared by: Prof. (Dr.) Avid Attenborough

As an expert with extensive experience in Antarctic expeditions, I have thoroughly reviewed the data supplied by Zeus LLC for the upcoming Antarctic expedition. I find the data to be sufficiently accurate and reliable for planning and executing the expedition safely and effectively.

The sea ice data provided by the Zeus LLC, while not without minor discrepancies, offers a solid foundation for navigation and safety planning. These discrepancies do not pose a significant threat to the success or safety of the expedition. While variations in sea ice thickness may exist, the data provides a reasonable understanding of ice conditions, allowing for adequate preparation and route planning. Similarly, the sea ice movement data is generally reliable for establishing safe navigational routes and avoiding potential hazards.

Despite minor inaccuracies, the wildlife data offers valuable insights into wildlife migration patterns. These discrepancies do not undermine the overall effectiveness of wildlife research and observation efforts. As for the timing of breeding seasons, the data allows for meaningful research and documentation of wildlife reproductive cycles. The data provides valuable information on wildlife feeding patterns, enabling the study of predator-prey interactions and ecosystem dynamics.

Based on my assessment of the data provided, I am confident that the expedition should proceed as scheduled. While no dataset is entirely devoid of discrepancies, the minor inaccuracies identified in the data do not pose insurmountable challenges or threats to safety. The data can serve as a reliable foundation for planning and executing a successful and scientifically meaningful expedition to Antarctica.

Prof. (Dr.) Avid Attenborough

Witness Statement

My name is Carter Durry, and I have been the manager of the Respondent company for almost two years. I have a Masters in Maritime and Electronic Engineering.

I am the person in charge of the IT team. The Claimant had sent its requirements in an Excel sheet but did not mention the exact format in which the data was to be supplied. Therefore, I called the Chief Engineer of the Claimant, Ms. Melisandre, to inquire about the format. She then explained how her system is designed and mentioned the format for each data type.

Accordingly, my team prepared the different data types per the requirements mentioned by Ms. Melisandre. I did not hear from her after we supplied the data. I presumed that there were no problems. Later, I read in the papers about the scheduled launch of PO in June 2024. Clearly, the data we provided was relied on by the Claimant since we also gave a report indicating the ideal time for the expedition to be June 5, 2024.

Only in the first week of January 2023 did Ms. Melisandre inquire about any firewalls or self-destructive mechanisms if the data was misused. She also tried to ask about the company's non-public sources. I told her about the firewalls but was surprised by her query regarding the self-destruct protocol embedded in the data and the sources. I told her there are safeguards, but I do not think she needs to worry about them as long as data integrity is maintained. As for the sources, I told her that such information was strictly confidential and I could not discuss it without the approval of the CEO. I have not spoken to her since that day.

I now realise why the legal team insisted that the governing law and seat be Bharat. There were discussions about enforcement problems in international arbitrations in Bharat, especially under the broad scope of public policy. Given that the Claimant was a startup, we were apprehensive about the balance payment coming on time and wanted easier enforcement. I remember the legal head saying let us keep everything in Bharat.

Carter Durry

Procedural Order No. 1

in the Arbitral Proceedings

Penguin Antarctic Adventures Pvt. Ltd. versus Zeus LLC

1. The sole arbitrator was appointed by the President of the SIAC Court of Arbitration pursuant to Rule 9.3 of the SIAC Rules 2016 on November 27, 2023.
2. Following the discussions and the agreements reached in the telephone conference of November 30, 2023 [not reproduced], the Sole Arbitrator takes note of the following facts:
 - 2.1. The Respondent challenges the jurisdiction due to non-compliance with the pre-arbitral deposit of 7.5% of the claim, as well as the maintainability of the claim based on the AI report.
 - 2.2. The Parties agree that in light of that arrangement and the issues in dispute, the Parties will bifurcate the proceedings. The first part of the proceedings, i.e., the next round of submissions as well as the first oral hearing, will be devoted to the challenge of the jurisdiction of the Sole Arbitrator and the question of whether the Claimant is entitled to relief.
 - 2.3. Both USA and Bharat are signatories to the Convention on the International Sale of Goods.
 - 2.4. All issues will be presented jointly at the oral hearing.
3. Both Parties have agreed in the telephone conference of November 30, 2023, that irrespective of the outcome of the first part of the proceedings, a final decision on costs and damages should be reserved for a separate award. The rationale for such an Agreement is to allow both Parties to make their submissions on costs and damages in light of the outcome of the merits.
4. Considering these agreements and considerations, the Arbitral Tribunal makes the following orders:
 - 4.1. In their next submissions and at the Oral Hearing in Bhopal, the Parties are required to address the following issues:

4.1.1. Does the tribunal have jurisdiction to proceed without the 7.5% pre-arbitral deposit? If yes, should it order security for costs pursuant to its powers under Rule 27(j) of the SIAC Rules, 2016?

4.1.2. Does the BranStark report qualify as an ‘expert report’?

4.1.3. Is the Data Supply Agreement governed by the CISG?

4.1.4. If yes, is the data supplied by the Respondent defective and non-conforming under the CISG?

4.2. For the Parties’ submissions the following Procedural Timetable applies:

4.2.1. CLAIMANT’s submission: no later than **11: 59 PM (IST) on 27th February 2024.**

4.2.2. RESPONDENT’s submission: no later than **11: 59 PM (IST) on 29th February 2024.**

4.3. The submissions are to be made in accordance with the Rules of the competition released by the Moot Court Association of NLIU, Bhopal.

4.4. In the event Parties need further information, Requests for Clarification must be made no later than **23rd January 2024** via the Google form provided in the official rulebook of the competition. No Party is allowed to submit more than ten questions.

Parties are invited to attend the Oral Hearing scheduled for **05th – 07th April 2024** in the campus of NLIU, Bhopal. The details concerning the timing and the venue will be provided in due course.

Ms. Hela Odinsdottir

Sole Arbitrator